

Domain name disputes in economic competition

K o p č o v á, R.*

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Domain disputes in competition. *Domain registration is currently one of the most effective and common forms of “virtual existence” of competitors. Domain names are included in the system of industrial property rights related to signs. They serve the same identifying – and distinguishing – goods and services in the marketplace function as other industrial property rights for signs, especially trademarks, but in the online world. This is the main reason why there are frequent conflicts between individual signs contained in domain names. This creates competition on the Internet, and logically, it also leads to certain forms of unfair competition. This is a procedure consisting of speculative registrations of domain names, which fulfills the conceptual features of the general clause on unfair competition. In this context, the author highlights the function of “universality” of the general clause on unfair competition, which can also be applied to domain name disputes. The author compares the judicial resolution of domain disputes and the alternative resolution of domain disputes in relation to the individual claims that can be applied in disputes. In conclusion, the author seeks solutions to prevent speculative domain registrations.*

Keywords: domain name, unfair competition, cybersquatting (abusive registration), alternative domain dispute resolution, judicial domain dispute resolution.

Introduction

Competition² exists wherever there is an economic market. It is determined by time, space and subject matter. Competition is beneficial to the country’s economy. According to current legal theory and judicial practice, it can be any market space, including the virtual space. The Internet, as a dynamic, rapidly and flexibly developing virtual environment, which lacks comprehensive and uniform legal regulation, creates suitable conditions for committing illegal activities. Such a relatively frequent case of illegal activity in practice is also the violation of the rights of other competitors in the Internet sphere, specifically in the domain space.

Domain names serve as unique web addresses that allow users to access specific websites and the resources or services offered within. Domain registration is currently one of the most effective and common forms of “virtual existence” of competitors. “Domain names”, according to legal literature experts, are included in the system of

* JUDr. Radka Kopčová, PhD. LL.M., Faculty of Law of the Pan-European University in Bratislava. <https://orcid.org/my-orcid?orcid=0009-0000-0930-4543>.

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² By “competition” in this article, we mean economic competition, which is a competition between companies in the fight for customers. It is one of the basic mechanisms of a market economy. Economic competition allows competitors to freely develop their competitive activities in order to achieve economic benefit and creates conditions for them to associate to perform this activity.

industrial property rights related to signs. It can be concluded that domain names serve the same identifying – and distinguishing – goods and services in the marketplace function as other industrial property rights for signs, especially trademarks, but in the online world. In competition, domain names are used to identify and represent products and services on the internet (that’s the same role of a trademark in the non-online world), to identify persons, businesses, events in the virtual world (like, for example, trade names or names of natural persons and legal entities). Therefore, in practice, domain names often conflict with other rights to designations. Rights to designations refer to the legal entitlements associated with specific names, titles, or identifiers used to distinguish entities (like businesses or products) or to denote roles or positions. These rights can protect against unauthorized use, misrepresentation, or infringement, ensuring the rightful owner maintains control and recognition.

In the article, we analyze conflicts of individual rights to designation in the domain space, and, in conclusion, we try to find solutions to prevent them. Based on the title of the article itself, the object of our research is economic competition. Our goal is to approach the unauthorized registration of domain names as an unfair competition act. We base our work on Slovak commercial law, according to which the provision of § 44 (1) of Act No. 513/1991 Coll. (Commercial Code) as amended: “Unfair competition is an act in economic competition that is contrary to good morals of competition and is capable of causing harm to other competitors or consumers.” By analogy with the legal regulation of unfair competition, we highlight the universality of the general clause, which can also be applied in individual disputes about domains.

In the research, the following hypotheses were used:

- 1) Domain names serve the same identifying – and distinguishing – goods and services in the marketplace – function as other industrial property rights related to signs, especially trademarks, but in the online world.
- 2) In practice, domain names often conflict with other industrial property rights related to signs.
- 3) From an extensive interpretation, there is a competitive relationship between Internet users on the Internet. Therefore, there is also competition in the domain space, as a defined area of the Internet.
- 4) Law against unfair competition can be a suitable method for resolving domain name disputes, particularly in cases involving cybersquatting and trademark infringement.

A domain name does not have a legal definition that is generally accepted. Also, there is no consensus in doctrine and case law on the legal nature of domain names. This is because the term domain name has such legal definition, which covers only its basic, technical characteristics. But it does not cover the features of the legal phenomenon of domain name and its legal nature. We therefore define the domain name *terminus technicus* and assess the significance of “ownership” of domains in competition. We explain how the right to use a domain name arises. We state why conflicts with other

rights to a sign arise in practice. We seek an answer as to how such conflicts can be prevented and whether it is even possible. We largely deal with the issue of liability in the event of unauthorized registration of a protected sign as a domain name by a third party. In this context, we compare the individual options for legal and judicial protection of owners of protected signs. The core of the research is the analysis of judicial resolution of domain disputes and alternative resolution of domain disputes. We are looking for parallels and differences between both options for resolving conflicts. As for written law, we highlight the universality of the general clause of unfair competition, which is analogously applicable in alternative resolution of domain disputes. Using the method of judicial interpretation, we present selected disputes from the decision-making practice of courts and panels as examples. Finally, we try to find solutions on how speculative domain registrations can be prevented from a technical and practical point of view.

We mainly base our research on Slovak and foreign professional legal literature. As for legal norms, in the research we use mainly Slovak commercial legal regulations (especially provisions on unfair competition), The Terms and Conditions of Domain Name Service in .sk Top Level Domain, The Rules for Alternative Dispute Resolution (ADR) in Slovakia, and The Rules for Uniform Domain Name Dispute Resolution Policy (UDRP). We demonstratively refer to several decisions of Slovak and foreign courts, the ADR Center and the WIPO Arbitration and Mediation Center.

1. Domain name and its function in competition

A domain name is a universal and unique address on the Internet that allows a user to search for pages on the Internet in the easiest way possible.³ In legal theory, several attempts can be found to define a domain name. Disman states: “*A domain name is a sequence of characters assigned to a specific IP address, and this sequence of characters meets the criteria set by the administrator of the relevant domain.*”⁴ According to Smejkal: “*A domain name is a hierarchically structured sequence of characters that is converted into numeric IP addresses using servers with a domain name system containing numeric and word databases for the purpose of simpler, mnemonic addressing of devices connected to the Internet.*”⁵ The Supreme Court of the Slovak Republic also attempted to define a domain name, according to which: “*A domain name is a text string through which it is possible to identify entities or their goods and services designated by this domain name on the Internet, and the domain name consists of a text string, hierarchically arranged into levels (degrees) that are separated from each other by dots.*”⁶

In our opinion, the term “domain name” is not the most appropriate term to apply to this subject, as “name” is associated with persons and we consider it more appropriate to

³ CIBUEA, M. Next big thing: doménové mená verzus ochranné známky. *Duševné vlastníctvo*, roč. 5, no. 2, 2001, p. 14. ISSN 1210-1605.

⁴ DISMAN, M. *Právní úprava domény „.eu“*. Praha: Linde, 2011, p. 17.

⁵ SMEJKAL, V. *Právo informačných a telekomunikačných systémů*. Praha: C. H. Beck, 2001, p. 411.

⁶ Judgment of the Supreme Court of the Slovak Republic of 24 June 2020, file no. 1Ndob/6/2020.

use the term “designation” or “sign” (from Slovak word “označenie”).⁷ In this context, Telec states: “*domain signs are basically just simplified translations of complex numerical Internet addresses (unique material identifiers) of computers (servers) in the electronic communications network, which are outwardly expressed by “user-friendly” characters (especially letters and words formed from them).*”⁸

A generally accepted legal definition of a domain, as well as a domain name (which constitutes a second-level domain), is absent. In Slovak law, a certain definition of a domain is contained in the Act on Electronic Commerce. And that: “*A domain is a symbolic address in an electronic communications network.*”⁹ The legal definition of a domain name is not included in The Terms and Conditions of Domain Name Service in .sk Top Level Domain either (hereinafter „Terms and Conditions of Domain Name Service in .sk“).¹⁰ Although these rules define a domain name, this definition is purely technical in nature. According to point 1.2: “*Second Level Domain Name .sk is a domain name directly under .sk top level domain name.*” Further, in point 3.6.2 it is stated: “*the Domain Name or its use should not violate rights of third parties to trademarks, business marks, names, company business names etc., whereby by submitting the Domain Name registration the User at the same time confirms that with the knowledge of possible violation of the aforementioned rights and legislation it made maximum endeavors to assure that the Domain Name won't be violating these rights and legislation and that in the case of such a violation it alone is responsible for the damage caused to third parties.*”¹¹

Focusing on competition, domain registration is currently one of the most effective and common forms of “virtual existence” of competitors. On the domain, and also in its name itself, individual competitors promote their business, or on which they sell or otherwise inform Internet users about their goods or services. By analogy, a certain similarity of the domain name can be inferred, especially with a business name (according to § 8 of Commercial Code, a trade name is the name under which an entrepreneur performs legal acts in his business activities)¹² and a trademark (according to § 2 of Act No. 506/2009 Coll. on Trademarks, as amended, the owner of a trademark has the

⁷ We also stated this conclusion in our dissertation (“Trademarks in the Information Society”, defended in 2017, supervisor: Prof. Telec). See also: KOLKUSOVÁ, R. Označenia v podnikaní. *Soukromoprávní problematika v bezpečnostní praxi*. Praha: Policejní akademie České republiky, 2019, pp. 62-74.

⁸ TELEC, I. Nový občanský zákoník ve společnosti sítí, 3rd revised edition. *Bratislavské právnické fórum*, 2015, pp. 293-297.

⁹ § 2 letter d) no. 1 of Act No. 22/2004 Coll. on electronic commerce, as amended.

¹⁰ The Terms and Conditions of Domain Name Service in .sk Top Level Domain effective from 1.1.2024. The aim of the Terms and Conditions is to specify the principles of usage of the second level domain namespace within .sk top level domain (online) https://sk-nic.sk/wp-content/uploads/dokumenty/Pravidla_2024_01_01.pdf.

¹¹ In our research, we will not discuss the classification of domains in the legal system in more detail, due to the scope of the paper and the fact that our research primarily focuses on the issue of domain disputes in economic competition. For the issue of the classification of domains in the legal system, see, for example: MACGREGOR PELIKÁNOVÁ, R. Ekonomické, právní a technické aspekty doménových jmen v globální perspektive. 1st ed., Ostrava: Key Publishing, 2012, p. 245. ISBN 978-80-7418-165-8.

¹² Act No. 513/1991 Coll. (Commercial Code) as amended (hereinafter “Commercial Code”).

exclusive right to use the trademark only in connection with the goods or services for which it is registered¹³, possibly also another protected sign.¹⁴ According to Vojčík: “Domain names, through which searches are made on websites, actually serve to identify entities, their products and services.”¹⁵ The issue of domain names is therefore very closely related to industrial property rights, which fulfill their basic function (to identify “someone” or “something”) in competition.¹⁶

Domain names have their economic value in competition, because each appropriately chosen domain represents a certain competitive advantage with potential market value and becomes a significant part of the intangible component of a competitor’s business.¹⁷ The economic value of domains has also been confirmed in its decision-making practice by the European Court of Human Rights, which emphasized that a domain must be considered a type of property right that must be protected by Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court of the Czech Republic also reached a similar conclusion, stating that the concept of property is not limited to the ownership of tangible goods, and that this concept also includes the right to a domain name.¹⁸

Choosing a “suitable” domain name on the Internet is therefore currently one of the first and most important decisions when starting (not only) a business and can significantly affect a competitor’s position, either positively or negatively.¹⁹ Individual entities are increasingly becoming aware of the necessity of “owning” a domain under the same name as the name of their business, or goods or services.²⁰ However, domain space is not

¹³ Act No. 506/2009 Coll. on trademarks, as amended (hereinafter “Act on Trademarks”).

¹⁴ For example, designations of origin of products or geographical indications, names of other legal entities, etc.

¹⁵ VOJČÍK, P., MIŠČÍKOVÁ, R. *Základy práva duševného vlastníctva. 1. ed.* Košice: TypoPress, 2004, p. 260.

¹⁶ See also: ZLOCHA, L.: Zneužitie doménových mien v nekalej súťaži. *Právny obzor*, 100, 2017, no. 6, pp. 595-610.

¹⁷ DOLOBÁČ, M. Doménové mená v hospodárskej súťaži. *Justičná revue*, vol. 60, no. 10, 2008, p. 1419. ISSN 1335-6461.

¹⁸ According to Article 1 of Protocol No. 1 – Right to property: “(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. (2) The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.” “ See also: LAZUR, J., NAGY, Z. Doménové spory a hľadanie optimálneho rámca ich riešenia – rozhodcovské konanie, všeobecné súdy alebo alternatívne (ADR) formy? *Bulletin slovenskej advokácie*, no. 3/2019, ISSN 1335-1079; and: Judgment of the Supreme Court of the Slovak Republic of 25 February 2020, file no. 5Obdo/44/2019.

¹⁹ Competitors in economic competition do not necessarily have the status of entrepreneurs. For this, see, for example: ONDREJOVÁ, D. *Právny prostriedky ochrany proti nekalé súťaži*. Praha: Wolters Kluwer, 2010, p. 26; according to the Judgment of the High Court in Prague of 11.01.1995, file no. 3 Cmo 1336/1994: “Unfair competition may also be committed by someone who does not provide performance of the same type, or even by a partner in a business company or a non-entrepreneur.”

²⁰ We have highlighted the word “owning” a domain because there are divergent opinions in the professional literature as to whether a domain can be considered a thing in the legal sense. Legal theory does not yet have a clear answer to this question. However, due to the limited scope of this article, we will not discuss this issue

unlimited. Each virtual address is unique, and a large part of domain names are therefore not “technically free”. In practice, a situation may arise (and often does) that the name or sign that a subject is interested in registering as a domain name is already technically occupied by another person.²¹

2. Domain name conflicts with industrial property rights for signs

Domains on the Internet are registered mainly for the purpose of identifying and promoting their holders in the virtual world.²² They designate businesses, goods and services of competitors, as well as other natural or legal persons, institutions, events (similar to, for example, trade names or other names of natural persons and names of legal persons). In competition, domains thus fulfill the same function as other objects of industrial property rights for signs (which are trade names, trademarks, designations of origin of products and geographical indications, but also unregistered designations, logos and others). Therefore, by analogy of law, it can be stated that the designations forming the domain name (domain names) fulfill the identification, distinguishing, promotional and guarantee function of a competitor in economic competition in the virtual environment.²³

In practice, there are quite frequent conflicts between domain names and other rights to designations. This can be any designations relating either to the entity itself or to goods or services. In this regard, as stated in the background of the Final Report of the WIPO Internet Domain Name Process of April 30, 1999, “*Domain names are the human-friendly form of Internet addresses. While designed to serve the function of enabling*

in more detail. See, for example: BURSHTEIN, S., Is a domain name property? *Journal of Intellectual Property Law & Practice*, Vol. 1, Issue 1, 2005, pp. 59–63. <https://doi.org/10.1093/jiplp/jpi019>); as Pelikánová: “*Domain names (or domains) ... cannot be the subject of property rights, as they are not things in the legal sense.*” (PELIKÁNOVÁ, R., ČERMÁK, K. *Právní aspekty doménových jmen*. Praha: Linde, 2000, p. 42); as Telec: “*Domain names themselves continue to be ideal private law subjects (newly with the nature of intangible things in the broad legal sense of the Civil Code)*” (TELEC, I. *Nový občanský zákoník ve společnosti sítí*, 3rd revised edition. *Bratislavské právnické fórum*, 2015, pp. 293–297). For a jurisprudential assessment of the legal nature of the domain, see e.g. also: Decision of the ECHR of 18 September 2007, file no. AZ 25379/04, 21688/05, 21722/05, 21770/05; Judgment of the Federal Constitutional Court of Germany of 24 November 2004, file no. 1 BvR 1306/02; also the Judgment of the Supreme Court of the Czech Republic of 19 April 2012, file no. 28 Cdo 537/2010: “*In order to be able to consider a certain object as a thing in the legal sense, it must be a controllable material object (res corporalis). However, another important element must not be missing here, which is the objective usefulness of such an object and its ability to satisfy human needs in a certain way.*” Due to the lack of uniformity of legal opinions, we therefore consider it more appropriate to use the phrase “hold the domain” or “possess the domain”.

²¹ In the professional literature, various terms are used for the “name” that forms the second-level domain, i.e. – domain name. Most often, authors use “designation”, “word”, “name”, “domain name”, we are inclined to the term “designation”, and therefore we use it in the following explanation. For example, see: TELEC, I. *Nový občanský zákoník ve společnosti sítí*, 3rd revised edition. *Bratislavské právnické fórum*, 2015, pp. 293–297.

²² Registrant is a user, who based on a successful domain name registration, acquired rights and duties to the domain name, including the right to use and dispose of the given domain name. (Terms and Conditions of Domain Name Service in .sk, point 1.10).

²³ We use the analogy of trade name law and trademark law. For the individual functions of the signs listed, see the explanation: KUBÍČEK, P., ŠKRINÁR, A., NEVOLNÁ, Z., KOLKUSOVÁ, R., ĐURICA, M. *Obchodné parvo*, 3rd ed. Plzeň: Aleš Čeněk, 2021, p. 54.

*users to locate computers in an easy manner; domain names have acquired a further significance as business identifiers and, as such, have come into conflict with the system of business identifiers that existed before the arrival of the Internet and that are protected by intellectual property rights.*²⁴

- a) Collisions between domain names and the name of the entity mainly concern:
- infringement of rights to a trade name and other (including unofficial) company names,
 - unauthorized use of the name of a legal entity, including the name of public administration bodies and including public institutions, states or international organizations,
 - unauthorized interference with the right to protection of personality,
 - unauthorized interference with the good reputation of a legal entity,
 - unauthorized interference with the name of a natural person or with a protected pseudonym or generally known nickname of a natural person,
 - unauthorized interference with the name of a protected literary or artistic work or the designation of literary characters.
- b) Collisions between domain names and designations of goods or services mainly concern:
- infringement of rights to a registered trademark,
 - infringement of rights to other unregistered signs, logos,
 - infringement of rights to designations of origin of products and geographical indications of products,
 - unauthorized use of the name of a protected plant variety.²⁵

Why do such collisions occur? We consider the following facts to be the main reason for these conflicts:

- 1) According to the traditional division system of intellectual property (IP) rights, domain names are classified as industrial property rights for signs and thus perform the same function as other protected signs, which leads to their conflict in relation to the entities, goods or services that they designate.²⁶
- 2) The main functions of industrial property rights for signs are indeed primarily fulfilled within the context of business competition. These rights, including trademarks and other designations, just like domain names, are crucial for differentiating products and services, fostering competition, and preventing unfair practices. Proposals to initiate domain disputes are thus in most cases filed by entities that are in a competitive relationship with the domain holder.²⁷

²⁴ Available online: <https://www.wipo.int/amc/en/processes/process1/report/finalreport.html>

²⁵ In the ADR Rules, point 2.6, these signs are collectively referred to as “protected marks”. In the following text, we will use the phrase “protected signs” in this context.

²⁶ VOJČÍK, P. a kol. *Právo duševného vlastníctva*. Praha: Čeněk, 2012, pp. 335-340.

²⁷ In this context, we point out the doctrinal and judicial interpretation of the “extensive competitive relationship” on the Internet, which also applies to domain space. According to the “concept of an ad-hoc

- 3) The technical process of domain registration, governed by the first-come, first-served rule, does not automatically check for potential conflicts with third-party rights like trademarks and other protected signs. Registrars primarily verify the availability of a domain name and ensure it complies with technical standards. As some experts state in this regard: “*it is not the task – nor is it technically possible – of the registrar or domain authority to proactively search for conflicting trademarks or other rights when registering a domain.*”²⁸
- 4) The domain name registration process is not public and does not involve an objection proceeding, as is the case with trademarks. Therefore, affected parties cannot prevent the registration of a disputed domain (the registration of a domain name is publicly recorded in WHOIS databases, making the information accessible to anyone. However, the initial registration process itself is typically first-come, first-served and doesn’t involve a formal objection period like trademark applications where third parties can oppose the registration). However, we do not believe that introducing objection proceedings into the domain registration process would help the status quo, because such a period would negatively affect its effectiveness and the entire domain registration process would slow down considerably.²⁹
- 5) Due to the fast, informal and relatively inexpensive domain registration process, there is a high number of domain registrations compared to other designation rights. According to statistics, 14,043 national top-level domains .sk were

competitive relationship” (introduced by P. Hajn for competitive clashes between entities with very distant objects of activity), even entities that would not otherwise have the status of competitors will find themselves in a competitive relationship. (In: FITZ, H., GAMERITH, H. *Wettbewerbsrecht*. 2nd ed. Wien, Orac 1997, p. 20. In.: HAJN, P. *Soutěžní chování a právo proti nekalé soutěži*. 1. vyd. Brno: Masarykova univerzita, 2000, p. 119.); On the Internet, at first glance, there may not be a competitive relationship between the litigant and the domain holder, but inside, this competitive relationship works, because the subject of common interest is the – *Internet* – communication itself. The need for an extensive interpretation of the competitive relationship on the Internet is also noted in the relevant jurisprudence: “*In the given case, the court came to the conclusion that the plaintiff and the defendant are competitors in economic competition. It is not a direct competitor relationship of the plaintiff, as the defendant does not provide telecommunications services, so that the participants meet on the Internet, where they advertise and offer their services, even if they are from a different area. If the defendant uses a sign when offering his services that is similar to the sign that on the same “market” has already been used by the plaintiff, it is undoubtedly a conduct contrary to the good manners of competition, and such conduct is objectively capable of causing harm to the plaintiff and, by extension, to consumers (Internet visitors).* (Judgment of the Supreme Court in Prague of 1 March 2010, file no. 3 Cmo 265/2009).

²⁸ KLINKA, T. *Doménové spory a ADR v doméne .sk*. Lexforum, 2016, Online: <https://www.lexforum.cz/624>.

²⁹ This is also evidenced by the recent tendencies of industrial property offices to move objection proceedings from the pre-registration to the post-registration period, with the aim of reducing the overall duration of the procedure for registering trademarks in the register. The obligation of objection proceedings as part of the registration procedure results from Directive EU/2015/2436, which allows the existence of objection proceedings in the pre-registration phase after the publication of the application, but also in the post-registration phase. (For this, see, e.g., Industrial Property Office of the Slovak Republic, Material for public consultation “Objection proceedings for trademarks and utility models” from May 2021 (online) <https://www.indprop.gov.sk/Dokumenty-a-formulare/formulare-a-poplatky/dotaznik-material-na-verejnu-konzultaciu-namietkovokonanie-pri-ochrannych-znamkach-a-uzitkovych-vzoroch>).

registered between January 2023 and January 2024³⁰ compared to 2,048 nationally registered trademarks at the Slovak Intellectual Property Office for the same period.³¹ The right to use a domain name is primarily established after completing only these two steps:

- submitting an application for domain registration, and
- paying the domain registration fee (including the initial registration fee and all others required fees).

Not in every case of registration of the same or similar protected sign (such as trademark, business name etc.)³² as a domain name by another competitor, such action automatically constitutes law infringement. Competitors, even though they have successfully registered a business name, trademark, or have the right to another protected signs without their registration, do *not have an absolute right to a domain name* which is registered with the same name (sign). While registering a competitor's protected trademark as a domain name might seem like a clear violation, it's not always the case that such registration automatically constitutes infringement. A legal claim requires more than just the identical or similar domain name; it needs to demonstrate bad faith or an intent to cause harm or unfair advantage.³³

A domain name and another protected sign (such as trademark) are distinct legal concepts, though they can overlap. In addition to the common features of domain names with other industrial property rights, we will also point out some of their different features:

1) Signs of which a domain name vs. another protected sign may consist of³⁴:

While a sign that does not have sufficient distinctiveness (for example, it is a general word in, in our case, Slovak, language designating a type of goods or services) cannot be registered as a trademark (what follows from absolute grounds for refusal), such a sign can still be successfully registered as a domain name. As a practical example, we will use the common word "chocolate". This is a sign that, according to §5(1)(c) of the Trademark Act, "*is made up exclusively of signs or information which, in trade, may serve to determine the type, quality, quantity, purpose, value, geographical origin, or the time of production of goods or provision of services, or other characteristics of goods or services.*"³⁵, and thus

³⁰ See statistics online: <https://virtualno.sk/statistiky/udaje-o-sk-domenach/> (data from 24 March 2025).

³¹ Annual report of the Industrial Property Office of the Slovak Republic, 2023, p. 23, ISBN 978-80-974307-7-1.

³² See footnote no. 26 (In the ADR Rules, point 2.6, these signs are collectively referred to as "protected marks". In the following text, we will use the phrase "protected signs" in this context.)

³³ We deal more with this issue in the next chapter.

³⁴ In Slovak legal literature, the term "Registrability of a designation" (from Slovak "zápisná spôsobilosť") is used for these conditions. See e.g.: BACHŇÁKOVÁ RÓZENFELDOVÁ, L. Analýza rozhodnutí Úradu priemyselného vlastníctva SR týkajúcich sa zápisnej spôsobilosti ochranných známkov. In: *Intellectual Property/Dusevne Vlastnictvo*, 2022, p. 26.

³⁵ Compare: Article 7 (1) (c) of The Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark on the European Union trade mark, according to which the following shall not be registered: "*trade marks which consist exclusively of signs or indications*

this sign cannot be registered as a trademark for this specific type of goods – chocolate. However, such an analogy does not apply to domain registrations, and the authorized holder of the domain “cokolada.sk” is the well-known company Mondelez Europe Services GmbH, which uses this domain in connection with the promotion of chocolate products under the Figaro brand.

The Higher Regional Court in Munich also ruled in this regard, dismissing the action for the deletion of the domain “sonntag.de”, which consisted of a sign that is the name of the plaintiff’s natural person and also a generic word (from German word “Sonntag” means “Sunday”).³⁶

2) Registration of a domain name doesn’t grant “ownership” in the same way that another protected sign registration does.

While domain name registration allows a user to utilize a specific name online, it doesn’t establish an absolute or proprietary right to that name. Domain names are essentially a license to use a name for a set period, with the registry ultimately holding title. Registration doesn’t grant ownership in the same way that copyright or trademark registration does. Unlike other intangible assets to which absolute rights are attached (such as the right to a trademark or the right to a trade name)³⁷, the mere registration of a domain does not give the holder any absolute right to that domain name. This is also confirmed by Czech case law: “*According to the Court of Appeal (author’s note: the Supreme Court of the Czech Republic), the above-mentioned argumentation of the court of second instance is incorrect, particularly in that it views a domain name, within the framework of protection against unfair competition and trademark rights, as an intangible asset to which absolute rights are attached (such as a trademark or a business name).*”³⁸, as well as German case law: “*By registering a domain name, the owner does not acquire any absolute right to the domain name, and therefore no other right within the meaning of § 823 (1) of the German Civil Code (BGB).*”³⁹

3. Domain name *terminus technicus*

When a person connects to a specific page via the Internet, he enters a virtual address into the search engine, which is also known professionally as an IP address. An IP address

which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service”

³⁶ Judgment of the Higher Regional Court in Munich on 24.02.2011, file no. 24 U 649/10.

³⁷ Intellectual property (IP) rights, unlike some other intangible assets, are characterized by the absolute rights they grant to the owner, meaning they can be asserted against anyone who infringes upon them, not just a specific debtor. This is a key distinction from other intangible assets, which might only be enforceable against a specific party.

³⁸ Judgment of the Supreme Court of the Czech Republic of 19 April 2012, file no. 23 Cdo 3407/2010.

³⁹ Judgment of the BGH in Germany of 18 January 2012, file no. I ZR 187/10. (The highest federal court in Germany for civil and criminal matters is the Federal Court of Justice (from German “Bundesgerichtshof” or “BGH”).

is a unique numerical code that is assigned to every device connected to the Internet.⁴⁰ However, just as with telephone numbers, which are quite difficult to remember all of them, and therefore we assign them in the telephone book the name of the person to whom the number belongs, it is the same on the Internet. From a technical point of view, domain names (in German “*ein Domänenname*”, in French “*nom de domaine*”) simply replace complex numerical IP addresses and represent their verbal equivalents. As an example, the IP address under the number “131.130.70.8” corresponds to the domain “http://univie.ac.at”, the website of the home page of the University of Vienna in Vienna.⁴¹

If we focus on the technical infrastructure of domain names, each virtual address usually consists of three or more parts. The first part is the third-level domain, in most cases formed from the abbreviation www (from the word “*world wide web*”). In some cases, however, there are also subdomains located before the second-level domain, which specify the virtual address in more detail (for example, according to territorial scope, subject of activity, or other focus of the domain owner). Each domain owner can create an unlimited number of third-level domains. The second part consists of a second-level domain (SLD), which consists of a registered domain name in the relevant domain register.⁴² The third part consists of the highest-level domain, called a top-level domain (TLD) or the first-level domain. It is the last part of a domain name, appearing after the final dot (e.g., “.com”, “.org”, “.net”). It’s a crucial part of the Domain Name System (DNS) hierarchy, indicating the type or purpose of a website. Domains of the second level (SLDs) are subordinate to the top-level domains. They are located before them and are separated from them by a dot. An example is the domain “sk.wikipedia.org”, where “sk” represents a third-level subdomain that makes it easier for Internet users to locate the domain, “wikipedia” is a registered domain name as a second-level domain under the top-level domain “.org”.⁴³

It follows from the description of the technical infrastructure of the domains that unfair competition through interference with the rights to designations occurs in second-level domains. These are names (characters) that people can create with any designation and register them according to their availability in the relevant register. It is not important how many characters the domain name will be made up of and it is also not important what letters or numbers it will be composed of (e.g. the record for the longest domain name in the world is held by the website of a municipality in Wales consisting of 64 characters).⁴⁴

Regarding the .sk domain registration rules, the domain must contain the characters “a” to “z” without punctuation, diacritics and numbers “0” to “9” and the character “-”, in the Unicode character set, while the character “-” may not be at the beginning or at the

⁴⁰ The so-called “DNS-server” (Domain-Name-Server); if, for example, the DNS server is not working, it is not even possible to load a website.

⁴¹ KORN, S. Wettbewerbs-und Markenrecht im Internet: Domainrecht. Vienna: Universität Wien, 2017.

⁴² In Slovakia, for example, SK-NIC (more to domain name registrars in the next chapter).

⁴³ For more details, see e.g.: GREGUŠOVÁ, D., DULAK, A., CHLIPALA, M., SUSKO, B. *Právo informáčných a komunikačných technológií*, 1st edition. Bratislava: STU, 2005, p. 209.

⁴⁴ See: “llanfairpwllgwyngyllgogerychwyrndrobwlllantysiliogogoch.co.uk”.

end of the domain character string, nor may it be twice in a row. Uppercase and lowercase letters are not distinguished in the domain, and it is not possible to change the character string of the domain name after its registration.⁴⁵

Each domain name acquires distinctiveness and will fulfill its identification function only in connection with the top-level domain. An example is the domain “polo.de” belonging to the German automobile concern Volkswagen for the vehicle of the same name. And the domain with the same domain name (the same second-level domain) “polo.com” is registered by the American luxury fashion company Ralph Lauren. It means that the mere registration of a domain name does not give the owner an absolute right to the sign that constitutes it.

Top-level domains (TLDs) are, in layman’s terms, the “suffixes” after domain names and there are two main types of them.⁴⁶ Namely, generic TLDs (gTLDs), like .com, .net, and .org and country code TLDs (ccTLDs), like .sk for Slovak Republic or .de for Germany.

Country code TLDs (ccTLDs) are specific to a country or territory.⁴⁷ And therefore, domain names with the ending of ccTLD are usually registered by entities (for example, often businesses) that operate only in the country to which the ending belongs. In addition to businesses operating at the national level, these are most often natural persons, public administration bodies, political parties and movements, universities, or other legal entities that, due to the nature of their focus, have no reason to register their virtual address at a transnational level.

The second type of TLDs are generic domains (gTLDs), also called “transnational domains”. It can be inferred from their naming that the registration of domain names under gTLDs is mainly decided by entities that operate on a transnational level, either as part of a business or other activity, or plan to expand their offer of goods or services beyond the borders of the current territory of operation in the future. Among the most famous and oldest endings at the international level are .com, .net, or .org, which were established in 1985 and are still among the most used domains worldwide. Later, several other top-level domains began to be added to them, which, however, due to their conceptual nature of the designation, often begin to acquire distinctiveness even without connection to a specific domain name. An example is the .museum domain, which can only be used by museums precisely because of its sufficient distinctiveness, in other

⁴⁵ Additional rules for domain creation are contained in point 4.1. of the Terms and Conditions of Domain Name Service in .sk.

⁴⁶ We list these two types of top-level domains only for the purposes of this article. We used the word “main” because there is also another type of top-level domains, the so-called “infrastructure” domains with the endings .root and .arpa, which, however, the average Internet user does not encounter in practice. And it is also not possible to have a domain name registered for business or other purposes in economic competition under such an infrastructure domain, and therefore we will not consider them in the following text.

⁴⁷ The codes of individual countries are determined according to the globally recognized ISO standard – Codes for the Representation of Names of Countries (ISO-3166, International Standards Organization). For this, see e.g.: SÍTHIGH, D. M. More than words: the introduction of internationalised domain names and the reform of generic top-level domains at ICANN. *International Journal of Law and Information Technology*, Vol. 18, Issue 3, 2010, pp. 274–300. <https://doi.org/10.1093/ijlit/eqq007>.

cases it could lead to misleading labeling or the creation of a risk of confusion among Internet users. Others are, for example, .aero for airlines or .edu, which is used for educational purposes.

The original first-level generic domains were made up of generic designations (.com, .mil., .gov., .edu, etc.), while .com, .net and .org are still available to anyone and can be used for any purpose. After the ICANN company took control over the management of the domain space, new, more specific generic domains such as .aero, .museum, .info began to emerge in 2000, which were primarily intended only for a limited range of registrants (e.g. the first-level domain .museum could initially only be registered by museums).⁴⁸

Until 2012, there were “only” 22 available generic domains, which were neutral in their own way. And so, in most cases, attention was focused only on unauthorized registrations of second-level domain names in infringements of trademark rights. However, the subjects’ interest in their “virtual existence” increased every year, as more and more business and other activities began to move to the Internet environment. This resulted in the gradual occupation of possible virtual addresses. Therefore, in 2012 ICANN launched “the largest expansion of the Internet in history”, which consisted of a plan to expand the domain space by more than 1900 new first-level domains in response to the shortage of free virtual addresses. However, the new first-level domains that the company planned to make available to the public were of a different nature.⁴⁹ Most of them were made up of generic or other neutral designations (e.g. .web, .love, .jetzt) and thus did not interfere with the rights or legally protected interests of other persons. Some, however, formed a geographical or geographical indication (e.g. .london, .bayern, .brussels), which in its own way could interfere with the rights to the name under civil law protection, or with the indication of the origin of products and geographical indications of products. Finally, some of the new top-level domains were made up of registered trademarks (eg .google, .sony, .dell). WIPO had to respond promptly to these fundamental changes, as the expansion of new TLDs was also associated with a possible increase in infringements of rights to registered trademarks, trade names, or other designations, and at the same time, such an action also represented a potential threat of causing the danger of confusion for the consumer. The reaction to this was the introduction of mechanisms and measures that had the task of ensuring stable and trustworthy use of the domain space even after the introduction of many new top-level domains.⁵⁰

⁴⁸ MACGREGOR PELIKÁNOVÁ, R. *Ekonomické, právní a technické aspekty doménových jmen v globální perspektive*. 1. vyd, Ostrava: Key Publishing, 2012, pp. 113-121.

⁴⁹ ICANN. *ICANN's Expansion of Top Level Domains*. Hearing Before the Committee on Commerce, Science, and Transportation, United States Senate, One Hundred Twelfth Congress, First Session, December 8, 2011. University of Minnesota: U.S. Government Printing Office, 2012, p. 117. ISBN: 978-01-6091-264-1.

⁵⁰ Ibid (These measures mainly included objection proceedings, alike Trademark Clearinghouse, Uniform Rapid Suspension System a Post-Delegation Dispute Resolution Procedure).

4. The origin of domain name rights and liability for infringement of third party

The domain authority at the global level is the Internet Corporation for Assigned Names and Numbers (ICANN), an organization based in California, created primarily to allocate and manage domain space on the Internet. ICANN assigns IP addresses with worldwide scope, i.e. generic domains such as .com, .net or .org. Domains at the national level are managed by “Network Information Centers” (NICs) established in each country, with their own registration rules.⁵¹

Individual names of network information centers are usually composed of the acronym “NIC” and the ending of the national first-level domain (e.g. for the Slovak Republic it is SK-NIC, in the Czech Republic CZ-NIC, in Germany DENIC, etc.). In the domain name registration system, it is generally not possible to register a domain name directly in network information centers, but it is necessary to choose a “registrar”. A domain name registrar is a company that facilitates the registration of domain names, allowing individuals and organizations to secure a unique address for their website. They act as an intermediary between users and the [domain name registry](#), managing the reservation of names and assigning [IP addresses](#). Domain registrars handle the process of registering domain names and they also manage the renewal of registrations and facilitate the transfer of domain names between registrars.

While the registration of domain names is not strictly governed by the same principles of priority as industrial property rights like trademarks, the concept of “first come, first served” does play a similar role in establishing rights. However, domain name registration, unlike trademark registration, doesn’t automatically grant exclusive rights to the registered name.⁵²

When registering a name as a domain name, only its “technical freedom” is examined.⁵³ And since no virtual address can be registered more than once, the registration of domain names itself does not usually infringe on the rights of other designations from a technical point of view.⁵⁴ However, the domain must be not only technically but also *legally* free. This means that the domain holder cannot interfere with the rights or legitimate interests

⁵¹ For this, see e.g.: SÍTHIGH, D. M. More than words: the introduction of internationalised domain names and the reform of generic top-level domains at ICANN. *International Journal of Law and Information Technology*, Vol. 18, Issue 3, 2010, pp. 274–300. <https://doi.org/10.1093/ijlit/eqq007>.

⁵² In the technical process of domain registration, possible conflicts with the rights of third parties are not investigated, and in this registration process, there is no objection procedure (as is the case, for example, when registering trademarks in the relevant register). According to point 4.2.2 of the Rules for the Provision of Domains in .sk: “Unless otherwise provided for in the Terms and Conditions, SK-NIC shall register Domain Names in order in which requests are received (“first come, first served”), and if it is relevant, also in order of payment receipt according to point 4.2.3.3, in accordance with the Terms and Conditions.”

⁵³ “Technical freedom” of a domain name refers to the ability of the domain name holder to use the domain name as they see fit, without unwarranted restrictions. This freedom is not absolute and can be limited by various factors, including intellectual property rights, contractual obligations, and legal regulations.

⁵⁴ According to 4.1.1.1 of the Rules for the Provision of Domains in .sk: “A Domain Name is available if a) it is not already registered, b) it is not listed in the list of Domain Names that are not allowed to be registered; the list is published on SK-NIC Website.”

of other persons by registering it. However, with the current frequency of registration of virtual addresses, it is practically impossible for NICs to monitor each new registration and at the same time investigate the potential infringement with an existing trademark or other protected sign. Individual NICs therefore do not investigate who registers a particular domain name and for what purpose, nor the way in which this name is created or whether it infringes the rights of other persons. As Klinka states in this regard: *“It is not the role – nor is it technically possible – of the registrar or domain authority to proactively search for conflicting trademarks or other rights when registering a domain.”*⁵⁵ There is no objection procedure as part of the domain registration process, such as in the case of registering trademarks.

However, to eliminate conflicts resulting from interference with the rights to protected designations of third parties, individual network information centers establish the obligation of the holder to find out in advance whether the domain designation does not interfere with existing rights to other protected signs (so called “Searches Prior to Registration”). According to point 3.6.2 of the Rules for the Provision of Domains in .sk: *“When submitting its Domain Name registration, the User acknowledges that the Domain Name or its use should not violate rights of third parties to trademarks, business marks, names, company business names etc., whereby by submitting the Domain Name registration the User at the same time confirms that with the knowledge of possible violation of the aforementioned rights and legislation it made maximum endeavours to assure that the Domain Name won’t be violating these rights and legislation and that in the case of such a violation it alone is responsible for the damage caused to third parties.”*

However, even such a requirement is unfulfillable given the huge number of registered and unregistered various types of protected signs in the world. WIPO also commented on this matter. In The Final Report of the WIPO Internet Domain Name Process of April 30, 1999 (hereinafter “the WIPO Final report”) was recommended that *“the performance of a prior search for potentially conflicting trademarks should not be a condition for obtaining a domain name registration.”* and *“Particularly in an international context, the requirement of searches prior to the registration of a domain name was generally considered to be unrealistic and conducive to unnecessary delays in the registration process.”*⁵⁶ In general, therefore, the registration of domain names cannot be “made conditional” on a prior search for trademarks or other protected signs to which a third party’s right of priority may potentially apply. In this context, the user can only be required to make every effort to ensure that the domain does not infringe such rights and laws, which is also supported by the WIPO Final report. Each user is thus required to carry out such a search on a *voluntary* basis, thereby avoiding potential conflicts. As the Rules for the Provision of Domains in .sk: *“...whereby by submitting the Domain Name registration the User at the same time confirms that with the knowledge of possible*

⁵⁵ KLINKA, T. *Doménové spory a ADR v doméne .sk*. Lexforum, 2016, Online: <https://www.lexforum.cz/624>.

⁵⁶ Point 103 of the WIPO Final Report (online) <https://www.wipo.int/amc/en/processes/process1/report/finalreport.html>.

violation of the aforementioned rights and legislation it made maximum endeavours to assure that the Domain Name won't be violating these rights and legislation and that in the case of such a violation it alone is responsible for the damage caused to third parties."

The right to use a domain name establishing is thus conditioned "only" on the following three facts:

1. submission of a domain registration application that does not contain deficiencies preventing further processing of the registration,
2. the requested domain was not registered during the processing of the application for its registration based on another (earlier) application for its registration,
3. payment of the domain registration fee.

After these conditions are met, SK-NIC will register the domain in order of receipt of the application for domain registration (or, if important, in the order of payment). By successfully registering a domain, the user becomes its holder, which gives him a limited, transferable, renewable and exclusive right to use it during the registration period. The domain registration period can also be repeatedly extended and is not limited in time.⁵⁷

The legislator specifies domain names that are not permitted for registration and, according to point 3.6.1 Rules for the Provision of Domains in .sk, "*the unacceptable Domain Name signification results from the use of word that is an element of*

- a) a trademark registered by the Industrial Property Office of the Slovak Republic,*
- b) an international trademark with Slovak Republic label,*
- c) a European Union trademark,*
- d) a trademark with a reputation within European Union territory, or*
- e) a mark of common knowledge that became commonly known within Slovak Republic territory or in relation to Slovak Republic regardless of its country of origin, to which the rights belong to a person other than the Registrant,"*

The responsibility for infringement of rights to protected signs falls on the registrant himself, as a person or entity that is using the sign without authorization and in a way that creates confusion or deception. Network Information Centers (in Slovakia, SK-NIC) hereby waive any responsibility for any possible interference with the rights of third parties. NIC is also formally exempted from liability. According to point 10.8.2 of the Rules for the Provision of Domains in .sk, "*SK-NIC is not liable for the Registrant's choice of the Domain Name, use or non-use of the Domain Name or for the manner in which the Domain Name is used*", and according to point 10.8.3 "*SK-NIC is not liable for infringement of rights to trademarks, trade names, names or business entities arising from the registration or use of the Domain Name.*"

The domain user is also responsible for any detriment due to providing false, incomplete, inaccurate or misleading data, or the use of the domain name in a way that violates the terms and conditions or rights of third parties. According to point 3.7 of the Rules for the Provision of Domains in .sk, "*The User furthermore agrees to immediately compensate SK-NIC for any such detriment or expenditure (cost) that SK-NIC was*

⁵⁷ Point 4.2 of the Rules for the Provision of Domains in .sk.

obliged or will be obliged to pay to third parties in relation to a service provision by reason of violation of trademark rights, rights to business name usage or any other rights of intellectual property, if such a violation is related to the choice of Domain Name and obligation of the detriment compensation is admitted by an effective and executable court decision.”

5. Domain Dispute Resolution

Domain disputes are a bit more complicated than “classic” disputes, as the domain space *de facto* has no borders and virtual addresses, whether generic (gTLD) or national (ccTLD) in nature, can be registered and used on a global level. Another problem is the difficult-to-regulate nature of the Internet, because the Internet network has no owner and is not subject to public authority. When assessing rights and claims for infringement of individual protected signs, ambiguities often arise. This is primarily due to the different scope of rights granted by individual systems and the way in which the system is administered.⁵⁸

The current legal system provides persons who have rights to protected signs with several options for protecting their rights in the event of unauthorized registration (and therefore infringement) of this sign as a domain name by a third party. Legal protection can indeed be sought at different bodies, whether at national, European or international level.

In practice, in the context of domain name disputes, resolution can involve three primary methods:

1. resolving disputes through court,
2. alternative dispute resolution (ADR)⁵⁹, and
3. arbitration.⁶⁰

5.1. Alternative Domain Dispute Resolution (ADR)

Speaking about ADR, firstly it is necessary to distinguish between disputes over country code domains (ccTLDs) and disputes over generic domains (gTLDs). In both cases, the primary objectives of the disputes include transferring the domain to the

⁵⁸ For this, see, for example: LAZUR, J., NAGY, Z. Doménové spory a hľadanie optimálneho rámca ich riešenia – rozhodcovské konanie, všeobecné súdy alebo alternatívne (ADR) formy? *Bulletin slovenskej advokácie*, č. 3/2019, ISSN 1335-1079; LIDDICOAT, J. A country road: domain name disputes in .nz—is private dispute resolution working? *International Journal of Law and Information Technology*, Vol. 27, Issue 4, 2019, pp. 409–436, <https://doi.org/10.1093/ijlit/eaz013>.

⁵⁹ In essence, while court litigation remains an option, ADR methods like mediation and arbitration offer more efficient and accessible ways to resolve domain name disputes.

⁶⁰ In a comparison of the Slovak and Czech models of domain dispute resolution, in the Czech Republic, alternative domain dispute resolution has been the responsibility of the arbitration court since 2004 (“Arbitration Court at the Economic Chamber of the Czech Republic and the Agrarian Chamber of the Czech Republic”), so it is only an area of focus of the arbitration court and not an independent entity authorized to resolve domain disputes.

authorized owner of the protected sign.⁶¹ Only the domain administrator is authorized to do this: In the case of generic domains, this is the ICANN organization; in the case of national domains, these are the relevant companies authorized to provide domain space in Internet domains (in Slovakia, this is SK-NIC, in Germany, DENIC, etc.). In addition to the aforementioned disputes over national domains and generic domains, it is also necessary to mention disputes over the .eu TLD. This is the legal regulation of the .eu top-level domain, which, compared to the classic legal regulation of domain names, has certain specific elements.⁶² The legal basis is Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain. The sources for resolving disputes over .eu domain names are regulations issued by the authority authorized to resolve disputes over .eu domains.⁶³

5.1.1. *Alternative Dispute Resolution (ADR) in the context of country code top-level domains (ccTLDs)*

Alternative Dispute Resolution (ADR) is used in some countries to resolve domain disputes at the national level. In Slovakia, the first attempts to introduce ADR for the national domain .sk took place in 2012, which subsequently resulted in the adoption of the Alternative Dispute Resolution Rules, which came into effect on 1 September 2017. Later they were replaced by the Rules for Alternative Dispute Resolution (ADR), effective from 1st September 2020, which are still in force today (hereinafter The ADR Rules).⁶⁴ The ADR Rules complete the entire process of providing domains in the .sk top-level domain, and are also included in each domain agreement, which means that they are also mandatory in resolving all disputes arising from the registration or use of the domain between their holder and a third party who has certain rights to the disputed protected designation (the complainant). Alternative dispute resolution of domain disputes represents an effective and optimal form of resolving these disputes before general courts.⁶⁵ The main objective of the introduction of the new dispute resolution was to streamline the resolution of disputes over

⁶¹ BETTINGER, T. Alternative Dispute Resolution Procedures for ccTLDs, in Torsten Bettinger, and Allegra Waddell (eds), *Domain Name Law And Practice: An International Handbook* (New York, 2015; online edn, Oxford Academic), <https://doi.org/10.1093/oso/9780199663163.003.0049>, accessed 18 Mar. 2025.

⁶² A specific element and one of the basic rules of registration of the .eu TLD is the so-called “domicile rule”, according to which the .eu domain expresses the domain holder’s connection to the area within the EU. For more information, see e.g.: REMMERTZ, F. Alternative Dispute Resolution (ADR) – an alternative for .eu domain name disputes? *Computer Law Review International*, vol. 7, no. 6, 2006, pp. 161-164. <https://doi.org/10.9785/ovs-cri-2006-16>.

⁶³ The Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic. Compare: GONDOL, T. Comparison of procedural rules in dispute resolution over domain names .gtld, .cz and .eu. *Socioeconomica – The Scientific Journal for Theory and Practice of Socio-economic Development*, 2015, Vol. 4, No. 7, pp. 145-166. [dx.doi.org/10.12803/SJSECO.4712815](https://doi.org/10.12803/SJSECO.4712815).

⁶⁴ Available online: https://sk-nic.sk/wp-content/uploads/dokumenty/Pravidla_2020_09_01_priloha1_Alternativne_riesenie_sporov.pdf.

⁶⁵ LAZUR, J., NAGY, Z. Doménové spory a hľadanie optimálneho rámca ich riešenia – rozhodcovské konanie, všeobecné súdy alebo alternatívne (ADR) formy? *Bulletin slovenskej advokácie*, no. 3/2019, ISSN 1335-1079.

.sk domains, according to the ADR Rules, which, despite the speed of the process, emphasize quality, impartiality, transparency and fairness in resolving domain disputes.⁶⁶ As Hajn states in this context: “*the length of judicial interventions against unfair competition only strengthens the tendency to look for other means of protection.*”⁶⁷

Every alternative resolution of a domain dispute begins with the filling of a proposal.⁶⁸ This is done exclusively in electronic form⁶⁹ and in the Slovak language, unless both parties to the dispute agree otherwise. The right to decide is vested in an expert or a panel of experts consisting of three members.⁷⁰ Of course, as in any dispute proceeding, also in the case of a new alternative dispute resolution, an objection of bias may be raised. An objection of bias can be raised when there are reasonable grounds to believe that an expert is not impartial and may be unfairly influenced by factors like personal relationships, prior involvement in the case, or pre-existing opinions. This objection aims to ensure a fair alternative dispute resolution and protect the right to a lawful expert or a panel of experts.

According to the Rules for the Provision of Domains in .sk, any legal relationship between SK-NIC and the user is governed by the law of the Slovak Republic and the domain holder is obliged to resolve a dispute regarding his domain registered in the registry according to the ADR Rules and under the conditions set out in these rules. The Arbitration Center for Alternative Dispute Resolution is a component of the EISi, which, with effect from 01.09.2017, covers and coordinates the activities of experts adjudicating disputes under the ADR Rules for the .sk domain. The domain holder is thus obliged to submit to dispute resolution under the ADR Rules if the complainant files a claim alleging infringement of its protected sign. According to point 2.6 of the ADR Rules, Protected Mark means a legally protected mark, in particular a registered trademark, designation of the origin of the product, geographical designation of the product, name of a protected plant species, unregistered marking, commercial name, name of a legal entity, including a name of public administration authorities, including institutions governed by public law, countries or international organisations, designation of an enterprise or an operation, name or a protected pseudonym or a generally known nickname of a natural person or the title of a protected literary or artistic work or the name of a literary character.⁷¹

⁶⁶ The author of the article presented a comprehensive comparison of methods for resolving domain disputes as part of her dissertation, in which she also evaluated the advantages and disadvantages of each option for resolving domain disputes. Therefore, we will not discuss this topic further.

⁶⁷ HAJN, P. *Soutěžní chování a právo proti nekalé soutěži*. 1st ed. Brno: Masarykova univerzita, 2000, p. 248.

⁶⁸ The commencement of the dispute resolution procedure under the ADR Rules does not constitute a barrier to the transfer of the domain onto a new registrant or termination of the Domain registration period, unless the court has issued a provisional measure in this matter or unless the domain has been blocked (point 3.6 of the ADR Rules).

⁶⁹ It means, it exists only in a digital format and is not available in a physical, paper-based form.

⁷⁰ Expert means a person that resolves the dispute under the ADR Rules and is included in the list of experts maintained by the ADR Centre, unless stated otherwise. Panel of Experts means a group of three experts resolving the dispute under the ADR Rules, if it has been decided, in accordance with the regulations that the resolution of the dispute be entrusted to a panel of experts (point 2.3 and 2.4 of the ADR Rules).

⁷¹ In the ADR Rules, point 2.6, these signs are collectively referred to as “protected marks”. In the article we use the phrase “protected signs” in this context (see footnote no. 26).

To successfully challenge a domain name under the ADR Rules, the complainant must prove three key elements:

1. the chain of characters forming the registrant's domain is identical or similar to the protected sign, whereto the complainant has or performs rights;
2. there exists a likelihood of confusion between the registrant's domain and the protected sign (this section shall not be enforced if the complainant proves that the protected sign enjoys a good reputation or good character in the relevant part of the public); and at the same time
3. the domain
 - a) has been registered or acquired without the current registrant having a right to or a legitimate interest in the domain or the protected sign; and at the same time
 - b) has not been registered, acquired and used in good faith.⁷²

The three key elements must be proven *cumulatively*. Or in other words, if even one key element is missing in a specific case, the complainant (even if he may be the authorized owner of the protected sign) will not be successful in the dispute. We therefore argue that this is a kind of “general clause” of cybersquatting (abusive registration)⁷³ by analogy with the law of unfair competition.⁷⁴ The burden of proof in all points lies with the *complainant*. When assessing whether the disputed domain was registered or acquired without the current holder having a right or legitimate interest in the domain, or in the protected sign, it applies that, unless the holder proves otherwise, the lack of a right or legitimate interest in the disputed domain is deemed to be proven by the filing of the application. This is therefore a rebuttable presumption of lack of a right or legitimate interest.

Within the dispute resolution under the ADR Rules, the complainant may seek only the termination of the domain registration period or the transfer of the domain to the complainant or a person designated by the complainant.⁷⁵ In the resolution of a dispute under the ADR rules, it is *not possible* to exercise substantive rights that might exist

⁷² Point 3.1. and point 3.8 of the ADR Rules.

⁷³ Cybersquatting (Abusive Registration) is the practice of unauthorized registering of identical or similar names, especially well-known company or brand names, trademarks and other signs as internet domains, in the hope of reselling them at a profit. The registration of a domain name shall be considered to be abusive when all of the following conditions are met:

(i) the domain name is identical or misleadingly similar to a trade or service mark in which the complainant has rights; and

(ii) the holder of the domain name has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is used in bad faith. (KOLKUSOVÁ, R. Porušovanie práv v kyberpriestore. *Ako právo reaguje na novoty*, 2015, Bratislava: VEDA SAV. pp. 307-323. ISBN978-80-224-1469-2).

⁷⁴ A general clause in unfair competition law serves as a broad legal principle that prohibits a wide range of anti-competitive and deceptive business practices, even if not specifically listed in the law. It acts as a safety net, catching practices that may not be explicitly prohibited but still undermine fair competition or deceive consumers. E.g., the general clause on unfair competition is regulated in § 44(1) of the Slovak Commercial Code as follows: *unfair competition is (1) action in economic competition, (2) which is contrary to good manners competition, and (3) which is likely to cause harm to other competitors or consumers.*

⁷⁵ Point 3.5 of the ADR Rules.

under specific laws, especially concerning remedies like compensation for damages, lost profits or adequate satisfaction, as in the case of court proceedings, and it will also not be possible to claim the costs of representation in the dispute.⁷⁶ The decision from the alternative resolution of a domain dispute is self-executable (unlike a decision of a general court).

In relation to judicial and arbitration proceedings, it is necessary to emphasize that, with regard to alternative dispute resolution, the rules will not affect the rights of the complainant or domain holder arising from other applicable legal regulations, whether on the conduct of judicial or arbitration proceedings. In relation to other methods of resolving domain disputes, according to points 7.1 and 7.2 of the ADR Rules: “*The ADR Rules shall not affect the rights of the Complainant or the Registrant ensuing from the applicable legislation including the rules pertaining to the court proceedings or arbitration proceedings under the corresponding legislation.*” and “*The resolution of the dispute under the ADR Rules shall not constitute a barrier preventing either party from filing a corresponding proposal regarding the Domain with a competent court, which may be done at any time prior to the commencement, during, or following the conclusion of such dispute resolution.*”

As an example of an alternative dispute resolution for country code top-level domain .sk we mention the recent dispute over the domain “letisko-kosice.sk” (from Slovak “airport-kosice.sk”).⁷⁷ The claimant appears in public under the trade name “Letisko Košice – Airport Košice, a. s.” with the registered office of the company “Letisko Košice, 041 75 Košice IV” (this information is considered one of the basic identification features of the entrepreneur, and at the same time, like the business name of the entrepreneur, it is considered a protected designation to which the claimant’s rights are attached) and the unregistered designation “Letisko Košice” with effects in the Slovak Republic since 2004 and at the time of the dispute appears on the Internet under the domain “airportkosice.sk”. In 2022, the defendant registered the domain “letisko-kosice.sk”, on which a flight ticket search engine was placed with a direct link to a specific page of the airline ticket trader kiwi.as well as an advertising link. According to the claimant, such actions by the defendant infringed upon his protected signs.

As mentioned, in order to succeed in an alternative resolution of domain name disputes, the complainant must claim and prove that the disputed domain meets all requirements (three key elements).⁷⁸

As regards the first and second requirements (the domain must be identical or similar to the protected sign and there is a likelihood of confusion between them), according to the expert, by analogy with trademark law and the law against unfair competition, the disputed domain “letisko-kosice.sk” is highly similar to the protected signs of the

⁷⁶ According to point 4.2 of the ADR Rules „*Within the resolution of the disputes under ADR Rules it is not possible to award compensation for the damages incurred or compensation of the costs of the resolution of the dispute, or compensation for the fees paid to the ADR Centre.*”

⁷⁷ Decision of the ADR Center regarding the domain letisko-kosice.sk of 3 October 2024, no. 62/2024.

⁷⁸ See footnote no. 73.

claimant, which have a high degree of distinctiveness in the public eye with regard to the uniqueness and specificity of the business among the average consumer in the given territory. When comparing the disputed domain with the unregistered sign “Letisko Košice”, the expert stated that both signs are identical. And when compared with the trade name of the claimant (Letisko Košice – Airport Košice, a. s.), the differences are so slight that they may escape the attention of the average consumer. The use of such a sign in the domain thus creates a high risk of causing a risk of confusion between the claimant and the defendant on the part of consumers (internet users).⁷⁹

As regards the requirement that the domain must be registered or acquired without the current holder having a right or legitimate interest in the domain or the protected sign, the holder of the domain “letisko-kosice.sk” operated a flight ticket search engine with the possibility of purchasing flight tickets worldwide, regardless of the place of departure or arrival (i.e. it was not only the services of Košice airport). This is therefore a competitive business activity, partly coinciding with the activities of the complainant, only carried out through another business partner and using the complainant’s protected signs. At this point, the expert also examined whether this was a form of referential use, which is permitted in the sense of decision-making practice.⁸⁰ However, this was not fulfilled.

In relation to the last requirement (the domain name was not registered, acquired and used in good faith), the expert in the decision also considered as one of the relevant factors in the given case that the holder knew or could have known that a third party was using an identical or similar sign for identical or similar goods/services, which could lead to a likelihood of confusion among internet users. The disputed domain name was used in this case with the aim of achieving an unjustified profit by, as a result of the likelihood of confusion, aiming to attract internet users to the website of its holder, who operated a website with a booking form on the domain with a direct link to the trader “kiwi.com”. And given the use of the domain name, which is highly similar to the protected signs of the complainant, visitors may mistakenly believe that this is the official website of the operator of Košice Airport, which also leads to a distortion of competition.

Based on the above, the complaint was successful (the expert considered all three steps as proven).

5.1.2. Alternative Dispute Resolution (ADR) in the context of generic Top-Level Domains (gTLDs)

In general, disputes over generic domains (gTLDs) are considered more complicated. The point is that in this case the registration applies not only to a certain territory of the country (as in the case of ccTLDs), but to the unlimited Internet-space. Also, in many cases disputes arise between Internet users from different countries, which significantly

⁷⁹ The expert relied on the judgment of the CJEU in case C-291/00 LTJ Diffusion of 23 March 2003, paragraph 54.

⁸⁰ These are cases where the holder of the domain refers to the goods or services of another entity in the form of a link. Referential use in this case would be, for example, placing links on the domain such as “we cooperate with Košice Airport” or “we are provided with luggage storage by Košice Airport”, etc.

complicates the resolution of conflicts, since the Internet has no physical borders and in these cases it is not possible to bring an action *in personam*, since the individual disputing parties fall under the jurisdiction of different states.⁸¹

Cross-border internet disputes pose unique challenges because the Internet lacks physical borders, making it difficult to establish jurisdiction and enforce judgments. The beginnings of global domain use, and thus the first beginnings of conflict situations as such, date back to the first half of the 1990s.⁸² One of ICANN's primary tasks was to deal with the frequent problem of unauthorized use of third-party names in domains without the consent of their owner. This involved handling disputes arising from the registration and use of domain names that infringed upon the rights of trademark or other intellectual property owners. The previous legal regulations did not protect the registration companies (NICs) themselves, and at that time they faced a series of lawsuits from owners of trademarks or other protected signs.⁸³ WIPO therefore discussed the creation of a mandatory administrative procedure concerning abusive domain name registrations. The procedure would allow for a neutral venue in the context of disputes that are often international in nature, and would be conducted in accordance with procedural rules laws which take account of the various legal procedural traditions around the world. The procedure would not exclude the jurisdiction of the courts. A party would be able to pursue a claim in a national court, or seek the ruling of a national court in respect of matters that had already been submitted to the administrative dispute-resolution procedure. It is to be hoped, however, that with experience and time, confidence will be built up in the credibility and consistency of decisions made under the procedure, so that the parties would resort less and less to litigation. The decisions taken under the procedure would be made available publicly. According to the WIPO Final report, "*It is recommended that a policy to make available a uniform administrative dispute-resolution procedure be adopted for all open gTLDs.*"⁸⁴ This final report of April 30, 1999, introduced several recommendations, still effective today, to prevent domain name disputes over protected signs. Many of them have been adopted by several national registration companies in their rules, including the rules for providing domains in .sk.

On October 24, 1999, the Uniform Domain Name Dispute Resolution Policy (UDRP) was adopted by ICANN. The UDRP is a set of rules⁸⁵ created by ICANN for resolving

⁸¹ MACGREGOR PELIKÁNOVÁ, R. Ekonomické, právní a technické aspekty doménových jmen v globální perspektive. 1st ed., Ostrava: Key Publishing, 2012, p. 113.

⁸² HÖRNLE, J. Cross-border Internet Dispute Resolution. London: Cambridge University Press, 2009, <https://doi.org/10.1017/CBO9780511576102>.

⁸³ SÍTHIGH, D. M. More than words: the introduction of internationalised domain names and the reform of generic top-level domains at ICANN. *International Journal of Law and Information Technology*, Vol. 18, Issue 3, 2010, pp. 274–300. <https://doi.org/10.1093/ijlit/eqq007>.

⁸⁴ The WIPO Final report, points 152-157. Available online: (<https://www.wipo.int/amc/en/processes/process1/report/finalreport.html>).

⁸⁵ Rules for Uniform Domain Name Dispute Resolution Policy (the Rules for UDRP), updated 21 February 2024 to reflect changes required to implement the Registration Data Policy, available online: <https://www.icann.org/resources/pages/udrp-rules-2024-02-21-en>. (These Rules are in effect for all UDRP proceedings in which a complaint is submitted to a provider on or after 31 July 2015).

disputes between domain name registrants and trademark and other protected signs holders, specifically regarding abusive domain registrations (cybersquatting).⁸⁶ It provides a streamlined, cost-effective alternative to traditional court litigation for *transferring* or *canceling* domain names. The UDRP allows trademark holders to challenge the registration of domain names that are identical or confusingly similar to their trademarks or other protected signs.

The Rules for UDRP have been adopted by all accredited registrars of generic top-level domains (e.g. .com, .net, and .org) as well as some ccTLD administrators. The UDRP providers are accredited by ICANN. They are international, independent, and neutral bodies supported by a wide range of external experts in international dispute resolution and intellectual property. The WIPO Arbitration and Mediation Center⁸⁷ became the first authorized body to resolve domain name disputes out of court. WIPO remains the leading entity for alternative dispute resolution (ADR) in international intellectual property (IP) disputes, particularly those involving the unauthorized registration of protected trademarks and another protected signs until today.⁸⁸

Any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the policy and the Rules for UDRP to any provider approved by ICANN. The complaint, including any annexes shall be submitted in electronic form and shall contain several requirements. The complainant shall according to point 3 of the Rules for UDRP describe in particular,

- (1) the manner in which the domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (2) why the Respondent (domain-name holder) should be considered as having no rights or legitimate interests in respect of the domain name(s) that is/are the subject of the complaint; and
- (3) why the domain name(s) should be considered as having been registered and being used in bad faith.

It follows that the Rules for UDRP outlines three key elements that a complainant must prove to succeed:

- 1) *identical or confusingly similar*: the domain name in question must be identical or confusingly similar to a trademark or service mark in which the complainant has rights.

⁸⁶ See footnote no. 74.

⁸⁷ The WIPO Arbitration and Mediation Center was established in 1994 to offer alternative dispute resolution (ADR) options for international commercial disputes, particularly those involving intellectual property. It provides arbitration, mediation, and expert determination procedures. The Center is based in Geneva, Switzerland, with an office in Singapore since 2010. The WIPO Arbitration and Mediation Center offers time – and cost-effective alternative dispute resolution options, such as mediation, arbitration, expedited arbitration and expert determination, which enable private parties to settle their domestic or cross-border commercial disputes.

⁸⁸ WIPO: WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition. 2017. Online: <https://www.wipo.int/amc/en/domains/search/overview3.0/>.

- 2) *lack of rights or legitimate interests*: the domain name registrant (the person or entity who owns the domain name) must have no rights or legitimate interests in the domain name.
- 3) *bad faith registration and use*: the domain name must have been registered and is being used in bad faith.

To successfully challenge a domain name under the UDRP, the three key elements must be proven *cumulatively*. Or in other words, if even one key element is missing in a specific case, the complainant (even if he may be the authorized owner of the protected sign) will not be successful in the dispute.⁸⁹

A fundamental problem in resolving current domain disputes is the fact that in most cases it is no longer a classic domain piracy as such and the increasing number of unauthorized registrations of protected signs as domain names cannot be resolved in a simple manner according to the principles and rules of the UDRP as it was twenty years ago. In competition, competitors are constantly finding new ways to stand out and succeed in the fight against competition, and this also applies to virtual space. Sophisticated methods of registering domain names of competitors often show signs of unfair competition, and just as it is sometimes quite difficult in practice to prove the fulfillment of all the conceptual features of the general clause of unfair competition⁹⁰, it is even more difficult, in our opinion, to cumulatively prove the fulfillment of all the above-mentioned three key elements.

In our opinion, the most problematic to prove is the third key element, according to which: “*the domain name(s) should be considered as having been registered and being used in bad faith.*” However, from Paragraph 15(e) of the Rules for UDRP it can be deduced an example of what is meant by this action. According to last sentence of this provision, if after considering the submissions the panel finds that the complaint was brought in bad faith, *for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder*, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

According to the decision-making practice of the WIPO Arbitration and Mediation Center, this may, for example, be a speculative registration of a domain name with the aim of selling it⁹¹ or with the aim of obtaining a certain financial income from placing advertising on a website.⁹² Another case illustrating of “having been registered and being

⁸⁹ We therefore argue that this is a kind of “general clause” “of cybersquatting (abusive registration) by analogy with the law of unfair competition (apply the same as footnote no. 75).

⁹⁰ Ibid.

⁹¹ See e.g.: Administrative Panel decision of WIPO Arbitration and Mediation Center, Case No. D2020-2683 (Facebook, Inc. v. Batyi Bela, Whois privacy services, provided by DomainProtect), dated on December 30, 2020.

⁹² See e.g.: Administrative Panel decision of WIPO Arbitration and Mediation Center, Case No. D2000-0003 (Telstra Corporation Limited v. Nuclear Marshmallows), dated on February 18, 2000.

used in bad faith” is when the domain includes the trademark with a typographical variation (so-called “typosquatting” by omitting, adding, or substituting the order of letters of a trademark)⁹³, passive holding (even though the domain was passively held the panel found bad faith due to deliberate targeting of a well-known mark, privacy shield, and no response)⁹⁴, imitating products.⁹⁵

By analogy with the law of unfair competition, is action of “*having been registered and being used in bad faith*” similar to the second assumption of general clause in unfair competition. Namely, under Paragraph 44(1) of the Slovak Commercial Code unfair competition is considered to be an action that is “*contrary to good manners competition*”.⁹⁶ We consider “*having been registered and being used in bad faith*” to be an even broader conception of the presumption of unlawful conduct, because according to the grammatical interpretation, such action does not necessarily have to be only *the action of a competitor in economic competition*.

We consider proving the registration and use of a domain name in bad faith by the domain holder to be a very difficult and often unprovable assumption, since in a dispute it is sufficient to demonstrate a “certain” legitimate interest in such a domain name. As an example, we mention the following dispute: Complainant was a well-known worldwide for modern design and furniture Finnish company founded in 1935, Artek oy ab. The company holds various trademarks for the word mark “ARTEK”, including Canadian, EU, and UK registrations (the Complainant). Respondent, Ilia Tchoudinov, had no direct affiliation with the Complainant, registered domain “artek.com” (the Respondent). The Complainant argued the domain is identical to its trademarks and company name and stated that the Respondent had no legitimate interest or rights in the domain and that the domain was both registered and used in bad faith. The Respondent claimed that the sign “Artek” refers to the famous Soviet-era children’s camp in Crimea and not the Finnish design company. To strengthen his claim, he also provided personal connection evidence (such as photo of the camp) and he also publicly declared the domain was “not for sale.” On balance, the panel concluded no proof both bad-faith registration and use. The Complainant was denied since it failed to prove bad-faith registration and use and the complaint.⁹⁷

⁹³ See e.g.: Administrative Panel decision of WIPO Arbitration and Mediation Center, Case No. D2000-0323 (Neuberger Berman Inc. v. Alfred Jacobsen), dated on June 12, 2000.

⁹⁴ See e.g.: Administrative Panel decision of WIPO Arbitration and Mediation Center, Case No. D2000-0003 (Telstra Corporation Limited v. Nuclear Marshmallows), dated on February 18, 2000.

⁹⁵ See e.g.: Administrative Panel decision of WIPO Arbitration and Mediation Center, Case No. DCO2014-0587 (Swarovski Aktiengesellschaft v. Wen Ben Zhou), dated on June 3, 2014.

⁹⁶ A general clause in unfair competition law serves as a broad legal principle that prohibits a wide range of anti-competitive and deceptive business practices, even if not specifically listed in the law. It acts as a safety net, catching practices that may not be explicitly prohibited but still undermine fair competition or deceive consumers. E.g., the general clause on unfair competition is regulated in § 44(1) of the Slovak Commercial Code as follows: unfair competition is (1) action in economic competition, (2) which is contrary to good manners competition, and (3) which is likely to cause harm to other competitors or consumers

⁹⁷ Administrative Panel decision of WIPO Arbitration and Mediation Center, Case No. D2013-0003 (Artek oy ab v. Ilia Tchoudinov), dated on February 15, 2013.

5.2. Resolving domain name disputes through court

Resolving domain name disputes before general courts is only a matter of the last two decades. Judicial practice in resolving domain name disputes often encounters various problems with assessing claims for disputed designations in domains. The reason is mainly the specifics of virtual space and the technical overlaps of this type of dispute.⁹⁸ When resolving domain name disputes, general courts apply the relevant substantive law of the respective state, which in practice can also pose a problem in asserting rights, for example due to the absence of effective means of protection.⁹⁹

However, general courts have the opportunity to resolve a wide range of domain name disputes, unlike alternative domain name dispute resolution, they can examine various substantive claims and subsequently seek their enforcement. When resolving domain name disputes by general courts, it is necessary to apply those generally binding substantive law provisions that apply to the relevant protected sign. According to the relevant professional literature and applicable court practice, in the event of a protected sign infringement by a third party registering a domain name, the competitor has the opportunity to seek legal protection both under the provisions of the law on unfair competition (Slovak Commercial Code) and under special laws (for example, the Trademark Act).¹⁰⁰

In the Slovak Republic, pursuant to Paragraph 3 of Act No. 160/2015 Coll. on the Civil Procedure Code, general courts have the authority to hear and decide private law disputes and other private law matters, unless they are heard and decided by other authorities under the law. The court with causal jurisdiction to hear and decide a dispute concerning a domain name is, pursuant to Paragraph 25(1) of the Civil Procedure Code, the District Court of Banská Bystrica, since the subject matter is a dispute over industrial property (which includes not only industrial rights but also rights similar to industrial rights, which also include domain names).¹⁰¹

Pointing out some problems in application practice, as a demonstration of the judicial resolution of domain disputes, we describe an interesting domain dispute in which Slovak courts assessed *whether the transfer of a domain does not exceed the legal limits given by the claims asserted in the claim*. In this case, the plaintiff decided, instead of

⁹⁸ LAZUR, J., NAGY, Z. Doménové spory a hľadanie optimálneho rámca ich riešenia – rozhodcovské konanie, všeobecné súdy alebo alternatívne (ADR) formy? *Bulletin slovenskej advokácie*, no. 3/2019, ISSN 1335-1079.

⁹⁹ The lack of judicial resolution of domain disputes may also be due to the lack of specialization of judges, insufficient speed of proceedings or problems of the cross-border context regarding jurisdiction, applicable law or enforcement. For practical problems in enforcing rights and the absence of effective means of protection, see e.g.: HUSOVEC, M.; MESARČÍK, M.; ANDRAŠKO, J., *Právo informačných a komunikačných technológií* 1. Bratislava: TINCT, 2020, p. 151. ISBN 978-80-973837-0-1.

¹⁰⁰ See e.g. Judgment of the Supreme Court of the Slovak Republic of 21 November 2001, file no. Obdo v 69/99. Prof. Vojčík distinguishes between “relative” legal protection of protected signs under the provisions of the law on unfair competition, and their “absolute” legal protection under special laws (VOJČÍK, P. a kol. *Právo duševného vlastníctva*. Praha: Čeněk, 2012, p. 341).

¹⁰¹ Judgment of the Supreme Court of the Slovak Republic of 24 June 2020, file no. 1Ndob/6/2020.

alternative dispute resolution, as envisaged by Article 22(1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain¹⁰², to assert a claim for the defendant's domain transfers together with other claims before a national court. The resolution of the issue of the possibility of domain transfer rests on national substantive law, which, however, does not regulate such domain transfers. In the lawsuit, the plaintiff requested that the defendant be ordered to refrain from using the domains "restartdrink.sk", "restartdrink.cz", and "restartdrink.eu" and also requested that these domains be transferred to him free of charge. The court of first instance¹⁰³ concluded that "*the transfer of the domain name to the plaintiff exceeds the scope of the right to eliminate the unlawful relationship and is not a relevant means, because the domain name is considered an intangible asset to which absolute rights are attached within the framework of protection against unfair competition and trademark rights.*" According to the court of first instance, granting the claim in this part (transfer of the domain) would exceed the limits of the removal remedy (claim for removal)¹⁰⁴ and therefore dismissed the claim in this part. The court of first instance was inspired by the legal opinion expressed in the decision of the Supreme Court of the Czech Republic of 10.04.2012, file no. 23Cdo/3407/2010. The court of second instance disagreed with the conclusion of the court of first instance in this regard and has changed this judgment by ordering the defendant to transfer the rights to the disputed domains free of charge.¹⁰⁵ However, The Supreme Court of the Slovak Republic, as the court of appeal, annulled the judgment of the court of second instance and returned the case to it for further proceedings. The reason was mainly procedural errors by the court, as well as the fact that the case should have been subject to a provision of a legal regulation that had not been used in the previous decision.¹⁰⁶ Specifically, it was a Commission Regulation (EC) No 874/2004, according to which Article 22(11) provides for the possibility of transferring a domain name in the case of certain standard registrations pursuant to Article 21 of this Regulation.¹⁰⁷ The court of second instance subsequently changed the judgment of the court of first instance in the contested part and imposed on the defendant the obligation to transfer the rights from the registration of domain names to the plaintiff free of charge, while stating that the decision in this case

¹⁰² Hereinafter "Commission Regulation (EC) No 874/2004".

¹⁰³ Judgment of the District Court in Banská Bystrica of 21 October 2014, file no. 10CbPv/8/2013-124

¹⁰⁴ In Slovak "odstraňovací nárok".

¹⁰⁵ Judgment of the Regional Court in Banská Bystrica of 25 June 2015, file no. 43Cob/572/2014-155.

¹⁰⁶ The fundamental procedural deficiency of the contested decision of the second instance court, in the opinion of the Supreme Court of the Slovak Republic, was the incorrect procedural procedure of the second instance court. The Supreme Court of the Slovak Republic stated in its resolution that the second instance court deprived the participant of the opportunity to act before the court and did not conduct any evidence on the issue of validity or existence of the contract at the time of the decision (Resolution of the Supreme Court of the Slovak Republic of 27 October 2016, file no. 5Obdo/39/2016-220).

¹⁰⁷ As Article 22(11) of the Regulation (EC) No 874/2004: "*In the case of a procedure against a domain name holder, the ADR panel shall decide that the domain name shall be revoked, if it finds that the registration is speculative or abusive as defined in Article 21. The domain name shall be transferred to the complainant if the complainant applies for this domain name and satisfies the general eligibility criteria set out in Article 4(2) (b) of Regulation (EC) No 733/2002.*"

was issued in accordance with the established decision-making practice of the courts of the Slovak Republic in similar cases concerning protection against infringement of industrial property rights and against unfair competition.¹⁰⁸

The court of second instance proceeded from the legal opinion that if the plaintiff files a motion to transfer the domain name to the plaintiff, the court may decide in this way. In this context, the court of second instance emphasized that even though the registration of a domain name occurs on the basis of a contract as a private-law relationship between the holder of the sign and the network operator, in fact and in law it is a sign under which the holder of the domain name presents himself on this network as an entrepreneur using the domain to provide information about his products. According to the court, such a sign acquires a similar character for the entrepreneur as a trademark or logo and represents a certain real value for him. This real value is not small and is increased by the fact that it is not possible to register two identical domain names on the Internet, under which two different entrepreneurs could act as holders of these domain names. Therefore, if the registration of a domain name results in an infringement of the right to a trademark, or unfair competition, those whose rights have been affected have the right to protection, because this unlawful action prevents them from registering and using the domain name. Even though no legal regulation valid in the Slovak Republic directly regulates the transfer of a domain name, the Court of Appeal stated that its registration in such a case is undoubtedly a violation of economic competition and the court has the right to sanction such unlawful conduct also under Paragraph 53 of the Slovak Commercial Code, including by imposing an obligation to transfer the disputed domain to the plaintiff.¹⁰⁹

The Supreme Court of the Slovak Republic stated that the transfer of a domain name is not a common remedial claim but rather has the character of a “special compensation claim”, by which a certain property value is transferred from the infringer, while this property value was not part of the original legal status. The Supreme Court of the Slovak Republic thus concluded that: “*the transfer of a domain name is an independent claim that goes beyond the removal of the defective state and thus beyond the restoration of the original state that existed before the unauthorized intervention, therefore it cannot be a remedial claim but a certain compensation.*”¹¹⁰ However, there is no legal regulation in Slovak private law that would address such a claim for domain transfer. The application of Paragraph 53 of the Slovak Commercial Code is a possibility (because the unauthorized registration of a protected designation meets the conceptual features of unfair competition) and so the court has the right to sanction such action in accordance with commercial law. This conclusion was also stated by the court of second instance in its judgment, but according to the Supreme Court of the Slovak Republic, such a statement is “*not only*

¹⁰⁸ Judgment of the Regional Court in Banská Bystrica of 21 December 2017, file no. 41CoPv/8/2016 – 290. Compare also: Decision of the Regional Court in Banská Bystrica of 19 December 2013, file no. 43Cob/94/2013.

¹⁰⁹ Ibid.

¹¹⁰ Judgment of the Supreme Court of the Slovak Republic of 25 February 2020, file no. 5Obdo/44/2019.

unclear, but also unexamineable without further convincing explanation.” In conclusion, according to the Supreme Court of the Slovak Republic, the factual and legal conclusions of the second instance court are manifestly unfounded, which contradicts the constitutional right to a fair trial enshrined in Article 46(1) of the Constitution of the Slovak Republic. Furthermore, the reasoning does not meet the parameters of a statutory reasoning, and therefore the Supreme Court annulled the decision of the second instance court and returned the case to it for further proceedings.¹¹¹

5.2.1. *Protection of protected signs through the law against unfair competition*

The connection between the law against unfair competition and industrial property rights in signs is significant due to the distinctive character of all signs, including domain names. The Paris Convention for the Protection of Industrial Property, adopted in 1883, is a foundational international treaty that plays a significant role in the suppression of unfair competition.¹¹² The protection of signs in domain names through the law against unfair competition plays an important role, especially because in individual cases of unfair competition, there may not be an explicit violation of specific legal regulations (e.g., a violation of the provisions of the Trademark Act). The provisions on unfair competition in a certain way “supplement” the legal means of protecting industrial property rights for signs, as they provide relative legal protection even to such protected signs that do not enjoy special legal protection, such as logos, unregistered signs, know-how, as well as domain names themselves. We are of the opinion that in many cases competitors do not even have a registered protected sign (for example, a trademark) and do business (offer goods/services) or otherwise compete only under the registered domain name. Given that a domain name *is* a subject of trademark rights, we are of the opinion that even a successfully registered domain is a protected sign to which property rights apply, and the same claims can be asserted as in the case of interference with other protected signs. As an example, we demonstrate a natural person who registers the domain “diaryofafamishedmother.sk”, on which the mother regularly publishes funny articles about raising her child, and over time this domain becomes popular among a certain group of people (mothers with children). Another person takes advantage of the popularity of this domain and starts a business under such a name. Despite the fact that the domain holder had no absolute right to such a name (in the form of a trademark or business name), she can invoke means of protection from unfair competition law.

The provisions of the law against unfair competition represent the best applicable method of protecting a domain name in court disputes over country code domains (ccTLDs), which is also confirmed by the fact that from a substantive point of view, claims from the law against unfair competition are usually applied in almost all domain

¹¹¹ Ibid.

¹¹² A key aspect of the convention is its commitment to combating unfair competition by ensuring fair trade practices and safeguarding the rights of creators and inventors. See more: VOJČÍK, P. a kol. *Právo duševného vlastníctva*. Praha: Čeněk, 2012, p. 415.

disputes.¹¹³ An example is the analyzed lawsuit over the domains restartdrink.sk, restartdrink.cz, and restartdrink.eu from the previous chapter. Legal protection against unfair competition is subject to the principle of territoriality, just like legal protection through special private law regulations. That is, it applies to competitors who operate in the territory of the Slovak Republic or are entitled to protection under the Paris Convention for the Protection of Industrial Property. According to Slovak law, protection against unfair competition can also be claimed by foreign persons if they meet these conditions or if the reciprocity criterion applies to them.¹¹⁴ Last but not least, the reason for the frequent use of the law against unfair competition in domain name disputes is the fact that unfair competition is based on objective liability. This means that there is no intention or intent on the part of the competitor.¹¹⁵

By resolving domain name disputes through court, unfair competition remedies (besides domain name transfer or cancellation) often include injunctive relief, adequate compensation (also monetary) for damage, as well as another compensation for losses suffered because of the domain name dispute. These remedies aim to stop infringing activities, compensate for harm, and correct unfair registration practices. According to Paragraph 53 of the Slovak Commercial Code, “*Persons whose rights have been infringed or threatened by unfair competition may demand that the infringer cease such conduct and restore the situation. Furthermore, they may claim appropriate relief, which may be provided in monetary form, compensation for damage, and restitution of unjust enrichment.*” Furthermore, in cases of false advertising, a court may order the infringing party to issue corrective advertising to rectify the misleading information (corrective advertising). According to Paragraph 55(2) of the Slovak Commercial Code, “*the court may grant the party whose application was granted the right to publish the judgment at the costs of the party who was unsuccessful in the dispute, and, depending on the circumstances, also determine the scope, form and method of publication.*”

In addition to the above means of protection, the specific claims are:

a) Transfer of the domain to the claimant,¹¹⁶ and

¹¹³ See, e.g.: Judgment of the Supreme Court in Prague of 1 March 2010, file no. 3 Cmo 265/2009; Judgment of the Supreme Court of the Slovak Republic of 13 October 2010, file no. 3M Obdo 1/2009.

¹¹⁴ VOZÁR, J. in: OVEČKOVÁ, O. a kol. *Obchodný zákonník* (The Great Commentary, Volume I), Bratislava: Wolters Kluwer, 2022, pp. 398 – 404.

¹¹⁵ The exception is the parasitism on the reputation of another competitor under Paragraph 48 of the Commercial Code, where intent is presumed. Legal theory also considers possible non-culpable parasitism, but we are inclined to believe that if the intention of the parasitic entity is absent, or if guilt is not proven, it may still be an unfair competition act – and such conduct is punishable under the general clause, which does not assume intent. See: HAJN, P. *Soutěžní chování a právo proti nekalé soutěži*. MU, Brno: 2000, p. 185; MORAVČÍKOVÁ, A. in: PATAKYOVÁ et al. *Obchodný zákonník*, 1st ed., Praha: C. H. Beck, 2022, pp. 187 – 191).

¹¹⁶ See, e.g., successful lawsuit for the transfer of the domain “illy.sk” (Judgment of the District Court of Banská Bystrica of 27 October 2009, file no. 10CbPv/4/2009); successful lawsuit for the transfer of the domain “viagra.sk” (Judgment of the District Court of Banská Bystrica of 24 March 2010, file no. 16CbPv/13/2008 et seq. in the second instance confirmed by the Judgment of the Regional Court in Banská Bystrica of 9 November 2011, file no. 41Cob/179/2010).

b) Cancellation of the domain (deletion of the domain from the second-level domain register).¹¹⁷

In this context, we point to the already analyzed dispute, in which the Supreme Court of the Slovak Republic, as the court of appeal, stated that the applied transfer of a domain name is not a common removal or delay claim, but rather has the character of a “special compensation claim”, by which a certain property value is transferred from the infringer. The Supreme Court of the Slovak Republic stated that: “*The transfer of a domain name is a separate claim that goes beyond the removal of the defective state and thus beyond the restoration of the original state that existed before the unauthorized intervention, therefore it cannot be a removal claim but a certain compensation.*”; and further stated in its decision: “*However, there is no legal regulation in Slovak private law that would resolve such a claim for domain transfer.*”¹¹⁸

It is also necessary to mention injunctions, which are a common remedy in domain name disputes. An injunction can be used to prevent a domain name registrant from continuing to use a domain name that is likely to cause confusion with a trademark or other protected sign. In this context, we also point out the possibility of applying for *preliminary injunction* (the court may ban the use of the domain especially in the case of the urgent legal and economic interest of the claimant based on protected sign infringement). This is a temporary order issued before a full trial, designed to preserve the *status quo* while the case is being decided. According to Paragraph 341(1) of Act No. 160/2015 Coll. (Civil Litigation Code): “*The court may order a party by an urgent measure to refrain from any action that threatens or infringes an intellectual property right.*” The application of a preliminary injunction by the claimants, which is to prohibit the defendant from operating the disputed domain due to the cessation of infringement of the rights to signs, is common practice also in foreign court domain disputes.¹¹⁹

All of the above-mentioned means of protection, applicable through the law against unfair competition, as opposed to claims in alternative dispute resolution, show their specific character mainly in the form of a sanction, or even several sanctions at the same time, which the court imposes in an attempt to educate not only the specific domain holder for his illegal actions, but also other potential persons who may have the impression that speculative domain registrations are profitable. The claims that can be applied in domain disputes through means against unfair competition therefore fulfill, in addition to the satisfactory and reparative function, also a preventive function, and serve as a certain

¹¹⁷ See, e.g., the Judgment of the District Court Bratislava 1 of 6 February 2012, file no. 27CbPv/4/2010, by which the court banned the use of the domain “daceuinck.sk” and an obligation to cancel this domain. More on the issue: HUSOVEC, M. Je (ešte stále) možné žalovať o prevod doménového mena? *Revue pro právo a technológiu*, Vol. 3, no. 6, Ústav práva a technológií Právnické fakulty Masarykovy university, 2012, pp. 3-10.

¹¹⁸ Judgment of the Supreme Court of the Slovak Republic of 25 February 2020, file no. 50Bdo/44/2019.

¹¹⁹ In German jurisdiction, e.g., the Judgment of the Higher Regional Court in Cologne of 30 September 2016, file no. 6 U 131/15.

warning so that competitors, and no one else, can get the impression that speculative (abusive) domain registration is profitable.

An interesting fact in domain name disputes is that in most cases the plaintiffs do not assert any of the above claims.¹²⁰ Compared to neighboring Austria or Germany, reparation and satisfaction remedies are a common part of domain name claims brought in court. Let us take as an example the lawsuit over the domain names “firn.at” and “www.firn.co.at” from neighboring Austria. The plaintiff was a manufacturer of well-known sweets under the name “Firn”, which had registered both a word and a combination trademark under the same name. The defendant was the Viennese café “Firn Bar & Casting Cafe”, which registered the disputed domains. In this case, the Supreme Court in Austria considered the registration of domains containing a well-known sign to be a form of parasitism on the plaintiff’s reputation and authorized the plaintiff to publish the admissible part of the judgment at the defendant’s expense in the Viennese newspaper “Neue Kronen Zeitung”.¹²¹

Conclusion

In recent years (especially in connection with the adoption of the ADR Rules in Slovakia effective from 1 September 2017, which established the possibility of alternative domain dispute resolution for the .sk domain through the ADR Center), several contributions have appeared highlighting alternative domain dispute resolution in comparison with the judicial resolution of these specific disputes. We will not repeat what we have already stated several times, that alternative domain dispute resolution is *de facto* more efficient and faster compared to the judicial process, that the expert’s decision is highly professional and is self-executable without the need for forced execution, since this “execution” will be ensured by the administrator of the .sk top-level domain registry itself, and many other advantages.

In our article, we focus on the function of a domain name in economic competition, we look for the main causes of frequent conflicts of domain names with other signs, we analyze the possibilities of legal protection, and in conclusion we try to find solutions how these conflicts can be eliminated from a technical and practical point of view.

Based on the basic hypothesis, according to which domain names in economic competition fulfill the same function as other industrial rights to signs, we can conclude that in practice there are frequent conflicts of domain names with other protected signs. We analyze several reasons why this is so. According to the traditional division system of intellectual property (IP) rights, domain names are classified as industrial property rights for signs and thus perform the same function as other protected signs. This leads to conflict in relation to the entities, goods or services that they designate. Also, the main functions of industrial property rights for signs are indeed primarily fulfilled within the

¹²⁰ For individual disputes see HUSOVEC, M. Doménová čítanka (Výber zo slovenských doménových rozhodnutí). 1st ed., 2013, EISi, p. 206. ISBN 978-80971307-0-1.

¹²¹ Judgment of the Austrian Supreme Court of Justice of 25 May 2004, file no. 4 Ob 36/04d.

context of business competition. These rights, including trademarks and other designations, just like domain names, are crucial for differentiating products and services, fostering competition, and preventing unfair practices. Proposals to initiate domain disputes are thus in most cases filed by entities that are in a competitive relationship with the domain holder. We further state that the technical process of domain registration, governed by the first-come, first-served rule, does not automatically check for potential conflicts with third-party rights like trademarks and other protected signs. Registrars primarily verify the availability of a domain name and ensure it complies with technical standards. The domain name registration process is not public and does not involve an objection proceeding, as is the case with e.g. trademarks. Therefore, affected parties cannot prevent the registration of a disputed domain (the registration of a domain name is publicly recorded in WHOIS databases, making the information accessible to anyone. However, the initial registration process itself is typically first-come, first-served and doesn't involve a formal objection period like trademark applications where third parties can oppose the registration). Due to the fast, informal and relatively inexpensive domain registration process, there is a high number of domain registrations compared to other designation rights.¹²² The right to use a domain name is primarily established after completing only these two steps: submitting an application for domain registration, and paying the domain registration fee (including the initial registration fee and all others required fees).

However, domain registration is a natural part of current economic competition. It ensures the virtual existence of competitors. Therefore, domain name disputes as such cannot be completely prevented in practice.

One option to prevent domain disputes from a technical point of view would be for the registrar to publish the domain registration process with a mandatory introduction of a period within which it would be possible to file objections to the domain registration of third parties, as is the case, for example, in the trademark registration process. However, such a process would encounter two fundamental problems. Firstly, introducing an objection proceeding into the domain registration process would negatively affect its current efficiency and significantly slow down the entire domain registration process. An alternative option would therefore be, for example, the introduction of a post-registration opposition period (currently, industrial property offices are also considering moving opposition proceedings from the pre-registration to the post-registration period, with the aim of reducing the overall duration of the trademark registration procedure). Secondly, as we have described the process of registering domains at the national (ccTLD) and supranational (gTLD) levels, the introduction of an objection procedure (as well as all other possible measures aimed at eliminating possible interference with the rights of

¹²² According to statistics, 14,043 national top-level domains .sk were registered between January 2023 and January 2024 compared only to 2,048 nationally registered trademarks at the Slovak Intellectual Property Office for the same period. See statistics online: <https://virtualno.sk/statistiky/udaje-o-sk-domenach/> (data from 24 March 2025). See also: Annual report of the Industrial Property Office of the Slovak Republic, 2023, p. 23, ISBN: 978-80-974307-7-1.

third parties) into the registration process is *practically impossible due to the global nature of the domain space*. All domains at the national level are managed by network information centers (NICs) established in each country, with their own registration rules. Therefore, for such measures to be truly effective, they would have to be introduced into the rules of all network information centers, or such measures would have to be introduced by ICANN itself, which exercises control over the management of the worldwide domain space.

From the analysis of individual domain disputes, we conclude that domain name disputes are frequently initiated by parties with competitive or conflicting interests, often seeking to acquire or eliminate the disputed domain to prevent confusion among internet users or protect their brand *as quickly as possible*. These disputes often arise when a domain name is seen as infringing on a trademark, trade name, or the overall reputation of a company.

Regarding alternative domain dispute resolution (ADR), the UDRP Rules (which are also accepted by most national ADR dispute resolution) outline three key elements that a complainant must *cumulatively* prove to successfully challenge a domain name in alternative domain dispute resolution. Or in other words, if even one key element is missing in a specific case, the complainant (even if he may be the authorized owner of the protected sign) will not be successful in the dispute. We therefore argue that this is a kind of “general clause” of cybersquatting (abusive registration) by analogy with the law of unfair competition.

A fundamental problem in resolving current domain disputes is the fact that in most cases it is no longer a classic domain piracy as such and the increasing number of unauthorized registrations of protected signs as domain names cannot be resolved in a simple manner according to the principles and rules of the UDRP as it was twenty years ago. In competition, competitors are constantly finding new ways to stand out and succeed in the fight against competition, and this also applies to virtual space. Sophisticated methods of registering domain names of competitors often show signs of unfair competition, and just as it is sometimes quite difficult in practice to prove the fulfillment of all the conceptual features of the general clause of unfair competition, it is even more difficult, in our opinion, to cumulatively prove the fulfillment of all the above-mentioned three key elements of abusive domain registration.

By analyzing decision-making practice, we consider the most problematic to prove the third key element, according to which: *“the domain name(s) should be considered as having been registered and being used in bad faith.”* We consider proving the registration and use of a domain name in bad faith by the domain holder to be a very difficult and often downright unprovable assumption, since in a dispute it is sufficient to prove any “certain” legitimate interest in such a domain name (we support our claim with an example from decision-making practice).

By analogy with the law of unfair competition is action of *“having been registered and being used in bad faith”* similar to the second assumption of general clause in unfair competition. Namely, under Paragraph 44(1) of the Slovak Commercial Code unfair

competition is an action that is “*contrary to good manners competition*”. We consider “*having been registered and being used in bad faith*” to be an even broader conception of the presumption of unlawful conduct, because according to the grammatical interpretation, such action does not necessarily have to be only *the action of a competitor in economic competition*.

Regarding resolving domain name disputes through court, we consider the judicial resolution of domain disputes to be a “long-distance race”. In this context, we demonstratively defined an interesting (6-year-long) dispute in which Slovak courts assessed whether the transfer of a domain does not exceed the legal limits set by the claims made in the lawsuit. In the dispute, the plaintiff requested that the defendant be ordered to refrain from using the disputed domains (restartdrink.sk, restartdrink.cz, and restartdrink.eu) and also requested that the domains be transferred on the plaintiff free of charge.

By resolving domain name disputes through court, unfair competition remedies (besides domain name transfer or cancellation) often include injunctive relief, adequate compensation (also monetary) for damage, as well as another compensation for losses suffered because of the domain name dispute. These remedies aim to stop infringing activities, compensate for harm, and correct unfair registration practices. By referring to above mentioned dispute, we also state an interesting fact in resolving domain name disputes through court in Slovakia, and that in most cases the plaintiffs do not assert any of the above claims. Compared to neighboring Austria or Germany, reparation and satisfaction remedies are a common part of domain name claims brought in court.

All of the above-mentioned means of protection, applicable through the law against unfair competition, as opposed to claims in alternative dispute resolution, show their specific character mainly in the form of a sanction, or even several sanctions at the same time, which the court imposes in an attempt to educate not only the specific domain holder for his illegal actions, but also other potential persons who may have the impression that speculative domain registrations are profitable. The claims that can be applied in domain disputes through means against unfair competition therefore fulfill, in addition to the *satisfactory* and *reparative* function, also a *preventive* function, and serve as a certain *warning* so that competitors, and no one else, can get the impression that speculative (abusive) domain registration is profitable.

Domain disputes are often initiated by competitors aiming to acquire a disputed domain *as quickly as possible* or eliminate it to prevent trademark or other protected sign infringement. Due to the higher efficiency, flexibility and self-executability of the decision, competitors therefore prefer ADR. However, in ADR for domain names, the only remedies available to the complainant are either the termination of the domain name’s registration period (releasing it for registration by others) or the transfer of the domain name to the complainant or a designated individual.

As for satisfaction, we are of the opinion that the transfer or cancellation of the domain *is not* sufficient satisfaction for the complainant (especially in the case of parasitism on the reputation of a competitor or in the case of damage to its good name or

reputation). Speculative domain holders also often unjustifiably enrich themselves at the expense of the complainant from the moment of domain registration to the moment of its transfer or cancellation (for example, by placing pay-to-click advertising or links to other domains, as was the case in the demonstrated dispute over the domain “letisko-kosice.sk”). In relation to our research question of how to prevent domain disputes, we conclude that the transfer and cancellation of a domain neither fulfills a preventive function nor serves as a certain warning so that other competitors can get the impression that speculative (abusive) domain registration is profitable.

In our opinion, *the ideal solution for eliminating domain disputes* would be either to expand the possibilities of claims in ADR disputes or to use both methods of resolving domain disputes in practice. Regarding the second proposed option, for reasons of higher efficiency, an alternative method of resolving domain disputes would be to first request the transfer of the domain to the complainant (or cancellation of the domain) and then seek applicable satisfaction claims arising from unfair competition or other relevant substantive legal regulations through the courts.

In this context, we also point out the possibility of applying for *preliminary injunction* (the court may ban the use of the domain especially in the case of the urgent legal and economic interest of the claimant based on protected sign infringement). This is a temporary order issued before a full trial, designed to preserve the *status quo* while the case is being decided.

Claiming compensation for the damage caused by the unauthorized registration of the domain, issuing an unjust enrichment of the unauthorized domain holder resulting from advertisements, demanding adequate satisfaction and exercising the right to publish a judgment for the costs of the unsuccessful party in the dispute – only these means of protection, applicable in general through the law against unfair competition would serve as a sufficient warning to other speculators who may currently feel that cybersquatting (abusive registration) pays off.

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