

Archive

HOME	SEARCH Go to Advanced Search/Archive	GO TO MEMB
HELP	Past 30 Days <input type="text"/> <input type="button" value="▶"/>	Welcome,

This page is print-ready, and this article will remain available for 90 days. [Instructions for Saving](#) | [About this Service](#) | [Purchase History](#)

March 21, 2004, Sunday

MAGAZINE DESK

Get Out of my Namespace

By James Gleick (NYT) 4428 words

You don't own your name. Just ask any John Smith. Then again. . . . The Seattle coffee company known as Starbucks owns its name and, maybe, a little more. It has sued to stop a pair of coffee shops in Shanghai from using the name xingbake. This is the age of globalization, after all. In Chinese, star = xing, and in a way Starbucks = Xingbake. "We came first," Xingbake's general manager said. "We can't lose." His name is Mao. . An Atlanta music writer known as bill wyman received a cease-and-desist letter from lawyers representing the former Rolling Stones bass player known as Bill Wyman: demanding, that is, that he "cease and desist" using his name. In responding, Bill Wyman No. 1 pointed out that Bill Wyman No. 2 had been born William George Perks. . The German car company known as Dr. Ing. h.c.F. Porsche AG has fought a series of battles to protect the name carrera. But another contender is a Swiss village, postal code 7122. "The village Carrera existed prior to the Porsche trademark," Christoph Reuss of Switzerland wrote to Porsche's lawyers. "Porsche's use of that name constitutes a misappropriation of the good will and reputation developed by the villagers of Carrera." He added, for good measure, "The village emits much less noise and pollution than Porsche Carrera." He didn't mention that José Carreras, the opera singer, was embroiled in a name dispute of his own. The car company, meanwhile, also claims trademark ownership of the numerals 911. . A Canadian businessman known as Jeff Burgar, living in High Prairie, a small town in Alberta, owns lots of names in dot-com territory. He registered J.R.R. Tolkien's name as an Internet domain in 1996 and held on to jrtrolkien.com until this year, when a panel of the World Intellectual Property Organization (WIPO) took it away from him. The name Tolkien -- just the name, as distinct from the prose, stories, characters and ideas -- is big business. Others who claim to own pieces of it -- as a brand and a trademark, either registered or unregistered -- are heirs, publishers and moviemakers; never mind the several thousand individuals worldwide who happen to come by the surname honestly. Burgar, meanwhile, has taken some other names in vain: celine dion, albert einstein, michael crichton and about 1,500 more. In many of these cases, battles have ensued -- even the ghost of Albert Einstein fought back, via the Hebrew University of Jerusalem. Burgar loses most of these cases, but not all. "It's a kangaroo court," he said matter-of-factly. "They seem to change the rules on the fly." Even so, he owns Bruce Springsteen's name, at least on the Internet.

The world is running out of names. The roster of possible names seems almost infinite, but the demand is even greater. With the rise of instantaneous communication, business spreading across the globe and the Internet annihilating geography, conflict is rampant in this realm of language and of intellectual property. Rules are up for grabs. Laws regarding names have never been in such disarray.

People war over names with the passion and righteousness seen in ancient battles for parcels of land. A select few names -- think of them as the pinnacles and hilltops -- develop a tremendous concentration of economic value. The word nike is thought by analysts to be worth \$7 billion; coca-cola is valued at 10 times as much. No wonder the lawyers gird their loins.

Computer science offers a useful term of art: namespace -- a territory within which all names are distinct and unique; no fuzziness allowed. The world has long had namespaces based on geography and other namespaces based on economic niche. You could be bloomingdale's as long as you stayed out of New York; you could be ford as long as you weren't making cars. All the world's rock bands live in a namespace where pretty boy floyd and pink floyd and pink and the 13th floor elevators and the 99th floor elevators happily co-exist. The Screen Actors Guild manages a formal namespace of its own -- one julia roberts per universe. But traditional namespaces are overlapping and melting together.

Certain namespaces have grown dangerously overcrowded. Pharmaceutical names are a special case: a subindustry has emerged to coin them, research them and vet them. The Food and Drug Administration now reviews proposed drug names for possible collisions, and this process is complex and subjective. Rigor may be impossible, and mistakes cause death. methadone (for opiate dependence) has been administered in place of methylphenidate (for attention-deficit disorder), and taxol (a cancer drug) for taxotere (another cancer drug). Doctors fear both look-alike errors and sound-alike errors: zantac/xanax; verelan/virilon. Linguists are devising scientific measures of the "distance" between drug names. But lamictal and lamisil and ludiomil and lomotil are all approved drug names. Meanwhile, of course, drug companies have other worries; they spend millions on market research to make sure their names are both serious and sexy. rogain, the hair-growth treatment, was deliberately chosen to make you think "regain."

"Names are perhaps the single-most important issue of corporate communication today," said Naseem Javed, founder of a corporate naming company called ABC Namebank International. "With millions and millions of product names clashing in cyberspace, a name is no longer something people can sit around a kitchen and come up with." A company can no longer say, "We make machines for business and we are international, so we will be international business machines."

"general motors worked for an industrial giant in the 20's, but it doesn't work today," Javed said. "The loose change is gone -- all those zodiac signs and constellations, genesis and pegasus, they're all gone. Apples, oranges, pineapples. Look at the newspaper business -- you have thousands of papers, and they're all courier or journal or dispatch or post. These people have a hell of a problem going into cyberspace."

The desperation of company founders and marketing departments to find new names sometimes brings ludicrous results. To single out some of the worst, a California naming company has created the Shinola Awards; recent "winners" -- futuristic, forgettable, pseudo-Latinate, barely pronounceable -- include achieva, altria and cruex. The Royal Mail of Britain spent millions of pounds to reinvent itself in 2001 as consignia -- a name that lasted barely a year before dying under the weight of derision.

Occasionally, though, desperation can lead to brilliance. It is surely not a coincidence that the two spectacular naming triumphs of the cyberworld are coinages verging on nonsense: yahoo! (never omit the exclamation point) and google.

Globalization tears down the walls that divide our collective mental universe. Some walls are geographic; others are just semantic. What is, for example, domino? It depends on the context. Maybe your first thought involved pizza? Or was it sugar? In the software world, Domino is the

name of e-mail server software. Elsewhere, it is a record label. And a game. As for domino.com, it belongs to none of these. As for the trademark, the United States has awarded ownership rights to several hundred contending parties. In a complex world, the simplest words are the most oversubscribed.

One approach to settling name disputes is to get inside our heads and figure out what's there. Litigators tried that in a famous Domino case, *pizza v. sugar*, employing public-opinion surveyors to find out which of the competing connotations dominated, mentally. Each side managed to produce surveys proving its points; this was done by asking different types of people. Customers buttonholed in Domino's pizza outlets tended to think *pizza*; housewives reached at home tended to think *sugar*. (A federal judge finally ruled that the two Dominos could co-exist.) There are six billion of us, but even as individuals, we are mercurial, our brains notoriously in flux. Whether *madonna* evokes the singer or the Virgin might depend on mood or time of day. So might the mental "distance" between the drugs *zeldox* and *zovirax* and *zephrex* and *zyprexa*. The law, for better and for worse, insists on mind reading: cases hinge on psychological concepts like distinctiveness and confusion.

Most such battles now play out in the online world. Internet-style name disputes began breaking out in the last decade and became epidemic during the dot-com boom; they are now growing particularly knotty. The Internet is not just a churner of namespaces; it is also a namespace of its own. Navigation around the globe's computer networks relies on the special system of domain names, like *cocacola.com*. Technically these names are just stand-ins for numbers, Internet Protocol addresses. The Internet's computers perform the conversions behind the scenes: translating, for example, *cocacola.com* to 129.33.45.163. The mapping of a domain name to a particular address can be changed in a matter of moments; the necessary instructions propagate automatically across the network, under the control of a computer that happens to be situated in Reston, Va. -- a computer known as the primary root server or, less affectionately, the Black Box. The Internet's naming system was designed in an atmosphere of idealism and naïveté, by technically minded people with no trademark lawyers on the payroll. Domain names were handed out to anyone who asked, first come first served. The storehouse seemed limitless, after all. This is where Jeff Burgar of High Prairie came in.

"I was working for an Internet service provider, and we had to register a domain name for our own company, and it just struck me that, Gee, this is a very interesting situation," he said. "I looked out, and that's when I discovered that domain names were free. And we had a lot of faith in the Internet and what it could do." This was 10 years ago.

Burgar does not make himself easy to find; *jrrtolkien.com* and many of his other celebrity domain names are registered to an enterprise called Alberta Hot Rods. (A clerical error, he insisted.) He was wary of talking at all, because he did not want to be accused of the particular sin associated with this business: registering other people's names in the hope of extorting money from them. He denied that he has ever done this. He's just a collector, he said, or a publisher. "This is basically freedom of the press," he said. "Why can't I publish a Web site about Carmen Electra and call it *carmenelectra.com*?"

"I really resent it when people accuse me of being a notorious cybersquatter, because I am not," he said.

He managed to hold on to the *brucespringsteen.com* domain name thanks to a split ruling by a panel of WIPO arbitrators. He registered it on behalf of the "Bruce Springsteen Club" of High Prairie, Alberta -- an organization that, in other ways, seems not to exist. The panel decided that the real Bruce Springsteen, "the famous, almost legendary, recording artist and composer," has some rights to his name but that Burgar was not using it in bad faith.

If he isn't trying to sell them, what does Burgar do with them? Here he was a bit vague: "The same thing we were going to do with any of the Web sites." Is the idea to create a fan site, then? Many celebrity names were first registered not by extortionists but by genuine fans. "Well, let's see," he said sardonically. "We have genghiskhan.com registered, and if I put up an information site about him, would you call that a fan site?" Actually, though, the Genghis Khan information site must be in the nature of a future project. That domain name, like almost all of Burgar's, redirects users to a generic celebrity site he also owns.

Before there was an Internet, Ratan N. Tata of Bombay, chairman of the Tata Group, India's pre-eminent business empire, had no occasion to butt heads with an American pornographer, but he cares about his name and its value. He has controlled Tata Steel, Tata Engineering, Tata Power, Tata Chemicals, Tata Finance, Tata Telecom and Tata Tea, not to mention Tata Sons Ltd. and the Sir Ratan Tata Trust.

Then a New Jerseyan registered the domain name bodacious-tatas.com and used it to display what subsequent legal proceedings referred to as "sexually explicit material." The House of Tata went to court, arguing that the Web site was taking "a cash ride" on its good name. Tata won an injunction in 1999. This, however, as handed down by the Honorable High Court of Delhi, had no practical effect on the porn site in New Jersey. So the company filed a complaint with the World Intellectual Property Organization, demanding the cancellation of the domain name.

The arbitrator's decision has become notorious.

First, he ruled that tata is an exemplary trademark: "It is now generally accepted in most countries that well-known marks, particularly those surrounded by an aura of high repute, excellent quality and respectability, deserve wide protection."

Then he considered the problem of the extra word, bodacious. The problem was whether tata and bodacious-tatas were "confusingly similar" -- the canonical test of trademark violation. He decided they were: "The addition of a word like bodacious ['South Midland and Southern U.S. 1. thorough; blatant; unmistakable; 2. remarkable; outstanding; 3. audacious; bold; brazen' / Webster's Encyclopedic Unabridged Dictionary of the English Language, 1989], and the addition of the letter s, does not render the Domain Name less identical or less confusingly similar to a trade or service mark. Indeed, the opposite is true, particularly when one considers most of the meanings attributed to the word bodacious." Because of the Internet's "tremendous reach," he ruled, people might well be fooled into thinking that the Tata Group had gone into the pornography business. Domain name canceled.

This caused a mild Internet storm. James Love, director of the Consumer Project on Technology, which tracks many WIPO decisions on name disputes, considers this one an abuse of power. "I can't imagine that anyone would think that a domain called bodacious-tatas had anything to do with this industrial giant, or that they would type it in by mistake," he said.

The world's czar of domain-name disputes may be a courtly Australian named Francis Gurry, deputy director general of WIPO, who is responsible for many of its various electronic-age activities. He is soft-spoken and unruffled and entirely convincing when he says that he had no idea what "tatas" meant. For a czar, his authority is quite circumscribed -- even a bit peculiar, as he is the first to point out. The World Intellectual Property Organization is an international body established by treaty among 180 sovereign states, yet in this one realm it is subordinate to a private corporation in the United States: Ican, the Internet Corporation for Assigned Names and Numbers. Ican oversees the management of Internet names and addresses -- in other words, the Black Box. It farms out responsibility for registering the domain names to a collection of profit-making companies, more than 100 at last count, all of whom agree to abide by a dispute-

resolution procedure drawn up in consultation with WIPO. The nuts and bolts of dispute resolution is farmed out, in turn, to arbitration bodies, principally WIPO.

The first flood of disputes came with the dot-com boom, which meant a quantum change in the nature of the domain name itself. "I think the correct characterization of it is that it was a spontaneous mutation," Gurry said. "These were technical addresses for a while, and then what caused the mutation was the allowance of commercial activity on the Internet. If you were only using it as a research medium, nobody was going to be more than passingly amused if you were going to be registering McDonald's or Coca-Cola or whatever it might be."

With commercialization, everything changed. The McDonald's Corporation (and, for that matter, The New York Times Company) cadged their eponymous domain names from individuals who had presciently registered them. Other companies with important trademarks struggled, until Ican and WIPO established their system. Then came a surge of cases in the general category of trademark holder v. cybersquatter, routinely decided in favor of trademark holder. Time Warner won a case involving 108 variations on the theme of Harry Potter. Telia, the Swedish telecommunications giant, tried to win back 204 variations and succeeded with all but one: itelia.org. Such cases seemed fairly easy, to WIPO, at least. The new generation of name disputes is far more troublesome.

In these proceedings, trademark law is the elephant in the room, but trademark laws vary from country to country, and in theory the arbitrators are not supposed to rely on any nation's laws. They use Ican's Uniform Domain Name Dispute Resolution Policy, or U.D.R.P. This boils down to a three-part test, each part meant to be straightforward and clear-cut:

The complainant must have rights to the name, or to a name "identical or confusingly similar." The name doesn't actually have to be a registered trademark, but it needs to have been used in commerce, like a brand. Actors, musicians, even authors get protection this way, while politicians, scientists and religious figures do not. (francisgurry? "No," Gurry said. "I'm not commercializable, unfortunately. As it exists at the moment, the trademark system is a very materialistic conception. And when you put it on the Internet, it's not necessarily the result that people want.")

The domain-name holder must be shown to have no legitimate rights to the name. This is not always as simple as it sounds.

The domain-name holder must be using the name in "bad faith." This crucial term is not well defined. In practice, any attempt to get money for the domain name constitutes prima facie evidence of bad faith.

WIPO is trying to broaden domain-name rules to cover problems that lie outside the realm of trademark law. Its rulings apply directly only to Internet domain names, but the issues reach increasingly far, and the most difficult questions are only now beginning to arise, Gurry said. "It's a problem that's larger than the Internet," he added. "It's a problem of a name having a certain status in a certain locality, and now telecommunications and transportation are such that the name travels beyond the locality. Governments are no longer able to control the movements of persons, goods, capital, ideas, viruses or anything else across frontiers. There are consequences for names and for many other things as well."

Trouble looms in international names for pharmaceuticals, because the drug companies' interest in proprietary trademarks comes into conflict with a public interest in generic names that patients can recognize wherever they may happen to be. Names based on geography have special problems too. "They are not really being dealt with," he said. "Country names, city names, towns,

geoethnic names. arab, europe, america: should there be any entitlement to these? What about names of indigenous people and tribes? Most have been registered, and the more we stray into the territory of naming systems and geography, the more we realize the illogicality."

Here are two familiar names of beverages: manhattan and bordeaux. Both are geographical names, but their legal status is entirely different, for a technical reason. One of these drinks has qualities derived from the region -- its soil and grapes, specifically -- and one does not. A true Bordeaux must hail from southwest France; you can mix an authentic Manhattan anywhere. Here is another: budweiser. Before this was an American beer, it was a Czech town. "There is a longstanding dispute," Gurry said, "between the Czechs, who say that you cannot have 'Budweiser' in the Czech Republic, and Budweiser, which has a trademark. You can't buy Budweiser here in Switzerland for that reason."

There are easy cases and hard cases. An easy case might be madonna

.com. The singer Madonna Ciccone won madonna.com from one Dan Parisi, who was running yet another "adult-entertainment portal," even though he pointed out that she was hardly the name's original user. His site had carried the disclaimer "Not affiliated or endorsed by the Catholic Church, Madonna College, Madonna Hospital or Madonna the singer." At the last minute, he tried to transfer the domain name to the Madonna Rehabilitation Hospital in Lincoln, Neb., but the arbitrators were unmoved.

But what about Anand Ramnath Mani, a graphic artist in Vancouver, who generally abbreviates his names? He registered armani.com, bumping into a trademark owned in many countries by Giorgio Armani and his representatives, who then spent years trying to get it away from him. They finally brought WIPO proceedings, pleading that "every day, all over the world, people which are looking for the site of the famous stylist, finds, with surprise, the site of Mr. Anand Mani in Vancouver" -- though, in fact, Mani never bothered to put up a Web site. The panel not only rejected the complaint but also rebuked the company for a bad-faith abuse of the process.

To most Americans, crazy horse is the name of the revered Oglala warrior aka Ta-Sunko-Witko. In 1992, it also became the name of a malt liquor marketed by the Stroh Brewing Company. The year after that, predictably enough, it also became the name of a national boycott and public education program; eventually the brewers apologized to the Crazy Horse Defense Project, though remnants of the litigation continue to this day. In another namespace, meanwhile, Crazy Horse signifies something altogether different: France's leading nude dance revue and nightclub. When a Parisian buys a Crazy Horse baseball cap, T-shirt, cigarette lighter or dressing gown, Native American tradition doesn't enter into it.

In the academic study of names -- onomastics, as the discipline is called -- it is axiomatic that expanding social units lead to expanding name systems. In tribes and villages, single names were enough; everyone knew who was designated by ulf or olga, and there was no need to fight about it. But tribes gave way to clans, cities to nations, and people had to do better: surnames and patronyms; names based on geography and occupation. A half-century ago, Ernst Pulgram wrote in his illustrious "Theory of Names" that "an increase in the complexities of the administrative and social constitution of an ethnic or political group tends to produce, as a rule, an increase in the complexity and rigidity of the onomastic system." So here we go again, he might say today. Cyberspace and globalization represent not just new opportunities for fights over names, but a sea change in the scale of modern society. Entities multiply.

"Consider the word apple," Pulgram wrote. To the horticulturalist or expert grocer, it hardly occurs: instead we have "Pippins, Codlins, Reinettes, Baldwins, McIntosh Reds, Biffins, Rome Beauties." Now, of course, an Apple is a computer. It's also a record label and holding company

for the Beatles. Apple Computer and Apple Corps managed to co-exist for a quarter-century, but now Apple Computer has a music store, and the Beatles' representatives have filed suit. Gurry updates Pulgram this way: "People go in and out of different contexts, and they use different instruments that decontextualize and recontextualize, and they're here and there and everywhere. Communications and transportation have challenged the contextual basis of naming systems."

As these conflicts have rattled the legal edifices of intellectual property, the response has been a sort of panic -- a land grab. Trademarks are a case in point. As recently as 1980, the United States registered about 30,000 a year. Last year, the number was 185,182, a jump of nearly 50 percent from just two years before. The vast majority of trademark applications used to be rejected; now the opposite is true. A few of the words and phrases trademarked in the most recent batch this month were drive harder, relaxed luxury, myassistant, a coffee shop in your office, flexible thinker (a Canadian motivational speaker), ringwraith (the Tolkien moviemakers still going strong) and doing his time (for "transportation of families of prison inmates"). Are any of these so special, creative or individual that ownership rights ought to be assigned?

Notorious forms of litigation flow from the overprotection of names. Every small-business owner is burdened by frivolous cease-and-desist letters; sending these is a cottage industry. The Fox News Network was laughed out of court trying to control the use of the words "fair and balanced"; yet for now, at least, Fox still does own trademark rights in those words, in two categories: television news programs and neckties. The organization that maintains the Dewey Decimal Classification system sued a library-themed hotel for using its numbers -- Room 700.003, for example, dedicated to the performing arts. (The case has been settled.) Pet Friendly of Alabama, maker of rope chew toys, is threatening Pet Friendly Rentals of California. Santa Claus has been trademarked in several hundred ways. None of this serves the public interest. It's wasteful overhead, it's expensive and it's noxious.

Time Warner surely ought to control harry-potter.com, having licensed the rights from the wizard's inventor, J.K. Rowling, but just as surely the company is not entitled to every variation on the theme. Let the i-love-harry-potter Web sites bloom. DaimlerChrysler may own dodge and viper, but others, too, may have legitimate, partial interests in those words, arguably including Brad Bargman of Florida, who originally registered dodgeviper.com and used it to offer advice and discussion for Dodge Viper enthusiasts. (WIPO nevertheless transferred the domain name to the company.)

So Jeff Burgar, accused cybersquatter, speaks for many Internet users when he views Ican and WIPO as defenders of the corporate trademark establishment. "It's a business," he said. "The arbitration process is geared to take domain names from one party and give them to another" -- from the have-nots, he means, to the haves. "The arbitrators are almost all of them attorneys who have a vested interest in looking out for big business or celebrities."

To cope with the dynamic, entangled, variegated nature of our information-governed world, perhaps the law just needs to relax -- loosen the cords, instead of tightening them. A system based on property rights in names may be the wrong approach. The principle people really care about is authenticity and truthfulness. The law needs to prevent miscreants from pretending to be people they're not or from passing off spurious products -- but that is all. bodacious-tatas.com may be unsavory, but it was not fooling anyone; it was not trying to impersonate the House of Tata; its wares were exactly as advertised.

Namespaces will collide. Let them.

CAPTIONS: Photos (Paintings by Ed Ruscha)(All paintings From "Edward Ruscha: Catalogue Raisonné of the Paintings, Volume one: 1958-1970," published this month by Gagolian/Steidl.)

Copyright 2003 The New York Times Company