

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

GREEN JACKET AUCTIONS, INC. and)	
RYAN CAREY, on behalf of GREEN)	
JACKET AUCTIONS, INC.,)	
Plaintiffs,)	CIVIL ACTION
)	
v.)	FILE NO.
)	
AUGUSTA NATIONAL, INC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	

COMPLAINT

Plaintiffs Green Jacket Auctions, Inc. (“GJA”) and Ryan Carey, on behalf of Green Jacket Auctions, Inc., hereby file this Complaint for Damages and Injunctive Relief against Defendant Augusta National, Inc. and state:

INTRODUCTION

1. This case is brought pursuant to 15 U.S.C. § 1114(2)(D)(iv)-(v) and for declaratory relief pursuant to 28 U.S.C. §2201 to establish that GJA’s registration and use of the internet domain name <greenjacketauctions.com> (the “Domain Name”) is not unlawful under the Anticybersquatting Consumer Protection Act (15 U.S.C. § 1125(d) (“ACPA”) or otherwise under the Lanham Act (15 U.S.C. § 1051, *et seq.*).

2. Specifically, GJA seeks to prevent the transfer of the Domain Name to Defendant, which was ordered in an administrative panel decision issued December 21, 2017, under the Uniform Domain Name Dispute Policy (“UDRP”) in a proceeding captioned: *Augusta National, Inc. v. Ryan Carey*, FA1711001758547.

3. 15 U.S.C. § 1114(2)(D)(v) authorizes a domain name registrant to sue trademark owners for “reverse domain name hijacking” and to commence an action to declare that the domain name registration or use by the registrant is not unlawful under the Lanham Act.¹

4. In such an action, the federal court must give “no deference” to the administrative UDRP panelist.² Rather, relief under Section 1114(2)(D)(v) turns on a showing that the “plaintiff’s registration or use of the domain name is not unlawful under the Lanham Act, as amended”.³

5. The registration of a generic, descriptive term or phrase is (i) lawful *per se* under the Lanham Act and (ii) therefore establishes entitlement to relief under 15 U.S.C. § 1114(2)(D)(v).⁴

PARTIES, JURISDICTION, AND VENUE

6. Plaintiff Green Jacket Auctions, Inc. is a Florida corporation with its principal place of business located at 3623 Beach Drive, Tampa, Florida 33629.

7. Plaintiff Ryan Carey, on behalf of Green Jacket Auctions, Inc., is a nominal party because the WhoIs information lists him as the registrant. Since the domain name was created, it has been owned by Green Jacket Auctions, Inc.

8. Augusta National, Inc. (“Augusta National”) is a Georgia corporation with its principal place of business located at 2604 Washington Road, Augusta, Georgia 30904. Augusta National operates as a golf club and hosts the Masters Golf Tournament.

9. Jurisdiction in this Court is proper pursuant to 28 U.S.C. §§ 1331 and 1338 because Plaintiff’s claims for violation of the United States Trademark Act, Title 15 of the

¹ *Barcelona.com, Inc. v. Excelentísimo Ayuntamiento de Barcelona*, 330 F.3d 617, 625 (4th Cir. 2003).

² *Id.* at 626.

³ *Id.*

⁴ *Id.* at 629.

United States Code arise under federal law. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the state law claim because the claim is so related to the federal claim that it forms part of the same case or controversy.

10. This Court has personal jurisdiction over Defendant because Defendant expressly and voluntarily agreed to submit to the jurisdiction of this Court when it initiated an administrative proceeding pursuant to the UDRP concerning the domain name. Specifically, Defendant voluntarily and expressly agreed in Paragraph 10 of its UDRP complaint (the “UDRP Complaint”) “that any challenges to a decision in the administrative proceeding canceling or transferring the Domain Name be heard before the Southern District of Georgia, Augusta Division....”

11. Defendant is also subject to the personal jurisdiction of this Court because it resides in the State of Georgia; has conducted, engaged in and carried out business ventures within the State of Georgia; has committed tortious acts within the State of Georgia; and has engaged in substantial and not isolated activity within the State of Georgia.

12. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b)(2) because, as detailed herein, a substantial part of the events or omissions giving rise to the claims occurred in this judicial district. Venue is also proper in this Court because Defendant consented to venue in this District.⁵

⁵ Plaintiffs contend that venue should be in any court of competent jurisdiction, including, but not limited to, one of the Mutual Jurisdictions identified in the Rules, namely, the domain-name holder’s address as shown for the registration of the domain name in the Registrar’s WhoIs database at the time Defendant’s UDRP complaint was filed or where GJA resides. The Registrar refused to delay transfer of the domain name unless a complaint was filed in a jurisdiction of Defendant’s choosing. Plaintiff contends that this is an incorrect interpretation of federal law and the Rules, but is filing the Complaint in this jurisdiction out of an abundance of caution and to ensure that the Domain Name is not transferred while this litigation is pending.

FACTUAL BACKGROUND

13. Ryan Carey, on behalf of GJA, registered the domain <greenjacketauctions.com> (the “Domain Name”) on February 27, 2006. A true and correct copy of the WhoIs history report for the Domain Name is attached hereto as **Exhibit A**.

14. GJA began advertising its auction services at least as early as April 2006 and has consistently advertised its services since 2006. True and accurate copies of screenshots of the website from Archive.org are attached hereto as **Exhibit B**.

15. Numerous publically available records also show GJA’s consistent usage of the Domain Name. *See* **Exhibit C**.

16. At the time the Domain Name was registered, Defendant did not have a United States federal trademark registration for GREEN JACKET, or anything confusingly similar thereto.

17. The Domain Name is currently the property of GJA.

18. GJA is a well-respected auctioneer of rare golf memorabilia.

19. Its two principals and only employees, Ryan Carey and Bob Zafian, founded the company in 2006 over a mutual admiration of golf memorabilia.

20. GJA has been successful in merging the high-end golf collection industry with the online marketplace.

21. Although small, GJA has successfully hosted approximately thirty auctions.

22. Since 2006, GJA has auctioned millions of dollars of Augusta National memorabilia, including several green jackets.

23. GJA has also auctioned green jackets from sources other than Defendant.

24. GJA is an expert in the industry whose business and license lives and dies on its reputation and the location of its auction site.

25. GJA's target clients are sophisticated, high worth individuals who would not and have not been confused between the services offered by Defendant and the vastly different services offered by GJA. In fact, GJA is not aware of any instances of consumers being confused between the parties and their respective services.

26. GJA and Defendant are not engaged in the same business. GJA is an online auctioneer of golf memorabilia and Augusta National is a private golf club that hosts the annual Masters golf tournament.

27. Augusta National does not sell golf products online nor does it auction golf memorabilia, including, but not limited to, green jackets.

28. GJA has spent considerable time and money establishing its online auction website. The Domain Name is one of GJA's most valuable assets. GJA would suffer severe prejudice if it was ordered to transfer the Domain Name to Augusta National.

29. GJA has made a bona fide offering of services at the Disputed Domain since at least April 2006, which is well before GJA had any notice that Defendant disputed GJA's use of the Domain Name. Since that date, GJA has offered its online auctioneer services through the Domain Name. Moreover, GJA has rights and legitimate interests in the Domain Name because it is commonly known by the Domain Name.

30. GJA's Domain Name is generic or at the very least descriptive, which further establishes its legitimate interest in the Domain Name.

31. GJA did not register the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name to Augusta National.

32. GJA did not register the Domain Name in order to prevent Augusta National from using the phrase “green jacket” as it is entirely generic or at the very least descriptive.

33. GJA did not register the Domain Name for the purpose of disrupting August National’s business.

34. GJA has not intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Augusta National.

35. Rather, GJA adopted a generic and/or descriptive domain name in 2006 based in part on some of the products it would be auctioning, namely, green jackets.

36. Augusta National waited over eleven years to bring its UDRP complaint. There is no valid reason for Augusta National’s delay. Augusta National has known about the Domain Name since at least as early as 2007. GJA would be unduly prejudiced if the Domain Name was taken away. Indeed, GJA has engaged in numerous online auctions through the Domain Name and the Domain Name has gained substantial notoriety.

COUNT ONE

DECLARATORY RELIEF - NON VIOLATION OF LANHAM ACT

37. GJA reasserts the allegations set forth in Paragraphs 1-36 above as though fully set forth herein.

38. Augusta National’s mark is entirely descriptive and the numerous third-party uses of the phrase “green jacket” establishes that Augusta National has not established secondary meaning for its GREEN JACKET mark.

39. GJA’s registration and use of the Domain Name does not violate Defendant’s rights under the Lanham Act. In registering the Domain Name, GJA did not have “bad faith intent,” as provided in 15 U.S.C. 1125(d)(1)(A)(i), to profit from Defendant’s alleged trademark.

At the time GJA registered the Domain Name, the Defendant's alleged mark was neither "distinctive" nor "famous" as provided under 15 U.S.C. 1125(d)(1)(A)(ii). GJA had reasonable grounds to believe that its registration and/or use of the Domain Name was a fair use or otherwise lawful, as provided in 15 U.S.C. 1125(d)(1)(8)(ii).

40. On information and belief, Defendant did not engage in interstate commerce in the United States of America in connection with the manufacture, sale, or transportation of jackets, or any colorable variation thereof, at the time the Domain Name was registered by GJA, and still does not.

41. Defendant does not employ "GREEN JACKET" as a trademark under the Lanham Act.

42. GJA reasonably believes its registration and use of the Domain Name was and is lawful under the Lanham Act.

43. There is an actual controversy with respect to whether the Defendant is entitled to transfer of the Domain Name, based on Defendant's alleged rights under the Lanham Act.

44. In the absence of a declaration from the Court, the Registrar will transfer the Domain Name to the control of Defendant, and GJA will suffer immediate and irreparable harm.

45. GJA's registration and use of the Domain Name does not, and is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of GJA with Defendant, or as to the origin, sponsorship, or approval of GJA's services or commercial activities by Defendant.

46. GJA's registration and use of the Domain Name does not misrepresent the nature, characteristics, qualities, or geographic origin of Plaintiff's or Defendant's goods, services, or commercial activities.

COUNT TWO

REVERSE DOMAIN HIJACKING UNDER 15 U.S.C. 1114(2)(D)(IV)-(V)

47. GJA reasserts the allegations set forth in Paragraphs 1-36 above as though fully set forth herein.

48. Under the UDRP, the Registrar will transfer the Domain Name to the Defendant unless legal action is commenced to prohibit the transfer.

49. On information and belief, at the time the Domain Name was registered by GJA, the Defendant's alleged GREEN JACKET mark as used on and in connection with jackets was not inherently distinctive under the Lanham Act.

50. On information and belief, at the time the Domain Name was registered by GJA, Defendant possessed no common law trademark rights to its alleged GREEN JACKET mark.

51. GJA's Domain Name has been locked beyond GJA's full enjoyment of the benefits of registration thereof in consequence of false statements made by Defendant under a dispute policy (the UDRP) followed by the domain Registrar. For example, Defendant in the UDRP dispute, asserted that GJA registered the Domain Name primarily to disrupt Defendant's business, creating confusion and to offer competing goods and services. These allegations are demonstrably false.

52. The Domain Name has been ordered transferred, and would be transferred to Defendant but for this lawsuit.

53. GJA has provided Defendant with notice of this lawsuit.

54. GJA has incurred costs in seeking to prevent transfer of the Domain Name as a consequence of Defendant's false statements.

55. GJA's registration or use of the Domain Name does not violate any cognizable right of the Defendant under the Lanham Act.

56. GJA is being harmed through the loss of its domain rights.

COUNT THREE

CONVERSION

57. GJA reasserts the allegations set forth in Paragraphs 1-36 above as though fully set forth herein.

58. GJA owns a valuable property right in possession of the Domain Name.

59. By invoking the UDRP, Defendant has assertion of dominion over the Domain Name and has impaired GJA's possession and control of the Domain Name.

60. Defendant continues to willfully exert dominion over the Domain Name.

61. Absent a declaration of this Court, Defendant will continue to exert dominion over the Domain Name and wrest all rights in the Domain Name from GJA for Defendant's use thereof.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all triable issues.

WHEREFORE, Plaintiffs Green Jacket Auctions, Inc. and Ryan Carey, on behalf of Green Jacket Auctions, Inc., respectfully request that this Court enter final judgment and permanent injunctive relief in favor of Plaintiffs and against Defendant, as follows:

- a. declaration by the Court that Defendant has no trademark rights to "GREEN JACKET" that are subject to protection in the United States;
- b. declaration by the Court, pursuant to 28 U.S.C. §2201, that GJA's registration, ownership, and use of the Domain Name <greenjacketauctions.com> is lawful

and proper and does not infringe on any right the Defendant may claim in the United States;

- c. awarding Plaintiffs their compensatory, consequential, statutory and special damages, as well as exemplary damages, together with pre and post judgment interest, as provided by law;
- d. awarding Plaintiffs their reasonable attorneys' fees and costs associated with this action;
- e. granting permanent injunctive relief in favor of Plaintiffs and against Defendant enjoining Defendant from engaging in the unlawful practices described in this Complaint; and,
- f. granting such further relief as this Court deems just and proper.

Respectfully submitted this 10th day of January, 2018.

CARLTON FIELDS JORDEN BURT, P.A.

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