

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

GRAHAM SCHREIBER,
Plaintiff,
vs.
LORRAINE LESLEY DUNABIN, et al.
Defendant.
Case No. 1:12 CV 00852 (GBL/JFA)

DEFENDANT ENOM, INC.'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant eNom, Inc. ("eNom"), through undersigned counsel, respectfully
moves this Court to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1),(5),(6).

The grounds for this motion are set forth in eNom's Memorandum in Support of
Its Motion to Dismiss Plaintiff's Complaint.

"ROSEBORO NOTICE"

Pursuant to Local Civil Rule 7(K) and Roseboro v. Garrison, 528 F.2d 309 (4th
Cir. 1975), undersigned counsel advises Plaintiff of the following:

- (1) Plaintiff is entitled to file a response opposing the motion; any such
response must be filed within twenty (20) days of the date on which this Motion to
Dismiss was filed.
(2) The Court could dismiss the action on the basis of Defendants' moving
papers if Plaintiff does not file a response.

(3) Plaintiff must identify all facts stated by Defendants with which the Plaintiff disagrees and must set forth the Plaintiff's version of the facts by offering affidavits (written statements signed before a notary public and under oath) or by filing sworn statements (bearing a certificate that is signed under penalty of perjury).

(4) Plaintiff is also entitled to file a legal brief in opposition to the one filed by Defendants.

Respectfully submitted,

/s/ David G. Barger

David G. Barger (Va. Bar No. 21652)
Amanda Katzenstein (Va. Bar No. 82273)
GREENBERG TRAURIG, LLP
1750 Tysons Blvd., Suite 1200
McLean, Virginia 22102
Telephone: (703) 749-1300
Facsimile: (703) 749-1301
bargerd@gtlaw.com
katzensteina@gtlaw.com

Attorneys for Defendant eNom, Inc.

Ian C. Ballon
Wendy M. Mantell
GREENBERG TRAURIG, LLP
1840 Century Park East, Suite 1900
Los Angeles, California 90067-2121
Telephone: (310) 586-7700
Facsimile: (310) 586-7800
ballon@gtlaw.com
mantellw@gtlaw.com

Attorneys for Defendant eNom, Inc.

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

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| _____ |) | |
| GRAHAM SCHREIBER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. 1:12 CV 00852 (GBL/JFA) |
| |) | |
| LORRAINE LESLEY DUNABIN, et al. |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

**DEFENDANT ENOM, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION
TO DISMISS PLAINTIFF'S COMPLAINT**

GREENBERG TRAUIG, LLP
1750 Tysons Blvd., Suite 1200
McLean, Virginia 22102
Telephone: (703) 749-1300
Facsimile: (703) 749-1301

Attorneys for Defendant eNom, Ltd.

Defendant eNom, Inc. (“eNom”), through undersigned counsel, respectfully submits this memorandum of law in support of its motion to dismiss the Complaint filed by Graham Schreiber (“Mr. Schreiber” or “Plaintiff”) pursuant to Fed. R. Civ. P. 12(b)(1),(5),(6).

I. INTRODUCTION

Plaintiff Graham Schreiber is a Canadian individual and allegedly the owner of Landcruise Ltd., a Canadian corporation that rents motor homes in Canada. Mr. Schreiber is also allegedly the registrant of the domain name <landcruise.com>.

On July 31, 2012, Mr. Schreiber filed this *pro se* action against Lorraine Dunabin (“Dunabin”), a resident and citizen of the United Kingdom. Mr. Schreiber alleges that Dunabin operates a United Kingdom company, Alco Leisure Ltd (“Alco”), which uses the name Landcruise in its business of renting motor homes in the United Kingdom.

Construing the allegations most favorably to Mr. Schreiber, the Complaint alleges that by registering the domain name <Landcruise.uk.com>, Dunabin has infringed and diluted Mr. Schreiber’s alleged mark, Landcruise, and has violated the Anticybersquatting Consumer Protection Act (“ACPA”). (Compl. at 4). In his Complaint, Mr. Schreiber also alleges claims for contributory trademark infringement and dilution, and violations of the ACPA against CentralNic Global Headquarters (the alleged owners of the domain name <uk.com>), Network Solutions (the alleged domain name registrar for CentralNic’s <uk.com> domain), VeriSign Global Registry Services (the alleged registry for .com domains), ICANN (the alleged authority over domain names), and eNom (the alleged registrar for the <Landcruise.uk.com> domain name at issue). (*Id.* at 1). Mr. Schreiber claims he is damaged because he is blocked from using

the Landcruise trademark in the United Kingdom. (*Id.* at 4).¹

As an initial matter, Mr. Schreiber's Complaint should be dismissed because eNom was not properly served with process. More importantly, however, Mr. Schreiber has failed to state a claim against eNom. Mr. Schreiber's claims against Dunabin fail because the Lanham Act cannot be applied extraterritorially, and this court has no jurisdiction over a dispute between Mr. Schreiber, a Canadian citizen, and Dunabin, a United Kingdom resident, alleging trademark use in the United Kingdom. Moreover, eNom cannot be held liable for trademark infringement or dilution since eNom has not used the alleged mark in commerce, and there is no valid claim for contributory infringement or dilution. In addition, eNom is immune from suit under the Safe Harbor provision of the Lanham Act since eNom is merely alleged to be the registrar of the allegedly infringing domain name. For these reasons, Mr. Schreiber's claims against eNom fail and his Complaint should be dismissed with prejudice.

II. RELEVANT FACTS

A. Graham Schreiber and His Business

eNom respectfully joins Section II.A of Defendant Centralnic, Inc.'s Memorandum in Support of its Motion to Dismiss Plaintiff's Complaint ("Centralnic's Motion to Dismiss") filed on September 10, 2012. See CentralNic's Motion to Dismiss at 4-5 (Dkt. No. 9).

¹ Defendants CentralNic, ICANN, and Network Solutions filed Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Dkt. Nos. 7, 9, and 18. Those Motions were heard and taken under advisement on October 19, 2012. *See* Dkt. No. 43. eNom joins in those Motions as appropriate, as noted below. Defendant Verisign filed a Motion to Quash for improper service, which Motion was granted on October 19, 2012. *See* Dkt. No. 45.

B. The Alleged Direct Infringement by Lorrain Dunabin

eNom respectfully joins section II.B in CentralNic's Motion to Dismiss filed on September 10, 2012. *See* CentralNic's Motion to Dismiss at 5 (Dkt. No. 9).

C. eNom

eNom is alleged to be a "United States business located in Washington State and an ICANN accredited registrar." (Compl. at 3); *see also* CentralNic's Motion to Dismiss at 6 (explaining the role of a domain name registrar). eNom allegedly is the registrar for the domain name <Landcruise.uk.com>. (Compl. at 3).

III. ARGUMENT

A. Legal Standards

This motion is brought pursuant to Federal Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, 12(b)(5) for improper service of process, and 12(b)(6) for failure to state a claim. With respect to the standard for the motion to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), eNom respectfully joins section III.A in CentralNic's Motion to Dismiss filed on September 10, 2012. *See* CentralNic's Motion to Dismiss at 6-7 (Dkt. No. 9).

Federal Rule of Civil Procedure 12(b)(5) provides the vehicle for the dismissal of an action for insufficient service of process. "In resolving a motion under Rule 12(b)(5), the party making the service has the burden of demonstrating its validity when an objection to service is made." *United States v. Sea Bay Dev. Corp.*, 2007 WL 1378544, at *2 (E.D. Va. May 8, 2007) (internal citations omitted). Under Va. Code § 8.01-301, a foreign corporation must be served (a) through personal service on any officer, director, or its Virginia registered agent; or (b) through substituted service, where

applicable, on the Secretary of the Commonwealth or the Clerk of the State Corporation Commission.

With the respect to pleadings by a *pro se* plaintiff, eNom respectfully joins section III.A in CentralNic's Motion to Dismiss filed on September 10, 2012. *See* CentralNic's Motion to Dismiss at 7-8 (Dkt. No. 9).

B. There Is No Subject Matter Jurisdiction

eNom respectfully joins section III.B. of Defendant CentralNic, Inc.'s Motion to Dismiss filed on September 10, 2012. *See* CentralNic's Motion to Dismiss at 8-11 (Dkt. No. 9).

C. Plaintiff Fails To State A Claim For Relief Under The Lanham Act

eNom respectfully joins sections III.C. of Defendant Centralnic, Inc.'s Motion to Dismiss filed on September 10, 2012. *See* CentralNic's Motion to Dismiss at 11-21 (Dkt. No. 9).

Plaintiff fails to state a claim against eNom for the following additional reasons.

1. Plaintiff's Claim for Trademark Infringement and Dilution Fail Because eNom Has Not Used Plaintiff's Mark In Commerce

eNom cannot be held directly liable under the Lanham Act because it did not *use* Mr. Schreiber's alleged mark in commerce. The Fourth Circuit requires that an "unregistered trademark satisfy two requirements if its owner is to have a protectable interest in the trademark: The mark must be used in commerce and it must be distinctive." *Int'l Bancorp, LLC v. Societe des Bains de Mer et du Cercle des Etrangers a Monaco*, 329 F.3d 359, 363 (4th Cir. 2003) (internal citations omitted); *see also Larsen*

v. Terk Technologies Corp., 151 F.3d 140, 146 (4th Cir. 1998) (holding that to receive protection under the Lanham Act, a trademark must be used in commerce). “Thus, for domain name disputes based on federal or common law trademark infringement or dilution, the relevant tortious act is the *use* of the domain name, and not the act of registration.” *Am. Online, Inc. v. Huang*, 106 F. Supp. 2d 848, 854 (E.D. Va. 2000).

Accordingly, courts have found that registrars do not “use” marks in commerce as required for liability under the Lanham Act, and therefore are not subject to liability under the Lanham Act, where a third party registers a domain name that includes the alleged mark. *See, e.g., Bird v. Parsons*, 289 F.3d 865, 877-79 (6th Cir. 2002) (finding companies that operate as Internet domain-name registrars or that provide an Internet auction site for registered domain names do not “use” trademarks for the purpose of §§ 1114(1)(a) and 1125(a)(1) and dismissing claims for trademark infringement and unfair competition under the Lanham Act); *Am. Online, Inc.*, 106 F. Supp. at 854 (stating that “a claim of trademark infringement or dilution arises from the commercial use of a domain name that is similar or identical to a person's trademark, and not from the mere registration of the domain name”).

As the Sixth Circuit noted in *Bird v. Parsons* :

A registrar that grants a particular domain name to a registrant simply grants it an address. . . . The fact that the registrant can then use its domain name to infringe on the rights of a registered trademark owner does not subject the registrar to liability for trademark infringement or unfair competition.

289 F.3d at 878. Hence, eNom cannot be held directly liable under the Lanham Act, and Mr. Schreiber’s claims must be dismissed.

2. Plaintiff's Claim for Contributory Dilution Should be Dismissed Because the Fourth Circuit Does Not Recognize A Claim for Contributory Trademark Dilution

Mr. Schreiber's claim for "accommodating dilution", to the extent it is a claim for contributory dilution, must be dismissed for the additional reason that the Fourth Circuit does not recognize such a claim.

No District of Virginia or Fourth Circuit court has ever recognized a cause of action for "contributory dilution," or secondary liability for trademark dilution, under the Lanham Act. *Accord Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) ("Although courts have discussed contributory dilution, no appellate court or statute has yet established the cause of action"). The few reported decisions that even contemplate this kind of claim either did so for the sake of argument and rejected it nonetheless, *see Tiffany (NJ) Inc. v. eBay Inc.*, 576 F. Supp. 2d 463, 526 (S.D.N.Y. 2008), *rev'd on other grounds*, 600 F.3d 93, 112 (2d Cir. 2010), or simply stated that no appellate court has recognized the cause of action, and held that an amendment to include such a claim would be futile. *See Lockheed Martin Corp.*, 194 F.3d at 986.

Because eNom has not used the alleged Landcruise trademark, and because there is no recognized cause of action of secondary liability for trademark dilution, the Court must dismiss Mr. Schreiber's claim against eNom for contributory dilution.

D. Plaintiff Failed to Properly Serve eNom

1. Service is Improper and Inadequate

Mr. Schreiber's Complaint should be dismissed for the additional and independent reason that Mr. Schreiber did not properly serve eNom with process. Service of the summons and complaint on a corporation is governed by

Fed. R. Civ. P. 4(h):

Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(i) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant

Rule 4(e)(1), in turn, as it applies here permits service to be effected in the manner prescribed by law for Virginia State Court summonses.

Under Virginia law, eNom, as a Washington corporation, may be served (a) through personal service on any officer, director, or its Virginia registered agent; or (b) through substituted service, where applicable, on the Secretary of the Commonwealth or the Clerk of the State Corporation Commission. See Virginia Code § 8.01-301. In this case, service was affected via UPS and was not personally made (or otherwise made) on the registered agent or any officer or director of eNom. *See* Declaration of David Barger, Exhibit A. Therefore, there has been no valid service of process in this case.

2. Plaintiff, Who Purports to Have Signed the Return of Service, Is Not Competent to Effect Service

eNom respectfully joins section II.B. of Defendant Verisign, Inc.'s Brief In Support of Motion to Quash Service of Process filed on September 17, 2012

(“Verisign’s Brief In Support of Its Motion to Quash”). *See* Verisign’s Brief In Support of Its Motion to Quash at 3 (Dkt. No. 31).

IV. CONCLUSION

This Court does not have subject matter jurisdiction over the underlying dispute between Mr. Schreiber and Dunabin regarding the use of Mr. Schreiber’s alleged Landcruise mark in the United Kingdom or the registration of the domain name <Landcruise.uk.com>. Likewise, Mr. Schrieber has not alleged a cognizable claim against eNom and has not properly served eNom with process. For all of these reasons and as described more fully above and in CentralNic’s Motion to Dismiss, Mr. Schreiber’s Complaint should be dismissed with prejudice.

Respectfully submitted,

/s/ David G. Barger

David G. Barger (Va. Bar No. 21652)
Amanda Katzenstein (Va. Bar No. 82273)
GREENBERG TRAURIG, LLP
1750 Tysons Blvd., Suite 1200
McLean, Virginia 22102
Telephone: (703) 749-1300
Facsimile: (703) 749-1301
bargerd@gtlaw.com
katzensteina@gtlaw.com

Attorneys for Defendant eNom, Inc.

Ian C. Ballon
Wendy M. Mantell
GREENBERG TRAURIG, LLP
1840 Century Park East, Suite 1900
Los Angeles, California 90067-2121
Telephone: (310) 586-7700
Facsimile: (310) 586-7800
ballon@gtlaw.com
mantellw@gtlaw.com

Attorneys for Defendant eNom, Inc.

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| Defendant. |) | |
| |) | |

DECLARATION OF DAVID G. BARGER

I, David G. Barger, counsel of record in the above-captioned matter, hereby declare as follows:

1. I am over 18 years of age, admitted to practice in this court, and if called to testify, could testify to the following:
2. Attached to this declaration as **Exhibit A** is a true and correct copy of a series of emails that Mr. Schreiber sent to me on October 17, 2012.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Dated: October 19, 2012

Respectfully submitted,

/s/ David G. Barger
David G. Barger (Va. Bar No. 21652)
GREENBERG TRAUIG, LLP

1750 Tysons Blvd., Suite 1200
McLean, Virginia 22102
Telephone: (703) 749-1300
Facsimile: (703) 749-1301
barger@gtlaw.com

Attorneys for Defendant eNom, Inc.

EXHIBIT A

Barger, David G. (Shld-TCO-LT)

From: Graham Schreiber [graham_schreiber@landcruise.com]
Sent: Wednesday, October 17, 2012 9:25 AM
To: Barger, David G. (Shld-TCO-LT)
Subject: Re: Schreiber v. Dunabin et al, civil action number 1:12-cv-00852

Hi David:

Yes. I stand behind my position, that eNom on each and every email received, clearly communicated the requisite reply email and contact party of / at "Legal-BLV <legal@enom.com>"

Related to this same point, at the eNom / Demand Media Website, You'll know that this same email address is published, along with their applicable office address. >
<http://www.enom.com/about-us.aspx> <

As my filed papers will show, eNom was the most communicative; and the "Legal-BLV" Team, knowing of the impending formal communications had ample opportunity to direct communications outside their in-house authority, to Yourself.

According to Google Maps, McLean, Va is only 15.8 from from Alexandria, Va. So, to save a Judgement against Your client, by chosen absence & contempt of a Pro Se, who as I've shown below, did follow the rules published in the "Pro Se Handbook"

I'm back listening in at the ICANN Conference, so won't phone. Write me!

Here again, is the time line, oldest to current:

From: Graham Schreiber <graham_schreiber@landcruise.com>
Subject: UPS Package ...
Date: 21 August, 2012 12:43:23 PM EDT
To: lorraine@landcruise.uk.com, info@landcruise.uk.com
Cc: Legal-BLV <legal@enom.com>

Hi Lorraine: cc Enom:

I just rang to advise that UPS called at your address listed, for the domain name {3rd Level} of Landcruise.UK.COM and nobody was there, so they'll make a 2nd call.

Lorraine, please make arrangement with UPS to meet, at your home; and receive the package, or go to their office to receive it.

> Signature required <

Legal at Enom: Please will you implore to your client that, through your service contracted, they are obliged to US Laws; and the package's contents are from ... The United States Federal Court, in the Eastern District of Alexandria and sent by myself, from here in Canada, as is the protocol of the Court system.

>>>>>>>>>>

10/17/2012

From: Graham <graham@landcruise.com>
Subject: Schreiber v Dunabin
Date: 20 August, 2012 1:13:53 PM EDT
To: jenny@centralnic.com, James Hubler <jhubler@verisign.com>, Nicholas Beizer
<Nicholas.Beizer@networksolutions.com>, John Jeffrey <john.jeffrey@icann.org>, Amy Stathos
<amy.stathos@icann.org>, Legal-BLV <legal@enom.com>

Hello All:

I've just had an informal conversation with your bespoke colleague; and noticed his use of the word "ransom".

Given this gentleman's prominence within your clique, I respect his knowledge & use of our English language.

>>>>>>>>>>

From: Graham <graham@landcruise.com>
Subject: Schreiber v Dunabin <> Fwd: Scans
Date: 15 August, 2012 2:17:50 PM EDT
To: Glenda.Walker@vaed.uscourts.gov
Cc: lorraine@landcruise.uk.com, jenny@centralnic.com, John Jeffrey <john.jeffrey@icann.org>, Amy Stathos <amy.stathos@icann.org>, James Hubler <jhubler@verisign.com>, Nicholas Beizer <Nicholas.Beizer@networksolutions.com>, Legal-BLV <legal@enom.com>

Hi Glenda: cc Lorraine, Jenny, John, Amy, James, Nicholas & Legal:

Please see my attached receipt from UPS, for the delivery of the respective packages.

>>>>>>>>

From: Graham Schreiber <graham_schreiber@landcruise.com>
Subject: Re: USPTO Trademark infraction at Virginia, USA. <> Landcruise.com {1998} Vs
Landcruise.uk.com {2009}
Date: 15 August, 2012 2:02:33 PM EDT
To: Legal-BLV <legal@enom.com>

Hi Legal Department:

Thanks for your reply; Your name as a human would be nice, as I like to be personable, even when I've got a problem.

Perhaps you (?) have already seen the case published!

>>>>>>>>

From: Legal-BLV <legal@enom.com>
Subject: RE: USPTO Trademark infraction at Virginia, USA. <> Landcruise.com {1998} Vs
Landcruise.uk.com {2009}

10/17/2012

Date: 15 August, 2012 12:08:17 PM EDT

To: 'Graham Schreiber' <graham_schreiber@landcruise.com>, Legal-BLV <legal@enom.com>

Thank you for your response. We are not typically in a position to adequately investigate and resolve claims of illegal activity. In this instance, we recommend you contact the operator and/or web host with your concerns or open a dispute with the registry.

>>>>>>>>>>

The elapsed time between Official Publication and my receipt of documents, for resending to the applicable Defendants, at the ~ active points of communication, as detailed ~ accommodating ample Trade Gossip.

>>>>>>>>>>

August 4th, 2012 > Remarks were quickly published; and one was from a very prominent & current ICANN team member, Mr. Volker Greimann, who from ICANNWiki, "is the Chief Legal Officer and General Counsel at Key-Systems, an accredited registrar of ICANN, a member of the KeyDrive Group. [1]"

With eNom & Demand Media including team & founder, being so active in / on ICANN, it's inconceivable that the proverbial grass-fire wouldn't have sent smoke, in your personal direction.

>>>>>>>>>>

August 3rd, 2012 > An article published by Mr. Andrew Allerman, at <http://domainnamewire.com/2012/08/03/centralnic-lawsuit/>

>>>>>>>>>>

July 31st, 2012 > The Federal Court in Virginia, Stamped into service an activation notice of the file; and it was simultaneously dispatched into the public record, by the Clerks Office.

On 2012-10-17, at 6:35 AM, Barger, David G. (Shld-TCO-LT) wrote:

Graham. Thank you for your email. Regardless of your conversations with the clerk, when serving a lawsuit as opposed to pleadings after a suit has been filed, service of the suit must be in compliance with the federal rules of civil procedure. I assume you are familiar with process servers and serving registered agents, or officers and directors of a corporation. May I take it from your response that you do not agree to my request for an agreed response date for our response to the complaint? Please just let me know one way or another. Thanks. David

Sent from my iPhone
I apologize for any typos
David G Barger
Shareholder,
Chair Tyson's Litigation Group
Greenberg Traurig LLP
1750 Tyson's Blvd, Suite 1200
McLean, VA 22102
703 749 1307

10/17/2012

On Oct 16, 2012, at 11:34 PM, "Graham Schreiber" <graham_schreiber@landcruise.com> wrote:

Hi David:

Thanks for your second (2nd) email, opining about the delivery process.

I've just sent a host of emails illustrating a fluid line of communications, to Your client, many of which have been graced with replies, from an unnamed person, represented on behalf of eNom / Demand Media as ... *"Regards, Legal Department, eNom / Bulk Register"* ... and it it was to this Titled Receiver & Address advised, that I sent my package.

In the communications history, please notice that the contact name and address that I sent the package to, was & is, the same as the address listed on Your clients emails, for anything of a Legal nature, as directed.

The Court (Glenda Walker) said that as I'm International, sending packages by Mail or UPS is acceptable, for "Service" and that ... **I MUST** ... ensure that a receiver signature is secured, which was done.

You'll note that advance notices were sent, along with notice & "pdf" of shipping receipt, including the payment receipt, for shipping.

Additional to this; and of an informal nature, this case was written up in the Internet Industry Newsletter.

Guy mad about CentralNic domains sues ICANN and Network ...
domainnamewire.com/2012/08/03/centralnic-lawsuit/ Share

<attachment.jpeg>

by Andrew Allemann - in 228 Google+ circles
3 Aug 2012 – **Guy mad** about CentralNic domains sues **ICANN** and Network Solutions ... The owner of Landcruise.uk.com, Lorraine **Dunabin**, also owns ..

It was written up a second time also!

Whacky lawsuit targets ICANN, eNom, CentralNic, NetSol, Verisign ...
domainincite.com/10490-whacky-lawsuit-targets-icann-enom-... Share
18 Sep 2012 – **ICANN**, which has a web page for the litigation here, has already filed a motion to dismiss (pdf). **Schreiber** is seeking monetary damages from ...

Beyond these articles, there were a handful of "Tweets" and "ReTweets" generated.

Glenda sent in her package, the **Signed & Sealed Notification Documents**, which I sent to the applicable recipients, with a 2nd document, that I was to return to her, as a signed document, stating '**for the record**' that I'd sent the documents. The 2nd file, had a few questions, all of which were dutifully answered. Please contact Glenda, for a copy of that Sworn Testimony Document.

With regard to the > *Service of Process*: <http://www.vaed.uscourts.gov/resources/pro%20se/documents/CompleteAlexProSeRefHandbook.pdf> <

"Service of Process" refers to the procedure of notifying a defendant that a lawsuit has been filed, what the lawsuit is about, and the time for filing an answer to the complaint.

In accordance with Rule 4 of the Federal Rules of Civil Procedure, you are responsible for making arrangements for service of the Complaint within 120 days from the date the Complaint is filed. << DONE >> If service is not effected within 120 days, your case may be dismissed.

The U.S. Marshal will not serve a summons and complaint if the pro se plaintiff is able and required to pay the filing and service fees. In that instance, the pro se plaintiff is responsible for prompt service of the complaint and summons in accordance with Local Rule 4(A) and Rule 4 of the Federal Rules of Civil Procedure.

The summons and complaint may be served by any person not less than 18 years of age who is not a party to or has an interest in the subject matter of controversy. <<< The UPS Employee would have meet this criteria. >>>

Continued on next page

Rule 4 of Federal Rules of Civil Procedure also provides for service of the complaint by mail using the "Notice of Lawsuit" <<< Advance notice given, as shown in the flurry of emails just sent. >>> and "Waiver of Service of Summons" forms.

Rule 4 permits a defendant to waive personal service of process. This means that the defendant(s) agrees to respond to the Complaint without being personally served with a summons.

A Notice of Lawsuit and Waiver of Service of Summons form must be completed for each defendant. <<< Done & Enclosed >>> These forms may be obtained from the Clerk's Office or on our website at www.vaed.uscourts.gov. A sample Notice of Lawsuit and Waiver of Service of Summons is provided in this handbook.

To request waiver of service of summons from a Defendant, you must send the Defendant the following items by first class mail or other reliable means:
<<< Done >>>

Completed Notice of Lawsuit and Request for Waiver of Service of Summons

forms,

An extra copy of the Waiver of Service of Summons form for the Defendant to keep, <<< Done >>>

A self-addressed stamped envelope so the Defendant can return a Waiver of Service of Summons to you, <<< Granted, NOT DONE. ~ Owing to the fact that, I had no idea of the local reverse shipping rates, based on the size of exact reply package, you'd be sending, as INTERNATIONAL Shipment. >>>

***** Side Note: This same unknown return cost for International Shipping applied to the other five (5) Defendants, all of whom, Knew the package was on it's way, received the package in time; and communicated by reply mail, in a timely manner. ~ Had they contacted me, by telephone, requesting a UPS Pick-up, I'd have obliged. *****

A copy of the complaint, including any exhibits or attachments or any motions that you submitted with the complaint. <<< Done, with my Book 1 & Book 2. Rather simple? Yes! communications, facts & details sent in 'simple' 8.5 by 11 sheets of paper, enclosed in basic binding folder / book. >>>

When you receive the signed Waiver of Service of Summons form from the Defendant(s), you must file the originals with the Court. <<< Done. I sent the Court the affidavit forms, confirming that I had contracted to have the files sent, along with copies of the UPS Receipts, showing receipt signatures. The "Signature Collection" was an additional fee and is identified as was requested. >>>

If the Defendant fails to return the Waiver of Service of Summons form within the specified time, you must submit a written notification to the Clerk and request that a summons be issued by the Clerk's Office. <<< Done. I contacted the Court, advised same, asked for next step, was advised; and as advised, sent out the secondary notice! A duplicate of which was sent to Glenda Walkers attention. I'm not certain if the Clerk's office sent you a revised summons, but I can tell you, that as of Yet, nothing formal was sent to me, which I needed to re-send to Your client. >>>

Note: Notice and Waiver forms may not be used when the defendant is the United States, a federal government agency, or a federal government official or employee of a foreign, state, or local government sued in his official capacity. <<< Not applicable. >>>

OR
OR
OR

>>>>>>>>>>

<http://www.vaed.uscourts.gov/localrules/LocalRulesEDVA.pdf>

LOCAL CIVIL RULE 4
SERVICE AND RETURN OF SUMMONS – ABATEMENT

(A) Service and Abatement: If service of a summons and complaint is sought other than under Fed. R. Civ. P. 4(d) but is not effected, the Marshal or other

person responsible for effecting service shall return the summons and complaint to the Clerk with an endorsement thereon stating the reasons for failure to effect service.

<<< The file was received and signed for. As such, UPS did not send the complete package back as undeliverable. >>>

All waivers of service obtained under Fed. R. Civ. P. 4(d) shall be filed within five (5) days after they are returned to plaintiff. Unless, within one hundred and twenty (120) days after the complaint is filed, a defendant has been served, or has appeared or has waived service, the Clerk shall abate the action and dismiss it without prejudice as to such defendant(s) after having given, but received no response to, the notice required by Fed. R. Civ. P. 4(m).

Where the United States, its officers, corporations, or agencies are served by mail pursuant to Fed. R. Civ. P. 4(i)(1)(A), **service shall be effective on the date of the postmark or on the date received if there is no postmark or it is illegible.** The United States Attorney shall file a certificate reporting the postmark and receipt dates.

(B) **Withholding Service:** Requests by a party to withhold the service of a summons and complaint, or a third-party summons and complaint upon parties as to whom waiver of service provisions are inapplicable shall not be granted by the Clerk without leave of Court first obtained; provided, however, that a party may request the Clerk to withhold the issuance and service of an in rem process upon advising the Clerk that the property subject to arrest or attachment is not within the jurisdiction or that arrangements have been made for the acceptance of service.

(C) **Civil Cover Sheet:** The Clerk shall require a complete and executed AO Form JS 44(a), Civil Cover Sheet, to accompany each civil action filed except as to actions filed by prisoners and other litigants proceeding pro se.

<<< Cover sheet / letter's DONE! Forms sent to me, for submission to eNom; and the other five (5) respondents, sent. >>>

Based on all of the above, in summary, had Your client's email replies articulated a directive of / for reply communications / instructions **NAMING YOURSELF & YOUR FIRM**, I'd most assuredly have respectfully complied.

Sadly, they didn't instruct communications with Yourself, as You know, so this delay tactic will fail!

Your client, knew ~ and knew well ~ of my impending actions, so they could easily have directed all future communications, to You, in one of their emails.

I've strived to communicate fairly, in good faith; and the proof sent is both evident & abundant.

As promised, I'll telephone you in the morning. Please anticipate my call at 10:00 AM and ... in the event that You on a conference call, or away from the office, I'll look forward to meeting you on Friday morning, as scheduled.

Regards, Graham.

Begin forwarded message:

From: Graham <graham@landcruise.com>
Subject: Schreiber v Dunabin <> Fwd: Scans
Date: 15 August, 2012 2:17:50 PM EDT
To: [Glenda Walker@vaed.uscourts.gov](mailto:Glenda.Walker@vaed.uscourts.gov)
Cc: lorraine@landcruise.uk.com,
jenny@centralnic.com, John Jeffrey
<john.jeffrey@icann.org>, Amy Stathos
<amy.stathos@icann.org>, James Hubler
<jhubler@verisign.com>, Nicholas Beizer
<Nicholas.Beizer@networksolutions.com>, Legal-
BLV <legal@enom.com>

Hi Glenda: cc Lorraine, Jenny, John, Amy, James, Nicholas &
Legal:

Please see my attached receipt from UPS, for the delivery of the
respective packages.

I've paid the extra fee for a signature on delivery, which I'll gather
and send, once I receive them from UPS, ensuring that your
requirements are all met as I'm out of Country, as are two
recipients from both you & I, as the Pro Se & Court.

Thanks for your help.

Graham Schreiber.

Begin forwarded message:

From: "The Ups Store #89"
<store89@theupsstore.ca>
Subject: Scans
Date: 15 August, 2012 1:17:30 PM EDT
To: graham@landcruise.com

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Thank You For Your Business

10/17/2012

The UPS Store #89
YouTube:<http://www.youtube.com/watch?v=7aQ1schgqLI>
Web:www.theupsstorelocal.ca/89
E-mail: store89@theupsstore.ca
NOW OFFERING INK AND TONER
CARTRIDGES
Save Up To 50% OnLine PriceBook
<http://ginos-ups.com/>

GIVE US A CALL
TALK 2 ME

<UPS-Shippingforms-08-15-12.pdf>

<UPSReceipt-08-15-12.pdf>

Graham Schreiber.

Landcruise Ltd. > www.landcruise.com

Vancouver: 1.604.227.1610

Calgary: 1.587.333.4620

Edmonton: 1.780.666.1580

Toronto: 1.416.803.4678

Halifax: 1.902.800.1740

If you are not an intended recipient of confidential and privileged information in this email, please delete it, notify us immediately at postmaster@gtlaw.com, and do not use or disseminate such information. Pursuant to IRS Circular 230, any tax advice in this email may not be used to avoid tax penalties or to promote, market or recommend any matter herein.

Graham Schreiber.

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10/17/2012

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

| | | |
|---------------------------------|---|---|
| GRAHAM SCHREIBER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. 1:12 CV 00852 (GBL/JFA) |
| |) | |
| LORRAINE LESLEY DUNABIN, et al. |) | |
| |) | |
| Defendant. |) | |

ORDER

Upon consideration of Defendant eNom, Inc.’s Motion to Dismiss Plaintiff’s Complaint, it is hereby

ORDERED that Defendant eNom, Inc.’s Motion to Dismiss Plaintiff’s Complaint is **GRANTED**; and it is

FURTHER ORDERED that Plaintiff’s Complaint is hereby **DISMISSED WITH PREJUDICE.**

SO ORDERED.

Entered this _____ day of _____, 2012

The Honorable Gerald Bruce Lee
United States District Court Judge

WE ASK FOR THIS:

/s/ David G. Barger

David G. Barger (Va. Bar No. 21652)
Amanda Katzenstein (Va. Bar No. 82273)
GREENBERG TRAUIG, LLP
1750 Tysons Blvd., Suite 1200
McLean, Virginia 22102
Telephone: (703) 749-1300
Facsimile: (703) 749-1301
bargerd@gtlaw.com
katzensteina@gtlaw.com

Attorneys for Defendant eNom, Inc.

Ian C. Ballon
Wendy M. Mantell
GREENBERG TRAUIG, LLP
1840 Century Park East, Suite 1900
Los Angeles, California 90067-2121
Telephone: (310) 586-7700
Facsimile: (310) 586-7800
ballon@gtlaw.com
mantellw@gtlaw.com

Attorneys for Defendant eNom, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 19, 2012, a true and accurate copy of the foregoing **DEFENDANT ENOM, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT; DEFENDANT ENOM, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT; DECLARATION OF DAVID G. BARGER; AND [PROPOSED] ORDER** were filed electronically with the Clerk of Court using the CM/ECF system and that service was thereby accomplished on the entities identified below. Further, Plaintiff Schreiber is proceeding *pro se*, as is Defendant Dunabin and they are not registered with the ECF system. Thus they will be served by mail and email where available:

Walter D. Kelley Jr.
VSB No. 21622
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001-2113
Tel: (202) 879-2113
Fax: (202) 626-1700
Email: wdkelley@jonesday.com

Attorney for Defendant Internet
Corporation for Assigned Names and
Numbers, CentralNic Ltd.
35-39 Moorgate
London United Kingdom EC2R 6AR

Jeremy D. Engle, Esq.
Steptoe & Johnson LLP
1330 Conn. Ave., N.W.
Washington, DC, 20036
202-429-3000
Fax: 202-429-3902
Email: jengle@steptoe.com
Timothy B. Hyland
Va. Bar No. 31163
Attorney for Verisign, Inc.
Ifrah PLLC
1717 Pa. Ave., N.W., Suite 650
Washington DC 20006
Tel: (202) 524-4140
thyland@ifrahlaw.com

Attorney for Defendant Defendant Network
Solutions LLC
13861 Sunrise Valley Drive, Suite 300
Herndon, VA 20171

Attorney for Defendant Defendant Verisign
Inc.
12061 Bluemont Way
Reston, VA 20190

BY REGULAR MAIL

Lorriane Lesley Dunabin
1 Chalder Farm Cottages, Chalder Lane
Sidlesham, Chichester, West Sussex
United Kingdom PO20 7RN

Defendant

BY REGULAR MAIL AND EMAIL

Grahm Schreiber
5303 Spruce Avenue
Burlington, Ontario Canada L7L-1N4
Graham@landcruise.com

Plaintiff

/s/ David G. Barger

David G. Barger (Va. Bar No. 21652)
GREENBERG TRAUIG, LLP
1750 Tysons Blvd., Suite 1200
McLean, Virginia 22102
Telephone: (703) 749-1300
Facsimile: (703) 749-1301
bargerd@gtlaw.com

Attorneys for eNom, Inc.