

Master of Your Domain – ACPA Damages Sought by Greg LeMond

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by Evan Everist



You might want to think twice before registering a domain name containing a competitor's personal name or trademark. Three-time Tour de France winner Greg LeMond put his "pedal to the metal" recently, suing two Minnesota businessmen under the Anticybersquatting Consumer Protection Act ("ACPA"). LeMond is seeking \$6.6 million in damages and a permanent injunction for their alleged registration of 66 domain names containing LeMond's name

and the name of his carbon-fiber business, Grail. The complaint is [here](#). LeMond alleges that the duo registered the domains in bad faith by seeking to profit from their sale and from third-party advertisements posted on the domains' websites. In a letter to the court, one of the defendants is seeking to exit the race early, claiming to be a victim of an unknown identity thief that is actually responsible for registering the domains.

As LeMond apparently knows, the ACPA is a powerful lever for trademark owners. A plaintiff may seek statutory damages of \$1,000 to \$100,000 per domain name (hence the \$6.6 million in requested damages) and injunctive relief to force transfer of the domain names. Statutory damages are an especially powerful tool because they are awarded based purely on a violation of the ACPA and do not require additional proof of the actual value of the harm caused by the violation. Courts may also treble actual damages, if proven, and award attorney's fees in exceptional cases. A defendant may therefore face significant road rash if it falters in its defense of an ACPA claim.

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Trademark owners sometimes seek other types of relief when faced with cybersquatters, such as initiating UDRP or URS domain name arbitration proceedings. These are relatively low-cost options and, if successful, result in the transfer or suspension of the infringing domain. However, unlike an ACPA claim, a trademark owner cannot seek damages or an injunction in a UDRP or URS proceeding. The stakes are much higher for a cybersquatter in an ACPA action.

This case also shows the value of proactively registering important domain names prior to filing new trademark applications or publicly announcing a new brand. Once a trademark application is filed, the information it contains is accessible on the U.S. Patent and Trademark Office website. Unscrupulous third parties sometimes troll new trademark filings to register corresponding domain names in hopes of selling the domains to the mark owner or generating advertising revenue. Establishing and abiding by a domain name registration policy can help to decrease the likelihood of needing to deal with cybersquatters.