

ESTTA Tracking number: **ESTTA449562**

Filing date: **01/05/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054966
Party	Defendant Cook Collection Attorneys, P.L.C.
Correspondence Address	COOK COLLECTION ATTORNEYS PLC 165 FELL STREET SAN FRANCISCO, CA 94102 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	David J. Cook (SBN # 060859)
Filer's e-mail	cook@squeezebloodfromturnip.com, mbaron@cookcollectionattorneys.com
Signature	/djc/
Date	01/05/2012
Attachments	Smith 12b6 motion Supp.pdf ( 12 pages )(827435 bytes )

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 SCOTT R. SMITH, an individual, )

4 Petitioner, )

5 vs. )

6 COOK COLLECTION ATTORNEYS, )  
7 P.L.C., a California corporation, )

8 Respondent. )

Cancellation No. 92054966  
Registration No. 3257604

9 **COOK COLLECTION ATTORNEYS, P.L.C.'S SUPPLEMENTAL MEMORANDUM IN**  
10 **SUPPORT OF MOTION TO DISMISS PETITION TO CANCEL, AND MOVE FOR**  
11 **ENTRY OF PREFILING ORDER AND OTHER RELIEF**

12 **I. INTRODUCTION.**

13 **A. SUBSEQUENT EVENTS.**

14 Petitioner filed a Complaint with GoDaddy.com. In response, GoDaddy has taken action,  
15 pursuant to its email of January 4, 2012, in which the email states as follows:

16 "Dear David J. Cook,

17 We are in receipt of your online complaint regarding the domain  
18 **COOKLEGALSERVICES.INFO**. Although that domain name is registered  
19 through Go Daddy, at the time of our review there was only a parked page (and no  
20 live website) associated with the domain. In response to your complaint, we have  
21 instituted a change that will remove all advertisements appearing on the parked  
22 page. Please allow 48 hours for propagation, at which time the parked page will  
23 appear with a generic "page not available" message.

24 If you have a complaint about the issue of ownership or wording of the domain  
25 name itself (as opposed to the content hosted on the associated website), that matter  
26 will need to be taken up with the domain name owner directly, or should be filed in  
27 a UDRP or court proceeding. Our internal policies, as well as ICANN regulations,  
28 prevent us from acting as the arbiter of domain name disputes; we are only able to  
assist with complaints about trademark infringement that may occur in the viewable  
content of a hosted website (as opposed to the wording of the domain name  
registered).

At Go Daddy, we are committed to assisting intellectual property owners in taking  
action against IP infringement. Please let us know if you have any other questions.

Thank you,  
Ryan S.  
Domain Services  
GoDaddy.com, LLC"  
(Attached hereto marked *Exhibit "A."*)

1 **II. WHAT THIS MEANS.**

2 GoDaddy provides two types of services: "domain registration" and "web hosting."  
3 Registration is like when the phone company assigns you a phone number. Hosting is like when  
4 you rent storage space.

5 **WEB HOSTING**

6 GoDaddy has deleted any and all data connected to "cooklegalservices.info" - including its  
7 own ads. Basically, Smith had rented a storage locker from GoDaddy and GoDaddy has padlocked  
8 it shut and taken all markings off the locker - even its own "Choose GoDaddy" ad.

9 The current site shows the following results, attached hereto marked *Exhibit "B."*

10 **III. NO STANDING.**

11 Petitioner has filed a separate Petition to Cancel the trademark of COOK for Cook  
12 Collection Attorneys, on the basis that Petitioner seeks to register  
13 COOKLEGALSERVICES.COM without fear of a lawsuit for cybersquatting. This alleged fear or  
14 supposed injury allegedly creates standing. GoDaddy now refuses to proceed with the posting of  
15 this website, and moreover, will remove all advertising appearing on the parked page. In short,  
16 COOKLEGALSERVICES.COM cannot be used, in light of the Complaint filed by Cook  
17 Collection Attorneys.

18 Petitioner has no standing, given the end of COOKLEGALSERVICES.COM as an  
19 effective website. As previously argued, standing is a requisite to any Petition to Cancel, all of  
20 which is set more particularly in the prior filed motions. Therefore, the Petition to Cancel the  
21 COOK Trademark would necessarily be denied.

22 Petitioner has not withdrawn either Petition to Cancel, in light of the obvious lack of  
23 standing. Both Petitions are now prosecuted without probable cause and brought maliciously.  
24 Given that GoDaddy declines to host COOKLEGALSERVICES.COM, the continued prosecution  
25 of that Petition is necessarily in bad faith, and moreover, represents another element of malicious  
26 prosecution.

27 The California courts now make it clear that the continued prosecution of a meritless action  
28 is independently actionable, despite the alleged probable cause at the initiation of the action. In

1 *Zamos v. Stroud* (2004) 32 Cal.4th 958, 969-70 [12 Cal.Rptr.3d 54, 63, 87 P.3d 802, 809-10], the  
2 court stated as follows:

3 “... Continuing an action one discovers to be baseless harms the defendant and  
4 burdens the court system just as much as initiating an action known to be baseless  
5 from the outset. (See 1 Harper et al., *The Law of Torts* (3d ed.1996) § 4.3, p. 4:13  
6 [“\*Clearly, it is as much a wrong against the victim and as socially or morally  
7 unjustifiable to take an active part in a prosecution after knowledge that there is no  
8 factual foundation for it, as to instigate such a proceeding in the first place”\*].) As  
9 the Court of Appeal in this case observed, “\*It makes little sense to hold attorneys  
10 accountable for their knowledge when they file a lawsuit, but not for their  
11 knowledge the next day.”\*

12 Moreover, as the Court of Appeal went on to point out, “\*Holding attorneys liable  
13 for the damages a party incurs as a result of the attorneys prosecuting civil claims  
14 after they learn the claims have no merit also will encourage voluntary dismissals of  
15 meritless \*\*810 claims at the earliest stage possible. Because \*970 an attorney will  
16 be liable only for the damages incurred from the time the attorney reasonably  
17 should have caused the dismissal of the lawsuit after learning it has no merit, an  
18 attorney can avoid liability by promptly causing the dismissal of, or withdrawing as  
19 attorney in, the lawsuit.”

20 Petitioner has not withdrawn either Petition, and seeks to continue the same. This court  
21 should construe Petitioner’s campaign of continuing damage and injury as strong evidence of his  
22 malevolence directed against Respondent. The court may conclude that the sole purpose of these  
23 two Petitions is to vex and injure the Respondent in an attempt to compel him to leave the  
24 engagement with Entrepreneur Media, Inc., less Respondent suffers more expense and effort.

25 Petitioner has somewhat succeeded in running up an expense, given these expenses as set  
26 forth below:

- 27 \$275 Registration of Cook Legal Services™
- 28 \$275 Registration of Squeeze Blood From Turnip™
- \$4.95 Service of Motion to Dismiss under Rule 12(b)(6) in connection with Smith Petition  
to Cancel SqueezeBloodFromTurnip.com™
- \$4.95 Service of Motion to Dismiss under Rule 12(b)(6) in connection with Smith Petition  
to Cancel Cook™
- \$230 Signage reading Cook Legal Services for front and back of office to show usage in  
trade
- \$59 Fee to Pitney Bowes to change printer readout to "Cook Legal Services" to show usage  
in trade
  
- Total \$848.90

29 **IV. CONCLUSION.**

30 Petitioner registered a website with GoDaddy probably at a marginal or no cost. Based  
31 upon that marginal filing, he has now launched an attack on the trademark of COOK for Cook

1 Collection Attorneys. He has also launched a Petition to Cancel SqueezeBloodFromTurnip as a  
2 trademark for T-shirts. Petitioner has not the slightest standing for either one of these Petitions.

3 The court therefore should deny both Petitions, with prejudice, and for this proceeding,  
4 issue a prefiling order, which would protect Respondent from any further filings.

5 DATED: January 4, 2012

COOK COLLECTION ATTORNEYS

6 By: \_\_\_\_\_

7 DAVID J. COOK  
8 Attorneys for Respondent  
COOK COLLECTION ATTORNEYS, P.L.C.

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1 **CERTIFICATE OF SERVICE**

2 SCOTT R. SMITH  
3 5714 Folsom Blvd., Suite 140  
4 Sacramento, CA 95819

5 I declare:

6 I am employed in the County of San Francisco, California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is 165 Fell Street, San Francisco, CA 94102. On the date set forth below, I served the attached:

7 **COOK COLLECTION ATTORNEYS, P.L.C.'S SUPPLEMENTAL  
8 MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PETITION TO  
9 CANCEL, AND MOVE FOR ENTRY OF PREFILING ORDER AND OTHER  
10 RELIEF**

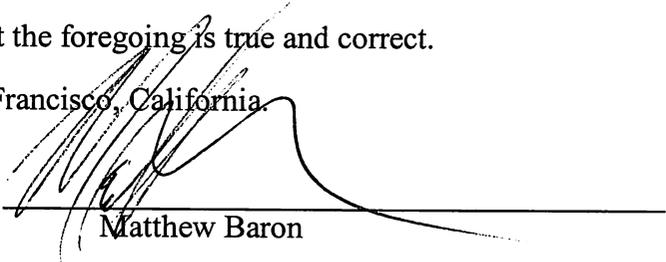
11 **DECLARATION OF DAVID J. COOK, ESQ. IN SUPPORT OF SUPPLEMENTAL  
12 MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PETITION TO  
13 CANCEL, AND MOVE FOR ENTRY OF PREFILING ORDER AND OTHER  
14 RELIEF**

15 on the above-named person(s) by:

16 XXX (BY MAIL) Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed to the person(s) served above.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on January 5, 2012 at San Francisco, California.

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21 Matthew Baron  
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Cancellation No. 92054966  
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9 **DECLARATION OF DAVID J. COOK, ESQ. IN SUPPORT OF SUPPLEMENTAL**  
10 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PETITION TO CANCEL,**  
11 **AND MOVE FOR ENTRY OF PREFILING ORDER AND OTHER RELIEF**

12 I, DAVID J. COOK, hereby declare and state as follows:

13 1. I am the Respondent in the above-entitled action, am duly authorized to practice before  
14 all courts in the State of California, and am familiar with the facts and circumstances in this action.

15 2. Petitioner filed a Complaint with GoDaddy.com. In response, GoDaddy has taken  
16 action, pursuant to its email of January 4, 2012, in which the email states as follows:

17 "Dear David J. Cook,

18 We are in receipt of your online complaint regarding the domain  
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prevent us from acting as the arbiter of domain name disputes; we are only able to  
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Thank you,  
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Domain Services

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GoDaddy.com, LLC”

Attached hereto marked *Exhibit “A”* is a true and correct copy of that email.

3. GoDaddy provides two types of services: "domain registration" and "web hosting."  
Registration is like when the phone company assigns you a phone number. Hosting is like when you rent storage space.

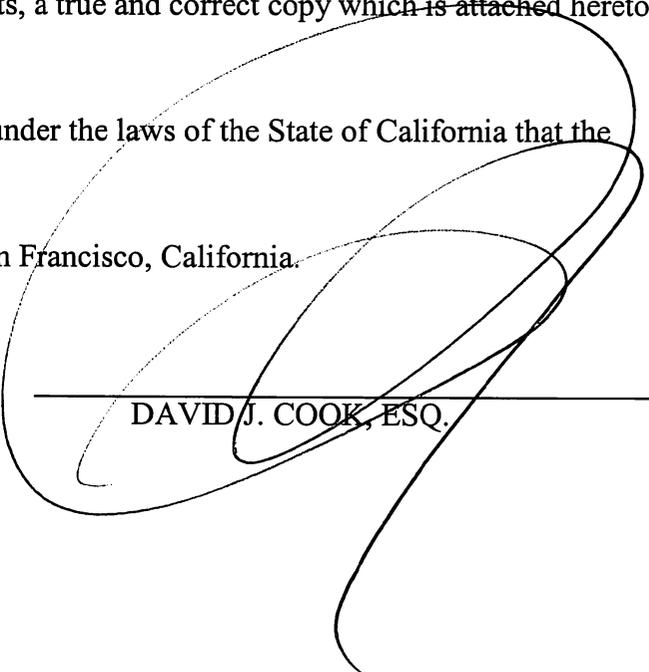
WEB HOSTING

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The current site shows the following results, a true and correct copy which is attached hereto marked *Exhibit “B.”*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 4, 2012 at San Francisco, California.



DAVID J. COOK, ESQ.

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**EXHIBIT "A"**

**Matthew Baron**

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**From:** "David J. Cook" <davidcook@cookcollectionattorneys.com>  
**Date:** Wednesday, January 04, 2012 8:37 AM  
**To:** "Matthew Baron" <mbaron@cookcollectionattorneys.com>  
**Subject:** FW: COOKLEGALSERVICES.INFO

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**From:** trademarkclaims@godaddy.com [mailto:trademarkclaims@godaddy.com]  
**Sent:** Wednesday, January 04, 2012 6:39 AM  
**To:** Cook@SqueezeBloodFromTurnip.com  
**Subject:** COOKLEGALSERVICES.INFO

Dear David J. Cook,

We are in receipt of your online complaint regarding the domain COOKLEGALSERVICES.INFO. Although that domain name is registered through Go Daddy, at the time of our review there was only a parked page (and no live website) associated with the domain. In response to your complaint, we have instituted a change that will remove all advertisements appearing on the parked page. Please allow 48 hours for propagation, at which time the parked page will appear with a generic "page not available" message.

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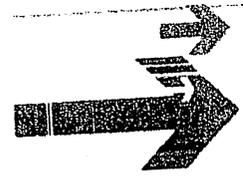
Thank you,

Ryan S.  
Domain Services  
GoDaddy.com, LLC

**EXHIBIT "B"**



**Sorry!**



This site is **not** currently available.



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3 5714 Folsom Blvd., Suite 140  
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5 I declare:

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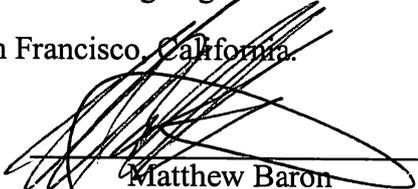
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16 XXX (BY MAIL) Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed to the person(s) served above.

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