



Domain Tasting: A Solution *

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August 14, 2007

Abstract

We argue that the five-day registration grace period¹ creates a subsidy from domainers as a whole to tasters in particular and should be abolished. We also suggest an alternative arrangement that would put a huge damper on tasting.

Introduction

One issue that a large number of domainers agree on is that domain tasting² under the current ICANN–approved policy is bad for the industry. For one thing, a healthy portion of the practice involves trademark use that not only is illegal but also destroys value. Of course, particular segments of the domain name ecosystem can suffer value destruction because of tasting that doesn't infringe trademarks. But most criticism is directed, and rightly so, at tasting that raises trademark issues.

Litigation over the trademark issues has done little to stop the practice and destroys value for trademark holders and domainers alike. Now the big trademark owners have begun pooling their efforts and given us [the Coalition Against Domain Name Abuse \(CADNA\)](#). As their creature, the group offers a real possibility of abuse. Conceivably, individual domain name owners could be bullied into giving up names that face only flimsy trademark allegations.

Meanwhile, tasting will continue as long as there is an increase in the average PPC rates or in search volume, advertising for new keywords or improvements in content to better match user intent. Thus, a long-term solution needs to be implemented.

* Prepared for the Domain Name Image session at the 3rd annual Domain Roundtable Conference (www.domainroundtable.com) in Seattle.

¹ For background information on origins of the grace period and negative implications of tasting, see http://en.wikipedia.org/wiki/Domain_tasting, http://icannwiki.org/Domain_tasting, and John Levine's article, "In Bad Taste" at http://www.circleid.com/posts/domain_in_bad_taste/.

² The practice refers to registering hundreds of thousands of domain names and testing them for their potential to generate ad revenue. After five days, the ones that "taste good" are kept, the others are canceled for a full refund.

A Taste of Existing Views

One argument invoked for eliminating the five-day grace period is that the opportunity for tasters to go hog-wild puts stress on the registries. But by now a number of the registries have installed and paid for the extra capacity they require. It must be considered a sunk cost and has no place in calculating the merits of eliminating the grace period.

There have been suggestions that registries could offer only partial, not full, refunds when a registration is canceled. But this proposal would have no bite unless ICANN mandated a ceiling for refunds; otherwise competitive market forces would make reductions in the refund nominal at best. The recent announcement of the formation of CADNA to tackle trademark-related domain tasting is primarily aimed at enhancing the trademark owners' market power while reducing their monitoring and enforcement costs. The market power comes not only from the aggregation of the coalition members' trademark rights but also from their call for action to enlist disgruntled domain name owners who have lost their names to tasters. However, CADNA and the route of confrontation are value-destroying for both parties. CADNA does not present an effective solution and might be used to pressure domainers into giving up domain names that don't violate trademarks.

What is the real problem?

Under the current ICANN pricing structure, the registration fee implicitly includes an option that allows the registering entity to force a full refund. This option has value, as demonstrated by the volume of domains being tasted. But those doing the tasting, by and large, are the few domain owners willing to risk trademark infringement. Other domain owners, the vast majority, also pay the higher registration fees that make the full refunds possible, but they don't benefit from the refund option. In effect, they are subsidizing those of their competitors ready to play fast and loose with trademarks.

On the registrars' side, of course, the players with the capacity to handle the large volume of tasters' five-day transaction sprees often benefit from the current arrangement. As a result ICANN is notably reluctant to tackle problems associated with the grace period.

What needs to be done?

Any solution has to accomplish two things: (1) give ICANN an incentive to overcome the bigger registrars' resistance to action; and (2) eliminate the subsidy to tasters.

One part of the answer would be to stop funding the cost of refunds out of the same standard registration fee that all domain owners pay. Instead domain owners would be given a choice when they registered. Those looking for full refunds would pay extra by purchasing insurance policies³ guaranteeing them that option. Those who weren't

³ A put option.

interested in refunds would pay only the registration fee, now lower because it would no longer carry the weight of subsidizing the tasters.

Different domainer risk classes would pay different prices for their insurance, of course. But paying would give all would-be tasters an incentive to abandon the spree approach to acquiring domain names and to start using analytical tools instead. The change would expand the field's knowledge base and thus create value.

More is needed to conquer domainers' "bad taste" problem. But going through the legal venues cannot be considered an answer. Done individually or coordinated through CADNA, lawsuits would take too long to resolve and would destroy value for both sides, domainers and trademark holders. Instead trademark holders should explore solutions based on cooperation with advertising agencies (such as Google and Yahoo) and monetizers.

Concluding Remarks

1. The proposed refund insurance policy solution stops the wrongful subsidy from domainers to tasters and satisfies ICANN.
2. To overcome "bad taste," or bad tasting, trademark owners need to follow a cooperative strategy instead of litigation.
3. A coordinated effort by domainers is needed to forestall abuse of CADNA. ■