

## Union Calendar No. 310

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3754

[Report No. 108-536]

To provide additional civil and criminal remedies for domain name fraud.

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### IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2004

Mr. SMITH of Texas (for himself and Mr. BERMAN) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 9, 2004

Additional sponsor: Mr. SESSIONS

JUNE 9, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 3, 2004]

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## A BILL

To provide additional civil and criminal remedies for domain name fraud.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Fraudulent Online Identity Sanctions Act”.*

4 **SEC. 2. AMENDMENT TO TRADEMARK ACT OF 1946.**

5 *Section 35 of the Act entitled “An Act to provide for*  
6 *the registration and protection of trademarks used in com-*  
7 *merce, to carry out the provisions of certain international*  
8 *conventions, and for other purposes”, approved July 5,*  
9 *1946 (commonly referred to as the “Trademark Act of*  
10 *1946”; 15 U.S.C. 1117), is amended by adding at the end*  
11 *the following new subsection:*

12 *“(e) In the case of a violation referred to in this sec-*  
13 *tion, it shall be a rebuttable presumption that the violation*  
14 *is willful for purposes of determining relief if the violator,*  
15 *or a person acting in concert with the violator, knowingly*  
16 *provided or knowingly caused to be provided materially*  
17 *false contact information to a domain name registrar, do-*  
18 *main name registry, or other domain name registration au-*  
19 *thority in registering, maintaining, or renewing a domain*  
20 *name used in connection with the violation. Nothing in this*  
21 *subsection limits what may be considered a willful violation*  
22 *under this section.”.*

23 **SEC. 3. AMENDMENT TO TITLE 17, UNITED STATES CODE.**

24 *Section 504(c) of title 17, United States Code, is*  
25 *amended by adding at the end the following new paragraph:*

1           “(3)(A) *In a case of infringement, it shall be a*  
2           *rebuttable presumption that the infringement was*  
3           *committed willfully for purposes of determining relief*  
4           *if the violator, or a person acting in concert with the*  
5           *violator, knowingly provided or knowingly caused to*  
6           *be provided materially false contact information to a*  
7           *domain name registrar, domain name registry, or*  
8           *other domain name registration authority in reg-*  
9           *istering, maintaining, or renewing a domain name*  
10           *used in connection with the infringement.*

11           “(B) *Nothing in this paragraph limits what*  
12           *may be considered willful infringement under this*  
13           *subsection.*

14           “(C) *For purposes of this paragraph, the term*  
15           *‘domain name’ has the meaning given that term in*  
16           *section 45 of the Act entitled ‘An Act to provide for*  
17           *the registration and protection of trademarks used in*  
18           *commerce, to carry out the provisions of certain inter-*  
19           *national conventions, and for other purposes’ ap-*  
20           *proved July 5, 1946 (commonly referred to as the*  
21           *‘Trademark Act of 1946’; 15 U.S.C. 1127).’.*

22   **SEC. 4. AMENDMENT TO TITLE 18, UNITED STATES CODE.**

23           (a) *SENTENCING ENHANCEMENT.*—*Section 3559 of*  
24           *title 18, United States Code, is amended by adding at the*  
25           *end the following:*

1       “(f)(1) If a defendant being prosecuted for a felony of-  
2       fense (other than offense of which an element is the false  
3       registration of a domain name) knowingly falsely registers  
4       a domain name and knowingly uses that domain name in  
5       the course of that offense, the maximum imprisonment oth-  
6       erwise provided by law for that offense shall be doubled or  
7       increased by 7 years, whichever is less.

8       “(2) As used in this section—

9               “(A) the term ‘falsely registers’ means registers  
10       in a manner that prevents the effective identification  
11       of or contact with the person who registers; and

12               “(B) the term ‘domain name’ has the meaning  
13       given that term is section 45 of the Act entitled ‘An  
14       Act to provide for the registration and protection of  
15       trademarks used in commerce, to carry out the provi-  
16       sions of certain international conventions, and for  
17       other purposes’ approved July 5, 1946 (commonly re-  
18       ferred to as the ‘Trademark Act of 1946’) (15 U.S.C.  
19       1127).”.

20       (b) UNITED STATES SENTENCING COMMISSION.—

21               (1) DIRECTIVE.—Pursuant to its authority  
22       under section 994(p) of title 28, United States Code,  
23       and in accordance with this section, the United States  
24       Sentencing Commission shall review and amend the  
25       sentencing guidelines and policy statements to ensure

1        *that the applicable guideline range for a defendant*  
2        *convicted of any felony offense carried out online that*  
3        *may be facilitated through the use of a domain name*  
4        *registered with materially false contact information is*  
5        *sufficiently stringent to deter commission of such acts.*

6            (2) *REQUIREMENTS.—In carrying out this sub-*  
7        *section, the Sentencing Commission shall provide sen-*  
8        *tencing enhancements for anyone convicted of any fel-*  
9        *ony offense furthered through knowingly providing or*  
10       *knowingly causing to be provided materially false*  
11       *contact information to a domain name registrar, do-*  
12       *main name registry, or other domain name registra-*  
13       *tion authority in registering, maintaining, or renew-*  
14       *ing a domain name used in connection with the vio-*  
15       *lation.*

16           (3) *DEFINITION.—For purposes of this sub-*  
17       *section, the term “domain name” has the meaning*  
18       *given that term in section 45 of the Act entitled “An*  
19       *Act to provide for the registration and protection of*  
20       *trademarks used in commerce, to carry out the provi-*  
21       *sions of certain international conventions, and for*  
22       *other purposes”, approved July 5, 1946 (commonly*  
23       *referred to as the “Trademark Act of 1946”; 15*  
24       *U.S.C. 1127).*

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