SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 39

23STCV19554
VERANDAGLOBAL.COM, INC., et al. vs INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, INC.

January 29, 2025
8:30 AM

Judge: Honorable Tony L. Richardson
Judicial Assistant: Patricia Salcido
Courtroom Assistant: Karlet Ghazarian

CSR: Jennifer Aguilar, CSR #12993
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Talcott J. Franklin; Christopher William Hellmich via LACourtConnect

For Defendant(s): Jeffrey Alan Levee and Kelly M. Watne in court and Amy Stathos and Cassandra Fury via LACourtConnect

NATURE OF PROCEEDINGS: Case Management Conference; Hearing on Demurrer - without Motion to Strike (Res #6336)

Pursuant to Government Code Sections 68086, 70044 and California Rules of Court, rule 2.956, Jennifer Aguilar, CSR #12993, certified shorthand reporter is appointed as an official Court Reporter Pro Tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The Court's tentative ruling is electronically posted on the Court's website before the hearing is held.

The matters are called for hearing and counsel are heard.

After considering the moving papers, all documents relating to the motion, and oral arguments, the Court amends and adopts its tentative ruling as the final ruling of the Court as follows:

DEPARTMENT	39
HEARING DATE	January 29, 2025
CASE NUMBER	23STCV19554
MOTION	Demurrer to First Amended Complaint
MOVING PARTY	Defendant Internet Corporation for Assigned Names and Numbers
OPPOSING PARTY	Plaintiffs Verandaglobal.com, Inc. and Bryan Tallman

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MOTION

Plaintiffs Verandaglobal.com, Inc. and Bryan Tallman ("Plaintiffs") sued Defendant Internet Corporation for Assigned Names and Numbers ("Defendant") for breach of contract. Plaintiffs are the registrants of single-character domain names in Katakana, Hangul, and Hebrew. They allege Defendant prohibits them from registering English single-character domain names, while allowing others to do so. Defendant demurs to Plaintiff's first amended complaint, and Plaintiff opposes the demurrer.

ANALYSIS

"It is black letter law that a demurrer tests the legal sufficiency of the allegations in a complaint." (*Lewis v. Safeway, Inc.* (2015) 235 Cal.App.4th 385, 388.) In ruling on a demurrer, the court must "liberally construe[]" the allegations of the complaint. (Code Civ. Proc., § 452.) "This rule of liberal construction means that the reviewing court draws inferences favorable to the plaintiff, not the defendant." (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238.)

As Defendant points out, Plaintiffs fail to allege they have standing to pursue claims against Defendant. "The existence of standing generally requires that the plaintiff be able to allege injury, i.e., an invasion of his legally protected interests. The focus of the standing inquiry is on the plaintiff, not on the issues he or she seeks to have determined; he or she must have a special interest that is greater than the interest of the public at large and that is concrete and actual rather than conjectural or hypothetical." (*Surrey v. TrueBeginnings, LLC* (2008) 168 Cal.App.4th 414, 417 (citations omitted).)

In this regard, Plaintiffs allege Defendant breached statements in Defendant's bylaws as well as Defendant's stated policies. (See First Amended Complaint, ¶¶ 1-4.) They claim Defendant related such policies, for example, by publishing on its website a letter from VeriSign, Inc. ("VeriSign") in which VeriSign stated registrants of domain names in other languages would be able to register those domain names in English. (*Id.*, ¶¶ 74-78.) In this way, Plaintiffs allege Defendant breached an agreement with them. But attributing a letter from VeriSign to Defendant does not establish Plaintiffs had any interaction with Defendant that would constitute a breach of any agreement, let alone such a letter constitutes a stated policy of Defendant's.

Further, Plaintiffs allege, in July 2017, Elon Musk reacquired the domain X.com from PayPal, but Defendants will not allow Plaintiffs to register single character domain names. (First Amended Complaint, ¶ 41.) However, absent any breached promise to Plaintiffs, the disparate treatment of Plaintiffs versus Elon Musk does not constitute an injury to Plaintiffs, as Plaintiffs do not allege Defendant discriminated against Plaintiffs on a legally prohibited basis. As such, Plaintiffs fail to allege Defendant caused Plaintiffs' a legally cognizable injury such that Plaintiffs may maintain this action.

Accordingly, the Court sustains Defendant's demurrer to Plaintiffs' complaint in its entirety with leave to amend. Plaintiffs must allege facts to show how Plaintiffs have standing to sue Defendant.

First Cause of Action: Violation of Business and Professions Code Section 17200

Plaintiffs must allege a claim under Business and Professions Code section 17200 "with reasonable particularity . . . ." (*Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 619.) Plaintiffs allege Defendant fraudulently promised to comply with its own policies. (First Amended Complaint, ¶¶ 125-127.) Defendant's alleged breach of its purported policies is not inherently fraudulent. Plaintiffs allege no facts to suggest Defendant intended to breach such policies at the time they were presumably published. Likewise, Plaintiffs allege no facts to support their claim Defendant's conduct was unfair or unlawful under Business and Professions Code section 17200. (First Amended Complaint, ¶ 129.) Plaintiff must amend.

Second, Third, and Fourth Causes of Action: Breach of Contract, Quasi-Contract, and the Implied Covenant of Good Faith and Fair Dealing

As Defendant points out, Plaintiffs fail to adequately allege Plaintiffs and Defendants entered into a contractual agreement. Rather, Plaintiffs simply state, "Plaintiffs entered a binding agreement with [Defendant] and/or through its agents that was governed by [Defendant]'s policies and procedures." (First Amended Complaint, ¶ 142.) Plaintiffs do not allege when Plaintiffs entered into such an agreement, what the terms of the agreement were, and how the parties reached that agreement. Plaintiffs' allegations amount to bare legal conclusions. Likewise, Plaintiffs' allegation "Plaintiffs entered an implied or actual contract with [Defendant] and/or its agents that is specified or governed by [Defendant]'s policies and

procedures" (*id.*, ¶ 163) does not state a claim for quasi-contract. For Plaintiffs' claim Defendant breached the implied covenant of good faith to overcome the challenge on demurrer, Plaintiffs would have to have sufficiently pleaded contract claims. Therefore, the demurrer is sustained with respect to these causes of action with leave to amend.

Fifth Cause of Action: Fraudulent Inducement

A plaintiff must allege fraud with particularity. "This means: (1) general pleading of the legal conclusion of fraud is insufficient; and (2) every element of the cause of action for fraud must be alleged in full, factually and specifically, and the policy of liberal construction of pleading will not usually be invoked to sustain a pleading that is defective in any material respect." (*Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331.) To state a claim for promissory fraud, Plaintiffs must allege specific factual circumstances beyond contract breach, which reflect Defendant's contemporaneous intent not to perform. (*Hills Transportation Co. v. Southwest Forest Ind., Inc.* (1968) 266 Cal.App.2d 702, 707.)

In the instant case, Plaintiffs allege Defendant "did not intend to follow its published policies and procedures regarding the release of Single-Character domain names, which concealment created a false impression with Plaintiffs." (First Amended Complaint, ¶ 171.) Plaintiff does not allege any specific facts establishing Defendant did not intend to follow its policies at the time it published them. More significantly, Plaintiffs have not alleged which person associated with Defendant made the fraudulent representations.

In opposition, Plaintiffs rely on *Kremen v. Cohen* (9th Cir. 2003) 337 F.3d 1024 (*Kremen*), which does not bind this Court. (See *Alameida v. State Personnel Board* (2004) 120 Cal.App.4th 46, 61 ["federal case law is not binding on this court"].) Even though such cases in some circumstances may have persuasive value, in this instance, *Kremen* is not on point. In that case, the Ninth Circuit held a registrant could state a cause of action for conversion (not breach of contract) against a domain name registrar, when, after the domain name registrar allowed the registrant to register a domain name, the registrar turned control of the domain name over to a con artist. (*Kremen*, *supra*, 337 F.3d at p. 1030.) In *Kremen*, the registrant and the domain name registrar had a relationship: The registrant registered the domain name with the domain name registrar. In the instant matter, on the other hand, Plaintiffs have not articulated they had an established relationship with Defendant that lead to Plaintiffs having a cognizable property right in domain names that were never registered.

Plaintiffs reliance on *Biakanja v. Irving* (1958) 49 Cal.2d 647 (*Biakanja*) is likewise misplaced. The California Supreme Court in that case considered liability for "negligence committed in the performance of a contract in the absence of privity." (*Id.*, at p. 649.) In this case, Plaintiffs do not assert a claim for negligence. As such, *Biakanja* is not on point.

The Court has already provided Plaintiffs with an opportunity to state claims against Defendants, and Plaintiff failed to do so. As such, leave to amend is likely futile. (See *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 168.) However, in an abundance of caution, the Court will provide Plaintiffs with one more opportunity to amend its first amended complaint to sufficiently state claims against Defendant.

CONCLUSION AND ORDER

Defendant's demurrer to Plaintiffs' first amended complaint is sustained with leave to amend. Plaintiffs are to file an amended complaint within 20 days.

Defendant is to give notice of this order and file proof of service of same.

On the Court's own motion, the Case Management Conference scheduled for 01/29/2025 is continued to 05/07/25 at 08:30 AM in Department 39 at Stanley Mosk Courthouse.

Notice is waived.