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

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PACIFIC LAW CENTER, a Professional Law Corporation; and SOLOMON WARD SEIDENWURM & SMITH, LLP,
 Plaintiffs,
 v.
 SHAHROKH SAADAT-NEJAD, an individual,
 Defendant.

CASE NO. 07-CV-00460 L (POR)
EX PARTE APPLICATION OF PACIFIC LAW CENTER AND SOLOMON WARD SEIDENWURM & SMITH, LLP FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION
 Date: Not Yet Scheduled
 Time: Not Yet Scheduled
 Courtroom: 14
 Hon. M. James Lorenz

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I INTRODUCTION

This case is here because of Saadat-Nejad's vicious attacks first on his former lawyers in a state criminal case and then, when those lawyers sought to defend themselves, on his lawyers' lawyers.

Before imposing on this Court, however, Pacific Law Center and Solomon Ward attempted to see if resolution was possible. They met with Saadat-Nejad for four hours on Friday, March 15, who showed up with a tape recorder and a baseball bat.¹ Based on Saadat-Nejad's subsequent telephone call and other conduct on Monday, March 19, Pacific Law Center and Solomon Ward conclude that they must come to this Court and seek both a temporary restraining order and an order to show cause for a preliminary injunction.²

II MATERIAL FACTS

Pacific Law Center.

Pacific Law Center has been doing business as a law firm, with a practice emphasizing criminal, bankruptcy and personal injury case, in San Diego. It registered the internet domain names "pacificlawcenter.com," "pacifidawcenter.net," "pacificlawcenter.org" and "pacificlawcenter.ws" and has maintained ownership of those domain names.³

Pacific Law Center has used the exclusive trademark "Pacific Law Center" in its professional business and in an extensive advertising and marketing campaign, including television, telephone business directories, print and various other media.⁴

It has used and advertised the internet domain names, and operated internet sites at the addresses, "pacificlawcenter.com," "pacificlawcenter.net," "pacificlawcenter.org" and

¹ McIntyre Declaration, p. 1, ¶¶ 2-7.

² McIntyre Declaration, p. 1, ¶ 7.

³ Slattery Declaration, p. 1, ¶ 7.

⁴ *Id.*

1 "pacificlawcenter.ws" to advertise and promote its activities as a law firm.⁵

2 Pacific Law Center has built up valuable goodwill in its "Pacific Law Center" service
3 mark and trade name, and the public generally has come to associate its mark exclusively
4 with Pacific Law Center's professional business in California.⁶

5 **Solomon Ward.**

6 Solomon Ward is, and has been for more than 25 years, a law firm in San Diego,
7 known and practicing throughout California and across the country.

8 Solomon Ward has used the exclusive service marks and trade names "Solomon
9 Ward Seidenwurm & Smith" and "Solomon Ward" in its professional business. Solomon
10 Ward has registered the internet domain names "swsslaw.com" and "solomonward.com"
11 and has operated internet sites at swsslaw.com to make the public aware of its professional
12 practice.

13 Solomon Ward has over the years built up valuable goodwill in its service marks and
14 trade names and the general public has come to associate those names exclusively with
15 Solomon Ward's professional practice in San Diego, throughout California and across the
16 nation.

17 **State Court Criminal Case.**

18 On August 31, 2006, Saadat-Nejad retained Pacific Law Center to defend him against
19 criminal charges pending against him in San Diego and for which he was then in custody.

20 Shortly thereafter, Saadat-Nejad became dissatisfied with Pacific Law Center's
21 representation, terminated its representation of him and began a course of conduct,
22 including posting disparaging comments about Pacific Law Center on the internet, all
23 calculated to interfere with and damage it and its business operations.

24 **Saadat-Nejad Misappropriates Pacific Law Center's Domain Name.**

25 On September 20, 2006, Saadat-Nejad registered and obtained ownership of the
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27 ⁵ *Id.*

⁶ *Id.*

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1 internet domain name "pacificlawcenters.com," which is one letter off, and confusingly
2 similar to, the internet domain names registered to Pacific Law Center and sites it uses.

3 **Superior Court Action.**

4 On January 12, 2007, Pacific Law Center filed an action in superior court against
5 Saadat-Nejad, case no. GIC 878352. On February 23, Pacific Law Center retained Solomon
6 Ward to represent it in that lawsuit.

7 On February 27, Solomon Ward successfully obtained a superior court temporary
8 restraining order against Saadat-Nejad. The original order the court signed restrained Saadat-
9 Nejad:

10 "Until further order of this Court Shahrokh Saadatnejad shall immediately
11 cease using the website pacificlawcenters.com or any similar website.

12 Until further order of this Court, Shahrokh Saadatnejad shall not use the trade
13 name Pacific Law Center in any published communication...."

14 On March 9, the superior court extended that temporary restraining order until an
15 April 20, hearing.

16 At a March 14 hearing, the superior court explained or modified its February 27 order
17 and said that Saadat-Nejad is restrained only from using the website/domain name
18 "pacificlawcenters.com."

19 Saadat-Nejad has now posted another phony website "pacific-law-center.com" which
20 he claims to be exposing corruption against Phillips and Associates and Pacific Law Center.

21 **Saadat-Nejad Misappropriates Solomon Ward's Domain Name.**

22 On March 10 or 11, Saadat-Nejad registered "solomonwardlawfirm.com," a
23 confusingly similar domain name to the names Solomon Ward owns. He has also registered
24 and uses solomonwardsandiego.com.⁷ Based on my Monday telephone conversation with
25 him, Saadat-Nejad has made clear that he will not stop using the Solomon Ward mark and
26 trade name. He further made clear that he intends to continue his vendetta against Solomon

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⁷ McIntyre Declaration, p. 1, ¶¶ 8-11; p. 2, ¶¶ 16-20.

1 Ward because it is representing Pacific Law Center in both the state and this action.⁸ Saadat-
2 Nejad, through a lawyer purporting to represent him, told Pacific Law Center that unless it
3 pays him \$500,000 he will continue to use its domain name. Saadat-Nejad reiterated that
4 threat at the meeting Friday evening at my office.⁹ Solomon Ward has already had inquiries
5 about the pirate site that Saadat-Nejad has used. Solomon Ward has already suffered
6 irreparable harm as a result of Saadat-Nejad's conduct and it will continue to suffer
7 irreparable harm unless this Court stops him.¹⁰ There is no way accurately to determine the
8 whole of the harm that Saadat-Nejad has done to Solomon Ward and its reputation and the
9 reputation of its attorneys. As a result, money damages are inadequate to repair that harm.
10 In that respect, Solomon Ward has suffered and continues to suffer irreparable harm and will
11 do so until this Court stops Saadat-Nejad.¹¹

12 **III**
13 **THE 1999 ANTI-CYBERSQUATTING AND CONSUMER PROTECTION ACT GIVES THIS**
14 **COURT THE POWER TO RESTRAIN SAADAT-NEJAD'S MISAPPROPRIATION OF PACIFIC**
15 **LAW CENTER AND SOLOMON WARD'S SERVICE MARKS AND TRADE NAMES**

16 Congress passed the 1999 Anti-Cybersquatting and Consumer Protection Act—15
17 U.S.C. § 1125(d)—to protect consumers and American business, to promote growth of
18 online commerce, and to provide clarity for trademark owners by prohibiting bad faith and
19 abuse of registration of distinctive marks as Internet domain names with the intent to profit
20 from goodwill associated with those marks.¹² Nothing in 15 U.S.C. § 1125(d) preempts state
21 law remedies.¹³

22 Saadat-Nejad has no trademark or other intellectual property rights in Pacific Law
23 Center or Solomon Ward's domain names; indeed, the Solomon Ward domain name also

24 ⁸ McIntyre Declaration, p. 2, ¶ 17.

25 ⁹ McIntyre Declaration, p. 2, ¶ 18.

26 ¹⁰ McIntyre Declaration, p. 3, ¶ 19.

27 ¹¹ McIntyre Declaration, p. 3, ¶ 20.

28 ¹² *Mattel, Inc. v. Internet Dimensions, Inc.*, 55 USPQ2d 1620 (S.D. NY 2000).

¹³ *Sporty's Farm, LLC v. Sportman's Market, Inc.*, 202 F.3d 489, 493 (2000 2d Cir.) (cybersquatting defined as "prevent[ing] use of the domain name by the mark owners, who might infrequently have been willing to pay 'ransom' in order to get 'their names' back.").

1 consists of the legal names of two Solomon Ward founding partners, Herbert J. Solomon and
2 William O. Ward.

3 Saadat-Nejad has no prior use of either domain name in connection with any *bona*
4 *fide* offering of goods or services. Nor does Saadat-Nejad have a *bona fide* non-commercial
5 or fair use of any mark in a site accessible under the domain name. Saadat-Nejad has made
6 clear his intent to divert clients from Pacific Law Center and Solomon Ward’s on-line
7 locations to sites accessible under the domain names that he has registered with the intent to
8 tarnish or disparage Pacific Law Center and Solomon Ward.

9 He has created a likelihood of confusion about the source, sponsorship, affiliation or
10 endorsement of his sites. Saadat-Nejad has demanded half a million dollars—through a
11 lawyer purportedly representing him—to stop using the pacificlawcenters.com domain name
12 and other Pacific Law Center domain names.

13 The Pacific Law Center and Solomon Ward marks are distinctive and famous in that
14 they are widely recognized by the general consuming public in San Diego, in California and
15 across the United States as a designation of the services respectively of Pacific Law Center
16 and Solomon Ward. Saadat-Nejad’s registration of multiple domain names which he knows
17 are identical or confusingly similar to the marks of Pacific Law Center and Solomon Ward—
18 marks that are distinctive and famous.

19 In short, Pacific Law Center and Solomon Ward have established **eight** of the nine
20 factors that 15 U.S.C. § 1125(d)(1)(B) and 15 U.S.C. § 1125(c)(1) suggests a court might
21 consider in determining whether there is actionable cybersquatting. Indeed, the only factor
22 that Pacific Law Center and Solomon Ward have not addressed is whether Saadat-Nejad
23 provided material and misleading false contact information when he applied for the
24 registration of the domain names. He has, however, a pattern of prior conduct, first in his
25 attack on Pacific Law Center and, subsequently, his attack on Solomon Ward.

26 Under the Ninth Circuit standard, this Court may grant the injunctive relief sought
27 because Pacific Law Center and Solomon Ward have shown: “(1) a strong likelihood of
28 success on the merits, (2) the possibility of irreparable injury to [them] if preliminary relief is

1 not granted, (3) a balance of hardships favoring [them], and (4) advancement of the public
2 interest¹⁴ Alternatively, this Court may grant that injunctive relief because Pacific Law
3 Center and Solomon Ward have demonstrated “either a combination of probable success on
4 the merits and the possibility of irreparable harm or that serious questions are raised and the
5 balance of hardships tips sharply in [their] favor.”¹⁵

6 Saadat-Nejad has no right to misappropriate domain names already registered to
7 Pacific Law Center or Solomon Ward or to misappropriate domain names so confusingly
8 similar to the names they use. He is attempting to hold Pacific Law Center hostage for at
9 least a half a million dollars.

10 Neither Pacific Law Center nor Solomon Ward has to show any commercial
11 interference with their law practices to prevail under the Anti-Cybersquatting Act. In a case
12 almost directly in point,¹⁶ the Ninth Circuit has held that the Anti-Cybersquatting Act does
13 not contain a commercial use requirement.¹⁷

14 The Christensen law firm sued Chameleon because, Chameleon had shifted the
15 registration of the Christenson law firm’s domain names to itself to gain leverage in a
16 payment dispute. The district court held:

17 An individual may be held liable under the ACPA for cybersquatting if the
18 person (1) registers, traffics in, or uses a domain name identical or confusingly
19 similar to a distinctive mark, and (2) has a bad faith intent to profit from use of
the mark as a domain name.¹⁸

20 The court noted that many of the decisions under ACPA refer to “an extortionate offer
21 to sell” as the hallmark of a bad faith intent to profit and found that Chameleon’s
22 “extortionate offer” to transfer the domain names back to resolve the fee dispute created a

23 _____
24 ¹⁴ *Earth Island v. United States Forest Service*, 442 F.3d 1147, 1158-59 (9th Cir. 2006), quoting *Earth Island*
Institute v. United States Forrest Service, 351 F.3d 1291, 1297-98 (9th Cir. 2003).

25 ¹⁵ *Id.* at 1159.

26 ¹⁶ *Bosley Medical Institute, Inc. v. Kremer*, 403 F.3d 672, 608-81 (9th Cir. 2005); *The Christensen Firm v.*
Chameleon Data Corp. (2006) 2006 US. Dist. LEXIS 79710 (W.D. Wash.). See also *Daimler Chrysler v.*
The Net Inc., 388 F.3d 201 (6th Cir. 2004); *Ford Motor Company v. Catalanatte*, 342 F.3d 543 (6th Cir.
2003).

27 ¹⁷ *Id.* at 680-681.

28 ¹⁸ *The Christensen Firm, supra*, 206 U.S. Dist. LEXIS *8.

1 fact issue concerning its bad faith intent to profit. That intent may be shown by an offer to
2 transfer a domain name to obtain a benefit in commercial dispute negotiation.

3 The district court also found, as a matter of law, that the transfer of the domain names
4 constituted "registration" of those domain names under the ACPA.

5 Bosley Medical provided surgical hair transplants and owns, among others, the
6 registered trademark Bosley Medical. Kramer, a dissatisfied former patient, purchased the
7 domain name bosleymedical.com. Then, five days later, Kramer delivered a two page letter
8 that read:

9 Let me know if you want to discuss this. Once it is spread over the internet it
10 will have a snowball effect and be too late to stop. M. Kramer [phone
number]. P.S. I always follow through on my promises.

11 Reversing the district court's grant of summary judgment in Kramer's favor the Ninth
12 Circuit held that 15 U.S.C. § 1125(d) does not require plaintiff to show that the defendant
13 has engaged in **any** commercial use. Rather, all that the trademark owner asserting an anti-
14 cybersquatting claim must establish is (1) a valid trademark entitled to protection; (2) that its
15 mark is distinct and famous; (3) the defendant's domain name is identical or confusingly
16 similar to, or in the case of famous marks, dilutive of, the owner's mark; and (4) the
17 defendant used, registered or trafficked in the domain name; (5) with a bad faith intent to
18 profit.¹⁹

19 Pacific Law Center and Solomon Ward have made a very strong showing of each of
20 those elements. They have also demonstrated irreparable harm. Accordingly, they are
21 entitled to injunctive relief.

22 IV 23 CONCLUSION

24 Pacific Law Center and Solomon Ward stand squarely among those whom Congress
25 intended to protect by the Anti-Cybersquatting and Consumer Protection Act. Saadat-Nejad
26 has no right to rip off their service marks and trade names and then make extortionate

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28 ¹⁹ *Bosley Medical Institute, supra*, 403 F.3d at 681.

1 demands for a half a million dollars or more just to leave them alone. Pacific Law Center
2 and Solomon Ward are entitled to, and truly need, emergency injunctive relief.

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4 DATED: March 21, 2007

SOLOMON WARD SEIDENWURM & SMITH, LLP

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By: /s/ Edward J. McIntyre

EDWARD J. MCINTYRE

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Attorneys for Pacific Law Center and Solomon
Ward Seidenwurm & Smith, LLP

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CERTIFICATE OF SERVICE

I caused the *EX PARTE* APPLICATION OF PACIFIC LAW CENTER AND SOLOMON WARD SEIDENWURM & SMITH, LLP FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION to be served in the following manner:

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

Electronic Mail Notice List

NONE.

I manually served the following:

Shahrokh Saadat-Nejad
3713 Mt. Ashmun Place
San Diego, CA 92111
VIA

/s/ Edward J. McIntyre _____
EDWARD J. MCINTYRE