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News & Articles

Dot-Gain

Who Wants To Be A Domain Name Millionaire? By Bryan P. Sugar, Esq.

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Dot-com domain names have been sold in recent years for several millions of dollars. For example, Business.com sold for over \$7 million and Loans.com sold for \$3 million. On April 24, 2002, NeuStar Inc., operator of the dot-US registry, opened registration for dot-US domain names to the public for the first time, allowing Americans and those with a substantial connection to the United States to register the dot-US equivalent of these multi-million dollar domain names.

Suppose I told you that an individual with no ties to the United States registered one of those dot-US million dollar domain names, and that if you spent \$700 you would be able to have his domain name cancelled? In other words, you have a chance to exercise your patriotic duty by shelling out \$700 of your hard earned money to prevent someone without a nexus to the United States from having this valuable domain name. Would you do it? Probably not.

What if the rules changed? What if by paying the \$700 you are able to force this foreign individual to transfer the valuable domain name to you? You might just consider it. With some diligent work, and a lot of luck, your dreams of being a domain name millionaire could become a reality. The rules may in fact be changing.

NeuStar is revising the Nexus Dispute Policy (NDP) to give people who successfully contest a dot-US domain name registration the option to keep the names they challenge.

The NDP

Dot-US domain names are restricted to U.S. citizens, residents, businesses and foreign entities that have a bona fide presence in the U.S. The NDP was specifically designed to encourage Americans and those with a nexus to the United States to police the dot-US domain names that are issued to the public.

The only ground for an NDP complaint is that a dot-US domain name owner does not comply with the NDP's nexus requirements. Those include being: (1) a U.S. citizen, permanent resident or primarily domiciled in the U.S.; (2) a U.S. entity or organization incorporated in one of the states or the District of Columbia; or (3) a foreign entity with a bona fide presence in the U.S., including "real and substantial lawful connections" in this country.

Currently, the NDP only gives you the ability to prevent someone from owning a dot-US domain name. So if you win an NDP dispute you get nothing but the satisfaction of knowing that you have done your patriotic duty of the day.

Recognizing the futility of this remedy, the .US Policy Council voted recently to modify the NDP to let successful contestants keep the domain names they challenge. Consequently, if you are one of the millions of people that missed the opportunity to register one of the rare million-dollar dot-US domain names you might have a second bite at the apple.

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What's The Catch?

As with most things – there is a catch. Even if you find a valuable domain name that is registered to a foreign individual or entity, there is no guarantee that you will win the NDP domain name dispute.

When a NDP complaint is filed, an initial evaluation of the complaint is conducted to determine whether the statements alleged in the complaint demonstrate that the registrant of the domain name did not comply with the NDP nexus requirements.

For example, if an individual registered the dot-US domain name you seek to obtain, your complaint has to demonstrate that the individual that registered the domain name is not: (1) a United States citizen, (2) a permanent resident of the United States, or (3) primarily domiciled in the United States. In order to pass this initial stage of review some investigative work will be required in order to support your allegations that the registrant does not meet the NDP requirements.

In order to discover the necessary information you may need to hire a trained investigator, this will add to your bill for filing the complaint, not to mention that you will likely need to seek the assistance of an experienced intellectual property attorney to draft the complaint.

If the complaint passes the initial review, the arbitrator will issue a letter to the registrant asking the registrant to submit evidence that it has complied with the NDP. The registrant is given 30 calendar days to respond to the arbitrator with proof that it satisfies at least one of the NDP requirements. If the registrant submits evidence in its response letter establishing any of the NDP requirements, the game is over -- you lose.

If the arbitrator decides that the registrant's evidence fails to demonstrate that it meets any of the NDP nexus requirements, the arbitrator must notify the registrant that it has 30 days to "cure" this situation. In other words, the registrant has 30 days to produce evidence that it has established a nexus with the United States in a manner that satisfies at least one of the requirements of the NDP. If the registrant is able to demonstrate to the arbitrator that it has "cured" the situation prior to or during the 30-day period, the arbitrator will issue a finding that the registrant gets to keep the domain name.

However, if the arbitrator determines that the evidence submitted by the registrant still fails to meet any of the NDP requirements -- or if the registrant does not respond within the 30-day cure period -- you win.

Deep Thoughts

There is a risk-reward ratio in NDP disputes. Once the proposed changes to the NDP are adopted, bringing an NDP complaint has the potential to bring great reward. However, winning an NDP dispute is in no way a certainty. There is no question that bringing an NDP proceeding against a foreign registrant is risky, but if you happen to find a diamond-in-the-rough domain name, it just might be worth it.

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http://www.domainmart.com/interact/most-valuable.htm#Highest_prices

<http://www.arb-forum.com/domains/NDP/fees.asp>

http://www.neustar.us/policies/docs/nexus_dispute_policy.pdf

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