

Attendance - 11 Members

Cyntia King
Greg Shatan
Griffin Barnett
Kathy Kleiman
Kristine Dorrain (Amazon Registry)
Michael Graham
Philip Corwin
Rebecca Tushnet
Roger Carney
Susan Payne
Zak Muscovitch

Apologies: Lori Schulman

Staff: Ariel Liang, Julie Hedlund, Mary Wong, Julie Bisland

Zoom Chat:

11:49:45 From Julie Bisland : Welcome to the RPMs Sub Team for Trademark Claims Data Review call on Thursday, 02 May 2019 at 17:00 UTC

11:50:49 From Julie Bisland : Agenda Wiki: <https://community.icann.org/x/1oKGBg>

11:56:48 From Roger Carney : Let me rejoin

11:57:30 From Roger Carney : I am in Fareway but I disconnected, grabbing my headset

11:58:26 From Julie Bisland : Oh, thank you!

12:02:38 From Zak Muscovitch : Such great quality audio

12:03:48 From mary.wong : @Zak, that's one of several reasons (esp stability and quality of VoIP) why we are switching to Zoom :)

12:04:40 From Julie Bisland : Please can I ask who called in from phone number ending in 6759?

12:06:05 From Julie Bisland : @Rebecca: is the phone number ending in 6759 yours by chance?

12:10:24 From Rebecca Tushnet : 703 is me

12:11:18 From Rebecca Tushnet : I can see, thanks.

12:11:30 From Julie Bisland : Thanks all!

12:11:44 From Ariel Liang : Both the summary table and individual proposal 6 have been sent to the chat, and you can scroll through the documents on your own

12:12:14 From Ariel Liang : hand up

12:17:24 From Kathy Kleiman : Table this?

12:17:24 From Ariel Liang : Noted the question, thanks Kathy

12:17:35 From mary.wong : Hand up

12:17:49 From Cyntia King : Agree @Kathy. We should table until we have some basic knowledge of the need & whether they've done this before.

12:17:52 From Kathy Kleiman : Tx!

12:18:54 From mary.wong : From the Org perspective, and as Roger noted, this seems like a very open ended and expensive undertaking. May I (on behalf of Org) ask what the specific problem is that is being addressed?

12:19:54 From Kathy Kleiman : @Mary: when do you expect an answer?

12:23:50 From Griffin Barnett : I've got my hand up....

12:25:40 From Rebecca Tushnet : I'd like to raise my hand--with audio off on my computer I'm not sure how best to do that.

12:26:18 From Michael Graham : Comment <Most domain names that we have issue with are Match Plus some other elements. Very few exact matches. And notifying applicants of possible issues would permit them to consider continuing or not.>

12:26:55 From Griffin Barnett : I can respond to Roger's question

12:27:02 From Griffin Barnett : Or Kristine can!

12:27:05 From Griffin Barnett : :)

12:27:17 From Griffin Barnett : A UDRP or a court case I think

12:28:09 From Griffin Barnett : Agree that the TM+50 mechanism could be really useful, but many TM owners I think found it cost prohibitive, or perhaps it was not particularly well-publicized or well known

12:28:12 From Michael Graham : Comment <Problem with +50 is that very few litigated domain names reappear."

12:28:12 From mary.wong : The Abused Domain Name labels service allows rights holders to register up to 50 abused labels related to a verified trademark record in the Clearinghouse. These associated labels must have been the subject of a determination in a prior UDRP case or court decision in which the rights holder prevailed. The TMCH Validator, facilitated by Deloitte, will examine former and current ICANN-approved UDRP providers' database information and court case documentation to ensure each label submitted meets this criterion.

12:28:34 From Griffin Barnett : Also agree with Kristine that TM+50 has its limitations because it only applies to previously-adjudicated variations

12:28:47 From mary.wong : (sorry, forgot to include quotation marks. The text I just posted is from ICANN's website)

12:30:10 From Griffin Barnett : If the notice was generated through an algorithm where it captured a certain set of TM variants, the notice language could I think we crafted in a manner that appropriately and accurately captures that the attempted registration is an exact match or similar variation of a mark n the TMCH

12:32:29 From Griffin Barnett : 53% of potential registrants reported receiving a Claims notice [Reg G12]; 83% of those continued with registration [Reg E13]; 70% of actual registrants have never received any notices or warning of possible trademark conflict [Reg G19]; about 20% of potential registrants indicated they did not know anything about their country's trademark law [Reg F27], so providing Claims notices for certain non-exact matches that would still likely be found "confusingly similar" to exact matches may be helpful/instructive given the "likelihood of confusion" standard for trademark infringement in most jurisdictions around the world.

12:33:02 From Michael Graham : @Kathy -- What is the evidence/data you are referring to -- not the conclusions/projections?

12:33:20 From Griffin Barnett : (just to cite some data that we previously gathered that is reflected in the data collection document for Q4)

12:34:17 From Griffin Barnett : How did AG conclude that registrations are proportionately more for exact matches than variations? Or that UDRP/URS cases are more for exact matches than variations?

12:34:31 From Kathy Kleiman : nalysis Group revised report

12:34:37 From Kristine Dorrain (Amazon Registry) : @Griffin, I'm 100% sympathetic. My primary concerns go to feasibility.

12:34:57 From Kathy Kleiman : pages 25 and 28

12:35:10 From Kathy Kleiman : I'd provide teh link, but it's on another machine...

12:35:48 From Griffin Barnett : bad faith is alikelihood of confusion is a perfectly reasonable standard, and this standard is baked into the bad faith standard for domain disputes

12:36:06 From Griffin Barnett : so not sure I agree with Rebecca about the standard

12:36:36 From Kathy Kleiman : good sound

12:37:02 From Rebecca Tushnet : No, there's a HOTEL in the TMCH right now

12:37:05 From Michael Graham : Kathy did not answer my question -- unless we take into account as data/evidence all the anecdotal statements from trademark owners, registrants, registries, etc. AG's report statements were conclusory and also made with the caveats of the report. They did not present evidence supporting these statements.

12:37:35 From Kathy Kleiman : It's our data, Michael. It's what we are working off of.

12:38:25 From Griffin Barnett : I would suggest that typos are actually the most likely to be in bad faith

12:38:56 From Griffin Barnett : someone intentionally registering an obvious misspelling of a mark, that is

12:39:10 From Kathy Kleiman : Goggle registered multiple times in USPTO before Google - that's a typo.

12:39:16 From Michael Graham : @Phil -- Agree that while triggering matches should be expanded, we do need to ensure it is not limitless -- as most typosquat variant-based proposals would probably be.

12:39:44 From Griffin Barnett : @Kathy - that's obviously an edge cases where a variant is also its own actual dictionary word

12:40:15 From Griffin Barnett : or a separate trademark in its own right

12:41:20 From Kathy Kleiman : Enom -> Venom.

12:41:44 From Kathy Kleiman : One letter changes everything on many, many words.

12:41:47 From Michael Graham : Quick question: To use "50Plus" does the list of variants have to be provided at the time of registration or can they be provided as decisions issue?

12:42:19 From Griffin Barnett : @Michael, I think they can be added incrementally as decisions come out, but I could be mistake

12:42:22 From Griffin Barnett : *mistaken

12:42:30 From Kristine Dorrain (Amazon Registry) : +1 Griffin

12:43:50 From Griffin Barnett : +1 Susan

12:43:57 From Michael Graham : @Kathy -- I'll keep looking for the data you're referring to, but I'm not finding it -- only AG's expression of the difficulty in making determinations other than suggesting possible (but not evidence-supported) conclusions.

12:44:43 From Kathy Kleiman : Not this area - Analysis Group spent a lot of time on this issue -- came up with very clear findings- and did not put limitations on their use.

12:45:32 From Michael Graham : @Kathy -- Disagree with characterization as "clear findings".

12:45:56 From Michael Graham : @Kathyy -- URS is not intended for variants, but for recidivists.

12:46:38 From Rebecca Tushnet : The URS coding my RAs did actually does consider whether the proceeding was an exact match or not. A lot are; a lot aren't. But the ones that aren't don't group neatly into anything like "within the definition of the goods and services."

12:47:02 From Rebecca Tushnet : I recommend you look at that data to see the variety of different things that might be added or changed.

12:47:07 From Griffin Barnett : Going to my original points, I still think it's better all around to provide broader notice (again, we are just talking about notice) than to force all parties to engage in curative mechanisms for the numerous variants that skirt the exact-match notice rules

12:47:44 From Griffin Barnett : Remember also, that we are not just talking about the notice to prospective registrants, but also notifying TM owners themselves who might otherwise not even be aware of a non-exact match

12:48:00 From Griffin Barnett : In order to consider taking curative action

12:49:24 From mary.wong : Just FYI: the 50 abused labels are part of the list that can be used for a Claims Notice only. Additional variants that a TM owner may wish to add are usable for the Ongoing Notification Service that the TMCH offers separately.

12:50:36 From Kristine Dorrain (Amazon Registry) : @Mary...is that the NORN?

12:50:47 From Michael Graham : Comment: <The evidence of harm for my company (and others based on my conversations with in-house IP counsel) is that most of our enforcement in the domain name space is for either Typosquats or Exact Plus Trademark domain name applications. This harms both us (protecting our trademarks and ensuring consumer ability to trust them) and applicants (who might not be aware that a particular domain name may include a registered domain name). Agree that a well-crafted, informational notice is better than forcing applicants and trademark owners to take adverse, curative action.>

12:51:07 From mary.wong : @Kristine, no, it's the optional (non-ICANN RPM) additional service a TM owner can pay for from the TMCH.

12:51:17 From Kristine Dorrain (Amazon Registry) : Ah, got it.

12:51:33 From Michael Graham : @Rebecca -- Is the notice "not working" or is it "not working as well as it might"?

12:51:37 From Cyntia King : Expanding & clarifying are not mutually exclusive.

12:51:46 From Cyntia King : Re: Claims Notice

12:52:44 From Zak Muscovitch : Expanding beyond accents and amlauts may result in additional uncertainty, confusion, and possibly a deterioration with the credibility of the notices. Example, Someone registers THEATER.ABC and gets a trademark notice for HEAT

12:53:02 From Michael Graham : Sorry -- my audio/phone is too iffy to use.

12:53:04 From julie.hedlund : @All: This meeting ends at 5 minutes to the top of the hour to allow time for a transition to the next meeting.

12:53:07 From Griffin Barnett : As counsel to Marriott I'd rather get 5,000 notices included false positives than too few and be missing potentially serious abuse/infringement because it was missed due to skirting the matching rules currently in place

12:54:02 From Rebecca Tushnet : Pretty sure there are watch services that do a better job than that.

12:54:09 From Zak Muscovitch : As the counsel for the guy who could have registered riot.com I would disagree, Griffen ;)

12:54:15 From Griffin Barnett : There are but they are much more costly

12:54:25 From julie.hedlund : Hand up

12:54:27 From Rebecca Tushnet : Costly to whom?

12:54:30 From julie.hedlund : From staff?

12:54:43 From Michael Graham : @Griffin -- Agree. I can screen 5000 EXPEDIA reports and it will be more time and cost efficient than having to monitor and take action every time I get a report.

12:54:47 From Philip Corwin : Yes. I think without a specific proposal(s) we are talking in a vacuum.

12:54:48 From Susan Payne : I think if we can advance on the list with suggestions that would be beneficial

12:55:19 From Michael Graham : @Julie -- I do want to resubmit my Exact Plus proposal, so this would be great.

12:55:20 From Cyntia King : I think we need a specific proposal or we're having a conceptual convo, not an implementable suggestion

12:55:21 From Griffin Barnett : I thought there had been a previous proposal of sorts regarding expanded matching for Claims notice....or am I misremembering?

12:55:27 From Susan Payne : there was previously a proposal on expanded matching

12:55:35 From Griffin Barnett : Maybe it was still too conceptia;

12:55:40 From Kathy Kleiman : I don't think we've shown harm in the data...

12:55:42 From Griffin Barnett : *conceptual

12:55:54 From Kathy Kleiman : If we are data-driven....

12:56:01 From Michael Graham : @Griffin -- You'll see it shortly. All 3 of them.

12:56:03 From Griffin Barnett : @Kathy - I previously flagged data that suggested the harms of current exact-match only

12:56:11 From Ariel Liang : Thanks everyone

12:56:18 From Griffin Barnett : Thanks all, hasta luego