

District Court of Wiesbaden
- 10 O 116/01 -

Pronounced on 13.6.2001

Received 9th July 2001 [Redacted]

R [Redacted],
Employee of the court
serving as registrar

Judgment

IN THE NAME OF THE PEOPLE

In the interim injunction proceedings

1. [Redacted] M [Redacted]
[Redacted]
2. [Redacted] F [Redacted]
[Redacted]
3. [Redacted] W [Redacted]
[Redacted]
4. [Redacted] M [Redacted]
[Redacted]
5. [Redacted] W [Redacted] S [Redacted]
[Redacted]

- Applicants 1 - 5 -

Legal representative: [Redacted] F [Redacted]

versus

DENIC Domain Verwaltungs- und Betriebsgesellschaft eG,
represented by the board, represented by [Redacted] B [Redacted] B [Redacted] S [Redacted],
Wiesenhüttenplatz 26, 60329 Frankfurt/Main,

- Defendant -

Legal representative: ██████ W ██████

the 10th civil division of the District Court of Wiesbaden
with S ██████ as Presiding Judge of the District Court
W ██████ as Judge of the District Court
R ██████ as Judge

on the basis of the oral proceedings of 13.6.2001, has ruled as follows:

The application made by the Applicants for an interim injunction is rejected.

The Applicants shall pay the costs of the proceedings.

The judgment is provisionally enforceable.

The Applicants may avoid enforcement by the Defendant by furnishing security in the amount of 2,700.00 DM, unless the Defendant furnishes security in the same amount prior to enforcement.

Facts of the case:

The Defendant registers and administers Internet domain names under the country code top level domain ".de". All computers connected directly to the Internet are assigned so-called Internet protocol (IP) numbers which consist of four sets of numbers separated by dots and ranging from 0 – 255 (one byte), e.g. 194.246.96.76. These series of numbers represent the dial numbers of computers, enabling information on the Internet to be transported to the "correct" computer. Using domain names makes the Internet user-friendly. An IP number is assigned to a registered domain name so only the domain needs to be entered to select the related computer.

A so-called name server then “translates” this domain into the associated IP number, ensuring the transfer is made to the correct addressee.

The names register and server for domains ending in “.de” is controlled by the Defendant.

From a technical point of view, in approximately 99.7 % of cases, domain registration is carried out via Internet service providers which are associated with the Defendant as a co-operative society. The providers submit domain reports on behalf of customers via an interface on the Internet directly to the Defendant’s computers where registration then takes place automatically. If the required domain name is available, it is entered into the database by the applicant’s provider. Around 4.5 million domain names are now held by the Defendant and it currently receives almost 180,000 registration applications each month. The Defendant receives registration fees, the amount of which depends on whether registration applications are submitted via a provider or by the applicant directly to the Defendant.

Domains are registered on a first come first served basis, without the Defendant checking whether the requested domains conflict with rights to names, trademarks or other rights held by third parties or whether websites which may later be accessed under the domain name are unlawful. The Defendant’s terms and conditions of registration include the following provision:

“The customer assures that all data provided is correct and that they are entitled to use the domain and, in particular, that the domain does not infringe any rights of third parties or violate any general laws.”

According to its terms and conditions of registration, the Defendant is not entitled to any ordinary right of termination. Only in exceptional cases can the Defendant terminate the registration agreement with no prior notice. The subject of the contractual relations between the Defendant and the domain holder is purely the domain itself and not the provision of other services performed by providers, for example the provision of network access.

The Applicants obtained an interim injunction, referred to herewith, dated 10.5.2001 against a Mr ■■■ R■■■ with the District Court of Wiesbaden, prohibiting him from circulating certain statements / representations on a website on the Internet, with fines or imprisonment imposed for non-compliance. The interim injunction has not yet been served on Mr R■■■.

Since 15.5.2001, Mr R■■■ has been operating a website under the domain "www.r-e-y.de", with which he is breaching the interim injunction issued to him.

The female applicant claims that the Defendant is liable as an accessory with regards the website of Mr R■■■.

If a breach of law is evident and ascertainable for the Defendant without further action, it shall be obliged to cancel the contested registration as part of its area of access with no further delay. The Defendant is the only party capable of blocking access to Mr R■■■'s website at "r-e-y.de". Mr R■■■ has stored his website on the computers of a provider in the USA. Even if this website can be accessed there at any time without a domain name by entering a ten-digit combination, the number of visitors to the website (running well into the thousands) would decrease significantly since the combination of numbers is not known to anyone and can only be found out by persons with inside information.

The Internet should not be an unlegislated area.

The female applicant requests that,

the Defendant is prohibited, by means of an interim injunction and on pain of a fine of up to 500,000.00 DM to be determined by the court for each infringement, or as an alternative, imprisonment of up to 6 months,

from allowing third parties to access an Internet website at www.r-e-y.de, if on this website:

- a) Applicant 1) is referred to as “Lügner” (liar) and/or
- b) Applicant 2) is referred to as “Betrüger” (fraud) and/or
- c) Applicant 5) is referred to as “Winkeladvokat” (incompetent lawyer) and/or
- d) Applicant 3) and applicant 4) are named,

particularly if these are featured under the heading “Die Positionen und Funktionen der Wiesbadener Connection” (The positions and functions of the Wiesbaden Connection).

The Defendant requests that

the application for an interim injunction is rejected.

It claims that it is not an accessory in the alleged infringement of Mr R■■■■'s personal rights.

It is devious to hold liable parties which provide only technically or commercially necessary infrastructure services, for tortious acts or other legal violations, which are performed using a neutral and non-infringing service. The Defendant does not make any contribution to the cause of the alleged violations as defined by the equivalence formula.

It does not have any real opportunities to prevent the alleged violations on the websites of Mr R■■■■. The Defendant is not responsible for checking the content of websites, nor is it able to, given its area of responsibility and the particular structure of the Internet.

For further details regarding the arguments of the parties, reference is made to their written pleadings and annexes included in the case files.

Reasons for the decision:

The application for an interim injunction is rejected.

The Applicant is not entitled to any claim for an interim injunction, which could be solely derived from sections 823, 1004 of the German Civil Code (BGB).

The Defendant is not considered a direct or indirect accessory regarding the infringement of the law attributable to Mr R■■■■ and his website.

The legal infringement (interference), in response to which the Applicants wish to apply for an interim injunction, is not adequately shown to be caused by the Defendant. The Defendant does not make any significant contribution to circulating the content on Mr R■■■■'s website.

The significant legal infringement lies in the fact that a website is stored on a computer which can be used worldwide on the Internet.

Even if the Defendant deleted Mr R■■■■'s domain name, the legal infringement would persist as the website would still be accessible on the Internet, either via the IP number or another domain obtained worldwide with the same effect or by linking via a different website.

Furthermore, no great credible weight is given to the legal violation originating from Mr R■■■■'s website with the allocation of the ".de" domain name, which could lead to ascribing the quality of a significant contribution to the contested domain use.

With a reasonable acknowledgement of all circumstances, there is no place for accepting the Defendant's significant contribution and therefore a causal link between the domain registration and existing legal infringement.

A possibility of legal protection has opened up to the female applicant with regard to Mr R■■■■, even if this may be difficult to implement.

Whether putting legal protection into practice against those responsible proves to be easy or difficult, ascribing the disrupting characteristics necessary for a claim to another person does not constitute a legal criterion.

The awarding of costs is based on section 91 of the German Code of Civil Procedure (ZPO).

The order regarding provisional enforceability and security payments is based on sections 708 no. 6, 711, 108 of the German Code of Civil Procedure (ZPO).

S■■■■

W■■■■

R■■■■