# EXHIBIT 2

**AFFIDAVIT OF DANIEL R. CASTRO**

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Mr. Daniel R. Castro, who being by me first duly sworn upon his oath deposed and stated as follows:

My name is Daniel R. Castro. I am over the age of 21 and am of sound mind and am capable of making this affidavit. I have personal knowledge of the facts stated below, and every statement is true and correct.

I am the custodian of records of the law offices of Castro & Baker, LLP.

Attached hereto is a true and correct copy of an email which I personally received from attorney Bill Barber.

Also attached is the email I sent to him in response.

These copies were made by me and kept by me or someone at my direction in the regular course of business. It was the regular course of business for an employee, or representative of this law firm with knowledge of the acts, events, conditions, opinions recorded to make the record or to transmit information thereof, to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The copy attached hereto is an exact duplicate of the original.

FURTHER AFFIANT SAYETH NOT:

Daniel R. Castro

SUBSCRIBED AND SWORN TO BEFORE ME the undersigned authority on this 20 day of July 2011.

Notary Public, State of Texas

HEATHER A. MAUEL
Notary Public, State of Texas
My Commission Expires
November 04, 2013

Gmail by Google

Dan Castro <danmancastro@gmail.com>

# Castro v. EMI

On Thu, May 26, 2011 at 3:01 PM, Bill Barber <bbarber@pirkeybarber.com> wrote:

Dan,

Regarding the joint proposed scheduling order, we can agree to all of your proposed dates except the date to file amended or supplemental pleadings. Given that you have now sought to amend your Complaint twice, we feel you have had ample opportunity to amend your pleadings and that deadline should be moved up to June 15, 2011. I have attached a copy of the scheduling order with this revision. If this is acceptable, you may sign the document electronically on my behalf and file it with the Court.

Regarding settlement, we agree that mediation might be productive. I believe our folks can be available during the week of June 13 (we have many scheduling conflicts before that week). Does any day that week work for you, and do you have any suggestions for a mediator?

Finally, we will be filing our Answer and Counterclaims shortly, and we do not intend to assert a counterclaim under the Anticybersquatting Act. In view of that, we propose that you withdraw your claim for a declaratory relief under the Anticybersquatting Act since that issue is moot. I'm sure Judge Yeakel would appreciate both parties withdrawing claims that are no longer in dispute. Please let us know if this is acceptable.

Thanks,

Bill Barber

Managing Partner|Pirkey Barber LLP

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**From:** Dan Castro [mailto:danmancastro@gmail.com]
**Sent:** Thursday, May 26, 2011 9:39 PM
**To:** Bill Barber
**Cc:** Dan Castro
**Subject:** Re: Proposed Scheduling Order

Bill,

Thanks for your response.

I think we are making progress.

If your client is acknowledging that I legally own and have a right to continue to own my domain name, then I need a formal statement signed by the President/CEO of your client to that effect, and an agreement to waive all present and future claims under Anticybersquatting Act as to that domain - forever. I can prepare this statement if you wish.

Do you realize how hard it is for people to spell that domain name anyway??? Why on earth does your client want it?

Right now, all I have is a nasty letter from a pit bull threatening to sue me if I don't turn over my right title and interest to that valuable piece of real estate. Without compensation.

With that letter, I believe it's clear that we have a "justiciable controversy" that needs resolution. Until I receive a formal document mooting that controversy permanently and forever, then I believe I am entitled to declaratory relief from the court. This of course, will entitle me to attorney's fees as the "prevailing party" under that claim, and the court will wonder why on earth your client demanded I turn over my domain name to them for free when they know I have a right to own it. This cannot end well for your client.

This claim also gives me a whole host of facts that support my "clean hands" defense, which could result in a ruling by the jury that your client acted in bad faith, and it gives the Court the factual finding he needs to refuse any relief you seek against me.

I need that fact finding, and the fact that your client is asking me to withdraw that claim is an acknowledgment that this is a great risk for them.

Since your client started this fight, it's up to them to correct their "bad faith" letter and I'm afraid an email from you is not sufficient. It is not up to me to correct their behavior by withdrawing my claim. It's up to them.

Also, I am anxious to hear what counterclaims you have in light of the fact that my already registered trademark is inherently distinct, that the Examining Attorney found no likelihood of confusion, that EMI never opposed it, and that I have been using it in conjunction with my name, and most importantly, that the Ninth Circuit said I have a right to own it.

I am suggesting that you think twice about ANY counterclaims you bring alleging infringement or likelihood of confusion - in light of the Ninth Circuit's ruling admonishing your client that others have a right to use the word "entrepreneur" as a trademark.

I am seriously considering filing a motion for sanctions if it appears to me your claims are frivolous, and I will submit a copy of this email to the court as evidence that I (and the Ninth Circuit) warned you.

You are a good attorney, and I don't like filing motions for sanctions, but your client has pushed me a bit too far already. I know it is the Latham & Watkins attorneys who are driving the ship, but it may be your own personal reputation before this Court that suffers. Please be careful here.

I can't agree to June 15 as the deadline to amend and file supplemental pleadings because I haven't seen your counterclaims yet. There are things you say that may cause me to have to adjust my strategy. Up till now, I have been operating in a vacuum without the benefit of an answer from your client. Therefore, I would like until at least July 30th to file amended and supplemental pleadings. You are going to oppose them anyway, so there is no reason not to at least give me the proper amount of time I need (if I need one). I have always been very generous in giving you whatever time and page length extensions you need.

Also, since you and I are on good terms, at least for now, I would like to make a proposal regarding the scheduling order. There is a section of Yeakel's order that always presents problems because of the way it's worded. He always just says, "It's up to the parties to agree to change any deadlines they wish by agreement." And he doesn't care what we change as long as we don't bother him.

The problematic section is paragraph 4. It requires that each party submit witness lists and exhibits by October 31st (or whatever date we choose). But while the exchange of expert opinions is important at this early date, it is difficult, if not impossible to know who all the possible witnesses and trial exhibits will be by that date.

Therefore, I'd like to enter into an agreement with you that we will allow each other to supplement and/or amend our witness and exhibit lists up to and including the 30th day before trial without leave of court - as long as those witnesses and exhibits have been properly disclosed in discovery by the discovery deadline. It makes easier on both parties later - trust me.

Let me know if you are agreeable to an agreement in advance that each of us may amend or supplement witness and exhibit lists after October 30th.

As I said, I think we're making progress.

But I would be grateful if you would call me and let me know tomorrow why on earth your client won't agree to a mutual walk away when this is the cheapest option for them. If they will do that, the whole case could be settled by Monday, and I will agree to keep everything confidential.

Dialogue is good, and I have not heard a good reason why this is not the easiest, quickest and cheapest solution. The mediator will ask the same thing, so you may as well tell me now.

Finally, if we are going to mediate, I would like your owner, not an underling, to be physically present. I don't like mediating by phone because it tells me the other party is not serious. Please confirm that the owner of the company will be here.

Please call me to discuss.

Dan