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6 **UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Richard Blair,

9 Plaintiff,

10 vs.

11 Automobili Lamborghini S.p.A.,

12 Defendant.

Case No.: 2:22-cv-01439-ESW

FIRST AMENDED COMPLAINT

13 **NATURE OF THE ACTION**

- 14 1. This action seeks declaratory relief pursuant to 15 U.S.C. § 1114(2)(D)(v) to
15 establish that the registration and Plaintiff Richard Blair’s use of the domain
16 name <Lambo.com> (hereinafter the “Disputed Domain”) are not unlawful
17 under the Anticybersquatting Consumer Protection Act (“ACPA”).

18 **THE PARTIES**

- 19 2. Plaintiff Richard Blair is a citizen of the United Kingdom with a residence at
20 8 West St., San Rafael, CA 94901.

1 3. Upon information and belief, Defendant Automobili Lamborghini
2 S.p.A. (“Lamborghini”) is an Italian company with an address at 12 Via
3 ModernaI-40019, Sant’Agata Bolognese, Italy.

4 **JURISDICTION AND VENUE**

5 4. This Court has subject matter jurisdiction over this action pursuant to 28
6 U.S.C. § 1331, 15 U.S.C. § 1114(2)(D)(v), and 28 U.S.C. § 2201 that
7 Plaintiff’s acquisition and use of the Disputed Domain is not unlawful under
8 the Anticybersquatting Consumer Protection Act (ACPA), 15 U.S.C. §
9 1125(d).

10 5. This Court has personal jurisdiction over Defendant as a result of
11 Defendant’s initiation of an administrative proceeding against the Disputed
12 Domain pursuant to the Uniform Domain Name Dispute Resolution Policy
13 (“UDRP”).

14 6. Venue is proper in this District under 28 U.S.C. § 1391 (b)(2). A substantial
15 part of the property that is the subject of this action is situated in this
16 District. Moreover, venue is proper in this district due to Defendant’s
17 voluntary submission to this Court’s jurisdiction when Defendant filed a
18 complaint with the World Intellectual Property Office (WIPO) arbitration
19 and mediation center concerning Plaintiff’s alleged registration and use of
20 the Disputed Domain.

1 7. The Disputed Domain has its situs in this District within the meaning of 15
2 U.S.C. §1125(d)(2)(C). The registrar for the Disputed Domain is NameSilo
3 LLC, which is not only headquartered in this District, but upon information
4 and belief also has additional business locations in this District.

5 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

6 8. The Plaintiff Richard Blair is a domain name investor who uses the
7 nickname “Lambo.” Plaintiff Blair is known in online communities and in a
8 personal capacity by the name “Lambo,” which corresponds directly with
9 the Disputed Domain.

10 9. Plaintiff Blair acquired the <Lambo.com> domain name in February 2018
11 because it is a five-letter domain name that can be used for a variety of
12 goods and services. Soon after acquiring the Disputed Domain, Blair
13 adopted “Lambo” as a private alias for his activities and to build an online
14 profile in various communities.

15 10. The WHOIS records for <Lambo.com> show that the original registration
16 date for the Disputed Domain is March 5, 2000. At the time of its initial
17 registration, Defendant had not registered a trademark for the term LAMBO
18 in the U.S. or anywhere else in the world.

19 11. Plaintiff Blair initially planned on developing a website at the Disputed
20 Domain that would showcase his various interests and exploits in a personal

1 and professional capacity. Those plans were subsequently delayed and
2 abandoned.

3 12. Plaintiff Blair owns over one hundred domain names, including inherently
4 valuable short word domain names, as well as dictionary or common word
5 domain names and domain names that are composed of numbers. A
6 representative sample includes <ASZ.com>, <aess.com>, <adlux.com>,
7 <dnas.com>, <Algar.com>, <HighIQ.com>, <sicos.com>, <wywy.com>,
8 <CigarRoller.com>, <88287.com> and many others. None of the domain
9 names in his portfolio are similar to known trademarks.

10 13. Plaintiff Blair generally purchases his domain names on the secondary
11 market, paying market prices for domain assets that he may develop, sell or
12 hold on to. For Blair, development potential and ideas are innate to the act of
13 domain investing.

14 14. Blair has a history of developing domain names – for example,
15 <sociology.com>, <marketingstrategies.com> & <chinesecoins.com> – and
16 he has projects underway on <datafeed.com> and <ceec.com>.

17 15. Plaintiff Blair does not purchase domain names with the primary intent to
18 sell them. Although he does list domain names for sale, he does not expect
19 to sell them, given the prices he sets, and most will never sell. He has never
20

1 been accused of infringing the intellectual property rights of others before
2 now.

3 16. When Plaintiff Blair acquired the Disputed Domain, he was unaware that the
4 Defendant Lamborghini owned a trademark registration in the Europe Union
5 for the term LAMBO for vehicles or claimed any rights in the term.

6 17. Further, when Blair acquired the Disputed Domain in February 2018,
7 Lamborghini did not own an active trademark registration in the U.S., where
8 Blair is domiciled. Lamborghini had owned a U.S. registration for LAMBO
9 that was based on its EU registration. As a result, Lamborghini did not have
10 to file evidence of use in U.S. commerce prior to registration. At the time a
11 post registration Declaration of Use was due in 2017, Lamborghini allowed
12 its LAMBO registration to lapse. It was eventually canceled by the USPTO
13 that same year. This all occurred prior to Plaintiff's acquisition of the
14 Disputed Domain.

15 18. Lamborghini has never filed evidence that a LAMBO trademark was used in
16 the U.S. with the USPTO. On information and belief, Lamborghini has never
17 used LAMBO as a trademark in the U.S.

18 19. Lamborghini's EU registration for LAMBO did not require that it first prove
19 use of the name in commerce for the claimed services. On information and
20

1 belief, Lamborghini has never used LAMBO as a trademark in Europe or
2 anywhere in the world.

3 20. Currently, the term “Lambo” is being used by third parties in various ways
4 that have no connection to Lamborghini or cars – for example, it is used as a
5 nickname, a surname (including the surname of U.S. football player Josh
6 Lambo), the name of a film, a cartoon character, a name for wool products,
7 the name of a music album by a Greek singer, the name for corporate
8 entities, the brand name of an allegedly rejuvenating cream, as well as
9 vegetarian capsules, and numerous other uses. There is also a current
10 USPTO trademark registration dated May 28, 2019 for use of the word
11 LAMBO for beard trimmers, electric razors and other goods. Thus, there is
12 significant third-party use of “Lambo” for a variety of goods and services
13 that do not involve Lamborghini at all.

14 21. By contrast, there is no evidence that consumers exclusively associate the
15 term LAMBO with Lamborghini.

16 22. Plaintiff Blair’s acquisition of the Disputed Domain because of its inherent
17 value as a five-letter domain name that can be used for a variety of reasons is
18 evident based on third party use of the term. Blair has a demonstrated right
19 to the Disputed Domain and a legitimate interest in owning it. As such, he
20

1 can set a “for sale” price at any price he wishes, even one that Lamborghini
2 may deem excessively high.

3 23. Blair has not done anything that would negate his right to acquire and own
4 the Disputed Domain. He has not targeted Lamborghini or its trademarks or
5 any third party, he has not pretended to be Lamborghini, nor has he passed
6 himself off as such, misled any Internet users, sold counterfeit goods,
7 engaged in typo-squatting to confuse the market, gone off on a phishing
8 expedition, or used the Disputed Domain for pay-per-click income or in any
9 other way improperly.

10 24. Blair did not purchase the Disputed Domain to sell it to Lamborghini or to a
11 competitor. Blair has never contacted Lamborghini or its competitors about
12 buying the Disputed Domain. Instead, Blair purchased the Disputed Domain,
13 considered development plans for a website and then decided to offer it for
14 sale to the world at large on the general market. None of Blair’s actions can
15 be considered registration and use of the Disputed Domain in bad faith.

16 25. On April 29, 2022, Defendant Lamborghini submitted a complaint with
17 WIPO, initiated an administrative proceeding alleging that Plaintiff
18 registered and used the Disputed Domain in bad faith, and sought a decision
19 to transfer the ownership rights of the Disputed Domain to Lamborghini.
20

1 26. By submitting the complaint with WIPO, Defendant Lamborghini is bound
2 by the terms of the Uniform Domain Name Dispute Resolution Policy (the
3 “UDRP Policy”).

4 27. The UDRP proceeding, *Automobili Lamborghini S.p.A. v. Domain*
5 *Administrator, SeePrivacyGuardian.org / Richard Blair Case No. D2022-*
6 *1570* (the “Proceeding”) was decided by a three-member WIPO panel on
7 August 2, 2022, with one panelist dissenting. The majority of the panel
8 issued a decision directing transfer of the Disputed Domain to Defendant
9 Lamborghini. Plaintiff Blair was not represented by legal counsel in the
10 Proceeding.

11 28. Section 4(k) of the UDRP Policy provides that the Respondent in the
12 Proceeding has ten business days to commence an action in this district to
13 stop the transfer of the Disputed Domain from taking place. Section 4(k)
14 expressly allows for domain name decisions to be suspended, pending the
15 outcome of a *de novo* decision by a court of competent jurisdiction.

16 29. In commencing the Proceeding, Defendant *chose* to submit itself to be
17 contractually bound by the terms of the UDRP Policy, which provides for
18 the filing of a civil action “to establish that the *registration* or *use* of the
19 domain name by such registrant is not unlawful under this chapter.” In so
20 doing, Defendant also agreed to submit to the jurisdiction of this Court, the

1 place where the registrar for the Disputed Domain is located, for the
2 adjudication of the dispute.

3 30. The Policy does not restrict the right of a party to a UDRP process to seek
4 judicial relief in any way, and does not limit the ability to do so to the
5 original registrant of the domain name.

6 31. Indeed, having availed itself of the Proceeding, and having sought a ruling
7 that Plaintiff “registered” and “used” the Disputed Domain in bad faith,
8 Defendant cannot circumvent Section 4(k) of the Policy by claiming that
9 Plaintiff did *not* “register” the Disputed Domain. Defendant argues that the
10 dispute over the <Lambo.com> domain name is not subject to judicial
11 review, because Plaintiff was not the *original* registrant of the Disputed
12 Domain, however, this would not preclude Plaintiff from seeking declaratory
13 relief based on the original registration of the Disputed Domain and
14 Plaintiff’s use, thereof.

15 32. Under U.S. law, a claim for cybersquatting cannot stand, unless, *first*, a
16 complaining party has a valid trademark entitled to protection that was
17 distinctive or famous at the time the domain name was registered, and
18 *second*, the defendant used, registered, or trafficked in the domain name
19 with a bad faith intent to profit.

20 33. These required elements are lacking in this case.

1 34. Blair could not have *registered* a domain name that was confusingly similar
2 to a U.S. trademark that was distinctive at the time of registration --
3 Lamborghini did not have a USPTO registration and had never used
4 LAMBO in U.S. commerce at the time Blair acquired the Disputed Domain.

5 35. What's more, the Disputed Domain was registered in 2000. It could not
6 have been registered with the intent to target Lamborghini's claimed
7 LAMBO trademark, or any distinctive U.S. trademark – Lamborghini did
8 not have a trademark registration for LAMBO in the U.S. or anywhere else
9 at that time, and had never used LAMBO as a trademark in U.S. commerce
10 at the time the Disputed Domain was originally registered.

11 36. Upon information and belief, Defendant possesses no common law trade or
12 service mark rights and no rights under the Lanham Act in connection with
13 goods and/or services under the name, "LAMBO."

14 37. At no point did Plaintiff offer the Disputed Domain for sale to Lamborghini
15 or a competitor, as falsely alleged in the UDRP Complaint.

16 38. Plaintiff acquired the Disputed Domain for its inherent value as a five-letter
17 domain name.

18 39. Defendant's sole argument in the Proceeding was that Plaintiff's offering of
19 the Disputed Domain for sale at a high price constitutes bad faith. However,
20 speculating on domain names that were purchased in good faith, is not

1 evidence of bad faith. As the dissenting panelist explained in the Proceeding,
2 “Offering a domain name for sale, at any price, is not in bad faith when the
3 domain name may be of interest and value to a wide variety of potential
4 purchasers within any of its many meanings of which evidence has been
5 given. That is the only use in question, as the Respondent has not used the
6 domain name for anything else. Putting the domain name up for sale is the
7 only use to which he has put the domain name and that use is entirely lawful,
8 no matter what the price the seller asks.”

9 40. Plaintiff greatly values short word domain names and has offered numerous
10 other domain names – not just the Disputed Domain – for sale at what may
11 be considered a “high” price. See, e.g. <dnas.com>, <asz.com> and others.

12 41. Plaintiff Blair is not concerned with selling the domain names he owns – he
13 values them as investment assets whether they sell at his price or not.

14 42. Indeed, Plaintiff has listed generic domain names that he owns for sale for
15 seven and eight figure prices, because he values the domains at those prices.
16 In other words, it would not be worthwhile for him to give up domain assets
17 that he could potentially develop for less than the amounts that they are
18 worth *to him*. <Lambo.com> became Plaintiff’s online identity, which is
19 why he values it so highly. For the above reasons, Plaintiff seeks a
20 declaration that the Disputed Domain is rightfully owned by Plaintiff.

1 43. In accordance with the UDRP Policy, Plaintiff provided notice to Defendant
2 that a lawsuit would be commenced against it concerning the Disputed
3 Domain name within a ten-day period.

4 **COUNT ONE**

5 **Declaration Under Anticybersquatting Consumer Protection Act**

6 44. Plaintiff realleges and incorporates paragraphs 1-43 above.

7 45. As stated above, Defendant lacks trademark rights in the United States and
8 under the Lanham Act.

9 46. As such, both the original registration, and Plaintiff's acquisition and use, of
10 the Disputed Domain violate no right of Defendant's under the
11 Anticybersquatting Consumer Protection Act, 15 U.S.C.1125(d).

12 47. As a result, because the Disputed Domain was originally registered in 2000
13 and acquired by Plaintiff because of its inherent value as a five-letter domain
14 name that corresponds with the nickname he wished to adopt, it cannot have
15 been registered with the bad faith intent to profit off of a trademark that
16 Defendant did not own and/or was not distinctive in the U.S. at the time of
17 registration.

18 48. In registering the Disputed Domain, the original registrant did not have a bad
19 faith intent, as provided in 15 U.S.C. § 1125(d)(1)(A)(i), to profit from any
20

1 mark alleged to be owned by Defendant. Plaintiff similarly had no such bad
2 faith intent to register or use the Disputed Domain.

3 49. Plaintiff acquired all rights of the original registrant of the Disputed Domain,
4 relating back to its original registration date of March 5, 2000.

5 50. Plaintiff did not have the intent, as provided in 15 U.S.C. § 1125(d)(1)(B), to
6 divert consumers from Defendant's online location to a site accessible under
7 the Disputed Domain that could harm the goodwill represented by the mark,
8 either for commercial gain or with the intent to tarnish or disparage the
9 mark, by creating a likelihood of confusion as to the source, sponsorship,
10 affiliation, or endorsement of the site.

11 51. And at no time since he acquired the Disputed Domain, has Plaintiff offered
12 to transfer, sell, or otherwise assign "Lambo.com" to Defendant or a
13 competitor, nor is there prior conduct by Plaintiff indicating a pattern of such
14 conduct.

15 52. Plaintiff has not registered or acquired multiple domain names that he knows
16 are identical or confusingly similar to marks of others that are distinctive at
17 the time of registration of such domain names, or dilutive of famous marks
18 of others that are famous at the time of registration of such domain names,
19 without regard to the goods or services of the parties.
20

1 53. Plaintiff has not registered, trafficked in, or used a domain name that was
2 identical or confusingly similar to any mark alleged to be owned by
3 Defendant at the time of the original registration in 2000 or acquisition by
4 Plaintiff in 2018.

5 54. Plaintiff believed and had reasonable grounds to believe that the registration
6 of the Disputed Domain was lawful, and that his acquisition and use of the
7 Disputed Domain was lawful.

8 55. As required by 15 U.S.C. § 1114(2)(D), Plaintiff has given notice to
9 Defendant of his intent to file an action to establish that the registration and
10 Plaintiff's use of the Disputed Domain is not unlawful under the ACPA.

11 **COUNT TWO**

12 **Declaratory Judgment Under 28 U.S.C. § 2201**

13 56. Plaintiff realleges and incorporates paragraphs 1-55, above.

14 57. A dispute exists between Plaintiff and Defendant concerning Plaintiff's right
15 to acquire and use the Disputed Domain. As a consequence of the dispute, an
16 actual and justiciable controversy exists between Plaintiff and Defendant.

17 58. As set forth above, Plaintiff is entitled to a declaratory judgment that he is
18 the rightful owner of the Disputed Domain.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff requests that the Court enter judgment:

1 (a) Declaring that the registration and Plaintiff's acquisition and use of the
2 domain name <Lambo.com> is not unlawful under the ACPA, 15 U.S.C. §
3 1125(d);

4 (b) Declaring that the registration and Plaintiff's acquisition and use of the
5 domain name <Lambo.com> does not constitute a registration with the bad faith
6 intent to profit from any mark alleged to be owned by Defendant under the ACPA,
7 15 U.S.C. § 1125(d);

8 (c) Declaring that Plaintiff is not required to transfer the domain name
9 <Lambo.com> to Defendant;

10 (d) Declaring that the Registrar NameSilo LLC shall not transfer the
11 registration for the domain name <Lambo.com> to Defendant;

12 (e) For such other and further relief as the Court shall deem appropriate.
13

14 Dated: March 9, 2023

15 **LEWIS & LIN, LLC**

16 By: /s/ Brett E. Lewis

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