



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

SB-342 Misleading advertising: domain and subdomain names. (2019-2020)

SHARE THIS:  

Date Published: 09/29/2020 02:00 PM

Senate Bill No. 342

CHAPTER 162

An act to amend Sections 17525 and 17526 of the Business and Professions Code, relating to business.

[Approved by Governor September 25, 2020. Filed with Secretary of State September 25, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 342, Hertzberg. Misleading advertising: domain and subdomain names.

Existing law makes it unlawful to, with bad faith intent, traffic in or use a domain name that is identical or confusingly similar to the personal name of another living person or deceased personality without regard to the goods or services of the parties, except if the name is connected to a work of authorship. Existing law authorizes a court to consider specified factors in making a finding regarding bad faith intent, including that it was the intent of the person using the name to divert consumers from the person's or deceased personality's online location to a site that could harm the goodwill of that person or to tarnish or disparage that person.

This bill would, instead, make it unlawful for a person, with bad faith intent, to register, traffic in, or use a domain name or subdomain name that is identical or confusingly similar to either the personal name of another living person or deceased personality without regard to goods or services or the name of a specified entity for the purpose of selling or reselling goods, as defined. The bill would provide that confusingly similar includes a misspelling of the domain or subdomain name. The bill would provide that this prohibition does not apply if the name is used with the consent of that specified entity or an authorized representative of that entity, and would create a presumption affecting the burden of proof that a person acted with bad faith intent if the entity or authorized representative did not consent to the registration, trafficking, or use of the domain or subdomain name. The bill would authorize a court to consider as a factor in making a finding regarding bad faith intent that a person intended to divert consumers from the online location of a specified entity to a site accessible under the domain name that could harm the goodwill represented by that entity's name either for commercial gain or with the intent to tarnish or disparage the entity by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site. The bill would create a private right of action for violation of these provisions and would provide that a remedy obtained for a violation of these provisions is cumulative with other available remedies.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17525 of the Business and Professions Code is amended to read:

17525. (a) It is unlawful for a person, with a bad faith intent, to register, traffic in, or use a domain or subdomain name that is identical or confusingly similar to, because of, among other things, misspelling of the domain or subdomain name, either of the following:

(1) The personal name of another living person or deceased personality, without regard to the goods or services of the parties.

(2) The name of any of the following used to sell or resell, or offer to sell or resell, goods:

(A) A specific professional or collegiate sports team, professional or collegiate sports league, theme or amusement park, or venue where concerts, sports, or other live entertainment events are held.

(B) A specific event, performance, or exhibition, including the name of a person, professional or collegiate team, performance, group, or entity scheduled to perform or appear at that event.

(b) This section shall not apply in the case of a name registered as a domain name or subdomain name in either of the following circumstances:

(1) The personal name described in paragraph (1) of subdivision (a) is connected to a work of authorship, including, but not limited to, fictional or nonfictional entertainment, and dramatic, literary, audiovisual, or musical works.

(2) The person whose personal name is described in paragraph (1) of subdivision (a) or the authorized agent of an entity whose name is described by paragraph (2) of subdivision (b) consents to the registration, trafficking, or use of the name as a domain or subdomain name.

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

(d) A party who has suffered injury in fact and has lost money or property as a result of a violation of this section may bring a civil action for recovery of actual, consequential, and punitive damages, if warranted, and shall be awarded reasonable attorney's fees if the action is resolved in that party's favor.

(e) For purposes of this section, "goods" includes tickets to a concert, sporting event, or other live entertainment event. "Goods" also includes clothing and memorabilia bearing the name or trademark of an entity described in paragraph (2) of subdivision (a).

(f) A person who registers, traffics in, or uses a domain or subdomain name in violation of paragraph (1) or (2) of subdivision (a) without the consent described in paragraph (2) of subdivision (b) is presumed to have done so with a bad faith intent. This presumption is a presumption affecting the burden of proof.

(g) The remedies provided by this section are cumulative and shall not be construed as restricting a remedy that is otherwise available, including, but not limited to, a remedy available under Chapter 2 (commencing with Section 14200) of Division 6, or Chapter 4 (commencing with Section 17000) of Part 2 of Division 7.

SEC. 2. Section 17526 of the Business and Professions Code is amended to read:

17526. In determining whether there is a bad faith intent pursuant to Section 17525, a court, consistent with 15 U.S.C. Sec. 1125(d)(1)(B)(i) as that section read on January 1, 2019, may consider factors, including, but not limited to, the following:

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

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

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

(d) The legitimate noncommercial or fair use of the name in an internet website accessible under the domain name by the person alleged to be in violation of this article.

(e) The intent of a person alleged to be in violation of this article to do either of the following:

(1) Divert consumers from the person's or deceased personality's online location to a site accessible under the domain name that could harm the goodwill represented by the person's or deceased personality's name either for commercial gain or with the intent to tarnish or disparage the person's or deceased personality's name by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

(2) Divert consumers from the online location of an entity described in paragraph (2) of subdivision (a) of Section 17525 to a site accessible under the domain name that could harm the goodwill represented by that entity's name either for commercial

gain or with the intent to tarnish or disparage the entity by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

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

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

(h) The registration or acquisition by the person alleged to be in violation of this article of multiple domain names that are identical or confusingly similar to names described in subdivision (a) of Section 17525.

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

(j) The intent of a person alleged to be in violation of this article to mislead, deceive, or defraud users of the internet website, including consumers and voters.