December 29, 2003

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Re: File No. 2401/03

This is in response to your letter of December 16, 2003, in which you invited me to reply to Mr. Sprinkle's correspondence of December 9, 2003 – which, in turn, was written in response to my request for the Commission to reconsider my complaint against him.

Relevance of Cybersquatting Accusation

In his latest response, Mr. Sprinkle addresses the issue of whether his admittedly false statements were material by noting that the misstatements concerned the cybersquatting aspects of the litigation – which, he claims, were not part of the appeal (and therefore immaterial in the context of the appeals hearing). For example, on pages 1 and 2:

> "That litigation involved essentially two causes of action. One was for trademark infringement and the other was for violation of the Anti-Cybersquatting Act…. Upon filing the suit, a motion for preliminary injunction with respect to the trademark infringement allegations alone was sought by my client and that injunction was granted by Judge Zatkoff."

And later on page 2:

> "The appeal to the Sixth Circuit was an interlocutory appeal and involved the limited issue of the appropriateness of the injunctive relief. Because the injunction was not granted under the Anti-Cybersquatting Act, violation of the Anti-Cybersquatting Act by the Complainant was simply not an issue in that appeal."

And finally, on page 4:

> "The timing of the $1,000 offer from the Complainant for the sale of his domain name is quite arguably material with respect to the anti-cybersquatting count in the lawsuit, but was simply not material to the trademark infringement count. As stated, the interlocutory appeal to the Sixth Circuit Court of Appeals involved

> *only* the preliminary injunction issued with respect to the trademark infringement; anti-cybersquatting was not an issue on appeal."

The emphasis in the previous paragraph is Mr. Sprinkle's. Quite clearly, he feels that it is important to convince you that his misstatements were not material because they related to cybersquatting, and that cybersquatting was **not** at issue in the appeal.

However, Mr. Sprinkle is well aware that his assertions are entirely false. The cybersquatting issue **was** an integral part of his client's motion for preliminary injunction, and was thus an integral part of the appeal.

I've attached a copy of the "Brief in Support of Plaintiff's Motion of Preliminary Injunction" [Attachment 1] that led to the first of the two injunctions that were the subject of the appeals hearing. Mr. Sprinkle claims that this motion sought an injunction "with respect to the trademark infringement allegations alone." However, that is certainly not the case.

On page 3, in Section II, the motion reads:

> "The complaint in this case seeks relief on three separate counts: (i) infringement of Plaintiff's federally registered trademark under Section 1114 of the Lanham Act; (ii) unfair competition and infringement of Plaintiff's rights under Section 1125(a) of the Lanham Act; and (iii) **violation of the Anti-Cybersquatting Act in violation of Section 1125(d) of the Lanham Act** (emphasis added). The above factors relevant to the granting of preliminary injunction are addressed for each claim in turn."

Indeed, the motion does address each claim in turn. You'll notice that, on page 11, the title of Section II.A.2 is "**Section 1125(d) – Anti-Cybersquatting**." Although Mr. Sprinkle states repeatedly and unequivocally that anti-cybersquatting was not part of this motion, anti-cybersquatting is actually the sole topic of this section of the motion, which begins on page 11 and ends on page 13.

In the final paragraph of this section, the motion states:

> "In view of Plaintiff's showing of both elements of the Anti-Cybersquatting Act, it is respectfully submitted that a likelihood of success has also been established for the third count."

Finally, in its very last sentence on page 16, the motion concludes:

> "Furthermore, given the likelihood that Plaintiff will succeed under the Anti-Cybersquatting law, relief is requested which will transfer the subject domain names into Plaintiff's exclusive control, Such [sic] relief is respectfully requested."

I am stunned at Mr. Sprinkle's temerity in claiming that cybersquatting was not part of the motion for an injunction, when even a casual reader of the motion can see that the opposite is true. I have an even harder time understanding why Mr. Sprinkle would make such obviously false statements as part of a proceeding that will determine whether he will be disciplined for making false statements. (Although I have no idea whether making false statements to the Commission is considered to be an ethical violation in itself, it seems to me that, in some ways, it's every bit as reprehensible an act as making false statements in court.)

I assume that one reason that Mr. Sprinkle felt that it was safe to misrepresent the motion so blatantly was that it had not been placed before the Commission, which is why I've included it as Attachment 1. To ensure that Mr. Sprinkle cannot successfully claim that the motion was somehow later limited by the "Order Granting Preliminary Injunction" or by my subsequent "Notice of Appeal," I've attached those documents as Attachment 2 and Attachment 3, respectively.

My "Offer to Sell" the Domain Names

Throughout this exchange, Mr. Sprinkle has insisted that I tried to sell his client my domain names for $1,000. In his latest response, he repeats that libelous allegation in the context of trying to show that his false statements were not material. (Frankly, I'm unclear on the point he's trying to make. I may be having a hard time following his line of reasoning because of my lack of legal training, but my guess is that Mr. Sprinkle is attempting to influence you by trying to convince you that I really **am** a cybersquatter, that the court of appeals erred in deciding otherwise, and that you should therefore not give my complaint the consideration that it deserves.)

For example, on page 1 (in a section entitled "**Factual Background**"), Mr. Sprinkle says:

> "Instead, Complainant offered to settle for $1,000 with no nondisclosure terms. This counter offer was unacceptable to my client and litigation ensued."

And later, on page 3:

> "Complainant likes to fool himself and believe that he never offered to sell his website for $1,000."
>
> "…the $1,000 offer from Mishkoff was clearly material (and true)…"
>
> "…whether the $1,000 offer from the Complainant was before or after 'the letter', and not the offer itself. In other words, did the Complainant first offer to settle for money, or did he counter offer to settle for money."

And finally, on page 4:

> "The timing of the $1,000 offer from the Complainant for the sale of his domain name…"
>
> "…my inaccurate statement with respect to the timing of the $1,000 offer from the Complainant…"

These statements might lead the Commission to conclude that perhaps I had actually initiated an offer to sell my domain names to Mr. Sprinkle's client. Certainly, it appears from Mr. Sprinkle's statements that some kind of negotiation was undertaken at some point (prior to the issuance of the injunction). Under those circumstances, it might be reasonable to conclude that Mr. Sprinkle might merely have been confused about the timing of my offer, as he maintains.

However, the offer to which Mr. Sprinkle persists in referring never happened. Instead, here is a recounting of the activity that took place surrounding my purported "offer":

1. On August 16, 2001, I received a fax from Mr. Sprinkle's partner Julie Greenberg essentially offering me $1,000 to settle the lawsuit that she had initiated. [Attachment 4]

2. On that same day, I sent Ms. Greenberg a fax accepting her offer in its entirety, with no discussion or conditions whatsoever. [Attachment 5]

3. On August 23, I received a letter from Ms. Greenberg that purported to concretize the contractual agreement that we had already reached in our exchange of faxes, but which actually introduced several new terms that were not acceptable to me. [Attachment 6] (What was most unacceptable to me was Ms. Greenberg's attempt to modify the terms of a contract that had already been concluded, but that's well beyond the scope of this discussion.)

4. On August 24, I responded to Ms. Greenberg by insisting that she honor the terms of the original agreement into which we had previously entered. [Attachment 7]

These are the only documents that were exchanged concerning this attempt to settle the lawsuit. As you can clearly see, my only contributions to this exchange were first to accept Ms. Greenberg's offer and later to insist that she adhere to its terms. Despite Mr. Sprinkle's continual claims to the contrary, I never offered to sell the domain names to his client. If the English language has any meaning whatsoever, there is no rational way to characterize my unconditional acceptance of their offer as an attempted sale on my part.

In the opinion that decided the appeal, Senior Judge Richard F. Suhrheinrich recognized Mr. Sprinkle's attempt at subterfuge:

> "Although Taubman's counsel intimated at oral argument that Mishkoff had in fact initiated the negotiation process, correspondence in the record supports the opposite conclusion, and shows that Taubman first offered Mishkoff $1000 to relinquish the site on August 16, 2001, and Mishkoff initially accepted it under threat of litigation…. There is no evidence that Mishkoff's initial motive in selecting Taubman's mark was to re-sell the name."

I submit that Judge Suhrheinrich was being kind in characterizing Mr. Sprinkle's false statement as an "intimation." The fact is that, although Mr. Sprinkle now concedes that his statements were inaccurate as to the "timing" of my purported attempt to sell the domain names (an admission that he never communicated to Judge Suhrheinrich, by the way, despite my lawyer's request), he persists in making his spurious accusations that I offered to sell the domain names, a contention that he knows to be false.

Telephone Discussions

As I have stated in previous communications with the Commission, Mr. Sprinkle's excuse that his misstatements to the Court of Appeals were simply "timing" errors (in other words, that he confused the time of one of our telephone discussions with the time of a different discussion) is not at all credible because he and I have never engaged in a substantive telephone conversation at **any** time, so there is no other discussion about which he could have become confused. In his latest response to the Commission, Mr. Sprinkle addresses this point as follows:

> "Next, the Complainant argues – again – that he and I have never had a substantive telephone conversation. This, however, has already been fully addressed in my initial letter to the Commission and which I adopt herein by reference."

This bizarre assertion is the sum total of Mr. Sprinkle's response to important evidence of the fact that his false statements were deliberate: Since Mr. Sprinkle and I have not engaged in even one substantive discussion, the chances that he could have confused one of our discussions with another of our discussions are exactly zero.

I call Mr. Sprinkle's assertion "bizarre" because he did **not** address the subject in his initial letter to the Commission! It is astounding that Mr. Sprinkle would blithely assert that he has already addressed my allegation when all the Commission has to do to determine the falsity of his assertion is to read his initial letter. Basically, he is asking you to include "by reference" material which does not exist. It is as if he believes that you will believe his statements rather than the evidence that you can see with your own eyes.

No Response

As indicated above, although Mr. Sprinkle claims to have responded to my point about our complete lack of potentially confusable telephone conversations, he has, in actuality, never responded to that point at all. There are other important points that I've raised to which Mr. Sprinkle has not even pretended to respond. For example:

- **"That's Not Directly in the Record":** Immediately after he made his false claim that he and I had engaged in telephone discussions "prior to that letter," Mr. Sprinkle confirmed to Judge Boggs that the telephone discussions in question were "not directly in the record." As I demonstrated in great detail in my previous communication to the Commission (detail that I will not repeat here), it severely strains credulity to believe that Mr. Sprinkle "accidentally" claimed to have had telephone discussions with me that preceded their offer letter, and yet was certain, a split second later, that those discussions were not reflected in the record of the case. To me, this one point alone provides powerful and convincing evidence that that the misstatements that Mr. Sprinkle claims were accidental were actually deliberate. The evidence is not only powerful and convincing, it is also uncontested, as Mr. Sprinkle has chosen not to respond to it.

- **Refusal to Retract:** If Mr. Sprinkle's false statements were "accidental," why did he not notify the court of appeals when he realized his error (as I'm sure that you or I would do)? As I discussed in detail in my previous communication to the Commission (detail that I will not repeat here), my attorney contacted Mr. Sprinkle shortly after the hearing to point out his misstatements and to request that he contact the court to correct his errors so that the court would not include his inaccuracies in its deliberations. Mr. Sprinkle responded with his usual rudeness, and instead of offering to correct his "accidental" mistake, he instead threatened to make public our confidential settlement discussions. Prior to my filing of this complaint, Mr. Sprinkle never admitted to my lawyer or me that his statements were incorrect – and more to the point, to the best of my knowledge, neither has he conveyed that information to the court of appeals. Why has he not notified the court that his critically important statements, ostensibly made from personal knowledge, were inaccurate? I can't answer that question, because Mr. Sprinkle has chosen not to address it.

Other Issues

While the preceding sections of this communication largely cover the issues that are relevant to this complaint, I would like to briefly respond to a few other points that Mr. Sprinkle made in his latest communication to the Commission.

- **"Dropped Complaints":** Contrary to Mr. Sprinkle's "understanding," I most certainly have **not** "dropped all of [my] miscellaneous complaints raised in [my] original complaint." Those charges still stand. As I clearly stated in my previous

communication with the Commission, that communication was confined to a discussion of Mr. Sprinkle's false statements because those false statements formed the substance of my **primary** complaint. I would, however, like the Commission to consider the other charges as well, both because they demonstrate a clear pattern of unethical behavior on the part of Mr. Sprinkle, and because I believe that they may constitute ethical violations in and of themselves.

- **Confidence Betrayed:** Although I'm not sure that it's relevant to this complaint, I nonetheless want to take issue with Mr. Sprinkle's statements in regard to the confidentiality of our settlement discussions.

  My understanding of our agreement not to discuss the details of our settlement discussions "publicly" was that those discussions were to remain the opposite of "public," which is "private" – in other words, I believed that I had entered into an agreement to keep the discussions confidential among only me, my lawyer, Mr. Sprinkle's firm, and his client. Mr. Sprinkle claims to have decided that it was acceptable to share those confidential discussions with the Commission because the Commission's proceedings are also confidential.

  However, Mr. Sprinkle is confusing (deliberately, I suspect) two different uses of the word "public." When my lawyer stipulated (and Mr. Sprinkle's partner agreed) that "neither party would discuss these conversations publicly," the clear intent was to ensure that discussions of the conversations in question would remain private (the opposite of "public"). However, Mr. Sprinkle seems to be maintaining that our agreement was not to divulge the contents of those discussions to the "public" at large, a very different meaning of the word "public." By Mr. Sprinkle's definition, he is free to share the contents of our confidential discussions not only with the Commission but with **any** group whose deliberations are not available to the general public, an interpretation that is self-serving and clearly incorrect.

  Mr. Sprinkle seems to be trying to convince you that he shared our confidential discussions with you after careful deliberation, after a conscious decision that such disclosure would not violate our agreement. However, his own words clearly demonstrate that this is nonsense. As you may recall, Mr. Sprinkle defended himself from my charge that he engaged in inappropriate discussions with a reporter by claiming that he would not have used the $1,000 figure quoted by the reporter. "If I were to relay a dollar amount to the newspaper reporter," he said, "I think I would have used the $10,000 figure." The $10,000 figure, of course, is exactly the information that is protected by our confidentiality agreement. In light of the fact that he was perfectly willing to disclose the details of our confidential discussions to a newspaper reporter – and thereby to the entire world – his claim that he disclosed the confidential information to the Commission only because the Commission's proceedings are not available to the general public is ludicrous.

My "Vendetta"

Although I'm not sure why Mr. Sprinkle has chosen to my make my motives (rather than the accuracy of my charges) an issue in these proceedings, but he has gone out of his way to do so in both of his communications to the Commission.

In his first communication to the Commission, Mr. Sprinkle referred to a "threat" that I made on my website. In his most recent communication, Mr. Sprinkle repeats that accusation, and embellishes it by saying that the "threat" appeared on my "various 'sucks.com' websites." (As Mr. Sprinkle knows, I have only one 'sucks.com' website, although it does respond to six different domain names.) The passage to which he refers appears as the final words of my website, and reads as follows:

> "In any event, at long last, this entire matter finally appears to be over. Unless, of course, I decide to initiate some kind of action against *them*… Stay tuned."

I have no idea why Mr. Sprinkle chooses to ominously characterize these simple statements as some kind of sinister "threat." Obviously, I was hinting to readers of my website that I intended to pursue some kind of action against those whom I feel have engaged in abusive tactics – which is, of course, exactly what I have done. Mr. Sprinkle regularly sends "cease-and-desist" letters on behalf of his clients – if he then follows through with a lawsuit, can the suit be discounted because it is merely the realization of the "threatening" C&D letter? I could go on, but I think that you see that Mr. Sprinkle's charges that I have "threatened" him are simply designed to convince you that I have some kind of ulterior motive, and thus arouse your sympathy.

And to ensure that you don't miss his point, Mr. Sprinkle even goes so far as to speculate on what those ulterior motives might be.

First, he wonders if I am unhappy that I did not get "my" $1,000 (thus neatly reinforcing his previous spurious charge that I tried to sell my domain name to his client). As Mr. Sprinkle is aware (from my deposition), I bill my clients at the rate of $100 per hour, so I can earn $1,000 in ten hours (one long day) of work. For Mr. Sprinkle to suggest that I have initiated this lengthy and tedious process (and continue to pursue it) because his client failed to pay me an amount that I can earn in one day (and an amount that I never sought) would be laughable if it weren't so gratuitously insulting.

Then, Mr. Sprinkle suggests that I'm seeking to renew interest in my "various" sucks.com websites. Of course, since these proceedings have not been posted to that site (as I've explained, there is only one), I'm at a complete loss to explain how my complaint against Mr. Sprinkle could possibly bring me even one new viewer (other than Mr. Sprinkle himself, of course, as his quotations from my site indicate that I do have at least one new visitor). In fact, as Mr. Sprinkle is well aware, I have not posted any new material to the site for more than six months! If, as Mr. Sprinkle suggests, I need some new "fodder" for the site, then I am doing an incomprehensibly poor job of trying to get it.

In filing a complaint against Mr. Sprinkle with the Commission, I am doing nothing more than pursuing the precise remedy that has been made available in this situation. If Mr. Sprinkle believes that pursuing an available legal course of action is a "vendetta," then perhaps he is in the wrong line of work.

Conclusion

Mr. Sprinkle claims that "the Complainant has suffered absolutely no harm, whatsoever, from any action of mine." If that is so, it certainly is not because he hasn't tried.

Fortunately for me, the court did not believe his false statements. If they had, it is entirely possible that they might have ruled against me – that's how critical was the point about which he was trying to mislead them. If the ruling had gone against me, I probably would have lost the case, which would have unfairly branded me as a cybersquatter and a trademark infringer. It would probably have ruined my professional career – and at the risk of sounding melodramatic, I should add that it could have ruined my life as well.

But Mr. Sprinkle is missing the point of these proceedings – the question is not whether or not he has inflicted harm on **me**, the question is whether or not he has inflicted harm on the legal system. By arrogantly acting on the assumption that attempting to mislead and deceive the court is within the purview of his obligation to protect and serve the best interests of his client, Mr. Sprinkle has struck a blow at the very foundation of the legal system. If lawyers are free to lie in court, why should any of us have any faith that court decisions are fair and true? If the Commission fails to discipline dishonest lawyers, who will protect the reputation of the overwhelming majority of attorneys who would never even dream of stooping to such reprehensible behavior?

To me, the most aggravating aspect of these proceedings is that Mr. Sprinkle treats them as if they are some kind of game. He plays with words, he bends the truth, he ignores some charges and compounds his offence by responding falsely to others. He has assured the Commission that one of his motions did not include language that it clearly did. He has claimed to respond fully to charges that he has not even bothered to address.

I simply cannot regard a dishonorable attempt to ruin my life as any kind of a game. As far as I'm concerned, lawyers who lie in court commit perjury and should have criminal charges brought against them. Of course, as far as I know, the Commission does not have the power to initiate criminal charges against Mr. Sprinkle. However, you do have the power to ensure that he can no longer continue to make a mockery of the legal system, that he cannot continue to bring lawyers everywhere into disrepute, and that he cannot continue to try to ruin people's lives as he has tried to ruin mine.

The original of this document was printed on my stationery and was signed by me, Henry C. Mishkoff.