



## **Lackebach Siegel Client Alert**

### **A LACKENBACH SIEGEL CLIENT ALERT FOR DECEMBER 2000**

## **Good News! The new Anticybersquatting law has Teeth!**

On October 30, 2000, the United States District Court for the Eastern District of Pennsylvania awarded a trademark owner \$500,000 in statutory damages, and \$30,653 in attorneys' fees, holding that defendant had violated the new Anticybersquatting Consumer Protection Act by registering and using Internet domain names that were misspelled versions of plaintiff's registered trademarks. *Electronics Boutique Holdings Corp. v. Zuccarini*, (E.D.Pa., No. 00-4055, 10/30/00).

Electronics Boutique owns federal trademark registrations for the marks EB and ELECTRONICS BOUTIQUE. It also owns and operates an Internet web site which can be accessed via the registered domain names EBWORLD.COM and ELECTRONICSBOUTIQUE.COM.

Mr. Zuccarini registered the following confusingly similar Internet domain names: ELECTRONICBOUTIQUE.COM (no S); ELECTRONICSBOTIQUE.COM; EBWORLD.COM; and EBWORLD.COM. Therefore, any of Electronics Boutique's current or potentially new customers who hit the wrong keys on their keyboards would be misdirected to Mr. Zuccarini's web sites. These web sites, in turn, "mousetrapped" the misspeller (i.e. lost and/or shocked customer) into a series of advertising windows featuring third party products.

This case is instructive as it highlights the importance of protecting your trademarks and e-commerce business from the dangers presented by misspelled and confusingly similar domain names. As the Internet is the newest frontier for trademark infringement, please contact us if you would like us to evaluate your trademark and domain name portfolio. [glandau@LSLLP.com](mailto:glandau@LSLLP.com)



## .aero .biz .coop .info .museum .name .pro

On November 16, 2000, the board of directors of the Internet Corporation for Assigned Names and Numbers, (ICANN) announced its approval of the above seven new generic Top Level Domain names (gTLDs).

Of the seven new gTLDs, two (.biz and .info) are considered general purpose, and will compete directly with the existing .com and .net gTLDs. The remaining approved gTLDs are reserved for specific purpose sites: .aero for airline industry groups; .coop for cooperative groups; .museum for museums; .name for personal services; and .pro for professional groups.

For each approved gTLD, ICANN selected specific entities to act as the registrars. Before the new gTLDs become available, ICANN must negotiate and execute registry agreements. The proposed schedule for completion of negotiations is December 31, 2000, after which the agreements must be approved by ICANN's board of directors. Following that approval, the ICANN board will forward its recommendations to the U.S. Department of Commerce for implementation.

The U.S. Federal Trade Commission issued a <sup>3</sup>consumer alert<sup>2</sup> warning against a scam targeting would-be web site owners offering <sup>3</sup>pre-registration<sup>2</sup> of the new gTLDs. As noted above, the process is not yet complete and pre-registration is not available. The FTC specifically warns against any offers received from unsolicited e-mail or facsimile and against any offers which seek the payment of up-front fees. As detailed above, each new gTLD will be administered by a specific registrar selected by ICANN. The selected registrar for the .biz gTLD is JV Team LLC/ The selected registrar for the .info gTLD is Affilias LLC, an international cooperative of 19 registrars.

For additional information or advice regarding the new gTLDs, please contact: [rgolden@LSLLP.com](mailto:rgolden@LSLLP.com).

## SWEET SUCCESS & DEEP LINKING

### SWEET SUCCESS

On November 16, 2000, personal jurisdiction of an accused cybersquatter was found by the U.S. District Court for the Eastern District of Pennsylvania, based upon an e-mail and telephone contact from the accused Lanham Act infringer to plaintiff.



Nutrisystem.com, owner of the "Sweet Success" trademark for diet foods, survived a motion to dismiss for lack of personal jurisdiction based upon such limited contact surrounding an offer to sell the sweetsuccess.com domain name. The accused site was not "merely" passive, but simply led to a third party home page where the site was listed for sale. *Nutrisystem.Com Inc. v. Easthaven Ltd.*

## DEEP LINKING NOT PER SE ILLEGAL

Recently, a California District Court found that unauthorized deep linking (the practice of hyperlinking from your website to an interior level (page) of another site) was not illegal per se. In this unpublished case the linking included clear notice of a lack of association between the respective sites, and there was readily available information about the identity of the linked site including trademarks identifying the linked site. The analysis of the court surrounded what information was available to users about the different locations, ownership, non-affiliation and the like. *Ticketmaster Corp. v. Tickets.Com, Inc.*

To discuss these issues further, please contact: [haronson@LSLLP.com](mailto:haronson@LSLLP.com)

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