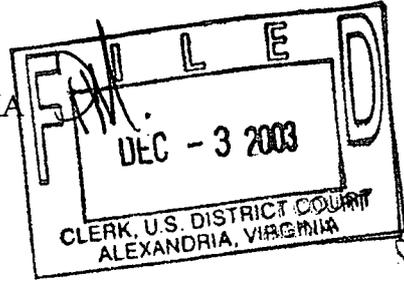


Hilton

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA



CHRISTOPHER LAMPARELLO,)
)
 Plaintiff,)
)
 v.)
)
 JERRY FALWELL and LIBERTY ALLIANCE,)
)
 Defendants.)

No. 03- 1503 -A

COMPLAINT FOR DECLARATORY RELIEF

1. This is an action for declaratory relief in which a citizen seeks to protect his right to use the domain name "fallwell.com" as the Internet address for a web site criticizing the well-known preacher Jerry Falwell for his anti-gay remarks. Jerry Falwell brought and won a claim against Chris Lamparello under the Uniform Domain-Name Dispute-Resolution Policy ("UDRP"). However, such rulings are subject to de novo review in the federal courts under principles of federal law, and Lamparello now asks this Court to declare that defendants are in violation of the reverse domain name hijacking provisions of the Anticybersquatting Consumer Protection Act (15 U.S.C. § 1114(2)(D)(v)) because Lamparello's domain name does not violate Reverend Falwell's rights under the trademark laws, and because any trademark claims are both time barred and forbidden by the First Amendment.

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction of ths action under 15 U.S.C. §§ 1114(1), 1114(2)(D)(v) and 1121, and 28 U.S.C. §§ 1331, 1337 and 1338.

3. The Court has personal jurisdiction of defendants, because defendant Jerry Falwell lives in Virginia, and both defendants are engaged in nationwide sales of good and services, because they

operate commercially interactive web sites on the Internet through which they sell goods and services, and because they consented to jurisdiction in Virginia.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (c), because defendants operate commercially interactive web sites on the Internet through which they market and sell goods and services to Virginia, and because defendants have consented to jurisdiction in the court where the domain name registrar, Network Solutions, Inc., is located, which is Herndon, Virginia.

PARTIES

5. Plaintiff Christopher Lamparello is a citizen of New York who has established a web site criticizing Jerry Falwell for his anti-gay remarks and who registered the domain name www.fallwell.com.

6. Defendant Jerry Falwell is a nationally known religious figure who sells and promotes the sale of a variety of goods and services, including but not limited to religious items, in every state in the nation.

7. Defendant Liberty Alliance is a national lobbying organization based in Washington, D.C., that was founded and is headed by defendant Jerry Falwell.

FACTS

Technical Background

8. The Internet is an informal, worldwide network of networked computers, linked together for the purpose of automated communication between members of the networks. Every computer connected to the Internet is assigned a numeric address (akin to a telephone number and area code), that the other computers on the Internet use to route messages to that computer. This numeric

address (called an IP address) is in the form of four sets of three digit numbers with each number being 255 or less; i.e. 123.255.001.213. So an IP number usually identifies a particular computer or Internet web site.

9. Because these long numbers are difficult for people to remember, the Internet authorities also assign alphanumeric addresses, like "xyz.com " to each numeric IP address. These alphanumeric addresses are referred to as "domain names." Internet users normally use the domain name to identify a particular web site by use of the domain name, rather than the numeric IP address, since it is easier to remember. The process of translating a domain name into an IP number is handled by a system of computers on the Internet known as DNS.

10. Each domain name must be unique, since each IP address is unique, because the Internet computers must be able to look up, in a table maintained online, the IP address for a specific domain name whenever the sender of a message uses only the domain name.

11. The World Wide Web user can merely enter a domain name into his browser software, and then his computer will automatically send out the necessary messages requesting information from that particular computer. In other words the user will be taken to that site. (More precisely, a request will be made to that particular computer, and it will send the web page requested to the user who entered the domain name.) The returned information is then presented in graphic form on the initiator's computer screen.

12. The domain name can be entered into the browser software by typing the name into a window of the browser, or by clicking on an Internet hyperlink. Domain names can be placed in hyperlinks by the user himself, through the creation of "bookmarks" or "favorites" in the browser software, or by the owners of other web pages who place such links in their pages, or by Internet search engines or Internet

directories that return hyperlinks to sites that may be identified by a search of their databases.

13. Anyone can register a domain name that has not been taken by filling out a few forms on the Internet. Once that name is registered it exists solely as an informational entry on a particular computer known as the DNS root server. Until a web site has been created under that domain name, however, typing the domain name into one's browser will return only an error message.

14. A web site is a page or collection of pages that may have text, graphics, sounds or animation on them. Usually there is only one web site under a given domain name.

15. After registering a domain name, the owner can elect to sell it, he can create web pages (a website) that individuals on the internet can access, or he do nothing with it. If he creates a web page or pages under the domain name, then the user who visits that domain name will be able to view those pages. The pages will be accessible to anyone in the world with access to the Internet; thus domain names are neither territorial nor are they geographic designations. The content of the web pages may be solely under the control of the site owner, or he may allow others to post there freely.

16. Users rely on the domain name as a mnemonic device to remember sites that they wish to revisit.

17. As a result of the unique nature of domain names, there can only be one "jets.com," and thus one owner of "jets.com" in the entire world. Thus Boeing, the NFL, dealers in aircraft, the Winnipeg Jets, fans of the "white" gang in West Side Story, aircraft enthusiasts, and others can only own this domain name if they were the first to register it, or if they obtain it from the original registrant, either through negotiation or through legal proceedings.

18. In the early days of the Internet, domain names were not particularly important because few commercial enterprises or other institutions or individuals had domain names and the Internet's World

Wide Web concept had not yet been developed. The initial domain names were mostly assigned to universities and government agencies, like "mit.edu," which indicates an educational institution.

19. As the utility of the Internet as a means of communication became more and more apparent, various persons who wanted to use the Internet to communicate information about particular subjects sought to register domain names reflecting those subjects. Commonly, it was a commercial enterprise that wanted a domain name that embodied its own name, or the name of one of its products. But other people who desired to talk about products also sought domain names embodying that topic. And, people who did not have a desire to talk about a subject, but anticipated that others **might** want a particular name in order to have a handy way to reference their web pages about that subject, also sought to be the first to reserve domain names identifying that topic.

20. On July 1, 1997, as part of the Clinton Administration's Framework for Global Electronic Commerce, the President directed the Secretary of Commerce to privatize the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

21. The Internet Corporation for Assigned Names and Numbers (ICANN) is the non-profit corporation that was formed to assume responsibility for the domain name system management, pursuant to agreements with the Department of Commerce. As part of the accreditation by ICANN, registrars are required to follow the Uniform Domain-Name Dispute-Resolution Policy (often referred to as the "UDRP"). Under the UDRP policy, most types of trademark-based domain-name disputes must be resolved by agreement, court action, or "arbitration" before a registrar will cancel, suspend, or transfer a domain name.

22. The "arbitration" is really just an expedited administrative proceeding, because its outcome

is binding only if no judicial review is sought. If judicial review is sought, the UDRP provides that the court's decision about whether a domain name violates the complainant's trademark rights is de novo, without any deference to the UDRP administrative panel.

23. If a Respondent loses the arbitration, his domain name is transferred to the Complainant unless the Respondent institutes litigation within 10 business days. UDRP paragraph 4(k) states:

The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision.

The Parties' Respective Web Sites

24. In approximately 1998, defendants, seeking to establish a presence on the Internet, registered the domain name falwell.com and created a web site to promote Jerry Falwell's ideas and market religious goods and services. At the time they registered that domain name, other domain names that incorporated or resembled Jerry Falwell's last name, including the domain name fallwell.com, were also available, but defendants chose not to register them.

25. Defendants do not have any registered trademarks in the names "Falwell" or "Fallwell," but they have registered the trademark "Listen America With Jerry Falwell" and they are in the administrative process of seeking to register the name "Jerry Falwell."

26. Both "Falwell" and "Fallwell" are common last names.

27. On February 11, 1999, Lamparello registered the domain name fallwell.com for the purpose of creating a web site to express his negative opinions about Jerry Falwell's views and public statements

about gays and lesbians. Lamparello chose that domain name because it represented the subject or title of his intended web site, while at the same time mocking the phonetic pronunciation of Jerry Falwell's last name, implying the statement that Reverend Falwell should "fall well."

28. On February 19, 1999, Lamparello posted his web site about Jerry Falwell on the Internet, using the domain name fallwell.com.

29. Lamparello's web site is completely non-commercial, existing for the sole purpose of expressing Lamparello's views about Jerry Falwell's views and statements about gays and lesbians. The web site does not make any statements about Jerry Falwell's or Liberty Alliance's commercial activities, and, on information and belief, it has had no adverse impact on those commercial activities.

30. Lamparello does not use the fallwell.com domain name in the ordinary course of trade.

31. Lamparello does not make a use in commerce of the fallwell.com domain name. No products or services are sold or offered for sale through the Web site.

32. At no time did Lamparello offer the domain name fallwell.com for sale, or even hint that he had any interest in selling the domain name. Lamparello is not in the business of selling domain names.

33. Lamparello's web site is plainly adverse to Jerry Falwell. No person visiting the web site could believe that Jerry Falwell himself owns or endorses the web site. Any person visiting the web site would recognize, from the very first instant that he or she viewed the site, that it is a web site that criticizes Jerry Falwell rather than one allied with or sponsored by Jerry Falwell.

34. In order to ensure a lack of confusion, Lamparello's web site displays a prominent disclaimer of affiliation with Jerry Falwell, at both the top and the bottom of the home page that an Internet viewer reaches by entering the domain name fallwell.com in his browser. The disclaimer at the top of the home page is coupled with a hyperlink to Jerry Falwell's own official web site, so that viewers who want to go

there can do so immediately. The disclaimer and the link to the www.falwell.com web site is the first thing the viewer sees when accessing Lamparello's web site.

35. Plaintiff has no intent to profit from any Internet traffic intended for defendants' web site which is why the disclaimer and link to Defendants' web site is prominently displayed at the top of Plaintiff's web site. In fact, plaintiff has no intent to profit from Internet traffic intended for his own web site, since nothing is for sale on plaintiff's web site and no donations are solicited on plaintiff's web site.

36. To the extent that the domain name fallwell.com is similar to the name Jerry Falwell or to any trademark rights that defendants have in the Falwell name, Lamparello makes fair use of that trademark for the purpose of denominating the subject of the web site and the target of his criticism.

Defendants' Assertion of Trademark Rights

37. On February 19, 2001, defendants initiated a UDRP complaint with WIPO against Lamparello and Gary Cohn, another individual who used the domain names jerryfalwell.com and jerryfallwell.com for a parody site criticizing Jerry Falwell. The UDRP complaint asserted that Lamparello and Cohn's use of domain names that incorporated Jerry Falwell's name violated their trademark rights in that name.

38. When WIPO refused to allow defendants to pursue both respondents in a single proceeding for a single fee, defendants dropped Lamparello from the proceeding. The WIPO panel selected by complainants ruled in favor of Cohn. Cohn later surrendered the domain names to avoid further litigation.

39. On June 25, 2003, defendants sent a demand letter to Lamparello, asserting that his domain name violated their trademark rights and notifying him that, unless he surrendered the domain name, they would initiate legal proceedings against him

40. On September 30, 2003, defendants initiated a second UDRP proceeding against Lamparello by sending a complaint to his New York address, this time selecting the National Arbitration Forum as the dispute resolution provider. Both June 25 and September 30 were more than four years after Lamparello had first registered the fallwell.com domain name and posted his critical web site to the Internet at that address. Defendants asked that the domain name be transferred to Liberty Alliance.

41. On November 21, the National Arbitration Forum panel ruled that Lamparello's domain name violated defendants' trademark rights, and ordered that the domain name be transferred.

CAUSES OF ACTION

42. Plaintiff maintains that its current and prior uses of the domain name were at all times perfectly legal. Defendants assert that plaintiff's actions were illegal.

43. Defendants' actions have given rise to an actual and justiciable controversy pursuant to 28 U.S.C. § 2201 et seq.

44. Defendants have engaged in Reverse Domain Name Hijacking in violation of the Anticybersquatting Protection Act, 15 U.S.C. § 1114(2)(D)(v).

45. Plaintiff therefore seeks a declaratory judgment that he has neither infringed nor diluted any trademark nor falsely designated any origin, and that he is not in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, and that he is not in violation of Section 43 of the Lanham Act, subsections (a), (c) or (d), 15 U.S.C. §§ 1125(a), (c) or (d).

46. Plaintiff also seeks a declaratory judgment that he is not infringing or diluting under state law, that he has not engaged and is not engaging in unfair competition or otherwise in violation of any common-law trademark rights or any other causes of action which the defendant may allege through counterclaims.

47. Plaintiff further seeks a declaratory judgment that any claims that defendants might have had under federal or state trademark laws have expired under the applicable statutes of limitations or laches.

48. Plaintiff further seeks a declaratory judgment that any claims that defendants might have had under federal or state trademark laws are barred by the First Amendment and by principles of fair use, including nominative use and parody.

WHEREFORE, plaintiff prays the court to enter a judgment in favor of plaintiff, Christopher Lamparello, and against defendants Jerry Falwell and Liberty Alliance, jointly and severally, as follows:

A. Declaring that plaintiff's domain name "fallwell.com", plaintiff's use of the domain name, and plaintiff's use of his web site do not violate defendants' rights under the Lanham Act or other trademark law;

B. Declaring that National Arbitration Forum ("NAF") decision providing for the transfer of the domain name registration of "fallwell.com" is null and void and without any force or effect;

C. Declaring that plaintiff's use of the domain name "fallwell.com" is fair use and protected under the First Amendment, and does not infringe on any of defendants' marks;

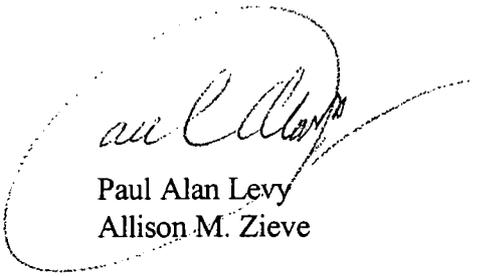
D. Declaring that defendant's trademark claims against plaintiff are barred as untimely and inequitable;

E. Declaring that defendants are not entitled to an injunction against plaintiff using the domain name "fallwell.com" or operating the Web site located at the url: www.fallwell.com;

F. Awarding plaintiff his costs in this matter, and

G. Awarding such other relief as may be just and proper.

Respectfully submitted,



Paul Alan Levy
Allison M. Zieve

Public Citizen Litigation Group
1600 - 20th Street, N.W.
Washington, D.C. 20009
(202) 588-1000

Raymond D. Battocchi (# 24622)

Gabeler, Battocchi, Griggs & Powell, PLLC
Suite 200
1320 Old Chain Bridge Road
McLean, Virginia 22101
(703) 847-8888

Of counsel:

Richard L. Ravin
Hartman & Winnicki, P.C.
West 115 Century Rd.
Paramus, NJ 07652
(201) 967-8040

Attorneys for Plaintiff,
Christopher Lamparello

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