

## CyberSquatting - A New Age Form of Blackmail

Are you a business that is just getting around to setting up your website, only to learn that the name of your company is already being used as a domain name by someone else? Are you surprised? Annoyed? Is there anything you can do about this?

Or perhaps after setting up your website, you receive a cease & desist letter from another company threatening to sue you for violation of the Anti-Cybersquatting Consumer Protection Act. How should you respond? Do you have to release your website to them?

Many of these questions can be answered by the Anti-Cybersquatting Consumer Protection Act (ACPA). The term “cybersquatting” refers to the registering, selling or using a domain name with the intent of profiting from the goodwill of someone else's trademark. It generally refers to the practice of buying up domain names that use the names of existing businesses with the intent to sell the names for a profit to those businesses.

The ACPA is a federal law that took effect in 1999, in order to prevent bad faith registration of domain names. For example, if Mercedes Benz did not have a website and you registered [www.Mercedesbenz.com](http://www.Mercedesbenz.com) with the intent of selling the site to Mercedes Benz for a lucrative ransom, you could be liable under the ACPA for bad faith registration of a domain name. Many people are surprised that this practice is illegal and believe that since the registrars, such as Network Solutions, and others allowed them to register the domain name, it must be legal. In reality, the only thing that registrars require registrants to do is to affirm that, by registering the domain name, they are not interfering with someone else's legitimate trademark rights.

The ACPA does not deal with registration of generic domain names, such as [www.luxurycars.com](http://www.luxurycars.com), which is perfectly legal. The ACPA comes into play when someone registers a domain name which includes a trademark, for example [www.bmwluxurycars.com](http://www.bmwluxurycars.com), and if the registration is done in bad faith.

Although holding a domain name for ransom is one of the ways “bad faith” can be shown under the ACPA, it is not the only one. Bad faith can also be shown by using a domain name to divert customers from a trademark owner's website to another for commercial gain. This is often seen by a competitor registering a variation of trademark, for example a photography equipment retail store may register [www.nicon.com](http://www.nicon.com), hoping to steal camera buyers from customers looking for Nikon cameras, but who may be hurried or unsure of the spelling for Nikon.

Bad faith can also be shown by an attempt to damage the trademark by harming the goodwill associated with the trademark. Damaging or tarnishing a trademark can arise if a domain name is similar to another's trademark and leads to a site, such as a

pornographic website, that tends to damage the goodwill of the trademark by creating an unpleasant association with the trademark.

The primary purpose of the ACPA is to reduce consumers' confusion about the source and sponsorship of Internet web pages. This helps provide consumers with a degree of certainty as to the quality of the goods associated with the trademark. Thus, when consumers visit a website of a trusted product, they will actually find the product they are looking for and not something entirely different.

Trademarks are a source of pride for many businesses and can represent years, if not decades, of dedication to their customers. Continuing a tradition and association with quality is the cornerstone of developing a successful business and ensuring customer loyalty. For this reason, business owners are vulnerable to predators who understand the link between a trademark and a successful business. Knowledge of the law is the key to protecting your business and your trademark.

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