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## CrossFit Crackdown: Cybersquatting

CrossFit Inc. wins victory over cybersquatter  
illegally selling domain names.

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All images: E.M. Burton

Last year, CrossFit Inc. won a court judgment against T&M Enterprises Inc., a Washington state company, for registering over 350 domain names containing the word “CrossFit.” T&M, a company owned by a Mr. Tal Moore, also sells gumball machines and barbershop poles. Moore and T&M had scooped up 370 domain names containing “CrossFit” and had been selling them illegally to CrossFit affiliates at anywhere from \$200 to \$400 per domain. The federal court for the Eastern District of Washington approved the consent decree that the parties submitted. Among the highlights, a final judgment for \$100,000 was entered against the company and its officers.

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*Cybersquatting is a real issue, and it's an issue CrossFit Legal is addressing vigorously.*

The judgment also included a permanent injunction against the company and its officers from ever again owning a domain name that includes the word “CrossFit.” The court’s order also protected CrossFit’s ability to inform the public about the result. For CrossFit Inc., our right to share this information with affiliate owners and the wider public was non-negotiable.

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**“With this win we’re  
serving notice.”**

**—Dale Saran, CrossFit HQ  
General Counsel**

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We are all accustomed to seeing towering libel suits and large divorce settlements, so this is work that often goes unnoticed; at most it will appear as a blurb in the business news. But this victory is significant, both in monetary terms—given the usual settlements typically seen in cases of its kind—and also in terms of protecting

the intellectual-property rights of companies like CrossFit and all the small-business owners who affiliate with it. This illegal activity—the registering and selling of domain names that contain the word “CrossFit”—is known as “cybersquatting.”

The existence of the U.S. Anti-Cybersquatting Consumer Protection Act (ACPA), enacted in 1999, should tip off the average reader that the public has a vested interest in seeing justice served in this area as well. According to the educational not-for-profit information agency Cybertelecom.org, “The practice of cybersquatting harms consumers, electronic commerce, and the goodwill equity of valuable U.S. brand names, upon which consumers increasingly rely to locate the true source of genuine goods and services on the Internet” (1). According to the agency, testimony before the congressional committee into the ACPA revealed that “Warner Bros. was reportedly asked to pay \$350,000 for the rights to the names ‘warner-records.com,’ ‘warner-bros-records.com,’ ‘warner-pictures.com,’ ‘warner-bros-pictures,’ and ‘warnerpictures.com’” (2).

Cybertelecom.org also notes that, “Most importantly, cybersquatters target distinctive marks to defraud consumers, including to engage in counterfeiting activities” (1).

Unfortunately, cybersquatting happens all the time. It's a potentially lucrative speculative game, and it's not entirely easy to fight. And it's rampant: the CrossFit HQ Affiliate and Legal teams often find themselves in the position of defending both the CrossFit trademark and new affiliates in the use of their chosen licensed domain name because someone else has already registered it. There is little to stop people or entities from buying up domain names, particularly ones that appear popular or have trademarks in them. Webcrawlers and other automated programs can and do purchase batches of domain names as they see people searching for them.

Cybersquatting might not sound all that ominous, but its cousins, "brandjacking" and "patent troll," convey the sense of violence and ill will that the act inheres in the business world—a world in which identity is a commodity and has the potential to carry quite a significant monetary value.

Cybersquatting is risky business. If proven in court, it carries a minimum statutory damage of \$1,000 per domain name and up to a maximum of \$100,000 per domain name. T&M—as an online retailer of barbershop poles and gumballs—was facing a minimum of \$375,000 and as much as \$37.5 million in damages, the possibility of being assessed plaintiff's attorney's fees, and other associated costs of litigation.

Internationally, cybersquatting falls under the banner of intellectual property. Unfortunately for most, it is expensive to pursue recourse through the court system, a process that thwarts attempts made by most individuals or small businesses. Other recourse is available through the Uniform Domain Name Dispute Resolution Policy (UDRP), the dispute-resolution system established by the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is the global organization based out of Marina Del Rey, Calif., that protects the rights of nations to own their own domain-name control. ICANN coordinates the global Internet's unique identifiers and IP-address spaces, maintains registries of Internet protocol identifiers, and manages the top-level domain-name space, which includes the operation of root-name servers. The unfortunate reality is that few fines are assessed (3).

This is just some of the work that occupies the CrossFit HQ Legal team. CrossFit General Counsel Dale Saran was an affiliate owner before joining the legal team and as such has a very good sense of the value vested in one's business name. Saran is excited to let people know about this and other recent victories.

"We continue to do everything we can," he stressed, "to ensure our affiliates have a safe and healthy legal environment in which to run their businesses and use the CrossFit trademark."

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### Use of the CrossFit name is allowed only by an affiliation agreement.

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Recent achievements include a victory for CrossFit and our Australian affiliate owners before the Australian Consumer Competition Committee (Australia's equivalent of the U.S. Federal Trade Commission).

"We recently received a response," Saran said, "finding that CrossFit is not a franchise in Australia, nor are CrossFit affiliates violating that country's franchise regulations."

Use of the CrossFit name is allowed only by an affiliation agreement. People often wonder what the affiliation fee covers. Other than the right to use the CrossFit name and the opportunity to join the worldwide movement, there are protections provided by our large number and common goals.

"Going to court for many is extremely expensive, so awards are not usually seen at this level, as in the case of the judgment against T&M. We remain committed to protecting our affiliates and our trademark," Saran said, "and with this win we've served notice."

Before you search the Web for domain names held by potential cybersquatters, however, it's important to remember that not every purchase of a domain name with "CrossFit" in it is an act of cybersquatting. CrossFit Inc. has the trademark in a number of trademark "classes"—this is the internationally recognized area of goods and services for which one can reasonably claim protection—but there are a few other companies who use the same name in other classes.

A strange pattern is also emerging. Otherwise well-intended CrossFitters are reserving or selling domains to other people within the community. This seems to suggest the existence of a certain fuzzy logic by squatters with perhaps less criminal intent, who are motivated because of their "love for CrossFit."

Esther Dohl, a paralegal for CrossFit HQ, pointed out that “domain squatting is not just an ‘external’ issue. An individual can’t legally put a CrossFit domain into use as a website until they have permission from CrossFit Inc., and they can’t have permission until they have applied to affiliate and have been granted use of the CrossFit domain.”

CrossFitters can research but should not register any CrossFit domain names until they have been approved to use the name by the CrossFit Affiliate Team.

“The proclamation that you are an avid, long-time supporter of CrossFit doesn’t grant you permission to register/reserve or sell domain names,” Dohl said.

It seems that if we are to be more accurate, we should be spelling it like this: CrossFit®.

If you’ve found a domain name you think is being squatted upon and you’re not sure, send a link to [IPtheft@CrossFit.com](mailto:IPtheft@CrossFit.com). They’re on top of it—as Tal Moore, and others like him, discover to their detriment.

### References

1. AntiCybersquatting Consumer Protection Act: <http://www.cybertelecom.org/dns/acpa.htm> Last accessed Feb. 20, 2012.
2. Report 106-140, 106th Congress, 1st Session (Aug. 5, 1999). p. 5. Available at <http://www.citmedialaw.org/sites/citmedialaw.org/files/ACPA%20leg%20history.pdf> Last accessed Feb. 20, 2012.
3. Wikipedia. Cybersquatting: <http://en.wikipedia.org/wiki/Cybersquatting>) Last accessed Feb. 20, 2012.
4. Report 106-140, 106th Congress, 1st Session (Aug. 5, 1999). pp 5-6. Available at <http://www.citmedialaw.org/sites/citmedialaw.org/files/ACPA%20leg%20history.pdf> Last accessed Feb. 20, 2012.



### Cybersquatter

Those who:

1. “Register well-known brand names as Internet domain names in order to extract payment from the rightful owners of the marks.”
2. “Register well-known marks as domain names and warehouse those marks with the hope of selling them to the highest bidder.”
3. “Register well-known marks to prey on consumer confusion by misusing the domain name to divert customers from the mark owner’s site to the cybersquatter’s own site.”
4. “Target distinctive marks to defraud consumers, including to engage in counterfeiting activities” (4).