



WIPO UDRP Cases Up for Fifth Straight Year: What That Means for Brand Owners

On Friday 15 March 2019 the World Intellectual Property Organization released its UDRP statistics for the 2018 calendar year.

As always the information is useful for brand owners and particularly those interested in knowing more about what their peers are doing in the online brand protection space.

The headlines of the report:

- i. Brand owners filed 3,447 UDRP disputes with the WIPO in 2018. That's very close to ten per calendar day and is approximately 13.5 per business day.

2018 is therefore the fifth straight year that the number of filed cases at the WIPO has seen a significant increase. It's clear that around the world brand owners are increasing the level of commitment to protections against all forms of cybersquatting.

- ii. There is good reason for this. WIPO attributes the increase to a "proliferation of websites used for counterfeit sales, fraud, phishing, and other forms of online trademark abuse". In particular, WIPO Director General Francis Gurry states "Domain names involving fraud and phishing or counterfeit goods pose the most obvious threats...". Notably, almost complementing the WIPO press release, on 13 March 2019 ZDNet.com reported a recently-released statistic that 45% of UK organisations were compromised by phishing attacks between 2016 and 2018.
- iii. The countries best-represented amongst the near-3,500 disputes filed are the US (976 cases), France (553), the UK (305), Germany (244) and Switzerland (193). The top sectors were unsurprisingly those with much to lose from a serious phishing scam: banking and finance and biotechnology and pharmaceuticals. This isn't to say that only certain sectors are taking the UDRP seriously: as the report shows, there are frequent filers in the areas of IT, fashion, heavy industry and machinery, retail, entertainment, automotive, hospitality and travel, food and beverages, electronics, media and publishing, transportation, insurance, sports, telecoms and luxury goods.
- iv. Interestingly, despite the number of cases increasing from last year, the number of domain names addressed is actually down from 2017 and not insignificantly: in 2017, 3074 UDRP cases addressed 6371 domain names. In 2018, the 3447 filed cases addressed 5655 domain names. That's 716 fewer domain names under dispute despite 373 more cases being filed.

This is an odd phenomenon, but it could be due to the GDPR and the impact it has had on brand owners' ability to identify multiple instances of squatting by a single Respondent and consolidate their cases accordingly. With registrant data masked, it's more difficult to identify the complete number of domain names registered or linked to a single squatter. This in turn means that Complainants are more likely to miss domain names when investigating a potential Respondent.

When they miss certain domain names and find out about them later, Complainants will probably file a second case rather than run the risk of hoping that the Respondent didn't notice the omission. This raises an interesting question about the 2018 increase in case filings: how many UDRPs in 2018 were filed only because the Complainant omitted domain names from an earlier case (and, moreover, how much has the post-GDPR change to Whois record cost Complainants in terms of additional filing fees)?

As an aside, if you're looking for GDPR work-arounds to help with your online brand protection please feel free to [get in touch](#).

- v. Another interesting point: the WIPO figures do not take into account UDRP cases filed at other tribunals, most notably the Forum in Minneapolis which is the second-largest provider of UDRP disputes and in the past has seen statistics similar the WIPO's. We would not be surprised if the global story showed even more signs of an increase around the world in anti-cybersquatting action.

The bottom line appears to be this: threats based on cybersquatting are increasing in number and severity, and brand owners are doing more to protect themselves through the tried-and-tested UDRP domain name dispute procedure.

If you'd like to discuss how J A Kemp can help with your online brand protection please contact [Aaron Newell](#) or your usual J A Kemp trade mark attorney.

The WIPO press release about the continuous increase in UDRP cases is [here](#).

The ZDNet article on phishing is [here](#).

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