VAYTON. BRAND CAPITAL

"Trademark and domain name protection are luxuries my company cannot afford."

There is a "*widespread view among business managers that the protection of IP [Intellectual Property] is a luxury they can only afford when they are ready to do so, and it is among the first things they economise on, to a large extent through ignorance*…" (Bill Lumley,"IP Theft and How to Avoid It," *World Intellectual Property Review*, 2008). Startling statistics about trademark and domain name hijacking are now beginning to get the attention of companies large and small. The U.S. Chamber of Commerce reports that intellectual property thefts cost 750,000 jobs for American businesses (*World Intellectual Property Review*, 2008 issue). The World Intellectual Property Organization (WIPO) reported a record 2,156 complaints of cybersquatting (abusive registration of trademarks on the Internet) in 2007. This is an 18 percent increase over 2006 and a 48 percent over 2005 for companies filing complaints with the WIPO Arbitration and Mediation Center.

The NetNames Cyberdaq report (2007) analyzed domain name protection for the top 30 listed brands from the FTSE 100, DowJones, CAC 40, DAX 30, IBEX 35 and OMX 20. The report found "*that the majority of companies fail to think about protecting their brands beyond the .com and national domain name suffix (eg. fr for French companies).*"

Countries were ranked according to their leading companies online brand protection:

- Germany 66 percent secure
- Denmark 60 percent secure
- France 57 percent secure
- UK 42 percent secure
- USA 41 percent secure
- Spain 33 percent secure

In the American E-commerce Brands 2008 report reviewing brand protection for top online US retailers, NetNames found that "*more than one in four (28 percent) domains relating to these online retailers were occupied by cybersquatters and more than one in twenty (6 percent) were available for purchase in the open market. Of the top 50 online US retailers identified, 34 had left at least one domain relating to the brand unprotected which was now occupied by cybersquatters.*"

The Security and Stability Advisory Committee for ICANN (Internet Corporation for Assigned Names and Numbers) in their report *Domain Name Hijacking* (July 12, 2005) cautioned that Internet domain hijacking is not just a "*worry for Fortune 1000 companies. Small and medium businesses can ill afford to have online businesses interrupted as well*."

***Intellectual Property (IP)*: There are several kinds of intellectual property rights: trademarks, copyright and database, designs, patents, unfair competition/passing off, and trade secrets/ confidentiality. The key word is property. The association with real estate is no accident. Just as a company would value real estate (property) where business is conducted or products are manufactured and/or sold, so should a company value intellectual or intangible property. An IP can be sold or leased like tangible property.**

IP laws vary from country to country, although members of the European Union (EU) have in common the Community Trade Mark laws. Securing intellectual property rights in one country does not guarantee the same rights will be upheld in other countries. Companies with EU registrations should

investigate whether protection can be upheld in non-EU countries like Switzerland or Norway.

Cybersquatting: This occurs when a third party registers another's mark as a domain name with bad-faith intent to profit from it. Microsoft estimates that 24% of all .com and .net domain names are parked by cybersquatters. The squatters' intent is to redirect traffic to third parties to promote their own products. The severity of the situation was acknowledged when in 1999 the U.S. Congress passed the Anticybersquatting Consumer Protection Act. Cyber criminals registering infringing domain names (sometimes by altering just one letter) are liable to civil suits from the trademark holder.

There is a 1 in 14 chance of consumers being directed away from the intended web site when the web address is misspelled ("Consumers Siphoned Off by Typo Scams," Computing, co.uk, November 2007). Cybersquatters benefit when web traffic is directed to their sites which have pay-per-click advertising.

ICANN (Internet Corporation for Assigned Names and Numbers): This is an international entity responsible for administering the DNS (domain name system) and ensuring Internet users reach the intended web location.

Brand Valuation. A trademark and a domain name are aspects of branding—in fact, they are the essential tools of branding. With a strong branding strategy, these tools can increase your company, service or product value. The prospective client relies on the trademark as an assurance of consistent quality. Value is attached to a brand that goes beyond the actual quality or merit of the product or service. From clothes to coffee, strong branding sells lifestyles not just commodities. Starbucks sells atmosphere and culture not just cappuccino. Louis Vuitton doesn't just sell luxury fashion and leather goods (bags and luggage), LV sells stardom by association, using celebrities to market the products. Now, moving away from exclusively glossy print ads to its first televised commercial in 2008, LV is selling… lifestyle…adopting the "Where will life take you" theme.

Brand Capital. No company is too small to build brand capital. "*As demand continues to set new records, consumers will place more importance on their personal relationships with brands than how much it costs. It will be about value."* (Chairman of the Association of Travel Marketing Executives, Inc., 2005) Brand valuation or capital can be measured as the amount another business or individual is willing to pay for the brand. Less easily measurable is the value a customer attaches to the brand and the degree of loyalty to the brand.

> "*Recent studies show, brands account for as much as 60 percent of the overall company value."* (BrandCapital.us,)

> John Stuart, an early CEO of Quaker Oats, famously said "*If this business were split up, I would give you the land and bricks and mortar, and I would take the brands and trademarks, and I would fare better than you.*"

Tools to Build Brand Capital. Brand capital begins with the trademark. An essential tool of branding, the graphic mark distinguishes your product or service from your competitors and has the power of signifying value for the customer. A domain name is a navigational marker for the customer or prospective client. The domain name guides the prospect to your virtual location for information and for business transactions. The navigational marker must be designed with ease of use for the prospect. The simpler, the better. Like the trademark logo or tag line, the domain name should be short, simple and memorable….and well-researched.

Protecting Brand Capital. Both the trademark and the domain name must be protected against fraud and abuse. A company's reputation can be threatened by a third party appropriating or diluting the product or service trademark with copy cat trademarks or redirecting Internet traffic to bogus websites. A company's reputation can be tarnished. Customers may abandon loyalty to the brand, resulting in revenue loss for the company.

Independent researchers in trademark and domain name abuses are not underestimating the impact...are you?

Mazerov Research and Consulting recently released findings on DNS (domain name system) security, based on an independent survey of 456 individuals. Loss of Internet connectivity because of cybersquatters or hijacking translates into major revenue loss for a company. According to the Mazerov report, "*a significant interruption has lasting impact on the company at about 88 minutes. That is, in just under 1.5 hours the company begins to suffer long-term damage.*"

Furthermore, the report noted "*a lack of understanding of the interplay of DNS security and how it relates to the connectivity of a company's IT infrastructure and Internet availability.*" If a company's domain name is hijacked by the third party, not only is security comprised but businesses are at risk of major fiscal losses. Among those surveyed for the Mazerov report, one-in-eight said their company would likely go out of business, 30 percent said they would lose customers, and 39 percent said their long-term brand image would be damaged.

A domain name is hijacked when a third party modifies the registrant's DNS information and has complete control over the domain. The hijacker substitutes the contract information for the legitimate administrative contact information in the Whois datadase. The hijacker becomes the "gaining" registrar of the DNS and the legitimate company the "losing" registrar. Since domain names are like real estate, a business might awake one morning to find an unauthorized *For Sale* sign planted outside the front door. A company's website disappears and so does the traffic and ability to make e-commerce transactions.

The ICANN Security and Stability Advisory Committee (SSAC) report in 2006 reiterates the Mazerov survey findings: "*Domain hijacking can disrupt or severely impact the business and operations of a registrant [company], including … denial and theft of electronic mail services, unauthorized disclosure of information through phishing web sites and traffic inspection (eavesdropping), and damage to the registrant's*

reputation and brand through web site defacement." The report also refers to collateral damage: *"customers, business partners, consumers of service provided by the name holder and even parties wholly unrelated to the name holder."*

Whois: This term combines the words "Who" and "is." It is a database of information about the domain name owner. Whois is an administrative authenticating device for the owner and a source of information about the domain owner/company useful to the consumer. Failing to update Whois places a business in harm's way.

Medium and small companies often do not have the personnel or expertise to proactively and periodically manage trademark and domain protection. Keeping the Whois database up to date may be a low priority, but it actually puts the company at risk of IP theft. Those in the name domain protection business also recommend performing regular audits and validation of your domain name and trademark. Domain name abuse dilutes the strength of your trademark.

Difference between a Trademark and Domain Name:

A trademark is a graphic signifier of a company. The International Trademark Association defines trademark as "*a word, name, slogan, symbol, design, or other designation that identifies and distinguishes the source of a product or service."* A domain name, however, is solely a textual signifier of branding (electronic address), referring both to the business location and to the virtual location, establishing a dual presence. It is a navigational marker—and more.

Often businesses incorrectly believe a registered trademark will protect a domain name that is the same as the trademark. A domain name requires separate registration and management.

Protect your trademark and domain name as you would any valuable asset.

- "*Name holders have a responsibility to protect their domain names as they would any valuable asset."*
(Steve Crocker, SSAC ICANN chairman, quoted in "*How To Protect Yourself Against Domain Name Hijackers," Information Week,* August 24, 2005)

- "*Failure to police and enforce trademark rights can weaken or even completely destroy the value of a brand*." (*World Intellectual Property Review*, 2008 issue)

- "*Companies that effectively combine marketing, legal and e-commerce techniques and tactics will excel over market competitors, while those who continue to think one-dimensionally will likely fade*."
(*Trademark World*, November 2007)

Nicolas Van Beek, founder and CEO of **VAYTON** based in Luxembourg, in a *Paperjam Magazine* interview (2004) noted that approximately $280 billion USD is lost to counterfeiting annually. Across the globe, threats to companies, large and small, are numerous and increasing when there is an online presence. And, few companies are passing up the market advantage of the Internet. Goldman Sachs reported global online advertising has increased by 75% since 2005 and by 2007 had reached $1 billion USD (source European Domain Registration website).

As the Internet market increases so do the techniques used by cyber criminals. Medium to small companies naturally focus on productivity and pay too little attention to the nuances of the cyber criminal industry. Not being a Fortune 1000 company is no guarantee a company will not be at risk of trademark or domain name hijacking. Unregistered and unmonitored trademarks and domain names have the potential to bring a company of any size and stature to its knees when a malicious third party appropriates intellectual property.

"*Would you walk out the door of your business at the end of the day without engaging the security system and locking the door? Or, would*

you even consider not insuring your place of business against natural disasters and intruders—fire, earthquakes, floods, and property theft?" Van Beek with **VAYTON** asked in an interview for this white paper. "*Then why would you ignore the good business practice of protecting your trademark and domain name when there is the potential risk of long-term damage to your business?"*

Similarly, what individual or business would fail to update a business address or phone number? Who would risk having important mail delivered to the old address or have it disappear altogether? Van Beek explained that when companies fail to update the Whois information for their domain name or to renew domain name registration, they are opening themselves to having their online business presence and/or the business itself hijacked or damaged by cyber criminals.

The ICANN committee report found that domain name hijacking is commonly caused by "*flaws in registration and related process, failure to comply with transfer policy, and poor administration of domain names by registrars, resellers and registrants.*"

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