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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

GLOBAL DNS LLC, a Washington  
limited liability company,

Plaintiff,

vs.

KOOK’S CUSTOM HEADERS, INC., a  
New York corporation,

Defendant.

NO.

**COMPLAINT FOR DECLARATORY  
RELIEF OF NON-INFRINGEMENT  
AND LAWFUL USE OF THE  
<KOOKS.COM> DOMAIN NAME,  
AND FOR CANCELLATION OF  
TRADEMARK REGISTRATION**

**JURY TRIAL DEMANDED**

By this Complaint, pursuant to 28 U.S.C. § 2201, Global DNS LLC (“Global DNS”) seeks declaratory relief, as set forth below, to establish that its registration and use of the domain name <kooks.com> (the “Domain Name”) is lawful under the Lanham Act (15 U.S.C. § 1125, *et seq.*) and the Anticybersquatting Consumer Protection Act (15 U.S.C. §1125(d)):

**I. NATURE OF THE CASE**

1. This is an action for declaratory relief to establish that Global DNS’s registration of the Domain Name (*i.e.*, <kooks.com>) is lawful under the Lanham Act and the Anticybersquatting Consumer Protection Act (“ACPA”) and does not violate Defendant Kook’s Custom Headers, Inc.’s (“Defendant”) rights thereunder.



1 **III. PARTIES**

2 8. Plaintiff Global DNS LLC is a Washington limited liability company.

3 9. On information and belief, Defendant Kook’s Custom Headers, Inc. is a  
4 New York domestic business corporation.

5 **IV. FACTS**

6 10. Global DNS registered the Domain Name in April, 1996.

7 11. Global DNS registered the Domain Name through the domain name  
8 registrar Tucows Inc.

9 12. At the time of registration of the Domain Name Global DNS was not aware  
10 of any third party with rights in “Kooks” or “kooks.com”.

11 13. Global DNS registered the Domain Name with an intention to propagate a  
12 website therefrom and not to profit from any third party’s goodwill in a mark similar or  
13 identical to the Domain Name.

14 14. On October 24, 2000 Defendant filed an application with the United States  
15 Patent and Trademark Office for the Alleged Mark with respect to “Automotive and  
16 motorcycle parts, namely, exhaust headers and mufflers.”

17 15. Defendant’s trademark application lists its date of first use of the Alleged  
18 Mark as January 1, 1962.

19 16. However, when Defendant initiated an administrative proceeding with the  
20 World Intellectual Property Organization concerning the Domain Name, Defendant  
21 represented that it is “a domestic business corporation incorporated in 1996 under the  
22 laws of the State of New York.”

23 17. By its own admission, Defendant did not exist in 1962, the date of its first  
24 claimed use of the Alleged Mark, and Defendant’s federal trademark application was  
25 fraudulent.

26 18. On February 14, 2008 Defendant submitted a complaint (the “Complaint”)  
27 to the World Intellectual Property Organization seeking transfer of the Domain Name to  
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1 Defendant.

2 19. As a result of Defendant’s initiation of administrative proceedings against  
3 Global DNS with respect to the Domain Name, the Domain Name registrar, Tucows Inc.,  
4 has disabled the Domain Name by “locking” it, *i.e.*, preventing Global DNS from  
5 transferring it.

6 20. Pursuant to 15 USC § 1114(2)(D)(v), a domain name registrant “whose  
7 domain name has been suspended, disabled, or transferred” as a result of an  
8 administrative proceeding regarding that domain name “may, upon notice to the mark  
9 owner, file a civil action to establish that the registration or use of the domain name by  
10 such registrant is not unlawful...”

11 21. Global DNS has commenced this action to establish that its registration  
12 and/or use of the Domain Name is not unlawful, and that Global DNS is not required to  
13 transfer the Domain Name registration to Defendant.

14 **V. FIRST CAUSE OF ACTION**  
15 **DECLARATORY RELIEF - 28 U.S.C. § 2201**  
16 **NO VIOLATION OF ACPA**

17 22. Plaintiff incorporates the allegations set forth in paragraphs 1 through 21  
18 above as though fully set forth herein.

19 23. There is an actual controversy with respect to whether Defendant is entitled  
20 to transfer of the Domain Name based on Defendant’s rights under the ACPA.

21 24. At the time Plaintiff registered the Domain Name the Alleged Mark was  
22 neither “distinctive” nor “famous” as provided under 15 U.S.C. §1125(d)(1)(A)(ii).

23 25. In registering the Domain Name Plaintiff lacked any “bad faith intent,” as  
24 provided in 15 U.S.C. §1125(d)(1)(A)(i), to profit from Defendant’s alleged trademark.

25 26. On information and belief, Defendant was not using and had no rights in  
26 the Alleged Mark at the time Plaintiff registered the Domain Name.

27 27. Plaintiff had reasonable grounds to believe that its registration and/or use of  
28 the Domain Name was a fair use or otherwise lawful, as provided in 15 U.S.C.

1 §1125(d)(1)(B)(ii).

2 28. Plaintiff's registration or use of the Domain Name does not violate  
3 Defendant's rights under the ACPA.

4 **VI. SECOND CAUSE OF ACTION**  
5 **DECLARATORY RELIEF - 28 U.S.C. § 2201**  
6 **NO VIOLATION OF LANHAM ACT**

7 29. Plaintiff incorporates the allegations set forth in paragraphs 1 through 28  
8 above as though fully set forth herein.

9 30. There is an actual controversy with respect to whether Defendant is entitled  
10 to transfer of the Domain Name based on Defendant's rights under the Lanham Act.

11 31. Plaintiff's registration of the Domain Name does not constitute "use" of the  
12 Alleged Mark under the Lanham Act.

13 32. Plaintiff's registration or use of the Domain Name is not likely to cause  
14 confusion, or to cause mistake, or to deceive as to the affiliation, connection, or  
15 association of Plaintiff with Defendant, or as to the origin, sponsorship, or approval of  
16 Plaintiff's goods, services, or commercial activities by Defendant.

17 33. Plaintiff's registration or use of the Domain Name does not misrepresent  
18 the nature, characteristics, qualities, or geographic origin of Plaintiff's or Defendant's  
19 goods, services, or commercial activities.

20 34. Plaintiff's registration or use of the Domain Name does not violate  
21 Defendant's rights under the Lanham Act.

22 **VII. THIRD CAUSE OF ACTION**  
23 **CANCELLATION OF TRADEMARK REGISTRATION NO. 2,475,925**  
24 **FOR FRAUD ON THE PTO**

25 35. Plaintiff incorporates the allegations set forth in paragraphs 1 through 34  
26 above as though fully set forth herein.

27 36. Defendant's Alleged Mark KOOKS should be canceled because, upon  
28 information and belief, Defendant committed fraud upon the United States Patent and  
Trademark Office ("PTO").

1 37. Defendant's federal trademark application for the Alleged Mark indicated  
2 Defendant's first use of the Alleged Mark occurred on January 1, 1962.

3 38. However, the complaint Defendant filed with the World Intellectual  
4 Property Organization concerning the Domain Name indicates Defendant was not  
5 incorporated until 1996, thirty-four (34) years after its claimed first use of the Alleged  
6 Mark.

7 39. At the time Defendant filed its application with the PTO to register the  
8 Alleged Mark KOOKS, Defendant knew its claimed first date of use was incorrect and  
9 misleading.

10 40. In providing incorrect information regarding its alleged first date of use of  
11 the Alleged Mark KOOKS, Defendant intended to obtain a registration to which it was  
12 not entitled, and committed fraud upon the PTO.

13 41. A claimed first use date well before the actual first date of use constitutes  
14 fraud on the PTO.

15 42. The Lanham Act authorizes cancellation of a trademark registration where  
16 the mark has been fraudulently obtained.

17 43. Consequently, Defendant's alleged KOOKS mark is invalid and should be  
18 cancelled.

19 44. Global DNS has been and will continue to be damaged by the registration  
20 of Defendant's alleged KOOKS mark. Global DNS's damages include, but are not  
21 limited to, fees and costs incurred in maintaining a defense against the World Intellectual  
22 Property Organization proceeding initiated by Defendant to enforce its invalid mark.

23 45. Therefore, Global DNS respectfully requests the Court order and certify to  
24 the Director of the United States Patent and Trademark Office that United States  
25 Trademark Registration No. 2,475,925 should be canceled for fraud on the PTO.

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**VIII. RELIEF REQUESTED**

WHEREFORE, Plaintiff Global DNS LLC prays for the following relief:

1. A Judgment declaring that Global DNS's registration and use of the Domain Name does not violate Defendant's rights under the Anticybersquatting Consumer Protection Act, 15 U.S.C. §1125(d).
2. A Judgment declaring that Global DNS's registration and use of the Domain Name does not violate Defendant's rights under the Lanham Act, 15 U.S.C. §1125.
3. A Judgment declaring that Global DNS is not required to transfer the registration for the Domain Name to Defendant.
4. A Judgment prohibiting Defendant from taking any further action with respect to the transfer of the Domain Name.
5. A Judgment ordering the cancellation of United States Trademark Registration No. 2,475,925 for KOOKS pursuant to 15 U.S.C. § 1119 because Defendant committed fraud on the United States Patent and Trademark Office.
6. Award to Global DNS of its costs and attorneys' fees.
7. That the Court grant such other, further, and different relief as the Court deems proper under the circumstances.

DATED this 14<sup>th</sup> day of February, 2008.

Respectfully Submitted,

**NEWMAN & NEWMAN,  
ATTORNEYS AT LAW, LLP**



By:

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Global DNS LLC