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Via: ICANN Public Comment Portal

April 18, 2022

Mr. David Olive
Senior Vice President
Policy Development Support
801 17th Street NW, Suite 400
Washington, DC 20006, USA

Re: INTA Comments on the UDRP Policy Status Report

Dear Mr. Olive:

The International Trademark Association (INTA) is pleased to have the opportunity to provide ICANN with input on the UDRP Policy Status Report (the "Report"). INTA thanks the GNSO for its work in compiling the background on the UDRP processes and procedures and the detailed data on UDRP complaints and decisions, which were helpful in informing INTA's comments concerning any review of the UDRP.

The UDRP Has Been Extremely Effective in Meeting ICANN's Goals

The abusive use or registration of domain name registrations necessarily damages the goodwill developed by brand owners in their marks and is frequently part of a scheme to defraud consumers.¹ As recognized by the Report, the UDRP was adopted by ICANN in order to provide an efficient, quick, cost-effective and fair substitute to traditional litigation for clear cases of cybersquatting.² Based on the experience of its members and the data summarized by the Report, INTA believes that the Policy has been effective at targeting straightforward cases of cybersquatting and that the UDRP has and continues to meet these goals overall.

The information provided by the Report speaks volumes about the scope of the problem that the UDRP was designed to address and the UDRP's effectiveness in doing so. For example:

¹ Report at 21.

² Report at 4.

- A total of 38,349 UDRP complaints involving 67,318 domain names were filed with UDRP Providers from 2013-2020.³
- Complainants succeeded in obtaining the disputed domain name in about 78% of cases across all dispute resolution Providers from 2013-2020.⁴
- There has been an average annual growth rate of 300 complaints per year from 2013 – 2020 across all UDRP Providers.⁵

This data demonstrates that the scope of cybersquatting is massive and continues to thrive. Indeed, the problem is international -- trademark owners from at least 25 countries worldwide have sought relief under the UDRP.⁶ Moreover, absent the availability of the UDRP, trademark owners would have had to incur massively greater expenses to take action against bad faith registration and misuse of their trademarks as domain names. In addition, the damage to brand owners and to consumers from the use of abusive trademark registrations would have remained largely unabated and would undoubtedly be even greater than it is today without the deterrent effect of the UDRP.

No Changes to the UDRP Are Currently Necessary

Although no system may ever be perfect, as discussed in the Report, any problems with the UDRP are outweighed by the benefits resulting from the UDRP and are not sufficient in number, absolutely or relatively, to warrant any major changes to the UDRP.

If a consensus exists that changes to the UDRP and its implementation should be considered, INTA believes some elements may be appropriate to address, namely:

- The requirement that a domain name has been registered and that it has been used in bad faith is too restrictive. For example, the UDRP should cover the situation where a domain name may have initially been registered in good faith, but the registrant later decided to use it for bad faith, or where a domain name is registered in good faith but later transferred to an entity that uses it in bad faith. Moreover, it may be difficult to show what the registrant's intent was at the time of registering a domain name.
- It takes from 60-75 days in which to receive a decision after a Complaint is filed with WIPO,⁷ during which time the damage to brand owners and to consumers from an abusive domain name continues unabated, which is unnecessary where the respondent is going to default. This period could be shortened by requiring a response to a UDRP complaint within, for example, 14 days, with leave to request an additional six (6) days in order to have the 20 days allowed currently.
- Registrars are supposed lock domain names before a complaint is forwarded to a respondent and implement UDRP decisions if no civil action is filed within ten (10) days after a decision is issued. These obligations are not always being met and stricter compliance solutions could be considered.
- ICANN's search tool for UDRP decisions⁸ is no longer operational. Having such a tool available would provide complainants and respondents with a valuable resource and enhance consistency. Consideration could be given to reinstating the search tool.

³ Report, Table 2, at 38-39.

⁴ Report at 55.

⁵ Report at 11.

⁶ See https://www.wipo.int/export/sites/www/pressroom/en/documents/pr_2022_886_annexes.pdf#page=13.

⁷ Report at 45.

⁸ <https://archive.icann.org/en/udrp/udrpdec.htm>.

Despite these concerns, however, INTA believes more pressing issues face ICANN that should be prioritized above consideration of changes to the UDRP.

About INTA

The International Trademark Association (INTA) is a 143-year-old global, not-for-profit association with more than 6,500 member organizations from 185 countries. One of INTA's goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. For more than two decades, INTA has also been the leading voice of trademark owners within the Internet Community, serving as a founding member of the Intellectual Property Constituency of the Internet Corporation for Assigned Names and Numbers (ICANN). Among other things, INTA has provided input to ICANN regarding the development and adoption of the UDRP.

Sincerely,

A handwritten signature in black ink, appearing to read "Etienne Sanz de Acedo". The signature is stylized and cursive.

Etienne Sanz de Acedo
Chief Executive Officer