

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

EDGAR ONLINE, INC., Plaintiff,

-vs-

DAN PARISI, d/b/a WALLSTREETEDGE, Defendant.

TRANSCRIPT OF PROCEEDINGS Newark, New Jersey

CIVIL NO. 99-2288

June 4, 1999

BEFORE: THE HONORABLE JOHN W. BISSELL, U.S.D.J.

Appearances: MC AULAY NISSEN GOLDBERG KIEL & HAND BY: GERALD H. KIEL, ESQ.,

and

JENNIFER D. SILVERMAN, ESQ., For the Plaintiff. SHANLEY & FISHER BY: CHARLES A. REID, III, ESQ., SOKOLOW, DUNAUD, MERCADIER & CARRERAS BY: MICHAEL J. CALVEY, ESQ., For the Defendant.

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above-entitled proceedings.

Joanne M. Caruso, Official Court Reporter

THE COURT: Counsel, I'm going to expedite this matter. I'm going to read my decision from the bench, although I don't usually do that.

In doing so, I will be omitting citations. I have handed a copy of this text, however, to Miss Caruso, my court reporter, and she will transcribe, as promptly as requested, the full opinion, including the citations.

The Court starts with a recitation first of that with which we're quite familiar, but nevertheless bears reciting, the preliminary injunction standard that must be applied.

It is well-established that the Court must consider the following factors in deciding whether to grant a preliminary injunction:

One, whether the movant has shown a reasonable probability of success on the merits; two, whether the movant will be irreparably injured by denial of such relief; three, whether granting preliminary relief will result in even greater harm to the nonmoving party; and, four, whether granting preliminary relief will be in the public interest.

SI Handling Systems, Inc. v. Heisley, 753 F.2d 1244, 1254 (3d Cir. 1985); **see also AT&T v. Winback and Conserve Program, Inc.**, 42 F.3d 1421, 1427 (3d Cir. 1994), **cert. denied**, 514 U.S. 1103 (1995); **Hoxworth v. Blinder, Robinson & Co., Inc.**, 903 F.2d 186, 197-98 (3d Cir. 1990); **Continental Group v. Amoco Chemicals Corp.**, 614 F.2d 351, 356-57 (3d Cir. 1980).

An "injunction should issue only if the plaintiff produces evidence sufficient to convince the district court that all four factors favor preliminary relief." **AT&T v. Winback and Conserve Program**, 42 F.3d at 1427 (citing **Opticians Ass'n v. Independent Opticians**, 920 F.2d 187, 192 (3d Cir. 1990); **Merchant and Evans, Inc. v. Roosevelt Bldg. Prods.**, F.2d 628, 632-33 (3d Cir. 1992). The Court addresses each of the relevant factors in turn.

Likelihood of Success on the Merits.

Plaintiff's likely to succeed on the merits in this action. Plaintiff asserts claims against Mr. Parisi for: One, false designation of origin and unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. Section 1125(a)(1); two, trademark infringement under the New Jersey statutes, N.J.S.A. 56:4-1; and, three, unfair competition under New Jersey common law. The analysis dictated by Section 43(a) of the Lanham Act applies to plaintiff's state law claims as well. **See Jews for Jesus v. Brodsky**, 993 F.Supp. 282, 310-11 (D.N.J.) *aff'd*, 159 F.3d 1351 (3d Cir. 1998).

Section 43(a) of the Lanham Act States in pertinent part:

(1) "Any person who, on or in connection with any goods or services ... uses in commerce, any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact which --

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship or approval of his or her goods, services, or commercial activities by another person, or.

(B) in commercial advertising or promotion. misrepresents the nature, characteristics, qualities or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is likely to be damaged by such act.

15 U.S.C. Section 1125(a).

Although Section 43(a) protects marks that have not yet been registered, it applies only to "qualifying unregistered trademarks." **Two Pesos, Inc. v. Taco Cabana**, 505 U.S. 763, 768 (1992). "The general principles qualifying a mark for reach station under Section 2 of the Lanham Act are for the most part applicable in determining whether an unregistered mark is entitled to protection under Section 43(a)." **Id.**

Thus, an unregistered mark is protected only "if the public recognizes it as identifying the claimant's goods or services and distinguishing them from those others." **A.J. Canfield Co. v. Honickman**, 808 F.2d 291, 296 (D.N.J. 1997) (quoting 1 J. Thomas McCarthy, **McCarthy on Trademarks and Unfair Competition**, Section 15.1 at 657 (2d ed. 1984)). **Accord Smith v. Ames Department Stores, Inc.**, 988 F.Supp. 827, 835 (D.N.J. 1997), **aff'd**, 172 F.3d 860 (3d Cir. 1988). This is the case if the mark is inherently distinctive or if, although not inherently distinctive, has achieved secondary meaning: "consumer recognition that the mark identifies the product as originating from a particular source." **Smith**, 988 F.Supp. at. 835.

Along the continuum by which trademark law evaluates the strength of a mark, marks may be classified as: (1) generic, (2), descriptive, (3), suggestive, (4) arbitrary, or (5) fanciful. **Id.** Generic marks, which "function as a descriptive name or a class of products," are generally not protected. **Id.** (citing e.g., **A.J. Canfield**, 808 F.2d at 292 ("chocolate fudge" is generic when used in connection with chocolate fudge flavored soda); **Kellogg Co. v. National Biscuit Co.**, 305 U.S. 111 (1938) ("shredded wheat is generic term when used for breakfast cereal) . A descriptive mark "immediately conveys a characteristic, ingredient or quality of the article or service it identifies and acquires protected status only if the plaintiff can demonstrate that the goods or service have achieved secondary meaning." **Id.** at 835-36 (citing e.g., **Transfer Print Foils, Inc. v. Transfer Print America, Inc.**, 720 F.Supp. 425 (D.N.J. 1989) ("Transfer Print" is descriptive for surface decorating machines, related technical machines, material and related technical services to distributors and manufacturers who require designs or words placed on their products")).

Suggestive, arbitrary and fanciful marks are considered inherently distinctive and are entitled to the highest level of protection. **Id.** at 836. Suggestive marks require "a consumer to use imagination, thought, or perception to determine the character of the goods or service." **Id.** (citing, e.g., **Taj Mahal Enters. v. Trump**, 745 F.Supp. 240 (D.N.J. 1990) ("Taj Mahal is suggestive of an Indian restaurant). Finally, "[a]n arbitrary mark employs terms that do not describe or suggest any attribute of goods or services sold and a fanciful mark differs in that it uses unfamiliar language coined expressly for the purpose of trademark protection." **Id.**

Defendant argues that the mark "EDGAR ONLINE" is generic. The Court disagrees. A term is generic if it "has so few alternatives (perhaps none) for describing the good that to allow someone to monopolize the [term] would debilitate competitors." **Duraco Prods., Inc. v. Joy Plastic Enters., Ltd.**, 40 F.3d 1431, 1442 (3d Cir. 1994). "EDGAR ONLINE," unlike "chocolate fudge" and "shredded wheat" is not such a term. The mark is, at least, descriptive, like "Transfer Print," and, in all likelihood, suggestive or arbitrary in light of its inclusion of the acronym EDGAR, a made-up word.

Even if "EDGAR ONLINE" were only a descriptive mark, plaintiff submits evidence that it has acquired secondary meaning and would, therefore, be entitled to registration. An affidavit from Mr. Marc Strausberg, the Chairman of the Board of Chief Information Officer of EDGAR Online, Inc., details the expenditure of almost \$1 million since 1997

on advertising in order to build brand awareness, and states that there is "overwhelming recognition by consumers that plaintiff's "EDGAR ONLINE" mark represents the services offered by EDGAR Online, Inc." (Strausberg Second Decl. Paragraph 5). Susan Strausberg's declaration of June 3, 1999, amplifies both the use of plaintiff's name and website and the anticipated use of the recent initial public offering's, proceeds "for additional marketing and promotional campaigns." (S. Strausberg Decl. Paragraph 12). This evidence of secondary meaning is sufficient to persuade the Court there is at least a reasonable likelihood that the mark is one that would qualify for registration and, therefore, is protected under Section 43(a) of the Lanham Act.

Finally, the Court notes that the mark has been deemed entitled to registration by the United States Patent and Trademark Office, although it has not yet been registered. (See Silverman Decl. Paragraph 6). This further persuades the Court that the mark is distinctive enough to receive the protections of Section 43(a).

In order to prevail on its claim under Section 43(a), plaintiff must further prove: (1) that defendant uses a false designation of origin, as defined in the Act; (2) that such use of a false designation occurs in interstate commerce in connection with goods and services; (3) that such designation is likely to confuse, mistake or deception and; (4) the plaintiff has been or is likely to be damaged. **See Jews For Jesus**, 993 F.Supp. at 309.

Plaintiff submits evidence that it has been continuously using the trademark "EDGAR ONLINE" since 1995. (Strausberg Decl. Paragraph 10). Plaintiff registered its domain name, "edgar-online.com" with Networks Solutions, Inc. ("NSI") on August 18, 1995; and that website became operational in approximately October, 1995. (*Id.* paragraphs 23-24). Mr. Parisi registered the domain name "edgaronline.com" with NSI on May 19, 1996. Mr. Parisi states that he has operated his website using the domain name "edgaronline.com" since August of 1998. (Parisi Certif. paragraph 22). Plaintiff indicates, however, that defendant's website merely read "coming soon" until mid-April 1999. (Second Strausberg Decl. paragraph 3). Ownership of a mark is governed by priority and continuity of use. **See Ford Motor Co. v. Summit Motor Products, Inc.**, 930, F.2d 277, 292 (3d Cir. 1991); **see also Sengoku Works, Ltd. v. RMC Int'l, Ltd.**, 96 F.3d 1217, 1219 (9th Cir. 1996). Accordingly, it appears that plaintiff is the owner of the mark "EDGAR ONLINE" and defendant's use of that mark constitutes false designation of origin.

In addition, defendant's false designation of origin occurs in interstate commerce in connection with goods and services. As in **Jews for Jesus v. Brodsky**, where an opponent of the organization Jews for Jesus operated a website using the domain name "jewsforjesus.org." Mr. Parisi uses a domain name that is virtually identical to plaintiff's name mark, he thereby impedes some Internet users from reaching plaintiff's website and interferes with plaintiff's distribution of its services. In **Jews for Jesus**, confronted with such circumstances, the Court determined that the false designation of origin occurred in interstate commerce "in connection with goods and services" within the meaning of Section 43(a). **Jews for Jesus**, 993 F.Supp. at 309 (citing **Planned Parenthood Federation of America, Inc. v. Bucci**, 1997 WL 133313 *4 (S.D.N.Y. 1997), *aff'd*, 152

F.2d 920 (2d Cir.), **cert. denied** &lowbar&lowbar&lowbar U.S. &lowbar&lowbar&lowbar, 119 S.Ct. 90, 142 L.Ed.2d 71 (1998)). The same is true here.

With respect to the third element of a Section 43(a) claim, it seems clear that the designation used by defendant is likely to cause confusion, mistake and deception. In assessing likelihood of confusion, courts in this Circuit consider the following factor:

- (1) the degree of similarity between the owner's mark and the alleged infringing mark;
- (2) the strength of the owner's mark;
- (3) the price of the goods and other factors indicative of the care and attention expected of customers from making a purchase;
- (4) the length of time the defendant has used the mark without evidence of actual confusion arising;
- (5) the intent of the defendant in adopting the mark;
- (6) the evidence of actual confusion;
- (7) whether the goods, though not competing, are marketed through the same channels of trade and advertised through the same media;
- (8) the extent to which the targets of the parties' sales efforts are the same;
- (9) the relationship of the goods in the minds of the public because of the similarity of function;
- (10) other facts suggesting that the consuming public might expect the prior owner to manufacture a product in the defendant's market.

Jews for Jesus, 993 F.Supp. at 301 (quoting **Scott Paper Co. v. Scott's Liquid Gold, Inc.**, 589 F.2d 1225, 1229 (3d Cir. 1978)).

Evidence of all of these factors has not been presented to the Court in this preliminary stage in the litigation. However, the Court has evidence as to enough of them to determine that plaintiff will almost certainly succeed in proving likelihood of confusion. The domain name used by defendant is virtually identical to plaintiff's mark; defendant's service is marketed through the same channels as plaintiff's; he targets the same audience, namely web browsers seeking information from the EDGAR database; and his product and plaintiff's are likely closely associated in the minds of the public because of their similar functions. With respect to defendant's intention in using the mark, the evidence presented suggests that it was his intention to cause confusion. He is not making any money directing plaintiff's would be consumers to be SEC's free database and he has

failed to explain any altruistic motive he may have in facilitating public access to the SEC's database. In fact, the SEC asked that he stop doing so. (**See** Barton Decl.).

The Court determines that it is self-evident that defendant's false designation or origin is likely to cause confusion. By merely omitting a hyphen in typing the domain name for plaintiff's website or by omitting a space in typing the name of plaintiff's company, consumers access defendant's website, rather than plaintiff's. In addition, once there, they find data similar to what they would expect to find on plaintiff's website, but lacking the enhanced features which are the only justification for plaintiff's charge of a fee for its service. Thus, inevitably, unsuspecting consumers will reach defendant's website when searching for plaintiff's; and it seems highly likely that some will leave the website, still believing they have accessed the EDGAR database using plaintiff's service and disappointed with what they believe to be plaintiff's website's features for which they have paid a fee. **See also Jews For Jesus**, 993 F.Supp. at 310 (finding likelihood of confusion caused by defendant's false designation of origin in domain name and entering preliminary injunction).

As to the final prong of a Section 43(a) claim, plaintiff can prove that it has been or is likely to be damaged by defendant's false designation of origin. As the Court explained above, it determines that consumers are likely to be confused by defendant's use of the domain name and thus develop a poor impression of plaintiff's service. In addition, as this Court explained in **Jews for Jesus**, [w]here one party misappropriates the mark of another, the offending party is using the reputation of the trademark owner for self gain. Such unauthorized use causes injury and harm, even if the offending party has not tarnished the mark or diverted any sales by its use. 993 F.Supp. at 311 (citing **Opticians Association of America v. Independent Opticians of America**, 920 F.2d 187, 195 (3d Cir. 1990)). Thus, by virtue of defendant's very infringements of plaintiff's mark, plaintiff also has been and is likely to be damaged. Thus, the Court believes it probable that plaintiff can prove all of the elements of its Lanham Act claim, and accordingly, all of the elements of its claim under New Jersey statutory and common law.

Finally, the Court finds unpersuasive defendant's reliance on the fair use defense. Under the Lanham Act's fair use doctrine, a plaintiff is not liable for trademark infringement when "the use of name, term or device charged to be an infringement is a use, otherwise than as a mark, ... of a term or device which is descriptive of and used fairly in good faith only to describe the goods or services of such party, or their geographic origin." 15 U.S.C. Section 1115(b)(4). The Court of Appeals for this Circuit has held that in order to establish fair use, defendants must prove that they: "(1) used the term merely to describe their product; (2) did not use the term as a trademark; and (3) used the term in good faith." **Smith**, 998 F.Supp. at 836 (citing **Institute for Scientific Info. v. Gordon and Breach, Science Publishers**, 931 F.2d 1002, 10087 (3d Cir.). cert. denied 502 U.S. 909 (1991)). Defendant argues that his use of the term "edgaronline.com" is not in the trademark sense, but is instead merely an accurate description of his product, used in good faith. At this juncture, as discussed above, the Court believes it unlikely that defendant could prove good faith use of the term "edgaronline." He denies being a "cybersquatter," but, as discussed above, the evidence presented suggests no other

legitimate basis for his purchase and use of this domain name. Defendant admittedly owns several hundred domain names, but has sold only one. (Oral Argument, June 4, 1999). However, defendant is more of a threat to plaintiff's legitimate use of its mark than if he were a mere "cybersquatter" who is bankrolling the domain name "edgaronline.com" either for leverage or future use. Defendant is in fact using that very name in a website which unfairly encroaches upon the plaintiff's rights. In addition, the Court considers it relevant that, unlike plaintiff, defendant does not have a license to use the SEC's trademark "EDGAR" and has, in fact, been asked by the SEC not to do so. (See Barton Decl. Paragraph 10). Under these circumstances and as discussed in greater detail above, the Court does not believe that defendant can prove good faith use of plaintiff's mark. Accordingly, notwithstanding the defendant's asserted statutory fair use defense, plaintiff is likely to succeed on the merits.

Defendant also asserts a fair use defense predicated on the First Amendment of the United States Constitution. Defendant cites no cases recognizing a fair use defense to trademark infringement, other than the statutory one. There are, however, at least a few cases outside this district holding that the First Amendment, like the Lanham Act, protects unauthorized use of trademarks which such use is "part of an expression of a communicative message," as distinct from when it is used "for the purpose of source identification." See **Planned Parenthood**, 1997 WL 133313 at *11; **Yankee Publishing, Inc. v. News American Publishing, Inc.**, 809 F.Supp. 267, 275 (S.D.N.Y. 1992). In **Planned Parenthood**, however, the United States District Court for the Southern District of New York held that the infringing use of a trademark in a domain name, there, "plannedparenthood.com," was on its face more analogous to source identification than to a communicative message. 1997 WL 133313 at *11. The Court held that use of the trademarked term was not protected by the First Amendment because it served to identify the product or item as originating from the plaintiff's organization and not to convey a communicative message. **Id.** The infringing use of plaintiff's mark similarly seems to serve, and was apparently intended to serve, to identify defendant's product as originating from plaintiff's organization. Under those circumstances, as in **Planned Parenthood**, infringing use of the mark is not entitled to First Amendment protection.

In addition, the Court notes that, in copyright law, "First Amendment concerns are protected by and coextensive with the fair use doctrine." See e.g., **Nihon Keizai Shimbun, Inc. v. Comline Business Data, Inc.**, 166 F.3d 65, 74 (2d Cir. 1999). To the extent that the First Amendment protects "fair use" of trademarks, the Court believes that the Lanham Act's fair use doctrine similarly addresses all First Amendment concerns. Thus, the Court further determines that, since defendant is unlikely to prevail on a statutory fair use defense here, he is also unlikely to prevail on a First Amendment fair use defense. The Court remains convinced that plaintiff is likely to succeed on the merits.

Irreparable injury

The Court is persuaded that plaintiff will be irreparably injured if a preliminary injunction does not issue. As discussed above, defendant's very infringement of plaintiff's mark causes irreparable injury to plaintiff. Under Third Circuit precedent, trademark

infringement "amounts to irreparable injury as a matter of law." **S&R Corp. v. Jiffy Lube International, Inc.**, 968 F.2d 371, 378 (3d Circuit 1991); **see also Jews for Jesus**, 993 F.Supp. at 311.

Defendant argues that plaintiff cannot prove irreparable injury because it failed to disclose this litigation or Mr. Parisi's ownership of the domain name "edgaronline.com" in the disclosure documents it issued in connection with its recent initial public offering. (See Parisi Certif. at Exh. M). The Court dissolved the temporary restraining order that it entered in this matter in part because of the significance it attributed to that non-disclosure. However, in evaluating whether to dissolve the temporary restraining order, the Court had to consider the possibility of irreparable injury over the two days remaining before the scheduled preliminary injunction hearing. Faced now with the issue of whether irreparable injury will result if defendant is not enjoined during the remainder of this potentially lengthy litigation, the Court considers the representations of plaintiff's disclosure documents not irrelevant, but less significant.

The Court determines that for purposes of its preliminary injunction application, plaintiff has proven irreparable injury. Confronted with an application in **Jews for Jesus**, this Court reasoned, plaintiff "has demonstrated a likelihood that the defendant is infringing upon the mark and the name of the plaintiff organization. Irreparable injury therefore is established." 993 F.Supp. at 311-12. The same is true here.

Balance of the Hardships

The third factor, which requires the Court to consider the hardship to the defendant if a preliminary injunction should issue, also weighs in favor of granting preliminary injunctive relief. As discussed above, an injunction would not infringe defendant's First Amendment rights. He has not suggested any other harm that would result to him if the preliminary injunction should issue. As mentioned earlier, he does not earn revenues from his website. In addition, it would appear that he is free to run the same website using a domain name which does not encroach upon plaintiff's mark or website. Under such circumstances, in this case, as in **Jews for Jesus**, 993 F. Supp. at 312, the Court can divine no harm to defendant resulting from the issuance of an injunction.

Public Interest

Finally, the public interest also favors entering the requested injunction. The Court observed in **Jews for Jesus**: "In trademark cases, 'the public interest is 'most often a synonym for the right of the public not to be deceived or confused.'" 993 F.Supp. at 313 (quoting **S&R Corp.**, 968 F.2d at 379 (quoting **Opticians**, 920 F.2d at 197)). As in **Jews for Jesus**, injunction of defendant's use of plaintiff's mark in his domain name will protect the public from deceptive and confusing use of that mark. **Id.** Accordingly, here, as in that case, the Court concludes that the public interest would be served by granting the requested injunctive relief.

Conclusion

To the extent that other arguments not addressed in this opinion have been presented to the Court, the Court assures the parties that they have been fully considered. For the reasons set forth above, plaintiff's application for preliminary injunctive relief sought is granted. Because the Court perceives (at most) minimal injury to the defendant should it later be determined that this injunction was improvidently granted, the \$10,000 security previously posted with the Court under Fed.R.Civ.P. 65(c) shall remain as the security for this preliminary injunction.

I have also entered an order for preliminary injunction, executed and signed an order for preliminary injunction that tracks exactly the specific relief set forth in the order to show cause and it was that relief which the defendant had notice and none other, and I will lodge the original with John for filing and distribute copies to counsel present.

I believe that concludes matters today. Anything further before we adjourn, Mr. Kiel?

Mr. KIEL: Thank you.

Nothing.

MR. CALVEY: May I take a quick look at the order?

THE COURT: Sure you can.

MR. CALVEY: My only concern with the language that was proposed and adopted by the Court is that it not preclude my client from using a good faith fair use of the name Edgar.

For example, as I mentioned, there are 9,000 websites out there now that make reference to Edgar, point to Edgar filings and the like. If this is limited to his use of edgaronline.com, I can understand.

However, in the broad language about anything, any colorable limitation thereof, et cetera, I would appreciate a clarification that would protect any fair use of the term "Edgar."

THE COURT: What comments would you have on that, Mr. Kiel?

MR. KIEL: Your Honor, of the various people that do provide internet services, only those that are licensed by the SEC do actually use the word "Edgar" in its domain name. If he uses the word "Edgar" in his domain name in any respect that is not licensed by the SEC, that is a colorable imitation and should be included in this injunction.

MR. CALVEY: Your Honor, first of all, I would disagree whole heartedly, but putting that aside, one of my concerns has to do with the links, the many links that we've pointed to repeatedly, the 9,000 without use or reference to the domain name per se instead make

reference to Edgar, Edgar filings or Edgar used in some other way that as a link directs people to those Edgar filings --

THE COURT: Let's explore something.

Let us assume that he chooses to set up a website under the name of Danparisi.com and if somebody goes into Danparisi.com and has accessed through to the SEC's Edgar information and so forth, that's not a problem.

MR. CALVEY: That's not a problem. That's what I'm hoping for.

MR. KIEL: That's not a problem for us.

THE COURT: That's right, from you, maybe from somebody else.

The question is, and I believe it was what was certainly encompassed here, is that a situation like that would not in any way infringe upon or generate the type of threat to the intellectual property rights of the plaintiff.

MR. CALVEY: I wouldn't think so either.

My concern is that I have been involved in cases, on both sides, seeking and defending against preliminary injunction applications, and I've seen instances where an injunction, either preliminary or permanent, was entered and a plaintiff comes back some time after and says even though the defendant is not using the specific language used here, the language that talks about any other confusingly similar use is to be very broadly construed. And there is authority to suggest that it should be construed against a defendant who has all ready been enjoined even more broadly than would be the case if there weren't injunction.

THE COURT: I'm aware of that body of law. I'm not going to modify the terms of this order because I think they are clear and have at least been clarified briefly by our colloquy here.

While I don't want, in the course of this case necessarily, to be a gatekeeper for the efforts of any party, at this juncture at least, and of course this case remains here, if I would only have to suggest if the defendant is going to have to be guided by the sound advice of a person such as yourself or others whom you may consult, and that if there is any question in mind as to whether a suggested naming of a website or anything along those lines could violate the terms of the order, then I would entertain an application on relatively short notice, either for clarification or modification of the order or for a declaration, as to whether a particular activity which he might contemplate was within the scope of the order or not.

MR. CALVEY: Well, I'm hopeful, your Honor, that the clarification that came out just in this colloquy, including from Mr. Kiel, has given us guidance and that is that apart from

domain names, if we make an honest use and say look, link here, click here for the latest Edgar filings, that that's not precluded here.

THE COURT: Well, as I said, whether that would fall -- whether and to what extent that might fall under the subpart three as another act calculated or likely to cause confusion or mistake in the minds of the public, I can't forecast each and every potential instance of that.

It seems to me without some of the breath of paragraph three, we wind up courting applications for either clarification or contempt that should be avoided. I'll essentially leave it as it is with those clarifying remarks.

It may well be that a letter of understanding between you and Mr. Kiel will be the better vehicle to establish any ground rules as to what Mr. Parisi's permitted activities will be.

Thank you.

Court adjourned.

(Matter concluded.)