

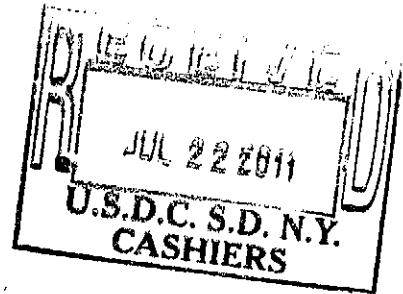
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JUDGE BERMAN

11 CIV 5079

Attorneys for Plaintiff
WALTER ARNSTEIN, INC.,
d/b/a THE NATURAL SAPPHIRE COMPANY,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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WALTER ARNSTEIN, INC., d/b/a THE NATURAL
SAPPHIRE COMPANY,

Index No.:

Plaintiff,

-against-

TRANSPACIFIC SOFTWARE PVT. LTD.,
PRASHANT
TELANG,

COMPLAINT FOR
CYBERSQUATTING;
DEFAMATION; TORTIOUS
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE

Defendants.

JURY TRIAL DEMANDED

X

Plaintiff Walter Arnstein, Inc., d/b/a The Natural Sapphire Company, by its attorneys, for its
complaint against Defendants TransPacific Software Pvt. Ltd., ("TransPacific"), and Prashant
Telang ("Telang"), alleges as follows:

Subject Matter Jurisdiction and Venue

1. This is an action for cybersquatting under 15 U.S.C. § 1125(d); for defamation under
New York common law; and for tortious interference with prospective economic

advantage under New York Common Law. This Court has subject matter jurisdiction over the claims pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338.

2. This Court has supplemental jurisdiction over the claims in this Complaint that arise under state statutory and common law of the State of New York pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.
3. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to the claim and the threatened and actual harm to Plaintiff occurred in this District by reason of Defendants' conduct as alleged below. Venue is also proper in this Judicial District pursuant to 28 U.S.C. § 1391(d) because Defendants are aliens.

Parties and Personal Jurisdiction

4. Plaintiff Walter Arnstein, Inc., d/b/a The Natural Sapphire Company ("Natural Sapphire Company") is a New York corporation with its principal place of business located at 6 East 45th Street, 20th Floor, New York, New York, 10017.
5. Defendant TransPacific is an Indian company with a principal address believed to be 207, Madhva, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051, India.
6. Defendant Telang is an individual residing at 21, 2nd Floor, Aradhana , R K Patkar Co-Op. Housing Society Ltd , Off Turner Road , Bandra (W) , Mumbai - 400050 India.
7. Defendant Telang and Defendant TransPacific ("Defendants"), each are working together and have worked together as a single entity, and in collusion with each other, for the purpose of perpetrating the unlawful activities complained of in this Complaint.

8. At all times material to this action, each of Defendants was the agent, servant, employee, partner, alter ego, subsidiary, or joint venture of the other Defendant, and the acts of each Defendant were in the scope of such relationship; in doing the acts and failing to act as alleged in this Complaint, each of the Defendants acted with the knowledge, permission, and the consent of the other Defendant; and each Defendant aided and abetted the other Defendant in the acts of omissions alleged in this Complaint.

Background

9. Natural Sapphire Company is a third-generation, family-owned company, specializing in sapphires and sapphire jewelry.
10. Natural Sapphire Company adopted THE NATURAL SAPPHIRE COMPANY™ as a trade name in 2004, when Michael Arnstein, the founder's grandson and current Chief Executive Officer, moved the business almost exclusively online.
11. On or about March 30, 2004, the company registered the domain name <thenaturalsapphirecompany.com>, which it still has registered, and uses in connection with its sapphires, sapphire jewelry, and its on-line retail store services featuring sapphires and sapphire jewelry.
12. On November 25, 2004, Natural Sapphire Company asked Telang to register the domain name <NaturalSapphireCompany.com> (the "Domain Name") on its behalf.
13. Telang registered the name in the name "Michael Arnstein, 55 West 45th Street, 5th Floor, New York, NY 10036.
14. As recently as January 29, 2011, the Domain Name was still registered in the name of Natural Sapphire Company's Chief Executive Officer, Michael Arnstein.
15. Two days later, on January 31, 2011, Telang replaced Michael Arnstein's contact details

with his own.

The Business of Plaintiff

16. Natural Sapphire began using THE NATURAL SAPPHIRE COMPANY in commerce in the United States as a mark in connection with its sapphires, sapphire jewelry, and on-line retail store services featuring sapphires and sapphire jewelry as early as December 31, 2004.
17. Since that time, Natural Sapphire Company has used the trade name and mark THE NATURAL SAPPHIRE COMPANYTM continuously in commerce in the United States in connection with its sapphires, sapphire jewelry, and on-line retail store services featuring sapphires and sapphire jewelry, and has spent considerable time, money, and effort in promoting and developing customer recognition and goodwill in the United States and elsewhere of its trade name and mark THE NATURAL SAPPHIRE COMPANYTM in connection with its sapphires, sapphire jewelry, and on-line retail store services featuring sapphires and sapphire jewelry.
18. Natural Sapphire Company has spent approximately \$1 million in advertising its sapphires and sapphire jewelry under the trade name and mark THE NATURAL SAPPHIRE COMPANYTM, and has advertised and promoted its sapphires and sapphire jewelry under and in connection with the mark THE NATURAL SAPPHIRE COMPANYTM through a variety of media.
19. In particular, Natural Sapphire Company has advertised and promoted its sapphires, sapphire jewelry, and on-line retail store services featuring sapphires and sapphire jewelry under and in connection with the mark THE NATURAL SAPPHIRE

COMPANYTM through the use of "organic" keywords and through the purchase of keywords from the GOOGLE AdWords program, as well as similar programs sponsored by other search engines, such as the YAHOO! and BING search engines.

20. Since 2004, Natural Sapphire Company's keywords purchased from the GOOGLE AdWords program have resulted in approximately 1.7 million clicks and 1.6 million impressions.
21. In addition, many of Natural Sapphire Company's organic keywords are ranked as the #1, #2, or #3 keyword, and are worth millions of dollars in sales each year.
22. Natural Sapphire Company also has advertised its sapphires, sapphire jewelry, and on-line retail store services featuring sapphires and sapphire jewelry under and in connection with the mark THE NATURAL SAPPHIRE COMPANYTM through the use of print advertisements in Avenue magazine, which is directed at a sophisticated and high net-worth readership in the New York region.
23. Further, numerous print and internet articles about the sapphires and sapphire jewelry that Natural Sapphire Company sells under and in connection with the mark THE NATURAL SAPPHIRE COMPANYTM have appeared in many national print and internet publications, including, but not limited to, The New York Times, ABC News, CBS News, New York Post, Reuters, BBC, USA Today, The Wall Street Journal, Daily News, The New Yorker, National Geographic, Luxxist, The Independent, Bloomberg Businessweek, Luxx, and Organic Style.
24. Likewise, numerous television stations have featured segments about the sapphires and sapphire jewelry that Natural Sapphire Company sells under and in connection with the mark THE NATURAL SAPPHIRE COMPANYTM, including, but not limited to, CNN,

ABC News, Fox Five News, Good Morning America, and The Wendy Williams Show.

25. Natural Sapphire Company also has distributed press releases about its sapphires and sapphire jewelry, routinely distributes promotional material to its customers that displays the mark THE NATURAL SAPPHIRE COMPANYTM with the shipments that they order from Natural Sapphire Company, and has attended industry trade shows in the past.

26. Video clips from some of the television segments easily are accessible on Natural Sapphire Company's website by way of the following link:

<http://www.thenaturalsapphirecompany.com/Sapphires/Company/Press/>.

27. By virtue of Natural Sapphire Company's long and substantially exclusive use and extensive promotion of THE NATURAL SAPPHIRE COMPANYTM, the mark has become distinctive for the company's sapphires, sapphire jewelry, and on-line retail store services featuring sapphires and sapphire jewelry, and Natural Sapphire Company has achieved sales in excess of \$20 million from its sapphires and sapphire jewelry sold under and in connection with the mark THE NATURAL SAPPHIRE COMPANYTM since 2004.

28. In order to protect its valuable common law rights in and to the mark THE NATURAL SAPPHIRE COMPANYTM, Natural Sapphire Company has applied to register the mark THE NATURAL SAPPHIRE COMPANYTM with the United States Patent and Trademark Office on the Principal Register under Section 2(f) of the United States Trademark Act, 15 U.S.C. § 1052(f), in connection with its sapphires, sapphire jewelry, and on-line retail store services featuring sapphires and sapphire jewelry, based on the distinctiveness the mark has acquired.

29. As such, Natural Sapphire Company acquired valid common law rights in its mark THE

NATURAL SAPPHIRE COMPANY™ long before Defendants hijacked the registration of the Domain Name on or about January 31, 2011.

The Defendants and Their Wrongful Conduct

30. Natural Sapphire Company hired Defendants in March, 2004 to design its website, located at www.thenaturalsapphirecompany.com, and to develop software to be used in connection with the website.
31. Plaintiff also instructed Defendants to purchase a number of domain names on Natural Sapphire Company's behalf for use in connection with Natural Sapphire Company's business.
32. Telang purchased the Domain Name on behalf of Natural Sapphire Company on or about November 25, 2004, using Natural Sapphire's corporate credit card.
33. Whois records list Natural Sapphire Company's CEO, Michael Arnstein, as the registrant of the Domain Name from 2006 through January 2011.
34. Telang, the founder and sole owner of TransPacific, was primarily responsible for the work performed by Defendants for Natural Sapphire Company.
35. Natural Sapphire Company compensated Defendants for their work in the amount of approximately \$240,000USD per year.
36. Natural Sapphire Company was forced to terminate its relationship with Telang on or about January 5, 2011 as a result of Telang's failure to cooperate and to perform his duties, as required.
37. Soon thereafter, Natural Sapphire Company's website, located at

www.thenaturalsapphirecompany.com repeatedly became disabled—and still to this day becomes disabled—as a result of Telang's attempts to harass Natural Sapphire Company, disrupt and disparage its business, and extort money from the company.

38. On or about January 31, 2011, without the knowledge or authorization of Natural Sapphire Company, Telang fraudulently made himself the owner of the Domain Name.

39. The archived WHOIS records for the Domain Name show Natural Sapphire Company's Chief Executive Officer as the registrant until Telang made this change.

40. Since seizing control of the Domain Name, Telang has wrongfully used the Domain Name to: divert visitors from Natural Sapphire Company's The Natural Sapphire Company Website; threaten Natural Sapphire Company; impersonate Natural Sapphire Company's Chief Information Officer; and re-direct users interested in Natural Sapphire Company to a website listing links to forums in which Telang, posing as a customer of Natural Sapphire, has posted false, disparaging, and malicious statements about Natural Sapphire Company.

41. Telang sends daily emails to Natural Sapphire Company threatening to destroy Natural Sapphire Company's search engine optimization ("SEO") and boasting of how many hits he has diverted away from Natural Sapphire Company's site, located at www.TheNaturalSapphireCompany.com to Telang's website, found at www.NaturalSapphireCompany.com.

42. Telang diverted over 2900 users away from Natural Sapphire Company in May, alone.

43. No one but Telang would know the traffic statistics for the Domain Name. On May 28, 2011, Telang wrote:

naturalsapphirecompany.com domain received 2100 unique visitors in May 2011 its increasing at 50% you are getting butchered on SEO I am enjoying this. Your would be customers are cancelling buying from you after visit naturalsapphirecompany.com and further writing it on forums and this is just the beginning

44. Two days later, Telang followed that missive up with the following:

More then 2900 hits on naturalsapphirecompany in May 2011 amongst them 90% through direct URL typing with this domain I will finish your seo in next 3 months you need to quickly go for appeal with three bench adjudicators.

45. On June 1, 2011, Telang further threatened:

You tried to break up my company exactly six months back Pay back time....by Nov I will ensure that not even a single sale happens through your web site We are working extra time to kill your SEO . We will put naturalsapphirecompany.com on the top And effectively bury your YOUR web site in toilet and THAT IS A PROMISE TELL THAT FAT MAN TO KEEP WATCHING

46. Telang is openly using Natural Sapphire Company's Domain Name, which Telang

hijacked, to damage Natural Sapphire Company's business, and then taunting Natural Sapphire Company about it.

47. Such conduct is compelling evidence of bad faith; it would be difficult to think of a more pernicious and willful set of facts.

48. Telang also repeatedly changed the URL on Natural Sapphire Company's Wikipedia page to Telang's infringing Domain Name, all in an effort to redirect and confuse consumers searching for Plaintiff's business.

49. Finally, Telang has demanded an asking price of \$100,000 to stop his course of harassment and return the Domain Name to Natural Sapphire Company. He also offered to sell the Domain Name to a third party whom he believed either to be Natural Sapphire Company, or a competitor of Natural Sapphire Company, for \$78,000.

50. As a result of Defendants' malicious conduct, Natural Sapphire Company has suffered irreparable damage to its reputation, and has lost substantial sales.

The UDRP Proceedings

51. Natural Sapphire Company filed a complaint with the National Arbitration Forum on April 1, 2011.

52. The Panel denied Natural Sapphire Company's Complaint on the basis that the dispute was beyond the scope of the Policy.

53. Natural Sapphire Company filed a second proceeding with The National Arbitration Forum on June 7, 2011, on the basis of new evidence.

54. The second Panel denied the second claim, on the basis that the newly submitted evidence only went to the issue of bad faith, and not to the issue whether the dispute was within the scope of the Policy.

55. The UDRP decisions were not on the merits, and have no precedential effect on these proceedings.

FIRST CAUSE OF ACTION

[Cybersquatting Under 15 U.S.C. § 1125(d)]

56. Plaintiff realleges and incorporates by reference Paragraphs 1 through 55 as though fully set forth here.

57. Plaintiff is informed and believes, and on that basis alleges, that Defendants registered and are using the Domain Name.

58. The THE NATURAL SAPPHIRE COMPANYTM Mark was distinctive and entitled to protection as a common law trademark at the time that Defendants hijacked the Domain Name and registered in their own names.

59. The Domain Name is confusingly similar to the THE NATURAL SAPPHIRE COMPANYTM trademark and <TheNaturalSapphireCompany.com> domain name. The only difference between the Domain Name and the THE NATURAL SAPPHIRE COMPANYTM Mark is the word “the.”
60. Plaintiff is informed and believes and on that basis alleges that Defendants registered, trafficked in, or used the Domain Name in bad faith and with a bad faith intent to profit from the goodwill long established by Plaintiff in the THE NATURAL SAPPHIRE COMPANYTM Mark.
61. Plaintiff is informed and believes and on that basis alleges that Defendants registered, trafficked in, or used the Domain Name in bad faith and with a bad faith intent to prevent Plaintiff from registering its trademark in a domain name, and to harm the goodwill established by Plaintiff in the THE NATURAL SAPPHIRE COMPANYTM Mark.
62. Defendants do not have any intellectual property rights or any other rights in the THE NATURAL SAPPHIRE COMPANYTM Mark.
63. Plaintiff is informed and on that basis alleges that the Domain Name does not consist of the legal name of any of the Defendants, nor a name that is otherwise commonly used to identify any Defendants.
64. Plaintiff is informed and on that basis alleges that Defendants have not made any prior use of the Domain Name in connection with a *bona fide* offering of any goods or services.
65. Plaintiff is informed and on that basis alleges that Defendants have not made any *bona fide* fair use of the THE NATURAL SAPPHIRE COMPANYTM Mark on a website accessible under the Domain Name.

66. Plaintiff is informed and on that basis alleges that Defendants registered and used the Domain Name to divert customers from Plaintiff's website to a website accessible under the Domain Name, to harm and disparage Plaintiff's business, and to extort Plaintiff into paying Defendants an exorbitant sum to cease their harassment.
67. Defendants' registration, use, or trafficking in the Domain Name constitutes cybersquatting in violation of 15 U.S.C. § 1125(d), entitling Plaintiff to relief.
68. By reason of Defendants' acts alleged herein, Plaintiff's remedy at law is not adequate to compensate it for the injuries inflicted by Defendants. Accordingly, Plaintiff is entitled to preliminary and permanent injunctive relief pursuant to 15. U.S.C. § 1116.
69. By reason of Defendants' acts alleged herein, Plaintiff's are entitled to recover Defendants' profits, actual damages and the costs of action, or statutory damages under 15 U.S.C. § 1117, on election by Plaintiffs, in an amount of one hundred thousand dollars (\$100,000) per domain name infringement.
70. This is an exceptional case, making Plaintiff eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

SECOND CAUSE OF ACTION

[Common Law Defamation and Trade Libel]

71. Plaintiff realleges and incorporates by reference Paragraphs 1 through 70 as though fully set forth here.
72. Defendants have intentionally posted false statements about Plaintiff and its products on various blogs and forums, as well as on the website, located at www.NaturalSapphireCompany.com.
73. These statements were made maliciously and willfully, and were intended to cause harm

to Plaintiff's business and reputation.

74. Among other statements, Defendants have posed as customers on chat forums, falsely accused Plaintiff of grossly overcharging customers, selling inferior merchandise, committing fraud, breaching credit card confidentiality, photoshopping images of gem stones, and engaging in criminal conduct.

75. These statements were false, and were published to third parties across the Internet.

76. As a result of Defendants' acts, Plaintiff has suffered irreparable damage to its reputation and damages in an amount to be determined at trial.

77. As a result of the willful and malicious nature of the defamation, Plaintiff is entitled to punitive damages.

THIRD CAUSE OF ACTION

[Tortious Interference with Prospective Economic Advantage]

78. Plaintiff realleges and incorporates by reference Paragraphs 1 through 77 as though fully set forth here.

79. Plaintiffs have a reasonable business expectancy of selling sapphire rings and jewelry to consumers who search for Plaintiff's name, "The Natural Sapphire Company," or "Natural Sapphire Company," on the Internet.

80. Defendants knew of that expectancy, and intentionally posted false and misleading statements about Plaintiff and its products on various blogs and forums, as well as on the website, located at www.NaturalSapphireCompany.com, with the intent of deliberately interfering with these clients and their business relationship with Plaintiff.

81. These statements were made maliciously and willfully, and were intended to cause harm

to Plaintiff's business and reputation, and to prevent Plaintiff from making sales to customers who sought Plaintiff out based on Plaintiff's reputation as a source for high quality sapphires.

82. Among other statements, Defendants have posed as customers on chat forums, falsely accused Plaintiff of grossly overcharging customers, selling inferior merchandise, committing fraud, breaching credit card confidentiality, photoshopping images of gem stones, and engaging in criminal conduct—all with the intent of destroying Plaintiff's business.

83. As a result of Defendants' acts, Plaintiff has suffered irreparable damage to its reputation and damages in an amount to be determined at trial.

84. As a result of the willful and malicious nature of Defendants' conduct, Plaintiff is entitled to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants awarding Natural Sapphire Company:


1. statutory damages for cybersquatting in the amount of \$100,000;
2. actual damages in an amount to be determined at trial due to commercial defamation and trade libel;
3. actual damages in an amount to be determined at trial due to tortious interference with prospective economic advantage;
4. punitive damages;
5. attorney's fees and costs; and

6. such other relief as the Court deems just and equitable under the circumstances.

Dated: July 22, 2011

Respectfully submitted,

Lewis & Hand, LLP



Brett E. Lewis

Attorneys for Plaintiff
Walter Arnstein, Inc.,
d/b/a The Natural Sapphire Company

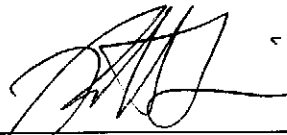
DEMAND FOR TRIAL BY JURY

Please take notice that Plaintiff, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, hereby demands trial by jury for all issues so triable.

Dated: July 22, 2011.

Respectfully submitted,

Lewis & Hand, LLP

A handwritten signature in black ink, appearing to read "Brett E. Lewis", is written over a horizontal line.

Brett E. Lewis

Attorneys for Plaintiff
Walter Arnstein, Inc.,
d/b/a The Natural Sapphire Company