

Wed, Nov 17, 2004 11:33 AM

Subject: Feb. 9, 2004 5: 30 p.m. WIPO and UDRP Issues
Date: Monday, February 9, 2004 11:25 PM
From: Steven Silvers <gewrue@hotmail.com>
To: <sesrig@stelorproductions.com>

February 9, 2004

To: Steven Esrig, CEO of Stelor Productions, Inc.

Re: WIPO and UDRP Position and Info For Your Review And Considerations

Ok, Steve, as promised here are some thoughts as to why I believe we need to file a WIPO and UDRP proceeding against not only google.com, .net, etc., but also the googles.org, booble.com, domain name owners as well:

To begin with any swift and inexpensive challenge against Google.com, Booble.com, and/or Googles.org, must first be established via a WIPO proceeding in conjunction with a Uniform Domain Name Dispute Resolution Policy filing also known as a UDRP proceeding.

There are very few lawyers in the US today that are astute and up to date on this type of legal litigation and usually when someone, whether it be a lawyer or doctor or any other professional specialist is not knowledgeable about a specific area or field of expertise they usually follow the rule of thumb and that is to sway away or try to persuade another seeking counsel or sound advice from proceeding not to do so because they don't want their client to think that they are ignorant about what they are being asked to offer advice or counsel about.

Cutting to the chase Steve, this WIPO/UDRP litigation is specific and unique. Unless Ira and his firm are knowledgeable in this arena it will be a disaster for us to have them performing this sort of challenge on our behalf. Having said this let me also inform you that the only sure fire way you are going to make any waves at all with Google.com is to institute, if it's not already to late, a legal campaign via a WIPO/UDRP proceeding to force and for all see the record straight as to who has the rights to use the "Googles" or "Google" name on the WWW.

The record clearly shows that I was first to market via the WWW in July of 1997 and several months later along came "Google.com" and they filed in September of 1997. They never took the time to read the fine print of the registration process to determine that there was no existing name that was either similar or confusingly similar to their name at the time they chose to register. At this time, way back in the dark ages of 1997, there was NO WIPO organization governing these sort of issues nor any rules or policy and procedures to follow via a UDRP proceeding. Internic was the governing body back in the day and they were only interested in getting as many people to sign up on the WWW as they possibly could and to insure that no one had the "exact" same name operating on the Internet. There was no similar or confusingly similar language back then. Thus Google.com snuck through the crack without using the "exact same name" as mine and just conveniently dropped the "s" at the end. Had they done their homework and perhaps they did, they would have not only noted that I was on the WWW before them with not only an "exact" sounding name as theirs but also an "exact" spelling of their name in the plural format.

As of this day there has NEVER been a WIPO or UDRP proceeding instigated against google.com or google.net or any of the other google registered names and there are many, or for that matter against the latest villain to be using our name at www.googles.org. The "exact" spelling of Googles.

Also, you may want to note that not only was I registered prior to Google.com and Googles.org but I also owned the "Registered" trademark with the USPTO as early as 1996 and for which I applied for the mark in 016 Intl. class code back in 1994, way before Google.com was even thought of by Larry

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Page and Sergia Brin (the Google.com founders from Stanford University).

So the two test questions for a WIPO/UDRP challenge is 1). Is the name similar in sound and/or likely to cause confusion among those surfing the Internet by the party bringing the action? 2). Does the name infringe upon an already existing Trademark that was, in fact, a previously registered mark prior to the registration of the challenged domain name? In the first question the answer is yes and yes. Yes that the name is almost identical in sound and spelling and yes that it is likely to and in fact has and continues to be confusing to those surfing the Internet.

Second question is also a yes in that I was first to register the mark way before Google.com was even thought of. I have copyright registrations dating back as early as the late 1980's and an original Googles prototype called: Googles "the purrfect pet" that I copyrighted back in the late 70's early 80's. I have copyrights for the names Googles, Giggles, and Goggles. I have the story copyrights for: Googles and the Planet of Goo, and Googles and the Return Flight to Goo.

I can clearly show and prove, convincingly, that I am the Senior Mark and that Google.com has infringed on that mark.

I started out with a book concept and later expanded my audience to include a web site that promoted the concept and the characters and the planet of Goo. I later licensed the project to Aurora and created a line of plush toys for sale and music and GooTunes that was my creation and idea for KMTV (Kids Music Television Videos). We created several.

Then Stelcor came along and picked up the ball and we expanded even further with redesigning the web site, and creating more music and then doing the music in Spanish, and then creating more GooTunes to add to the already existing collection to someday launch the broadband 24-7 GooZicle Musical Revue for kids around the world with the launching of our very own Googles MTV type music video and educational cable station.

We then planned, in our business plan, to start our very own Googles.com search engine dedicated strictly for kids and their caregivers from around the globe. This search engine would be a vehicle for children of all ages to stay in tune with the news around the world and environmental issues, ecological issues, lost and found, missing kids, homework helper, idea workshops, polling issues, and so much more. A place with companies like National Geo, and Discovery Channel, Disney, Warner Bros., etc and all sorts of children,s advertisers would be proud to steer some of their adv. dollars to our children,s search engine with the understanding that a portion of their dollars would go to a charity of their choice and you get the picture, Steve.

What about a consumers' guide to safe and sound toys for tots and young kids. A sort of watch dog news alert on our search engine for parents to view before they are about to go out and purchase a toy for their child or loved ones? It's endless what we could come up with. It would be greater and warrant more advertising dollars than Google.com ever dreamed of. We could get Disney and Warner Bros. and Nicks Kids, and all the rest of the big child related advertisers to come on board. I have a game plan for all of this to come to fruition.

And last but certainly not least, we would launch our very own kids hotmail and call it say: GooMail or Googlesmail for kids or GooKidsmail, or something like that and every kid around the world could acquire their very own "free" e-mail/pen pal address. It would take off like wild fire.

So as you can see we are now a multi-billion dollar entity strictly dedicated for children around the world. What court in this land is going to deny us the exclusive rights to the "Googles" name and perhaps even go so far as to force Google.com to change theirs. Think about it, Steve. It's worth the publicity and at the very worst we still have "Oogle, Iggle, and Oogle from the Planet of Goo" And their new name would be The Oogles from

Good! Which reminds me, we MUST have Ira get on this as well. We need to reestablish the Googles name ASAP with the USPTO and get it out of abandonment status.

So, as to the filing NOW a WIPO challenge against Google.com and Googles.org, etc., I think we need to be aggressive and do so right away. Ira may not be the firm to perfect this litigation as I informed you it is a specialty area. You may need to speak with a Kenneth Bass and see what his take is on this matter. It may be worth a visit to his firm when I come up and pay him for an hour of his time to get his opinion. We can't linger on this, Steve. I've given you fair warning that we must do something NOW and not wait any longer. I've been very patient with holding off on doing something on my own and pay the consequences in order to protect my IP. I know what I'm doing and while I'm not an attorney I have an awful lot of knowledge about this sort of litigation and how we need to go about attacking these issues. We can't afford to dilly dally around any longer.

You have the upcoming licensing show in just a few more months. It's right around the corner. How are you going to handle all this once we debut the characters and we get an audience with Good Morning America or CNN on our characters who I'm sure will be the talk of the show with the music playing and the colorful character costumes and all? We need to be prepared for all of this hoopla now.

Let me give you a few ground rules taken directly from the Internet regarding WIPO and UDRP proceedings: What types of disputes are covered by the Administrative Procedure of a UDRP complaint? Ans: According to Paragraph 4(a) of the UDRP Policy, the UDRP Adm. Procedure is only available for disputes concerning an alleged abusive registration of a domain name; that is, which meet the following criteria: (i) the domain name registered by the domain name registrant is identical or confusingly similar to a trademark or service mark in which the complainant (the person or entity bringing the complaint) has rights; and (ii) the domain name registrant has no rights or legitimate interests in respect of the domain name in question; and (iii) the domain name has been registered and is being used in bad faith.

I'm not sure if one needs to prove all three challenges or any one of the three, in which case for purposes of our challenge we would seek redress as to (i) above.

A WIPO challenge does not preclude us from bringing the action to federal court if we should not prevail and the good thing is that it only takes 40-50 days to be resolved one way or the other. Once a panel convenes it takes about 17 days for a response.

A WIPO proceeding may be held between one or 3 panelists. One panel proceeding involving 1-5 domain names, which is where we'll fit in, cost \$1,500 and for a 3 panel proceeding it cost \$4,000. So if we choose to bring a WIPO proceeding against google.com, booble.com, googles.com it will cost \$4,000 for a (3) panel proceeding and I believe it takes a majority of (2) for us to prevail.

Remember, if we prevail in a WIPO proceeding it doesn't preclude Google.com from seeking a federal court to challenge the ruling of the WIPO committee but it works both ways for us as well. During the process we'll have a lot of free publicity and I have a feeling that Google.com will soon realize that we mean business and that we are the Senior Mark and that their mark is confusingly similar and that we were first to reap a Registered Trademark from the USPTO and they may find themselves in a real jam once the wheels of justice start to move against them.

Here's the GooNews about such a filing. If we lose we can still bring an action in federal court within 10 days and all adm. proceedings and sanctions by the WIPO Adm. Board are suspended until a final ruling is made by the courts and all appeal processes have been denied. This we all know could take years to perfect all the way to the US Supreme Court. Also,

during the process we can arbitrate directly with Google.com to work out a mutual deal with them. At least they will know of our existence and that we are not playing games.

It is my opinion that if they knew they had a solid case against us they would have come at us long before now. They are holding their breathe, in my opinion that we don't file against them before they go public.

Yes, it's a chance and a roll of the dice, and yes, we could possibly lose but it is doubtful and that is why we need to solicit now for some professional opinions as to the likely outcome of such a filing by a competent legal advisor such as Ken Bass. We can't afford to linger with this any longer, Steve. The showdown is inevitable. We are the senior mark and we are in the drivers' seat and I think Google.com knows this. If you feel you can get to them first and have our counsel speak with them on amiable terms first prior to filing such a complaint then I would urge that you make this a Number one priority and do so right away. At least we'll know how they stand and on what scale from 1-10 are they concerned.

I don't see us losing and in federal court we'll have a very strong case against them for at the very least the "confusion" issue and like you said, we've been around for as long as they have and longer and we were first to market and I can surely prove that with no problems.

My trademark for Googles predates any trademarks that they have sought and they have crossed over the threshold by filing for trademarks in all sorts of Int'l. class codes including but not limited to 016 (text books, stickers, written word, etc., and 028 (push toys).

I'll close for now and let you digest all of this but now you are fully aware and apprised of my position and how I think we MUST proceed and remember timing is everything. I am at your disposal and would like to firm up Stelor's position by the time I arrive in Maryland on the 18th of this month and I will look to get with you, Henry, and any other member or members of the Stelor Board to further discuss my position.

Respectfully submitted by: Steven A. Silvers (Licensor)

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CASE NO. 04-30954-CIV-HURLEY/HOPKINS

PLAINTIFF'S REQUEST TO RECONSIDER
AND VACATE THE NOVEMBER 4, 2004
ORDER DENYING EMERGENCY STATUS
FOR PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION
IN LIGHT OF NEW FACTS OR, IN THE
ALTERNATIVE, FOR A
TEMPORARY RESTRAINING ORDER

Exhibit J