

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

REZA GANJAVI,	)	Case No. 06 C 4189
Plaintiff,	)	
v.	)	Plaintiff's Motion for Leave to File Sur-
JEREMY C. SMITH, CINDY SMITH,	)	Response to Defendant Jeremy Smith's
TODD TIPTON, WILLIAM D.	)	Motion to Dismiss
JENNINGS, DOES 1-3	)	Honorable Judge Gettleman
Defendants.	)	Honorable Magistrate Judge Denlow

**PLAINTIFF'S MOTION FOR LEAVE TO FILE SUR-RESPONSE**

NOW COMES Plaintiff, REZA GANJAVI ("Plaintiff") by and through his attorneys, Law Offices of Khoi Dang-Vu, P.C. And Khoi Dang-Vu, and kindly requests this Honorable Court leave to file a Sur-Response to Defendant Jeremy Smith's ("Defendant") Motion to Dismiss on the grounds that Defendant raises certain new material contentions in his Reply filed on 6 April 2007 which were not present in his previous pleadings and therefore Plaintiff did not have a chance to respond to them previously.

**BACKGROUND**

Defendant has contested jurisdiction arguing that Plaintiff's federal question and diversity claims are invalid. To support his arguments, in his Reply, Defendant presented new material contentions which Plaintiff would like to respond to in a Sur-Response. Some of the Defendant's new contentions are misrepresentations and intentional falsehoods which Plaintiff can prove by evidence.

**DEFENDANT'S NEW MATERIAL CONTENTIONS TO DISCREDIT PLAINTIFF'S CLAIM  
OF DIVERSITY JURISDICTION**

**Defendant newly contends, contrary to his own, previous, documented remarks on the subject,  
that none of his actions against Plaintiff have had any adverse effect on Plaintiff**

Defendant contends that he believes “*the facts he [Plaintiff] alleges against Jeremy Smith do not appear to have affected him [Plaintiff] in any way*”.

In the Third Amended Complaint, Plaintiff has already demonstrated in detail the scope of Defendant’s actions against Plaintiff, and the scope of the resulting damages (summary in Paragraphs 58-60 of the Complaint, and under each cause of action). Furthermore, on several occasions, Defendant Jeremy Smith has admitted, in writing, that he expected some of his actions to cause harm to Plaintiff. For example, on 30 October 2005 using a pseudonym, Defendant published a statement on the Usenet: “*I forged Reza's posts solely to get my rocks off.... The fun part was imagining Reza's reaction to the post, which I hope involved much writhing and the occasional regurgitation*” (Third Amended Complaint, Paragraph 49).

There are a number of other pieces of evidence, including Defendant’s own written statements that clearly demonstrate he intended to damage Plaintiff in a numerous of ways, professionally and personally, and that he was very much aware that his actions had an adverse effect on Plaintiff. On one occasion, Defendant contacted Plaintiff via email in reference to some of his actions and wrote “*I see now that it was really hurting you*”. This was part of a pseudo-apology that was futile because Defendant continued to utter a number of lies including false statements about his identity: “*My real name is Jerry Leonard. I live in Chicago. I'm not the original Rosa. I think that was Todd Tipton...*”.

These and other pieces of evidence invalidate Defendant’s argument that there is no basis for compensation to meet the minimum requirement of Diversity jurisdiction since Defendant’s actions “*do not appear to have affected him in any way*”. That declaration to the Court as basis for Defendant’s Motion to Dismiss is false by the virtue of Defendant’s own, documented statements.

In a Sur-Reponse, Plaintiff would like to demonstrate why Defendant’s contention that Defendant’s actions had no effect on Plaintiff is a calculated falsehood which not only Defendant does not believe in, and not only they contradict with Defendant’s previous written statements, but by any measure of common sense, anybody in Plaintiff’s position would have suffered tremendously as a result of offenses that carry both short-term and long-term consequences. Plaintiff has already argued in his Response that the sum of damaged incurred as a result of the Sixteen (16) causes of action will far surpass the \$75,000 minimum requirement for Diversity jurisdiction.

**Defendant newly contends, contrary to his own previous, documented remarks on the subject, and despite hard evidence against him, that Plaintiff has fabricated his claims in bad faith**

Defendant contends for the first time that he believes that Plaintiff's "*claims are far from 'minimally reasonable' and are obviously made in bad faith so that he might avail himself of the jurisdiction of this Court*".

Plaintiff's claims are backed by an extensive body of evidence obtained from various sources including several online service providers which Defendant had contracted with. The evidence has strongly, conclusively, and unambiguously established Defendant as the party responsible for the claims made by Plaintiff.

In the Complaint, Plaintiff has stated that the evidence will be presented at the time of trial. In the Sur-Response Plaintiff will explain in detail the nature of the evidence against the Defendant, how it was obtained, why it is credible, and why all the claims against the Defendant are substantiated, backed by evidence. Therefore, the argument that the claims are made in bad faith, as a basis for Defendant's Motion to Dismiss, is false.

### **DEFENDANT'S NEW MATERIAL CONTENTION REGARDING PLAINTIFF'S CLAIM OF FEDERAL QUESTION**

#### **Defendant newly contends that the process of registering a sub-domain is not "registration"**

In his Reply, Defendant claims that "*Jeremy Smith Did Not 'Register, Traffic in, or Use' A Domain Name As Required By § 1125, Invalidating Plaintiff's Federal Question Claim Under the Lanham Act*". In the Third Amended Complaint (paragraphs 5c, 14, 44, 45, 62, 64-73, 117, 123, 127-130, etc.), Plaintiff has demonstrated that Defendant indeed registered at least one forged website, used it, advertised it, benefited from it, and fulfilled his crooked intentions.

In the Sur-Response Plaintiff will:

- a) Demonstrate that Lanham Act does not specifically define what "registration" means and that the act of establishing a universally unique URL, as the Defendant did against Plaintiff, is indeed a process of "registration" despite Defendant's attempts to narrow Lanham Act down to a specific definition to suit their needs. Plaintiff is now aware of any cases where a court has decided that the act of registering a sub-domain is not an act of registration.
- b) Provide evidence from Yahoo Incorporated that the IP address which explicitly belongs to Defendant indeed registered a user ID and subsequently a universally unique and addressable domain name of Plaintiff's forged website with Yahoo Incorporated. Plaintiff further will provide evidence from Defendant's home ISP, i.e., RCN Corporation, which proves that the IP

address provided by Yahoo as registrant of the forged website was indeed that of Defendant's.

- c) Provide evidence as to how the Defendant used, advertised, and benefited from at least one forged website he setup against Plaintiff. Not only Defendant setup the website but he actively advertised it to make sure the forged site gets as many visitors as possible.

**Defendant newly contends that he did not have bad faith intent to profit from the forged websites**

In the Complaint, Plaintiff demonstrated the ingredients of the mock websites, and any impartial observer with any degree of common sense, could immediately determine that the person who setup such a website had malicious intent.

In the Sur-Response, Plaintiff will point out numerous instances which are discussed to a certain degree in the Complaint, where Defendant's maliciousness, vulgarity, and bad faith are clearly demonstrated. Plaintiff will further demonstrate why in a competitive environment, such malicious acts are conducive to profit at the expense of the perceived competitor, in this case, Plaintiff.

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests leave to file Sur-Response to Defendant Jeremy Smith's Motion to Dismiss within five (5) days of leave to demonstrate Defendant's new arguments to support his Motion to Dismiss are fallacious.

DATED this 30<sup>th</sup> day of April 2007.

RESPECTFULLY SUBMITTED BY:

/s/ Khoi Dang-Vu

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Khoi Dang-Vu

Attorney for Plaintiff, REZA GANJAVI

A.R.D.C. Number 6271169

Law Offices of Khoi Dang-Vu, P.C.

1719 W. 18<sup>th</sup> Street, Chicago, Illinois 60608

Tel. (312) 492-1477 Fax (312) 455-9372