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CYBERSQUATTING AND CONSUMER PROTECTION: ENSURING DOMAIN NAME INTEGRITY

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

S. 1255

A BILL TO PROTECT CONSUMERS AND PROMOTE ELECTRONIC COMMERCE BY AMENDING CERTAIN TRADEMARK INFRINGEMENT, DILUTION, AND COUNTERFEITING LAWS, AND FOR OTHER PURPOSES

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CYBERSQUATTING AND CONSUMER PROTECTION: ENSURING DOMAIN NAME INTEGRITY

THURSDAY, JULY 22, 1999

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:07 p.m., in room SD–628, Dirksen Senate Office Building, Hon. Spencer Abraham presiding.

Also present: Senators DeWine and Leahy.

OPENING STATEMENT OF HON. SPENCER ABRAHAM, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator ABRAHAM. We will come to order, and we welcome everybody and thank our panel that I will introduce in just a moment or so. Senator DeWine, we appreciate his being here, too.

This is a hearing on Cybersquatting and Consumer Protection: Ensuring Domain Name Integrity. I would like to just make a few opening statements here, and then if any other members join us, we will offer the minority an opportunity to respond. Senator DeWine, if you have an opening statement, we will allow you as well.

We are here today to hear evidence on a new form of high-tech fraud that is causing confusion and inconvenience for consumers, increasing costs for people doing business on the Internet, and posting substantial threat to a century of pre-Internet American business efforts. The fraud is commonly called "cybersquatting," a practice whereby individuals, in bad faith, reserve Internet domain names or other identifiers of online locations that are similar to or identical to trademarked names. Once a trademark is registered as an online identifier or domain name, the cybersquatter can engage in a variety of nefarious activities—from the relatively benign parody of a business or individual, to the obscene prank of redirecting an unsuspecting consumer to pornographic content, to the destructive worldwide slander of a centuries-old brand name. This behavior undermines consumer confidence, discourages Internet use, and destroys the value of established brand names and trademarks.

Our economy, and its ability to provide high-paying jobs for American workers, is increasingly dependent upon technology. Electronic or e-commerce, in particular, has been an engine of great economic growth for the United States. Between businesses, e-commerce has grown to an estimated $64.8 billion for 1999 alone. Ten million customers shopped for some product using the Internet in 1998. International Data Corporation estimates that $31 billion in

products will be sold over the Internet in 1999. And 5.3 million households will have access to financial transactions like banking and stock trading by the end of this year. If we want to maintain our edge in this emerging marketplace, then we must address the problems which endanger the continued growth of electronic commerce.

Cybersquatting has already caused significant damage in this area. Even computer-savvy companies buy domain names from cybersquatters at extortionate rates to rid themselves of a headache with no certain outcome.

For example, Gateway computers recently paid $100,000 to a cybersquatter who had placed pornographic images on the website www.gateway20,000. But rather than simply give up, several companies, including Paine Webber, have instead sought protection of their brands through the legal system. However, as with much of the pre-Internet law that is applied to this post-Internet world, precedent is still developing, and at this point one cannot predict with certainty which party to a dispute will win and on what grounds. In fact, one of our panelists will provide us with a first-hand account of this shortly.

Whether perpetrated to defraud the public or to extort the trademark owner, squatting on Internet addresses using trademarked names is wrong. Trademark law is based on the recognition that companies and individuals build a property right in brand names because of the reasonable expectations they raise among consumers. If you order a Compaq or Apple computer, that should mean that you get a computer made by Compaq or Apple, not one built by a fly-by-night company pirating the name. The same goes for trademarks on the Internet.

To protect Internet growth and job production, Senators Torricelli, Hatch, McCain, and I recently introduced an anticybersquatting bill which has received strong public support. A number of suggestions have convinced me of the need for substitute legislation which addresses the issue of in rem jurisdiction and which eliminate provisions dealing with criminal penalties, and I have been pleased to work with Senator Leahy and Senator Hatch to that effect.

As it now stands, the substitute legislation would establish uniform Federal rules for dealing with this attack on interstate electronic commerce, supplementing existing rights under trademark law. It establishes a civil action for registering, trafficking in, or using a domain name identifier that is identical to, confusingly similar to, or dilutive of another person's trademark or service mark, if that mark is inherently distinctive or has acquired distinctiveness.

The substitute will incorporate substantial protections for innocent parties, keying liability on the bad faith of a party. Civil liability would attach only if a person had no intellectual property rights in the domain name identifier; the domain name identifier was not the person's legal first name or surname; and the person registered, acquired, or used the domain name identified with the bad-faith intent to benefit from the goodwill of another's trademark or service mark.

And just to be clear of our intent here, this substitute legislation specifies the evidence which may be used to establish the bad faith of an individual.

Under this legislation, the owner of a mark could bring an in rem action against the domain name identifier itself. This will allow a court to order the forfeiture or cancellation of the domain name identifier or the transfer of the domain name identifier to the owner of the mark. It also reinforces the central characteristics of this legislation—its intention to protect property rights. The in rem provision will eliminate the problem most recently and prominently experienced by the auto maker Porsche, which had an action against several infringing domain name identifiers dismissed for lack of personal jurisdiction over the cybersquatting defendant.

Finally, this legislation provides for statutory civil damages of at least $1,000, but not more than $100,000 per domain name identifier. The plaintiff may elect these damages in lieu of actual damages or profits at any time before final judgment.

The growth of the Internet has provided businesses and individuals with unprecedented access to a worldwide source of information, commerce, and community. Unfortunately, those bad actors seeking to cause harm to businesses and individuals have seen their opportunities increase as well. In my opinion, online extortion in this form is unacceptable, it is outrageous, and it is dangerous to both business and consumers. I believe that these provisions will discourage anyone from squatting on addresses in cyberspace to which they are not entitled.

With that, I welcome each member of our panel and look forward to hearing their testimony, and to working with, really, any and all members of this committee as we move forward to try to advance this legislation.

At this point I would like to enter into the record the statement of Senator Hatch, Chairman of the full Committee on the Judiciary.

[The prepared statement of Senator Hatch follows:]

PREPARED STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Let me begin by welcoming everyone here today. As is apparent the title of our hearing, we are here to discuss an issue that has a great impact on American consumers and the brand names they rely on as indications of source, quality, and authenticity. For the Net-savy, what we are talking about is "cybersquatting," of the deliberation, bad-faith, and abusive registration of Internet domain names in violation of the rights of trademark owners. For the average consumer, what we are talking about is basically fraud, deception, and the bad-faith trading on the goodwill of others.

The problem of brand-name abuse and consumer confusion is particularly acute in the online environment. While trademarks serve as the primary means of ensuring the quality and authenticity of goods and services, consumers in the real world may also look to other indicators. For example, when one walks in to the local consumer electronics retailer, they are fairly certain who they are dealing with and they can tell by looking at the products and even the storefront itself whether or not they are dealing with a reputable establishment. these protections are largely absent in the electronic world, where anyone with Internet access and minimal computer knowledge can set up a storefront online. In many cases what the consumer sees on the site is their only indication of source and authenticity, and the Internet domain name that takes them there may be the primary source indicator. Cybersquatting makes a potentially dangerous situation worse by fostering con-

sumer confusion and deteriorating consumer confidence in brand name identifiers and electronic commerce generally.

There are many other examples of how cybersquatting harms consumers. Take, for example, the child who in a "hunt-and-peck" manner mistakenly types in the domain for "dosney. com", looking for the rich and family-friendly content of Disney's home page, only to wind up staring at a page hard-core pornography because someone snatched up the "dosney" domain in anticipation that just such a mistake would be made. Or imagine logging on to what you is your favorite online retailer only to find out later that the site was not that retailer at all, but rather a facade for an unscrupulous individual who is collecting your credit card and other personal information for unknown and possibly nefarious purposes.

In addition to the consumer harm, we must also look at the harm caused to American businesses by cybersquatters. In each case of consumer confusion there is a case of brand-name misappropriation and an erosion of goodwill. Even absent consumer confusion, there are many many cases of cybersquatters who appropriate a brand name with the sole intent of extorting money from the lawful mark owner, precluding evenhanded competition, or harming the goodwill of the mark. It is time for Congress to take a closer look at these abuses and to respond with appropriate legislation.

I look forward to hearing from our witnesses today as they relay their experiences relating to domain name abuses and help us to understand better the problems of online consumer confusion that are perpetuated by brand-name misappropriation in cyberspace.

Senator ABRAHAM. I will ask Senator DeWine if he has any comments.

Senator DEWINE. Mr. Chairman, I do not have an opening statement. I just want to thank you for holding this hearing. I think it is a very important topic, and I look forward to hearing the testimony of the witnesses.

Senator ABRAHAM. I thank you for being here, Senator.

At this point we will turn to our panel. First we will hear from Ms. Anne Chasser, who is president of the International Trademark Association, INTA. Ms. Chasser is a recognized expert in trademark law and is well published in the field. Her association represents trademark owners worldwide and has been an active participant in the WIPO and the I-CANN processes relating to domain names and Internet administration.

Our next witness is Mr. Gregory Phillips of Howard, Phillips & Andersen, who is a trademark practitioner on the front lines of the battle against cybersquatting. Mr. Phillips has represented a number of clients who have had problems with cybersquatters, most notably Porsche automobiles and Chanel and Calloway Golf.

Our final witness is Mr. Christopher Young, who is president and CEO of Cyveillance—did I get that right?

Mr. YOUNG. That is close.

Senator ABRAHAM. OK; we will let you do it the right way in a second here. It is a private company that helps trademark owners police their marks online. Mr. Young has been featured as an expert on e-commerce issues on CNNfn and several notable magazines, newspapers, and journals.

We appreciate all three of you being here to help us to clarify this a little bit more. We will turn to you, Ms. Chasser, and we appreciate your participation.

STATEMENTS OF ANNE H. CHASSER, PRESIDENT, INTERNATIONAL TRADEMARK ASSOCIATION, WASHINGTON, DC; GREGORY D. PHILLIPS, HOWARD, PHILLIPS & ANDERSEN, SALT LAKE CITY, UT; AND CHRISTOPHER D. YOUNG, PRESIDENT AND CO-FOUNDER, CYVEILLANCE, INC., ARLINGTON, VA

STATEMENT OF ANNE H. CHASSER

Ms. CHASSER. Thank you. Good afternoon, Mr. Chairman. On behalf of the 3,600 members of the International Trademark Association, I want to thank you for the opportunity to appear before you today to support the legislation designed to curb cybersquatting. We appreciate your efforts, as well as the efforts of Senator Hatch and Senator Leahy, to bring this issue to the attention of the Congress. I want to especially thank my fellow Buckeye, Senator DeWine, for also attending. Thank you.

Cybersquatting can be referred to generally as the registration and trafficking in Internet domain names with bad-faith intent to benefit from another's trademark. It is an activity that has emerged with the growth of the Internet and, in particular, the use of the Internet as a vehicle for commercial activity.

There has been a lot said about the impact of e-commerce on the global marketplace. There is no doubt that business on the Internet is here and it is here to stay. We can, therefore, not ignore the fact that consumers who use the Internet to purchase goods or learn about a particular product look for some type of clarity, something that tells them that they have reached their intended destination in cyberspace. That something, Mr. Chairman, is trademark. Trademarks are the link in the commercial chain.

A trademark is a basic mode of communication, a means for a company to convey a message of quality, consistency, safety, and predictability to the consumer in an easy-to-understand form. It is usually one of the most significant property assets of a company. Cybersquatters seek to capitalize on this familiarity and value by registering or trafficking in domain names that are worded exactly like a trademark or a variation of a trademark. They do this with little or no investment of their own and with something significantly less than good intentions.

Some cybersquatters, Mr. Chairman, try to extract payment from the rightful owner of the mark, essentially holding the mark as ransom. For example, Warner Brothers reports that cybersquatters offered to sell them such domain names as bugsbunny.net and daffyduck.net for over $350,000.

Others offer domain names for sale publicly to third parties. The University of California at Los Angeles, UCLA, was surprised at one point to learn that ucla.com was on the auction block. Still other cybersquatters use marks, particularly those famous or well-known, as addresses for pornographic sites. Mobil Corporation reported to INTA that their MOBIL 1 trademark was used to direct people to a site containing adult material.

Finally, there are those cybersquatters who use the domain name to engage in commercial fraud. AT&T reports that a cybersquatter registered attphonecard.com and then solicited credit card information for those visiting the site.

Cybersquatting is on the rise. Moreover, remedies under traditional trademark law cannot deal adequately with the number of instances of cybersquatting. For example, existing law does not deal with cases where cybersquatters are warehousing domain names, essentially holding an inventory of trademarks that he won't use but intends to sell to the rightful owner at extortionate prices. There are also recent cases where there is no one to initiate legal action against because cybersquatters have given false or misleading contact information to the registration authority.

For anticybersquatting legislation to be effective and even-handed, Mr. Chairman, it must accomplish, at a minimum, four objectives. First, it must explicitly prohibit cybersquatting in all of its forms, in particular the registration or trafficking of Internet domain names with bad-faith intent to benefit from another's trademark.

Second, there must be clear remedies for trademark holders, including the availability of injunctive relief and the ability to recover actual or statutory damages. Third, there must be a protection of the public interest, including the legitimate use of domain names that meet fair use and freedom of expression standards, thereby protecting the first amendment.

Finally, it should provide clear guidance in order to determine whether an alleged case of cybersquatting is indeed a case of bad-faith activity or one with good-faith and honest intentions. This balance approach, we believe, will ultimately prove satisfactory. It is one that we hope will be adopted in the end, and we look forward to working with you and others, Mr. Chairman, to make this happen.

Senator ABRAHAM. Thank you very much.

[The prepared statement of Ms. Chasser follows:]

PREPARED STATEMENT OF ANNE H. CHASSER

INTRODUCTION

Good afternoon, Mr. Chairman. My name is Anne Chasser. I am the President and Chairperson of the Board of the International Trademark Association ("INTA").

INTA appreciates the opportunity to appear before the Committee to offer support for effective, yet even-handed legislation designed to curb "cybersquatting."[1] We thank you, Mr. Chairman, as well as Senator Leahy and Senator Abraham, for helping to bring this issue to the attention of the Congress.

Cybersquatting is an activity that has emerged with the growth of the Internet, and while there is no formal or established definition for the term, it can be referred to generally as the registration and trafficking in Internet domain names with the bad-faith intent to benefit from another's trademark. Cybersquatters seek to capitalize on the investment made by trademark owners and the goodwill associated with the trademark. In the words of Francis Gurry, Assistant Director General for the World Intellectual Property Organization ("WIPO"), cybersquatting is "an abusive practice" that undermines "consumer confidence."[2]

The testimony I present here today will explain the nature of cybersquatting and offer suggestions as to what types of provisions anti-cybersquatting legislation should contain. In addition, I will refer to real life examples of "cybersquatting," many of which involve trademarks readily familiar to the average American consumer. By the end of my presentation, I am confident that you will conclude that there is nothing entrepreneurial, enterprising, or noteworthy about being a

[1] *See, Intermatic, Inc.* v. *Toeppen,* 947 F. Supp. 1227 (N.D. Ill. 1996) (referring to the defendant as a "cybersquatter").

[2] Courtney Macavinta, "Domain Restrictions Target Cybersquatters," *CNET News.com,* (May 3, 1999) http://*www.news.com/news/Item/o,4,35983,00.html.*

cybersquatter, and that something must be done to ensure that trademark owners and consumers receive adequate protection from these bad-faith actors.

THE NATURE OF "CYBERSQUATTING"

> If the Internet is about getting rich quick, they don't come any faster than 'cybersquatters."[3]

That is what cybersquatting is all about—getting rich quick off of the hard work and investment of trademark owners, and in the words of one intellectual property attorney, the practice is "just exploding."[4] Piracy of trademarks in cyberspace has been on the rise since 1996, when e-commerce itself began to evolve as a factor in the overall global economy. Early cases include *Intermatic, Inc.* v. *Toeppen,*[5] in which the term "cybersquatter" was coined. In that particular case, the defendant registered *intermatic.com* based on the plaintiff's registered trademark for INTERMATIC. The defendant, in addition to this domain registration, also had registered approximately 240 other domain names, many based on trademarks of well-known businesses, including *deltaairlines.com, eddiebauer.com* and *neiman-marcus.com.*

Today, a growing number of trademarks, famous or not, are still subject to cybersquatting. However, it is particularly the famous marks which have been prime targets of cybersquatters, who are fast becoming the "pirates" of the new millennium. WIPO, in addition to identifying cybersquatting as a global problem, recognized in its interim report on the domain name process that, indeed, "[f]amous and well-known marks have been the special target of a variety of predatory and parasitical practices on the Internet."[6]

Why do cybersquatters conduct themselves in this manner? Based on research, as well as first-hand reports from our members, INTA has found that "cybersquatting" takes place for a number of reasons, including the following:

(1) To extract payment from the rightful owner of the mark. These are the most prevalent cases, since it takes only $70 to register a domain name with Network Solutions, Inc. (the registration authority for *.com, .net,* and *.org*), and the potential financial windfall (should a trademark owner opt to purchase the domain) is much greater.

- *Warner Bros.* was offered *warner-records.com; warner-bros-records.com; warner-pictures.com; warner-bros-pictures;* and *warnerpictures.com* for the selling price of $350,000. Another cybersquatter offered to sell to Warner Bros. 15 domain names, including *bugsbunny.net* and *daffyduck.net.*
- *Glaxo Wellcome* reports that it has been contacted by various individuals concerning registrations for domain names such as *zovirax.com.*
- The *Mobil Oil Corporation* reports that when the merger between Mobil and Exxon was announced on December 1, 1998, it was contacted by a cybersquatter who offered to sell the combined Exxon Mobil the domain names *exxonmobil.com* and *exxon-mobil.com.*
- Although not a trademark issue per se, Baltimore Orioles superstar *Cal Ripken* was asked to pay $100,000 for *calripken.com.*[7]

(2) To offer the domain name for sale publicly to third parties.

- *Omega Protein Corp.* took action against persons who registered hundreds of trademarks as domain names for the purpose of reselling them.[8]
- In documents filed in the United States District Court for the Eastern District of Virginia, *Porsche* stated that *www.porschgparts.com* had been put up for sale by the party who had registered it as a domain name.[9]

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[3] "High Stakes in Name Game," *On the Spot—Domain Name News http://www.onthespot.com/squatters.htm* (quoting the *Financial Times* March 10, 1999).

[4] Andrew Zajac, " Domain Names @Hoard.Com: Cybersquatters Buy Up Internet Addresses for Profit," *Chicago Tribune,* June 27, 1999, at C1 (quoting Keith Medansky).

[5] 947 F. Supp. 1227 (N.D. Ill. 1996).

[6] World Intellectual Property Organization, *The Management of Internet Names and Addresses: Intellectual Property Issues,* December 23, 1998.

[7] See, Laura Lorek, "Beware of Cybersquatters," *Ft. Lauderdale Sun Sentinel,* May 25, 1997, at 1E *http://www.sun-sentinel.com/money/09080008.htm.*

[8] *Omega Protein Corp.* v. *Flom,* No. H–98–3114 (S.D. Tex. filed September 18, 1998).

[9] *Porsche Cars North America, Inc. and Dr. Ing. H.C.F. Porsche A.G.* v. *Porsch.com. et. al.,* complaint filed by Porsche Cars North America, Inc. before the Eastern District Court for the Eastern District of Virginia, January 6,1999, *http:/www.mama-tech-com/pc.html. The magnitude of the problem for trademark owners is reflected in the district court's opinion dismissing*

Continued

- The University of California at Los Angeles (commonly referred to as "UCLA"), took action against a cybersquatter who registered *www.ucla.com* and then put up a "for sale" sign with a number to call. Shortly after counsel for UCLA sent a letter to the cybersquatter, it became a pornographic site. The party operating the pornographic site was found to have several addresses and phone numbers, none of which were legitimate.
- Right now, you can log-on and find *marypoppins.com* on sale for $500 and *thegodfather.com* for $1,500.[10]

(3) To use famous and well-known marks as domain names for pornographic sites or otherwise capitalizes on customer confusion.

- One of the best examples was given by Senator Abraham in his introductory remarks for S. 1255, a case where *Gateway* recently paid $100,000 to a cybersquatter who had placed pornographic images on the Web site *www.gateway20000.com.*[11]
- The *Mobil Oil Corporation* reports that its trademark, MOBIL 1, was used in a domain name to direct Web surfers to a pornographic site. The domain name was *mobil1.com.*
- On September 23, 1998, as part of the WIPO study on trademarks and domain names, a representative of *Intel Corporation* reported that a cybersquatter had registered *www.pentium3.com,* placed nude photos of celebrities on the page, and stated that he was willing to sell the domain name to the highest bidder. At the time Intel's representative testified, the highest bid was $9,350.[12]

(4) To engage in consumer fraud, including counterfeiting activities.

- *AT&T* reports that a cybersquatter registered the domain names *attphonecard.com* and *attcallingcard.com* and established a Web site soliciting credit card information from consumers. AT&T was concerned because its brand name was being used to lure consumers to a Web site that might be used fraudulently to obtain financial information from unsuspecting consumers.

The problem of cybersquatting has expanded beyond the generic top level domains ("gTLDs"), such as *.com,* to the country code top level domains ("ccTLDs"). For example, Bell Atlantic reports that another party registered and offered telecommunications services to the public using *www.bellatlantic.uk* (*.uk* is the country code for the United Kingdom). Some of the lesser known ccTLDs have actually become piracy havens in which the local agent offers to sell domain names to the highest bidder, without any consideration of trademark rights. Other ccTLD registration authorities "reserve" names of famous marks and offer to sell them back to the rightful trademark owner.

Despite the problems it presents to trademark owners and consumers, cybersquatting, is not illegal *per se.* In other words, there are no laws in any jurisdiction, national or otherwise, that explicitly prohibit the practice. Courts, particularly those in the United States where cybersquatting is an especially pressing issue, have typically utilized traditional concepts in trademark law to provide some trademark owners with remedies for harm caused by piracy on the Internet. For example, in one case, the court ruled that the defendant's attempt to sell a domain name to the owner of a famous trademark was akin to a "use in commerce" and was therefore covered by the Lanham Act's dilution provision.[13]

Unfortunately, some cybersquatters have read these cases carefully and have taken the necessary precautions to insulate themselves from liability. Cybersquatters register famous trademarks in bulk, but in most cases, do not post an active Web site. This activity is traditionally referred to as "warehousing." In ad-

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the action on procedural grounds. See, Memorandum Opinion of the court delivered on June 8, 1999. Decision can be found at *http://www.mama-tech.com/pc.html#mo* and can be cited as 1999 WL 378360 (E.D. Va..).

[10] *See generally, http://www.GetYourOwnName.com.*

[11] 145 *Congressional Record,* S. 7334 (daily ed. June 21, 1999) (statement of Senator Spencer Abraham on the introduction of S. 1255, 106th Congress (1999)).

[12] Anne Gundelfinger, "Testimony before the WIPO Panel of Experts" (September 23, 1998) *http://wipo2.wipo.int/process/eng/sf-transcript5.html.*

[13] *See, Panavision Int'l, L.P.* v. *Toeppen,* 945 F. Supp. 1296 (C.D. Cal. 1996) (Defendant's attempt to arbitrage the *panavision.com* domain name constitutes commercial use under the Lanham Act).

dition, cybersquatters are now careful not to offer the domain name for sale in any manner that could result in liability under current case law.[14]

Finally, some cybersquatters provide false and misleading contact information, making it impossible for the trademark owner to initiate legal action. We know, for example, Mr. Chairman, that Chanel, Inc. has written to you about the *www.chanelparis.com* domain name. For the benefit of all Senators, in that instance, a fictitious name and street address in Cairo, Egypt were given to the registrar. As a consequence of false information being given to the registration authority, many courts have been unable to provide assistance to trademark owners.[15]

For many trademark owners, the lack of clear anti-cybersquatting mechanisms have left them without adequate and effective judicial remedies. Even though cybersquatters are trafficking in domain names, trademark owners in many cases cannot sue without proof of use or an offer of sale or because *in rem* actions against domain names are not permitted. Consequently, trademark owners are forced to engage in a continual monitoring program—waiting to see if the cybersquatter begins to use their domain name, offers it for sale to the public, provides legitimate contact information to the registration authority, or fails to renew the registration with the registration authority.

It is also important to keep in mind that even in cases where a trademark owner can sue, costs associated with litigation, and the difficulty of receiving damages in standard trademark infringement and dilution actions have a chilling financial effect. Frequently, trademark owners weigh the costs and choose to pay off a cybersquatter in exchange for the domain name registration. Instances of cybersquatting continue to grow each year because there is little risk for cybersquatters who continue their abusive practices.

ANTI-CYBERSQUATTING LEGISLATION

According to Commerce Secretary William Daley, "electronic commerce will be the engine for the economic growth in the next century."[16] Recently released numbers suggest that the future cited by Secretary Daley may already be upon us. A study by the University of Texas' Center for Research in Electronic Commerce, which was sponsored by Cisco Systems and cited by the Department of Commerce in its report entitled *The Emerging Digital Economy II,* indicates that 1998 total e-commerce was $102 billion.[17]

INTA believes that the progress made thus far, as well as that which is anticipated, will not be truly realized unless there is a legal mechanism in place that specifically addresses cybersquatting. The objectives of this mechanism should be the limitation of consumer confusion in cyberspace, the protection of the investment made by trademark owners, and the maintenance of goodwill associated with the trademark. If adequately protected, Mr. Chairman, trademarks can serve as road maps for the "information superhighway," helping to build a sound global marketplace for the 21st Century.

Prior to receiving your invitation to testify, INTA had begun to consider the question of an anti-cybersquatting statute. In a resolution adopted May 26, 1999, the Association's Board of Directors indicated that anti-cybersquatting mechanisms, including national legislation, should, at a minimum, include the following:

1. Provisions that explicitly prohibit cybersquatting, specifically, the registration and trafficking of an Internet domain name with the bad-faith intent to benefit from another's trademark.

2. Clear remedies for trademark holders, including the availability of injunctive relief and the ability to recover actual or statutory damages.

3. Protection of the public interest, including allowing for legitimate uses of domain names that meet fair use/freedom of expression standards.

The legislation should focus on trafficking in or registration of even a single domain name with the bad-faith intent to benefit from another's trademark, and the remedies included therein should be available to all trademark owners, whether

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[14] *See, Juno Online Services* v. *Juno Lighting, Inc.,* 979 F. Supp. 684 (N.D. Ill. 1997) (mere registration of a domain name is not trademark infringement or misuse even if the use of another's trademark is deliberate).

[15] *See, Porsche Cars North America, Inc. and Dr. Ing. H.C.F. Porsche A.G.* v. *Porsch.com. et. al.* (the court said that the Trademark Dilution Act cannot be read to permit *in rem* actions).

[16] United States Department of Commerce, *The Emerging Digital Economy II, http://www.ecommerce.gov/ede/secretary.html.*

[17] *See,* Anitesh Barua, Jay Shutter, & Andrew Whinston, "The Internet Economy Indicators,", Initial report results issued June 10, 1999 *(http://www.internetindicators.com); see also, The Emerging Digital Economy II, supra* note 17.

they be large or small. In addition, there must also be carefully crafted language that helps to guide a court in making a determination as to who is a bad-faith cybersquatter and who adopts a domain name in good faith. This will help to ensure that the new law is fair and equitable.

CONCLUSION

Thank you again, Mr. Chairman, for the opportunity to appear today to talk about an issue which is so vitally important to both the trademark community and consumers who use trademarks as a means for identifying products in an increasingly crowded marketplace. This marketplace, incidentally, as we have shown here today, now exists both in the real world, as well as in cyberspace. We look forward to working with you, Senator Leahy, and others both in the Congress and in the private sector, on effective, yet even-handed anti-cybersquatting legislation.

THE INTERNATIONAL TRADEMARK ASSOCIATION

INTA is a not-for-profit membership organization, which just recently celebrated its 121st anniversary at its annual meeting in Seattle, Washington. Since the Association's founding in 1878, membership has grown from 17 New York-based manufacturers to approximately 3,600 members from the United States and 119 additional countries.

Membership in INTA is open to trademark owners and those who serve trademark owners. Its members are corporations, advertising agencies, professional and trade associations, and law firms practicing trademark law. INTA's membership is diverse, crossing all industry lines and spanning a broad range of manufacturing, retail and service operations. All of INTA's members, regardless of their size or international scope, share a common interest in trademarks and a recognition of the importance of trademarks to their owners, to the general public, and to the economy of both the United States and the global marketplace.

Senator ABRAHAM. Mr. Phillips.

STATEMENT OF GREGORY D. PHILLIPS

Mr. PHILLIPS. Thank you, Mr. Chairman. Porsche Cars appreciates the opportunity of providing testimony to this committee. My other clients support this as well.

Porsche is a member of the Private Sector Working Group, which is a diverse group of famous trademark holders who are concerned about consumer fraud, counterfeiting, and other confusion on the Internet. Members in the Private Sector Working Group include Bell Atlantic, AT&T, Disney, Microsoft, Viacom, America Online, and Dell Computer, and they all support this legislation.

WIPO recently concluded in its report that existing mechanisms for resolving conflicts between trademark owners and domain name holders are often viewed as expensive, cumbersome and ineffective. The sheer number of instances precludes many trademark owners from filing multiple suits in one or more national courts.

I will focus my remarks on the plight of Porsche, but I want this committee to know that Porsche's situation is not unique; it is illustrative and typical of what other people are facing on the Internet. I think the best description of the reason for what I call cyberpiracy and the need to capitalize on the goodwill and reputation of famous trademarks recently appeared in a front-page article in the "Wall Street Journal" on April 13, 1999.

The article wrote,

> With the rapid explosion of Web sites hawking everything from pornography to bibles, competition for the world's estimated 147 million Web users is fierce. Site creators spare no strategy to get noticed, and trading on fa-

mous names which are queried relentlessly by Web surfers is a key one.

I think more powerful than anything I could say is some exhibits that I have attached to my testimony that I think demonstrate this problem very graphically. First of all, Exhibit 1 is a list of over 300 domain names that have been registered that use Porsche or a variation of Porsche. We had 128 on January 6 of this year when we filed our lawsuit. Every week, we get between 5 and 25 new domain names. Porsche is a very unique and famous name. People seem to want it out there.

Exhibit 2, which I understand has been censored, is the Web site that appears at porschecar.com. It is a pornographic Web site. We have had many of our customers complain about that Web site and wonder why Porsche isn't doing something about it. And I will explain that we haven't been able to find the registrar of that domain name.

Exhibit 3 to my testimony is a Web site from bestdomains.com in Australia, where they sell domain names. It starts out, "What's in a name? Ask Coca-Cola." The first domain name that is listed is 911porsche.com. "Porsche. Do I need to say anything more?" $60,911—that is what they are selling it for, almost as much as the price of a new Porsche.

If you look at Exhibit 4, you will see the "who is" page for a company that operated a porn site, porsch.com, without the "e." The registrant there was so brazen that he registered the domain name under "Domain 4 sale & company." He also provided a fictitious address when he registered that domain name so that we could not find him to effect service of process in trying to get that domain name back.

Exhibit 5 is a three-page list of domain names that were recently up for auction that we received from one of our dealers, including domain names from Acura through Volkswagen or Volvo, offering them for thousands of dollars.

Exhibit 6 is a good example of a warehouser. This is a gentleman down in Texas, and we were only able to print out 50 domain names because the "who is" stops at 50. But as you can see by looking at that, he has got everything from Pepsi Bottler, McDonald's Restaurant, Mercedes Benz USA, McDonald's Corp. And if you look at the next page, Exhibit 7, that is where you go to his Internet Web site and you make an offer to purchase these domain names. The list goes on and on.

I think, Mr. Chairman, you hit the nail on the head when you talked about the need for in rem and statutory provisions. Cyberpirates are sophisticated. They know how to insulate themselves from legal process. They register domain names using fictitious information. The cyberpirate who had porsch.com used an address for a Federal office building up in New York. Companies use offshore companies. They transfer these to people in Iran, to Belarus. Malaysia is now a favorite address of cyberpirates.

In conclusion, Mr. Chairman, the cost of cybersquatting and cyberpiracy is enormous. Companies like Porsche, Chanel and Pfizer have much better things to do with their resources than to chase cyberpirates. They can make better cars, better perfume, and they can make better drugs.

The Internet is no longer the domain of the academics, the tekkies; it is becoming a major player in the commercial world. It needs to be subject to the rules of the commercial world. The same way that Congress recently amended the copyright laws to protect against new forms of digital infringement provides a good example of what Congress needs to do. It needs to amend the trademark laws to outlaw cyberpiracy.

Senator ABRAHAM. Mr. Phillips, thank you very much.

[The prepared statement of Mr. Phillips follows:]

PREPARED STATEMENT OF GREGORY D. PHILLIPS

INTRODUCTION

Good afternoon, Mr. Chairman and distinguished members of this Committee. My name is Gregory D. Phillips. I am outside trademark counsel for Porsche Cars North America, Inc.

In my testimony, I will be focusing on the intolerable and unbearable problems faced by Porsche Cars and its consumers with cybersquatting, cyberpiracy, and cyberabuse. Porsche Cars' problems, however, are not unique, and are similar to problems faced by other famous trademark holders and their consumers. Porsche Cars is a member of the Private Sector Working Group on Trademarks and Domain Names. The Private Sector Working Group consists of a diverse group of leading companies and associations representing famous trademark holders from a broad cross section of the world's economy. Companies like Porsche, Bell Atlantic, AT&T, Disney, Viacom, Chanel, Warner Lambert, American Express, Ford, Microsoft, AOL, and many others. Our consumers rely on the Internet to find the genuine brands they are seeking and to communicate and engage in electronic commerce. The unprecedented formation of the Private Sector Working Group occurred because we cannot permit United States consumers, our clients, to continue to be subject to the fraud and confusion from the ever increasing problems caused by cyberpiracy.

Porsche and other members of the Private Sector Working Group are currently battling many thousands of infringement matters in which their famous trademarks have been misappropriated by pirates who seek to defraud the public in hopes of exploiting trademarks on the Internet.

Cyberpiracy damages brand equity, increases consumer fraud, causes customer confusion and is linked to other serious problems such as counterfeiting and pornography. Consumers of these companies are being confused and defrauded as they attempt to purchase genuine products from brand-name companies, or as they are diverted away to pornographic and other unrelated web sites.

Not only are consumers and society being harmed by consumer fraud and confusion resulting from cyberpiracy, but consumers and society are also being harmed because companies such as Porsche are being forced to devote a dramatically increasing share of their resources to battle cyberabuse. Companies such as Porsche are now spending more of their legal budgets on dealing with cyberabuse than all other legal expenses combined. Rather than devoting their resources to making better cars, perfume, or drugs that will benefit society, companies such as Porsche, Chanel, and Pfizer are needlessly wasting resources in fighting fraud, monitoring the Internet, and in litigation.

THE REASON FOR CYBERPIRACY

As the Internet has grown in commercial importance, the theft of Internet domain names diluting world famous trademarks such as Porsche® has increased dramatically. The *Wall Street Journal* recently described the reason for this phenomenon:

> With the rapid explosion of Web sites hawking everything from pornography to Bibles, competition for the attention of the world's estimated 147 million web users is fierce. Site creators spare no strategy to get noticed—and trading on famous names, which are queried relentlessly by Web surfers, is a key one.

Wall Street Journal, "Net of Fame," p. 1, April 13, 1999.

Recently, the World Intellectual Property Organization ("WIPO"), an entity organized under the auspices of the United Nations to protect intellectual property, noted that "[f]amous and well-known marks have been the special subject of predatory and parasitical practices by a minority of domain name registrants acting in

bad faith." WIPO Interim Report on the Internet, December 23, 1998, at p. iii .[1] "These practices include the deliberate, bad faith registration as domain names of well-known and other trademarks in the hope of being able to sell the domain names to the owners of those marks, or *simply to take unfair advantage of the reputation attached to those marks.*" *Id.* at p. 6 (emphasis added).

The trademark Porsche® is a perfect example of the types of trademarks that are misappropriated by cyberpirates. Because Porsches is one of the most famous and unique trademarks in the world, countless registrants have included Porsche® in their Internet domain names. Attached hereto as Exhibit 1 is a partial list of the over 300 Internet domain names that have been registered without Porsche's permission or consent. As you can quickly see from the list, the sheer number of domain names misappropriating the trademark Porsches is overwhelming.

Porsche has determined that registrants misappropriate Internet domain names that include Porsche® for a variety of purposes, including, but not limited to,

(1) To Use Such Names For Pornographic Sites. For example, the Internet domain name PORSCHECAR.COM is presently being used as a pornographic web site. The home page of this pornographic web site depicts a naked woman and a snake in the "Sex Zoo," advertises the infamous Pamela Anderson-Tommy Lee Honeymoon video, and also depicts a woman copulating with an ape. A copy of the home page of the web site is attached as Exhibit 2.

(2) To Extract Payment From Porsche. For example, the registrant of PORSCHESALES.COM recently offered to sell this domain name to Porsche for $25,000. The registrant of PORSCHECREDIT.COM and PORSCHECREDITCORP.COM recently called the President of Porsche Cars North America, Inc. and attempted to extort a substantial sum from Porsche for transferring the names to Porsche.

(3) To Offer The Domain Name For Sale to Third Parties. For example, several domain names using Porsche® were recently being sold by The Best Domains, an Australian company. The domain name 911PORSCHE.COM was being offered for sale for $60,911, the domain name 996PORSCHE.COM was being offered for sale for $15,500, and the domain name PORSCHEAUTOPARTS.COM was being offered for sale for $20,500. The Best Domains Web Site states:

> What's in a Name? ASK COCA-COLA. A domain-name is your own Internet address. This address, [sic] should say it all. When advertising it should be catchy and easily recognizable like all your other advertising. There are 10,000 NEW addresses registered every day. When those addresses listed below are gone THEY'RE GONE it [sic] will be even harder. REMEMBER your Internet address IS a business asset and has value. All these addresses listed below WILL go up in value." *Id.* (emphasis in original).

A copy of the print out of this home page is attached hereto as Exhibit 3.

Some of the cyberpirates are so blatant that they actually register the name with a for sale sign in their domain name registration with Network Solutions. For example, the domain name PORSCH.COM, another hardcore pornographic site was registered under the fictitious name "Domain 4 sale & company." A copy of the Network Solutions Whois listing for the registrant of this domain name is attached as Exhibit 4. As discussed more fully below, the address listed for this registrant is fictitious. Also attached as Exhibit 5 is a copy of a domain name auction sheet that Porsche recently received offering for sale numerous Internet domain names involving famous and well known automobile companies, including Porsche.

Instances of cyberabuse are not limited to car companies. Recently, Porsche discovered that one Beswick Adams had registered the Internet domain name DRINGHCFPORSCHE.COM, the correct name of Porsche AG. In addition to this domain name, Mr. Adams had registered numerous other famous trademarks as domain names ranging from MCDONALDSRESTAURANT.COM to COCA-COLACORPORATION.COM. A partial list of Mr. Adams' Whois listing is attached hereto as Exhibit 6. The list is only partial because Network Solutions' Whois listing only lists the first 50 registered domain names for any particular registrant. Mr. Adams sells these domain names at WWW.BESWICKADAMS.COM where one can make an offer to purchase these

[1] WIPO's Final Report was recently issued and is available at <http://wipo2.wipo.int>. The WIPO Final Report's explication of the problems faced by famous trademark holders is virtually identical to that set forth in the WIPO Interim Report.

Internet domain names. A copy of Mr. Adams' offer sheet is attached hereto as Exhibit 7.

(4) To Divert Traffic to The Registrant's Internet Web Site Selling Products Unrelated to Porsche Products by Capitalizing on Consumer Confusion. For example, the domain name PORSCHE-CARRERA.COM directs Internet traffic to the web page for Marv-Stev Sales & Promotions Inc. where Power Rangers, Beetleborgs, Tamagotchi, and Mystic Knights toys are being sold. A copy of the web site at PORSCHE-CARRERA.COM is attached hereto as Exhibit 8.

(5) To Divert Internet Traffic to Unauthorized Web Sites Selling Porsche Related Products. The domain name EVERYTHINGPORSCHE.COM, for example, diverts Internet users to an unauthorized web site that sells parts for Porsche automobiles. The operator of the web site is not an authorized Porsche Dealer and sells both genuine and non-genuine Porsche 5 parts. The web site uses a counterfeit of the world famous Porsche Crest® in the wallpaper of the web site. The wallpaper is not visible from the printed hard copy. A copy of this web site is attached hereto as Exhibit 9.

(6) To Engage in Consumer Fraud, Including the Sale of Counterfeit Porsche Products. For example, the domain name BOXSTER.NET, another famous Porsche trademark, directs Internet users to a web site that advertises and sells shirts and coffee mugs that bear counterfeits of Porsche's trademarks and trade dress. A copy of this web site is attached hereto as Exhibit 10. This type of site associated with counterfeiting activities defrauds consumers, harms electronic commerce and deprives trademarks owners like Porsche of substantial revenues that should be associated with genuine goods and services.

THE NEED FOR CYBERABUSE LEGISLATION THAT INCLUDES IN REM JURISDICTIONAL PROVISIONS

In many ways, Porsche feels like Sysyphus, the ancient King of Corinth, condemned to roll a heavy rock up a hill in Hades only to have it roll down again. Porsche will successfully halt the misappropriation of the trademark Porsche® in one situation, only to have several new misappropriations surface. Legislation that will deter cyberpirates is absolutely essential to lessen the intolerable and unnecessary burden on society caused by cyberabuse. Legislation that allows famous trademark holders to have an effective remedy is also essential. One necessary component of any effective legislation is an *in rem* jurisdictional provision where a trademark holder can file a lawsuit against the domain name itself, rather than the registrant.

Not surprisingly, cyberpirates and cybersquatters often provide false and fictitious information as to their identity when they register a new domain name diluting or infringing a famous trademark. Cyberpirates do so in order to insulate themselves from liability and to make it impossible for trademark holders to effect service of process. As WIPO recently recognized, such registration practices and the "absence of reliable and accurate contact details leads to a situation in which the intellectual property rights can be infringed with impunity, on a highly visible public medium." WIPO Interim Report at 14–15.

As a result of the exponentially escalating problem of cyberpiracy, and the practice of false and fictitious registration of domain names, WIPO has concluded that:

> existing mechanisms for resolving conflicts between trademark owners and domain name holders are often viewed as expensive, cumbersome and ineffective. The sheer number of instances precludes many trademark owners from filing multiple suits in one or more national courts.

Id. at 33.

Porsche's difficulties in locating cyberpirates is illustrative of how easy it is for cyberpirates to use the anonymity of the Internet to harm Porsche and insulate themselves from liability for their actions. With electronic registration of a domain name just a push of the button away, and with the registration process being completely automated, cyberpirates are able to register domain names with false and fictitious contact information making service of process on such cyberpirates impossible. The cyberpirate who registered PORSCHE.COM is a perfect example. In 1996, Porsche discovered that PORSCHE.COM and several similar domain names had been registered by Heinz Porsche Langeneckert Consulting of New York, a subsidiary of The Zone One Group Ltd. This corporate name was completely fictitious, and the mailing address and telephone number for this entity were also fictitious. Indeed, the mailing address was for some federal offices in New York City. Porsche was contacted by one Lee X. Chen who informed Porsche that he would transfer

PORSCHE.COM to Porsche for a substantial payment plus an ongoing monthly payment of $2,400.

Porsche attempted to send several letters to Mr. Chen and/or Heinz Porsche Langeneckert Consulting of New York at the address on the Network Solutions, Inc. application. These letters were all returned. Porsche then filed suit against Mr. Chen, Heinz Porsche Langeneckert Consulting, and Network Solutions, Inc. in the United States District Court for the Eastern District of Virginia. Of course, Porsche was unable to serve Mr. Chen with legal process because the information that he had provided to Network Solutions, Inc. was false.

Finally, Porsche and another company whose trademark had been pirated by Mr. Chen, NUSKIN, located in Provo, Utah, hired a private investigator to locate Mr. Chen and these fictitious entities. Service of process was finally effected upon Mr. Chen's father. After Porsche had spent several thousand dollars in unsuccessfully locating Mr. Chen, the District Court finally determined that notice of the lawsuit sent to Mr. Chen's false address provided to Network Solutions, Inc., to Mr. Chen's E-mail address provided to Network Solutions, Inc., to the facsimile number provided to Network Solutions, Inc., and service of process on Mr. Chen's father was sufficient for the Court to enter both a preliminary and permanent injunction.

Other examples that Porsche has encountered further illustrate the problem. Some registrants create offshore corporations which then register the domain names. For example, several of the domain names using the trademark "PORSCHE" (e.g., "PORSCHE944.COM," "PORSCHE993.COM" "PORSCHE996.COM")[2] were originally registered by a law firm in Seattle for an offshore company, Holler Enterprises, Inc., Apartado Postal 4818, San Pedro Sula, Honduras, and then sold to third-parties. Other registrants located in the United States have transferred their registrations to entities located in countries such as Iran (e.g., PORSCHEDEALERS.COM).

The registrants of pornographic Web Sites (e.g., PORSCH.COM and PORSCHECAR.COM) use fictitious addresses (e.g., a non-existent suite number) to insulate the registrants from service of process. Several of the Domain Names used false or incorrect information when the Domain Names were registered with Network Solutions, Inc. including FORUMULAPORSCHE.COM, PORSCHEDIRECT.NET, PORSCHESALES.COM, PORSCHEMAIL.COM, PORSCHECARSALES.COM, PORSCHELYNN.COM, PORSCHE944.COM, and PORSCHEPHILES.ORG.

Porsche respectfully submits that the only effective way to deal with problems such as false and fictitious information is through legislation that makes the act of cybersquatting illegal, provides for statutory damages, and, importantly, recognizes the concept of *in rem* jurisdiction whereby Porsche can sue the Internet domain names themselves, rather than file suit against the registrants personally.

Porsche recently filed such an *in rem* lawsuit in the Eastern District of Virginia against 128 Internet domain names on the theory that Porsche is entitled to cancellation and forfeiture of domain names that dilute Porsche's world famous trademarks in violation of the Federal Trademark Dilution Act, 15 U.S.C. § 1125(c). By proceeding *in rem,* Porsche voluntarily limited itself to claims to the *res* itself, and agreed to forego any claims for damages and attorneys' fees against the cyberpirates who registered the domain names.

Unfortunately, the court dismissed Porsche's lawsuit because the court could find no specific *in rem* jurisdictional provision in the Lanham Act allowing such a lawsuit. *Porsche Cars North America, Inc. et al.* v. *PORSCH.COM,*—F.Supp.—, 1999 WL 378360 (E.D.Va. 1999). Although the court recognized the "dilemma" Porsche faced in battling cyberpiracy and acknowledged that "the mere act of registration [of unauthorized domain names] creates an immediate injury by preventing Porsche from utilizing those domain names itself in order to channel consumers to its own web site," the court in effect held that the Lanham Act would need to be amended by Congress to allow for such *in rem* jurisdiction. Porsche has appealed the ruling to the Fourth Circuit Court of Appeals.

CONGRESS MUST PROVIDE WORLD-WIDE LEADERSHIP IN PROTECTING CONSUMERS FROM CYBERABUSE

Some critics assert that Congress has no business enacting legislation to protect commerce on the Internet, a world-wide resource. Companies such as Porsche AG and Chanel, who have United States affiliates, employ thousands of United States Citizens, and whose largest market is the United States, but who do business throughout the world, are looking for the United States Congress to provide leader-

[2] 944, 993, and 996 refer to specific Porsche model numbers.

ship in providing protection on the Internet. Moreover, the Internet was created in the United States by citizens of the United States. Network Solutions, Inc., the registrar of Internet domain names and the entity that maintains and controls the master computer that contains all Internet domain names is located in the United States. In a very real sense, the Internet is a United States resource over which the United States has jurisdiction.

United States consumers, United States companies and foreign companies doing business in the United States, and electronic commerce as a whole must be protected from malicious and willful acts of cyberpiracy that occur over this valuable world-wide resource. This problem demands that the United States Congress provide guidance and leadership in high tech, cutting edge, intellectual property matters throughout the world. As the Internet increases in commercial importance, the United States must ensure that commerce can be safely and appropriately be conducted on the Internet throughout the world.

1800PORSCHE.COM
1999PORSCHE.COM
1PORSCHE.COM
4-PORSCHE.COM
911PARTSFORPORSCHE.COM
928PORSCHE.COM
996PORSCHE.COM
ACCESSORIES4PORSCHE.COM
ALLPARTSFORPORSCHE.COM
ALLPORSCHE.COM
ARIZONAPORSCHE.COM
BESTPORSCHE.COM
BESTPORSCHE.NET
BEVERLYHILLSPORSCHE.COM
BUY-PORSCHE.COM
BUYAPORSCHE.COM
BUYMYPORSCHE.COM
BUYPORSCHE.COM
BUYSELLPORSCHE.COM
CALPORSCHE.COM
CANADAPORSCHE.COM
CASINOPORSCHE.COM
CONTEMPORARYPORSCHE.COM
CYBERPORSCHE.COM
DOVERPORSCHE.COM
DOWNTOWNPORSCHE.COM

DRINGPORSCHEAG.COM
E-PORCHE.COM
E-PORSCHE.COM
EPORSCHE.COM
EPORSCHEPARTS.COM
EVERYTHINGPORSCHE.COM
EXTREMEPORSCHE.COM
FINDPORSCHE.COM
FORDPORSCHE.COM
FORDPORSCHE.NET
FORDPORSCHE.ORG
FORMULAPORSCHE.COM
FREEDOMPORSCHE.COM
GMPORSCHE.COM
GO-PORSCHE.COM
IANPORSCHE.COM
IDOPORSCHE.COM
ILOVEPORSCHE.COM
INTERNETPORSCHE.COM
INTRO2PORSCHE.COM
ISELLPORSCHE.COM
JUSTPORSCHE.COM
LAPORSCHE.COM
LEASE-PORSCHE.COM
LEASEPORSCHE.COM
LYNCHPORSCHE.COM

EXHIBIT

1

MICHAELPORSCHE.COM
MYBOXSTER.COM
MYPORSCHE.COM
NEWPORSCHE.COM
NEWPORTBEACHPORSCHE.COM
OGNERPORSCHE.COM
OPRSCHE.COM
OWNAPORSCHE.COM
OWNAPORSCHE.NET
P-O-R-S-C-H-E.COM
PARTS4PORSCHE.COM
PARTSFORPORSCHE.COM
PASSION-PORSCHE.COM
PLANETPORSCHE.NET
PORACHE.COM
PORCHE.NET
PORS.NET
PORSCE.COM
PORSCEH.COM
PORSCH.COM
PORSCHAGIRLS.COM
PORSCHE.COM
PORSCHE.NET
PORSCHE.ORG
PORSCHE-2000.COM
PORSCHE-911.COM

PORSCHE-911.NET
PORSCHE-944.COM
PORSCHE-ACCESSORIES.COM
PORSCHE-AFFARI.COM
PORSCHE-AUTOS.COM
PORSCHE-BOOKS.COM
PORSCHE-CARRERA.COM
PORSCHE-CARS.COM
PORSCHE-CITY.COM
PORSCHE-CLASSIC.COM
PORSCHE-CONNECTION.COM
PORSCHE-DEALERS.COM
PORSCHE-EXCHANGE.COM
PORSCHE-LEASE.COM
PORSCHE-LEASING.COM
PORSCHE-LYNN.COM
PORSCHE-MODELLCLUB.COM
PORSCHE-MUNICH.COM
PORSCHE-NET.COM
PORSCHE-NL.COM
PORSCHE-ONLINE.COM
PORSCHE-OWNERS.COM
PORSCHE-RS.COM
PORSCHE-SALES.COM
PORSCHE-SERVICE.COM
PORSCHE-SUPERCUP.COM

PORSCHE-UK.NET
PORSCHE-US.COM
PORSCHE-USA.NET
PORSCHE-WEB.COM
PORSCHE1.COM
PORSCHE356.COM
PORSCHE356.NET
PORSCHE356.ORG
PORSCHE4ME.COM
PORSCHE4SALE.COM
PORSCHE4U.COM
PORSCHE911.COM
PORSCHE911.NET
PORSCHE911.ORG
PORSCHE911PARTS.COM
PORSCHE911PORSCHE.COM
PORSCHE911TURBO.COM
PORSCHE911TURBO.NET
PORSCHE911TURBO.ORG
PORSCHE914.COM
PORSCHE924.COM
PORSCHE944.COM
PORSCHE986.COM
PORSCHE993.COM
PORSCHE996.COM
PORSCHEACCESSORIES.NET

PORSCHEACCESSORIES.COM
PORSCHEAG.COM
PORSCHEATERFORSALEJARE.COM
PORSCHEAUCTION.COM
PORSCHEAUDIPARTS.COM
PORSCHEAUTOPARTS.COM
PORSCHEBARGAINS.COM
PORSCHEBIL.COM
PORSCHEBILAR.COM
PORSCHEBOOKS.COM
PORSCHEBOXSTER.COM
PORSCHEBOXTERCUP.COM
PORSCHEBYTEL.COM
PORSCHECANADA.COM
PORSCHECAR.COM
PORSCHECARRERA.COM
PORSCHECARRERACUP.COM
PORSCHECARRINGTON.COM
PORSCHECARSALES.COM
PORSCHECARSFORSALE.COM
PORSCHECASINO.COM
PORSCHECHAT.COM
PORSCHECITY.COM
PORSCHECLASSIFIED.COM
PORSCHECLUB.NET
PORSCHECLUB.ORG

PORSCHECOMPANY.COM
PORSCHECONNECTION.COM
PORSCHEDEALER.COM
PORSCHEDEALER.NET
PORSCHEDEALERS.COM
PORSCHEDEALERS.NET
PORSCHEDEALS.COM
PORSCHEDESIGNS.COM
PORSCHEDIRECT.COM
PORSCHEDIRECT.NET
PORSCHEDOCTOR.COM
PORSCHEDOT.COM
PORSCHEEXCHANGE.COM
PORSCHEEXCHANGE.NET
PORSCHEF1.COM
PORSCHEFACTORYPARTS.COM
PORSCHEFAN.COM
PORSCHEFANS.COM
PORSCHEFLEET.COM
PORSCHEFORFREE.COM
PORSCHEFORFREE.NET
PORSCHEFORMULA.COM
PORSCHEFORMULA1.COM
PORSCHEFX.COM
PORSCHEGT.COM
PORSCHEHAUS.COM

PORSCHEHEAVEN.NET
PORSCHELEASE.COM
PORSCHELEASING.COM
PORSCHELINE.COM
PORSCHELIST.COM
PORSCHELIST.ORG
PORSCHELOAN.COM
PORSCHELOANS.COM
PORSCHELYNN.COM
PORSCHEMAIL.COM
PORSCHEMALL.COM
PORSCHEMINDER.COM
PORSCHEMOTORSPORTS.COM
PORSCHENAUT.COM
PORSCHENETT.COM
PORSCHENETWORK.COM
PORSCHENEWCARS.COM
PORSCHENOW.COM
PORSCHENUT.COM
PORSCHEOFNEWPORTBEACH.COM
PORSCHEONLINE.COM
PORSCHEOWNER.COM
PORSCHEOWNERS.COM
PORSCHEOWNERSCLUB.COM
PORSCHEPARADE.COM
PORSCHEPARTS.COM

PORSCHEPARTS.NET
PORSCHEPARTSSTORE.COM
PORSCHEPARTTRADERS.COM
PORSCHEPHILE.COM
PORSCHEPHILES.ORG
PORSCHEPRODUCTS.COM
PORSCHERACING.COM
PORSCHERESOURCE.COM
PORSCHERIMS.COM
PORSCHES.COM
PORSCHES-4-SALE.COM
PORSCHES-USA.COM
PORSCHES4LESS.COM
PORSCHES4SALE.COM
PORSCHESALES.COM
PORSCHESALESCENTER.COM
PORSCHESALESTODAY.COM
PORSCHESALVAGE.COM
PORSCHESCAPE.COM
PORSCHESCENE.COM
PORSCHESCOTTSDALE.COM
PORSCHESDIRECT.COM
PORSCHESERVICE.COM
PORSCHESERVICE.NET
PORSCHESERVICEINFO.COM
PORSCHESEX.COM

PORSCHESFORSALE.COM
PORSCHESHOWROOM.COM
PORSCHESITE.COM
PORSCHESONLINE.COM
PORSCHESPARES.COM
PORSCHESPECIALS.COM
PORSCHESPLAYHOUSE.COM
PORSCHESPOKENHERE.COM
PORSCHESTORE.COM
PORSCHESTORE.NET
PORSCHESTUFF.COM
PORSCHESUCKS.COM
PORSCHESUCKS.NET
PORSCHESUCKS.ORG
PORSCHESUK.COM
PORSCHESUPERCUP.COM
PORSCHESUPERSTORE.COM
PORSCHESWAP.COM
PORSCHETALK.COM
PORSCHETECHNICAN.COM
PORSCHETODAY.COM
PORSCHETOYS.COM
PORSCHETRADE.COM
PORSCHETRADER.COM
PORSCHEUS.COM
PORSCHEUSA.COM

PORSCHEUSEDCARS.COM
PORSCHEVEHICLES.COM
PORSCHEVIDEO.COM
PORSCHEWEB.COM
PORSCHEWORLD.COM
PORSCHEWORLD.NET
PORSCHEZENTRUM.COM
PORSCHEZENTRUM.NET
PORSCHEZONE.COM
PORSHCE.COM
PORSHEN.COM
PORSHEN.NET
PORSHEN.ORG
POSCHE.COM
POSRCHE.COM
PREOWNEDPORSCHE.COM
PRISTINEPORSCHE.COM
PROSCHE.COM
PRSCHE.COM
PURCHASEPORSCHE.COM
PURCHASEUSEDPORSCHE.COM
QUICKPORSCHE.COM
ROADSPORTPORSCHE.COM
SEEPORSCHE.COM
STEVENSCREEKPORSCHE.COM
THINKPORSCHE.COM

TURBOPARTSFORPORSCHE.COM
ULTIMATEPORSCHE.COM
USEDPARTSFORPORSCHE.COM
USEDPORSCHE.COM
USEDPORSCHES.COM
VWPORSCHE.COM
VWPORSCHE.NET
VWPORSCHE.ORG
WALTERSPORSCHE.COM
WINAPORSCHE.COM
WINPORSCHE.COM
WWWPORSCHE.COM
YOURPORSCHE.COM
1-800-PORSCHE.COM
PORSCHE-PARTS.NET
PORSCHE2000.COM
PORSCHEAUTOPARTS.COM
PORSCHEPARTSNETWORK.COM
PORSHCHA.COM
PORSHE.NET
PORSHE.ORG
E-PORCHE.ORG
E-PORCHE.NET
PORSCHECREDITCORP.COM

http://WWW.THEBESTDOMAINS.COM/

The Best Domains

A domain-name is your own Internet address.This address. should say it all.When advertising it should be catchy and easily recognisable like all your other advertising. There are 10,000 NEW addresses registered every day.When those addresses listed below are gone **THEY'RE GONE** it will be even harder. **REMEMBER** your Internet address **IS** a business asset and has value.All these addresses listed below **WILL** go up in value.You should be able to deduct these costs of purchase from your tax.

...all these Domain names can have SUB-DOMAINS ie: with 911porsche.com you can add a sub-topic in front of this ie: **www.parts.911porsche.com** or **www.sales.911porsche.com**, this can be done to all of these Domain names and dramatically increases their use and value!

DOMAIN NAME	COMMENTS	PRICE
911porsche.com	Porsche DO I NEED TO SAY ANYTHING?	$60,000
996porsche.com	Porsche DO I NEED TO SAY ANYMORE?	$15,000
porscheautoparts.com	Porsche parts	$20,000
no1homes.com	great name for home builder	$15,000
airfares4sale.com	Travel	$5,000
badboyscars.com	BAD BOYS BAD BOYS WHAT YA GONNA DO?	$5,000
badboystoys.com	WHEN THEY COME FOR YOU BAD BOYS BAD BOYS	$5,000
bank-credit.com	Credit	$15,000
banking-on-line.com	Banking	$20,000
breweryonline.com	BEER! Here is a RARE top level one word keyword domain (VERY HARD TO FIND)	$2,500
cds-on-line.com	CDs	$20,000
cd-on-line.com	CDs	$15,000
chevcorvette.com	Corvette Stingray anyone?	$2,000

EXHIBIT
3

chevyspares.com	Chevy Spare Parts	$5,500
chevyspareparts.com	Chevy	$5,500
cigars-on-line.com	Cigars	$25,000
diamonds-on-line.com	Jewellery	$20,000
dvd-on-line.com	DVD PRICELESS!!!	$15,000
dvds-on-line.com	DVD PRICELESS!!	$20,000
fordspares.com	FORD	$5,500
fordspareparts.com	FORD	$5,500
game-boy.com	Games	$10,000
phones4sale.com	Phone Store	$5,000
shelbycobras.com	Cobra	$40,500
shelbymustang.com	The Ultimate Mustang!	$45,500
shelbyseries1.com	The Best Address	$10,500
shoppingmall-online.com	Shopping	$50,000
shoppingon-line.com	Shopping	$[illegible]
stockbroker-on-line.com	Stock	$50,000
stogieson-line.com	Cigars	$[illegible]
stogies-on-line.com	Cigars	$[illegible]
the-boxoffice.com	The Movies	$[illegible]
tickets-on-line.com	Tickets	$2,000
wallst-on-line.com	Wall St THE address-better buying than bonds!	$45,000
wine-on-line.com	Wine the address says it all!!!	$41,000
wines-on-line.com	Wine the address says it all!!!	$45,000
xxxave.com	XXX Here is a RARE top level one word keyword domain (VERY HARD TO FIND)	$5,000
xxx-on-line.com	XXX good XXX is hard to find	$5,000
xxxst.com	XXX Here is a RARE top level one word keyword domain (VERY HARD TO FIND)	$5,000
xxx-st.com	XXX	$3,000
yourchevydealer.com	Chevy contact ... bill@your chevy dealer.com	$10,500
yourforddealer.com	Ford contact ... bob@your ford dealer.com	$10,500

yourporschedealer.com	Porsche contact: helmut@your porsche dealer.com	$10,500
yourhondadealer.com	Honda contact: fred@your honda dealer.com	$10,500

We can help if you are selling a Domain!
E-mail Us here!

Interested in purchasing any of the domains above? just E-MAIL us. We are the owners&sellers and will send you a response as soon as possible. Please include full name and email address where we can reach you.

1133
BESEEN.COM

4 sale @ thebestdomains.com

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Web Interface to Whois

Brand every e-mail you send. NETWORK SOLUTIONS the dot com people

```
Registrant:
domain 4 sale & company (PORSCH3-DOM)
   15445 ventura bl # 318
   sherman oaks, CA 91403

   Domain Name: PORSCH.COM

   Administrative Contact:
      YOMTOBIAN, SAEID  (LH2672)  domainsale@AOL.COM
      818-599-9141 (FAX) 0000000
   Technical Contact, Zone Contact:
      support  (SUP13-ORG)  dns@VIA.NET
      650 969-2203
Fax- 650 969-2124
   Billing Contact:
      YOMTOBIAN, SAEID  (LH2672)  domainsale@AOL.COM
      818-599-9141 (FAX) 0000000

   Record last updated on 12-Jan-99.
   Record created on 23-Dec-97.
   Database last updated on 23-Jun-99 08:35:41 EDT.

   Domain servers in listed order:

   NS.VIA.NET                    209.81.9.1
   NS2.VIA.NET                   165.96.49.12
```

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EXHIBIT 4

DOMAIN NAME	PRICE
Acura	
Acura-Lease.com	$695
Acura-Leasing.com	$695
Acura-Sales.com	$1,295
atAcura.com	$1,295
DriveAcura.com	$695
go-Acura.com	$695
HotAcuraBuys.com	$1,295
Lease-Acura.com	$695
LeaseAcura.com	$695
Audi	
atAudi.com	$1,295
Audi-Lease.com	$695
Buy-Audi.com	$695
DriveAudi.com	$695
go-Audi.com	$695
HotAudiBuys.com	$695
LeaseAudi.com	$695
BMW	
atBMW.com	$1,295
BMW-Lease.com	$695
BMW-Leasing.com	$695
BMW-Service.com	$1,295
DriveBMW.com	$695
go-BMW.com	$695
Lease-BMW.com	$695
Buick	
atBuick.com	$1,295
Buick-Dealer.com	$1,295
Buick-Leasing.com	$695
Buick-Sales.com	$1,295
BuickLeasing.com	$695
go-Buick.com	$695
Cadillac	
atCadillac.com	$1,295
Cadillac-Dealer.com	$1,295
Cadillac-Leasing.com	$695
Cadillac-Sales.com	$1,295
CadillacLease.com	$695
go-Cadillac.com	$695
LeaseCadillac.com	$695
Chevrolet	
atChevrolet.com	$1,295
Chevrolet-Dealer.com	$1,295
Chevrolet-Leasing.com	$695
Chevy-Sales.com	$1,295
ChevyTruck-Sales.com	$695
go-Chevrolet.com	$695

DOMAIN NAME	PRICE
go-Chevy.com	$695
HotChevyBuys.com	$695
Chrysler	
atChrysler.com	$1,295
Chrysler-Dealer.com	$1,295
Chrysler-Leasing.com	$695
Chrysler-Sales.com	$1,295
ChryslerPlymouthSales.com	$695
go-Chrysler.com	$695
goChryslerPlymouth.com	$695
Dodge	
atDodge.com	$1,295
Dodge-Dealer.com	$1,295
DodgeTruck-Sales.com	$695
DriveDodge.com	
go-Dodge.com	$695
goDodgeTrucks.com	$1,295
Ferrari	
Ferrari-Leasing.com	$695
MyFerrari.com	$1,295
Ford	
atFord.com	$1,295
DriveFord.com	$695
Ford-Leasing.com	$695
FordToughTrucks.com	$695
FordTruck-Sales.com	$695
go-Ford.com	$695
goFordTrucks.com	$1,295
HotFordBuys.com	$695
Geo	
Geo-Dealer.com	$1,295
Geo-Sales.com	$1,295
GeoLeasing.com	$695
go-Geo.com	$695
HotGeoBuys.com	$695
GMC	
at-GMC.com	$695
GMC-Dealer.com	$1,295
GMTruckSales.com	$695
go-GMC.com	$695
goGMC.com	$695
Honda	
atHonda.com	$1,295
go-Honda.com	$695
Honda-Dealer.com	$1,295
Honda-Leasing.com	$695
HotHondaBuys.com	$1,295

DOMAIN NAME	PRICE
Lease-Honda.com	$695
LeaseHonda.com	$695
****HOT SALES**	
BestCarSavings.com	$1,295
Car-guy.com	$695
CarBuyersMart.com	$1,295
HotAutoBuys.com	$1,295
HotCarBuys.com	$1,295
HotTruckBuys.com	$1,295
PurchaseCar.com	$695
The-Car-Guys.com	$695
TonsOfCars.com	$695
Hummer	
atHummer.com	$1,295
go-Hummer.com	$695
Hummer-Dealer.com	$1,295
Hummer-Sales.com	$1,295
HummerLeasing.com	$695
Infiniti	
atInfiniti.com	$1,295
DriveInfiniti.com	$695
goInfiniti.com	$1,295
Infiniti-Deals.com	$695
Infiniti-Lease.com	$695
Infiniti-Leasing.com	$695
LeaseInfiniti.com	$695
Isuzu	
atIsuzu.com	$1,295
go-Isuzu.com	$695
goIsuzu.com	$695
Isuzu-Dealer.com	$695
Isuzu-Deals.com	$695
Isuzu-Sales.com	$695
IsuzuLeasing.com	$695
Jaguar	
atJaguar.com	$1,295
go-Jaguar.com	$695
Jaguar-Leasing.com	$695
JaguarLease.com	$695
LeaseJaguar.com	$695
Jeep	
atJeep.com	$1,295
go-Jeep.com	$695
goJeepEagle.com	
Jeep-Dealer.com	
JeepEagleDealer.c	
JeepEagleLease.co	
JeepEagleSales.co	

EXHIBIT 5

DOMAIN NAME	PRICE
JeepLeasing.com	$695
Kia	
atKia.com	$1,295
go-Kia.com	$695
HotKiaBuys.com	$695
Kia-Dealer.com	$1,295
Kia-Sales.com	$1,295
KiaLeasing.com	$695
LandRover	
LandRover-Sales.com	$1,295
LandRoverBuys.com	$695
Lexus	
atLexus.com	$1,295
DriveLexus.com	$695
go-Lexus.com	$695
goLexus.com	$1,295
HotLexusBuys.com	$1,295
Lease-Lexus.com	$695
LeaseLexus.com	$695
Lexus-Lease.com	$695
Lexus-Leasing.com	$695
Lincoln	
atLincoln.com	$1,295
go-Lincoln.com	$695
Lincoln-Dealer.com	$695
Lincoln-Leasing.com	$695
Lincoln-Sales.com	$695
Mazda	
atMazda.com	$1,295
go-Mazda.com	$695
HotMazdaBuys.com	$695
Mazda-Leasing.com	$695
Mercedes-Benz	
atMercedes.com	$1,295
go-Mercedes.com	$695
goMercedesBenz.com	$1,295
Lease-Mercedes.com	$695
Mercedes-Lease.com	$695
Mercedes-Leasing.com	$695
Mercedes-Service.com	$1,295
MercedesBenzLease.com	$695
Mercury	
atMercury.com	$1,295
DriveMercury.com	$695
Mercury-Dealer.com	$695
Mercury-Lease.com	$695
Mercury-Sales.com	$1,295

DOMAIN NAME	PRICE
Mitsubishi	
atMitsubishi.com	$1,295
go-Mitsubishi.com	$695
goMitsubishi.com	$695
Mitsubishi-Dealer.com	$695
Mitsubishi-Sales.com	$1,295
MitsubishiLease.com	$695
Nissan	
atNissan.com	$1,295
go-Nissan.com	$695
HotNissanBuys.com	$695
Nissan-Lease.com	$695
Nissan-Trucks.com	$1,295
Oldsmobile	
atOldsmobile.com	$1,295
Oldsmobile-Leasing.com	$695
Oldsmobile-Sales.com	$1,295
Peugeot	
atPeugeot.com	$1,295
BuyPeugeot.com	$1,295
GoPeugeot.com	$695
Peugeot-Dealer.com	$695
PeugeotLeasing.com	$695
Pontiac	
atPontiac.com	$1,295
go-Pontiac.com	$695
Pontiac-Dealer.com	$695
Pontiac-Sales.com	$695
PontiacLeasing.com	$695
Porsche	
atPorsche.com	$1,295
go-Porsche.com	$695
Lease-Porsche.com	$695
LeasePorsche.com	$695
Porsche-Lease.com	$695
Porsche-Leasing.com	$695
RangeRover	
atRangeRover.com	$1,295
goRangeRover.com	$695
RangeRover.net	$1,295
RangeRover-Sales.com	$1,295
RangeRoverDealer.com	$1,295
RangeRoverLease.com	$695
Saab	
atSaab.com	$1,295
go-Saab.com	$695
LeaseSaab.com	$695

DOMAIN NAME	PRICE
Saab-Dealer.com	$1,295
Saab-Lease.com	$695
Saab-Leasing.com	$695
Saturn	
atSaturn.com	$1,295
go-Saturn.com	$695
goSaturn.com	$695
HotSaturnBuys.com	$695
Saturn-Lease.com	$695
Saturn-Leasing.com	$695
Subaru	
go-Subaru.com	$695
HotSubaruBuys.com	$695
Subaru-Dealer.com	$695
Subaru-Deals.com	$695
Subaru-Leasing.com	$695
Suzuki	
atSuzuki.com	$1,295
Suzuki-Dealer.com	$1,295
Suzuki-Sales.com	$1,295
Toyota	
atToyota.com	$1,295
BuyToyotaTrucks.com	$1,295
go-Toyota.com	$695
goToyotaTrucks.com	$1,295
HotToyotaBuys.com	$1,295
Lease-Toyota.com	$695
LeaseToyota.com	$695
Toyota-Dealer.com	$1,295
Toyota-Lease.com	$695
Toyota-Leasing.com	$695
ToyotaTruckSales.com	$1,295
Volkswagen	
atVolkswagen.com	$1,295
BuyVolkswagen.com	$1,295
go-Volkswagen.com	$695
go-VW.com	$695
goVolkswagen.com	$695
goVW.com	$1,295
HotBugs.com	$695
HotVWBugs.com	$695
VW-Sales.com	$1,295
Volvo	
atVolvo.com	$1,295
go-Volvo.com	$695
LeaseVolvo.com	$695
Volvo-Dealer.com	$1,295
Volvo-Leasing.com	$695

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Aborting search 50 records found .....

Beswick Adams	(PEPSIBOTTLER-DOM)	PEPSIBOTTLER.
Beswick Adams	(MCDONALDSRESTAURANT-DOM)	MCDONALDSRESTAURANT.
Beswick Adams	(ROLLS-ROYCEPLC-DOM)	ROLLS-ROYCEPLC.
Beswick Adams	(SUBWAYSUCKS3-DOM)	SUBWAYSUCKS.
Beswick Adams	(COCA-COLACORP-DOM)	COCA-COLACORP.
Beswick Adams	(BURGERKINGWHOPPER-DOM)	BURGERKINGWHOPPER.
Beswick Adams	(JAGUARCARSLIMITED-DOM)	JAGUARCARSLIMITED.
Beswick Adams	(DRINGHCFPORSCHEAG-DOM)	DRINGHCFPORSCHEAG.
Beswick Adams	(WENDYS6-DOM)	WENDYS.
Beswick Adams	(COCA-COLABOTTLER-DOM)	COCA-COLABOTTLER.
Beswick Adams	(BURGERKINGCORPORATION-DOM)	BURGERKINGCORPORATION.
Beswick Adams	(TACOBELLCORP-DOM)	TACOBELLCORP.
Beswick Adams	(MAZDAMOTORCORPORATION-DOM)	MAZDAMOTORCORPORATION.
Beswick Adams	(KFCRESTAURANT-DOM)	KFCRESTAURANT.
Beswick Adams	(WENDYSRESTAURANT-DOM)	WENDYSRESTAURANT.
Beswick Adams	(THESATURNGROUP-DOM)	THESATURNGROUP.
Beswick Adams	(TOYOTAMOTORCORPORATION-DOM)	TOYOTAMOTORCORPORATION.
Beswick Adams	(SUBWAYRESTAURANTS-DOM)	SUBWAYRESTAURANTS.
Beswick Adams	(BURGERKINGRESTAURANT-DOM)	BURGERKINGRESTAURANT.
Beswick Adams	(WENDYSSUCKS-DOM)	WENDYSSUCKS.
Beswick Adams	(KFCRESTAURANTS-DOM)	KFCRESTAURANTS.
Beswick Adams	(THEDODGECORPORATION-DOM)	THEDODGECORPORATION.
Beswick Adams	(NISSANMOTORCORPORATION-DOM)	NISSANMOTORCORPORATION.
Beswick Adams	(VIRGINCORP-DOM)	VIRGINCORP.
Beswick Adams	(MERCEDES-BENZUSA-DOM)	MERCEDES-BENZUSA.
Beswick Adams	(MCDONALDSCORP-DOM)	MCDONALDSCORP.
Beswick Adams	(SUBWAYSANDWICHES-DOM)	SUBWAYSANDWICHES.
Beswick Adams	(BMW-AG-DOM)	BMW-AG.
Beswick Adams	(HYUNDAIMOTORCOMPANY-DOM)	HYUNDAIMOTORCOMPANY.
Beswick Adams	(PEPSICORPORATION-DOM)	PEPSICORPORATION.
Beswick Adams	(VOLVOGROUP-DOM)	VOLVOGROUP.
Beswick Adams	(COCA-COLACORPORATION-DOM)	COCA-COLACORPORATION.
Beswick Adams	(SAABAUTOMOBILE-DOM)	SAABAUTOMOBILE.
Beswick Adams	(MCDONALDSCORPORATION-DOM)	MCDONALDSCORPORATION.
Beswick Adams	(MCDONALDSBIGMAC-DOM)	MCDONALDSBIGMAC.
Beswick Adams	(TACOBELLCORPORATION-DOM)	TACOBELLCORPORATION.
Beswick Adams	(BURGERKINGRESTAURANTS-DOM)	BURGERKINGRESTAURANTS.
Beswick Adams	(VIRGINCORPORATION-DOM)	VIRGINCORPORATION.
Beswick Adams	(PEPSICORP-DOM)	PEPSICORP.
Beswick Adams	(LOTUSCARSUSA2-DOM)	LOTUSCARSUSA.
Beswick Adams	(AMERICANHONDAMOTORCO-DOM)	AMERICANHONDAMOTORCO.
Beswick Adams	(BESWICKADAMS-DOM)	BESWICKADAMS.
Beswick Adams	(SUBWAYRESTAURANT2-DOM)	SUBWAYRESTAURANT.
Beswick Adams	(WENDYSINTLINC-DOM)	WENDYSINTLINC.
Beswick Adams	(CHRYSLERCORPORATION2-DOM)	CHRYSLERCORPORATION.
Beswick Adams	(GENERALMOTORSOFCANADA-DOM)	GENERALMOTORSOFCANADA.
Beswick Adams	(PEPSI-BOTTLER-DOM)	PEPSI-BOTTLER.
Beswick Adams	(BURGERKINGCORP-DOM)	BURGERKINGCORP.
Beswick Adams	(COKE-BOTTLING-DOM)	COKE-BOTTLING.
Beswick Adams	(PEPSI-COLABOTTLER-DOM)	PEPSI-COLABOTTLER.

EXHIBIT 6

OFFER FORM

Please complete and submit the following form to make an offer for one of Beswick Adam's domain names. Be certain that your contact information is correct. Also, please be certain that your chosen domain name is spelled correctly because once submitted, THIS FORM CONSTITUTES A LEGALLY BINDING OFFER TO PURCHASE THE DOMAIN YOU HAVE LISTED FROM BESWICK ADAMS CORPORATION. If you have any questions regarding this form or process, please e-mail them to jcschem@beswickadams.com or surf to Contact Us in the navagation bar for further Beswick Adams contact information.

First Name:		Last Name:	
Title:		Email:	
Company:		Address:	
City:		State / Province:	
Postal Code:		Country:	
Telephone:		Facsimile:	
Domain Name:			
Offer: (in US dollars)			

Please note: Although it is most unlikely that you will experience any problems responding to this form, certain non-standard browsers will not respond properly. If you experience any difficulties, (or if you are not using a forms-capable browser) you may email your response to this form to: jcschem@beswickadams.com.

Submit Offer | Abort Offer

EXHIBIT 7

MAR-STEV SALES & PROMOTIONS INC.

Authorized Distributor

NEW !!!

PRODUCTS LIST
ORDER
CONTACT US

Bandai Products

Other Products

MasterCard, Visa, American Express, Discover

1-888-627-7838

EXHIBIT

8

Exhibit C

MYSTIC KNIGHTS of TIR NA NOG

7833 MYSTIC KNIGHTS BATTLE FURY DEFENDERS ** $11.25

The Mystic Knights gain even more wizardry and fighting ability, thus creating the Mystic Knights Battle fury Defenders! Fully poseable, each figure comes with projectile weapons and additional armor. Assortment includes Lugad, the Evil Warrior of Temra! For Ages 4 and up.

7850 JOUSTING MYSTIC KNIGHTS ** $18.12

The undaunted Mystic Knights take on the Evil Sentinels in some real jousting action. Each set comes with one Mystic Knight, an Evil Sentinel, and their respective jousting handles. Who wins? You decide! For ages 4 and up.

7900 BATTLE BIKES AND BATLLE SIDE CARS ** $13.75

Muscular looking bikes with fearsome details. The Battle Bikes fire projectiles while the Battle Side Cars drills through evil terror. Each Battle Bike and Battle Side Car comes with poseable Mystic Knight figure. Garrett's Battle Bike, Deirdre's Battle Side Car, Rohan's Battle Bike, Ivar's Battle Side Car and Angus's Battle Bike For ages 4 and up.

7855 DELUXE ATTACK MACHINES ** $27.50

The Deluxe Attack Machines are power packed with cool weapons for fight against evil. Clear the way with the flip-out spike blades, or fire giant flame missiles. Each Deluxe Attack Machine comes with its own poseable figure. For ages 4 and up.

7770 MYSTIC DEFENDERS ACTION FIGURES ** $9.40

This Spring we add the Baby Dragon. The Drageen featuring amazing detail and decoration! The Drageen can flap his wings and apply his jaw crunching chomp. For ages 4 and up

7880 DELUXE MICRO PLAYSETS ** $13.60

The world of Mystic Knights comes alive with these incredibly detailed playsets. Each set comes with working features, hidden areas & miniature figures! Open and discover the mystical secrets inside! Not pictured, but coming soon is Rohan's, Mystic Knight of Fire Helmet Playset. For ages 4 and up.

7910 MOBILE ARMOR ELIMINATOR ** $20.00

Mobile Armor Eliminators aid the Mystic Knights in their battles against Lugad, the Warrior of Temra. Comes complete with two action features like firing projectiles, slashing swords, or pinching claws. Bonus Mystic Knight poseable figure included. Not pictured, but coming soon are Angus's and Ivar's Mobile Armor Eliminators. For ages 4 and up.

7800 8" DELUXE ARMOR DEFENDERS ** $15.00

POWER RANGERS LOST GALAXY

4265 ASTRO CYCLES **$15.00

These cycles are the first vehicles of the Lost Galaxy season, and come in Red, Green, Blue and Black, for the Stealth Defender. Each custom cycle resembles each Power Ranger's Zord and is packaged with a 5" articulated Power Ranger. Special pieces can be removed from the cycle and snapped onto the Power Ranger to create an armored look. Assortment of 4. Ages 4 and up.

4290 DELUXE GALAXY MEGAZORD ** $54.37

Battle evil with this imposing Megazord, comprised of five individual Zords. Each articulated Zord can be played with individually or combined to create the Deluxe Galaxy Megazord. The Condor Galactazord can either be stored on the back of the Megazord or used as bow-and-arrow weapon, with head, tail and wing movements action. Ages 4 and up.

4291 DELUXE DEFENDER TOROZORD ** $41.25

The Stealth Defender has summoned his Zord to battle the Evil Space Aliens. This second Megazord includes a Stealth defender articulated figure which fits inside the Deluxe Defender Torozord. The Stealth Defender can also ride on the back of the Torozord. Two weapons included. Ages 4 and up.

4295 DELUXE MICRO PLAYSETS ** $13.64

This new playset assortment is comprised of a Galaxy Power Ranger and a Galaxy Megazord head. Each playset is complete with two 1" Power Rangers and two Evil Space Aliens, and feature their own unique actions and traps to foil the Evil Space aliens. For storage, place the figure inside, close the front and the toy is instantly portable. Assortment of 2. Ages 4 and up.

4280 WEAPON ASSORTMENT ** $20.00

The Quasar Saber is used by all the Power Rangers to defend Earth from Evil Space Aliens. The saber features lights and sound and comes with five amber medallions that snap on to match your favorite Zord. This assortment also includes the Galaxy Blaster, a two piece weapon featuring lights and sound. Assortment of 2. Ages 4 and up.

4275 MORPHER ASSORTMENT ** $13.75

Now kids can become their favorite Power Ranger by strapping the Transmorpher on their wrist to summon their very own Zord. The morpher has lights and sounds. By rotating the dial to match the five Power Ranger colors, kids can press the silver button and hear each zord's battle cry. Also included in the assortment is the Stealth Defender Morpher, a two piece morpher with lights and sound. Assortment of 2. Ages 4 and up.

4283 TRANSDAGGER ** $13.75

This role play item is extremely versatile and can change into five different modes, one mode for each Power Ranger. Bonus Power Ranger badge included. Ages 4 and up.

4240 5" GALAXY POWER RANGERS ** $8.75

Each Power Ranger speaks a unique phrase at the touch of a button. These fully articulated action figures come with special weapons and accessories. This assortment includes the 5 Power Rangers and the special Stealth Defender. Two Evil Space Aliens complete the mix and have unique weapons and action features. Assortment of 8. Ages 4 and up.

4255 5" ACTION ZORDS ** $8.75

These exciting new action Zords each have their own signature action feature and accessories. The assortment includes the Galaxy Megazord, Defender Torozord and the Mega Defender (not included). Assortment of 3. Ages 4 and up.

4285 INTERMEDIATE ZORD ASSORTMENT ** $20.00

The Galaxy Megazord comes with a sword and condor weapon. Pull the bird's tail back and the head snaps forward just like a real bow-and-arrow! Each zord stands a full 12 " tall. Also included in the assortment is the Mega Defender Zord, the Stealth Defender in the Zord mode. Assortment of 2. Ages 4 and up.

 # 3200 DIGIZORD ** $13.75

This season's Digizord is in the form of the Galaxy Megazord, complete with condor bow-and-arrow. This electronic game can be played on its own or hooked up to a friend's Digizord for battle. The more you train your Digizord, the stronger it becomes. Assortment of 3. Ages 4 and up.

 # 4300 5" CONQUERING POWER RANGERS ** $11.25

These awesome 5" figures have removable translucent armor and a bonus space beast weapon. The beast can be dismantled and snapped onto figure for animal armor look! Assortment of 4. Ages 4 and up.

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FLUFFY'S

#75000ASSORTMENT ** $4.27

#75100FLUFFY'S FAMILIES ** $7.04

-

YOYO

#3434ASSORTED ** $6.91

#3435MACHINE HYPER SPINNER ** $8.62

POCKET DRAGON

#60000COLLECTABLE ** $5.99

#60010BEANIES ** $7.65

#60002PRINCESS ** $16.99

#60011CARRY CASE ** $10.20

#60001CASTLE PLAY SET ** $29.99

#60003KEYCHAINS ** $2.56

#60004SINGLE FIGURE ** $2.13

W.W.F. - NEW

PLASTIC DRINKWARE

#2[illegible]

#2[illegible]

#23200 3D Straw Hugger-Steve Austin ** $2.50

#23201 3D Straw Hugger-Undertaker ** $2.50

#23275 Frosty Mug w/Logo Asst. - 5 Styles ** $7.95

#23150 WWF

#23251 Austin Skull

#23252 Stone Cold Steve Austin

#23253 Degenerado X

#23254 Undertaker

#23305 22 oz Super Thermo [illegible] ** $1.35

#23304 22 oz Roadhog [illegible] ** $6.50

Steve Austin

Degeneration X

Undertaker

#23310 32 oz Handi-Squeeze w/Straw ** $4.50

Steve Austin

Degeneration X

#23311 32 oz Stadium [illegible] $4.95

Steve Austin

Degeneration X

#23312 32 oz Sports [illegible] $6.5

Steve Austin

Degeneration X

CERAMIC ITEM

#26007 10 [illegible] Quickie [illegible] ** $20.00

#26008 [illegible] oz Coffee [illegible] ** [illegible]

#26308 Steve Austin

#26309 Degeneration X

#26010 Undertaker

#90001 15 oz Coffee Mug [illegible]

#26020 Austin

#26021 Degeneration

#26022 Undertaker

#90003 [illegible]

#26015 Steve Austin

#26016 Degeneration X

#26017 Undertaker

#90005 15 oz Black Coffee [illegible]

#26025 Steve Austin

#26026 Degeneration X

#26027 Undertaker

NOVELTY ITEMS

#24004 Laser Cut Magnets [illegible]

#24000 Austin Figure

#24001 Degeneration X

#24002 Undertaker

#24003 Austin Skull

#24006 3D [illegible]

Austin

Degeneration X

Undertaker

#24500 Bank [illegible]

Austin

Undertaker

KITCHENWARE

#25000 Small Cup, Plate & Bowl Set - [illegible] $1.98

#25000 Austin -2.5x5x5.5"

#25001 Undertaker - [illegible]

#25005 Large Cup, Plate & Bowl [illegible] $4.00

#25005 Austin - [illegible]

#25006 Undertaker [illegible]

BARWARE

#90006 1 [illegible] oz Shot Glass - [illegible] $2.95

#27002 Austin Sauce

#27003 Degeneration [illegible]

#27010 Undertaker

#90007 2 ½ oz Shooter Glass [illegible] $3.25

#27004 Austin

#27013 Degeneration X

#27011 Undertaker

#90008 [illegible]

#27006 Austin

#27007 Degeneration [illegible]

#27008 Undertaker

#90011 Pocket [illegible] $2.75

Austin

Degeneration X

STAINLESS STEEL

29000 14 oz Stainless Steel [illegible] $24.50

Austin

Degeneration X

TAMAGOTCHI

#1810 TAMAGOTCHI ANGEL $17.80

#1850 DIGIMON, THE ORIGINAL BATTLING DIGITAL MONSTER $18.59

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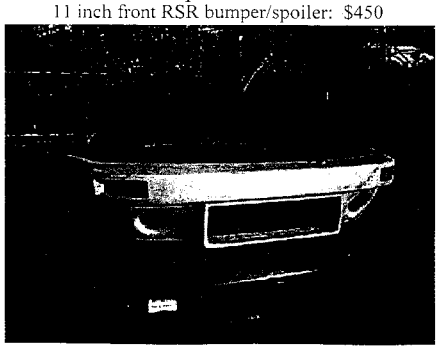

EXHIBIT
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Exhibit D

Stuff to Wear

Stuff to Read

Porsche Pete's Boxster Board is proud to present an initial library of books for you to purchase through this web site. In conjunction with Amazon.com Books, we will strive to offer the best available Boxster / Porsche-related books. A portion of every book you purchase from this site will help support the Boxster Board. When you see a book that you're interested in, just click on the purchase link of that book and you will be automatically sent to Amazon's site to process your order. All with the safety and security of a name you can trust. Be sure to return to this area of this site to find just the right books. The library is just beginning, hoping to grow, so come back often, and remember, every purchase helps the Board. If you have a favorite Porsche / Boxster book to recommend for listing here, email Porsche Pete.

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	Follow the sweeping curves of the stunning new Porsche Boxster from its conception through design, testing, and development in this dynamic collection of lavish color photographs and archival images. Included are early design drawings and photographs of prototype models and testing. Includes and exceptional see-through color diagram. Paperback - 128 pages (September 1998) Mbi Publishing; ASIN: 0760305196
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	This title is out of print. Kind of like the diminished Boxster colors, options, and now maybe even the car you thought you were getting this summer. Although it is no

EXHIBIT
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Senator ABRAHAM. Before we turn to you, Mr. Young, we have been joined by our committee's ranking member, Senator Leahy, and I will turn to him for an opening statement. I also just would indicate, by, I gather, prior agreement, that we will leave the record open for any other members who couldn't be here today to submit any opening statements or comments they want.

And we would also request if anybody wishes to submit questions for the witnesses who couldn't be here today that they do so by the close of business tomorrow so that you all would have a chance to respond. We are hoping to get the responses done by the close of business Tuesday.

So with that said, I will turn to our committee ranking member, Senator Leahy, of Vermont.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Thank you very much, Mr. Chairman. Like you and the rest of us, we have about four hearings going on at the same time, but this is an important issue and one I have thought a lot about.

We know that trademarks are an important tool of commerce. In fact, the exclusive right to the use of a unique mark helps companies compete in the marketplace. It can distinguish their goods and services from their competitors. It helps consumers identify the source of a product and they can link it with a particular company.

The use of trademarks by companies and the reliance on trademarks by consumers is just going to become that much more important as the global marketplace becomes bigger, and it is becoming bigger and more accessible with electronic commerce. The reason is obviously simple. When you have a trademarked name, if it is used as a company's address in cyberspace, well then a customer, whether they are in Michigan or Vermont or Sri Lanka, will know where to go online to conduct business with that company.

The growth of electronic commerce is having a positive effect on small rural States like mine. A Vermont Internet Commerce report I commissioned earlier this year found that Vermont gained over 1,000 new jobs as a result of Internet commerce, with the potential that there would be another 24,000 jobs over the next 2 years. Mr. Chairman, for a State the size of Michigan, that may not seem like a large number, but for a State of only 600,000 people, 24,000 new jobs just from this one source in 2 years is an enormous difference for us.

But along with that good news, the same report identified a number of obstacles. One obstacle is that, "Merchants are anxious about not being able to control where their names and brands are being displayed." The report also says, consumer confidence in shopping online has to be bolstered.

Both merchant and consumer confidence is undermined by cybersquatters or cyberpirates who abuse the rights of trademark holders by purposefully and maliciously registering as a domain name the trademark name of another company. It diverts and confuses customers. It denies the company the ability to establish an easy-to-find online address.

Enforcing trademark law in cyberspace can help. I have long been concerned about this. In fact, when the Congress passed the Federal Trademark Dilution Act of 1995, I said, 'Although no one else has yet considered this application, it is my hope that this antidilution statute can help stem the use of deceptive Internet addresses taken by those who are choosing marks that are associated with the products and reputations of others." Last year, I authored an amendment that was part of the Next Generation Internet Research Act on this same issue.

These are serious matters. Both the Internet Corporation for Assigned Names and Numbers, I-CANN, and WIPO are also making recommendations. The Federal Trademark Dilution Act has been used as I predicted to stop misleading uses of names, but we have a long way to go. Cybersquatting is an important issue both for trademark holders and for the future of electronic commerce on the Internet.

But we also have to tread very carefully to ensure that any remedies do not impede or stifle the free flow of information on the Net. Because the United States has been the incubator in many ways of the World Wide Web, the world is going to watch very carefully what we do.

So I am hopeful, Mr. Chairman, that you and I and Chairman Hatch, Senator Torricelli and all can work together on this. I will put my whole statement in the record, but I think that we will find on this issue especially the rest of the world is going to watch very carefully what we do, so we want to make sure we do it right.

Thank you very much.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Trademarks are important tools of commerce. The exclusive right to the use of a unique mark helps companies compete in the marketplace by distinguishing their goods and services from those of their competitors, and helps consumers identify the source of a product by linking it with a particular company. The use of trademarks by companies, and reliance on trademarks by consumers, will only become more important as the global marketplace becomes larger and more accessible with electronic commerce. The reason is simple: when a trademarked name is used as a company's address in cyberspace, customers know where to go online to conduct business with that company.

The growth of electronic commerce is having a positive effect on the economies of small rural states like mine. A Vermont Internet Commerce report I commissioned earlier this year found that Vermont gained more than 1,000 new jobs as a result of Internet commerce, with the potential that Vermont could add more than 24,000 jobs over the next two years. For a small state like ours, this is very good news.

Along with the good news, this report identified a number of obstacles that stand in the way of Vermont reaching the full potential promised by Internet commerce. One obstacle is that "merchants are anxious about not being able to control where their names and brands are being displayed." Another is the need to bolster consumers' confidence in online shopping.

Both merchant and consumer confidence in conducting business online are undermined by so-called "cybersquatters" or "cyberpirates," who abuse the rights of trademark holders by purposely and maliciously registering as a domain name the trademarked name of another company to divert and confuse customers or to deny the company the ability to establish an easy-to-find online location. A recent report by the World Intellectual Property Organization (WIPO) on the Internet domain name process has characterized cybersquatting as "predatory and parasitical practices by a minority of domain registrants acting in bad faith" to register famous or

well-known marks of others—which can lead to consumer confusion or downright fraud.

Enforcing trademark law in cyberspace can help bring consumer confidence to this new frontier. That is why I have long been concerned with protecting registered trademarks online. Indeed, when the Congress passed the Federal Trademark Dilution Act of 1995, I noted that:

> [A]lthough no one else has yet considered this application, it is my hope that this antidilution statute can help stem the use of deceptive Internet addresses taken by those who are choosing marks that are associated with the products and reputations of others.

(Congressional Record, Dec. 29, 1995, page S19312)

In addition, last year I authored an amendment that was enacted as part of the Next Generation Internet Research Act authorizing the National Research Council of the National Academy of Sciences to study the effects on trademark holders of adding new top-level domain names and requesting recommendations on inexpensive and expeditious procedures for resolving trademark disputes over the assignment of domain names. Both the Internet Corporation for Assigned Names and Numbers (I–CANN) and WIPO are also making recommendations on these procedures. We should make sure that any anti-cybersquatting legislation we pass does not frustrate these efforts.

The Federal Trademark Dilution Act of 1995 has been used as I predicted to help stop misleading uses of trademarks as domain names. One court has described this exercise by saying that "attempting to apply established trademark law in the fast-developing world of the Internet is somewhat like trying to board a moving bus * * *" [*Bensusan Restaurant Corp.* v. *King,* 126 F.3d 25 (2d Cir. 1997)] Nevertheless, the courts appear to be handling "cybersquatting" cases well. As Professor Michael Froomkin notes in his written testimony, "[i]n every case involving a person who registered large numbers of domains for resale, the cybersquatter has lost."

For example, courts have had little trouble dealing with a notorious "cybersquatter," Dennis Toeppen from Illinois, who registered more than 100 trademarks—including "yankeestadium.com," "deltaairlines.com," and "neimanmarcus.com"—as domain names for the purpose of eventually selling the names back to the companies owning the trademarks. The courts reviewing his activities have unanimously determined that he violated the Federal Trademark Dilution Act.

Enforcing or even modifying our trademark laws will be only part of the solution to cybersquatting. Up to now, people have been able to register any number of domain names in the popular ".com" domain with no money down and no money due for 60 days. Network Solutions Inc. (NSI), the dominant Internet registrar, announced yesterday that it was changing this policy, and requiring payment of the registration fee up front. In doing so, the NSI admitted that it was making this change to curb cybersquatting.

In light of the developing case law, the ongoing efforts within WIPO and I–CANN to build a consensus global mechanism for resolving online trademark disputes, and the implementation of domain name registration practices designed to discourage cybersquatting, we should be precise about the problems we need to address before we legislate in this area.

I am concerned that the S. 1255, the "Anticybersquatting Consumer Protection Act," introduced by Senators Abraham, Torricelli, Hatch and McCain, would have a number of unintended consequences that could hurt rather than promote electronic commerce. This bill would make it illegal to register or use any "Internet domain name or identifier of an online location" that could be confused with the trademark of another person or cause dilution of a "famous trademark."

- *The definition is overbroad.* The bill covers the use or registration of any "identifier," which could cover not just second level domain names, but also e-mail addresses, screen names used in chat rooms, and even files accessible and readable on the Internet. As Professor Froomkin points out, "the definitions will make every fan a criminal." How? A file document about Batman, for example, which uses the trademark "Batman" in its name, which also identifies its online location, could land the writer in court under this bill. This bill is simply overbroad; cybersquatting is not about file names.
- *The bill threatens hypertext linking.* The Web operates on hypertext linking, to facilitate jumping from one site to another. S. 1255 could disrupt this practice by imposing liability on operators of sites with links to other sites with trademark names in the address. One could imagine a trademark owner not wanting to be associated with or linked with certain sites, and threatening suit under

this proposal unless the link were eliminated or payments were made for allowing the linking.

- *The bill would criminalize dissent and protest sites.* A number of Web sites collect complaints about trademarked products or services, and use the trademarked names to identify themselves. For example, there are protest sites named "boycott-cbs.com" and "www.PepsiBloodbath.com." While the speech contained on those sites is clearly constitutionally protected, S. 1255 would criminalize the use of the trademarked name to reach the site and make them difficult to search for and find online.

The bill would stifle legitimate warehousing of domain names. The bill would change current law and make liable persons who register domain names similar to other trademarked names, whether or not they actually set up a site and use the name. The courts have recognized that companies may have legitimate reason for registering domain names without using them and have declined to find trademark violations for mere registration of a trademarked name. For example, a company planning to acquire another company might register a domain name containing the target company's name in anticipation of the deal. This bill would make that company liable for trademark infringement.

Cybersquatting is an important issue both for trademark holders and for the future of electronic commerce on the Internet. Yet the Congress should tread carefully to ensure that any remedies do not impede or stifle the free flow of information on the Internet. In many ways, the United States has been the incubator of the World Wide Web, and the world closely watches whenever we venture into laws, customs or standards that affect the Internet. We must only do so with great care and caution. Fair use principles are just as critical in cyberspace as in any other intellectual property arena. I am hopeful that Chairman Hatch and I, along with Senators Abraham and Torricelli, will be able to work together to find a legislative solution that works.

Senator ABRAHAM. Senator Leahy, I want to just thank you, and we have enjoyed working with you and your staff, as we do on a lot of projects, to move the legislation from its initial form to the substitute we are working, and look forward to continue doing that through the committee and hopefully onto the floor and beyond.

We stopped with Mr. Young and so I will return to you, and appreciate your patience as we address the always challenging scheduling dilemmas of members here as they come and go from the committee. Thank you for your patience and we will turn to you.

STATEMENT OF CHRISTOPHER D. YOUNG

Mr. YOUNG. Thank you, Mr. Chairman, Senator Leahy, for the opportunity to give this committee a perspective on cybersquatting from the front lines of the Internet.

Cyveillance is in support of legislation to prevent cybersquatting on the Internet. In fact, for nearly 2.5 years, which is a long time in Internet years, Cyveillance has been scouring the Internet on behalf of our clients, who represent market leaders across several industries. Some of our clients include the likes of Bell Atlantic, Levi Strauss, Dell Computer, Chanel, companies like that. And we have confirmed through many of our investigations that cybersquatting and other types of fraud are rapidly growing on the Internet.

During the course of our work, we have encountered countless cybersquatters who are preying on the public and leveraging the goodwill of major brands that consumers know and trust. The very fact that Cyveillance is a growing company exemplifies how prevalent cybersquatting and other Web-related issues have become. Cyveillance has helped market leaders in telecommunications, computers, apparel, pharmaceuticals, among other industries, deal with cybersquatting and other Internet issues that impact their e-businesses.

The act of cybersquatting, as it is commonly know, began its ascent as early as 1993, when a host of major corporations including Coca-Cola, Hertz Rentals, Delta Airlines, among others, learned that third parties had already registered their domains and would gladly sell them back to the rightful owners for a substantial fee.

Today, the Web is still the wild, wild west, with few rules or guidelines. "Cybersquatting" was coined as an analogy to the situation in the mid- to late 1800's when people attempted to lay a claim to land on which they were living or on which they squatted. On the Internet, which is today's new frontier, cybersquatters are trying to stake their claim on domain names that do not belong to them for their own personal or financial gain.

Cybersquatters essentially do this for two main reasons. The first is they want to sell it back to the original owner for a profit. The second reason they do it is to drive traffic, meaning users, to their Web sites to sell them goods or services, whether those services be counterfeit, unauthorized, or even pornographic in nature.

Many of you may be familiar with an infamous called www.whitehouse.com. It is a pornographic site that uses a popular name to attract unsuspecting consumers trying to reach whitehouse.gov, which is the legitimate White House Web site.

Businesses are affected by all these different objectives. Consumers are the real victims, however, of cybersquatters who aim to do business on the Internet. Cybersquatters really intentionally use popular brand names or slight misspellings of these names to capture site traffic from confused Internet users.

What I would like to do today is I actually brought some examples from the Internet itself so that I could illustrate some of the things that are taking place out there on the Internet. The first example that I have for you is an example of a popular male baldness drug. It is called Propecia.

If you look in the upper left-hand corner of the monitor, you will see that the domain name is www.propeciasales.com. That address has been registered by a company called KwikMed, which is not the manufacturer nor the owner of the trade name Propecia, and they are doing so to sell that drug.

The second example that I have is www.dellspares.com. Now, this site is intentionally put up to confuse consumers that are searching for products that are manufactured by Dell Computer Corporation. And based on feedback that we have gotten from our client, Dell, this particular site is not an authorized reseller of Dell Computer products. Another example that I have got is another Dell example, dellbackup.com, a second example of a site that is not an authorized reseller of Dell products or peripherals.

The fourth example that I have is www.bellatlantics.com, and this site is selling Internet domain name hosting services, et cetera. It is put up there to compete with Bell Atlantic's Internet-hosting services. And as you can see, and as Bell Atlantic will tell you, this is not an affiliate or reseller of Bell Atlantic products or services.

These are just a few examples of the kinds of cybersquatting that takes place on the Internet that could be used to draw unsuspecting consumers who are seeking to purchase the products or services of legitimate branded companies.

In conclusion, Cyveillance supports legislation that allows consumers and corporations to conduct e-business safely on the Web. My only caution is that in adopting such legislation, we do so in a manner that doesn't stifle the growth of the Internet.

Thank you very much.

[The prepared statement of Mr. Young follows:]

PREPARED STATEMENT OF CHRISTOPHER D. YOUNG

MR. CHAIRMAN, My name is Christopher Young, and I'm the president and co-founder of *Cyveillance*™, the leading provider of e-Business intelligence. We provide critical market feedback that Internet-savvy companies need to survive in today's competitive e-Business world. We use our proprietary technology called NetSapien™ to look deep within sites across the Internet and extract key business information for our customers. Our NetSapien technology is operational around the clock, downloading and analyzing over one million pages of data from the Internet each day, seven days a week, to provide comprehensive coverage of Internet activity to our clients. For nearly two and a half years, Cyveillance has been scouring the Internet on behalf of our clients, who represent the market leaders across several industries, and we have confirmed through our many investigations that cybersquatting and other types of fraud are proliferating on the Internet.

I appreciate very much the opportunity to appear before this Committee and to voice our support for the Hatch-Leahy substitute bill. With more than 800 million pages of data, the World Wide Web is a priceless resource for nearly 70 million Americans. According to a study released this month by Navidec, 53 percent of U.S. Internet consumers have made an online purchase this year. This figure is up from 26 percent in 1997. Last year's holiday season was infused with stories on the record numbers of consumers turning to the Web for their shopping needs, and the forecasts are even more optimistic for the upcoming online holiday shopping season.

Consumers are clearly taking full advantage of the instant access to goods, services and other resources afforded by the Internet. But during the course of our work, we have encountered countless cybersquatters who are preying on the public by leveraging the goodwill of major brands that consumers know and trust. The very fact that *Cyveillance* is a growing company exemplifies how prevalent cybersquatting and other Web-related issues have become. *Cyveillance* has helped market leaders in telecommunications, computers and apparel manufacturing, among other industries, deal with cybersquatting and other Internet issues that impact their e-Businesses.

The act of cybersquatting, as it is commonly known, began its ascent as early as 1994, when a host of major corporations, including Coke, Hertz, MTV and many others learned that third parties had already registered their domains and would gladly sell them back to the rightful owner for a substantial fee. Today, the Web is still the "wild West" with few rules or guidelines. Cybersquatting was coined as an analogy to the situation in the mid- to late- 1800s when people attempted to lay claim to land on the new frontier by "squatting" on the land. On the Internet, today's new frontier, cybersquatters are trying to stake their claim on domain names that do not belong to them, for their own personal/financial gain. Typically, the most sought-after domains are well-known brands that companies have spent decades and billions to build and establish. Additionally, because the Internet is the great equalizer, an individual or a small, no-name company can look as big on the Internet as any market leader. For these very reasons consumers are at risk and must always be on guard when using the Internet. Cybersquatters have been working quickly—and effectively—to buy addresses and put up sites to ultimately confuse the consumer.

Cybersquatters essentially hijack a well-known company's name so they can

(1) sell it for a profit;

(2) drive traffic to sell goods or services [counterfeit, unauthorized, ancillary or unrelated sales and pornography] or

(3) voice an opinion.

Businesses are affected by all three of these objectives, but consumers are the real victims of the cybersquatters who aim to do business on the Internet. Cybersquatters intentionally use popular brand names or slight misspellings of these names in an attempt to capture site traffic from confused Internet users.

To better illustrate these points, please permit me to show a few examples of cybersquatting. These examples, which *Cyveillance* has uncovered using our NetSapien technology, show blatant abuse of household brand names.

The examples I will shown are just a small sample of what is on the Web today. The Web is a constantly changing medium with hundreds of thousands of pages being added and deleted every day. Consumers, who are embracing the Web in record numbers, deserve adequate protection against cybersquatters who are trying to swindle them and create confusion by associating brand names with undesirable or illegal activity. *Cyveillance* estimates that more than 80 percent of *Fortune 1000* companies suffer from some type of brand abuse. Moreover, in a recent *Cyveillance* study on counterfeiting, we found that between 10 percent and 20 percent of Web sites selling luxury goods are peddling counterfeit wares. With odds like these, it is the consumer who will ultimately suffer.

Cyveillance supports legislation that allows consumers and corporations to conduct e-Business safely on the Web. Thank you gentleman for your time and consideration on this issue.

[See exhibits.]

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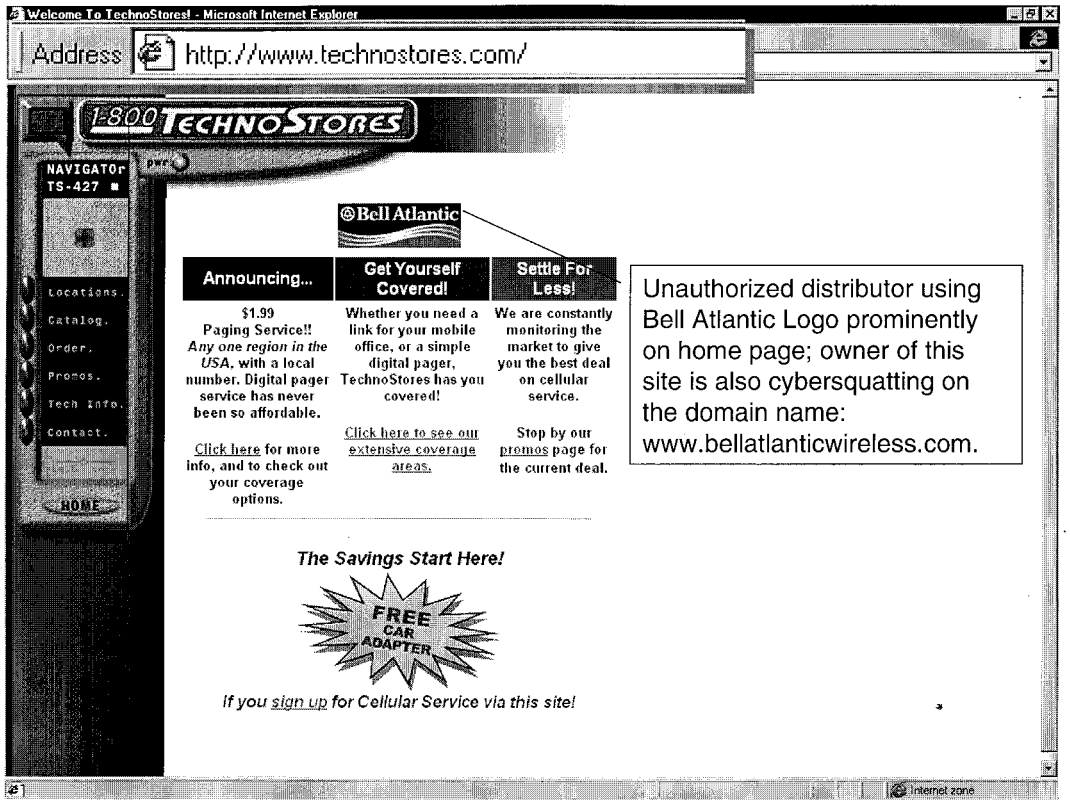
Internet zone

Start | Microsoft Word | Screen Shots | Microsoft PowerPoint | Hotmail Inbox - Micros... | LEVIS ACCESSORIE... | LEVIS 501 JEAN... | 11:37 AM

Unauthorized distributor using Levi's brand name in domain.

Site using Bell Atlantic name in domain and offering competitive hosting services.



Unauthorized distributor using Bell Atlantic Logo prominently on home page; owner of this site is also cybersquatting on the domain name: www.bellatlanticwireless.com.

Senator ABRAHAM. I thank all three panelists. Let me just try to maybe give each of you a chance to elaborate perhaps on this. One of the things that probably members would want to know is the extent to which this is happening. Can any of you really comment on that in terms of a sense of whether the cybersquatting crime, if you would—if people are increasing the frequency of this behavior? Is this something that is mushrooming or is it something where a few people kind of did this and are now kind of being chased around by your organizations or companies, or is this something that is a growing problem?

Mr. Young.

Mr. YOUNG. Our perspective is that the issue is increasing tremendously. What you used to see was that someone would register just the correct spelling of a popular company's name. Now, what you are seeing is that individuals or groups will seek to register every possible combination of a name, whether there be misspellings or spaces between words, et cetera, so that they can stake claim to some of these names. I think Greg can give you some great examples from Porsche and the numerous different combinations that take place.

Mr. PHILLIPS. Back in 1997, it was frequent, but infrequent. In 1998, it started growing, maybe 2 to 5 a week. In January of this year, we had 128. Now, we are up over 300, and I think it is just growing exponentially. People out there realize that they can make a lot of money by cyberpiracy and cybersquatting and it is very easy money for them, and there is no deterrent out there so they are doing it in droves.

Ms. CHASSER. And we are seeing also an increase, but we are also seeing a greater sophistication among the cybersquatters that they are identifying ways to insulate themselves from liability and getting around the safeguards that have been established.

Senator ABRAHAM. Is the principal profit just the idea that you kind of sell back these names or you can extort money out of the person whose domain you really have invaded?

Ms. CHASSER. I think "ransom" or "extortion" is a good term for that, yes.

Mr. PHILLIPS. And porn operators love famous trademarks because they are easy to remember. They divert a lot of traffic to those sites. A lot of these sites, you find counterfeit products. On porschecarrera.com, they settle Beetle Borgs, Power Rangers, and what not. But they know people will want to go to porschecarrera.com and that is an easy name to remember. So a lot of it is extortion, but there are all kinds of other consumer fraud out there that people are able to benefit from.

Mr. YOUNG. The extortion piece doesn't really hurt consumers as much because if I don't put a site there and I just want to sell that address back to a large company, that doesn't hurt the consumer. But what hurts the consumer is if you look at an example like the one I showed, which was the Bell Atlantic example, I mean this site is actually seeking to sell a service to consumers, but it is not a Bell Atlantic service.

We don't know whether this company is even a legitimate company. In fact, if I look at the language on the site, the money is in British pounds, so therefore the site is not even located in the

United States. So, that is a problem for consumers and that is what is really going to hurt them when these sites leverage these popular names to drive traffic there and ultimately get consumers to purchase something from that site.

Senator ABRAHAM. Is it your experience that most of them are cleverly enough put together to prevent consumers from being able to distinguish the difference between them? In mean, in other words, are most of them well-masked?

Mr. YOUNG. I will give you a great example. About 2 months ago, there was an individual at a company called Pairgain Technologies who went to a Yahoo message board and posted a rumor that said Pairgain was going to be purchased by an Israeli-based company. That individual subsequently on that message board put the address of a site that he had constructed that looked exactly like the Bloomberg financial markets Web site.

Investors went to that site, saw that the rumor was legitimized by Bloomberg, which is a reputable financial information and news provider, and the next day the stock was bid up 31 percent because of that rumor and because that site legitimized what was happening on the Internet.

Senator ABRAHAM. That example seems to me to be perhaps the most telling in the sense that when we started this discussion one thought in terms of specific sites. Somebody thinks they are getting A and they get B, and maybe they make an incorrect choice of some type. But here you are talking about utilizing multiple sites, in a sense, to really sort of confuse and benefit.

Mr. YOUNG. That is absolutely right. They have really figured out a number of different ways. Greg used pornographic sites. Pornographic sites are at the forefront of the ability to confuse consumers and drive traffic to their own Web sites. They do everything they can possibly do in terms of registering different combinations of domain names; medi-tagging, which is a whole different issue that I am sure we don't even want to get into today—medi-tagging popular brand names all in an attempt to drive unsuspecting consumers to their Web sites.

Senator ABRAHAM. Back to you, Ms. Chasser, in terms of the Trademark Association, how many members—you said about 3,600?

Ms. CHASSER. We have 3,600 members, yes. We represent most of the major trademark owners.

Senator ABRAHAM. Any feel for the percentage of them that are now engaging Cyveillance-types of firms, or maybe doing it internally? Are they all engaged in some form of this?

Ms. CHASSER. If I may ask my colleagues behind me, they probably have that answer. I don't have that answer.

Senator ABRAHAM. Sure.

Ms. CHASSER. The short answer is there are a significant number.

Senator ABRAHAM. Well, that is a significant answer, then. Thank you.

Ms. CHASSER. It is a significant number and it is growing very quickly. When you actually look at the amount of e-commerce being conducted, it was quoted last year, in 1998, that there was over $102 billion of business conducted through e-commerce, and that is

being led primarily by the business on e-commerce, but also the major trademark owners are represented in that business.

Senator ABRAHAM. Well, in terms of your Association, this is, I assume, therefore, probably the thing you are hearing the most about.

Ms. CHASSER. Well, actually one of our priorities this year is Internet issues, and the amount of committee work that we have involved in the Internet, not only legislative issues but other issues involved in the Internet, is significant. So it is one of our major thrusts.

Senator ABRAHAM. Mr. Phillips, I noticed there were countless Porsche references here. How many different problems has the company got to deal with out here? I mean, I just am looking at all these.

Mr. PHILLIPS. Too many for the legal budget is the short answer to that. It grows tremendously, and the thing that we are finding is that cyberpirates are becoming more sophisticated. I just had a case for Calloway Golf where the cyberpirate understands commercial use aspects of the Dilution Act, so what he was going to do was put a picture of himself with a Calloway golf club on his Web site saying Calloway has lowered my handicap by 10, and wait for Calloway to come and try to get that domain name from him and make the argument, I am not engaged in commercial use, I am just telling my friends and family how wonderful Calloway is. Why are you beating up on me?

That is how sophisticated they are getting now. They know what the rules are. They know how to engage in false and fictitious registration so that we in many cases can't even find them, and that is why the in rem provision that you talked about is so important.

Senator ABRAHAM. So the person doing that is basically trying to sell the site back, essentially?

Mr. PHILLIPS. They know eventually the trademark holders will come and ask for the site, and some of them now say, well, we would sure like to resolve this amicably. And we say, OK, we will send you the domain name transfer agreement, please sign that. And they say, well, there is something else. And they won't even go so much as to ask for money because they know the minute they ask for money, you have got a commercial use. So they are getting more sophisticated all the time, trying to get around the trademark laws as they exist now.

Senator ABRAHAM. In putting together this hearing, we offered members of the committee the opportunity to find witnesses who might speak in opposition to perspective legislation. We really didn't find much of that out there. I assume that there isn't a lobbying organization that is trying to protect cybersquatting.

But I just wonder, without getting into all the details, have those people who are engaging in these practices—you imply there is a sophistication. Is there a network of sorts that has developed, or some other type of defensive maneuvering going on that the committee should be aware of among those who are engaged in these practices?

Mr. PHILLIPS. I think there is an underground network, and I think sometimes they use some other organizations to legitimize what they are doing under the umbrella of free speech or some-

thing else. But when you ask the leaders of those organizations who their members are or who they represent, they can never tell you.

Senator ABRAHAM. Well, as I said, I am sure other members of the committee would like to participate, can't be here today, but will want to submit questions. And we may have a few additional ones ourselves, but we did want to make sure we got the hearing moving here because our goal is to try to expedite the passage of the legislation to the extent we possibly can here in the Senate. So let me just thank all of our panelists and our audience for their participation. To the groups and organizations who have helped us put together today's hearing, I also say thanks. If we get questions, those submitted by the end of the day will be submitted to the panel for your response and we would appreciate it if you could get them back to us by Tuesday just so that we can be in a position, we hope, next to perhaps bring this legislation to the committee for consideration.

With that, the hearing is adjourned.

[Whereupon, at 2:48 p.m., the committee was adjourned.]

APPENDIX

QUESTIONS AND ANSWERS

RESPONSES OF ANNE H. CHASSER TO QUESTIONS FROM SENATOR HATCH

Question 1. If a bad actor is using a famous name, an online consumer is at serious risk of being defrauded, are they not?

Answer 1. Yes, absolutely. Trademarks have been an integral part of e-commerce. With the "World Wide Web" becoming ever so tangled, consumers, researchers, and typical "Net surfers," need some type of assurance that they have reached their intended destination in cyberspace. That assurance, that sign, Mr. Chairman, is a trademark. Trademarks, in the form of domain names (i.e. www.oreo.com) are the street and house signs on the "information superhighway" and the awning of the "cyber-shop" as well. Ultimately, for the benefit of the consumer, trademarks must be safeguarded in cyberspace.

Question 2. How big of a problem is warehousing? Could you comment on whether the registration of a single domain name might ever be so harmful as to merit a remedy?

Answer 2. Instances of warehousing are on the rise. Cybersquatters are getting smarter. Bad faith warehousers know that if they do not "use" the mark in commerce, courts will not allow trademark owners to bring an infringement action against them. However, this in turn is preventing the legitimate mark owner from using the mark on what has undoubtedly become a new form of media.

We find that even one action of cybersquatting should incur liability, and that a bill should not be limited to patterns of cybersquatting. Our findings are based on the following:

- A cybersquatter may be sitting on a single domain name that is a "gold mine" (imagine exxon.com);
- A mark owner may not be aware that the cybersquatter has engaged in a "pattern" of misbehavior and thus never know that the remedies of the bill are available; and
- A cybersquatter may initially register multiple domain names, then sell individual names to other cybersquatters to diffuse the ownership.

Question 3. We were to prohibit multiple registrations, but exempt single instances, and not require truthful information to be provided when registering a domain name, wouldn't this provide a blueprint for avoiding liability by encouraging people to register each domain name under a different alias.

Answer 3. Mr. Chairman, I can answer this question very simply by stating that a "false information" provision is essential if we are to move forward with an anti-cybersquatting bill. These days, in order to avoid liability, cybersquatters provide false and misleading information to registration authorities. Congress should send a message that if false information is provided, it can be used as a factor by the court in determining whether cybersquatting has taken place.

Question 4. Do you read the *Porsche* case as an invitation to Congress to provide this sort of remedy [in rem] for these cases? Can you also comment on the need for this type of remedy and how this will help trademark owners better police their marks on the Internet? Can you also share with the Committee your thoughts with respect to the court's discussion of due process issues related to *in rem* proceedings and whether the Hatch-Leahy draft adequately addresses the concerns expressed in the Porsche case?

Answer 4. I can tell you, Mr. Chairman, that since the *Porsche* decision there have been trademark owners calling for some type of "fix" to the problem. As for how an *in rem* provision will help trademark owners, I can say that it will help trademark owners take action against the nameless and faceless cybersquatters (particularly those who provide false and misleading information to the registration authorities). We are comfortable with the in rem provision in the June 28 Hatch-Leahy draft.

Question 5. Can you give us an example, if there is one, of a case where the registration of a trademark as a domain name is done for noncommercial purposes yet should be actionable under cybersquatting?

Answer 5. There have been cases where the cybersquatter wanted to use the trademark to direct traffic to a Web site that contains pornography. Such an action works towards the destruction of the goodwill associated with the trademark. For a specific example, I direct your attention to the case of the MOBIL 1 trademark which was identified in my written statement.

Question 6. Can you comment on the suggestion that service providers and registrars and registries should similarly be immune from liability to the trademark owner for the registration of the offending domain name in the first instance, absent some sort of bad faith?

Answer 6. I can comment only to the extent that we are aware of the desires of select ISPs to incorporate such a provision into the anti-cybersquatting bill. We are working with them on acceptable language and look forward to an equitable and sensible resolution.

RESPONSES OF ANNE H. CHASSER TO QUESTIONS FROM SENATOR LEAHY

Question 1. NSI has changed its policy, which used to allow people to register domain names without paying for up to 60 days. What effect, if any, do you think this policy change will have on the cybersquatting problem?

Answer 1. NSI's move is one which we have been advocating for some time. We support it. Paying up front will help in some cases of cybersquatting. However, there are still a great number of cybersquatters for whom $70 is not a lot of money, especially when they may try and ransom it off to a trademark owner for even larger sums.

Question 2. WIPO and other experts have defined the cybersquatting problem as the abusive registration of another person's trademark as a second level domain.

a. Should legislation intended to address the problem of cybersquatting limit itself to dealing with the registration of second level domain names and, if not, why not?

Answer 2. The definition should not be limited to second-level domains. We must account first for changes in technology that could make a restrictive definition of "domain name identifier" obsolete. Second, cybersquatters are nothing if they are not clever. Once they realize that the statute only covers the second level, they will begin moving beyond, more to the left, in order to confuse the public and extort money from legitimate trademark owners.

b. Please identify any other way in which a domain name may be used that could infringe a trademark and lead to consumer confusion?

Answer b. The Hatch/Leahy bill is not designed to address the problem of *"use"* of another's trademark or service mark over the Internet. If someone "uses" another's mark in electronic commerce, the current statute provides a remedy under both Sections 32(1), trademark infringement, in the case of registered marks and 43(a), unfair competition, in the case of unregistered marks. The Hatch-Leahy bill addresses the situation where a third party registers another's mark as a domain name and holds it for ransom or simply blocks the rightful owner from using the mark. If this third party does not actually "use" the mark in commerce, under current law, the mark owner has no remedy.

Question 3. Should we make sure that First Amendment free speech rights are fully protected and that we in no way chill the right of Internet users to both post and access so-called "protest sites" that are set up to protest or complain about a particular company's products, services or business practices?

Answer 3. INTA believes that protection of the public interest, including allowing for legitimate uses of domain names that meet fair use/freedom of expression standards, should be included in an anti-cybersquatting bill.

Question 4. Do you support S. 1255, the Anti-cybersquatting and Consumer Protection Act, as introduced or would you recommend that changes be made to this bill? If so, what changes would you suggest?

Answer 4. INTA supports the overall intent of S. 1255, which is to help stem the tide of cybersquatters and to protect consumers who "surf" the Internet. However, we find that we cannot support a number of its provisions, especially the call for criminal sanctions.

We find that a bill targeted towards the *bad-faith* registration and trafficking of domain names is the better way to go. The bill should provide a list of factors by which a court can determine whether the activity was done in *bad-faith* or with good faith intentions. There should also be means for trademark owners to recover the costs of prosecuting a cybersquatter. The bill should permit actual, as well as statutory damages. As noted in our answer to Question 3, there should also be protection for legitimate uses of domain names that meet fair use/freedom of expression standards.

Senator Abraham noted that S. 1255 will be amended to account for these recommendations.

Question 5. Professor Froomkin states in his written testimony that, "In every case involving a person who registered large numbers of domains for resale, has lost." Do you dispute that statement?

Answer 5. While there have in fact been a number of cases where litigation has stopped a cybersquatter, instances of cybersquatting are clearly on the rise. Trademark owners are forced to spend a great deal of time and effort chasing them. Cybersquatters are clever; they know how much litigation costs, and often set offering prices for their pirated domain names at levels low enough to make litigation unattractive. It is cheaper to pay the ransom to these thieves than it is to litigate. The Hatch/Leahy legislation is designed to "chill" the practice of cybersquatting and to short circuit litigation. Claimants now must somehow demonstrate that the cybersquatter is somehow "using" the mark, and after some examination, most courts are able to find "use." This new provision would allow courts to dispense with that time-consuming and sometimes expensive procedure. The mere act of registering another's mark as a domain name in bad faith would incur liability.

Question 6a. Do you support a change in the law that would make the mere registration of a domain name that is another's trademark, without more, illegal?

b. There are situations where a company plans to purchase another company and, in contemplation of the deal, registers a domain name with both companies' names. This name is warehoused until the deal is completed. Would a law that makes the mere registration of a domain name, which is also another's trademark, illegal and also make legitimate business practices such as the one I described illegal?

Answer 6 a and b. Senator, I think I can answer both parts of your question at once. INTA believes that anti-cybersquatting legislation should cover only instances of *bad-faith* registration or trafficking in domain names. So, is it the "mere registration" that should be illegal? We say "No". It is *bad-faith* registration that should be prohibited. Should the example you provided in sub. "b" be prohibited? Again, we would say "No," because it appear that the registration was done in good faith as part of a legitimate business activity.

RESPONSES OF ANNE H. CHASSER TO QUESTIONS FROM SENATOR ABRAHAM

Question 1. If a bad actor is using a "famous name" as a domain name, how would an online consumer determine whether or not the Web site is authentic? What problems do you foresee for consumers if famous marks are not protected from infringement of domain names?

Answer 1. It may be difficult for the online consumer to determine whether the site is genuine, since once the cybersquatter has the domain name and has set up a site, he or she can do anything they want with it. This includes placing on the site whatever material they so desire.

Famous marks have helped to generate the significant numbers we see in e-commerce today. To leave them vulnerable to cybersquatters will result in consumer confusion and damage to the online economy.

Question 2. Would you highlight for us how big a problem warehousing is, and explain the harm to trademark owners caused by someone registering a mark and then simply letting it sit?

Answer 2. Warehousing is becoming more prevalent as cybersquatters figure out ways to circumvent existing forms of trademark law. It harms trademark owners by preventing them from using the trademark to help sell their product or to provide services on the World Wide Web.

Question 3. In your view, could the registration of a single domain name ever be so harmful so as to merit a remedy? Would you please comment on whether you think the prohibition only of "multiple registrations" would be workable in practice?

Answer 3. If the Senator will permit me, I refer you to the answer I provided to Chairman Hatch on a similar question. It is as follows:

> We find that even one action of cybersquatting should incur liability, and that a bill should not be limited to patterns of cybersquatting. Our findings are based on the following:

- A cybersquatter may be sitting on a single domain name that is a "gold mine" (imagine exxon.com);
- A mark owner may not be aware that the cybersquatter has engaged in a "pattern" of misbehavior and thus never know that the remedies of the bill are available; and
- A cybersquatter may initially register multiple domain names, then sell individual names to other cybersquatters to diffuse the ownership.

Question 4. Would you please comment on the positives and negatives of a false information provisions, and explain the impact such a provision would have on cybersquatting?

Answer 4. Senator, as I indicated to Chairman Hatch, "a 'false information' provision is essential if we are to move forward with an anti-cybersquatting bill." To avoid prosecution by trademark owners, cybersquatters provided false and misleading information to registrars. This is a loophole which must be closed. Congress should permit courts to consider the provision of false information when determining whether cybersquatting has taken place. In our opinion, there are no negatives to such a provision.

HOWARD, PHILLIPS & ANDERSEN,
Salt Lake City, UT, July 27, 1999.

Re: "Cybersquatting and Consumer Protection: Ensuring Domain Name Integrity"

The Honorable ORRIN G. HATCH,
Chairman, Committee on the Judiciary,

The Honorable PATRICK LEAHY,
Ranking Member,

The Honorable SPENCER ABRAHAM,
U.S. Senator, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS HATCH, LEAHY, AND ABRAHAM: Thank you for allowing me to testify on behalf of Porsche Cars North America, Inc. at the July 22, 1999 hearing.[1] Thank you also for submitting additional questions, which I have answered:

RESPONSES OF GREGORY D. PHILLIPS TO QUESTIONS FROM SENATOR HATCH

Question 1. Trademarks help consumers discern quality goods from inferior ones and to ensure the source and authenticity of those goods through brand-name association. In a brick and mortar environment, these brand names are supplemented by additional protections, like the fact that the storefront serves as a strong indication of legitimacy. On the Internet, however, these additional protections disappear. In cyberspace, the only indication of source or authenticity a consumer has is what they see on the website when they log on, and legitimate and illegitimate sites may be indistinguishable in cyberspace. In fact, a famous mark in a domain name may be the primary source indicator for the online consumer. So if a bad actor is using that famous name, an online consumer is at serious risk of being defrauded, are they not?

Answer 1. Absolutely. When consumers walk into a typical store or business, consumers can often tell by the storefront and by looking at the tangible products whether they are dealing with a reputable business. This is not so on the Internet

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[1] In my written testimony of July 22, 1999 I stated that the registrant of PORSCHESALES.COM offered to sell that domain name to Porsche for $25,000. I need to correct that testimony. I inadvertently left the hyphen out of PORSCHE-SALES.COM and Bill Hodges the registrant of PORSCHESALES.COM has received several inquiries regarding this testimony. Bill Hodges currently has our permission to use the domain name PORSCHESALES.COM. The registrant of PORSCHE-SALES.COM is not authorized to use that domain name. Porsche and I apologize to Mr. Hodges and to this committee about the inadvertent omission of the hyphen.

where any huckster with Internet access and a little knowledge about computers can set up a storefront online and sell counterfeit products.

Many cyberpirates set up storefronts like PORSCHECAR.COM and then sell hardcore pornography when consumers enter. For example, there is a website that uses a variation of the trademark Disney®. This website is especially pernicious because it lures unsuspecting children who may misspell Disney and then be trapped. Some porn sites employ technology, which refuses to allow Internet users to exit once they unknowingly enter the site until the user turns off the computer.

Domain names are much like storefront signs or even company names. Recent court decisions have begun to recognize that an Internet domain name is the functional equivalent of a company name. For example, the Eastern District of Virginia recently held: "Thus, a domain name is more than a mere Internet address. It also identifies the Internet site to those who reach it, much like * * * a company's name identifies a specific company." *Cardservice International, Inc.* v. *McGee,* 960 F.Supp. 737, 741 (E.D.Va. 1997), aff'd, 129 F.3d 1258 (41 Cir. 1997). The law is well settled that the misappropriation of a trademark, or a variation of a trademark, in a business name dilutes and infringes trademarks. *See, e.g., Porsche Cars North America, Inc.* v. *Manny's Porshop, Inc.,* 972 F.Supp. 1128 (N.D.Ill. 1997) (enjoining use of the name "Manny's Porshop" because it diluted and infringed the world famous trademark Porshe®); *Cardservice,* 950 F.Supp. at 741 (minor differences in a domain name between the registered mark and the unauthorized use of the mark do not preclude liability under the Lanham Act).

Even if a consumer goes to a web site and then is able to determine that the web site is not affiliated with the trademark holder, the consumer is still defrauded. A good example is a consumer traveling along the Interstate. The consumer sees a huge sign for a Chevron gas station at the next exit and takes the exit to fill up his or her car with his or her Chevron credit card. When the consumer takes the exit and goes over to the sign, the consumer is surprised to learn that there is no Chevron gas station, but rather finds Joe Schmoe's Gas & Repair. The consumer is still defrauded, inconvenienced, and harmed, even though the consumer quickly figures out that it is not a real Chevron gas station. Joe Schmoe has taken advantage of both the consumer and Chevron. This is exactly what cyberpirates do on information superhighway.

Moreover, the trademark laws strongly condemn the practice of "initial consumer confusion," where infringers use famous trademarks to attract the consumers' attention to their business, even if the consumer ultimately determines that the infringer's business is not sponsored by or affiliated with the trademark holder. The law is well settled that the use of a trademark or trade dress as an "attention getting symbol" or device is not fair use. *E.g., Sands, Taylor & Wood Co.* v. *Quaker Oats Co.,* 978 F.2d 947, 954 (7th Cir. 1992), cert. denied 507 U.S. 1042 (1993) (quoting McCarthy § 11:46, at p. 11–82). As Judge Barry recently held in *Liquid Glass Enterprises* v. *Dr. Ing. h.c.F. Porsche AG,* 8 F.Supp.2d 398, fn 4 (D.N.J. 1998):

> Analysis of consumer confusion may be based upon initial confusion, not necessarily whether, after closer examination, the consumer would likely figure out that [the infringer] is a separate company. *See Ferrari S.p.A Fabriche Automobili E Corse* v. *Roberts,* 944 F2d 1235, 1245 (6th Cir. 1991) (Lanham Act intended to do more than protect consumers at the point of sale), *cert. denied,* 505 U.S. 1219 (1992); *Mobil Oil Corp* v. *Pegasus Petroleum Corp.,* 818 F.2d 254, 260 (2d Cir. 1987) (likelihood that "potential purchasers would be misled into an initial interest" justifies finding of infringement); *Clinique Laboratories, Inc.* v. *Dep Corp.,* 945 F.Supp. 547, 551 (S.D.N.Y. 1996) (a "court may find infringement has occurred based on confusion that creates initial customer interest, even if no final sale is completed as a result").

Question 2. Each of the witnesses raised the issue of warehousing of domain names. Can you highlight for us how big a problem warehousing is and exactly what the harm to trade mark owners is from someone registering a mark and then simply sitting on it? Second, could you also comment on whether the registration of a single domain name might ever be so harmful as to merit a remedy?

Answer 2. Warehousing of domain names is an enormous problem. Cybersquatters warehouse hundreds, and sometimes thousands of Internet domain names. Warehousing causes several problems to trademark holders even though the cyberpirate may not have an operational web site. First, warehousing domain names prevents the trademark holder from using that domain name. The cyberpirate who registered PORSCHECLUB.NET claims that Porsche is not being harmed by his "mere registration" of the domain name. Porsche, however, cannot use PORSCHECLUB.NET in connection with the many authorized Porsche Clubs

around the world who want to use this particular domain name. The cyberpirate who misappropriated CALLAWAYGOLFBALL.COM at one time had over 20,000 names. If Callaway Golf wants to launch a new line of products such as Callaway Golf Balls, Callaway Golf will be precluded from using this domain name even though the cybersquatter is just sitting on the name.

Recently, William Finkelstein, General Counsel of Pepsico, Inc. reported to me the following experience. Pepsi was going to launch a new star wars theme and wanted to keep the name of one of the characters that Pepsi intended to use on a website confidential. Thus, he registered the Internet domain name by using his own name, his home address, and his home telephone number. Within hours of Pepsi announcing the theme and character, he received a telephone call from a cyberpirate at home who told him that Pepsi had just launched an advertising campaign using that exact domain name, that the cyberpirate had attempted to register the domain name and discovered that Mr. Finkelstein had already registered the domain name, and would Mr. Finkelstein like to join with the cyberpirate in extorting money out of Pepsi. If that domain name had not been registered and Pepsi had gone to register the domain name later, Pepsi would have been precluded from using the domain name for its Star War campaign even though the cyberpirate may not have put an operational website at the domain name.

Second, warehousing causes intolerable monitoring problems. Famous trademark holders must constantly monitor such warehoused domain names to make certain that they are not being used for an improper purpose. It takes only the stroke of a key on a computer to activate a domain name with an operational web site. I actually received a phone call from a cyberpirate who told me to type in a domain name that included Porsche®. When I typed the domain name in, the screen was blank. He asked what I could see and I said the screen was blank. He then said, watch this, and instantaneously put up a porn site. He then said, watch this, and took it down. He then put it up again and asked how much Porsche was willing to pay to stop him from using the domain name. Within seconds, a cyberpirate can turn a warehoused domain name into a website that can irreparably harm a famous trademark holder throughout the world.

Third, many savvy Internet consumers use databases such as Whois, Saegis, and others to look up and locate companies and organizations through reverse searches. Thus, if an Internet user wanted to find information about a Porsche Club and used Whois database to try to contact the Porsche Club who had registered PORSCHECLUB.NET, the user would discover not a Porsche Club, but the fictitious address of a cyberpirate.

Finally, the registration of even a single domain name could be very harmful. If the cyberpirate of PORSCHE.COM had only registered PORSCHE.COM and not the many other domain names that he had registered including the NEWYORKYANKEES.COM, Porsche would have been irreparably harmed because Porsche could not use this web site for itself. One particular cyberpirate registered one domain name—BELLATLANTICMOBILE.COM and refused to transfer ownership back to Bell Atlantic. Bell Atlantic was forced to file suit and currently, the registration of this one domain name has prevented Bell Atlantic Mobile from doing business under its rightful name. If a cybersquatting law applied only to infringers who registered multiple domain names, these sophisticated criminals would simply use a different name and address for each domain name they register to avoid liability.

Question 3. One of the issues that has been discussed in the context of cybersquatting legislation is the provision of false information by domain name registrants when registering domain names and what weight, if any, should be given to such conduct in determining whether the registrant should be liable to the trademark owner as a cybersquatter. Some would suggest that the provision of false information is a strong indicator of bad faith and should be explicitly stated as such in the legislation. Others express concern that to do so might unintentionally extend the penalties of the bill to those who provide such false information mistakenly or for reasons unrelated to cybersquatting. Following up on the previous question, then, if we were to prohibit multiple registrations, but exempt single instances, and not require truthful information to be provided when registering a domain name, wouldn't this provide a blue print for avoiding liability by encouraging people to register each domain name under a different alias?

Answer 3. Absolutely. As set forth in the previous answer, cyberpirates are sophisticated and will simply use a different name and address for each domain name. Because cyberpirates can pay for domain names with credit cards, real names and street addresses are not necessary for registering domain names. For example, the cyberpirate who registered PORSCHEDESIGN.COM uses the following fictitious address:

netcross.com.
P.O.BOX 1178
SANDAKAN, SABAH 90713
MY

This cyberpirate could change the name to Dr. David Porsche and change the address to the UK for the next domain name and so on.

With regard to the unintentional error such as the innocent transposition of numbers in a telephone number, we must remember that a court will be applying the statute on a case-by-case basis. I find it hard to believe that a court would impose liability based upon an innocent transposition of a telephone number by an innocent registrant. If the court, however, concluded that the cybersquatter inserted materially false information in the application, the court could then correctly conclude that the cybersquatter provided fictitious information and was acting in bad faith. This factor would also be considered along with others, including the possibility that the cybersquatter had inserted false information in other domain name applications for trademarks belonging to third parties.

Question 4. Mr. Phillips mentioned the recent *Porsche* case, in which the court failed to find authorization for *in rem* jurisdiction under the Lanham Act for trademark dilution cases. Do you read the *Porsche* case as an invitation to Congress to provide this sort of remedy for these cases? Can you also comment on the need for this type of remedy and how this will help trademark owners better police their marks on the Internet? Can you also share with the Committee your thoughts with respect to the court's discussion of due process issues related to *in rem* proceedings and whether the Hatch-Leahy draft adequately addresses the concerns expressed in the *Porsche* case?

Answer 4. The *Porsche* case invites Congress to provide for *in rem* Jurisdiction. The Eastern District of Virginia recognized the "dilemma" that Porsche was facing with cybersquatting, and held that "the mere act of registration [of domain names using the trademark Porsche®] creates an immediate injury by preventing Porsche from utilizing those domain names itself in order to channel consumers to its own web site. Customers might try to contact Porsche through 'PORSCHE.NET,' for example, only to find that they have reached a 'dead end' on the Web and then to conclude that the strength of Porsche's brand name is not as great as they first thought." *Porsche Cars North America, Inc. et al.* v. *PORSCH.COM, et al.,* — F.Supp.2d—, 1999 WL 378360 (E.D.Va. 1999).

The court, however, ruled that because the Lanham Act does not have a specific *in rem* provision, Porsche could not proceed *in rem.* In other words, the court held that until Congress enacted an *in rem* provision in the Lanham Act, the court could not allow such jurisdiction.

In rem jurisdiction is absolutely essential to battling cyberpiracy. As cyberpirates continue to use fictitious information in registering domain names, register domain names through offshore companies, transfer domain names to persons or entities in Libya, Iran, Belarus, or register domain names using addresses in such locations, famous trademark holders are left without a remedy. In its Interim Report, WIPO noted: "such registration practices and the "absence of reliable and accurate contact details leads to a situation in which the intellectual property rights can be infringed with impunity on a highly visible public medium." WIPO Interim Report at 14–15.

In addition, the sheer number of instances of cyberpiracy prevents famous trademark holders from filing hundreds of *in personam* lawsuits. In this regard, WIPO recently concluded:

> existing mechanisms for resolving conflicts between trademark owners and domain name holders are often viewed as expensive, cumbersome and ineffective. *The sheer number of instances precludes many trademark owners from filing multiple suits in one or more national courts.*

WIPO Interim Report at 33 (emphasis added).

Porsche is a perfect example. Porsche simply does not have the resources to file 300 *in personam* lawsuits throughout the world against the 300 cyberpirates who have misappropriated the trademark Porsche® in domain names. Nor would such suits be successful in many cases because the defendants cannot be found. By proceeding against the infringing domain names directly, Porsche hoped to avoid the intractable problems associated with pursuing in *personam* actions against hundreds of defendants who would be difficult, if not impossible, to identify and locate. Indeed, Porsche submits that if Porsche were confined to the traditional mechanism of filing hundreds of *in personam* lawsuits throughout the world, its federally pro-

tected rights against dilution would be thwarted and it would be left without a remedy.

In rem jurisdiction would also benefit the judicial system. Rather than clog the court system with hundreds of *in personam.* lawsuits throughout the country, famous trademark holders could file a single *in rem* lawsuit against hundreds of domain names at a time and resolve the issues in a single proceeding.

Finally, the court's purported due process concerns were illusory and simply a half-hearted attempt to justify the court's decision. In an *in rem* lawsuit, the plaintiff's claims are necessarily limited to only the property. Thus, in the *Porsche* lawsuit, Porsche did not, and could not, assert claims for damages or attorneys' fees against the registrant. Porsche's claims were strictly limited to cancellation and/or transfer of the domain names. Nothing more was, nor could be, at stake.

Specifically, the court asserted that "courts generally cannot exercise *in rem* jurisdiction to adjudicate the status of property unless the Due Process Clause would have permitted *in personam* jurisdiction over those who have an interest in the *res.*" *Id.* at 11–12 (citing *Shaffe,* 433 U.S. at 207). Despite this initial premise, the court stopped short of actually concluding that accepting jurisdiction under these circumstances would violate due process, preferring instead to warn that it "might" do so.

On closer analysis, the constitutional concern raised by the district court is a windmill of its own making for several reasons. First, the district court's constitutional doubt is resolved in the very opinion that the court cites for its concern. Thus, while the Court in *Shaffer* v. *Heitner,* 433 U.S. 186 (1977), generally suggested that the "minimum contacts" test applicable in *in personam* proceedings would also apply in some proceedings *quasi-in rem,* the Court went on to identify several "circumstances in which the presence of property alone might support * * * jurisdiction consistently with the requirements of due process." James Wm. Moore, 16 *Moore's Federal Practice* § 108.80[2] [a], at 108–109–108–110. *Shaffer* expressly held that such circumstances include cases like this one where "claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant." 433 U.S. at 207–08. In such true *in rem* actions, *Shaffer* clearly indicated that due process would be satisfied. *Id.*

Consistent with this clarification in *Shaffer,* the Fourth Circuit and other courts consistently have held that due process is satisfied in true *in rem* proceedings designed to resolve the parties' competing claims to property within the district. In *R.M.S. Titanic, Inc.* v. *Haver,* 171 F.3d 943, 957–58 (4th Cir. 1999), for example, the Fourth Circuit sustained the district court's "constructive" *in rem* jurisdiction "to adjudicate salvage rights" with respect to the R.M.S. Titanic wreck site. In so doing, the Fourth Circuit indicated that "personal jurisdiction need not be exercised in a pure *in rem* proceeding because, in the simplest of terms, a piece of property and not a person serves as the defendant." *Id.* at 957. The *R.M.S. Titanic* court further explained that " [i]n rem actions only require that a party seeking an interest in a res bring the res into the custody of the court and provide reasonable, public notice of its intention to enable others to appear in the action to claim an interest in the res." *Id.*

The district court reached a similar conclusion in *Chapman* v. *Vande Bunte,* 604 F. Supp. 714, 716–17 (E.D. N.C. 1985). Plaintiff in *Chapman* had entered into a contract with defendant (while both parties resided in Michigan) under which each party would acquire "a one-half undivided interest in artifacts theretofore and thereafter removed by Treasure Salvors, Inc. * * * from the shipwreck believed to be the Santa Margarita." *Id.* at 715. After plaintiff subsequently moved to North Carolina and took with her property removed from the shipwreck, she filed an *in rem* action in North Carolina "seeking sale of personal property * * * belong[ing] equally to the parties and the division of the proceeds thereof." *Id.* at 714. In rejecting defendant's argument that the court "should not be allowed to inconvenience him and cause him attendant expense absent any contact by him with the North Carolina forum," the district court clearly indicated that true *in rem* actions are consistent with due process:

> North Carolina has a legitimate governmental interest in the title to any chattel brought within its borders. Each state has the constitutional authority to make its own laws with respect to persons and events within its own borders, [citation omitted], and any dealing with the artifacts in question in North Carolina is an event within said state. The presence of this governmental interest in the context of an *in rem* proceeding insures compliance with the Due Process Clause. * * * *In rem* jurisdiction must exist, at times, without regard to the contact of individuals to the jurisdictional forum. In a true *in rem* proceeding, in order to subject property to a judg-

> ment *in* due process requires only that the property itself have certain minimum contacts with the territory of the forum. * * *

Id. at 716; *accord* James Wm. Moore, 16 *Moore's Federal Practice* § 108.80[2][a], at 108–109–108–110 ("Presence of property within the forum state, by itself, generally will be a sufficient basis for jurisdiction in actions to determine interests in that property."); Wright & Miller, 4 Federal Practice and Procedure § 1072, at 440–41 (noting that the presence of property within a state is itself a sufficient contact to satisfy due process "when the property within the state is itself the subject matter of a dispute," and that "the Shaffer opinion suggests that the Court had no intention to disturb the assertion of jurisdiction in in rem or quasi-in-rem. actions of this type").

Question 5. I think we can all agree that abusive domain name registrations, when done for commercial gain, should clearly be actionable. Can you give us an example, if there is one, of a case where the registration of a trademark as a domain name is done for noncommercial purposes yet should be actionable under a cybersquatting statute?

Answer 5. As I explained above, cyberpirates are becoming more sophisticated, read the case law and then figure ways around it. Cyberpirates attempt to dress up their cyberpiracy in the cloak of noncommercial use. For example, the cyberpirate who had registered CALLAWAYGOLFCLUBS.COM told me that he had intended to put up a web page showing a picture of him with his Callaway Golf Clubs and letting his family and friends know how much his Callaway Golf Clubs had lowered his handicap. He would then wait for Callaway Golf to approach him to get the domain name. If Callaway Golf sued him before offering to buy the domain name, he would then argue that he was not engaged in any commercial activity, and that this was simply a "fan site" for Callaway Golf.

Many times, cybersquatters simply put an "under construction" web site at the domain name, and will argue that there is no commercial activity on the site, the site is going to be a "fan site," or other noncommercial speech site and the Lanham Act is not triggered.

Even though the Eastern District of Virginia dismissed Porsche's *in rem* lawsuit, the court did hold that "the mere act of registration [of domain names using the trademark Porsche®] creates an immediate injury by preventing Porsche from utilizing those domain names itself in order to channel consumers to its own web site." *Porsche Cars North America, Inc. et al.* v. *PORSCH.COM, et al.,—F.Supp.2d—, 1999 WL 378360 (E.D.Va. 1999).*

Question 6. i think we can also agree that an Internet service provider or a domain name registrar or registry that cancels or freezes a domain name pursuant to a court order or a reasonable policy prohibiting abusive domain name registrations should not be liable to the domain name holder for such actions. Some have suggested that service providers and registrars and registries should similarly be immune from liability to the trademark owner for the registration of the offending domain name in the first instance, absent some sort of bad faith. Can you comment on this suggestion?

Answer 6. A registrar should not be required to monitor the registration of domain names. As a general matter, unless the registrar is engaged in bad faith or actively participates in the infringing conduct, the registrar should not be liable. As the number of registrars increases, there are certain to be some bad actors. Already, certain registrars for cyberpiracy havens such as Tonga encourage the registration of domain names using famous trademarks in country codes such as .TO or .CC. If registrars engage in such conduct, such registrars should be liable.

The law, however, must preserve the incentives for Registrars to cooperate with trademark holders by creating and enforcing a policy designed to prohibit the act of cybersquatting. For example, when I contacted Network Solutions about the porn site at PORSCHECAR.COM, Network Solutions refused to cancel the domain name because it feared a lawsuit by the registrant, and even though Network Solutions acknowledged that the Porn site was damaging Porsche. If the registrar were required to adopt a policy prohibiting cybersquatting and was at the same time immune from claims by the registrant or trademark holder, Network Solutions could then cancel the domain name without risking of liability.

RESPONSES OF GREGORY D. PHILLIPS TO QUESTIONS FROM SENATOR LEAHY

Question 1. Network Solutions Inc. announced this week that it is changing its policy, which has been in place for over five years, allowing people to register domain names without paying for up to 60 days. Many have suggested that this policy

encouraged cybersquatting because people could register for dozens of domain names without any investment or payment of any money. What effect, if any, do you think this policy change will have on the cybersquatting problem?

Answer 1. Prepayment is certainly a step in the right direction but it will not have any appreciable impact on cybersquatting. Cybersquatters are well funded and usually pay for the domain names up-front. The low fee of $70, which will likely continue to decrease as competition is introduced, ensures that it is still highly profitable for cybersquatters to misappropriate well known trademarks. Although the new policy, will knock out some of the cybersquatters, without appropriate legislation, the practice will continue. There is just too much money to be made in cybersquatting to risk having a domain name canceled because of non-payment. Moreover, most cybersquatters recognize that they will be holding on to the domain names for longer than 60 days. It simply takes longer than 60 days to obtain a return on the investment of cybersquatting.

Question 2. The World Intellectual Property Organization (WIPO) and other experts have defined the cybersquatting problem as the abusive registration of another person's trademark as a second level domain name.

a. Should legislation intended to address the problem of cybersquatting limit itself to dealing with the registration of second level domain names and, if not, why not?

T3b. Please identify any other way in which a domain name may be used that could infringe a trademark and lead to consumer confusion.

Answer 2a. The legislation should not be limited strictly to second-level domain names, but should include an appropriate definition of the term "domain name identifier." If cybersquatting is limited only to second level domain names, cyberpiracy will just move to the left of the dot. The narrow definition could imply that all other forms of creative misappropriation are permissible. Cybersquatters will then use this loophole to find creative ways to continue confusing the public and extorting trademark owners.

Answer b. For example, if a cybersquatter was selling counterfeit Porsche parts to U.S. consumers at Porsche.co.il (the country code for Israel), this use would not technically qualify as a second level domain. All Israeli Internet addresses are structured in this manner. It would not be sensible to prohibit the use of getchanel.com, yet permit get.chanel.com. Cyberpirates will also start registering domain name identifies such as PORSCHE@GEOCITIES.COM etc as sites in which to freely perpetrate cybercrimes.

Question 3. As we consider legislation to address the cybersquatting problem, should we make sure that First Amendment free speech rights are fully protected and that we in no way chill the right of Internet users to both post and access so-called "protest sites" that are set up to protest or complain about a particular company's products, services or business practices?

Answer 3. The First Amendment is a vital concern and must absolutely be considered. To engage in protected speech or even anonymous speech, the Chinese dissident, however, need not use a famous trademark such as Porsche® to make his or her point. In fact, a Chinese dissident could register, even after the proposed legislation with a false information provision is enacted, the domain name CHINESEDISSIDENT.COM using fictitious information. That domain name does not infringe on any trademark and no trademark holder would ever any reason to attempt to pursue the Chinese dissident. The Chinese dissident can also register an anonymous e-mail address through any service provider such as AOL and send anonymous messages. Such an e-mail account in no way involves the use of a trademark in a domain name.

Many times, cyberpirates use the First Amendment to shield their cyberpiracy. Porsche recently encountered a porn site at PORSCHESUCKS.NET. The cyberpirate said that the First Amendment protected his right to put hardcore pornography at the website. The cyberpirate further argued that his use of PORSCHESUCKS.NET was protected by the "fair use" doctrine. He asserted that the domain name was simply descriptive of the activity that took place at the porn site which purportedly featured the exploits of the porn star Lynn Porsche.

Famous trademark holders can have no objection to parody, satire, editorial, criticism and other forms of expression. If a person wants to criticize or make fun of a company such as Porsche at his own web site HOLMGREEN.COM, Porsche cannot object.

The law, however, is well settled that one cannot use a trademark to identify the source of the criticism. Planned Parenthood, 1997 WL 133313, *11 ("'When another's trademark * * * is used without permission for the purpose of source identification, the trademark law generally prevails over First Amendment. Free speech rights do not extend to labelling [sic] or advertising products in a manner that conflicts with

the trademark rights of others.'") (quoting *Yankee Publishing, Inc.* v. *News America Publishing, Inc.,* 809 F.Supp. 267 (S.D.N.Y. 1992)). In short, registrants may disparage and criticize famous trademark holders, but they do not have the right to use the famous trademarks to identify their potential web sites. *See Dallas Cowboy Cheerleaders, Inc.* v. *Pussycat Cinema, Ltd.,* 604 F.2d 200 (2d Cir. 1979) (the right to convey a message does not entitle defendant to appropriate plaintiff's trademark in conveying that message); *Walt Disney Prod.* v. *The Air Pirates,* 581 F.2d 751, 758 (9th Cir. 1978) ("Because the defendants here could have expressed their theme without copying Disney's protected expression, Sid & Marty Krofft requires that their First Amendment challenge be dismissed."); *San Francisco Arts & Athletics* v. *United States Olympic Committee,* 483 U.S. 522 (1987) (the First Amendment does not give defendant the right to appropriate plaintiff's statutorily granted "Olympic" designation in the name "Gay Olympics" for an event not sponsored by plaintiff).

"[T]he cry of 'parody!' does not magically fend off otherwise legitimate claims of trademark infringement or dilution." *Dr. Seuss Enterprises, L.P.* v. *Penguin Books USA, Inc.* 109 F.3d 1394, 1405 (9th Cir. 1997). "A defendant's claim of parody will be disregarded where the purpose of the similarity is to capitalize on a famous mark's popularity for the defendant's own commercial use." *Grey* v. *Campbell Soup Co.,* 650 F. Supp. 1166, 1175 (C.D.Cal.1986), aff'd, 830 F.2d 197 (9th Cir. 1987). Moreover, one cannot use the trademark of another in the context of parody or disparagement. *Mutual of Omaha Ins. Co.* v. *Novak,* 648 F. Supp. 905, 910 (D.Neb. 1986), aff'd, 836 F.2d 397 (8th Cir. 1987), cert. denied, 488 U.S. 933, 109 S. Ct. 326, 102 L.Ed.2d 344 (1988) (enjoining "Mutant of Omaha" as violation of the "Mutual of Omaha" mark); *Coca-Cola Co.* v. *Gemini Rising, Inc.,* 346 F. Supp. 1183 (E.D.N.Y. 1972) ("Enjoy Cocaine" held to violate COCA COLA trademark when used in same style as COCA COLA logo); *American Exp. Co.* v. *Vibra Approved Laboratories Corp.,* 1989 WL 39679, 10 U.S.P.Q.2d 2006 (S.D.N.Y., Apr. 19, 1989) (image of American Express card and phrase "don't leave home without it" on condoms held to dilute distinctiveness of AMERICAN EXPRESS marks).

Question 4. Do you support S. 1255, the Anti-cybersquatting and Consumer Protection Act, as introduced or would you recommend that changes be made to this bill? If so, what changes would you suggest?

Answer 4. I understand from the hearing that changes will soon be made to S. 1255. I would support a number of changes to the bill, including the inclusion of explicit recognition for the in rem cause of action and further clarification on the types of factors a court can consider to determine bad faith.

Question 5. I am interested in your views about how well the courts have been handling the cybersquatting problem under current trademark law. Professor Froomkin states in his written testimony that, "In every case involving a person who registered large numbers of domains for resale, the cybersquatter has lost." Do you dispute that statement?

Answer 5. While courts have recognized in several cases that cybersquatting violates the trademark laws, the issue is not at all settled. In many cases, the courts have had to stretch existing concepts such as "commercial use" to address the problems associated with cybersquatting. Professor McCarthy has described this stretching as follows:

> When a company reserves its competitor's trademark as a domain name, a court *may overlook the legal niceties* and enjoin use of the domain name even though defendant has as yet no web site identified by the domain name. The thinking apparently is that it is only a matter of time until such a defendant opens a web site under the domain name and that web site will inevitably be deceptive.

McCarthy on Trademarks § 25:76 (emphasis added)

Of significant importance is the *Porsche* lawsuit. In that lawsuit, the Eastern District of Virginia ruled that even though Porsche was being harmed by the mere registration of domain names using the world famous trademark Porsche®, and even though Porsche could not find many of the registrants of the domain names to effect service of process, Porsche was not entitled to proceed *in rem* because the Lanham did not allow such *in rem* jurisdiction. The court invited Congress to amend the Lanham Act to provide for such *in rem* jurisdiction. Even if a trademark owner can prevail after spending tens of thousands of dollars in each case against a cybersquatter, it has been extremely rare for the trademark holder to recover damages or even its costs. This problem combined with the hundreds of infringement matters that well known trademark owners face each year has discouraged the use of litigation as an effective remedy. The legislation will help provide an important

deterrent to the act of cybersquatting and will enable the trademark holder to recover losses associated with the damage to the goodwill of its valuable trademarks.

Question 6. S. 1255 would make the registration of a domain name that is the trademark, or similar to the trademark, of another person illegal *per se.* This could make the warehousing of domain names illegal in many instances, and would make a significant change in current law.

(a). Do you support a change in law that would make the mere registration of a domain name that is another's trademark, without more, illegal?

(b). There are situations where a company plans to purchase another company and, in contemplation of the deal, registers a domain name with both companies' names. This name is warehoused until the deal is completed. Would a law that makes the mere registration of a domain name, which is also another's trademark, illegal and also make legitimate business practices such as the one I described illegal?

Answer 6 (a). As set forth above in answer to Senator Hatch's question 2, mere registration of an Internet domain name *in bad faith* causes irreparable harm to the trademark holder and should be illegal. First, such bad faith registration prevents the trademark holder from using the domain name itself or to link to its official website. Second, such registration requires the trademark holder to constantly monitor the domain name. As set forth above, the cyberpirate who was displaying hardcore pornography at an inoperable website using Porsche® could turn the website on and off with the stroke of a key. Finally, mere registration causes consumer confusion and dilution as Internet users use the various databases to locate trademark holders through reverse searches.

Answer 6 (b) No. A trademark holder would not object to the registration of a domain name for a proper business purpose. Thus, in the example that you mention, both companies would most likely encourage the registration of such a domain name, particularly with the realization that if one of the two companies did not immediately register the domain name, a cyberpirate would beat them to it.[2] If the company that was being purchased objected to the registration of the domain name and filed a lawsuit, which it most likely would not, the purchasing company would have a good "fair use" defense: We registered this domain name in anticipation of the acquisition and to prevent a cyberpirate from beating us to the punch.

RESPONSES OF GREGORY D. PHILLIPS TO QUESTIONS FROM SENATOR ABRAHAM

Question 1. If a bad actor is using a "famous name" as a domain name, how would an online consumer determine whether or not a website is authentic? What problems do you foresee for consumers if famous marks are not protected from infringement in domain names?

Answer 1. As set forth above in Porsche's answer to Senator Hatch's Question No. 1, it sometimes is impossible for a consumer to determine whether a website is authentic. Some porn sites that use famous trademarks make it virtually impossible to even exit the website attempting to lure in and keep unsuspecting Internet users, particularly children.

Moreover, as set forth above in the Chevron example in my answer to Senator Hatch's Question No. 1, even if the consumer eventually determines that the website is counterfeit, the consumer has been deceived, has wasted his or her time, and the trademark holder has been damaged. The trademark laws strongly condemn the practice of "initial consumer confusion."

Question 2. Would you highlight for us how big a problem warehousing is, and explain the harm to trademark owners caused by someone registering a domain name and then simply letting it sit idle?

Answer 2. As set forth above in Porsche's Answer to Senator Hatch's Question No. 2, warehousing is an overwhelming problem and trademark holders are harmed by the mere registration of domain names. Warehousing prevents trademark holders from using the domain names to direct traffic to their sites. Warehousing forces trademark holders to constantly monitor the domain names because a website can be put up and broadcast throughout the world in a matter of seconds. Finally, Internet users use databases such as Whois to conduct reverse searches to locate companies.

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[2] Dan Noonan, in-house counsel for Dell Computers, reports that on July 19, 1999, Dell Computers announced the commencement of DELLAUCTIONS.COM. Within hours, cyberpirates had registered several variations of this domain name including DELL- AUCTIONS.COM and DELLAUTIONS.COM.

As the Eastern District of Virginia recently held: "the mere act of registration [of domain names using the trademark Porsche® creates an immediate injury by preventing Porsche from utilizing those domain names itself in order to channel consumers to its own web site. Customers might try to contact Porsche through 'PORSCHE.NET,' for example, only to find that they have reached a 'dead end' on the Web and then to conclude that the strength of Porsche's brand name is not as great as they first thought." *Porsche Cars North America, Inc. et al.* v. *PORSCH.COM, et al.,*—F.Supp.2d—, 1999 WL 378360 (E.D.Va. 1999).

Question 3. Some have suggested that Congress should prohibit multiple registrations of another's trademark, but exempt single instance, allowing a cybersquatter "one free bite at the apple." In your view, could the registration of a single domain name ever be so harmful so as to merit a remedy? Would you please comment on whether you think a prohibition only of "multiple registrations" would be workable in practice?

Answer 3. See Answer to Question 2 of Senator Hatch. If a cyberpirate registered a single name such as COCACOLA.COM, PEPSI.COM, IBM.COM, DELLCOMPUTER.COM, AOL.COM etc., such registration would cause tremendous harm to these companies because these companies would be prevented from using these domain names themselves. A remedy would certainly be warranted in such a situation.

Giving one free bite at the apple and only prohibiting multiple registrations will simply cause cyberpirates to register one domain name per fictitious name and address to avoid liability. Cyberpirates are sophisticated and will figure out ways to beat the system.

Question 4. The substitute draft does not require that a domain name registrant provide accurate identification information. Would you please comment on the positives and negatives of such a provision, and explain the impact such a provision would have on cybersquatting?

Answer 4. Accurate identification information is absolutely essential, for both trademark holders and also in the area of copyright piracy. Copyright holders, for example, need to be able to locate immediately who is operating websites where Internet users can download pirated copies of computer software, music, movies, and other counterfeit products.

Moreover, as set forth above in Answers to Senator Hatch's Questions 3 & 4, cyberpirates use fictitious identification information to insulate themselves from legal recourse. As WIPO recently noted: "such registration practices and the "absence of reliable and accurate contact details leads to a situation in which the intellectual property rights can be infringed with impunity on a highly visible public medium." WIPO Interim Report at 14–15.

CONCLUSION

As technology advances, and intellectual property rights in such technology develop, the law protecting and governing such technology and property rights must also advance and develop. The United States Senate must provide guidance and leadership in high tech, cutting edge, intellectual property matters throughout the world. As the Internet increases in commercial importance, the United States must ensure that commerce can be safely and appropriately conducted on the Internet throughout the world.

Again, thank you for allowing Porsche to bring these important matters to your attention. We sincerely hope that the information provided in this letter assists you in enacting legislation that protects the invaluable rights of famous trademark holders such as Porsche Cars. Please let me know if we can provide any additional information.

Sincerely yours,

GREGORY D. PHILLIPS.

RESPONSES OF CHRISTOPHER D. YOUNG TO QUESTIONS FROM SENATOR HATCH

Answer 1. Yes. If a so-called "bad actor" is using a famous name, consumers are bound to be confused. You need only to refer to the examples in my testimony to see how easily this could happen.

Answer 2. Warehousing is a major issue on the Internet. My fellow witness from INTA is better equipped to answer the legal questions regarding harm to the trademark owners and remedies needed.

Answer 3. Again, I defer to the witness from INTA to answer this question.

Answer 4. NA (Question is directed specifically to Mr. Phillips)

Answer 5. Cyveillance encounters many forms of abuses on the Internet, however our clients are most concerned with abuses that are connected to commercial uses. Because we typically focus almost totally on commercial uses, at the request of our clients, I am not equipped to discuss examples of a domain name being used for noncommercial purposes.

Answer 6. Our clients have found service providers to be very cooperative. I cannot comment specifically on whom the liability should fall. This is being debated by my counterparts within INTA and throughout the industry.

RESPONSES OF CHRISTOPHER D. YOUNG TO QUESTIONS FROM SENATOR LEAHY

Answer 1. This is a positive change and may serve to dissuade some would-be cybersquatters.

Answer 2(a). This is a legal question that I am not qualified to answer.

Answer 2(b). As per my testimony, cybersquatters will essentially hijack a well-known company's name so they can:

(1) sell it for a profit;
(2) drive traffic to sell goods or services [counterfeit, unauthorized, ancillary or unrelated sales and pornographic] or
(3) voice an opinion.

Answer 3. It is important that freedom of speech not be hindered on the Internet.

Answer 4. I am in support of S. 1255 and the Hatch-Leahy substitute bill.

Answer 5. Since I am not an attorney, I defer this question to the other two witnesses.

Answer 6 (a) and (b). Since I am not an expert in trademark, law, I wish to defer this question to the two other witnesses.

RESPONSES OF CHRISTOPHER D. YOUNG TO QUESTIONS FROM SENATOR ABRAHAM

Answer 1 . As technology improves and people become more proficient at Web site development, it becomes more and more difficult to tell whether a site is authentic or not. Unlike a street corner in any major city where you might see a person selling watches from a card table, on the Internet, any small retailer or "bad actor" can look as professional and legitimate as known companies. They can also disguise themselves so that they actually *appear* to be a company the consumer knows and trusts. Additionally, these "bad actors" are using tools like metatags, hidden text and other techniques (coupled with cybersquatting) to lure consumers surfing the Web for well-known brands. Our advice to online consumers is to stick to names they know. If famous marks are not protected from infringement in domain names, the abuses will only proliferate and might ultimately undermine consumer trust and hinder the growth of e-Commerce. At the same time, we need to be certain that any legislation enacted is done so in a manner that does not in and of itself hinder e-Commerce growth.

Answer 2. Warehousing is a major issue on the Internet. My fellow witness from INTA is better equipped to answer the legal questions regarding harm to the trademark owners.

Answer 3. Again, I defer to the witness from INTA to answer this question, with regard to the legal ramifications of multiple versus single registrations.

Answer 4. It is my view that requiring a domain registrant to provide accurate information would be a benefit to trademark holders who are trying to take action against cybersquatters.

ADDITIONAL SUBMISSIONS FOR THE RECORD

PREPARED STATEMENT OF JESSICA LITMAN

Thank you for the invitation to submit written testimony on *"Cybersquatting and Consumer Protection: Ensuring Domain Name Integrity."* My name is Jessica Litmam I am a professor of law at Wayne State University. I have been teaching trademark and unfair competition law since 1988 and Internet law since 1996. I am a co-author of the second edition of JANE C. GINSBURG, JESSICA LITMAN, DAVID GOLDBERG AND ARTHUR J. GREENBAUM, TRADEMARK AND UNFAIR COMPETITION LAW: CASES AND MATERIALS (1996 & ANNUAL Supplement). This testimony reflects my personal views, as a scholar and teacher of trademark and Internet law, and in no way represents the views of Wayne State University.

I would like to express deep reservations about S. 1255, the *AntiCybersquatting Consumer Protection Act.* S. 1255 seeks to address the problems created by what the courts have come to term "cybersquatting"—the bad faith registration of multiple domain names with the intention of selling them to businesses who failed to register them, often at inflated prices. The practice is especially troubling when the domain names include trademarks owned by businesses that want to operate Internet domains or websites. Although only a small minority of cases have actually caused consumer deception,[1] cybersquatters have been a major annoyance to trademark owners and to at least some individuals browsing the World Wide Web. Cybersquatting has in fact been, so troubling that it has attracted a significant number of efforts to solve it, not all of which have been consistent with each other. It is important to realize that the problem is well on its way to resolution without any legislative intervention. Even if It were not, however, the measures included in S. 1255 would not be very useful.

When most cybersquatters accumulated their warehouses full of domain names, doing so wasn't criminal. Indeed, it wasn't even believed to be actionable. During the early years of the World Wide Web, many businesses had not yet considered doing business on the Internet, and had not investigated registering domain names corresponding to their trademarks, so amassing a large number of trademark domain names was easy. See Joshua Quittner, *Billions Registered,* Wired 2.10, October 1994, at 50. Business speculators registered a bunch of potentially valuable domain names as a simple business proposition. Many of the speculators did not view their activities as extortion; rather, they saw themselves as investors in commodities that they believed would turn into valuable business assets.

The problem of domain name speculators' bad faith registrations of domain names incorporating other businesses' trademarks, however, has been substantially reduced as a result of efforts by the Internet community and the World Intellectual Property Organization to make domain name speculation unprofitable. Network Solutions, the entity that registers.com domains, has adopted a trademark dispute policy under which it will suspend a domain name identical to a registered trademark upon complaint from the trademark owner, and has recently adopted a policy requiring domain name registrations to pay the registration fee in advance, thus discouraging speculative registration. The U.S. Department of Commerce has insisted repeatedly that the redesigned Internet Domain Name System must incorporate a dispute resolution process that gives trademark owners effective remedies against cybersquatters.[2] At the request of the United States Government, the World Intellectual Property Organization has put together the contours of a dispute resolution policy that will permit expeditious administrative resolution of disputes between trademark owners and cybersquatters. *See* FINAL REPORT OF THE WIPO INTERNET DOMAIN NAME PROCESS ON THE MANAGEMENT OF INTERNET NAMES AND ADDRESSES: INTELLECTUAL PROPERTY ISSUES (April 30,1999).

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[1] One notable exception was Internic Technology's site at <www.internic.com>, which apparently defrauded a significant number of domain name registrants. The Federal Trade Commission launched a consumer fraud investigation, which resulted in the Australian Competition and Consumer Commission's charging Internic Technology with deceptive conduct. Internic Technology agreed to surrender the domain name and pay monetary reparation to its customers for any deception.

[2] *See* Memorandum of Understanding Between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers, Nov. 25, 1998, URL: <http://www.ntia.doc.gov/ntiahome/domainname/icann-memorandum.htm>; United States Department of Commerce, Management of Internet Names and Addresses, June 5, 1998, URL: <http://www.ntia.doc.gov/ntiahome/domainname/6—5—98dns.htm>.

The details of the WIPO plan have been controversial. While representatives of trademark owners have been generally enthusiastic,[3] others have criticized the WIPO recommendations for being unfairly slanted in favor of owners of registered trademarks.[4] There seems to be little doubt, however, that the WIPO plan or one much like it will be implemented in all generic top level domains within a matter of months.

Many of the problematic domain name registrations have been the subject of litigation. The courts have been merciless to defendants perceived as cybersquatters, finding trademark infringement and trademark dilution even in cases where, but for the domain name conflict, no reasonable court would be likely to find a violation of the Lanham Act. *See, e.g., Panavision International* v. *Toeppen,* 141 F.3d 1316 (9th Cir. 1998); *Intermatic Inc.* v. *Toeppen,* 40 U.S.P.Q.2d 1412 (N.D. Ill. 1996). Anyone who feels held up by a cybersquatter can file suit, secure in the knowledge that the cybersquatter will lose. Further, courts have been quick to impose liability for bad faith registrations of domain names on individuals who, rather than warehousing domain names, have used them in competition with trademark owners or in the hope of diverting web traffic from a trademark owner's site. *See, e.g., Cardservice International, Inc.* v. *McGee,* 950 F. Supp. 737 (E.D. Va. 1997). Finally, some businesses have registered domain names that are confusingly similar to trademarks or personal names in order to use them for pornographic web sites. Those businesses have without exception lost suits brought against them. *See, e.g., Hasbro, Inc.* v. *Internet Entertainment Group,* 40 U.S.P.Q.2d 1479 (W.D. Wash. 1996). Thus, people who have not already invested in domain names that may be valuable precisely because of their similarity to other businesses' trademarks have little incentive to do so now, and trademark owners aggrieved by the bad faith registration of their trademarks as domain names have reliable remedies under the trademark law.

The courts have imposed civil liability for bad faith registration even in some cases in which defendants used the domains to engage in expressive conduct motivated by sincere political convictions. In *Planned Parenthood* v. *Bucci,* 42 U.S.P.Q.2d (BNA) 1430 (S.D.N.Y. 1997), *aff'd mem.,* 152 F.3d 920 (2d Cir. 1998), for example, Richard Bucci, a Catholic anti-abortion activist, had registered plannedparenthood.com and operated a website at www.plannedparenthood.com. The page opened with the greeting "Welcome to the Planned Parenthood Home page", but otherwise contained anti-abortion material. In a preliminary injunction decision, the court held that these acts constituted trademark infringement, trademark dilution and false designation of origin. In *ews for Jesus* v. *Brodsky,* 993 F. Supp. 282 (D.N.J. 1998), *aff'd mem.,* 159 F.3d 1351 (3d Cir. 1998), Brodsky registered jewsforjesus.org and jews-for-jesus.com. He put up a website that he hoped would attract websurfers seeking the Jews for Jesus organization, in order to protest that organization's activities, and to lead potential strays back into the fold of traditional Jewish organizations. The Jews for Jesus organization successfully brought suit for trademark infringement and trademark dilution.

Most of the actual disputes over trademarks and domain names don't involve bad faith registration of multiple domain names. Instead, there are two parties, both of whom want a particular domain name. One of them registered the domain name in good faith, and has either been using it or intends to do so. The other one is, typically, someone who has a trademark registration for a different business. *See. e.g., Interstellar Starship Services Ltd.* v. Epix, Inc., 1999 U.S. App. LEXIS 16536 (9th Cir. 1999); *Brookfield Communications* v. *West Coast Entertainment.* 50 U.S.P.Q.2d 1545 (9th Cir. 1999); *Gateway 2000* v. *Gateway.com,* 1997 U.S. Dist. LEMS 2144 (W.D.N.C. 1997). Such situations we common, in part because U.S. trademark law permits multiple businesses to register the same trademark for different classes of products. Although courts have been quick to impose liability for bad faith registration, they have been far more cautious in disputes involving a domain name registrant who has a legitimate claim to use a domain name and registered it in good faith. *See. e.g., Data Concepts. Inc.,* v. *Digital Consulting, Inc.,* 150 F.3d 620 (3d Cir. 1998). In a number of cases, courts have refused to impose liability where there is no significant likelihood that anyone will be misled, even if there is

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[3] *See, e.g.* American Intellectual Property Law Association et. al., Response to WIPO Report (May 20, 1999), URL: <http://www.icann.org/comments-mail/comment-ip/msg00046.html>.

[4] *See, e.g.,* Diana Cabell, Comment on WIPO Final Report (May 10, 1999), URL: <http://www.icann.org/comments-mail/comment-ip/mag00019.html>; A. Michael Froomkin, A commentary on WIPO's The Management of Internet Names and Address: Intellectual Property Issues (May 19, 1999), URL: <http://www.law.miami.edu/amf/commentary.htm>; Carl Oppedahl, Comments on WIPO Report (May 7, 1999), URL: <http://www.icann.org/comments-mail/comment-ip/mag00006.html>.

a significant possibility of trademark dilution. *See, e.g.. Gateway 2000* v. *Gateway.com,* 1997 U.S. Dist. LEXIS 2144 (W.D.N.C. 1997); *Toys "R" Us* v. *Feinberg,* 26 F. Supp.2d 639(S.D.N.Y. 1998).

S. 1255 takes the approach of assimilating cybersquatting to trademark counterfeiting, amending the criminal trademark counterfeiting law to make anyone who knowingly and in bad faith registers or uses a domain name or other identifier that is identical to, confusingly similar to or likely to dilute someones trademark guilty of a misdemeanor. Subsequent offenses are felonies.

S. 1255 treats bad faith registration and use as a species of counterfeiting. Yet, bad faith registration of a domain name, however annoying, is not trademark counterfeiting. Bad faith registration and use of a domain name have nothing to do with trademark counterfeiting as that offense is commonly understood. The essence of counterfeiting is using spurious trademarks to defraud consumers into believing that defendant's products are the genuine article marketed by the trademark owner. Bad faith registration and use of domain names typically does not involve that sort of deception. Many people have speculated in domain names to sell them to businesses likely to want them, but those people would have no reason to use the domain names to fraudulently traffic in counterfeit products or products bearing counterfeit trademarks. Others have speculated in domain names in order to put pornographic material on the web at sites likely to be discovered by casual browsers. Those businesses would also have no reason to sell counterfeit products, or to represent even by implication that their adult material is affiliated with or approved by any legitimate business—they are just trying to get eyeballs by any possible means. They be bad people, but they are not trademark counterfeiters, and S. 1255 does not require that they do anything that the courts have recognized before now as trademark counterfeiting; instead, it imposes criminal liability for the bad faith registration *or* use of any domain name or identifier of an online location that is confusingly similar to or likely to dilute a trademark.

S. 1255 does not draw a workable line between cybersquatting and other activities. The bill would impose criminal penalties for the knowing or bad faith registration of a domain name or other "identifier" that is identical to, confusingly similar to or likely to dilute a registered trademark. That liability would fall on both conventional cybersquatters and other bad faith registrants. It would also fall on people like Richard Bucci and Steven Brodskey. Both gentlemen may have engaged in unwise protests, but I know of nobody who argues that their behavior should be treated as criminal. In Addition, the term "identifier" is defined, so broadly that it could be read to cover file names and email addresses as well as domain names. Thus, even if Richard Bucci were to relocate his abortion protest site to <http://www.bucci.com/-plannedparenthood/protest.htm>, the bill as it is currently drafted would apply to his activity: he would be guilty of knowing and bad faith use of "an identifier of an online location." Anthony Bartolo's disparagement of the GoPed® brand scooter at <http://www.idiosync.com/goped/> was held by the court to be a premissible non-trademark use, in significant part because Bartolo's use of the mark "GoPed" was as a file name rather than a domain name. *See Patmont Motor Werks* v. *Gateway Marine,* 1997 U.S. Dist. LEXIS 20877 (N.D. CA). S. 1255 does not distinguish between them, thus potentially subjecting expressive activity like Anthony Bartolo's to liability.

Although section 4(a)(D)(ii)(III) attempts to exclude some good faith registrants from criminal liability, the exclusions are so narrow as to be of little use. For example, if the Dell Computer Corporation, which operates a website at <http://www.dell.com>, were accused of bad faith registration of a domain name that was the trademark of Bantam-Doubleday-Dell, it could not avail itself of the exception in 4(a)(D)(ii)(III). Dell Computer owns a registered trademark, but its first use of that mark in commerce was in 1988. Bantam-Doubleday-Dell's registration of the Dell mark (for paperback books) issued in 1959 based on a use-in-commerce date of 1943.

The international efforts to devise an administrative dispute resolution process have struggled to draw an appropriate line between cybersquatting, which involves multiple bad faith registrations, and honest trademark disputes where the domain name has been registered and is being used in good faith. It is a difficult line to draw, and the WIPO domain dispute resolution process went through multiple iterations of a standard in an attempt to devise an appropriate definition for abusive domain name registration.[5] An appropriate standard must exclude businesses with legitimate competing rights to use a domain name, registrants of coincidentially similar domain names, and individuals who, without any intent to confuse or de-

[5] *See generally* WIPO Internet Domain Name Process, URL: <http://wipo2.int/process/eng/processhome.html>.

ceive, operate fan sites or sites intended to criticize trademark owners or their products. WIPO's ultimate product remains controversial, but the United States government has worked hard to assure that the recommended dispute resolution process is adopted by all generic top level domain registrars. Because the standard reflected in S. 1255 is very different from the one adopted as a result of the WIPO process, there is a significant risk that the enactment of this bill will destabilize that effort just as it is beginning to bear fruit. The worldwide adoption of a uniform trademark domain name dispute resolution policy would be of more benefit to US trademark owners in the long run than this bill.

In addition to treating bad faith domain name registrants as trademark counterfeiters, the bill would impose enhanced, arguably punitive, civil penalties in many cases on good faith domain name registrants with legitimate claims to their registered domains. Section 3 of the bill permits a plaintiff to elect substantial statutory damages and attorneys fees in lieu of actual damages for any trademark infringement or dilution involving the registration of a domain name or other identifier that is either identical to a trademark or likely to cause confusion or dilution, even if the registration and operation of the domain was undertaken in good faith. (Statutory damages have until now been available in trademark actions only for trademark counterfeiting.) The attorney fee awards is available only to plaintiffs at plaintiffs' election. Unlike the attorney fee provision in the copyright law, *see* 17 U.S.C. § 505; *Fantasy* v. *Fogerty,* 510 U.S. 517 (1994), a prevailing defendant in a domain name trademark case is given no opportunity to recover attorney's fees. The combination of substantial civil damages requiring no proof of actual harm with the attorney fee provision threatens to greatly exacerbate the increasingly significant problem of "reverse domain name hijacking."

Reverse domain name hijacking involves an attempt by a trademark owner to take a domain name from a legitimate good faith user, typically by threatening legal action. The well-publicized cases of two-year-old Veronica Sam's "little Veronica" website at <http://www.veronica.org> and 12 year-old Chris "Pokey" Van Allen's web page at <http://www.pokey.org> pitted trademark owners against children whose parents had registered their children's names in the .org domain. the registration and operation of the web sites was unquestionably innocent, and there was no plausible likelihood that consumers would be misled. Nonetheless, in both cases, the trademark owners demanded that the children's web sites be taken down.[6] A flood of negative publicity persuaded the trademark owners in both cases to back down. Every week, though, I hear of a different domain name owner who just has received a cease and desist letter from a trademark owner that he's never heard of. Many of them abandon their domains rather than risk litigation, even when no court would be likely to hold them liable. If the trademark statute is amended to expose them, at plaintiff's election, to substantial statutory damages even where plaintiff suffers no harm, and to a one-way award of attorneys fees, few responsible attorneys would advise even those domain name holders whose legitimate claim to their domains seems inarguable to take that risk.

Section 5 of S. 1255 would amend section 39 of the Lanham Act to provide a liability shield for any Internet service provider, domain name registrar or domain name registry who removes a domain from service in response to a complaint from a trademark owner or transfers control of that domain to the trademark owner, whether or not the domain registrant is ultimately found liable for infringement or dilution. Section 5 does not, however, codify the holdings of recent cases that domain name registrars can not be held liable for registering domain names that are infringing or dulitive. *See, e.g., Lockheed* v. *Network Solutions,* 985 F. Supp. 949 (C.D. Cal. 1997). The provision in S. 1255 would give service providers, registrars and registries an irresistible incentive to do anything a trademark owner asks them to do, whether the trademark owner's claim has merit or not, since that is the surest way to avoid being liable to anyone. In addition, the provision would leave the wrongfully ousted domain name registrant without any legal remedy. The result would be to further exacerbate the reverse domain name hijacking problem.

This bill would in many ways be bad for electronic commerce, by making it hazardous to do business on the Internet without first retaining trademark counsel. The bill imposes draconian penalties on any business that is found to have registered a domain name, or used any "Internet identifier," in bad faith. Faced with that risk, many start-up businesses may choose to abandon their goodwill and move to another Internet location, or even to fold, rather than risk liability. The bill would

[6] Archie® Comics operated a web site at www.archiecomics.com and owned the veronica.com domain. Prema toys, maker of Gumby®, did not and still does not operate a website devoted to the Gumby® line of toys and licensed merchandise. Neither company, thus, wanted the website for itself; instead, they were concerned about the risk of trademark dilution.

also impede the U.S. Commerce Department's efforts to encourage the worldwide adoption of a uniform trademark domain name dispute resolution policy, which would be of more benefit to US trademark owners in the long run.

I thank you again for this opportunity to submit written testimony. I would be happy to respond by mail or by email to any questions that you might have.

UNIVERSITY OF MIAMI,
SCHOOL OF LAW,
Coral Gables, FL, July 22, 1999.

Hon. ORRIN G. HATCH,
Chairman, Senate Judiciary Committee, Dirksen Office Building, Washington, DC.

DEAR SENATORS HATCH AND LEAHY: I regret that family commitments make it impossible for me to come testify in person regarding S. 1255. I would like to request that the following comments be submitted as testimony for the hearing on S. 1255 today:

I am a Professor law at the University of Miami. I have been specializing in Internet Law for the last seven years. I teach courses in Internet Law, E-commerce, and Intellectual Property in the Digital Era. During the past year I have been intimately involved in cybersquatting policy debates, serving as the sole "public interest representative" to the World Intellectual Property Organization Panel of Experts on domain name issues.

I believe S. 1255, while well-intentional, is very badly flawed in its current form and will do far more harm than good.

- It attempts to "solve" a problem that is very temporary. To a large extent it is already being solved by the courts, and domain name pre-payment and mandatory arbitration will take care of the rest.
- The bill purposes a solution that will cause harm to large numbers of innocent people.
- The definitions are badly drafted—it will criminalize *file names* (they are "identifiers"). It will also criminalize third and fourth level domain names which cannot, by any commonly held definition (or logic), be part of cybersquatting.
- The penalties are vastly in excess of the harms in most cases.
- As a result, the main consequence of this bill were it to become law, is that it will provide a new tool for the unscrupulous to use to intimidate the blameless.

CYBERSQUATTING IS A TEMPORARY PHENOMENON

Cybersquatting is generally understood to have these elements:

(1) registration [and sometimes use]

(2) for speculative purposes, and without another legitimate purpose or claim of right, of

(3) a *second-level* domain name which

(4) is identical to a trademark held by another.

there is no hand data on the extent of the cybersquatting problem. Testimony of hearings held by the World Intellectual Property Organization suggested that even accepting the complainants' definition of the problem, far fewer than 1 percent of all domains were alleged to involve cybersquatting. Other data from NSI, the .com registrar, suggest that the original burst of cybersquatting has peaked and its declining—probably because the courts have made cybersquatting unattractive.

To the extent that the cybersquatting problem is not solved by requiring pre-payment or an on going relationship, it will be eliminated by the proposed WIPO rules on mandatory arbitration which are almost certain to become the standard for all global registrars and registries.

EVERY CYBERSQUATTER WHO HAS GONE TO COURT HAS LOST

There is now an impressive and growing body of case law in the US and other nations regarding speculative registrations of domains corresponding to other people's trademarks. In every case involving a person who registered large numbers of domains for resale, the cybersquatters has lost.

On the other hand, the courts have rightly taken a more careful approach than S. 1255, as they are also conscious of the danger of "reverse domain name hijacking"—cases where the plaintiff seeks to take a domain name held by a legitimate user. Several courts have correctly refused to find for plaintiffs where the defendant

was making legitimate use of a domain name for purposes which in no way infringed on the claimant's trademark.

THE BILL TO TAKE ACCOUNT OF "REVERSE DOMAIN NAME HIJACKING"

One of the major effects of enacting statutory damages of $100,000 is that the fear of this large number will be used to intimidate honest people who happen to have an attractive domain name. Students in my Internet Law class have received demand letters from lawyers representing trademark holders whose claims for their domain names, insofar as I was able to work out the facts, were worthless. Nevertheless, the letters were threatening and frightening, and I am sure that many non-lawyer, or non-law students would be intimidated. This bill will make that intimidation worse.

THE BILL FAILS TO TAKE ACCOUNT OF MANY LEGITIMATE NON-TM INTERESTS IN A NAME

Not all of the threats will be baseless. The bill fails to protect a large number of perfectly legitimate uses of domain names. Among the groups left out are holders of common law trademarks, "doing business as" names, middle names, stage names, pen names, names of pets. The bill also fails to make provisions for first amendment uses of names—e.g. critics of a corporation whose purpose may be to attract attention associated with the company, but whose aims are political rather than unfair competition. Unfair competition, incidentally, is actionable, and there is no exception for unfair competition carried out with a misleading domain name.

It is important that the committee understand that these concerns are far from fanciful. Consider the following example. Suppose I had been clever enough to register "cars.com". Cars is a generic term for automobiles, but it is trademarked in many other context. Suppose a person having a trademark on hypothetical cars brand umbrellas wants the domain name. They would have a trademark, I would not, and they would have a good arguable case for confusion, or even (given the very broad interpretation of the Anti-Dilution Act) for dilution. My lawyer would be hard pressed to promise me I would win a case, and if I were running a small company or a startup, I might need to give in rather than fight.

THE DEFINITIONS WILL MAKE EVERY FAN A CRIMINAL

The definition of an identifier in this bill is vastly over-broad. I will concentrate on two issues: file names, and portions of the domain name itself.

File names

The bill appears crafted to reach the name of every file readable on the Internet. The "identifiers" to which sec. 3(a) applies is not defined. Section (3)(a)(2)(A) refers to "the registration or use of an identifier described in subparagraph (B)". In turn, sub-paragraph (B) does not provide much of a definition at all.

We do find a definition in section 4, subpara C, which speaks of "an Internet domain name or other identifier of an online location," a definition which sweeps far too broadly. Thus, for example, http://www.mydomain.net/froomkin/thingsIlove/NYYankees or http://www.mydomain.net/froomkin/thingsIlove/StarTrek would both involve "an Internet domain name or other identifier of an online location" which is arguably dilutive.

Cybersquatting is not about file names. At most that is a standard Lanham Act issue, and a rather unlikely one in most cases. Cybersquatting is about domain names and only second (or first and second) level ones. The legitimate interests worth being protected here are (1) consumers' interest in not being misled; and (2) goodwill in the mark. There is simply no evidence whatsoever that either of these interests is affected by third, fourth or fifth level domain names. Would anyone think that stimpy.ir.miami.edu has anything to do with the cartoon character of that name? Is there any potential for confusion there? Or even dilution? I rather doubt it, and there is certainly no evidence of this, anywhere.

Nth-Level domain names

To understand why third, fourth, and Nth level domain names are not cybersquatting, one needs to understand how domain registrations work. It is impossible for anyone to register "trademark.yahoo.com" in the DNS. The "registrations" are limited to second level domains. Yahoo has yahoo.com. It thus has full control over what third level domains it wishes to create in the yahoo.com hierarchy. It may be that yahoo contracts with someone else to allow them to use trademark.yahoo.com, but that's between them and yahoo, and isn't a DNS issue at all. The registry and registrar are not involved. The use of "trademark.yahoo.com" *is not cybersquatting by yahoo against the owner of "trademark"* and is at most garden va-

riety trademark infringement covered by the Lanham Act. The decision by the owner of yahoo.com to run a machine with the name trademark.yahoo.com does not in any way obstruct the owner of the trademark from having and enjoying trademark.com. The use of trademark.yahoo.com thus lacks an essential element of cybersquatting blocking the legitimate use of the trademark holder.

This is a key point: not every intellectual property violation on the Internet is cybersquatting. Cybersquatting is the (repeated) registration of other people's trademarks in a manner designed to block them from having the second level domain that corresponds to their trademark, done for the purpose of holding it for ransom. That is not what is happening in "trademark.yahoo.com"—although the Lanham Act on the Anti-Dilution Act may well have something to say to the owners of yahoo.com if they tried this.

CONCLUSION

This bill is too much, too late. The courts have taken a big bite out of the real cybersquatting on their own, and pre-payment and soon-to be-adopted mandatory arbitration rules will do the rest.

Yours sincerely,

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