AJ WEBERMAN pro se

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

STEVEN ROMBOM, Plaintiff, vs. AJ WEBERMAN, MARK LEVY, JEWISH DEFENSE ORGANIZATION, Defendant	Case No.: No. SC092414 ANSWER TO CREDITORS ACTION COMPLAINT

Defendant AJ Weberman hereby responds to Plaintiff's Complaint for himself only.

DENIAL OF ALLEGATIONS

1. Pursuant to the provisions of section 431.30 of the California Code of Civil procedure, Defendant generally and specifically denies each and every allegation in the Complaint, and specifically denies that

Defendant is liable to Plaintiff in any manner stated in complaint, or that Plaintiff is entitled to any of the relief sought in his Complaint.

FIRST AFFIRMATIVE DEFENSE

2. The Complaint and each and every cause of action contained therein violates defendants First Amendment Rights.

—

JUDGMENT DEBTOR IS DISSIDENT AUTHOR AND JOURNALIST

The Judgment Debtor, AJ Weberman, is an author and journalist who has written many books, including *My Life In Garbology, The Dylan to English Dictionary and Coup D'Etat in America The CIA the assassination of John Kennedy.* He is the subject of an award winning British documentary. He does research for the Emmy Award winning author Peter Lance and has written for *Esquire, Rolling Stone, The Village Voice* etc. Weberman is described in *Wikipedia* as a political gadfly. He served as an investigator for the late Congressman Henry Gonzales and for the late Senator Richard Schweiker on the assassination of President Kennedy and is the Curator of the Youth International Party Museum, chartered by the Board of Regents of New York State. He is also a member of the Jewish

Defense Organization intelligence team. He is a State Committee person of the New York Independence Party. He has been an associate of dissidents Abbie Hoffman, John Lennon, Jerry Rubin, Paul Krassner and others.

Weberman creates his own websites the primary purpose of which is to get his political point of view across to others and to secondarily collect donations, and affect sales of his books. The websites in question tools of Weberman's trade as an html writer and web designer contain expressions of protected opinion some of which Plaintiff finds highly offensive.
The author created the names of addresses of the websites and are part and parcel of the website just like a title is part and parcel of a book. In fact the addresses are more than titles. Dylanology is a word Judgment Debtor created to describe the study of Bob Dylan's poetry, garbology is a word he invented to describe the analysis of celebrity and political garbage and acidtrip.com is word he invented to describe a cyber-induced simulated LSD trip. The name Jewish Defense Organization or JDO was created by Judgment Debtor Levy.

Rambam proposes to turn these website names over to a receiver for sale to satisfy a judgment debt along with their content. The website addresses have no intrinsic value as would a website with the name

bargains.com or doctor.com. These URLs have no financial value other than to AJ Weberman. Plaintiff admits that he would probably be the one to purchase these websites from the receiver than credit the Judgment Debtor whatever amount he feels these websites are worth. This action deprives Judgment Debtor of due process of law as there is no adversarial interaction and Rombom can name his own price.

The United States appellate authority suggests that a domain name is a form of intangible intellectual property when the domain name is part of the title of a literary work or an electronic newspaper. To seize these domain names and turn them over to the person named in them constitutes an unconstitutional regulation of speech in violation of the First Amendment of the United States Constitution.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Judgment Debtor contends that the real intention of this action against him is not to collect debt but is a transparent attempt to silence a critic from writing about Plaintiff, who

Debtor has known, along with his father, since the early 1980's, without due process of law.

The court should conclude its analysis by holding that since **the judgment creditor was not seeking to collect a debt but to curtail and diminish the Judgment Debtors freedom of speech, garnishment is not the appropriate action.**

A libel suit would be the proper venue to remove any objectionable defamatory information from the websites in question because this is Judgment Creditors motivation as evidenced from Plaintiff's December 28, 2006 pleading wherein laboring under the misapprehension that to seize the URL would be identical to seizing the actual content of the website it was stated, "The websites at issue have value because of their age and unusual content…**Obviously the defamatory information would be purged from the websites before they are sold**." This is what this "collection action" is really about – to chip away at Judgment Debtors right to freedom of press as what is there to prevent Judgment Creditor from obtaining other URLs using your Honor's determination as legal precedent?

—

—

MEMORANDUM OF POINTS AND AUTHORITIES

GUCCI v HALL

In GUCCI AMERICA, INC., Plaintiff, - against - HALL & ASSOCIATES, DENISE HALL, and MINDSPRING ENTERPRISES, INC., Defendants. 00 Civ. 549 (RMB) USDC SOUTHERN DISTRICT OF NEW YORK the ISP Mindspring asserted:

“As a general matter, enforcement of trademark law is limited by the First Amendment…This principle is particularly important with respect to freedom of speech on the Internet. (Mindspring's Mem. at 10-11.) The Second Circuit has employed the First Amendment/trademark rights analysis, in the Internet context. See Name.Space, Inc. v. Network Solutions. Inc., 202 F.3d 573, 585-86 (2d Cir. 2000); 23 see also OBH, Inc. v. Spotlight Magazine. Inc., (86 F.Supp. 2d I76, 197 (W.D.N.Y. 2000) 'Domain names ... per se are neither automatically entitled to nor excluded from the protections of the First Amendment…' Whether a particular domain name is entitled to protection under the First Amendment depends on the extent of its communicative message” - quoting and citing Name.Space, 202 F.3d at 586 that stated:

“In short, while we hold that the existing gTLDs do not constitute protected speech under the First Amendment, we do not preclude the possibility that certain domain names, including new gTLDs, could indeed amount to protected speech. The time may come when new gTLDs could be used for "an expressive purpose

such as commentary, parody, news reporting or criticism," comprising communicative messages by the author and/or operator of the website in order to influence the public's decision to visit that website, or even to disseminate a particular point of view."

Additionally historically, certain types of intangible, intellectual property have not been subject to levy and sale under execution. See Ager v. Murray, 105 U.S. 126, 131 (1881) ("debtor's interest in the patent-rights . . . cannot be taken on execution at law"); Stephens v. Cady, 55 U.S. 528, 531 (1852) (copyright "is not the subject of seizure or sale by means of" an execution, but it "may be reached by a creditor's bill"); Stutzman v. C.A. Nash & Son, Inc., 189 Va. 438, 446, 53 S.E.2d 45, 49 (1949) ("there is no property in a trade-mark" aside from its use in a trade or business). But see McClaskey v. Harbison-Walker Refractories Co., 138 F.2d 493, 500 (3rd Cir. 1943) (allowing judgment creditor to reach Judgment Debtor's patent by using writ of fieri facias).

—

SECOND AFFIRMATIVE DEFENSE

3. The URLs in question are tools of Judgment Debtors trade and are exempt under CCP 487.020. The Judgment Debtor, is a writer not only in the English Language; but also in HTML, hypertext markup language and is adept at creating websites and graphics.

Weberman is employed by the JDO to run, update, write for etc the website http://jdo.org and by Dennis King to run the website, http://dennisking.org and by Irvin Dana Beal of the Yippie Museum to maintain the website http://yippiemuseum.org among others such as http://abbiehoffman.com. He was paid a lump sum of money to create these sites and gets reimbursed for the time he works on the websites on an irregular basis. He uses a HP Pavilion 6355 to do this. Part of his work creating these websites involves obtaining and maintaining the URLs for them. One might ask why these particular URLs and not any others are tools of Debtors trade. These particular URLs, rather than other URLs are tools of Judgment Debtors trade as Google has rated them due to the number of years they have been on the internet, the content present in their names and the number of websites that are linked to them. PageRank relies on the uniquely democratic nature of the web by using its vast link structure as an indicator of an individual page's value. In essence, Google interprets a link from page A to page B as a vote, by

page A, for page B. But, Google looks at more than the sheer volume of votes, or links a page receives; it also analyzes the page that casts the vote. Votes cast by pages that are themselves "important" weigh more heavily and help to make other pages "important".

The bills for these web addresses go to Alan Weberman, not to the JDO or Dennis King because he customized them for these clients. These URLs are a tool of Judgment Debtors trade as the names have been devised to bring visits to the website, part of the Judgment Debtors job. Additionally, if dennisking.org is seized Dennis King would be deprived of his rights as an innocent third party. Just as my computer is a tool of my trade and exempt from seizure so are the URLs that I registered on behalf of my clients the URLs are tools of my trade and I wish to be granted a Claim of Outright Seizure Exemption: A procedure by which a "Judgment Debtor" can claim that, under federal and/or California law, certain of his money or other property is exempt from outright seizure efforts to satisfy a debt.

MEMORANDUM OF POINTS AND AUTHORITIES

The California Civil law states;

487.020. Except as provided in paragraph (2) of subdivision (a) of Section 3439.07 of the California Code of Civil Procedure, the following property is exempt from attachment:

(a) All property exempt from enforcement of a money judgment.

(b) Property which is necessary for the support of a defendant who is a natural person or the family of such defendant supported in whole or in part by the defendant.

(c) "Earnings" as defined by Section 706.011.

(d) All property not subject to attachment pursuant to Section 487.010. CCP also states,

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and **other personal property** are exempt to the extent that the aggregate equity therein does not exceed:

(1) Six thousand seventy-five dollars $6,075, if reasonably necessary to and actually used by the Judgment Debtor in the exercise of the trade, business, or profession by which the Judgment Debtor earns a livelihood.

THIRD AFFIRMATIVE DEFENSE

4. The web addresses, are a tool of a webmasters trade because they provide income for the Judgment Debtor, income that could be attached by the Judgment Creditor if that was Judgment Creditor's motivation. The URLs are an intrinsic part of these websites as the alphabetical coding in the websites is based on their numerical coding and would have to be changed should URLs be seized. The websites that I run partially for income, partially to get my ideas across include http://garbology.com which provides me with income as I sell my garbology book there and http://dylanology.com where I sell my *Dylan to English Dictionary* as I also do on http://acidtrip.com. This website includes some sponsors and advertisers. Since the websites and web addresses provide income they are subject to garnishment not seizure.

MEMORANDUM OF POINTS AND AUTHORITIES

The California Code of Civil Procedure states,

704.070. (a) As used in this section:

(1) "Earnings withholding order" means an earnings withholding order under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(2) "Paid earnings" means earnings as defined in Section 706.011

that were paid to the employee during the 30-day period ending on the date of the levy.

For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.

(3) "Earnings assignment order for support" means an earnings assignment order for support as defined in Section 706.011.

706.011. As used in this chapter:

(a) "Earnings" means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise.

706.050. Except as otherwise provided in this chapter, the amount of earnings of a Judgment Debtor exempt from the levy of an earnings withholding order shall be that amount that may not be withheld from the Judgment Debtor's earnings under federal law in Section 1673(a) of Title 15 of the United States Code:

§ 302 Definitions

For the purposes of this title:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

§ 303. Restriction on garnishment

(a) Except as provided in subsection (b) and in section 305, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time

the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

—

FOURTH AFFIRMATIVE DEFENSE

5. The question of whether a web address is always a tangible asset and never intellectual property as yet to be resolved.

MEMORANDUM OF POINTS AND AUTHORITIES

The following is extracted from the case NETWORK SOLUTIONS, INC. v. UMBRO INTERNATIONAL, INC., ET AL Record No. 991168 OPINION by JUSTICE CYNTHIA D. KINSER April 21, 2000 FROM THE CIRCUIT COURT OF FAIRFAX COUNTY M. Langhorne Keith, Judge

I. INTRODUCTION

In this case of first impression, we address the issue whether a contractual right to use an Internet domain name

can be garnished. In doing so, we "apply traditional legal principles to [a] new avenue[] of commerce," Intermatic Inc. v. Toeppen, 947 F. Supp. 1227, 1229 (N.D. Ill. 1996), and conclude that such a contractual right is "the product of a contract for services," Dorer v. Arel, 60 F. Supp.2d 558, 561 (E.D. Va. 1999), and hence is not subject to garnishment. Accordingly, we will reverse the judgment of the circuit court holding that the domain name registrations at issue in this appeal are garnishable.

In 1997, appellee Umbro International, Inc. (Umbro), obtained a default judgment and permanent injunction in the United States District Court for the District of South Carolina against 3263851 Canada, Inc., a Canadian corporation (the Judgment Debtor), and also against a Canadian citizen who owns the Judgment Debtor. Umbro Int'l, Inc. v. 3263851 Canada, Inc., No. 6:97-2779-20, slip op. at 5, 8 (D.S.C. Dec. 31, 1997). That proceeding involved the Judgment Debtor's registration of the Internet domain name "umbro.com." In its order, the district court permanently enjoined the judgment debtor from further use of the domain name "umbro.com" and

awarded judgment to Umbro in the amount of $23,489.98 for attorneys' fees and expenses.

Umbro subsequently obtained a Certification of Judgment for Registration in Another District from the district court in South Carolina. Umbro then filed that document in the United States District Court for the Eastern District of Virginia, which, in turn, issued an Exemplification Certificate. See 28 U.S.C. 1963. Using that Certificate and a copy of the district court's judgment, Umbro obtained a writ of fieri facias from the Circuit Court of Fairfax County and instituted a garnishment proceeding that is the subject of this appeal.

In the garnishment summons, Umbro named Network Solutions, Inc. (NSI), as the garnishee and sought to garnish 38 Internet domain names that the Judgment Debtor had registered with NSI. Accordingly, *Umbro* asked NSI to place those domain names on hold and to deposit control of them into the registry of the circuit court so that the domain names could be advertised and sold to the highest bidder.

NSI answered the garnishment summons, stating that it

held no money or other garnishable property belonging to the Judgment Debtor. Instead, NSI characterized what Umbro sought to garnish as "standardized, executory service contracts" or "domain name registration agreements." NSI also asserted that 8 of the 38 domain names listed in the garnishment summons either were not then, or never had been, subject to a domain name registration agreement between NSI and the Judgment Debtor.

Umbro subsequently filed a motion for NSI to show cause why it had not deposited control of the Judgment Debtor's domain names into the registry of the circuit court. NSI opposed that motion and the garnishment on the grounds that the writ of fieri facias does not attach to the judgment debtor's contractual rights that are dependent on unperformed conditions, that the Judgment Debtor's domain name registration agreements with NSI are contracts for services and thus not subject to garnishment, that domain name services do not have a readily ascertainable value, and that the domain name services are not similar to patents and other forms of intellectual property.

In opposing the garnishment, NSI submitted an affidavit from its director of business affairs, who stated that domain names cannot function on the Internet in the absence of certain services being provided by a domain name registrar such as NSI. He further stated that NSI performs these domain name registration services pursuant to a standard domain name registration agreement.

After a hearing on *Umbro's* show cause motion, the circuit court determined that the Judgment Debtor's Internet domain name registrations are "valuable intangible property subject to garnishment." In a letter opinion, the court concluded that the Judgment Debtor has a possessory interest in the domain names registered with NSI. The court further found that there are no unperformed conditions with regard to the Judgment Debtor's contractual rights to use the domain names, that NSI is not being forced to perform services for entities with whom it does not desire to do business, and that the domain names are a "new form of intellectual property."

Accordingly, the court ordered NSI to deposit control

"over all of the [j]udgment [d]ebtor's Internet domain name registrations into the [r]egistry" of the court for sale by the sheriff's office. Because of the intangible nature of the domain names, the court directed the sheriff's office to sell the domain names in whatever manner it "deem[ed] appropriate" after consultation with Umbro, and to notify NSI as to the name of the successful bidder for each domain name. According to the court's order, NSI then had to "transfer the domain name registration" to the successful bidder "as soon as commercially practicable following NSI's receipt of a properly completed registration application for the domain name from the winning bidder." (Umbro Int'l v.3263851 Canada Inc., update April 21, 2000, Virginia Supreme Court)

ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT

Congress passed the "Anti-cybersquatting Consumer Protection Act." This amendment to Section 43 of the Trademark Act of 1946, 15 U.S.C. 1125, et. seq., authorizes an in rem civil action against a domain name in the judicial district in which the domain name registrar is located. The amendment also states that the remedies in such an action are limited to an order "for the forfeiture or cancellation of the domain

name or the transfer of the domain name to the owner of the mark." Id. at 1125(d)(2)(A) and (D)(i). Finally, the amendment requires the registrar of the domain name to deposit with the court "documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name." While it could be argued that this legislation supports the position that Internet domain names are intangible property since the amendment provides for an in rem proceeding, the language of the amendment does not address the relationship between an operational Internet domain name and its attendant services provided by a registrar such as NSI.

Dorer v. Arel , 60 F. Supp. 2d 558 (E.D. Va. 1999)

Plaintiff sued defendant in part for using its mark as a domain name. After defendant failed to respond, the court entered default judgment for plaintiff, awarding $5,000 in statutory damages and enjoining use of plaintiff’s mark. The court did not order transfer of the infringing domain-name registration. When defendant failed to pay, plaintiff requested a writ of fieri facias seeking transfer of the domain name in

satisfaction of its money judgment. In assessing whether a domain name was the type of property subject to a lien, the court disagreed with the Virginia Circuit Court's reasoning in Umbro that domain-name registrations were personal property subject to liens. Significantly, the district court noted that a domain name, like a trademark, was generally valueless apart from the goodwill associated with it. The court also reasoned that because the Judgment Debtor owned no trademark rights in the domain name, the registration entailed only contract rights; any value creating a property interest in the domain name had to be added by the lawful user, not the Judgment Debtor. The court also noted, however, that some domain names could have value apart from any goodwill that might be attached a generic domain name like "computer.com"). Nonetheless, after an extensive analysis, the court never answered the question, instead requiring the plaintiff to seek recourse through the dispute policies of NSI.

Kremen v. Cohen

Kremen v. Cohen, 99 F. Supp. 2d 1168, 1170-1171 (N.D. Cal. 2000), *aff'd in part, rev'd in part,* 337 F.3d 1024, 1026-27 (9th Cir. 2003).

In 1994, Gary Kremen, an Internet entrepreneur, registered the domain name sex.com with NSI. About a year and a half after he registered the

name, Steven Cohen, purporting to act for Kremen, contacted NSI and asked it to cancel the registration for sex.com. Sometime later, Cohen registered sex.com for his own company. Kremen, wishing to recover the domain name and any

profits received by Cohen, sued Cohen and NSI. One of the causes of action that he alleged against NSI was a conspiracy to convert property. The District Court's decision in *Kremen v. Cohen* is a good example of one that might seem to indicate that rights in domain names are not protected property rights. The court granted NSI's motion for summary judgment and in doing so ruled that a domain name could not, at least in California, serve as the basis of a conversion claim. The court discussed the elements of conversion and explained that while the tort was historically limited to tangible personal property, some states, including California, have extended the tort of conversion to specified types of intangible property. Prior California decisions had extended the tort of conversion to intangibles such as stock certificates, bonds and notes, but the court distinguished these types of property from domain names, noting that stock certificates, bonds, and notes represent rights that are either customarily merged in, or identified with, some document. The court recognized that California's extension of the tort

of conversion to negotiable instruments and other reified intangible rights might have been arbitrary, but refused to extend the scope of the tort any further, stating that extending it to encompass domain names would essentially scrap any requirement of tangibility consistently associated with the tort. It then suggested that the California legislature fashion a scheme for the protection of domain names. The district court's reluctance to extend the tort of conversion to domain names seems based less on the characteristics of domain names than on the recognition that certain matters are best left to legislatures. Because conversion is a strict liability tort, the court was reluctant to impose liability on NSI for performing its purely ministerial functions. The court concluded by recognizing the imprudence of superimposing the archaic principles governing the tort of conversion onto the nebulous realm of the Internet. Therefore, while the court said that the domain name could not be the subject of a conversion action, it did not say that the domain name was not property. The court recognized that there are many types of intangible property rights, and that most of them cannot be the subject of a conversion action. The reluctance of the district court in *Kremen* mirrors the reluctance of the court in *Umbro*; it did not want to expand an existing body of laws,

initially developed to protect tangible rights, to intangible rights. The Ninth Circuit reversed the district court's holding and ruled that a domain name could indeed be the subject to a conversion action in California. After discussing the definition of property and surveying the history of the law of conversion, the court concluded that California does *not* follow the rule that, in order for the tort of conversion to apply to intangible property, the property must be merged into, or identified with, some document. The court stopped short, however, of holding that conversion is a remedy applicable to all types of intangible property, and instead curiously held that a domain name *is* identified with a document, that document being the Domain Name System.

ARGUMENT

Kremen is not applicable here for several reasons. There is no conversion law involved in instant action. Sex.com is a generic website similar to wine.com or bargain.com and has intrinsic value nor did Kremen or Cohen invent the word sex. There is no monetary gain to the Judgment Creditor by selling something to himself. Acidtrip has no intrinsic generic value unless you are selling LSD over the Internet. There is no First Amendment question in *Kremen* wherein there is a major on in this instant action.

FIFTH AFFIRMATIVE DEFENSE

IMPROPTER VENUE / INCONVENIENT FORUM

6. Plaintiff's complaints should be dismissed due to improper venue or on the grounds of *forum conveniens*. Rambam and Weberman are both legal residents of New York State where judgment has been entered. Using the sister judgment in California to file this action rather than filing it in Superior Court of Kings County makes it virtually impossible for indigent Judgment Debtor to defend his constitutional rights in this action. Sister State Judgments are generally used when the Judgment Debtor leaves the Judgment Creditor's jurisdiction. Judgment debtor has never visited Beverly Hills and the last time he was in California was 1975. Judgment creditor alleges by answering this complaint he is approving jurisdiction yet if he did not do this he would loose via default so this is really a Catch-22 situation. It should be noted that in Jewish Defense Organization, Inc. v. Superior Court, 72 Cal. App. 4th 1045, 85 Cal. Rptr. 2d 611 (2d Dist. 1999) the original libel suit against Weberman, Levy and the JDO was dismissed because of inappropriate jurisdiction.

Wherefore, Defendant prays for judgment as follows:

1. Plaintiff be awarded nothing in this action, and the action be dismissed.

2. Plaintiff be denied injunctive relief.

3. Judgment be entered in favor of Defendant.

4. Defendant be awarded the costs of the suit and

Such other relief as the Court deems appropriate.

5. This court allow this pro se defendant some leeway in any errors he might have made filing his pleadings.

Dated this 16th day of March, 2007

AJ WEBERMAN pro se