

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VULCAN GOLF, LLC, JOHN B.
SANFILIPPO & SONS, INC., BLITZ
REALTYGROUP, INC., and VINCENT
E. "BO" JACKSON, Individually And
On Behalf of All Others Similarly Situated,

Lead Plaintiffs,

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 Blanche M. Manning

DEFENDANTS' AGREED JOINT AND UNOPPOSED MOTION FOR LEAVE
TO FILE SEPARATE MOTIONS AND SUPPORTING BRIEFS TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendant, Sedo.com LLC (misnamed Sedo LLC) ("Sedo"), on behalf of itself and all
other defendants in this case, Google Inc. ("Google"), Oversee.net ("Oversee"), Internet Reit, Inc.
("Ireit"), and Dotster, Inc., a/k/a RevenueDirect.com ("Dotster"), respectfully request that the Court
grant leave to allow each defendant to file: (1) its own motion to dismiss plaintiffs' amended
complaint under Federal Rule of Civil Procedure 12; and (2) a supporting memorandum of up to 30
pages. In support of this motion, defendants provide as follows:

1. On September 18, 2007, plaintiffs filed their 92-page, fourteen-count, amended
complaint as a purported class action against the five named defendants and John Does I-X.

Plaintiffs assert myriad federal and state causes of action, including RICO, unfair competition, and

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trademark claims. Although there is a single amended complaint against defendants, there can be no presumed unified defense.

2. The essence of the amended complaint is that defendants allegedly used, pursuant to an "illegal infringement scheme," internet domain names similar to domain names and trademarks plaintiffs and other putative class members own, as a means of attracting internet traffic and generating advertising revenues.

3. During the initial status hearing before this Court on September 20, 2007, defendants informed the Court that each defendant had filed a motion to dismiss the original complaint before plaintiff requested leave to file an amended complaint. On August 21, 2007, Judge Kocoras granted plaintiff leave to file an amended complaint and accordingly denied without prejudice defendants' motions to dismiss, prior to recusing himself from the case due to a conflict of interest.

4. To avoid having each defendant file its own motion for leave to file a brief in excess of fifteen pages, defendants requested during the September 20 status hearing that the Court grant each defendant leave to file a brief of up to 35 pages in support of its motion to dismiss. The Court appeared to agree with defendants' reasoning, verbally granting their request.

5. The Court's order entered on September 25, 2007, which addresses the issues discussed during the September 20, 2007 status hearing, nevertheless instructs defendants to file a "consolidated motion to dismiss and reply." *See* Sept. 25, 2007 Order, a copy of which is attached hereto as Exhibit A.

6. Counsel for each defendant have conferred regarding the Court's order and agree that a consolidated motion and brief were never anticipated, are not feasible, and could not sufficiently advance and safeguard each defendant's distinct interests and defenses.

7. Defendants strongly believe there are issues unique to each defendant, and that they would be significantly disadvantaged if required to file a consolidated motion to dismiss and supporting brief. Although plaintiffs' allegations relate to a purported single "scheme," plaintiffs' amended complaint presents an accumulation of specific claims against individual defendants that involve facts and legal claims that differ significantly from defendant to defendant. Plaintiffs impliedly acknowledge this fact in the amended complaint, distinguishing defendants one from another and citing their differing roles, responsibilities, and participation in the alleged "scheme." *See* Amended Complaint, pp. 14-18, 22-32.¹ Moreover, plaintiffs do not oppose this motion.²

8. In addition to the fundamental differences among the defendants' positions and roles, separate motions are also advisable because each defendant has an unassailable interest in the individual control of its defense in this action, and it appears already that various defendants may have adverse interests.³ As a result, their defenses would pose conflicts of interest if they were forced to file a consolidated motion and brief.

9. Lastly, coordinating twenty defense attorneys strewn across the country in the preparation of a consolidated motion and brief would be inordinately complex and burdensome, particularly in view of each defendant's unique position and perspective in this case.

¹ For example, in their amended complaint, plaintiffs define Google as an "online marketing/advertising business" (p. 22); Oversee, Sedo, and Dotster as "Parking Companies," which denote "compan[ies] that aggregate[] numerous domain names from individual domain name registrants and contract[] with an advertising service to license and monetize those domain names" (pp. 20, 28); and Ireit, in contrast, as an owner and manager of domain names Ireit owns (p. 16).

² On September 26, 2007, Plaintiffs' counsel, Robert Foote, indicated in writing that plaintiffs do not oppose this motion.

³ For instance, Google argued in its motion to dismiss the original complaint that it "could not be liable for contributory trademark infringement or cybersquatting for the claimed actions of the PCDs [Parking Company Defendants]." *See* Google's Memorandum in Support of its Motion to Dismiss, p. 6.

Wherefore, defendants request leave -- which plaintiffs do not oppose -- to file: (1) their Rule 12 motions and supporting briefs separately; and (2) supporting briefs of up to 30 pages each pursuant to Local Rule 7.1.

Date: September 28, 2007

Respectfully submitted,

SEGAL MCCAMBRIDGE SINGER &
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By: /s/ Misty R. Martin

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On Behalf of Sedo.com LLC

SERVICE LIST

I hereby certify that on September 28, 2007, a true and correct copy of the foregoing was served in accordance with Rule 5, on the following:

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