

# EXHIBIT E

**From:** Adam Simms

**Sent:** Tuesday, August 24, 2010 7:40 PM

**To:** msacks@bellsouth.net

**Subject:** It's a 10 , inc.

Mr. Sacks,

We have reviewed your certified mail sent August 20, 2010, pertaining to the It's a 10 trademark, and alleged infringements on our part. After careful consideration and further research we have come to the following actions and conclusions on your listed points below.

Response to your bulletin stating "Does the domain name holder have trademark rights in the domain name? ANSWER: you do not, but we do"

Your client owns a word mark, serial number 78753586, registration number 3420182, listed as "It's a 10", but do not have registration of, its-a-10, its-a-ten, its-a-ten.com or its-a-10.com, notice the differences in the domain name versions to registered trademark, the lack of a single quote, and the addition of two "-". These are not the same and must be the same to be an infringement. If our domains were it'sa10.com or it'saten.com I would agree with you, but they are not.

We do not have a domain with the phrase "it's a 10" in it, ours is a term of art by combining all three words into one using hyphens and removing the possessive apostrophe 's' and using it as a plural.

The domain "itsaten.com", one of their two trademarked domain versions and is not even registered and up for grabs by anyone, this shows we are not a "domainer", buying trademark domain names to sell to the trademark owners, we are businessmen selling a business. It also shows a lack of effort and/or interest in your client owning their own domain name, and their sudden interest in our domains is simply them trying to cash in on the efforts and money we have invested to receive the relevant traffic to our online retail store.

They do not own their other trademark domain version "itsa10.com" which is currently owned by a publisher that advertises retail products including It's a 10 for sale online.

Response to your bulletin stating "Is the domain name the legal name of the domain name holder, or some other name that is otherwise commonly used to identify that person? ANSWER: no, it is our client's name"

Please refer to section 1.1, 1.2

Response to your bulletin stating "Has the domain holder made use (prior to the dispute) of the domain name in connection with a bona fide sale of goods or services? ANSWER: yes you have"

We purchased [its-a-10.com](http://its-a-10.com) and [its-a-ten.com](http://its-a-ten.com) to perform retail sales. We have records of thousands of dollars spent on advertising and SEO for said sites to achieve retail sales for profit and records of those sales. Our intent was to use these domains for retail sales from the beginning and our actions only reinforce this intent.

*Bobbs-Merrill Co. v. Straus*, 210 U.S. 339 (1908), First-sale doctrine, allows us to resell any copyrighted or trademarked goods.

Response to your bulletin stating "Is the domain name holder using the mark in a bona fide noncommercial or fair use way at a web site accessible at the domain name? ANSWER: no you have not, but in fact, have used the domain/mark for "commercial purposes" in the unauthorized sale of our client's hair products"

No authorization needed, please refer to, *Bobbs-Merrill Co. v. Straus*, 210 U.S. 339 (1908), First-sale doctrine, allows us to resell any copyrighted or trademarked goods.

We are not using their trademark as already stated.

Response to your bulletin stating "Has the domain holder offered to sell the domain name to the trademark owner (or anyone else) for financial gain? ANSWER: your recent email to our client confirms this fact, perhaps the most damning evidence against you to date."

First, this is not your client's trademark, as previously shown, and even if it was...

reading the email in its completeness, you would easily see that we were only offering the business (customer base, ecommerce code, Google adwords campaign) for sale after our original reason for owning the domains (retailing product) looked as if we could not continue. We used these domains for a retail business up to that point and was only considering selling because of recent events. Purchasing a domain name and building a business on it, then selling said business is a legitimate transaction, as long as the domain is not purchased in bad faith, and since we purchased and executed these domains for a retail business and not just for reselling them to your client (though they are not your clients trademark anyhow) would easy negate your claims of bad faith.

Regarding (a) using a confusingly similar domain to our client

Your clients domain name is [www.itsa10haircare.com](http://www.itsa10haircare.com) and it would be a very far stretch to say our domain [www.its-a-ten.com](http://www.its-a-ten.com) is similar in any fashion, or easily confused.

Regarding (b) holding yourselves out as an authorized seller, agent and/or dealer of our client's products

At no time do we describe ourselves as any of the above.

Regarding (c) simultaneously offering your domain for sale to my client via email...

Again their trademark is "It's a 10" and we do not own [itsa10.com](http://itsa10.com), nor do we own a domain that would be easily confused with their current domain. Itsa10.com is owned by an anonymous source contactable at, [itsa10conadmin@domainnameproxylc.com](mailto:itsa10conadmin@domainnameproxylc.com), you might want to bring these charges up to them.

Our statement of "We do have people contacting us, trying to contact you regularly. We always forward them to your [www.itsa10haircare.com](http://www.itsa10haircare.com)." is not due to a confusing domain name, but excellent search engine placement. We highlight this in the last paragraph of said email: 'Search for "it's a 10" or "It's a Ten" and you will find the site comes up in 5th place on Google, 2nd and 4th on Bing, 1st, 3rd and 5th on Yahoo.', the email even contains an itemized list of costs, and in it "website, SEO" was listed at \$5,500.

Regarding request (1) "holding yourselves out to the public as either an agent, seller, distributor or provider of It's a 10, Inc hair care products;"

No authorization needed, please refer to, *Bobbs-Merrill Co. v. Straus*, 210 U.S. 339 (1908), First-sale doctrine, allows us to resell any copyrighted or trademarked goods.

Regarding request (2) "selling our client's product via the internet unless purchased directly from an authorized distributor of our client;"

See section 9 subset 1.

Please take the above as our response. We hope this will settle these accusations. Our original offer to sell this business is still on the table.

Sincerely,

Adam Simms  
330-554-4102

