

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FORD MOTOR COMPANY, a Delaware  
corporation,

Plaintiff,

Civil No. 01 60084 DT

Hon. Robert L. Cleland

v.

2600 ENTERPRISES, a New York not-for-  
profit corporation, and EMMANUEL  
GOLDSTEIN, aka ERIC  
CORLEY, an individual,

Defendants.

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**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION**  
**FOR PRELIMINARY INJUNCTION**



**CONCISE STATEMENT OF ISSUE PRESENTED**

Is Ford Motor Company entitled to a Preliminary Injunction during the pendency of this lawsuit to protect it from the irreparable harm caused by defendants' unlawful use of the Internet domain name FUCKGENERALMOTORS.COM to point directly to Ford's official website at FORD.COM?

**TABLE OF MOST APPROPRIATE AUTHORITIES**

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<u>Rock &amp; Roll Hall of Fame &amp; Museum, Inc. v. Gentile Prods.</u> 134, F3d 749, 753 (6 <sup>th</sup> Cir. 1998).....	6
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Plaintiff Ford Motor Company (“Ford”) respectfully submits this Memorandum in Support of its Motion for Preliminary Injunction restraining and enjoining defendants, 2600 Enterprises and Emmanuel Goldstein, a/k/a Eric Corley (“Defendants”), from using in any way the Internet domain name FUCKGENERALMOTORS.COM to point to Ford’s official website at FORD.COM, or any other website affiliated with Ford.

### **INTRODUCTION**

Defendants use the Internet domain name FUCKGENERALMOTORS.COM to point directly to Ford’s official website at FORD.COM. In other words, when an Internet user types FUCKGENERALMOTORS.COM into his or her computer, the user is catapulted directly to the official Ford website at FORD.COM. By pointing the domain name FUCKGENERALMOTORS.COM directly to Ford’s official website at FORD.COM, Defendants are confusing the public into believing that somehow Ford has approved or is somehow involved in using the domain name FUCKGENERALMOTORS.COM to divert Internet users to Ford’s official website at FORD.COM. In addition, the use of such an obscene domain name in pointing directly to the website at FORD.COM tarnishes and dilutes the world-famous trademark FORD®.

In this lawsuit, Ford alleges claims for trademark dilution, trademark infringement, and false designation of origin under the Lanham Act (15 U.S.C. §1051 et seq.). The court should enter a preliminary injunction in order to protect Ford from the irreparable harm that will ensue from the consumer confusion and tarnishment that flow from Defendants’ devious scheme. An Internet user searching for strident, vulgar criticism of General Motors might type in or stumble upon the obscene domain name FUCKGENERALMOTORS.COM. On doing so, however, the Internet user will be taken directly and immediately to Plaintiff Ford’s official web site at

FORD.COM. As a result, Ford is inevitably associated not only to the vulgar, strident criticism of a competitor, but also with the offensive, obscene word that is used in the domain name. Unless a preliminary injunction is entered, Ford will be irreparably harmed by the likelihood of consumer confusion and by the dilution of its mark from its association with defendants' vulgar domain name.

### **FACTUAL BACKGROUND**

The following facts have been established by the Verified Complaint. For the convenience of the Court, the paragraphed numbers set forth below are the same as the paragraph numbers in the Verified Complaint:

#### *The Parties*

7. Ford is a Delaware corporation with its principal place of business in Dearborn, Michigan.

8. 2600 Enterprises is a Not-For-Profit Corporation in Suffolk County, New York, and, according to the whois record, operating with an address of P.O. Box 99, Middle Island, NY, 11953. Defendant Emmanuel Goldstein is an individual residing at an unknown address in Stony Brook, NY. Defendant Emmanuel Goldstein is also known as Eric Corley.

#### *Ford's Registered Trademark and Goodwill and Reputation*

9. Ford has obtained several United States Trademark Registrations for the trademark FORD®. The United States Trademark Registrations for the trademark FORD® are valid, unrevoked, subsisting, and incontestible, and constitute prima facie evidence of Plaintiff's exclusive ownership of the trademark FORD®.

10. Ford has continuously used the trademark FORD® in connection with the promotion, advertising, and sale of automobiles and other products and services since well before the acts of Defendants complained of herein.

11. Ford has spent billions of dollars and has expended significant effort in advertising, promoting, and developing the trademark FORD® throughout the world. As a result of such advertising and expenditures, Ford has established considerable goodwill in the trademark FORD®. The trademark FORD® has become widely known and recognized throughout the world as a symbol of high quality automotive and other goods and services. The trademark FORD® is world-famous and distinctive, and has become associated by the consuming public exclusively with Ford. The trademark FORD® is an invaluable asset of substantial and inestimable worth to Plaintiff.

12. Ford uses its official website, FORD.COM in connection with the promotion, advertising, and sale of automobiles and other products and services since well before the acts of Defendants complained of herein.

*The Internet and Domain Name Registration*

13. The Internet is a worldwide network of computers that enables individuals and organizations to access and share information by means of “web pages” and “web sites,” so-called because the pages are reached by “links” from one to another, creating the “worldwide web” or “web.”

14. A web page is a computer data file that is published or “served” to the Internet by one computer and presents itself as a graphical

“page” viewable by other computers on the Internet. It can include names, pictures, text, sound, and links to other web pages. A collection of related web pages published by the same owner is typically referred to as a web site, which is identified on the Internet by a unique address, similar to a street address, and commonly referred to as a “domain name.”

15. The Internet is divided into several “top level” domains, such as “.com,” “.net,” and “.org.” Domain names with the “.com,” “.net,” and “.org.” designations can be registered with Network Solutions, Inc. (“NSI”), CORE, or other domain name registrars for a de minimis fee. The registrars register domain names on a first-come, first-serve basis. The registrars do not make a threshold determination regarding a registrant’s right to use a domain name, other than to insure that no two domain names are identical.

16. As an express condition of registering a domain name, an applicant must represent and warrant that: (1) the applicant’s statements are true; (2) the applicant has the right to use the requested domain name; (3) the use or registration of the domain name does not interfere with the rights of any third party in any jurisdiction with respect to trademark, service mark, trade name, company name, or any other intellectual property rights; and (4) the applicant is not seeking to use the domain name for any unlawful purpose, including unfair competition.

17. Pointing an obscene and profane domain name such as FUCKGENERALMOTORS.COM directly to Ford’s official web site constitutes unfair competition, causes public confusion, as well as tarnishes

Ford's goodwill and reputation. The public recognizes, and often relies on the expectation, that links to a company's official web site address are sponsored by, affiliated with, or somehow approved by that company.

Defendants' Infringement

18. On September 26, 1999, Defendants registered the Internet domain name FUCKGENERALMOTORS.COM, which Defendants recently pointed directly to Ford's official website at FORD.COM. A copy of the Network Solutions, Inc. "whois" printout demonstrating that FUCKGENERALMOTORS.COM is registered to defendant 2600 Enterprises, and that defendant Emmanuel Goldstein is the Administrative and Technical contact for the domain name is attached to the Verified Complaint as Exhibit A. A copy of the official Ford Home Page to which FUCKGENERALMOTORS.COM points is attached to the Verified Complaint as Exhibit B.

19. Defendants are not in any way affiliated or associated with Ford and have absolutely no right to point their domain name FUCKGENERALMOTORS.COM to Ford's official website.

20. In registering the domain name FUCKGENERALMOTORS, Defendants falsely represented and warranted that Defendants had the right to not only register the domain name, but that Defendants' registration and/or use of the domain name did not interfere with the right of any third party, and that the domain name would not be used for any unlawful purpose.

21. Defendants' use of the domain name FUCKGENERALMOTORS.COM causes public confusion and tarnishes the goodwill and reputation of Ford. In addition, pointing an obscene and profane domain name that uses the trademark of another company constitutes unfair competition.

### **ARGUMENT**

Four factors are relevant to the availability of a preliminary injunction: “(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction.” Rock & Roll Hall of Fame & Museum, Inc. v. Gentile Prods., 134 F.3d 749, 753 (6<sup>th</sup> Cir. 1998); see also McPherson v. Michigan High Sch. Athletic Ass’n, 119 F.3d 453, 459 (6<sup>th</sup> Cir. 1997) (en banc). In this Circuit, these factors are not “prerequisites” to the issuance of a preliminary injunction; they are factors to be “balanced” by the court. See Unsecured Creditors’ Comm. of DeLorean Motor Co. v. DeLorean (In re Delorean Motor Co.), 755 F.2d 1223, 1229 (6<sup>th</sup> Cir. 1985).

Thus, a strong showing as to likelihood of success on the merits may justify entry of a preliminary injunction upon a relatively lesser showing of irreparable harm; conversely, proof that the moving party will suffer significant irreparable injury may justify a preliminary injunction on a lesser showing of likelihood of success. See id. at 1229 (holding that “the likelihood of success that need be shown will vary inversely with the degree of injury the plaintiff will suffer absent an injunction”). In other words, a moving party may be entitled to a preliminary injunction either upon a showing of “a strong or substantial probability of ultimate success on the merits,” or upon a showing of “serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if an injunction is issued.” Friendship Materials, Inc. v. Michigan Brick, Inc., 679 F.2d 100, 105 (6<sup>th</sup> Cir. 1982).

Ford easily qualifies for preliminary injunctive relief because there is a strong likelihood that Ford will succeed on the merits **and** the balance of hardships tips decidedly in Ford's favor.

Indeed, preliminary injunctive relief is routinely granted in trademark cases on the basis of the important presumption that consumer confusion constitutes irreparable harm to the goodwill and reputation of the trademark owner. See Lone Star Steakhouse & Saloon, Inc. v. Alpha of Virginia, Inc., 43 F.3d 922, 939 (4th Cir. 1995) (“[W]e recognize that irreparable injury regularly follows from trademark infringement.”). In recent years, this standard has been applied to sustain preliminary injunctive relief in the emerging field of Internet domain name disputes involving obscenity, or attempts to use a trademark to point or link to websites not sponsored or affiliated with the trademark. See, e.g., Ford Motor Co. v. Lapertosa, 126 F. Supp.2d 463 (E.D. Mich. 200[1]) (preliminarily enjoining misappropriation of FORDRECALLS.COM for pornographic website and transferring domain name to Ford); Planned Parenthood Fed. of America, Inc. v. Bucci, 1997 WL 133313, 42 U.S.P.Q.2d 1430 (S.D. N.Y. 1997), aff'd 152 F.3d 920 (2d Cir. 1998) (entering preliminary injunction against registration of domain name PLANNEDPARENTHOOD.COM to link to anti-abortion website). These and other courts have recognized that only preliminary injunctive relief properly protects the substantial interests of the trademark holder from violation of the trademark laws on the Internet.

**I. FORD'S INJURY IS IRREPARABLE AND THE BALANCE OF HARDSHIPS TIPS DECIDEDLY IN FORD'S FAVOR**

Courts have long adopted a presumption that irreparable injury “follows as a matter of course” from the infringement or dilution of valuable trademark rights. Opticians Ass'n of America v. Independent Opticians of America, 920 F.2d 187, 196 (3d Cir. 1990); Polo Fashions, Inc. v. Craftex, Inc., 816 F.2d 145, 148 (4<sup>th</sup> Cir. 1987). Because of the inherent difficulty of placing a value on the damage to such intangibles as the goodwill or reputation of a business, courts routinely grant injunctions in trademark actions. See, e.g., Aveda Corp. v. Evita Marketing, Inc., 706 F. Supp. 1419, 1431 (D. Minn. 1989) (“Any hardship caused by the

preliminary injunction may justly fall on the parties which consciously decided to dress their goods for the market in a manner ‘so near to [a] successful rival that the public may fail to distinguish between them.’”).

The presumption of irreparable injury is appropriate here. If Defendants are permitted to continue to tarnish the trademark FORD® and continue to confuse the public by using FUCKGENERALMOTORS.COM to point directly to Ford’s official website at FORD.COM, Ford will suffer irreparable damage to its goodwill and reputation by the loss of control over its trademark. Plaintiff’s “lack of ability to control the nature and quality of services provided under an infringing . . . mark . . . constitutes irreparable injury.” Fotomat Corp. v. Photo Drive-Thru, Inc., 425 F. Supp. 693, 711 (D.N.J. 1977). Indeed, this analysis has been applied in a similar case where the defendant was using the domain name PLANNEDPARENTHOOD.COM to link to an anti-abortion website. Planned Parenthood Fed. of America, Inc. v. Bucci, 1997 WL 133313, 42 U.S.P.Q.2d 1430 (S.D. N.Y. 1997), aff’d 152 F.3d 920 (2d Cir. 1998) (misuse of domain name PLANNEDPARENTHOOD.COM to link to anti-abortion website constituted irreparable harm).

Under these circumstances, the balance of hardships tips decidedly in Ford’s favor. While the injury to Ford is immeasurable and irreparable, the only “harm” to Defendant will be an injunction against his attempt to injure or damage the trademark FORD®. No legitimate purpose is served by this conduct.

Ford’s injury is monumental and incalculable by comparison. Ford has invested substantial sums in the world-wide development of its valuable trademarks and website at FORD.COM, and Defendant’s attempts to use the domain name FUCKGENERALMOTORS.COM to point directly to Ford’s official website at FORD.COM poses an immeasurable threat to Ford’s goodwill.

Finally, the public interest heavily favors entry of a preliminary injunction in this case. Presented with circumstances analogous to those presented here, this court has found that “the public interest clearly tips in favor of Ford.” Ford Motor Co. v. Lapertosa, 126 F. Supp.2d 463,

467 (E.D. Mich. 200[1]). The Court in Lapertosa entered a preliminary injunction transferring the domain name FORDRECALLS.COM away from a registrant operating a pornographic website to Ford pending resolution of the matter on the merits. In considering the public interest, the court held that both Ford's customers and the public generally have a "strong interest" in avoiding public confusion regarding the sponsorship or association of Internet domain names. Id.; see also Estate of Presley v. Russen, 513 F. Supp. 1339 (D.N.J. 1981) ("[T]he public is interested in fair competitive practices and clearly opposed to being deceived in the marketplace.").

In sum, the balance of hardships in this case tips decidedly in Ford's favor. Preliminary injunctive relief is appropriate because Ford has at least raised serious questions going to the merits of its claims. Indeed, as demonstrated below, Ford's likelihood of success is strong and substantial.

## **II. FORD IS HIGHLY LIKELY TO SUCCEED ON THE MERITS**

Ford has asserted claims against Defendant for federal trademark dilution, federal trademark infringement, and false designation of origin under the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a), (b), (c), and (d). There is a high likelihood that Ford will succeed on the merits of these claims.

By pointing the domain name FUCKGENERALMOTORS.COM directly to Ford's official website at FORD.COM, Defendants are confusing the public into believing that somehow Ford has approved or is somehow involved in using the domain name FUCKGENERALMOTORS.COM to divert Internet users to Ford's official website at FORD.COM. In addition, the use of such an obscene domain name in pointing to the website at FORD.COM tarnishes and dilutes the world-famous trademark FORD®.

In an analogous case, the Southern District of New York ruled that the use of the domain name PLANNEDPARENTHOOD.COM for an anti-abortion website constituted trademark

dilution, trademark infringement, and false designation of origin under Sections 1114 (Trademark Infringement), 1125(c) (Dilution), and 1125(a) (False Designation of Origin) of the Lanham Act. Planned Parenthood Fed. of America, Inc. v. Bucci, 1997 WL 133313, 42 U.S.P.Q.2d 1430 (S.D. N.Y. 1997), aff'd 152 F.3d 920 (2d Cir. 1998). In that case, the court concluded that the use of a competitor's trademark in a domain name for a website that seeks to undermine the mark-holder is likely to confuse consumers—notwithstanding the fact that an Internet user will eventually figure out that the web page is sponsored by the competitor and not the mark holder. Id. The confusion in Planned Parenthood stemmed from the delay between the time an Internet user attempts to connect to the “plannedparenthood.com” domain name and the time the user finally realizes that the website is not controlled by the trademark holder:

[A]n Internet user cannot immediately determine the content of a home page maintained by the owner of a particular domain name or located at a specific address. Only after a user has seen or entered “plannedparenthood.com” can she access the web site; such access occurs after at least a temporary delay. In addition, there is a delay while the home page “loads” into the computer. Because the words on the top of the page load first, the user is first greeted solely with the “Welcome to the Planned Parenthood Home Page!” It is highly likely that an Internet user will still believe that she has found plaintiff's web site at that point.

Id.

If the likelihood of confusion was sufficiently established in Planned Parenthood, it is even more clearly presented here. In fact, Defendants' shameful plot virtually assures confusion by Internet users. An Internet user searching for strident, vulgar criticism of General Motors might type in or stumble upon the obscene domain name FUCKGENERALMOTORS.COM. On doing so, however, the Internet user will be taken directly and immediately to Plaintiff Ford's official website at FORD.COM. The ensuing confusion is as inevitable as it is pernicious. Ford is inevitably associated with not only to the vulgar, strident criticism of a competitor, but also with the offensive, obscene word that is used in the domain name.

Moreover, unlike the confusion in Planned Parenthood, the consumer confusion presented here will not dissipate upon examination of the web site. A person who tries to type in FUCKGENERALMOTORS.COM but finds himself at the official Ford website will be left with no choice but to reach the erroneous (and harmful) conclusion that Ford endorses or somehow condones this vulgar, obscene domain name and the obvious criticism of a competitor. In other words, unlike the situation in Planned Parenthood where there is an intervening communication indicating that the Internet user has been taken to the “Planned Parenthood Homepage,” there is no indication at all to the Internet user that the user has been taken directly to the official Ford website at FORD.COM. If the facts in Planned Parenthood created a likelihood of confusion, a fortiori the facts in this lawsuit create a likelihood of confusion.

Moreover, courts have uniformly held that the use of famous trademarks in domain names to point or link to obscene or pornographic websites similarly violates the Lanham Act. Lapertosa, 126 F. Supp.2d at 466; see also Lucent Technologies v. Johnson, 2000 WL 1604055, \*3 (C.D.Cal. 2000) (concluding that defendant’s use of LUCENTSUCKS.COM for a website offering pornography violates the Lanham Act); Hasbro, Inc. v. Internet Entertainment Group Ltd., 40 U.S.P.Q.2d 1479 (W.D. Wash. 1996) (use of “CANDYLAND.COM” to link to web site showing sexually explicit pictures violates Lanham Act); Archdiocese of St. Louis v. Internet Entertainment Group, Inc., 1999 WL 66022 (E.D. Mo. 1999) (use of “PAPALVISIT.COM” and “PAPALVISIT1999.COM” to link to web sites advertising adult entertainment violated Lanham Act); Toys "R" Us, Inc. v. Akkaoui, 40 U.S.P.Q.2d 1836 (N.D. Cal. 1996) (“ADULTSRUS.COM” domain name violated trademark TOYS “R” US when linked to a website advertising adult sexual products). Here, defendants’ despicable conduct associates

Ford's trademark with one of the most vulgar, obscene words in the English language. Surely this association constitutes dilution by tarnishment.<sup>1</sup>

**CONCLUSION**

For the foregoing reasons, the Court should grant a preliminary injunction restraining and enjoining Defendants from using in any way the domain name FUCKGENERALMOTORS.COM to point to the website FORD.COM. Ford further requests that the Court order Defendants to transfer FUCKGENERALMOTORS.COM to the custody of the Court pending a resolution on the merits. Such a transfer is the only way that Ford can be certain that Defendants will not otherwise use the domain name to violate Ford's trademark rights.

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<sup>1</sup> Defendants cannot raise any First Amendment defense for their misleading, despicable ploy, for at least three reasons: (a) the law is well settled that there is no First Amendment right to use a competitor's trademark to identify the source of the criticism, Planned Parenthood, 1997 WL 133313, \*11, 42 U.S.P.Q.2d 1430 (S.D. N.Y. 1997), aff'd 152 F.3d 920 (2d Cir. 1998); (b) there is no "public forum" right to any particular domain name, as "there is simply no need for someone to attempt to communicate his or her 'message' in the limited space available to second-level domain names," National A-1 Advertising, Inc. v. Network Solutions, Inc., 121 F.Supp.2d 156, 174 (D. N.H. 2000); and (c) prohibitions on misleading, profane or vulgar domain names are consistent with longstanding trademark law and cannot be deemed unconstitutional, id. at 177.