

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Happy Halloween, Inc., a Texas Corporation,
and Todd James, an individual, d/b/a Happy
Halloween, Inc.

Plaintiffs,

vs.

Screams, LLC, a Texas Limited Liability
Company,

Defendant.

No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF WITH
JURY DEMAND**

I. NATURE OF THE CASE

This Action is brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and seeks injunctive relief under 15 U.S.C. § 1114(2)(D)(iv)-(v). Happy Halloween, Inc., and Todd James (together, “Plaintiffs”) ask this Court 1) to declare that its registration and use of the domain name <screams.com> (the “Domain Name”) is not unlawful under the Anticybersquatting Consumer Protection Act (“ACPA”), 15 U.S.C. § 1125(d), and 2) to prevent the transfer of the Domain Name <screams.com> from Plaintiffs to Defendant.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. PARTIES

1. Plaintiff Happy Halloween, Inc. (“Happy Halloween”) is a company organized and existing under the laws of the State of Texas having a principal place of business in Fort Worth, Texas, and is the registrant of the Domain Name <screams.com>.

2. Plaintiff Todd James is an individual domiciled in the State of Texas and doing business as Happy Halloween, Inc.

3. Defendant Screams, LLC (“Defendant”) is, upon information and belief, a limited liability company organized and existing under the laws of the State of Texas, having a principal place of business in Waxahachie, Texas.

III. JURISDICTION AND VENUE

4. Jurisdiction in this Court is proper under 28 U.S.C. § 1331 because this Action raises federal questions under 15 U.S.C. § 1114, the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. Jurisdiction is further proper because Defendant has directed activity into this judicial district with the intent to deprive Plaintiffs of rights under a contract having situs in this judicial district.

6. This Court has personal jurisdiction over Defendant because Defendant agreed to submit to the jurisdiction of this Court when it initiated an administrative proceeding with the National Arbitration Forum concerning the Domain Name. Specifically, Defendant submitted to the jurisdiction where the registrar of the Domain Name is located, and the registrar of the Domain Name is located in this judicial district.

7. Venue is proper under 28 U.S.C. § 1391(b)(2). 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. Venue is also proper under 15 U.S.C. § 1125(d)(2)(C)(i) because the registrar of the Domain Name which is the subject of this Action, Dotster, Inc., is a company organized and existing under the laws of the State of Washington, having a principal place of business in Vancouver,

1 Washington.

2 **IV. FACTS**

3 8. Happy Halloween operates “Cutting Edge Haunted House,” a nationally
4 well known haunted house located in Fort Worth, Texas. “Cutting Edge Haunted House”
5 has been voted one of the best haunts in the country by Hauntworld.com and named one
6 of America’s top thirteen haunted houses by Hauntedhouseratings.com. The Travel
7 Channel featured the haunted house in its program “America’s Scariest Haunted
8 Attractions” and the Guinness Book of World Records has named it the longest walk-
9 through haunted house.

10 9. Happy Halloween is the registrant of the Domain Name <screams.com>.
11 On January 22, 1997, Happy Halloween registered the domain with the domain registrar,
12 Dotster, Inc. (“Dotster”).

13 10. At all times since registration of the Domain Name <screams.com>, Happy
14 Halloween has used the Domain Name in association with its legitimate business of
15 operating haunted houses.

16 11. Happy Halloween chose the Domain Name <screams.com> because
17 “screams” is a generic term characteristic of the Halloween season and for several years
18 used the domain to redirect to its main website located at
19 www.cuttingedgehauntedhouse.com. Now the Domain Name does not redirect; rather, it
20 resolves directly to a website advertising the Cutting Edge Haunted House.

21 12. Upon information and belief, Defendant also operates haunted houses.
22 Defendant operates the Screams Halloween Theme Park located in Waxahachie, Texas.

23 13. Defendant has registered the mark “SCREAMS” and claims a trademark in
24 the term “screams” in connection with “amusement park services, namely, a Halloween
25 theme park including haunted houses, haunted hayrides, drama exhibitions and
26 amusements” (U.S. Trademark Registration 2,052,919).

27 14. The Internet Corporation for Assigned Names and Numbers (“ICANN”) is
28 a private-sector, not for profit corporation created to assume responsibility for, among

1 other things, IP address space allocation and domain name system management. ICANN
2 promulgated the Uniform Domain Name Dispute Resolution Policy (“UDRP”), a uniform
3 process for the administrative resolution of disputes regarding registration of domain
4 names.

5 15. Dotster’s registration agreement requires domain registrants to agree to
6 resolve domain disputes brought by third parties in accordance with the UDRP.

7 16. The UDRP requires that a registrant submit to a mandatory administrative
8 proceeding in the event a third party asserts that (i) the domain at issue is identical or
9 confusingly similar to a trademark in which the complaining third party has rights; (ii) the
10 registrant has no rights or legitimate interests in the domain; and (iii) the domain has been
11 registered and is being used in bad faith.

12 17. On July 27, 2011, Defendant submitted a Complaint to the National
13 Arbitration Forum (“NAF”) pursuant to the UDRP, Claim No. FA1107001400621.
14 Defendant challenged the registration of the Domain Name <screams.com> and sought
15 the transfer of the Domain Name from the Plaintiffs to Defendant.

16 18. Prior to July, 2011, no other domain name dispute claim had been filed by
17 Defendant, or anyone else, against Happy Halloween. Defendant’s was the first filed
18 complaint concerning the Domain Name in the more than fourteen years that Happy
19 Halloween held and used the Domain Name.

20 19. On August 31, 2011, a single-member NAF Panel issued its decision in the
21 Domain Name dispute (the “UDRP Decision”). The Panel found that Defendant had
22 established the three elements required under the ICANN policy, noted in Paragraph 16
23 above, and ordered the transfer of Domain Name <screams.com> from Plaintiffs to
24 Defendant.

25 20. The Domain Name <screams.com> is subject to imminent transfer as a
26 result of the UDRP Decision.

27 21. This Court is in no way bound by the NAF’s August 31, 2011 ruling nor is
28 the UDRP Decision due any deference. This Court should perform a de novo review of

1 the allegations presented herein.

2 22. The UDRP Decision was improper and Happy Halloween's ownership and
3 use of the Domain Name is not in violation of the ACPA.

4 23. Happy Halloween has neither registered nor used the Domain Name in bad
5 faith.

6 24. Happy Halloween has at all times used the Domain Name in connection
7 with its own legitimate haunted house business services.

8 25. Happy Halloween does not seek to divert Defendant's customers nor does
9 Happy Halloween use the Domain Name with any intent to tarnish or disparage the
10 Defendant's mark or the Defendant.

11 26. Happy Halloween has never offered to sell or otherwise assign the Domain
12 Name to Defendant or to any other party for financial gain.

13 27. Happy Halloween registered the Domain Name before Defendant had
14 registered the trademark "SCREAMS" in any jurisdiction.

15 28. Defendant has overreached its trademark rights and wrongfully asserted a
16 claim to the Domain Name.

17 29. Happy Halloween's registration and use of Domain Name is not unlawful
18 under the ACPA, and Happy Halloween therefore has every right to possess and maintain
19 this asset which is very valuable to its business.

20 30. Happy Halloween is entitled to injunctive relief preventing the transfer of
21 the Domain Name from Happy Halloween to Defendant.

22 31. Contemporaneous with the filing of this Complaint with the Court, Happy
23 Halloween has provided notice of the same upon Defendant, its attorney, the National
24 Arbitration Forum and the sponsoring registrar for the Domain Name, Dotster.

25 **V. FIRST CAUSE OF ACTION**
26 **DECLARATORY JUDGMENT**
27 **ANTICYBERSQUATTING CONSUMER PROTECTION ACT**

28 32. Plaintiffs hereby incorporate the allegations in paragraphs 1-31 above as if
stated fully herein.

1 to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or
2 association of Plaintiffs with Defendant, or as to the origin, sponsorship, or approval of
3 Plaintiff's goods, services, or commercial activities by Defendant.

4 42. Happy Halloween's registration and use of the Domain Name do not
5 misrepresent the nature, characteristics, qualities, or geographic origin of Plaintiffs' or
6 Defendant's goods, services, or commercial activities.

7 43. Happy Halloween's registration and use of the Domain Name do not
8 violate Defendant's rights under the Lanham Act.

9 44. Happy Halloween will be irreparably harmed if the Domain Name is
10 transferred to Defendant.

11 **VII. THIRD CAUSE OF ACTION**
12 **DECLARATORY JUDGMENT**
13 **UNENFORCEABILITY DUE TO LACHES**

14 45. Plaintiffs hereby incorporate the allegations in paragraphs 1-44 above as if
15 stated fully herein.

16 46. A dispute exists between Happy Halloween and Defendant concerning
17 Happy Halloween's right to use the Domain Name. That Domain Name is now subject to
18 imminent transfer. Therefore, an actual and justiciable controversy exists between Happy
19 Halloween and Defendant.

20 47. Happy Halloween has held and used the Domain Name <screams.com> at
21 all times since January 22, 1997, almost fifteen years.

22 48. Upon information and belief, Defendant knew the Domain Name
23 <screams.com> was registered by Plaintiffs as early as 1999. It was not until another
24 twelve years passed that Defendant commenced an action to transfer the Domain Name.

25 49. It was not until July 2011, almost a decade and a half since the Domain
26 Name <screams.com> was registered by Plaintiffs, that Defendant initiated proceedings
27 to acquire the Domain Name.

28 50. This delay on the part of Defendant is unreasonable and inexcusable.

51. Defendant comes far too late and, under the doctrine of laches, has slept on

1 its rights.

2 52. Happy Halloween has operated the Domain Name <screams.com> in
3 conjunction with its legitimate business activities for fourteen years without complaint by
4 Defendant. Happy Halloween will be irreparably harmed if the Domain Name, an asset
5 quite valuable to its haunted house business, is transferred to Defendant.

6 **VIII. FOURTH CAUSE OF ACTION**
7 **CANCELLATION OF TRADEMARK REGISTRATION NO. 2,052,919**

8 53. Plaintiffs hereby incorporate the allegations in paragraphs 1-52 above as if
9 stated fully herein.

10 54. Defendant's alleged mark, SCREAMS, used in connection with
11 "amusement park services, namely, a Halloween theme park including haunted houses,
12 haunted hayrides, drama exhibitions and amusements", is understood by the relevant
13 purchasing public to be a generic term characteristic of the Halloween season and the
14 services Defendant provides in connection with its alleged mark.

15 55. The U.S. trademark registration obtained by Defendant is invalid,
16 unenforceable, and should be cancelled because the primary significance of the mark to
17 the consuming public is generic with respect to the services.

18 **IX. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs respectfully request judgment against Defendant as
20 follows:

21 A. Declaration by the Court that Happy Halloween's use and ownership of the
22 Domain Name <screams.com> is not in violation of the Anticybersquatting Consumer
23 Protection Act, 15 U.S.C. § 1125(d);

24 B. Declaration by the Court that, pursuant 15 U.S.C. § 1114(2)(D)(iv)-(v),
25 Plaintiffs are entitled to registration, ownership and use of the Domain Name
26 <screams.com> and need not transfer the Domain Name to Defendant;

27 C. Declaration by the Court that Defendant comes too late to contest
28 Plaintiffs' ownership and use of the Domain Name <screams.com> under the doctrine of

1 laches;

2 D. Cancellation of U.S. Trademark Registration No. 2,052,919;

3 E. Injunctive relief against enforcement of the UDRP Decision of August 31,
4 2011, and entry of an Order requiring Dotster to permanently refrain from transferring the
5 Domain Name < screams.com > to Defendant, except as may be directed by Plaintiffs;

6 F. Award of attorney's fees and costs incurred in pursuing this action; and

7 G. Providing all other relief the Court deems just and proper.

8 **X. REQUEST FOR A JURY TRIAL**

9 Plaintiffs request a jury trial on all issues triable by a jury.

10
11 Dated this 12th day of September, 2011.

12
13 **NEWMAN DU WORS LLP**

14
15 By: 

16 Derek A. Newman, WSBA No. 26967
17 Randall Moeller, WSBA No. 21094
18 1201 Third Avenue, Suite 1600
19 Seattle, Washington 98101

20 **DOZIER INTERNET LAW, P.C.**

21 /s/ John W. Dozier, Jr.

22 John W. Dozier, Jr., Esq., *pro hac vice*
23 forthcoming

24 11520 Nuckols Rd., Suite 101

25 Glen Allen, Virginia 23509

26 Tel: (804) 346-9770

27 Fax: (804) 346-0800

28 Email: jwd@cybertriallawyer.com

Attorneys for Plaintiff Happy Halloween, Inc., a
Texas Corporation, and Todd James, an
individual, d/b/a Happy Halloween, Inc.