
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.] It is unlawful for a person, with a bad faith intent~~
8 ~~to register, traffic in, or use a domain name, that is identical~~
9 ~~or confusingly similar to the personal name of another person or~~
10 ~~deceased personality, without regard to the goods or services of~~
11 ~~the parties."~~

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

14 " (a) In any action brought pursuant to this part, it shall
15 be the claimant's burden to prove by a preponderance of the
16 evidence the person's bad faith intent. In determining whether
17 there is bad faith intent pursuant to section 481B-22, a court



1 may consider factors, including[7] but not limited to[7] the
2 following:

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

5 (2) The person's prior use, if any, of the domain name in
6 connection with the bona fide offering of any goods or
7 services;

8 (3) The person's bona fide noncommercial or fair use of
9 the mark in a site accessible under the domain name;

10 (4) The person's intent to divert users from the mark
11 owner's online location to a site accessible under the
12 domain name that could harm the goodwill represented
13 by the mark, either for commercial gain or to tarnish
14 or disparage the mark, by creating a likelihood of
15 confusion as to the source, sponsorship, affiliation,
16 or endorsement of the site;

17 (5) The extent to which the domain name consists of the
18 legal name of the person or a name that is otherwise
19 commonly used to identify the person;

20 (6) The person's offer to transfer, sell, or otherwise
21 assign the domain name for financial gain without
22 having used or having an intent to use, the domain



1 name in the bona fide offering of any goods or
2 services or the person's prior conduct indicating a
3 pattern of such conduct;

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

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

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

20 (10) The person sought or obtained consent from the
21 rightful owner to register, traffic in, or use the
22 domain name."



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

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

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



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on December 21,
4 2112.



Report Title:

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

Description:

Makes it unlawful for a person with bad faith intent to register, traffic in, or use a domain name that is identical or confusingly similar to the personal name of another person or deceased personality. Effective December 21, 2012. (SB2958 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

