

IN THE GRAND COURT OF THE CAYMAN ISLANDS

60565

CAUSE NO. OF 2008

BETWEEN:

(1) **NAME ADMINISTRATION INC (BY)**

Plaintiff

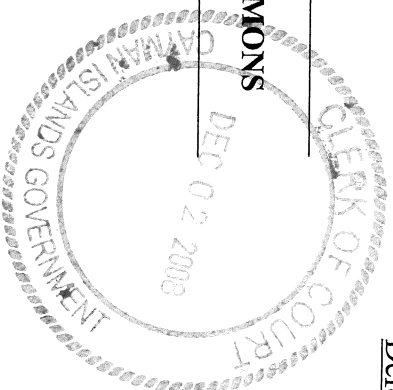
-AND-

(1)
BALGLOW FINANCE SA
(2)
FORTUNA COMÉRCIO E FRANQUIAS LTDA

Defendants



WRIT OF SUMMONS



TO: BALGLOW FINANCE SA

Av. General Flores, 2422
Montevideo
Uruguay

AND TO: FORTUNA COMÉRCIO E FRANQUIAS LTDA

Rua Frandique Coutinho, 1271
05416-011 São Paulo – SP
Brazil

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 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 2nd day of December 2008

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.

STATEMENT OF CLAIM

1. The Plaintiff is a company incorporated in the British Virgin Islands whose principal office is located at 10318 APO, Grand Cayman, Cayman Islands BWI. The Plaintiff is an online media network that operates thousands of generic domain names for paid search and development purposes.
2. The First Defendant is a company incorporated in Uruguay whose address is Av. General Flores, 2422, Montevideo, Uruguay. The First Defendant represents itself as being in the business of selling sunglasses and related goods primarily in Brazil.
3. The Second Defendant is a company incorporated in Brazil whose address is Rua Fradique Coutinho, 1271, 05416-011 São Paulo – SP, Brazil The Second Defendant is a license of the First Defendant.
4. On or about September 7, 2004 the Plaintiff entered into an agreement (the “Agreement”) for the registration of the domain name “Chilibeans.com” (the “Domain Name”) with Domain Name Sales Corp (BVI) (now known as iRegistry.com Inc. (BVI)) (hereinafter the “Registrar”). The Registrar is accredited by the Internet Corporation for Assigned Names and Numbers (“ICANN”) which is authorized by the US Department of Commerce to contract with registries for the management of generic top-level domains.
5. 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.
6. 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 Provider, 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.”

7. Prior to the registration of the Domain Name the Plaintiff had previously registered various other domain names containing the words “chilis” and/or “beans”. Examples of these domains names are chilirecipe.com (registered in January 2002) and chilipepers.com (registered in September 2003). The registration of the Domain Name was accordingly consistent with the Plaintiff’s business model of obtaining domain names with the generic reference to these words to allow the creation of websites containing advertising to links to goods and services relating to the words.

8. Shortly subsequent to the September 2004 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 foods and beverages consistent with the primary meaning of the term “Chilli Beans”.

9. On or about August 8th 2008 the First and Second Defendant issued a complaint under the UDRP challenging the Plaintiff’s registration of the Domain Name. The First and Second Defendant alleged that prior to the registration of the Domain Name they were in the business of providing sunglasses and related goods sold in Brazil under a mark that consisted of a logo depicting a pepper with the stylized words “Chilli Beans” in an oval. Prior to the issuance of the complaint the Plaintiff its officers, directors, and agents had no actual knowledge of the existence of the First and Second Defendant, their mark, or their alleged products.
10. The First and Second 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.
11. On or about November 10th 2008, an administrative panel appointed by the World Intellectual Property Organization, rendered a UDRP decision directing the Registrar to transfer the domain name to the First and Second Defendants.
12. The First and Second Defendant have not registered “Chilli Beans” as a trademark in the Cayman Islands. The First and Second Defendant do not sell sunglasses or related products in the Cayman Islands.
13. The Plaintiff reasonably believes that its registration and use of the Domain Name was and is lawful. The Plaintiff accordingly seeks a declaration that its registration of the Domain Name is lawful and does not violate any enforceable rights of the First and Second Defendant in the Cayman Islands.
14. Further or alternatively, the Plaintiff does not use the logo which the First Defendant and Second Defendant claim as their mark and which they have registered outside of the Cayman Islands. The Plaintiff uses the Domain Name for the purpose of providing advertising material relating to food and beverages. The Plaintiff is accordingly using a generic term in connection with the generic meaning of the words in question. The Plaintiff seeks a declaration that its use of the Domain Name as a generic term does not violate any enforceable right of the First and Second Defendant.
15. Further or alternatively, the Plaintiff seeks a declaration (or declarations) that, with respect to the First and Second Defendant, 1) the Domain Name is not identical or confusingly similar to the trademark or service mark in which the First and/or Second Defendant has rights; (2) that the Plaintiff has rights and a legitimate interest in respect of the Domain Name; and (3) the Plaintiff has not registered and used the Domain Name with a bad faith intent in relation to the Defendants’ claimed mark.

16. 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 First and Second Defendant in the Cayman Islands;
- (2) Further or alternatively, a declaration that the Plaintiff has the right to use the generic term “Chilli Bean” for a generic purpose in the form of an internet domain name utilized in connection with the generic meaning of the term “Chilli Bean” and related wares and that accordingly the use of the Domain Name by the Plaintiff does not violate any enforceable rights of the First and Second Defendant;
- (3) Further or alternatively, the Plaintiff seeks a declaration (or declarations) that, with respect to the First and Second Defendant, 1) the Domain Name is not identical or confusingly similar to the trademark or service mark in which the First and/or Second Defendant has rights; (2) that the Plaintiff has rights and a legitimate interest in respect of the Domain Name; and (3) the Plaintiff has not registered and used the Domain Name with a bad faith intent in relation to the Defendants’ claimed mark;
- (4) Costs;
- (5) Such further or other relief as this Honourable Court may deem just.

Dated the 2nd day of December 2008

BROADHURST BARRISTERS
Broadhurst Barristers
Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim is filed by Broadhurst Barristers, 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.

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.
6. 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*.
7. A Defendant acting in person may obtain help in completing the form at the Courts Office.
- 8.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2008

BETWEEN:

(1) NAME ADMINISTRATION INC (BYD)

Plaintiff

-AND-

(1) BALGLOW FINANCE SA

(2) FORTUNA COMERCIO E FRANQUIAS LTDA

Defendants

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 BARRISTERS
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.

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