



**NATURE OF ACTION**

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2 This action seeks a declaratory judgment that WebQuest is the rightful registered name holder or  
3 registrant of the domain names <Hayward.com> and <wwwHayward.com> (hereinafter “the Domain  
4 Names”), and seeks to bar their transfer to Hayward Industries, Inc. a New Jersey Corporation  
5 (“Hayward Industries”).

**JURISDICTION**

- 7  
8 1. Pursuant to 28 U.S.C. §§ 2201(a) and 2202, WebQuest seeks a declaration and judgment  
9 regarding its rights and obligations in an actual controversy within this Court’s  
10 jurisdiction between WebQuest and Hayward Industries concerning WebQuest’s rights in  
11 and to the Domain Names. Subject matter jurisdiction exists in this case pursuant to 28  
12 U.S.C. § 1331, giving this Court original jurisdiction in a civil action raising a federal  
13 question, and 28 U.S.C. § 1338(a), giving this Court original and exclusive jurisdiction in  
14 a civil action arising under the trademark laws of the United States, as the Defendant  
15 alleges that Plaintiff has infringed Defendant’s trademark via registration and use of the  
16 Domain Names. Moreover, there is complete diversity of the parties insofar as Plaintiff  
17 is a citizen of California and Defendant is a citizen of New Jersey, and the amount in  
18 controversy well exceeds \$75,000; thus this Court has original jurisdiction pursuant to 28  
19 U.S.C. §1332.
- 20  
21 2. Hayward Industries consented to the jurisdiction of this Court in connection with the  
22 filing of an administrative complaint with the World Intellectual Property Organization  
23 (“WIPO”), in Hayward Industries, Inc. v. WebQuest.com, Inc., Case No. D2009-1493  
24 (WIPO, Jan. 27, 2010) (the “Administrative Action”), conducted under the Uniform  
25 Domain Name Dispute Resolution Policy (the “UDRP”).  
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3. WebQuest was served by WIPO with a copy of the decision ordering transfer of the Domain Name on February 9, 2010 (the “Decision Date”).

**THE PARTIES**

4. Plaintiff WebQuest is a California corporation with its principal place of business in Modesto, California.

5. WebQuest is a domain name investment company, with a portfolio of thousands of descriptive, generic, dictionary word, and keyword domain names, such as <automakers.com>, <automotivetires.com>, <dentalproblems.com>, <boatparts.com>, and <reptiles.com>.

6. WebQuest also owns numerous geographical domain names (“geo domains”), including the domain names for such Northern California cities as <CastroValley.com>, <SanLeandro.com>, <SanRamon.com>, <Pleasanton.com>, <UnionCity.com>, and <Hayward.com>.

7. Upon information and belief, Hayward Industries is a New Jersey corporation with its principal place of business at 620 Division Street, Elizabeth, NJ 07201.

8. Upon information and belief, Hayward Industries manufactures and sells swimming pool controls, filters, heaters, pumps, valves, and automatic pool cleaners, as well as other related products from its headquarters in New Jersey.

**FACTUAL BACKGROUND**

Introduction

9. Domain Names are the digital real estate of the Internet age. A prime address on the Internet can be every bit as valuable as an address on Rodeo Drive. Savvy investors

1 realized early on that the value of finite “dot com” addresses would only increase as the  
2 Internet grew in popularity. These entrepreneurs developed many of the Web sites and  
3 businesses that became the backbone of the Internet. WebQuest is a prominent and  
4 respected domain name investment and development company.

5 10. Just as claim jumpers sought to rob prospectors of the fruits of their labors in the mid-  
6 1800s, domain name investors find themselves under legal assault by modern day claim  
7 jumpers. It has become all too common for corporate trademark holders to file abusive  
8 proceedings under the auspices of the UDRP -- with the intent of hijacking domain  
9 names from their rightful owner.

10 11. Some UDRP panelists seem all too willing to go along with tortured logic and fabricated  
11 evidence, raising serious doubts about fairness and due process in the UDRP’s  
12 administrative system. The end result is that descriptive, dictionary word domain names  
13 and the names of cities, such as Hayward, California, are increasingly the subject of  
14 abusive administrative proceedings. Such filings, and decisions like the one underlying  
15 this action, are having a chilling effect on domain name investment and innovation. In  
16 the absence of a stable and predictable body of governing rules and decisions, the market  
17 for descriptive dictionary or geo domain names is jeopardized.

18 12. The fiction that an investor must use a domain name in order to have legitimate rights to  
19 it has no place in a capitalist society. There is no other investment asset that can be taken  
20 from its owner, without compensation, for the sole reason that it is not *used or developed*.  
21 It would be ludicrous to suggest that the owner of a plot of land in Amador County  
22 should forfeit her rights to the plot because she failed to plant a vineyard, but that is  
23 exactly what happened to Plaintiff, and is happening all too often. The system is broken.  
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1 13. Some UDRP panelists are finding new and innovative ways to strip legitimate parties of  
2 their rights. In the UDRP proceeding underlying this action, WIPO panelists found that  
3 WebQuest was a bad faith actor based on a combination of fabricated evidence, tortured  
4 logic, and a speculative and unsubstantiated domain name valuation. It is shocking and  
5 appalling that WIPO panelists, without any expertise in domain name valuation, would  
6 strip a domain owner of a six figure asset because they deemed its auction reserve to be  
7 too high.

8 The Auction

9  
10 14. In November 2009, due to economic reasons, WebQuest had to break up its portfolio of  
11 Bay Area city domains. WebQuest placed the <Hayward.com> domain name for auction  
12 at a domain industry conference. The listed reserve price was \$100,000.

13 15. WebQuest came to the price of \$100,000 for the <Hayward.com> domain based on  
14 previous geo domain sales. Other city names owned by third parties, such as  
15 <Daytona.com> and <BoiseIdaho.com>, sold for \$150,000 (in August 2008) and  
16 \$175,000 (in September 2007), respectively. WebQuest had previously sold  
17 <Bellevue.com> for \$150,000 in May 2008, <SantaRosa.com> for \$75,000 in September  
18 2008, and <Oceanside.com> for \$85,000 in November 2008.

19  
20 16. Geo names are valued as some of the best domain names for city, state and regional  
21 travel and destination sites. Six figure sales are common.

22 The Registration

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24 17. WebQuest purchased the domain name <Hayward.com> in good faith from its prior  
25 owner, Hayward & Associates, Inc., a Georgia-based IT company, on or about July 31,  
26 2006 for \$20,000. WebQuest had previously registered the <wwwHayward.com>  
27 domain name on August 14, 2004.  
28

1 18. WebQuest also registered a number of other Hayward, California-specific domain names  
2 between 2005 and 2007, including haywardhomesforsale.com (December 31, 2005),  
3 haywardclassifieds.com (January 3, 2006), haywardclassified.com (July 18, 2006),  
4 haywardchat.com (October 2, 2006), and haywardcatering.com (June 2, 2007).

5 19. WebQuest similarly registered city-specific domain names for the other Bay Area city  
6 domain names in its portfolio. For example, WebQuest is the registrant of the following  
7 domain names: <sanleandroclassifieds.com> (July 18, 2006),  
8 <sanleandrohomesforsale.com> (December 31, 2005), <sanramonclassifieds.com>  
9 (December 31, 2006), <sanramonjobs.com> (January 2, 2006), <fresnochat.com>  
10 (August 26, 2005), and <fresnoclassifieds.com> (February 7, 2008).

11 20. The registration and use of generic geo domains is widely recognized as a good faith use.

12 21. At the time that WebQuest registered the Domain Names, it had never heard of Hayward  
13 Industries. WebQuest did not register the Domain Names with the intent to sell them to  
14 Hayward Industries, and WebQuest never offered to sell the Domain Names to Hayward  
15 Industries.  
16 Industries.

17 22. Nor did WebQuest intend to divert customers searching for Hayward Industries' pool  
18 filters, heaters, pumps or related equipment to the Web sites located at  
19 [www.Hayward.com](http://www.Hayward.com) or [www.wwwHayward.com](http://www.wwwHayward.com) (the "Hayward sites"). Upon  
20 information and belief, the Hayward Sites did not display advertisements for pool filters,  
21 heaters, pumps or related equipment.  
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23 The Demand Letter

24 23. Immediately after WebQuest acquired the <Hayward.com> domain name on July 31,  
25 2006, Hayward Industries sent WebQuest a cease and desist letter, dated August 1, 2006,  
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1 accusing WebQuest of willful infringement and dilution of Hayward’s trademarks, and  
2 demanding that WebQuest transfer <Hayward.com> to Hayward Industries.

3 24. By letter dated August 4, 2006, WebQuest denied the allegations. In that letter,  
4 WebQuest informed Hayward Industries that it was the registrant of a portfolio of  
5 Northern California geo domain names, including <Hayward.com>,  
6 <CastroValley.com>, <SanLeandro.com>, <SanRamon.com>, and <Pleasanton.com>.  
7 WebQuest’s intent in acquiring the <Hayward.com> domain was for its geographic  
8 significance as a city in the Bay Area of Northern California.  
9

10 25. From that date until November 3, 2009, the date on which Hayward Industries  
11 commenced the Administrative Action, WebQuest received no correspondence from  
12 Hayward Industries. During the three years and three months that passed between  
13 WebQuest’s August 4, 2006 letter and Hayward Industries’ filing of the Administrative  
14 Action, Hayward Industries did not complain a single time about WebQuest’s registration  
15 or use of the Domain Names.  
16

17 The Use

18 26. After registering the Domain Names, WebQuest used them in connection with pay-per-  
19 click advertising. A domain name monetization company, Domain Sponsor, supplied the  
20 content for the Hayward Sites. Pay-per-click advertising is a widely accepted, good faith  
21 practice, when used in connection with geographically descriptive names.  
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23 27. On or about August 1, 2006, one day after it acquired <Hayward.com> and the same day  
24 that it was placed on notice of Hayward Industries’ putative trademark rights, WebQuest  
25 turned off the “auto-optimization” feature for the Domain Names with Domain Sponsor.  
26 WebQuest disabled auto-optimization in an effort to *prevent* competitive links or  
27 advertisements from being displayed on the Hayward Sites.  
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1 28. “Auto-optimization” is a feature offered by domain name monetization companies to  
2 maximize pay-per-click revenue by serving ads that are contextually relevant to the  
3 content that Internet users are searching for, based on behavioral patterns. In turning off  
4 auto-optimization, WebQuest assured not only that advertisements for Hayward  
5 Industries and pool-related products would *not* be displayed in connection with the  
6 Hayward Sites, but also that no optimized advertisements for any other individual, entity,  
7 lake or town, including the city of Hayward, would be displayed. The advertised links  
8 posted in connection with the Hayward Sites were simply generic default links to a broad  
9 category of goods and services.  
10

11 29. As a result of turning off auto-optimization, the <Hayward.com> domain name generated  
12 roughly \$20 per month in pay-per-click revenue – or roughly \$240 per year, for the past  
13 three years – on a \$20,000 investment.  
14

15 30. Although Hayward Industries has not provided WebQuest with any evidence that  
16 competitive links were *displayed* in connection with the Hayward Sites, Hayward  
17 Industries, nevertheless, contends that *search results*, which were generated *in response*  
18 *to Hayward Industries’ own search requests* entered into the embedded Google search  
19 box on the Hayward Sites, are evidence of WebQuest’s bad faith intent to profit off of its  
20 various HAYWARD® formative marks. Hayward Industries simply entered terms such  
21 as “Hayward,” “pool filter,” and “pool hose” into the search box. Google supplied the  
22 search results which were displayed on the Hayward sites.  
23

24 31. Upon information and belief, most, if not all, pay-per-click pages on the Internet contain  
25 a Google or other search engine search box. Web site owners have no control over the  
26 results generated in response to a user-generated search request in a Google search box.  
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1 32. When a pay-per-click site is associated with a legitimate, descriptive domain name,  
 2 which displays no trademark-related advertisements, it confounds logic and reason to  
 3 ascribe a bad faith intent to the site owner based upon the manually entered intentional  
 4 search requests of a third party – in this case a trademark holder looking to generate  
 5 evidence of competitive listings to support an administrative virtual property grab. Had  
 6 Hayward Industries been in the business of selling pumpkin pies, it could just as easily  
 7 have typed pumpkin pie into the search box and generated pumpkin-related links. If it  
 8 sold feather dusters, it could have generated advertisements and argued that WebQuest  
 9 “deliberately” targeted the feather duster market with competitive links. Any trademark  
 10 holder of any common dictionary or geographically descriptive word could manufacture  
 11 so-called evidence of bad faith, simply by performing a Google search and submitting the  
 12 search results as “evidence” of bad faith. This cannot be the result intended by Congress  
 13 when it enacted the Anti-Cybersquatting Consumer Protection Act (“ACPA”) to address  
 14 abusive cybersquatting. Nor could it have been the intent of ICANN, which at the time  
 15 was closely related to the US government, in enacting the UDRP.  
 16

17  
18 The Weak Mark

19 33. Among other uses, “Hayward” is the name of a city in California, the name of a lake, a  
 20 school name, proper name, airport name, and a name used by numerous companies as  
 21 part of their trademarks.  
 22

23 34. There are 22 active trademark registrations, which include the word HAYWARD,  
 24 including: HAYWARD® for women’s handbags; HAYWARD FAST FLOOR® for  
 25 building materials and computer software; HAYWARD® for jewelry; HAYWARD® for  
 26 a building supply store; HE HAYWARD ELECTRIC® for maintenance services in the  
 27 area of industrial and commercial electrical systems; and HAYWARD® for  
 28

1 smoking tobacco and cigarettes. Any of these companies could have a legitimate  
2 right to own the <Hayward.com> domain name.

3 35. Hayward is a common surname, with roughly 30,000 Haywards in the United States,  
4 alone. Any of those persons could have a legitimate right to own the <Hayward.com>  
5 domain name.

6 36. Hayward Industrial does not own and cannot rightfully claim exclusive rights to  
7 use of the word HAYWARD, as used in a domain name or otherwise.  
8

9 The Administrative Proceeding

10 37. As stated above, Hayward Industries filed a Complaint with WIPO on or about -  
11 November 3, 2009. WIPO formally notified WebQuest of the Complaint, and  
12 proceedings commenced on November 18, 2009. WebQuest filed a Response on  
13 December 8, 2009, and a Decision was issued on January 27, 2010.  
14

15 38. The Decision, which was served on the parties on February 9, 2010, ordered that the  
16 Domain Names be transferred to Hayward Industries. Under the UDRP, a losing party  
17 has ten business days to stay an administrative transfer order by filing a Complaint in a  
18 Court located in the designated jurisdiction – in this case, the United States District Court  
19 for the Eastern District of California.

20 39. WebQuest timely filed this action in the appropriate jurisdiction. Accordingly, the  
21 Domain Names may not be transferred, pending the resolution of this action.  
22

23 **CLAIM FOR DECLARATORY RELIEF**

24 40. WebQuest realleges paragraphs 1-39 of this Complaint.  
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26 41. WebQuest rightfully registered the Domain Names in good faith, and with no knowledge  
27 of, or intent to sell them to, Hayward Industries. WebQuest had no intention of diverting  
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1 any traffic from Hayward Industries' Web sites, nor would customers searching for  
2 Hayward Industries find any references to Hayward Industries or competing products on  
3 the Hayward sites.

4 42. In registering the Domain Names, WebQuest provided accurate contact information.

5 43. Hayward is a common surname, with roughly 30,000 Haywards in the United States,  
6 alone, and a commonly used business name. Hayward is also the name of a school, a  
7 lake, and most notably a city in Northern California. As such, Hayward Industries'  
8 putative rights in the HAYWARD® mark are far from exclusive. They are extremely  
9 weak, and only relevant to pool supplies.

10  
11 44. Prior to the commencement of the Administrative Action, WebQuest used the Domain  
12 Names as geographic identifiers in connection with pay-per-click advertising. Pay-per-  
13 click advertising has been widely recognized as a bona fide use for geographically  
14 descriptive domain names. Upon information and belief, pay-per-click advertising is  
15 Google's main source of revenue.

16  
17 45. The presence of a Google search box on a parked pay-per-click page in no way turns a  
18 bona fide good faith use into a bad faith one. The results delivered by a search box are  
19 driven by the user and by Google. The same search results appear that would appear if  
20 the user was searching directly on Google. Bad faith intent cannot be imputed to a  
21 registrant where, as here, a trademark holder fabricates evidence of bad faith by seeding a  
22 search engine box with competitive keyword terms.

23  
24 46. Offering a geographically descriptive domain name for sale at an auction is in no way  
25 indicative of bad faith.

26 47. Webquest believed and had reasonable grounds to believe, based on the secondary  
27 market for geographically descriptive domain names, as well as prior legal decisions and  
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1 decisions under the Policy, that the registration and use of the Domain Names, as geo  
2 domains, was lawful.

3 48. Hayward Industries filed the Administrative Action, contending that WebQuest registered  
4 and used the Domain Names in bad faith.

5 49. The Policy provides that administrative panel decisions may be stayed, and that subject  
6 domain name disputes may be resolved in a court of competent jurisdiction. The courts  
7 have held that such review is to be made *de novo*.

8 50. A justiciable controversy exists between WebQuest and Hayward Industries.

9 51. To resolve this actual controversy, WebQuest seeks a declaration and judgment that its  
10 registration and use of the Domain Names is a good faith use, and a cancellation of the  
11 transfer order of the panel in the Administrative Action.  
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14 **PRAYER FOR RELIEF**

15 WHEREFORE, WebQuest prays for judgment as follows:

- 16  
17 a. a declaration that WebQuest is the rightful registrant of the Domain Names, and a  
18 cancellation of the transfer order in the Administrative Action;  
19 b. an award of attorney fees; and  
20 c. granting such other and further relief as the Court may deem just and proper.  
21

22 Dated: Fresno, California  
23 February 19, 2010

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