

## **New generic Top Level Domain Names in Lithuania**

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Introduction of new generic Top Level Domain Names (gTLDs) most likely will introduce new infringements of trademark owner's rights in Lithuania.

### *Free registration*

In Lithuania domain names can be registered freely by any interested person. General rule is "first come first served". In quite many cases the domain name registrants understand this rule as imperative. Thus the clients, who's trademark rights the domain name infringes, must additionally try explaining the domain name owner that the rule applies only when the registration doesn't infringe earlier rights of other persons.

Another thing – the domain name registrars do not provide information on the domain name owner unless a plaint is filed in the court. The reason is why they refuse providing the information is that they are prohibited by the laws to disclose personal information of their clients. Thus, if the domain name owner is a natural person – any interested person can only see first letter of his name, first letter of his surname and e-mail address (which quite often is inactive since it quite often is generated automatically by the registrar).

### *Legal acts*

There are no legal acts which would be directly applicable against unfair registration of domain names. There are several provisions in the Lithuanian Law on Trademarks, in the Law on Competition and the Civil Code which can be applied. However none of the acts indicate that the infringing domain name can be transferred to the trademark owner. Thus, even if the client wins the case against unfair registration of the domain name and the court terminates the domain name registration – the infringer immediately can register the domain name again.

In a few instances the courts transferred the domain names to the trademark owners, however these were decision of the lower instance courts, thus they don't legally bind other courts.

### *Practice of the courts*

When the courts solve domain name disputes in Lithuania – they mainly rely on the legal acts mentioned above. However in a few instances regarding gTLDs the courts also relied on provisions of the Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu TopLevel Domain and the

principles governing registration. This legal act is directly applicable in Lithuania, and since it regulates similar issues, the courts have the right to apply it (as legal analogy).

### *Institutions*

There is only one institution that can solve domain name disputes in Lithuania – that is the courts (Vilnius district court as the first instance court). According to the Lithuanian legal acts, only the court can solve disputes, related to the intellectual property. Therefore, there is no and can not be any other body, like arbitration, which would have powers to solve domain name disputes.

Therefore the clients can defend their rights only by filing the plaint in the court. Litigation in the first instance court takes about 1 year. If the trademark owner wins – he/she is entitled to compensation of litigation expenses and damages (if any is done). However the court usually grants about 60-80 % of all litigation expenses.

### *Summary*

In Summary, new gTLDs probably will increase number of infringements and, taking into consideration above information, it may be quite complicated to defend one's rights against them. Thus we recommend the clients to register at least the main new gTLDs domain names themselves and prevent themselves from possible disputes.

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