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6

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 VIRTUAL POINT INC. dba CAPTIVE MEDIA, a
10 California corporation,

11 Plaintiff,

12 vs.

13 JOSEPH ROSENZWEIG, an individual, and DOE
14 DEFENDANTS 1-10,

15 Defendants.
16

17 : Case No. 8:14-cv-924

18 : **COMPLAINT FOR:**

- 19 : 1. Declaratory Judgment of no
- 20 : Trademark Infringement,
- 21 : Unfair Competition or
- 22 : violation of the
- 23 : Anticybersquatting
- 24 : Consumer Protection Act
- 25 : and that Plaintiff is the
- 26 : rightful holder of the
- <ALFinancial.com> domain
- name;
- 2. Fraudulent
- Misrepresentation;
- 3. Wire Fraud;
- 4. Federal Common Law
- Unfair Competition; and
- 5. Unfair Competition (Cal.
- Bus. & Prof. Code Sec.
- 17200).

DEMAND FOR JURY TRIAL

Plaintiff Virtual Point Inc. dba Captive Media (“Plaintiff”), by its attorney, for its

Complaint alleges:

1 **NATURE OF ACTION**

2 This action seeks a declaratory judgment that Plaintiff’s registration and use of its
3 valuable domain name property <ALFinancial.com> (hereinafter the “Domain Name”) does
4 not constitute trademark infringement, unfair competition, or violation of the Anti-
5 cybersquatting Consumer Protection Act (“ACPA”), and that Plaintiff is the rightful
6 registrant of the Domain Name. This action also seeks relief for Defendant Joseph
7 Rosenzweig’s (“Defendant”) and/or Doe Defendants’ bad faith actions constituting
8 fraudulent misrepresentation, wire fraud, federal common law unfair competition, and unfair
9 competition in violation of California Business & Professions Code Sec. 17200 *et seq.*

10 **JURISDICTION AND VENUE**

11 1. Pursuant to 28 U.S.C. §§ 2201(a) and 2202, Plaintiff seeks a declaration and
12 judgment regarding its rights and obligations in an actual controversy within this Court’s
13 jurisdiction, concerning Plaintiff’s rights in and to the Domain Name. Subject matter
14 jurisdiction exists in this case pursuant to 28 U.S.C. § 1331, giving this Court original
15 jurisdiction in a civil action raising a federal question under 28 U.S.C. § 1338(a), the
16 Lanham Act, 15 U.S.C. § 1051, *et seq.*, and the ACPA, 15 U.S.C. § 1125(d), giving this
17 Court original and exclusive jurisdiction in a civil action arising under the trademark and
18 cybersquatting laws, and federal unfair competition law of the United States. Pendent
19 jurisdiction exists over the state law claims.

20 2. This Court has personal jurisdiction over Defendant because the Defendant has
21 sufficient contacts with the State of California and this Judicial District subjecting it to the
22 general and specific personal jurisdiction of this Court pursuant to Cal. Code Civ. Pro. §
23 410.10. Defendant has purposefully availed itself to this forum through general business
24 presence and by threatening Plaintiff with legal action to force the transfer of the Domain
25 Name.

1 3. Venue is proper in this Judicial District under 28 U.S.C §§ 1391, because the
2 Court has personal jurisdiction over the Defendant and because Plaintiff’s claims arise from
3 Defendant’s activities in and/or targeted to this District.

4 **THE PARTIES**

5 4. Plaintiff Virtual Point, Inc. is a California corporation with its principal place of
6 business in Irvine, California, dba Captive Media.

7 5. Plaintiff is a web development company who has developed several businesses
8 and websites including without limitation: UDRPsearch.com, Gamex.com,
9 CrosswordGames.com, Racex.com, Frip.com, Y10.com, and ShakeItUp.com.

10 6. Upon information and belief, Defendant Joseph Rosenzweig is an individual with
11 a residence at ---- ----- ----, Houston, TX -----.

12 7. Upon information and belief, Doe Defendants include Defendant’s principal
13 and/or others acting in concert with Defendant in some or all of the tortious actions
14 described herein.

15
16 **FACTUAL BACKGROUND**

17 **Introduction**

18 8. Domain Names are essentially Internet Protocol addresses that point and direct
19 Internet users to their desired destination, and they are valuable pieces of property that many
20 liken to the new “real estate” of our burgeoning virtual society. Domain name and website
21 development is a legitimate and important industry. Plaintiff is a prominent and respected
22 web development company.

23 9. In recent years, overreaching trademark owners have sought to capitalize on this
24 thriving market by filing baseless trademark infringement lawsuits or taking advantage of
25 the administrative system set up by ICANN (the California corporation that administers the
26 Domain Name System (“DNS”)), and using them to intimidate domain name holders into

1 transfer; essentially to swipe valuable descriptive, generic, keyword and/or dictionary
2 domain names away from their rightful owners. These abusive lawsuits are threatening
3 meaningful development of domain name and Internet investment and innovation.

4 10. Such is the situation that is before the Court in this Complaint. Defendant has
5 threatened to file a Uniform Domain-Name Dispute Resolution Policy action (“UDRP
6 action”), accusing Plaintiff of lacking a legitimate business interest in the Domain Name and
7 registering the Domain Name in bad faith. Such claims also equate to trademark
8 infringement and cybersquatting claims under U.S. federal law.

9 11. These serious and baseless accusations and threats establish an actual
10 controversy between the parties, impair the value of the Domain Name property, and
11 constitute an attempt to reverse hijack that property from Plaintiff; and thus Plaintiff
12 requests that this Court grant declaratory and affirmative relief in its favor.

13 Plaintiff’s Use of the Domain Name

14 12. Plaintiff, dba Captive Media, acquired the Domain Name <ALFinancial.com> in
15 good faith, as it was originally registered in November 2003.

16 13. Plaintiff did not register the Domain Name with the intent to sell it to Defendant.
17 Plaintiff has never offered to sell the Domain Name to Defendant, except in response to
18 Defendant’s unsolicited request to purchase the name. Nor has Plaintiff attempted to disrupt
19 the Defendant’s business by confusing consumers trying to find the Defendant’s website, or
20 otherwise. Plaintiff has not knowingly used the Domain Name in connection with goods or
21 services that may be related to Defendant’s business. Content at the website associated with
22 the Domain Name has never been focused upon Defendant, Defendant’s business, or
23 Defendant’s competitors. There are many other very similar domain names registered to
24 persons other than Defendant, indicating other domain name registrants with legitimate and
25 relevant rights, including without limitation the following:

26 ALFINANCIAL.NET

1 ALFINANCIAL.US
2 ALFINANCIALCORP.COM
3 A-LFINANCIALCORP.COM
4 ALFINANCIALGROUP.COM
5 ALFINANCIALNETWORK.COM
6 ALFINANCIALAID.COM
7 ALFINANCIALLYFIT.COM
8 ALFINANCE.COM
9 AL-FINANCE-JOBS.COM
10 ALFINANCELTD.COM
11 AL-FINANCE-RESUMES.COM
12 ALFINANCES.COM

13 Defendant's Activities That Create a Justiciable Controversy

14 14. On February 14, 2014, Defendant contacted Plaintiff and inquired whether
15 Plaintiff was interested in selling the Domain Name.

16 15. That same day, Plaintiff informed Defendant that the Domain Name was not
17 currently for sale. Plaintiff did, however, invite defendant to make an offer for Plaintiff's
18 consideration.

19 16. On February 18, 2014, Defendant informed Plaintiff that his principal declined to
20 make an offer to purchase the Domain Name.

21 17. On June 3, 2014, almost four months after the initial communication, Defendant
22 again contacted Plaintiff and stated that his principle offered to pay \$500 for the Domain
23 Name.

24 18. On June 6, 2014, Plaintiff informed Defendant that Plaintiff would sell the
25 Domain Name for \$8,000.

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1 19. On June 9, 2014, Defendant informed Plaintiff that his principal would only pay
2 \$1,000 for the Domain Name. Moreover, Defendant informed Plaintiff that his principal
3 had “quite a bit of evidence” that the Domain Name was being “squatted-on” by Plaintiff
4 and that his principal wanted to “avoid going the UDRP route, which would cost about
5 \$1,000 anyway.”

6 20. Plaintiff responded that it was unclear why Defendant was making references to
7 commencing a legal action. Plaintiff further requested that Defendant inform Plaintiff of his
8 own, his principal’s and his principal’s attorney’s contact information. Plaintiff also
9 requested that Defendant indicate his principal’s affiliation, if any, with a number of similar
10 domain names.

11 21. Defendant responded that his principal said they had “plenty of evidence to
12 obtain the [Domain Name] via UDRP . . .”

13 22. Plaintiff responded to Defendant and informed him that they considered these
14 claims to be Defendant’s alone because he had not provided any contact information for his
15 principal or his principal’s attorney, nor had he provided any evidence that he represented
16 anyone other than himself. Plaintiff also instructed Defendant to serve any documents
17 relating to the threatened UDRP action upon Plaintiff’s attorney and provided the
18 appropriate contact information. Plaintiff also informed Defendant that Plaintiff would be
19 filing a federal lawsuit against Defendant.

20 **COUNT I: CLAIM FOR DECLARATORY RELIEF**

21 23. Plaintiff realleges paragraphs 1-22 of this Complaint.

22 24. Plaintiff rightfully registered the Domain Name in good faith, and with no intent
23 to sell the Domain Name to Defendant.

24 25. Plaintiff believed and had reasonable grounds to believe that the registration and
25 its use of the Domain Name was and is lawful.

26

1 26. Defendant's principal (currently Doe Defendant herein), through its agent the
2 Defendant, has threatened to initiate administrative proceedings alleging that Plaintiff
3 registered and used the Domain Name in bad faith and in violation of trademark,
4 cybersquatting and unfair competition laws.

5 27. A justiciable controversy exists between Plaintiff and Defendant.

6 28. To resolve this actual controversy, Plaintiff seeks a declaration and judgment that
7 it is not infringing Defendant's trademark rights or those of any Doe Defendant who may be
8 identified in this action, that Plaintiff is not violating unfair competition laws and/or the
9 ACPA, that its registration and use of the Domain Name is a good faith use, and that
10 Plaintiff is the rightful owner of the Domain Name.

11 **COUNT II: FRAUDULENT MISREPRESENTATION**

12 29. Plaintiff realleges paragraphs 1-28 of this Complaint.

13 30. Defendant represented to Plaintiff that his principal had evidence that Plaintiff
14 acted in bad faith in registering and using the Domain Name.

15 31. Upon information and belief, this representation was false, and Defendant knew
16 such a representation to be false because Defendant refused to provide any contact
17 information for either his principal or his principal's attorney, nor did Defendant provide
18 any such evidence of bad faith by Plaintiff.

19 32. Defendant intended Plaintiff to rely on such false representation to force Plaintiff
20 into selling the Domain Name property in order to avoid legal action.

21 33. Plaintiff relied on Defendant's representation, forcing Plaintiff to file this lawsuit
22 to clear the cloud over Plaintiff's title to the Domain Name.

23 34. As a result, Plaintiff has suffered damages in an amount to be proved at trial
24 including compensation for Plaintiff's time, effort and attorneys' fees in defending against
25 Defendant's baseless claims.

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COUNT III: WIRE FRAUD

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2 35. Plaintiff realleges paragraphs 1-34 of this Complaint.

3 36. Defendant knowingly devised a plan to obtain Plaintiff's valuable domain name
4 property when he threatened Plaintiff with a UDRP action and stated that his principal had
5 evidence that Plaintiff acted in bad faith when registering and using the Domain Name.

6 37. Such statements were material and as a result of such statements Plaintiff was
7 forced to file the instant action to protect its valuable Domain Name property.

8 38. Defendant acted with the intent to defraud Plaintiff because he knew such
9 statements were false, and made them in an effort to force Plaintiff to sell the Domain Name
10 property.

11 39. Defendant used wire communications when making such statements when he
12 communicated with Plaintiff via the Internet.

13 40. As a result, Plaintiff has suffered damages in an amount to be proved at trial
14 including compensation for Plaintiff's time, effort and attorneys' fees in defending against
15 Defendant's baseless claims.

16 **COUNT IV: CLAIM FOR COMMON LAW UNFAIR COMPETITION**

17 41. Plaintiff realleges paragraphs 1-40 of this Complaint.

18 42. Defendant's principal has threatened to initiate administrative proceedings
19 against Plaintiff, contending that Plaintiff registered and used the Domain Name in bad faith
20 and in violation of trademark, cybersquatting and unfair competition laws.

21 43. Defendant's wrongful and baseless accusations have created a cloud on
22 Plaintiff's title to the Domain Name, impairing its value and transferability.

23 44. As a result of Defendants' past and continued wrongful acts, Defendant has
24 violated federal common law of unfair competition.

1 45. Consequently, Plaintiff has incurred damages in an amount to be proved at trial,
2 including compensation for Plaintiff's time, effort and attorneys' fees in defending against
3 Defendant's baseless claims.

4 **COUNT V: CLAIM FOR UNFAIR COMPETITION**
5 **UNDER CAL. BUS. & PROF. CODE SEC. 17200 *et seq.***

6 46. Plaintiff realleges paragraphs 1-45 of this Complaint.

7 47. Defendants' wrongful acts, as described in this Complaint, are unlawful, unfair
8 and fraudulent, and cause damage to Plaintiff and injure its business, in violation of section
9 17200 *et seq.* of the California Business and Professions Code.

10 48. As a result of Defendants' past and continued wrongful acts, Plaintiff has
11 incurred damages in an amount to be proved at trial, including compensation for Plaintiff's
12 time, effort and attorneys' fees in defending against Defendant's baseless claims.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment as follows:

- 15 a. a declaration that Plaintiff is not infringing the trademark rights of Defendant;
16 b. a declaration that Plaintiff is not violating unfair competition law;
17 c. a declaration that Plaintiff is not violating the ACPA;
18 d. a declaration that Plaintiff registered and used the Domain Name in good faith
19 and is the rightful registrant of the Domain Name;
20 e. a finding awarding Plaintiff monetary compensation for damages sustained by
21 Defendants' wrongful actions as alleged in this Complaint;
22 f. an award of reasonable attorneys' fees and expenses; and,
23 g. such other and further relief as the Court may deem just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff respectfully requests that all issues in this case be decided by a jury.

Dated: June 13, 2013

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