

## BOOK REVIEW

### THE CURRENT STATE OF DOMAIN NAME REGULATION: DOMAIN NAMES AS SECOND-CLASS CITIZENS IN A MARK- DOMINATED WORLD

*Konstantinos Komaitis*

New York: Routledge, 2010, 264 pp, £80, ISBN 978-0-415-47776-5 (hbk)

It was once said that “attending a conference is a professionally rewarding experience”.<sup>1</sup> This is certainly true in the case of this book, as the author, Konstantinos Komaitis, only became interested in the scope of domain names as a result of his attendance at a conference. Ten years later, he produced this remarkable piece of work, described as a “story of [his] experience”.<sup>2</sup>

The aim of the book is to share the many interesting ideas of the author regarding his perspective on the regulation of domain names. It presents them as those of an aggrieved party, as in current disputes over domain names and trade-marks, and tries to regenerate some interest in the questionable legitimacy of the *Internet Corporation for Assigned Names and Numbers* (ICANN) and its policy, the Uniform Domain-Name Dispute-Resolution Policy (*UDRP*). In doing so he attempts to reveal how the theme and philosophy of the *UDRP*, which he sees as biased toward the encampment of trade-marks, jeopardises the regulation of both domain names and trade-marks alike.

The book provides practical advice for navigation of the challenging area of professional responsibility for trade-mark and domain names. Its focus, on managing domain names as e-property, does an excellent job of identifying the ethical problems in a manner that is comprehensive, up-to-date and practical. It looks at the institutional problems that arise in domain names and provides much practical advice in taking the issue of trade-marks and domain names forward.

According to Komaitis, the disputes over trade-marks and domain names have increased dramatically in recent years, adding interest to the study of the subject. It portrays well the concept of domain names as a property and the history of the evolution of domain names as intellectual property.

Komaitis begins with property and philosophy in order to clarify the nature and statutes of the main subject in question, domain names. His thesis is that the crucial issue is the ambiguity of their nature or legal orientation, as he sees no basis for regarding domain names as an entity. He examines the technical nature and functions of domain names from various legal perspectives: as trade-marks, as service contract

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<sup>1</sup> M Ernst, ‘Attending an Academic Conference’ [2004] available at <http://www.cs.washington.edu/homes/mernst/advice/conference-attendance.html> (accessed 1 December 2010).

<sup>2</sup> K Komaitis, *The Current State of Domain Name Regulation: domain names as second-class citizens in a mark-dominated world* (Routledge: New York 2010) xxv.

rights, and then as property. Important questions about the functions and the economic value of trade-marks are also examined in this part, demonstrating that trade-marks are driven by politics and that, according to the UDRP of ICANN, the rules governing them are unfair.

Part II is headed ‘institutional problems’, and here the author raises certain issues regarding the regulation of domain names. He clarifies and comments on the history and development of domain name regulations and the ICANN prior to the issuance of the UDRP. The treatment of the subject is up-to-date and provides much needed guidance and understanding of the legal sources of regulation of domain names and their disputes. The author criticises, for example, the basis of the UDRP of ICANN by comparing it to ‘lex mercatoria’. This continues with an evaluation of the procedural issue of the ICANN and its policy (the UDRP), which is seen as being oppressive for domain names as opposed to trade-marks. The UDRP is also evaluated under the principles of free speech. After examining domain names under the United States Anticybersquatting Consumer Protection Act (ACPA), this section ends with the perspective of the author regarding the appropriate application of the UDRP and the ACPA on domain name issues. He finishes by confirming the need for fair processing and balancing of the decisions awarded under the UDRP.

It is appropriate that a large part of the book is devoted to the institutional conduct and regulation of domain names. Part III discusses the appropriate response to the aspects and issues raised in the previous parts; the intention is to demonstrate the need for a solid ethical framework, which - according to the author - is missing in the UDRP.

Moving on, in Part IV Komaitis reflects on the themes of the book by exploring how to deal with domain names. In particular, he raises the importance of going back to the basics of domain name regulations: he places the procedural, techno-legal and political aspects of the UDRP under the microscope. He also discusses issues regarding domain names and trade-marks that have arisen in recent disputes; he provides practical advice as well as pointing out problems and policy concerns with the law in its current state. He also critiques recently proposed solutions including, for example, the ICANN proposal to permit proprietors to register their trade-marks as generic Top Level Domain names ('gTLDs'). He also shares with readers how the Implementation Recommendations Team (IRT) has reviewed this ICANN proposal.

Although the primary audience for this book will be legal researchers, academics, regulators and judges, it will also be of interest to practitioners and students who are looking for a concise treatment of the topic. Certain trade-mark proprietors or domain name holders will be interested in certain sections of the book that may help them define and understand their rights. The book is recommended for all those in the field of intellectual property law, trade-mark law, Internet law, e-commerce law, information technology law and cyberspace law as well as arbitration law. It is a valuable resource, particularly for those interested in the ICANN and the UDRP, as it provides a clear analysis of the vague aspects of these as they relate to Internet disputes, especially regarding the conflict of domain names and trade-marks.

The author provides a thorough, comprehensive, and up-to-date treatise on this important and timely topic, making it a valuable contribution to the literature on the subject, fulfilling an important need. Komaitis has examined the jurisprudence that highlights the main issues discussed in the book. An in-depth study of the case law reflects the UK, US and other international perspectives on these issues. This is most evident in Part IV\*, where the author uses important cases to discuss the status of

domain names. The decisions of the World Intellectual Property Organisation (WIPO) also provide major insight into the issue of domain names and how they have been analysed at other regulatory levels.

The author successfully deals with the relationship between trade-mark and domain names by defining the scope of each, and suggests that the boundaries he draws can be supplemented with laws, orders or rules. In his view this will help to avoid the mistakes that led to consideration of domain names as 'second-class citizens'.

The primary message of this book is that we have a responsibility to regulate domain names, and that practices should be adopted to minimise risks associated with trademarks, though it would be difficult to wholly eliminate inadvertent conflict between domain names and trade-marks. Komaitis recognises the limitations on legal practice, and identifies the current prevalent practice, which cannot avoid conflict but which is feasible without becoming too expensive in the future. In my view the content of the book is excellent and it gives a thorough and comprehensive study on the subject. It is a valuable contribution on the subject of domain names and should be on the top of the list for researchers seeking answers to questions on the state of domain names. It will also be extremely useful for researchers on the scope of trade-mark and domain names disputes, including the encampment of domain names or trade-marks, and for any who seek fair and neutral solutions to conflicts between the two.

Readers will find that Komaitis has employed a variety of legal terms and technical words that have enriched his style, helping them to familiarise themselves and then to better understand the terms and abbreviations within the scope of the book. The structure and content of the book is good, and its citation style is endnote - good news for those who prefer not to be disturbed by footnotes.

The book is currently available as hardback, and perhaps the publisher should review the price in order to increase its reach. The information, arguments and analysis in the book are all original, and not just a collection of data that could be found somewhere else. Originally a PhD thesis and subsequently published as a book, it is supported by the thoughts of well-known specialists in the field such as Milton Mueller, Catherine Colston, Robin Gross, Kathryne Kleiman and others. For someone like me, interested in the scope of intellectual property and trade-marks versus domain name issues, it is highly recommended. It deserves to be read and will benefit those who do so.

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