

**LAW OFFICES OF HOWARD E. GREENBERG, ESQ., P.C.**  
**ATTORNEYS FOR PLAINTIFF BLACK SHEEP TELEVISION, LTD.**  
**180 EAST MAIN STREET, SUITE 308**  
**SMITHTOWN, NEW YORK 11788**  
**TEL: 631-982-0080; FAX: 631-982-0087**  
**HOWARD E. GREENBERG, ESQ. (HEG-2773)**  
**e-mail: howard@hgreenberglaw.com**

**FILED**  
 IN CLERK'S OFFICE  
 U.S. DISTRICT COURT E.D.N.Y.

★ OCT 26 2010 ★

LONG ISLAND OFFICE

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF THE STATE OF NEW YORK**

-----X Case No.  
**BLACK SHEEP TELEVISION, LTD.,**

Plaintiff,

--against--

**TOWN OF ISLIP,**  
**A New York Municipal Corporation,**

Defendant.

-----X

**COMPLAINT**

(SD)  
**CV-10 4926**

**WEXLER, J.**  
**LINDSAY, M.**

**PLAINTIFF BLACK SHEEP TELEVISION LTD.'S COMPLAINT**  
**FOR A DECLARATORY JUDGMENT AND PERMANENT INJUNCTION**

**INTRODUCTION**

1. Plaintiff Black Sheep Television, Ltd. brings this action seeking a Declaratory Judgment that its registration and use of the domain names <macarthuraairport.com>, <islipairport.com>, <islipmacarthuraairport.com>, <islipairportonline.com>, <islipairportonline.net>, <macarthuraairportonline.com>, <macarthuraairportonline.net>, <ispairportonline.com>, and <ispairportonline.net> is not unlawful under the Anticybersquatting Consumer Protection Act, 15 U.S.C. 1125(d), as well as a Permanent Injunction enjoining the transfer of the aforementioned domain

names to the Defendant Town of Islip herein, as directed by the October 11, 2010 determination of Petter Rindforth which was issued pursuant to a Uniform Domain Name Dispute Resolution Policy proceeding initiated by the Defendant.

### **PARTIES**

2. That the Plaintiff Black Sheep Television is a domestic corporation organized under the laws of the State of New York with its principal offices located in Suffolk County, New York and operating with a business address of P.O. Box 1116, Hampton Bays, NY 11946.

3. That the Defendant Town of Islip is a New York Municipal Corporation, organized under the laws of the State of New York and located in Suffolk County, New York, with an office located at 655 Main Street, Islip, New York 11751.

4. That at all times hereinafter mentioned, the Plaintiff Black Sheep Television, Ltd., is and was the registrant of the aforementioned domain names.

### **VENUE AND JURISDICTION**

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1331, in that the Plaintiff seeks a declaration, pursuant to 15 U.S.C 1114(D)(v) and 28 U.S.C. 2201, that its registration and use of the aforementioned domain names is not unlawful under the Anticybersquatting Consumer Protection Act, 15 U.S.C. 1125(d). In addition, the Defendant Town of Islip agreed to submit to the jurisdiction of this Court when it initiated an administrative proceeding with the

National Arbitration Forum concerning the Plaintiff's right to register and utilize the aforementioned domain names.

6. That venue set in the United States District Court, Eastern District of New York, is proper pursuant to 28 U.S.C. 1331(c) in that both the Plaintiff and the Defendant maintain their principal offices in Suffolk County, New York. Venue in this Court is also proper based upon 28 U.S.C. 1391(b)(2) because a substantial part of the events giving rise to this action occurred in this District and a substantial part of the property that is the subject of this action is situated in this District.

### **FACTUAL ALLEGATIONS**

7. On or about January 1, 2000, the Plaintiff by its agents, registered the domain names <macarthurairport.com>, <islipairport.com>, and <islipmacarthurairport.com>.

8. That at the time of registration, the Plaintiff intended to operate a fully functional airport information website providing information and services to travelers of Macarthur Airport.

9. That at the time of the Plaintiff's registration, the Defendant Town of Islip, did not operate or offer any internet or web site based informational outlets for Macarthur Airport.

10. Thereafter, the Plaintiff put forth a directed good faith effort to offer the most up to date and relevant information regarding flight tracking, flight booking, hotel accommodations, commuting information, weather and other

related services to travelers of the Macarthur Airport who sought to obtain such information and procure such services via the internet.

11. That in the wake of the World Trade Center attacks on September 11, 2001, the Plaintiff received a number of passenger inquiries regarding security guideline changes and other information.

12. That in response, the Plaintiff added links to the Transportation Security Administration as well as the United States Department of Homeland Security, and additionally reached out to representatives of the Defendant Town of Islip for the purposes of seeking a cooperative relationship regarding operation of the website so that travelers of the airport would be provided with the most up to date and accurate information and services relevant to Macarthur Airport.

13. That such attempts at cooperation with the Defendant were absolutely rebuffed. Peter McGowan, then Town of Islip supervisor, informed the Plaintiff and its agents that "the Town saw no need for a website."

14. Thereafter, the Plaintiff continued to operate the website for the next six years without interference, interruption or cooperation from the Defendant Town of Islip and its successive administrations in the most effective, efficient and beneficial manner it could to provide the best service to the public seeking airport services and information via the internet. The Plaintiff paid for flight tracking information and screened various services and businesses to determine their suitability for being part of the website.

15. In or about November of 2007, agents of the Defendant, on behalf of the Town of Islip and at the direction of its current Supervisor Phil Nolan, contacted agents of the Plaintiff to attend a meeting of the herein parties to discuss the Town of Islip's alleged interest in brokering a partnership between the Plaintiff and Defendant for the operation of the website.

16. That on November 8, 2007, in good faith and in reliance on the offer of a cooperative relationship by the Defendant, Supervisor Nolan and their representatives, agents of the Plaintiff attended a meeting at the airport with agents of the Defendant and discussed and disclosed their business operations, website function, advertising, revenue capabilities and other relevant information for the purposes of fostering a cooperative relationship.

17. That on December 19, 2007, a second meeting was held between the same agents of the parties, in addition to technology and computer specialist of the Defendant, wherein various functions of the Plaintiff's website were further discussed and divulged to the Defendant for the purposes of fostering a cooperative relationship.

18. That at the meetings, the parties and their representatives came to an agreement that the Plaintiff and Defendant would form a cooperative relationship for the operation of <macarthuraairport.com> and its related addresses.

19. That agents of the Defendant informed the Plaintiff's agents that they would have the agreement memorialized by their legal department.

20. In the months after the meetings, agents of the Plaintiff stayed in continued contact and communication and discussed various webs site function with agents and technological specialists of the Defendant, and provided the Defendant agents with certain information regarding the Plaintiff's operation and modifying its web site based on information and direction provided by the Defendant and its agents.

21. That the Plaintiff's agents inquired with agents of the Defendant regarding the status of the written agreement and were assured that by Defendant's agents that "we are working on it."

22. Thereafter, on or about May 13, 2009, the Plaintiff received a "cease and desist" letter from outside counsel to the Defendant Town of Islip, whereby the Town, upon direction of Supervisor Nolan, seemingly reneged on all that had been previously discussed and agreed.

23. Thereafter, the Plaintiff registered the domain names <islipairportonline.com>, <islipairportonline.net>, <ispairportonline.com>, and <ispairportonline.net>, <macarthuraairportonline.com> and <macarthuraairportonline.net> to protect the good will the Plaintiff had established through the previous ten years of operation of the sole website offering services and information for Macarthur Airport.

24. Subsequently, in or about August 10, 2010, Uniform Domain Name Dispute Resolution Policy (UDRP) Arbitration proceedings were commenced before the National Arbitration Forum (NAF) under file FA1008001339861 by the

Town of Islip and Supervisor Nolan to divest the Plaintiff of the domain name, macarthuraairport.com, and the other website addresses as set forth herein and in the NAF Arbitration proceedings.

25. That after review of the submissions of the Town of Islip, the Complainant therein, and a review of those submissions of the Respondent therein, Black Sheep Television, Ltd.; that the Panel chose to consider; on October 11, 2010, the NAF Panel ordered the transfer of the aforementioned domain names from the Plaintiff herein to the Defendant.

26. That during the proceedings, the sole Panelist Petter Rindforth rejected the Plaintiff's submissions of CD-ROM discs that contained actual recordings of the meetings held between the parties herein on November 8, 2007 and December 19, 2007 on the basis that the evidence was in an inadmissible form according to UDRP and ICANN policy rules, thereby prejudicing the Plaintiff in those proceedings.

27. Thereafter, the Plaintiff was forced to institute this action for a declaratory judgment that its registration and use of the aforementioned domain names is not unlawful under the Anticybersquatting Consumer Protection Act, 15 U.S.C. 1125(d), and for a Permanent Injunction enjoining the transfer of the aforementioned domain names to the Defendant herein in conformance with the decision of Panelist Petter Rindforth dated October 11, 2010, pursuant to a Uniform Domain Name Dispute Resolution Policy proceeding filed by the Defendant.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**FOR A DECLARATORY JUDGMENT AND PERMANENT INJUNCTION**  
**UNDER 15 U.S.C. 1114(2)(d)(v)**

28. That the Plaintiff repeats, reiterates and re-alleges each and every allegation set for in Paragraphs 1-27 of the Complaint as if set forth fully herein.

29. That in 2000, Plaintiff through its agent, registered domain names <macarthurairport.com>, <islipairport.com>, and <islipmacarthurairport.com> through Network Solutions, LLC and has operated them in good faith since the year 2000.

30. That in 2009, Plaintiff through its agent, registered domain names <islipairportonline.com>, <islipairportonline.net>, <ispairportonline.com>, and <ispairportonline.net>, <macarthurairportonline.com> through Godaddy.com, Inc., which link to the original <macarthurairport.com> website.

31. That in or about August of 2010, the Defendant filed an administrative complaint with the National Arbitration Forum pursuant to ICANN's Uniform Domain Name Dispute Resolution Policy claiming that the Plaintiff's registration of the aforementioned domain names violated the Defendants' trademark of Macarthur Airport.

32. That pursuant to such filing, a decision was issued dated October 11, 2010 by Panelist Petter Rindforth who ordered a transfer of the aforementioned domain names from the Plaintiff herein to the Defendant.



33. That such decision was incorrect in that the selected Panelist failed to consider the Plaintiff's additional submission of CD-ROM discs and in finding that the Plaintiff has made an unlawful use of the aforementioned domain names.

34. That the Plaintiff has in good faith lawfully registered and operated the website under the aforementioned domain names.

35. That the Defendant, by its actions and proceedings has caused the ordering of the transfer of the Plaintiff's registered domain names.

36. That by its conduct, the Defendant has engaged in "reverse domain names hijacking" in that it has caused the unlawful transfer of the Plaintiff's registered domain names.

37. That in accordance with 15 U.S.C. 1114(2)(d)(v)(ii)(II), the Plaintiff has provided notice to the Defendant of its intention to file the herein action for a declaratory judgment.

38. That the conduct of the Defendant has damaged the Plaintiff and will cause continuing and irreparable injury should the ordered transfers be effected.

39. That the Plaintiff is entitled to a declaratory judgment that its registration and use of the aforementioned domain names is lawful and to a permanent injunction barring the transfer of the domain names.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**FOR FRAUDULENT INDUCEMENT**

40. That the Plaintiff repeats, reiterates and re-alleges each and every allegation set for in Paragraphs 1-39 of the Complaint as if set forth fully herein.

41. That in November of 2007, at the direction of current Supervisor Phil Nolan, the Defendant and its agents solicited the Plaintiff to attend a meeting to discuss the Plaintiff and its agents' operation of the website.

42. That on November 8, 2007, agents of the Plaintiff and agents of the Defendant met at the airport.

43. That at such meeting, agents of the Defendant discussed the Plaintiff's operation of the website and proposed a cooperative partnership for the Plaintiff and Defendant to engage in for the operation of the website.

44. Thereafter, on December 19, 2007, a second meeting was held between the same agents of the Plaintiff and the same agents of the Defendant as well as Defendant's computer specialists.

45. That at such meeting, the parties further discussed a cooperative relationship for operation as well as all of the Plaintiff's business operations, website function, informational gathering, advertising and revenue sharing opportunities.

46. That the actions of the Defendant and its agents were designed to discover the inner workings of the Plaintiff's business operations of the websites, including the number of visitors to the websites; the potential for revenues from

advertisers; the time and efforts necessary to monitor the website, and in all respects the business operations of the Plaintiff.

47. That the actions by the Defendant and its agents, performed at the direction of Supervisor Phil Nolan, in offering a potential business and legal partnership to the Plaintiff were done in bad faith and in a manner to fraudulently induce the Plaintiff to reveal such information to the Defendant and its agents.

48. That the Defendant and its agents never intended to negotiate fairly with the Plaintiff and the meetings that were set up by the Town were for the sole purpose of discovering the business operations of the Plaintiff so that the Town could then develop its own competing business.

49. That by its conduct, the Defendant has engaged in fraud.

50. That the Plaintiff relied upon the good faith promises of a potential working relationship with the Town when its agents attended the meetings and divulged to the Town representatives its business operations.

51. That had the Plaintiff known the true intentions of the Defendant, its Supervisor and its agents, it would have not agreed to meet with the Defendant, nor would it have disclosed its private business operations and methods to the Defendant's agents.

52. That the Defendant's actions have caused and will cause harm and injury to the Plaintiff including but not limited to the loss of income, revenues, costs and good will.

53. That the Defendant's conduct has caused actual losses to the Plaintiff, the sum and total of which shall be established at trial, in an amount not less than \$1,000,000.00.

**AS AND FOR A THIRD CAUSE OF ACTION  
FOR CONVERSION**

54. That the Plaintiff repeats, reiterates and re-alleges each and every allegation set for in Paragraphs 1-53 of the Complaint as if set forth fully herein.

55. That sometime after the meetings that the Defendant Town had with the Plaintiff in November and December of 2007 and after months of correspondence with the Plaintiff regarding the website and its operation and the purported agreement, in or about August of 2008, under the direction of Supervisor Nolan, the Town of Islip established www.flylima.com.

56. That the Town and/or its agents, acting under its direction and that of Supervisor Nolan, copied without the permission or authority or consent of the Plaintiff, its internal website coding, including certain of its source code and meta descriptions all in anticipation of the launch of www.flylima.com in or about May of 2009.

57. That the Defendant's actions were willful, intentional and were done in an effort to plagiarize the work and assets of the Plaintiff.

58. That the Defendant's actions were done for the purpose of competing with the Plaintiff and as such, such actions, have damaged the Plaintiff in its business operations.

59. That the Defendant's actions have caused and will cause harm and injury to the Plaintiff including but not limited to the loss of income, revenues, costs and good will.

60. That the Defendant's conduct has caused actual losses to the Plaintiff, the sum and total of which shall be established at trial, in an amount not less than \$1,000,000.00.

**AS AND FOR A FOURTH CAUSE OF ACTION  
FOR BREACH OF IMPLIED CONTRACT**

61. That the Plaintiff repeats, reiterates and re-alleges each and every allegation set for in Paragraphs 1-60 of the Complaint as if set forth fully herein.

62. That in November of 2007, at the direction of its Supervisor Phil Nolan, the Defendant and its agents solicited the Plaintiff to attend a meeting to discuss the Plaintiff and its agents' operation of the website.

63. That on November 8, 2007, agents of the Plaintiff and agents of the Defendant met at the airport.

64. That at such meeting, agents of the Defendant discussed the Plaintiff's operation of the website and proposed a cooperative partnership for the Plaintiff and Defendant to engage in for the operation of the website.

65. Thereafter, on December 19, 2007, a second meeting was held between the same agents of the Plaintiff and the same agents of the Defendant as well as Defendant's computer specialists.

66. That at such meeting, the parties further discussed a cooperative relationship for operation as well as all of the Plaintiff's business operations, website function, informational gathering, advertising and revenue sharing opportunities.

67. That at such meeting, the parties came to a meeting of the minds and an agreement on a cooperative relationship between the Plaintiff and Defendant to operate and work jointly on the Plaintiff's website.

68. That the Defendant and its agents represented and agreed to a cooperative relationship and informed the Plaintiff and its agents that they would forward the agreement to their legal department for memorializing.

69. That thereafter, the Plaintiff and its agents continued to have an open dialogue with the Defendant's computer specialist regarding website function and updated information.

70. That the Plaintiff and its agents inquired regarding the status of the agreement and were told by agents of the Defendant that "we are working on it".

71. That at all times relevant hereto, the Plaintiff and its agents acted in good faith in meeting with the Defendant and divulging their business operations and website function for the purposes of the cooperative agreement.

72. That in reliance on the representations of the Defendant and its agents and the agreement discussed, proposed and accepted between the parties herein to operate on a joint basis, the Plaintiff continued to divulge all of its operations to the Defendant's computer specialist and perform work and services in preparation for the joint operation.

73. That in May of 2009, the Plaintiff then received a cease and desist letter from the Defendant's outside counsel claiming trademark infringement and ordering the Plaintiff to cease its operations.

74. That the Defendant reneged on the agreement made and had between the parties for a cooperative partnership in operation of the website.

75. That thereafter, on August 10, 2010, the Defendant instituted a Uniform Domain Name Resolution Policy (UDRP) action against the Plaintiff for trademark infringement.

76. That such conduct constituted a breach of contract as well as bad faith dealing and misrepresentation.

77. That by its conduct, the Defendant has damaged the Plaintiff in an amount to be determined at trial but not less than \$1,000,000.00.

#### **JURY DEMAND**

78. That the Plaintiff requests that these matters be tried before a jury.

**WHEREFORE**, Plaintiff respectfully requests that this Court grant it:

On the First Cause of Action:

- (a) An award of damages in an amount determined at trial, not less than \$1,000,000.00;
- (b) Judgment for the costs, disbursements and reasonable attorney's fees in connection with the filing of the herein action;

On the Second Cause of Action:

- (a) An award of damages in an amount determined at trial, not less than \$1,000,000.00;
- (b) Judgment for the costs, disbursements and reasonable attorney's fees in connection with the filing of the herein action;

On the Third Cause of Action:

- (a) An award of damages in an amount determined at trial, not less than \$1,000,000.00;
- (b) Judgment for the costs, disbursements and reasonable attorney's fees in connection with the filing of the herein action;

On the Fourth Cause of Action:

- (a) An Award of damages in an amount determined at trial, not less than \$1,000,000.00;
- (b) Judgment for the costs, disbursements and reasonable attorney's fees in connection with the filing of the herein action;

and for such other and further relief as this Court deems just and proper.

Dated: October 25, 2010  
Smithtown, New York

/s/ \_\_\_\_\_  
**Law Offices of**  
**Howard E. Greenberg, Esq., P.C.**  
(HEG-2773)  
180 East Main Street, Suite 308  
Smithtown, New York 11787  
631-982-0080 tel; 631-982-0087 fax  
Email: [howard@hgreenberglaw.com](mailto:howard@hgreenberglaw.com)  
*Attorneys for the Plaintiff*

To: Town of Islip  
655 Main Street  
Islip, New York 11751  
*Defendant*



STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF SUFFOLK )

That I am a **Principal of the Plaintiff Black Sheep Television, Inc.** in the within action, to wit: I have read the annexed **COMPLAINT** and know the contents thereof and the same are true to my knowledge, except as to those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

  
Jacques Ditte

James Tynell  
Notary Public  
State of New York

**FRANCES TYRRELL**  
Notary Public, State of New York  
No. 01TY6070429  
Qualified in Suffolk County  
Commission Expires March 4, 2014