

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 69 OF 2018

BETWEEN:

NAME ADMINISTRATION INC (CAYMAN BVI)

Plaintiff

-AND-

SAMUEL J. MCROBERTS

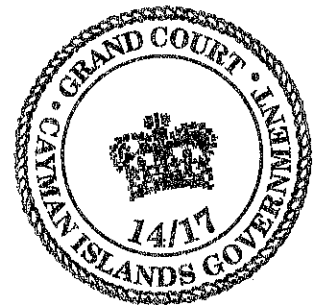
Defendant



AMENDED WRIT OF SUMMONS
(amended pursuant to GCR Order 20 Rule 1)

TO: SAMUEL J. MCROBERTS

504 Overlook Dr.
North Palm Beach, FL 33408
United States of America



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 28 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495 GT, Grand Cayman, Cayman Islands, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 10th day of April 2018

NOTE: This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issued unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Services are given with the accompanying form.

AMENDED STATEMENT OF CLAIM

1. The Plaintiff is a company incorporated in the ~~British-Virgin~~ Cayman Islands whose principal office is located at 3-110 Governors Square, Seven Mile Beach, Grand Cayman, Cayman Islands, 10518 APO KY1-1105. The Plaintiff is an online media network that operates thousands of generic domain names for paid search and development purposes.
2. The Defendant is an individual residing at 504 Overlook Dr. North Palm Beach, FL 33408 United States of America. The Defendant is in the business of selling sunglasses and related goods.
3. On or about March 2, 2017 the Plaintiff obtained the domain name "Coolfit.com" at an auction of expired and abandoned previously-registered domain names and thereafter entered into an agreement (the "Agreement") for the registration of the domain name "Coolfit.com" (the "Domain Name") with Uniregistrar Corp. d/b/a Uniregistry.com. The Registrar is a Cayman company accredited by the Internet Corporation for Assigned Names and Numbers ("ICANN") for the management of generic top-level domains.
4. The Agreement contained the following express terms:
 - 5.1 That the Agreement was governed by and interpreted and enforced in accordance with the laws of the Cayman Islands and that any action relating to the Agreement must be brought in the Cayman Islands.
 - 5.2 That if the registration of the domain name is challenged by a third party the challenge will be subject to the provisions specified in the dispute policy ("Dispute Policy").
 - 5.3 The Dispute Policy is the Uniform Domain Name Dispute Resolution Policy (commonly known as the "UDRP") set forth by ICANN and incorporates the UDRP Rules of Procedure also set out by ICANN.
5. THE UDRP contains the following express terms:
 - 6.1 **"a. Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provide, in compliance with the Rules of Procedure, that (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) you have no rights or legitimate interests in respect of the domain name; and (iii) your domain name has been registered and is being used in bad

faith. In the administrative proceeding, the complainant must prove that each of these three elements are present.”

6.2 **“k. Availability of Court Proceedings.** The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceedings is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel’s decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See Paragraphs 1 and 3(b)(xiii) of the Rules of Procedures for details. If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel’s decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name.”

6. Prior to the registration of the Domain Name the Plaintiff had previously registered various other domain names containing the words “cool” and/or “fit”. The registration of the Domain Name was accordingly consistent with the business model in obtaining domain names with the generic reference to these dictionary words to allow the creation of websites containing advertising to links to goods and services relating to the words.
7. Immediately subsequent to registration of the Domain Name the Plaintiff began operating a website utilizing the Domain Name. The website provided automated advertising links to goods and services relating to exercise and fitness equipment consistent with the primary meaning of the phrase “Cool Fit”.
8. On or about January 31, 2018 the Defendant issued a complaint under the UDRP challenging the Plaintiff’s registration of the Domain Name. The Defendant alleged that they were in the business of providing apparel sold under a stylized logo representation of the words “coolfit”.

9. In its UDRP complaint, the Defendant falsely claimed that Plaintiff was diverting alleged "consumers" of apparel in which the Defendant claims to trade when, in fact, the Defendant produces no goods, and conducts no substantial trade in such goods.
10. In its UDRP complaint, the Defendant falsely claimed that Plaintiff had "made an anonymous offer to sell the domain name to the [Defendant]" when, in fact, the Defendant engaged an agent to solicit purchase of the domain name from the Plaintiff in order to conceal Defendant's identity.
11. The Defendant pursuant to Paragraph 4. k of the UDRP submitted to the jurisdiction of the courts of the Cayman Islands for independent resolution of the dispute in the event either party commenced proceedings either prior to or subsequent to the decision of the administrative panel.
12. On or about March 26, 2018, an administrative panel appointed by the (US) National Arbitration Forum, in reliance on false statements made in the Defendant's UDRP complaint, rendered a decision directing the Registrar to transfer the domain name to the Defendant.
13. The Defendant has not registered "COOLFIT" as a trademark in the Cayman Islands. The Defendant does not sell apparel or any other goods or services in the Cayman Islands.
14. The Plaintiff reasonably believes that its registration and use of the Domain Name was and is lawful in the Cayman Islands. The Plaintiff accordingly seeks a declaration that its registration of the Domain Name is lawful and does not violate any rights of the Defendant in the Cayman Islands.
15. Further or alternatively, the Plaintiff does not use the logo which the Defendant claims as its mark. The Plaintiff uses the Domain Name for the purpose of providing advertising material relating to exercise and fitness equipment. The Plaintiff is accordingly using a descriptive term in connection with the descriptive meanings of the words in question. The Plaintiff seeks a declaration that its use of the Domain Name does not violate any enforceable right of the Defendant in the Cayman Islands.
16. Further or alternatively, the Plaintiff seeks a declaration (or declarations) that Plaintiff's registration and use of the Domain Name for advertising exercise and fitness equipment does not infringe and is otherwise lawful in relation to Defendant's claimed rights.
17. Further or alternatively, the Plaintiff seeks declarations that, with respect to the Defendant, (1) the Domain Name is not identical or confusingly similar to the trademark or service mark in which the Defendant has rights; (2) that the Plaintiff has rights and a legitimate interest in respect of the Domain Name; and/or (3) the

Plaintiff has not registered and used the Domain Name with a bad faith intent in relation to the Defendant's claimed mark.

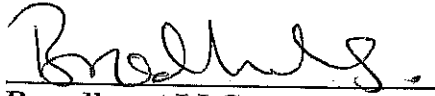
18. Further or alternatively, the Plaintiff seeks a declaration reversing and/or overturning the Decision on the basis that it was wrong in both fact and/or in law.
19. Further or alternatively, pursuant to the Agreement and the UDRP, the dispute concerning the Domain Name is expressly referable to the Grand Court for independent resolution. The Plaintiff seeks a corresponding declaration concerning the Dispute and/or rights under the Agreement and/or its ownership of the Domain Name.
20. Further or alternatively, the Domain Name is property within the Cayman Islands and the Plaintiff is entitled to the following declarations with respect to that property:
 - a. that the Plaintiff has rights or legitimate interest in respect of the Domain Name;
 - b. that the Domain Name has neither been registered nor is it being used in bad faith by the Plaintiff;
 - c. that the Defendant is not entitled to the transfer of the Domain Name.
21. In the absence of a declaration from the Court, the Registrar will transfer the Domain Name to the control of the First and Second Defendant and the Plaintiff will suffer immediate and irreparable harm.

AND THE PLAINTIFF claims

- (1) A declaration that its registration of the Domain Name is lawful and does not violate any enforceable right of the Defendant in the Cayman Islands;
- (2) Further or alternatively, a declaration that the Plaintiff has the right to use the phrase "Cool Fit" for descriptive purposes and that accordingly the use of the Domain Name by the Plaintiff does not violate any enforceable rights of the Defendant;
- (3) Further of alternatively, the Plaintiff seeks a declaration that 1) the Domain Name is not identical or confusingly similar to a trademark or service mark in which the First and/or Second Defendant has right;
- (4) Further of alternatively, the Plaintiff seeks a declaration that the Plaintiff has rights and a legitimate interest in respect of the Domain Name;

- (5) Further of alternatively, the Plaintiff seeks a declaration that the Plaintiff has not registered and used the Domain Name in bad faith;
- (6) Further of alternatively, the Plaintiff seeks a declaration that the Defendant does not have any trademark or other enforceable right with respect to the Domain Name;
- (7) Further of alternatively, the Plaintiff seeks a declaration its utilization of the Domain Name does not violate any enforceable right and/or trademark held by the Defendant;
- (8) Further or alternatively, the Plaintiff seeks declarations that, with respect to the Defendant, (1) the Domain Name is not identical or confusingly similar to the trademark or service mark in which the Defendant has rights; (2) that the Plaintiff has rights and a legitimate interest in respect of the Domain Name; and/or (3) the Plaintiff has not registered and used the Domain Name with a bad faith intent in relation to the Defendant's claimed mark.
- (9) Further or alternatively, the Plaintiff seeks a declaration reversing and/or overturning the Decision on the basis that it was wrong in both fact and/or in law.
- (10) Further or alternatively, pursuant to the terms of the Agreement and the UDRP, the dispute concerning the Domain Name is expressly referable to the Grand Court for independent resolution. The Plaintiff seeks corresponding declarations including declarations confirming its rights under the Agreement and/or its ownership of the Domain Name.
- (11) Further or alternatively, the Domain Name is property within the Cayman Islands and the Plaintiff is entitled to the following declarations with respect to that property:
 - (a) that the Plaintiff has rights or legitimate interest in respect of the Domain Name;
 - (b) that the Domain Name has neither been registered nor is it being used in bad faith by the Plaintiff;
 - (c) that the Defendant is not entitled to the transfer of the Domain Name.
- (12) Costs;
- (13) Such further or other relief as this Honourable Court may deem just.

Dated the 10th day of April 2018
Re-Dated the 13th day of August 2018



Broadhurst LLC
Attorneys-at-Law for the Plaintiff

This Amended Writ of Summons and Statement of Claim is filed by Broadhurst LLC, Attorneys-at-Law for the Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, George Town, Grand Cayman, Cayman Islands.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (14) days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not endorsed on the Writ, the defence need not be served until fourteen (14) days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for fourteen (14) days after his Acknowledgement, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (14) days for acknowledging service, a Writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a FIRM and an Attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2018

BETWEEN:

NAME ADMINISTRATION INC (BVI)

Plaintiff

-AND-

SAMUEL J. MCROBERTS

Defendant

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important

Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

-
- State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

 - State whether the Defendant intends to contest the proceedings (*tick appropriate box*)
Yes [] No []

 - If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)
Yes []
-

Service of the Writ is acknowledged accordingly

(Signed) _____
[Attorney] for
[Defendant in Person]
Address for service:

Please see overleaf.....

Notes on address for service

Attorney: where the Defendant is represented by an Attorney, state the Attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign Attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Endorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

**BROADHURST LLC
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503 GT
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, BRITISH WEST
INDIES**

Endorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.