

Vilau &amp; Mitel

# Gripes and phishing in Romania

**Keyword advertising, gripe sites and phishing can all infringe IP rights. Such activities generally trigger liability under unfair competition law in Romania and require detailed enforcement strategies**

The Internet provides new means for infringing registered rights. Such activities started with registration of domain names incorporating a trademark – widely known as cybersquatting (fortunately, there has been much progress in this field) and typosquatting – and evolving to trademark and copyright infringement through, among other things, keyword advertising, gripe sites and phishing scams.

However, Romanian trademark, copyright, unfair competition and e-commerce laws are at hand to provide assistance. Plus, well-established case law is helping to address infringement online.

## Keyword advertising

Keyword advertising is based on a principle of search engine optimisation. Under this principle, the anchor text of incoming hyperlinks to a site will cause search engines to associate the site with that term and improve the site's search engine ranking for that keyword.

The initial purpose of search engines as a help tool for locating online content has changed somewhat and now the homepages of well-known search engines are either the default page in a browser or the first page opened by an internet user.

Keyword and contextual advertising have become the most popular forms of online advertising and are a major source of income for search engines. As a result, search engines have come under fire from trademark or trade name owners, claiming that advertisers should not be permitted to use competing trademarks or company names in paid-for keyword advertising campaigns or metatags.

## Legal remedies against keyword advertising

Mark owners can take preliminary

measures against allegedly infringing keyword advertising, such as preserving evidence by way of interim orders or obtaining injunctive relief against infringers or intermediaries (ie, web hosting companies). Romanian courts – especially those in Bucharest having specialised IP panels – have proved to be open to sanctioning intermediaries and consequently the latter often readily assist rights holders to avoid paying damages.

Second, rights holders can make use of the relevant IP-related or e-commerce laws. There have been several cases before the Bucharest Tribunal (eg, *Heborom International v Group M Marketing Case 13816/3/2007*) in which trademark owners have successfully protected their rights. However, Romanian courts often require the opinion of an IT expert to assist in evaluating as to whether a specific example of keyword advertising qualifies as a trademark infringement.

## Gripe sites

The Internet has proved to be an excellent medium for companies to market and sell goods and services. However, it can also be used as a tool for dissatisfied customers, employees or competitors to disparage persons, political figures or companies by promoting websites which include the criticised name or trademark in the URL (uniform resource locator). In Romania many such sites employ the prefix 'anti-' (eg, [www.anti-\[name or trademark\].ro](http://www.anti-[name or trademark].ro)).

These types of website were established initially as a cost-effective public platform, sometimes reaching a global audience, for criticising companies, places, political figures or social events. They were viewed as playing an important watchdog role and a way of reminding everyone of the strength of public opinion. To the

disappointment of trademark owners, these sites are often impossible to control or fight since the concept has spread rapidly to become the main way of publicly criticising a mark owner or business.

As noted by a One World Trust study, "a gripe site can have a profound impact on global organisations" and right now there are many allegedly "legitimate" gripe sites; however, these types of website are usually not a real threat to IP rights holders, unlike the so-called 'sucks' sites. The latter have been adopted in Romania as 'anti-' websites. Companies and individuals affected by this phenomenon have generally not taken steps to fight the 'anti-' websites, which often claim to be protected by freedom of speech rights. Nevertheless, if any of these sites obviously infringe trademark rights, one should know one's options.

## Gripe site remedies and strategies

A number of strategies have now been established and should be considered when dealing with 'anti-' websites. These include the following:

- Sending polite and consistent cease and desist letters and responses (which in most cases are published by the offending sites), offering to address and possibly solve the problem;
- Registering 'anti-' domains or purchasing them if they have already been taken up by third parties; or
- Some suggest creating official 'anti-' websites to provide customers with a responsive but controllable way to post gripes or complaints.

## Phishing

Phishing refers to the fraudulent activity of attempting to acquire sensitive information such as usernames, passwords and credit card details by masquerading as

a trustworthy entity in an electronic communication. Communications (typically through email and instant messaging) are allegedly from popular websites, auction sites, banks, shipping companies, mobile phone carriers, online payment processors, public authorities, national lottery companies, etc.

The number of criminal proceedings initiated by the Romanian authorities has increased significantly in recent years. It is unfortunate that Romania has become a top source of phishing, as Romanian phishers have gained a reputation for the ingenuity of their attacks and the use of social engineering.

The online auction site eBay made public in June 2007 the results of a three-year campaign to curb online fraud arising in Romania; an effort which led to several arrests by the Romanian police. The scale of the fraud was such that eBay formed a dedicated team to look into the issue – hiring a crack group of analysts and lawyers to work with victims and the Romanian authorities to come up with workable solutions.

In recent years, Romanian banks – such as BCR (Banca Comerciala Romana), BRD – Groupe Société Générale, Raiffeisen Bank, BancPost, Banca Romaneasca and Bancii Comerciale Carpatica – have been the target of repeated attacks, some of these attacks (mostly during 2007 to 2008) being described by IT experts as extremely sophisticated. According to a police representative, the investigations in these cases have not yet led to any criminal charges.

Some phishers at the lower end of the scale (ie, involving sums under \$25,000) were imprisoned, after having been found guilty of organising phishing schemes in connection with internet auctions during 2002 to 2006 (Decisions 870/2005, 4399/2006 or 1201/2007 issued by the High Court of Cassation and Justice).

### Legal remedies against phishing

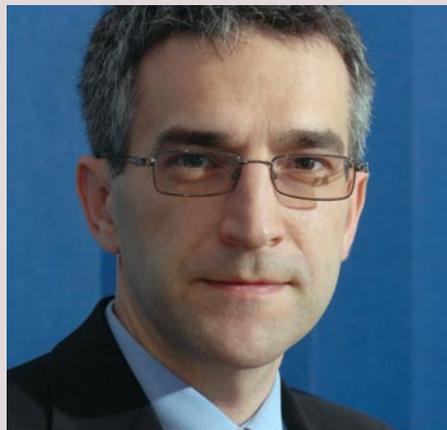
Fighting against phishing is by far the most complex of all internet issues. It requires detailed knowledge and extensive resources. Working together with the Romanian police seems to have produced results in some cases.

Multinational companies have been successful during the last few years in their efforts to protect their trademark rights in Romania and avoid phishing by constantly monitoring online auction sites and targeting website forgeries based on similar domain name registrations. Some phishing



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scams were shut down by writing to and negotiating with web hosting companies for deactivation of similar/identical domain name registrations. However, when web hosting companies were reluctant to act (although this is usually rare), formal complaints were addressed to the Romanian police and the Ministry of Telecommunications.

### Considerations

While Romanian law offers extensive protection of trademark rights and provides several remedies to fight infringement online, such remedies may not always be effective. Caution must be exercised when dealing with 'anti-' sites in particular. [WTR](#)