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6
7 In the United States District Court
8 for the District of Arizona

9 Kyle Burns,

10 Plaintiffs

11 vs.

12
13 Connecting Open Time, LLC, and
14 Godaddy.com, LLC.,

15 Defendants.

No.

Complaint

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18 **NATURE OF THE ACTION**

19 1. This action seeks declaratory relief pursuant to 15 U.S.C. §
20 1114(2)(D)(v) to establish that Plaintiff's registration and use of the domain name
21 "opentime.com" (hereinafter the "Disputed Domain") is not unlawful under the
22 Anticybersquatting Consumer Protection Act ("ACPA"), 15 U.S.C. § 1125(d).

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THE PARTIES

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2 2. Plaintiff Kyle Burns is a United States of America citizen residing in
3 Japan.

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5 3. Upon information and belief, Defendant Connecting Open Time, LLC
6 (hereinafter “COT”) is a Texas limited liability company with a principal place of
7 business at 2316 Shoreham Circle, Lewisville, TX 75056.

8
9 4. Upon information and belief, Defendant GODADDY.COM, LLC
10 (hereinafter “GODADDY”) is a Delaware business entity with its principal place of
11 business within this judicial district at 14455 N. Hayden Rd., Suite 226, Scottsdale,
12 AZ 85260. Upon further information and belief, GODADDY is the world’s largest
13 domain name registrar.

JURISDICTION AND VENUE

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16 5. This Court has subject matter jurisdiction over this action pursuant to
17 28 U.S.C. § 1331, 15 U.S.C. § 1114(2)(D)(v), and 28 U.S.C. § 2201 that Plaintiff’s
18 registration and use of the Disputed Domain is not unlawful under the
19 Anticybersquatting Consumer Protection Act (ACPA), 15 U.S.C. § 1125(d).

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21 6. This Court has personal jurisdiction over Defendant COT as a result of
22 Defendant’s initiation of an administrative proceeding against the Disputed
23 Domain pursuant with the Uniform Domain-Name Resolution Policy (“UDRP”).
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1 7. Venue is proper in this District under 28 U.S.C. § 1391 (b) (2). A
2 substantial part of the property that is subject of this action is situated in this
3 District. Moreover, venue is proper in this district because Defendant's COT's
4 voluntary submission to this Court's jurisdiction when Defendant COT filed a
5 complaint with the World Intellectual Property Organization (WIPO) dispute
6 resolution service concerning Plaintiff's registration of the Disputed Domain.
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8 8. The Disputed Domain has its situs in this District within the meaning
9 of [15 U.S.C. § 1125\(d\)\(2\)\(C\)](#). The registrar for the Disputed Domain is Defendant
10 GODADDY, which is not only headquartered in this District, but upon information
11 and belief also has additional business locations in this District.
12

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14 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

15 9. Plaintiff is a technology entrepreneur with multiple technology
16 ventures, including software services and products, and is the owner of the OPEN
17 TIME software platform and service. Plaintiff has spent considerable time and
18 resources developing his OPEN TIME software platform and service and the
19 associated Intellectual Property.
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21 10. Plaintiff has treated its OPEN TIME software platform and service and
22 associated Intellectual Property, including the Disputed Domain, as valuable
23 assets. Plaintiff's development of OPEN TIME and the acquisition of the Disputed
24 Domain with its OPEN TIME software is not an effort to resell the domain for
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1 profit or obtain or exercise any sort of leverage or advantage over another business
2 or individual.

3 11. Plaintiff, a resident of Japan, owns a Japanese Trademark Registration
4 for the mark OPEN TIME covering classes 9, 35, 36, 41, and 42. The OPEN TIME
5 mark was registered on October 21, 2016 with registration number 5889812.
6

7 12. Plaintiff also sought international registration of the mark with WIPO.
8 Plaintiff's OPEN TIME mark was registered with WIPO on September 30, 2016
9 and Plaintiff has applied for protection of the mark in the following
10 countries/regions: Australia, Benelux, Switzerland, China, Columbia, Cuba, the
11 European Community, Georgia, Israel, India, Iceland, Republic of Korea,
12 Liechtenstein, Mongolia, Mexico, Norway, New Zealand, the African Intellectual
13 Property Organization, Philippines, Russian Federation, Singapore, Saint Maarten
14 (Dutch part), Turkmenistan, Tunisia, Turkey, Ukraine, United States of America,
15 Uzbekistan, and Viet Nam.
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18 13. On November 15, 2016, Defendant COT submitted a complaint with
19 WIPO and initiated an administrative proceeding regarding Plaintiff's registration
20 of the Disputed Domain and sought an order to transfer the ownership rights of the
21 Disputed Domain to Defendant COT.
22

23 14. The WIPO proceeding, *Connecting Open Time, LLC v. Kyle Burns*,
24 Case No. D2016-2328 (WIPO February 27, 2017) was decided on February 27, 2017.
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1 A WIPO arbitrator issued a decision directing transfer of the Disputed Domain to
2 Defendant COT.

3 15. In accordance with the Internet Corporation for Assigned Names and
4 Numbers (ICANN) Policy, Plaintiff provided notice to Defendant COT that a
5 lawsuit would be commenced against Defendant COT concerning registration of the
6 Disputed Domain name within a ten-day period.
7

8 16. Plaintiff has no current plans to sell the Disputed Domain. Plaintiff's
9 acquisition and registration of Disputed Domain was part of Plaintiff's good faith
10 business operations and plans related to its OPEN TIME mark and associated
11 products.
12

13 **COUNT ONE**
14 **Declaration Under Anticybersquatting Consumer Protection Act**

15 17. Plaintiff realleges and incorporates paragraphs 1-16 above.
16

17 18. In registering the Disputed Domain, Plaintiff did not have a bad faith
18 intent, as provided in 15 U.S.C. § 1125(d)(1)(A)(i), to profit from any mark alleged
19 to be owned by Defendant COT.
20

21 19. In registering the Disputed Domain, Plaintiff did not have the intent,
22 as provided in 15 U.S.C. § 1125(d)(1)(B), to divert consumers from Defendants'
23 online location to a site accessible under the domain name that could harm the
24 goodwill represented by the mark, either for commercial gain or with the intent to
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1 tarnish or disparage the mark, by creating a likelihood of confusion as to the
2 source, sponsorship, affiliation, or endorsement of the site.

3 20. In registering the Disputed Domain, and at no time since registration,
4 has Plaintiff offered to transfer, sell, or otherwise assign “opentime.com” to
5 Defendants or any third party for financial gain without having used, or having an
6 intent to use, the domain name in the bona fide offering of any goods or services,
7 nor is there prior conduct by Plaintiff indicating a pattern of such conduct,
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9 21. In registering the Disputed Domain, Plaintiff did not provide material
10 and misleading false contact information when applying for registration of that
11 domain name, has not intentionally failed to maintain accurate contact
12 information, nor is there prior conduct by Plaintiff indicating a pattern of such
13 conduct,
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16 22. Plaintiff has not registered or acquired multiple domain names that it
17 knows are identical or confusingly similar to marks of others that are distinctive at
18 the time of registration of such domain names, or dilutive of famous marks of
19 others that are famous at the time of registration of such domain names, without
20 regard to the goods or services of the parties.
21

22 23. Plaintiff has not registered, trafficked in, or used a domain name that
23 at the time the Disputed Domain was registered was identical or confusingly
24 similar to any mark alleged to be owned by Defendant COT.
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1 24. Plaintiff believed and had reasonable grounds to believe that its
2 registration of the Disputed Domain was lawful.

3 25. As required by 15 U.S.C. § 1114(2)(D), Plaintiff has given notice to
4 Defendants of its intent to file an action to establish that Plaintiff's registration
5 and use of the Disputed Domain is not unlawful under the ACPA.
6

7 **COUNT TWO**
8 **Declaratory Judgment**

9 26. Plaintiff realleges and incorporates paragraphs 1-25 above.

10 27. A dispute exists between Plaintiff and Defendants concerning
11 Plaintiff's right to register and use the Disputed Domain. As a consequence of the
12 dispute, an actual and justiciable controversy exists between Plaintiff and
13 Defendants.
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15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff requests that the Court enter judgment:
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- 18 (a) Declaring that Plaintiff's registration and use of the domain name
19 "opentime.com" is not unlawful under the ACPA, 15 U.S.C. § 1124(d);
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21 (b) Declaring that Plaintiff's registration and use of the domain name
22 "opentime.com" does not constitute a bad faith intent to profit from any
23 mark alleged to be owned by Defendant COT under the ACPA, 15
24 U.S.C. § 1124(d);
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- 1 (c) Declaring that Plaintiff is not required to transfer the registration for
2 the domain name “opentime.com” to Defendant COT;
- 3 (d) Declaring that the Defendant Registrar “GODADDY.COM LLC shall
4 not transfer the registration for the domain name “opentime.com” to
5 Defendant COT; and
6
- 7 (e) For such other and further relief as the Court shall deem appropriate.
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9 Dated March 20, 2017.

10 Shorall McGoldrick Brinkmann

11 By /s/ Michael Morgan
12 Michael D. Morgan
13 Attorneys for Plaintiff
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