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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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AUSTIN LINFORD., a Utah resident,  
Plaintiff,

vs.

PACIFIC-10 CONFERENCE, an  
unincorporated California Business  
association,

Defendant.

**COMPLAINT FOR DECLARATORY  
JUDGMENT OF NON-  
INFRINGEMENT OF TRADEMARK**

Civil No.

The Honorable

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Plaintiff Austin Linford ("Linford" or "Plaintiff") for his claims against defendant Pacific-10 Conference (the "Pacific-10 Conference" or "Defendant") alleges as follows:

**NATURE AND SUBSTANCE OF THE ACTION**

1. This is an action for a declaratory judgment of non-infringement of a federally registered trademark made pursuant to 28 U.S.C. § 2201. Defendant Pacific-10 Conference has threatened trademark infringement and violations of the Anti-Cybersquatting Consumer Production Act, 15 U.S.C. § 1125(d), as well as having filed a domain name dispute before the World Intellectual Property Organization ("WIPO") seeking transfer of the Internet domain name PAC10.COM that was registered by Linford in good faith for legitimate business

reasons nearly five years before the Pacific-10 Conference publically announced that it would become the Pacific-16 Conference, then the Pacific-11 Conference, and finally the Pacific-12 Conference. The Pacific-10 Conference's threats are made in bad faith and are nothing more than a blatant and feckless overreach by a large, well-funded organization, seeking to confiscate and unlawfully acquire the Internet domain name PAC12.COM with no justification and without just compensation. Defendant Pacific-10 Conference has absolutely no basis for attempting to steal PAC12.COM, a domain name that was registered by Linford for legitimate reasons nearly five years before the Pacific-10 Conference ever considered becoming the Pacific-12 Conference. The nature of this dispute are set forth in the two letters attached hereto as Exhibits A and B. Exhibit A is a cease and desist letter that was sent by counsel for defendant Pacific-10 Conference on December 1, 2010, and Exhibit B is plaintiff Linford's response dated February 22, 2011.

2. In addition, as set forth below, the Pacific-10 Conference has attempted to "game" or "rig" the WIPO proceeding by naming two out of the three arbitrators who attended universities in the Pacific-10 Conference to decide the WIPO proceeding. Should the WIPO proceeding order the transfer of the Internet domain name PAC12.COM to the Pacific-10 Conference, Linford will amend this Complaint to add a claim for reverse domain name hijacking pursuant to 15 U.S.C. § 1114(2)(D)(v), and will seek damages and attorneys fees against the Pacific-10 Conference.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1338 and 2201.

4. Venue is proper in this judicial district under 28 U.S.C. § 1391 inasmuch as this action arises out of the transaction of business and the activities of the Pacific-10 Conference within this District and the threatened harm to Linford in this District by reason of Defendant's conduct as alleged below. Plaintiff Linford resides and conducts business in this District and a substantial part of the events giving raise to the claim occurred and are occurring in this District.

#### **THE PARTIES**

5. Plaintiff Austin Linford is a resident of the State of Utah. Plaintiff Linford has been in the Internet domain business for over a decade and is a principal and founder of Domainmonger, an Internet domain and web hosting business. Linford has been using the name "Steve Holds" to "hold" his domain names as an inexpensive privacy service--which service did not exist when Linford became involved in the domain name business.

6. According to the WIPO complaint, defendant Pacific-10 Conference is an unincorporated California business association with its principal place of business in Walnut Creek, California. Defendant Pacific-10 Conference purports to be a collegiate athletic conference consisting of the University of Arizona, Arizona State University, University of California at Berkeley, University of Oregon, Oregon State University, Stanford University, University of California at Los Angeles, University of Southern California, University of Washington, and

Washington State University. The Pacific-10 Conference announced in the summer of 2010 that it would become the Pacific-16 Conference by adding Texas Tech University, University of Texas at Austin, University of Oklahoma, Oklahoma State University, University of Colorado at Boulder, and Texas A&M University. After Texas Tech University, University of Texas at Austin, University of Oklahoma, Oklahoma State University, and Texas A&M University decided not to join the Pacific-16 Conference, the Pacific-10 Conference publicly announced that it would become the Pacific-11 Conference only adding the University of Colorado. Then in June 2010, the University of Utah officially accepted an invitation to join the conference and the conference was named the Pacific-12 Conference. Various press reports that describe these events and that were attached to defendant Pacific-10 Conference's WIPO complaint are attached hereto as Exhibit C.

### **FACTUAL BACKGROUND**

7. Linford registered PAC12.COM, PACIFIC12.COM, AND PACTWELVE.COM on July 8, 2005 for legitimate and good faith business reasons that had nothing to do with the Pacific-10 Conference or the yet-to-be-created-five-year-later Pacific-12 Conference. Linford has made substantial investments in these domain names and the related business opportunities, and needs these domain names for those business opportunities.

8. As set forth above, defendant Pacific-10 Conference did not even announce the formation of the Pacific-12 Conference until the summer of 2010, nearly five years after Linford registered his domain names in good faith. As set

forth in the news reports attached to the WIPO complaint and attached hereto as Exhibit C, the Pacific-10 Conference first announced in June 2010 that it was going to expand to the Pacific-16 Conference. Then when schools such as Texas, Texas A&M, Texas Tech, Oklahoma, and Oklahoma State decided not to join the Pacific-16 Conference, the Pacific-10 Conference announced that with the addition of Colorado, it would become the Pacific-11 Conference. Only when the University of Utah decided to join the Pacific-11 Conference later in June 2010, did the Pacific-11 Conference become the Pacific-12 Conference.

9. Accordingly, defendant Pacific-10 Conference's allegations that Linford, some five years earlier, registered PAC12.COM in bad faith is specious. For example, Linford never registered PAC11.COM, PAC14.COM, PAC16.COM, or any other domain name with "Pacific," "PAC," or these numbers.

10. On December 1, 2010, counsel for defendant Pacific-10 Conference sent a cease and desist letter alleging federal trademark infringement and violations of the Anti-Cybersquatting Consumer Protection Act. A true and correct copy of this letter is attached hereto as Exhibit A.

11. In a humorous attempt to thumb his nose at defendant Pacific-10 Conference's unlawful and bad faith demands, defendant Linford changed the "parking page" for PAC12.COM to page offering a "12Pac from Tupac," providing a link to Amazon.com where Internet users could purchase 12 CD music selections from the rap music artist Tupac Shakur.

12. On January 31, 2011, defendant Pacific-10 Conference filed a WIPO complaint seeking the transfer of PAC12.COM. A true and correct copy of

the WIPO complaint without the voluminous exhibits is attached hereto as Exhibit D. On February 11, 2011, defendant Pacific-10 Conference amended the WIPO complaint and the amendment is attached hereto as Exhibit E.

13. Defendant Pacific-10 Conference has attempted to “game” or “rig” the WIPO proceeding by nominating as arbitrators Kevin C. Trock and Perry Viscounty, two of the three arbitrators whom defendant Pacific-10 Conference wants to decide the WIPO proceeding. See WIPO complaint at ¶ 45, attached hereto as Exhibit D. Kevin C. Trock is a graduate of Oregon State University and received a BS from Oregon State University in 1979 and another BS for Oregon State University in 1980. Mr. Trock is a partner in the Menlo Park, California office of the law firm of Alston & Bird and specializes in trademark law representing large and famous trademark holders. Perry Viscounty is a graduate of the University of Southern California as well as the law school of the University of Southern California. Mr. Viscounty obtained a BS from USC in 1984, and a JD from USC's law school in 1987. Mr. Viscounty is a partner in the Costa Mesa, California office of Latham & Watkins and represents large and famous trademark holders. True and correct copies of Mr. Trock's and Mr. Viscounty's law firm profiles are attached hereto as Exhibits F and G.

14. In an Anti-Cybersquatting claim CPA lawsuit, defendant Pacific-10 Conference must show that the Pacific-10 Conference had trademark rights in “Pac-12” before Linford registered PAC12.COM, and also that Linford registered PAC12.COM in bad faith. Defendant Pacific-10 Conference can demonstrate neither. First, the Pacific-10 Conference obtained trademark rights for the first

time in "Pac-12" some five years after Linford registered PAC12.COM. Thus, the Pacific-10 Conference cannot demonstrate trademark rights in "Pac-12" until five years after the fact. Second, there was no way that Linford acted in bad faith because there is simply no way he would have divined that the Pacific-10 Conference would announce a Pacific-16 Conference, then a Pacific-11 Conference, and then settle on a Pacific-12 Conference some five years after the fact.

15. Defendant Pacific-10 Conference's assertions that Linford was selling competing goods and attempting to sell the domain name are absolutely without basis. Most domain names today have a "parking page" when they are not in use.

#### **FIRST CLAIM FOR RELIEF**

16. Linford repeats and incorporates herein the allegations set forth above.

17. An actual controversy exists between defendant Pacific-10 Conference and plaintiff Linford.

18. Plaintiff Linford's registration and use of the Internet domain name PAC12.COM does not constitute either trademark infringement or a violation of the Anti-Cybersquatting Consumer Protection Act under Sections 32(1), 43(a), and 43(d) of the United States Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. §§ 1114(1), 1125(a), and 1125(d).

#### **REQUEST FOR RELIEF**

WHEREFORE, plaintiff Linford prays for relief against defendant Pacific-10 Conference as follows:

1. That this Court adjudge and declare that plaintiff Linford's registration and use of PAC12.COM do not infringe or violate any rights of defendant Pacific-10 Conference.
2. That plaintiff Linford be awarded his attorneys fees and costs in connection with this dispute.
3. For such other relief as may be appropriate.

DATED: February 22, 2011.

HOWARD, PHILLIPS & ANDERSEN

/s/ Gregory D. Phillips

By: Gregory D. Phillips  
*Attorneys for Plaintiff*