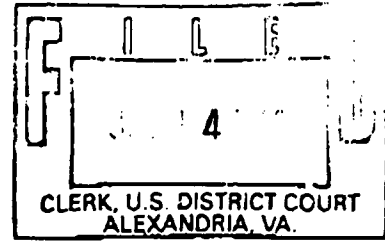


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



AMERICA ONLINE, INC.)

Plaintiff,)

v.)

AOLCARD.COM, et al.,)

Defendants.)

CIVIL ACTION
NO. 00-229-A

REPORT AND RECOMMENDATION

This matter came before the Court on July 14, 2000 on Plaintiff's motion for default judgment against in this in rem action against several Internet domain names. Notice of this action was sent to Alexander Maximov ("Maximov"), the registrant of the domain names, by certified mail on February 7, 2000, as well as by e-mail to "deco@springmail.com" which was the address listed for Maximov by Network Solutions, Inc. ("NSI"). Additionally, notice of this in rem action was published in the legal section of the Los Angeles Times on February 18, 2000 and on March 27, 2000. This day, this Court enters nunc pro tunc an order requiring publication, satisfying the requirements of 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(bb).

PROCEEDINGS AND JURISDICTION

This case is currently before the Court on the basis of its jurisdiction over the subject matter under Section 39 of the Trademark Act of 1946, 15 U.S.C. § 1121; the Judicial Code, 28

U.S.C. §§ 1331 and 1338.

Plaintiff, America Online, Inc. ("AOL") filed its complaint on February 7, 2000 alleging one count: Violation of the Federal Anticybersquatting Consumer Protection Act.

FACTS

AOL is the owner of the trade name, service mark and trademark "AOL". The United States Patent and Trademark Office ("USPTO") has recognized AOL's rights by issuing various federal registrations for this mark, including Reg. No. 1,977,731 which was issued on June 4, 1996.

At least as early as 1989, AOL adopted and began using the mark AMERICA ONLINE in connection with its computer online services and other services. Currently, AOL has over 17 million subscribers, and millions more are aware of AOL, its services or products, as a result of significant multi-million dollar marketing and advertising campaigns.

Maximov has registered domain names that infringe AOL's trademarks, service marks and trade names. These domain names include: aolcard.com, aolcard.net, aolcard.org, aolcreditcard.com, aolcreditcard.net, aolcreditcard.org, aolforce.com, aolforce.net, aolforce.org, aolgoldcard.com, aolgoldcard.net, aolgoldcard.org, aolinfo.org, aolinfo.com, aolinfo.net, aolmastercard.com, aolmastercard.net, aolmastercard.org, aolplatinum.com, aolplatinum.net,

aolplatinum.org, aolplatinumcard.com, aolplatinumcard.net,
aolplatinumcard.org, aolunicard.com, aolunicard.net,
aolunicard.org, aolusacard.com, aolusacard.net, aolusacard.org,
aoluser.com, aoluser.net, aoluser.org, aolvisa.net, aolvisa.org,
aolvisacard.com, aolvisacard.net, aolvisacard.org, visaol.com,
visaol.net, and visaol.org (collectively the "Maximov Domain
Names").

Notwithstanding AOL's prior use of and rights in the AOL marks, Maximov obtained the Maximov Domain Names with the intent to profit from the fame and good will associated with the AOL marks. To create the false impression that he and his "movement" were affiliated with, sponsored by, approved by, or endorsed by AOL, Maximov began using the Maximov Domain Names in interstate commerce.

Upon learning of this, AOL informed Maximov of AOL's intellectual property rights, demanded that Maximov cease and desist his use of the imitating names, and requested that he transfer the Maximov Domain Names to AOL. Maximov refused to transfer the infringing domain names to AOL, unless AOL paid \$47 million to Maximov's "Apocalypses Or Life" movement.

Maximov's use of the domain name imitates the famous name and mark AOL and is likely to cause confusion among customers that visit its Web site. Maximov's infringing actions were done despite having full knowledge of AOL's prior rights in its names

and marks.

DISCUSSION

Based on the facts in the well-pleaded complaint there is no doubt that Plaintiff has protected rights to marks associated with and related to AOL. Defendant's bad faith use of the domain names at issue in this case has misled and confused consumers, diluted the mark, and irreparably harmed Plaintiff.

Defendants' actions violate the Federal Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d). Under this Act, bad faith use of an infringing domain name can result in a court order transferring the infringing domain name to the party that holds the registered mark. Defendants' actions were in bad faith. Therefore, AOL is entitled to have the domain names transferred to it.

CONCLUSION

Based upon the complaint and the documents submitted in proof of damages this Court concludes that Defendant has infringed Plaintiff's mark. As a result, Plaintiff is entitled to the transfer of the Maximov Domain Names to it.

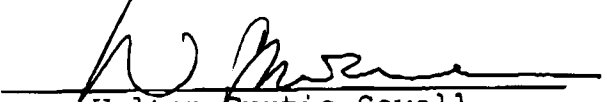
RECOMMENDATION

It is recommended that NSI transfer the Maximov Domain Names to Plaintiff AOL.

NOTICE

Objections to this Report and Recommendation pursuant to 28

U.S.C. Section 656 and Federal Rule of Civil Procedure 72(b) must be filed ten (10) days after service. Failure to file such objections waives appellate review of a judgment based on this Report and Recommendation.



Welton Curtis Sewell
United States Magistrate Judge

July 14, 2000
Alexandria, Virginia