

Jun 17 2005

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMIUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDASTELOR PRODUCTIONS, L.L.C., a
Delaware corporation, f/k/a STELOR
PRODUCTIONS, INC.,CASE NO. 05-80393-CIV-HURLEY
Magistrate Hopkins

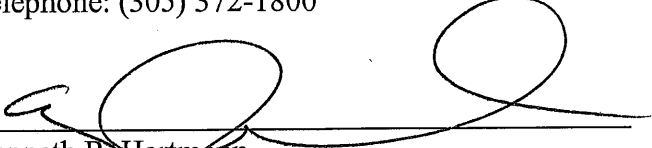
Plaintiff,

v.

STEVEN A. SILVERS, a Florida resident,

Defendant,
_____ /**NOTICE OF FILING DECLARATION OF RUSSELL B. TEWKSBURY**Defendant, Steven Silvers, hereby gives notice of filing the attached Declaration of Russell
B. Tewksbury.**I HEREBY CERTIFY** that a true and correct copy of the foregoing was hand-delivered this
17th day of June, 2005, to: Kevin C. Kaplan, Esq., Daniel F. Blonsky, Esq. and David Zack, Esq.,
Burlington, Weil, Schwiep, Kaplan & Blonsky, P.A., Counsel for Plaintiff, Office in the Grove,
Penthouse A, 2699 South Bayshore Drive, Miami, FL 33133.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA.

STELOR PRODUCTIONS, L.L.C.,
a Delaware corporation,
f/k/a STELOR PRODUCTIONS, INC.,

Plaintiff,

Case No. 05-80393-CIV-HURLEY

v.

STEVEN A. SILVERS, a Florida resident,

Defendant.

DECLARATION OF RUSSELL TEWKSBURY

I, Russell Tewksbury, declare under penalty of perjury that the following is based upon my personal knowledge and is true and correct:

1. I am an Internet Strategist and technology consultant, writer and lecturer with more than a decade of related experience. I have lectured about Internet technologies at key industry conferences in Europe, the Caribbean and throughout North America. My writings have been published in technology & communications journals/publications, distributed in more than one hundred countries. I am listed in a number of Marquis' Who's Who publications, including, but not limited to: Who's Who in the World; Who's Who in America and Who's Who in the Media and Communications.

2. I personally know Steven A. Silvers, and via public Whois look-up, have reviewed the domain name registration information for the googles.com domain name. I have also reviewed limited information (IP address and server data) pertaining to the Gootopia Website operated by Stelor Productions.

3. I submit this declaration in support of Steven A. Silvers' Motion to Strike Steven A. Esrig's Declaration, and Objection to Magistrate's Report and Recommendation.

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4. It is my understanding Stelor licensed from Silvers the right to use certain trademarks and characters called the "Googles." It is my understanding Stelor created and developed a Website that Stelor refers to as the "Gootopia Website." It is my understanding Stelor incorporated the licensed property in the content of the Gootopia Website.

5. It is my understanding Stelor is the owner, creator and operator of the Gootopia Website. According to public Whois information, it appears Stelor Productions, Inc. entered into a Web hosting agreement with Verio Inc. for a Virtual Private Server (VPS) shared-hosting account.

6. It is my understanding Stelor Productions, Inc. Gootopia Website is hosted on a Verio Virtual Private Server shared-hosting account. The current name servers for the Gootopia Website are: *ns1.secure.net* and *ns2.secure.net*. Verio, Inc, assigned Stelor an IP address of 128.121.122.247 for Stelor's VPS account where the Gootopia Website is currently hosted (ARIN & RIPE IP search). The Gootopia Website server type is Apache/ 1.3.33 (Unix) mod_jk/1.2.5 PHP/4.3.11 (Name Intelligence, Inc. Whois database Look-Up for googles.com).

7. When Stelor created their Verio Web hosting account, Stelor was given a user-login and password for their VPS server and Verio's customer administrative backroom and product control panel. The user-login and password to Stelor's Verio VPS server provides secure access for Stelor to their Gootopia Website and enables Stelor to control the content of their Website. Unless Stelor gave their Verio VPS user-login and password information to a third party, only they and Verio possess password-access to the VPS server where Stelor's Gootopia website is hosted. Stated another way, unless Stelor has given their user-login and password to Silvers, he does not have administrative access the server that hosts the Gootopia Website, nor does he have any control over the content on the Gootopia Website.

8. Any person wanting to view the Gootopia Website on the Internet can do so by

simply entering the numeric IP address 128.121.122.247; the user will be connected to the Gootopia Website.

9. A Whois search reveals Silvers Ent. Group, Inc. listed as the registrant for the Googles.com domain name. As the lawful registrant for the Googles.com domain name, only Silvers should direct the DNS records that associate the Googles.com domain name with any particular IP address or name server(s).

10. Up until recently, Silvers maintained the DNS records for the Googles.com domain name to point to Verio's name servers (ns1.secure.net and ns2.secure.net), which in turn directed website visitors to the IP address associated with Stelor's Gootopia Website. Simply stated, when a person typed in the domain name googles.com, they were connected to Stelor's Gootopia Website.

11. It is my understanding when Silvers terminated the license agreement with Stelor, he logged into his Godaddy.com domain name account and directed the DNS records of the Googles.com domain name to point to a different IP address (Web server) hosting a Website he controls.

12. Esrig's testified that because Silver directed the DNS records away from the Gootopia Website "Silvers shut down the (Gootopia) Website." It is my understanding Silvers was not a party to the Web hosting agreement between Stelor and Verio, Inc. That being the case, only Stelor and Verio had access to the (password protected) Gootopia Website, which Stelor created. Only Verio or Stelor has the ability to shut down the Gootopia Website. Access to the VPS server that hosts the Gootopia Website is an issue between Stelor and Verio, Inc. Unless Verio suspended Stelor's VPS account, the Gootopia Website remained accessible via IP address once Silvers pointed the DNS for his googles.com domain name to a different IP address (Web server) hosting a Website he controls.

13. Esrig testified that because Silver directed the DNS records away from the Gootopia Website “Stelor no longer has access to the (Gootopia) Website.” As previously stated, Stelor’s access to the Gootopia Website is an issue between Stelor and Verio. Even if Verio suspended Stelor’s VPS account –denying Stelor access to their VPS server, Silvers has no authority or ability to direct Verio to do anything relating to Stelor’s account or access thereto. In addition, Stelor should have access to their Gootopia Website content through back-up copies. It is normal and customary for a Website developer to have back-up copies of their Website. Finally, Stelor has the option to contract with another Web hosting company (other than Verio) to host their Gootopia Website.

14. Esrig testified that because Silver directed the DNS records away from the Gootopia Website “Silvers redirected the Website.” This statement is incorrect. Silvers redirected the DNS for the Googles.com domain name to point to an IP address (Web server) under his control. Silver’s action does not prohibit or restrict Stelor’s ability to access, modify, alter or delete any content on their Gootopia Website.

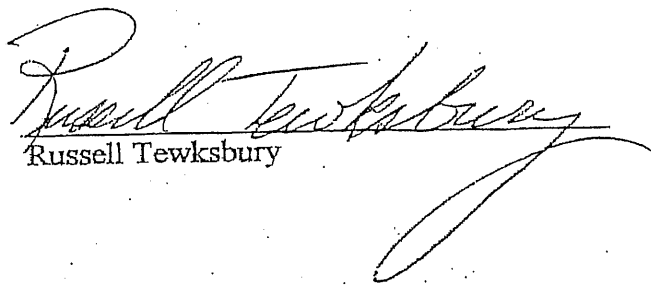
15. Esrig testified that because Silver directed the DNS records away from the Gootopia Website “Stelor can’t operate the (Gootopia) Website without the googles.com domain name.” That is incorrect. Stelor does not *need* the googles.com domain name to operate the Gootopia Website. The Gootopia Website exists completely independent of any domain name. If, by the word “operate,” Esrig means to imply people can’t access the Gootopia Website via the Internet, that is incorrect. All that his needed for the Gootopia Website to be accessible via the Internet, is a Web hosting account (Web server) and a publicly accessible IP address. If the preference is to have a domain name associated with the Gootopia Website, Stelor can register a multitude of other domain names and have those point to the Gootopia Website.

16. Esrig testified that because Silver directed the DNS records away from the

Gootopia Website "Silvers took the Website (Gootopia) content." That is incorrect. Unless Stelor gave Silvers password access to their Verio VPS server where their Gootopia Website was hosted, Silvers is not able to remove or in any other way restrict Stelor's access to their Gootopia Website content. Only Stelor has that control.

17. Esrig testified that because Silver directed the DNS records away from the Gootopia Website "Stelor can't demonstrate the site to anyone." That is incorrect. Stelor has multiple options to demonstrate the Gootopia Website. It can do so over the Internet using an IP address, or any other domain name it chooses. Or, it can demonstrate off-line on a local computer or from a DVD or CD-Rom.

Dated: June 17, 2005


Russell Tewksbury

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