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December 9, 2003

Ms. Cynthia C. Bullington
Assistant Deputy Administrator
Attorney Grievance Commission
243 W. Congress, Suite 256
Detroit, MI 48226-3259

**Re: Henry C. Mishkoff as to Douglas W. Sprinkle
File No. 2401/03**

Dear Ms. Bullington:

This is a response to the motion for consideration of the decision to take no further action filed by the Complainant in the above-identified grievance proceeding.

The motion is nothing more than another detailed argument of the identical claims made in the original complaint. I have already made a rather lengthy response to many of the arguments made by the Complainant. Rather than repeat them in this letter, they are incorporated by reference. In the unlikely event that the Commission does not have a copy of that earlier letter, a copy is attached hereto as Exhibit A.

Factual Background

The relevant facts to this litigation are relatively simple. The Complainant adopted a domain name which essentially incorporated my client's registered United States trademark for its shopping mall, followed by ".com". This upset my client, the Taubman Group.

In order to eliminate this conflicting domain name operated by the Complainant, the Complainant was offered \$1,000 to transfer the domain name. Although the Complainant accepted the financial terms of the settlement, when the written settlement agreement was forwarded including a standard nondisclosure term, the Complainant refused to enter into the settlement. Instead, Complainant offered to settle for \$1,000 with no nondisclosure terms.

This counter offer was unacceptable to my client and litigation ensued. That litigation involved essentially two causes of action. One was for trademark infringement and the other was

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for violation of the Anti-Cybersquatting Act. A claim of copyright infringement was also added after discovery.

Upon filing the suit, a motion for a preliminary injunction with respect to the trademark infringement allegations alone was sought by my client and that injunction was granted per Judge Zatkoff. Judge Zatkoff then extended the scope of the preliminary injunction to include the several "sucks.com" sites opened by the Complainant. The modified injunction, covering the basic site and the "sucks.com" sites, was appealed to the Sixth Circuit Court of Appeals.

The appeal to the Sixth Circuit was an interlocutory appeal and involved the limited issue of the appropriateness of the injunctive relief. Because the injunction was not granted under the Anti-Cybersquatting Act, violation of the Anti-Cybersquatting Act by the Complainant was simply not an issue in that appeal. Violation of the Anti-Cybersquatting Act, however, certainly remained an issue in the lawsuit itself.

The key issue on appeal, and one which apparently even the Complainant understands, is whether or not the Complainant's use of my client's registered trademark as a domain name constituted commercial use of my client's trademark. If there was no commercial use, the injunction would have been improper.

In arguing the appeal, my client argued that Complainant had engaged in various activities that constituted commercial use, including, but not limited to, the agreement to sell the domain name for \$1,000. The Sixth Circuit Court of Appeals, however, found no commercial use and vacated the injunction. Shortly thereafter, the Taubman Group dismissed the case against the Complainant which ended the litigation.

Complainant's Position

As understood in the request for reconsideration, the Complainant has dropped all of his miscellaneous complaints raised in his original complaint. These miscellaneous complaints included, *inter alia*, improper pretrial publicity, that I attempted to intimidate the Complainant, etc. Instead, it appears that the Complainant now has concentrated on Rule 3.3 which prevents an attorney from knowingly making false statements to a court concerning material facts.

In reviewing the request for reconsideration by the Complainant, I do not know if the Complainant simply misunderstands the relevant facts and law with respect to his litigation with my client, or if the Complainant is simply attempting to intentionally mislead the Commission. However, since the Complainant is a non-attorney, I will give him the benefit of the doubt and assume the former, rather than the latter.

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Material Fact

The crux of the Complainant's argument on his request for reconsideration seems to be summarized on page two of his request as follows:

In regard to the materiality of the issue of the \$1,000 offer, let me submit this appraisal of the case on appeal:

“...it's about a cybersquatter, it's about a trademark infringer, and a fellow who saw that a new mall was going up, he immediately registered our name as a domain name in order to extract \$1,000 from us. **That's what this case is all about**” (emphasis added).

According to this view of the case, the issue of the \$1,000 offer is not only material, it's a key issue in this case. The statement is direct, to the point, unambiguous, and forceful.

There is absolutely no dispute, then or now, that the \$1,000 offer (or counter offer) made by the Complainant to sell his website was material to the appeal. I fully agree with that conclusion before the appeal, during the appeal, and currently. The reason, of course, that the \$1,000 offer was material is that it constitutes evidence of commercial use of my client's trademark.

What the Complainant fails to understand, or more likely refuses to acknowledge, is that the \$1,000 offer discussed by me with the Court of Appeals **was entirely true**. Complainant likes to fool himself and believe that he never offered to sell his website for \$1,000. However, there is absolutely no dispute that my client offered the Complainant \$1,000 for the website with conditions and that the Complainant countered for \$1,000 without at least some of those conditions. Just in case the Commission has any doubt about this, the Complainant even memorialized his offer to sell his website for \$1,000 on his “sucks.com” websites and a copy of that offer is attached as Exhibit B.

Furthermore, from the standpoint of trademark infringement, i.e. the only issue before the Court of Appeals on the interlocutory appeal, the \$1,000 offer from Mishkoff was clearly material (and true) since it supported commercial use of my client's trademark by the Complainant. More importantly, the representation made to the Court of Appeals was entirely true.

Rather, the only incorrect statement that I made to the Court of Appeals regards *the timing* of the offer from the Complainant, i.e. whether the \$1,000 offer from the Complainant was before or after “the letter”, and not the offer itself. In other words, did the Complainant first offer to settle for money, or did he counter offer to settle for money?

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The timing of the \$1,000 offer from the Complainant for the sale of his domain name is quite arguably material with respect to the anti-cybersquatting count in the lawsuit, but was simply not material to the trademark infringement count. As stated, the interlocutory appeal to the Sixth Circuit Court of Appeals involved *only* the preliminary injunction issued with respect to the trademark infringement; anti-cybersquatting was not at issue on appeal.

For these reasons, my inaccurate statement with respect to the timing of the \$1,000 offer from the Complainant was simply not material to the issues before the Sixth Circuit Court of Appeals.

Telephone Discussions

Next, the Complainant argues – again – that he and I have never had a substantive telephone conversation. This, however, has already been fully addressed in my initial letter to the Commission and which I adopt herein by reference.

Knowingly Made

I recognize that it may be difficult for the Complainant to understand that I am not perfect and that I actually made a mistake with respect to the timing of his offer of \$1,000 but, in fact, that is what happened. In any event, all of this has been previously addressed in my prior letter which is adopted by reference.

Confidence Betrayed

Lastly, and somewhat surprisingly, the Complainant now complains that confidential information was revealed to the Commission, i.e. the \$10,000 settlement discussions, and that that absolutely true statement somehow “betrayed” a confidence. Specifically, the Complainant relies upon a letter dated January 28, 2002 from the Complainant’s then attorney Mr. Levy to my partner Allen Krass (attachment 6 to the request for reconsideration). Perhaps the Complainant should actually read the January 28, 2002 letter from Mr. Levy before making such spurious allegations.

More specifically, as is clear from the January 28, 2002 letter from Mr. Levy, Mr. Levy confirmed an agreement with Mr. Krass that the settlement discussions would not constitute “admissible evidence” nor would such discussions be disclosed “publicly”. Neither, of course, has happened, and for this reason the complaint has no merit.

More specifically, absolutely no attempt has been made to use the \$10,000 settlement discussions between Mr. Levy (Complainant’s attorney), myself and Ms. Greenberg as admissible evidence. Nor will this ever happen, since the case is now dismissed.

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Likewise, there has been no public disclosure of this \$10,000 settlement figure by me. As we all know, proceedings before the Commission are confidential, and any discussion of this element of the dispute must be maintained confidential.

Consequently, there was no "betrayal" between myself and the Complainant who was never my client in the first place.

Conclusion

The Complainant has suffered absolutely no harm from any act that I have committed. Indeed, he won his appeal and his case. Furthermore, the unintentional error of fact made by me to the Court of Appeals was not material to that appeal and, in any event, was totally rebuffed by the Court of Appeals. Therefore, the Complainant, by definition, has suffered no harm.

I respectfully submit that Ruthann Stevens, the Associate Counsel for the Attorney Grievance Commission, was absolutely correct when she wrote to the Complainant on October 20, 2003 saying in part as follows:

If you believe that he made inaccurate statements in pleadings or during argument to the court, you have the right to litigate your position before the court.

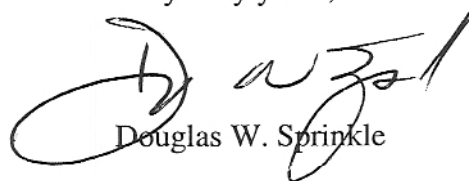
In fact, my best recollection is that that was exactly what happened. Specifically, Mr. Levy, acting as the Complainant's attorney, contested that representation on rebuttal.

In closing, I do not understand why the Complainant continues with what appears to be a vendetta of some sort against me. This is clear from his threat on his various "sucks.com" websites to take action against the attorneys.

The Complainant has an agenda of some sort, although it is not clear to me what it is. Perhaps he is still unhappy that he did not get his \$1,000. Perhaps interest is waning on his various "sucks.com" websites and he needs some new fodder. Whatever the case, there certainly is no legitimate explanation.

It is respectfully submitted that the Commission should deny the request for reconsideration.

Very truly yours,



Douglas W. Sprinkle

DWS/gs
Enclosures