

Dueling Websites

The proliferation of websites increases the likelihood of trademark disputes between the owners of domain names and the owners of trademarked goods or services. Internic often steps in and revokes domain names that infringe on trademarks whose use predates the domain name registration. However, Internic may take a hands-off approach if the claimants are from different nations and each owns the same trademark in their country. This is exactly what has happened in a case between Desktop Technologies, a U.S. company, and ColorWorks Reproduction, a Canadian company.

Desktop and ColorWorks are both in the printing industry. Both companies have trademarked the name "colorworks" in their own countries. ColorWorks went one step further, however, and obtained the domain name www.colorworks.com. Desktop, claiming trademark infringement, filed suit against ColorWorks in Pennsylvania. In its response to the lawsuit, ColorWorks argued that the Pennsylvania court does not have jurisdiction over ColorWorks.

Jurisdiction is the legal concept that enables a court to exercise its judicial power over a defendant. Under the U.S. Constitution, a court lacks jurisdiction if the defendant does not have sufficient contact with the state in which the court is located. Traditionally, such contact requires some sort of actual physical presence in the state. Recently, the courts have been faced with cases in which a defendant's sole contact with the state is by its website.

Although the law is still evolving in this area, the cases in which courts have determined that access to a defendant's website is sufficient contact to invoke the court's jurisdiction have generally involved websites that are interactive rather than merely informational. For example, courts have more readily asserted jurisdiction over defendants whose websites enable visitors to purchase merchandise rather than websites that simply advertise goods or services.

ColorWorks claims that as it has no customers, offices, employees, or agents in Pennsylvania, the traditional jurisdictional contacts are lacking. ColorWorks also claims that as its website is merely informational rather than interactive, it also has no "cybercontact" with Pennsylvania.

A victory by Desktop could have profound implications for anyone who has a website. If Desktop wins (and if that court's decision becomes generally accepted), merely maintaining a noninteractive website could subject a website owner to jurisdiction in any state or indeed, in any country. In other

words, this could empower distant states and foreign countries with which you have no contact (other than through your website) to enter judgments against you. We all worry that undue legislative interference could kill the Internet. Perhaps, instead, we need legislation to prevent the courts from exerting undue interference with websites.