

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

VULCAN GOLF, LLC, )  
Individually And On Behalf of All Others )  
Similarly Situated, )  
Lead Plaintiff, )  
 )  
v. )  
 )  
GOOGLE INC., OVERSEE.NET, )  
SEDO LLC, DOTSTER, INC., AKA )  
REVENUEDIRECT.COM, )  
INTERNET REIT, INC. d/b/a IREIT, INC. )  
and JOHN DOES I-X, )  
Defendants. )

No. 07 CV 3371

Judge Charles P. Kocoras  
Magistrate Judge Geraldine Soat Brown

**MOTION TO DISMISS**

Pursuant to Rule Federal Rules of Civil Procedure 12(b)(1) and (b)(6), Defendant Internet REIT ("Ireit") hereby submits its Motion to Dismiss, together with the Memorandum in Support filed contemporaneously herewith.

1. Plaintiff asserts against Ireit and the other named defendants claims pursuant or relating to the Lanham Act, 15 U.S.C. § 1051 *et seq.*, including trademark infringement, under 15 U.S.C. § 1114(1), false designation of origin under 15 U.S.C. § 1125(a), dilution under 15 U.S.C. § 1125(c) and cybersquatting under 15 U.S.C. § 1125(a); Racketeering Influenced Corrupt Organizations Act ("RICO") under 18 U.S.C. § 1962(c) and (d); the Illinois Consumer Fraud and Deceptive Business Practices Act under 815 ILCS 505/2; the Illinois Uniform Deceptive Trade Practices Act under ILCS 510/2, and "the identical or substantially similar consumer fraud and fair trade practices acts of the various states, and various states' common law."

2. Plaintiff's Complaint is subject to dismissal for myriad reasons. As an initial matter, Plaintiff lacks standing to sue Ireit because Plaintiff does not allege that Ireit committed any acts that harmed Plaintiff itself.

3. In addition, Plaintiff's RICO and consumer protection claims are not pleaded with particularity as required by Federal Rule of Civil Procedure Rule 9(b).

4. Plaintiff's Complaint also fails to state any claim for relief and is subject to dismissal under Tule 12(b)(6). Specifically, Counts I and II, wherein Plaintiff asserts claims under the Racketeering Influenced Corrupt Organizations Act ("RICO"), should be dismissed because Plaintiff fails to plead a cognizable RICO claim, Plaintiff lacks standing because it fails to plead direct injury, there is no RICO "enterprise" over which Ireit exerted control, and Plaintiff fails to adequately plead a predicate racketeering activity and conspiracy.

5. Count III should also be dismissed because Plaintiff fails to assert a cybersquatting claim because Ireit does not own any domain name that infringes Plaintiff's rights.

6. Likewise, Counts IV, V, VI, IX, and X must be dismissed because Plaintiff fails to allege that Ireit infringed (either directly or contributorily), falsely designated, or diluted Plaintiff's marks. Accordingly, there has been no actionable trademark infringement, no false designation of origin, or trademark dilution by Ireit.

7. Counts VII and VIII are also subject to dismissal because Plaintiff has no claim for consumer fraud or deceptive trade practices, and Plaintiff has no basis to contend a right to declaratory relief in its favor.

8. Lastly, Counts XI and XII warrant dismissal for failure to adequately plead an intentional interference with any current or prospective adavantage or cognizable unjust enrichment claim against Ireit.

9. While dismissal is warranted for the reasons discussed herein and in the accompanying Memorandum, even if the Court is inclined not to dismiss the Complaint at this time, pursuant to Rule 12(e) this Court should order Plaintiff to provide a more definite statement or make such order as the Court deems just.

For the foregoing reasons, Internet Ireit, Inc. respectfully requests that the Court dismiss Counts I through XII of Plaintiff's Complaint as alleged against Internet Reit, Inc. with prejudice.

Date: August 10, 2007

Respectfully submitted,

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**SERVICE LIST**

I hereby certify that on August 10, 2007, a true and correct copy of the foregoing was served in accordance with Rule 5, Federal Rules of Civil Procedure, on the following:

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