

# Anyone “Amying” to “Wine” about cyber squatting

By Alicia Louw

Amy Winehouse was not long gone before the domain names [<amywinehousefoundation.org>](http://amywinehousefoundation.org) and [<amywinehousefoundation.uk.org>](http://amywinehousefoundation.uk.org) were registered.

Amy Winehouse, I believe most of us know, was a world renowned British singer known for her eclectic music, including “Rehab”. She recently died at a tender 27 years of age.

Shortly after her death, Amy’s father, Mitch Winehouse, announced that he would launch a foundation in his daughter’s name. The aim would be to raise funds to assist those struggling with alcohol and drug abuse.

We thought what a noble and apt tribute to his daughter, considering her own battle with substance abuse.

However, some others, acutely aware of the advertising power of the internet, saw dollar signs. Shortly after Mitch’s announcement, they registered the domain names [<amywinehousefoundation.org>](http://amywinehousefoundation.org) and [<amywinehousefoundation.uk.org>](http://amywinehousefoundation.uk.org).

It is amazing how quick and relatively simple it is to register a domain name. There are no checks and balances to ensure that the registrant has any right to the name, and that registration of the name will not infringe any third party’s rights.

To register a domain name you simply check if it is available, complete a form, and pay a relatively small sum of money, after which the domain name is yours.

The process is clearly open to abuse, with trade mark owners and celebrities often the victims of unscrupulous “entrepreneurs”.

The Internet Corporation for Assigned Names and Numbers (ICANN) is the organisation responsible for, among other things, management of the generic top level domains such as .com, .net and .org. In order to combat the problem of domain names infringing third party rights, ICANN adopted the Uniform Domain Name Dispute Resolution Policy (UDR Policy) in December 1999.

Wow – a mouthful of considerable dimensions. Be that as it may, what is its relevance to the Amy Winehouse domain name issue? In terms of the UDR Policy, it is possible to file a complaint to get a domain name back if you believe you have better rights to the name. To do so, you must demonstrate:

- (i) the domain name is identical or confusingly similar your trade mark; **and**
- (ii) the registrant has no rights or legitimate interests to the name; **and**
- (iii) the domain name has been registered **and** is being used in bad faith

The magic word is “and”, as a failure to show all of these elements will lead to your complaint being unsuccessful. This would mean that you then have to negotiate a fee with the registrant to get the domain name back.

Complainants usually encounter difficulty with criterion (iii) in particular.

Thankfully, the UDR Policy sets out a list of circumstances that are indicative of use and registration of a domain name in bad faith.

One example is if the registrant has acquired a domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration for a price more than his documented “out-of-pocket costs” for it (extortion).

I therefore suspect that the registrants of the Amy Winehouse Foundation domain names are unlikely to have much luck in selling the domain names for millions and will, in the end, probably be obliged to transfer the domain names to Mitch Winehouse and his foundation.

Unfortunately, Mitch Winehouse will, however, have to spend some money in fighting to get the domain names back.

The lesson is to register the domain name for a new brand you intend using before making any announcements. If possible, you should also register simple variations of it, as someone is likely to register <amywhinehouse.com> or <amy-winehouse.com> and then attempt to sell it to you later.

Instructively, the policy governing .co.za domain name dispute matters is similar but, in my view, a little less stringent.

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