

DOMAIN TYPOSQUATTING

NEW STRATEGIES FOR MITIGATING ONLINE RISK

Typographical errors and misspellings are an unavoidable part of the human condition. But when those typos occur while entering your web address into a browser, it can lead your customers—and your brand—to a new dimension of infringement called domain typosquatting.

Typosquatting is the practice of registering web domains that are intentional misspellings of other websites, in order to redirect web users to a different site. As the web has evolved as a key channel for commerce and marketing, the incidence of these “rogue” websites has grown by leaps and bounds. And that creates a major headache for web users and brand owners alike. At best, typosquatting impacts your customers’ online experience. At worst, it can lead to even more serious business consequences.

GROWING PHENOMENON

Typosquatting has grown in part due to the rise in “direct navigation”—the practice of web users entering website domain names directly into the address bar on their browser, rather than using a search engine to locate the site. According to the Coalition Against Domain Name Abuse (CADNA), a nonprofit group advocating action against all forms of cybersquatting, nearly 75% of all web users access websites via direct navigation. This fact, together with the high frequency of mistyped domain names, particularly when entered on cell phone keypads, provides a rich opportunity for typosquatters looking to divert web users.

The incidence of typosquatting has exploded in recent years. CADNA reported that cybersquatting has increased by nearly 250% in 2007 alone. Out-Law.com, an e-commerce law site sponsored by Global 100 law firm Pinsent Masons, reported in 2007 that the world’s 500 largest companies have all been targeted by typosquatters.



The impact on individual owners of popular brands can be staggering. According to a 2008 McAfee Security Report, the company found more than 80,000 typosquatting domains targeting the top 2,000 websites. The same report found that 17 of the most popular websites had between 235 and 742 typosquatting domains each.

CADNA reported that the top five misspellings of mspace.com each receive more than 3 million visitors per year—a total of 15 million misdirected consumers every year, for just one popular site.

REAL BUSINESS IMPACT

In many cases, typosquatters are trying to divert traffic to a “parking” website with pay-per-click ads. If the diverted visitor clicks on one of the ads, this generates revenue for the typosquatter. These parking sites may have ads for the brand owner’s competitors. Or, in an ironic twist, the brand owner’s own ad may be among the list, forcing the brand owner to pay a fee for leading consumers to the site they intended to go to all along—adding insult to injury.



Sometimes, however, the typosquatters’ purpose is more nefarious. An August, 2008, article in *PC World* reported on research by Symantec that revealed a typosquatting domain registered to someone in China that had no website associated with it; instead, the domain was designed only to receive email. The implication appears to be that the typosquatter was trying to intercept email with mistyped addresses intended for the brand owner, a defense contractor—raising the chilling possibility of espionage.

Unfortunately, examples of ill-intentioned typosquatters are not hard to find. Attorney Philip D. Mitchell of Epstein Becker Green points to a client in the health insurance industry who learned about typosquatting the hard way.

“They discovered that through typosquatting, an offshore party was directing people to a website identical to the client’s site. In order to log in to the site, users had to provide personal information,” Mitchell explains, noting that the client was made aware of the threat by an employee who came across it. “No matter how sophisticated your IT capabilities are, companies often find out about this surreptitiously, from a customer, vendor or employee.”

Like other cyber miscreants, typosquatters are resourceful and extremely savvy, continually seeking new ways to take advantage of vulnerabilities.

“A lot of these typosquatters are one step ahead of the brand owners, because there’s money to be made,” says Jason Bernstein, Partner at Bryan Cave Powell Goldstein, LLP, in Atlanta. “You have to take as many countermeasures as you can within reason.”

LEGAL RECOURSE

What can brand owners do to protect themselves? Start by taking the typosquatting threat seriously, says Allison McDade, Senior Associate at Pirkey Barber, LLP, in Austin.

“I advise clients, even smaller companies, to be proactive,” McDade says. “Any brand owner has the obligation to police their mark. Under that obligation, you need to have some sort of search or watch strategy that addresses typosquatting.”

If you do identify a case of typosquatting on your brand, what then? One response is to file a complaint under the Uniform Domain-Name Dispute-Resolution Policy (UDRP), established by the Internet Corporation for Assigned Names and Numbers (ICANN) to handle disputes regarding the registration of domain names.

Winning a UDRP decision can result in the typosquatting domain being turned over to you. But McDade says these complaints can drag on—while the typosquatter continues to reap profits.

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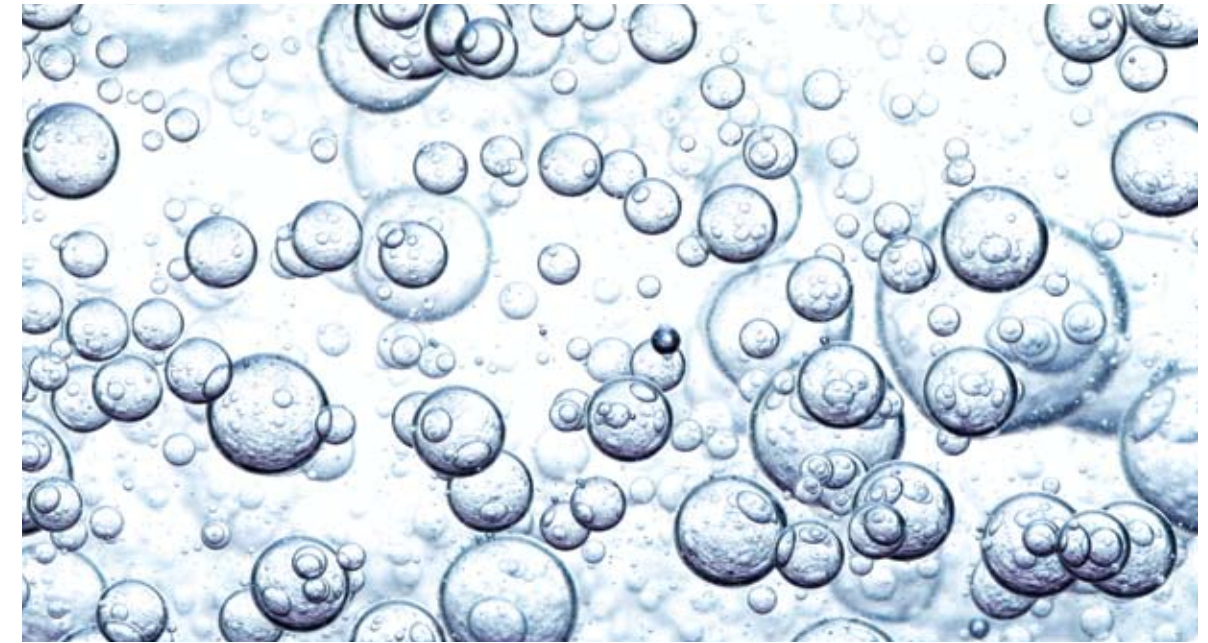
“If clients have a large scale typosquatter, their best option may be to file a lawsuit,” McDade says, noting that the Anticybersquatting Consumer Protection Act (ACPA) of 1999 provides statutory damages of \$1,000 up to \$100,000 per infringing domain name. She points to a recent California case brought by telecommunications company Verizon against a company called OnlineNIC, which had registered a variety of closely similar domains names (e.g., bestverizon.net, myprepaidverizon.com, etc.). Verizon won a default judgement including damages of \$50,000 per violation, totaling \$33.15 million. “The case shows the court’s inclination to award large monetary damages in these cases.” The challenge, though, is trying to collect a damage award from a company that either has no assets or is located outside the U.S.

What about just buying up the typosquatting domains? That may send the wrong message, Berstein says.

“It might seem expedient to just pay \$1,000 or some other relatively small amount for the domain than to file a UDRP complaint,” he says. “And, sometimes it is. However, if you do that, you become known as someone who will pay and others may take advantage of this knowledge.”

DEFENSIVE STRATEGIES

How can you avoid such a situation? Bernstein recommends a multi-pronged approach that encompasses domain registration, domain management and automatic renewal, and policing. Ideally, the process of protecting domains begins before you register your trademark.



“When a client is developing a new brand, I want to make sure that we go out immediately and search to find out what domains are available and what’s taken,” Bernstein says. “If a domain is taken, you may still be able to buy it, but you want to buy it before you launch your site, before the owner of the other domain sees that it is a valuable brand.”

Bernstein notes that cybersquatters have sophisticated software that scans the Internet looking for new domain names and registering the variations and misspellings. They can also figure out what product or service you are offering and put up pay-per-click links of companies offering similar products/services to divert traffic to those sites and away from yours. Every time someone clicks on that site’s link, the typosquatter gets a few pennies. It adds up to millions of dollars.

Bernstein emphasizes that in the age of typosquatters, registering your trademark domain is just the beginning.

“You want to make sure you register not just the main domain name, but alternative spellings, misspellings and other variations, dashes, the actual product name, various TLDs (.info, etc), and domains for different countries,” he says. “It all depends on your brand strategy and what’s important to you.” Bernstein notes that if your domain name is one that people will remember by hearing it (e.g., by radio advertising) registering misspellings is even more important.

Mitchell agrees, pointing out that, when registering domains, timing is everything. “The first thing companies should do is reserve the domain name,” he says. “Once you file a trademark application with USPTO, it’s public knowledge. Typosquatters can search that information on the USPTO website and register closely similar domains. Then it’s too late.”

SEARCH SOLUTION

But how do you know which similar domains to search when developing a new brand or trying to protect and existing one? Thomson CompuMark has developed a new Domain Typosquatting Search designed to help answer that question.

“People are looking for solutions to help them mitigate the risk of typosquatting, both when developing new trademarks and for policing existing ones,” says Margaret Goldstein, Thomson CompuMark Product Developer, who led the effort to develop the new Domain Typosquatting Search.

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"We started by studying the strategies typically used by typosquatters," says Goldstein. The result is a multi-dimensional approach that searches for a range of common domain typo variations. For example, a typosquatting search for the domain "YELLOWSKY" would include:

- **Wrong key typos** (e.g., YRLLOWSKY, YELLOWSJY, UELLOWSKY)
- **Missed characters** (e.g., YELOWSKY, YELLOWSK, YLLOWSKY)
- **Double characters** (e.g., YYELLOWSKY, YELLOWSKY, YELLOWSKYY)
- **Double key strikes** (e.g., TYELLOWSKY, YELLOAWSKY, YELLOWSKHY)
- **Transposed characters** (e.g., YELLWOSKY, YELLOWSYK, EYLOWSKY)
- **Character look-alikes**, such as "O" and "0" (e.g., YELLOWSKY)
- **Wrong domain** (e.g., .INFO instead of .COM)
- **Other common typos** (e.g., WWWYELLOWSKY, WWW-YELLOWSKY, YELLOWSKYCOM)

But Goldstein emphasizes that the new search goes beyond computer algorithms. "A key advantage is the human factor we add to every search," she says. "Our Web Search Analysts have specialized training in researching and evaluating web domains. They review search results to help ensure clients receive thorough, high-quality information."

VALUABLE INSIGHT

The Domain Typosquatting Search provides the information needed to help assess the risk posed by typosquatting to your brand or prospective trademark. Reports include a list of domains that could potentially be used for typosquatting, indicating whether those domains are currently registered. For registered domains, the report provides WHOIS information on the domain owner, when available. For domains with live websites, the report includes color screen shots of each website home page.

PROACTIVE APPROACH

The results provided by the Domain Typosquatting Search can be used in a number of ways. For companies with existing domains, the search provides invaluable insight regarding potential instances of typosquatting that could be diverting traffic from their website, tarnishing their brand, or deceiving their customers.

"We recommend clients do a trademark IP audit every couple of years to assess what they have and how they are using it," Mitchell says. "The Domain Typosquatting Search would be an excellent tool to use in that process, particularly for a client's house marks or strong brands."

The search also provides invaluable insight for companies launching new trademarks, helping assess the potential risk associated with particular domain names.

"When searching a new mark, it's important to understand the landscape of the online space so you can gauge how much potential enforcement you may be looking at," McDade says. "If you're trying to decide between two different marks and someone has registered a lot of typo variations on one and the other mark has none, that would be very valuable to know up front. You could head off a lot of costly headaches."

POWERFUL NEW TOOL

While the web's commercial and legal landscape is continually evolving, one thing is clear: the typosquatters will continue to seek out opportunities for their own gain, at the expense of legitimate brand owners. Despite efforts on the part of CADNA and other advocacy groups to promote legislation to help curb domain abuse, you can expect typosquatters to keep looking for vulnerable domains.

"They think of nefarious things faster than we can enforce against them," McDade says. "The potential for damage to your brand is great enough that companies with valuable brands should devote resources to the problem of typosquatting. This is not going away."

The key is to be proactive, Bernstein says. "Searching potential typosquatting domains as part of your normal trademark screening search can help you stay one step ahead of the typosquatters."

With Thomson CompuMark's Domain Typosquatting Search, brand owners now have a powerful, new tool in the cat-and-mouse game of online brand protection.

For more information on our Domain Typosquatting Search, call (800) 692-8833 or visit us online at www.compumark.thomson.com.

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