

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
2006 EWHC 3461 (Ch)

Ref No CH/2005/PTA/738

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Thursday 30 November 2006

B e f o r e :

MR JUSTICE LAWRENCE COLLINS

B E T W E E N :

PATEL

Applicant/Claimant

- v -

ENDO PHARMACEUTICALS INC & Others

Respondents/Defendants

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THE APPLICANT/CLAIMANT appeared in person

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J U D G M E N T  
(Approved)

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Words: 2016  
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Thursday 30 November 2006

**MR JUSTICE LAWRENCE COLLINS:**

1. This is an action by Mr Patel against Endo Pharmaceuticals Inc and Auxilium Pharmaceuticals Inc, both of which are American companies which do not have places of business in England. Endo is a Pennsylvania corporation with its office in Chadds Ford, Pennsylvania, and Auxilium Pharmaceuticals is also a Pennsylvania corporation with its office in Malvern, Pennsylvania. The third defendants are a firm of lawyers in Washington DC, who seem to have acted at least for Endo in these matters in connection with the domain name issue.

2. Mr Patel registered with an English domain registration company, Total Registrations Limited, domain names in the name of Endo Pharmaceuticals and Auxilium Pharmaceuticals in the form of "Endo-Pharmaceuticals.com". Mr Patel's contract with Total Registrations Limited incorporated the UDRP rules and the UDRP policy which require a person registering a domain name to submit to a mandatory administrative proceeding in the event that a third party asserted to the provider in compliance with the rules of procedure that the use of the domain name was wrongful. Mr Patel has not produced the contract with Total Registrations Limited, but it does seem, and he accepts, that the effect of his contract was that he was contractually obliged vis-a-vis Total Registrations Limited to

submit to a disputes procedure with any third party who complained.

3. As a neutral dispute resolution provider, Endo and Auxilium chose the American National Arbitration Forum. The panellist who decided at least the complaint in relation to Endo, which I have seen, was an American, Dr Reinhart Shander. His decision is dated 3 April 2006. It recited that Endo had submitted a complaint to the National Arbitration Forum on 8 February 2006. Total Registrations confirmed that the "Endo-Pharmaceuticals.com" domain name was registered with Total Registrations and that Mr Patel was the current registrant. Total Registrations had verified that Mr Patel was bound by the Total Registrations' agreement and had thereby agreed to resolve domain name disputes brought by third parties in accordance with the uniform domain name dispute resolution of ICANN.

4. The decision of the panellist was that the domain name "Endo-Pharmaceuticals.com" was confusingly similar to Mr Patel's registered trademark; that Mr Patel had not established any right or legitimate interest in the domain name; and that Mr Patel had registered and was using the domain name in bad faith. The panel found that, despite Mr Patel's right to freedom of speech, he did not have rights or legitimate interests in a domain name which fully incorporated Endo's trademark. It also found that Mr Patel was not commonly known by the disputed domain name and that he therefore did not have rights or legitimate interest in the use of the name. So far as bad faith was concerned, the panellist found that there was

no evidence that the name was acquired primarily for the purpose of sale, and there did not appear to be an intention to prevent Endo from reflecting the mark and there was no pattern of use. Although the panel might conclude that the primary purpose of the registration was to disrupt the business of Mr Patel, Endo was not a competitor of Mr Patel. Even if there was an intention to attract internet users to the site, the site was not being operated for commercial gain. The panellist went on that, given that none of the four enumerated policy criteria with respect to bad faith had been met, that left the panel with the question of whether there was bad faith for some other reason.

5. The panellist found that Mr Patel was using the disputed domain name to host a web-site criticising Endo; that Mr Patel was damaging Endo and its mark by deceiving Endo's customers as to the source, sponsorship or affiliation of the disputed domain name and its content. As a result, the panel concluded that such use was evidence of bad faith registration and use pursuant to the policy. His use of a disclaimer on the web-site did not mitigate evidence of bad faith, registration and use.

6. Mr Patel claims that in these proceedings the defendants had relied upon malicious falsehoods in order to aid their goal in defaming his character, and that they had conspired with others in the industry to initiate vexatious administrative proceedings and vexatious court cases in foreign jurisdictions. Their

administrative proceedings were malicious with the ulterior motive of shielding them from any criticism and preventing Mr Patel from making a non-commercial use of the domain name. They were fully aware that he was not a "cyber squatter" and that he was not infringing their trademarks. They deliberately set out to relieve him of his property and his rights. Their actions of making malicious false statements, false allegations and libellous statements were designed to cause damage and done in order to cause a decision favourable to them; this resulted in a decision being made which contained malicious false statements, groundless allegations and libellous statements, which was then published on the NAF web-site. The proceedings were a threat of infringement proceedings. In addition, the defendants wrote threatening letters to both Mr Patel and Total Registrations in an attempt to interfere with the contracts between him and the Registrar. The collective actions of the defendants were a clear attempt to interfere with his contracts and to incite and/or induce a breach of those contracts. The tortious actions are an intent to induce a breach of contract within the jurisdiction and damage to property within the jurisdiction also gave rise to a cause of action against the defendants. The first two defendants, aided by the third defendant lawyers, initiated separate and simultaneous vexatious court cases in the United States on about 13 April 2006. They were done for no other reason than to harass. The third defendant should not have participated in vexatious and parallel court cases. Mr Patel ends by saying that the defendants' actions include, but are not limited

to:

"conspiracy, conspiracy to defraud, tortious conspiracy, defamation, slander of title, libellous statements, tortious acts, including tortious interference with contracts within the jurisdiction, conspiracy to induce and/or incite a breach of contracts, nuisance, deception, tort of deceit, deceit, malicious falsehood, dishonesty, misrepresentation, distortion of the true facts, suppression of the true facts, concealment of material facts, concealment, wrongful declaration, intentional interference, wrongful interference, malicious damage to property, harassment, intentional harassment, distress, targeted malice, interference with my human rights, interference with administration of justice, causal connection with wrongful conduct, violation of my legal rights, intention to injure my interests and/or my rights, contributory cause of loss, intention without legal justification, causation of economic damage, tort of conspiracy to cause injury by lawful and unlawful means, abuse of process, attempted fraud, and each contributed to the damage caused by the collective actions and were the cause of such damage."

7. This matter arises on an application for permission to appeal from a decision of Master Bowles refusing permission to serve the claim form out of the jurisdiction. There were two grounds for the decision. The first is one with which I need not deal; it is that the application was not made within four months from the date of issue of the claim form. The second substantive ground was:

"I have in any event refused permission to serve out because his claim is to me incomprehensible and thus I cannot say, as I must, if I am to grant permission to serve, that it constitutes a good arguable case."

8. All the defendants are based in the United States: the two companies in Pennsylvania and the firm of lawyers in Washington. In order for Mr Patel to be able to obtain permission to serve proceedings out of the jurisdiction he has to show three matters: first, that there is a serious issue to be tried on the merits; secondly, that there is a good arguable case that the claims come within CPR 6.20; and thirdly, that England is the clearly appropriate forum for his claim.

9. In my judgment he would fail on at least the first two, and possibly all three of those hurdles. I would refuse permission to appeal from the decision of the Master because as regards a serious issue to be tried, try as I may to understand Mr Patel's complaints, I cannot see any serious cause of action in a complaint that two American corporations have exercised their rights under the domain name arbitration procedure to prevent what would plainly be an obvious case of passing-off, bar the fact that Mr Patel disclaims any intention to trade in any way. There seems to me no legitimate basis for complaint that corporations should not be able to protect their own domain names by preventing registration of domain names which not only use their names but their logos.

10. Secondly, I am not satisfied that there is an arguable case that any of the claims come within CPR 6.20. The only possible heads are for an injunction to order the defendants to do or refrain

from doing an act within the jurisdiction, or that the claim is made in tort, where the damage was sustained within the jurisdiction or the damage sustained resulted from an act committed within the jurisdiction. All that has happened is that the American companies have reacted to an English registration by initiating an arbitration or dispute resolution procedure in the United States and obtained an order, the effect of which would be that Total Registrations would deny Mr Patel the use of that name in this jurisdiction. It seems to me that that is very far from what is intended by CPR 6.20. Therefore I do not think there is a good arguable case that the matter would come within CPR 6.20.

11. As for the third matter, essentially Mr Patel complains about what the American companies did in the United States and says that that was wrongful. If that is so, I do not think that he would show that England is clearly the appropriate forum. In those circumstances it seems to me that any appeal from the Master would be bound to fail. I would therefore refuse permission to appeal.

12. If this had been a case where permission to appeal would have been appropriate, then on the basis that the points were arguable I would have dealt with the matter here and now because this is not a case where the defendants would have had to be heard at this juncture. If I had thought that there was an arguable point (or even barely arguable), I would have dealt with the appeal on its merits here and now, and on the material available to me now I would

have dismissed the appeal.

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