
A BILL FOR AN ACT

RELATING TO ONLINE PROTECTION OF INDIVIDUAL RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 481B-22, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Any person who in bad faith registers a domain name
4 that consists of the name of another [~~living~~] person, or a name
5 substantially and confusingly similar thereto, without that
6 person's consent, shall be liable in a civil action by the
7 person."

8 SECTION 2. Section 481B-23, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) In any action brought pursuant to this part, it shall
11 be the claimant's burden to prove by a preponderance of the
12 evidence the person's bad faith intent. In determining whether
13 there is bad faith intent pursuant to section 481B-22, a court
14 may consider factors, including[~~7~~] but not limited to[~~7~~] the
15 following:

16 (1) The trademark or other intellectual property rights of
17 the person, if any, in the domain name;



- 1 (2) The person's prior use, if any, of the domain name in
2 connection with the bona fide offering of any goods or
3 services;
- 4 (3) The person's bona fide noncommercial or fair use of
5 the mark in a site accessible under the domain name;
- 6 (4) The person's intent to divert users from the mark
7 owner's online location to a site accessible under the
8 domain name that could harm the goodwill represented
9 by the mark, either for commercial gain or to tarnish
10 or disparage the mark, by creating a likelihood of
11 confusion as to the source, sponsorship, affiliation,
12 or endorsement of the site;
- 13 (5) The extent to which the domain name consists of the
14 legal name of the person or a name that is otherwise
15 commonly used to identify the person;
- 16 (6) The person's offer to transfer, sell, or otherwise
17 assign the domain name for financial gain without
18 having used or having an intent to use, the domain
19 name in the bona fide offering of any goods or
20 services or the person's prior conduct indicating a
21 pattern of such conduct;



1 (7) The person's provision of material and misleading
2 false contact information when applying for the
3 registration of the domain name, the person's
4 intentional failure to maintain accurate contact
5 information, or the person's prior conduct indicating
6 a pattern of such conduct;

7 (8) The person's registration or acquisition of multiple
8 domain names that the person knew were identical or
9 confusingly similar to marks of others that were
10 distinctive at the time of registration of the domain
11 names, without regard to the goods or services of the
12 parties;

13 (9) The person's registration or acquisition of multiple
14 domain names that the person knew were identical or
15 confusingly similar to the name of another [~~living~~]
16 person, without the person's consent; and

17 (10) The person sought or obtained consent from the
18 rightful owner to register, traffic in, or use the
19 domain name."

20 SECTION 3. Section 481B-24, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) A person who in good faith registers a domain name
2 consisting of the name of another [~~living~~] person, or a name
3 substantially and confusingly similar thereto, shall not be
4 liable under section 481B-22 if the name is used in, affiliated
5 with, or related to a work of authorship protected under Title
6 17, United States Code, including a work made for hire as
7 defined in section 101 of Title 17, United States Code, and if
8 the person registering the domain name is the copyright owner or
9 licensee of the work, the person intends to sell the domain name
10 in conjunction with the lawful exploitation of the work, and the
11 registration is not prohibited by a contract between the
12 registrant and the named person. The exception under this
13 subsection shall apply only to a civil action brought under this
14 part and shall in no manner limit the protections afforded under
15 the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) or other
16 federal or state law."

17 SECTION 4. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken.

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1 SECTION 6. This Act shall take effect on July 1, 2050.

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Report Title:

Cybersquatting; Domain Names; Online Protection; Individual and Business Rights; Bad Faith Intent

Description:

Applies provisions in chapter 481B, part II, relating to civil liability for bad faith registration of a domain name, determining bad faith intent, and good faith exception to individuals and business entities. Effective 07/01/2050. (SD1)

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