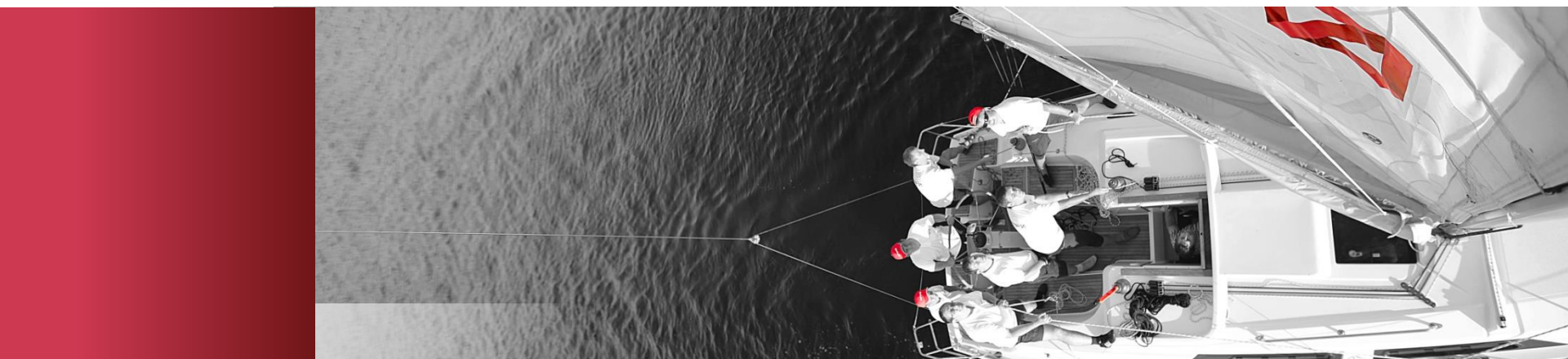


Alternative dispute resolution procedures in the changing landscape of Internet



Arzinger 

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UDRP key parameters

Applicable gTLD

- Traditional gTLDs, some ccTLD and new gTLDs

Applicable trademarks

- Registered or common law

Burden of proof

- Preponderance of evidence
(just enough evidence to make it more likely than not that the fact the claimant seeks to prove is true)

Supplemental filings

- Yes

Remedy

- Transfer or cancellation

URS Key Parameters

Applicable gTLD

- Only new gTLDs that went live starting in 2013

Applicable trademarks

- Word marks
- Registered, validated by court, or protected by statute or treaty

Burden of proof

- Clear and convincing evidence (it is substantially more likely than not that it is true)

Supplemental filings

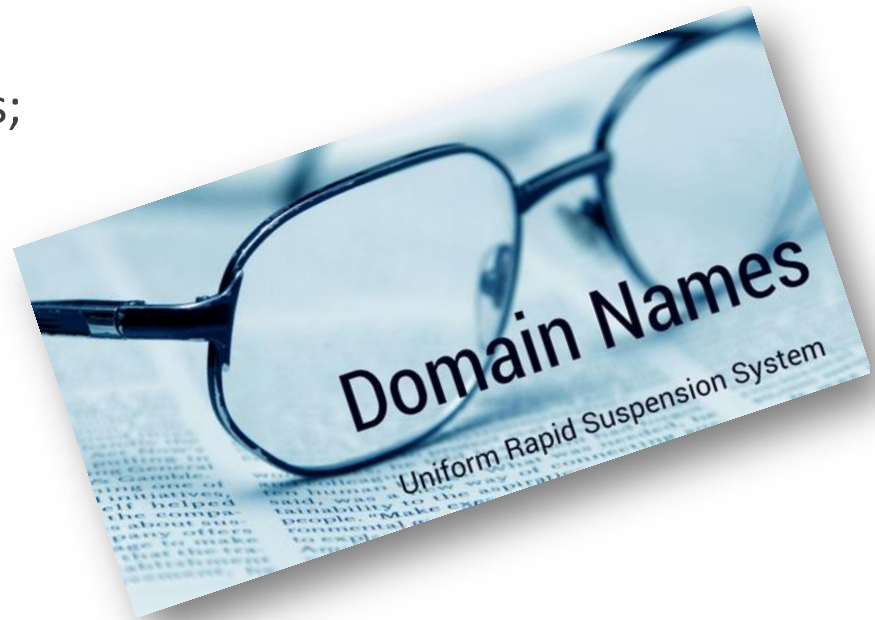
- No

Remedy

- Temporary suspension

Uniform Rapid Suspension designed to:

- ☐ provide rapid relief to trademark holders for the most clear-cut cases of infringement;
- ☐ complement the existing Uniform Domain Name Dispute Resolution Policy (UDRP) with a lower cost path for suspension;
- ☐ incorporate protections for registrants;
- ☐ about 600 cases vs. more than 20 mln domain names.



Threshold

1. Identical or confusing similarity

2. Legitimate Interest

that the Registrant has no legitimate right or interest to the domain name

3. Bad faith

that the domain was registered and is being used in bad faith.

Defenses to claim

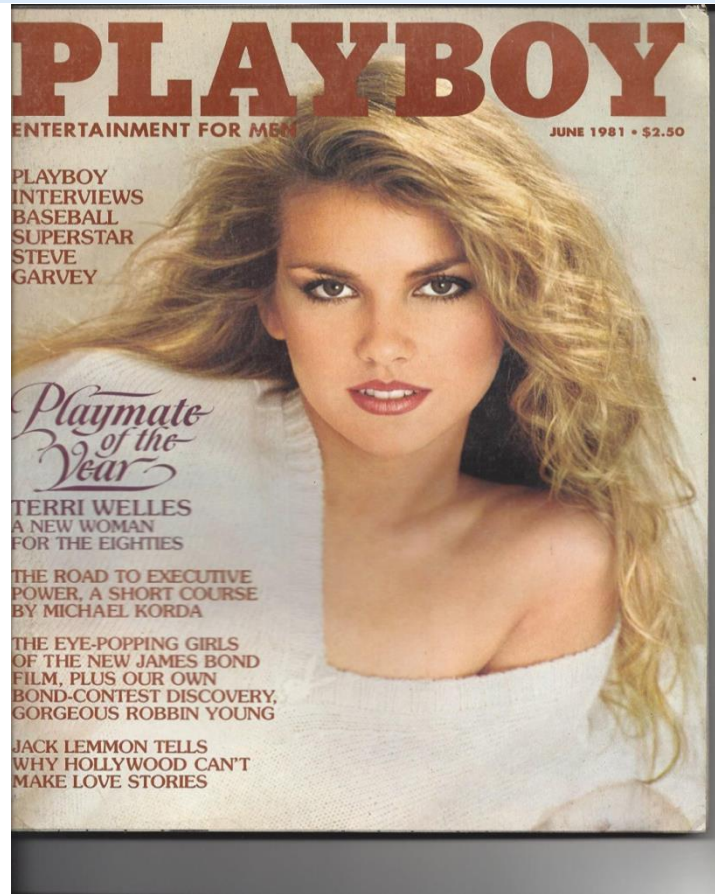
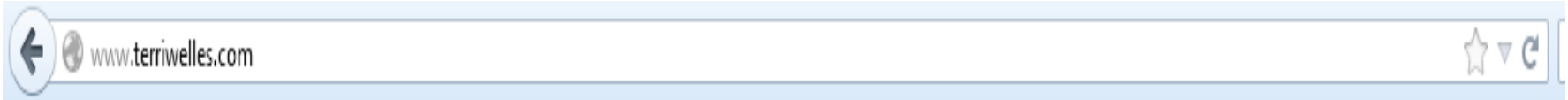
- Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
- Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights;
- Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

- **Classic fair use** is where the junior user (e.g., the Target Practice advertiser) uses someone else's mark not as a trademark (e.g., not to refer to the megabrand Target), but merely to describe its own goods or services.
- **Nominative Fair Use**, on the other hand, is where the junior user uses another's trademark deliberately to refer to that party, for purposes such as:
 - *News Reporting*
 - *Commentary*
 - *Parody*
 - *Advertising (particularly comparative advertising)*

Defenses to claim

- The domain name is generic or descriptive and the Registrant is making fair use of it.
- The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
- Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
- The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.

Nominative Fair Use Post-New Kids: Metatags & Websites Playboy Enterprises, Inc. v. Welles, 279 F.3d 796 (9th Cir. 2002)



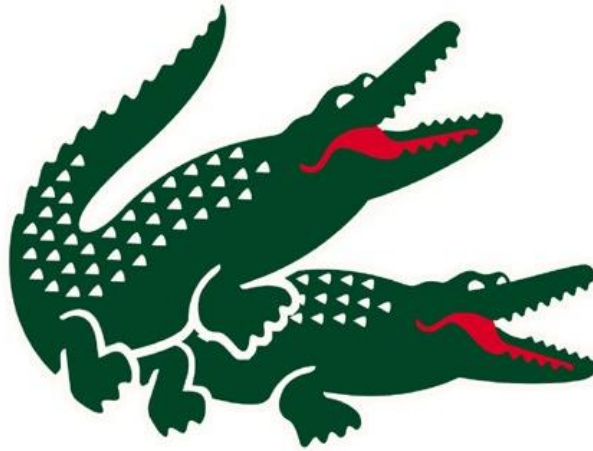
Terri Welles, Playmate of the Year, 1981 FAN CLUB!!



You guys make me feel so special!!!! I hope you like
what I've come up with:

- A quarterly newsletter from me, including the latest happenings;
- An 8x10 personally autographed never-before seen picture of me....

"This site is neither endorsed, nor sponsored by, nor affiliated
with Playboy Enterprises, Inc. PLAYBOY, PLAYMATE OF THE
YEAR and PLAYMATE OF THE MONTH are registered
trademarks of Playboy Enterprises, Inc."



J'ACCOSTE

"the right to parody or caricature could not apply in a field which is purely commercial"

(LACOSTE vs. "Attention j'accoste", (Paris High Court, February 17 1990)

The next ...Illustrative Draft Disclosure Framework for Intellectual Property Rights-holders

- For privacy/proxy service providers
- Obliges to disclose the information about the registrant
- Covers not only trademark infringement, but the copyright infringement claims as well

“jeboycottedanone” .net & .com



Les êtres humains ne sont pas des yaourts

Paris High Court, July 14 2001

Danone vs. Société Le Réseau Voltaire pour la Liberté
d'Expression/ Société Gandhi

“any freedom corresponds to responsibility”

Illustrative disclosure framework

Initiation	<ul style="list-style-type: none">• Trademark and the copyright owners
Infringement claims	<ul style="list-style-type: none">• Trademark, copyright infringements• Domain name, web-site content
Procedure for submission of requests	<ul style="list-style-type: none">• Registration with the service providers• Authentication• Fee (optional)
Requirements	<ul style="list-style-type: none">• Substantiation of the copyright/trademark infringement• Compliance with the data protection
Responsibility	<ul style="list-style-type: none">• For the misuse of personal data

Who will kick off the first question to the speaker?

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**We are looking forward to our future
cooperation!**

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