

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

Alexandria Division

Yoshiki Okada,)
)
Plaintiff,)
)
v.)
)
John Doe,)
and)
eol.com,)
and)
fde.com,)
and)
jol.com,)
and)
nnn.com,)
and)
olp.com,)
and)
tang.com,)
and)
wok.com)
and)
wtv.com)
and)
zhang.com)
)
Defendants.)

Case No. 1:18-cv-01338

Verified Complaint

Comes Now the Plaintiff, Yoshiki Okada (hereinafter Okada), by and through his counsel, and files this complaint against John Doe (Defendant Doe) and <eol.com>, <fde.com>, <jol.com>, <nnn.com>, <olp.com>, <tang.com>, <wok.com>, <wtv.com>, and <zhang.com> (Defendant Domain Names).

I. Nature of The Suit

1. This is an action for 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.

2. The Plaintiff is seeking injunctive and other equitable relief as a result of the actions of the Defendant John Doe who somehow gained unauthorized access to the Plaintiff's domain name management system on a protected computer, and used this access to transfer control of the Defendant Domain Names from the Plaintiff's account and therefore disabled the Plaintiff's ability to use and control his domain names causing irreparable injury to the Plaintiff.

II. The Parties

3. The Plaintiff, Yoshiki Okada, is a Japanese citizen with a primary residence of 103, Tomodachi 4-Chome, Nada-Ku, Kobe, Japan 657-0035.

4. Upon information and belief John Doe is an individual, although his true identify is unknown as the defendant is using a privacy service and fictitious names to conceal his identity.

5. The Defendant Domain Names are all <.com> domain names for which the Registry, Verisign, Inc., is located at 21355 Ridgetop Circle, Lakeside III, Dulles, Virginia 20166 within this Court's judicial district.

6. The Plaintiff, upon information and belief, acquired <eol.com> on or about August 30, 2006, on January 22, 2016 renewed his registration to July 27, 2024 and has, since acquisition, used the domain in commerce. (See Exhibit 1.)

7. At some point on or about May 21, 2017 Defendant Doe somehow gained access to the Plaintiff's domain name management account and transferred <eol.com> away from the Plaintiff's control. The current WHOIS information for <eol.com> is blank for the name of the registrant listing only the state and country, Zhejiang, China. (See Exhibit 11.)

8. The Plaintiff, upon information and belief, acquired <fde.com> on July 5, 1997, on November 8, 2016 renewed his registration to July 4, 2018 and has, since acquisition, used the domain in commerce. (See Exhibit 2.)

9. At some point on or about May 11, 2018 Defendant Doe somehow gained access to the Plaintiff's domain name management account and transferred <fde.com> away from the Plaintiff's control. The current WHOIS information for <fde.com> list the registrant as "Registration Private" with a contact address of Domains by Proxy, LLC, 14455 N. Hayden Road, Scottsdale, Arizona 85260 with an email address of fde.com@domainsbyproxy.com. (See Exhibit 12.)

10. The Plaintiff, upon information and belief, acquired <jol.com> as the original registrant on October 24, 1997, on November 8, 2016 renewed his registration to October 23, 2025 and has, since acquisition, used the domain in commerce. (See Exhibit 3.)

11. At some point on or about September 11, 2017 Defendant Doe somehow gained access to the Plaintiff's domain name management account and transferred <jol.com> away from the Plaintiff's control. The current WHOIS information for <jol.com> lists the registrant as "Chenlilan" with the state and country of Jiangsu, China. (See Exhibit 13.)

12. Plaintiff, upon information and belief, acquired <nnn.com> on November 3, 1997, on January 22, 2016 renewed his registration to November 2, 2024 and has, since acquisition, used the domain in commerce. (See Exhibit 4.)

13. At some point on or about July 17, 2018 Defendant Doe somehow gained access to the Plaintiff's domain name management account and transferred <nnn.com> away from the Plaintiff's control. The current WHOIS information for <nnn.com> is blank but for the state and country, Zhejiang, China. (See Exhibit 14.)

14. The Plaintiff, upon information and belief, acquired <olp.com> on September 17, 2009, on November 8, 2016 renewed his registration to September 16, 2020 and has, since acquisition, used the domain in commerce. (See Exhibit 5.)

15. At some point on or about January 29, 2018 Defendant Doe somehow gained access to the Plaintiff's domain name management account and transferred <olp.com> away from the Plaintiff's control. The current WHOIS information for <olp.com> lists the registrant organization as Yang Sheng, of Shanxi, China but no other contact information. (See Exhibit 15.)

16. The Plaintiff, upon information and belief, acquired <tang.com> on October 24, 1997, on January 22, 2016 renewed his registration to October 23, 2019 and has, since acquisition, used the domain in commerce. (See Exhibit 6.)

17. At some point on or about May 9, 2018 Defendant Doe somehow gained access to the Plaintiff's domain name management account and transferred <tang.com> away from the Plaintiff's control. The current WHOIS information for <tang.com> is blank for the name of the registrant listing only Shejiang, China. (See Exhibit 16.)

18. The Plaintiff, upon information and belief, acquired <wok.com> on September 5, 1997, on November 8, 2016 renewed his registration to September 4, 2020 and has, since acquisition, used the domain in commerce. (See Exhibit 7.)

19. At some point on or about September 11, 2017 Defendant Doe somehow gained access to the Plaintiff's domain name management account and transferred <wok.com> away from the Plaintiff's control. The current WHOIS information for <wok.com> list the registrant as "chenlilan," Jiangsu, China. (See Exhibit 17.)

20. The Plaintiff, upon information and belief, acquired <wtv.com> on August 8, 2008, on April 20, 2017 renewed his registration to February 27, 2025 and has, since acquisition, used the domain in commerce. (See Exhibit 8.)

21. At some point on or about May 8, 2018 Defendant Doe somehow gained access to the Plaintiff's domain name management account and transferred <wtv.com> away from the Plaintiff's control. The current WHOIS information for <wtv.com> list the registrant as yan wen xiu with no further information. (See Exhibit 18.)

22. The Plaintiff, upon information and belief, acquired <zhang.com> on July 3, 1997, on January 22, 2016 renewed his registration to July 2, 2018 and has, since acquisition, used the domain in commerce. (See Exhibit 9.)

23. At some point on or about May 9, 2018 Defendant Doe somehow gained access to the Plaintiff's domain name management account and transferred <zhang.com> away from the Plaintiff's control. The current WHOIS information for <zhang.com> is blank for the name of the registrant listing only Zhejiang, China. (See Exhibit 19.)

24. Upon information and belief, based on the timing and methodology of the thefts, the Plaintiff believes that the same one individual is behind each of the thefts.

25. The Plaintiff manages his domain name portfolio through a secure domain name management account on a domain name management system.

26 Defendant Doe somehow gained unauthorized access to the Plaintiff's secure domain name management account on a protected computer system and transferred control of the Defendant Domain Names away from the Plaintiff.

27. Defendant Doe has concealed his true identity by leaving the name of the registrant blank, using false name(s) and using privacy protection to conceal his identity.

III. Jurisdiction and Venue

28. This actions arises out of Defendant Doe'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.

29. 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 Names pursuant to 15 U.S.C. § 1125(d)(2)(A) insofar as the registry for the <.com> domain names, Verisign, Inc., is located within this judicial district.

30. Venue is proper in this district pursuant to 15 U.S.C. § 1125(d)(2)(C) as the subject registry, Verisign, Inc. 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 subjects of the action reside in this judicial district.

31. Defendant John Doe directed the acts complained of towards the district and utilized instrumentalities in the district in that he gained unauthorized access to the Plaintiff's domain management account and associated computer records and thereafter, without authorization, caused the domain name registration records maintained by Verisign, Inc. for the Defendant Domain Names to be altered so as to transfer control of the Defendant Domain Names away from the Plaintiff.

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

IV. Notice

33. Pursuant to the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(aa), notice of this filing of this complaint is being sent to the Defendant at the postal addresses and email addresses provided on the current WHOIS records¹ as set forth above, along with a request to waive service pursuant to Federal Rule of Civil Procedures 4(d).

34. 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.

35. The Plaintiff's claim in the alternative 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).

¹ The Plaintiff notes that there is only one such address, for Defendant Domain Name <nnn.com> and that there are no other postal addresses to which notice may be sent.

36. Joinder of the Defendant Domain Names 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.

V. Factual Background

37. The Plaintiff acquired each of the Defendant Domain Names as set forth above, has owned the Defendant Domain Names since that time and has used each of the Defendant Domain Names in commerce since that date.

38. The Plaintiff is in the business of domain monetization and collects domain names for the purpose of turning internet traffic into monetary gain through the use of click traffic and/or resale. In addition, the Plaintiff has used the Defendant Domain Names for advertising services and email addresses over the years.

39. The Defendant Domain Names, all three letter <.com> domain names are extremely valuable and their loss has deprived the Plaintiff of both the income generated by the domain names as well as the ability to sell the domain names. The Defendant Domain Names are collectively worth at least \$500,000 and as much as \$2,000,000.

40. The Plaintiff has used each of the Defendant Domain Names in commerce since their acquisition and has common law rights in the names.

41. The Plaintiff controls his domain names through secure domain name management system.

42. The Plaintiff's domain name management system is maintained on a protected computer system and access to the account should be restricted to only that person with the Plaintiff's username and password.

43. Defendant Doe gained unauthorized access to the Plaintiff's domain name management system and took control of the Defendant Domain Names.

44. Defendant Doe used his unauthorized control of the Plaintiff's domain name management account to change the registration record for the Defendant Domain Names.

45. Defendant Domain Names <eol.com>, <fde.com>, <jol.com>, <nnn.com>, <olp.com>, <tang.com>, <wok.com>, <wtv.com> and <zhang.com> were transferred by Defendant Doe away from the Plaintiff's control.

46. Defendant Doe has taken control of the Defendant Domain Names with the intent to divert the substantial advertising revenue produced by the web sites associated with the Defendant Domain Names to himself.

47. Defendant Doe has, upon information and belief, taken control of the Defendant Domain Name with the intent to resell the Defendant Domain Names and has listed Defendant Domain Names <nnn.com>, <tang.com>, <wtv.com> and <kang.com>. for sale. (See Exhibits 24, 26, 28 and 29.)

48. Defendant Doe's registration and use of the Defendant Domain Names is without the Plaintiff's authorization.

49. Defendant Doe has no intellectual property rights in the Defendant Domain Names.

50. Defendant Doe provided misleading or incomplete contact information in the domain name registration when changing the registration for the Defendant Domain Names.

51. Defendant Doe's actions are in violation of these aforementioned rights of Plaintiff.

VI. Causes of Action

Count I
Claim for Declaratory Judgment

52. The Plaintiff repeats and realleges the previous paragraphs as if set forth in full. Plaintiff had registered each of the Defendant Domain Names as alleged above and has, since that time, maintained uninterrupted control over the Defendant Domain Names.

53. Defendant Doe's actions have taken control of the Defendant Domain Names from Plaintiff without authorization or permission.

54. 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)

55. The Plaintiff repeats and realleges the previous paragraphs as if set forth in full. The Plaintiff has owned the Defendant Domain Names for many years, has used them in commerce to generate substantial income and has common law rights in the marks.

56. Defendant Doe's actions constitute registration, trafficking, or use of a domain name that is identical to the Plaintiff's trademark, with bad faith intent to profit therefrom.

57. The Plaintiff, because of Defendant Doe's actions, is being prevented from using and exercising control over the Defendant Domain Names.

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

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

60. The Plaintiff, despite diligent inquiry, has been unable to obtain the accurate identity of a person subject to this Court's jurisdiction who would have been a defendant in a civil action pursuant to 15 U.S.C. § 1125(d)(2)(A)(i)(I).

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

62. The above described conduct by Defendant Doe has caused, and is causing, great and irreparable harm to the Plaintiff and the public, specifically the potential posting of improper, illegal, incorrect or otherwise harmful information on the web pages associated with its domain names. 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 Names to the Plaintiff.

Count III
Tortious Interference with Contractual Relationship

63. The Plaintiff repeats and realleges the previous paragraphs as if set forth in full. The Plaintiff properly entered into contracts with the registrar for the Defendant Domain Names before the Defendant Domain Names were stolen.

64. Defendant Doe has unlawfully taken control of the Defendant Domain Names, interfering with Plaintiff's lawful contract rights to the Defendant Domain Names.

65. 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 service contracts.

Count IV
Conversion

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

67. Defendant Doe has taken control of the Defendant Domain Names and is wrongfully exercising control and authority over the Defendant Domain Names.

68. The control and authority exercised by Defendant Doe deprives the Plaintiff of control and the income and business generated from the Defendant Domain Names.

69. Defendant Doe is wrongfully exerting dominion over the Plaintiff's property in denial of his rights.

Count V
Violation of the Computer Fraud and Abuse Act

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

71. Defendant Doe knowingly and intentionally accessed the Plaintiff's email systems on a protected computer without authorization and thereby obtained information from the protected computer in a transaction involving an interstate or foreign communication in violation of 18 U.S.C. § 1030(a)(2)(C).

70. Defendant Doe knowingly, and with intent to defraud, accessed the Plaintiff's domain management account on a protected computer without authorization and obtained information from that computer which Defendant Doe used to further a fraud and obtain something of value in violation of 18 U.S.C. § 1030(a)(4).

71. Defendant Doe intentionally accessed the Plaintiff's domain management system on a protected computer without authorization and as a result of such conduct caused damage and loss in violation of 18 U.S.C. § 1030(a)(5)(C).

72. The Plaintiff has suffered damages as a result of the conduct complained of and such conduct has caused a loss to the Plaintiff during a one-year period aggregating to at least \$5,000.

73. 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.

WHEREFORE, The Plaintiff respectfully requests of this court:

- I. That judgment be entered in favor of the Plaintiff on his claims for violation of the Anticybersquatting Consumer Protection Act; and
- II. That judgment be entered in favor of the Plaintiff on his claims for violation of the Computer Fraud and Abuse Act; and
- III. Enter an order declaring that Yoshiki Okada is the only person with any rights to the contracts controlling the Defendant Domain Names; and
- IV. Enter an order declaring that Defendant Doe does not have any rights to the Defendant Domain Names; and

V. Enter an order directing that the Defendant Domain Names be promptly transferred to the Plaintiff; and

VI. Enter an Order directing Verisign to promptly return control of the Defendant Domain Names to Yoshiki Okada and the registrar as directed by counsel for the Plaintiff; and

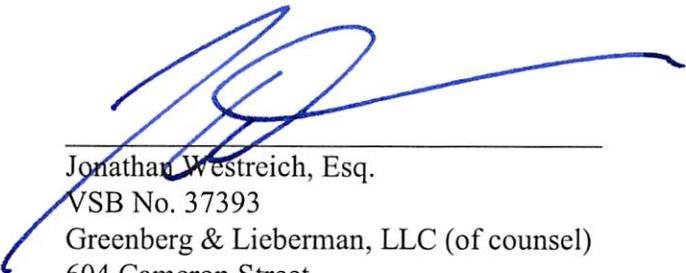
VII. Award the Plaintiff his fees and costs, including reasonable attorney fees, in connection with this action pursuant to 15 U.S.C. § 1117(a); and

VIII. That the Court grant such other relief to the Plaintiff as the Court deems just and proper.

Dated: October 26, 2018

Respectfully submitted,

Yoshiki Okada
By Counsel



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Counsel to the Plaintiff

VERIFICATION

I, Yoshiki Okada declare under penalty of perjury, pursuant to 28 U.S.C. 1746, that I am the original owner of each of the Defendant Domain Names: <eol.com>, <fde.com>, <jol.com>, <nnn.com>, <olp.com>, <tang.com>, <wok.com> and <zhang.com> and the facts contained in the foregoing verified complaint are true and correct to the best of my knowledge, information and belief.

Dated October 9, 2018

Y. Okada
YOSHIKI OKADA