

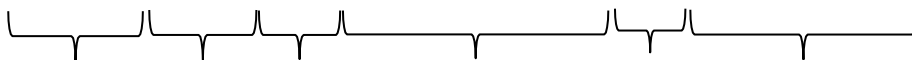
Domains

1. General

For the identification and accessibility of computers on the Internet, each computer is assigned an IP address. This consists of 4 bytes with a maximum of 12 digits, e.g. 132.187.1.117. Since these are unsuitable for comfortable use, the Domain Name System ("DNS") was introduced. This assigns an IP address to each domain name, for the example above "jura.uni-wuerzburg.de".

The URL ("Uniform Resource Locator") is to be distinguished from this. This represents the entire Internet address. As an example:

<http://www.jura.uni-wuerzburg.de/lehrstuehle/>



Hypertext Transfer Protocol	World Wide Web	Third- level domain	Second-level domain	Top- level domain	Subdirectory
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The highest level of the hierarchy for German domains is the top-level domain ".de". All second-level domains available under this are unique and are allocated by DENIC according to the priority principle. In this procedure, DENIC does not carry out any checks with regard to conflicting rights of third parties.

2. Legal nature of the domain

By registering a domain, the holder does not acquire an absolute right, but merely a claim under the law of obligations against DENIC with the content of being allowed to use a certain domain name for a certain IP address.

Registration as such does not constitute acquisition of a trade mark under the MarkenG. Therefore, a registration as a trade mark according to Sec. 4 No. 1 MarkenG must be made at the DPMA or the trade mark must have acquired a reputation, Sec. 4 No. 2 MarkenG.

However, it is more likely that the domain will be used as a company sign under Sec. 5 (2) MarkenG if it is suitable for indicating the company origin and is not merely used as an address designation. Protection as a title of work under Sec. 5 (3) MarkenG is also conceivable.

3. Transmission

The claim under the law of obligations against DENIC for connection can be transferred to third parties by legal transaction. The transaction of disposal in rem takes place by way of transfer of the contract in accordance with Sec. 398 et seq. and 414 of the German Civil Code (BGB). However, Sec. 6 of DENIC's Domain Terms and Conditions is contradictory. On the one hand, it provides for transferability, but on the other hand it requires the previous domain holder to give notice of termination. With the successful completion of the registration, the transfer to the new holder is effective.

4. Collision Domain vs. Trade Mark

Collisions between domains and trade marks are possible.

The domain holder must act in the course of business. Mere

registration by a natural person does not constitute a rebuttable presumption in this regard.

Furthermore, use as a trade mark is required, for which use with a “construction site sign” is not yet sufficient (BGH, GRUR 2005, 687, 689 – *weltonline.de*; GRUR 2008, 912, 913 – *Metrosex*). Registration is only unfair to competitors under Sec. 4 No. 4 UWG if special circumstances exist (BGH, GRUR 2009, 685, 688 – *abd.de*).

An infringement in the identity area according to Sec. 14 (2) No. 1 MarkenG only exists in case of identical use of domain and trade mark. The area of identity is already not affected if the top-level domain (e.g. “.de”) is added to the trade mark (BGH, GRUR 2005, 262, 263 – *soco.de*). Therefore, an identity can only exist if the trade mark is registered like a domain name.

For the likelihood of confusion under Sec. 14 (2) No. 2 MarkenG, on the other hand, only the second-level domain is taken into account, i.e. elements such as “www.” or “.de” are not taken into consideration (BGH, GRUR 2005, 262, 263 – *soco.de*).

The protection of reputation under Sec. 14 (2) No. 3 MarkenG is mainly affected in the case of abusive registration of a well-known trade mark in order to generate access to one’s own site (“cybersquatting”), in the case of registration of the domain with typical typos of well-known trade marks (“typosquatting”, but cf. also BGH, GRUR 2014, 393 – *wetteronline.de*) or if the name or content of the domain is likely to impair the reputation of the trade mark.

5. UWG

If there is no protection according to Sec. 14, 15 MarkenG, the law of unfair competition may intervene.

a) Targeted obstruction, Sec. 4 No. 4 UWG

In cases of *domain grabbing* (also known as *cybersquatting*), a domain is not registered in order to provide one's own content, but only to hinder another person and to gain one's own economic advantages by offering it for sale to a third party.

Targeted obstruction may also be present in the case of *typosquatting*, in which the trade mark of a competitor is registered with a typical typographical error in order to direct its users to the company's own website. Unfair obstruction may be given in form of intercepting customers if the Internet user does not find the expected service, but merely advertising. However, there is no unfairness if the user is immediately and conspicuously made aware of the fact that he is not on the website he intended to access (BGH, GRUR 2014, 393, para. 40, 48 - *wetteronline.de*).

The mere use of a domain with a generic designation, on the other hand, does not yet constitute targeted obstruction, since the aim is not to intercept customers from third parties but to direct them to the company's own site (BGHZ 148, 1, 8 = GRUR 2001, 1061, 1063 - *mitwohnzentrale.de*). In this case, further circumstances must be added for unfairness, e.g., if the domain is misleading or is registered also under multiple other top-level domains.

b) Misleading, Sec. 5 UWG

A domain can be misleading if it is likely to trigger relevant misconceptions in the Internet user. This is the case, for example, if no lawyer is active under the domain "rechtsanwalt.com" or if no company in the legal form of a stock corporation is behind a top-level domain ".ag" used

in Germany (OLG Hamburg, NJW-RR 2002, 1582, 1583 - *rechtsanwalt.com*; CR 2004, 769, 771 - *tipp.ag*).

Usually a generic domain does not contain a unique selling proposition (“Alleinstellungsbehauptung”). For example, the domain "drogerie.de" is permissible because the public does not expect to find all providers of drugstore products on the Internet under this domain (OLG Frankfurt, MMR 2002, 811, 813 - *drogerie.de*). Also a combination of a generic term with a profession or city name does not create the impression that the company is the only or leading one in the locality (BGH, GRUR-RR 2011, 7 – *Steuerberater-suedniedersachsen.de*).

6. Tort Law

If the domain holder is not acting in the course of trade, or if the domain is merely registered but not used, recourse to Sec. 12, 823 (1), 826 BGB remains possible. However, a concrete offer for sale or the registration of a large number of well-known trademarks is required for the existence of an immoral intent to cause damage (OLG Frankfurt, WRP 2000, 645, 646 - *weideglueck.de*).

7. Legal consequence

The legal consequence of an infringement is not a claim to transfer of the domain to the infringed party, but merely a claim to relinquishment of the domain. A transfer, for example analogous to Sec. 8 (2) PatG or Sec. 894 BGB, fails because there is no absolute right to the registration of a domain. For these reasons, no transfer can be demanded on the basis of presumed self-dealing under Sec. 687 (2), 681, 667 BGB or on the basis of encroachment condemnation under Sec. 812 (1) (1) (Alt. 2) BGB (BGH, GRUR 2002, 622, 626 - *shell.de*).