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## GENERAL INTRODUCTION

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### A. What this Book is About

Trade marks are business identifiers and are vital to the trade in goods and services. With the ever-increasing importance of brand advertising for manufacturers and the subsequent brand awareness of consumers, trade marks have become increasingly important and valuable. **1.01**

Alongside legitimate trade mark use, there is also trade mark abuse. Next to cases of unauthorized copying or ‘trade mark piracy’, such as counterfeiting the branded product of a third party, unauthorized registration or ‘trade mark grabbing’ also occurs. This often involves situations where trade mark applicants deliberately register the trade mark of a third party in their own name.

This book deals with (an element of) the latter case of trade mark abuse: trade mark registrations in bad faith. Trade mark law aims to protect right holders from abusive trade mark registrations and contains various specific provisions to this effect. For instance, article 6*bis* of the Paris Convention was introduced in 1925 and aims to prohibit unauthorized registration of well-known (famous) trade marks. Another example in the Paris Convention is article 6*septies*, effective since 1958, which aims to prevent business partners registering the trade mark of another business partner in their own name without consent. Trade mark law aims to prevent such predatory practices.

What also—more generally—is not allowed in many countries is applying for a trade mark registration in ‘bad faith’. Many trade mark acts consider a trade mark application inadmissible if such an application embodies ‘bad faith’ towards third parties having earlier or better rights to the registered trade mark. This is the

topic of this book. In Europe, the Trade Mark Directive and the Community Trade Mark Regulation contain specific provisions against such bad faith trade mark applications.<sup>1</sup>

## B. Approach and Structure

- 1.02** What does or does not amount to bad faith has been unclear in the past and it still is today. The Trade Mark Directive and the Community Trade Mark Regulation do not contain a straightforward definition. As a result, the judiciary in each Member State tends to apply their own and thus different standards in determining whether a trade mark has been applied for in bad faith. For instance, in the Benelux countries bad faith is assessed differently than in Spain, Slovenia, or Sweden. In view of the common origin of these provisions, it is unfortunate that one legal concept from one single directive is interpreted so differently throughout the European Union. This even more so, because the Trade Mark Directive is a directive aimed at harmonizing trade mark practice among the Member States. With so many different approaches on bad faith and divergence in legal practice among Member States, convergence is called for and at least a challenge. For that reason, this book aims to contribute towards a harmonized approach on the Community concept of bad faith, by acknowledging and reconciling the established practices in the Member States, and to phrase a conclusive answer to the question when a trade mark application should be deemed in bad faith according to European trade mark law.
- 1.03** Given that the topic of this book involves the Community concept of bad faith, this book deals primarily with European trade mark law. The approach adopted in this book is basically two-fold, and aims to address the subject of bad faith trade mark registrations from both a top-down and a bottom-up perspective: top-down, by tracing the origin and analysing the relevant rules of the Trade Mark Directive and the Community Trade Mark Regulation; bottom-up, by looking simultaneously at the implementation of the Trade Mark Directive in the national legal systems of the Member States and the way in which bad faith trade mark registrations are dealt with in legal practice across Europe. In summary, after the general introduction in this chapter, the approach adopted in this book consists of the following elements:
- *The general framework for obtaining trade marks (Part I, Chapter 2).* Given that bad faith is a general concept which often derives its specific legal meaning from

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<sup>1</sup> First Directive 89/104/EEC of the Council, of 21 December 1988, to Approximate the Laws of the Member States Relating to Trade Marks, OJ 1989 L 40 (now TMD 2008/95); Council Regulation 40/941 of 20 December 1993 on the Community trade mark, OJ 1994 L11/1 (now CTMR 207/2009).

its surrounding context, it is important to first look briefly at the legislative framework which surrounds, and thus affects, this legal concept of bad faith. The legal ground for barring bad faith trade mark applications from registration does not stand alone, but rather functions within the current legal framework for obtaining and protecting trade marks. For this reason, the manner in which trade marks are obtained and the way in which right holders are generally protected against conflicting trade mark registrations will be discussed in Chapter 2.

- *European trade mark law: harmonization and unification (Part II)*. The need to address bad faith trade mark registrations was recognized by the Community legislator early on. Both the Trade Mark Directive and the Community Trade Mark Regulation contain specific provisions to combat and invalidate such trade mark registrations. The origin and negotiations of these bad faith provisions will be discussed in Chapter 3. Subsequently, Chapter 4 will discuss the relevant provisions from the Directive (TMD), while Chapter 5 will deal in more detail with article 52–1b of the Regulation (CTMR). Case law from the OHIM Cancellation Divisions, Boards of Appeals, and the CTM Courts will also be discussed in Chapter 5.
- *The Member States: implementation and interpretation (Part III)*. Given the fact that Member States are under the obligation to transpose the Trade Mark Directive into national legislation, the specific implementation and interpretation of each individual Member State is of great importance. Which Member States have implemented the (optional) bad faith provisions (articles 3–2D and 4–4G TMD)? And how do national courts tend to apply this legal concept from the Directive? Those issues of implementation and interpretation are the focus of Part III, which provides a legal comparison between the 15 Member States that were part of the European Union at the start of this research project (2003). Such comparative analysis could contribute towards a balanced understanding of the Community concept of bad faith. Subsequently, the relevant implementing provisions of the 12 Member States that have joined the European Union during the course of this project will also be dealt with in brief in Chapter 19.
- *Bad faith revealed (Part IV)*. Part IV contains the concluding chapter of this book and will also discuss the recent decision of the European Court of Justice in *Goldhase*.

### C. Bad Faith in Other Areas of Intellectual Property Law

Before turning to trade mark law, it must be acknowledged that bad faith is a widely used legal concept, which is not used solely in conjunction with trade mark grabbing. Just like the requirement of ‘good faith’, the term ‘bad faith’ is applied in many areas: from contract law to property law and from insurance law to tax law. The term covers (for example) bad faith in negotiating or interpreting contracts,

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acquiring property, paying taxes, or denying insurance coverage.<sup>2</sup> Bad faith also surfaces in other areas of intellectual property law, sometimes based upon a specific statutory provision, and sometimes just merely used in case law generally to describe wrongful behaviour, fraud, or abuse.

**(a) Misappropriation of other IP rights**

*(i) Patents*

- 1.05** Such cases of abuse often involve the misappropriation of intellectual property rights. Just as with trade marks, this often involves situations of unauthorized registration, for example where one person attempts to register a patent which rightfully belongs to someone else. Many statutes contain specific provisions to curb such practices, most notably in the area of registered IP rights such as patents and registered designs.<sup>3</sup>
- 1.06** With regard to patents, article 61 of the European Patent Convention (EPC) contains a specific provision barring a ‘non-entitled person’ from filing a patent application, allowing the rightful owner to seize and prosecute the unauthorized application as his own, to file a new patent application altogether, or to request the European Patent Office to refuse this patent.<sup>4</sup> Although this provision does not expressly use the term ‘bad faith’, in some instances the Board of Appeal of the EPO has nevertheless labelled the filing of such unauthorized patent applications as bad faith. This occurred for example in case J 0001/91 in which the Board of Appeal held (in favour of the rightful owner) that a previous patent application ‘was made without its knowledge and consent and in bad faith, in breach of confidence’.<sup>5</sup>

In cases where the invention has already been disclosed by the rightful owner, such attempts to misappropriate patent rights are most likely to be refused on absolute grounds, because of the mere existence of the (identical) prior art of the rightful owner, which thus precludes the application from meeting the statutory requirement of novelty. Even though in such cases the primary ground for refusal is lack of novelty rather than ‘bad faith’, sometimes nevertheless courts have also applied

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<sup>2</sup> Contract law: with regard to good faith, see eg M Hesselink, *Towards a European Civil Code* (Nijmegen: Ars Aequi, 1998) p 287. Property Law: see eg the common law doctrine on bad faith possession discussed by LE Fennell, ‘Efficient trespass: the case for “bad faith” adverse possession’, (2006) *Northwestern University Law Review* 100(3), p 1037. Tax law: see the Dutch provision in §16 Algemene Wet inzake de Rijksbelastingen. Insurance law: see *Berges v Infinity Insurance Company*, 896 So 2d 665 (2004, Florida SC).

<sup>3</sup> Some jurisdictions also allow for registering copyright, such as for example before the US Copyright Office. Similar accusations of bad faith are sometimes raised in that area as well, for example in the highly publicized dispute in the US between SCO and Novell on Novell’s alleged wrongful registration of Unix and Unixware copyrights.

<sup>4</sup> Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973. See also eg s8 of the UK Patents Act 1977.

<sup>5</sup> European Patent Office, Board of Appeal 31 March 1992 J 0001/91, para 25.

a test of bad faith in cases of filing a patent while the applicant ‘knew or should have known’ that this patent lacked novelty. This happened for example in the Netherlands in *Postmus v De Back*.<sup>6</sup>

If the invention had not yet been disclosed and registered by the rightful owner, article 55–1 EPC provides some protection in cases where such invention is subsequently disclosed by a third party due to evident abuse of the rightful owner’s rights. In such instances of ‘evident abuse’ the disclosure will be disregarded and is therefore unable to destroy the novelty of the subsequent patent application by the rightful owner, provided that the patent application is filed within six months of the disclosure. Although this rule of ‘non-prejudicial disclosure’ in article 55–1 EPC does not speak of ‘bad faith’ but rather refers generally to ‘evident abuse’, the case law of the Boards of Appeal shows that both concepts appear to have much in common, emphasizing that evident abuse boils down to a ‘deliberate intention to harm’ and that the state of mind of the ‘abuser’ is of central importance to the assessment under article 55–1 EPC. Evident abuse was also accepted in a case of ‘knowledge of the possibility of harm resulting from a planned breach of confidentiality’.<sup>7</sup>

(ii) *Designs*

Similar protection against abusive disclosure exists for designs. According to the Design Directive (article 6–3) and Community Designs Regulation (article 7–3) disclosure of a design ‘as a consequence of an abuse in relation to the designer or his successor in title’ shall not be taken into account as prior art for the assessment of novelty and original character.<sup>8</sup> If for example a designer shows or tells someone about his or her design on the basis of confidentiality and the latter subsequently publishes this design without the designer’s consent, such disclosure is then disregarded, provided that the rightful owner proceeds to apply for registration of his or her design within 12 months after the abusive disclosure.<sup>9</sup> Although these provisions do not use the term ‘bad faith’, some literature has associated an abusive disclosure of this kind with bad faith.<sup>10</sup>

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Furthermore, express reference is made to the concept of bad faith in article 15–3 of the Community Designs Regulation. In order to safeguard legal certainty, this provision generally bars claims relating to rights under a Community design

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<sup>6</sup> Pres. District Court, The Hague, 14 June 1972, BIE 1973/10.

<sup>7</sup> European Patent Office, Board of Appeal 20 March 1995 T 0436/92 para 5.2 See further EPO, *Case law of the Boards of Appeal of the European Patent Office*, 2006 p 50–1.

<sup>8</sup> Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs; Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ L 3 of 5 January 2002).

<sup>9</sup> Tritton 2008 pp 571–2.

<sup>10</sup> Eg in the Netherlands: Geerts in Gielen 2007 nr. 195; Van der Kooij in Gielen/Verkade 2005 art. 1 *bis* no 6c.

three years after the date of publication or disclosure. However, pursuant to the second paragraph of article 15–3, this provision does not apply ‘if the person who is not entitled to the Community design was acting in bad faith at the time when such design was applied for or disclosed or was assigned to him’. In other words, the rightful designer can always launch proceedings to challenge the ownership of a Community design which was acquired in bad faith. Although this provision is not provided in the Design Directive, some Member States such as Germany have also included such exemption in national legislation.<sup>11</sup>

**(b) Recovery of profits and damages**

- 1.08** The concept of bad faith is also used in the context of injunctive and monetary relief. For example, in order to allow the owner of a trade mark or design to recover the profits of the infringer, the Benelux countries expressly require that the infringement occurred in ‘bad faith’ (article 2.21–4, article 3.17–4 of the Benelux Convention on Intellectual Property (BCIP)).<sup>12</sup> What amounts to bad faith infringement in Benelux was actually unclear until the decision of the Benelux Court of Justice in 2008 in *Ondeo Nalco v Michel Company*.<sup>13</sup> In this preliminary ruling by the BenCJ, bad faith was generally interpreted as ‘deliberate’ or ‘wilful’ infringement. The BenCJ added that ‘wilful’ infringement requires that the infringer was aware of the infringing character of its actions at the time. However, it was also held that such knowledge cannot be inferred where the alleged infringer has reason to believe that it can rely on a plausible legal defence, for example if it denies likelihood of confusion or challenges the validity of the trade mark by invoking a ground for cancellation or revocation. Although the true impact of this decision on Benelux trade mark practice is still unclear, it is likely that the mere refusal to comply with a cease-and-desist letter is not necessarily an indication of bad faith, if the (legal counsel of the) alleged infringer raises a plausible defence in reply and continues to use the disputed sign.

Other jurisdictions use similar concepts for recovering profits and damages. For example, in the United States, recovering profits in trade mark litigation is usually only allowed in case of wilful infringement (eg 15 USC Article 1117). Apart from requiring an element of ‘deliberate’, ‘false’, ‘misleading’, or ‘fraudulent’ infringement, US case law also tends to equate wilful infringement with bad faith.<sup>14</sup> A recent example can be found in the highly publicized *adidas v Payless* case,

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<sup>11</sup> §9 Geschmacksmustergesetz.

<sup>12</sup> Up until 2007, to be entitled to request the destruction of infringing goods, the Benelux countries also required bad faith intent (§2.22/3.18 BCIP). This requirement was deleted in 2007, however, upon the implementation of the Enforcement Directive (Directive 2004/48 of 29 April 2004 on the enforcement of intellectual property rights, OJ L 195/16 of 2 June 2004), in order to bring this provision in line with §10 of the Directive.

<sup>13</sup> Case A 2006/4, BenCJ 11 February 2008.

<sup>14</sup> See Dinwoodie/Janis 2004 p 880 for further references to case law.

in which the jury held that Payless had acted ‘willfully or in bad faith’, resulting in awarding profits and (actual and punitive) damages for a total of \$305 million.<sup>15</sup> The same concept of wilful infringement also applies in other areas of IP litigation, such as with regard to recovering profits in case of patent or copyright infringement.<sup>16</sup> For example, US and Dutch courts have also referred to the (lack of) ‘bad faith’ of the infringer in such cases.<sup>17</sup> A general legal basis for monetary relief in cases of wilful infringement is to be found in article 45 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which generally allows for recovery of damages and profits where the infringer ‘knowingly, or with reasonable grounds to know, engaged in infringing activity’. The WTO, which was responsible for drafting this provision, generally interprets Article 45 TRIPs as requiring that the infringer acted in bad faith.<sup>18</sup>

### (c) Domain names

Domain names have been called the trade marks of the 21st century. It is therefore no surprise that trade mark grabbing was quickly followed by domain name grabbing. In the 1990s domain name grabbing was a booming business for cybersquatters, and a nightmare for trade mark owners. Brand owners who had failed to promptly obtain corresponding domain names for their trade marks were forced either to buy those domain names from the domain name grabber or opt for (expensive) litigation. The huge number of generic and country-code top-level domains, and the fact that registering domain names could be done quickly, cheaply, and on a massive scale, only made things worse. In addition to already existing problems such as counterfeiting, domain name grabbing became a serious concern for brand owners. It is therefore no surprise that providing effective measures against domain name grabbing quickly became a top priority. Important progress was made in 1999, when ICANN adopted the Uniform Domain Name Dispute Resolution Policy (UDRP). In the same year, the United States enacted specific legislation under the Anticybersquatting Consumer Protection Act (ACPA). Both policies have been instrumental in curbing domain name grabbing and have served as an example for other similar domain name policies and legislation across

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<sup>15</sup> 5 May 2008, 01–1655–KI (2008, Oregon DC).

<sup>16</sup> See for a critical review of wilful patent infringement in the USA: MA Lemley & RK Tangri, ‘Ending Patent Law’s Willfulness Game’, (2003) *Berkeley Technology Law Journal* 18, p 1085. Also see for the UK: s62 UK Patents Act 1977.

<sup>17</sup> With regard to recovering profits in patent infringement in the USA (based upon 35 USC §284): *Jurgens v CBK*, 80 F3d 1566 (1996, Court of Appeal); *Bott and Jac Products v Fourstar*, 807 F2d 1567 (1996, Court of Appeal). With regard to copyright infringement in the USA (based upon 17 USC §504(c)): *Yurman v PAJ*, 262 F3d 101 (2001, Ct Apps (2nd Cir)). With regard to copyright infringement in the Netherlands: *Karel Mintjes v VDV Meubelen* IEPT 20070621 (2007, The Hague CA) para 15; *Autodesk v Aztek* IEPT 20061025 (2006, DC Breda) para 3.34.

<sup>18</sup> See <[http://www.wto.org/english/tratop\\_e/trip\\_e/intel2b\\_e.htm](http://www.wto.org/english/tratop_e/trip_e/intel2b_e.htm)>. However this is not supported by Gervais 2003 p 298.

the world. The difference between those policies is that the UDRP is shaped as an alternative dispute resolution policy, while the ACPA allows for regular proceedings before the courts. UDRP disputes are not decided before the courts but by panelists who have been appointed by a dispute resolution provider such as the WIPO Arbitration and Mediation Center. Apart from the procedural differences, an important similarity is that both policies rely on the legal concept of 'bad faith'.

- 1.10** Since its enactment in 1999, the UDRP has become the most important mechanism for dealing with domain name disputes. Although the UDRP primarily applies to generic top-level domains such as eg .com, .net, and .info, it has also been adopted by various countries for disputes involving country-code top-level domains. This includes the popular .nu and .tv domains as well as over 30 other ccTLDs which have officially adopted the UDRP. Many other countries also relied on the UDRP criteria to devise their own dispute resolution policy, such as Australia (.au), Belgium (.be), China (.cn), Italy (.it), Japan (.jp), and the United States (.us).<sup>19</sup>

The UDRP basically consists of a three-step test. Under article 4(a), transfer or cancellation of the disputed domain name is allowed if the following conditions are satisfied:<sup>20</sup>

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the domain name holder has no rights or legitimate interest in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

The last two requirements are further explained in the UDRP through a non-exhaustive list of factors in article 4. Pursuant to article 4(b), the following circumstances point towards finding that the domain name holder has registered and used the disputed domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

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<sup>19</sup> Tsoutsanis 2003 p 125. In 2008, the Netherlands finally changed its ADR policy for .nl domains and adopted an (extended) UDRP model, after serious criticism in literature, most notably by this author: see Tsoutsanis 2003 pp 281–309; Tsoutsanis *BIE* 2003 pp 153–7 and pp 309–10.

<sup>20</sup> The history, practice, and case law of the UDRP have been extensively discussed in literature. See eg Tsoutsanis 2003 pp 105–94 and also Lindsay 2007, Bettinger 2005.

- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

These circumstances basically indicate the wrongful intention of the domain name holder to benefit, obstruct, disrupt, or create confusion with the business of the trade mark owner. Apart from the factors mentioned above, UDRP case law has also accepted bad faith in other circumstances.<sup>21</sup> Most notably, bad faith has also been construed as a standard of 'actual and constructive knowledge', accepting that cases where the domain name holder knew or ought to have known about the trade marks of the complainant, for example because the parties operate in the same industry or because of the worldwide use, reputation, and fame of the complainant's trade mark, constitute bad faith.<sup>22</sup> The importance of the legal concept of bad faith in domain name disputes is only confirmed by the fact that the EU also adopted those grounds for its dispute resolution policy for .eu domains.<sup>23</sup>

In addition to alternative dispute resolution mechanisms for bad faith domain name registrations such as the UDRP, various governments have also moved to enact specific domain name legislation enabling right holders to combat domain name grabbing through regular proceedings before the courts. The USA launched a key initiative in this regard in 1999 by enacting the ACPA. This Act amended US trade mark legislation and introduced specific grounds against 'cyberpiracy' in 15 USC article 1125(d). Under this provision a person will be liable in a civil action by the owner of a mark if, without regard to the goods or services of the parties, that person has a 'bad faith intent' to profit from that mark, and registers, traffics in, or uses a domain name that is identical or confusingly similar to that mark. The concept of 'bad faith intent' is further explained through a non-exhaustive list of relevant circumstances, which can be used to persuade the courts that the domain name holder acted in bad faith in registering the disputed domain name.<sup>24</sup> The key advantage of the ACPA over the UDRP is the possibility of obtaining monetary relief for statutory damages for up to \$100,000 per domain name, which aims to send a clear signal to cybersquatters that domain name grabbing should not pay off. This is the biggest drawback of the UDRP, which does provide for swift dispute resolution but

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<sup>21</sup> See further Bettinger 2005 IIIA379; Tsoutsanis 2003 pp 173–86.

<sup>22</sup> See for example (from the author's own experience in litigating UDRP disputes on behalf of complainants before the WIPO Arbitration and Mediation Center): *Reebok International Limited v Domain Privacy Service, Hong Kong Names LLC*, Case D 2008–0359; *AFC Ajax v R de Monchi*, Case DTV 2007–0009; *Adidas v Zhifang Wu*, Case D 2006–0032; *G-Star International v James Hobart*, Case DTV 2006–0002; *Adidas–Salomon AG v Digi Real Estate Foundation, Patrick Williamson*, Case D 2006–0748.

<sup>23</sup> §21 of Regulation (EC) No 874/2004 of 28 April 2004. The 'euDRP' is primarily based on the Belgian policy for .be domain names, which is an extended version of the UDRP.

<sup>24</sup> 15 USC §1125(d)(1)(B).

does not allow for monetary relief and is therefore unable to really hurt, and thus deter, domain name grabbers. This is also the prime reason why domain name grabbers often refuse to comply with the cease-and-desist letter send out by trade mark owners, and also often do not bother to respond in UDRP proceedings. Experienced domain name grabbers know that the most likely scenario after refusing a voluntary transfer is that the trade mark owner will consequently decide to opt for UDRP proceedings which might result in transfer but not in damages. This lack of monetary relief in the UDRP only provides an incentive for domain name grabbers to play hardball and force the trade mark owner to either decide to spend a few thousand dollars on UDRP proceedings or pay the domain name holder an amount which is (usually) a little bit lower than the necessary costs for UDRP proceedings.<sup>25</sup> This type of conduct is exactly what the ACPA aims to prevent, by awarding steep damages against domain name grabbers. One case even resulted in awarding damages of \$500,000 against a notorious cybersquatter.<sup>26</sup> In Europe, Belgium has followed the example of the United States and also enacted a specific domain name law against abusive domain name registrations.<sup>27</sup> However, unlike the ACPA, the Belgian act does not rely on the concept of bad faith, but requires that the domain name was registered in order to harm or to obtain an unjust advantage.

## D. Summary

**1.12** This chapter can be summarized as follows:

### **Topic and approach**

This book focuses on when trade marks are considered to have been registered in bad faith according to European trade mark law. It is about the legal concept of bad faith in the context of trade mark grabbing. This book basically adopts a systematic, historical, and comparative analysis, looking at the legislative framework surrounding this legal concept, tracing its origins, and analysing the interpretation and implementation of the concept of bad faith in the Member States across Europe (paragraphs 1.01–1.03).

### **Bad faith in other areas of intellectual property law**

Bad faith is not used only to designate trade mark grabbing, but also in many other areas such as misappropriating other IP rights, recovering profits or damages, and domain name grabbing (paragraphs 1.04–1.11).

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<sup>25</sup> Brand owners who settle for the second solution are usually better off in the short term, but are often worse off in the long run as 'buying back' abusive domain name registrations only rewards and thus provides a further incentive for future domain name grabbing, often involving the same domain name in other generic TLDs (gTLD) and ccTLDs.

<sup>26</sup> See, for a concise review of case law, Abel in Bettinger 2005 US30–1.

<sup>27</sup> Wet betreffende het wederrechtelijk registreren van domeinnamen, law of 26 Jun. 2003, published in BS of 9 September 2003. Briefly discussed by Strowel/Daems in Bettinger 2005 BE20 and, more extensively, Tsoutsanis 2003 pp 264–75.