

AMENDED IN ASSEMBLY JUNE 26, 2000

AMENDED IN SENATE MAY 3, 2000

AMENDED IN SENATE APRIL 10, 2000

SENATE BILL

No. 1319

Introduced by Senator Burton

January 3, 2000

An act to add Article 1.6 (commencing with Section 17525) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to unfair business practices.

LEGISLATIVE COUNSEL'S DIGEST

SB 1319, as amended, Burton. Unfair business practices: cyber piracy.

Existing law provides that unlawful, unfair, or fraudulent business acts or practices and unfair, deceptive, untrue, or misleading advertising constitute unfair competition, and provides certain remedies in this regard.

This bill would provide that it is unlawful for a person, with a bad faith intent, to register, traffic in, or use an Internet domain name that is identical or confusingly similar to the personal name of another living person or deceased personality, with certain exceptions, as specified. This bill would exempt from liability domain name registrars and registries, and would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 1.6 (commencing with Section
2 17525) is added to Chapter 1 of Part 3 of Division 7 of the
3 Business and Professions Code, to read:

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Article 1.6. Cyber Piracy

7 17525. (a) It is unlawful for a person, with a bad faith
8 intent to register, traffic in, or use a domain name, that is
9 identical or confusingly similar to the personal name of
10 another living person or deceased personality, without
11 regard to the goods or services of the parties.

12 (b) This section shall not apply if the name registered
13 as a domain name is connected to a work of authorship,
14 including, but not limited to, fictional or nonfictional
15 entertainment, and dramatic, literary, audiovisual, or
16 musical works.

17 (c) A domain name registrar, a domain name registry,
18 or any other domain name registration authority that
19 takes any action described in subdivision (a) that affects
20 a domain name shall not be liable to any person for that
21 action, regardless of whether the domain name is finally
22 determined to infringe or dilute a trademark or service
23 mark.

24 17526. In determining whether there is a bad faith
25 intent pursuant to Section 17525, a court may consider
26 factors, including, but not limited to, the following:

27 (a) The trademark or other intellectual property
28 rights of the person alleged to be in violation of this
29 article, if any, in the domain name.

30 (b) The extent to which the domain name consists of
31 the legal name of the person alleged to be in violation of
32 this article or a name that is otherwise commonly used to
33 identify that person.

34 (c) The prior use, if any, by the person alleged to be in
35 violation of this article of the domain name in connection
36 with the bona fide offering of any goods or services.

37 (d) The legitimate noncommercial or fair use of the
38 person's or deceased personality's name in an Internet



1 web site accessible under the domain name by the person
2 alleged to be in violation of this article.

3 (e) The intent of a person alleged to be in violation of
4 this article to divert consumers from the person's or
5 deceased personality's name online location to a site
6 accessible under the domain name that could harm the
7 goodwill represented by the person's or deceased
8 personality's name either for commercial gain or with the
9 intent to tarnish or disparage the person's or deceased
10 personality's name by creating a likelihood of confusion
11 as to the source, sponsorship, affiliation, or endorsement
12 of the site.

13 (f) The offer by a person alleged to be in violation of
14 this article to transfer, sell, or otherwise assign the domain
15 name to the rightful owner or any third party for
16 substantial consideration without having used, or having
17 an intent to use, the domain name in the bona fide
18 offering of any goods or services.

19 (g) The intentional provision by the person alleged to
20 be in violation of this article of material and misleading
21 false contact information when applying for the
22 registration of the domain name.

23 (h) The registration or acquisition by the person
24 alleged to be in violation of this article of multiple domain
25 names that are identical or confusingly similar to names
26 of other living persons or deceased personalities.

27 (i) *Whether the person alleged to be in violation of this*
28 *article sought or obtained consent from the rightful*
29 *owner to register, traffic in, or use the domain name.*

30 17527. As used in this article:

31 (a) "Deceased personality" shall have the same
32 meaning as defined in Section 3344.1 of the Civil Code.

33 (b) "Domain name" means any alphanumeric
34 designation that is registered with or assigned by any
35 domain name registrar, domain name registry, or other
36 domain name registration authority as part of an
37 electronic address on the internet.

38 (c) "Internet" shall have the meaning specified in
39 Section 17538.



1 (d) *“Traffic in” refers to transactions that include, but*
2 *are not limited to, sales, purchases, loans, pledges,*
3 *licenses, exchanges of currency, or any other transfer for*
4 *consideration or receipt in exchange for consideration.*

5 17528. Jurisdiction for actions brought pursuant to
6 this article shall be in accordance with Section 410.10 of
7 the Code of Civil Procedure.

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