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2 NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7
8 **FOR THE DISTRICT OF ARIZONA**

9 Yoyo.Email, LLC

10 Plaintiff,

11 v.

12 Playinnovation, Ltd.

13
14 Defendant.

No. CV-14-01922-PHX-JJT

DECLARATORY JUDGMENT

15 At issue is the parties' Consent Motion for Declaratory Judgment (Doc. 16).
16 Upon review of the Motion and the record, the Motion (Doc. 16) is granted, and
17 the Declaratory Judgment proposed by the parties is entered, as follows:

18 1. Plaintiff filed a complaint for Declaratory Judgment on August 29,
19 2014 requesting, among other things, a declaration of rights in the domain name
20 <playinnovation.email> ("subject domain name") purchased, registered and owned
21 by Plaintiff on or about July 8, 2014 and deleted from Plaintiff's account with
22 Registrar GoDaddy.com, LLC ("GoDaddy") at the request of Defendant on
23 allegations of cybersquatting under the Uniform Rapid Suspension System
24 ("URS") and Uniform Domain Name Dispute Resolution Policy ("UDRP").

25 2. Plaintiff brought this declaratory judgment action seeking, among
26 other things, a declaration by this Court that its business model as detailed in its
27 August 29, 2014 Complaint was lawful; that the business model as described did
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1 not violate the UDRP, Anti-Cybersquatting Consumer Protection Act or the
2 Lanham Act.

3 3. Plaintiff's August 29, 2014 Complaint (Doc. 1) is hereby incorporated
4 by reference.

5 4. On October 16, 2014 counsel for Defendant Playinnovation accepted
6 service of process for Defendant.

7 5. Defendant has reviewed the Complaint.

8 6. Defendant has reviewed the Complaint and discussed the allegations
9 therein and settlement of the claims asserted therein with Plaintiff.

10 7. After such discussions, the parties, with no admission of liability by
11 any party, agree to the entry of this Declaratory Judgment pursuant to the terms
12 herein.

13 Accordingly,

14 A. **WHEREFORE**, in view of the foregoing, it is hereby **ORDERED**,
15 **ADJUDGED AND DECREED** that: Plaintiff Yoyo.Email, LLC is a limited
16 liability company of the United Kingdom having its principal place of business at
17 38 Market Square, Toddington, Dunstable, Bedfordshire LU5 6BS, United
18 Kingdom.

19 B. Defendant Playinnovation, Ltd. is a limited company of the United
20 Kingdom having its principal place of business at 26 Chase Road, Park Royal,
21 NW10 6BB, United Kingdom.

22 C. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 2201 and
23 2202.

24 D. This Court has personal jurisdiction over Defendant by virtue of its
25 stipulation to the personal jurisdiction of this Court when it filed a Uniform Rapid
26 Suspension (URS) Complaint against Plaintiff wherein Defendant agreed to the
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1 jurisdiction of the registrar of <playinnovation.email>, which is GoDaddy.com,
2 LLC, whose principal place of business is Scottsdale, Arizona.

3 E. Plaintiff has a good faith intent to register, use, and traffic
4 <playinnovation.email>.

5 F. Plaintiff does not have a bad faith intent to profit from the registration,
6 use or trafficking of the subject domain name.

7 G. Plaintiff's legitimate purpose seeking to certify the sending and
8 receipt of emails, as described in the Complaint, does not evidence a bad-faith
9 intent to profit from the "registration, use or trafficking" of a domain name.

10 H. Plaintiff has not made any use of <playinnovation.email> as of the
11 date of this Judgment.

12 I. Plaintiff's intended use of <playinnovation.email> as set forth in the
13 Complaint is not trademark use.

14 J. Plaintiff's intended use of <playinnovation.email> as described in the
15 Complaint is not a violation of the Anti-Cybersquatting Consumer Protection Act
16 (ACPA), 15 U.S.C. § 1125(d) *et seq.*, the Lanham Act, 15 U.S.C. § 1051 *et seq.*,
17 the ICANN URS and UDRP policy or other law.

18 K. The domain name <playinnovation.email> shall be moved from
19 suspension and/or lock at the Registrar GoDaddy and restored to Plaintiff's
20 GoDaddy Registrant Account with full control rights and privileges. Plaintiff shall
21 include a disclaimer in its "Terms of Use" on the website <YOYO.email> and any
22 home or landing page associated with <playinnovation.email>, which states,
23 "YOYO.email is an independent certified email service and not affiliated with or
24 approved by Playinnovation, Ltd."

25 L. Plaintiff shall include a disclaimer in the metadata for all email
26 transmitted through <playinnovation.email> which states, "The domain name
27 <playinnovation.email> is part of an independent, certified email service that is not
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1 affiliated with or approved by Playinnovation Ltd. of London, England
2 [<http://www.playinnovation.co.uk/>].”

3 M. Plaintiff’s use of <playinnovation.email> shall be limited to:

- 4 a. Use as a non-public, back-end email server used to link
- 5 multiple email servers.
- 6 b. Use to track, record, document, or verify email communication.
- 7 c. Use only by an individual or entity whose corporate or trade
- 8 name is or incorporates “playinnovation.”

9 N. This Court shall retain jurisdiction for enforcement of this Judgment.

10 O. Each party in this action shall bear its own attorney’s fees and costs.

11 This Judgment resolves the last pending claim between these parties. As
12 such, the Clerk is directed to administratively close this case.

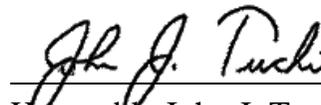
13 APPROVED AS TO FORM AND SUBSTANCE:

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17 /s/ Enrico Schaefer
18 ENRICO SCHAEFER
19 (MI Bar No. P43506)
20 Counsel for Plaintiff

21 /s/ Ken M. Motolenich-Salas (with permission)
22 KEN M. MOTOLENICH-SALAS
23 (AZ Bar No. 027499)
24 Counsel for Defendant

25 Dated this 5th day of November, 2014.

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Honorable John J. Tuchi
United States District Judge