

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

GRAHAM SCHREIBER,)	
)	
Plaintiff,)	
v.)	No. 1:12-cv-00852-GBL-JFA
)	
LORRAINE LESLEY DUNABIN,)	
CENTRALNIC, LTD.,)	
NETWORK SOLUTIONS, LLC,)	
VERISIGN, INC.,)	
INTERNET CORPORATION FOR ASSIGNED)	
NAMES AND NUMBERS, and)	
DEMAND MEDIA, INC., D/B/A/ ENOM, INC.,)	
BULKREGISTER, INC.)	
)	
Defendants.)	

**DEFENDANT CENTRALNIC LTD'S MEMORANDUM
IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

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**DEFENDANT CENTRALNIC LTD'S MEMORANDUM
IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant, CentralNic, Ltd. ("CentralNic" or "Defendant") respectfully submits this memorandum of law in support of its motion to dismiss the Complaint filed by Graham Schreiber ("Mr. Schreiber" or "Plaintiff") pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2) and (b)(6).

I. INTRODUCTION

The Plaintiff, Graham Schreiber is a Canadian individual and apparently the owner of Landcruise Ltd. a Canadian corporation that rents motor homes in Canada.

Mr. Schreiber brought the *pro se* action against Lorraine Dunabin ("Dunabin"), a resident and citizen of the United Kingdom. Dunabin, allegedly began a United Kingdom company, Alco Leisure Ltd that uses the name Landcruise for its business that rents motor homes in the United Kingdom. Mr. Schreiber also objects to Alco's use of the word Landcruise in the third level¹ domain name *Landcruise.uk.com* by Dunabin.

Construing the Complaint in a light most favorable to Plaintiff, it appears that he is claiming trademark infringement, dilution and cybersquatting of Landcruise and related claims as a result of Dunabin's use of Landcruise in the United Kingdom and registration of the domain name *landcruise.uk.com*. Mr. Schreiber claims he is damaged because he is blocked from using the Landcruise trademark in the United Kingdom. (Compl. at 4).

Most fundamentally, Mr. Schreiber's claims against Dunabin fail because trademark rights are territorial and his trademark rights in Canada do not extend to the United Kingdom and he does not have the right to stop Dunabin from continuing to use the Landcruise mark in the

¹ A third level domain is two dots to the left of the first level .com domain.

United Kingdom. Further, neither Mr. Schreiber's trademark rights nor his ownership of the *Landcruise.com* domain name give him any rights to object to Dunabin's use of the *Landcruise.uk.com* domain name.

Mr. Schreiber's claims against Dunabin must fail because this Court has no jurisdiction over claims between foreign nationals concerning trademark rights in the United Kingdom that are governed by United Kingdom law.

Mr. Schreiber's claims against CentralNic as well as the other defendants are secondary and dependent on the validity of the claims against Dunabin. Essentially, Mr. Schreiber claims that CentralNic and the other defendants who have some role in the issuance or maintenance of the *Landcruise.uk.com* domain name have contributed to the infringement and violation of his rights by the *Landcruise.uk.com* domain name owned by Dunabin. Since Mr. Schreiber has no rights that are infringed by that domain name, his claims against CentralNic must fail.

II. RELEVANT FACTS

A. Graham Schreiber and His Business

Graham Schreiber ("Mr. Schreiber" or "Plaintiff") of Canada, filed this suit *pro se* on July 31, 2012. (DE 1). Mr. Schreiber has a Canadian-based company named "Landcruise Ltd" that he has operated for the past fourteen years and that sells and/or rents motor homes in Canada. (Compl. at 5, 14); *see also* (Compl., Ex. 1 at 6).

In 1998, Mr. Schreiber registered the domain name *Landcruise.com* using Network Solutions as his domain name registrar. He has filed a pending trademark application for the mark Landcruise with the United States Patent and Trademark Office for use in connection with the rental of motor homes. (Compl. 15). Mr. Schreiber claims that Landcruise Ltd. has been conducting business on the Internet since September 8, 2006, and with its webhosting and email service managed by Network Solutions. (*Id.* at 4, 13; *see also* Compl., Ex. 1) ("With additional

weighting being placed on the fact that since, September 8th, 2006, Landcruise has been on FTP servers, hosted by Network Solutions, Conducting business to the World, via Cyberspace.”).

B. The Alleged Direct Infringement By Lorraine Dunabin

Lorraine Dunabin (“Dunabin”) is a citizen of the United Kingdom and operates a business in the United Kingdom named “Alco Leisure Ltd.” with an address of 1 Chalder Farm Cottages, Chalder Lane, Sidesham, West Sussex, P20 7RN in the United Kingdom. (Compl. at 4). Dunabin uses the Landcruise name and mark in connection with her motor home rental business located in the United Kingdom. (Compl. at 4). Dunabin has also registered the domain name *Landcruise.uk.com* through the domain name registrar eNOM. (Compl. at 5).

Mr. Schreiber alleges that “Lorraine Dunabin willfully registered *Landcruise.uk.com* which is “abusive” – “infringing” – “Look-a Like” registration, because she, new [sic] of my business, having visited prior to purchasing the name “Landcruise” within the domain name of UK.com.” (Compl. at 4).

Mr. Schreiber also asserts that he has been harmed by Dunbin because she owns the trademark rights to Landcruise in the United Kingdom. (Compl. at 4) (“I am damaged, as owner of LANDCRUISE/LANDCRUISE.COM... Because Lorain owns the Trademark of “Landcruise” in the United Kingdom, I’m essentially blocked from entry ... returning .. to present my branded business name, in the UK, since discovery.”).

C. CentralNic and its Business Operations

As stated in the Complaint, CentralNic is headquartered in London, United Kingdom. (Compl. at 1). CentralNic is an accredited ICANN registrar. (Compl. at 7). CentralNic also acts as a registry operator of third level domains such as domains that end in *uk.com*. (Compl. at 7 through 8).

A domain name registrar is an organization or commercial entity that manages the reservation of Internet domain names. A domain name registry is a database of all the domain names registered in a top level domain. A registry operator is the part of the Domain Name System (DNS) of the Internet that keeps the database of domain names, and generates the zone files which convert domain names to IP addresses. Registrants of second-level domains sometimes act as a registry by offering sub-registrations to their registration. In other words, the domain registrar is the service that takes a consumer's registration information and reserves the domain from the main registry. The registrar will then submit the technical information to the registry operator. The registry operator maintains the database and provides the technical information to locate the domain name and the accompanying website.² In connection with the domains offered under the second level domain *uk.com*, CentralNic acts as the registry operator and contracts with other accredited registrars to distribute and offer the domain names to the consuming public.

III. ANALYSIS

A. The Standard

This motion is brought under Federal Rule 12(b)(1) for lack of subject matter jurisdiction, Federal Rule 12(b)(2) for lack of personal jurisdiction, and Federal Rule 12(b)(6) for failure to state a claim. The standard to determine a motion to dismiss pursuant to 12(b)(1) and 12(b)(6) is the same. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982)(emphasis added) (holding if the Rule 12(b)(1) motion is a facial challenge attacking subject-matter jurisdiction by asserting that

² See *American Girl, LLC v. Nameview, Inc.*, 381 F. Supp. 2d 876, 878 (E.D. Wis. 2005) (explaining how the Internet operates and defining domain name registrar and domain name registry) citing TORSTEN BETTINGER, *DOMAIN NAME LAW AND PRACTICE: AN INTERNATIONAL HANDBOOK* 3–6 (2005); JANE K. WINN & BENJAMIN WRIGHT, *THE LAW OF ELECTRONIC COMMERCE* § 11.03[A] (4th ed. 2005).

“a complaint simply fails to allege facts upon which subject matter jurisdiction can be based[,]” then “the facts alleged in the complaint are assumed to be true and the plaintiff ... is afforded the same procedural protection as he would receive under a Rule 12(b)(6) consideration.”).

A motion to dismiss pursuant Rule 12(b)(6) tests the legal sufficiency of a complaint and generally should be granted unless an adequately stated claim is “supported by showing any set of facts consistent with the allegations in the complaint.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561 (2007). A court must construe the complaint in the light most favorable to the plaintiff and construe the facts asserted as true. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). A pleading, however, that “offers labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations and citations omitted). Plaintiffs “must provide enough detail to illuminate the nature of the claim and allow defendants to respond.” *Jackson v. Michalski*, 10-cv-00052, 2011 WL 3679143, at *5 (W.D. Va. 2011).

In the case of a *pro se* plaintiff, like all plaintiffs, the *pro se* plaintiff has to plead facts that support a claim and the court and the defendants do not have any obligation to search the complaint for a viable claim. The court is not required “to conjure up questions never squarely presented to them.” *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985) (“[d]istrict judges are not mind readers”); *Brock v. Carroll*, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring) (district court is not the *pro se* plaintiff's advocate, *sua sponte* developing statutory and constitutional claims the plaintiff failed to raise on the face of the complaint (citation omitted)); *see also Michalski*, 2011 WL 3679143, at *5 (citing *Holsey v. Collins*, 90 F.R.D. 122, 123-24 (D. Md. 1981) (“observing that voluminous, repetitive, and conclusory complaint ’places an unjustifiable burden on defendants to determine the nature of the claim

against them and to speculate on what their defenses might be,’ and ’imposes a similar burden on the court to sort out the facts now hidden in a mass of charges, arguments, generalizations and rumors’’)); *see also Whitlock v. Street*, No. 12cv95, 2012 U.S. Dist. LEXIS 120795, at *12 (E.D. Va. Aug. 24, 2012) (noting courts recognize a plaintiff “can plead himself out of court by pleading facts that show he has no legal claim”).

B. There Is No Subject Matter Jurisdiction

1. The Lanham Act Cannot Be Applied Extraterritorially

The underlying facts for which the entire Complaint is based, are that by using Landcruise in the United Kingdom and registering *Landcruise.uk.com*, Dunabin has harmed Mr. Schreiber because he is now barred from using Landcruise in the United Kingdom and registering Landcruise in the *uk.com* second level domain name space. (Compl. at 4). As a result of Dunabin’s actions in the United Kingdom, Mr. Schreiber asserts claims of trademark infringement (15 U.S.C. § 1125(a)), dilution (15 U.S.C. § 1125(c)) and cybersquatting (15 U.S.C. § 1125(d)) under the Lanham Act (15 U.S.C. § 1051 et seq.). The subject matter jurisdiction that enables this Court to decide these claims is through the Lanham Act. All of the other claims, which appear to be common law and Virginia State law infringement and dilution, breach of contract, fraud and “shaking down” would fall under “Supplemental Jurisdiction” pursuant to 28 U.S.C § 1367 because they are so related and “part of the same case and controversy.” *See id.*

While there are cases where the Lanham Act may be applied extraterritorially, “only foreign acts having as significant effect on U.S. commerce are brought under its compass.” *Tire Engineering and Distribution LLC v. Shandong Linhleng Rubber Co., Ltd.*, 682 F.3d. 292, 310

(4th Cir. 2012) *see also Nintendo of America, Inc. v. Aeropower Co.,Ltd*, 34 F.3d 246, 250-251

(4th Cir. 1994). The Fourth Circuit has explained:

While a court may issue an injunction having extraterritorial effect in order to prevent trademark violations under the Lanham Act, it should do so only where the extraterritorial conduct would, if not enjoined, have a significant effect on United States commerce, and then only after consideration of the extent to which the citizenship of the defendant, and the possibility of conflict with trademark rights under the relevant foreign law might make issuance of the injunction inappropriate in light of international comity concerns.

Nintendo, 34 F.3d at 250-251.

This suit is a complaint from a citizen of Canada, regarding use of a trademark in the United Kingdom by a citizen of the United Kingdom. As the Plaintiff states in his complaint:

I am damaged, as owner of LANDCRUISE/
LANDCRUISE.COM ... Because Lorain owns the Trademark of
“Landcruise” in the United Kingdom, I’m essentially blocked from
entry ... returning ... to present my branded business name, in the
UK, since discovery.

The harm that Plaintiff is alleging is that he cannot expand into the United Kingdom. Plaintiff does not allege any effect on United States commerce or that he cannot use Landcruise in the United States or that he cannot conduct business in the United States. There is no effect, let alone a significant effect on United States commerce. Moreover, the defendant is a citizen of the United Kingdom and the plaintiff is a citizen of Canada. Thus, no citizen of the United States is being harmed, such that the Lanham Act should be applied extra-territorially to a defendant located in the United Kingdom conducting business in the United Kingdom.

In *Nintendo*, the Fourth Circuit vacated an extraterritorial application of the Lanham Act even though the infringing conduct in Canada and Mexico had a significant impact on United States commerce because the lower court failed to consider the defendant’s citizenship and the possibility of conflict with Canadian or Mexican law. Similarly here, the defendant is a citizen

of the United Kingdom and the Complaint states that the defendant has trademark rights in that jurisdiction. Thus, there is a real and strong possibility that any decision by this Court would conflict with trademark rights under the law of the United Kingdom and make issuance of the injunction or an award of damages inappropriate in light of international comity concerns.

Additionally, it is possible for the “significant effects requirement to be satisfied by extraterritorial conduct even when that conduct will not cause confusion among U.S. consumers, ... where sales to foreign consumers would jeopardize the income of an American company” *Tire Engineering*, 682 F.3d at 310. In *Tire Engineering*, the Fourth Circuit found that the Lanham Act could not apply extraterritorially because the plaintiffs were not United States corporations and lack a pervasive system of domestic operations. Therefore, the Lanham Act could not provide Plaintiff relief. Similarly here, the plaintiff is a citizen of Canada with a business located in Canada. Plaintiff has not alleged a pervasive system of operations in the United States. In fact, Plaintiff has made no allegations regarding his conducting business in or with the United States. Therefore, the Lanham Act cannot provide Mr. Schreiber with relief for his claims against Dunabin’s actions in the United Kingdom.

It is not uncommon for Courts to find that the Lanham Act does not apply extraterritorially and therefore there is no subject matter jurisdiction. *See e.g., McBee v. Delica Co., Ltd*, 75 U.S.P.Q.2d 1609 (1st Cir. 2005) (upholding lower Court’s decision to dismiss for lack of subject matter jurisdiction Lanham Act dispute between U.S. citizen and Japanese company operating a website); *see also, Roquette America, Inc. v. Alymum N.V.*, No. 03-0434, 2004 WL 1488384, *6 (S.D.N.Y July 1, 2004) (“The gravamen of this complaint is a dispute between European rivals, Roquette and Amylum, that arose in Europe. Despite some arguable minor connections to the United States, the crucial acts of unfair competition all took place in

Europe. Because the Lanham Act does not apply extraterritorially, plaintiffs' Lanham Act claim must be dismissed for lack of subject matter jurisdiction.”).

Because the Lanham Act does not apply extraterritorially to Dunabin's actions in the United Kingdom and its application may conflict with United Kingdom law, relief cannot be granted to Mr. Schreiber under the Lanham Act. Thus, the Court should dismiss the complaint for lack of subject matter jurisdiction and should not exercise supplemental jurisdiction over Plaintiff's remaining related claims. *Bhd. of Locomotive Eng'rs Div. 269 v. Long Island R.R. Co.*, 85 F.3d 35, 39 (2d Cir. 1996) (“When all bases for federal jurisdiction have been eliminated ... the federal court should ordinarily dismiss the state claims.” (citation omitted)).

Accordingly, the complaint should be dismissed with prejudice for lack of subject matter jurisdiction.

C. Plaintiff Fails To State A Claim For Relief Under The Lanham Act

1. Plaintiff Does Not Allege Valid Trademark Rights in the United States

Assuming, *arguendo*, that there is subject matter jurisdiction, Mr. Schreiber's claims fails to assert claims of trademark infringement³, dilution⁴, and cybersquatting⁵ under the Lanham

³ “In order to assert a claim of trademark infringement and unfair competition under §§ 1114 and 1125(a), and (c) of the Lanham Act, as an initial matter plaintiff must allege that it owns a valid trademark. *See Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC*, 507 F.3d 252, 259 (4th Cir. 2007)

⁴ “To state a dilution claim under the [Trademark Dilution Revision Act], a plaintiff must show: (1) that the plaintiff owns a famous mark that is distinctive ...” *Vuitton*, 507 F.3d at 264-65.

⁵ To establish a cause of action under the Anti-Cybersquatting Consumer Protection Act (“ACPA”), a plaintiff must prove that: (i) it has a valid trademark entitled to protection.... *B&J Enters. Ltd. v. Giordano*, No. 06-1235, 2008 U.S. Dist. LEXIS 116688 (D. Md. Mar. 11, 2008) (citing *Maruti.com v. Maruti Udyog Ltd.*, 447 F. Supp. 2d 494, 497 (D. Md. 2006); *see also DaimlerChrysler v. The Net Inc.*, 388 F.3d 201, 204 (6th Cir. 2004).

Act, because he fails to assert ownership of a valid trademark in the United States. Mr. Schreiber bases his trademark rights on his use of Landcruise in Canada and his registration of the domain name *landcruise.com*. Such actions do not create valid trademark ownership rights in the United States. In the United States, trademark rights are solely acquired through use in commerce. *See Emergency One, Inc. v. American Fire Eagle Engine Co., Inc.*, 332 F.3d 264, 267 (4th Cir. 2003) (citing *Homeowners Group, Inc. v. Home Mktg. Specialists, Inc.*, 931 F.2d 1100, 1105 (6th Cir. 1991) (“ownership rights flow only from prior appropriation and actual use in the market”). Plaintiff fails to assert any use of Landcruise in the United States.

a. Use of Landcruise in Canada Does Not Create Trademark Rights

Use and registration of a trademark in a foreign country, such as Canada, does not create trademark rights in the United States. “It has long been recognized that use of a foreign mark in a foreign country creates no trademark rights under United States law.” *International Bancorp, LLC v. Societe des Bains de Mer et du Cercle Des Etrangers A Monaco*, 329 F.3d 359 (4th Cir. 2003); *see also Person’s Co.*, 900 F.2d at 1568-69 (stating “foreign use of a foreign trademark creates no rights under United States law”). The fact that Mr. Schreiber has used Landcruise in Canada in connection with his business there for over a decade, does not create trademark rights in the United States.

b. Registration of the Domain Name *Landcruise.com* Does Not Create Trademark Rights in the United States

Moreover, Mr. Schreiber’s registration of the *landcruise.com* domain name does not create trademark rights in the United States. A domain name is a place on the Internet where a website is located. 1 J. THOMAS MCCARTHY, MCCARTHY OF TRADEMARKS AND UNFAIR COMPETITION, § 7:17.50 at 7-29 (4th ed. 2012). “The mere registration of a designation as a domain name with the intent to use it commercially does not establish ‘use’ of the designation as

a trademark.” *Brookfield Commc’ns v. W. Coast Entm’t Corp.*, 174 F.3d 1036, 1052 (9th Cir. 1999). *See also, Newborn v. Yahoo! Inc.*, 391 F. Supp. 2d 181 (D.D.C. 2005) (“The mere registration of a domain name with a domain name registrar by itself does not confer trademark rights.”).

Plaintiff appears to consider his registration of the *landcruise.com* domain name through Network Solutions as equivalent to a federal trademark registration through the United States Patent and Trademark Office. According to the Complaint, “Network Solutions furnished [Mr. Schreiber with] a “Certificate of Registration {RegistrationPlus} “Certificate of Mark” {Landcruise.com} incorporating the ‘Landcruise’ and ‘.com’ into the new business trading environment,” along with a ““Publication number,” called a ‘NIC Handle,” for both Landcruise as LC631-ORG ... operating at the pleasure of the US Congress [and] Department of Commerce ... in 1998 and currently.” (Compl. at 13-14). Plaintiff asserts that domain name registration authorities, including Registrars and Registry Operators such as Network Solutions, Verisign and ICANN, “secure[] names for use in commerce” in an “equivalent” or “identical practice” to the United States Patent and Trademark Office. (*Id.*)

In fact, such actions do not constitute use in commerce in the United States such that Plaintiff would acquire trademark rights in this country. “Courts have noted that “[a]nyone may register any unused domain name upon payment of a fee. Of course, this registration in no way trumps federal trademark law; registration of a mark or name with [Network Solutions, Inc.] does not itself confer any federal trademark rights on the registrant.” *Washington Speakers Bureau, Inc. v. Leading Authorities, Inc.*, 33 F. Supp. 2d 488, 491 n.3 (E.D.Va.1999).

Mr. Schreiber appears to erroneously believe that registration of the *Landcruise.com* domain name and putative use of the Landcruise trademark in Canada entitles him to exclusive

worldwide rights to the Landcruise trademark, as well as a monopoly over all second level domain names and subdomain names—everything “to the left of the dot”, such as *Landcruise.uk.com*. It is well established that one person can own rights to the Landcruise mark in Canada, and another may certainly own rights to the same Landcruise mark in the United Kingdom. *Fuji Photo Film Co. v. Shinohara Shoji Kabushiki Kaisha*, 754 F.2d 591, 599 (5th Cir.1985)). (“trademark rights are territorial and exist according to the terms of each country's laws.”); *see also Person's Co. v. Christman*, 900 F.2d 1565, 1568-69, 14 U.S.P.Q.2d 1477 (Fed. Cir. 1990) (“The concept of territoriality is basic to trademark law; trademark rights exist in each country solely according to that country's statutory scheme”). Thus, Mr. Schreiber may have valid rights in the Landcruise mark in Canada and at the same time Dunabin may have valid rights in the Landcruise mark in the United Kingdom.

c. Plaintiff Does Not Allege Use in the United States

In order to allege ownership of a valid trademark in the United States—whether the mark is registered or unregistered—a plaintiff must demonstrate actual use of the mark in commerce. *See Emergency One, Inc. v. American Fire Eagle Engine Co., Inc.*, 332 F.3d 264, 267 (4th Cir. 2003) (citing *Homeowners Group, Inc. v. Home Mktg. Specialists, Inc.*, 931 F.2d 1100, 1105 (6th Cir. 1991) (“ownership rights flow only from prior appropriation and actual use in the market”)); *see also* 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, §§ 16:1, 16.18 (4th ed. 2003). “[U]se in commerce” is defined in the Lanham Act as “the bona fide use of a mark in the ordinary course of trade ... on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce” 15 U.S.C. § 1127.

Plaintiff appears to be asserting use in the United States based on his registration of a domain name and the subsequent web hosting of the domain name with Network Solutions located in Virginia. (Compl. at 3) (“[i]n 2006 Landcruise the business began full trading from

Virginia, with web-hosting [and] email, managed by Network Solutions” whereby “Landcruise became bona fide, as doing business in Virginia...”). He further states that the domain name “has been on FTP servers, hosted by Network Solutions, conducting business to the World, via Cyberspace,” that it has been “continuously placed on the ‘registry’ purchase ... at an ‘arms length’ via ownership of privilege, the ‘mark’ having been in continuous business, just shy of eleven (11) years....” (Compl. at 11-12).

Even when viewed in a light most favorable to Plaintiff, these statements fail to establish sufficient use of the Landcruise mark in United States commerce. It is true that the Internet is available worldwide. However, operating a website available on the Internet does not necessarily constitute use in commerce in the United States. The website must have an effect on United States commerce and consumers. *See e.g., Specht v. Google, Inc.*, 758 F. Supp. 2d 570, 593 (N.D. Ill. 2010) (“Allowing a mark owner to preserve trademark rights by posting the mark on a functional yet almost purposeless website, at such a nominal expense, is the type of token and residual use of a mark that the Lanham Act does not consider a bona fide use in commerce.”).

The fact that Mr. Schreiber operates a website at the domain name landcruise.com is not the equivalent of using Landcruise in connection with the *bona fide* offering of goods or services in United States commerce.

Unfortunately, Mr. Schreiber’s use of Landcruise in Canada and registration and operation of the website *landcruise.com* do not constitute use in commerce in the United States such that Plaintiff would acquire trademark rights in this country. Accordingly, Plaintiff fails to assert valid trademark rights in the United States and his claims for trademark infringement, dilution and cybersquatting must be dismissed.

2. **Plaintiff Fails to Allege Critical Elements of Trademark Infringement, Dilution and Cybersquatting**

Even if Plaintiff has established valid trademark rights, his claims for infringement, dilution and cybersquatting must fail because Plaintiff has failed to establish critical elements of such claims.

a. **There is No Likelihood of Confusion**

In order for there to be trademark infringement, Plaintiff must allege that Dunabin's use of Landcruise in the United Kingdom and registration of *Landcruise.uk.com* creates a likelihood of confusion among consumers in the United States. *CareFirst of Md., Inc. v. First Care, P.C.*, 434 F.3d 263 (4th Cir. 2006). The Complaint does not discuss any effect that Dunabin's use of Landcruise, or registration of Landcruise.uk.com may have on consumers in the United States or commerce in the United States. Thus, the claims for direct trademark infringement should be dismissed. See *Michalski*, 2011 WL 3679143, at *14 (dismissing *pro se* plaintiff's complaint where "under the facts alleged no confusion is possible").

b. **Landcruise Is Not a Famous Mark**

Similarly, the critical elements for a claim of dilution is that the Plaintiff's mark is famous and that as a result of the use of the defendant's mark the distinctiveness of the famous mark is likely to be impaired or the reputation of the famous mark is likely to be harmed. 15 U.S.C. § 1125(c)(1). See also *Vuitton*, 507 F.3d at 265.

A mark is "famous" when it is "widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner." 15 U.S.C. § 1125(c)(2)(A) (the determination of fame includes *inter alia* the amount, volume and geographic extent of sales of services offered under the mark and the extent of actual recognition of the mark).

Plaintiff does not assert that his mark Landcruise is famous. On the contrary, he appears to immediately concede that the mark is not famous—“while ‘Famous Brands’ are hard to establish or prove; ‘Incontestable’ seems to be more openly embraced” and “requires only five (5) years of uninterrupted or contested use.” (Compl. at 14). The Trademark Dilution Revision Act clearly sets forth the requisite elements to assert a claim of dilution as well as the factors to establish a famous mark,⁶ which have nothing to do with the incontestable status of a mark. Plaintiff makes no attempt to address these elements. He admits that his mark is not famous. He fails to allege any facts to support a claim that Dunabin’s mark gives rise to an association with his mark in the minds of consumers in the United States. And he also fails to allege any facts that such an association is likely to blur or tarnish the reputation of his mark. Accordingly, his claims for trademark dilution should be dismissed.

c. There Is No Bad Faith

The critical element to establish cybersquatting, is that the defendant had registered the domain name with “bad faith intent to profit.” *B&J Enters. Ltd. v. Giordano*, No. 06-1235, 2008 U.S. Dist. LEXIS 116688 (D. Md. Mar. 11, 2008) (citing *Maruti.com v. Maruti Udyog Ltd.*, 447 F. Supp. 2d 494, 497 (D. Md. 2006)); *see also DaimlerChrysler v. The Net Inc.*, 388 F.3d at 204. The Anti-Cybersquatting Consumer Protection Act (“ACPA”) also does not generally apply to subdomain names. *See e.g., Goforit Entm’t LLC v. Digimedia.com L.P.*, 750 F. Supp. 2d 712 (N.D. Tex. 2010).

⁶ “(A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark’s owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following: (i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties. (ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark. (iii) The extent of actual recognition of the mark” 15 U.S.C. § 1125(c)(2).

As discussed above, Plaintiff does not allege ownership or use in commerce of a valid trademark in the United States. Plaintiff admits that Dunabin is the owner of trademark rights in the United Kingdom for Landcruise. Generally, when an individual has legitimate intellectual property rights, bad faith intent cannot be found. Indeed, one of the factors weighing against a finding of bad faith set forth in the ACPA is “the trademark or other intellectual property rights of the person, if any, in the domain name.” 15 U.S.C. § 1125(d)(1)(B)(i). Accordingly, the claims for cybersquatting should be dismissed with prejudice.

3. There is No Contributory Infringement

a. *If there Is No Claim for Direct Infringement There Is No claim For Contributory Infringement*

Clearly, as set forth above Plaintiff does not have cognizable claims for direct infringement, dilution and cybersquatting. Because there are no underlying claims for trademark infringement and dilution, there can be no contributory claims against CentralNic and the other defendants. *Rosetta Stone Ltd. v. Google, Inc.*, 676 F.3d 144, 163 (4th Cir. 2012) (“for there to be liability for contributory trademark infringement, the plaintiff must establish underlying direct infringement”).

b. The Safe Harbor Provisions of the Lanham Act Apply

Even if viewing the complaint in a light most favorable to Plaintiff, and if the Court finds Mr. Schreiber has valid direct claims, he does not state a cognizable claim for contributory infringement against CentralNic.

The Lanham Act provides a Safe Harbor Provision for Domain Name Registrars, Domain Name Registries and other domain name registration authorities. 15 U.S.C. §1114 (2)(D). The statute provides:

A domain name registrar, a domain name registry, or other domain name registration authority that takes any action described under clause (ii) affecting a domain name shall not be liable for monetary relief or, except as provided in subclause (II), for injunctive relief, to any person for such action, regardless of whether the domain name is finally determined to infringe or dilute the mark.

Id.

A domain name registrar or registry is only liable if there is a “showing of bad faith intent to profit from such registration or maintenance of the domain name.” 15 U.S.C. § 1114 (2)(D)(iii).

As the Fourth Circuit explained “Congress intended expressly to limit the liability of domain name registrars under the Act as long as the domain name registrars comply with the conditions stated in § 1114 (2)(D)(i). *Hawes v. Network Solutions, Inc.*, 337 F.3d 377 (4th Cir. 2003).

CentralNic operates as the “registry” for third level domains under the *uk.com* second level domain. It provides a central directory of all the domain names under *uk.com* and provides other computers on the Internet with the information necessary to locate websites associated with a domain name ending in *.uk.com*. Accordingly, CentralNic is a domain name registry for the purposes of the Lanham Act and as a result is immune from Plaintiff’s claims of infringement, dilution and cybersquatting absent a showing of bad faith.

There are no facts in the Complaint to support a claim that CentralNic acted outside the normal course of business or with bad faith intent to profit from Dunabin’s registration of *landcruise.uk.com*, which is registered through another domain name registrar, eNOM. (Compl. at 3). Accordingly, Plaintiff cannot and does not plead a cognizable claim for contributory liability against CentralNic.

c. CentralNic Does Not Have Sufficient Control Over Dunabin For there to Be Claims of Contributory Liability for Trademark Infringement, Dilution of Cybersquatting

Moreover, in for there to be contributory liability under the Lanham Act for infringement, dilution,⁷ or cybersquatting,⁸ “a defendant must: (1) intentionally induce another to infringe a trademark, or (2) continue to supply a product to a third party with actual or constructive knowledge of the infringement.” *Size, Inc. v. Network Solutions, Inc.*, 255 F. Supp. 2d 568, 572 (E.D. Va. 2003) (citing *Inwood Labs., Inc. v. Ives Lab., Inc.*, 456 U.S. 844, 854 (1982)). Most notably, domain name registrars and registries, such as CentralNic, generally lack the requisite degree of monitoring or control over the activity of domain name registrants to trigger liability for contributory trademark infringement. *See Size, Inc. v. Network Solutions, Inc.*, 255 F. Supp. 2d at 573 (finding that “[Network Solutions] is simply a routing service, and does not supply domain name combinations any more than the Postal Service supplies street addresses to its customers”).

Just as with domain name registrars, registries are not obligated to examine domain names to ensure that the registrant is not violating the rights of a third party. A registrar who simply accepts the registration of a domain name generally is not liable for trademark infringement or dilution, unfair competition, or violations of the ACPA. *Bird v. Parsons*, 289 F.3d 865, 877–81 (6th Cir. 2002) (finding domain name registrar not liable for trademark infringement, unfair competition, trademark dilution, or violations of ACPA); *see also Lockheed*

⁷ Plaintiff would need to establish the same facts as for contributory infringement. *See Tiffany (NJ) Inc. v. eBay, Inc.*, 576 F. Supp. 2d 463, 526 (S.D.N.Y. 2008).

⁸ “In general, courts apply the elements of a claim of contributory infringement to a claim of contributory cybersquatting under the ACPA.” *Petroliam Nasional Berhad v. GoDaddy.com, Inc.*, No. 09-5939, 2010 U.S. Dist. LEXIS 99963, at *8 (N.D. Cal. Sept. 9, 2010) (citing *Solid Host, NL v. NameCheap, Inc.*, 652 F. Supp. 2d 1092, 1112 (C.D. Cal. 2009)).

Martin Corp. v. Network Solutions, Inc., 985 F. Supp. 949, 956–67 (C.D.Cal.1997), *aff'd*, 194 F.3d 980 (9th Cir.1999) (finding domain name registrar not liable for trademark infringement, unfair competition, trademark dilution, or contributory infringement).

CentralNic simply maintains the technical information and provides other computers on the Internet that information so computers can locate the domain name. CentralNic does not have control over Dunabin or her use of Landcruise or registration of *Landcruise.uk.com*. The mere operation and maintenance of a domain name registry does not create the requisite degree of monitoring or control to trigger contributory liability. *See id.* Thus, CentralNic’s actions as a registry operator do not create a cognizable claim for contributory infringement as a result of Dunabin’s registration of the *Landcruise.uk.com* domain name. Accordingly, Plaintiff’s claims for contributory trademark infringement should be dismissed with prejudice.

D. To the Extent Plaintiff Asserts Breach of Contract Against CentralNic for “Conflicts” With the RAA, That Claim Must Be Dismissed

Plaintiff does not formally allege a breach of contract claim against CentralNic; however, in an abundance of caution given the muddled nature of the complaint, to the extent Plaintiff may have asserted such a claim, it must be dismissed. Plaintiff alleges that CentralNic was in “conflict” with the 2009 Registrar Accreditation Agreement with ICANN (“RAA”). (*See* Compl. at 11-12). The specific details of those meritless allegations are irrelevant because Plaintiff lacks standing to assert that any conflicts with the RAA inure to his benefit in the form of a breach of contract. Plaintiff does not allege, nor could he, that he is either a party to the RAA or a third-party beneficiary. Thus, any breach of contract claim relating to the RAA fails as a matter of law. *See Trigo v. Travelers Commercial Ins. Co.*, No. 10-00028, 2010 U.S. Dist. LEXIS 92913, at *14-15 (W.D. Va. Sept. 7, 2010) (stating one who is not party or in privity lacks standing to sue under an instrument absent exception to common law rule); *Radosevic v.*

Virginia Intermont College, 651 F. Supp. 1037, 1039 (W.D. Va. 1987) (stating four corners of a contract evidence whether contracting parties clearly and definitely intended to directly benefit third party and absent such indication one lacks standing to sue under instrument) (citing *Obenshain v. Halliday*, 504 F. Supp. 946 (E.D. Va. 1980)).

Reinforcing Plaintiff's lack of a claim, he cites the provision in the RAA expressly disclaiming any third-party beneficiaries to the contract.⁹ (Compl. at 16) ("Section 8.5 No Third Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder."). Plaintiff merely asserts that he registered a domain name. This does not make him a party to the agreement, and as a result he cannot assert any basis for breach of contract. *See, e.g., Balsam v. Tucows Inc.*, 627 F.3d 1158, 1163 (9th Cir. 2010) (concluding that "the 'No Third Party Beneficiaries' clause unambiguously manifests an intent *not* to create any obligations to third parties through the RAA" under California law). Accordingly, to the extent that Plaintiff is alleging a breach of contract claim against CentralNic, it must be dismissed.

E. To the Extend Plaintiff Asserts a Fraud Claim, the Complaint Fails to State the Claim with the Requisite Particularity under Rule 9(b)

Plaintiff does not formally allege a fraud claim against CentralNic; however, given the unclear and confusing nature of the complaint, to the extent he has asserted a claim for actual or constructive fraud, it must be dismissed.

In support of his claim that CentralNic violated and/or breached 2001 and 2009 Registrar Accreditation Agreements (RAAs), he alleges that CentralNic made a material representation, material inaccuracy, or materially misleading statement in the applications or material submitted

⁹ Plaintiff does not even allege that he is referring to any particular agreement jointly signed by CentralNic and ICANN, but rather, appears to refer to the generic RAA available on ICANN's website.

with the applications. (Compl. ¶ 11). More specifically, he appears to argue that the alleged misrepresentation stems from the fact that CentralNic's application(s) only included "legal" IANA domain names in an attempt to "giv[e] themselves / their products, an artificial integrity . . . and eludes to clients a sense of legitimacy" though there is "no Registry Agreement for / with an UK.com appendix . . . because they are frauds, so far as the IANA Root directory is concerned" and that "IANA's one and only ".com" representation authority listed, is with / for Verisign." *Id.* at 11.

In Virginia, a plaintiff asserting a claim for actual fraud must allege "(1) a false representation (2) of a material fact (3) made intentionally and knowingly (4) with intent to mislead, (5) reliance by the party misled, and (6) resulting damage to the party misled." *Poth v. Russey*, 281 F. Supp. 2d 814, 824 (E.D. Va. 2003) (internal quotation marks and citations omitted). Moreover, the fraud must be proved by clear and convincing evidence. *Arabian v. Bowen*, 966 F.2d 1441, 1992 WL 154026, at *5 (4th Cir. July 7, 1992) (unpublished table decision).

To satisfy the requisite particularity required for a fraud claim, Mr. Schreiber must identify the specific date, place, speaker and content of the alleged misrepresentation. *Iron Workers Local 16 Pension Fund*, 432 F. Supp. 2d at 578; *Schmidt v. Wells Fargo Home Mortg.*, No. 3:11-cv-059, 2011 U.S. Dist. LEXIS 45122, *13 (E.D. Va. April 26, 2011) ("In order to survive a motion to dismiss, the Plaintiffs must plead, with the requisite degree of particularity, facts which support all the elements of a cause of action for constructive fraud.") (internal quotation marks and citations omitted); *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 784 (4th Cir. 1999)), *rev'd sub nom. on other grounds Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S.Ct. 2296 (2011) (noting that Rule 9(b) requires pleading of "the time,

place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.”). Rule 9(b) also requires that he allege with particularity facts sufficient to demonstrate that each representation is false. Moreover, those facts must establish that the alleged misrepresentation was false when it was made. *See, e.g., Byelick v. Vividelli*, 79 F. Supp. 2d 610, 616-17 (E.D. Va. 1999).

Mr. Schreiber fails to plead any facts that would permit a reasonable person to find that any alleged representation made by CentralNic regarding the sale of domain names is false. *Teachers’ Ret. Sys. of La. v. Hunter*, 477 F.3d 162, 173 (4th Cir. 2007) (indicating that the complaint must state sufficient facts to permit a reasonable person to find that the defendant made a false or misleading statement). The Complaint does not allege any specific time or place where the alleged misrepresentation was made, does not identify who made the misrepresentation, or even what the specific misrepresentation is. Mr. Schreiber discusses no source nor offers any documents that he relies upon to support his allegation that CentralNic is selling “illegal domains”. Rather, he appears to rely on section 5.3.1 of a generic RAA that is available on ICANN’s website and conclusory statements.

Mr. Schreiber’s fraud claim is precisely the type of claim that should be dismissed also because he cannot establish reasonable and justifiable reliance; a necessary element of his claim. *White v. Patocska, P.C.*, 589 F. Supp. 2d 631, 650 (E.D. Va 2008) (“Reliance that is justifiable may not be reasonable.”). There is no allegation that CentralNic had a business relationship with Mr. Schreiber and thereby owed him some duty or that he was a party to or the intended beneficiary of any RAA entered into by CentralNic. As such, he cannot establish justifiable reliance on any misrepresentation, even assuming one as made by CentralNic.

Moreover, in Virginia, to state a claim for constructive fraud, a plaintiff must allege the same elements as for actual fraud, with the exception of intent. *Schmidt*, 2011 U.S. Dist. LEXIS, at *11-*12. To prevail, the plaintiff must show “that a false representation of a material fact was made innocently or negligently, and the injured party was damaged as a result of his reliance upon the misrepresentation.” *Schmidt v. Wells Fargo Home Mortg.*, No. 3:11-cv-059, 2011 WL 1597658, at *5 (E.D. Va. Apr. 26, 2011) (quoting *Mortarino v. Consultant Eng’g Servs., Inc.*, 251 Va. 289, 295 (Va. 1996)). Because Mr. Schreiber has failed to plead with particularity a material misrepresentation and reasonable and justifiable reliance, any constructive fraud claim he is raising must also be dismissed.

F. Plaintiff’s “Shaking Down” Claim Must Be Dismissed.

To avoid dismissal under Rule 12(b)(6), a complaint must allege facts stating a claim for relief that is “plausible on its face.” *Twombly*, 550 U.S. at 570; *see also Ashcroft*, 556 U.S. at 668-69; *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009). *Twombly* and *Iqbal* thus “require that complaints in civil actions be alleged with greater specificity than previously was required.” *Walters v. McMahan*, 684 F.3d 435, 439 (4th Cir. 2012) (citation omitted).

Plaintiff’s claim for “Shaking Down” must be dismissed as it fails to state a legally cognizable theory of potential liability. Even accepting the pled facts as true, there is no discernible legal wrong that can be deduced from the allegations of CentralNIC owning “‘shakedown’ domains of EU.com, CN.com . . .” (Compl. at 6); the “shakedown team at WIPO” (*id.*); and/or the alleged obligation to register second-level domains in other top-level domains (Compl. at 6, 8, 10, 12). None of these pseudo-factual allegations regarding a “GENTLE SHAKEDOWN” (Compl. at 12) state a claim for relief that is cognizable or plausible on its face. Therefore, Plaintiff’s claim for “Shaking Down” must also be dismissed.

G. There Is No Personal Jurisdiction Over CentralNic

The Due Process Clause requires that no defendant shall be hauled into court unless the defendant has “certain minimum contacts [with the state] . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The Fourth Circuit has synthesized the due process requirements for asserting specific personal jurisdiction in a three-part test in which the court considers “(1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiff’s claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.” *Michalski*, 2011 WL 3679143, at *3 (quoting *Consulting Eng’rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 (4th Cir. 2009)). To exercise personal jurisdiction over a nonresident defendant, the plaintiff bears the burden of making a prima facie showing that jurisdiction is authorized by the state’s long arm statute and that the exercise of personal jurisdiction would be consistent with due process under the U.S. Constitution. *Michalski*, 2011 WL 3679143, at *3 (citing *Mitrano v. Hawes*, 377 F.3d 402, 406 (4th Cir. 2004)).

The Plaintiff makes two unavailing allegations in support of jurisdiction: *first*, that CentralNic has “two (2) office [sic] in the United States”, and *second*, that CentralNic owns the domain name UK.COM “which are [sic] registered in the United States.” (Compl. at 3). While it is true that CentralNic operates from its headquarters in London and, in the United States, it has an office that is located in New York and an office located in Los Angeles, such actions do not necessarily avail it to jurisdiction in the State of Virginia.

In *ALS Scan, Inc. v. Digital Service Consultants, Inc.*, the Fourth Circuit explained:

When a person places information on the Internet, he can communicate with persons in virtually every jurisdiction. If we were to conclude as a general principle that a person's act of

placing information on the Internet subjects that person to personal jurisdiction in each State in which the information is accessed, then the defense of personal jurisdiction, in the sense that a State has geographically limited judicial power, would no longer exist. The person placing information on the Internet would be subject to personal jurisdiction in every State.

[I]f that broad interpretation of minimum contacts were adopted, State jurisdiction over persons would be universal, and notions of limited State sovereignty and personal jurisdiction would be eviscerated.

293 F.3d 707, 711 (4th Cir. 2002). The Fourth Circuit concluded:

[A] State may, consistent with due process, exercise judicial power over a person outside of the State when that person (1) directs electronic activity into the State, (2) with the manifested intent of engaging in business or other interactions within the State, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State's courts. Under this standard, a person who simply places information on the Internet does not subject himself to jurisdiction in each State into which the electronic signal is transmitted and received. Such passive Internet activity does not generally include directing electronic activity into the State with the manifested intent of engaging business or other interactions in the State thus creating in a person within the State a potential cause of action cognizable in courts located in the State.

Id.

Plaintiff has not alleged any facts that CentralNic directs electronic activity into Virginia, with the manifested intent of engaging in business or other interactions in Virginia, and that the alleged activity creates a potential cause of action cognizable in the State's Courts. The allegations in the Complaint are that CentralNic is an ICANN accredited registrar and operates a domain name registry in connection with third level domains under UK.COM and that its operates computer servers in Holland on which UK.COM domain names are listed.¹⁰ (Compl. at

¹⁰ That Mr. Schreiber alleges that by September 2006, *he* “began trading from Virginia and doing business [through his Landcruise site] via cyberspace, with its webhosting and email managed by Network Solutions” says nothing about the propriety of *jurisdiction over CentralNic* in Virginia. (Compl. at 3).

4, 6). Such allegations are not sufficient to create the level of Internet activity that would avail CentralNic to jurisdiction in the State of Virginia.

Moreover, to the extent that Plaintiff seeks for jurisdictional purposes to rely on that alleged fact that Dunabin, of the United Kingdom, purchased the domain *landcruise.uk.com* from defendant Enom/Demand Media, and/or Plaintiff's alleged need to defensively register domains in other CentralNic registries such as JPN.COM, those allegations have no bearing on jurisdiction in Virginia. Dunabin purchased her domain name through eNom, a company allegedly located in Washington, is also of no moment to jurisdiction in Virginia:

While it is true that the infringing domain name is included in the VeriSign registry, this is not enough to establish minimum contacts; indeed, even if the registrar were also located in this district, the resultant contacts would still be too minimal to support jurisdiction. *See America Online, Inc., et al. v. Huang*, 106 F. Supp. 2d 848, 856-58 (E.D. Va. 2000) (holding that registration of a domain name in this district with Network Solutions, Inc., which at the time performed both the registrar and the registry functions, did not constitute sufficient minimum contacts to support suit in this district.).

GlobalSantaFe Corp. v. Globalsantafe.com, 250 F. Supp. 2d 610, 615 (E.D. Va. 2003). Thus, the fact that CentralNic is the registry operator for the allegedly infringing domain name is itself insufficient to support jurisdiction.

Finally, Plaintiff appears to assert a jurisdictional basis arising out of the forum selection clause in the 2001 and 2009 Registrar Accreditation Agreement ("RAA"), an agreement which ICANN enters into with registrars, *i.e.*, entities that sell domain name registrations.¹¹ (*See* Compl. at 7, 9). Mr. Schreiber is neither a signatory to, nor a third-party beneficiary of, the RAA, and thus lacks standing to assert the forum selection clause to invoke jurisdiction.

¹¹ It is not at all clear whether Mr. Schreiber is referencing any agreement that CentralNic entered into with ICANN as no specific allegation is made and no agreement appended to the Complaint, or rather the generic RAA available on ICANN's website.

Moreover, while the RAA has a forum selection clause, corporations routinely operate in many jurisdictions, yet choose one state in which to litigate claims arising from its contracts. *America Online, Inc. v. Huang*, 106 F. Supp. at 857. By the agreement, the registrar agrees to litigate claims *with ICANN* in a particular forum (not necessarily Virginia), not claims between the registrar and any third party. *See id.* In any event, a “forum selection clause is a bargained-for term in a contract between the contracting parties, and for that reason it may not, in most instances, be enforced by one who is not a party to the contract.” *Id.* at 857 n.26.

Plaintiff has not alleged facts to support jurisdiction over CentralNic in Virginia and for this reason, the Complaint must be dismissed.

IV. CONCLUSION

For the foregoing reasons, this Court does not have subject matter jurisdiction over the underlying dispute between Mr. Schreiber and Dunbin regarding the use of the Landcruise mark in the United Kingdom and the registration of the domain name *Landcruise.uk.com*. Therefore, the Complaint should be dismissed with prejudice.

In the event that the Court finds there is subject matter jurisdiction, Mr. Schreiber has failed to assert facts that establish personal jurisdiction over CentralNIC. Moreover, Mr. Schreiber does not state a cognizable claim against CentraNic upon which relief can be granted.

Mr. Schreiber does not have valid underlying claims against Dunabin. Therefore, the claims for contributory liability against CentralNic and the other related defendants must be dismissed with prejudice.

Respectfully Submitted,

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September 10, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2012, a copy of the foregoing Defendant CentralNic, Ltd.'s Motion to Dismiss Pro Se Plaintiff's Complaint was electronically filed with the Clerk of the Court using the CM/ECF system and was mailed first class, along with the NEF, to the following:

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