

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Vance Ryan,

v.

Plaintiff,

a national banking

Bank &

Trust,

Defendant.

CASE NUMBER:

COMPLAINT

Jurisdiction

This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, § 1338 and § 2201 and 15 U.S.C. § 1121 §§ 15 U.S.C. § 1114(2)(D)(v). The plaintiff is a resident of California and a citizen of the United States. The defendant, a national banking association, dba , is a resident of and a citizen of the United States. The cause of action arose in the Phoenix division.

This Court has personal jurisdiction over this matter because both parties have Plaintiff and Defendant expressly agreed to submit to the Court’s personal jurisdiction. Specifically, Defendant filed a UDRP Complaint in which it agreed to submit to personal jurisdiction in “the location of the principal office of the concerned registrar” with respect to any challenge to the decision of the UDRP panel and Plaintiff agreed to this jurisdiction. The domain name Disputed Domain is registered with GoDaddy.com, LLC, (the “Registrar”), a Delaware business entity with its principal place of business within this judicial district at 14455 N. Hayden Rd., Suite 226, Scottsdale, AZ 85260.

Complaint

This action seeks declaratory relief pursuant to 15 U.S.C. § 1114(2)(D) (v) to establish that Plaintiffs registration and use of the domain name <cbnt.com> is not unlawful under the Anticybersquatting Consumer Protection Act (ACPA), 15 U.S.C. § 1125(d)(1)(B)(ii).

Plaintiff Vance Ryan is a citizen of the United States of America, residing in _____ California. Defendant is _____, a national banking association, dba _____ with it's headquarters located in Salt Lake City, Utah, United States of America.

1. On April 21, 2017, Defendant _____ submitted a complaint with WIPO to initiate an administrative proceeding regarding Plaintiffs registration of the Disputed Domain in an effort to seek an order to transfer the ownership rights of the Disputed Domain to Defendant. The WIPO proceeding, _____, a national banking association, dba _____ : v. Domains By Proxy, LLC, DomainsByProxy.com / Vance Ryan, ABC Productions (Case No. D2017-0814), was decided on June 20, 2017. A WIPO arbitrator issued a decision directing transfer of the Disputed Domain to Defendant.

2. Plaintiff Ryan brings this action to stay the transfer of the Disputed Domain domain name to Defendant _____ and to obtain a declaration of lawful use of the domain name Disputed Domain under the Anti-Cybersquatting Consumer Protection Act (“ACPA”), 15 U.S.C. § 1114 (2)(D)(v). As set forth in more detail below, the Disputed Domain domain name is a four-letter domain name that is an acronym with dozens, if not hundreds, of possible meanings. These letters, in this order and combination, are generic and are not identical to, confusingly similar to, nor dilutive of any mark belonging to Defendant.

3. In proceedings under the Uniform Domain-Name Dispute Resolution Policy (“UDRP”) of the Internet Corporation for Assigned Names and Numbers (“ICANN”), Defendant knowingly provided the UDRP panel

with incomplete and misleading information in an effort to hijack the Disputed Domain domain name from Plaintiff. Defendant knowingly and materially misrepresented that the Disputed Domain domain was identical to, confusingly similar to, or dilutive of a mark that exclusively belonged to Defendant and these misrepresentations caused the UDRP panel to order the transfer of the domain name to Defendant.

Accordingly, Plaintiff asks for injunctive relief prohibiting the transfer of the domain name to Defendant and a declaration of lawful use of the domain name by Plaintiff.

4. The domain name Disputed Domain was originally registered on February 7, 2000. Plaintiff acquired the domain name Disputed Domain through a private party individual on April 2, 2013 and has owned and used this domain in good faith since that date.

5. As a user and seller of acronym and generic domain names, Plaintiff has developed a large portfolio of domain names, currently more than 6500 domain names in total, including more than 1800 four-letter, acronym domain names. Many of these four-letter domain names have been the subject of inquiries by third parties wishing to purchase such domain names for their own use. Since 2004, Plaintiff has sold more than 200 four-letter domain names directly to various individuals and companies as well as indirectly through various, well-known, domain names sales platforms operated by companies such as GoDaddy, Afternic, NameJet, Heritage Auctions, and Sedo. These various domain name platforms offer third-party domain names through auctions and direct sales for a commission generally ranging from 10% to 20% of the sales price. On April 21, 2017, the date Defendant submitted a complaint with WIPO, the Disputed Domain was “parked” with the sales platform Afternic. Being “parked” with Afternic sales platform means the Disputed Domain is directed to a “parked page” provided by Afternic. This page included a for sale banner at the top that stated “The domain cbnt.com is for sale. To purchase, call Afternic at +1 339-222-5147 or 866-836-6791. Click here for more details.” and also included various random pay-per-click (PPC) links, including links

related to banking services. *See* Exhibit 1. These links are automatically generated by the PPC algorithm used by Afternic, not by Plaintiff.

6. Plaintiff has never initiated contact with Defendant about the domain name Disputed Domain or about any other domain names.

7. Plaintiff had no knowledge of Defendant at the time Disputed Domain was registered by Plaintiff.

8. The registration and trade in domain names containing acronyms and generic words constitutes a bona fide use of such domain names.

9. Further, the acronym “cbnt” was not coined by Defendant; rather, it is a random combination of letters used by numerous third parties.

10. Defendant has claimed exclusive rights to the acronym “cbnt” for its goods and services based on its alleged use of these letters in relation to its trademarks registered with the United States Patent and Trademark Office:

registered on January 10 2006; (with design), registration no. 2,447,581, registered on August 14 2001; CALBANK NETWORK, registration no. 2,617,487, registered on September 10, 2002; and CB & TRUST CALIFORNIA BANK & TRUST (with design), registration no. 4,337,301, registered on May 21, 2013 (collectively the “CB&T Marks”). However, according to the United States Patent and Trademark Office, Synovus Financial Corp. of Georgia has owned the federal trademark registration for the mark CB&T for banking services since 1995 *See* Exhibit 2. Synovus Financial Corp. uses the domain name cbtbank.com to offer its banking services (Annex 2). Complainant is not the owner of the mark CB&T and has no rights to the disputed domain name. If Complainant is using the mark CB&T for banking services, then they are a trademark infringer.

11. Defendant claims its right to the acronym “cbnt” as a mark for its goods and services since using “CB&T” as a common law mark since 1998.

12. Defendant alleged in the UDRP Complaint that Zions Bancorporation, the parent of Defendant, has been the registrant of the domain name <calbanktrust.com> since July 13, 1998, from which Defendant advertises and offers its banking services.

13. Defendant waited until April 21, 2017, after nearly 19 years of using <calbanktrust.com> to advertise and offer its banking services, to file UDRP complaint (Case No. D2017-0814) with WIPO seeking to force Plaintiff to transfer ownership of Disputed Domain to Defendant. *See* Exhibit 3.

14. Defendant's purposeful and undue delay in filing its UDRP complaint therefore bars any relief under the doctrine of laches.

15. On June 20, 2017, the arbitration panel in the UDRP proceeding issued its ruling in favor of Defendant. The panel's decision was based on Defendant's misrepresentation that the Disputed Domain domain name is identical or confusingly similar to the trademark CB&T which Defendant does not own.

16. Under ICANN Rule 4(k), if an Administrative Panel decides that a domain name registration should be canceled or transferred, the Registrar holding the domain name must wait ten (10) business days before implementing that decision. The Registrar will implement the decision unless they receive, during that ten (10) business day period, official documentation, such as a copy of a complaint, file-stamped by the clerk of the court, that a lawsuit has commenced against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. If documentation is received within the ten (10) business day period, the Registrar will not implement the Administrative Panel's decision, and take no further action, until the Registrar receives (i) evidence satisfactory of a resolution between the parties; (ii) evidence satisfactory that the lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing the lawsuit or ordering that Plaintiff in the lawsuit does not have the right to continue to use of the domain name." *See* Exhibit 4.

Demand

Plaintiff requests that the Court enter judgment:(a) Declaring that Plaintiffs registration and use of the domain name <cbnt.com> is not unlawful under the ACPA, 15 U.S.C. § 1125(d)(1)(B)(ii) and (b) Declaring that Plaintiff is not required to transfer the domain name Disputed Domain to Defendant.