



**TABLE OF CONTENTS**

	<u>Page</u>
1.0 INTRODUCTION .....	1
2.0 PLAINTIFF’S STATEMENT OF UNDISPUTED MATERIAL FACTS .....	2
3.0 SUMMARY JUDGMENT STANDARD .....	5
4.0 ARGUMENT .....	5
4.1 PLAINTIFF’S TRADEMARK IS PRESUMPTIVELY VALID .....	5
.....	
4.1.1 Acquired Distinctiveness Need Not Be Considered .....	6
4.1.2 Defendant’s Case is Insufficient to Overcome Presumptive Validity ....	7
4.1.3 Defendant’s Affirmative Defenses Should Be Summarily Disposed Of ..	8
4.2 REGISTRATION OF THE DISPUTED DOMAIN .....	9
4.2.1 OWV Is the Registrant of the Disputed Domain .....	10
4.2.2 The Disputed Domain Is Identical to Plaintiff’s Mark .....	10
4.3 BAD FAITH INTENT TO PROFIT .....	10
4.3.1 OWV Seeks Only to Profit From Use of the MYSCHOOL Mark Through Third-Party Advertising and Sale of the Disputed Domain .....	12
4.4 PLAINTIFF’S MARK IS ENTITLED TO A PRESUMPTION OF VALIDITY AND DEFENDANT CANNOT ASSERT ITS DISMISSED COUNTERCLAIMS FOR INVALIDITY .....	14
4.5 ATTORNEY FEES .....	15
5.0 CONCLUSION .....	15

**TABLE OF AUTHORITIES**

Cases

<i>Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.</i> , 2001 U.S. Dist. LEXIS 16057 at *5 (W.D. Va. Oct. 2, 2001)	9
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 248 (1986)	5
<i>Barcelona.com, Inc. v. Excelentísimo Ayuntamiento De Barcelona</i> , 330 F.3d 617, 623 (4th Cir. 2003)	7
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 322 (1986)	5, 9
<i>Eurotech, Inc. v. Cosmos European Travels Aktiengesellschaft</i> , 213 F.Supp.2d 612, 617 (E.D.Va. 2002)	7
<i>Front Royal &amp; Warren County Industrial Park Corp. v. Town of Front Royal</i> , 865 F.2d 77, 78 (4th Cir. Va. 1989)	9
<i>Harrods Ltd. v. Sixty Internet Domain Names</i> , 110 F. Supp. 2d 420 (E.D. Va. 2000)	13
<i>Lamparello v. Falwell</i> , 420 F.3d 309, 319 (4th Cir. 2005)	10, 13
<i>Lumber Liquidators, Inc. v. Stone Mt. Carpet Mills, Inc.</i> , No. 3:08-cv-573, 2009 U.S. Dist. LEXIS 59388, at *16 (E.D. Va. July 10, 2009)	6
<i>March Madness Athletic Ass'n L.L.C. v. Netfire, Inc.</i> , 162 F. Supp. 2d 560, 573 (N.D. Tex. 2001)	12
<i>Pizzeria Uno Corp. v. Temple</i> , 747 F.2d 1522, 1529 (4th Cir. 1984)	6, 7
<i>Sara Lee Corp. v. Kayser Roth Corp.</i> , 81 F.3d 455, 464 (4th Cir. 1996)	7
<i>Sport's Farm L.L.C. v. Sportsman's Market, Inc.</i> , 202 F.3d 489, 499 (2d Cir. 2000)	12
<i>Retail Services v. Freebies Publishing</i> , 247 F.Supp.2d 822, 828 (E.D. Va. 2003)	8
<i>Resorts of Pinehurst, Inc. v. Pinehurst Nat'l Corp.</i> , 148 F.3d 417 (4th Cir. 1998)	6
<i>Sallen v. Corinthians Licenciamentos LTDA</i> , 273 F.3d 14, 27 (1st Cir. 2001)	8
<i>Teaching Co. v. Unapix Entm't, Inc.</i> , 87 F. Supp. 2d 567, 575-576 (E.D. Va. 2000)	7
<i>Virtual Works, Inc. v. Volkswagen of Am., Inc.</i> , 238 F.3d 264, 270 (4th Cir. 2001)	10
<i>Volkswagen AG v. Valkswagentalk.com</i> , 584 F. Supp. 2d 879 (E.D. Va. 2008)	15

*Washington Metro. Area Transit Auth. v. Fleischman*, 1997 U.S. App. LEXIS 10560 (4th Cir. Md. May 8, 1997) 9

*Waste Mgmt. Holdings v. Gilmore*, 252 F.3d 316, 347 (4th Cir. Va. 2001) 9

Statutes

15 U.S.C. §§ 1057(a) - (b) 5  
15 U.S.C. § 1125(d)(1)(B)(i)(I - IX) 18  
15 U.S.C. 1072 12  
16 U.S.C. § 1125(d) 12, 13  
15 U.S.C. § 1064 22  
15 U.S.C. § 1117(a) 24

Federal Rules

Rule 56(c) 8  
Rule 12(f) 9

Other Authorities

4 *McCarthy on Trademarks* at 32-163. 6

## 1.0 INTRODUCTION

The present case presents a simple cybersquatting matter. The material facts are not disputed. The Plaintiff is the owner of a valid and subsisting registered US trademark on MYSCHOOL (Reg. No. 3568160) (the “Mark”), issued in 2009 after the US Patent and Trademark Office (USPTO) determined the Mark was suggestive, not descriptive, and thus inherently distinctive. The *res* underlying this *in rem* cybersquatting action <myschool.com> (the “Disputed Domain”) is identical to the Mark and was registered by the Defendant in March of 2013 – well after the Plaintiff accrued trademark rights. OWV has never used the Disputed Domain for anything other than attempting to sell the *res* and for generating cost-per-click (i.e., pay-per-click) revenue from advertisements of third-parties on a generic landing page to which the Disputed Domain resolves, including Plaintiff’s competitors. No use of the Disputed Domain in connection with any product or service has ever been made by OWV.

The counterclaims attacking the validity of the Mark were voluntarily dismissed by the registrant Original Web Ventures (OWV) on June, 30 2015 [Dkt No. 67] so OWV could avoid submitting itself to US jurisdiction, including counterclaims seeking to cancel or invalidate the trademark as being descriptive or secured through fraud. Plaintiff’s Mark is presumptively valid.

Confusingly similarity is self-manifest and and bad faith intent is evidenced from the facts and analysis below. In short, the case is ripe for disposition on summary judgment.

**2.0 PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS**

1. The Plaintiff is the owner of a valid and subsisting US trademark in MYSCHOOL, which issued in 2009 and has been owned by Plaintiff since. (Affidavit of Joseph Carpenter attached hereto as **Exhibit A** (“Carpenter Aff.”) ¶ 2; *see also* Record of Plaintiff’s MYSCHOOL Trademark Registration (Reg. No. 3568160) (the “Mark”) attached as **Exhibit B** hereto; *see also* Transcript of Deposition of Joseph L. Carpenter attached hereto as **Exhibit O** (August 13, 2015) (“Carpenter Depo. Tr.”) 235:3 – 10).
2. OWV is a legal entity in Canada which registered the Disputed Domain <myschool.com>. (*See* Defendant’s Responses to Plaintiff’s Second Set of Requests for Admissions attached hereto as **Exhibit C** at 2 (Requests 38 – 39); *see also* Answer ¶ 8 [Dkt No. 7]).
3. The Disputed Domain was registered by Original Web Ventures (OWV) between March 1, 2013 and March 14, 2013. (*See* Transcript of Deposition of Yonatan Belousov attached hereto as **Exhibit D** (August 14, 2015) (“Belousov Depo. Tr.”) 47:8-15; Counterclaims ¶ 13 [Dkt No. 7]; *see also* Defendant’s Responses to Plaintiff’s First Set of Interrogatories attached hereto as **Exhibit E** at 5 (Response 9) (claiming a registration date for the Disputed Domain of March 14, 2013)).
4. [REDACTED]
5. OWV is wholly owned by Yonatan Belousov, a resident of Canada, who makes his living primarily buying and selling these domain names as OWV’s only employee. (Belousov Depo. Tr. 8:12-17 and 15:2-10).
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. OWV was found to be cybersquatting in all previous UDRP cases filed against it prior to the ongoing cybersquatting dispute between the parties. These UDRP disputes, which

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<sup>1</sup> [REDACTED]

OWV lost, include *Grisoft, s.r.o. v. Original Web Ventures Inc.*, WIPO Case No. D2006-1381 (the “Grisoft Case”); and (ii) *ADAC e.V. v. Domain Administrator, Original Web Ventures Inc.*, WIPO Case No. D2013-0411 (the “ADAC Case”); and *Krea Icerik Hizmetleri Ve Produksiyon Anonim Sirketi v Domain Administrator / Original Web Ventures Inc.*, NAF Case No. 1489266 (the “Krea Icerik Case”). The decisions in these cases are attached hereto respectively as **Exhibit H<sup>2</sup>**, **Exhibit I<sup>3</sup>** and **Exhibit J<sup>4</sup>**, and include: *Grisoft, s.r.o. v. Original Web Ventures Inc.*, WIPO Case No. D2006-1381; and (ii) *ADAC e.V. v. Domain Administrator, Original Web Ventures Inc.*, WIPO Case No. D2013-0411; and in *Krea Icerik Hizmetleri Ve Produksiyon Anonim Sirketi v Domain Administrator / Original Web Ventures Inc.*, NAF Case No. 1489266. (Belousov Depo. Tr. 125:8 – 128:22).

11. [REDACTED]
12. OWV had constructive notice of Plaintiff’s Mark when it registered the Disputed Domain in 2013. (Judicial Notice).<sup>5</sup>
13. [REDACTED]

<sup>2</sup> <http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-1381.html>

<sup>3</sup> <http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2013-0411>

<sup>4</sup> <http://www.adrforum.com/domaindecisions/1489266.htm>

<sup>5</sup> 15 U.S.C. 1072 (“Registration of a mark on the principal register provided by this Act or under the Act of March 3, 1981, or the Act of February 20, 1905, shall be constructive notice of the registrant's claim of ownership thereof.”).

14. [REDACTED]
15. OWV's single officer and owner Yonatan Belousov has been previously banned from one or more online fora for "falsifying information & falsifying impressions" including <bannergomlm.com> as manifest by the screenshots attached hereto as **Exhibit L**. (Carpenter Aff. ¶ 4).
16. [REDACTED]
17. Since registering the Disputed Domain, OWV has used the Disputed Domain only to try and sell the domain for a profit, [REDACTED]  
[REDACTED] (See screenshots of OWV's website at the Disputed Domain attached hereto as **Exhibit M** (showing advertisements to Plaintiff's competitors including Classmates.com, a screenshot of which is attached hereto as **Exhibit N**); see also Carpenter Aff. ¶ 5 (authenticating screenshots); see also Belousov Depo. Tr. 19:11 – 19 (admitting putting third-party ads on the website) and Belousov Depo. Tr. 105:3 – 6 [REDACTED])
18. All of Defendant's counterclaims were voluntarily dismissed from this action on June 30, 2015 [Dkt No. 67] including claims for trademark invalidity and trademark fraud. There are no claims pending for invalidity or cancellation of Plaintiff' Mark. (Judicial Notice).



### **3.0 SUMMARY JUDGMENT STANDARD**

Summary judgment must be rendered if the movant shows that there is no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party seeking summary judgment has the initial burden to show the absence of a material fact. *Celotex Corp.*, 477 U.S. at 322. A genuine issue of material fact exists “if the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In opposing a motion for summary judgment, the non-moving party must show more than the mere existence of some alleged factual dispute between the parties, and must rely on more than conclusory allegations, mere speculation, the “mere existence of a scintilla of evidence” (*Id.* at 252), or the appearance of some “metaphysical doubt” concerning a material fact. *Id.* at 261.

### **4.0 ARGUMENT**

#### **4.1 PLAINTIFF’S TRADEMARK IS PRESUMPTIVELY VALID.**

Under Section 7(b) of the Lanham Act, trademark registrations are presumed valid.<sup>6</sup> As the holder of a registered mark, Plaintiff is entitled to the statutory presumption under sections 7(b) and 33(a) of the Lanham Act, 15 U.S.C. §§ 1057(b), 1115(a), that its mark is valid in all respects. The USPTO’s registration of Plaintiff’s mark “must be considered prima facie correct by a court in considering the validity of a trademark.” *Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1529 (4th Cir. 1984) (citing *Union Carbide Corp. v. Ever-Ready, Inc.*, 531 F.2d 366, 378 (7th Cir. 1976)). The Lanham Act thus creates the “strong presumption” that a registered mark is

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<sup>6</sup> “Certificate as prima facie evidence. A certificate of registration of a mark upon the principal register provided by this Act shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.”

valid with respect to “all of the several bases for challenge to a trademark’s validity.”<sup>4</sup> *McCarthy on Trademarks* at 32-163.

The Lanham Act’s “strong presumption” that Plaintiff’s mark is valid shifts the burden of proof from Plaintiff to OWV “who must introduce sufficient evidence to rebut the presumption of plaintiff’s right to such [exclusive] use.” *Pizzeria Uno*, 747 F.2d at 1529 (quoting *Keebler Co. v. Rovira Biscuit Corp.*, 624 F.2d 366, 373 (1st Cir. 1980)). The presumption can only be overcome by a preponderance of the evidence. *Pizzeria Uno*, 747 F.2d at 1529 n. 4.

Summary judgment is as appropriate on the issue of trademark validity as in any other case and should be granted or denied on the same principles. *See Resorts of Pinehurst, Inc. v. Pinehurst Nat’l Corp.*, 148 F.3d 417 (4th Cir. 1998) (affirming summary judgment on plaintiffs trademark validity and infringement claims and reversing the district court’s denial of injunctive relief). A party attacking the validity of a registered trademark bears the burden of proving that invalidity by a preponderance of the evidence. *See* 15 U.S.C. §§ 1115(a) (registration is prima facie evidence of validity); *Retail Servs. v. Freebies Publ’g*, 364 F.3d 535, 542 (4th Cir. 2004) (“The presumption of validity flowing from trademark registration . . . has a burden-shifting effect, requiring the party challenging a registered mark to produce sufficient evidence to establish that the mark is generic by a preponderance of evidence”); *Lumber Liquidators, Inc. v. Stone Mt. Carpet Mills, Inc.*, No. 3:08-cv-573, 2009 U.S. Dist. LEXIS 59388, at \*16 (E.D. Va. July 10, 2009) (citing *Retail Servs., Inc.*, 364 F.3d at 542) (“Absent rebutting evidence . . . registration of [a mark] alone would entitle [its owner] to summary judgment on the issue of whether the [mark] is generic”). Plaintiff’s Mark is registered on the Principal Register at the USPTO.

#### 4.1.1 **Acquired Distinctiveness Need Not Be Considered.**

Suggestive, arbitrary, and fanciful marks are inherently distinctive; descriptive marks are not. *Teaching Co. v. Unapix Entm't, Inc.*, 87 F. Supp. 2d 567, 575-576 (E.D. Va. 2000); *Sara Lee Corp. v. Kayser Roth Corp.*, 81 F.3d 455, 464 (4th Cir. 1996). A suggestive mark conjures a quality or characteristic of the product or service without immediately describing it, while arbitrary and fanciful marks do not suggest or describe any aspect of the goods or services they identify. *Id.* If a mark is not inherently distinctive, a trademark owner may establish that its mark has acquired distinctiveness through use. *Id.*

Here, Plaintiff owns a federal trademark registration for its MYSCHOOL Mark which was found to be suggestive by the USPTO. For this reason, any analysis of evidence of acquired distinctiveness is not necessary, and this registration constitutes conclusive evidence of the validity and distinctiveness of the MYSCHOOL Mark. 15 U.S.C. § 1057(b); *see also Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1529 (4th Cir. 1984).

#### 4.1.2 Defendant's Case is Insufficient to Overcome Presumptive Validity.

Defendant's proffers nothing sufficient to overcome this presumption of validity except inadmissible UDRP cases. Defendant has no counterclaims for invalidity, has submitted no experts, no surveys, and no other evidence of invalidity.

Defendant attempts to establish with UDRP findings that the Mark is descriptive must fail, as UDRP cases are inadmissible and entitled to no deference. *See, e.g. Barcelona.com, Inc. v. Excelentísimo Ayuntamiento De Barcelona*, 330 F.3d 617, 623 (4th Cir. 2003) ("indeed, the WIPO [UDRP] panelist's decision is not even entitled to deference on the merits"); *Eurotech, Inc. v. Cosmos European TravelsAktiengesellschaft*, 213 F.Supp.2d 612, 617 (E.D.Va. 2002) (Noting that a prior UDRP decision "is neither admissible, nor entitled to any deference, with respect to the merits issues present in this suit...[r]eview...must be de novo and independent of

any” UDRP decision); *Retail Services v. Freebies Publishing*, 247 F.Supp.2d 822, 828 (E.D. Va. 2003) (“[d]ecisions made by arbitration panels under the UDRP are not afforded deference by the district court”); *Sallen v. Corinthians Licenciamentos LTDA*, 273 F.3d 14, 27 (1st Cir. 2001) (“the UDRP explicitly contemplates independent review in national courts....”);

In opposing a motion for summary judgment, the non-moving party must show more than the mere existence of some alleged factual dispute between the parties, and must rely on more than conclusory allegations, mere speculation, the “mere existence of a scintilla of evidence” (*Id.* at 252), or the appearance of some “metaphysical doubt” concerning a material fact. (*Id.* at 261.)

Rule 56(c) does not require “that the moving party support its motion with affidavits or other similar materials negating the opponent's claim.” *Id.* at 323 (emphasis in original). Rather, “the burden on the moving party may be discharged by ‘showing’ – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case.” *Celotex*, 477 U.S. at 325 (1986).

#### 4.1.3 **The Defendant’s Affirmative Defenses Should Be Summarily Disposed of.**

OWV has not appeared. OWV refuses to subject itself to jurisdiction before the Court. OWV has interposed incognizable affirmative defenses, including trademark misuse. To prevent OWV from being subject to jurisdiction, OWV voluntarily dismissed all of its counterclaims in this action. Despite this fact, OWV continues to assert the dismissed counterclaims and proceed as if entitled to relief in a non-in rem action, including demanding that Plaintiff’s trademark be “cancelled” in the present motion and demanding attorney fees.

OWV’s affirmative defenses should be summarily disposed of before trial as they are simply counterclaims restylized and are not supportable by any evidence Defendant can advance. Defendant has submitted no experts, no surveys, and only inadmissible UDRP findings in

support of its affirmative defenses. Permitting Defendants to further these defenses into trial would unnecessarily prolong the trial, confuse the jury/trier of fact, and waste valuable trial and court time on defenses which have no factual or legal support.

The Fourth Circuit has held that “a defense that might confuse the issues in the case and would not, under the facts alleged, constitute a valid defense to the action can and should be deleted.” *Waste Mgmt. Holdings v. Gilmore*, 252 F.3d 316, 347 (4th Cir. Va. 2001) (quoting 5A A. Charles Alan Wright et al., *Federal Practice & Procedure* § 1381, 665 (2d ed. 1990) and affirming the district court's grant of Plaintiff's motion to strike Defendants' “purported affirmative defense”). Further, a “court may ‘strike defenses when they are clearly legally insufficient, such as when there is no bona fide issue of fact or law.” *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 2001 U.S. Dist. LEXIS 16057 at \*5 (W.D. Va. Oct. 2, 2001) (quoting *Clark v. Milam*, 152 F.R.D. 66, 70 (S.D.W.Va 1993) (citation omitted)). See Rule 12(f); *see also Front Royal & Warren County Industrial Park Corp. v. Town of Front Royal*, 865 F.2d 77, 78 (4th Cir. Va. 1989) (affirming district court's grant of motion to strike defendants' absolute immunity defense); *Washington Metro. Area Transit Auth. v. Fleischman*, 1997 U.S. App. LEXIS 10560 (4th Cir. Md. May 8, 1997) (affirming district court's grant of motion to strike defense on ground that it was not a defense to a condemnation action).

#### 4.2 **REGISTRATION OF THE DISPUTED DOMAIN.**

To establish cybersquatting under the Anticybersquatting Consumer Protection Act (“ACPA”), Plaintiff must establish: (1) registration, use, *or* trafficking in a domain name (2) that is identical or confusingly similar to a distinctive or famous trademark, (3) with a bad-faith intent to profit from the mark. 15 U.S.C. § 1125(d). As detailed below, Plaintiff has established all three elements of this claim.

#### 4.2.1 **OWV Is the Registrant of the Disputed Domain.**

OWV is the registrant of the Disputed Domain, and registered it sometime between March 1, 2015 and March 14, 2015. (Belousov Depo. Tr.) 47:8-15; *see also* Defendant's Responses to Plaintiff's First Set of Interrogatories at 5 (Response 9) (claiming a registration date for the Disputed Domain of March 14, 2013)).

#### 4.2.2 **The Disputed Domain is Identical to Plaintiff's Mark.**

OWV is the registrant of the Disputed Domain <myschool.com> which is identical to the Plaintiff's Mark. Confusingly similarity between the text is self-manifest.<sup>7</sup>

#### 4.3 **BAD FAITH INTENT TO PROFIT.**

In determining whether OWV had the requisite bad-faith intent to profit from Plaintiff's Mark, the ACPA identifies nine factors for courts to balance. 15 U.S.C. § 1125(d)(1)(B)(i)(I)-(IX). The court is not limited, however, to these statutory factors. 15 U.S.C. § 1125(d)(1)(B)(i); *Lamparello v. Falwell*, 420 F.3d 309, 319 (4th Cir. 2005). Rather, the court may look at the totality of the circumstances in making the bad-faith determination. *Virtual Works, Inc. v. Volkswagen of Am., Inc.*, 238 F.3d 264, 270 (4th Cir. 2001). Here, the relevant bad-faith factors compel a finding that OWV registered and used the Disputed Domain with a bad-faith intent to profit from Plaintiff's Mark.<sup>8</sup>

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<sup>7</sup> Under the ACPA, the "confusingly similar" standard differs from the likelihood-of confusion standard applied to a trademark infringement claim. The traditional multi-factor test for infringement is not used, but rather courts look solely at the similarity in appearance between the domain name and the mark. *Newport News Holdings*, 2011 U.S. App. LEXIS 7883, at \*24- 25 (citing other Circuit courts; "the inquiry under the ACPA is . . . narrower than the traditional multifactor likelihood of confusion test for trademark infringement," which, unlike the ACPA, considers factors "beyond the facial similarity of the two marks"); *see also Sporty's Farm LLC v. Sportman's Market, Inc.*, 202 F.3d 489, 497 (2d Cir. 2000).

<sup>8</sup> The Fourth Circuit uses a multifactor test for assessing trademark infringement. Those factors include: (1) the distinctiveness and strength of Plaintiff's mark, (2) the similarity between the two marks, (3) the similarity of goods or services, (4) similarity of the facilities the parties use, (5) similarity of the advertising the parties use, (6) the defendant's intent, (7) actual confusion, (8) quality of the defendant's products, and (9) sophistication of the consuming public. *Pizzeria Uno*, 747 F.2d at 1527 (stating factors 1 - 7), and *Sara Lee*, 81 F.3d at 463-64 (4th Cir.

The factors that are particularly relevant to establishing “bad faith intent to profit” in this case include:

(V) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site; and

...

(VII) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

...

(IX) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous within the meaning of subsection (c)(1) of this section. 15 U.S.C. § 1125(d)(1)(B)(i)(V), (VII) & (IX).

These factors weigh heavily in favor of Plaintiff. Plaintiff's Mark is registered, rather than common law, and inherently distinctive.<sup>9</sup> Most importantly, the Disputed Domain and the Mark are identical. The Disputed Domain wholly incorporates the Mark. The Defendant has been shown to have had both actual and constructive notice of the Mark before registering the Disputed Domain. Additionally, because intent can be hard to prove,<sup>10</sup> facts about Defendant's behavior are relevant, which facts include a history numerous lost cybersquatting actions and cease and desist letters, selling of trademarked domain names, and being banned for fraud-like behavior from other websites. Defendant has admitted a familiarity with the ACPA under oath,

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1996) (adding factors 8 and 9). Not all factors carry equal relevance, nor do all factors apply in each case. *Pizzeria Uno*, 747 F.2d at 1527. As the Defendant sells nor products nor services, factors 3, 4, 5, 8, and 9 are irrelevant.

<sup>9</sup> Plaintiff's Mark is not unique in being comprises of two otherwise generic words. Many marks are, including MYSFACE<sup>®</sup>, MYLIFE<sup>®</sup>, MYSCORE<sup>®</sup>, MYFAMILY<sup>®</sup>, and others.

<sup>10</sup> This Court has noted that: “[a]s intent is rarely discernable directly, it must typically be inferred from pertinent facts and circumstances.” *International Bancorp, L.L. C. v. Societe Des Baines De Mer Et Du Cercle Des Etrangers A Monaco*, 192 F. Supp. 2d 467, 486 (E.D. Va. 2002).

and intent can be inferred from these facts and the fact the Disputed Domain is identical to the Mark.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and electronic discovery from OWV established it had actual notice of Plaintiff's trademark when it registered the Disputed Domain, in addition to constructive notice under 15 U.S.C. 1072. "A person acts in bad faith when using a domain that is identical, confusingly similar to, or dilutive of a mark that was distinctive or famous at the time it was registered, *regardless of what the person knew at the time of registration.*" *March Madness Athletic Ass'n L.L.C. v. Netfire, Inc.*, 162 F. Supp. 2d 560, 573 (N.D. Tex. 2001) (emphasis added).

Bad faith is not required in *in rem* cases. Instead, the statute affords relief where "*the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office, or protected under subsection (a) or (c).*" 16 U.S.C. § 1125(d)(2)(A)(i) (emphasis added).

Given these facts, the only credible explanation for the registration and continued use of the Domain Name is that OWV sought to profit from the Mark using cost-per-click ads on the site, which is bad faith under the ACPA as shown below. *See* 15 U.S.C. § 1125(d)(1)(B)(i)(V). *See Sport's Farm L.L.C. v. Sportsman's Market, Inc.*, 202 F.3d 489, 499 (2d Cir. 2000) (the best evidence of bad faith is taken from "the unique circumstances of the case, which do not fit neatly into the specific factors enumerated by Congress").

#### **4.3.1 OWV Seeks Only to Profit from Use of the MYSCHOOL Mark Through Third-Party Advertising and Sale of the Disputed Domain.**



[REDACTED]

[REDACTED]

OWV sells no products or services, and seeks only to profit from sale of the Disputed Domain and search traffic for the expression “myschool.” OWV’s history and use of the domain constitute a bad faith intent to profit from the Mark.

The ACPA includes a non-exhaustive list of factors a court may consider in assessing bad faith. 15 U.S.C. § 1125(d)(1)(B)(i). The Fourth Circuit has explained with regard to the listed factors:

“[t]here is no simple formula for evaluating and weighing these factors. For example, courts do not simply count up which party has more factors in its favor after the evidence is in. In fact, because use of these listed factors is permissive, we need not ... march through them all in every case. The factors are given to courts as a guide, not as a substitute for careful thinking about whether the conduct at issue is motivated by a bad faith intent to profit.”

*Lamparello v. Falwell*, 420 F.3d 309, 320 (4th Cir. 2005).

A finding of “bad faith intent to profit” is appropriate under any or all of these factors against OWV. OWV is diverting consumers from the Plaintiff’s site via search engines to a site where OWV gains commercially. OWV put the Disputed Domain under a privacy guard, misrepresented its actual notice of the Mark, and has a pattern of previous bad conduct. *See e.g., Harrods Ltd. v. Sixty Internet Domain Names*, 110 F. Supp. 2d 420 (E.D. Va. 2000) (“Failure to keep one’s address current or to leave an accurate forwarding address certainly casts doubt on the bona fides of a registrant. This fact coupled with the similarity of the offending mark may well be sufficient to enable a plaintiff facing a defaulting domain name to obtain an in rem judgment against the domain name.”).

Screenshots attached hereto as Exhibit L, show the advertisements Defendant has on its site, including advertisements to Classmates.com, a site which is the principal competitor of the Plaintiff. Classmates.com, as evidenced in Exhibit N, invites users to “find high school friends” and “plan your high school reunions.” Plaintiff’s Mark is registered in International Classes 35 and 38 for “Advertising services, namely, advertising, promoting and offering information about the goods and services of others via a global communication network; providing a web site that enables users to post items for sale through on-line classified advertisements and messages,” and “Communications services, namely, providing on-line chat rooms and forums for transmission of messages, photographs, information and data among computer users in the field of general interest, including among alumni of various educational institutions; Electronic transmission of information, messages, data, sound, images and documents among users of computers; Providing on-line communications links which transfer the website user to other local and global web pages electronic transmission of data and documents among users of computers; providing access to databases via a global communication network.”

Classmates.com is an obvious competitor, as are other links shown on the Disputed Domain in Exhibit L, including advertisements to About.com, advertising “Search High School Movies” and Local.com advertising “Looking for High School? Find One Nearby With Local.com!”

Defendant is profiting using the MYSCHOOL Mark from advertisements paid for by Plaintiff’s competitors. This is bad faith intent to profit, and should be found to be such by the Court in summary judgment.

#### **4.4 PLAINTIFF IS ENTITLED TO TRANSFER OF THE DISPUTED DOMAIN.**

In an in-rem action, the Lanham Act provides for the transfer of the Disputed Domain name to a successful ACPA plaintiff. *See* 15 U.S.C. § 1125(d)(1)(C). For the reasons discussed below, Plaintiff is entitled to transfer of the <myschool.com> domain name. The Lanham Act entitles a prevailing trademark owner on an ACPA claim to transfer of the disputed domain. 15 U.S.C. § 1125(d)(1)(C). This is the usual remedy for a violation of the ACPA. *See, e.g., Newport News*, Case no. 4:08cv19 at p.25 (ordering transfer of domain name); *Volkswagen AG v. Volkswagentalk.com*, 584 F. Supp. 2d 879 (E.D. Va. 2008) (same); *Agri- Supply Co. v. Agrisupply.com*, 457 F. Supp. 2d 660 (E.D. Va. 2006).

#### 4.5 ATTORNEY FEES.

This is case in which Plaintiff has appeared, but the registrant of the Disputed Domain has refused to do so. In granting Plaintiff summary judgment, this Court should rule the present case constitutes an exceptional case under the Lanham Act and award attorney fees to Plaintiff for inter alia the following reasons:

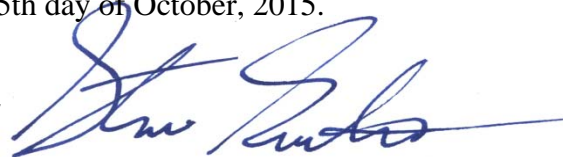
- (1) [REDACTED]
- (2) [REDACTED]
- (3) OWV has a history of cybersquatting, including three previous lost UDRP cases;
- (4) [REDACTED]

**5.0 CONCLUSION**

For all of the foregoing reasons, Plaintiff requests that his Motion for Summary Judgment be granted and the Court order transfer of the Disputed Domain <myschool.com> to Plaintiff.

DATED this the 5th day of October, 2015.

/s/



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**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2015 a copy of the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

/s/ Steven Rinehart  
Steven Rinehart