

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

International Information Systems	:	
Security Certifications Consortium	:	
	:	
Plaintiff,	:	Case No.: 2:07-cv-1195
	:	
v.	:	Judge Marbley
	:	
Miko Degraphenreed, et al.	:	Magistrate Judge King
	:	
Defendants.	:	

**MOTION FOR: (1) EXTENSION OF TIME TO SERVE DEFENDANT  
DEGRAPHENREED AND (2) SERVICE OF PROCESS BY PUBLICATION**

Pursuant to Rules 4(e)(1) and 4(m), Plaintiff International Information Systems Security Certifications Consortium, moves this Court for an Order extending the time for service of summons on Defendant Miko Degraphenreed and directing the Clerk of Court to serve the summons on Degraphenreed by publication under the Ohio Rules of Civil Procedure. A brief memorandum in support of this motion is attached. A proposed Order granting this motion will be separately forwarded to the Court's chambers.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT

The present action alleges that Defendants Degraphenreed and Degrapheinread Information Systems Security Corporation (DISS Corp.) have been and are engaged in activities that infringe Plaintiff International Information Systems Security Certifications Consortium's ("ISC"<sup>2</sup>) federally-registered trademark. The Complaint, filed on November 16, 2007, asserts trademark infringement, unfair competition and false designation, dilution, and other claims against Degraphenreed and DISS Corp. As filed, the Complaint also asserted claims of contributory infringement against Defendants Google, Inc., and Yahoo!, Inc., but these claims have been previously dismissed or are the subject of a pending unopposed motion to dismiss. (Dock. No. 33.)

Since filing the Complaint, (ISC)<sup>2</sup> has endeavored to serve a summons and copy of the Complaint on Degraphenreed at what appear to be his last three known addresses, located in Columbus, Ohio and Indianapolis, Indiana. (See Affidavit of Joshua A. Kimsey, attached as Exhibit A.) Attempts to serve Degraphenreed by personal delivery, certified mail, and regular mail under the procedures set forth in Federal Rules and Local Rules of this District have been unsuccessful. (Id.) Federal Rule 4(e)(1) provides that service may be effected "pursuant to the law of the state in which the district court is located . . . for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State." Fed. R. Civ. P. 4(e)(1). Ohio's Civil Rules permit service on a defendant by publication where "the residence of a defendant is unknown." Ohio R. Civ. P. 4.4(A)(1). Under the Ohio procedure, the party seeking service by publication must file an affidavit averring that the defendant's residence is unknown, detailing all efforts made to ascertain the defendant's residence, and stating that the defendant's residence cannot be ascertained with reasonable diligence. Id.

Once the party seeking service by publication files an appropriate affidavit, the “clerk shall cause service of notice to be made by publication in a newspaper of general circulation in the county in which the complaint is filed.” *Id.* The notice must contain certain specified information and must be published at least once a week for six successive weeks. *Id.* Service of process is deemed complete on the date of the last publication. *Id.*

Degrphenreed’s current physical address is unknown, thus making service by publication under Ohio Rule 4.4(A)(1) both appropriate and necessary. (ISC)<sup>2</sup> has made a diligent effort to ascertain Degrphenreed’s address, as detailed in the attached affidavit. In addition to attempts at service in person, by certified mail, and by regular mail, counsel for (ISC)<sup>2</sup> contacted Degrphenreed electronically to request an address where he could be reached. (Exh. A at ¶25.) Degrphenreed refused to provide a physical address. (Exh. A at ¶26.)

The Federal Rules provide that a defendant must be served with the summons and complaint within 120 days after filing of the complaint. Fed. R. Civ. P. 4(m). In the present case, this deadline is set to expire on March 15, 2008. Because service by publication under the Ohio rules requires six weeks, it will be impossible for (ISC)<sup>2</sup> to serve Degrphenreed within the 120-day period. The Court may extend the deadline when a plaintiff “shows good cause for the failure” to serve within the specified period. Fed. R. Civ. P. 4(m); *see also, Henderson v. United States*, 517 U.S. 654, 661-63 (1996) (discussing the 120-day service deadline under Rule 4(m)). “Good cause means a valid reason for delay, such as the defendant’s evading service.” *Coleman v. Milwaukee Bd. of Sch. Dirs.*, 290 F.3d 932, 934 (7th Cir. 2002). Here, Degrphenreed may not be *actively* evading service, but he has refused to provide an address where he could be reached for service. (Exh. A at ¶26.) Furthermore, (ISC)<sup>2</sup> has made repeated efforts – at significant expense – to locate and serve Degrphenreed in compliance with the rules. Nor is

this a scenario where (ISC)<sup>2</sup> has committed unexcusable neglect. Each of the methods of attempted service required a certain amount of time for completion, and once each method failed (ISC)<sup>2</sup> promptly moved forward with the next method. It is appropriate under these circumstances for the Court to extend the deadline for service for a sufficient time to permit the process of service by publication to be completed.

For the foregoing reasons, (ISC)<sup>2</sup> requests that the Court extend the deadline for service of the Complaint on Degraphenreed to Friday, May 30, 2008. (ISC)<sup>2</sup> further requests that the Court order the Clerk of Court for the United States District Court, Southern District of Ohio, Eastern Division, to publish notice of the present action under the procedure set forth in Ohio Civil Rule 4.4(A)(1) at least once per week for six weeks in a newspaper of general circulation in Franklin County, Ohio.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was duly served by ordinary U.S. mail, first class postage prepaid, electronically through the Court's ECF System at the email addresses registered with the Court, by other electronic means pursuant to Rule 5(b)(2)(D), or by leaving a copy with the Clerk of Court pursuant to Rule 5(b)(2)(C) upon the following parties this 19th day of February, 2008:

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