The UDRP and the future

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ALLEN & OVERY

Challenges ahead for the UDRP, an arbiter's personal views

- "Registered AND used in bad faith"
- Personal names
- Geographic names
- "confusingly similar"

"Has been registered AND is being used in bad faith"

- Cumulative
- What if focus of bad faith on one element only?
- Interference as a creative solution?
- Alternatives :
 - Belgium: has been registered OR is being used in bad faith
 - Canada: has been registered in bad faith

Personal names

- Louisdebernieres.com
- isabelleadjani.com
- jaapstam.com
- juliaroberts.com
- venusandserenawilliams.com

Personal names (2)

- Is there a registered trademark?
- If not: are there common law trademark rights?
- Discrepancies between national laws
- 2nd WIPO Internet Domain Name Process: lack of an international norm protecting personal names; no modification should be made to the UDRP

Geographical names

- Champagne.com
- france.com
- athens.com
- inuit.com
- barcelona.com









barcelona.com

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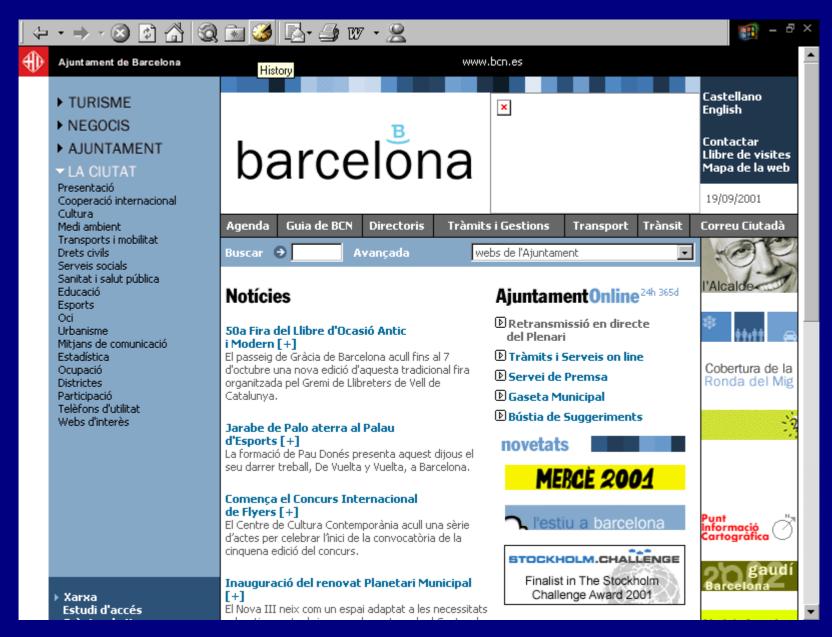
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Geographical names (2)

- Is there a registered trademark?
- Is there bad faith by the mere fact that the domain name is not owned / web site is not run by the city, region, country....itself?
 - Yes: Barcelona.com
 - no: Brisbane.com; Portofhelsinki.com

Geographical names (3)

- 2nd WIPO Internet Domain Name Process: existing rules apply to trade in goods: quid internet? lack of international agreed list of geographical indications
- What with shared use ?
 - Amazone, Spa, Osh-Kosh, Patagonia, Paris, Anderlecht

"confusingly similar"

- stretching : volvooceanrace.com; audi-lamborghini.com
- essential part : sonypresent.com; nikewomen.com
- can pejorative domain names be confusingly similar?: anti-philips; directlinesucks.com