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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

GEORGE SABIN,

Plaintiff,

v.

CURT MANUFACTURING COMPANY,

Defendants.

No. 08-1852-PHX-mEA

COMPLAINT FOR DECLARATORY RELIEF

1. This is an action for declaratory relief in which a citizen seeks to protect his right to use the domain name "curt-mfg.com" as the Internet address for a web site criticizing the Curt Manufacturing Company because of design of one of its products caused serious injury to a friend of the plaintiff's. Curt Manufacturing brought and won a claim against George Sabin under the Uniform Domain-Name Dispute-Resolution Policy ("UDRP"), because the panelist named by the National Arbitration Forum deliberately ignored the controlling decision of the United States Court of Appeals for the Ninth Circuit even after it was pointed out to him. However, such rulings are subject to de novo review in the federal courts under principles of federal law, and Sabin now asks this Court to declare that defendants

are in violation of the reverse domain name hijacking provisions of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1114(2)(D)(v), because Sabin's domain name does not violate Curt's rights under the trademark laws, and because any trademark claims are forbidden by the First Amendment.

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction of this action under 15 U.S.C. §§ 1114(1), 1114(2)(D)(v) and 1121, and 28 U.S.C. §§ 1331, 1337 and 1338.

3. The Court has personal jurisdiction of defendant, because defendant has a facility in Phoenix, Arizona, and because in filing the UDRP proceeding, it expressly consented to jurisdiction in Arizona, where Sabin's domain name registrar is located.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (c), because defendant operates an interactive web site on the Internet through which it markets and sells goods and services to Arizona, because defendant has a facility in Phoenix, Arizona, and because defendant has consented to jurisdiction in the court where the domain name registrar, Go Daddy, is located, which is Scottsdale, Arizona.

PARTIES

5. Plaintiff George Sabin is a citizen of California who has established a web site criticizing Curt Manufacturing for its manufacture of a defective hitching product.

6. Defendant Curt Manufacturing is, according to its web site, a "Manufacturer, Importer, and Distributor of Towing System products, OE Trailer products and Specialty Equipment products."

FACTS

Technical Background

7. The Internet is an informal, worldwide network of networked computers, linked together for the purpose of automated communication between members of the networks. Every computer connected to the Internet is assigned a numeric address (akin to a telephone number and area code), that the other computers on the Internet use to route messages to that computer. This numeric address (called an IP address) is in the form of four sets of three digit numbers with each number being 255 or less; i.e. 123.255.001.213. So an IP number usually identifies a particular computer or Internet web site.

8. Because these long numbers are difficult for people to remember, the Internet authorities also assign alphanumeric addresses, like "xyz.com " to each numeric IP address. These alphanumeric addresses are referred to as "domain names." Internet users normally use the domain name to identify a particular web site by use of the domain name, rather than the numeric IP address, since it is easier to remember. The process of translating a domain name into an IP number is handled by a system of computers on the Internet known as DNS.

9. Each domain name must be unique, since each IP address is unique, because the Internet computers must be able to look up, in a table maintained online, the IP address for a specific domain name whenever the sender of a message uses only the domain name.

10. The World Wide Web user can merely enter a domain name into his browser software, and then his computer will automatically send out the necessary messages requesting information from that particular computer. In other words the user will be taken to that site. (More precisely, a request will be made to that particular computer, and it will send the web page requested to the user who entered the domain name.) The returned information is then presented in graphic form on the initiator's computer screen.

11. The domain name can be entered into the browser software by typing the name into a window of the browser, or by clicking on an Internet hyperlink. Domain names can be placed in hyperlinks by the user himself, through the creation of "bookmarks" or "favorites" in the browser software, or by the owners of other web pages who place such links in their pages, or by Internet search engines or Internet directories that return hyperlinks to sites that may be identified by a search of their databases.

12. Anyone can register a domain name that has not been taken by filling out a few forms on the Internet. Once that name is registered it exists solely as an informational entry on a particular computer known as the DNS root server. Until a

web site has been created under that domain name, however, typing the domain name into one's browser will return only an error message.

13. A web site is a page or collection of pages that may have text, graphics, sounds or animation on them. Usually there is only one web site under a given domain name.

14. After registering a domain name, the owner can elect to sell it, he can create web pages (a website) that individuals on the internet can access, or he do nothing with it. If he creates a web page or pages under the domain name, then the user who visits that domain name will be able to view those pages. The pages will be accessible to anyone in the world with access to the Internet; thus domain names are neither territorial nor are they geographic designations. The content of the web pages may be solely under the control of the site owner, or he may allow others to post there freely.

15. Users rely on the domain name as a mnemonic device to remember sites that they wish to revisit.

16. As a result of the unique nature of domain names, there can only be one "jets.com," and thus one owner of "jets.com" in the entire world. Thus Boeing, the NFL, dealers in aircraft, the Winnipeg Jets, fans of the "white" gang in West Side Story, aircraft enthusiasts, and others can only own this domain name if they were the first to register it, or if they obtain it from the original registrant, either through negotiation or through legal proceedings.

17. In the early days of the Internet, domain names were not particularly important because few commercial enterprises or other institutions or individuals had domain names and the Internet's World Wide Web concept had not yet been developed. The initial domain names were mostly assigned to universities and government agencies, like "mit.edu," which is the domain name for an educational institution.

18. As the utility of the Internet as a means of communication became more and more apparent, various persons who wanted to use the Internet to communicate information about particular subjects sought to register domain names reflecting those subjects. Commonly, it was a commercial enterprise that wanted a domain name that embodied its own name, or the name of one of its products. But other people who desired to talk about products also sought domain names embodying that topic. And, people who did not have a desire to talk about a subject, but anticipated that others **might** want a particular name in order to have a handy way to reference their web pages about that subject, also sought to be the first to reserve domain names identifying that topic.

19. On July 1, 1997, as part of the Clinton Administration's Framework for Global Electronic Commerce, the President directed the Secretary of Commerce to privatize the domain name system ("DNS") in a manner that increases competition and facilitates international participation in its management.

20. The Internet Corporation for Assigned Names and Numbers ("ICANN") is the non-profit corporation that was formed to assume responsibility for the domain

name system management, pursuant to agreements with the Department of Commerce. As part of the accreditation by ICANN, registrars are required to follow the Uniform Domain-Name Dispute-Resolution Policy (often referred to as the "UDRP"). Under the UDRP, most types of trademark-based domain-name disputes must be resolved by agreement, court action, or "arbitration" before a registrar will cancel, suspend, or transfer a domain name.

21. The "arbitration" is really just an expedited administrative proceeding, because its outcome is binding only if no judicial review is sought. If judicial review is sought, the UDRP provides that the court's decision about whether a domain name violates the complainant's trademark rights is de novo, without any deference to the UDRP administrative panel.

22. If a Respondent loses the arbitration, his domain name is transferred to the Complainant unless the Respondent institutes litigation within 10 business days.

UDRP paragraph 4(k) states:

The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are

informed by the applicable Provider of the Administrative Panel's decision before implementing that decision.

The Parties' Respective Web Sites

23. In approximately 1997, defendant, seeking to establish a presence on the Internet, registered the domain name curtmfg.com and created a web site to promote its products. At the time it registered that domain name, other domain names that incorporated or resembled its name, including the domain name curt-mfg.com, were also available, but defendant chose not to register them.

24. On June 14, 2008, Sabin registered the domain name curt-mfg.com for the purpose of creating a web site to express his negative opinions about one of Curt Manufacturing's products, which had caused serious injury to one of his friends. Sabin chose that domain name because it represented the subject or title of his intended web site.

25. Sabin then posted his web site about Curt Manufacturing on the Internet, using the domain name curt-mfg.com.

26. Sabin's web site is completely non-commercial, existing for the sole purpose of expressing Sabin's views about Curt Manufacturing's defective hitch.

27. Sabin does not use the curt-mfg.com domain name in the ordinary course of trade.

28. Sabin does not make a use in commerce of the curt-mfg domain name. No products or services are sold or offered for sale through the Web site.

29. At no time did Sabin offer the domain name curt-mfg.com for sale, or even hint that he had any interest in selling the domain name. Sabin is not in the business of selling domain names.

30. Sabin's web site is plainly adverse to Curt Manufacturing. No person visiting the web site could believe that Curt Manufacturing itself owns or endorses the web site. Any person visiting the web site would recognize, from the very first instant that he or she viewed the site, that it is a web site that criticizes Curt rather than one allied with or sponsored by Curt.

31. In order to ensure a lack of confusion, Sabin's web site displays a prominent disclaimer of affiliation with Curt Manufacturing, at the top of the home page that an Internet viewer reaches by entering the domain name curt-mfg.com in his browser. The disclaimer at the top of the home page is coupled with a hyperlink to Curt Manufacturing's own official web site, so that viewers who want to go there can do so immediately. The disclaimer and the link to the www.falwell.com web site is the first thing the viewer sees when accessing Sabin's web site.

32. Plaintiff has no intent to profit from any Internet traffic intended for defendant's web site which is why the disclaimer and link to defendant's web site is prominently displayed at the top of plaintiff's web site. In fact, plaintiff has no intent to profit from Internet traffic intended for his own web site, since nothing is for sale on plaintiff's web site and no donations are solicited on plaintiff's web site.

33. To the extent that the domain name curt-mfg.com is similar to the name Curt Manufacturing or to any trademark rights that defendant has in the Curt

Manufacturing name, Sabin makes fair use of that trademark for the purpose of denominating the subject of the web site and the target of his criticism.

Defendants' Assertion of Trademark Rights

34. On August 12, 2008, defendant initiated a UDRP complaint with WIPO against Sabin. The UDRP complaint asserted that Sabin's use of a domain name that incorporated its name violated its trademark rights in that name.

35. On information and belief, Curt Manufacturing chose to submit its complaint to the National Arbitration Forum knowing that of the available providers for UDRP proceedings, the National Arbitration Forum is the most pro-complainant. And, because it is up to the complainant to choose which provider will handle any given case, providers have an incentive to choose panelists that rule in favor of complainants.

36. Because Curt Manufacturing submitted its UDRP complaint to the National Arbitration Forum and paid only enough for the appointment of a single panelist, Sabin had no ability to participate in the selection of the panelist that would decide his case.

37. In response to the UDRP complaint, Sabin pointed out that his case is on all fours with a decision of the United States Court of Appeals for the Ninth Circuit, *Bosley Medical v. Kremer*, 403 F.3d 672 (9th Cir. 2005). Sabin identified several other decisions of the United States Courts of Appeals that supported his claim that his use of the domain name curt-mfg.com was entirely permissible under the trademark laws, including *Lighthouse Ministry v. Foundation for Apologetic*

Information and Research, 527 F.3d 1045 (10th Cir. 2008), *Lamparello v. Falwell*, 420 F.3d 309 (4th Cir. 2005), *TMI v. Maxwell*, 368 F.3d 433 (5th Cir. 2004), *Lucas Nursery and Landscaping v. Grosse*, 359 F.3d 806 (6th Cir. 2004), and *Taubman v. WebFeats*, 319 F.3d 770 (6th Cir. 2003).

38. On September 23, 2008, the panelist selected by the National Arbitration Forum ruled that Sabin's domain name violated defendant's trademark rights, and ordered that the domain name be transferred.

CAUSES OF ACTION

39. Plaintiff maintains that his current and prior uses of the domain name were at all times perfectly legal. Defendant asserts that plaintiff's actions were illegal.

40. Defendant's actions have given rise to an actual and justifiable controversy pursuant to 28 U.S.C. § 2201 et seq.

41. Defendant has engaged in Reverse Domain Name Hijacking in violation of the Anticybersquatting Protection Act, 15 U.S.C. § 1114(2)(D)(v).

42. Plaintiff therefore seeks a declaratory judgment that he has neither infringed nor diluted any trademark nor falsely designated any origin, and that he is not in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, and that he is not in violation of Section 43 of the Lanham Act, subsections (a), (c) or (d), 15 U.S.C. §§ 1125(a), (c) or (d).

43. Plaintiff also seeks a declaratory judgment that he is not infringing or diluting under state law, that he has not engaged and is not engaging in unfair competition or otherwise in violation of any common-law trademark rights or any other causes of action which the defendant may allege through counterclaims.

44. Plaintiff further seeks a declaratory judgment that any claims that defendant might have had under federal or state trademark laws are barred by the First Amendment and by principles of fair use, including nominative use and parody. WHEREFORE, plaintiff prays the court to enter a judgment in favor of plaintiff, George Sabin, and against defendant Curt Manufacturing, as follows:

A. Declaring that plaintiff's domain name "curt-mfg.com," plaintiff's use of the domain name, and plaintiff's use of his web site do not violate defendant's rights under the Lanham Act or other trademark law;

B. Declaring that National Arbitration Forum ("NAF") decision providing for the transfer of the domain name registration of "curt-mfg" is null and void and without any force or effect;

C. Declaring that plaintiff's use of the domain name "curt-mfg" is fair use and protected under the First Amendment, and does not infringe on any of defendant's marks;

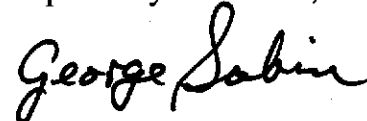
D. Declaring that defendant is not entitled to an injunction against plaintiff using the domain name "curt-mfg" or operating the Web site located at the url: "www.curt-mfg";

E. Awarding punitive damages in favor of Sabin against Curt Manufacturing because it pursued proceedings to enforce its trademark rights despite the knowledge that, in the jurisdiction where it had agreed to be subject to court proceedings, the law squarely supported plaintiff;

F. Awarding plaintiff his costs in this matter, and, once plaintiff secures legal representation, awarding plaintiff his reasonable attorney fees; and

G. Awarding such other relief as may be just and proper.

Respectfully submitted,

A handwritten signature in cursive script that reads "George Sabin".

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October 6, 2008