

**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.	:	

ORDER

AND NOW, this _____ day of _____, 2011, upon consideration of the attached Lanham Act Motion for Attorney’s Fees and Costs, it is hereby ORDERED that a hearing is scheduled for the _____ day of _____, 2011, at _____ o’clock __.m., Courtroom No. _____, William J. Nealon Federal Building & U.S. Courthouse, 235 N. Washington Ave., Scranton, Pennsylvania.

BY THE COURT:

J.

cc: Marshall E. Anders, Esquire
Nicholas Haros, Esquire

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LANHAM ACT MOTION FOR ATTORNEY’S FEES AND COSTS

AND NOW, come the individual Defendants, Noreen Gorka and Michael Glassic, by their attorneys, Anders & Masington, L.L.C., and move this Honorable Court to impose attorney’s fees and costs upon the Plaintiff pursuant to the Lanham Act, upon the following representations, to wit:

1. That your Movants, Noreen Gorka and Michael Glassic, are the individual Defendants in the above captioned matter.
2. That the Respondent, Stillwater Lakes Civic Association, Inc., is the Plaintiff in the above captioned matter.
3. That voluntary dismissal with prejudice is a final adjudication on the merits in favor of the non-moving party.

4. That Section 35(a), as amended and supplemented 15 U.S.C., Section 1117 provides that a Court in exceptional cases may award reasonable attorney's fees to the prevailing party.

5. That unjustified litigation or a frivolous suit can form the basis of an exceptional case.

6. An exceptional case exists where there is culpable conduct on the part of the losing party such as bad faith.

7. A frivolous lawsuit has also been defined as one that the trademark holder knew or, upon reasonable investigation, should have known was baseless.

8. That the Complaint filed in the above captioned matter purports to allege the following causes of action:

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).

9. That the claims alleged in the Complaint 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 marketed in commerce.

10. That the litigation was brought, since the Defendant Michael Glassic used the website to print news concerning the Plaintiff and Stillwater Lakes Community, including criticism of certain decisions and actions of the Board of Directors of the Plaintiff, which was an exercise of Mr. Glassic's First Amendment right of free speech.

11. That the above captioned litigation was brought in bad faith, since:

A. Noreen Gorka was named as a Defendant, notwithstanding the fact that she was not an owner of the homepage/website and had no involvement with the maintenance and administration of same, a fact which was known to the representatives and agents of the Plaintiff.

B. The Complaint was filed in order to financial harm the individual Defendants, forcing them to incur the cost of litigation.

C. Michael Glassic was named as a Defendant in retaliation for filing a complaint against the Plaintiff with the Bureau of Consumer Protection.

D. At the time the litigation was instituted, changes had been made to the homepage/website, which the Plaintiff, in its Motion for Voluntary Dismissal, alleges are acceptable and do not dilute its name or cause confusion, the

representatives and agents of the Plaintiff being aware at the time the litigation was filed that the aforementioned changes had been made.

12. That the Plaintiff either knew at the time it filed the litigation or would have known upon reasonable investigation that the lawsuit was baseless, since:

A. The Plaintiff is not engaged in the selling of goods and services in commerce.

B. The Defendants do not sell goods or services in commerce.

C. That the Plaintiff and the Defendants are not in competition in commerce in marketing or selling similar goods and services.

D. That the Plaintiff, at the time of the filing of the lawsuit, had not lost any profits due to any unfair competition.

E. That the Plaintiff had no common law right to a trademark for its name.

F. That the Defendant Michael Classic's use of the homepage/website did not dilute the name of the Plaintiff.

G. That the Defendant Michael Classic's use of the homepage/website did not create a likelihood of confusion between the website and the Plaintiff, especially in light of the disclaimers set forth therein.

16. That as a result of the allegations contained in Paragraphs 11 and 12 hereof, this case is an exceptional case and since the individual Defendants are the prevailing parties, they are entitled to an award of attorney's fees and costs.

WHEREFORE, your Movants, by their attorneys, respectfully request this Honorable Court to award attorney's fees and costs pursuant to Section 35(a) of the Lanham Act.

RESPECTFULLY SUBMITTED

ANDERS & MASINGTON, L.L.C.

By:



MARSHALL E. ANDERS, ESQUIRE
Attorney I.D. #17724
18 North 8th Street
Stroudsburg, PA 18360
(570) 424-1117
Attorney for Defendants.