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When URLs Collide

Perfume Bay CEO Jacqueline Tran battles eBay over a trademark infringement case.

BY LINDA MELONE

When Jacquelyn Tran launched Perfumebay.com in 1999, she never anticipated how much her choice of URL would cost her. To date, the Huntington Beach-based company has waged a legal war costing hundreds of thousands of dollars against eBay, the giant online-auction house. Tran maintains her rights to use the current URL, which eBay claims may be confusing to customers who think the 2 sites are related.

Tran, who compares her company's struggle to that of David and Goliath, grew tired of hearing about other small companies "rolling over" when sued by the \$4-billion giant, referring to AutoBay, RentBay and other sites with names ending in "bay" that eBay put out of business. "This has not been an easy road to take," Tran notes on her blog, makesnoscents.com, where she keeps her 300,000 loyal customers up to date on her fight. "The money spent fighting this lawsuit has had a serious impact on us." And she's far from giving up.

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In the latest ruling, Perfume Bay lost against the online-auction giant, which is protected from "trademark dilution" by E-commerce proprietors with similar-sounding names.

Dilution protects companies with famous marks, according to Becky Christensen, an Irvine trademark attorney. "If you represent a well-known company such as Coca-Cola or McDonald's, you get extra protection (against people trying to benefit from your fame)," she explains. If a consumer sees your company's mark on a number of different goods or services, the mark then loses its distinctiveness or "cachet."

The 3-judge panel of the 9th U.S. Circuit of Appeals ruled unanimously that Perfume Bay must get a new name. Tran says she will appeal and asked for an emergency stay of the injunction to keep operating her site. Further action is pending.

A simple Google search can help others avoid Tran's situation. "A typical trademark infringement case costs around a million dollars," says Christensen. "So the penalty for getting involved is so high, that even if you have to give up a name you love because it's similar to something else, you have to do that." She also recommends checking with the U.S. Patent and Trademark Office page (USPTO.gov). "Having a domain name doesn't mean you're safe, either, because they don't check. If you're even 1 letter off, you can be sued." ocm

Linda Melone is OC METRO Business Magazine's e-commerce columnist.

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