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The Anticybersquatting Consumer Protection Act and your Web identity

After betting on yourself and opening a solo firm, things are finally humming along. Your carefully selected practice areas are in demand, and with wise marketing efforts on the Web, referrals are pouring in. All arrows are pointing up.

Pause to consider that online success carries risk. Take the practice known as reputational cybersquatting. Sole practitioners should prepare to meet this emerging threat.

Highjacking a lawyer's Web presence

In its commercial form, cybersquatting occurs when a party leverages another's trademark and goodwill by using a misleadingly similar domain name. Thus, Citigroup recently sued certain "anonymous foreign registrants" who acquired a number of "Citi" domain names and redirected visitors from Citigroup's legitimate sites to competing products and services. *Citigroup Inc. v. Citibankthankyourewards.com*, No. 1:14-CV-0855, 2015 WL 222161 (E.D. Va., Jan, 13, 2015).

Reputational cybersquatting takes a more personal and malevolent turn.

Just ask Jeffrey Wilens, a sole practitioner in California who operates a successful plaintiff class-action practice known as the Lakeshore Law Center.

Wilens does not expect to be adored by the defendants he sues, but never believed his firm's reputation would be jeopardized by a defendant-turned-cybersquatter. He learned something was wrong when a caller mentioned, "You sure made some enemies ... there is a website saying bad things about you."

After a quick Google search, Wilens was alarmed to find a substantial number of illicit, defamatory websites using variations of his personal and trade names — such as "lakeshorelawcenter," "attorneyjeffreywilens" and even a "jeffrey_wilens" Twitter account.

Those rogue sites targeted Wilens' practice and his standing in the legal community by misdirecting actual and potential clients to online locations making bizarre assertions of disbarment, incarceration and the like.

Fighting back with the Anticybersquatting Consumer Protection Act

Wilens was not versed in intellectual property law but driven by self-preservation — "You either fight back or find another occupation" — he went to work.

Because Wilens' stalker used untraceable foreign IP addresses that made direct interdiction virtually impossible, Wilens decided to go after the offending domains by pursuing the online service providers.

He filed a federal case under the Anticybersquatting Consumer Protection Act, naming his unknown attacker as a Doe defendant and including as parties the various domestic entities that sold, hosted and promoted the offending domains.

The ACPA protects both registered and common-law trademarks — including personal names in appropriate cases — from online exploiters who use domains that mirror the protected mark or are confusingly similar. The statute authorizes damages and injunctive relief.

Wilens used subpoenas and other discovery from the domain providers to identify all of the clandestine domains. Ultimately he obtained a court order that not only awarded damages against the Doe defendant and enjoined further cybersquatting, but further directed the domain providers to either cancel the offending domains or transfer ownership to Wilens.

Although Wilens' efforts to protect his online identity continue — his now-identified attacker continues its smear campaign through various Internet-based complaint centers — Wilens is grateful he was able to shut down the fraudulent domains and protect his professional identity — his most valuable asset — using the ACPA.

For more information, see *Wilens v. Doe Defendant No. 1*, No. 3:14-CV-02419, 2015 WL 4606238 (N.D. Calif., July 31, 2015).

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Be vigilant in protecting your Web identity

With a caution that First Amendment and attorney ethical considerations apply — legitimate public discourse includes criticism, and attorney communications are regulated — sole practitioners can minimize exposure to cybervillain attacks.

1. Trademark your firm name.

Maximize your protection by trademarking your firm name. Because common personal names can be difficult to protect, this may be a good time to consider using a trade name, which may have other benefits. If a trade name is used, make sure to comply with Rules 7.1 and 7.5 of the Illinois Rules of Professional Conduct.

2. Monitor your reputation on the Web with Google Alerts.

Your free Google account provides yet another valuable resource. Google's Alerts function offers customizable, automatic Google searches for your chosen content on a daily or weekly basis. When Google records a hit on your automated search, you receive an e-mail with a link to the designated subject matter.

By setting up a daily search for content involving your firm name, you will be informed of developments, positive or negative, nearly in real time.

3. Consider an online reputation management service.

If you are not inclined to self-monitor, check out this option. Some firms combine online review management, marketing visibility and social media promotion to boot. This approach can both protect and market your firm name, but tread carefully — make sure to use a trusted provider who complies with all ethical requirements and understand what you are purchasing.

4. If you are under attack, go to court.

Although pursuing an anonymous cyberstalker in court can tax a sole practitioner's resources, there may be no other option. Wilens quickly learned that Internet regulation at times "is like the Wild West," and "you have to fight fire with fire."

The ACPA provides a powerful weapon against domain misdirection, even if the offender cannot be found. As Wilens will tell you, "Getting your name back is well worth the effort."

SOLE SPEAK

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