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Ouch, I lost my domain name!

In the digital age, having a domain name that corresponds to your corporate identity is essential. However, there are many circumstances that can lead to unpleasant surprises. Here is an anthology: *"I forgot to renew my domain name and a third party registered it"*, *"my former employee from whom I have separated held my domain name and does not want to give it back"*, *"I had not paid attention, but the name is already held by a third party"*. The only then question is: how do I get it back?

Contacting the incumbent: a mission impossible?

Logically, the first step is to contact the holder to try to settle the case amicably. If the holder is known, this is possible, although success is no guaranteed. If the holder is not known, things however become more complicated, since the registries no longer reveal the identity of domain name holders in their WHOIS databases, which can be consulted online, for reasons related to data protection. At first glance, one might think that the desire to enter into talks to obtain a domain name is a sufficient reason to obtain such data. In my experience, registries nevertheless refuse to disclose such an identity and, even worse, to contact their customers to enable you to get in touch with them. The only thing that remains open is a legal action, even though there may be no infringement whatsoever, a situation that is absurd to say the least...

Online alternative dispute resolution methods: the UDRP and its friends

When the registration of the domain name has taken place in bad faith, you will fortunately not need to take legal action in civil courts. Online procedures exist for such cybersquatting cases, mostly managed by the [World Intellectual Property Organization](#) (WIPO). Such bad faith exists, for example, when a former employee or development agency refuses to transfer the domain name in your favour, or when a third party has registered it to hinder your business.

The first question is to ask yourself under which extension the domain name you want to recover is registered:

If it is a *".com"*, you will have to file your claim under the *"Uniform Domain Name Dispute Resolution Policy"*, better known to lawyers under its abbreviation *"UDRP"*. In order to do so, you must be the owner of a validly registered trademark; in other words, a simple corporate name is not enough. However, the trademark you will base your claim upon does not have to be a Swiss trademark. To be able to recover the domain name you are interested in, you will have to make sure that the holder of the domain name in question has no legitimate interest in holding this name, such an interest obviously excluding any bad faith. For example, this may be the case of a distributor or reseller, which will then make it difficult to prove an act of cybersquatting.

If the domain name you wish to recover is a *".ch"*, you will have to take action under the *".ch" dispute resolution procedure*. This procedure is also managed by WIPO and, like the first one, is entirely online. This *".ch"* procedure has two important differences from the UDRP: first, it requires the parties to participate in a conciliation session, which takes the form of a telephone conference of one hour maximum. Second, it does not rely on autonomous criteria as the UDRP does, but requires the application of Swiss substantive law. While this application of Swiss substantive law makes the requirements of motivation a little more complex, it does make it possible to invoke not only a trademark, but also a trade name, a name or even an infringement of the federal law against unfair competition. The legal arsenal that can be invoked is therefore broad.

The main interest of these alternative procedures, which exist for many geographical extensions (see [here](#) for a list), is twofold: first of all, the costs, since a UDRP procedure costs USD 1,500, and a *".ch"* procedure costs CHF 2,300; secondly, the duration of the procedure, since it allows you to recover a domain name within two months after your application has been filed.

Compared to a state procedure before a civil court, the advantages are obvious. However, if you do not meet the conditions for the application of these procedures, you will have no choice but to take legal action in a civil court.

Recourse to the state courts

Needless to say, this path is the least desirable for several reasons:

In the first place, it will cost you at least CHF 10'000 after you have paid the judicial fees and your lawyer's fees.

Then, such a procedure can last 2-3 years before you recover your domain name, a considerable and unbearable lapse of time for those who want to appear online. Of course, it is possible in some cases to obtain the transfer of the domain name through provisional measures, but even in this case, you will have to wait at least 6 months before obtaining such a transfer.

Finally, if the transfer of a domain name in ".ch" will be easy, the transfer of a domain name under another extension will be more complicated, since it may require that the decision rendered in your favour be enforced abroad, with costs, slowness, not to mention uncertainties as to its final enforcement in the concerned State.

Starting a state procedure to recover a domain name is therefore akin to an obstacle course.

Conclusion

Finally, these few remarks underline one point: be careful to register your domain name in your name, and to keep control over its administration. Any delegation in this respect can have serious consequences, which can easily be avoided.

Source : <https://www.wg-avocats.ch/en/news/intellectual-property/ouch-i-lost-my-domain-name/>