

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

EB Publishing, Inc.,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. _____
)	
ApplianceRepair.net)	
)	
and)	
)	
Adrian Bursill,)	
)	
Defendants.)	

Verified Complaint

Comes Now the Plaintiff, EB Publishing, Inc., (hereinafter EB), by and through its counsel, and files this complaint against Adrian Bursill and ApplianceRepair.net (Defendant Domain Name).

I. Nature of The Suit

1. This is an action seeking i) a declaration, pursuant to the Declaratory Judgment Act, as to the rights to the Defendant Domain Name, ii) for violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), iii) for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, iv) for Tortious Interference with Contractual Relationship, v) Trespass to Chattels, Computer Trespass and Conversion, vi) Unjust Enrichment and vii) copyright infringement in violation of the Copyright Act, 17 U.S.C. §§ 101.

2. The Plaintiff is seeking injunctive and other equitable relief as a result of the actions of the Defendant Adrian Bursill. (Hereinafter Bursill.) Bursill, using his access as agent for EB, has taken control of the Defendant Domain Name, in violation of EB's trademark rights, and redirected the income generated to his own use. By his unauthorized actions Bursill has prevented EB from using and controlling its domain name causing irreparable injury to EB.

II. Jurisdiction and Venue

3. This action arises out of Bursill's violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d) and the Computer Fraud and Abuse Act, 18 U.S.C. § 1030.

4. This Court has original jurisdiction pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a) and has *in rem* jurisdiction over the Defendant Domain Name pursuant to 15 U.S.C. § 1125(d)(2)(A) as the registry for the Defendant Domain Name, Verisign, is located within this judicial district. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises out of Defendants' violation of the Federal Computer Fraud and Abuse Act (18 U.S.C. § 1030), Electronic Communications Privacy Act (18 U.S.C. § 2701), and the Lanham Act (15 U.S.C. §§ 1114, 1125). The Court also has subject matter jurisdiction over EB's claims for trespass to chattels, unjust enrichment, conversion, and intentional interference with contractual relationships pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this district pursuant to 15 U.S.C. § 1125(d)(2)(C) as the subject registry, Verisign, has its principal place of business in this judicial district. Venue is further proper pursuant to 28 U.S.C. § 1391(b)(2) as the subject of the action, the domain name, is located in this judicial district.

6. Defendant Bursill directed the acts complained of towards the district and utilized instrumentalities in the district in that he gained unauthorized access to the subject domain name and thereafter, without authorization, caused the Domain Name's registration record maintained by NameCheap and recorded in Verisign's records in Virginia for the Defendant Domain Name to be altered so as to transfer control of the Defendant Domain Names away from the Plaintiff.

7. The Declaratory Judgment Act, 28 U.S.C. § 2201 provides for a declaration of the rights of the Plaintiff in this matter.

III. Notice

8. Pursuant to the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(aa), notice of filing of this complaint is being sent to the Defendant at the postal addresses and email addresses provided on the current WHOIS records as set forth above, along with a request to waive service pursuant to Federal Rule of Civil Procedures 4(d).

9. The Plaintiff is providing such notice contemporaneously with the filing of this Complaint. Pursuant to 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(bb), the Plaintiff will promptly publish notice of this action as the Court may direct after filing of this Complaint.

10. The Plaintiff's claim for violation of the Computer Fraud and Abuse Act, and the Court's jurisdiction over the alternative claim, are proper pursuant to 15 U.S.C. § 1125(d)(3) and (4).

11. Joinder of the Defendant Domain Name is proper under Federal Rule of Civil Procedure 20(a)(2) in that the claims set forth herein arise out of the same set of operative facts and the questions of law are common as to all claims and Defendants.

IV. The Parties

12. The Plaintiff, EB Publishing Inc. is a corporation registered in Nevada with an address of 123 W. Nye Lane #129, Carson City, Nevada 89706.

13. Adrian Bursill is a natural person residing, upon information and belief, in Thailand with a last known address of 81/8 Mukdahan – Dontan Rd., Si Bun Rueang, Mukdahan, Mukdahan 49000 Thailand.

14. The Defendant Domain Name is a .NET tld (top level domain) which is controlled by Verisign, Inc. which has a primary address of 12061 Bluemont Way, Reston, Virginia 20190 which is within this Court's judicial district.

V. Factual Background

15. The Plaintiff acquired the Defendant Domain Name on November 6, 1998 and has maintained registration since acquisition and used the domain in commerce. (See Exhibit A-i (WHOIS for ApplianceRepair.net) and Exhibit A-ii (WHOWAS for ApplianceRepair.net).

16. The Plaintiff is in the business of publishing books about repairing major appliances and receiving advertising income revenue from Google AdSense.

17. The Defendant Domain Name is extremely valuable and its loss has deprived the Plaintiff of the income revenue generated by the business as well as depriving the Plaintiff of sales of its books and development of new client relationships.

18. EB has used the Defendant Domain name for 20-plus years in association with its books, advertising for others, and has indelibly associated the domain name with EB and its business.

19. EB also owns the following copyright registrations (“EB Copyrights”):

#	Name (NALL) <	Full Title	Copyright Number	Date
[1]	Emley, Douglas	<u>Cheap and easy clothes dryer repair / by Douglas Emley.</u>	TX0004460684	1993
[2]	Emley, Douglas	<u>Cheap and easy dishwasher repair / by Douglas Emley.</u>	TX0004460683	1994
[3]	Emley, Douglas	<u>Cheap and easy oven and cooktop repair / by Douglas Emley.</u>	TX0004460685	1996
[4]	Emley, Douglas	<u>Cheap and easy refrigerator repair / by Douglas Emley.</u>	TX0004460687	1991
[5]	Emley, Douglas	<u>Cheap and easy washing machine repair / by Douglas Emley.</u>	TX0004460682	1993
[6]	Emley, Douglas	<u>Economico y facil reparacion de refrigeradores / por Douglas Emley.</u>	TX0004460686	1991

20. EB advertises its copyrighted materials on the Defendant Domain Name, along with other advertisements.

21. The Defendant Domain Name is the basis of Plaintiff’s entire business.

22. Bursill, as a freelance computer programmer, was hired by EB to perform website maintenance, SEO and mobile-friendly conversion services and had access to EB’s registrar.

23. Bursill used that access to both move the Defendant Domain Name, ApplianceRepair.net, into his own name as well as steal revenue from the Defendant Domain Name as well as revenue from EB’s copyrighted books.

24. The Plaintiff acquired the Defendant Domain Name on November 6, 1998 and is and always has been the sole legal registrant of the domain name. (See Exhibit A-ii (WHOWAS for appliancerepair.net)).

25. On or about March 9, 2019 EB discovered that Defendant Bursill had placed Bursill's name on the Defendant Domain Name, most likely a couple of years prior to its discovery.¹

26. Defendant Bursill has continued to run EB's website for his own profit.

27. Defendant Bursill's actions include the use of EB's common law rights in and to ApplianceRepair.Net and its common law trademark to its series of books "Cheap & Easy!" Appliance Repair Manuals.

28. EB's 20-plus years of use of ApplianceRepair.Net in association with its books and advertising for others has indelibly associated the domain name with itself and its business.

29. Defendant Bursill continues to offer EB's books and advertising space on the website using EB's common law "Cheap and Easy" trademark. (See Exhibit B – appliancerepair.net Webpage)

30. The Zele private detective agency (hereinafter "Private Detective") was retained to attempt to find Defendant Bursill. (See Exhibit C – Investigation Report.)

31. Bursill's immigration records were tracked as he entered Thailand. According to immigration Bursill has not left Thailand. Bursill was not found at his listed address and no other address or location was discoverable. (See Exhibit C – Investigative Report.)

32. Although Bursill must be somewhere in Thailand, the address currently found on the Whois record for the Defendant Domain Name is 14 Robinson Rd #08-01A, Singapore, 048545. (See Exhibit A-i, (WHOIS for appliancerepair.net.)

¹ The WHOIS information for appliancerepair.net (exhibit A-ii) indicates that Bursill changed the registrant information on November 5, 2018. See Exhibit A-ii, row 7.

33. It is believed that Defendant Bursill has garnered more than \$120,000 in income from his scheme although the complete scope of his theft is unknown.

34. Defendant Bursill used his position as a technical contractor for Plaintiff to take control of the Plaintiff's domain name, website and business.

35. Defendant Bursill has taken control of the Defendant Domain Name with the intent to divert the substantial revenue produced by the business to himself.

36. Defendant Bursill's registration and use of the Defendant Domain Name is without the Plaintiff's authorization.

37. Defendant Bursill has no intellectual property rights in the Defendant Domain Name, Plaintiff's trademarks or copyrights.

38. Defendant Bursill provided misleading or incomplete contact information in the Domain Name's registration when changing the registration for the Defendant Domain Names.

39. Defendant Bursill's actions are in violation of these aforementioned rights of Plaintiff.

VI. Causes of Action

Count I Claim for Declaratory Judgment

40. The Plaintiff repeats and realleges the previous paragraphs as if set forth in full. Plaintiff registered the Defendant Domain Name as alleged above and has, since that time, maintained uninterrupted control over the Defendant Domain Name until stolen by Defendant Bursill.

41. Defendant Bursill's actions have taken control of the Defendant Domain Name from Plaintiff without authorization or permission.

42. The Declaratory Judgment Act, 28 U.S.C. § 2201, provides for a declaration of the rights of the Plaintiff in this matter.

Count II
Anticybersquatting Consumer Protection Act (ACPA)
15 U.S.C. § 1114(2)(d)

43. The Plaintiff repeats and realleges the previous paragraphs as if set forth in full.

44. The Plaintiff has owned the Defendant Domain Name since 1998, has used it in commerce to generate substantial income revenue and has common law rights in the aforementioned marks.

45. Defendant Bursill's actions constitute registration, trafficking, or use of a Domain Name that is confusingly similar to the Plaintiff's trademark, with bad faith intent to profit therefrom.

46. The Plaintiff, because of Defendant Bursill's actions, is being prevented from using and exercising control over the Defendant Domain Name (ApplianceRepair.net).

47. The Plaintiff is being harmed through the loss of revenue, loss of business and loss of business opportunities unless enjoined.

48. The Plaintiff's business reputation and standing is at risk from posting of improper, illegal, incorrect or what otherwise may be harmful or incorrect information on the web pages associated with his domain name.

49. The Plaintiff, despite diligent inquiry, has been unable to obtain the accurate location of Defendant Bursill for any Court's jurisdiction in a civil action pursuant to 15 U.S.C § 1125(d)(2)(A)(i)(I).

50. The above described conduct of Defendant Bursill, registrant of the Defendant Domain Names, constitutes unlawful cybersquatting in violation of the Anticybersquatting Consumer Protection Act, 15 U.S. C. § 1125(d)(1).

51. The above described conduct by Defendant Bursill has caused, and is causing, great and irreparable harm to the Plaintiff and the public. Unless permanently enjoined by this Court, said irreparable harm will continue. Accordingly, pursuant to 15 U.S. C. § 1125(d)(2)(D)(I), the Plaintiff is entitled to an order transferring the registration of the Defendant Domain Name to the Plaintiff.

Count III

Violation of the Computer Fraud and Abuse Act 18 U.S.C. § 1030

52. The Plaintiff repeats and realleges the previous paragraphs as if set forth in full.

53. Defendant Bursill knowingly and intentionally accessed the Plaintiff's hosting account and registrar account on protected computers exceeding his authorization and thereby obtained and used information from the protected computer systems in multiple transactions involving interstate and foreign communication in violation of 18 U.S.C. § 1030(a)(2)(c).

54. Defendant Bursill knowingly, and with intent to take Plaintiff's revenue and business, accessed the Plaintiff's email system on a protected computer exceeding his authority and used the access to transfer all of Plaintiff's assets to himself in violation of 18 U.S.C. § 1030(a)(4).

55. Defendant Bursill intentionally accessed the Plaintiff's registrar, hosting system and, upon information and belief, Google AdSense account without authorization and as a result of such conduct caused damage and loss in violation of 18 U.S.C. § 1030(a)(5)(c).

56. The Plaintiff has suffered damages as a result of the conduct complained of and such conduct has caused a loss to the Plaintiff aggregating to at least \$120,000.

57. As a direct result of the actions complained of, the Plaintiff has suffered, and continues to suffer, irreparable harm for which the Plaintiff has no adequate remedy at law and which will continue unless enjoined.

Count IV
Tortious Interference with Contractual Relationship

58. The Plaintiff repeats and realleges the previous paragraphs as if set forth in full. The Plaintiff properly entered into a contract with the registrar for the Defendant Domain Name and for the hosting of the website for the Defendant Domain Name, before the Defendant Domain Name was stolen.

59. Defendant Bursill has unlawfully taken control of the Defendant Domain Name, interfering with Plaintiff's lawful contract rights to the Defendant Domain Name.

60. As a result of the Defendant's acts, the Plaintiff has been damaged and will continue to be damaged. The Plaintiff requests that this Court declare Defendant liable for its past and any future losses in association with the registration and hosting service contract.

Count V
Trespass to Chattels, Computer Trespass and Conversion

61. The Plaintiff repeats and realleges the previous paragraphs as if set forth in full. Plaintiff has property rights in the Defendant Domain Name.

62. Defendant Bursill has taken control of the Defendant Domain Name and is wrongfully exercising control and authority over the Defendant Domain Name, the associated webpage and the associated Google AdSense account.

63. The control and authority exercised by Defendant Bursill deprives the Plaintiff of control and the revenue and business generated from the Defendant Domain Name.

64. Defendant Bursill is wrongfully exerting dominion and possession over the Plaintiff's property in denial of its rights and is intermeddling with the Plaintiff's property rights.

Count VI
Unjust Enrichment

65. The Plaintiff repeats and realleges the previous paragraphs as if set forth in full.

66. The acts of Defendant complained of herein constitute unjust enrichment of the Defendant at the expense of EB in violation of the common law. The Defendants use of EB's business assets, including, but not limited to EB's domain name, website, hosting account, copyrights and all associated leads ("Assets") to facilitate unlawful conduct while garnering all profits is unjust.

67. Upon information and belief, Defendant has an appreciation and knowledge of the benefit derived from his unauthorized use of EB's Assets

68. Retention by the Defendant of the profits derived from his malfeasance would be inequitable.

69. EB seeks injunctive relief and compensatory and punitive damages in an amount to be proven at trial. As a direct result of Defendant's actions, EB suffered and continues to suffer irreparable harm for which no adequate remedy at law exists, and which will continue unless Defendant's actions are enjoined.

Count VII
Copyright Infringement

70. The Plaintiff repeats and realleges the previous paragraphs as if set forth in full.

71. Currently, and at all relevant times, EB has been the sole owner of all rights, title, and interest in and to the EB Copyrights.

72. EB has the exclusive right to, among other things, reproduce, distribute, publicly display, and create derivative works from the EB Copyrights, which it solely owns.

73. The Defendant has directly infringed EB's Copyrights by offering EB's books for sale as well as holding out EB's website copy as his own for Defendant's own profit in violation of EB's exclusive rights under 17 U.S.C. § 106.

74. EB is entitled to recover from the Defendant the profits that the Defendant obtained through infringements of EB's Copyrights.

75. The Defendant's willful infringement of EB's Copyrights has caused, and unless restrained and enjoined by this Court, will continue to cause, irreparable injury to EB, which is not fully compensable in monetary damages. EB is therefore entitled to preliminary and permanent injunction prohibiting the Defendant from further infringing EB's Copyrights.

WHEREFORE, The Plaintiff respectfully requests of this court:

- I. Enter judgment in favor of the Plaintiff against the Defendant for:
 - a. Violation of the Anticybersquatting Consumer Protection Act; and
 - b. Violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);
 - c. Violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(5)(C); and
 - d. Tortiously interfering with the Plaintiff's contract rights;

- e. Trespassing upon the chattels of the Plaintiff and converted the Plaintiff's property; and
 - f. Unjust enrichment; and
 - g. Violation of the Copyright Act of 1976, 17U.S.C. §§ 101 et seq.; and
 - h. Trademark infringement and unfair competition with EB, in violation of Virginia common law; and
 - i. In all instances, the Defendant acted in bad faith, willfully, intentionally, and/or in malicious disregard of EB's lawfully protected rights.
- II. Enter an order declaring that EB Publishing, Inc. is the only entity with any rights to the contract controlling the Defendant Domain Name; and
- III. Enter an order declaring that Defendant Bursill does not have any rights to the Defendant Domain Name; and
- IV. Enter an order directing that the Defendant Domain Name be promptly transferred to the Plaintiff; and
- V. Enter an Order directing the appropriate registrar to promptly return control of the Defendant Domain Name to EB Publishing, Inc. and the registrar as directed by counsel for the Plaintiff; and
- VI. Enter an Order directing Google transfer all funds derived from the clicks on the advertisements on ApplianceRepair.net (Google AdSense) be paid to EB Publishing, Inc.; and
- VII. Enter an Order enjoining Defendant and all those acting in concert or participation with Defendant, from using EB's Copyrights or Trademarks or misappropriating that which rightfully belongs to EB; and

- VIII. Enter an Order requiring Defendant to account for and pay EB Publishing all profits derived from his wrongful conduct; and
- IX. Enter an Order awarding EB compensatory damages and injunctive relief to the full extent provided by 18 U.S.C. §1030(g); and
- X. Award the Plaintiff its fees and costs, including reasonable attorney fees, in connection with this action pursuant to 15 U.S.C. § 1117(a); and
- XI. That the Court grant such other relief to the Plaintiff as the Court deems just and proper.

Date: May 15, 2019.

/s

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Respectfully Submitted,
EB Publishing, Inc.,
By Counsel


and

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Verification

I, Douglas Emley declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I am a Director of EB Publishing, Inc. which is the original owner of the Defendant Domain Name listed above and the facts contained in the foregoing verified complaint are true and correct to the best of my knowledge, information and belief.

13 May 2019
Date



EB Publishing, Inc.
By Douglas Emley