SO, WHO OWNS YOUR WEBSITE DOMAIN MY CHINA? BIGBROTHERAFRICA.COM: A QUICK CASE STUDY

Category: Commercial Law,Media and OTT
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How the domain name was grabbed

Endemol Netherlands owns all rights in a very successful reality television series called “Big Brother”. In 2003, Endemol South Africa (“**Endemol SA**”) produced the pan-African of the Big Brother series for broadcaster M-Net / MultiChoice Africa. The series was Big Brother Africa (“**BBA**”). To promote BBA online, MultiChoice Africa and Endemol SA registered the domain bigbrotherafrica.com.

The 2003 production proved popular, but the next series only resumed in 2007. The parties then discovered that, the domain registration expired in early 2006. Someone involved in buying/selling domains, “grabbed” it very quickly in April 2006 (“**the Respondent**”). The Respondent, or someone to whom it was sold, set up a bigbrotherafrica.com website in 2008 and has since been using the domain to promote an “official Big Brother Africa fan website”.

The website has many BBA fans, but also has many unauthorised BBA video clips and lots of advertising. Endemol SA believes that not only is the Respondent infringing its copyright, but is also earning substantial revenue out of the advertising.

How we intend getting it back

Endemol SA filed a complaint against the Respondent with the World Intellectual Property Organisation’s (“**WIPO**”) Arbitration and Mediation Centre on 3 January 2013, declaring a dispute and requesting the transfer of the domain back to it. The Respondent filed a defence on 4 February 2013. The parties expect a ruling on the matter around 22 February 2013.

How to avoid losing the domain in the first place

- Be sure about who is contractually responsible for ensuring the protection of intellectual property such as your domains. Endemol SA and M-Net have not had a dispute over this: you may not be as lucky.
- Ensure that a reliable person is allocated the task of monitoring domain registration expiries and timely re-registration.
- Try to register variations of your domain. It helps if it incorporates your trade mark, for example bigbrothereurope.com.
- Try to register variations of your domain. It helps if it incorporates your trade mark, for example bigbrothereurope.com.
- Try to avoid a lapse in your domain’s registration. The costs of trying to get it back could be high, especially if the person who “grabbed” the domain is elusive. In the bigbrotherafrica.com case, the person who “grabbed” the domain seemed to be based in the United States, then possibly Australia (using an Australia based Privacy Protect service) and was then, once WIPO lifted the privacy protection, shown to be in China.

The bigbrotherafrica.com “official fan site” which the person operated, built up a large following. These fans are fans who could have been directed to the official BBA website, with many commercial

benefits to the lawful owners of BBA.

So make sure your contracts are in place (you may not always have an amicable person on the other side if it was your responsibility to protect the domain), ensure that the domain registration is renewed on time and take rapid action against someone who “grabs” your domain.