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HOW 'TYPOSQUATTERS' REDIRECT WEB USERS TO THE GUTTER

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Typosquatting -- the intentional misspelling of words in domain names to siphon off Internet traffic from its intended destination -- can lead to loss of the misspelled domain names and legal findings of bad faith.

This was the result in the recent case National Association of Professional Baseball Leagues Inc. v. John Zuccarini with respect to the domain name minorleaugebaseball.com, which contains a commonly made typographical error, and which caused Internet traffic to be directed to a pornographic Web site.

The National Association of Professional Baseball Leagues (NAPBL) was formed in 1901 and has jurisdiction over professional baseball farm clubs affiliated with Major League Baseball in the United States and Canada. The NAPBL has asserted that it has used the mark "minor league baseball" since its inception in connection with a wide range of goods, including printed matter, jewelry, clothing, sporting equipment, and housewares, in connection with entertainment services in the nature of baseball games and exhibitions.

The NAPBL registered the domain names minorleaguebaseball.com and minorleaguebaseball.org in 1996 and 2000, respectively. Leagues received various related trademark registrations in 2001.

John Zuccarini registered the disputed domain name minorleaugebaseball.com in May 2000. As of the end of 2001, that domain name directed traffic to a pornographic Web site. The NAPBL learned about this from an informant who stated, "[I]t's not the kind of place that you want kids to hit by mistake." As of late 2002, the domain name directed traffic to yet another pornographic site.

Zuccarini has a lengthy history of registering domain names using the trademarks of others or slight misspellings of them. Indeed, in one case, he admitted that he registered thousands of domain names because they are confusingly similar to the famous marks or personal names of others.

The NAPBL filed suit with the World Intellectual Property Organization (WIPO) to arbitrate Zuccarini's registration of minorleaugebaseball.com. The NAPBL sought cancellation of Zuccarini's registration and argued that the domain name is confusingly similar to its registered marks and a common law mark, that Zuccarini had no legitimate interest in the domain name, and that he had registered the domain name in bad faith.

Zuccarini responded by arguing that his registration was proper because his domain name simply contained the misspelling of the generic, and arguably unprotectable, term "minor league baseball."

The three-member WIPO panel that presided over the arbitration ruled squarely in favor of the NAPBL. The panel first ruled that the association had protectable rights in the expression "minor league baseball." The panel then found that the typosquatted domain name minorleaugebaseball.com is confusingly similar to the NAPBL's mark. The panel then concluded that Zuccarini is not commonly known by the disputed domain name and that he has not used the name for the bona fide offering of goods or services.

The panel then found that Zuccarini's registration of the disputed domain name was in bad faith, entitling the NAPBL to relief. The panel found bad faith because "typosquatting is inherently parasitic and of itself bad faith" because the intent is to "siphon off traffic from its intended destination, by preying on Internauts who make common typing errors." Furthermore, directing traffic to a pornographic Web site is "clear evidence" of bad faith. The conclusion of bad faith by the panel was reinforced by "the pattern in which [Zuccarini] has engaged by registering multitudes of suchmisspelled names."

Although the NAPBL sought cancellation of Zuccarini's registration, the panel was concerned that cancellation would "only place the domain name back into the public domain from which [Zuccarini] or others can re-register it, hence perpetuating the problem which [the NAPBL] now faces." Accordingly, and even though not requested, the panel directed Zuccarini to transfer the disputed domain name to The NAPBL.

At the end of the day, typosquatting may not survive as a successful business approach, especially if the law has anything to say about it.

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