

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

DANIEL L. BALSAM,
Plaintiff and Appellant,
v.
TRANCOS, INC., et al.,
Defendants and Appellants.

A128485, A129458

(San Mateo County
Super. Ct. No. CIV471797)

ORDER MODIFYING OPINION
AND DENYING REHEARING

[NO CHANGE IN JUDGMENT]

It is ordered that the opinion filed herein on February 24, 2012, be modified as follows:

1. On page 5 of the opinion, at the end of the third and last full paragraph, after the sentence ending “ ‘phoning and badgering us,’ ” insert as footnote 9, the following footnote, which will require the renumbering of all subsequent footnotes:

⁹ There was no testimony as to how Costeli chose the actual domain names. It may be inferred one motivation was to avoid disclosing Trancos was the sender. None of the domain names contained any variation or hint of Trancos’s name. If the names themselves connected Trancos to the mailing, private registration would be pointless. Other potential motivations for the whimsical name choices—including evading spam filters and avoiding accidental infringement of names used by other businesses or web sites—are not in issue in this case.

2. On page 11, first full paragraph, in the sixth sentence, beginning “Further, unlike *Kleffman*,” change the word “admitted” to “salient.”

3. On page 13, in the carryover paragraph, substitute the following sentence for the sentence beginning “Thus, Trancos selected”:

Thus, the nonsensical domain name “misstepoutcome.com” neither discloses Trancos’s name nor can it be linked to Trancos using any public database.

4. On page 13, in the carryover paragraph, delete the second-to-last sentence, beginning “Nelson specifically”

There is no change in the judgment.

Appellant’s petition for rehearing is denied.

Dated:

Margulies, Acting P.J.