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15 *Studio AB, and Niklas Thorin*

16 **IN THE UNITED STATES DISTRICT COURT**

17 **FOR THE DISTRICT OF ARIZONA**

18 Crisby Studio AB, a Swedish limited
19 liability company, and Niklas Thorin, a
20 Swedish resident

21 Plaintiffs,

22 v.

23 GoDaddy, Inc., a Delaware corporation,
24 GoDaddy.com, LLC, a Delaware
25 corporation, and 123-Reg Limited, a
26 UK company,

27 Defendants.

Case No.

COMPLAINT

(Conversion, Trespass to Chattel; Breach of Auction Membership Contract; Breach of Registration Agreement; Breach of the Covenant of Good Faith and Fair Dealing as to GoDaddy Defendants; Tortious Interference with Prospective Economic Advantage as to All Defendants; Tortious Interference with Contract; Gross Negligence, Negligence, Negligent Misrepresentation, Estoppel, Request for Injunctive Relief)

Jury Trial Demanded

28 Plaintiffs Crisby Studio AB, and Niklas Thorin (“Crisby” or “Plaintiff”), by and through its attorneys, for its Complaint against defendants GoDaddy, Inc., GoDaddy LLC, and 123-Reg Limited (“Defendants”) alleges as follows:

INTRODUCTION

1
2 1. This action arises from Defendants’ breach of its various domain name
3 registration and auction agreements by (a) co-mingling its roles as an ICANN-Accredited
4 Registrar and its separate role as a provider of domain name auction services, (b)
5 improperly using its role as ICANN-Accredited registrar to unilaterally misappropriate a
6 valuable .com domain name, calor.com (“Domain Name”), from Crisby’s GoDaddy
7 registrar account more than two months after Plaintiff purchased the Domain Name from
8 GoDaddy’s auction services and registered, paid for, and began using the Domain Name
9 through GoDaddy’s separate role as an ICANN-Accredited Registrar.

10 2. By this action Plaintiffs seek the immediate return of the Domain Name to
11 Crisby’s account and compensation for damages actually incurred as a direct result of
12 GoDaddy’s wrongful actions.

PARTIES

13
14
15 3. Plaintiff Crisby Studio AB is a limited liability company formed under the
16 Country of Sweden, with a principal place of business located in Stockholm, Sweden
17 (Reg. No. 556880-8892).

18 4. Plaintiff Niklas Thorin is a Swedish citizen that currently resides in Vastra
19 Gotaland, Sweden.

20 5. Defendant GoDaddy, Inc., is a Delaware company with its principal place
21 of business in Tempe, Arizona. Upon information and belief, GoDaddy Inc., has two
22 distinct and separate roles relevant to this dispute. First, it operates an ICANN-
23 Accredited domain name registrar under an agreement with the Internet Corporation
24 Names for Assigned Names and Numbers (“ICANN”). In this capacity, Defendant either
25 itself, or through its subsidiaries, registers and renews domain names on behalf of its
26 customers. This includes the management of the domain name records associated with
27 the domain names that they register. Separate and apart from its role as a ICANN-
28 Accredited registrar, Defendant GoDaddy also offers domain name aftermarket services

1 to enable the purchase and sale of previously registered domain names through an online
2 auction, an offer/counteroffer transaction, or a “buy now” transaction (collectively
3 “Aftermarket Services.”).

4 6. Defendant GoDaddy, LLC is a wholly owned subsidiary of GoDaddy, Inc.
5 It is registered in Delaware with its principal place of business in Tempe, Arizona. Upon
6 information and belief, GoDaddy LLC, is the operating entity that manages and operates
7 the ICANN regulated domain name registration services, and Defendants’ separate
8 Aftermarket Services.

9 7. Defendant 123-Reg Limited is a domain name registrar and is upon
10 information and belief, wholly owned by either Defendant GoDaddy, Inc. or Defendant
11 GoDaddy, LLC, and according to its website, <http://123-reg.co.uk>, has its registered
12 office in Middlesex, England.

13
14 **JURISDICTION AND VENUE**

15 8. This Court has diversity jurisdiction over this case pursuant to 28 U.S.C. §
16 1332. Defendants GoDaddy, Inc. and GoDaddy.com LLC (collectively, “GoDaddy”) are
17 registered in Delaware with their principal place of business in Arizona. Defendant 123-
18 Reg Limited is wholly owned by GoDaddy and has a registered office in England.
19 Plaintiffs are an “Aktiebolag”, which is roughly equivalent to a Swedish limited liability
20 company, registered in Stockholm, Sweden, and a person in residing in Vastra Gotaland,
21 Sweden. Further, the amount in controversy exceeds \$75,000.

22 9. Venue is proper in the District of Arizona pursuant to 28 U.S.C. §§
23 1391(b)(1) and (b)(2), because it is the judicial district in which the defendants have their
24 principal place of business and/or in which the events or omission giving rise to the claim
25 occurred.

BACKGROUND

1
2 10. Defendants' Registrar Services Defendant GoDaddy, LLC is a domain
3 name registrar accredited by the Internet Corporation for Assigned Names and Numbers
4 ("ICANN") to provide domain name registration services. More specifically, ICANN
5 defines a "registrar" as an organization through which individuals and entities
6 (registrants) register domain name¹ "During the registration process, a registrar verifies
7 that the requested domain name meets registry requirements, and submits the name to the
8 appropriate registry operator. Registrars are also responsible for collecting required
9 information from registrants and making the information available through WHOIS.
10 After registration, registrants can make updates to their domain name settings through
11 their registrars."²

12 11. An ICANN-Accredited Registrar is one that has entered into a Registrar
13 Accreditation Agreement ("RAA") with ICANN.³ In order to serve as a registrar for
14 any gTLD (including .com), registrars must be ICANN Accredited. The RAA sets for
15 the terms and conditions by which registrars may register, renew and/or delete domain
16 names. In addition, it also sets forth the minimum standards for the performance of
17 registration functions, which not only includes registration services, but also the
18 maintenance and modification of domain name records associated with domain names
19 (eg., adding Name Server records to point to websites, or MX records to point to e-mail
20 accounts, etc.).

21 12. ICANN-Accredited registrars may, and often do, provide other value-
22 added services which are not generally regulated by ICANN through the, including
23 website hosting, e-mail services, and domain name after market services. However, the
24 offering of these services is not in their registrar capacity, but rather in their separate
25 capacities as a website hosting, e-mail, and aftermarket service providers.

26 ¹ See definition of "registrar" at <https://www.icann.org/en/icann-acronyms-and-terms?nav-letter=r&page=1>.

27 ² *Id.*

28 ³ *Id.*

1 13. An illustration of this distinction is that ICANN does have certain
2 requirements with respect to the expiration of domain names. It requires that (a) registrars
3 list in a public WHOIS database the expiration date of a domain name registration, (b)
4 registrars must delete a domain name within 45 days of either the registrar or the
5 registrant terminating a registration record⁴, (c) registrars must provide notice to
6 registrants about their deletion and auto-renew policies, and (d) the circumstances by
7 which a domain name can be redeemed by the registrant after expiration of the domain
8 name. However, ICANN does not regulate how aftermarket services are offered, so long
9 as they are consistent with the ICANN-Agreement. In other words, those that are offering
10 aftermarket services, like Defendants', are not doing so in their role as an ICANN-
11 accredited registrar, but rather as a separate and distinct aftermarket service provider.

12 A. Defendants' Expiring Domains Auction Service

13 14. Upon information and belief, the previous owner of the Domain Name,
14 Calor Gas Ltd, located in the United Kingdom. It was registered using the domain name
15 registrar, 123-Reg Limited (123 Reg).

16 15. 123 Reg was acquired by GoDaddy in 2017 as part of GoDaddy's purchase
17 of 123 Reg's parent company, Host Entertainment Group.

18 16. 123 Reg describes the process it follows when a domain name expires at
19 [https://www.123-reg.co.uk/support/domains/what-is-the-domain-recovery-period-and-](https://www.123-reg.co.uk/support/domains/what-is-the-domain-recovery-period-and-how-can-i-restore-my-domain-names/)
20 [how-can-i-restore-my-domain-names/](https://www.123-reg.co.uk/support/domains/what-is-the-domain-recovery-period-and-how-can-i-restore-my-domain-names/), set forth as Ex. A.

21 17. More specifically, 123 Reg will try to auto-renew at the standard renewal
22 price for up to fifteen (15) days after a domain name expires provided that the domain
23 name registrar has been paid by the domain name registrant. *Id.*

24 18. If the domain name has not been renewed during that time period, the
25 "domain will be auctioned" by 123 Reg's auction service provider *Id.* Although an
26

27 _____
28 ⁴ See Expired Domain Deletion Policy, currently at
<https://www.icann.org/resources/pages/registars/accreditation/eddp-en>.

1 auction will begin on the domain name, the existing registrant will be allowed to recover
2 the domain name at the standard renewal price.

3 19. If the domain name has not been renewed within thirty (30) days after the
4 expiration of the domain name, the “Domain is not recoverable” by the registrant. “This
5 timeframe is reserved for auction bids and backorders.”

6 20. If there are no bids on the domain name in the auction, or if there are no
7 “backorders” on the domain name, the domain name will enter a “Redemption Grace
8 Period” and can be recovered by the original registrant, an additional redemption fee will
9 apply.

10 21. As 123 Reg is owned by Defendant, expired domain names that are
11 auctioned use the GoDaddy aftermarket auction system, a marketplace designed for the
12 buying and selling of previously owned or expired domain names.

13 22. As an expired domain aftermarket service provider, Defendant’s auction
14 platform is housed at <http://auctions.godaddy.com>. According to Defendant’s website,
15 expired auctions last for ten (10) days.⁵ “Once a bid is placed, the registrant can no longer
16 renew the domain in their account.” *Id.*

17 B. Calor.com

18 23. Upon information and belief, the Domain Name Calor.com had an
19 expiration date of February 25, 2024, and was allowed to expire.

20 24. Upon information and belief, the Domain Name was not renewed by the
21 then-current registrant within fifteen (15) days after the expiration date. In accordance
22 with Defendant 123 Reg’s policy, the domain name was placed into the Defendant
23 GoDaddy’s auction platform on or about March 10, 2024.

24 25. On or about March 26, 2024, thirty (30) days after the Domain Name
25 expired, the Domain Name registrant for Calor.com was changed to “Afternic, LLC”, the
26 registrant’s name Defendant GoDaddy uses to indicate that the domain name is no longer

27 _____
28 ⁵ See <https://www.godaddy.com/help/listing-types-for-godaddy-auctions-1525>, which is
also attached as Ex. B.

1 recoverable by the registrant, as described in ¶ 22 above. Ex. C shows the WHOIS record
2 from March 31, 2024.

3 26. Plaintiff Niklas Thorin (GoDaddy Customer number 41750938) placed a
4 bid on the Domain Name for \$11,405.00 (“Auction Bid Price”) on or about March 31,
5 2024.

6 27. On or about April 4, 2024, Plaintiff Thorin was notified that “the winning
7 bidder of **Item Number 548251391, calor.com**, did not complete this transaction.”
8 (emphasis in original). See Ex. D. As the second highest bidder for the Domain Name,
9 Plaintiff was declared the new winner of the Domain Name provided that it completed the
10 purchase of the Domain Name through the auction service platform and renewed the
11 domain name through Defendants’ registrar system within 24 hours of being notified. *Id.*

12 28. On April 5, 2024, Plaintiff Thorin made the required payment \$11,427.17
13 (which included the Auction Bid Price payable to Defendants’ auction service provider,
14 plus the price of the Domain Name renewal payable to Defendants’ registrar service
15 provider (\$22.17). Confirmation of Plaintiff’s payment was e-mailed to Plaintiff
16 immediately after completing the order from Defendant. See Ex. E. The confirmation
17 states: “Thank you for your order, Niklas. Here is your confirmation for order number
18 2987847541. Review your receipt and get started using *your* products.” *Id.* (emphasis
19 added). The receipt identifies the Domain Name purchased as calor.com.

20 29. At some point between April 5, 2024, and April 10, 2024, consistent with
21 Plaintiffs’ ownership of the Domain Name. Plaintiffs changed the DNS records of the
22 Domain Name through Defendants’ registrar service platform to point to the IP address
23 162.19.152.159, which upon information and belief is operated by CloudDNS. Operating
24 out of Bulgaria. This change allowed the Domain Name to resolve to the website content
25 set forth in Ex. F. The Website contains an Orange/Pink background with the word
26 “CALOR” in a stylized font, followed by the Spanish words “Encuentra el Calor del Amor”
27 (which loosely translates to “Find the Heat of Love” in English. It then, in Spanish, invites
28 users to send an email to beta@calor.com to access the service earlier. Plaintiffs

1 subsequently modified the website to state that the owner of the domain name is Plaintiff's
2 Swedish Company. See Exhibit G. The Domain Name continues to resolve to this
3 Website owned by Plaintiff as of the date of the filing of this Complaint.

4 30. On or about that same time frame (between April 5, 2024, and April 10,
5 2024), Plaintiffs activated e-mail on the Domain Name by adding the "MX Records" of
6 its e-mail provider, Migadu, a Swiss company. Those MX records continue to be present
7 in the DNS Records for the Domain Name as of the date of the filing of this Complaint.
8 See Ex. H.

9 31. On May 27, 2024, Plaintiffs executed a Joint Venture Agreement ("JV
10 Agreement") with QLSC Consulting S.R.L., a Romanian company with its principal
11 office located at Str. Dristorului, m Sector 3, Municipiul Bucuresti ("QLSC") for the
12 purpose of developing and launching a dating app targeting the global Spanish-speaking
13 market, to be named after Plaintiff's .com domain name, CALOR. In Spanish, the term
14 "Calor" translated to "Heat" or "Hot" in English.

15 32. As part of the JV Agreement, Plaintiffs had to agree to a standard warranty,
16 namely that it "currently owns the domain name 'Calor.com'". Plaintiffs also had to agree
17 to the transfer of ownership of the domain name to the Joint Venture upon the achievement
18 of certain milestones set forth in the JV Agreement. Until such transfer, Plaintiffs
19 contractually committed to "maintain ownership and control of the domain name."

20 33. On May 29, 2024, a Sales Manager for Defendant reached out to Plaintiff
21 Thorin via e-mail stating that they "recently had a client request our assistance in
22 potentially acquiring the above domain which appears to be owned/ registered to you. If
23 you would please confirm that you are still the registrant of this domain, and whether you
24 would be open to discussing the sale of this domain. I would greatly appreciate it. If you
25 are open to selling the domain, can you please provide me with a ballpark figure that you
26 would be willing to consider selling it for?" See Ex. I.

27 34. Later that same day, Plaintiff Thorin responded to Defendant putting in on
28 notice that (a) it was already using the Domain Name to launch a project in early 2025,

1 and that (b) it would only be willing to sell the domain name to Defendant’s client for a
2 high six-figure amount.” See Ex. J.

3 35. On June 4, 2024, just one day short of two (2) months after Plaintiff paid-
4 for and took ownership of the Domain Name, and more than one hundred (100) days after
5 the domain name expired for the previous registrant, Plaintiff received an e-mail from
6 Defendant’s “CEO Team” stating that “[D]ue to an unexpected error, the domain
7 calor.com should not have been available for your purchase. To correct this error, we have
8 removed the domain from your account and are taking proactive steps to prevent this error
9 from happening again in the future. We have refunded your original purchase and have
10 added a \$350 in-store credit to your account for the inconvenience.” See Ex. K.

11 36. Despite the fact that Defendant had actual knowledge that (i) Plaintiffs
12 were the rightful owners of the Domain Name, (ii) Plaintiffs were already using the
13 Domain Name for a large project dependent on the Domain Name, (iii) the commercial
14 launch of the services was already planned to be launched in early 2025, and (iv) in
15 response to Defendant’s own sales agent’s offer to purchase the Domain Name, Plaintiffs
16 were unwilling to do so unless Plaintiffs were compensated for the loss of their business,
17 Defendant unilaterally removed the Domain Name from Plaintiffs’ GoDaddy registrar
18 account thereby removing Plaintiffs’ ability to use the Domain Name.

19 37. The removal of the Domain Name from Plaintiffs’ registrar account not
20 only meant the loss and control of Plaintiffs’ property, but also put Plaintiffs in breach of
21 the JV Agreement that was executed with QLSC. As a direct result of Defendant’s
22 wrongful taking of Plaintiffs’ property, Defendant caused QLSC to terminate the JV
23 Agreement with Plaintiff and significantly damaged the reputation of Plaintiffs and the
24 relationship with QLSC.

25 38. On June 17, 2024, Plaintiffs through their counsel sent a letter to
26 Defendants’ Auction Disputes Team, Defendants’ CEOTeam, and its legal department
27 notifying Defendants of their breaches of contracts and requested the immediate
28 reinstatement of the domain name to Plaintiffs, a detailed written explanation for

1 Defendants' actions in this matter, and compensation for damages incurred ("June 17th
2 Letter"). See Ex. L.

3 39. When no substantive response was received by Plaintiffs to the Letter, on
4 July 17, 2024, a follow up letter was sent by Plaintiffs through their counsel repeating its
5 requests from the June 17th Letter. See Ex. M.

6 40. Finally on July 18, 2024, Defendants responded to Plaintiffs' essentially
7 restating what it said on June 4, 2024. Defendants provided no further detail on the nature
8 of their "error", nor did Defendants return the Domain Name they misappropriated from
9 Plaintiffs.

10 **FIRST CLAIM FOR RELIEF**
11 **(CONVERSION)**

12 41. Plaintiffs hereby restate and re-allege the allegations set forth in paragraphs
13 1 through 40 above and incorporate them by reference.

14 42. On April 5, 2024, Plaintiffs became the rightful owner of the Domain Name
15 and had the right to possess the Domain Name which was ultimately misappropriated by
16 Defendants. It completed the purchase of the domain name through Defendants' auction
17 service as well as a required one-year renewal through Defendants' registrar.

18 43. On May 29, 2024, in an e-mail from Defendants' domain name aftermarket
19 service provider, Defendants acknowledged that Plaintiffs were indeed the rightful owner
20 to the Domain Name and made an offer to Plaintiffs to purchase the Domain Name.

21 44. On the same day, Plaintiff Thorin responded to Defendant's sales agent that
22 it had already put the Domain Name to use and was working on a commercial launch of
23 a product using that Domain Name. Plaintiff Thorin told Defendant that he and his
24 company, Plaintiff Crisby, would have to be compensated an amount in the "high six
25 figures" in order to consider another domain name for the project.

26 45. Apparently not satisfied with Plaintiff's Thorin's response, on June 4,
27 2024, (more than 100 days from the date the Domain Name expired, and sixty (60) days
28 after Plaintiff purchased the Domain Name via Defendant's auction system, Defendant

1 intentionally exercised dominion and control over Plaintiffs' property through its domain
2 name registrar services when it wrongfully took possession of the Domain Name.
3 Defendant deprived Plaintiffs of possession and use of the property. See Ex. K.

4 46. Defendant's misappropriation damages Plaintiffs in an amount to be
5 proven at trial, but that exceeds \$75,000.

6
7 **SECOND CLAIM FOR RELIEF**
(TRESSPASS TO CHATTEL)

8 47. Plaintiffs hereby restate and re-allege the allegations set forth in paragraphs
9 1 through 46 above and incorporate them by reference.

10 48. On April 5, 2024, Plaintiffs became the rightful owner of the Domain Name
11 and had the right to possess the Domain Name which was ultimately misappropriated by
12 Defendants. It completed the purchase of the domain name through Defendants' auction
13 service as well as a required one-year renewal through Defendants' registrar.

14 49. On May 29, 2024, in an e-mail from Defendants' domain name aftermarket
15 service provider, Defendants acknowledged that Plaintiffs were indeed the rightful owner
16 to the Domain Name and made an offer to Plaintiffs to purchase the Domain Name.

17 50. On the same day, Plaintiff Thorin responded to Defendant's sales agent that
18 it had already put the Domain Name to use and was working on a commercial launch of
19 a product using that Domain Name. Plaintiff Thorin told Defendant that he and his
20 company, Plaintiff Crisby, would have to be compensated an amount in the "high six
21 figures" in order to consider another domain name for the project.

22 51. Apparently not satisfied with Plaintiff's Thorin's response, on June 4,
23 2024, (more than 100 days from the date the Domain Name expired, and sixty (60) days
24 after Plaintiff purchased the Domain Name via Defendant's auction system, Defendant
25 intentionally dispossessed Plaintiffs of the domain name by inappropriately leveraging
26 its domain name registrar services to seize control of the domain name. In so doing,
27 Defendant deprived Plaintiffs of possession and use of the property. See Ex. K.

1 52. Defendants dispossessed Plaintiffs of their domain name by
2 inappropriately filing transfer information with ICANN and updating the WHOIS
3 registry to reflect that Plaintiffs were no longer the owners of the Domain Name.

4 53. Defendant's actions damages Plaintiffs in an amount to be proven at trial,
5 but that exceeds \$75,000.

6
7 **THIRD CLAIM FOR RELIEF**
(BREACH OF AUCTION MEMBERSHIP CONTRACT)

8 54. Plaintiffs hereby restate and re-allege the allegations set forth in
9 paragraphs 1 through 53 above and incorporate them by reference.

10 55. Plaintiffs entered into an "Auction Membership Agreement" with
11 Defendants (as a provider of domain name auction services) as of the date in which it
12 placed a bid on the Calor.com domain name ("AMA"). See Ex. N. Under the AMA,
13 Defendant, as an aftermarket service provider, facilitates the buying and selling of
14 currently registered domain name, including those domain names in their expiration
15 period.

16 56. The AMA requires that for an expired domain name auction to be
17 completed, the winning bidder (called the "Buyer" in the AMA), must pay the winning
18 bid amount plus a one (1) year renewal fee. Once that is completed, "Change of
19 ownership will begin upon the completion of the check-out process and receipt of
20 Buyer's funds." See *Id.*

21 57. On April 5, 2024, Plaintiff made the required payment \$11,427.17 (which
22 included the Auction Bid Price plus the price of the Domain Name renewal (\$22.17).
23 April 5, 2024, was approximately 41 days after the expiration of the Domain Name.

24 58. On that same day the transfer of the Domain Name to Plaintiff was
25 complete and placed into Plaintiffs' GoDaddy *registrar* account.

26 59. On June 4, 2024, More than 100 days after the domain name expired, and
27 nearly two months after Plaintiff acquired the domain name, Defendant breached the
28 AMA by nullifying the result of the Domain Name purchase.

1 DNRA. Although Defendants are both a registrar and an auction service provider, there
2 is nothing in the DNRA that allows Defendants to use their position as a domain name
3 registrar to correct errors by them performing non-registrar services (here, auction
4 services).

5 67. As a result of this breach of the DNRA, Plaintiff has suffered damages in
6 an amount to be proven at trial, but that exceeds \$150,000.

7
8 **FIFTH CLAIM FOR RELIEF**
9 **(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING AS**
10 **TO GODADDY DEFENDANTS)**

11 68. Plaintiffs hereby restate and re-allege the allegations set forth in
12 paragraphs 1 through 67 above and incorporate them by reference.

13 69. At least two contracts existed between Defendant and Plaintiff. The first
14 of which was the AMA for the auction services, and the second, Defendants' domain
15 name registration agreement (DNRA).

16 70. Pursuant to those contracts, Plaintiff expected Defendant would comply
17 with its fiduciary duties, perform its professional obligations as an ICANN-Accredited
18 registrar, separate and apart from its role as a provider of other non-registrar services,
19 without impairing the businesses of Plaintiff, and not convert Plaintiff's property,
20 opportunities, interests and expectancies for Plaintiff's use of the Domain Name.

21 71. Pursuant to those contracts, Plaintiff expected Defendant would comply
22 with its fiduciary duties, and not comingle its non-registrar services with it serving as an
23 ICANN-Accredited registrar, As a result of this breach of the covenant of good faith
24 and fair dealing, Plaintiff has suffered damages in an amount to be proven at trial, but
25 that exceeds \$150,000.

NINTH CLAIM FOR RELIEF
(NEGLIGENCE)

1
2 90. Plaintiffs hereby restate and re-allege the allegations set forth in
3 paragraphs 1 through 89 above and incorporate them by reference.

4 91. Defendants owed Plaintiff a duty of care to ensure that domain name
5 auctions are properly conducted and that the sale of domain names as a result of such
6 auctions are final and without error.

7 92. Defendants breached this duty by negligently auctioning off a domain
8 name that it claims should not have been auctioned, and by failing to adequately verify
9 the eligibility of the domain name for auction before offering it for sale.

10 93. As a direct and proximate result of Defendants' negligence, Plaintiff has
11 suffered significant harm, including but not limited to: (a) the loss of the Domain
12 Name, (b) costs incurred in developing and promoting the Domain Name during the
13 two month period in which it owned the Domain Name, (c) business disruption and loss
14 of potential revenue, and (d) reputational damage and loss of business opportunities.

15 94. As a result of Defendant's negligence, Plaintiff was damaged in an
16 amount to be proven at trial, but at least \$150,000.00.

TENTH CLAIM FOR RELIEF
(NEGLIGENT MISREPRESENTATION)

17
18
19 95. Plaintiffs hereby restate and re-allege the allegations set forth in
20 paragraphs 1 through 86 above and incorporate them by reference.

21 96. By placing the Domain Name up for auction through Defendant's
22 aftermarket services, Defendant represented that it had the right to sell the Domain
23 Name to anyone that placed bids on the Domain Name.

24 97. By declaring Plaintiff, the winner of the auction for the Domain Name,
25 and requesting payment for the Domain Name, Defendant again was representing that it
26 has the right to sell the Domain Name to Plaintiff, and that upon payment of the
27 purchase price, Defendant had the right to transfer title of the Domain Name to
28 Plaintiff.

1 aggravated or outrageous nature to indicate motive by an evil mind, coupled with an
2 evil hand.

3 114. In addition, Defendants intentionally co-mingled its services as a domain
4 name auction provider or aftermarket services with that of an ICANN-Accredited
5 Registrar that provides critical domain name registration services to third parties. As
6 the largest ICANN-Accredited Registrar, Defendant believes that it can engage in self-
7 help by using its separate domain name registrar to “correct errors” it commits as an
8 auction service provider and misappropriate Plaintiff’s Domain Name. In fact, if
9 Plaintiff was aware that this was something Defendant could do, it would have
10 transferred its Domain Name to another registrar that could not take such actions. In
11 other words, had Plaintiffs’ purchased the domain name through Defendants’ auction
12 service, then subsequently transferred to Domain Name to a separate registrar,
13 Defendant would not have been able to use its registrar service to convert Plaintiff’s
14 property. If there were any errors by the auction service provider, it would have had to
15 bring a legal action to attempt to recover the name. Rather than following the
16 appropriate legal course of action, Defendant abused its position as a registrar to
17 misappropriate plaintiffs’ property.

18 115. Therefore, a punitive damages award against Defendant in an amount to
19 be proven at trial is fully justified and warranted and would have the effect of deterring
20 others from committing similar acts and omissions.

21 116. Plaintiff is entitled to a temporary restraining order and permanent
22 injunction against Defendants.

23 **DEMAND FOR JURY TRIAL**

24 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff respectfully demands
25 a jury trial of all issues triable to a jury in this action.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:
28

- 1 A. Entry of judgment in favor of Plaintiffs against Defendants
- 2 B. An order awarding Plaintiffs damages, including punitive damages as
3 allowable, in an amount to be proven at trial, but in an amount no less than \$75,000;
- 4 C. Pre-judgment and post-judgment interest;
- 5 D. An order awarding Plaintiffs its costs and attorneys’ fees to the extent
6 allowed by law.
- 7 E. A temporary restraining order enjoining Defendants GoDaddy Inc. and
8 GoDaddy.com LLC, its officers, agents, directors, affiliates, servants, employees, and
9 all persons acting in concert with it, from directly or indirectly allowing the calor.com
10 domain name to expire and/or revert to the domain name registry to be generally
11 available for purchase by third parties;
- 12 F. A temporary restraining order enjoining Defendants GoDaddy, Inc. and
13 GoDaddy.com LLC from preventing or frustrating Plaintiffs’ right, pursuant to
14 GoDaddy’s Domain Registration Agreement, to renew the registration of the Domain;
- 15 G. A temporary restraining order enjoining Defendants GoDaddy, Inc.,
16 GoDaddy.com LLC, 123-Reg Limited, their officers, agents, directors, affiliates,
17 servants, employees, and all persons acting in concert with it (collectively “Defendants”)
18 from selling or otherwise transferring any ownership interest in the calor.com domain
19 name, or purchasing any ownership interest in the domain, or otherwise accepting
20 transfer of any ownership interest in the Domain Name;
- 21 H. An order to show cause why a preliminary injunction should not issue,
22 pursuant to Fed. R. Civ. P. 65, enjoining Defendants from directly or indirectly
23 committing the above-described acts during the pendency of this action; and
- 24 I. Granting Plaintiffs any such other and further relief as this Court deems
25 just and proper, or that Plaintiffs may be entitled to as a matter of law or equity.
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DATED: August 23, 2024,

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LIST OF EXHIBITS

EXHIBIT	DESCRIPTION
A	Def. 123 Reg Domain Expiration Policy
B	Def. GoDaddy Auction Website – Listing Types
C	March 31, 2024 WHOIS Record for Calor.com
D	Notification of Winning Auction Bid for Calor.com
E	Payment Receipt for Calor.com
F	June 2024 Screenshot of Calor.com
G	August 2024 Screenshot of Calor.com
H	DNS MX Record Change for Calor.com
I	Def. GoDaddy Sales E-mail to Plaintiff
J	Plaintiff Response to GoDaddy Sales E-mail
K	Def. Notification of Misappropriation of Calor.com
L	Plaintiff 6-17-24 Letter to Defendants
M	Plaintiff 7-17-24 Follow Up Letter to Defendants
N	Def. Auction Membership Agreement
O	Def. Domain Name Registration Agreement

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