

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

BLACKSHORE PROPERTIES, INC.
2275 Huntington Drive, #255
San Marino, CA 91108,

Plaintiff,

v.

EQN.COM, an Internet domain name, and
JOHN DOE,

Defendants.

Civil Action No. _____

VERIFIED COMPLAINT

Plaintiff Blackshore Properties, Inc. (“Blackshore”), by counsel, alleges as follows for its Verified Complaint against Defendants:

NATURE OF THE SUIT

1. Blackshore’s claims in this case involve intellectual property theft by computer hacking—colloquially referred to as “domain name theft” or “domain name hijacking.” To recover its valuable intellectual property, Blackshore asserts *in rem* claims under the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), under 28 U.S.C. § 1655, and Virginia common law, and *in personam* claims under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707, and Virginia common law, arising from the unauthorized access to Blackshore’s secured computer account and the unauthorized transfer and theft of the EQN.com domain name (the “Defendant Domain Name”).

2. Blackshore seeks injunctive and other equitable relief as a result of the actions of

a person of unknown identity who gained unauthorized access to Blackshore's domain name management account on a protected computer, transferred control of the Defendant Domain Name from Blackshore's account, and thereby disabled Blackshore's control of the Defendant Domain Name causing irreparable injury to Blackshore.

PARTIES

3. Blackshore Properties, Inc. is a California corporation located at 2275 Huntington Drive, #255, San Marino, CA 91108. Blackshore was, and is, the rightful owner of the Defendant Domain Name.

4. Defendant EQN.com is an Internet domain name which, according to records in the WHOIS database of domain name registrations, has been improperly transferred to the domain name registrar 22.cn. A copy of the current domain name registration record for EQN.com is attached as Exhibit A.

5. Defendant John Doe is a person of unknown identity who gained unauthorized access to Blackshore's protected domain name management account and, without consent or authority, transferred control of Defendant Domain Name away from Blackshore.

JURISDICTION, VENUE AND JOINDER

6. This action arises under the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), 28 U.S.C. § 1655, the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707, and related claims under the common law of Virginia.

7. This Court has original jurisdiction under 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a), 28 U.S.C. § 1367, 28 U.S.C. § 1655, and the doctrines of ancillary and pendent jurisdiction.

8. This Court has *in rem* jurisdiction over the Defendant Domain Name pursuant to 15 U.S.C. § 1125(d)(2)(A) and 28 U.S.C. § 1655.

9. *In rem* jurisdiction is appropriate under 15 U.S.C. § 1125(d)(2)(A)(i)(I) because the registrant of the Defendant Domain Name is, on information and belief, a fictitious person/entity and therefore Blackshore cannot obtain in personam jurisdiction over a person who would have been a defendant in a civil action under 15 U.S.C. § 1125(d)(1)(A) and/or Blackshore, despite its due diligence, has been unable to find a person who would have been a defendant in a civil action under 15 U.S.C. § 1125(d)(1)(A). Blackshore will provide notice to the Defendants of its intent to proceed in rem against the Defendant Domain Name pursuant to 15 U.S.C. § 1125(d)(2)(A)(i)(I)(aa).

10. The Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(3) and (4), states that the *in rem* action, jurisdiction, and remedies created by the statute are “in addition to any other civil action or remedy otherwise applicable” and “in addition to any other jurisdiction that otherwise exists, whether in rem or in personam.”

11. *In rem* jurisdiction is appropriate under 28 U.S.C. § 1655 because the EQN.com domain name is property situated in this district and Blackshore is asserting its claim of ownership to the EQN.com domain name and seeking removal of the cloud on the title of the domain name.

12. Blackshore’s claims against John Doe for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707, and for conversion, are based on John Doe’s unauthorized access to and alteration of computer records maintained on protected computers for the domain registry located within the district so as to effectuate the theft of the Defendant Domain Name.

13. John Doe directed the acts complained of herein toward the district and utilized instrumentalities in the district in that John Doe gained unauthorized access to Blackshore's domain name management account and associated computer records and thereafter, without authorization, caused the domain name registration records maintained in the district by VeriSign, Inc. to be altered so as to transfer control of Defendant Domain Name away from Blackshore.

14. Venue is proper in this District pursuant to 15 U.S.C. § 1125(d)(2)(C), 28 U.S.C. § 1391(b)(2), and 28 U.S.C. § 1655 in that the Defendant Domain Name is property situated in this district and pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this district.

15. Joinder of the Defendant Domain Name and Defendant John Doe is proper under Fed. R. Civ. P. 20(a)(2) in that the claims set forth herein arise out of the same series of transactions and the same questions of law are common to all of the Defendants.

BLACKSHORE'S RIGHTS

16. Blackshore purchased the domain name EQN.com through a public auction on May 16, 2011. Attached as Exhibit B is an archived copy of the Whois record for the EQN.com domain name from December 1, 2012, identifying Blackshore as the registrant of the domain name.

17. After acquiring the EQN.com domain name, Blackshore transferred the domain name to the ICANN-accredited domain name registrar Enom, Inc. ("Enom"). Blackshore was the registrant of the EQN.com domain name until the domain name was stolen. Attached as Exhibit C is an archived copy of the Whois record for the EQN.com domain name from May 11,

2016, identifying Blackshore as the registrant of the domain name and Enom as the registrar for the domain name.

18. Blackshore used the EQN.com domain name in U.S. commerce in association with the paid provision of information and advertisements for goods and services until Defendant John Doe stole the domain name and thereby disabled Blackshore's access to and control of the domain name.

19. Blackshore is entitled to common law trademark protection in the EQN.com mark by virtue of its use of the mark in U.S. commerce in association with paid advertising and information services.

20. John Doe's unauthorized transfer and subsequent misuse of the Defendant Domain Name further demonstrates that the EQN.com mark is entitled to trademark protection.

21. As a stolen domain name, no subsequent registrant may acquire title to the Defendant Domain Name that is superior to Blackshore's title to the EQN.com domain name.

UNLAWFUL TRANSFER AND REGISTRATION OF THE DOMAIN NAME

22. The Associated Press reported that a 2013 survey by the National Small Business association found that 44% of small businesses had been the subject of computer hacking.

23. The Verizon 2018 Data Breach Investigations Report reported that there were over 53,000 security breaches in the U.S. in 2017, and 58% of the victim companies were small businesses.

24. Blackshore's claims in the present case involve one of the most recent iterations of such computer hacking actions—colloquially referred to as “domain name theft.”

25. Blackshore maintains a domain name management account with Enom.

26. Blackshore's domain name management account with Enom is maintained on a

protected computer and access to the account should be restricted to only those persons that possess Blackshore's user name and password.

27. Blackshore recently noticed that the EQN.com domain name had been transferred from Enom to 22.cn, which is a common destination registrar for stolen domain names. *See, e.g., Du v. BSH.com et al.*, 17-cv-00698-LMB-MSN (E.D. Va.) (transfer of stolen domain name to 22.cn); *Intercontinental Data Communications Ltd. v. Doe et al.*, 16-cv-00613-LMB-JFA (E.D. Va.) (same); DomainGang, *Cache of 25 LLLL.com Domains Stolen from GoDaddy Account* (Oct. 10, 2015, 10:32 p.m.), <http://domaingang.com/domain-crime/cache-of-25-llll-com-domains-stolen-from-a-godaddy-account/> (describing transfer of stolen domain names to 22.cn); DomainGang, *Cybercrime Report: Four LLL.com Domains Reported as Stolen* (Nov. 11, 2015, 9:59 p.m.), <http://domaingang.com/domain-crime/cybercrime-report-four-llll-com-domains-reported-as-stolen/> (same).

28. A search of Blackshore's administrative e-mail account reveals that Blackshore never received a notification from Enom that the Defendant Domain Name was being transferred. Such a domain name transfer notification email is required by ICANN.

29. On information and belief, John Doe obtained unauthorized access to Blackshore's domain registrar account and manipulated the computer records to obtain the transfer of the Defendant Domain Name through an "account transfer" within Enom or other surreptitious manner intended to avoid detection by Blackshore.

30. On information and belief, John Doe prevented Blackshore from receiving electronic communications seeking approval for the transfer of the Defendant Domain Name and obtained unauthorized access to such electronic communications so as to approve the transfer.

31. When the Defendant Domain Name was transferred by John Doe without

authorization, the domain name registrant information was changed and the technical settings for the domain name were changed thereby disabling Blackshore's ability to control the domain name and associated website.

32. The registration and use of the Defendant Domain Name by John Doe are without authorization from Blackshore.

33. The Defendant Domain Name does not reflect the trademark or intellectual property rights of John Doe.

34. On information and belief, the Defendant Domain Name does not reflect the legal name of John Doe.

35. John Doe has not engaged in bona fide noncommercial or fair use of Blackshore's EQN.com trademark in a website accessible under the Defendant Domain Name.

36. John Doe provided material and misleading false contact information in the domain name registration when changing the registrant for the Defendant Domain Name from Blackshore.

37. John Doe transferred the Defendant Domain Name without authorization from Blackshore and thereby acquired a domain name which John Doe knew was identical to, and reflective of, Blackshore's EQN.com mark.

FIRST CLAIM FOR RELIEF (IN REM)
Violation of the Anticybersquatting Consumer Protection Act

38. Blackshore repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

39. Blackshore's EQN.com mark is distinctive and was distinctive prior to the time the Defendant Domain Name was transferred away from Blackshore without authorization and thereby unlawfully registered to John Doe.

40. The aforesaid acts by John Doe constitute registration, trafficking, and/or use of a domain name that is identical to Blackshore's EQN.com mark, with bad faith intent to profit therefrom.

41. The aforesaid acts constitute unlawful cyberpiracy in violation of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1).

42. The aforesaid acts have caused, and are causing, great and irreparable harm to Blackshore and the public. Unless permanently restrained and enjoined by this Court, said irreparable harm will continue. Thus, pursuant to 15 U.S.C. § 1125(d)(2)(D)(i) and 28 U.S.C. § 1655, Blackshore is entitled to an order transferring the Defendant Domain Name registration back to Blackshore.

SECOND CLAIM FOR RELIEF (IN REM)

Quiet Title

43. Blackshore repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

44. Blackshore has valid legal and equitable title to the Defendant Domain Name by virtue of its registration and ownership of the domain name since 2011.

45. The Defendant Domain Name was stolen from Blackshore and no subsequent registrant may acquire valid title to the domain name—whether or not any such registrant purports to be a bona fide purchaser.

46. Through control of the domain name, John Doe has asserted a claim to the Defendant Domain Name that impedes Blackshore's ownership and control of the domain name and constitutes a cloud on Blackshore's title to the domain name.

47. Blackshore is entitled to a declaration from the Court that it is the lawful owner and registrant of the Defendant Domain Name and that there are no other valid claims against the

title to the Defendant Domain Name.

THIRD CLAIM FOR RELIEF (IN PERSONAM)
Violation of the Computer Fraud & Abuse Act

48. Blackshore repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

49. John Doe: (a) knowingly and intentionally accessed Blackshore's domain name management account on a protected computer without authorization and thereby obtained information from the protected computer in a transaction involving an interstate or foreign communication (18 U.S.C. § 1030(a)(2)(C)); (b) knowingly and with an intent to defraud accessed Blackshore's domain name management account on a protected computer without authorization and obtained information from the computer, which John Doe used to further a fraud and obtain something of value (18 U.S.C. § 1030(a)(4)); and (c) intentionally accessed Blackshore's domain name management account on a protected computer without authorization, and as a result of such conduct caused damage and loss (18 U.S.C. § 1030(a)(5)(C)).

50. John Doe's unlawful actions have included causing the protected domain name registration records maintained in the district by VeriSign, Inc. to be altered so as to transfer control of Defendant Domain Name away from Blackshore.

51. Blackshore has suffered damages as a result of the conduct complained of herein and the loss of the Defendant Domain Name.

FOURTH CLAIM FOR RELIEF (IN PERSONAM)
Violation of the Electronic Communications Privacy Act

52. Blackshore repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

53. On information and belief, John Doe intentionally accessed without authorization electronic communications sent by the domain name registrar to Blackshore seeking Blackshore's approval for the transfer of the Defendant Domain Name.

54. On information and belief, John Doe obtained such electronic communications and/or prevented Blackshore's authorized access to such electronic communications while the communications were in electronic storage.

55. John Doe engaged in such actions with a knowing and/or intentional state of mind, and such actions constitute a violation of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707.

56. Blackshore has suffered damages including the loss of the Defendant Domain Name as a result of the conduct complained of herein and is entitled to injunctive relief, actual, statutory, and/or punitive damages, and attorney's fees under the Electronic Communications Privacy Act.

FIFTH CLAIM FOR RELIEF (IN PERSONAM)

Conversion

57. Blackshore repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

58. Blackshore is the owner of property rights in and to the Defendant Domain Name.

59. John Doe has wrongfully taken control of the Defendant Domain Name.

60. John Doe's wrongful exercise of dominion and control over the Defendant Domain Name deprives Blackshore of use and control of the Defendant Domain Name in violation of Blackshore's rights in and to the domain name.

61. To the extent that John Doe has subsequently transferred the Defendant Domain Name to a person or persons other than John Doe, such other person's wrongful exercise of

dominion and control over the Defendant Domain Name deprives Blackshore of use and control of the Defendant Domain Name in violation of Blackshore's rights in and to the domain name.

62. Blackshore has suffered damages including the loss of the Defendant Domain Name as a result of the conduct complained of herein and is entitled to injunctive relief, actual, statutory, and/or punitive damages, and/or attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Blackshore respectfully requests of this Court:

1. That judgment be entered in favor of Blackshore on its *in rem* claims under the Anticybersquatting Consumer Protection Act, 28 U.S.C. § 1655, and for quiet title against the res Defendant EQN.com.

2. That judgment be entered in favor of Blackshore on its *in personam* claims under the Computer Fraud and Abuse Act, the Electronic Communications Privacy Act, and for Conversion against Defendant John Doe.

3. That the Court order the Defendant Domain Name be returned to Blackshore through VeriSign, Inc.'s transfer of the domain name from the current domain name registrar to Blackshore's registrar of choice, Enom, Inc., and by Enom, Inc.'s change of the registrant back to Blackshore.

4. That the Court order an award of actual, statutory, and/or punitive damages, costs and reasonable attorney's fees; and

5. That the Court order an award to Blackshore of such other and further relief as the Court may deem just and proper.

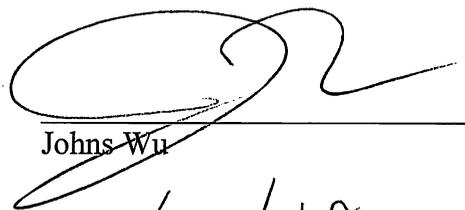
Dated: October 24, 2018

By: /s/ Attison L. Barnes, III /s/
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VERIFICATION

I, Johns Wu, President of Blackshore Properties, Inc., declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the facts contained in the foregoing Verified Complaint are true and correct.



Johns Wu

10/19/18

Date