



Brand Complementors: Implementing a Cooperative Domain-Name Use

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Abstract

The essay expands a cooperative solution¹ to third-party use of brands in domain names. Like any approach that depends on cooperation, the solution will require both sides to change behavior but also allow both sides to take credit for the resulting benefits, i.e. a triangular solution. If not immediately addressed, the problem of third-party use can become a major threat to the industry. But we already know one thing: when it comes to this issue, legal action and bullying don't work.

Introduction

The mere word “cybersquatting” stirs up emotions in all of us. The term was first used to mean the simple act of registering a domain name for investment purposes. We have anecdotal evidence that anyone who wants a given name, and who finds it already taken, becomes eager to lay the cybersquatter label on all domainers everywhere and especially on the registrant. The media also sprays the term about quite freely. But a more precise meaning has won acceptance, and that's the one I use here. Currently, it typically refers to the use and registration of domain names that include someone else's brand or a typo version of said brand.

As far as brand owners are concerned, such behavior counts as breach of trust (intentional or not) by the name owner in particular and the domainer community in general. The domainers, meanwhile, resent the tone taken by brand owners and the media, and they have their guard up because of the techniques some brand owners have used in trying to gain control of a given domain name. Too often, domainers feel, brand owners have ignored clear evidence that a domain name represented fair use and was therefore legal.

Our community resents criticism and resents it fiercely. Anybody who has ever written about the domain name industry tells the same story — introducing even a hint of negativity into an article creates intense negative emotions against the author and the publishing site. One reason, no doubt, is our abundant experience with biased media coverage. But there's another. At Stanford University, the psychologists Robert P. Vallone, Lee Ross, and Mark R. Lepper studied perceptions of media bias regarding the Israeli-Palestinian conflict. They found that people with strong opinions on the conflict were more likely to perceive bias in news accounts. Pro-Palestinian subjects saw a pro-Israel bias, and vice versa. The same could well be true in our case. Polarization creates an abiding sense of unfairness.

¹ See Alex Tajirian, “[Typosquatting: A Solutions](#),” CircleID.

To reach beyond the polarization mindset, to restore trust, we must set aside litigation and any attempts to broaden the relevant laws.² A new approach is needed, one that allows both sides to change behavior and brag about it.

Solution Components

The first step is relabeling. Domain name owners should be seen as *brand complementors* because, when the names are used cooperatively, they create value for both sides.

Next, brand owners should:

1. Acknowledge that not all uses of brand names in a domain name are illegal.
2. Think forward, to the opportunities presented by cooperation, and not backward to disputes over interests.
3. Take into account the harm that legal action, if undertaken, could do to value.³
4. Realize that underdogs, including domainers, do sometimes win and Goliaths sometimes crumble.
5. Forget about labeling a solution “sleeping with the enemy” and remember that cooperation means there is no enemy.
6. Forget about confrontation and strong arm tactics. Tough policing was not the main reason for crime’s decline in New York City. The Delancey Street Project in San Francisco has shown the amazing things that trust and respect can do in turning around people branded as hardened criminals. Remember this useful proverb found among the Swedes: “You cannot make yourself taller by cutting off the other fellow’s head.”

Now for our side. Owners of domain names—that is, of complementors—should:

1. Realize that some uses do indeed violate IP and that vigorous legal action can be expected as a result.
2. Look forward to a value-creating cooperative regime.
3. Recognize that even the use of a generic domain name that doesn’t contain a given brand can still enhance a brand’s value.⁴
4. Acknowledge that lobbying is not enough.⁵ Additional instruments need to be used to protect and promote the interests of brand complementors.

We’ll know the new approach is working when both sides can boast about how well they’re making out. Brand owners will point to the foresight and the courage to work for Me Inc., the shareholders, and the domain name ecosystem. Complementors will point to higher legitimate returns and lower risk. Even the third side of the triangle benefits, because what better place to boast than starting with the media? ■

² See Philip S Corwin, “ICA Posts Position Paper and Analysis of Snowe ‘Anti-Phishing’ Legislation,” CircleID.

See Alex Tajirian, “Don’t Litigate, Open Them Up!,” DomainMart.

⁴ See Alex Tajirian, “Generic Domain Names Bolster Your Brands,” DomainMart.

⁵ For lobbying effort, see Corwin, *supra*.