

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

GMF, INC.
6104 Queens Brigade Court
Fairfax, Virginia 22030,

Plaintiff,

v.

JOHN DOE and
GMF.COM, an Internet domain name,

Defendants.

Civil Action No. _____

VERIFIED COMPLAINT

Plaintiff GMF, Inc., by counsel, alleges as follows for its Complaint against Defendants:

NATURE OF THE SUIT

1. Theft and unlawful exploitation of American intellectual property has grown to become a threat to U.S. national interests. “The entities engaged in commercial scale piracy, counterfeiting, or trade secret theft harm the economic competitiveness of our businesses, the livelihood of our creative and innovative communities, the health and safety of the public, workers’ rights, the environment, and domestic and international security.”¹

2. GMF, Inc.’s claims in this case involve intellectual property theft by computer hacking—colloquially referred to as “domain name theft” or “domain name hijacking.” To recover its valuable intellectual property, GMF, Inc. asserts claims for violation of the

¹ Office of the Intellectual Property Enforcement Coordinator, *U.S. Joint Strategic Plan on Intellectual Property Enforcement* 32 (2017-2019), available at https://www.whitehouse.gov/sites/default/files/omb/IPEC/spotlight/eop_ipec_jointstrategicplan_hi-res.pdf.

Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707, and related claims arising from the unauthorized access to Plaintiff's secured computer account and the unauthorized transfer of the gmf.com domain name.

3. GMF, Inc. seeks injunctive and other equitable relief as a result of the actions of a person of unknown identity who gained unauthorized access to GMF, Inc.'s domain name management account on a protected computer, transferred control of the Defendant domain name from GMF, Inc.'s account, and thereby disabled GMF, Inc.'s control of the domain name causing irreparably injury to GMF, Inc.

PARTIES

4. GMF, Inc. is a company based in Virginia with an address of 6104 Queens Brigade Court, Fairfax, Virginia 22030. Until on or about April 18, 2016, GMF, Inc. was the registrant of the Defendant gmf.com domain name. GMF, Inc. was, and is, the rightful owner of the Defendant gmf.com.

5. Defendant gmf.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, is now improperly registered in the name of "FINLEAD AG, SCHWYZERSTRASSE 60, WOLLERAU SCHWYZ 8832 CH". A copy of the current domain name registration record for gmf.com is attached as Exhibit A.

6. Defendant John Doe is a person of unknown identity who gained unauthorized access to GMF, Inc.'s protected domain name management account and, without consent or authority, transferred control of Defendant gmf.com away from GMF, Inc.

JURISDICTION, VENUE AND JOINDER

7. This action arises out of John Doe's violation of the Anticybersquatting

Consumer Protection Act, 15 U.S.C. § 1125(d), the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707, and related claims under the common law of Virginia.

8. This Court has original jurisdiction under 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has *in rem* jurisdiction over the Defendant gmf.com pursuant to 15 U.S.C. § 1125(d)(2)(A). *In rem* jurisdiction is appropriate under 15 U.S.C. § 1125(d)(2)(A)(i)(I) because the registrant of the Defendant domain name is purportedly located in Switzerland, and therefore the Court cannot obtain in personam jurisdiction over a person who would have been a defendant in a civil action under 15 U.S.C. § 1125(d)(1)(A). GMF, Inc. is providing notice, concurrently with the filing of this complaint, to the Defendants of its intent to proceed *in rem* against the Defendant domain name pursuant to 15 U.S.C. § 1125(d)(2)(A)(i)(I)(aa).

10. The Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(3) and (4), states that the *in rem* action, jurisdiction, and remedies created by the statute are “in addition to any other civil action or remedy otherwise applicable” and “in addition to any other jurisdiction that otherwise exists, whether in rem or in personam.”

11. GMF, Inc.’s claims for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707, and related claims for quiet title, and conversion, are based on John Doe’s unauthorized access to and alteration of computer records maintained on protected computers for the domain registry located within the district so as to effectuate the theft of the gmf.com domain name.

12. John Doe directed the acts complained of herein toward the district and utilized instrumentalities in the district in that John Doe gained unauthorized access to GMF, Inc.’s

domain name management account and associated computer records and thereafter, without authorization, caused the domain name registration records maintained in the district by VeriSign, Inc. to be altered so as to transfer control of Defendant gmf.com away from GMF, Inc.

13. Venue is proper in this District pursuant to 15 U.S.C. § 1125(d)(2)(C) and 28 U.S.C. § 1391(b)(2) in that Defendant gmf.com is property situated in this district and pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this district.

14. Joinder of Defendant John Doe and Defendant gmf.com is proper under Fed. R. Civ. P. 20(a)(2) in that the claims set forth herein arise out of the same series of transactions and the same questions of law are common to all of the Defendants.

GMF, INC.'S RIGHTS

15. GMF, Inc. was incorporated in 1983 to provide defense contracting services to the U.S. Department of Defense (“DoD”).

16. GMF, Inc. registered the gmf.com domain name on March 7, 1996, and was the named registrant of the gmf.com domain name until on or about April 18, 2016.

17. A copy of an archived domain name registration record showing GMF, Inc. as the named registrant of the gmf.com domain name prior to the theft is attached hereto as Exhibit B.

18. GMF, Inc. maintained an active website at gmf.com until Defendant John Doe changed the settings for the domain name and thereby disabled GMF, Inc.’s website.

19. For many years, GMF, Inc. held a Top Secret Facility Clearance providing hardware and technical services under contract to the U.S. Air Force, U.S. Navy, and other elements of the U.S. Department of Defense.

20. GMF, Inc. developed and fabricated, among other products, a low signal-to-noise intrapulse processor for the detection and analysis of radar signals.

21. Since 1990, GMF, Inc. has provided technical educational services in the area of signal processing, including Electronic Warfare. GMF, Inc. has presented its course, Electronic Intelligence/Electronic Warfare Applications of Digital Signal Processing to various DoD offices and defense contractors.

22. For approximately 20 years, GMF, Inc. has promoted its digital signal processing short courses through use of the GMF mark and its website at gmf.com.

23. GMF, Inc. also used the gmf.com domain name for email, and thousands of emails were sent and/or received through gmf.com prior to the theft of the domain name by Defendant John Doe and Defendant John Doe's disabling of GMF, Inc.'s email server settings.

24. GMF, Inc. used the GMF mark and the gmf.com domain name in U.S. commerce in association with the provision of services relating to digital signal processing education and training, and GMF, Inc. is entitled to common law trademark protection in GMF and gmf.com.

25. John Doe's unauthorized transfer and subsequent misuse of the gmf.com domain name further demonstrates that the GMF and gmf.com marks are entitled to trademark protection.

UNLAWFUL TRANSFER AND REGISTRATION OF THE DOMAIN NAME

26. Computer hacking and theft of intellectual property by persons based outside of the U.S. has become such a significant problem for American businesses that the director of the FBI stated in an October 5, 2014 interview with CBS that "Chinese hackers target[] the intellectual property of U.S. companies on a daily basis, costing the U.S. economy billions of dollars each year."

27. The United States government and federal law enforcement agencies regularly provide warnings of such attacks to American businesses. For example, the FBI recently issued a “flash” alert to a wide range of U.S. businesses warning of the actions of "a group of Chinese Government affiliated cyber actors who routinely steal high-value information from U.S. commercial and government networks through cyber espionage."

28. The Associated Press reported that a 2013 survey by the National Small Business association found that 44% of small businesses had been the subject of computer hacking.

29. GMF, Inc.’s claims in the present case involve one of the most recent iterations of such computer hacking actions—colloquially referred to as “domain name theft.” The Wall Street Journal and the Huffington Post recently reported that the FBI received 26 separate reports of domain name theft over the last year even though the majority of such thefts go unreported.

30. This Court has addressed numerous cases involving domain name theft over the last few years, including a number of such cases filed by undersigned counsel for GMF, Inc.

31. GMF, Inc. maintains a domain name management account with the domain name reseller 123CheapDomains.com, a California-based reseller of domain names provided by ICANN-accredited registrar Tucows, Inc. (“Tucows”).

32. GMF, Inc.’s domain name management account with 123CheapDomains.com is maintained on a protected computer and access to the account should be restricted to only those persons that possess GMF, Inc.’s user name and password.

33. GMF, Inc. maintains a web hosting and e-mail account with FASTWEBHOST, which utilizes servers in Lansing, Michigan and Phoenix, Arizona for its web hosting and e-mail services.

34. On March 5, 2016, GMF, Inc. received an e-mail from 123CheapDomains.com

indicating that “a request has been received to have the password for gmf.com reset.” GMF, Inc. had not requested to have the password reset and immediately advised 123CheapDomains.com that no such request had been made and requested that 123CheapDomains.com prevent any password changes not directly authorized.

35. Later that day, Jonathan Lee, Tech Manager for 123CheapDomains.com, responded that merely requesting a password reset “wouldn’t work, and is pointless” and indicated that he was “enabling ‘locking’ on your domain as an extra security measure.”

36. Nevertheless, on April 18, 2016, GMF, Inc. was unable to access or use the gmf.com e-mail server maintained with FASTWEBHOST.

37. Upon discovering that it could not access or use the gmf.com e-mail server, GMF, Inc. immediately contacted FASTWEBHOST. A customer service representative for FASTWEBHOST informed GMF, Inc. that the server setting maintained by 123CheapDomains.com had been changed from their proper settings for GMF, Inc.’s account with FASTWEBHOST.

38. GMF, Inc. then discovered that it was unable to gain access to its domain name management account with 123CheapDomains.com.

39. A search of GMF, Inc.’s administrative e-mail account reveals that GMF, Inc. never received a notification that the gmf.com domain name was being transferred. Such a domain name transfer notification email is required by the Internet Corporation for Assigned Names and Numbers (ICANN).

40. On information and belief, John Doe obtained unauthorized access to GMF, Inc.’s domain registrar account and manipulated the computer records to obtain the transfer of the gmf.com domain name through an “account transfer” within Tucows or other surreptitious

manner intended to avoid detection by GMF, Inc.

41. On information and belief, John Doe prevented GMF, Inc. from receiving electronic communications seeking approval for the transfer of the gmf.com domain name and obtained unauthorized access to such electronic communications so as to approve the transfer.

42. John Doe transferred the gmf.com domain name from Tucows to Dynadot, LLC, a common destination registrar for stolen domain names.²

43. When the gmf.com domain name was transferred by John Doe without authorization, the domain name registrant information was changed and the technical settings for the domain name were changed thereby disabling GMF, Inc.'s ability to use and control the domain name and associated website and email services.

44. The registration and use of the gmf.com domain name by John Doe is without authorization from GMF, Inc.

45. The Defendant gmf.com domain name does not reflect the trademark or intellectual property rights of John Doe.

46. The Defendant gmf.com domain name does not reflect the legal name of the current registrant of the domain name.

47. The current registrant of the Defendant domain name has not engaged in bona fide noncommercial or fair use of GMF, Inc.'s GMF trademark in a website accessible under the domain name.

48. John Doe provided material and misleading false contact information in the

² See Andrew Denney, *Stolen Internet Domain Name Leads to Connecticut Lawsuit*, The Connecticut Law Tribune (Oct. 26, 2016), available at <http://www.ctlawtribune.com/id=1202770849252/Stolen-Internet-Domain-Name-Leads-to-Connecticut-Lawsuit?slreturn=20170006110149>; Andrew Allemann, *Lawsuit filed to recover stolen domains: 5678.com, 26266.com and Manhua.com*, Domain Name Wire (Mar. 6, 2016), available at <http://domainnamewire.com/2016/03/09/stolen-domains-5678/>.

domain name registration when changing the registrant for the Defendant gmf.com domain name from GMF, Inc. to the current registrant.

49. John Doe transferred the Defendant gmf.com domain name without authorization from GMF, Inc. and thereby acquired a domain name which John Doe knew was identical to, and reflective of, GMF, Inc.'s GMF and gmf.com marks.

50. On July 14, 2016, Domain Gang published an article entitled "Domain crime: GMF.com is a stolen domain name" describing the theft of the domain name gmf.com and stating, "If you are approached to acquire the domain GMF.com keep in mind that it's stolen property, and the legitimate owners are in the process of reclaiming it." This article appears as one of the first results in a Google search for the term "gmf.com."

FIRST CLAIM FOR RELIEF
Violation of the Federal Anticybersquatting Consumer Protection Act

51. GMF, Inc. repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

52. GMF, Inc.'s GMF and gmf.com marks are distinctive and were distinctive prior to the time that John Doe transferred the Defendant gmf.com domain name away from GMF, Inc. without authorization and thereby registered the Defendant domain name.

53. The aforesaid acts by John Doe constitute registration, trafficking, or use of a domain name that is identical to GMF, Inc.'s GMF and gmf.com marks, with bad faith intent to profit therefrom.

54. GMF, Inc., despite its due diligence, has been unable to find a person over whom the court could obtain in personam jurisdiction for a civil action under 15 U.S.C. § 1125(d)(2)(A)(i)(I).

55. The aforesaid acts by John Doe constitute unlawful cyberpiracy in violation of the

Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1).

56. The aforesaid acts have caused, and are causing, great and irreparable harm to GMF, Inc. and the public. Unless permanently restrained and enjoined by this Court, said irreparable harm will continue. Thus, pursuant to 15 U.S.C. § 1125(d)(2)(D)(i), GMF, Inc. is entitled to an order transferring the Defendant gmf.com domain name registration to GMF, Inc.

SECOND CLAIM FOR RELIEF
Violation of the Computer Fraud & Abuse Act

57. GMF, Inc. repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

58. John Doe: (a) knowingly and intentionally accessed GMF, Inc.'s domain name management account on a protected computer without authorization and thereby obtained information from the protected computer in a transaction involving an interstate or foreign communication (18 U.S.C. § 1030(a)(2)(C)); (b) knowingly and with an intent to defraud accessed GMF, Inc.'s domain name management account on a protected computer without authorization and obtained information from the computer, which John Doe used to further a fraud and obtain something of value (18 U.S.C. § 1030(a)(4)); and (c) intentionally accessed GMF, Inc.'s domain name management account on a protected computer without authorization, and as a result of such conduct caused damage and loss (18 U.S.C. § 1030(a)(5)(C)).

59. John Doe's unlawful actions have included causing the protected domain name registration records maintained in the district by VeriSign, Inc. to be altered so as to transfer control of Defendant gmf.com away from GMF, Inc.

60. GMF, Inc. has suffered damages as a result of the conduct complained of herein and the loss of a domain name worth tens of thousands of dollars, if not more.

61. As a direct result of the actions complained of herein, GMF, Inc. has suffered and

continues to suffer irreparable harm for which GMF, Inc. has no adequate remedy at law, and which will continue unless enjoined.

THIRD CLAIM FOR RELIEF
Violation of the Electronic Communications Privacy Act

62. GMF, Inc. repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

63. On information and belief, John Doe intentionally accessed without authorization electronic communications sent by the domain name registrar to GMF, Inc. seeking GMF, Inc.'s approval for the transfer of the gmf.com domain name.

64. On information and belief, John Doe obtained such electronic communications and/or prevented GMF, Inc.'s authorized access to such electronic communications while the communications were in electronic storage.

65. John Doe engaged in such actions with a knowing and/or intentional state of mind, and such actions constitute a violation of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707.

66. GMF, Inc. has suffered damages including the loss of the gmf.com domain name as a result of the conduct complained of herein and is entitled to injunctive relief, actual, statutory, and/or punitive damages, and attorney's fees under the Electronic Communications Privacy Act.

FOURTH CLAIM FOR RELIEF
Quiet Title

67. GMF, Inc. repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

68. GMF, Inc. has valid legal and equitable title to the gmf.com domain name by

virtue of its registration and ownership of the domain name since 1996.

69. The gmf.com domain name was stolen from GMF, Inc. and no subsequent registrant may acquire valid title to the domain name.

70. Through control of the domain name, John Doe and/or the current registrant of the gmf.com domain name (if someone other than John Doe) has asserted a claim to the gmf.com domain name that impedes GMF, Inc.'s ownership and control of the domain name and constitutes a cloud on GMF, Inc.'s title to the domain name.

71. If the current registrant of the gmf.com domain name, FINLEAD AG, is not John Doe, then FINLEAD AG acquired the gmf.com domain name under circumstances through which it knew or should have known that the gmf.com domain name was stolen.

72. GMF, Inc. is entitled to a declaration from the Court that it is the lawful owner and registrant of the gmf.com domain name and that there are no other valid claims against the title to the domain name.

FIFTH CLAIM FOR RELIEF
Conversion

73. GMF, Inc. repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

74. GMF, Inc. is the owner of property rights in and to the gmf.com domain name.

75. John Doe has wrongfully taken control of the gmf.com domain name.

76. John Doe's wrongful exercise of dominion and control over the gmf.com domain deprives GMF, Inc. of use and control of the gmf.com domain name in violation of GMF, Inc.'s rights in and to the domain name.

77. To the extent that John Doe has subsequently transferred the gmf.com domain name to a person other than John Doe, such other person's wrongful exercise of dominion and

control over the gmf.com domain deprives GMF, Inc. of use and control of the gmf.com domain name in violation of GMF, Inc.'s rights in and to the domain name.

PRAYER FOR RELIEF

WHEREFORE, GMF, Inc. respectfully requests of this Court:

1. That judgment be entered in favor of GMF, Inc. on its claim for violation of the Anticybersquatting Consumer Protection Act and against the res Defendant gmf.com.
2. That judgment be entered in favor of GMF, Inc. on its claims for violation of the Computer Fraud and Abuse Act, violation of the Electronic Communications Privacy Act, Quiet Title, and Conversion and against Defendant John Doe.
3. That the Court order the Defendant gmf.com domain name be returned to GMF, Inc. through VeriSign, Inc.'s transfer of the domain name from the current domain name registrar back to Tucows, Inc. and by Tucows, Inc.'s change of the registrant back to GMF, Inc.
4. That the Court order an award of actual, statutory, and/or punitive damages, costs and reasonable attorney's fees; and
5. That the Court order an award to GMF, Inc. of such other and further relief as the Court may deem just and proper.

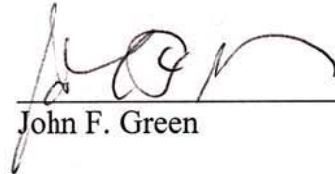
Dated: January 10, 2017

By: /s/ Attison L. Barnes, III /s/
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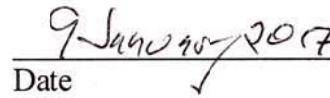
Counsel for Plaintiff GMF, Inc.

VERIFICATION

I, John F. Green, President at GMF, Inc., declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the facts contained in the foregoing Verified Complaint are true and correct.



John F. Green



Date