



Pattishall Client Prevails in Ground-Breaking Domain Name Class Action

January 8, 2009

Pattishall lawyers Brett August, Bradley Cohn and Alexis Payne recently won another round in a closely-watched lawsuit involving Google and others regarding allegedly unfair use of domain names. The plaintiffs had attempted to bring a class action against multiple defendants for purported trademark infringement, cybersquatting and deceptive trade practices. In this important victory on behalf of our client Internet REIT ("Ireit"), for which the firm has long served as trademark and domain name counsel, we successfully showed that the many differences among the defendants and the intellectual properties at issue precluded class certification. In refusing to certify the class, the court stated: "class members cannot be treated alike because of the requisite individual inquiries regarding ownership, distinctiveness and the effect of the affirmative defenses that are inherent in a trademark-related action."

In earlier motion practice, Pattishall lawyers had already succeeded in dismissing Ireit from five counts of the complaint. In this most recent ruling, the court agreed with the argument that trademark issues cannot properly be adjudicated as a class because individual issues predominate. A ruling allowing for class certification could have deprived many trademark owners of the ability to assert their rights separately under existing laws governing infringement, cybersquatting and unfair competition. Importantly, it could also have deprived trademark owners of the right to recover statutory damages of up to \$100,000 per domain name for cybersquatting.

The case is *Vulcan Golf, LLC, John B Sanfilippo & Son, Inc., Blitz Realty Group, Inc., and Vincent E. "Bo" Jackson, Individually and on Behalf of All Others Similarly Situated v. Google Inc., Oversee.net, Sedo LLC, Dotster, Inc., a/k/a Revenue Direct.com, Internet Reit, Inc., d/b/a Ireit, Inc., and John Does I-X*, N.D. Ill. Case No. 07 C 3371, ruling of Dec. 18, 2008.

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