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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PACIFIC LAW CENTER, A Professional Corporation and SOLOMON WARD SEIDENWURM & SMITH, LLP.,  
  
Plaintiffs,  
  
vs.  
  
SHAHROKH SAADAT-NEJAD,  
  
Defendant.

CASE NO. 07-CV-00460 JLS (POR)  
  
**ORDER: (1) GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT AND (2) DISMISSING ALL OF PLAINTIFFS' CLAIMS**

On June 16, 2008, this Court issued an order directing Solomon Ward Seidenwurm & Smith, LLP (“Solomon Ward”) and Pacific Law Center (collectively, “Plaintiffs”) to show cause as to why summary judgment should not be entered. [Doc. No. 78, (“OSC”).] Presently before the Court are Solomon Ward’s response to the Court’s OSC, Defendant’s opposition, and Solomon Ward’s reply. [Docs. Nos. 80, 86, 87.] Pacific Law Center failed to respond to the Court’s OSC. Defendant filed a timely response to Solomon Ward’s brief, but also moved for an extension of time to respond. Solomon Ward filed a response to that motion. [Docs. Nos. 84, 85.] For the following reasons, the Court **GRANTS** summary judgment in favor of Shahrokh Saadat-Nejad (“Defendant”), **DISMISSES** all of Plaintiffs’ claims, and **DENIES** Defendant’s motion for an extension of time to respond as moot.

1 **BACKGROUND**

2 On August 31, 2006, Defendant retained Pacific Law Center to defend him against criminal  
3 charges pending in San Diego. [Pl.’s Resp. at 2.] Shortly thereafter, Defendant terminated his  
4 relationship with Pacific Law Center after becoming dissatisfied with its representation. [Id.]<sup>1</sup>  
5 Defendant then began posting disparaging comments about Pacific Law Center on the internet.  
6 [Id.]

7 On September 20, 2006, Defendant registered and obtained ownership of the internet  
8 domain name “pacificlawcenters.com.” Plaintiffs argue that this domain name is confusingly  
9 similar to the internet domain name registered to Pacific Law Center, “pacificlawcenter.com.” [Id.  
10 at 3.] Plaintiffs state that Defendant used this domain name to: (1) intercept actual and potential  
11 Pacific Law Center clients that conducted “key word” searches for “Pacific Law Center” on  
12 internet search engines; (2) intercept such clients that added the letter “s” to Pacific Law Center’s  
13 true internet site name; and (3) to attempt to dissuade such clients from doing business with Pacific  
14 Law Center by enticing them to communicate with him and to visit another website owned by  
15 Defendant, “ushostage.com.” [Id.] Plaintiffs state that it lost clients as a result of Defendant’s  
16 misappropriation. On January 12, 2007, Pacific Law Center filed an action in San Diego Superior  
17 Court against Defendant. On February 23, 2007, Pacific Law Center retained Solomon Ward to  
18 represent it in that lawsuit. On February 27, 2007, Solomon Ward successfully obtained a  
19 restraining order against Defendant on behalf of Pacific Law Center. [Id. at 3-4.] Pacific Law  
20 Center subsequently dropped its state lawsuit.

21 On or about March 10, 2007, Defendant obtained a domain name titled  
22 “solomonwardlawfirm.com” and “solomonwardsandiego.com.” [Id. at 4.] Plaintiffs allege that  
23 Defendant used this domain name to disparage Solomon Ward in the same way he had disparaged  
24 Pacific Law Center. [Id.]

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<sup>1</sup> Apparently, Defendant believes that his constitutional rights were violated when Pacific Law  
28 Center allegedly represented him in state court after it was fired, waived his right to be present in the  
courtroom, and waived his right to a speedy trial without his permission. [Doc. No. 58, Exhs. 1 and  
2.]

1 On March 13, 2007, Pacific Law Center and Solomon Ward filed a complaint in federal  
2 court against Defendant alleging, in part, trademark infringement, cybersquatting, and unfair  
3 competition. [Doc. No. 1.] On March 29, 2007, Judge Burns granted Plaintiffs' request for a  
4 temporary restraining order ("TRO"). [Doc. No. 14.] On April 26, 2007, Judge Burns issued a  
5 preliminary injunction that repeated the restrictions set forth in the TRO. [Doc. No. 26.] The  
6 preliminary injunction enjoined Defendant from:

7 1. Registering, and trafficking in, any internet website or domain name that  
8 contains the words Pacific, Law and Center, with or without other words or  
symbols, in any respect whatsoever;

9 2. Registering, and trafficking in, any internet website or domain name that  
10 contains the words Solomon and Ward, with or without other words or symbols, in  
any respect whatsoever;

11 3. Registering and trafficking in the service mark or trade name Pacific Law  
12 Center in any respect whatsoever; and

13 4. Registering and trafficking in the service mark or trade name Solomon  
Ward or Solomon Ward Seidenwurm & Smith in any respect whatsoever.

14 [Id.; Pl.'s Resp. at 6.] Judge Burns found that Plaintiffs' declarations "substantiate[d] that Mr.  
15 Saadat-Nejad intentionally obtained and used confusing websites to disparage the two law firms."

16 [Id.]

17 On July 16, 2007, Judge Burns found Defendant in contempt of court for violating the  
18 preliminary injunction by registering the domain name "pacificlawyerscenter.com." [Doc. No.  
19 41.] As a result, Judge Burns jailed Defendant for nearly two weeks. [Doc. No. 43.] On July 23,  
20 2007, the ACLU filed an amicus curiae brief, arguing in part that Judge Burns may have deprived  
21 Defendant of his constitutional right to counsel by incarcerating him for civil contempt without  
22 advising him of his right to counsel. [Doc. No. 46.]

23 On October 2, 2007, this case was reassigned to this Court. [Doc. No. 54.] On November  
24 15, 2007, Plaintiffs moved to convert Judge Burns' preliminary injunction into a permanent  
25 injunction. [Doc. No. 55.] On March 24, 2008, the Court denied Plaintiffs' motion for a  
26 permanent injunction in part because they had not yet succeeded on the merits. [Doc. No. 61.]

27 On June 12, 2008 the Court held a pre-trial conference in this matter. At the conference,  
28 Defendant confirmed his prior written request to dismiss this action. [See Doc. No. 71 at 6

1 (requesting a “motion for dismissal hearing”.)] On June 16, 2008, the Court issued an order to  
2 show cause as to why summary judgment should not be entered. [Doc. No. 78.] On July 25, 2008,  
3 Plaintiff Solomon Ward filed a brief to address the issues raised in the Court’s OSC. [Doc. No.  
4 79.]

## 6 LEGAL STANDARD

7 Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure if  
8 the moving party demonstrates the absence of a genuine issue of material fact and entitlement to  
9 judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A fact is  
10 material when, under the governing substantive law, it could affect the outcome of the case.  
11 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Freeman v. Arpaio, 125 F.3d 732, 735  
12 (9th Cir. 1997). A dispute is genuine if a reasonable jury could return a verdict for the nonmoving  
13 party. Anderson, 477 U.S. at 248.

14 A party seeking summary judgment always bears the initial burden of establishing the  
15 absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. The moving party can  
16 satisfy this burden in two ways: (1) by presenting evidence that negates an essential element of the  
17 nonmoving party’s case; or (2) by demonstrating that the nonmoving party failed to establish an  
18 essential element of the nonmoving party’s case on which the nonmoving party bears the burden of  
19 proving at trial. Id. at 322-23. “Disputes over irrelevant or unnecessary facts will not preclude a  
20 grant of summary judgment.” T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d  
21 626, 630 (9th Cir. 1987).

22 Once the moving party establishes the absence of genuine issues of material fact, the  
23 burden shifts to the nonmoving party to set forth facts showing that a genuine issue of disputed  
24 fact remains. Celotex, 477 U.S. at 321. The nonmoving party cannot oppose a properly supported  
25 summary judgment motion by “rest[ing] on mere allegations or denials of his pleadings.”  
26 Anderson, 477 U.S. at 256. When ruling on a summary judgment motion, the court must view all  
27 inferences drawn from the underlying facts in the light most favorable to the nonmoving party.  
28 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

1 “Sua sponte summary judgment is only appropriate if the losing party has reasonable notice  
2 that the sufficiency of his or her claim will be in issue. Reasonable notice implies adequate time to  
3 develop the facts on which the litigant will depend to oppose summary judgment.” Oluwa v.  
4 Gomez, 133 F.3d 1237, 1239 (9th Cir. 1998) (internal citation and quotation omitted); see also  
5 Celotex Corp. v. Catrett, 477 U.S. 317, 326 (1986) (discussing summary judgment standard and  
6 stating “Our conclusion is bolstered by the fact that district courts are widely acknowledged to  
7 possess the power to enter summary judgments sua sponte, so long as the losing party was on  
8 notice that she had to come forward with all of her evidence.”)<sup>2</sup>

## 10 ANALYSIS

### 11 I. Pacific Law Center Has Failed to Show that Defendant Misappropriated its 12 Mark

13 Pacific Law Center has failed to respond to the Court’s OSC. The Ninth Circuit has stated  
14 that “[i]t is not our task, or that of the district court, to scour the record in search of a genuine issue  
15 of triable fact. We rely on the nonmoving party to identify with reasonable particularity the  
16 evidence that precludes summary judgment.” Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir.  
17 1996). However, “it is error to grant a motion for summary judgment simply because the opponent  
18 failed to oppose.” In re Rogstad, 126 F.3d 1224, 1227, (9th Cir. 1997). Therefore, the Court will  
19 still address Pacific Law Center’s claims on the merits.

### 21 A. Anti-Cybersquatting Protection Act

22 The Anti-Cybersquatting Protection Act (“ACPA”) is violated if a person registers, traffics  
23 in, or uses a domain name that is identical or confusingly similar to a distinctive mark, with a bad  
24 faith intent to profit from that mark. 15 U.S.C. § 1125(d)(1)(A). To prevail on an ACPA claim, a  
25 plaintiff must show: (1) that its trademark was distinctive at the time the domain name was

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26 <sup>2</sup> In the OSC, the Court stated that it “will treat the requested briefs as cross-motions for  
27 summary judgment.” [Doc. No. 78 at 5.] Both parties received over one month to respond to the OSC  
28 and they were made aware that the Court’s ruling “could end this litigation in favor of Plaintiffs or in  
favor of Defendant without proceeding to trial.” [Id.] The Court also instructed the parties to “attach  
with their briefs any evidence that: (1) pertains to this ‘bad faith intent to profit’ issue, or (2) that  
supports any of the arguments they wish to present.” [Id.]

1 registered; (2) that the domain names the defendant registered are identical or confusingly similar  
2 to the trademark; and (3) that the defendant used or registered the domain names with a bad faith  
3 intent to profit. See id. The Court finds that both Pacific Law Center and Solomon Ward fail to  
4 establish that Defendant possessed a bad faith intent to profit from the domain names. Therefore,  
5 the Court need not address whether the first two elements are satisfied.<sup>3</sup>

6 The ACPA lists nine nonexclusive factors to assist courts in determining whether the use of  
7 a trademark involves a bad faith intent to profit. See 15 U.S.C. § 1125(d)(1)(B)(I). The courts  
8 may consider:

9 (I) the trademark or other intellectual property rights of the person, if any, in the  
10 domain name;

11 (II) the extent to which the domain name consists of the legal name of the person or  
12 a name that is otherwise commonly used to identify that person;

13 (III) the person's prior use, if any, of the domain name in connection with the bona fide  
14 offering of any goods or services;

15 (IV) the person's bona fide noncommercial or fair use of the mark in a site accessible  
16 under the domain name;

17 (V) the person's intent to divert consumers from the mark owner's online location to  
18 a site accessible under the domain name that could harm the goodwill represented by  
19 the mark, either for commercial gain or with the intent to tarnish or disparage the mark,  
20 by creating a likelihood of confusion as to the source, sponsorship, affiliation, or  
21 endorsement of the site;

22 (VI) the person's offer to transfer, sell, or otherwise assign the domain name to the  
23 mark owner or any third party for financial gain without having used, or having an  
24 intent to use, the domain name in the bona fide offering of any goods or services, or  
25 the person's prior conduct indicating a pattern of such conduct;

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26 <sup>3</sup> In response to the OSC, both Pacific Law Center and Solomon Ward failed to put forth any  
27 evidence of websites that actually use their marks in the domain name. Solomon Ward states that it  
28 is “aware” of at least two such websites, “solomonwardlawfirm.com” and  
solomonwardsandiego.com.” [Pl.’s Resp. at 16.] This is notable because Solomon Ward asks this  
Court to enjoin the Defendant “from registering and maintaining websites with ‘Solomon Ward’ in  
the domain name.” [Id. at 8.; Plaintiff’s Reply at 1.] Instead, Solomon Ward provided evidence of  
Defendant’s websites such as ushostage.com and uscourtjudges.com that, in part, criticize Plaintiffs.  
The ACPA does not prohibit the creation of such websites and it appears Solomon Ward has not even  
objected to this type of site in its response.

Nonetheless, the Court is aware that Defendant did previously create sites that incorporated  
Plaintiffs’ marks in the domain names and that those sites have been shut down. [Doc. No. 26 at 2.]  
Therefore, for the purposes of this order, the Court will assume that Defendant’s sites that actually  
used Plaintiffs’ marks as domain names resemble those sites in Plaintiffs’ exhibits.

1 (VII) the person's provision of material and misleading false contact information when  
2 applying for the registration of the domain name, the person's intentional failure to  
3 maintain accurate contact information, or the person's prior conduct indicating a  
4 pattern of such conduct;

5 (VIII) the person's registration or acquisition of multiple domain names which the  
6 person knows are identical or confusingly similar to marks of others that are distinctive  
7 at the time of registration of such domain names, or dilutive of famous marks of others  
8 that are famous at the time of registration of such domain names, without regard to the  
9 goods or services of the parties; and

10 (IX) the extent to which the mark incorporated in the person's domain name  
11 registration is or is not distinctive and famous within the meaning of subsection (c) of  
12 this section.

13 Id. Courts weighing these factors have often balanced them in favor of allowing websites for  
14 comment and criticism.

15 For example, various courts have found that “gripe sites” using nearly identical or  
16 confusingly similar marks in the domain names do not violate the ACPA. In TMI v. Maxwell, 368  
17 F.3d 433, 434-35 (5th Cir. 2004), a customer of homebuilder TMI registered the domain name  
18 “www.trendmaker.com.” This domain name differed by only one word from TMI’s mark,  
19 TrendMaker Homes, and its domain name, “www.trendmakerhomes.com.” The Fifth Circuit  
20 reversed the district court’s finding that defendant violated the ACPA and reasoned that the site  
21 was noncommercial and designed only “to inform potential customers about a negative experience  
22 with the company.” Id. at 438-39.

23 In Lucas Nursery & Landscaping, Inc. v. Grosse, 359 F.3d 806, 810 (6th Cir. 2004), the  
24 defendant registered the domain name “www.lucasnursery.com” to express her dissatisfaction with  
25 the company’s landscaping services. The Sixth Circuit found that her site did not constitute what  
26 Congress intended to proscribe and explained:

27 One of the ACPA’s main objectives is the protection of consumers from slick  
28 internet peddlers who trade on the names and reputations of established brands.  
The practice of informing fellow consumers of one’s experience with a particular  
service provider is surely not inconsistent with this ideal.

Id. at 811.

Further, in Lamparello v. Falwell, 420 F.3d 309 (4th Cir. 2005), the Fourth Circuit cited to  
TMI and Lucas Nursery, in finding for the defendant who maintained a website,  
“www.fallwell.com,” nearly identical to Reverend Falwell’s mark. In rejecting the ACPA claim,

1 the Court concluded:

2 After close examination of the undisputed facts involved in this case, we can only  
3 conclude that Reverend Falwell cannot demonstrate that Lamparello ‘had a bad  
4 faith intent to profit from using the [www.fallwell.com] domain name.’  
5 [Citation.] Lamparello clearly employed www.fallwell.com simply to criticize  
6 Reverend Falwell’s views. Factor IV of the ACPA, 15 U.S.C. §  
7 1125(d)(1)(B)(i)(IV), counsels against finding a bad faith intent to profit in such  
8 circumstances because ‘use of a domain name for purposes of . . . comment, [and]  
9 criticism,’ H.R. Rep. No. 106-412, 1999 WL 970519, at \*11, constitutes a ‘bona  
10 fide noncommercial or fair use’ under the statute, 15 U.S.C. §  
11 1125(d)(1)(B)(i)(IV) . . . We agree with the Fifth and Sixth Circuits that, given  
12 these circumstances, the use of a mark in a domain name for a gripe site  
13 criticizing the markholder does not constitute cybersquatting.

14 Id. at 320-22.<sup>4</sup>

15 However, courts have found that creating gripe sites to extort money from the markholder  
16 can violate the ACPA. For example, in Bosley Med. Inst., Inc. v. Kremer, 403 F.3d 672 (9th Cir.  
17 2005), defendant created a website “bosleymedical.com” to discuss his dissatisfaction with hair  
18 restoration services that he received from Bosley Medical Institute. Id. at 674. After the district  
19 court dismissed the ACPA claim on summary judgment, the Ninth Circuit remanded the claim to  
20 the district court noting that there was an issue as to whether the defendant made an extortionate  
21 offer to sell the bosleymedical.com site to Bosley. See also Christensen Firm v. Chameleon Data  
22 Corp., 2006 U.S. Dist. LEXIS 79710, \*9-10 (W.D. Wash. Nov. 1, 2006) (citing Bosley and stating  
23 “Many reference an extortionate offer to sell as the hallmark of a bad faith intent to profit.”);  
24 Lucas Nursery & Landscaping, 359 F.3d at 810 (“The paradigmatic harm that the ACPA was  
25 enacted to eradicate—the practice of cybersquatters registering several hundred domain names in an  
26 effort to sell them to the legitimate owners of the mark—is simply not present in any of  
27 [defendant’s] actions.”).

28 Here, Pacific Law Center has failed to demonstrate that Defendant possessed a bad faith  
intent to profit. The evidence shows that Defendant used his websites essentially as a venue to  
gripe about Pacific Law Center’s services, criticize both law firms, and offer his own political  
views. Second, Pacific Law Center has not shown that there is a genuine issue of material fact as  
to whether Defendant sought to extort money. An attorney, Mary Prevost, sent a “pre-filing”

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<sup>4</sup> See also Best Western Int’l, Inc. v. Doe, 2006 U.S. Dist. LEXIS 77942 (D. Ariz. Oct. 24, 2006).



1 settlement offer to Pacific Law Center on February 1, 2007 that stated Defendant would sign over  
2 all domain names in his possession referring to Pacific Law Center, *and* would not file a  
3 malpractice claim, if Pacific Law Center paid Defendant \$500,000. The letter reflects that she  
4 demanded \$500,000, at least in part, to compensate Defendant for alleged “damages” caused by  
5 Pacific Law Center’s malpractice.<sup>5</sup> Defendant alleges that he never saw the contents of this  
6 demand letter until after she sent it and that he has never sought to sell Plaintiffs his domain  
7 names.<sup>6</sup> In support, Defendant previously provided the Court with a series of emails between him  
8 and Ms. Prevost that reveal *she* was the driving force behind the demand for money. The emails  
9 show that Defendant even tried to terminate his relationship with Ms. Prevost shortly before she  
10 sent the letter, but that she persuaded him not to. [See Doc. No. 58, Defendant’s Opposition to  
11 Plaintiffs’ Motion for a Permanent Injunction, 20-29, Ex 1 and 2; Doc. No. 64, Defendant’s  
12 Motion for a Writ of Mandamus, 5-6.] Finally, these weaknesses in Plaintiff’s extortion allegation  
13 were previously raised in this Court’s OSC, and Plaintiffs did not adequately respond. Thus, the  
14 Court finds that Pacific Law Center has failed to establish a “bad faith intent to profit” and  
15 therefore its ACPA claim fails.

### 16 17 **B. Lanham Act and Unfair Competition Claims**

18 Pacific Law Center argues that Defendant’s use of pacificlawcenters.com and  
19 pacific/law/centers.com violates Section 43 of the Lanham Act and California’s unfair competition  
20 statute. The Court disagrees.

21 The Ninth Circuit has consistently held that state common law claims of unfair competition  
22 and actions pursuant to California Business and Professions Code § 17200 are “substantially

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23  
24 <sup>5</sup> Solomon Ward also alleges that Defendant later demanded “millions” in a subsequent  
25 telephone conversation with one of its attorneys. However, Solomon Ward states that he made this  
26 demand because he sought to be compensated for the “‘harms’ Solomon Ward had allegedly caused  
27 him stemming from his incarceration and the firm’s alleged filing of ‘falsified documents.’” [Pl.’s  
28 Resp. at 13.] As with the demand letter, this actually supports the argument that Defendant did not  
seek to “extort” money, but instead, created the websites and sought relief to address the “harm” he  
believes Plaintiffs have caused him.

<sup>6</sup> See Interstellar Starship Servs. v. Epix, Inc., 304 F.3d 936, 947 (9th Cir. 2002) (finding no  
“bad faith” under the ACPA, in part, because the attorney offered to sell the domain name in the  
context of settlement negotiations when defendant was not present).

1 congruent” to claims made under the Lanham Act. Clery v. News Corp., 30 F.3d 1255, 1262-63  
2 (9th Cir. 1994); Century 21 Real Estate Corp. v. Sandlin, 846 F.2d 1175, 1178 (9th Cir. 1988)  
3 (holding that the “ultimate test” for unfair competition and trademark infringement claims is  
4 “whether the public is likely to be deceived or confused by the similarity of the marks”) (internal  
5 quotations omitted). To prevail on these claims, the plaintiff must show: (1) the mark is  
6 protectable; (2) the defendant used the mark “in connection with any goods or services”  
7 (commonly referred to as the “commercial use requirement”); and (3) the defendant’s use “is likely  
8 to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or  
9 association of such person with another person, or as to the origin, sponsorship, or approval of his  
10 or her goods, services, or commercial activities by another person.” 15 U.S.C. § 1125 (a)(1)(A).

11 In Bosley, the Ninth Circuit found that the district court properly dismissed the Lanham  
12 Act claim and reasoned: “noncommercial use of a trademark as the domain name of a website—the  
13 subject of which is consumer commentary about the products and services represented by the  
14 mark—does not constitute infringement under the Lanham Act.” Bosley, 403 F.3d at 674.

15 Further, in Lamparello v. Falwell, 420 F.3d 309 (4th Cir. 2005), the Fourth Circuit  
16 followed this principle when it rejected plaintiff’s Lanham Act claim. In rejecting the Lanham Act  
17 claim, the Court reasoned, in part:

18 Reverend Falwell’s mark is distinctive, and the domain name of Lamparello’s  
19 website, www.fallwell.com, closely resembles it. But, although Lamparello and  
20 Reverend Falwell employ similar marks online, Lamparello’s website looks  
21 nothing like Reverend Falwell’s; indeed, Lamparello has made no attempt to  
22 imitate Reverend Falwell’s website. Moreover, Reverend Falwell does not even  
23 argue that Lamparello’s website constitutes advertising or a facility for business,  
24 let alone a facility or advertising similar to that of Reverend Falwell.  
25 Furthermore, Lamparello clearly created his website intending only to provide a  
26 forum to criticize ideas, not to steal customers.

27 Most importantly, Reverend Falwell and Lamparello do not offer similar goods or  
28 services. Rather they offer opposing ideas and commentary. Reverend Falwell’s  
29 mark identifies his spiritual and political views; the website at www.fallwell.com  
30 criticizes those very views. After even a quick glance at the content of the  
31 website at www.fallwell.com, no one seeking Reverend Falwell’s guidance would  
32 be misled by the domain name—www.fallwell.com—into believing Reverend  
33 Falwell authorized the content of that website. No one would believe that  
34 Reverend Falwell sponsored a site criticizing himself, his positions, and his  
35 interpretations of the Bible.

36 Id. at 315.

1 The same is true here. Pacific Law Center has not provided any evidence establishing that  
2 Defendant's websites use their domain names to offer any goods or services. Defendant neither  
3 operates a competing law firm nor diverts potential Pacific Law Center customers to a competing  
4 law firm. Further, Pacific Law Center has failed to establish a likelihood of confusion.  
5 Defendant's websites merely criticize the Plaintiffs' businesses, personnel, and practices, and offer  
6 his own political views. Thus, Pacific Law Center has not shown that Defendant's actions violate  
7 the Lanham Act or California's unfair competition laws.

8  
9 **II. Solomon Ward Has Failed to Show that Defendant Misappropriated its Mark**

10 **A. Anti-Cybersquatting Protection Act**

11 Plaintiff Solomon Ward brings the same claims as Pacific Law Center. However, it alleges  
12 that its case is different because Defendant never actually used Solomon Ward's legal services. As  
13 a result, Solomon Ward argues that Defendant is not "gripping" about any product or service , and  
14 therefore, his websites are not protected. The Court disagrees.

15 Solomon Ward has not shown that Defendant is prohibited from creating a "gripe site"  
16 about it merely because he did not use its services. In fact, case law weighs against such a  
17 proposition. In Lamporello v. Falwell, the defendant "clearly employed www.fallwell.com simply  
18 to criticize Reverend Falwell's views," and the court concluded that defendant's website  
19 constituted a "bona fide noncommercial or fair use" under the ACPA. Lamporello, 420 F.3d at  
20 320-22. In another related case, Ut. Lighthouse Ministry v. Found. for Apologetic Info. and  
21 Research, 527 F.3d 1045 (10th Cir. 2008), the plaintiff had a website that provided an online  
22 bookstore offering materials critical of the Church of Jesus Christ of Latter-day Saints. The  
23 defendants created a website that used plaintiff's mark in its domain name and criticized the  
24 plaintiff's online bookstore and its views. The defendants were not customers complaining about  
25 their direct experience with plaintiffs' online bookstore. Nonetheless, the Tenth Circuit found the  
26 case was similar to TMI and Lucas Nursery, and concluded that defendants did not have a bad  
27 faith intent to profit because their use was entirely noncommercial and constituted a fair use  
28 parody. Id. at 1058-59.

1 Thus, in sum, the foregoing cases focused on the defendants' bad faith intent to profit. The  
2 defendants did not use the plaintiff's services or buy the plaintiff's product, yet each court still  
3 found that the defendants were able to comment, criticize, and "gripe" without violating the  
4 ACPA. Therefore, similar to Pacific Law Center, Solomon Ward has also not established a bad  
5 faith intent to profit and its ACPA claim also fails.

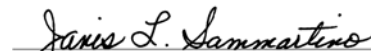
6  
7 **B. Lanham Act and Unfair Competition Claims**

8 Solomon Ward argues that Defendant's use of solomonwardlawfirm.com and  
9 solomonwardsandiego.com violate the Lanham Act and constitute unfair competition under  
10 California law. The Court disagrees. As with Pacific Law Center, Solomon Ward's claims fail  
11 because it has also not provided any evidence establishing that: (1) Defendant's websites satisfy  
12 the commercial use requirement, or (2) that there is a likelihood of confusion. Defendant's sites  
13 merely offer ideas and commentary, and criticize both law firms.

14  
15 **CONCLUSION**

16 For the foregoing reasons, the Court **GRANTS** summary judgment in favor of the  
17 Defendant and **DISMISSES** all of Plaintiffs' claims. This order effectively ends this litigation.  
18 Accordingly, the Clerk is directed to close the case.<sup>7</sup>

19  
20 DATED: September 2, 2008

21   
22 Honorable Janis L. Sammartino  
23 United States District Judge  
24  
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27 <sup>7</sup> In the Court's OSC, the Court stated that Defendant had until August 15, 2008 to file an  
28 opposition to Plaintiffs' response to the OSC. [Doc. No. 78.] On August 7, 2008, Defendant filed a  
request for an extension of time to oppose Solomon Ward's brief. However, Defendant did file a  
timely response on August 15, 2008. Therefore, Defendant's request is **DENIED** as moot.