

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
CASE NO:**

Network and IT Management Ltd.)
a Cayman Islands limited partnership)
)
Plaintiff,)
)
vs.)
)
)
Bachoco, S.A. de C.V.)
A Mexico corporation)
)
Defendant.)
_____)

**COMPLAINT FOR
DECLARATORY RELIEF OF NON-
INFRINGEMENT AND LAWFUL
USE OF <BACHOCO.COM>
DOMAIN NAME**

NOW COMES Plaintiff Network and IT Management Ltd. ("Plaintiff"), alleging as follows:

I. NATURE OF THE CASE

1. This case is brought pursuant to 15 U.S.C. 1114(2)(D)(v) for declaratory relief pursuant to 28 U.S.C. § 2201 to establish that Plaintiff's registration and use of the domain name <BACHOCO.COM> (the "Domain Name") is not unlawful under the Anticybersquatting Consumer Protection Act (15 U.S.C. § 1125(d) ("ACPA")) or otherwise under the Lanham Act (15 U.S.C. § 1051 et. Seq.), and to prevent the transfer of the Domain Name to Defendant, which was ordered in an administrative panel decision issued February 9, 2010 under the Uniform Domain Name Dispute Policy

(“UDRP”) in a proceeding captioned: Bachoco, S.A. de C.V. v. Network and IT Management Ltd.; WIPO Case No. D2009-1687.

II. JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiff seeks a declaration, pursuant to 15 U.S.C. 1114(2)(D)(v) and 28 U.S.C. § 2201, that its registration and use of the Domain Name does not violate Defendant’s trademark for the term BACHOCO.

3. This Court has personal jurisdiction over Defendant because Defendant agreed to submit to the jurisdiction of this Court when it initiated an administrative proceeding pursuant to the Uniform Domain Name Dispute Resolution Policy (the “UDRP”) concerning the Domain Name. Specifically, Defendant agreed in its UDRP complaint (the “UDRP Complaint”) to submit to jurisdiction at the address listed for principal office of the Registrar in connection with a challenge of a UDRP decision ordering a transfer of the Domain Name. The address of the principal office of the Registrar as of the filing date of the UDRP Complaint is: 8100 NE Parkway Dr #300, Vancouver, WA, 98682.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2).

III. PARTIES

5. Plaintiff is a Cayman Islands limited partnership.

6. Plaintiff is engaged in an Internet media and marketing business involving the development, operation and monetization of Internet domain names registered by Plaintiff.

7. Defendant Bachoco, S.A. de C.V. is a Mexico corporation.

8. Upon information and belief, Defendant sells poultry and poultry products primarily in Mexico.

IV. FACTS

Plaintiff's Bona Fide Lawful Business of Registering and Using Geographical Term Domain Names in Good Faith

9. At all times, Plaintiff believed and had reasonable grounds to believe that the registration and use of the geographical term "BACHOCO" as a domain name used in its business and its web site for the Domain Name has been completely lawful.

10. Plaintiff's intentions at all times have been to register and use the Domain Name which is a geographical term which Plaintiff believes in good faith is not subject to exclusive trademark rights.

11. At no time has Plaintiff observed links related to Defendant or its goods or services on the web site for the Domain Name.

12. Plaintiff uses the Domain Name in connection with a web site hosted by domain name parking services that display advertising links.

13. Plaintiff generates revenue from the operation of a web site www.BACHOCO.com through the display of pay-per-click ("PPC") advertisements appearing on the web page associated with the Domain Name. The PPC advertisements

are provided by domain name parking providers which host domain names and provide the PPC advertising links. The PPC advertising links generally originate from a feed provided by either Google or Yahoo. The domain name parking providers share the advertising revenue earned with the domain name owners.

14. The domain name parking providers use software intended to display links associated with the contextual meaning of the terms contained in the hosted domain names. In some cases the software finds no advertisers for contextually-related links, and instead displays generic links from other advertisers or links which otherwise have no apparent relation to the terms contained in the domain name. At times this was the case for the web site for Plaintiff's Domain Name where links were displayed for generic products and services.

15. The type of business engaged in by Plaintiff in connection with its Domain Name has been deemed lawful, bona fide, legitimate and in good faith by numerous decisions under the UDRP.

16. Plaintiff has not solicited Defendant or any other party in connection with the sale of the Domain Name.

Registration and Use of the Domain Name BACHOCO.COM

17. Plaintiff registered the Domain Name on March 24, 2002.

18. Plaintiff registered the Domain Name because it incorporated the geographical term "BACHOCO" which Plaintiff believed in good faith it could lawfully register under the Lanham Act, as well as the UDRP.

Comment [apn1]: [Ari: I took this out because I think we can save it for the evidentiary stage. Let me know if you disagree.](#)
~~DELETED:~~
[Plaintiff has never solicited a trademark owner in connection with the sale of a domain name. The value of Plaintiff's domain names, and the prices at which it sells a particular domain name, is based on the domain name's value as a common word or descriptive term only.](#)

19. Plaintiff did not have actual knowledge of Defendant, or any trademark for “BACHOCO” held by Complainant, when it registered the Disputed Domain.

20. Plaintiff has hosted the Domain Name with domain name parking providers which has resulted in the display of generic links on the Domain Name website.

21. Because “BACHOCO” is a common geographical term subject to substantial third party use, Plaintiff believed it was a term that was free to be used by anyone provided that such use did not infringe upon another party’s trademark rights.

22. Plaintiff did not register the Domain Name with the intent to profit from Defendant’s trademark or any other party’s trademark.

23. Defendant’s USPTO trademark was registered on July 29, 2003 more than a year after the Domain Name was registered. Defendant’s date of first use of mark, February 6, 2003 and date of first use in commerce, February 6, 2003 as claimed in its USPTO registration are almost one year after registration of the Domain Name.

24. Defendant did not object to Plaintiff’s registration and use of the Domain Name for more than seven years following Plaintiff’s registration of Domain Name.

25. Defendant filed its UDRP Complaint against Plaintiff more than seven years after Plaintiff registered the Domain Name indicating it must have believed Plaintiff was using the name in good faith since the time of its registration.

26. “BACHOCO” is a common geographical term which was in existence long before Defendant adopted it as the name for its business.

27. Defendant’s mark is not “famous” pursuant to 15 U.S.C. 1125(c).

28. Defendant does not have the exclusive right to use the term “BACHOCO.”

29. The term “BACHOCO” is subject to substantial third party use, including the following: “BACHOCO” is a popular geographic name in Mexico. There are six towns in different states of Mexico that have the name “BACHOCO”. Separate postal codes have been assigned to these towns by the Mexican Postal Service. “BACHOCO” is the name of a mountain in Mexico that is a popular sporting destination of international fame frequented and publicized by mountain biking enthusiasts from the US and Mexico as well as enthusiasts in other parts of the world including Asia and the Middle East. One of the best known beaches in the resort town of Puerto Escondido, Mexico is named “Playa BACHOCO” which is also referred to as “BACHOCO Beach”.

30. Additionally the name Bachoco is a common surname in use by many individuals in various countries. A Google search for bachoco Philippines while limiting results related to Complainant (search text: bachoco philippines -industrias -poultry) gives over 9,000 results, many of which list people with the surname Bachoco in the Philippines.

31. Defendant does not have the exclusive right to use BACHOCO, or the exclusive right to register or use the Domain Name.

The UDRP Proceeding

32. On December 9, 2009 Defendant submitted a complaint pursuant to the UDRP to the WIPO Arbitration and Mediation Center seeking transfer of the Domain Name to Defendant.

33. The only evidence presented by Defendant in the UDRP proceeding alleging that Plaintiff's web site contained references to Defendant was in connection with a single incident on or about March 15, 2009.

34. Defendant presented a screenshot of a web page in the Spanish language that was accessed from a computer in Mexico on or about March 15, 2009. Unbeknownst to Plaintiff this web page showed Spanish language references to Defendant. Plaintiff's web site did not display any references to Defendant when viewed on computers in the United States and the Cayman Islands at this time. Had Plaintiff known of references to Defendant, Plaintiff would have caused them to be removed.

35. The only evidence Defendant has presented where links on the web site for the Domain Name referred to Defendant was a single incident of which Plaintiff had no knowledge.

36. Plaintiff used the domain name parking provider DomainSponsor for a limited time on or about March 15, 2009 to host the web site for the Domain Name. Prior to DomainSponsor Plaintiff used SmartName to host the web site and after DomainSponsor Plaintiff used Sedo to host the web site for the Domain Name.

37. Plaintiff has registered other geographical term domain names for use in its business including "burlingtonvermont.net", "coppercanyon.net", "torontocanada.net", and "turnov.net". This pattern of behavior by Plaintiff is evidence of Plaintiff's good faith intent and use of the Domain Name.

38. Defendant did not present any evidence in the UDRP proceeding that Plaintiff had attempted to sell the Domain Name to Defendant.

39. On February 10, 2010 a UDRP Panel issued a decision directing that the registration of the Domain Name be transferred to Defendant. [Date shown incorrectly in Decision as February 10, 2009]

40. In its decision, the UDRP Panel disregarded evidence of Plaintiff's good faith registration and use of the Domain Name and ruled in Defendant's favor. The Panel ruled incorrectly and should have found there was no bad faith registration or use by Plaintiff for the reasons cited above.

41. The UDRP expressly provides that a domain name transfer directed by a UDRP panel shall not be implemented if a lawsuit is commenced against the Defendant (i.e., the defendant in this case) within ten (10) business days of the date of the UDRP panel's decision.

42. The UDRP also provides that any lawsuit relating to a domain name subject to a UDRP decision shall be reviewed *de novo*, without regard to the UDRP decision.

43. Plaintiff commenced this action within said ten (10) business day period to prevent transfer of the Domain Name and to seek an order declaring that Plaintiff's registration and use of the Domain Name does not violate Defendant's rights.

**V. FIRST CAUSE OF ACTION
DECLARATORY RELIEF – 28 U.S.C. § 2201
NO VIOLATION OF ACPA**

44. Plaintiff incorporates the allegations set forth in paragraphs 1 through 45 above as though fully set forth herein.

45. There is an actual controversy with respect to whether Defendant is entitled to transfer of the Domain Name based on Defendant's rights under the ACPA.

46. In registering the Domain Name, Plaintiff lacked any bad faith intent to profit from Defendant's mark as provided in 15 U.S.C. § 1125(d)(1)(A)(i).

47. For more than the past seven years, Plaintiff has used the Domain Name in connection with the bona fide offering of services in the nature of the display of PPC advertising links. The only evidence Defendant presented where links related to Defendant appeared was a single incident on or about March 15, 2009. Plaintiff was unaware of the incident and would have caused such links to be removed had it known of them.

48. Plaintiff has registered other geographical term domain names for use in its business including "burlingtonvermont.net", "coppercanyon.net", "torontocanada.net", and "turnov.net". This pattern of behavior by Plaintiff is evidence of Plaintiff's good faith intent and use of the Domain Name.

49. Plaintiff has not intended 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 Defendant's trademark by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

50. Plaintiff has not offered to transfer, sell, or otherwise assign the Domain Name to Defendant or any third party.

51. Plaintiff has reasonable grounds to believe its registration and/or use of the Domain Name was lawful, as provided in 15 U.S.C. § 1125(d)(1)(B)(ii).

52. Plaintiff has not registered the Domain Name with the intent to profit from a trademark.

53. Plaintiff's actions are lawful under the UDRP and Lanham Act.

54. Plaintiff's trademark is not "famous" as provided under 15 U.S.C. § 1125(d)(1)(B)(i)(IX), 1125(d)(1)(A)(ii).

55. Defendant does not have the right to exclusive use of the term BACHOCO, nor did it have such right as the time Plaintiff registered the Domain Name.

56. Plaintiff's registration and use of the Domain Name does not violate Defendant's rights under the ACPA.

**VI. SECOND CAUSE OF ACTION
DECLARATORY RELIEF – 28 U.S.C. § 2201**

57. Plaintiff incorporates the allegations set forth in paragraphs 1 through 56 above as though fully set forth herein.

58. There is an actual controversy with respect to whether the Defendant is entitled to transfer of the Domain Name based on Defendant's rights under the Lanham Act.

59. Plaintiff's registration and use of the Domain Name does not, and is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Plaintiff with Defendant, or as to the origin, sponsorship, or approval of Plaintiff's goods, services, or commercial activities by Defendant.

60. Plaintiff's registration or use of the Disputed Domain does not violate Defendant's rights under the Lanham Act.

Comment [apn2]: I deleted the following and revised it slightly:

DELETED:
While Plaintiff has registered and acquired many domain names, it only registers and acquires domain names that incorporate common words and descriptive terms, registering no domain name with the intent to profit from a trademark. This is lawful under the UDRP and Lanham Act.

61. Pursuant to 15 U.S.C. § 1114(2)(D)(v), Plaintiff is entitled to injunctive relief including but not limited to an order prohibiting the transfer of the Domain Name to Defendant.

VI. RELIEF REQUESTED

WHEREFORE, PLAINTIFF Network and IT Management Ltd. prays for the following relief:

1. A Judgment declaring that UDRP decision issued by the WIPO Arbitration and Mediation Center in *Bachoco, S.A. de C.V. v. Network and IT Management Ltd.* is negated.

2. A Judgment declaring that Plaintiff Network and IT Management Ltd.'s registration and use of the Domain Name does not violate Defendant's rights under the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

3. A Judgment declaring that Plaintiff Network and IT Management Ltd.'s registration and use of the Domain Name does not violate Defendant's rights under the Lanham Act, 15 U.S.C. § 1051 *et seq.*

4. A Judgment declaring, pursuant to 15 U.S.C. § 1114(2)(D)(v) *inter alia*, that Plaintiff Network and IT Management Ltd. is not required to transfer registration for the Domain Name to Defendant.

5. For an award of attorneys' fees and costs against Defendant.

6. That the Court grant such other, further, and different relief in favor of Plaintiff and against Defendant as the Court deems proper under the circumstances.

DATED this 9th day of March, 2010.

M Greenberg

May Greenberg, Manager

Network and IT Management Ltd.