

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

STEPHEN FRAYNE, JR., an )  
Illinois resident, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CHICAGO 2016, an Illinois corporation, )  
UNITED STATES OLYMPIC )  
COMMITTEE, a federally chartered )  
corporation, and DOMAIN TRADE, INC., )  
a Japanese company, )  
 )  
Defendants. )

No. )  
FILED STAMP: SEPTEMBER 17, 2008 )  
08CV5290 )  
JUDGE KENNELLY )  
MAG. JUDGE COLE )  
J. N. )

**JURY TRIAL DEMANDED**

**COMPLAINT FOR DECLARATORY AND OTHER RELIEF**

Plaintiff, Stephen Frayne, Jr. (“Frayne”), by his undersigned attorneys, for his Complaint for Declaratory and Other Relief (“Complaint”) against Defendants Chicago 2016, the United States Olympic Committee (“USOC”), and Domain Trade, Inc. (“Domain Trade”), alleges as follows:

**NATURE OF THE ACTION**

This case represents an important battle for First Amendment rights and the use of the internet as a forum to foster debate over a topic that deserves to be discussed: What is the economic and social impact with regard to a city’s potential bid for, and hosting of, the Olympic Games? Frayne is deeply interested in this discussion and, accordingly, registered tokyo2016.com and chicago2016.com in 2002 and 2004 to provide citizens of those respective cities with a forum in which both criticism and support can be heard on these various issues. However, in an attempt to prevent that debate, the Defendants have threatened Frayne with legal action and Chicago 2016 and the USOC actually initiated an action against Frayne to take his

domain name from him in front of a Panel for the World Intellectual Property Organization (“WIPO”).<sup>1</sup> Never mind the fact that Frayne’s registration of these domain names predate the Defendants’ trademark rights *by years* and when Frayne registered these domain names no one had any idea that the cities would bid for the 2016 Olympic Games, let alone whether either city would be selected to host the Games. If Chicago or Tokyo had not chosen to bid and had not been selected, then the Tokyo 2016 or Chicago 2016 mark would not even exist, as it did not exist at the time that Frayne registered his domain names.

Simply put, if they believe it to be in their ability to do so, the Defendants refuse to allow any website that contains criticism of Chicago’s or Tokyo’s bid for the 2016 Olympic Games. To subdue said criticism and open debate, the Defendants attempt to hold their trademark rights as a sword over Frayne’s head. Of course, Defendants argue that they are only concerned about the fact that Chicago 2016 appears in Frayne’s domain name, but this assertion is belied by the facts. Indeed, the Court need simply type in [chicago2016.net](http://chicago2016.net), which is a top level domain, such as .com or .org, and one finds a blog run by the Chicago Metro Organizing Committee – an entity apparently unrelated to Chicago 2016 and the USOC. Just like Frayne, this group uses Chicago 2016 in their domain name, but, unlike Frayne, this website is uniformly in favor and supportive of bringing the 2016 Olympic Games to Chicago. Not surprisingly, Frayne has failed to find any record that the Defendants have pursued this website owner for alleged trademark violations or cybersquatting. If the Defendants were truly concerned about the use of their mark in a domain name, surely they would have found this website by now –

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<sup>1</sup> Frayne has filed an emergency motion in that forum requesting that the Panel suspend or terminate the proceeding in light of the fact that Frayne has filed this action. Further, according to the Uniform Dispute Resolution Policy that WIPO is bound by, the Panel lacks the subject matter jurisdiction to hear the dispute.

especially since Frayne and Chicago 2016 and the USOC were engaged in a significant dispute before a WIPO Panel on this issue.

However, putting aside the equal protection and free speech claims at issue here, the Defendants' bad faith actions and meritless accusations of Lanham Act, Stevens Act and ACPA violations speak volumes as to the lengths they will go to misappropriate Frayne's domain names. For example, the Defendants on numerous occasions tried to lure Frayne into selling his domain names, when the Defendants knew that if he did so, then his rights to said names would likely be forfeit under current federal court and WIPO precedent. Further, the Defendants' allegations and threats against Frayne are either entirely baseless or seek to stretch the boundaries of trademark law beyond any recognizable structure. Frayne's domain names reflect exactly the content of his websites, they are discussion and debate forums. As detailed herein, Frayne plans to provide a moderated forum for citizens of each potential Olympic city to express reasoned thoughts and opinions in an open environment that includes professional economists and commentators to discuss such issues.

As he has faced repeated threats and legal action from the Defendants and in an effort to ensure there is no confusion, Frayne has large disclaimers, *at the top and bottom of every page of his website*, in bright, bold lettering informing every visitor to his website that this is not the official Chicago 2016 website and he provides a link to their site directly under said warning. Moreover, *none* of the traditional Olympic trademarks, such as the five interlocking rings or the torch or the specific city's design for 2016 are present on Frayne's website. Of course, the 2016 Olympics represent the first Olympic Games where Frayne is implementing his dream, so there are a few kinks to be worked out, but as Frayne continues to build the websites and learn from his mistakes he is confident that he will be able to present the citizens of each

potential Olympic bid city with a top-notch forum to discuss, criticize and debate the pros and cons of bidding for and hosting the Olympic Games. In addition to these features, Frayne is providing a valuable service by disseminating the works of professional sports economists who have studied this issue at length. Currently, their work lies buried in isolation in the halls of academia, but Frayne's site leverages this work to inform public policy debate just the way the researchers intended. Every sports economist Frayne has discussed this with has supported Frayne's efforts and encouraged him to succeed in this important dispute. The constant legal proceedings and threats that Frayne has endured necessitated bringing this action, as he has been unfairly targeted by the Defendants for daring to allow criticism on his website of the Olympic Games and having a domain name that accurately describes where the Olympics will likely be held in 2016, which reflects the very nature of the content of his website. Consequently, Frayne filed this action seeking the appropriate relief.

#### **PARTIES**

1. Plaintiff, Stephen Frayne, Jr., is an individual and resident of Evanston, Illinois.
2. Defendant, Chicago 2016, is an Illinois corporation with its principal place of business in Chicago, Illinois. Chicago 2016 is an agent and representative of the City of Chicago with regard to its bid for the 2016 Olympic Games and is thus a state actor.
3. Defendant, United States Olympic Committee, is a federally chartered corporation with its principal place of business in Colorado Springs, Colorado.
4. Defendant Domain Trade, Inc., is a Japanese corporation with its principal place of business in Tokyo, Japan. Upon information and belief, Domain Trade is in the business of buying and selling internet domain names.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338 because Frayne's claims arise under the Constitution and laws of the United States, including the Lanham Act, 15 U.S.C. § 1121, the Anticybersquatting Consumer Protection Act, and the Ted Stevens Act. This Court has supplemental jurisdiction over Frayne's state law claims pursuant to 28 U.S.C. § 1367. The Court's authority to grant declaratory relief and other appropriate relief is founded upon 28 U.S.C. §§ 2201 and 2202. Defendants' actions have given rise to an actual and justiciable controversy. This Court has personal jurisdiction over the Defendants due to their systematic and continuous business connections and contacts with Illinois and specifically with respect to Domain Trade, Inc., due to its actions in contact with and threatening litigation against Frayne in Illinois.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2-3) in that a substantial part of the events or omissions giving rise to this claim occurred in this judicial district, defendant Chicago 2016's principal place of business is in this district and both defendants Chicago 2016 and USOC have significant contacts with this district.

### **FACTUAL BACKGROUND**

#### **Frayne's Background and the His Idea to Provide An Open Forum For an Even-Handed Debate Amongst the Bid/Host City's Citizens and Experts.**

7. Mr. Frayne has been an avid sports fan all his life and has always enjoyed the pageantry and sportsmanship of the Olympic Games. He first became aware of the political, social and economical impact that sporting events and teams could have on a city when his hometown Houston Oilers football team, which had made the playoffs for nine consecutive seasons, moved from Houston to Nashville. Frayne witnessed first hand the differing opinions of

the city leaders, citizens, sports fans, and the team owners. The ramifications of the situation impacted all Houstonians, not only those who followed professional sports.

8. When considering where to attend college, Frayne nearly attended Georgia Tech in Atlanta. When he visited the college, the city was preparing for the 1996 Olympic Games and Frayne saw tangible benefits first hand – a tremendous sense of civic pride and he saw the brand new buildings that would be used by Georgia Tech for years to come. In addition to those benefits, Frayne saw the drawbacks including traffic, congestion and little non-Olympic construction going on in the city. This first showed Frayne that the Games brought a mixed blessing to the city. It was much like Frayne's experience growing up for a period of time in Aruba where he saw that the hotels brought tax dollars into the community but also diverted city services. Through all Frayne's experiences he has learned that public expenditures can benefit as a whole but can result in disproportionate benefits for different elements of society, including negative benefits to underrepresented segments of society, and that better public dialogue can help solve these allocation inequities.

9. Frayne graduated with a B.S. in Mechanical Engineering from Texas A&M University in 2001. After graduation, rather than take a job in the energy industry in Texas, Frayne wanted to branch out into other entrepreneurial areas. Frayne then moved to Silicon Valley, California, where he applied his engineering background to the business world in Intel Corporation's internal venture capital group. Frayne enjoyed his work at Intel.

10. With regard to the Olympic debate, as to whether it would make sense for a city to bid for the Olympic Games, Frayne first became really excited about this debate when his hometown, Houston, was named one of four finalists to bid for the 2012 Olympic Games in early 2002. Frayne saw firsthand, through monitoring the news and discussing the subject with family

and friends, how the bid was dividing the city, especially on the issue of public transportation. Houston is a city built private transportation and the superficial public transportation built to court the Games was never a success. Unfortunately, Frayne also saw how the media only portrayed – or heavily favored – the voices that were in favor of the bid. It was this entirely lopsided portrayal of the benefits and costs of Houston’s Olympic bid that caused Frayne to seek to provide a forum for each potential host city, which would serve as a nucleus of reasoned criticism and debate regarding an Olympic bid, and whether the bid made sense according to professional economists and qualified commentators, including local citizens. Frayne correctly believed that the citizens of a potential host city and nation needed a free and open forum to articulate amateur and professional opinions concerning the Olympic bids for their respective cities, and he sought to provide this forum.

11. Although he was too busy advancing his full time career and obtaining his Masters degree in mechanical engineering at Stanford to concentrate on the 2012 Games, Frayne began preparing for the launch of his idea. Frayne decided that the most efficient and economic way to do this was to register domain names for certain cities and for certain years, as the internet is easy to use and provides a convenient forum for discussion that most people are familiar with. Accordingly, on July 31, 2002, Frayne registered [toronto2016.com](http://toronto2016.com) and on August 7, 2008, Frayne registered many other such sites, as he had no idea what cities would attempt to bid for the Olympic Games or in what year. Frayne paid approximately \$4,300 for a total of 38 such sites, which included [tokyo2016.com](http://tokyo2016.com). On August 8, 2004, Frayne registered [chicago2016.com](http://chicago2016.com) and [dallas2016.com](http://dallas2016.com) as well. At the time, Frayne did not have a telephone landline and he did not want unsolicited calls to his cell phone, so he registered the domain name using the number (408) 999-9999. This insulated Frayne from receiving unsolicited telephone

calls. Frayne provided his accurate physical address and received lots of unsolicited email but no unsolicited phone calls. To his knowledge, no one has had trouble contacting him at the contact information provided when Frayne registered this domain name.

12. In the Spring of 2003, Frayne was admitted to Stanford for his first Masters degree in Mechanical Engineering where he took many business classes including several at the Graduate School of Business at Stanford. Frayne was particularly inspired by his entrepreneurship classes. After building and managing an analysis team for Intel in India, Frayne moved to a small innovative team doing work that was more in line with his passion for independent thinking. That team won the Intel Achievement Award in 2007 for pioneering work. The IAA is the highest team award given at Intel and just a small fraction of employees receive it annually. That year just 3 in 1,000 employees received this Award.

13. In 2004, Frayne was not sure whether he should trademark his domain names and accordingly, he retained Carr & Ferrell LLP after initial consultations. Frayne ultimately decided against trademarking his domain names.

14. After his work at Intel and in order to provide him with the necessary background to fully develop and utilize his planned website forums for Olympic city discussions, Frayne applied to several business schools in 2007. Frayne was accepted by the business schools at Massachusetts Institute of Technology (MIT) and the Kellogg School of Management at Northwestern University. Even though MIT was a better fit for Frayne's technical and quantitative background, Frayne passed up the chance to go to MIT because, in April 2007, Chicago had been chosen over Los Angeles to be the bid city for the United States. Kellogg offered Frayne the perfect opportunity to be at ground zero for his first potential Olympic forum site and still allow him to develop his business and managerial skills.



15. During the school year of 2007-2008 and during the summer of 2008, Frayne discussed his opinion with two Chicago-area reporters that the Bid Committee was forcing the Olympics on the citizens rather than having the citizens unite around the bid. Frayne also sought out discussion with Allen Sanderson, a Sports Economist from the University of Chicago Economics Department on June 30, 2008. Professor Sanderson supported Frayne's plan for the domain. Frayne and Professor Sanderson also discussed cooperation about the plan, and he supplied Frayne with contact information for six other sports economists who could provide input on the value proposition of the Olympics for the citizens of Chicago and neighboring areas. During this time, Frayne also prepared and researched the issue of the economics of the Olympic Games extensively, becoming arguably an expert in the subject and preparing to launch his website introducing the citizens of Chicago and all interested parties to a new, open and independent forum that is available to discuss the bid and potential hosting of the Olympic Games, review criticism and commentary for and against the bid, and engage in all relevant discussions with regard to whether or not it would be a good idea to bring the Olympics to Chicago.

16. Frayne believes that it is in the public interest for the citizens of Chicago to have a serious public debate about whether the best use of city officials' time, taxpayers' money, and local citizens' money to court the Olympics, which puts huge demands on public resources not only in the two weeks of the Games, but in the run up to the Games themselves. The Chicago 2016 Bid Committee is claiming the bid will use no public money, but will not guarantee that. The public has a right to open and honest discussion throughout all phases of the Olympic bid and host process, including after the Games are over. Serious questions raised by credible

sources such as Professor Sanderson have not been addressed by the USOC, or the Chicago 2016 Bid Committee.

17. Frayne thinks that it is clear that ordinary citizens around the city of Chicago will have their lifestyles considerably impacted by the bid and the Games. For example, amateur sporting enthusiasts will likely lose their only sporting grounds forever so that international athletes can perform amateur sports on those grounds for just two weeks. Frayne's plan is to provide a moderated forum for citizens to express reasoned thoughts and opinions in an open environment that includes professional economists and commentators to discuss such issues. Frayne also believes that many citizens do not realize the security impacts the Games could have on the city as well. The Olympics have been a venue for terrorism with the Munich and Atlanta incidents in modern years. Acts of terrorism can occur at any time, especially in a post-9/11 world for Games conducted on American soil, so citizens face a difficult choice – exposure to terrorism or extreme security measures designed to minimize exposure. These are all issues that should be discussed openly and freely, with all affected parties.

18. On July 12, 2008, Frayne created CityPure, LLC, a Delaware limited liability company, to hold the domain names that he would purchase in the future. On July 14, 2008 and at several times during August 2008, Frayne registered additional domain names for certain cities and certain years at a cost of approximately \$6,200.

19. Frayne continues to fine-tune and construct his websites [tokyo2016.com](http://tokyo2016.com) and [chicago2016.com](http://chicago2016.com). Frayne has a scheduled trip to Tokyo on September 23, 2008, to speak to interested parties in the Tokyo bid in preparation for the launch of his Japanese website. Of course, putting together his [tokyo2016.com](http://tokyo2016.com) website is much more difficult to do because of translation issues, but Frayne has hired a fluent Japanese-American to begin the translation work

and his web developer is under contract to deliver the site. As for his chicago2016.com website, Frayne's web developer has created a great forum for debate about the Olympic bid and Frayne looks forward to fine-tuning the site as he gains a little more experience with the correct way of handling the forum, technical matters, and other issues. Frayne has also spent money advertising his website, by conducting a fly-over advertisement of downtown Chicago, naming his website and referring to it as a "A Balanced Conversation," the advertisement was supposed to say "A Balanced Discussion," but apparently something was lost in the translation. Frayne has expended serious effort and has taken concrete steps to develop excellent forums for the citizens of Chicago and Tokyo in which to discuss the bid and related topics and he is confident that the more he is able to hone his experience in creating these websites, the more satisfying the experience will be for visitors to his website. Frayne is proud and excited to offer a forum where real debate is heard, both criticism and support, on these issues, as Frayne believed the critical point of view was always missing from the Olympic Games discussion and professional economic analysis is totally absent from the public debate.

20. Due to the Defendants' repeated threats and instigation of an actual proceeding seeking to take control of Frayne's domain name, Frayne has a real and reasonable apprehension of liability and due to Frayne's website usage, he has engaged in a course of conduct that brings him into adversarial conflict with the Defendants. As such a real dispute exists here. Frayne maintains that his current and prior uses of his domain names and his websites were at all times legal. Defendants maintain that Frayne's actions were illegal.

#### **Chicago Decides to Bid for the Olympics**

21. Before May 2006, Frayne had no knowledge that Chicago intended to bid for the Olympics. Strangely enough, apparently the first concrete step that Chicago took related to the

bid for the 2016 Games was to register [chicago2016.org](http://chicago2016.org), four days after Frayne registered [chicago2016.com](http://chicago2016.com). At the time, Chicago 2016 did not have a trademark or service mark on Chicago 2016. Indeed, the bid committee, Chicago 2016, did not even exist in 2004.

22. Sometime in or around May 2006, Chicago decided to pursue a bid for the 2016 Games and on July 19, 2006, Chicago 2016 Exploratory Committee (now, named Chicago 2016) was incorporated as the City of Chicago's bid committee for the U.S. domestic selection process for the 2016 Games. Later that year, on November 28, 2006, Chicago 2016 filed for a trademark on Chicago 2016, which was registered on April 22, 2008. Frayne was aware of this filing and requested an extension of time in which to oppose it, but decided against doing so. On information and belief, on April 9, 2007, Chicago 2016 assigned its rights and interest in the mark Chicago 2016 to the USOC. On April 14, 2007, the USOC selected the City of Chicago as the U.S. applicant city for the 2016 Games. On that same day, the USOC licensed to Chicago 2016 the right to use certain trademarks, including Chicago 2016, in connection with its bid for the 2016 Games.

23. Before the City of Chicago announced its intention to bid on the 2016 Games, Frayne had never seen the mark Chicago 2016 used in commerce or displayed or advertised in any fashion. Chicago 2016, although a private entity, is the official representative and agent of the City of Chicago and, therefore, operated under the color of state law for purposes of this Complaint and is a state actor.

#### **Chicago 2016 and USOC Attempts to Hijack Frayne's Domain Name and Other Improper Conduct**

24. On October 10, 2007, Frayne received an email from Jeff Stiers, who works for the Chicago 2016 Bid Committee. In that email, Mr. Stiers asked Frayne: "Let me know if you're entertaining offers on or would otherwise be willing to part with: [chicago2016.com](http://chicago2016.com)."

Frayne replied, “Jeff, thank you for asking. I would be interested in talking to you about this though I have to plans to sell the my names.” This email contains several typographical errors and should have read “though I have no plans to sell my name.” Frayne has never indicated a willingness to sell his chicago2016.com domain name.

25. On or about November 14, 2007, Frayne met with Mr. Stiers alone at Chicago 2016’s offices and Frayne informed Mr. Stiers that he was interested in hosting an online public debate about the interests of the citizens of Chicago who are not getting the full story out to the public on the Chicago bid. In other words, Frayne informed Mr. Stiers that not only was his domain name not for sale, but that he planned to use this website as a public forum to allow for criticism, as well as support, of the Chicago bid that may not have otherwise been widely-recognized in the local media up to this point.

26. At this point, Mr. Stiers asked if Frayne was aware that Chicago 2016 had acquired a trademark on Chicago 2016 and Frayne acknowledged that he was aware of that fact. Mr. Stiers told Frayne that chicago2016.org was receiving about 1,000-2,000 visitors per day with spikes around major news coverage and asked Frayne what his traffic was at chicago2016.com. At that time, Frayne did not have the tracking code installed so he had no idea what kind of traffic he was getting. Mr. Stiers asked Frayne repeatedly (at least 4 times) to discuss prices at which Frayne would part with the name. Upon information and belief Mr. Stiers knew that if Frayne offered to sell his website, then Mr. Stiers could then proceed against Frayne before a WIPO Panel or in federal court to show that Frayne had engaged in bad faith. These repeated attempts to lure Frayne into offering to sell his website represent a bad faith attempt by Chicago 2016 to hijack Frayne’s domain name. Regardless, time and again Frayne told Mr. Stiers very politely but plainly that he was not interested in selling his domain name.

27. Frayne informed Mr. Stiers he would wait to see what he wanted to do with his domain name until after the International Olympic Commission (“IOC”) had made its final cut before choosing the host city. After all, if Chicago was not in the final four cities that were in the running to host the Olympics, Frayne’s intended use for the website would obviously have to change. Frayne never stated or implied that he was interested in profiting off mis-clicks or selling his domain name once Chicago was awarded the Games. The business that Frayne planned was providing a forum for a comprehensive discussion, debate and analysis of the Olympics in Chicago. Indeed, there would still be a need for new content dissecting the effect of the Olympics even as much as a year or more after the Games take place.

28. After Chicago was selected to be one of the four remaining cities in the running to host the Olympic Games, Frayne emailed Mr. Stiers and congratulated him on making the final round of voting for the IOC host city. Mr. Stiers seemed like a pleasant man to Frayne, and Frayne appreciated his taking the time out of his work to show Frayne the Chicago 2016 bid in person, and Frayne simply wanted to congratulate him on a professional victory on a project that seemed to mean a lot to him. Four days after this communication, on June 8, 2008, Frayne was contacted by Patrick Ryan of Chicago 2016 but their schedules did not match up. The next communication Frayne received on this matter was Chicago 2016’s and the USOC’s Complaint seeking to forcibly transfer his domain name.

29. On July 15, 2008, Chicago 2016 and the USOC initiated a WIPO proceeding against Frayne seeking to force the transfer of Frayne’s domain name to Chicago 2016. In their Complaint, Chicago 2016 and the USOC accuse Frayne of violations of the Stevens Act, violations of the UDRP (which is a counterpart in most ways to the ACPA), and the Lanham Act because Frayne registered [chicago2016.com](http://chicago2016.com). As of the date of this filing, this proceeding is still

pending although Frayne has filed a motion to suspend or terminate the proceeding in light of the fact that he has chosen to proceed before this Court.

**Domain Trade, Inc. Attempts to Hijack Frayne's tokyo2016.com Domain Name and Other Improper Conduct**

30. On June 17, 2008, Frayne was contacted via email by Domain Trade, a Japanese company that, as the name implies, buys and sells domain names. In this email, Domain Trade asked whether or not Frayne would like to sell his domain name as Domain Trade had a client that was interested in buying it. Frayne replied: "The domain is not for sale. I have plans for it." After Frayne rebuffed repeated attempts to purchase his domain name, then the threats began. Domain Trade wrote Frayne the following email:

This e-mail will be our last attempt to purchase TOKYO2016.COM. If we do not hear back from you by July 4<sup>th</sup>, 2008, we will file our case with WIPO...

**We will most likely win our case as we all know how WIPO handles cases related to olympic trademarks.** As you also registered CHICAGO2016.COM WIPO will have an easy case to settle. (emphasis added).

All of these emails are attached hereto as Exhibit 1 for the Court's review. These emails are reflective of the pressure that domain name owners feel with regard to parties with deep pockets threatening to take their property by vexatious litigation.

31. Indeed, Domain Trade truly has Frayne in a Catch-22 situation, if he says yes, my domain name is for sale, then that constitutes bad faith and Domain Trade can use that to take Frayne's domain name away from him – and Domain Trade is well aware of this fact. However, if Frayne refuses to sell, then Domain Trade could force him into costly litigation and succeed in taking his domain name away from him anyway. In any event, Frayne responded to these threats as follows: "Perhaps you didn't understand my previous email. The domain name is not for sale since I am actively developing it. Please look for another domain name to register." Domain

Trade's threats to bring Frayne before WIPO and potential legal action against Frayne and its attempts to lure Frayne into offering to sell his domain name, and thus evince bad faith in owning said name, represent an attempted reverse domain name hijacking proscribed under the Lanham Act.

### **Additional Background Facts**

32. Based upon a review of the relevant documents, the first time that the International Olympic Committee even mentioned domain names as part of their "Legal aspects" expected of candidate cities was for the 2014 Games and this Candidate Procedure and Questionnaire publication was published in July 2006, *years after* Frayne registered his domain names in question. Moreover, the first time that the Olympic literature even referenced protecting the word mark "[city] [year]" was for the 2012 games, and that Candidate Procedure and Questionnaire was published in May 2004. Again, this publication is dated *years after* Frayne registered his domain name tokyo2016.com.

33. For the 2010 Olympic Games, the Manual for Candidate Cities, Candidature File – Legal Aspects transposes the word mark and says that "the IOC may take all necessary measures to obtain such legal protection in relation to the terms "2010 [city]," at the expense of the Candidate City. The Manual for the 2008 Olympic Games contained similar language. Thus, the mark of [city] [year] is as recent as the city bid materials provided for the 2012 Olympic Games, which was published in May 2004. Before then, the mark appears to have been transposed and led with [year] [city] instead.

34. In the most recent 2016 Candidate Procedure and Questionnaire, the International Olympic Committee instructs applicant cities to "protect the word mark [City] 2016" within the host territory" and "register domain names that are of value to your candidature such as



“[City]2016” followed by extensions .com .net .org as well as the country code concerned.” Of course, these instructions regarding domain names are of recent vintage – July 2006 – and were first mentioned in the materials for the 2014 Games. Thus, pursuant to this policy, Chicago 2016 would have had to review the website at [chicago2016.net](http://chicago2016.net). Yet, even though it appears that an unrelated third party owns that domain name, Frayne’s research has uncovered no proceeding brought by Chicago 2016 or the USOC against the owner of [chicago2016.net](http://chicago2016.net). The website, although not appearing active and containing fairly dated information, is clearly a uniformly supportive site and blog for Chicago’s bid. Yet, to Frayne’s knowledge, neither the USOC nor Chicago 2016 have taken any kind of action against the owner of the domain [chicago2016.net](http://chicago2016.net).

35. Finally, according to Frayne’s research, the only U.S. trademark with regard to [tokyo2016.com](http://tokyo2016.com) is a word-design mark which incorporates the five interlocking rings to the left of the word mark. Frayne’s domain name does not contain five interlocking rings and indeed, the five interlocking rings do not appear on Frayne’s website at all.

**COUNT I – NON-INFRINGEMENT OF THE LANHAM  
ACT – AGAINST DEFENDANTS USOC AND CHICAGO 2016**

36. Frayne reasserts and incorporates by reference the allegations of his Complaint at paragraphs 1 through 35 as if fully set forth herein.

37. When one first visits Frayne’s website at [chicago2016.com](http://chicago2016.com), the following disclaimer is immediately visible in large font, bold red lettering: “This is NOT the official Chicago 2016 Olympic Bid Committee site.” Directly under this glaring warning a link is provided to Chicago 2016’s website which states: “Find them at [www.Chicago2016.org](http://www.Chicago2016.org).” Further, upon entering the main page of the website, the same warning is repeated on the top and bottom of the page and again a link is provided directly under this warning to Chicago 2016’s

website. These clear and conspicuous warnings and links are provided on the top and bottom of *every page* of Frayne's website.

38. There is no likelihood of confusion about whether Frayne's domain name or website is sponsored by or affiliated with the official website of Chicago 2016 or the USOC.

39. Frayne's domain name and website neither infringe, nor dilute, nor tarnish the Defendants' trademarks or service marks.

40. Frayne's domain name and website constitute a non-commercial use of the Defendants' trademarks or service marks.

41. Frayne's domain name and website are neither confusingly similar nor dilutive of Defendants' trademarks or service marks, and Frayne does not have a bad faith intent to profit.

42. Frayne's domain and website are protected speech as Frayne offers criticism and public commentary discussing Chicago's bid for the 2016 Olympic Games.

43. Accordingly, this Court should declare that Frayne's domain name and website have neither infringed, nor diluted, nor tarnished the Defendants' trademarks or service marks and that he is not in violation of the Lanham Act, nor any similar state law, or any law whose violation Defendants may assert through counterclaims and permanently enjoin Defendants from attempting to transfer, cancel or otherwise affect Frayne's domain name and accompanying website.

**COUNT II – NON-VIOLATION OF THE TED STEVENS  
ACT – AGAINST DEFENDANTS USOC AND CHICAGO 2016**

44. Frayne reasserts and incorporates by reference the allegations of his Complaint at paragraphs 1 through 43 as if fully set forth herein.

45. The Stevens Act only protects a small set of words and symbols found in 36 U.S.C. § 220506(a):

- (1) the name “United States Olympic Committee”;
  - (2) the symbol of the International Olympic Committee, consisting of 5 interlocking rings, the symbol of the International Paralympic Committee, consisting of 3 TaiGeuks, or the symbol of the Pan-American Sports Organization, consisting of a torch surrounded by concentric rings;
  - (3) the emblem of the corporation, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief; and
  - (4) the words “Olympic,” “Olympiad,” “Citius Altius Fortius,” “Paralympic,” “Paralympiad,” “Pan-American,” “America Espirito Sport Fraternite,” or any combination of those words.
46. Frayne’s domain name does not use any of the above words, which the Stevens

Act statutorily protects.

47. The Stevens Act also provides, in relevant part:
- (c) CIVIL ACTION FOR UNAUTHORIZED USE – ... the corporation may file a civil action against a person for the remedies provided in the [Lanham Act] if the person, without the consent of the corporation, uses for the purpose of trade, to induce the sale of any goods or services, or to promote any theatrical exhibition, athletic performance, or competition—
    - (1) the symbol described in subsection(a)(2) of this section [220506(a)];
    - (2) the emblem described in subsection (a)(3) of this section;
    - (3) the words described in subsection (a)(4) of this section, or any combination or simulation of those words tending to cause confusion or mistake, to deceive, or to falsely suggest a connection with the corporation or any Olympic, Paralympic, or Pan-American Games activity; or
    - (4) any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, the International Olympic Committee, the International Paralympic Committee, the Pan-American Sports Organization, or the corporation.

48. Frayne’s domain name and website is not for the purpose of trade, does not induce the sale of any goods or services, and does not promote any theatrical exhibition, athletic

performance or competition. Further, Frayne's domain name and website do not falsely represent an association with, or authorization by, the International Olympic Committee, the International Paralympic Committee, the Pan-American Sports Organization, or the corporation. To the contrary, Frayne's website is replete with large disclaimers and warnings that his website is not the official Chicago 2016 Olympic Bid Committee site and provides a link to their website.

49. Accordingly, this Court should declare that Frayne's domain name and website are not in violation of the Stevens Act and permanently enjoin Defendants from attempting to transfer, cancel or otherwise affect Frayne's domain name and accompanying website.

**COUNT III – NON-VIOLATION OF THE  
ANTICYBERSQUATTING CONSUMER PROTECTION ACT – ALL DEFENDANTS**

50. Frayne reasserts and incorporates by reference the allegations of his Complaint at paragraphs 1 through 49 as if fully set forth herein.

51. The Anticybersquatting Consumer Protection Act ("ACPA"), 15 U.S.C. § 1125(d), provides in relevant part:

- (1)(A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person
- (i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; *and*
  - (ii) registers, traffics in, or uses a domain name that –
    - (I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;
    - (II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or
    - (III) is a trademark, word, or name protected by reason of section 706 of Title 18 or section 220506 of Title 36.

(emphasis added).

52. Frayne's domain names of `tokyo2016.com` and `chicago2016.com` were registered well before (August 7, 2002 and August 8, 2004, respectively) any of the Defendants had rights in the mark Chicago 2016 or Tokyo 2016. At the time the domain names were registered, it was not known whether either city would bid for the Olympics, nor whether either city would be selected to bid for the Games during that year. These marks were not famous at the time of registration, nor were they distinctive at the time of registration. Indeed, if Los Angeles was chosen as the bid city for the United States, Chicago 2016 would be meaningless. Further, the requirement of bad faith intent to profit from these marks is entirely absent in this case. (III) refers to the Stevens Act, and this is discussed in Count II above and is inapplicable to Frayne's actions here. In addition, the mark Tokyo 2016 has not been registered independent of any Olympic design, such as the five interlocking rings, and Frayne's domain name and website does not contain any such Olympic symbol; therefore, he cannot be said to be violating the ACPA with regard to his `tokyo2016.com` domain name. Consequently, Frayne's registration of `tokyo2016.com` and `chicago2016.com` is not in violation of the ACPA according to the plain language of the statute.

53. Accordingly, this Court should declare that Frayne's domain names of `chicago2016.com` and `tokyo2016.com` and the accompanying websites are not in violation of the Anticybersquatting Consumer Protection Act and permanently enjoin Defendants from attempting to transfer, cancel or otherwise affect Frayne's domain names and websites.

**COUNT IV – REVERSE DOMAIN NAME HIJACKING**  
**15 U.S.C. § 1114(2)(D) – DEFENDANTS CHICAGO 2016 AND USOC**

54. Frayne reasserts and incorporates by reference the allegations of his Complaint at paragraphs 1 through 53 as if fully set forth herein.

55. Frayne is the domain name registrant for chicago2016.com. Frayne registered this domain name on August 8, 2004.

56. This domain name is currently subject to being transferred, disabled or suspended under a policy (the UDRP) implemented by the registrar – as of the date of this filing the World Intellectual Property Organization Panel’s decision is due by September 22, 2008.

57. Frayne provided the Defendants with notice of this action in federal court.

58. Frayne’s registration or use of the domain name in question is not unlawful under the Lanham Act.

59. The Defendants have made knowing and material representations to another person that a domain name is identical to, confusingly similar to, or dilutive of their mark and thus should be held liable for damages, including costs and attorney’s fees, incurred by Frayne as a direct and proximate result of these wrongful actions by the Defendants. Defendants also have engaged in bad faith conduct by attempting to entrap Frayne by offering to purchase his domain name chicago2016.com, when Defendants never had the intention to purchase said domain name, but were attempting to hijack Frayne’s domain name from him by setting Frayne up for an accusation of a bad faith intent to profit.

**COUNT V – ATTEMPTED REVERSE DOMAIN NAME**  
**HIJACKING 15 U.S.C. § 1114(2)(D) – ALL DEFENDANTS**

60. Frayne reasserts and incorporates by reference the allegations of his Complaint at paragraphs 1 through 59 as if fully set forth herein.

61. Frayne is the domain name registrant for [chicago2016.com](http://chicago2016.com) and [tokyo2016.com](http://tokyo2016.com). Frayne registered these domain names on August 8, 2004 and August 7, 2002, respectively.

62. This domain name [chicago2016.com](http://chicago2016.com) is currently subject to being transferred, disabled or suspended under a policy (the UDRP) implemented by the registrar – as of the date of this filing the World Intellectual Property Organization Panel’s decision is due by September 22, 2008. Defendant Domain Trade, Inc. also has threatened Frayne with a WIPO proceeding and other such potential legal action. Through bringing these proceedings and threatening other such actions, the Defendants are attempting to hijack these domain names from Frayne. Further, Defendants attempted to hijack these domain names from Frayne by making bad faith offers to Frayne to purchase these domain names, with no real intention to actually make said purchase, so that the Defendants could show a bad faith intent on Frayne’s part with regard to his registration and use of these domain names and websites.

63. Frayne provided the Defendants with notice of this action in federal court.

64. Frayne’s registration or use of the domain names in question is not unlawful under the Lanham Act.

65. Defendants Chicago 2016 and USOC have made knowing and material representations to another person that these domain names are identical to, confusingly similar to, or dilutive of their mark and thus should be held liable for damages, including costs and attorney’s fees, incurred by Frayne as a direct and proximate result of these wrongful actions by the Defendants. Defendants also have engaged in bad faith conduct by attempting to entrap Frayne by offering to purchase his domain name [chicago2016.com](http://chicago2016.com), when Defendants never had the intention to purchase said domain name, but were attempting to hijack Frayne’s domain name from him by setting Frayne up for an accusation of a bad faith intent to profit.

**COUNT VI – VIOLATION OF FIRST AMENDMENT RIGHTS  
UNDER THE UNITED STATES CONSTITUTION – AGAINST CHICAGO 2016**

66. Frayne reasserts and incorporates by reference the allegations of his Complaint at paragraphs 1 through 65 as if fully set forth herein.

67. The First Amendment to the Constitution of the United States rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public and that a reduction in the volume of available speech harms not only speakers themselves but society as a whole which is deprived of an uninhibited marketplace of ideas.

68. The information contained on Frayne’s website and Frayne’s use of the term “chicago2016” as his domain name is entitled to protection under the First Amendment.

69. The Defendants’ attempts to wrongfully hijack Frayne’s domain name – said actions in violation of the Lanham Act – and Defendants’ actions in bringing baseless WIPO proceedings and threatening legal proceedings against Frayne, as well as Defendants’ bad faith attempts to entrap Frayne by engaging in unsolicited offers to purchase Frayne’s domain name for the sole purpose of invalidating Frayne’s property rights in said domain name to prevent Frayne from providing a forum which would allow citizens to review well-articulated criticism and debate over the City of Chicago’s bid for the 2016 Olympic Games, constitute an unlawful abridgment of Frayne’s First Amendment rights.

70. Chicago 2016’s attempt to prohibit, restrict and condition Frayne’s First Amendment activity flies in the face of the federal government’s policy objective of protecting legitimate public criticism and open and fair debate over issues and does not further – to the contrary runs counter to – an important or substantial governmental interest.



71. Even if Chicago 2016's actions in seeking to hijack Frayne's domain name and prevent the criticism and debate about Chicago's bid to host the Olympic Games did further an important or substantial government interest, the prohibitions, restrictions, and actions are far greater than is essential to the furtherance of any such interest.

72. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

73. Chicago 2016 is a "person" and state actor within the meaning of 42 U.S.C. § 1983, and at all times relevant to this action Chicago 2016 has acted under color of state law.

74. Chicago 2016's actions described herein have deprived and will deprive Frayne of his rights, privileges, and immunities under the Constitution of the United States.

75. 42 U.S.C. § 1988 provides in relevant part that "[i]n any action or proceeding to enforce a provision of section [ ] \* \* \* 1983 \* \* \* of this title, \* \* \* the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

76. Accordingly, this Court should declare that Chicago 2016's actions violate 42 U.S.C. § 1983 by depriving Frayne of the rights, privileges and immunities afforded to him by the Constitution of the United States, and hold that those actions violate the First Amendment and that Frayne is entitled to injunctive and other relief as described in the prayer for relief at the end of this Complaint. Further, this Court should award Frayne his reasonable attorney fees pursuant to 42 U.S.C. § 1988.

**COUNT VII – VIOLATION OF THE RIGHTS  
GUARANTEED TO FRAYNE BY THE FREE SPEECH  
CLAUSE OF THE ILLINOIS CONSTITUTION – AGAINST CHICAGO 2016**

77. Frayne reasserts and incorporates by reference the allegations of his Complaint at paragraphs 1 through 76 as if fully set forth herein.

78. Article I, Section 4 of the Illinois Constitution states: “All persons may speak, write and publish freely, being responsible for the abuse of that liberty.”

79. The Free Speech Clause of the Illinois Constitution protects the liberties of freedom of speech and the press from infringement by action of the legislature or the courts or state actors. Its protection extends to every type of publication that affords a vehicle of information and opinion.

80. Frayne’s domain name and the information found on his website, [chicago2016.com](http://chicago2016.com), are entitled to protection under Article I, Section 4 of the Illinois Constitution.

81. Chicago 2016’s conduct and improper actions seeks to prohibit and inhibit Frayne’s use of his domain name and constitutes an unlawful abridgement of Frayne’s right to freedom of speech.

82. Chicago 2016’s effective prohibition of Frayne’s First Amendment activity flies in the face of Chicago 2016’s stated interest in providing the citizens of Chicago with an open and fair debate as to the hosting of the Olympic Games – and, indeed, runs directly contrary to – an important or substantial governmental interest.

83. Accordingly, Chicago 2016’s actions and conduct in attempting to silence Frayne and wrest control of his domain name should be declared to be in violation of, and preempted by, the guarantees of the Free Speech Clause of the Illinois Constitution, and should be set aside and enjoined by the Court on that basis.

**COUNT VIII – VIOLATION OF EQUAL PROTECTION RIGHTS  
UNDER THE UNITED STATES CONSTITUTION – AGAINST CHICAGO 2016**

84. Frayne reasserts and incorporates by reference the allegations of his Complaint at paragraphs 1 through 83 as if fully set forth herein.

85. Chicago 2016's actions and conduct are discriminatory in that they seek to prohibit and prevent some, but not all, speech related to Chicago's bid for, and potential hosting of, the Olympic Games. Chicago 2016 seeks to prohibit Frayne's website and use of his domain name because he dares to offer a forum that allows criticism, as well as support, for Chicago's bid for the Olympic Games. For example, Chicago 2016 has not attempted to prevent and prohibit the use of a domain with an identical name, except for the .TLD, *chicago2016.net*, because that domain unilaterally supports Chicago's bid for the 2016 Olympic Games. These discriminatory actions are not tailored to any legitimate justification.

86. The discrimination effected by Chicago 2016's conduct has violated and continues to violate Frayne's rights under the Equal Protection Clause of the United States Constitution.

87. The information contained on Frayne's website and Frayne's use of the term "chicago2016" as his domain name is entitled to protection under the First Amendment.

88. Accordingly, Chicago 2016's actions and conduct should be declared to be in violation of, and preempted by, constitutional guarantees of equal protection under the law.

89. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party

injured in an action at law, suit in equity, or other proper proceeding for redress.

90. Chicago 2016 is a “person” and state actor within the meaning of 42 U.S.C. § 1983, and at all times relevant to this action Chicago 2016 has acted under color of state law.

91. Chicago 2016’s actions described herein have deprived and will deprive Frayne of his rights, privileges, and immunities under the Constitution of the United States.

92. 42 U.S.C. § 1988 provides in relevant part that “[i]n any action or proceeding to enforce a provision of section [ ] \* \* \* 1983 \* \* \* of this title, \* \* \* the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.”

93. Accordingly, this Court should declare that Chicago 2016’s actions violate 42 U.S.C. § 1983 by depriving Frayne of the rights, privileges and immunities afforded to him by the Constitution of the United States, and hold that those actions violate the Equal Protection Clause and that Frayne is entitled to injunctive and other relief as described in the prayer for relief at the end of this Complaint. Further, this Court should award Frayne his reasonable attorney fees pursuant to 42 U.S.C. § 1988.

**COUNT IX – VIOLATION OF EQUAL PROTECTION RIGHTS  
UNDER THE ILLINOIS CONSTITUTION – AGAINST CHICAGO 2016**

94. Frayne reasserts and incorporates by reference the allegations of his Complaint at paragraphs 1 through 93 as if fully set forth herein.

95. Article I, Section 2 of the Illinois Constitution states: “No person shall be deprived of life, liberty or property without the due process of law nor be denied the equal protection of the laws.”

96. Chicago 2016's actions and conduct deprive Frayne of his rights secured by the equal protection clause of the Illinois Constitution, in that Chicago's 2016 decision to attempt to silence and take Frayne's domain name, and not other, almost identical domain names, is discriminatory, unfair, arbitrary and capricious, lacking in a rational basis and without legitimate justification. The Free Speech Clause of the Illinois Constitution protects the liberties of freedom of speech and the press from infringement by action of the legislature or the courts or state actors. Its protection extends to every type of publication that affords a vehicle of information and opinion. Chicago 2016 violates this important right of Frayne's only because Frayne offers critical commentary about Chicago's bid for the 2016 Olympic Games.

97. Frayne's domain name and the information found on his website, [chicago2016.com](http://chicago2016.com), are entitled to protection under Article I, Section 4 of the Illinois Constitution.

98. Chicago 2016's conduct and improper actions seeks to prohibit and inhibit Frayne's use of his domain name and constitutes an unlawful abridgement of Frayne's right to freedom of speech.

99. Accordingly, Chicago 2016's actions and conduct in attempting to silence Frayne and wrest control of his domain name should be declared to be in violation of, and preempted by, constitutional guarantees of equal protection of the laws, and should be set aside and enjoined by the Court on that basis.

#### **PRAYER FOR RELIEF**

WHEREFORE, Frayne respectfully requests that this Court grant him the following relief:

- (a) Declare that Frayne's domain names – [chicago2016.com](http://chicago2016.com) and [tokyo2016.com](http://tokyo2016.com) – and website have neither infringed, nor diluted, nor tarnished the Defendants' trademarks or service marks and that he is not in violation of the Lanham Act, nor any similar state law,

or any law whose violation Defendants may assert through counterclaims;

- (b) Declare that Frayne's domain name and website are not in violation of the Stevens Act;
- (c) Declare that Frayne's domain names of chicago2016.com and tokyo2016.com and the accompanying websites are not in violation of the Anticybersquatting Consumer Protection Act;
- (d) Declare that Chicago 2016's actions and improper conduct violate Frayne's rights under the First Amendment to the United States Constitution;
- (e) Declare that Chicago 2016's actions and improper conduct violate Frayne's rights under the Free Speech Clause of the Illinois Constitution;
- (f) Declare that Chicago 2016's actions and improper conduct deprive Frayne of his rights under the Equal Protection Clause to the United States Constitution;
- (g) Declare that Chicago 2016's actions and improper conduct deprive Frayne of his rights under the Equal Protection Clause of the Illinois Constitution;
- (h) Permanently enjoin Defendants from acting in any manner inconsistent with the declaratory relief sought herein and from trying to transfer, cancel, disable or affect Frayne's domain names chicago2016.com and tokyo2016.com in any way;
- (i) Award Frayne money damages and the costs of this action;
- (j) Award Frayne his attorney's fees pursuant to 42 U.S.C. § 1988; and
- (k) Award Frayne such other and further relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Frayne hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

STEPHEN FRAYNE, JR.

Dated: September 17, 2008

By:           /s/ Robert S. Grabemann            
One of His Attorneys

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