

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

CODE-TO-LEARN FOUNDATION D/B/A
SCRATCH FOUNDATION
7315 Wisconsin Avenue, 4th Floor
West Bethesda, MD 20814,

Plaintiff,

v.

SCRATCH.ORG, an Internet domain name,

Defendant.

Civil Action No. _____

VERIFIED COMPLAINT

Plaintiff Code-To-Learn Foundation d/b/a Scratch Foundation, by counsel, alleges as follows for its *in rem* Complaint against Defendant Scratch.org (hereinafter the “Domain Name”).

NATURE OF THE SUIT

1. This is an *in rem* action for cybersquatting under the Federal Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

PARTIES

2. Code-To-Learn Foundation d/b/a Scratch Foundation (hereinafter “Scratch Foundation”) is a 501(c)(3) nonprofit corporation organized and existing under the laws of Delaware with a principal business address of 7315 Wisconsin Avenue, 4th Floor, West Bethesda, MD 20814.

3. The Scratch Project was initiated in 2002 by the Lifelong Kindergarten group at the Media Lab of the Massachusetts Institute of Technology. The SCRATCH programming

language and online community were publicly launched in 2007. SCRATCH enables children (especially ages 8 to 16) to code their own interactive games, stories, and animations -- and share their creations in an online community. SCRATCH is available for free and runs on multiple technology platforms.

4. Scratch.org is an internet domain name which, according to records in the WHOIS database of domain name registrations, is registered by the registrar “Dynadot, LLC” to an unknown registrant. A copy of the domain name registration record for Scratch.org is attached as Exhibit A showing that Dynadot is concealing the registrant of the Domain Name.

JURISDICTION AND VENUE

5. This is a civil action for federal cybersquatting in violation of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

6. This Court has original jurisdiction under 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has *in rem* jurisdiction over the Defendant Domain Name pursuant to 15 U.S.C. § 1125(d)(2)(A). *In rem* jurisdiction is appropriate under 15 U.S.C. § 1125(d)(2)(A)(ii) because Plaintiff 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 Scratch Foundation, 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) because the registrar is concealing the identity of the registrant.

8. Pursuant to 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(aa), Scratch Foundation will give notice of the violations of Scratch Foundation’s rights, and Scratch Foundation’s intent to proceed *in rem*, to the postal and e-mail addresses set forth in the registration records for the

Defendant Domain Name.

9. Venue is proper in this District pursuant to 15 U.S.C. § 1125(d)(2)(C) in that the .ORG domain name registry operator, Public Interest Registry, is situated in this judicial district, and the Defendant Domain Name is a .ORG domain name.

SCRATCH FOUNDATION'S RIGHTS

10. SCRATCH provides an application allowing children to create their own interactive stories, games, and animations on their computer and share them with the online community by uploading them to the SCRATCH website.

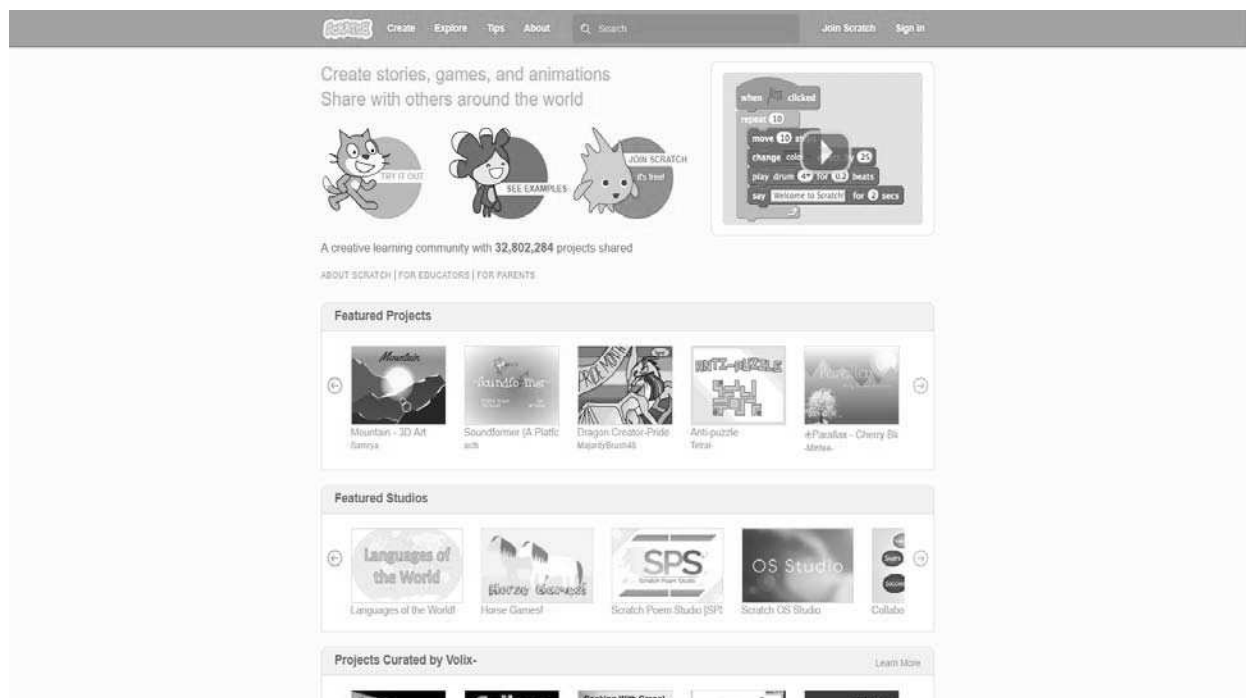
11. SCRATCH is presently the world's largest coding platform for kids and is available worldwide, for free. Since 2014, the Scratch Foundation has provided nearly 5 million dollars in funding to the SCRATCH Project.

12. Through these efforts and the generous financial support of its donors, SCRATCH reaches millions of kids around the world across 196 countries and in more than 70 different languages.

13. Scratch Foundation provides these services through websites and services available at, *inter alia*, ScratchFoundation.org:



and Scratch.mit.edu



14. The SCRATCH service was initially launched for public use on May 15, 2007 under the auspices of the Massachusetts Institute of Technology's ("MIT")'s Lifelong Kindergarten Group at the MIT Media Lab.

15. The SCRATCH website receives more than 200 million unique visitors per year.

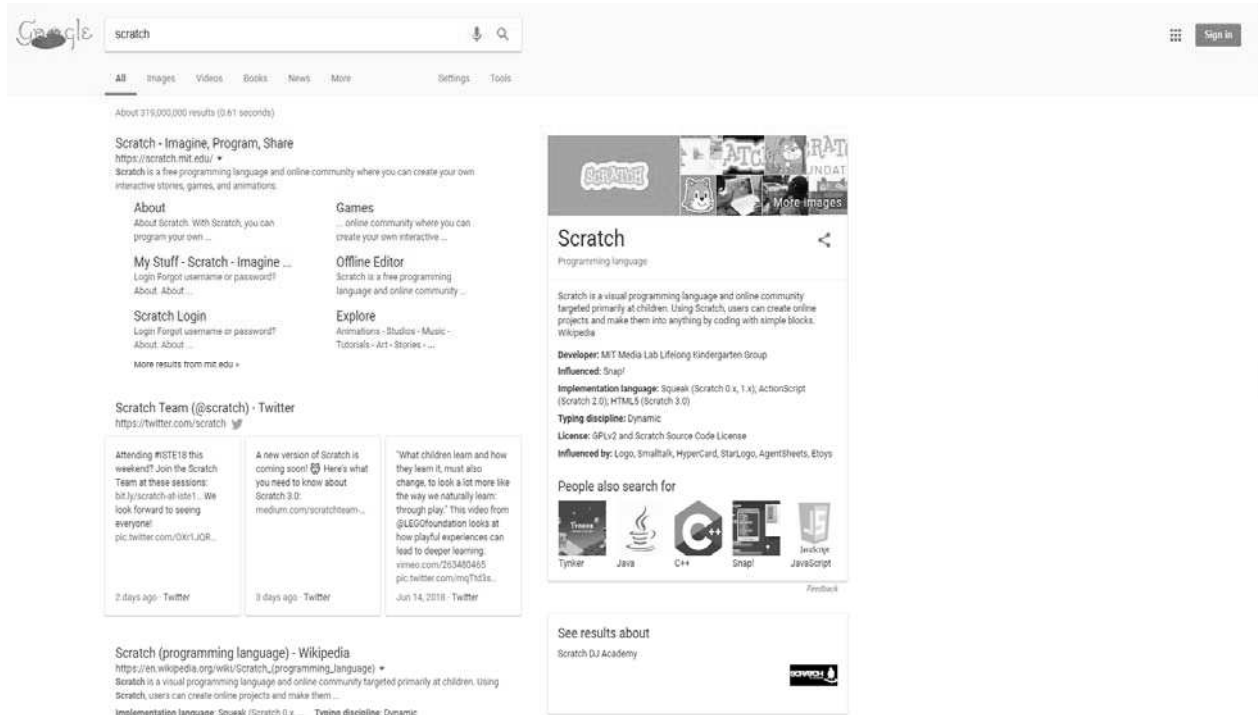
16. Children can also access the SCRATCH programming language via a stand-alone, downloadable application (especially useful in situations with poor connectivity). The stand-alone application is downloaded more than one million times each month.

17. The Scratch Foundation has supported a collection of other SCRATCH-related products and events, including ScratchJr (designed for younger children, ages 5-7), ScratchEd (a community for educators using Scratch), Scratch Day (an annual event for families and children, at more than 1000 locations around the world), and Scratch Conferences (events where educators and developers gather to share ideas about Scratch).

18. As of December 2018, there were more than 36 million projects shared, 34

million users registered, and 175 million comments posted by Scratch users.

19. The widespread fame of the Scratch Foundation's SCRATCH mark is also shown by the fact that a Google search for the word "scratch" returns a listing for the SCRATCH community website as the first listing and the entire first page of listings refer to the Scratch Foundation's SCRATCH.



20. As a result of the widespread promotion of the SCRATCH mark for more than a decade, consumers immediately associate the SCRATCH mark with the Scratch programming language and online community.

21. Consumers have come to distinguish and recognize the legitimacy of Scratch Foundation's products and services as a result of the use and widespread promotion of the SCRATCH mark, and the SCRATCH mark is entitled to common law trademark rights under U.S. federal law.

22. The SCRATCH mark is also registered on the Principal Trademark Register of

the U.S. Patent and Trademark Office under registration number 5053133, and Scratch Foundation is the owner by assignment of this registration. *See* Exhibit B. Scratch Foundation filed a memorialization of its assignment with the U.S. Patent and Trademark Office on December 13, 2018, and is presently awaiting recordation of that assignment.

23. Scratch Foundation's federal registration for the SCRATCH mark is *prima facie* evidence of the validity of the mark, of Scratch Foundation's ownership of the mark, and of Scratch Foundation's exclusive right to use the mark in U.S. commerce.

**UNLAWFUL REGISTRATION, USE AND/OR TRAFFICKING
OF THE DOMAIN NAME**

24. The Defendant Domain Name is Scratch.org, which is merely Scratch Foundation's registered SCRATCH mark with the .ORG top-level domain.

25. The use of the SCRATCH mark within the Defendant Domain Name and/or associated website is without authorization from Scratch Foundation.

26. Upon information and belief, the registrant of the Defendant Domain Name does not have any trademark or other intellectual property rights in the Defendant Domain Name.

27. Upon information and belief, the registrant never made bona fide noncommercial or fair use of the SCRATCH Mark in a site accessible under Defendant Domain Name.

28. Upon information and belief, the registrant of the Defendant Domain Name may possess an intention to divert consumers from the Scratch Foundation's online locations to a site accessible under the Defendant Domain Name that could harm the goodwill represented by the SCRATCH Mark, either for commercial gain or with the intent to tarnish or disparage the SCRATCH Mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site(s) accessible under the Defendant Domain Name.

29. Upon information and belief, the registrant of the Defendant Domain Name could

configure the domain name to confuse and/or deceive young children who are seeking the Scratch Foundation's products and services through the Scratch.org domain.

30. As explained in further detail *infra*, the registrant of the Defendant Domain Name has made multiple offers to sell Defendant Domain Name to Scratch Foundation at prices many times greater than the appraised value of Defendant Domain Name, evidencing registrant's offer to transfer, sell, or otherwise assign the Defendant Domain Name to the mark owner or any third party for financial gain without having used, or having an intent to use, the Defendant Domain Name in the bona fide offering of any goods or services.

31. When one attempts to access the Scratch.org domain, the following content is displayed, which includes an offer to sell advertising space on the Scratch.org website:

INSPYR

If you are experiencing this message, you've reached this message either because the web page has changed, there has been a server modification or the site is coming soon.

If you're interested in ad options on this web site [Contact Us](#) for more information.

It is possible you have reached this landing page for the following:

The IP address has changed.

The IP address for this domain may have changed recently. Check your DNS settings to verify that the domain is set up correctly. It may take 8-24 hours for DNS changes to propagate. It may be possible to restore access to this site by [following these instructions](#) for clearing your dns cache.

There has been a server misconfiguration.

You must verify that your hosting provider has the correct IP address configured for your Apache settings and DNS records. A restart of Apache may be required for new settings to take affect.

The site may have moved to a different server.

The URL for this domain may have changed or the hosting provider may have moved the account to a different server.

[Contact Us.](#)

32. Upon information and belief, the registrant of the Defendant Domain Name has not engaged in a bona fide offering of any good or services in connection with SCRATCH mark in the website accessible under the Domain Name.

33. The website displayed by the registrant of the Defendant Domain Name is likely

to be confused with the legitimate online locations for SCRATCH at Scratch.mit.edu and ScratchFoundation.org.

34. The website displayed by the registrant of the Defendant Domain Name is likely to cause confusion, or to cause mistake, or to deceive the relevant public, including children, as to the source or sponsorship of that website, and to mislead the public into believing that such website emanates from, is approved or sponsored by, or is in some way associated or connected with, Scratch Foundation.

35. Upon information and belief, the registrant of the Defendant Domain Name may have registered and/or re-registered the Domain Name with intent to divert consumers away from Scratch Foundation's legitimate online locations, for commercial gain, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the Defendant Domain Name and the site displayed through use of the Defendant Domain Name.

36. Upon information and belief, the registrant of the Defendant Domain Name provided material and misleading false contact information when applying for and maintaining the registration of the Defendant Domain Name in that the person or entity identified as the registrant of the Defendant Domain Name is not the true owner of the Domain Name.

37. The registrant of Scratch.org is unknown because the registrar, Dynadot, LLC is concealing such information.

38. Upon information and belief, the use of the SCRATCH mark in the Defendant Domain Name does not constitute the registrant's individual name, or the individual name of anyone in privity with registrant, or of a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of registrant, or their geographic origin.

39. On February 18, 2015, Scratch Foundation's Executive Director offered to

acquire the Scratch.org domain for a price in the range of \$1,000 - \$5,000.

40. On this date, the Scratch.org domain name was registered to “Contact Privacy Inc. Customer 0129733617”, with the registrar Tucows, and a registration expiration date of October 30, 2015.

41. On March 18, 2015, the Scratch.org domain name was transferred from the registrar Tucows to the registrar Dynadot creating a new registration.

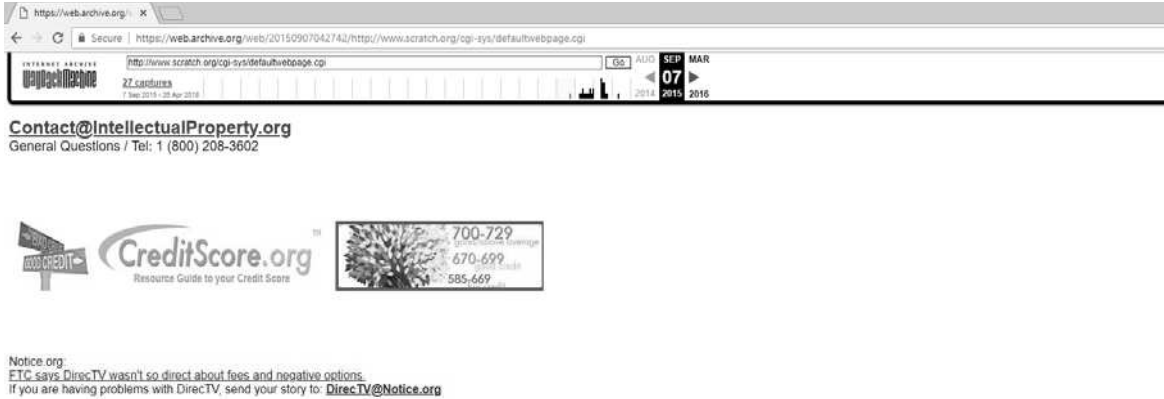
42. On this date, the registrant of the Scratch.org domain name became “Super Privacy Service c/o Dynadot” with a registration expiration date of October 30, 2018.

43. Dynadot has been the named Respondent in dozens of proceedings under ICANN’s Uniform Domain Name Dispute Resolution Policy (UDRP) due to its refusal to identify its customers who are the owners of domain names that were found to have been registered and used in bad faith in violation of the UDRP.

44. On April 24, 2015, the registrant responded to the Scratch Foundation’s inquiry with a demand for \$450,000.00 to transfer the Scratch.org domain name to the Scratch Foundation.

45. The Scratch Foundation responded to this demand by stating to the party communicating with the registrant *inter alia* “The \$450,000 is a ridiculously high amount. We are a nonprofit that makes a free online programming platform available to young people.”

46. Shortly after this exchange, and at least as of September 7, 2015, the registrant of Scratch.org configured the domain name to display advertisements for credit repair services which, on information and belief, provided the registrant with compensation when the advertisement(s) were “clicked” by site visitors. Following is a screen capture of the Scratch.org site taken on September 7, 2015 by the Internet Archive:



47. On June 15, 2017, the Scratch Foundation offered \$10,000 to acquire the Scratch.org domain name.

48. On June 27, 2017, the registrant responded with a demand for \$650,000 to transfer the domain name to the Scratch Foundation.

49. As of June 21, 2018, the appraised value of the Scratch.org domain name is \$880. See Exhibit C.

50. On information and belief, the current registrant's exorbitant monetary demands are based on the Scratch Foundation's SCRATCH trademark.

51. The attempts to sell the Scratch.org domain to Scratch Foundation for over 700 times the domain's appraised value without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services indicates bad faith registration, re-registration, use, and/or trafficking of the domain.

COUNT ONE:
(Violation of the Federal Anti-Cybersquatting Consumer Protection Act)

52. Scratch Foundation repeats and realleges each and every allegation set forth in the

foregoing paragraphs, as though fully set forth herein.

53. Scratch Foundation's federally registered SCRATCH mark is famous and/or distinctive and was famous and/or distinctive prior to the time of registration and/or re-registration of the Defendant Domain Name.

54. The aforesaid acts by the registrant of the Defendant Domain Name constitute registration, re-registration, maintenance, trafficking in, and/or use of a domain name that is confusingly similar to the Scratch Foundation's SCRATCH mark, with bad faith intent to profit therefrom.

55. In light of the concealment of the identity of the owner of the Defendant Domain Name, Scratch Foundation is not able to obtain *in personam* jurisdiction over the registrant of the Defendant Domain Name or any other person who would have been a defendant in a civil action under 15 U.S.C. § 1125(d)(1)(A).

56. Scratch Foundation, 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).

57. The aforesaid acts by the registrant of the Domain Name constitutes unlawful cyberpiracy in violation of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1).

58. The aforesaid acts have caused, and are causing, great and irreparable harm to Scratch Foundation and the public. The harm to Scratch Foundation includes harm to the value and goodwill associated with the SCRATCH mark that money cannot compensate. 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), Scratch Foundation is entitled to an order transferring the Defendant Domain Name registration to Scratch Foundation.

PRAYER FOR RELIEF

WHEREFORE, Scratch Foundation respectfully requests of this Court:

1. That judgment be entered in favor of Scratch Foundation on its claim of cybersquatting.
2. That the Court order the Defendant Domain Name be transferred to Scratch Foundation through transfer by Public Interest Registry of the Defendant Domain Name from the current domain name registrar to Scratch Foundation's domain name registrar of choice and by such registrar's change of the registrant to Scratch Foundation.
3. That any other domain name(s) registered by the registrants of the Defendant Domain Name that resemble or include the SCRATCH mark be transferred to Scratch Foundation.
4. That the Court order an award of costs and reasonable attorney's fees incurred by Scratch Foundation in connection with this action pursuant to 15 U.S.C. § 1117(a); and
5. That the Court order an award to Scratch Foundation of such other and further relief as the Court may deem just and proper.


Dated: January 17, 2019

By: /s/ Attison L. Barnes, III /s/
Attison L. Barnes, III (VA Bar No. 30458)
David E. Weslow (*for pro hac admission*)
Adrienne J. Kosak (VA Bar No. 78631)
WILEY REIN LLP
1776 K St. NW
Washington, DC 20006
(202) 719-7000 (phone)
(202) 719-7049 (fax)
abarnes@wileyrein.com

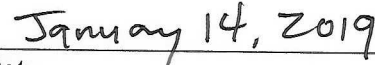
*Counsel for Plaintiff
Code-To-Learn Foundation
d/b/a Scratch Foundation*

VERIFICATION

I, Mitchel Resnick, Chair of Code-To-Learn Foundation d/b/a Scratch Foundation,
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.



Mitchel Resnick



Date