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11 UNITED STATES DISTRICT COURT

12 DISTRICT OF ARIZONA

13 David Dent, an Individual,

14 Case No.

15 Plaintiff,

**COMPLAINT UNDER 15 USC 1114
FOR REVERSE DOMAIN HI-
JACKING, DECLARATORY RELIEF
UNDER THE LANHAM ACT, AND
TORTIOUS INTERFERENCE WITH
CONTRACT**

16 vs.

17 Lotto Sport Italia S.p.A, an Italian
18 Corporation,

DEMAND FOR JURY TRIAL

19 Defendant.

20 Plaintiff David Dent (hereinafter “Dent” or Plaintiff) hereby complains
21 against defendant Lotto Sport Italia S.p.A, an Italian Corporation (hereinafter “Lotto
22 Sport”), and for its causes of action alleges as follows:

23 **NATURE OF THE ACTION**

24 1. This is an action brought by Plaintiff Dent against Defendant Lotto Sport
25 pursuant to 15 U.S.C. 1114(2)(D)(iv)-(v) and for declaratory relief pursuant to 28
U.S.C. 2201 to establish that Dent’s registration and use of the internet domain names

1 <lottoworks.com> and <lottostore.com> (the "Domain Names") is not unlawful under
2 the Anticybersquatting Consumer Protection Act (15 U.S.C. § 1125(d)("ACPA"), or
3 otherwise under the Lanham Act (15 U.S.C. § 1051 et. seq.), and to prevent the transfer
4 of the Domain Names to Defendant, which were ordered in an administrative panel
5 decision notified on February 21, 2017 under the Uniform Domain Name Dispute
6 Policy ("UDRP") in a proceeding captioned: *Lotto Sport Italia S.p.A. v. David Dent*,
7 WIPO Case No. D2016-2532.

8 **PARTIES**

9 2. Plaintiff David Dent is a citizen and resident of Canada, having an address
10 of 4467 Harris Place, North Vancouver, British Columbia V7G 1E9, Canada.

11 3. On information and belief, Defendant Lotto Sport s.p.A is a corporation of
12 Italy having a principal address of Via Montebelluna, 5/7 31040 Trevignano (Treviso),
13 Italy.

14 **JURISDICTION AND VENUE**

15 4. This Court has subject matter jurisdiction over this action because it
16 involves a federal question, and because it requires a declaration of rights and other
17 legal relations. More specifically, this Court has jurisdiction pursuant to 28 U.S.C.
18 1331 (because this cause arises under 15 U.S.C. 1114 in that Plaintiff is the registrant of
19 a domain name which has been suspended, disabled, or transferred under a policy
20 provided by the registrar thereof relating to alleged conflict with a trade or service mark
21 claimed by the Defendant), and under 28 U.S.C. 2201(a) ("In a case of actual
22 controversy within its jurisdiction, . . . any court of the United States, upon the filing of
23 an appropriate pleading, may declare the rights and other legal relations of any
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1 interested party seeking such declaration, whether or not further relief is or could be
2 sought.”).

3 5. This Court has personal jurisdiction over Defendant Lotto Sport because
4 Defendant agreed to submit to the jurisdiction of this Court when it initiated an
5 administrative proceeding pursuant to the Uniform Domain Name Dispute Resolution
6 Policy (the "UDRP") concerning the Domain Name. Specifically, Defendant Lotto
7 Sport agreed in its UDRP complaint to submit to jurisdiction of the registrar in
8 connection with a challenge of a UDRP decision ordering a transfer of the Domain
9 Names.

10 6. The registrar for the Domain Names is GoDaddy LLC, having its
11 principal office at 14455 N Hayden Rd Suite 219, Scottsdale, Arizona 85260, in this
12 judicial district.

13 7. Defendant Lotto Sport has directed activity into this judicial district with
14 the intent to deprive Plaintiff Dent of rights under a contract having a situs in this
15 judicial district.

16 8. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b)(1) and (2). In
17 addition, the relevant sponsoring registrar, GoDaddy.com, Inc. (“GoDaddy”), is located
18 within this Judicial District, and the registration contract for domain names with
19 GoDaddy provides that jurisdiction and venue over disputes in relation to the contract is
20 Arizona, stating that “(N) Exclusive Venue for Other Controversies. GoDaddy and you
21 agree that any controversy excluded from the dispute resolution procedure and class
22 action waiver provisions in this Section (other than an individual action filed in small
23 claims court) shall be filed only in the Superior Court of Maricopa County, Arizona, or
24 the United States District Court for the District of Arizona, and each party hereby
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1 irrevocably and unconditionally consents and submits to the exclusive jurisdiction of
2 such courts for any such controversy. You also agree to waive the right to trial by jury
3 in any such action or proceeding."

4 9. Pursuant to the Uniform Domain Name Dispute Resolution Policy
5 ("UDRP") Paragraph 3(b)(xiii), the Complainant (in this case, now Defendant) is
6 required to explicitly consent to a "mutual jurisdiction," in which challenges to a
7 decision under the UDRP may be brought by the Respondent (in this case, now
8 Plaintiff). As discussed below, Defendant expressly consented to jurisdiction in this
9 District for actions such as this one.

10 **FACTS**

11 10. Plaintiff Dent is a co-founder, majority owner and principal of Trimark
12 Ltd., a Gibraltar corporation engaged in the development and licensing of software and
13 technical services for online gambling operators in jurisdictions where such operations
14 are licensed for operation. Through his company Trimark Ltd. and predecessor
15 organizations, the Dent has been involved in the development and licensing of software
16 relevant to the conduct of lottery, bingo and casino games for over ten years prior to this
17 action.

18 11. In 2016, a company which had contracted to distribute Plaintiff's software
19 discontinued operations, and the Plaintiff decided to continue the development of his
20 operations into providing direct online lottery gambling services to the public in such
21 jurisdictions where online lottery gambling can be licensed.

22 12. Pursuant to the Plaintiff's decision to expand into direct lottery gambling
23 services, the Plaintiff expended substantial resources for software and user interface
24 development, and other operation planning and preparations. Plaintiff additionally
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1 sought to find two domain names to establish an online presence for the eventual launch
2 of the expanded services, such that one domain name would be used for corporate
3 operations and licensing matters, and the other domain name would be the Plaintiff's
4 online presence for lottery gaming services.

5 13. The term "lotto" is a generic word long defined as, for example, "a game
6 resembling bingo" by Webster's New World Dictionary, Third College Edition, 1988
7 (Simon & Schuster), and is commonly used in reference to lotteries.

8 14. The term "lotto" is generic in relation to gambling software services long
9 provided by the Plaintiff through the companies of which Plaintiff is a principal, and is
10 directly generic of the services which the Plaintiff has been preparing to launch.

11 15. The United States Patent and Trademark Office has repeatedly and
12 consistently recognized that "lotto" is a generic term in connection with services
13 essentially identical to Plaintiff's services, and has required specific disclaimers of
14 exclusive rights in the word "lotto" in relation to gaming services in a large number of
15 marks registered or pending on the Principal Register under the Lanham Act. For
16 example, as recently as May 7, 2015, in relation to an application to register "CLOVER
17 LOTTO" and design, US TM Reg. No. 4,965,712, the United States Patent Office
18 issued an Office Action referring to the dictionary definition of the word "lotto" and
19 stating:
20

21 "Applicant must disclaim the word "LOTTO" because it merely describes an
22 ingredient, quality, characteristic, function, feature, purpose, or use of applicant's
23 goods and/or services, and thus is an unregistrable component of the mark. See
24 15 U.S.C. §§1052(e)(1), 1056(a); DuoProSS Meditech Corp. v. Inviro Med.
25 Devices, Ltd., 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012)

1 (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370,
2 1371 (Fed. Cir. 2004)); TMEP §§1213, 1213.03(a). The attached evidence from
3 an online dictionary shows this word to refer to “a game of chance similar to
4 bingo”. Applicant has identified gaming software encompassing that for use in
5 playing lotto type games. Therefore, the wording merely describes the nature or
6 function of the identified goods.”

7 16. In late 2016, the Plaintiff Dent found two domain names listed online for
8 sale by their respective registrants which are directly descriptive of the Plaintiff's
9 business. The Plaintiff proceeded to purchase the domain name lottoworks.com for
10 company operations and lottostore.com for a direct lotto game storefront. The Plaintiff
11 purchased lottostore.com in September 2016 for \$4820, and then purchased
12 lottoworks.com in December 2016 for \$6500.

13 17. While Plaintiff prepared to launch its sites under the respective domain
14 names, Plaintiff chose to register the domain names with Godaddy LLC, an internet
15 domain name registrar located in this judicial district, pursuant to a registration contract
16 having a situs in this judicial district.

17 18. The domain registration contract governing Plaintiff's registration of the
18 Domain Names with GoDaddy LLC incorporates a non-binding "Uniform Domain
19 Name Dispute Resolution Policy (UDRP)", under which a third party may request
20 transfer of rights under said contract to that third party on the basis of a claim of trade or
21 service mark rights. The UDRP is an administrative proceeding, which provides in
22 pertinent part:

23
24 **“k. Availability of Court Proceedings. The mandatory administrative**
25 **proceeding requirements set forth in Paragraph 4 shall not prevent either**

1 **you or the complainant from submitting the dispute to a court of competent**
2 **jurisdiction for independent resolution before such mandatory**
3 **administrative proceeding is commenced or after such proceeding is**
4 **concluded.** If an Administrative Panel decides that your domain name
5 registration should be canceled or transferred, we will wait ten (10) business days
6 (as observed in the location of our principal office) after we are informed by the
7 applicable Provider of the Administrative Panel's decision before implementing
8 that decision. We will then implement the decision unless we have received from
9 you during that ten (10) business day period official documentation (such as a
10 copy of a complaint, file-stamped by the clerk of the court) that you have
11 commenced a lawsuit against the complainant in a jurisdiction to which the
12 complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure.
13 (In general, that jurisdiction is either the location of our principal office or of
14 your address as shown in our Whois database. See Paragraphs 1 and 3(b)(xiii) of
15 the Rules of Procedure for details.) If we receive such documentation within the
16 ten (10) business day period, we will not implement the Administrative Panel's
17 decision, and we will take no further action, until we receive (i) evidence
18 satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to
19 us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order
20 from such court dismissing your lawsuit or ordering that you do not have the
21 right to continue to use your domain name.” (Emphasis Added)

22 19. On or about December 14, 2016, in spite of the generic and descriptive
23 nature of the term Lotto, and in spite of the fact that the Plaintiff does not compete in
24 any way with Defendant, and does not (and given the nature of the mark and products,
25 could not) utilize the domain names in a way that might infringe upon any rights

1 Defendant might have, at nearly the same time the Plaintiff had purchased the
2 lottoworks.com domain name, the Defendant Lotto Sport proceeded to file a complaint
3 under the UDRP with the World Intellectual Property Organization.

4 20. In the UDRP Complaint, Defendant Lotto Sport admitted to the
5 jurisdiction of this court as follows:

6 **“IX. Mutual Jurisdiction**

7 (Rules, para. 3(b)(xiii))

8 [15.] In accordance with Paragraph 3(b)(xiii) of the Rules, the Complainant
9 will submit, with respect to any challenges that may be made by the Respondent
10 to a decision by the Administrative Panel to transfer the domain name that is the
11 subject of this Complaint, to the jurisdiction of the courts at the location of the
12 principal office of the concerned registrar”

13 21. In the UDRP Complaint, the Defendant Lotto Sport represented itself to
14 be an "Italian clothing company" with various foreign trademark claims to "LOTTO"
15 for clothing.
16

17 22. Notwithstanding the fact that Plaintiff Dent had purchased the domain
18 names mere weeks and days before Defendant Lotto Sport proceeded with its
19 Complaint, and notwithstanding the considerable development effort in which Plaintiff
20 was engaged, the Defendant Lotto Sport alleged that the fact that Plaintiff Dent had not
21 immediately deployed websites for the domain names was demonstrative of "bad faith"
22 intent predicated on the Lotto Sport’s asserted foreign trademark claims.

23 23. Plaintiff had never heard of the Defendant Lotto Sport prior to notice of
24 the UDRP filing, and did not know of the Defendant's UDRP Complaint until
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1 discovering that GoDaddy LLC had disabled the Plaintiff's access to and control of the
2 Domain Names. Within days after assuming control of the lottoworks.com domain
3 name, Plaintiff attempted to de-activate the domain name from directing to the
4 "parking" website to which the previous registrant had directed the domain name. The
5 Plaintiff was unable to de-activate the previous registrant's configuration of the domain
6 name, because GoDaddy LLC had locked the domain name in response to receipt of the
7 Defendant's UDRP Complaint. The Plaintiff has been unable to exercise control over
8 the domain name as a result of the Defendant's action.

9 24. On February 21, 2017, the World Intellectual Property Organization
10 notified the parties and GoDaddy LLC of a decision issued by a Hong Kong attorney
11 ordering transfer of the domain names to the Defendant.

12 25. Under the UDRP, GoDaddy LLC will transfer Plaintiff's Domain Names
13 to the Defendant Lotto Sport unless legal action for independent determination of the
14 Plaintiff's rights is commenced by Plaintiff in this judicial district, as designated under
15 the registration contracts for the domain names by GoDaddy LLC and as agreed to in
16 the "Mutual Jurisdiction" provision to which the Defendant has expressly admitted to be
17 subject.

18 26. On information and belief, the Defendant possesses no common law trade
19 or service mark rights and no rights under the Lanham Act in connection with the
20 conduct of lotto gambling operations.

21 27. The Plaintiff does not manufacture, produce or sell clothing of any kind.

22 **FIRST CLAIM FOR RELIEF**
23 **(REVERSE DOMAIN HI-JACKING)**

24 **[15 U.S.C. 1114(2)(D)(IV)-(V)]**
25

1 has invested substantial resources beyond the \$11,500 paid out of pocket for the domain
2 names.

3 35. Plaintiff had reasonable grounds to believe that its registration and/or use
4 of the Domain Names was a fair use or otherwise lawful use, as provided in 15 U.S.C.
5 1125(d)(1)(B)(ii) in accordance with the directly descriptive meanings of "lotto",
6 "works" and "store". Plaintiff had received legal counsel that pursuing trademark
7 registration corresponding to the domain names would be a fruitless exercise on the
8 grounds that the terms at issue were entirely descriptive of the Plaintiff's intended use.

9 36. On information and belief, Defendant had not engaged in interstate
10 commerce in the United States of America in connection with the manufacture, sale, or
11 transportation of any goods or services relating to the conduct of lotto games and
12 denominated "LOTTO STORE" or "LOTTO WORKS", or any colorable variation
13 thereof, at the time the Domain Names were registered by Plaintiff, and subsequent to
14 that time.

15 37. Plaintiff reasonably believes its registration and use of the Domain Names
16 was and is lawful under the Lanham Act.

17 38. There is an actual controversy with respect to whether the Defendant is
18 entitled to transfer of the Domain Name based on Defendant's rights under the Lanham
19 Act.
20

21 39. In the absence of a declaration from the Court, GoDaddy LLC will
22 transfer the Domain Name to the control of Defendant, and Plaintiff will suffer
23 immediate and irreparable harm.

24 40. Plaintiff's registration and use of the Domain Names does not, and is not
25 likely to cause confusion, or to cause mistake, or to deceive as to the affiliation,

1 connection or association of Plaintiff with Defendant, or as to the origin, sponsorship, or
2 approval of Plaintiff's goods, services, or commercial activities by Defendant.

3 41. Plaintiff's registration and use of the Domain Names do not misrepresent
4 the nature, characteristics, qualities, or geographic origin of Plaintiff's or Defendant's
5 goods, services, or commercial activities.

6 42. Plaintiff's domain names are directly descriptive and/or generic to the
7 Plaintiff's activities in connection with the conduct of lotto games.

8 **THIRD CLAIM FOR RELIEF**
9 **(TORTIOUS INTERFERENCE)**

10 43. Plaintiff incorporates the allegations set forth in paragraphs 1 through 42
11 above.

12 44. Knowing its allegations were not "complete and accurate", Defendant
13 certified otherwise in its UDRP complaint, and claimed that the Plaintiff had "registered
14 and used [the domain names] in bad faith" relative to the Defendant's asserted foreign
15 rights for marks for clothing. Defendant did so for the purpose of depriving the Plaintiff
16 of its rights under the domain registration contract.

17 45. Defendant's misrepresentations in the UDRP Complaint were made for
18 the purpose of inducing a mis-application of the dispute policy of Plaintiff's domain
19 registration contract, to cause breach thereof in that the UDRP panel was misled, and
20 the UDRP was mis-interpreted and mis-applied in the course of the UDRP Proceeding.

21 46. Defendant's misrepresentation of Plaintiff's intent in registering the
22 domain names were made for the purpose of depriving Plaintiff of the benefit of
23 Plaintiff's registration contracts with GoDaddy LLC, and transferring such benefits to
24 Defendant.
25

DEMAND FOR JURY TRIAL

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2 47. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Dent hereby demands a trial by
3 jury for all issues triable of right by a jury.
4

PRAYER FOR RELIEF

5
6 WHEREFORE, Plaintiff Dent demands judgment against Defendant Lotto Sport
7 as follows:

8 1. Declaration by the Court, pursuant to 28 U.S.C. §2201, that plaintiff's
9 registration, ownership and use of the Domain Names <lottostore.com> and
10 <lottoworks.com> is lawful and proper and does not infringe on any right the Defendant
11 may claim in the United States;

12 2. A Judgment that Defendant has attempted unlawfully to interfere with
13 Plaintiff's rights and expectations under its domain name registration contract and has
14 induced a breach thereof by making false statements resulting in mis-application of the
15 dispute policy embodied therein;

16 3. Cost and expenses, including costs under 15 U.S.C. 1114(2)(D)(iv)-(v)
17 and reasonable attorneys' fees;

18 4. As this is an action "involving a violation of 15 USC 1125(d)(1)" by way
19 of determining that no such violation in fact has occurred, "an award of statutory
20 damages in the amount of not less than \$1,000 and not more than \$100,000 per domain
21 name, as the court considers just" as provided under 15 USC 1117(d); and
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23 5. For such other and further relief as this Court deems just and proper.
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1 DATED this 3rd day of March, 2017.

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