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14 **Attorneys for Plaintiff, ALEX ALGARD**

15 **IN THE UNITED STATES DISTRICT COURT**
16 **DISTRICT OF ARIZONA**

17 ALEX ALGARD, a Washington resident,
18 Plaintiff,
19 vs.
20 ALEXALGARD.COM, a domain name
21 registered to a domain name registrar
22 located in this Judicial District,
23 Defendant.

24 **NO. _____**
25 **IN REM COMPLAINT UNDER**
26 **THE ANTI-CYBERSQUATTING**
CONSUMER PROTECTION ACT

27 PLAINTIFF, Alex Algard (“*Algard*”) respectfully submits this *in rem* Complaint
28 against the domain name <alexalgard.com>, which is registered through GoDaddy.com,
29 Inc., a domain name registrar (the “*Registrar*”) which is located in this judicial district.
30 In support thereof, Plaintiff alleges as follows:

31 **NATURE OF ACTION**

32 This is an action for cybersquatting. An unknown third party (the “*Registrant*”)
33 registered the domain name <alexalgard.com> (the “*Domain Name*”), and featured
34 Plaintiff’s likeness (a photograph and name) on the website accessible via the Domain
35 Name. Plaintiff through counsel transmitted letter demanding that the Registrant cease
36

1 and desist from further exploiting the Domain Name, and Plaintiff's likeness. The letter
2 also requested the Registrant to transfer the Domain Name to Plaintiff. The Registrant
3 did not transfer the Domain Name as demanded, and instead purported to cancel the
4 Domain Name. Pursuant to its contractual arrangement with the Registrar, the Registrant
5 retains the right to "re-activate" the Domain Name. In the event Registrant does not re-
6 activate the Domain Name, the Registrar will release the Domain Name into the available
7 pool of domain names. In such event, the Domain Name may be registered by a third
8 party (including the Registrant), depending on who else signed up to register the Domain
9 Name. Absent relief from the Court, Plaintiff will not be ensured registration of the
10 Domain Name. Plaintiff seeks an order requiring the Domain Name to be transferred to
11 Plaintiff, and such other relief as may be appropriate based on the evidence.

12 I. PARTIES

13 1. Plaintiff is an individual who resides in the State of Washington.

14 2. Defendant is a domain name registered through a domain name registrar
15 located in the State of Arizona, in this judicial district.

16 II. JURISDICTION AND VENUE

17 3. **Subject Matter Jurisdiction:** The Court has original subject matter
18 jurisdiction pursuant to 28 U.S.C. § 1331 and 15 USC § 1051, *et seq.* (the Lanham Act),
19 specifically, 15 U.S.C. § 1125(d).

20 4. **Personal Jurisdiction:** This Court has personal jurisdiction over the
21 Domain Name because the Domain Name is registered through a domain name registrar
22 which is located in this judicial district. 15 U.S.C. § 1125(d) expressly authorizes the
23 filing of an *in rem* lawsuit in the judicial district in which the registrar is located. Plaintiff
24 has exercised due diligence and has not been able to contact the Registrant. Plaintiff
25 further believes that the Registrant will not be found in this jurisdiction or will not be
26 subject to the jurisdiction of this Court. In these circumstances 15 U.S.C. § 1125(d)

1 expressly authorizes the filing of an *in rem* lawsuit.

2 5. **Venue:** Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)
3 because the Domain Name is deemed to be located within this judicial district.

4 III. FACTS

5 BACKGROUND – ALEX ALGARD

6 6. Plaintiff is a Seattle-based entrepreneur and the current CEO of
7 WhitePages.com, Inc. (“*WhitePages*”). He founded WhitePages in 1997, and
8 whitepages.com is now top 50 website with over 37 million monthly unique users in
9 North America. In addition, Plaintiff also co-founded CarDomain Network, Inc.
10 (“*CarDomain*”), one of the preeminent auto enthusiast sites and communities on the
11 internet today.

12 7. Plaintiff has achieved significant success as an entrepreneur and investor,
13 and both Algard and his companies (WhitePages and CarDomain) have been featured
14 extensively in the press. This coverage includes, for example, pieces in Inc. magazine
15 (<http://www.inc.com/magazine/20060101/life-essentials.html>) (“*Things I Can’t Live*
16 *Without: Alex Algard*”), and the Puget Sound Business Journal
17 (<http://www.bizjournals.com/seattle/stories/2003/09/15/focus24.html>) (“*Algard sails*
18 *through dot-com bust with two intact*”), as well as countless newspapers, blogs, and
19 websites. In addition, Plaintiff is often a speaker at events aimed at entrepreneurs as well
20 as technology conferences and events. (*See, e.g.*, Montana Entrepreneur University
21 <<http://btc.montana.edu/meu/agenda.htm>>.)

22 8. Plaintiff is also (through Algard Ventures LLC (“*Algard Ventures*”)) an
23 investor in, and advisor to, numerous technology and internet companies, including
24 BuddyTV, mInfo, Sampa, and Shelfari. Algard Ventures maintains a website accessible
25 at <www.algardventures.com> and the investment activities of Algard Ventures are listed
26 on that site at <<http://www.algardventures.com/investments>>.

1 9. In short, Plaintiff has achieved extensive name recognition and built a brand
2 around his name, reputation, and his investment activities. His name qualifies for
3 trademark protection under the Lanham Act.

4 **THE DOMAIN NAME – PLAINTIFF’S CEASE AND DESIST LETTER**

5 10. The Domain Name was registered in May 2007 without Plaintiff’s consent.
6 The site which was accessible via the Domain Name (the “*Infringing Site*”) featured
7 Plaintiff’s photograph, and the descriptive text provided that the subject of the Infringing
8 Site is Plaintiff. There is no dispute that the Infringing Site is about Plaintiff and utilized
9 his likeness. Visitors who were looking for Plaintiff or Plaintiff’s services would be
10 confused as to whether he had sponsored or was affiliated with the Infringing Site.

11 11. On May 29, 2008, Plaintiff (through counsel) transmitted a written letter
12 demanding that the Registrant cease and desist from further exploiting Plaintiff’s
13 goodwill and likeness. The letter demanded the Registrant to transfer the Domain Name
14 to Plaintiff.

15 12. Some time after receiving the letter, the Registrant purported to “cancel” the
16 Domain Name. The current WHOIS information for the Domain Name shows the
17 Domain Name as having been “suspended” for “spam” and “abuse.” (Although unclear,
18 this may be the designation given by the Registrar in response to the Registrant’s act of
19 cancelling the Domain Name.)

20 13. Plaintiff followed up with the Registrar to obtain a transfer of the Domain
21 Name to him.

22 14. The Registrar advised that the Registrar lacked contractual authority to do
23 so, and that upon expiration of the thirty day “grace period” (during which time the
24 Registrant could re-activate the Domain Name) the Registrar would release the Domain
25 Name back into the pool of generally available domain names.

26 15. While Plaintiff could seek to “back order” the Domain Name, there is no

1 guarantee that he would become the registrant of the Domain Name.

2 16. Plaintiff has sought to contact the Registrant to seek a transfer of the
3 Domain Name directly, but has not received a response.

4 17. Absent judicial intervention, a third party may register the Domain Name
5 (or the Registrant may activate it).

6 18. Plaintiff suffers ongoing harm through having people who look up the
7 WHOIS registration for the Domain Name find that the Domain Name has been
8 “suspended” for “spam,” and “abuse.” Plaintiff also suffers ongoing harm from people
9 typing his name into the browser address and encountering a “website not found”
10 message.

11 **WRITTEN NOTIFICATION TO THE REGISTRAR AND THE REGISTRANT**

12 19. Pursuant to 15 USC section 1125(d)(2)(D)(i), Plaintiff has provided notice
13 to the Registrant of Plaintiff’s intention to proceed under the *in rem* provisions of the
14 ACPA.

15 20. The Registrar is required to “not . . . transfer, suspend, or otherwise modify
16 the domain name(s) during the pendency” of this action.

17 **IV. FIRST CAUSE OF ACTION (ANTI-CYBERSQUATTING CONSUMER
18 PROTECTION ACT – 15 U.S.C. § 1125(d))**

19 21. Plaintiff incorporates herein and realleges the allegations set forth in
20 paragraphs 1-20, above.

21 22. Plaintiff’s name has achieved secondary meaning, due to its wide-ranging
22 exposure and press coverage, and recognition in the minds of consumers – the name is
23 thus protectable as a mark under the Lanham Act.

24 23. The Registrant registered the Domain Name with the bad faith intent to
25 profit from Plaintiff’s rights in his name. Among other things, the Registrant exploited
26 Plaintiff’s personality rights, featured a photograph of Plaintiff on the Infringing Site, and

1 drew many visitors who were looking to communicate with Plaintiff and access Plaintiff's
2 website.


3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 5 1. An Order requiring the Domain Name to be transferred to Plaintiff.
6 2. For such other relief as the Court may deem just and proper.

7 DATED this 23rd day of June, 2008.

8 **BALASUBRAMANI LAW**

9 By:  _____

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