UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:09-cv-60973-CMA

TRANSAMERICA CORPORATION,	)
	)
Plaintiff,	)
v.	)
	)
MONIKER ONLINE SERVICES, LLC; OVERSEE.NET; MONIKER PRIVACY SERVICES, LLC.; and JOHN DOES 1-15 a/k/a "Domain Park Limited," "Domains Ventures," "G.H. Wagenaars," "H.W. Barnes," "Jan Stroh," "Jayme Young," "Net41 Media" a/k/a Network Fourty-One," "Omgi Media," "Ron Oron," "Swallowlane Holdings Ltd.," and "Virtual Sky,"	)
	)
Defendants.	)

PLAINTIFF'S RESPONSE TO DEFENDANTS' AMENDED MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT

Transamerica Corporation responds as follows to Defendants' Amended Motion for Extension of Time to Respond to Plaintiff's First Amended Complaint.

(1) Plaintiff opposes Defendants' amended motion for extension of time on the grounds that it is premature. Defendants have misstated the operative deadline by failing to account for the ten-day enlargement that Plaintiff agreed to provide. Defendants' response to Plaintiff's First Amended Complaint was never due on September 9, 2009. Defendants' response was due on September 14, 2009. *See* Fed.R.Civ.P. 15(a)(3), 6(a). Plaintiff then agreed to an additional ten days, which pushed the date back to September 24, 2009. This gave Defendants *more* than the 20 days they *would* have had if Plaintiff had served its *original* complaint on August 28, 2009.

(2) Defendants rushed to Court on September 4, 2009, not because they were facing an impending deadline, but so they could place their motion on file before Plaintiff had a chance to respond to their request for an extension of time. On September 3, Plaintiff's counsel informed Defendants' counsel that Plaintiff would respond to Defendants' request for an enlargement the following day, and Defendants' counsel agreed to wait for that response. At 1:46 p.m. on September 4, Plaintiff's counsel left a voice mail message with Defendants' counsel proposing a ten-day enlargement of time and inviting Plaintiff's counsel to call him if that was a problem. Despite knowing that Plaintiff would be responding on September 4, Defendants' counsel apparently did not check his voice mail messages.

(3) The reason Defendants rushed to court rather than awaiting a response to their request for an enlargement was to embarrass Plaintiff with misrepresentations about a threatened Rule 11 motion that Defendants served on August 7, 2009. Defendants' assumptions about the merits of their Rule 11 threat are wildly mistaken.

(4) The main contentions in Defendants' threatened Rule 11 motion were that Plaintiff failed to perform a cursory pre-filing factual investigation and that its legal claims were frivolous. The investigation leading to this dispute was anything but cursory. That investigation goes back to 2005 and involves virtually every one of the principal trademark clients at the law firm of Plaintiff's counsel, all of whom have been affected by the conduct of Defendants described in Plaintiff's complaint. Plaintiff's pre-filing investigation includes (and included at the time Plaintiff's original complaint was filed) reports from investigators in the Cayman Islands, China, Germany, the Netherlands, the Russian Federation, Ukraine, and the United Arab Emirates.

(5) The legal contentions in Plaintiff's complaint were anything but frivolous. Moreover, they are fundamentally unchanged in Plaintiff's amended complaint. Trademark owners are fighting back against abusive practices by domain name registrars, and the courts are in agreement. The unlawful conduct varies from case to case, but the common thread is a lack of transparency and accountability in the ownership and use of Internet domain names and websites.[1]

(6) Defendants charge that Plaintiff amended its complaint to remove a frivolous claim to the effect that Defendants have a beneficial interest in the disputed domain names that constitutes ownership for all material purposes. Defendants' argument is a façade. Plaintiff is not required to allege that Defendants are "owners" of the disputed domain names in order to state its claims. Whatever terminology the law may settle upon to describe Defendants' interest in these domain names, Defendants are parties in interest for all purposes relevant to this case.[2]

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[1] *See Dell Inc. v. BelgiumDomains, LLC, and John Does 1-10,* Case No. 07-22674, 2007 U.S. Dist. LEXIS 98647 (S.D.Fla. Nov. 21, 2007)(granting temporary restraining order, holding that trademark owner was likely to succeed on claim of trademark counterfeiting); *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc. and John Does 1-10,* 591 F. Supp. 2d 1098 (N.D. Cal. 2008)(denying registrar's motion for summary judgment on contributory infringement claim); *Verizon California Inc. v. OnlineNIC Inc. and John Does 1-10,* Case No. C 5:08-cv-02832 (N.D.Cal. Dec. 19, 2008)(granting default judgment to trademark owner); *Solid Host, NL v. NameCheap, Inc.,* Case No. CV 08-5414 *2009 U.S. Dist. LEXIS 63423,* (C.D.Cal. May 19, 2009) (denying registrar's motion to dismiss). Other cases are in the pipeline, *e.g., uBid, Inc. v. GoDaddy Group, Inc.*, 09-cv-02123 (N.D.Ill.)(complaint filed April 6, 2009).

[2] *Cf. Hamptons Locations, Inc. v. Rubens,* Case No. 01-CV-5477, 2009 U.S. Dist. LEXIS 46856 (E.D.N.Y. June 4, 2009)(denying motion to set aside jury verdict, holding that a reasonable jury could "circumstantially infer" that defendant was the registrant's "authorized licensee" as he was "involved in the development, launching, and operation of the website."

(7) Plaintiff did not amend its complaint to remove any frivolous contentions or material errors.[3] Plaintiff amended its complaint to shorten and sharpen its allegations as a means of meeting Defendants' legal contentions more directly, something that could not have been done before Defendants' contentions were known.

(8) Defendants should not need another 30 days to prepare a motion to dismiss. , In any event, their motion is premature because Plaintiff already agreed to a ten-day extension of time, pushing Defendants' deadline back to September 24, 2009. Plaintiff agreed to this extension because, if the Rule 11 motion that Defendants are threatening is anything like the one they served on August 7, 2009, then it will be just as frivolous as that one was. If Defendants' counsel had taken the ordinary step of communicating with Plaintiff's counsel before rushing to court and filing a premature motion for enlargement, Defendants' counsel would have been told that in the unlikely event Plaintiff decided to file a second amended complaint in response to the new threatened Rule 11 motion, Plaintiff would then agree to the requested extension.

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[3] Of the myriad factual errors cited by Defendant, Plaintiff confirmed only two. First, Plaintiff did not know that Moniker's affiliate, Moniker Privacy Services, LLC, was formed as a limited liability company in Delaware in June 2008. Second, there was an error in Exhibit B, which comprised a list of 380 domain name dispute cases and their outcomes, one of which showed the disputed domain name as having been transferred, whereas in fact, the claim had been denied. The error was incorporated in one of the paragraphs of Plaintiff's complaint. The error was immaterial because Plaintiff's complaint acknowledged that some of the claims listed in Exhibit B were denied, and there is no dispute that the other 379 citations in Exhibit B are correct.

Respectfully submitted this 7th day of September 2009,

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CERTIFICATE OF SERVICE

I certify that on September 7, 2009, I electronically filed the foregoing document with the Clerk of Court by using the Court's Case Management/Electronic Case Filing ("CM/ECF") System. I also certify that the foregoing document is being served this day on all counsel of record, either via transmission of Notices of Electronic filing generated by the CM/ECF System or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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SERVICE LIST

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