

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

ENTREPRENEUR MEDIA, INC.,)	
2445 McCabe Way, Suite 400)	Civil Action No. 1:11-cv-00583-
Irvine, California 92614)	AJT-TCB
)	
Plaintiff,)	
)	
v.)	
)	
B-ENTREPRENEUR.COM & S-)	
ENTREPRENEUR.COM, each an Internet)	
<i>Domain Name,</i>)	
)	
Registrants:)	
)	
Pamela Lynn)	
2445 McCabe Way, Suite 400)	
Irvine, CA 92614)	
B-ENTREPRENEUR.COM &)	
)	
Entrepreneur Inc.)	
Verita Powell)	
2445 McCabe Way, Suite 400)	
Irvine, CA 92614)	
S-ENTREPRENEUR.COM)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION FOR AN ORDER TO PUBLISH NOTICE OF ACTION**

Plaintiff Entrepreneur Media, Inc. (“Plaintiff” or “EMI”) has filed an *in rem* civil action alleging a cybersquatting claim against the Internet Domain Names *b-entrepreneur.com* and *s-entrepreneur.com* (collectively, the “Defendant Domain Names”) in this District where the domain name registry is located, because Plaintiff is not able to obtain *in personam* jurisdiction over the owners of the Defendant Domain Names. EMI now brings its Motion for an Order to Publish Notice of Action under 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(bb). In support of its Motion, Plaintiff submits the following.

INTRODUCTION

Under 15 U.S.C. § 1125(d)(2)(A), a trademark owner may file an *in rem* action against an infringing domain name registration if the trademark owner is not able to obtain *in personam* jurisdiction over the owner of the infringing domain name. The ACPA specifically provides that service of process in an *in rem* action is made by “sending a notice of the alleged violation and intent to proceed under this paragraph to the registrant of the domain name at the postal and email address provided by the registrant to the registrar” and “publishing notice of the action as the court may direct promptly after filing the action.” 15 U.S.C. §§ 1125(d)(2)(A)(ii)(II)(aa) & (bb). For the reasons set forth below, Plaintiff requests that notice be published once in *The Washington Times* and in the form reflected in the Proposed Order submitted herewith.

ARGUMENT

Plaintiff is a well-known publisher of magazines and business guides, including ENTREPRENEUR® magazine and other publications incorporating the ENTREPRENEUR® trademark (the “ENTREPRENEUR Mark”) in their titles. ENTREPRENEUR® magazine is published monthly with a current paid circulation, including both subscriptions and newsstand sales, of more than 600,000. ENTREPRENEUR® magazine is sold and currently distributed in over 100 foreign countries. (Verified Complaint ¶ 11.) The ENTREPRENEUR mark is a well-known brand, which identifies EMI as the source of its various goods and services and distinguishes those goods and services from those of its competitors. The ENTREPRENEUR Mark also represents enormous goodwill of great value belonging exclusively to EMI. (Verified Complaint ¶ 16.) EMI has used the ENTREPRENEUR Mark in commerce continuously since 1978 (Verified Complaint ¶ 12) and owns numerous United States trademark registrations for the ENTREPRENEUR Mark, including United States Trademark Registration Nos. 1,453,968; 2,502,032; and 2,263,883. (Verified Complaint ¶ 14.) EMI also owns numerous United States

trademark registrations for marks incorporating the term “ENTREPRENEUR” and used in connection with print and digitized books and online and/or Internet services: 3,470,064 (ENTREPRENEUR PRESS®); 3,924,374 (ENTREPRENEUR ASSIST®); 3,519,022 (ENTREPRENEUR.COM®); 3,470,063 (EP ENTREPRENEUR PRESS®); 3,266,532 (ENTREPRENEURENESPANOL.COM®); 3,374,476 (WOMENENTREPRENEUR.COM®); 3,204,899 (ENTREPRENEUR’S STARTUPS®); and 3,652,950 (ENTREPRENEUR CONNECT®). (Verified Complaint ¶ 15.)

The registrants of the Defendant Domain Names have intentionally provided false and misleading WHOIS contact information in connection with the registration and operation of the Defendant Domain Names. In particular, “Pamela Lynn” is listed in the WHOIS record as the registered owner of the *b-entrepreneur.com* Defendant Domain Name with Plaintiff’s physical address and phone number listed as the contact information. (Verified Complaint ¶ 9.) The administrative contact information provided by “Pamela Lynn” and reflected in the WHOIS records for the *b-entrepreneur.com* Defendant Domain Name is also Plaintiff’s contact information: Entrepreneur.com, Inc., Michael Frazier, 2445 McCabe Way, Suite 400, Irvine, California 92614, phone number +1.9492612325, along with an email address of admin@b-entrepreneur.com. (Verified Complaint ¶ 25.) Likewise, “Entrepreneur Inc., Verita Powell” is listed in the WHOIS record as the registered owner of the *s-entrepreneur.com* Defendant Domain Name with Plaintiff’s physical address and phone number listed as the contact information. (Verified Complaint ¶ 10.) The administrative contact information provided by “Entrepreneur Inc., Verita Powell” for the *s-entrepreneur.com* Defendant Domain Name is also Plaintiff’s contact information: Entrepreneur, Inc., Michael Frazier, 2445 McCabe Way, Suite

400, Irvine, California 92614, along with an email address of admin@s-entrepreneur.com.

(Verified Complaint ¶ 25.)

The Defendant Domain Names encompass the ENTREPRENEUR Mark in its entirety and are confusingly similar to the ENTREPRENEUR Mark and to the *Entrepreneur.com* domain name owned by EMI. (Verified Complaint ¶¶ 18 & 20.) The unauthorized use of the ENTREPRENEUR Mark and confusingly similar variations thereof in the Defendant Domain Names and throughout the related websites in connection with content related to starting a business, business ideas, technology and similar content is likely to cause confusion as to the source or sponsorship of the Defendant Domain Names, the related websites, and the content displayed thereon. (Verified Complaint ¶ 23.) Further, the Defendant Domain Names are registered and being used in bad faith as evidenced by the provision of false and misleading contact information in the WHOIS records by the owners of the Defendant Domain Names. (Verified Complaint ¶ 24.)

Plaintiff has filed an *in rem* civil action against the Defendant Domain Names in this District, where the domain name registry is located, because the registrants who control the Defendant Domain Names have provided false and/or misleading contact information to the domain name registry and registrar through which the Defendant Domain Names are registered.

15 U.S.C. § 1125(d)(2)(A)(ii)(II). The ACPA expressly provides that in such cases the following actions “shall constitute service of process”:

(aa) sending a notice of the alleged violation and intent to proceed under this paragraph to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar; and

(bb) publishing notice of the action as the court may direct promptly after filing the action.

15 U.S.C. §§ 1125(d)(2)(A)(II) and 1125(d)(2)(B).

Plaintiff has provided actual e-mail notice dated June 30, 2011 to the registrants of the Defendant Domain Names. *See* Exhibit A. Plaintiff cannot provide actual postal notice to the registrants of the Defendant Domain Names due to the registrants' provision of false contact information for the Defendant Domain Names. Plaintiff has provided actual postal and e-mail notice dated June 30, 2011 of this dispute to the registrar of the Defendant Domain Names, Register.com, Inc. *See* Exhibit B. Register.com, Inc. has acknowledged receipt of Plaintiff's notice of June 30, 2011 by e-mail dated July 5, 2011. *See* Exhibit C. The registrants of the Defendant Domain Names have not acknowledged Plaintiff's notice; however, in light of the provision of false contact information for the WHOIS data for the Defendant Domain Names, Plaintiff has exhausted all possible measures to contact and notify the owners of the Defendant Domain Names.

In light of the multiple forms of notice provided under the ACPA, the published notice need not be multiple or extensive, and the ACPA does not require multiple published notices. Accordingly, one publication in *The Washington Times* is sufficient notice. Further, orders issued by the Court in other cases brought under the ACPA demonstrate that publishing a single notice is appropriate. *See Atlas Copco AB v. Atlascopcoiran.com et al.*, Case No. 1:07cv1208 (E.D. Va. December 12, 2007) (authorizing publication in *The Washington Times*), attached as Exhibit D.

CONCLUSION

For the reasons set forth above, Plaintiff requests that this Motion be granted and that the Court enter the Proposed Order submitted with this Memorandum.

Dated: August 26, 2011

Respectfully submitted,

/s/ Tara Lynn R. Zurawski

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Counsel for Plaintiff Entrepreneur Media, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2011, I will electronically file the foregoing with the Clerk of the Court using the EC/ECF system and that a true and correct copy of the foregoing and a copy of the Notification of Electronic Filing (NEF) were sent to the following non-filing users by electronic mail:

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admin@b-entrepreneur.com

&

S-ENTREPRENEUR.COM
Entrepreneur Inc.
Verita Powell
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By: /s/ Tara Lynn R. Zurawski

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