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TRADEMARK

Jessica R. Friedman

Two college students create an Internet site¹⁵⁴ under the domain name "elektra.com."¹⁵⁵ The site offers a computer bulletin board service¹⁵⁶ called "Elektrabeat" directed towards composers of electronic music. It also offers access to digital sound recordings that subscribers can sample online and download to their personal computers upon payment of a small fee. The students apply to the United States Patent and Trademark Office to obtain federal service mark¹⁵⁷ registrations for both "Elektrabeat" and "elektra.com." Shortly after the students begin to operate their service, the site comes to the attention of Elektra Records. Elektra promptly demands that the students cease and desist from using the name "Elektrabeat" and withdraw both of their pending service mark applications. Elektra also demands that the students relinquish their domain name "elektra.com" and threatens to sue not only the students but also InterNIC, the agency that assigns domain names.¹⁵⁸ This hypothetical scenario illustrates some of the ways in which trademarks may come into play on the information superhighway.

Part I of this section of the Report outlines some basic principles of trademark law. Part II discusses trademark issues that have arisen in the context of modern information technologies, including the increasing relationship between trademarks and Internet domain names.

I. TRADEMARK LAW: GENERAL PRINCIPLES

A trademark is a "word, name, symbol, or device, or any combination thereof" used to indicate the source of goods to consumers.¹⁵⁹ A service mark takes the same forms and serves the same purpose for

154. An "Internet site" is a "[h]ost computer [that] provid[es] Internet services." *MTW Networks v. Curry*, 867 F. Supp. 202, 203 n.2 (S.D.N.Y. 1994). This hypothetical assumes that the students would have the technical expertise to set up an Internet site. Many people retain Internet consultants for this purpose. See G. Burgess Allison, *The Lawyer's Guide to the Internet* 109 (1995).

155. A "domain name" is the "address" of an information service provider on the Internet. See *Curry*, 867 F. Supp. at 204 n.2. The designation ".com" in the site name indicates a commercial service, as opposed to, for example, ".edu," which designates an educational institution, or ".gov," which designates a government entity. The name immediately to the left of the ".com" designation identifies the host computer and the entity that owns the site.

156. A bulletin board service is an online service that enables users to enter information for others to read or copy. James A. O'Brien, *Management Information Systems: A Managerial End User Perspective* 646 (1990).

157. For a definition of "service mark," see *infra* note 160 and accompanying text.

158. See *infra* note 182 and accompanying text.

159. 15 U.S.C. § 1127 (1994). Examples of trademarks include "Levi's," "Nabisco," "Ford," and "Heinz." See Lawrence E. Evans, Jr., *A Primer on Trademarks and Service Marks*, 18 St. Mary's L.J. 137, 139 (1986).

intangible services.¹⁶⁰ Trademarks generally perform four functions. They (1) "identify one seller's goods and distinguish them from the goods sold by others," (2) indicate "that all goods [which bear] the trademark come from or are controlled by a single, albeit anonymous, source," (3) signify that all goods which bear the mark are of the same quality, and (4) play a primary role in the advertising of the products sold under the mark.¹⁶¹ The underlying purpose of trademark law is to "protect the purchasing public from confusing the product it desires to purchase with a similar product from a different source."¹⁶²

The owner of a valid mark has the exclusive right to use that mark,¹⁶³ at least to the extent necessary to prevent consumer confusion.¹⁶⁴ For exclusive ownership to attach to a mark, certain conditions must be fulfilled. First, the mark itself must be capable of distinguishing the purported owner's goods or services.¹⁶⁵ Not every word or phrase satisfies this requirement.¹⁶⁶ Second, the person or

160. See 15 U.S.C. § 1127 (1994). Examples of service marks include "Roto-Rooter," "Allstate," and "Coldwell Banker." See Evans, *supra* note 159, at 139-40. For the remainder of this section of the Report, the terms "trademarks" or "marks" shall be used to refer to both trademarks and service marks.

161. 1 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 3.01[2], at 3-3 (3d ed. 1995).

162. Mechanical Plastics Corp. v. Tital Technologies, Inc., 823 F. Supp. 1137, 1143 (S.D.N.Y. 1993).

163. *Id.*

164. 1 McCarthy, *supra* note 161, § 2.05[1], at 2-22 to 2-23.

165. See *id.* § 11.01, at 11-4 ("[A]ll candidates for trademark status must be . . . inherently distinctive or non-inherently distinctive.")

166. There are four traditional categories of marks. A "generic" term describes the product or service itself, and thus is incapable of identifying a particular source of that product or service. See *Investacorp, Inc. v. Arabian Inv. Banking Corp.*, 931 F.2d 1519, 1522 (11th Cir. 1991). VIDEO BUYERS' GUIDE, for example, was held not to be a valid trademark for a magazine because it identified a type of magazine. *Reese Publishing Co., v. Hampton Int'l Communications, Inc.*, 620 F.2d 7, 11-12 (2d Cir. 1980).

A "descriptive" mark literally describes the purpose, end use, class of users, or some other characteristic of the product or service, see 1 McCarthy, *supra* note 161, § 11.05[2][a], at 11-20 to 11-21, like HONEY ROAST for roasted nuts, *id.*, § 11.08, at 11-34, and thus is incapable of identifying the source of the product or service, *id.*, § 11.05[3], at 11-23, unless it has been used so extensively that consumers have come to identify that mark with its source. See *id.*, § 11.09, at 11-40. In that case, the mark is said to have acquired "secondary meaning." See *id.*; *Two Pesos, Inc. v. Taco Cabana, Inc.*, 112 S. Ct. 2753, 2757 (1992). CHAPSTICK is a descriptive mark which has acquired secondary meaning. Evans, *supra* note 159, at 151.

A "suggestive" mark, which requires some thought or imagination to ascertain the subject or nature of the goods or services, is a valid trademark *ab initio*. 1 McCarthy, *supra* note 161, § 11.20[1], at 11-104.4. ROACH MOTEL has been held to be a suggestive mark for roach and waterbug traps. *American Home Prods. Corp. v. Johnson Chem. Co.*, 589 F.2d 103, 106 (2d Cir. 1978).

An "arbitrary" mark is a commonly used term which has no inherent relationship to the goods or services that it serves to designate. See 1 McCarthy, *supra* note 161, § 11.04[1], at 11-14. An example of an arbitrary mark is BLACK & WHITE scotch whiskey. *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 314 F.2d 149, 154 (9th Cir.), *cert. denied*, 374 U.S. 830 (1963).

entity claiming exclusive ownership must have used the mark commercially.¹⁶⁷

One who uses a mark owned by another in a manner that is likely to cause confusion as to the source of goods or services is liable for trademark infringement.¹⁶⁸ To establish a cause of action for trademark infringement, a plaintiff must prove (1) ownership of a valid mark and (2) a likelihood of confusion between the plaintiff's mark and the defendant's mark.¹⁶⁹ A federal certificate of trademark registration is prima facie evidence that the registrant is the exclusive owner of the mark.¹⁷⁰ A likelihood of confusion exists if ordinary consumers would reasonably believe that the defendant's goods or services originate with the plaintiff or are associated with or sponsored by the plaintiff.¹⁷¹

A fifth category which McCarthy identifies, but which is not always categorized separately from arbitrary marks, is fanciful marks such as KODAK. 1 McCarthy, *supra* note 161, § 11.03[4], at 11-13. McCarthy points out that if a fanciful mark is used on a new product, consumers may use the mark as the name of the product itself, which will result in the mark's becoming generic, as occurred with ASPIRIN and ESCALATOR. *Id.*, § 11.03[5], at 11-14.

167. *Mechanical Plastics Corp. v. Tital Technologies, Inc.*, 823 F. Supp. 1137, 1143 (S.D.N.Y. 1993). Section 45 of the Lanham Act defines the use necessary to establish ownership of a mark as "the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark." 15 U.S.C. § 1127 (1994). To obtain federal trademark protection, use in interstate commerce is necessary. *See* 15 U.S.C. § 1051(a) (1994). It is possible to file an application for federal registration without having used the mark. *See* 15 U.S.C. § 1051(b) (1994). The registration, however, will not issue until the applicant has shown the requisite use in interstate commerce. 15 U.S.C. § 1051(d) (1994).

168. *See* 15 U.S.C. § 1114(1) (1994) (providing federal cause of action for infringement of registered marks); 15 U.S.C. § 1125(a)(1) (1994) (providing federal cause of action for infringement of non-registered marks).

169. *See* *Jockey Club, Inc. v. Jockey Club of Las Vegas, Inc.*, 595 F.2d 1167, 1168 (9th Cir. 1979); *Resorts Int'l, Inc. v. Grete Bay Hotel & Casino, Inc.*, 830 F. Supp. 823, 834 (D.N.J. 1992).

170. 15 U.S.C. § 1057(b) (1994). Although use, not registration, actually creates exclusive rights in a mark, and registration is not necessary to enforce those exclusive rights, federal registration of a mark confers several advantages on the registrant in addition to prima facie evidence of ownership. Registration serves as constructive notice of the registrant's claim of ownership of a mark. 15 U.S.C. § 1072 (1994). In addition, the owner of a federal registration has the right to sue for infringement in federal court without having to show a threshold amount in controversy or satisfy other jurisdictional requirements. *See* 15 U.S.C. § 1121 (1994). After five years, a federal registration can become incontestable, precluding certain challenges to the validity of the registration. 15 U.S.C. § 1065 (1994). Lastly, the maximum damage award in an infringement suit may be higher for a registered mark than for a non-registered mark. *See, e.g.*, 15 U.S.C. § 1117(b) (1994) (allowing treble damages and reasonable attorney fees for injury caused by intentional use of registered mark).

171. *Anheuser-Busch, Inc. v. Balducci Publications*, 28 F.3d 769, 774 (8th Cir. 1994). The test under Section 32 of the Lanham Act is whether the defendant's use of the mark in question is "likely to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1114(1) (1994). Courts look at several factors, which vary slightly among the different federal circuits, to assess whether there is a likelihood of confusion between two marks: (1) the strength of the plaintiff's mark; (2) the similarity between the plaintiff's and the defendant's marks; (3) the similarity between the plaintiff's and

II. TRADEMARK LAW AND THE INFORMATION SUPERHIGHWAY

As already noted, modern technologies have created new ways to use trademarks, such as the hypothetical college students' use of the name "Elektrabeat" for their computer bulletin board, which, if not authorized, can result in infringement. In two recent cases, courts have held defendants liable for trademark infringement for using trademarks online without authorization. In *Playboy Enterprises v. Frena*, the court found that a bulletin board service's online display of photographs with Playboy's trademark constituted trademark infringement.¹⁷² The court stated that the appearance of the Playboy name on the screen used in the bulletin board service created the impression that Playboy had authorized the defendant's use of the photographs, which it had not.¹⁷³

In *Sega Enterprises v. MAPHIA*, the defendants operated a computer bulletin board which allowed users to upload and download unauthorized copies of Sega video games.¹⁷⁴ Whenever someone used a game copied from the defendants' bulletin board, the first computer screen display would include the Sega name and logo.¹⁷⁵ The court found that even if bulletin board users knew that the games had been downloaded without Sega's permission, people who saw the copied games after they had entered the stream of commerce inevitably would be confused into thinking that Sega had authorized the games.¹⁷⁶

A complaint recently filed by the National Football League raises issues similar to those addressed in *Playboy* and *Sega*. This complaint alleges that two companies have infringed the League's trademarks by using the trademarks without authorization on a World Wide Web

the defendant's products or services; (4) the identity of purchasers and similarity of retail outlets; (5) the defendant's intent in using the mark; (6) the degree of care exercised by purchasers in selecting the product or service (sometimes referred to as sophistication of the buyers); (7) the length of time the defendant has used the mark without actual confusion arising; and (8) evidence of actual confusion. See *Anheuser*, 28 F.3d at 774; *Playboy Enters. v. Frena*, 839 F. Supp. 1552, 1560 (M.D. Fla. 1993); *Resorts*, 830 F. Supp. at 835. No single factor is dispositive. See 3 McCarthy, *supra* note 161, § 23.03[1], at 23-44 ("All of these factors are to be considered in reaching a decision on the likelihood of confusion."). The United States Patent and Trademark Office looks at a similar group of criteria in deciding whether an applicant's mark is confusingly similar to a registered mark or a mark that is the subject of another pending application. See *In re E.I. DuPont de DeMours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973).

172. *Playboy*, 839 F. Supp. at 1561.

173. *Id.*

174. *Sega Enters. v. MAPHIA*, 857 F. Supp. 679, 683 (N.D. Cal. 1994).

175. *Id.* at 684.

176. *Id.* at 688.

site¹⁷⁷ that provides "football information, entertainment and merchandise" in the course of its services.¹⁷⁸

An issue that has arisen in the context of federal trademark registration is whether it is possible to obtain federal service mark registration for the name of a computer bulletin board. In *In re Metriplex Inc.*, the Trademark Trial and Appeal Board¹⁷⁹ answered this question in the affirmative by holding that the electronic transmission of data is a service entitled to trademark protection.¹⁸⁰ The *Metriplex* panel also held that a print-out of a computer screen display which shows the mark may constitute acceptable evidence of use of the mark in commerce.¹⁸¹

The selection of Internet domain names such as the college students' "elektra.com" also has created a new context for trademark disputes. Until recently, InterNIC,¹⁸² the organization responsible for registering domain names, assigned domain names strictly on a first-come, first-served basis.¹⁸³ For a long time, this did not create any problems because at least initially, companies were slow to claim domain names which mirrored their trademarks and service marks. As of May 1994, only one-third of Fortune 500 companies had registered their company names as site names.¹⁸⁴ Furthermore, the names of

177. A World Wide Web site "links servers across the Internet." Symposium *First Amendment and the Media: Regulating Interactive Communications on the Information Superhighway: The Changing Landscape of First Amendment Jurisprudence In Light Of The Technological Advances In Media*, 5 Fordham Intell. Prop., Media & Ent. L.J. 235, 240 n.13 (1995).

178. Complaint at 4, ¶ 8, *National Football League v. Stats, Inc.*, 95 CIV. 8547 (S.D.N.Y. Oct. 10, 1995). The complaint alleges that the service entitled "Football Live!" "makes repeated and extensive unauthorized use of registered trademarks belonging to the NFL or its member clubs, including every club's team name and the marks 'National Football League' and 'NFL.'" *Id.* at 14, ¶ 35.

179. An "examining attorney," or "examiner," reviews each federal trademark application for procedural and substantive sufficiency. See 2 McCarthy, *supra* note 161, § 19.40[1], at 19-214; Patent and Trademark Office, U.S. Dep't of Commerce, Trademark Manual of Examining Procedure 1105-1 to 1105-29 (2d ed. 1993). The Trademark Trial and Appeal Board is the judicial tribunal which hears appeals from the patent and trademark examiners. 15 U.S.C. § 1070 (1994).

180. *In re Metriplex Inc.*, 23 U.S.P.Q.2d (BNA) 1315, 1317 (1992).

181. See *id.* at 1317. Use of a mark is traditionally shown through actual sales of goods or provision of services. See *supra* note 167 (discussing nature of use necessary for exclusive ownership of trademarks).

182. InterNIC, a division of Network Solutions, Inc., manages the official Internet name registry with funding from the National Science Foundation. Elizabeth Corcoran, *Registry Rationing Internet Address*, Wash. Post, Sept. 27, 1994, at C3.

183. Jared Sandberg, *Rush to Claim Turf on Internet Ends Tradition of Free 'Domain Name'*, Wall St. J., Sept. 14, 1995, at B2.

184. Joshua Quittner, *Billions Registered*, Wired, Oct. 1994, at 50, 50. Mr. Quittner conducted his own experiment in this context by registering "mcdonalds.com" for himself. *McDonald's Gives in to the Little Guy*, Inside Media, Jan. 20, 1995. When McDonald's discovered the domain name, it demanded that Mr. Quittner surrender his registration, but Mr. Quittner insisted that the company contribute money to assist a New York City high school obtain an Internet connection. *Id.* Eventually McDon-

fourteen percent of the remaining companies had already been registered by other companies and individuals.¹⁸⁵

Eventually, however, as an increasing number of companies came to perceive domain names as valuable assets,¹⁸⁶ InterNIC's first-come, first-served policy generated several trademark disputes. First, the owners of the MTV cable network ("MTV") filed an action against former MTV video disc jockey Adam Curry, alleging that Curry's use of the site name "mtv.com" for his online rock music report constituted trademark infringement.¹⁸⁷ That case settled on confidential terms, but MTV now controls "mtv.com."¹⁸⁸ Kaplan Educational Centers ("Kaplan"), the well-known test preparation company, filed a trademark infringement suit against its competitor Princeton Review ("Princeton"), which had registered "kaplan.com" as its Internet site name.¹⁸⁹ A private arbitration panel ruled that Princeton must relinquish all rights in the "kaplan.com" domain name and transfer the name to Kaplan.¹⁹⁰

In *KnowledgeNet, Inc. v. Boone*, a computer consulting company called KnowledgeNet brought a federal trademark infringement claim against not only the individual who had registered "knowl-edgenet.com" as his domain name, but also against Network Solutions, Inc., which owns InterNIC.¹⁹¹ Similarly, Fry's Electronics, a computer retailer, charged a small Seattle catering service and InterNIC with trademark infringement based on the registration of "frys.com" as the catering service's domain name.¹⁹²

ald's agreed to contribute \$3600 to the school in exchange for Mr. Quittner's relinquishing the domain name. *Id.*

185. Quittner, *supra* note 184, at 50.

186. A recent issue of *Wired* reports that Procter & Gamble ("P&G") has registered 90 domain names, one for "every conceivable P&G product" and even one for "every affliction and body part the product is intended to treat," including "head-ache.com" and "pimples.com." *Electric Word*, *Wired*, Nov. 1995, at 49, 55 (emphasis omitted).

187. *MTV Networks v. Curry*, 867 F. Supp. 202, 204 (S.D.N.Y. 1994). In a similar context, the complaint filed by the National Football League alleges that "the domain address displayed on the computer screen for the [football information] service includes a reference to 'NFL'." Complaint at 14, ¶ 35, *National Football League v. Stats, Inc.*, 95 CIV. 8547 (S.D.N.Y. Oct. 10, 1995).

188. InterNIC Domain Name Registry, available in INTERNET, <http://rs.internic.net>.

189. Stewart Ugelow, *Address for Success: Internet Name Game*, *Wash. Post*, Aug. 11, 1994, at A1, A20.

190. Jared Sandberg, *Washington Post Co. Wins Unit's 'Name' in Trademark Suit*, *Wall St. J.*, Oct. 6, 1994, at B8; Peter H. Lewis, *A Cyberspace Name Game: Fighting Words on Internet*, *N.Y. Times*, Oct. 6, 1994, at D1, D5.

191. *See Parties Try to Settle Internet Trademark Suit*, *Information Law Alert*, May 12, 1995, available in WESTLAW, ALLNEWS Database.

192. *See Peter H. Lewis, Trademark Holders Win Net Name Battle*, *San Diego Union-Tribune*, Aug. 22, 1995, at 5.

InterNIC recently issued a new policy concerning the registration and handling of disputes concerning domain names.¹⁹³ Among other things, the new policy, which was revised effective November 23, 1995,¹⁹⁴ requires each domain name applicant to make a number of warranties and representations, including a warranty and representation to the effect that its use of the proposed domain name "does not interfere with or infringe the right of any third party in any jurisdiction with respect to trademark, service mark, tradename, company name or any other intellectual property right."¹⁹⁵ The policy also requires each applicant to indemnify InterNIC and various related organizations against any loss arising from trademark or other claims that may be lodged against InterNIC as a result of the applicant's use of its domain name.¹⁹⁶

Under the policy, if a third party obtains a court order to the effect that a particular domain name "rightfully belongs" to that third party, InterNIC will terminate the applicant's¹⁹⁷ registration and withdraw the domain name from use on the Internet.¹⁹⁸ If a third party presents evidence to InterNIC demonstrating that an applicant's use of a domain name "violates the [third party's] rights,"¹⁹⁹ but the applicant first used its domain name²⁰⁰ before the third party first used its

193. NSI Domain Name Dispute Policy Statement, *available in* INTERNET, URL: <ftp://rs.internic.net/policy/internic/internic-domain-4.txt> [hereinafter Dispute Policy Statement]. It is reasonable to assume that InterNIC changed its policy in response to being named in the KnowledgeNet and Fry's Electronics actions. *See supra* notes 191-92 and accompanying text.

194. Dispute Policy Statement, *supra* note 193. The original version of the policy was entitled "NSI Domain Name Dispute Resolution Policy Statement," but the Dispute Policy Statement explains that InterNIC's revised "policy name does not include the word '[r]esolution,' as the policy relates to Domain Name disputes, not the resolution of them." *Id.*

195. *See id.* ¶ 1(c). The other warranties and representations include the following: (1) "Applicant has a bona fide intention to use the Domain Name on a regular basis on the Internet," *id.* ¶ 1(b); and (2) "Applicant is not seeking to use the Domain Name for any unlawful purpose, including, without limitation, tortious interference with contract or prospective business advantage, unfair competition, injuring the reputation of another, or for the purpose of confusing, misleading a person, whether natural or incorporated." *Id.* ¶ 1(d). Each applicant also must meet certain technical requirements, namely, having "operational name service from at least two operational Internet servers for that domain name." *Id.* ¶ 3.

196. *Id.* ¶ 4.

197. The Dispute Policy Statement uses only the term "applicant," not "registrant," but the complete text makes clear that the term "applicant" includes anyone who has registered a domain name. *See id.* ¶ 5.

198. *Id.* ¶ 5. A binding arbitration award would have the same weight. *Id.*

199. *Id.* ¶ 6(b). "Such evidence includes, but is not limited to, evidence that the Domain Name is identical to a valid and subsisting foreign or United States federal registration of a trademark or service mark that is in full force and effect . . ." *Id.* "Trademark or service mark registrations from the individual states . . . of the United States are not sufficient." *Id.*

200. The date of "first use" for this purpose would be the "activation date" of the applicant's domain name. *Id.* ¶ 6(c)(1).

mark²⁰¹ or obtained federal registration, the applicant may elect to continue to use the disputed name as its domain name unless and until the third party's claims are resolved by court order or arbitration.²⁰² In this situation, however, the applicant must give additional indemnities to InterNIC and post a bond.²⁰³ If the applicant declines to post the bond, InterNIC may place the disputed name on "hold."²⁰⁴ If the applicant did not use its domain name before the third party first used its mark, but the applicant has a certificate of trademark or service mark registration,²⁰⁵ the applicant finds itself in the same situation.²⁰⁶ If the applicant did not use its domain name before the third party first used its mark and cannot produce a registration, the applicant must agree to temporary reassignment of its domain name.²⁰⁷ One clear implication of this new policy is that anyone with a registered domain name should register their domain name as a service mark,²⁰⁸ so that in the event of a third party challenge, the domain name owner will be able to produce the evidence necessary to keep its domain name from being put on "hold."²⁰⁹

201. There is no indication of what evidence would be sufficient to establish that the third party did in fact did use its mark before the activation date of the applicant's domain name.

202. *Id.* ¶ 6(c)(2).

203. *Id.* ¶ 6(c)(5). The bond must be for "an amount sufficient to meet the damage sought, or if no specific amount of damages is sought, in an amount deemed reasonable in [Network Solutions, Inc.'s ("NSI")] sole discretion within fourteen . . . days of NSI's request." *Id.*

204. *Id.*

205. The only registrations which the InterNIC will consider for this purpose are foreign and United States federal registrations. *Id.* ¶ 6(b). The applicant must submit a certified copy of the registration on which it seeks to rely. *See id.* ¶ 6(c)(1).

206. *Id.* ¶ 6(c)(2).

207. *Id.* ¶ 6(c)(3). In this situation, InterNIC will place the domain name on "hold" after a 90-day transition period to a new domain name. *Id.* InterNIC will "assist [the] [a]pplicant with assignment of a new [d]omain [n]ame" if the applicant submits a written request for such assistance within 30 days of InterNIC's request for trademark or service mark registration. *Id.* If the applicant refuses reassignment of and will not relinquish the domain name, InterNIC will immediately place the name on "hold." *Id.* ¶ 6(c)(4). In either case, InterNIC will reinstate the domain name upon the order of a court or arbitration panel. *Id.* ¶ 6(c)(6).

208. Even before InterNIC issued this new policy, some companies were applying to register domain names as trademarks. Advance Magazine Publishers, Inc., for example, applied to register GLAMOUR.COM, MADEMOISELLE.COM and PARADE.COM for online magazine services in late 1994. Official Gazette of the United States Patent and Trademark Office, Sept. 26, 1995, at TM 360, TM 362. Following its dispute with Joshua Quittner, *see supra* note 184, McDonald's applied to register MCDONALDS.COM in February 1995. Official Gazette of the United States Patent and Trademark Office, Oct. 10, 1995, at TM 375.

209. As previously noted, even the possession of a certificate of registration will not excuse the applicant of a disputed domain name from having to indemnify InterNIC, *see supra* note 196 and accompanying text, but it could prove helpful in resolving the challenging party's claims.