

NO. 06-84870 **FILED**
 2006 MAY 19 9:11
 IN THE DISTRICT COURT
 DISTRICT CLERK
 DALLAS CO., TEXAS
 DEPUTY
 G-134th
 JUDICIAL DISTRICT
 DALLAS COUNTY, TEXAS

COMPANA LLC

Plaintiff,

vs.

FABJOB INC.

Defendant.

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**ORIGINAL PETITION FOR
 DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff Compana LLC, brings this action against Defendant Fabjob Inc. ("FJ") and for such would show as follows:

I. DISCOVERY CONTROL PLAN

1. This is an action seeking declaratory judgment, injunctive relief and damages resulting from Defendant's attempts to hijack Plaintiff's domain name <fabjobs.com> and Plaintiff asserts that this case should proceed under Discovery Control Plan Level 2.

II. PARTIES

2. Plaintiff Compana LLC is a limited liability company, organized under the laws of Wyoming, with a principal place of business in Dallas County, Texas.

3. Defendant Fabjob, Inc. is a corporation organized under the laws of the Province of Alberta, Canada that upon information and belief does business in Texas, with its principal place of business located at 19 Horizon View Court, Calgary, Alberta T3Z 3M5. Fabjob does not maintain a registered agent in the State of Texas. Defendant does not maintain a registered agent for service in

the State of Texas, and pursuant to TEX.R.CIV.P. 108 and TEX.CIV.PRAC. & REM. CODE § 17.044 may be served by service upon the Secretary of State for the State of Texas, P. O. Box 12079, Austin, Texas 78711-2079, who may then effect service upon Defendant at its home office and chief officer and/or president, to wit: Chief Executive Officer Tag Goulet, 19 Horizon View Court, Calgary, Alberta T3Z 3M5.

III. JURISDICTION AND VENUE

4. This court has jurisdiction over the subject matter of this case as it is an action under Texas Declaratory Judgments Act for declaratory judgment and injunctive relief, and the money damages sought, in the form of reasonable attorneys' fees and costs, are within the jurisdictional limits of the court.

5. This court has personal jurisdiction over Defendant because Defendant upon information and belief been engaged in business in the State of Texas and has willfully availed himself of the jurisdiction by pursuing remedies pursuant to the Uniform Domain Name Dispute Resolution Process for the reason that the registrar of the disputed name is based in the State of Texas. In combination, these actions touch Texas residents on an ongoing, continual basis.

6. Venue is proper under 15.002(a)(1) and (4) of the Texas Civil Practices & Remedies Code in that all or a substantial portion of the events complained of occurred in Dallas County and the property which forms the basis of this suit, namely the domain name <fabjobs.com> is registered with a registrar based in Dallas County, Texas, and Dallas County is the location of the home office of the Plaintiff at the time of the accrual of the cause of action.

IV. FACTUAL ALLEGATIONS

7. Plaintiff is an ICANN-accredited domain name registrar, also engaged in the business of providing sponsored Internet locator services, through generic and descriptive domain names

comprised of common words and useful phrases. The sponsored content appearing on Plaintiff's Internet locator sites is supplied by third-party search engines and advertising consolidators, who match these generic and descriptive names with keywords, in order to provide subscribing advertisers with targeted customer traffic, and consumers with a means of locating goods and service through reference to generic, descriptive, and geographically descriptive terms. This business is an important source of revenue for Plaintiff Company.

8. The registration of such domain names has become fiercely competitive as more users of the Internet seek information about products/services in the virtual marketplace instead of the brick-and-mortar marketplace. There is widespread consumer demand for online information about products/services as increasing numbers of Americans become web savvy seekers of information. In fact, some venture capitalists invest in start-up companies, and some start-up companies have evolved into publicly traded companies, whose core business is the registration and/or acquisition of domain names comprised of generic, descriptive, and geographically descriptive common nouns and adjectives in everyday use in the U.S. Some companies that operate on this business model use proprietary computer programs that seek available domain names that meet the generic/descriptive/geographically descriptive criteria and register them automatically. Specific domain names are not selected because they are trademarks/service marks. In fact, quite the opposite. It is the generic/descriptive/geographically descriptive nature of these domain names that meet the criteria of registrability for use as web sites that deliver advertising targeted to Internet users seeking such information. The portfolios of domain names registered by entrepreneurs some years ago, and Plaintiff is among them, are long term-investments that yield a steady stream of income for the owners of those portfolios and/or the shareholders in those companies. As a result of the increased value over time of these domain names, because more customers are using the Internet to

seek information about products/services and to actually purchase products/services, some business owners have sought trademark protection for these generic, descriptive, and geographically descriptive nouns and adjectives in order to make a claim for domain names previously registered by entrepreneurs under this new Internet targeted advertising business model. That is the case before the court.

9. One of Plaintiff's registered domain names, <fabjobs.com>, is the HTTP URL for a web site offering information about products/services targeted to users of the Internet who seek such information. The <fabjobs.com> domain name is a combination of two descriptive words. In common use in the semiconductor industry, "fab" is a noun meaning a manufacturing plant that makes semiconductor devices. In another common use, the slang adjective "fab" was popularized in the 1960's when The Beatles became known as "The Fab Four" in the media. The slang adjective "fab" is derived from the descriptive adjective "fabulous," meaning "extremely pleasing; wonderful." More recently, the gay stars of the hit BRAVO cable television show "Queer Eye for the Straight Guy" call themselves the "Fab Five." In the world of sports, the five freshman basketball players in 1991 at the University of Michigan in Ann Arbor are the subject of "The Fab Five: Basketball, Trash Talk, and "The American Dream," a 1993 book by Mitch Albom (later famous for ("Tuesdays with Morrie"). An entirely different common definition of "fab," this one an abbreviation for the noun "fabrication," meaning "1. a deliberately false or improbable account [syn: fiction, fable] 2: writing in a fictional form [syn: fictionalization, fictionalisation] 3: the act of making something (a product) from raw materials; "the synthesis and fabrication of single crystals"; "an improvement in the manufacture of explosives"; "manufacturing is vital to Great Britain" [syn: manufacture] 4: the act of constructing something (as a piece of machinery) [syn: assembly] [ant: dismantling] 5: the deliberate act of deviating from the truth [syn: lying, prevarication]" (WordNet 2.0, 2003, Princeton University).

“Jobs” is a plural noun meaning “1. a regular activity performed in exchange for payment, especially as one's trade, occupation, or profession 2. a position in which one is employed” (The American Heritage Dictionary of the English Language, Fourth Edition, 2000, Houghton Mifflin Company).

10. On June 2, 2002, in accordance with its business model, Plaintiff Compana registered the domain name <fabjobs.com> and has operated that website in conformity with that business model since that time. On December 16, 2003, the trademark “FABJOB” was registered (U.S. Reg. No. 2795637 in International Class 09) and on January 11, 2005 “FABJOB.COM FROM DRAB JOB TO FAB JOB” (U.S. Reg. No. 2917697 in International Class 09).

11. Plaintiff had no constructive or actual knowledge of the domain name when it was registered. Further it had no actual knowledge of the purported trademarks until May 10, 2006, when it received a document from Defendant complaining Plaintiff’s domain name.

12. Furthermore, that document published by Defendant described Plaintiff’s activities as “typosquatting,” and said that the domain name had been registered in bad faith. Such statements implicitly accused Plaintiff of the illegal activity of “cyber-squatting.” Such statements were false and Defendant knew or should have known of the falsity of the statements.

13. Plaintiff have complied with all conditions precedent to the filing of this lawsuit.

V. CAUSES OF ACTION

Cause 1 — Declaratory and Injunctive Relief subject to 15 U.S.C. § 1114

14. Plaintiff incorporates all prior statements and incorporates them by reference.

15. As a result of Defendant’s unfounded allegations of “typo squatting” against Plaintiff, with respect to its <fabjobs.com> domain name, an actual, present and justiciable controversy exists between Plaintiff and Defendant, as to whether Plaintiff has violated 15 U.S.C. § 1125(d); as to

whether Plaintiff is entitled to retain and use the subject domain; and as to the extent and scope, if any, of Defendant's rights.

16. Plaintiff Compana seeks a Declaratory Judgment from this Court, that Plaintiff has not engaged in cyberpiracy or typo squatting with respect to its registered <fabjobs.com> domain name; has and is not infringing or diluting any rights that Defendant may, or may not, have in its marks referenced in the trademark/service mark registrations described previously; that the terms "fabjob," "fab job," "fabjobs," and "fab jobs" are descriptive and/or generic and have no secondary meaning with respect to the goods/services recited by Defendant in its trademark/service mark registrations described in Paragraph 14 above; and that Plaintiff is entitled to continue owning and using its <fabjobs.com> domain name for the delivery of simple, useful, organized information about products/services targeted to search results obtained by users of the Internet.

Cause 2 — Declaratory Judgment of Non-Infringement on Trademark/ Service Mark

17. Plaintiff incorporates all prior statements and incorporates them by reference.

18. Plaintiff Compana's registration of its domain name <fabjobs.com> preceded Defendant's registration of its descriptive term FABJOB as a trademark/service mark (June 2, 2002 for Plaintiff, December 16, 2003 and January 11, 2005 for Defendant. The terms "fabjob," "fab job," "fabjobs," and "fab jobs" are descriptive and/or generic and have no secondary meaning with respect to the goods/services recited by Defendant in its trademark/service mark registrations described previously. Defendant's descriptive term FABJOB, therefore, is not eligible for protection under the Lanham Act because Defendant did not submit evidence of acquired distinctiveness or secondary meaning. Defendant's registration of its descriptive term cannot be used as a sword to wrest Plaintiff's registered domain name <fabjobs.com> from Plaintiff's ownership and control.

19. Plaintiff is therefore entitled to a declaratory judgment that its registration and use of the domain name <fabjobs.com> does not infringe on any rights Defendant may, or may not, have in its descriptive term FABJOB under either common law or TEX. BUS. & COM. CODE ANN. § 16.26, *et seq.*

Cause 3 — Declaratory Judgment of Non-Dilution of Trademark/ Service Mark

20. Plaintiff incorporates all prior statements and incorporates them by reference.

21. Plaintiff Compana seeks and is entitled to declaratory judgment that its registration and use of the < fabjobs.com > domain name does not violation the Texas Anti-Dilution Statute under TEX. BUS. & COM.CODE ANN. § 16.29 because: (1) under the Lanham Act, Defendant’s descriptive term FABJOB is merely descriptive, not inherently distinctive, with respect to the goods/services recited by Defendant in its applications to register the term at the USPTO; and, (2) Plaintiff’s registration and use of the domain name < fabjobs.com > does not create a likelihood of dilution with respect to Defendant’s descriptive term FABJOB.

Cause 4 — Injunctive Relief Prohibiting Transfer of the Domain Name <fabjobs.com >

22. Plaintiff Compana incorporates all prior statements and incorporates them by reference.

23. As part and parcel of the declaratory judgment entitling Plaintiff Compana to continue to own and to use the domain name < fabjobs.com >, Plaintiff also seeks and is entitled to a permanent injunction against Defendant prohibiting it from effectuating the transfer to it of Plaintiff’s domain name <fabjobs.com> through court proceeding or by any other means without Plaintiff’s consent.

Cause 5 — Request for Reimbursement of Reasonable Attorneys’ Fees and Costs

24. Plaintiff incorporates all prior statements and incorporates them by reference.

25. Plaintiff Compana brings this suit pursuant to the Texas Uniform Declaratory Judgments Act, TEX. CIV. PRAC. & REM. CODE ANN. § 37.001-.011 and other statutes as may apply, and requests an award of costs and reasonable and necessary attorney's fees as are equitable and just.

Cause 6 — Defamation and Business Disparagement

26. Plaintiff incorporates all prior statements and incorporates them by reference.

27. Defendant's publication of statements branding Plaintiff Compana as "typosquatters" falsely imputed an allegation of illegal conduct to Plaintiff. These disparaging labels concern and are related to Plaintiff's economic interests, reputation and/or interest in property. These statements were published with malice and without privilege and as a result Plaintiff has or will suffer special damages.

Cause 7 — Tortious Interference with Peaceful Use and Enjoyment of Property

28. Plaintiff incorporates all prior statements and incorporates them by reference.

29. Defendant has intentionally interfered with Plaintiff's right to the peaceful use and enjoyment of property, causing injury to Plaintiff. Defendant's intentional invasion of or interference with property and property rights caused injury without just cause or excuse, for which Plaintiff seeks recovery of compensatory damages and, in so far as such acts were committed with malice, recovery of exemplary damages.

VI. JURY DEMAND

30. Plaintiff demands a trial by jury on all issues.

VII. CONCLUSION AND PRAYER

In view of the above, Plaintiff respectfully prays that this Court grant judgment against Defendant and in favor of Plaintiff in all respects and award Plaintiff the following:

- a) Declaratory judgment that it is not infringing on any trademark or service mark rights of Defendant;

- b) Declaratory judgment that it is not diluting any trademark or service mark owned by Defendant;
- c) Injunction prohibiting any transfer of the domain name <fabjobs.com>;
- d) Plaintiff's costs and reasonable and necessary attorneys' fees;
- e) Monetary damages, including nominal, special, general, statutory and/or punitive damages, along with pre-judgment and post-judgment interest as allowed by law, and
- f) Such other and further relief as the Court shall determine to be just and proper.

Respectfully submitted,

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PLAINTIFF DEMANDS TRIAL BY JURY