

CYBERSQUATTING AND RESOLVING OF DOMAIN NAME DISPUTES IN POLAND

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Abstract in original language

Cybersquatting is a form of law infringement occurring nowadays on the Internet. It happens when someone is registering, selling or using an internet domain name incorporating someone else's trademark in order to block the domain and with the intent of gaining profits from it. When the domain name is identical or similar to a trademark used by another person or entity, trademark owner may file a claim in arbitration against whoever registered the domain name to cease the infringement.

Key words in original language

cybersquatting, domain name, trade mark, arbitration

In the last decades we can observe a global cultural, economic and legal integration which is affected by introduction of various innovations. The increased use of new technological developments such as the Internet and various internet services has not only accelerated the process of globalization and enabled a development of a constant and rapid integration beyond boundaries, but has also caused a growing interest in legal issues related to the global network. Nowadays one of the most popular matter, apart from copyright law or network security regulations, is that of legal aspects of internet domain names.

The development of computer science and mostly easy access to the Internet has significantly influenced the commerce all around the world, opened up new markets etc., but simultaneously 'enabled' committing infringements, e.g. in the field of industrial property rights as well as personal rights, copyrights, trademarks (registered and unregistered ones), company names etc.

Today it is hard to find a sector not influenced by the Internet. An Internet address seems to be one of the most important and frequently used tools on the Internet¹. Possessing an own place on the Internet – a unique internet address seems to be an indispensable condition for an online activity of an entrepreneur (not only for those entrepreneurs, whose business is strictly

¹ See Ożegalska-Trybalska J., *Adresy internetowe. Zagadnienia cywilnoprawne*, Zeszyty Naukowe Uniwersytetu Jagiellońskiego, Prace z Wynalazczości i Ochrony Własności Intelektualnej, Kraków: Zakamycze 2003, vol. 84, p.449, ISSN 0137-236X.

connected with the Internet or even based on it² but also for those starting a company). It has become one of the fundamental and basic elements of a company's image. An internet address plays a role of an online business card which enables to localize the company and supports its commercial activity. A domain name registration is nowadays one of the first steps taken by entrepreneurs entering the market or intending to introduce e-commerce to their regular business activity. In order to obtain such an address it is necessary to register, usually after paying a specific fee³, a particular name (any word in principle).

An internet address which is also called an internet domain (or simply a domain) serves to identify particular computers on the Internet⁴. Every computer connected to the Internet has a unique 32-bit numeric address (known as an IP address – an Internet Protocol address) written as four numbers separated by periods, where each number can be zero to 255⁵. An example of a valid IP address could be 64.90.50.50 or 193.1.0.15. In order to facilitate remembering such a string of numbers, every numeric address is replaced by domain name. Domain names are assigned on a 'first come, first served' basis⁶ which is a consequence of numerical system features and which means that only one specific domain configuration of domain name can be registered⁷. In the Republic of Poland the national registry of internet names with the .pl domain is administered by NASK (the abbreviation stands for Naukowa i Akademicka Sieć Komputerowa which can be translated as the Research and Academic Computer Network⁸) The Internet country code top-level domain (ccTLD)⁹ for Poland '.pl' was created in 1990¹⁰ and, as the statistics held by NASK reveal, a constant and

² Internet based companies are called 'dotcoms'. The name derives from the name of one of the most popular domain - .com., see Kasprzycki D., *Prawo konkurencji a zasady rejestracji adresów internetowych*, Zeszyty Naukowe Uniwersytetu Jagiellońskiego, Prace z Wynalazczości i Ochrony Własności Intelektualnej, Kraków: Zakamycze 2002, vol. 80, p. 41, ISSN 0137-236X.

³ Compare register fees existing in different countries in Olsen J., Wood N., Maniatis S., *Domain Names. Global Policy and Procedure*, London West: Sweet & Maxwell 2000, pp. 14-22, ISBN 0421727209.

⁴ Ożegalska-Trybalska J., *Adresy internetowe. Zagadnienia...*, op.cit., p. 449; Kobyłańska A., *Ochrona znaków towarowych w Internecie*, Warszawa: C.H. Beck 2005, p. 9, ISBN 83-7387-716-9.

⁵ <http://www.lookup-ip.com/main/02> (visited on 27 April 2011).

⁶ 'First come first served' means that there is no preferential treatment and a service will be provided to those who arrive first, see <http://www.usingenglish.com/reference/idioms/first+come,+first+served.html>, http://en.wikipedia.org/wiki/First-come,_first-served (viewed on 26 April 2011).

⁷ Szumański A., *System Prawa Handlowego. Arbitraż handlowy*, Warszawa: C.H. Beck 2010, p. 854, ISBN 978-83-255-1234-7.

⁸ See http://www.nask.pl/run/n/Who_we_are (visited on 27 April 2011).

⁹ Country-code Top-level Domain (ccTLD) is a two-letter top-level domain designated for a particular country or autonomous territory to use to service their community, see <http://www.iana.org/domains/root/cctld/> (viewd on 20 April 2011).

dynamic growth in the number of domain names registration has been observed in Poland since then¹¹. According to statistics of domain names registered in NASK currently (in 2011) there are over 2 million (precisely 2.087091) registered domain names, which means that the daily change in the registered domain names amount is 606¹². The number of transactions involving domains is still on the increase not only because of their economic value and substantial marketing power, but also because they often correspond with or incorporate trademarks, company names and other distinctive designations which are easily recognized on the Internet¹³. In the first half of 2011 the number of new '.pl' domain name registrations was 300.000¹⁴. Basing on NASK statistics concerning exemplary sell prices in the period 2008 – 2010, in the second half of 2010 the most expensive domain name address was 'samochod.pl' written without Polish signs (the word 'samochód' means 'a car' in Polish), which reached the price of 52 000 American dollars¹⁵.

As it was mentioned before, a growing importance of domain names can sometimes lead to infringements of third parties` rights, which occur when someone registers a domain name containing someone`s else distinctive sign. Such an abusive activity can be described as cybersquatting¹⁶.

Cybersquatting, known worldwide also as domain name piracy¹⁷, domain name grabbing¹⁸, domain squatting¹⁹ or domain (name) warehousing²⁰ is nowadays one of the most discussed forms of law infringement occurring in

¹⁰ http://www.freewebdomainnameregistration.com/Country_Top-Level_Code_pl.aspx (viewed on 27 April 2011).

¹¹ <http://www.dns.pl/english/registrar/Number%20of%20domain%20names%20registrations%20%28yearly%29.jpg> (viewed on 27 April 2011).

¹² <http://www.dns.pl/english/zonestats.html> (viewed on 30 April 2011).

¹³ Ożegalska-Trybalska J., *Adresy internetowe. Zagadnienia...*, op.cit., p. 450.

¹⁴ <http://www.dns.pl/essentials.html> (viewed on 28 April 2011).

¹⁵ <http://www.dns.pl/essentials.html>, *Data Source: Domain Name Journal* (viewed on 28 April 2011).

¹⁶ The term 'cybersquatting' appeared for the first time in the USA, see <http://www.nolo.com/legal-encyclopedia/cybersquatting-what-what-can-be-29778.html> (viewed on 28 April 2011), see also: Akincza, J.: *Piractwo domenowe (cybersquatting)*, *Jurysta - Magazyn Prawniczy* No. 5, Warszawa: Wydawnictwo In Plus 2005, pp. 15-16, ISSN 1230-7114.

¹⁷ Term occurred in e.g. Mayer-Rochow R., *The Application of Passing Off as a Remedy Against Domain Name Piracy*, *European Intellectual Property Review* Vol. 20, London: Sweet & Maxwell 1998, pp. 405-409, ISSN 0142-0461.

¹⁸ Term used in e.g. Swerdloff N., Farach Jr J.J., *Internet Domain Name – Grabbing, or Cyber-Squatting: An analysis of Remedies Under Federal Law*, *Florida Bar Journal* Vol. 71 No. 2, Florida: Florida Bar 1997, p. 30, ISSN 0015-3915, https://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/fc655f8eb450dd5785256adb005d60fe!OpenDocument&Highlight=0,* (visited 28 April 2011).

¹⁹ Term used in e.g. <http://www.articlesbase.com/cyber-law-articles/cyber-squatting-2054332.html> (visited on 28 April 2011).

²⁰ Term used in e.g. <http://www.domainregistration.com.au/news/domain-name-warehousing.php> (viewed on 28 April 2011).

the cyberspace. The practice of cybersquatting generally refers to abusive domain name registration, offering for sale or using an internet domain name which incorporates someone else's trademark, name of existing business or other company designation in order to block the domain, sell or license it with the intent of profiting from it.

The term derives from a combination of two English words – 'cyber'²¹, which means involving, using or relating to computers, especially the Internet, and 'squat' (squatting)²², which means the practice of inhabiting someone else's property without permission of the owner and without paying a rent. Cybersquatting, however, seems to differ in that the domain names being 'grabbed' are paid for through the registration process by the cybersquatter (a person who reserves domain names with the intent of benefiting from it)²³.

If the domain name is exactly the same or bewilderingly similar to the trademark, name of existing business or other distinctive sign used by another person or entity, the owner of such a distinctive sign has a cause of action against anyone who registered and is holding on to the name. Domain name cases are usually complex and complicated and a resolution of such cases depends on various circumstances taken into consideration by the judge, such as whether the cybersquatter is violating someone's personal rights, copyright, etc. But using the domain name which incorporates someone else's distinctive sign doesn't mean that the sign owner is automatically entitled to take over the domain. Many factors are taken into account, e.g. what kind of services are provided via the website in dispute and who uses the domain²⁴. According to Article 120 Section 1 of the Polish

²¹ See the word 'cyber-' (in:) *Cambridge Advanced Learner's Dictionary*, Cambridge University Press 2003, version 1.0.

²² See the word 'squat' (in:) *Cambridge Advanced...*, op.cit.

²³ The term 'cybersquatter' is also used by polish legal scholars, see e.g. Ożegalska J., *Cybersquatting i inne formy nadużywania znaków towarowych w adresach internetowych a nieuczciwa konkurencja*, Zeszyty Naukowe Uniwersytetu Jagiellońskiego, Prace z Wynalazczości i Ochrony Własności Intelektualnej, Kraków: Zakamycze 2001, vol. 77, pp. 166 – 170, ISSN 0137-236X.

²⁴ The famous case of the domain name Gmail.pl registered and used by a group of polish poets - Grupa Młodych Artystów i Literatów (the Group of Young Artists and Writers), which uses an abbreviation GMAiL in their activity. Google had filed a lawsuit against them, the group won. See article <http://www.ft.com/cms/s/0/c1934d34-d17f-11db-b921-000b5df10621.html#ixzz1MRWiV8hg> (viewed on 28 April 2011) as well as <http://www.mondaq.com/article.asp?articleid=110570> (viewed on 28 April 2011), <http://edgp.gazetaprawna.pl/index.php?act=mprasa&sub=article&id=312075> (viewed on 28 April 2011), <http://www.internetstandard.pl/news/360854/Gmail.pl.oparl.sie.Google.i.wyladowal.na.Allegro.Warto.kupic.AKTUALIZACJA.nie.html> (viewed on 28 April 2011), http://biznes.gazetaprawna.pl/artykuly/444608,gmail_pl_nie_dla_google_a.html (viewed on 28 April 2011).

Industrial Property Law (abbreviated further in the text to PIPL)²⁵ a trademark is defined as 'Any

sign capable of being represented graphically may be considered as trademark, provided that such signs are capable of distinguishing the goods of one undertaking from those of other undertakings'. In accordance with Section 2 of this Article, within the meaning of paragraph one, the following, in particular, may be considered as trademarks: words, designs, ornaments, combinations of colours, the three-dimensional shape of goods or of their packaging, as well as melodies or other acoustic signals. In Section 3 item 1 there is indicated another category of trademarks: service marks, which, however, remains undefined by the Polish legislator. Nevertheless, in the aforementioned Article it is stated that any references in PIPL to trademarks shall also mean service marks. Regardless of a legal definition of a trademark presented above, it can be simply described as a distinctive symbol creating a relationship between a specific designation and certain goods (services)²⁶. Legal scholars indicate that trademarks are performing different functions such as, e.g.²⁷ (1) origin function which means an ability of identifying the goods of a particular manufacturer and indicating its origin²⁸, (2) quality function indicating that the trademark assures quality of the product, creates an image of the quality of the product in the mind of the ultimate purchaser and enables consumers to choose a particular product known for its quality and (3) marketing function which illustrates that the trademark advertises the product (trademarks play a significant role in advertising - surveys show that advertising is a key factor that influences consumer's purchase decisions)²⁹.

Such factors, in particular, as the growing commercial need for domains, treating domains as an investment and the rapid development of domain name market have led to a rise in disputes over the right to specific domain names. The UN World Intellectual Property Organization (WIPO) reported on the 1 April 2011 that cases regarding the practice of cybersquatting rose

²⁵ Act of 30 June 2000 on the Polish Industrial Property Law: The Consolidated Text of the Act, Journal of Laws - Dz.U. No. 119/2003 text 1117 with amendments; <http://www.uprp.pl/English/Law/>, http://www.wipo.int/wipolex/en/text.jsp?file_id=179232 (visited on 27 April 2011).

²⁶ See Promińska U., *Prawo do znaku towarowego a wolność konkurencji*, PiP 1999, vol. 2, p. 42.

²⁷ Some scholars distinguish also goodwill function - when a trademark acts as a symbol representing the goodwill of the business, see Pinckaers S., *Misappropriation of Goodwill of Popular Symbols*, Intellectual Property and Information Law. Essays in Honour of Herman Cohen Jehoram, Information Law Series 6, The Hague: Kluwer Law International 1998, pp. 286-290, ISBN 90-411-9702-8.

²⁸ See Skubisz R., *Funkcje znaku towarowego*, Księga pamiątkowa z okazji 80-lecia rzecznictwa patentowego w Polsce, Polska Izba Rzeczników Patentowych, Warszawa 2001, p. 165.

²⁹ See <http://www.consumerpsychologist.com/> (visited on 27 April 2011).

severely last year – there were nearly 2.700 cases submitted for arbitration course with WIPO³⁰ and, as indicated by NASK – approximately seventy cases a year are resolved within the alternative dispute resolution course³¹. When the exclusive right to a trademark is infringed by a cybersquatter, the trademark owner may make seek protection by initiating a legal action in court or seek an alternative dispute resolution in the arbitration court. A domain name disagreement can be resolved outside of the regular court system – the holder may file a claim in arbitration against whoever registered the domain name in order to cease the infringement³².

As it was mentioned before, in Poland the national registry of Internet names with the .pl domain is managed by NASK. It is possible to register a .pl domain name directly with NASK³³ or through one of its partners' network (named Registrars)³⁴. In order to register a domain name with NASK it is mandatory for the future domain name holder to accept the provisions of the NASK Domain Name Regulations³⁵ setting out, among other things, a dispute settlement procedure, which acceptance is a precondition of the domain name registration³⁶.

According to the provisions of these regulations, the NASK-registered domains with the .pl suffix where at least one party to the dispute is resident or with a place of business in the Republic of Poland, arguments are resolved under the law of the Republic of Poland by one of two arbitration courts pursuant to their rules (the permanent arbitration courts operating at organizations connected with NASK by co-operation agreements on disputes resolution which currently are: The Arbitration Court at the Polish Chamber of Information Technology and Telecommunication in Warsaw³⁷ and The Court of Arbitration at the Polish Chamber of Commerce in Warsaw³⁸) or Polish common courts of law. When both parties are resident or registered outside the Republic of Poland disputes are administered by The World Intellectual Property Organization Arbitration and Mediation

³⁰ <http://www.un.org/apps/news/story.asp?NewsID=37980&Cr=internet&CrI=> (visited on 28 April 2011).

³¹ See <http://www.dns.pl/essentials.html> (viewed on 28 April 2011).

³² See <http://www.warsawvoice.pl/WVpage/pages/article.php/19844/article> (viewed on 28 April 2011).

³³ See <http://www.dns.pl/english/maindn.html> (visited on 28 April 2011).

³⁴ See <http://www.dns.pl/english/registrarprog.html> (visited on 28 April 2011).

³⁵ See *Domain Names Regulations of 18 December 2006* (in force from 18 March 2007), <http://www.dns.pl/english/regulations.html> (viewed on 28 April 2011).

³⁶ See <http://www.dns.pl/english/principles-n.html> (visited on 28 April 2011).

³⁷ The Arbitration Court at the Polish Chamber of Information Technology and Telecommunication, ul. Koszykowa 54, 00-675 Warsaw (Poland), tel./fax: + 48 22 625 73 23, http://www.piiit.org.pl/piiit2/index.jsp?place=Menu02&news_cat_id=64&layout=2, see also <http://www.dns.pl/english/disputes.html> (viewed on 28 April 2011).

³⁸ Court of Arbitration at the Polish Chamber of Commerce, ul. Trębacka 4, 00-074 Warsaw, Poland, tel.: +48 22 827 47 54/fax: +48 22 827 94 01, <http://www.sakig.pl>; see also <http://www.dns.pl/english/disputes.html> (viewed on 28 April 2011).

Center³⁹, which handles the domain cases basing on the WIPO Expedited Arbitration Rules for Domain Name Dispute Resolution⁴⁰.⁴¹ The choice between the common court of law or the arbitration court depends on the claimant. If the claimant initiates the arbitration course pursuant to the Rules of the Court of Arbitration in Matters Concerning Internet Domain Names at the Polish Chamber of Information Technology and Telecommunications (further in the text called the Rules)⁴² and the domain name holder (the subscriber - a party to an agreement with NASK for maintaining an Internet domain name in the .pl domain) refuses to take part in the arbitration, NASK will terminate the agreement to maintain the domain name. According to Article 22 of the NASK Regulations 'In case a third party initiates a legal action in the Arbitration Court against the Subscriber claiming that the Subscriber has infringed the rights of that person by entering into or performing the Agreement, the Subscriber shall submit to that Arbitration Court a duly signed arbitration clause to the Arbitration Court in due time stated in the summon to sign this arbitration clause.' In accordance with Article 23 of these Regulations 'The non-signing of the arbitration clause specified above shall result in the termination of the Agreement three months after the time stated to sign this arbitration clause, and this time limit shall be shortened to the date of the expiry of the calculating period based on the Price List if this date occurs before the end of the three month-period after the time stated to sign this arbitration clause. If the NASK has been informed during the time period specified above by the Arbitration Court about the delivery of the signed arbitration clause to that Court, the Agreement shall not be terminated.' In this situation, the domain name will become available again and may be registered by any person who made an application.

According to Article 9 of the Rules before initiating the arbitral proceedings at the Arbitration Court at the Polish Chamber of Information Technology and Telecommunication in Warsaw the claimant has to pay a non-refundable administration fee and files a pre-trial motion informing about

³⁹ The World Intellectual Property Organization Arbitration and Mediation Center 34, chemin des Colombettes, P.O. Box 18, 1211 Geneva 20 (Switzerland), tel.: (41-22) 338 8247 or 0800 888 549/ fax: (41-22) 740 3700 or 0800 888 550, <http://www.wipo.int>; see also <http://www.dns.pl/english/disputes.html> (viewed on 28 April 2011).

⁴⁰ See <http://www.wipo.int/amc/en/domains/rules/cctld/expedited/pl/index.html>, see also: <http://www.wipo.int/amc/en/domains/cctld/pl/index.html> (viewed on 28 April 2011).

⁴¹ In it worth mentioning that, on the other hand, if the domain name is registered by the Internet Corporation for Assigned Names and Numbers (ICANN) and the domain name suffix is .com, .org, .net, .biz, .info, .aero, .coop, .museum, .name, or .pro, the dispute is adjudicated by an arbitration panel authorized by ICANN adjudicates on the basis of the Uniform Domain Name Dispute Resolution Policy (UDRP).

⁴² See the Rules of the Court of Arbitration in Matters Concerning Internet Domain Names at the Polish Chamber of Information Technology and Telecommunications of 28 May 2008, http://www.piit.org.pl/piit2/index.jsp?place=Lead06&news_cat_id=63&news_id=2841&layout=2&page=text (viewed on 28 April 2011).

the intention to file a suit, where indicates the defendant (the subscriber) and the internet domain name which the proceedings shall concern. Further, immediately after receipt of the information from the claimant regarding his/her intent to commence proceedings, the arbitration court shall send an arbitration clause for signing with the list of arbitrators to the claimant (which is returned by the claimant within a time limit stipulated by the court). Then, the court sends an arbitration clause for signing to the defendant together with the copy of the arbitration clause signed by the claimant (the signed arbitration clause shall be then returned by the defendant to the court). If one of the parties fails to sign the arbitration clause, the proceedings before the court shall not be commenced and the court shall immediately notify NASK of it. The President of the Court may restore the time limit for the party to sign the arbitration clause in case of justified circumstances that made the deadline impossible to meet. If it is not possible to serve the arbitration clause on the defendant, arbitration proceedings may not be instituted – in this case the President of the Court shall immediately notify the claimant and NASK. The President of the Court shall refuse to institute proceedings if the defendant indicated by the claimant is not the subscriber of the domain in dispute at the day of filing the pre-trial motion.

The arbitration course becomes initiated by submitting a lawsuit. Pursuant to the Rules, the suit means a claimant's written communication necessary to commence arbitration proceedings, prepared according to the Rules. The claimant is a party who brings a lawsuit. According to Article 9 section 8 of the Rules the claimant shall file the duly paid suit within fourteen days from notification of the claimant by the court that the arbitration clause signed by the subscriber has been served. If no suit is brought, the President of the Court shall refuse to start the proceedings and shall immediately notify the parties and NASK of this decision. Commencing the arbitration proceedings depends on paying the arbitration fee (in amount stated in the Fee Schedule⁴³). The arbitration fee shall be reimbursed only by the withdrawal of the suit until the appointment of the Arbitrator in the proceedings⁴⁴. The claimant can submit a claim or precede it with the mediation phase⁴⁵.

The parties may be represented by the duly authorized persons. A natural person with full legal capacity can act as a representative, irrespective of nationality or professional qualifications⁴⁶. According to Article 10 of the

⁴³ http://www.piit.org.pl/piit2/index.jsp?place=Lead06&news_cat_id=63&news_id=2841&layout=2&page=text (viewed on 28 April 2011).

⁴⁴ See Szumański A., *System Prawa Handlowego. Arbitraż...*, op.cit p. 866.

⁴⁵ See Articles 5-8 of the Rules of the Court of Arbitration in Matters Concerning Internet Domain Names at the Polish Chamber of Information Technology and Telecommunications.

Rules the lawsuit shall be made in writing and include the names, addresses and telephone, telefax, e-mail of the parties and in the event of representation respectively information regarding the representatives of the parties, a determination of the claim stating that the defendant has infringed the claimant's rights by entering the agreement regarding the maintenance of the domain name, factual circumstances justifying the claim (and the evidence supporting them e.g. the subscriber has not been commonly known by the domain name, or has not made a legitimate, commercial or fair use of the domain name, by using the domain name, the subscriber intentionally attempted to attract Internet users to his/her website by creating a likelihood of confusion with the claimant's mark), and if necessary justifying the court's jurisdiction, an indication of the provisions of the Polish law on the basis of which the claimant has submitted the claim (which can be, e.g. the provisions of the Polish Industrial Property Law⁴⁷, the Polish Civil Code⁴⁸, The Polish Unfair Competition Law⁴⁹), a request for the reimbursement of the costs of the arbitration proceedings and an indication of an arbitrator from the list of arbitrators sent previously by the court. According to Article 9 section 12 of the Rules the claimant shall submit the copies of the suit to every defendant and the arbitrator. Pursuant to Article 11 of the Rules the defendant shall provide the court and the claimant with a written response to the lawsuit within seven days of receipt of the suit.

The arbitration proceeding shall be conducted by a sole arbitrator, acting as an arbitration court according to the Polish Code of Civil Procedure⁵⁰, but the parties may request the proceeding to be conducted by an arbitration court composed of three arbitrators and, unless the parties decide otherwise, each of the parties shall appoint in writing one arbitrator from the list of arbitrators, and then, the arbitrators appointed by the parties shall select a third arbitrator from the list of arbitrators. If the appointment of the arbitrator is not made by the parties within fourteen days from the date of notification of the court regarding the intent to select a three-person tribunal, or if the two arbitrators do not select the third one within fourteen days from

⁴⁶ See Article 12 of the Rules of the Court of Arbitration in Matters Concerning Internet Domain Names at the Polish Chamber of Information Technology and Telecommunications.

⁴⁷ Act of 30 June 2000 on the Polish Industrial Property Law: The Consolidated Text of the Act, Journal of Laws- Dz.U. No. 119/2003 text 1117 with amendments; <http://www.uprp.pl/English/Law/>, http://www.wipo.int/wipolex/en/text.jsp?file_id=179232 (visited on 27 April 2011).

⁴⁸ Act of 23 April 1964 – The Polish Civil Code, Journal of Laws – Dz.U. No.16, item 93, subsequently amended).

⁴⁹ Act of 16 April 1993 on Combating Unfair Competition, Journal of Laws- Dz.U. No.47, item 211, with subsequent amendments.

⁵⁰ See <http://lex.pl/kodeksy/?akt=64.43.296.htm> (viewed on 28 April 2011).

the date of their appointment, the arbitrator shall be indicated by the President of the Court.⁵¹

According to Article 14 Section 1 of the Rules 'The parties appoint an Arbitrator in the following manner:(i) the Claimant shall indicate in the Suit an Arbitrator from the List of Arbitrators.(ii) In the Response to the Suit the Defendant may agree to the appointment of the Arbitrator indicated by the Claimant or indicate another Arbitrator from the List of Arbitrators made available by the Court.(iii) In the event the Defendant indicates an Arbitrator other than the one listed in the Suit, the Claimant may agree to the appointment of the Arbitrator indicated by the Defendant and shall notify the Court and the Defendant thereof within three days of the delivery by the Court of the information regarding the Defendant's position concerning the appointment of an Arbitrator. (iv) In the event the Defendant does not take a stand on appointment of the Arbitrator within the time limit stipulated by the Court, the Arbitrator shall be appointed pursuant to Article 15'. According to Section 2 of this Article 'The parties may propose candidates for Arbitrators within the time limit set in Section 3', which in accordance with Section 3 of the Article means that 'If the parties do not appoint an Arbitrator within twenty-one days from the date of the Suit delivery to the Court, the Arbitrator shall be appointed pursuant to Article 15.'⁵² The arbitrator may not only admit and examine in his discretion documentary evidence, evidence by parties hearing, testimonial evidence and experts' opinion evidence, but may also request a party to

⁵¹ See Article 13 of the Rules of the Court of Arbitration in Matters Concerning Internet Domain Names at the Polish Chamber of Information Technology and Telecommunications.

⁵² The arbitrator will be appointed by the President of the court, Article 15 of the Rules (SUBSTITUTION APPOINTMENT) '1. If no Arbitrator has been appointed pursuant to Article 14, one shall be appointed in the following manner: (i) The Court shall send to each party an identical List of Arbitrators, which shall contain the names of at least three Arbitrators in alphabetical order along with a brief description of their qualifications. (ii) Each of the parties may cross off from the List of Arbitrators names of persons it objects to being appointed, and number the remaining names in order of preference. (iii) Each of the parties shall return the List of Arbitrators along with crossed off names to the Court the next working day after the list is delivered. It is considered that a party which does not return the marked list within that time, does not object to the appointment of any of the persons listed on the List of Arbitrators as an Arbitrator. (iv) Immediately after receiving the list from the parties, or if the list is not returned - after the time limit described in the preceding paragraph has elapsed, the President of the Court shall appoint a person from the List of Arbitrators as the Arbitrator appointed to resolve the dispute described in the Suit, according to the preferences and objections submitted by the parties. 2. If the Arbitrator is not appointed in the manner indicated in section 1, or the person proposed by the parties cannot be an Arbitrator in the given matter or there is a probability of reasons which make Arbitration service impossible for a given person, and no person remains on the list, which a party has not opposed, the President of the Court shall appoint an Arbitrator of its choice from the List of Arbitrators.', http://www.piit.org.pl/piit2/index.jsp?place=Lead06&news_cat_id=63&news_id=2841&layout=2&page=text (viewed on 28 April 2011).

submit documents or other evidence of essential relevance necessary to resolve the dispute⁵³.

The parties may decide to make a settlement before an arbitrator and resolve the dispute at anytime during the arbitration proceedings⁵⁴. If the parties conclude a settlement agreement, the arbitrator will terminate the proceedings.

If the claimant exclusive rights have been sufficiently proved, the arbitrator issues a judgment on behalf of the Arbitration Court stating that the claimant's rights have been infringed by the registration of the domain name in dispute. At the same time the claimant decides for the reimbursement of the costs of the arbitration proceeding. The arbitration judgment is valid and enforceable in Poland after its recognition by a court of general jurisdiction eligible to issue a ruling in such case, however, in any case, the court of first instance.

Mediation and Arbitration Tribunal Regulation of the Polish Chamber of Information Technology and Telecommunication in Warsaw established in order to mediate in Internet domain names cases is an example of the Alternative Dispute Resolution. The purpose of the alternative methods of resolving domain name disputes is to provide a forum in which cases concerning the abusive domain registration and consequently – infringement of a third party rights as a result of registration and use of domain name, can be resolved in a quick and relatively inexpensive manner. Arbitration seems to be an attractive, but still underestimated method of resolving domain name clashes, which is often less formal (in comparison to the traditional court proceedings before the courts of general jurisdictions), less expensive and not so time-consuming. What's more, the above mentioned Alternative Dispute Resolution policy for domain name disputes constitutes the basis for the termination of the Agreement by NASK with the subscriber which has infringed the claimant's rights and gives also the basis for the registration of the domain name for the claimant. Submitting a dispute to the arbitration court is a method of resolving disputes which does not exclude the possibility of using other legal remedies. Conciliatory methods of resolving domain names arguments facilitate to resolve a case outside the court system. Most people are not willing to become involved in lawsuits. Litigation can entail lengthy delays, high costs, unwanted publicity etc. Appeals might be filed, causing further delay, after a decision has been

⁵³ See Articles 25-28 of the Rules,
http://www.piit.org.pl/piit2/index.jsp?place=Lead06&news_cat_id=63&news_id=2841&layout=2&page=text (viewed on 28 April 2011).

⁵⁴ Article 31 of the Rules: 'At any time during the arbitration proceedings parties may conclude a settlement before the Arbitrator, who shall confirm settlement conclusion by signing its text along with the parties. Original copies of the settlement shall be conveyed to the Court and to the parties. A copy of the settlement shall be immediately conveyed by the Court to NASK.'

rendered. Arbitral proceedings is, as it was already mentioned above, usually faster and less expensive, and it is also conclusive, which explains why so many parties decide to bring their cases to the arbitration court.

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