

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria, Virginia

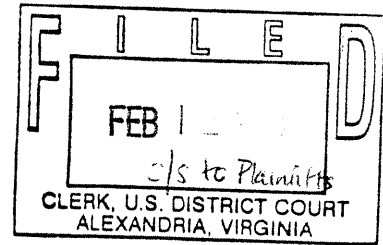
UNITED STATES OLYMPIC COMMITTEE,)
INTERNATIONAL OLYMPIC COMMITTEE,)
SALT LAKE ORGANIZING COMMITTEE)
FOR THE OLYMPIC GAMES OF 2002,)

Plaintiffs,)

v.)

2000OLYMPIC.COM, et al.,)

Defendants.)



Civil Action No. 00-1018-A

COPY

REPORT AND RECOMMENDATION

This matter came before the court on the motion of plaintiffs, the United States Olympic Committee ("USOC"), the International Olympic Committee ("IOC"), and the Salt Lake City Organizing Committee for the Olympic Winter Games of 2002 ("SLOC") (collectively, "plaintiffs") for entry of default judgment against 44 defendant domain names¹ ("domain names") under the *in rem* provisions of the Anticybersquatting Consumer Protection Act² ("ACPA"), and Section 44(h) of the Lanham Act.³ Plaintiffs effectuated service and provided actual notice to the registrants of the domain names in compliance with 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(aa) by sending its complaint to the registrants' postal and email addresses. On February 12, 2003, the court entered an order (docket no. 96) setting a time certain for registrants or other persons claiming an interest in the domain names to respond to the complaint. Forty-one of the 44 domain names did not respond, and the magistrate judge finds that those domain names and their registrants are in default.

¹A complete listing of all 44 domain names and the registrants is attached as Appendix 1.

²15 U.S.C. § 1125(d).

³15 U.S.C. § 1051 *et seq.*

Two registrants of the remaining three domain names, Angelo Grigoropoulos and Philip Neocleous, responded by letter after the court-ordered deadline. The magistrate judge finds that these letters are not answers to the complaint and that there is no reason in law or equity to deem them answers. The magistrate judge therefore finds that these domain names and their registrants are in default.

As to the remaining domain name, registrant Fogarty sent a letter to the court within the court-ordered 30 days. The magistrate judge finds that this letter does not constitute an answer and that there is no reason in law or equity to treat it as one.⁴ The magistrate judge therefore finds that this domain name and its registrant is in default.

I. Factual Summary

From the well-pled allegations of the complaint, the magistrate judge finds the following. The USOC is non-profit, congressionally chartered corporation, with its principal place of business in Colorado. The USOC uses license and sponsorship fees to house, feed, train, and otherwise support U.S. Olympic athletes. The IOC is an international, non-governmental, non-profit organization, organized under the laws of Switzerland, which owns all rights to the Olympic Games and the Olympic symbol, flag, motto and anthem, and which is the umbrella organization of the “Olympic Movement.” The SLOC is non-profit Utah corporation, which was formed to organize, promote, fund, and host the Salt Lake City 2002 Olympic Winter Games, and which is a licensee of the USOC and is authorized to use and license others to use the Olympic marks registered to and owned by the USOC.

⁴The magistrate judge also finds that registrant Fogarty’s letter fails to specifically affirm or deny the allegations of the complaint, and that, in the alternative, plaintiffs are entitled to a judgment on the pleadings under FED. R. CIV. P. 12(c).

In accordance with the Olympic and Amateur Sports Act,⁵ and by registrations issued by the U.S. Patent and Trademark Office (“USPTO”) and the Swiss Trademark Office, the USOC⁶ and the IOC⁷ are the owners (and the SLOC⁸ is a licensee) of various Olympic marks, such as OLYMPIC, OLYMPIAD, ATLANTA 1996 CULTURAL OLYMPIAD, OLYMPIQUE (the French equivalent of Olympic), OLYMPIADE (the German equivalent of Olympic Games), SALT LAKE CITY OLYMPIC WINTER GAMES OF 2002, XIX OLYMPIC WINTER GAMES, SALT LAKE ORGANIZING COMMITTEE FOR THE OLYMPIC WINTER GAMES OF 2002, OLYMPIC WINTER GAMES, AND 2002 OLYMPIC WINTER GAMES.

The USOC, together with the IOC, have used the word “Olympic” since at least 1896, when the modern Olympic games began. Since that time, the USOC has been engaged extensively in the business of using and/or licensing others to use the Olympic and Olympiad marks throughout the United States, to the point that the word “Olympic” has acquired a secondary meaning, distinctive of the USOC’s goods and services. Likewise, the IOC has

⁵36 U.S.C. § 220506(a)(4). The U.S. Congress granted the USOC exclusive right in the United States to make commercial use of the word “Olympic” and “Olympiad.” Congress also statutorily prohibited the commercial use of any trademark, trade name, sign, symbol, or insignia falsely representing association with, or authorization by, USOC and IOC, and further prohibited commercial use of the work “Olympic” or any simulation thereof tending to cause confusion or mistake, to deceive, or to falsely suggest a connection with the USOC or any Olympic activity. *Id.* at § 220506(c)(3)(4).

⁶The USPTO issued to the USOC: 1) the registration of the “Olympic” trademark in 1973, for use and in connection with a wide variety of goods and services, for which the first date of use was in 1920; 2) the registration for the “United States Olympic Committee” trademark and design in 1974, for use and in connection with a wide variety of goods and services, for which the first date of use was in 1932; 3) the registration for the “USA Olympics” trademark and design in 1987, for use on footwear, and which was first used in 1986; 4) registration for the “Olympic” trademark in 2000, for use in selecting and obtaining the most competent amateur athletes to represent the U.S. in Olympic events, etc., and which was first used in 1896. The USOC also has a large number of federal trademark registrations for other marks containing the Olympic marks, which are too numerous to list.

⁷The IOC has registrations of the Olympic marks in many other countries, including, but not limited to: Australia, China, France, Germany, Hong Kong, Italy, Japan, Singapore, South Korea, Spain, and Taiwan.

⁸With the authorization of the USOC, the SLOC has been and is now using various Olympic marks to identify its goods and services.

engaged in business using the Olympic mark throughout the world (including the United States), resulting in world-wide sponsorship agreements with companies such as Coca-Cola, Kodak, and Visa. Over the past century these marks have become inherently distinctive and have an associated goodwill that is a valuable asset needed by the USOC and the IOC to ensure the long term ability to fund U.S. Olympic Teams and the overall Olympic movement.

The registrants of the domain names, who reside outside the United States, are not authorized to use the Olympic mark, but have registered in total over 1,800 domain names containing the Olympic marks. The domain names that are the subject of this report and recommendation contain Olympic marks and/or simulations thereof, such as misspellings (e.g., “olimpic.com”), foreign equivalents of such marks (e.g., “vila-olimpica.com”), or the term “olympic” combined with another English word (e.g., “olympicairways.com”). All of the domain names were registered without plaintiffs’ authorization, and create a likelihood of confusion as to the source, sponsorship, affiliation, and endorsement of the domain names and their related websites. The domain names attempt to divert consumers for commercial gain or in order to tarnish or disparage the Olympic words and marks. Moreover, their registrants do not make noncommercial, fair use of the Olympic words and marks, nor do the related websites show any intent to make future noncommercial, fair use of the Olympic words and marks.

II. Jurisdiction and Venue

Plaintiffs filed this action *in rem* to obtain rights to the domain names. The ACPA allows a trademark owner to file an *in rem* action in the judicial district in which the domain name registrar, domain name registry or other domain name authority that registered or assigned the domain name is located. Although the IOC (a Swiss organization) seeks relief pursuant to the Lanham Act, the United States and Switzerland are parties to the International Convention for the Protection of Intellectual Property,⁹ and therefore, the provisions of the ACPA protect the IOC’s trademarks to the same extent they protect U.S. trademarks. In the instant case, the domain name

⁹21 U.S.T. 1583, T.I.A.S. No. 6923.

registry for all of the domain names is Network Solutions, Inc. (now Verisign Global Registry Services), located in this district in Herndon, Virginia.

The *in rem* provision of the ACPA requires a plaintiff to prove that it cannot obtain personal jurisdiction over the domain name registrant. This court has previously held that the mere registration of a domain name within a judicial district is not sufficient contact to establish personal jurisdiction over a domain name registrant domiciled outside the jurisdiction.¹⁰ All of the domain name registrants are foreign entities or individuals residing in various countries worldwide. None of the registrants have any known connection sufficient to establish personal jurisdiction in any judicial district within the United States, including the Eastern District of Virginia. The magistrate judge therefore finds that plaintiff cannot obtain personal jurisdiction over any of the registrants of the domain names that are the subject of this report and recommendation.

III. Substantive Analysis

Under the ACPA, once *in rem* jurisdiction has been established, the plaintiff must then prove that the “domain name violates any right of the owner of a mark registered in the Patent and Trademark Office, or protected under subsection (a) [infringement] or subsection (c) [dilution].” In *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 232 (4th Cir. 2002), the Fourth Circuit held that the *in rem* provision of the ACPA is not limited to claims of bad faith registration with the intent to profit under the ACPA, but also recognizes *in rem* actions for infringement and dilution claims.

Plaintiffs have demonstrated that the domain names in issue here are confusingly similar to plaintiffs’ Olympic marks. The domain names contain the Olympic words and marks, and simulations thereof, such as misspellings (e.g., “Olimpics”), foreign equivalents (e.g., “Olympique” and “Olimpico,” respectively the French and Spanish words for Olympic), or Olympic words and marks used in combination with other terms (e.g., “Olympicairways” and

¹⁰*America Online, Inc. et al. v. Huang*, 106 F. Supp. 2d 848, 856-57 (E.D. Va. 2000).

“Olympicicons”). In fact, the “confusingly similar” standard requires no more than a showing of facial similarity of domain names with marks.¹¹ Moreover, when considering the similarity of individual marks, courts must give “greater force and effect to the marks’ dominant elements.”¹² Since the dominant elements of the domain names are identical to or substantially indistinguishable from the Olympic words and marks, the domain names are “confusingly similar” to the Olympic words and marks for purposes of the ACPA.

The Olympic marks are also so famous, renowned and valuable that Congress has seen fit to give the USOC exclusive rights to the marks through the Olympic and Amateur Sports Act. In fact, the Supreme Court has observed that Congress acted reasonably in doing so because it found that the commercial and promotional value of the word “Olympic” was the product of the USOC’s “own talents and energy, the end result of much time, effort, and expense.”¹³ Considering the fame, value and importance of the Olympic words and marks, a mere analysis of the domain names themselves reveals that a bad faith intent existed on the part of the registrants.

Moreover, several factors enumerated in the ACPA support a finding of bad faith on the part of the registrants. The domain names are currently registered to registrants who have no intellectual property rights in the Olympic words and marks, have no legal name justifying use of the Olympic words and marks, and have not formerly used nor are presently using the Olympic words and marks in connection with the bona fide offering of any goods or services. Similarly, by using the Olympic marks in the domain names, the registrants obviously intended to divert consumers from legitimate Olympic websites to their own websites by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the website. In fact, some of the domain names have been registered in order to sell them to the highest bidder. The

¹¹*Northern Light Tech. v. Northern Lights Club, et al.*, 97 F. Supp. 2d 96, 117 (D. Mass. 2000), *aff’d*, 236 F.3d 57 (1st Cir. 2001).

¹²*Washington Speakers Bureau, Inc. v. Leading Auths., Inc.*, 33 F. Supp. 2d 488, 498 (E.D. Va. 1999).

¹³*San Francisco Arts & Athletics v. Olympic Committee*, 483 U.S. 522, 533 (1987).

registrants also do not make noncommercial, fair use of the Olympic words and marks, nor do the related websites show any intent to make future noncommercial, fair use of the Olympic words and marks. Plaintiffs therefore have demonstrated that the registrants acted with bad faith intent in registering the domain names.

IV. Conclusion

Because plaintiffs have shown that the domain names violate plaintiffs' rights under the ACPA, and because plaintiffs have established *in rem* jurisdiction over the domain names, the magistrate judge finds that plaintiffs are entitled to the transfer of the domain names pursuant to 15 U.S.C. § 1125(d)(2)(D)(i).

V. Recommendation

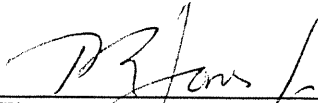
The magistrate judge recommends entry of default judgment against all 44 domain names (as listed in Appendix 1), and that those domain names be transferred to plaintiffs.

VI. Notice

The registrants are notified as follows. Objections to this report and recommendation must be filed within ten (10) days of service on you of this report and recommendation. A failure to file timely objections to this report and recommendation waives appellate review of the substance of the report and recommendation and waives appellate review of a judgment based on this report and recommendation.

VII. Service

Counsel for plaintiffs is directed to serve copies of this report and recommendation on each registrant listed in Appendix 1, and to file a certificate of service.



Thomas Rawles Jones, Jr.
United States Magistrate Judge

February 12, 2004
Alexandria, Virginia

Appendix: Domain Names Subject to Default Judgment

Registrants	Domain Names
<p>BigMart.com 995-5 Doowon BD 3F Daechi-Dong Kangnam-Ku Seoul, KR</p> <p>ceo@bigmart.com</p>	<p>olympicpark.net olympique.com</p>
<p>Robert Weiland 48146 Bentall Centre Vancouver, B.C. V7X 1N8 CA</p> <p>rweilan@worldtractor.com</p>	<p>olympicboulevard.com</p>
<p>Chris Toms 1454 Dresden Row Suite 304 Halifax, Nova Scotia B3J 3T5 CA</p> <p>chris@minus13.com</p>	<p>djolympics.com</p>
<p>Damian Macafee 69 Charlotte St London, W1P 1LA UK</p> <p>macafee@inbox.ru</p>	<p>olimpic.com</p>
<p>John Connolly PO Box 10, Newcastle County Down, Northern I BT33 0BU GB</p> <p>epocire@hotmail.com</p>	<p>olympicgreats.com</p>
<p>Farmaha 84 Glenashton Dr Oakville, Ont L6H 6G2 CA</p> <p>svgaf@idirect.com</p>	<p>canadaolympic.com olympiccanada.com</p>
<p>Gregory Koulax PO Box R1362 Royal Exchange Sydney, NSW 1225 AU</p> <p>gregkoulax@hotmail.com gkoulax@blackjacklimo.com</p>	<p>losangelesolympics.com</p>

<p>HomesOnline Photo-Marketing Service 392 Woodsworth Road, Unit 33 Toronto M2L-2T9 Ontario, Canada</p> <p>randybasin@hotmail.com</p>	<p>torontoolympicrentals.com</p>
<p>Imagination Holdings P/L 64 North Terrace Kent Town 5067 SA AUSTRALIA</p> <p>webmaster@imagination.com.au</p>	<p>olympicgamesgiveaway.com olympictab.com</p>
<p>Kibong Um #134-204, CheonCheon-Apt., CheonCheon-Dong, JangAn-Gu Suwon-Si GyeongGi-Do KR</p> <p>vox@unitel.co.kr</p>	<p>2008beijingolympic.com</p>
<p>Kim Jong Shik 40-172 bongmyung-dong chunan-si chungnam, Korea</p> <p>kjs2000@altavista.co.kr</p>	<p>olympicdomain.com</p>
<p>Robert Montori 13 rue de Bruxelles Paris, 75009 FR</p> <p>rmontori@etxeama.com</p>	<p>village-olympique.com villageolympique.com villageolympique.net village-olympique.net</p>
<p>K Papageorgopoulos 24 Rue J. L'Aveugle Luxemburg LU 1148 352 460896 X</p> <p>papageo@pt.lu</p>	<p>olympicairways.com</p>
<p>Olympicmail.com P.O. Box 52 FIRA Santorini, 84700 Greece</p> <p>info@olympicmail.com</p>	<p>olympicmail.com</p>
<p>Online Australia Level 8, South Tower 1 Railway Street Chatswood 2067 NSW, Australia</p> <p>mbradley@oal.com.au</p>	<p>olympicicons.com</p>

<p>Philip Neocleous 117 Athalassa Ave PO Box 23825 Nicosia 1686, Cyprus</p> <p>neocls@cytanet.com.cy</p>	<p>olympicflowers.com</p>
<p>Jordi Jordi Ramon Turro, 93, 2-2a Barcelona, BARCELONA E-08005 SPAIN</p> <p>nul@nominalia.com</p>	<p>vila-olimpica.org</p>
<p>Urban Domain Inc. 121 Woodlawn Ave West Toronto, Ontario m4w1g9 Canada</p> <p>tasears@hotmail.com</p>	<p>toolympics.com</p>
<p>Visible Domain 19 Ballanawin Strang, Isle of Man IM4 4NS UK</p> <p>alan-white@talk21.com</p>	<p>olympics2024.com</p>
<p>Training Online International 21 Russell St West End 4101 QLD AUSTRALIA</p> <p>dmain@netregistrv.com.au</p>	<p>Australian-olympics-courtesy- course.com</p>
<p>Travelability Ltd. Framilode Gloucestershire GL2 7LH United Kingdom</p> <p>d1b5@aol.com</p>	<p>accessibleolympics.com</p>
<p>Damian Fogarty 24 Hutchinson Street Sydney, 2207 AU</p> <p>001161291504912 (fax)</p> <p>DandSFogarty@aol.com (opened email sent to this address) senator@hutch.com.au (did not open email sent to this address)</p>	<p>olympicswimmingteam.com olympicswimmingteams.com olympicswimwear.com olympicswimming.com</p>
<p>Antonio Carrano 231 Welling Drive Narellan 2567 NSW Australia</p> <p>tcarrano@macquarie.com.au</p>	<p>olympicmoments.com</p>

<p>Craig Missell 33 Kierens Way Chadstone 3148 Victoria, Australia</p> <p>craigmissell@hotmail.com</p>	<p>olympicsponsor.com</p>
<p>Zhao Yanpei R/309, No.6, Anhuili Third Block, Chaoyang Beijing 100101 China</p> <p>zhaoyp@uni-net.com.cn</p>	<p>china-olympic.com</p>
<p>Andrew Lobel 35 Marsh Lane London NW7 4QJ Great Britain (UK)</p> <p>Andrew@thinkingfish.com</p>	<p>whistler-winter-olympics.com</p>
<p>Itaca Multimedia Via delle Fosse di Castello, 8 Rome, Italy 00193 IT</p> <p>itaca@itaca.com</p>	<p>olympicgamesturin.com, olympicgamesturin.org, olympicgamesturin.net</p>
<p>Informatiebeheer Malgrat Apdo 292, Sta. Susanna, Bcn 08398 Spain</p> <p>postmaster@malgrat.nl</p>	<p>portolimpic.com</p>
<p>Philip McVeigh 202/204 McAvoy House 17a Ormeau Avenue Belfast, BT2 8HD UK</p> <p>hostmaster@olympiclifts.com</p>	<p>olympiclifts.com</p>
<p>Jerries Haddad 17 Rembrandt Crescent Brampton, Ontario L6Y 3V5 Canada</p> <p>D-6653mxvr@usersa3.domainsatcost.ca</p>	<p>olympicbid.com</p>
<p>John Brosseau 2154 W. 6th Ave, Apt 203 Vancouver, BC V6K 1V6</p> <p>johnbrosseau@shaw.ca</p>	<p>vancouverolympics.com</p>

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