

IN THE COURT OF COMMON PLEAS OF
FRANKLIN COUNTY, OHIO

ANN M. YEAGER,

Plaintiff,

v.

GO DADDY GROUP, INC.; INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS; UNKNOWN
REGISTRANT(S) & USERS OF
COPYRIGHTED WORD; IBRAHIM
KAZANCI,

Defendants.

Case No. 11CVC4434

Judge Guy L. Reece II

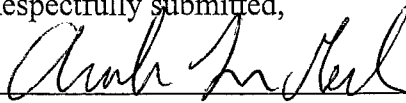
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**MOTION OF DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES
AND NUMBERS TO DISMISS PLAINTIFF'S COMPLAINT**

Pursuant to Rules 12(B)(2) and 12(B)(6) of the Ohio Rules of Civil Procedure, and for the reasons set forth in the Memorandum of Law in Support and Affidavit of Akram Attalah, dated May 10, 2011, Defendant hereby moves the Court for an Order dismissing Plaintiff's Complaint in its entirety and with prejudice.

Dated: May 13, 2011

Respectfully submitted,



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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT INTERNET
CORPORATION FOR ASSIGNED NAMES AND NUMBERS' MOTION TO DISMISS
PLAINTIFF'S COMPLAINT

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INTRODUCTION

While the claims asserted in Plaintiff Ann M. Yeager's Complaint are largely unintelligible, she apparently seeks "\$1,000,000,000 (One Billion Dollars)" in damages from Defendants Internet Corporation for Assigned Names and Numbers ("ICANN")¹, Go Daddy Group, Inc., Ibrahim Kazanci, and "Unknown Registrant(s) & Users of the Copyrighted Word 'Aypress,' Years 2004-2011" for the purported misuse of the allegedly copyrighted word "aypress." With respect to ICANN, however, Plaintiff has sued the wrong party, in the wrong jurisdiction, under the wrong statutes, for alleged injuries ICANN could not have caused. Accordingly, Plaintiff's Complaint must be dismissed on at least two independent grounds, including lack of personal jurisdiction and for failure to state a claim against ICANN.

First, Plaintiff improperly seeks to have this Court exercise personal jurisdiction over Defendant ICANN (a California non-profit public benefit corporation), despite the fact that ICANN maintains no offices, facilities or other presence in Ohio, has no assets in Ohio, does not conduct any business in the State, and simply does not have sufficient contacts with Ohio that would render ICANN subject to suit here. Plaintiff, who bears the burden of establishing this Court's jurisdiction, does not even attempt to allege the "minimum contacts" necessary for this Court to assert personal jurisdiction over ICANN. What is more, the evidence set forth in this motion definitively establishes that no such jurisdiction exists.

Second, Plaintiff's Complaint falls well short of stating a claim against ICANN. Specifically, Plaintiff fails to allege facts sufficient to establish that the word "aypress" is protected by a valid copyright or that ICANN infringed on such a copyright.

For these reasons, Plaintiff's entire Complaint should be dismissed with prejudice.

¹ Plaintiff erroneously refers to ICANN as the "*International* Corporation of Assigned Names & Numbers." See Complaint Caption (emphasis added).

FACTUAL BACKGROUND

Background on ICANN.

ICANN is a California non-profit public benefit corporation with its principal place of business in Marina del Rey, California. It does not engage in commercial business, but rather administers the Internet's domain name system on behalf of the Internet community, pursuant to a series of agreements with the United States Department of Commerce. ICANN's coordination role is fulfilled in certain ways. For example, and relevant to Plaintiff's allegations, consumers may obtain the right to use second-level domain names (such as google.com or uscourts.gov) through companies known as "registrars." ICANN operates the accreditation system that has produced a highly competitive registrar marketplace, with over 900 accredited registrars, including defendant Go Daddy Group, Inc.

ICANN has no company facilities, assets or real estate in Ohio, is not registered to do business in Ohio, does not solicit business or advertise in Ohio, does not have any phone number or mailing address in Ohio, does not sell any goods or services in Ohio, does not have a bank account in Ohio, and does not have any employees in Ohio. Declaration of Akram Atallah In Support of ICANN's Motion to Dismiss ("Atallah Decl."), ¶¶ 4-8, 10-11, 14.

The only plausible ICANN-Ohio contact, Ohio shares with the rest of the world. ICANN operates a few passive websites on the Internet that provide information regarding its Internet coordination activities, as well as publicly available information about domain name registrants, including the websites at <http://www.icann.org>, <http://www.iana.org>, and <http://www.internic.net>. These websites are operated from web servers physically located in Southern California and Virginia. Atallah Decl., ¶ 14. The websites contain information about ICANN, about the people who work for ICANN, and about the projects that ICANN has undertaken in connection with the Internet. The websites also contain "links" to other

information that is related to ICANN's activities. ICANN does not offer anything for sale on its websites; in fact, ICANN does not sell anything anywhere. *Id.*

Plaintiff's Complaint.

Plaintiff alleges that she "is the creator – and true owner – of the copyrighted word, Aypress." Compl. at p. 2. Plaintiff further alleges that she "contracted with a third party [Scott Denman of Bookmasters] – to register her business name – for online use" and, for a time, was the registrant of the domain "aypress.com." *Id.* at pp. 2-3. Plaintiff alleges that she terminated her contract with Bookmasters, but that Mr. Denman nonetheless later "notified the Plaintiff that the domain, aypress.com, was to expire." *Id.* at p. 3. At Plaintiff's "instruction," the registration was not renewed and Plaintiff's domain name registration expired. *Id.* at pp. 3, 5. Plaintiff alleges that at some future time, "a third unknown party registered the copyrighted word, Aypress, as Aypress.com." *Id.*

Plaintiff's *only* allegation with respect to ICANN is that ICANN "oversees, accredits, and approves domain name registrations." *Id.* at p. 2. Nonetheless, Plaintiff alleges that ICANN "aided and abetted in [the] theft" of Plaintiff's allegedly copyrighted word "aypress" (*id.* at p. 3) by failing to "check for invasive, unauthorized, malicious, copyright infringement" and thereby allowing a third party to register the domain name. *Id.*

It is on these allegations that Plaintiff sued ICANN in this State seeking "a punitive and economic award in the amount of \$1,000,000,000 (One billion US dollars)." *Id.* at p. 1.

I. PLAINTIFF'S COMPLAINT AGAINST ICANN MUST BE DISMISSED UNDER RULE 12(B)(2) FOR A LACK OF PERSONAL JURISDICTION.

In Ohio, determining whether personal jurisdiction can be exercised over a non-resident defendant like ICANN involves a two-part inquiry: (1) whether the exercise of jurisdiction is appropriate pursuant to Ohio's long-arm statute, *see U.S. Spring Communications Co. Ltd.*

Partnership v. Mr. K's Foods, Inc. (1994), 68 Ohio St.3d 181, 183-84, 624 N.E.2d 1048; and (2) whether exercising jurisdiction would violate the Due Process Clause of the Fourteenth Amendment. *Id.* The second part of the inquiry asks whether there are sufficient "minimum contacts . . . such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Helicopteros Nacionales de Colombia, S.A. v. Hall* (1984), 466 U.S. 408, 414, 104 S.Ct. 1868, 80 L.Ed.2d 404; *Int'l Shoe Co. v. Washington* (1945), 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95. In other words, to satisfy constitutional concerns, the non-resident defendant should reasonably expect to be haled into court in the forum. *See Burger King Corp. v. Rudzewicz* (1985), 471 U.S. 462, 472, 105 S.Ct. 2174, 85 L.Ed.2d 528.

The party seeking to invoke personal jurisdiction bears the burden of establishing the existence of jurisdiction. *Giachetti v. Holmes* (1984), 14 Ohio App.3d 306, 307, 471 N.E.2d 165. Even if such a prima facie case is made, where, as here, Defendant submits affidavits to the contrary, the burden shifts back to the plaintiff to produce evidence supporting jurisdiction. *Baltimore & Ohio R. Co. v. Mobile Tank Car Servs.* (N.D. Ohio 1987), 673 F. Supp. 1436, 1439 ("Defendant, by introduction of evidence controverting jurisdiction, shifts the burden of going forward back to the plaintiff."). In analyzing whether personal jurisdiction exists, "[t]he due process rights of a defendant should be the courts' primary concern." *CompuServ, Inc. v. Patterson* (C.A. 6, 1996), 89 F.3d 1257, 1262.

Here, Plaintiff has not alleged sufficient material facts to support personal jurisdiction over ICANN in Ohio under either the long-arm statute or the Due Process Clause. Indeed, Plaintiff has made *no* specific factual allegations regarding personal jurisdiction. Plaintiff's Complaint should be dismissed with prejudice. *Baltimore & Ohio R. Co. v. Mobile Tank Car*

Servs. (N.D. Ohio 1987), 673 F. Supp. 1436, 1438 (Failure by a plaintiff to establish personal jurisdiction is “fatal to a Court’s ability to proceed.”).

A. Plaintiff Has Not Satisfied Ohio’s Long-Arm Statute And ICANN Has Established That She Cannot.

Ohio Revised Code section 2307.382, Ohio’s long-arm statute, establishes the grounds for exercising personal jurisdiction over non-resident defendants. R.C. 2307.382 (A) & (C). The Ohio courts have held that the statutory provisions of Ohio’s long-arm statute “must be strictly met.” *Baltimore & Ohio R. Co.*, 673 F. Supp. at 1438.

Plaintiff’s Complaint, however, fails to invoke any provision of Ohio’s long-arm statute. What is more, the statute *cannot* be satisfied because ICANN has not undertaken any of the activities enumerated in the statute. At best, the activities alleged in Plaintiff’s Complaint may (but actually do not) implicate only two provisions of Ohio’s long-arm statute. These two provisions of the long-arm statute may subject a nonresident defendant to Ohio jurisdiction only if the plaintiff’s cause of action arises from the defendant’s: (1) transacting business within the state; or (2) tortious acts within the state. R.C. 2307.382 (A)(1), (A)(3), (C).

1. ICANN Does Not “Transact” Any Business In Ohio.

Section A(1) of Ohio’s long-arm statute subjects a nonresident defendant to jurisdiction if it transacts business in Ohio. R.C. 2307.382 (A)(1). In order to establish that a defendant is “transacting” business for the purposes of Ohio’s long-arm statute, “the business operations set in motion by the defendant [must] have a ‘realistic impact’ on Ohio commerce.” *Priess v. Fisherfolk* (S.D. Ohio 1982), 535 F. Supp. 1271, 1274 (citation omitted); *see also Kentucky Oaks Mall Co. v. Mitchell’s Formal Wear, Inc.* (1990), 53 Ohio St.3d 73, 75, 559 N.E.2d 477 (transact “means to prosecute negotiations; to carry on business; to have dealings”) (emphasis omitted), quoting Black’s Law Dictionary (5th Ed. 1979), 1341.

Plaintiff's Complaint is devoid of any allegation that ICANN has transacted any such business activity in Ohio, and ICANN's evidence establishes the exact opposite. ICANN is a not-for-profit California corporation with its principal place of business in California. Atallah Decl., ¶ 2. ICANN has no employees, offices or agents in Ohio. *Id.* at ¶¶ 4, 5, 9. ICANN holds no business licenses in Ohio. *Id.* at ¶ 10. ICANN does not offer anything for sale to Ohio residents; in fact, ICANN does not sell anything. *Id.* at ¶ 14. On similar facts, the Sixth Circuit found that it lacked personal jurisdiction over a defendant under Ohio's long-arm statute where the defendant had no employees, offices, bank accounts, telephone numbers, or a license to do business in the State. *See Premium Balloon Accessories, Inc. v. Control Plastics* (C.A. 6, 2004), 113 Fed.Appx. 50, 50-51, 2004 WL 1922165, *1 (affirming dismissal of complaint for lack of personal jurisdiction under Section (A)(1) where defendant did not have offices, telephone numbers, mailing address, employees, property, or a license to do business in Ohio); *see also Kroger Co. v. Malease Foods Corp.* (C.A. 6, 2006), 437 F.3d 506, 512. The result should be no different here.

Plaintiff may argue that ICANN transacts business in Ohio because it maintains a passive Internet website that can be viewed by Ohio residents if they so chose. But Ohio courts consistently hold that the maintenance of a passive website, such as ICANN's, does not constitute transacting business for the purposes of Ohio's long-arm statute. *Edwards v. Erdey* (C.P. 2001), 118 Ohio Misc. 2d 232, 240, 770 N.E.2d 672 ("A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction [under Section (A)(1) of Ohio's long-arm statute]."); *See also Malone v. Berry*, 174 Ohio App.3d 122, 2007-Ohio-06501, 866 N.E.2d 66, at ¶ 12-19; *Parshall v. PAID, Inc.*, 2008-Ohio-3171, 2008 WL 2553098, at ¶16 ("Ohio courts have found no personal

jurisdiction under the long-arm statute where the defendant merely passively posts information, including advertising, on its website.”) (citations omitted).

2. ICANN Has Not Committed A Tort Within The State.

Section (A)(3) of Ohio’s long-arm statute subjects a nonresident defendant to jurisdiction if the defendant has caused “tortious injury by an act or omission in this state.” R.C. 2307.382 (A)(3). Section (A)(3) is not applicable here.

To utilize the tort prong of Ohio’s long-arm statute, not only must Plaintiff sufficiently state a tort claim against ICANN, but Plaintiff must also establish that the alleged tort arose from ICANN’s contacts with Ohio. *See* R.C. 2307.382 (C) (“When jurisdiction over a person is based solely upon this section, only a cause of action *arising from* acts enumerated in this section may be asserted against him.”) (emphasis added). Plaintiff has done neither.

First, as explained in Section II, *infra*, Plaintiff has not sufficiently stated a cause of action against ICANN for copyright infringement and thus has not properly alleged that ICANN has committed a tort.² Second, as noted, the only arguable contact ICANN has with Ohio is its website, which is accessible to anyone in the world. Plaintiff has not alleged, and cannot allege, that her purported cause of action arose out of ICANN’s website or any website that ICANN maintains. As such, Plaintiff cannot utilize Section (A)(3) of Ohio’s long-arm statute to secure Ohio jurisdiction over ICANN. *See Gerber v. Riordan* (N.D. Ohio 2009), No. 3:06-CV-01525, 2009 WL 1505572, *8 (ruling that section (A)(3) was inapplicable because plaintiffs’ tort claims did not arise from the defendants’ Ohio contacts).

² ICANN does not concede that Plaintiff’s claims sound in tort. However, even assuming, *arguendo*, this Court considers Plaintiff’s action for damages by reason of copyright infringement analogous to tort cases, Plaintiff still does not state a cause of action against ICANN, as explained below in Section II.

B. Plaintiff Has Not Satisfied The Due Process Clause And ICANN Has Established That She Cannot.

If the Court finds it necessary to go beyond analysis of Ohio's long-arm statute, the Due Process Clause of the Fourteenth Amendment provides further justification to dismiss Plaintiff's claims against ICANN. Plaintiff has not alleged sufficient material facts to establish that Ohio jurisdiction over ICANN comports with due process and ICANN has shown that Plaintiff cannot.

"The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz* (1985), 471 U.S. 462, 471-72. Due process requires that two elements be established: (1) the defendant must have certain "minimum contacts" with the forum state; and (2) the maintenance of the suit must not offend "traditional notions of fair play and substantial justice." *Int'l Shoe Co.*, 326 U.S. at 316.³

Minimum contacts within the forum may give rise to two types of personal jurisdiction: specific or general jurisdiction. *See Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 414-15. Here, Plaintiff has not and cannot establish either.

1. The Court Does Not Have General Jurisdiction Over ICANN.

To assert general jurisdiction, Plaintiff must establish that ICANN has "continuous and systematic" contacts with Ohio. *Third Nat'l Bank in Nashville v. WEDGE Group, Inc.* (C.A. 6, 1989), 882 F.2d 1087, 1089. Factors that weigh against general jurisdiction include a lack of business or a business license in the forum, *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 416, a lack of property ownership in the forum, *Conti v. Pneumatic Products Corp.* (C.A. 6, 1992), 977 F.2d 978, 981, or a lack of any bank accounts, telephone listings, or mailing

³ While Ohio's long-arm statute "is not coterminous with federal constitutional limits," courts, in evaluating whether personal jurisdiction is proper under the long-arm statute, "have consistently focused on whether there are sufficient minimum contacts between the nonresident defendant and the forum state so as not to offend 'traditional notions of fair play and substantial justice.'" *Bird v. Parsons* (C.A. 6, 2002), 289 F.3d 865, 871-72 (quoting *Int'l Shoe Co.*, 326 U.S. at 316).

addresses in the forum. *Bird v. Parsons* (C.A. 6, 2002), 289 F.3d 865, 873-74. General jurisdiction does not arise because a party maintains a website or otherwise offers information nationwide. *Id.* at 874 (ruling that the fact that the defendant “maintains a website that is accessible to anyone over the Internet is insufficient to justify general jurisdiction”) (citing *Cybersell, Inc. v. Cybersell, Inc.* (C.A. 9, 1997), 130 F.3d 414, 419-20 (holding that the maintenance of a passive website that contained advertisements did not even justify the exercise of *specific* jurisdiction over the defendant, whom the plaintiff conceded was not subject to general jurisdiction)); *Mink v. AAAA Dev. LLC* (C.A. 5, 1999), 190 F.3d 333, 336-37 (nationwide toll-free telephone number and website insufficient); *see also ALS Scan, Inc. v. Digital Serv. Consultants, Inc.* (C.A. 4, 2002), 293 F.3d 707, 715; *Soma Med. Int’l v. Standard Chartered Bank* (C.A. 10, 1999), 196 F.3d 1292, 1297. Nor can general jurisdiction be premised on a “stream of commerce” theory; *i.e.*, that a defendant has contacts with third parties who then do business in the forum state. *See, e.g., Purdue Research Found. v. Sanofi-Synthelabo, S.A.* (C.A. 7, 2003), 338 F.3d 773, 778; *Alpine View Co. Ltd. v. Atlas Copco AB* (C.A. 5, 2000), 205 F.3d 208, 216.

ICANN definitively lacks the requisite “continuous and systematic” contacts that would subject it to general jurisdiction in Ohio. ICANN has no employees, assets, bank accounts, real property, personal property, offices, or other facilities in Ohio. Atallah Decl., ¶¶ 4, 6- 8. ICANN is not licensed to do business in Ohio, does not have a registered agent for service of process in Ohio, and has no phone numbers or mailing addresses in Ohio. *Id.* at ¶¶ 5, 9-10. ICANN does not collect fees directly from domain name registrants, such as Ms. Yeager⁴ and has no contracts with Ms. Yeager. *Id.* at ¶¶ 3, 13. Finally, ICANN’s website, which is operated from web servers

⁴ Plaintiff alleges that she was the domain name registrant for aypress.com, Compl. at p. 3, but that the domain name registration expired on her “instruction.” *Id.*

physically located in Southern California and Virginia, does not offer anything for sale. *Id.* at ¶ 14.

ICANN thus has none of the contacts with Ohio that are relevant to the general jurisdiction inquiry. *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 416; *Conti*, 977 F.2d at 981. That Ohio residents may access ICANN's website is far from sufficient to satisfy the rigorous "continuous and systematic" test for general jurisdiction. *Bird*, 289 F.3d at 874. Nor is it sufficient that ICANN accredits non-Ohio registrars who *themselves* provided services to Ohio residents. *Purdue*, 338 F.3d at 778; *Alpine View*, 205 F.3d at 216.

2. The Court Lacks Specific Jurisdiction Over Plaintiff's Claim.

Ohio sets forth three criteria for determining whether minimum contacts sufficient to support specific personal jurisdiction exist: (1) the defendant's contacts with Ohio must involve some act by which the defendant purposefully avails itself of the privilege of conducting activities within the State; (2) the defendant's contacts with the State must give rise to the plaintiff's cause of action; and (3) the exercise of jurisdiction must be reasonable. *See Scotts Co. v. Aventis S.A.* (C.A. 6, 2005), 145 Fed.Appx. 109, 113, 2005 WL 1869653, *3. The "constitutional touchstone" of sufficient contacts is that the defendant purposefully directed its activities at residents of the forum-state. *In re Blue Flame Energy Corp.*, 171 Ohio App.3d 514, 528, 2006-Ohio-6892, 871 N.E.2d 1227, at ¶¶17-20 (finding no specific personal jurisdiction because the defendant's passive internet website could not be considered to be purposefully directed to the residents of Ohio); *see also Burger King*, 471 U.S. at 472-73.

As noted, ICANN does not transact business in Ohio and is not party to any contracts with Plaintiff. Atallah Decl., ¶¶ 10, 13-14. Plaintiff's Complaint fails to identify ICANN's contacts with the state of Ohio, much less prove that her claims against ICANN arise out of these contacts. Specific personal jurisdiction is therefore absent here. *In re Blue Flame Energy Corp.*,

171 Ohio App.3d 514, 527, 2006-Ohio-6892, 871 N.E.2d 1227, at ¶16 (“Specific” jurisdiction “exists only when the litigation at hand arises out of or relates to a defendant’s ‘minimum contacts’ with the forum.”). Plaintiff’s Complaint should be dismissed with prejudice for this reason alone.

Specific personal jurisdiction is also lacking because ICANN did nothing to “purposefully avail itself of the privilege of acting” in Ohio, and does not have “a substantial enough connection” with Ohio to render jurisdiction over it “reasonable.” *In re Blue Flame Energy Corp.*, 171 Ohio App.3d 514, 528, 2006-Ohio-6892, 871 N.E.2d 1227, at ¶17-18; *see also id.* at ¶20 (“A passive website, i.e., one that does little more than display information, does not subject a defendant to specific jurisdiction.”).

In short, Plaintiff has not alleged any facts sufficient to satisfy the Due Process Clause. ICANN has established that it has no meaningful contacts with Ohio and that the exercise of Ohio jurisdiction over ICANN would be unreasonable. This Court therefore has more than ample justification to dismiss Plaintiff’s Complaint against ICANN for want of personal jurisdiction under the Due Process Clause.

II. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED UNDER RULE 12(B)(6) FOR FAILURE TO STATE A CLAIM AGAINST ICANN.

Ohio Rule of Civil Procedure 12(B)(6) contemplates dismissal of a complaint that fails to state a claim upon which relief can be granted. Rule 12(B)(6). Thus, faced with a motion to dismiss under Rule 12(B)(6), a court may sustain a complaint only where it appears that, within the bounds of the pleading, the plaintiff could prove a set of facts entitling it to relief. *Vail v. Plain Dealer Publishing Co.* (1995), 72 Ohio St.3d 279, 280, 649 N.E.2d 182. Here, Plaintiff’s Complaint fails to state a claim against ICANN and should be dismissed.

Plaintiff purports to state a claim for copyright infringement⁵ for “use of the word, Aypress.” Compl. at p. 1. Plaintiff’s copyright claim to the word “Aypress” appears to be based on her purported registration of the word as her small business name and/or her placement of a “copyright notice of said word” on two books. Compl. at pp. 2-3. Under either theory, Plaintiff’s claim for copyright infringement fails on its face because words alone are not copyrightable.

Although a book is subject to copyright protection, a word in a book is not. *Bird*, 289 F.3d at 881 (“ . . . taking a single word, or even a phrase, from a copyrighted work generally does not violate the rights that copyright law provides to the owner of that work.”) A business name similarly would not be protected under copyright laws. According to the U.S. Copyright Office:

Copyright law does not protect names, titles, or short phrases or expressions. Even if a name, title or short phrase is novel or distinctive or lends itself to a play on words, it cannot be protected by copyright.

United States Copyright Office, CIRCULAR NO. 34 (rev. 2010), Copyright Protection Not Available for Names, Titles, or Short Phrases. Examples of words not subject to copyright protection include names of businesses, pseudonyms, and catchwords. *Id.* Therefore, even if the word “Aypress” appeared on Plaintiff’s books or was a registered trade name, neither entitle her to a copyright on that word.

⁵ ICANN interprets Plaintiff’s cause of action for “willful theft of copyright” to be copyright infringement.

The cover page to Plaintiff’s Complaint identifies the following additional causes of action, none of which are addressed in the Complaint and many of which do not constitute causes of action at all: (i) “Willful Contributory – Slander of Title & Property;” (ii) “Will Contributory – Libel, Defamation, Slander, False Light – Worldwide – To Induce Emotional and Mental – Agitation - & Anguish In An Author (Whose Work Is The Mind);” (iii) “Willful Contributory – Assault (Touching of the Mind);” (iv) “Willful Contributory – False Imprisonment (Restrict Own Movement);” (v) “Willful Contributory – Injury to Reduce & Remove: Ethical Reputation, Reputational Capital, Loss of Standing in Worldwide Community; Loss of Direct, Indirect, Copyright Income (Including 70 Years After Death) – Of An Author;” and (vi) “Willful Contributory – Libel, Defamation, Slander, False Light – Worldwide – Resulting in Loss of Good Reputation – Affecting Marital & Dependent Status (Incl. Heirs to Copyright).” Because Plaintiff does not address these claims in her Complaint, they are not before this Court. *Morris v. Children’s Hosp. Med. Center* (1991), 73 Ohio App.3d 437, 441, 597 N.E.2d 1110, (“[T]he caption of a pleading is not controlling. It is, instead, the substance of a pleading that determines its operative effect.”); *Baltes Commer. Realty v. Harrison*, 2009-Ohio-5868, at ¶ 38 (“[T]he caption of the Complaint does not control the nature of the claims.”).

Plaintiff's claim for copyright infringement, which appears to be based on a third party's registration of the domain name "Aypress.com" (Compl. at 3-5), also fails because the registration of a domain name does not constitute copyright infringement. In a similar case involving the registration of a domain name, the Sixth Circuit affirmed the dismissal of a claim for copyright infringement. *Bird*, 289 F.3d at 881-82. The plaintiff in *Bird* alleged that the use of the domain name "efinancia.com" was a violation of his copyright in the computer program and manual titled "Financia." *Id.* at 870, 881. The Sixth Circuit found that the "defendants' alleged use of the word 'efinancia' simply does not reproduce any of the creativity that entitles Bird to a copyright in the computer program titled Financia." Similarly, here, the domain name "aypress.com" does not violate any copyrights Plaintiff may have to her books on which such word or domain allegedly appeared; Plaintiff's claim should therefore be dismissed.

Although Plaintiff uses only the word "copyright" in her Complaint, her allegations regarding "Aypress" being her business name⁶ suggest she may also be attempting to assert a claim for trademark infringement.⁷ However, such a claim would similarly fail because ICANN has not made any use of the word "Aypress."

A claim of trademark infringement or unfair competition under federal trademark laws requires the use of a mark in commerce. Sections 1114(1)(a) & 1125(a)(1)(A), Title 15, U.S. Code.⁸ Plaintiff does not – and cannot – allege that ICANN uses the "Aypress" word in commerce. Rather, Plaintiff alleges that ICANN "allowed used [sic] of this word – after a third contracted party did not renew it – on instruction of the Plaintiff." Compl. at p. 5. ICANN, the

⁶ In her Complaint, Plaintiff alleges that "Aypress" was her business name, which was registered with the State of Ohio. Compl. at p. 2.

⁷ Plaintiff alludes to trademark rights by alleging that the word "Aypress was coined from [her] initials, and stands for Ann Yeager Press." Compl. at p. 2.

⁸ Federal trademark principles apply to analogous Ohio common law claims like common law trademark infringement. *DeGidio v. West Group Corp.* (C.A. 6, 2004), 355 F.3d 506, 509.

non-profit public benefit corporation responsible for coordinating Internet Protocol (IP) addresses, does not even “allow” use, it merely administers the domain name registration process.

In the case of *Bird* discussed above, the Sixth Circuit also upheld the dismissal of trademark infringement and unfair competition claims against a domain name registrar and domain name auction site based on the alleged use of a trademark in a domain name. The court found that:

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.

Bird, 289 F.3d at 878. Here, ICANN is much further removed from the registrant, with whom ICANN does not contract, than the registrar was in *Bird*. ICANN, therefore, cannot be liable for trademark infringement or unfair competition from any alleged use of the “Aypress” mark by a domain name owner.

In addition, even if ICANN did “use” the “Aypress” mark (which it did not), ICANN does not sell anything, and therefore did not (and could not) offer any services that could possibly be confused with the goods and services allegedly offered by Plaintiff. Furthermore, ICANN is not the entity offering services on the Aypress.com website. *See, e.g., DeGidio v. West Group Corp.* (C.A. 6, 2004), 355 F.3d 506, 512 (“Finally, as Defendant points out, the main problem with Plaintiff’s position is that Defendant in this case is not even accused of providing those services . . . on the website that allegedly infringed on Plaintiff’s mark.”).⁹

⁹ Because ICANN’s lack of any use of the “Aypress” word is sufficient to rebut any claim of trademark infringement, ICANN does not address in more detail the other factors Plaintiff must establish to set forth a trademark infringement or unfair competition claim. However, ICANN maintains that Plaintiff does not have a valid trademark in the word “Aypress,” and she would be unable to show that the alleged use of “Aypress.com” is likely to cause confusion with any use she has made of the word “Aypress.” *See generally Savannah College of Art*

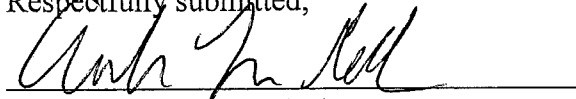
For the foregoing reasons, Plaintiff has failed to state a claim for copyright infringement, trademark infringement, or unfair competition, and her Complaint, to the extent it even makes such claims, should therefore be dismissed.

III. CONCLUSION.

Plaintiff's Complaint is deficient on a number of grounds. Principally, Plaintiff has sued the wrong defendant in the wrong court—ICANN has no meaningful or relevant contacts with Ohio and there is no link between ICANN and Plaintiff's alleged injuries. For these reasons, and given the futility of Plaintiff's substantive cause of action against ICANN, Plaintiff's entire Complaint should be dismissed with prejudice as to ICANN.

Dated: May 13, 2011

Respectfully submitted,



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(continued...)

& Design v. Houeix (S.D. Ohio 2004), 369 F.Supp.2d 929 (rejecting claims of trademark infringement and dilution based on use of mark in a domain name).

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2011, I served the foregoing by regular United States mail, postage prepaid, upon the following:

Ann M. Yeager
3546 Steubenville Road SE
Amsterdam, OH 43903

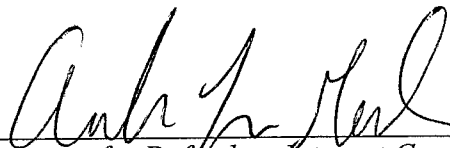
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Group, Inc. and GoDaddy.com*

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Canada

Defendant



*Attorney for Defendant Internet Corporation
for Assigned Names and Numbers*

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

ANN M. YEAGER,

Plaintiff,

v.

GO DADDY GROUP, INC.; INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS; UNKNOWN
REGISTRANT(S) & USERS OF
COPYRIGHTED WORD; IBRAHIM
KAZANCI,

Defendants.

Case No. 11CV004434

Judge Guy L. Reece II

**DECLARATION OF AKRAM ATALLAH IN SUPPORT OF
DEFENDANT ICANN'S MOTION TO DISMISS**

I, Akram Attalah, declare and affirm as follows:

1. I am the Chief Operating Officer of the Internet Corporation for Assigned Names and Numbers ("ICANN"), a defendant in this action. I have personal knowledge of the matters set forth herein and am competent to testify to those matters. I make this declaration in support of ICANN's Motion to Dismiss Pursuant to Ohio Rules of Civil Procedure 12(B)(2) and 12(B)(6).

Background on ICANN

2. ICANN is a not-for-profit public benefit corporation organized under the laws of the State of California. Its principal place of business is in Marina del Rey, which is in Los Angeles County, California. ICANN is responsible for the global coordination of the Internet's domain name system unique identifiers. Background on the privatization of the Internet is available in a publication published by the Department of Commerce on June 5, 1998 entitled *Management of Internet Names and Addresses* and is available at 63 Fed. Reg. 31741 (1998).

3. ICANN maintains a series of agreements with generic TLD Internet registries (such as .com and .net) and registrars, and these agreements provide that the registries and registrars pay ICANN fees, some of which are based on a per-registration basis. ICANN collects these fees only from the registries or registrars, and not from the registrants.

ICANN's Lack of Connection to Ohio

4. ICANN does not have any office or other company facilities Ohio.
5. ICANN does not have any phone number or mailing address in Ohio.
6. ICANN does not have any employee or staff member in Ohio.
7. ICANN has not applied for any loan or opened any bank account in Ohio.
8. ICANN has not owned any tangible personal property or real estate property or assets in Ohio.
9. ICANN has not appointed any agent in Ohio for service of process.
10. ICANN is not licensed to do business in Ohio.
11. ICANN has never released any advertisement to the residents of Ohio, nor has it released any advertisement in any magazine targeted at residents of Ohio.
12. To the extent ICANN has witnesses who have knowledge of the facts alleged in the Complaint, none of those witnesses are in Ohio.
13. No contract exists between ICANN and Plaintiff Ann M. Yeager.

14. ICANN maintains the websites that are located at <http://www.icann.org>, <http://www.iana.org>, and <http://www.internic.net>. These websites are operated from web servers physically located in El Segundo, California and Reston, Virginia. The websites contain a wealth of information about ICANN, about the people who work for ICANN, and about the projects that ICANN has undertaken in connection with the Internet. The websites also contain "links" to other information that is related to ICANN's activities. ICANN does not offer

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anything for sale on its websites; in fact, ICANN does not sell anything.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

This declaration was signed on May 10, 2011 at Marina Del Rey, CA.


Akram Atallah

IN THE COURT OF COMMON PLEAS OF
FRANKLIN COUNTY, OHIO

ANN M. YEAGER,

Plaintiff,

v.

GO DADDY GROUP, INC.; INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS; UNKNOWN
REGISTRANT(S) & USERS OF
COPYRIGHTED WORD; IBRAHIM
KAZANCI,

Defendants.

Case No. 11CVC4434

Judge Guy L. Reece II

ORDER

The Court, having considered the Motion of Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") to Dismiss Plaintiff's Complaint and all briefing thereon, and good cause having been shown for the relief sought in the Motion;

IT IS HEREBY ORDERED this _____ day of _____, 2011 that the Defendant ICANN's Motion is GRANTED and that the above-captioned action is dismissed with prejudice with respect to Defendant ICANN.

IT IS SO ORDERED.

Date: _____

Judge Guy L. Reece II

Cc: Ann M. Yeager, *Plaintiff*
Christopher M. Bechhold, *Attorney for Defendants Go Daddy Group and GoDaddy.com*
Ibrahim Kazanci, *Defendant*