

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STILLWATER LAKES CIVIC	:	NO. 3:08 CV 02264
ASSOCIATION, INC.,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
NOREEN GORKA,	:	
MICHAEL GLASSIC,	:	
STILLWATER LAKES CITIZENS, and	:	
STILLWATER LAKES COMMUNITY	:	
ACTIVIST, a Pennsylvania Corporation,	:	
	:	
Defendants.	:	

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**MEMORANDUM OF LAW  
IN SUPPORT OF MOTION FOR SANCTIONS**

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I.

**BACKGROUND**

The Plaintiff instituted this action asserting the following claims against the Defendants:

A. Count I – Lanham Act – Trade Name Infringement Pursuant to Section 1125(a);

B. Count II – Lanham Act – Cyber Squatting Pursuant to Section 1125(d).

C. Count III – Pennsylvania Anti-Dilution of Trade Name;

D. Count IV – Misappropriation of Corporate Name;

E. Count V – Unfair Competition;

F. Count VI – Common Law Trade Name Infringement; and

G. Count VII – Lanham Act – Anti-Dilution of Trade Name Pursuant to Section 1125(c).

These claims allegedly arose out of the Defendants' ownership, maintenance and administration of a homepage/website which the Plaintiff contended diluted its mark and created a likelihood of confusion with the goods and services it marketed in commerce.

The homepage of the website, however, was never owned by Noreen Gorka and before she became a member of the Board of Directors of the Plaintiff she stopped having any involvement with the website. At the time of the filing of this

litigation, the Plaintiff, through its agents and representatives, was aware of these facts, but nevertheless named her as a Defendant for no reason other than to harass her and cause she and her husband, Michael Glassic, financial harm.

Before the institution of the lawsuit, on or about the 25<sup>th</sup> day of September, 2008, Mr. Glassic filed a Complaint against the Association with the Bureau of Consumer Protection as a result of which he incurred the wrath of the representatives of the Plaintiff, including the property manager at the time. Because of this, the Board of Directors of the Plaintiff determined to hit him where it hurts, in his finances. Thus, the Plaintiff's reason for filing suit against Mr. Glassic, which, as was the case with Ms. Gorka, was not a proper basis or reason to institute the lawsuit, since it was brought out of vindictiveness.

As previously stated, the suit was based upon violations of the Lanham Act, Pennsylvania Anti-Dilution of Trade Name and Unfair Competition. However, contrary to the allegations in the Complaint, neither the Plaintiff nor the Defendants sold goods or services in commerce. The Plaintiff is a property owner's association, which administers one (1) of the two (2) Stillwater Lake Communities or Subdivisions.<sup>1 2</sup>

As a community association, the Plaintiff in its administrative capacity, manages the community, including the roads, common areas and recreational

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<sup>1</sup> The other community is Stillwater Lake Estates which is managed by a separate association. There is constant confusion as to which community is which and which association is which.

<sup>2</sup> Stillwater Lakes is and has been for years a geographic location.

facilities and performs other responsibilities described in its By-Laws and the Uniform Planned Community Act. Thus, its functions do not involve the sale of goods and services in commerce.

Nor was the Defendants' homepage/website used for the sale of goods and services in commerce; rather, it was used to provide information about the Stillwater Lakes Community to interested members of the Plaintiff Association. This information, at times, was critical of the actions of the Board of Directors of the Plaintiff, the publication of this information was and is protected by the First Amendment.

At the time of the filing of the lawsuit, contrary to the assertions in the Plaintiff's Brief in support of its Motion, Mr. Glassic had made the changes referenced in the Brief which the Plaintiff now admits had clearly eliminated the possibility of confusion (although none ever existed with regard to goods or services). The disclaimer was also added prior to the institution of this lawsuit. Given the Plaintiff's admission and the fact that the changes were made prior to the institution of the lawsuit, there was no reason to bring the lawsuit, other than to harass the Defendants.

After the lawsuit was filed and the Defendants' Rule 12(b) Motion was dismissed, the parties began to engage in discovery. A Request for Production of Documents was served upon the Plaintiff, pursuant to which the Plaintiff produced 15,000 pages of documents. None of these documents evidenced that the Plaintiff

was engaged in the selling of goods or services in commerce. In fact, in response to a Request for Documents to substantiate that fact, the Plaintiff responded that the information was too voluminous to produce. If that was the case, then a sampling could have been produced.

In response to Interrogatories inquiring who was confused by the homepage/website, the majority of the names given were members of the Board of Directors who clearly were not confused since they were aware of the situation and Mr. Glassic's attempt to resolve legitimate concerns. Based upon the Answers to the Interrogatories, counsel for the Defendants began scheduling depositions. After the depositions were scheduled, there was an effort to resolve the case, which failed. The Plaintiff then filed its Motion for Voluntary Dismissal. The Defendants answered and filed a Motion for Sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. This Memorandum of Law is submitted in Support of the Motion for Sanctions.

**II.**

**ISSUE**

WHETHER SANCTIONS PURSUANT TO RULE 11 OF THE FEDERAL  
RULES OF CIVIL PROCEDURE SHOULD BE IMPOSED?

Suggested Answer:

Affirmative.



### III.

#### ARGUMENT

SANCTIONS PURSUANT TO RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE SHOULD BE IMPOSED.

Rule 11 of the Federal Rules of Civil Procedure provides for the imposition of sanctions for a violation of Rule 11(b) which provides as follows:

“(b) **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it – an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.”

Rule 11 then prohibits a case from being filed for an improper purpose. See Benton vs. G & O Mfg. Co., 921 F.Supp. 905 (Pa.Comm. 1995). This prohibition, it is submitted, means that a party may not submit a pleading for a purpose of delay, harassment or increasing costs of litigation. See Baker vs. Urban Outfitters,

Inc., 254 F.Supp.2d 346 (2003). Thus, if a party or its attorney acts in bad faith, vexatiously, wantonly or for oppressive reasons, sanctions are appropriate.

In making a determination to impose sanctions, an objective standard is used. See Benton vs. G & O Mfg. Co., supra at page 3. Subjective bad faith then is not required before sanctions can be imposed. See Damiant vs. Adams, 657 F.Supp. 1409 (S.D. Cal. 1987).

The Court, in Dreir and Krump Mfg. Co. vs. International Association of Machinists and Aerospace Workers District No. 8, 802 F.2d 247 (7<sup>th</sup> Cir. 1986) recognized that while it is human nature to crave vindication of a passionately held position even if the position lacks an objective reasonable basis in law. Rule 11 governing sanctions makes it clear that he who seeks vindication in such circumstances and fails to get it must pay his opponent's attorney's fees.

In Ridge vs. U.S. Postal Service, 154 F.R.D. 182 (N.D., Ill. 1992), app dis. 983 F.2d 1073, the Court stated that the Rule 11's improper purpose clause which provides that a party may not use a pleading for purposes of delay, harassment or increasing cost of litigation is analogous to common law torts of abuse of process, based upon a filing of an objectively frivolous lawsuit and malicious prosecution, based upon the filing of a colorable suit in order to impose expenses on a Defendant.

For purposes of the Rule, litigation is frivolous when a party or its attorney fails to make a reasonable inquiry into the facts or the law. See Kelly vs. Mercord

Corp., 775 F.Supp. 1296 (D.C. 1991). The relevant inquiry then in deciding if a pleading is frivolous within the meaning of Rule 11 is whether the party that filed the pleading made a reasonable investigation into the facts and the law. See Ridge vs. U.S. Postal Service, supra.

Thus, the standard test is an objective standard of reasonableness as to the investigation. Gottlieb vs. Westin Hotel Co., 940 F.2d 323 (7<sup>th</sup> Cir. 1997). If a reasonable investigation has not been made, then sanctions should be imposed on a Plaintiff. See Shrock vs. Attier Nurses Register, 810 F.2d 658 (7<sup>th</sup> Cir. 1987).

Finally, in Trace Services, Inc. vs. American Meter Company, 141 F.R.D. 47 (1992), a case brought pursuant to the Lanham Act, the Court declined to grant sanctions against the Plaintiff, since the parties marketed goods and services both utilizing the term “Trace”.

In the present instance, the individual Defendants will present evidence that this litigation was commenced by filing a Complaint for an improper purpose in that the litigation was brought vindictively to harass the Defendants and to force them to incur the cost of litigation. The specific evidence in this regard will be addressed.

In addition, the evidence presented will establish that not only was no reasonable investigation performed prior to the filing of the Complaint, but the Plaintiff disregarded the existing facts and attempted to manipulate the facts to conform with the law. Thus, the Complaint instituting this action was frivolous

and without merit. When this is combined with the aforementioned improper purpose, it is clear that sanctions should be imposed and the individual Defendants awarded attorney's fees and costs which they incurred because of the Plaintiff's actions.

IV.

**CONCLUSION**

For the reasons hereinbefore set forth, Rule 11 sanctions should be imposed upon the Plaintiff.

RESPECTFULLY SUBMITTED

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