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## **COMPANY NAME, THE INTERNET, AND ACHIEVING COMPETITIVENESS IN A CHANGING GLOBAL ENVIRONMENT**

### **ABSTRACT**

*The aim of this paper is to demonstrate that the most recent forms of Internet business generate new risks and new needs for the legal protection of company names. The global communication network referred to as the Internet allows for an almost infinite variety of linkages between individuals and companies across the globe. These circumstances create new issues for the protection of company names. Cyber-space provides much greater scope for abuse than ordinary conditions. This paper's initial assumption is that the issue of the deliberate or accidental hijacking or inclusion of a company name in a domain name cannot be tackled by relying on our experience from the classical pre-cyber-space development. This is because protection of company names in cyber-space has two aspects – an international and a national one. The research presented in this paper deals with the impact of technological development, particularly in its Internet and cyberspace forms, on business activities and the need to adapt current forms of protection to it and to the new communication and technological circumstances.*

**Key words:** *company name, domain name, e-business, competitiveness, changing global environment*

**JEL classifications:** *K20*

### **1. INTRODUCTION**

e-Business facilitates a very wide range of transactions (offer, presentation, negotiation, ordering, warranty, payment, delivery, claims, authentication, verification, etc.) on a

global scale, from almost anywhere in the world. There is no existing form of business that does not benefit from the new possibilities offered by the Internet. If these activities are to be secure and protected, however, the legal issues and potential risks must be properly understood. While the manner of doing business should be kept as simple as possible, there is a need for effective measures and procedures to ensure legal protection. Laws make life more predictable, and predictability is an essential prerequisite for any business.

Approaches to and arrangements for ensuring that companies are protected on the Internet vary by country. The degree of economic development and cross-border business determines how far a country looks into or regulates a company's presence in cyber-space and how it deals with the issue of protection. The international legal order is founded on the basis of relations between sovereign states. Cyberspace encompasses the world, with the result that the borders and, inevitably, the jurisdiction of sovereign states take on quite new aspects. The universal nature of doing business in cyberspace calls for differences to be eliminated in favour of legal regulation to ensure equal rights and obligations for all involved. This need for new legal solutions was first identified in the most developed countries (US, EU, Japan, etc.), but has since proved equally necessary in the rest. No country, and that includes Bosnia-Herzegovina, can tackle the legal regulation of business in cyberspace entirely independently. If new legal standards are to be introduced, the solutions in force in the various countries or associations of countries across the world must be reviewed, and the will, awareness, and ability for harmonization must exist in each individual country.

The extremely rapidly changing technology does not allow for the imposition of specific laws in cyberspace. This is why many organizations are now proposing and advocating the global coordination of legislative provisions. Efficiency in business depends on the level of confidence the public has in the companies dealing on the Internet. Dependability and trust, as social capital, acquire new meaning as Internet commerce increases in volume. Both technology and the challenges of business provide the impetus for the colonization of cyberspace. Technology is both a threat and a solution, which is why it is a challenge to existing legal and regulatory systems on the one hand, but also provides solutions to many of those threats, including security, integrity and authenticity, on the other.

## **2. COMPANY NAME AND DOMAIN NAMES**

This paper's argument and conclusions require clear distinction be made between the meanings of the following terms: 'company name,' 'trademark,' and 'domain name.' As the following text makes clear, treating these concepts as equivalent and failing to distinguish clearly between them is directly linked to the main problems affecting e-business.

The 'company name' concept (trade name, trading name, or business name) comes originally from German law. In business practice, it is effectively synonymous with the company itself, as its economic significance is greater than that of the other ways of

designating a company's status. Moreover, it is the company name that serves to distinguish the company's products and services on the market (Čović, 2003:53).

Businesses are players on markets and have a legitimate economic interest in promoting their image and so using their attributes to develop good will. It is particularly important that they develop a strong market identity vis-à-vis future business partners, whether users of their services or purchasers of their products. Their attributes as companies contribute in a number of ways to the development of a strong market identity aimed at promoting the business interests of both the company and its consumers or service users, as well as their protection, and the creation and maintenance of legal security on the market.

Companies base their corporate identity on the market on the following mandatory attributes: the company name; the business activities; registered place of business; nationality; and a unique identification number (Čović, 2003:52). In business practice, of course, other aspects may also serve to raise a company's profile and recognition-factor (e.g. its management).

The company name is an individual mark under which a business can and must conduct its business, so identifying and signing for itself (Simić and Trifković, 1999:304). According to Art. 12 of the Companies Act (Official Gazette of the Federation of Bosnia-Herzegovina), the company name is the name under which a company operates. This is why the company name is the most important mark of identity, a marker of status that is as such indivisible from the company itself. The company name frequently takes on broader reference than just the name. It is used to refer to the company itself, to make clear whether it is a good or poor one, that it is a name to do business with, etc., or to underline the precise legal entity involved (Velimirović, 1980:75) and so emphasize its quality as a company and the legal security involved in dealing with it.

Each company name must be clearly distinguished from that of every other company. What constitutes a 'clear' distinction cannot be defined in advance for all company names and will always be a matter of the actual circumstances. It is vital, however, that the distinction hold not just for the names of companies active in a given line of business, but for all businesses recorded with the court.

This is the principle of distinction. The company name must not include words or marks that could give rise to any confusion in the course of trading with respect to the kind or volume of business, lead to it being confused with another company's trade name or mark, or constitute the infringement of anyone else's rights (Companies Act of FBiH, Art. 16). Distinctions are required only with respect to company names already entered with the court register or for which application has been made.

A trademark is a recognizable mark or designation of some kind used by an individual, company, or another legal entity to make unambiguously clear to consumers the source of their product and/or service and to distinguish that individual or company's products or services from those provided by others. Trademarks are used to protect signs that can be graphically presented or which are suitable for distinguishing the goods or services of one trader from similar goods or services being offered by others (Act on

industrial property in BiH, Art. 69). The trademark is intellectual property and typically includes a name, word, sentence, logo, symbol, design, picture, or some combination of them (Pravni leksikon, 2007:1865). The trademark owner has the exclusive right to use it to mark the goods or services it is recognized for or in trading in them (Act on industrial property in BiH, Art. 86).

At present, there are no phone book-style directories of business addresses or Internet domain names. Businesses, therefore, often incorporate their company name into their domain name. This allows prospective customers to find their addresses on the basis of certain logical assumptions or by using a search engine to find their web sites. The purpose of the procedure is to register a domain name that is as easily recognizable as their address or phone number, and which very clearly refers to it.

As a result, the domain name increasingly represents the company on its business path. One may observe here the complex merging of two normally distinct mechanisms. The address, which is typically easy to recognize, does not determine the company name, any more than the company name normally provides enough detail to locate the company fully in the real world. The problem thus arises of discerning at what point the domain name transcends its role as mere address and becomes a determining factor in the company's identity (Lim, 2002:199-209). This is the heart of the confusion over trademark and domain name. Laws on real world trademarks include two core limitations which refer to pillars of the legal order – nationality and exclusivity. The Internet respects neither. Therein lies the problem. The company name and trademark may be protected within a national legal order, but that protection is not necessarily valid beyond the national borders, and the Internet transcends all national borders.

Since the Internet encompasses the whole world, no two registered domain names can be the same. Regardless of how different their activities may be or how geographically distant the jurisdictions, no two web sites can use the same domain name. There can, for instance, be only one *prince.com* or *kodak.com*, but there may well be two or more companies, in one or more countries, with an equal right to the name. The *prince.com* domain name was the subject of dispute between UK-based Prince Plc and US-based Prince Sports Inc (Prince Plc v. Prince Sports Group Inc, 1998). It is a classic case, where both parties had real world rights with respect to the disputed domain name. Such disputes are termed 'domain name envy,' as the plaintiff's case is based on the objection that the party being sued did not register the domain name first. Two further major types of dispute referred to in the literature are 'domain name hijacking' and 'reverse domain name hijacking.'

There are many cases of registered domain names that are the same or very similar to the company name or registered trademark of a well-known company. Such domains are frequently offered to the owners of the registered trademarks or company names at a high price or are used to attract people to unrelated sites. There need not necessarily be any intention of causing confusion. It may simply be due to a desire to profit from the charisma related to the trademark. This practice is often called 'domain name hijacking' or, more commonly, 'cybersquatting.'

Finally, there are cases of the owners of well-known or famous company names and trademarks aggressively pursuing policies aimed at preventing others from using any name that includes or suggests their registered company name or trademark. Such cases are sometimes called 'reverse domain name hijacking.' For example, the owner of 'McDonalds' trademark may attempt to register [www.mcdonalds.com](http://www.mcdonalds.com), [www.mcdonalds.net](http://www.mcdonalds.net), and [www.mcdonalds.co.uk](http://www.mcdonalds.co.uk), even though many persons and businesses might legitimately want to use one of these domains. In such disputes, the distinction between trademark and company name is often lost sight of, at least when it comes to the domain name. The domain name indicates the address located by the computer on the Internet. It does not necessarily play the role of trademark and/or company name, which are generally considered a mark of source or origin and are required on the market to signify the source of a product or service. Neither a trademark nor a company name can exist in a vacuum. It is through the trademark and/or company name that a relationship is established between the supplier and the customer of the goods or services. Unused trademarks or company names can be expunged from the register, while a sign will not function as a trademark or company name if it is only used to mark the trader's address. There have been attempts, however, in disputes over domain-names to equate the two (domain and company name), without due understanding and discussion of the differences between them.

When a company name is introduced into cyberspace, a number of advantages, but also of protection and legal issues ensue. A company that wishes to establish a presence in cyberspace must find a domain name that is unique worldwide. Its uniqueness must be established in the face of the millions of existing and potential domain names. A company will frequently find that its name, or the most appropriate domain name for it, has already been registered and is unavailable. They then face the question: How to deal with the problem of a name that has already been taken in cyberspace?

The parties to such conflicts of interest may be acting in either *bona* or *mala fide*, with the plaintiff requesting dispossession of an already registered name, its transfer, or deletion, and perhaps damages. In principle, the parties to such disputes may come from anywhere in the world, and so from different national jurisdictions.

Domain name registration and use is a business asset with a definite market value. The complexity and reach of cyberspace entail more than just business advantage. There are forms of domain name registration that are geared towards resale, disadvantaging competitors, restricting market freedom, etc. There have already been a number of cases of activities that require forms of legal protection to be established at all levels.

### **3. THE SIGNIFICANCE AND LEGAL CONSEQUENCES OF PLACING A COMPANY NAME ON THE INTERNET**

Planning and conducting business over the Internet and exploiting the opportunities it offers, in all its complexity, are unavoidable realities, an integral part of the modern market economy. Under these new conditions, the company name retains its original significance in terms of the theory of classic market operations, but takes on new aspects as well. A company name remains an institution whereby a relationship is

established between a supplier of goods or services and potential customers, so that they are led, as directly as possible, toward a given company and its agents, for the successful consummation of business relations.

Under the new conditions of doing business over the Internet, the domain name has a certain economic value. It facilitates the process of distinguishing its owner from competing company names, simplifying access by potential customers. The domain name content can render its owner and the company name more or less attractive to customers and consumers. Being effective on the market requires that the company name be easily recognizable on the Internet and as easy to access as possible.

Domain name identification is even more important for businesses that trade online. The domain name is not, however, exclusively a matter of intellectual property law, even though economic practice is full of cases of trademarks being registered as Internet domain names or companies applying to register easily recognizable domain names as their trademarks. There is no actual legal protection for domain names. Names are only registered with the authorized institution for priority of use. As Vesna Besarović points out, 'collision is possible, in business trade, between a trademark on the one hand and a company's trade name on the other. In cases of the deliberate acquisition and conduct of businesses, the law privileges the rights of the owner of the company name; i.e. where conflict arises over the same company name and trademark, the company name has priority' (Besarović, 1984:78). In resolving such disputes, national courts apply intellectual property law, which is not always suitable in the Internet context. This has led to the emergence of alternative forms of dispute resolution, with uneven success (Popović, 2005:7).

The domain name helps business credibility. A business with a domain name appears more professional. Since many people still do not trust the Internet and e-business, one has to do one's best to show that companies whose names are stressed in this way repay the interest of those who encounter them. If the owner of a company name has not invested the money required to register a suitable domain name, why should the customer trust the company's products and services?

A domain name increases the mobility of a company's Internet presence. When a company has its own domain name, it can move it from provider to provider or place it on its own server. If it does not have its own domain, it will have to take a new URL and a new provider, forfeiting the recognition built up through the first address.

An appropriate domain name can attract or open up business. Registering a domain name that refers to the business concept rather than the company name itself may attract searches across the net from individuals interested in the topic. For example, a bookstore registered as *manuscripts.com* might attract visitors looking for manuscripts over the Internet. On the other hand, search results are very difficult to predict. Manuscripts.com might equally generate a lot of results related to manuscripts that are completely irrelevant to the domain name owner's business interests.

The domain name contributes to building a business' profile. The name can significantly contribute to awareness of that profile. If the domain name corresponds to

the company name, it reinforces the profile, making it easier for customers to remember and so return to the site. It contributes to the success of direct communication with the customer, as they remember the name and pass it on to associates or friends.

Applying an appropriate business strategy for Internet-based operations assumes insight into and understanding of the main aspects of and ways in which the Internet works. 'Launching a business blindly on the Internet would be a little like flying an airplane without a flight manual. Even if you were able to get it off the ground, your business would be likely to crash and burn.' (Pink, 2001:12)

#### **4. PRESENTING THE COMPANY NAME ON THE INTERNET: ADVANTAGE IN A GLOBAL ENVIRONMENT**

Doing business electronically means planning, presenting, and running your business ventures through electronic networks. In such businesses, data are transferred and processed in computers and computer networks that are not closed or limited in space, but open to the whole world. e-Business involves the sale of products and services from a website over the Internet (Sparrow, 2000:9).

Websites are the most visible means of presenting a business to the world. The Internet is the means for such presentation. In this way, every interested person or business with access to the Internet has at their disposal full data on the business being presented. A website is, effectively, a shop-window or catalogue of the products and services a business has to offer potential and current customers visiting the website. Every website has a name, by which it is presented, visited, and remembered.

The US Supreme Court first opinion on the Internet includes language that gives hope that the courts there will accept the legal metaphor of cyberspace as a space beyond national borders (Menthe, 1998): 'Taken together, these tools constitute a unique medium – known to its users as “cyberspace” – located in no particular geographical location but available to anyone, anywhere in the world, with access to the internet (Menthe, 1998:n3).' The Internet is a medium through which a user in real space under a given legal system communicates with other users in real space under different legal systems. This will be found to be of fundamental importance for the degree to which national law can be applied to a given net community made up precisely of the interaction of numerous and highly centralized individual networks and or to their operations over the decentralized Internet through which they communicate. This is why one key aspect of how the Internet creates networks is that it acts logically, rather than geographically (Zekos, 2002:45-102).

A question arises at this point: What would a typical empirical framework that would allow companies to use Internet technology for private gain and, more broadly, for sustainable economic development look like?

e-Business in cyberspace increases a business's exposure to unfair market behaviour, uncertain means of payment, loss of privacy, and the lack of suitable legal protection.

e-Commerce is defined as any business activity that requires transactions to be conducted over a network such as the Internet.

e-Commerce provides benefits to both seller and buyer. The seller can build a global presence, reduce costs, increase competitiveness, and adapt the product more easily. e-Commerce allows order, delivery, invoicing, and payment times to be significantly cut, using the global web. e-Commerce is global and its advantages cannot be fully grasped unless it is possible worldwide.

Players in e-commerce agree that it should be by industry-led and that governments should support the industry by establishing an appropriate environment.

There are two causes of difficulties in regulating e-commerce. First, the framework and content of e-commerce and technology are subject to exceptionally fast change. Moreover, formulation of the law is a gradual process and is responsive to the needs of society. Secondly, the very nature of the technology involved means that it is trans-national and can lead to complications over which legal system has jurisdiction over e-commerce transactions. Digital media challenge our traditional understanding of borders.<sup>1</sup> Computers reproduce digital content while also acting on it. Such repetition is necessary for the system to function, and the computer makes copies as part of its routine operation.

Since the Internet transcends national borders, online activities raise issues of jurisdiction and the choice of legal system. For this reason, jurisdictional issues may impose additional costs on online transactions.

Businesses and consumers linked by e-commerce have direct access to manufacturers, bypassing the need for resellers or distributors in all cases where physical contact is not required. This helps economic activities approximate certain aspects of the ideal of perfect competition: low transaction costs, low entry costs, and a greater degree of information symmetry. On the other hand, lack of trust, uncertainty over the regulatory environment, privileged access, and logistical problems hinder the development of e-commerce.

Self-regulatory approaches needed to be placed within a legal framework that can ensure compliance and implementation. The customer needs access to web infrastructure and regulatory structures. This need is facilitated by the market framework, which both stimulates and limits the expansion of infrastructural capacity.

The development of new kinds of business activity in the electronic environment depends on both consumers and businesses believing that their use of net services is secure and reliable. Policies to promote e-commerce should therefore focus decisively

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<sup>1</sup> The concept of a 'digital medium' can be understood as 'digital technology' in the broadest sense, which includes the design, production, and development of all forms of hardware and software. This technology is based on binary mathematics, both conceptually and technologically. Two physical phenomena are reflected in the structure of the hardware receiving and processing information as 'non-existent' and 'existent,' to which correspond 0 and 1 in mathematics. This is what makes a medium 'digital' as opposed to 'analogue,' which is when physical phenomena are represented in terms of their quantities.



on the development and use of reliable technologies and policies and then on developing mechanisms to place legal restrictions on users who attempt to abuse these technologies.

While electronic transactions should be secure and reliable, they include calculated risk and will be accepted when their value is higher than the presumed risk.

In the very rapidly changing world of IT, governments and the private sector have to step up their game significantly. States should facilitate technologically neutral policy that does not squeeze e-commerce or impede online transactions by over-regulation. Lack of physical support for identification, on the one hand, and the ease with which perfect copies and invisible changes can be made to digital data complicate the use of cyberspace. Consensus between government, companies, and the public is thus required for the establishment and development of the e-business model.

Market globalization entails increasing interdependence between world economies. New technologies and the increasing number of new products contribute to market globalization. A few decades ago, the world market was dominated by a few multinational companies. This is no longer the case. Companies from all round the world are now active on the world market, in deals for which that global market provides the framework. Fundamental changes have thus taken place in international transactions.

They can be summarized as follows: a shift from the nation-state to individual entrepreneurship; a shift from nationally-based undertakings toward stable assumptions of competitiveness and capital; a shift from competition toward cooperation and from market diversity to market homogenization; and, finally, a shift from multilateral toward bilateral trade relations. Multinational activities mean conducting activities related to production, resources, and marketing in many markets. International organizations have made significant progress in developing the regulations, rules, and guidelines that govern their areas of responsibility.

##### **5. USING COMPANY NAME AND DOMAIN NAME FOR COMPETITIVENESS IN A CHANGING GLOBAL ENVIRONMENT**

Cyberspace can affect the main factors determining competitive conditions on any given market. First is the price of product development and entry to a given branch as a manufacturer. Second is the price of becoming known or wooing the customers, which is to say ability to become a player in large markets. Cyberspace allows and encourages unique products, direct links between the consumer and manufacturer, flexible working arrangements, and simplified conditions of entry for competitors from across the world in similarly expansive markets (PriceWaterHouseCoopers, 1999).

Business methods can be liberated from fixed sites, offices, or plants. At this point, it is uncertain whether cyberspace will become a new frontier, a space for the democratic realization of human aspirations, or simply another infrastructure that makes existing companies more efficient.

By definition, national law is restricted to a given territory, beyond which it is not applicable. Companies that plan to use cyberspace must make informed moves and make constant efforts to control the scope of their interaction with other forums.

The use of cyberspace to deliver goods and services and sell physical items has been constantly increasing. Given this trend, information technology is expected to drive economic growth for many years to come. Progress in information and communication technologies has facilitated the development of new products and art forms, their multiplication, and their distribution.

The greatest benefit brought by the digital economy is the universal availability of knowledge. Using the full range of modern technology in business both brings many advantages and imposes an almost equal number of traps. Those who understand the impact of new laws, regulations, and rules on business issues can avoid the major traps. Falling costs and the improvement in the consumer's position encourage the use of cyberspace in the field of sales. e-Markets must be competitive, with transparency regarding the consumers' ability to fully understand the value of a product or service before buying it.

e-Commerce cannot be developed without regulatory liberalization of the communication network environment. Competition has opened up new opportunities for new players in the economy. Many new types of business venture are attempting to tap into opportunities created by the Digital Revolution, straining on the existing supervisory and regulatory systems, whose main task is to protect the consumer and the public interest.

No answer is possible to the issue of how domain name relates to the introduction of a given company name in cyberspace that ignores the trends and dilemmas discussed above. Domain name clearly represents for each potential or existing participant in e-commerce a clear representation of the company's identity to potential partners and customers. If the domain name is to suit its owner's intention, it must be articulated on the basis of these opportunities and restrictions.

A customer identifies the domain name with the business. Given that the business has been planned and developed for years, the choice of a suitable domain name is decisive for business success.

The domain name should reflect the company name and be descriptive of its products or services. It should, however, be as short as possible, to allow the customer to memorize it easily.

## **6. CONCLUSIONS**

Businesses with considerable reputation and brand loyalty on the market possess a value that is not limited to the prices of their products and services. A company's reputation and loyalty to its name allow it a more efficient presence on the market,

increasing brand differentiation and reducing the impact of price changes, thanks to higher levels of customer loyalty. Businesses whose names are associated with strong partner loyalty on the market attract valuable potential customers, while retaining existing ones and the possibility of offering and selling them new products and services.

Leaving a business's name is unprotected, and thus exposed to threat or abuse, is tantamount to accepting ruin. Even minor harm to the name can have long-term consequences. For this reason, businesses must take whatever measures they can to protect their names from their inception. Once lost, a market reputation is very difficult to recover.

Doing business over the Internet also implies increased risk to a business's image or reputation. There are two ways the image may be at risk. The first is when a similar company name and/or trademark is in use, and the second is encroachment upon the domain name as a business asset.

Protecting the company name and trademark, given their connection with the domain name, which in turn implies the global framework of business over the Internet, presupposes the development and implementation of protection programs. Such programs would have to link the national framework of company name and trademark registration with the global framework of business over the Internet and with domain name registration and protection. Under contemporary business conditions, company name and trademark protection do not provide sufficient means of safeguarding one's business image. It also requires advertising slogans, unofficial product names, fictive marks, etc. It does not seem possible fully to prevent cyber-piracy, but their activities can be seriously limited by monitoring the use of company names and trademarks on the Internet and taking appropriate legal measures. In addition to the companies that monitor and chase cyber-pirates, businesses should also develop a strategy of encouraging employees, business partners and clients to investigate occurrences of unauthorized use of its own or confusingly similar company names, trademarks, or domain names.

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