

DOMAIN NAMES

The importance of the internet for commercial use has increased enormously. In this information leaflet we inform you on a number of aspects of domain names that may also be of importance to you.

General

A domain name is just an address on the internet. Domain names may be applied for per country with the local registration authority. In the Netherlands this is the "Stichting Internet Domeinregistratie Nederland". There are also domain names, which are not country-bound, like for example the .com-domain for commercial organizations, which is managed in the United States.

Internet addresses usually use the formula: www.domainname.nl or www.domainname.com. Usually the name of the company itself or a trade mark of the company is chosen as domain name. For some extensions also private persons may apply for a domain name. Domain names are in principle allocated in accordance with the principle: "first come, first served", which may cause quite a few problems.

Difference between domain name and trade mark

There is a big difference between a trade mark registration and a domain name registration. A trade mark registration gives an exclusive right to use the name for a certain product or a certain service in a specific country. Furthermore the trade mark registration offers a legal system for protection against infringement.

A domain name registration only gives permission to use a name worldwide as a unique address on the Internet. A domain name is therefore not, like a trade mark right, limited in territory. For domain names there is no specific legal framework. The only protection is that nobody

else will get access to the internet under exactly the same name, irrespective of his activities. However, one different letter in the domain name is sufficient to have the chosen name registered anyway.

Conditions for .nl domain names

There are no restrictions with regard to who may apply for a .nl domain name. The .nl domain is open to applicants from all over the world, both to companies and private persons. The applicant only has to prove his identity.

In order to be accepted as a domain name, the name has to meet various conditions. First of all the domain name needs to be available. The name has to consist of at least two characters and may not count more than 63 characters. The name may only contain letters, digits and the minus sign, although minus signs may only stand between two letters and/or digits. Finally the domain name applied for has to contain at least one letter.

Necessary documents and data

If you wish to have your (company) name registered as a domain name, you have to prove your identity by means of an extract of the Trade Register or a copy of your passport. Furthermore you have to complete and sign a registration contract. By doing so you state that you do not infringe any rights of third parties and you submit to Dutch law and the domain name arbitration regulation. You have to record any changes in your data as soon as possible.

Disputes on domain names

Also in the field of domain names there are conflicts of interests. In most cases it concerns trade mark owners who want to register their trade mark as a domain name and find that someone else did so before them.

In such event a trade mark right is a strong instrument to act against such other party. The trade mark owner can only take action against a conflicting domain name, if the domain name is used in commerce and such use infringes an earlier trademark. For example, the request of Procter & Gamble to transfer the domain name ariel.nl to them was rejected by the court for the reason that the website ariel.nl was only used for private purposes.

Special dispute procedures

There is a special arbitration procedure for disputes on .nl domain names, which is administered by the World Intellectual Property Organisation (WIPO). WIPO has several years of experience in arbitration with regard to domain name disputes. In particular for disputes on .com domain names this procedure was often used. This dispute procedure only applies to cases of bad faith or abuse of right.

An example is the dispute on the domain name dior.org. In this dispute Dior applied for the transfer of the domain name dior.org. The WIPO-panel ascertained that the holder of the domain name himself was not at all interested in the domain name dior.org. It was obvious that the domain name had only been applied for with the object to sell it later. Therefore the WIPO-panel decided that the holder of the domain name dior.org had registered and used the domain name in bad faith and that the domain name had to be transferred to Dior.

The arbitration regulation for disputes regarding .nl domain names is in the first instance limited to infringement of a Benelux trademark, Community Trademark or a Dutch company

name. For other conflicts on .nl domain names you still have to apply to the court. An important advantage of the arbitration procedure is that it is quick and less expensive than proceedings before the court.

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