



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

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STILLWATER LAKES CIVIC	:	
ASSOCIATION, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
NOREEN GORKA, MICHAEL GLASSIC,	:	
STILLWATER LAKES CITIZENS,	:	
AND STILLWATER LAKES COMMUNITY	:	
ACTIVIST, a Pennsylvania Corporation,	:	Civil Action No. 3:08 CV 2264
	:	
	:	JURY TRIAL DEMANDED
Defendants.	:	

-----X

**MOTION TO DISMISS PLAINTIFF’S COMPLAINT PURSUANT  
TO FED. R. CIV. P. 12(B)(6) BY DEFENDANTS NOREEN GORKA,  
MICHAEL GLASSIC, STILLWATER LAKES CITIZENS, AND  
STILLWATERLAKES COMMUNITY ACTIVIST, a Pennsylvania Corporation**

Defendants Noreen Gorka, Michael Glassic, Stillwater Lakes Citizens, and Stillwater Lakes Community Activist, a Pennsylvania Corporation, by and through their counsel, Stewart I. Rosenblum, Esq., file this Motion to Dismiss Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and in support thereof, aver as follows:

1. Plaintiff through its Board of Directors filed a Complaint on December 18, 2008 against the instant Defendants setting forth six (6) counts:

- a. Count I: Lanham Act-Trade Name Infringement
- b. Count II: Cyber Squatting

- c. Count III: Statutory Anti-Dilution of Trade Name
- d. County IV: Anti-Dilution Misappropriation of Corporate Name
- e. Count V: Unfair Competition
- f. Count VI: Common Law Trade Mark Infringement

2. The gravamen of all of the claims is set forth in paragraph 2 of the Plaintiff's Complaint:

“As a corporation, the Association has ownership rights to its corporate and trade name (“Stillwater Lakes” and “Stillwater Lakes Civic Association, Inc.”) pursuant to Articles of Incorporation filed with the Pennsylvania Department of State in 1976.

3. It is the contention of the Plaintiff in each individual count that the filing of the Articles of Incorporation with the Pennsylvania Department of State in some manner accounts to common law trademark protection to the names “Stillwater Lakes” and “Stillwater Lakes Civic Association, Inc.”

4. Plaintiff is maintaining this instant action against the Defendants for their alleged use of registered domain names strikingly similar to the Plaintiff's name and have allegedly used the Plaintiff's “official” corporate and trade name without Association authorization.

5. The Plaintiff is maintaining this instant action against the Defendants under federal and state law but have failed to allege in any portion of the complaint that they have registered a trademark for either “Stillwater Lakes” or “Stillwater Lakes Civic Association, Inc.” or have filed an Intent to Register a Trademark for those entities.

6. The Plaintiff is maintaining this instant action against the Defendants under federal and state law but have failed to allege in any portion of the complaint that it has at any time ever affixed any service mark, trademark, or any other indication of a claim of trademark rights in the names “Stillwater Lakes” and/or “Stillwater Lakes Civic Association, Inc.”

7. Plaintiff relies upon the provisions of the Lanham Act, the Trademark Act of 1946, 15 U.S.C. Section 1124, as the basis for the protection of its claimed trademarked names.

8. The Lanham Act provides as follows:

(a)(1) Any person who, on or in connection with any goods or services, or any contained for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation which of origin, false or misleading description of fact, which-

(A) is likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection, or association of such person with another person, or as to the origin, sponsorship or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

9. Lanham Act subsection 4 provides for certain activities which shall not be actionable under the provisions of the statute:

(A) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark.

(B) Noncommercial use of a mark.

(C) All forms of news reporting and news commentary.

10. Several elements of a trademark case are not present in the instant action.

11. The Plaintiff has failed to demonstrate that it has satisfied the requirement that names were used in connection with any goods or services or used in commerce.

12. The mere filing of a corporate name with a filing of a certificate of incorporation does not render the name protected if it is not used to identify goods, services, or products in commerce.

13. The Plaintiff is a non-profit organization organized for the maintenance of a planned community.

14. The Plaintiff is one of two organizations that were established when the original Stillwater Lakes community was divided into two entities by the creation of Route 380, dissecting the two formerly united communities, into Stillwater Lakes Civil Association, Inc. and Stillwater Lake Estates, Inc., which was filed as a business organization with the Pennsylvania Department of Corporation on October 19, 1954.

15. In addition, a search of the Department of State indicates that there is a third corporate entity, Stillwater Lakes Water Corp., which was organized as a business corporation on December 4, 1973.

16. In addition, Defendants are annexing as exhibit 1 a google search report which indicates that there were 8,860 results for "Stillwater Lakes."

17. A review of the google search in Exhibit "1" demonstrates that the description of the Defendants' website "is a growing group of property owners in the planned community known as Stillwater Lakes Civic Association."

18. Plaintiff also claims the ownership of the initials "SLCA" in that the acronym is identical to the Plaintiff's acronym in paragraph 76 of the Complaint.

19. A review of a google search in Exhibit "2" demonstrates there were 278,000 reports of results for "SLCA."

20. A review of a website entitled acronym.com is annexed as Exhibit “3.”

A review of the listing fails to disclose that the Plaintiff has registered its initials with this entity.

21. Plaintiff contends that the Defendants Gorka and Glassic are bound by the Association’s Declaration of Covenants in paragraph 15 of the Complaint but no mention or allegation is made of any Covenant provision which purportedly restricts the use of the names sought to be protected by the Plaintiff in this action or in any manner is controlling on any issue in this lawsuit.

22. Plaintiff contends that the Defendants Gorka and Glassic are bound by the Association’s Bylaws and Rules and Regulations in paragraph 16 of the Complaint but no mention or allegation is made of any by-law, rule, or regulation which purportedly restricts the use of the names sought to be protected by the Plaintiff in this action or in any manner is controlling on any issue in this lawsuit.

23. Plaintiff has failed to demonstrate as a matter of law that it has any trademark protection available to it under any theory of action nor any Count of this Complaint and the instant Complaint should be stricken in its entirety.

**COUNT I**  
**LANHAM ACT-TRADE NAME INFRINGEMENT**

\_\_\_\_\_24. Defendants hereby incorporate paragraphs 1 through 23 by reference as if set set forth at length.

25. Paragraphs 64 and 65 of the Complaint contend that the filing of the Articles of Incorporation and Covenants provide the Plaintiff with the ownership of the names and are evidence of the ownership of the corporate and trade names.

26. The Count fails to allege that the name has been “used in commerce” as defined in 15 USC 1501 (U.S. Trademark Act) or 15 USC Section 1125 (Lanham Act).

27. The Count fails to allege that the name has been used in connection with any goods or services, as defined in 15 USC 1501 (U.S. Trademark Act) or 15 USC Section 1125 (Lanham Act).

28. The essential element of a trademark is the exclusive right of its owner to use a word or device to distinguish the product.

29. Plaintiff has failed to demonstrate in any manner that it has the exclusive right to use the word or name sought to be protected in this lawsuit.

30. Plaintiff’s real complaint is that “the Defendants’ intent in developing the website is to criticize the activities of the association and to intentionally confuse consumers.” (Paragraph 82, Complaint)

31. Plaintiff has failed to demonstrate that the Defendants have utilized the websites complained of for commercial enterprise. Rather, the only financial allegation contained in this Count is that “(T) Defendants’ attempts to market the domain name to the Association for a profit.” (Paragraph 86( c), Complaint).

32. There is no requisite allegation that the Defendants made any profit or commercial gain by selling any products or services utilizing the names alleged to be owned by the Plaintiff.

33. The noncommercial use of a name, even if one is indeed elevated to the legal of a mark protected by the Lanham Act, is not actionable under the Lanham Act.

34. News reporting and news commentary is not actionable so that the comments made by the forum on the Defendants' sites is not actionable under the Lanham Act.

35. The Defendants have the protection of the First Amendment for statements made on the sites.

36. The Defendants have the protection of 47 USC Section 230( c)(1) to provide them with complete immunity from liability for providers and users of an interactive computer service who publish information provided by others.

37. The Plaintiff is seeking to use the trademark protection vehicle as a method of procuring the termination of the criticism of the Board and the Association which is at the root of the Complaint.

38. The Count fatally fails to set forth the requisite elements of a claim under which trademark protection should be permitted as there is no goods, services, or commerce alleged to have been involved in the activities of the Plaintiff. The mere filing of an Articles of Incorporation and Covenants with the state and local offices does not rise to the level of trademark protection, especially when there is never any indications that the Plaintiff ever sought to identify the names by any method of defining trademark or service mark use of the names.

WHEREFORE, Defendants request that the Court dismiss Count I in its entirety for failure to state a claim upon which relief can be granted as a matter of law, and for an Order

of this Court granting the Defendants such other and further relief as the Court deems just and proper.

### COUNT II- CYBER SQUATTING

39. Defendants hereby incorporate paragraphs 1 through 38 by reference as if set set forth at length.

40. Plaintiff relies upon 15 U.S.C. Section 1125 (d) as the basis for this Count.

41. Plaintiff's reliance on this provision is unfounded.

42. 15 U.S.C. Section 1125(d) is more commonly known as the Anticybersquatting Consumer Protection Act.

43. The provisions of the statute mandate that in order for a trademark owner to commence an action under this provision, the owner must prove:

- (a) the trademark owner's mark is distinctive or famous;
- (b) the domain name owner acted in bad faith to profit from the mark; **and**
- (c) the domain name and the trademark are either identical or confusingly similar (or dilutive for famous trademarks). [Emphasis added]

44. Plaintiff has failed to demonstrate that the Plaintiff's mark is distinctive or famous.

45. Plaintiff has failed to demonstrate that the domain owner acted to profit from the mark. The alleged profit from the sale of the websites to the Plaintiff do not constitute the profit to the extent set forth in the statute.

46. Plaintiff has failed to demonstrate that the Plaintiff is the owner of a trademark.

47. The statute also provides that it does not take away from individuals' rights to free speech.

48. The statute also requires that the defendants' creation and registration of the websites was for the sole intent of selling the rights of the domain name to the trademark holder.

49. Plaintiff alleges that the "Defendants have registered and trafficked in that same domain name with the intent to tarnish or disparage the name 'Stillwater Lakes Civic Association.'" (Paragraph 96, Complaint)

50. The Complaint totally and fatally fails to set forth a claim under which relief can be granted pursuant to the provisions of 15 USC Section 1125(d).

WHEREFORE, Defendants request that the Court dismiss Count II in its entirety for failure to state a claim upon which relief can be granted as a matter of law, and for an Order of this Court granting the Defendants such other and further relief as the Court deems just and proper.

### **COUNT III-STATUTORY ANTI-DILUTION OF TRADE NAME**

51. Defendants hereby incorporate paragraphs 1 through 50 by reference as if set forth at length.

52. Plaintiff alleges that the "Plaintiff's trade name is famous and recognizable." (Paragraph 101, Complaint).

53. The statute establishes specific criteria for determining "famousness."

- a. The degree of inherent or acquired distinctiveness of the mark;
- b. The duration and extent of usage of the mark;
- c. The duration and extent of advertising and publicity of the mark;
- d. The geographical area in which the mark is used;

- e. The channels of trade for the goods or services with which the trademark is used;
- f. The fame of the mark in the owner's and the alleged diluter's trading areas;
- g. The nature and extent of use of similar marks by third parties; **and**
- h. Whether the mark is federally registered. (emphasis added)

54. In addition, defenses available as "safe harbors" are also set forth in the statute:

- a. The use of another's mark in comparative advertising ("fair use")
- b. Non-commercial use
- c. News reporting, commentary and other first amendment purposes.

55. Plaintiff has failed to demonstrate that it has satisfied all of the requirements of the statute as set forth in paragraph 53 of this motion. In addition, Defendants contend that they are entitled to exemption from any application of the statute even if the Plaintiff could proof each of the elements of the statute because of the availability of the non-commercial use of their sites and the fact that the sites are used for commentary and other first amendment purposes.

56. The existence of some degree of advertisement on the sites of the Defendants does not give rise to the proof that the sites themselves were organized as commercial vehicles for the exploitation of the Plaintiff's alleged trademarks. The major content on the websites attached as exhibits to the Plaintiff's complaint clearly defines that it involves "a growing group of property owners in the planned community" and that there is a petition to which

property owners can show support for an open honest and transparent community run by competent Directors. (Exhibits “A” and “C” of Plaintiff’s Complaint.)

57. There is no indications on the exhibits of the Plaintiff that the sites were being organized for any commercial activity on the part of the defendants or for any profit to be derived by the Defendants from any goods or services being sold through interstate commerce.

58. As a result, the Count is defective in that the Complaint fails to set forth any claim for which relief can be granted.

WHEREFORE, Defendants request that the Court dismiss Count III in its entirety for failure to state a claim upon which relief can be granted as a matter of law, and for an Order of this Court granting the Defendants such other and further relief as the Court deems just and proper.

**COUNT IV- ANTI-DILUTION**  
**MISAPPROPRIATION OF CORPORATE NAME**

59. Defendants hereby incorporate paragraphs 1 through 58 by reference as if set forth at length.

60. Plaintiff relies on its filing of the Articles of Incorporation as the basis for the establishment of a trademark in the corporate name. (Paragraph 125, Complaint).

61. Plaintiff fails to establish that any goods or services were created by it using the trademarks alleged to be owned by the Plaintiff in interstate commerce.

62. State law is not applicable in this provision, since the terms of 15 U.S.C. Section 1125 specifically provide that the federal Act preempts the existing state dilution acts.

63. The Defendants repeat the contentions set forth in the preceding Count since this particular Count is the same as that of the previous Count although renamed.

64. As a result, the Count is defective in that the Complaint fails to set forth any claim for which relief can be granted.

WHEREFORE, Defendants request that the Court dismiss Count IV in its entirety for failure to state a claim upon which relief can be granted as a matter of law, and for an Order of this Court granting the Defendants such other and further relief as the Court deems just and proper.

#### **COUNT V- UNFAIR COMPETITION**

65. Defendants hereby incorporate paragraphs 1 through 64 by reference as if set forth at length.

66. Plaintiff contends that commercial value has been garnered through the prolong operation of its corporate name. (Paragraph 137, Complaint).

67. Unfair competition has been recognized as a basis by which the owner of a trademark of goods and services used in interstate commerce sustains a loss of profit by the use of that trademark by another which strips profits from the claimed trademark owner.

68. There is no claim that the Plaintiff was involved in the utilization of the name as a trademark for any goods or services involved in interstate commerce.

69. At best, the Plaintiff's claim of this count is that the websites of the Defendants are critical of the Plaintiff and that the public may believe that the content on the websites is that of the Plaintiff.

70. Without any claim of goods and services and profits lost through interstate commerce and the loss of the profits derived by the Defendants' use of the name for commercial sales and profits, there can be no claim for unfair competition as there is no competition set forth in this Court.

71. Plaintiff is setting forth a claim for libel and slander cloaked in an unfair competition claim since it is alleging that the Plaintiff's business reputation and goodwill have been hurt by the Defendants' websites.

72. There is no claim which establishes that any goods and services in interstate commerce were lost by the Plaintiff as a result of the activities of the Defendants.

73. As a result, the Count is defective in that the Complaint fails to set forth any claim for which relief can be granted.

WHEREFORE, Defendants request that the Court dismiss Count V in its entirety for failure to state a claim upon which relief can be granted as a matter of law, and for an Order of this Court granting the Defendants such other and further relief as the Court deems just and proper.

**COUNT VI- COMMON LAW TRADE MARK NAME INFRINGEMENT**

74. Defendants hereby incorporate paragraphs 1 through 73 by reference as if set forth at length.

75. Plaintiff again fails to demonstrate that there is any recognizable trademark of the use of the names sought to be protected representing goods and services involving interstate commerce.

76. Plaintiff has failed to allege how the Defendants' use of the name of the claimed trademark has caused the Plaintiff to sustain any loss of profit from the sale of goods or services involved in interstate commerce.

77. Plaintiff's complaint is defective in that it fails to set forth any criteria to establish that the Plaintiff is indeed entitled to any trademark protection, either under state or federal law, for the name of a corporation that was set up to operate the planned community.

78. Plaintiff has failed to demonstrate in any count that it has the exclusive right to use the name "Stillwater Lakes" in any vehicle or entity as a trademark.

79. As a result, the Count is defective in that the Complaint fails to set forth any claim for which relief can be granted.

WHEREFORE, Defendants request that the Court dismiss Count VI in its entirety for failure to state a claim upon which relief can be granted as a matter of law, and for an Order of this Court granting the Defendants such other and further relief as the Court deems just and proper.

Dated: January 20, 2009

---

xStewart I. Rosenblum  
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East Stroudsburg, PA 18301  
(570) 424 9599  
stewrose@aol.com  
stewrose1@yahoo.com  
Attorney for Defendants  
Electronically Transmitted

CERTIFICATE OF SERVICE

It is certified that I have on the 20th day of January, 2009, I served a copy of the Defendants's Motion to Dismiss Pursuant to Rule 12(b)(6) upon the following by electronically filing the same with the court through electronic means:

Nicholas Charles Haros  
nharos@eastpennlaw.com

as attorney for the Plaintiff.

Dated: January 20, 2009

xStewart I. Rosenblum  
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Attorney for Defendants

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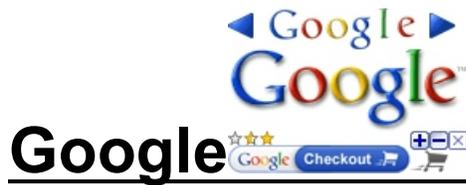
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## 11. Acronym

### Definition

SLCA	Salt Lake Climbers' Alliance (Utah)
SLCA	Streamlined Life-Cycle Assessment
SLCA	Salt Lake City Area
SLCA	Sri Lanka Cricketers Association (UK)
SLCA	Shepherd's Length Composition Analysis
SLCA	Simplified Life Cycle Assessment
SLCA	Screening Level Concentration Approach
SLCA	Salt Lake Choral Artists (Utah)
SLCA	Subscriber Line Circuit Analog
SLCA	St Louis Chinese Association
SLCA	St. Lawrence Cruise Association
SLCA	Service Learning and Community Action
SLCA	Single Linkage Clustering Algorithm
SLCA	Spacelab Contract Administration
SLCA	Spiritual Living Center of Atlanta (Georgia)
SLCA	Specialist Letting & Caretaking Agency (UK)
SLCA	Saskatchewan Lactation Consultant Association Inc. (Canada)
SLCA	Single-Line Communications Adapter

EXHIBIT "3"

SLCA South Lexington Civic Association (Lexington, Massachusetts)

SLCA Shift Left and Count Accumulator

SLCA Society for Life Cycle Assessment

SLCA St Lucia Community Association (Australia)

SLCA Survivors for Lung Cancer Awareness

SLCA Sedona Licensed Contractor Association (Arizona)

SLCA State Land Ceiling Act (India)

SLCA Silver Lake Civic Association (Belleville, NJ)

SLCA Stepping Linear Choke Actuator (Cameron Willis)

SLCA Salt Lake Climbers Association (Utah)

SLCA Supervisor, Licensing and Certification Administration

SLCA Sandlake Christian Academy (Orlando, FL)

SLCA Saint Lawrence Centre for the Arts (Toronto, Canada)

SLCA Sri Lanka Canada Association (Calgary, Alberta, Canada)

SLCA Salt Lake Christian Academy (Utah)

SLCA Service Learning for Civic Action

SLCA Systems Life Cycle Assessment

SLCA Southlake Christian Academy

SLCA SeaLife Custom Aquariums

SLCA            Sensitive Landscape Character Assessment  
SLCA            Sutherland Leisure Centre Aquadot (Australian swimming club)

SLCA            Sub Loop Control Adapter

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