

PENYELESAIAN PERSELISIHAN NAMA DOMAIN (PPND)

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JENIS PERSELISIHAN NAMA DOMAIN (Ver. 4.0)

Perselisihan Nama Domain yang
terkait dengan Merek



Perselisihan Nama
Domain lain

Nama

Kepatutan

PERSELISIHAN NAMA DOMAIN YANG TERKAIT DENGAN MEREK

Nama Domain identik dan/atau memiliki kemiripan dengan Merek yang dimiliki oleh Pemohon; dan

Termohon tidak memiliki hak dan/atau kepentingan sah atas Nama Domain tersebut; dan

Nama Domain telah didaftarkan atau dipergunakan oleh Termohon dengan iktikad tidak baik.

Pemohon harus membuktikan ketiga unsur-unsur tersebut terpenuhi

IDENTIK DAN/ATAU MEMILIKI KEMIRIPAN

- Merek terdaftar di Direktorat Jenderal Kekayaan Intelektual, Indonesia
- Tidak memperhatikan “filing date”
- Tidak memperhatikan “Class” dan “Jenis Barang”
- Kemiripan ≠ persamaan pada pokoknya
 - A comparison between the trademark and the domain name itself to determine likelihood of Internet user confusion (*WIPO Overview 2.0, Sec. 1.2*)
 - Addition of common, dictionary, descriptive, or negative terms typically being regarded as insufficient to prevent threshold Internet user confusion
 - a common or obvious misspelling: Mirip
 - **WACHOVIA** = wochovia.com = wachovai.com
- Penambahan kode Negara, misalnya “.id”, tidak cukup untuk membedakan nama domain dari merek dagang atau merek jasa
- Tanggal pendaftaran ND vs. Filing date of TM (*WIPO Overview 2.0, Sec. 1.4*)

HAK ATAU KEPENTINGAN YANG SAH

- *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview, 2.0”), Section 2.1*
 - *“While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.”*
- Jika Pemohon dapat membuat/membuat kasus *prima facie*, maka Termohon mempunyai beban pembuktian untuk menunjukkan hak atau kepentingan yang sah atas nama domain.
- Jika Termohon gagal memberikan bantahan atau pembuktian, Pemohon pada umumnya dianggap memenuhi paragraf 4(a)(ii) dari UDRP.
 - Paragraf 4(a)(ii) dari UDRP tersebut adalah sama dengan butir 6.1.2 dari Kebijakan PPND.

PENDAFTARAN DAN PENGGUNAAN DENGAN IKTIKAD TIDAK BAIK



Nama Domain didaftarkan dengan tujuan untuk mencegah pemilik merek/layanan menggunakan nama domain dimaksud; atau



Nama Domain didaftarkan dengan tujuan untuk mengganggu/merusak kegiatan usaha dari lawan bisnis (kompetitor); atau



Pendaftaran dan penggunaan nama domain dimaksudkan secara sengaja untuk menarik pengguna internet ke situs-nya atau ke lokasi online lainnya, untuk keuntungan materiil/finansii; atau



Pendaftaran nama domain dengan maksud untuk dijual, disewakan, atau ditransfer kepada Pemohon sebagai pemilik merek/layanan atau kepada lawan bisnis (kompetitor) pemohon untuk suatu keuntungan materiil/finansii.

PENDAFTARAN DAN PENGGUNAAN DENGAN IKTIKAD TIDAK BAIK

- PPND menyebut/memuat secara spesifik pemahaman “Pendaftaran dan penggunaan dengan IKTIKAD tidak baik”
- Butir 4.1 Kebijakan PPND:
 - Kebijakan PPND dapat digunakan dengan tetap mengacu pada Kebijakan dan Aturan penyelesaian perselisihan Nama Domain yang diadopsi oleh ICANN (*the Internet Corporation for Assigned Names and Numbers*)
- Butir 4.2 Kebijakan PPND:
 - Pengelola Nama Domain Internet Indonesia dapat menggunakan Kebijakan PPND beserta Kebijakan dan Aturan penyelesaian perselisihan Nama Domain yang diadopsi oleh ICANN terhadap seluruh keberatan yang disampaikan

IKTIKAD TIDAK BAIK: BUTIR 6.1.3 KEBIJAKAN PPND

- Nama domain didaftarkan dengan tujuan untuk mencegah pemilik merek/layanan menggunakan nama domain dimaksud; atau
- Nama domain didaftarkan dengan tujuan untuk mengganggu/merusak kegiatan usaha dari lawan bisnis (kompetitor); atau
- Pendaftaran dan penggunaan nama domain dimaksudkan secara sengaja untuk menarik pengguna internet ke situs-nya atau ke lokasi online lainnya, untuk keuntungan materiil/finansii yang tidak sah; atau
- Pendaftaran nama domain dengan maksud untuk dijual, disewakan, atau ditransfer kepada Pemohon sebagai pemilik merek/layanan atau kepada lawan bisnis (kompetitor) Pemohon untuk suatu keuntungan materiil/finansii.

IKTIKAD TIDAK BAIK

- Butir 6.1.3 Kebijakan PPND (=UDRP, Paragraf 4(b))
- *WIPO Overview 2.0*
 - Date of acquisition of DN before Filing date of TM = Iktikad baik
 - When the domain name is not actively used and the domain name holder has taken no active steps to sell the domain name or contact the trademark holder (passive holding) = Bad faith
 - Registering multiple domain names which are similar to trademarks
 - “Knew or should have known” about the existence of the complainant's trademark
 - The existence of a disclaimer cannot by itself cure bad faith, when bad faith has been established by other factors
 - 3.6 – 3.11

IKTIKAD TIDAK BAIK: WIPO OVERVIEW SECTION 3.2

- WIPO Overview Section 3.2
 - *With comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, panels have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include the complainant having a well-known trademark, no response to the complaint having been filed, and the registrant's concealment of its identity. Panels may draw inferences about whether the domain name was used in bad faith given the circumstances surrounding registration, and vice versa. Some panels have also found that the concept of passive holding may apply even in the event of sporadic use, or of the mere "parking" by a third party of a domain name (irrespective of whether the latter should also result in the generation of incidental revenue from advertising referrals)*

WIPO OVERVIEW 2.0

<http://www.wipo.int/amc/en/domains/search/overview2.0/>

- **1. First UDRP Element**

- [1.1](#) Does ownership of a registered trademark to which the domain name is identical or confusingly similar automatically satisfy the requirements under paragraph 4(a)(i) of the UDRP?
- [1.2](#) What is the test for identity or confusing similarity, and can the content of a website be relevant in determining this?
- [1.3](#) Is a domain name consisting of a trademark and a negative term confusingly similar to the complainant's trademark? ("sucks cases")
- [1.4](#) Does the complainant have UDRP-relevant trademark rights in a trademark that was registered, or in which the complainant acquired unregistered rights, after the domain name was registered?
- [1.5](#) Can a complainant show UDRP-relevant rights in a geographical term or identifier?
- [1.6](#) Can a complainant show UDRP-relevant rights in a personal name?
- [1.7](#) What needs to be shown for the complainant to successfully assert common law or unregistered trademark rights?
- [1.8](#) Can a trademark licensee or a related company to a trademark holder have rights in a trademark for the purpose of filing a UDRP case?
- [1.9](#) Is a domain name consisting of a trademark and a generic, descriptive or geographical term confusingly similar to a complainant's trademark?
- [1.10](#) Is a domain name which contains a common or obvious misspelling of a trademark (*i.e.*, typosquatting) confusingly similar to a complainant's trademark?
- [1.11](#) Are disclaimed or design elements of a trademark considered in assessing identity or confusing similarity?

- **2. Second UDRP Element**

- [2.1](#) Is the complainant required to prove that the respondent lacks rights or legitimate interests in the disputed domain name?
- [2.2](#) Does a respondent automatically have rights or legitimate interests in a domain name comprised of a dictionary word(s)?
- [2.3](#) Can a reseller/distributor of trademarked goods or services have rights or legitimate interests in a domain name which contains such trademark?
- [2.4](#) Can a criticism site generate rights or legitimate interests in the disputed domain name?
- [2.5](#) Can a fan site generate rights or legitimate interests in the disputed domain name?
- [2.6](#) Do parking and landing pages or pay-per-click (PPC) links generate rights or legitimate interests in the disputed domain name?
- [2.7](#) Does a respondent trademark corresponding to a disputed domain name automatically generate rights or legitimate interests?

- **3. Third UDRP Element**

- [3.1](#) Can bad faith be found if the domain name was registered before the trademark was registered or before unregistered trademark rights were acquired?
- [3.2](#) Can there be use in bad faith when the domain name is not actively used and the domain name holder has taken no active steps to sell the domain name or to contact the trademark holder (passive holding)?
- [3.3](#) What constitutes a pattern of conduct of preventing a trademark holder from reflecting the mark in a corresponding domain name?
- [3.4](#) Can constructive notice, or a finding that a respondent "knew or should have known" about a trademark, or willful blindness, form a basis for finding bad faith?
- [3.5](#) What is the role of a disclaimer on the web page of a disputed domain name?
- [3.6](#) Can statements made in settlement discussions be relevant to showing bad faith?
- [3.7](#) Does the renewal of the registration of a domain name amount to a registration for the purposes of determining whether the domain name was registered in bad faith?
- [3.8](#) Can third-party or "automatically generated" material appearing on a website form a basis for finding registration and/or use in bad faith?
- [3.9](#) Can use of a privacy or proxy registration service form a basis for finding bad faith?
- [3.10](#) Can the use of "robots.txt" or similar mechanisms to prevent website content being accessed in an on-line archive form a basis for finding in bad faith?
- [3.11](#) Can tarnishment of a trademark form a basis for finding bad faith?

- **4. Procedural Questions**

- [4.1](#) What deference is owed to past UDRP decisions dealing with similar factual matters or legal issues?
- [4.2](#) Will the WIPO Center put an unsolicited supplemental filing before a panel, and in what circumstances would a panel accept such filing?
- [4.3](#) What is the proper language of the proceeding and what are the relevant considerations in this regard?
- [4.4](#) Under what circumstances can a refiled case be accepted?
- [4.5](#) May a panel perform independent research when reaching a decision?
- [4.6](#) Does failure of a respondent to respond to the complaint (respondent default) automatically result in the complainant being granted the requested remedy?
- [4.7](#) What is the standard of proof under the UDRP?
- [4.8](#) Under what circumstances may further domain names be added to a filed complaint?
- [4.9](#) Who is the proper respondent in a case involving a privacy or proxy registration service?
- [4.10](#) Does delay in bringing a complaint prevent a complainant from filing under the UDRP?
- [4.11](#) Can a registrar be liable as a registrant under the UDRP?
- [4.12](#) Can UDRP proceedings be suspended for purposes of settlement?
- [4.13](#) Can a panel decide a case under the UDRP based on a respondent's consent to transfer?
- [4.14](#) What is the relationship between UDRP proceedings and court proceedings?
- [4.15](#) To what extent is national law relevant to a panel assessment of rights and legitimate interests and/or bad faith?
- [4.16](#) Can multiple complainants bring a single consolidated complaint against a respondent? Can a single consolidated complaint be brought against multiple respondents?
- [4.17](#) In what circumstances should a finding of Reverse Domain Name Hijacking or abuse of process be made?



DESKRIPSI KEBERATAN

- Nama Domain yang diperselisihkan
- Nama Registrar dimana Nama Domain yang diperselisihkan terdaftar
- Nama Merek yang identik dan/atau memiliki kemiripan dengan Nama Domain yang menjadi obyek perselisihan (jika alasannya karena identik dan/atau memiliki kemiripan dengan Merek). Setiap Merek yang dimaksud agar dijelaskan klasifikasi barang atau jasanya dan jenis barang atau jasanya
- **Uraian penjelasan dan alasan permohonan Keberatan dan permohonan putusan Panel yang dikehendaki**
- Nama, alamat, alamat surat elektronik, nomor telepon dan faksimili dari Pemohon atau kuasa yang mewakilinya
- Nama, alamat, alamat surat elektronik dan semua informasi tentang data Termohon
- Uraian pernyataan Pemohon yang pada pokoknya menyatakan bahwa “Pemohon setuju bahwa permohonan Keberatan terkait pendaftaran dan atau penggunaan Nama Domain hanya ditujukan kepada Termohon (pemegang Nama Domain) dan tidak kepada (a) Pengelola Nama Domain Internet Indonesia dan Panelis, dan (b) Registrar
- Batasan

BATASAN

- Batasan jumlah kata dari setiap Keberatan atau Tanggapan adalah maksimum 3000 (tiga ribu) kata
- Panel atas diskresinya sendiri, bebas untuk mengabaikan bagian yang melebihi batasan maksimum yang ditetapkan

TERIMA KASIH