

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

FORD MOTOR COMPANY,

Plaintiffs,

v.

Case No. 00-CV-71685-DT
Hon. Robert H. Cleland
United States District Judge

**2600 ENTERPRISES, and ERIC
CORLEY, pseudonymously known as
EMMANUEL GOLDSTEIN,**

Defendants

SUPPLEMENTAL DECLARATION OF ERIC CORLEY

I, Eric Corley, of Setauket, New York, declare under 28 U.S.C. § 1746, that the following testimony is true and correct:

1. The purpose of this supplemental affidavit is to magnify and clarify certain points made during the May 18, 2001 Preliminary Injunction hearing, as well as to respond to certain statements made by FORD lawyer Susan McFee in a supplemental affidavit filed and dated May 18, 2001.

2. As stated in my earlier affidavit, my professional specialty is explaining technical details about the use and function of computers and communications networks. I have over a decade of specialized experience using the Internet – including use of the World Wide Web and the Domain Name registration system since prior to 1993.

3. **How To “Attribute” Speech Using Domain Names:** The mechanism for “attributing” the identity of the “owner” or “publisher” of a particular Internet Domain Name

is commonly known and widely understood. It consists of the “Whois” record that is associated with each and every Domain Name registration as part of the Domain Name registration process. It is trivially easy to register a Domain Name under a false or assumed name, if one wishes to do so. If somebody wanted or intended to attribute an allegedly “offensive” or “controversial” Domain Name, and/or the communicative message of “pointing” that Domain Name (thereby fooling people) – to FORD Motor Company or anyone else – it would certainly be easy to input the false identity “Ford Motor Company” or some other alias in the appropriate boxes at the time of registration signup.

4. Obviously, everyone in this case agrees that 2600 Enterprises provided **truthful** “Whois” information and did not attribute the Domain Name F__GeneralMotors.com to FORD via the “Whois” record. As shown at Tab 1 (Def. Exh. 511), the “Whois” record for the Domain Name F__GeneralMotors.com truthfully and accurately identifies the Registrant as 2600 Enterprises. Clearly, the attribution by 2600 of the identity of the “speaker” or “publisher” of this particular communicative message is solely and exclusively to 2600 itself.

5. The principal reason that the “Whois” and the attribution are necessarily one and the same, is that nobody but the registrant of the Domain Name (whoever registered it, even if they used an assumed or fictitious name) has any power to “repoint” the Domain Name, or any power to change the “Whois” record itself. So the “Whois” – to the extent (as in this case) it is accurate and not falsified – accurately identifies the person or entity to whom any speech employing the Website “pointer” may be attributed. Since nobody else

is capable of “repointing” the Domain Name, any other rule of “attribution” would be at odds with the technical reality of the Internet.

6. Tab 1 shows the “Whois” function for Network Solutions, Inc. Clearly, the “attribution” in this case is to no entity other than 2600 Enterprises. Plaintiff has used Verio to conduct Plaintiff’s Whois – with the same results as Network Solutions (“NSI”). These are not the only sources for “Whois” information that truthfully reflect the identity of this particular registrant. So far as I can determine, **every** other popular and widely-used source of “Whois” information contains the correct information. For example, using the “Open Shared Registry Service,” via the OpenSRS Whois Lookup Utility, see Tab 2 (Def. Exh. 512), the result clearly shows that the identity of the Registrant for F___GeneralMotors.com is correctly identified as 2600.

7. Moreover, contrary to the testimony of Susan McFee, a search for “GeneralMotors.com” in the OpenSRS “Whois” clearly turns up **only** a record showing that GM actually owns “GeneralMotors.com.” See Tab 3 (Def. Exh. 513). Likewise, the NSI “Whois,” when searched for General Motors, turns up only an accurate listing of GM as the Registrant for GeneralMotors.com. Tab 4 (Def. Exh. 514).

8. I have never in any way, method or manner whatsoever “attributed” the statement “F___ General Motors” to FORD Motor Company. I have never in any way, method or manner whatsoever attributed any speech employing the Domain Name < F___GeneralMotors.com > to Ford Motor Company.

9. It has never at any time ever been my desire or intention to “attribute” any

speech using the Domain Name <F___GeneralMotors.com > to FORD Motor Company in any manner whatsoever. In fact it has always been my active desire and intention – through accurate use of the “Whois” record – to make sure that this speech (both the Domain Name itself, and the communicative act of “pointing” the Domain Name) is accurately and correctly attributed to 2600 Enterprises and to no other person or entity. I have never understood the “pointing” of this Domain Name (especially when the “Whois” record is truthful and accurate) to constitute any form of “attribution” of any speech whatsoever (using this Domain Name or otherwise) to FORD Motor Company (or to any entity other than 2600).

10. I firmly and reasonably believe, based on long experience with the Internet and Internet users, that no reasonable Internet user would infer an intent or desire to make an “attribution” of speech to FORD Motor Company from the mere act of “pointing” the Domain Name (truthfully identified as belonging to 2600) at the IP address of FORD’s Website.

11. Based on these facts, 2600 has clearly and unequivocally attributed the speech of 2600 to 2600 alone and to nobody else. FORD is identified only and exclusively as **one subject** of speech published by 2600. FORD clearly is **not** identified as the speaker or publisher of this expression. No speech whatsoever is identified as that of FORD or attributed to FORD, or identified as coming from FORD.

12. The Domain Name “F___GeneralMotors.com” has **never** been used as a trademark in any manner whatsoever, and has never been used to identify the source of any goods or services. It has been used exclusively for expressive purposes, and never for any

“commercial” purpose whatsoever.

13. I have specifically relied on the common understanding among the Internet community generally that a “Website pointer” standing alone (i.e., in the absence of the Whois record or, for example, an actual published statement making an attribution) never under any circumstances either actually or impliedly constitutes or communicates any “attribution” of any speech to any speaker other than the registrant named in the “Whois” record. I have specifically relied on the common understanding that a “Website pointer” alone should not ever be permitted to sustain the inference that an attribution is intended to anybody but the entity names in the “Whois” as the Domain Name Registrant (here, 2600).

14. Ms. McFee’s affidavit – which is based on a far-fetched “search engine” hypothesis – is deliberately misleading. Upon examination, her affidavit only serves to illustrate exactly how unlikely it is that anyone would “accidentally” stumble across the speech of 2600.

15. Most importantly, Ms. McFee fails to inform this Court how many different and unique “search engine” services are available on the Internet. She completely fails to inform the Court whether the sample she has selected is representative of “search engines” generally – or whether her sample is statistically non-representative. It turns out her sample is non-random and deliberately misleading, making it impossible for her to make broader inferences about better-known or general-purpose services with anything that can even begin to resemble accuracy. Ms. McFee completely fails to explain why she completely ignores any of the best-known “search engines” and instead bases her entire hypothesis on a

relatively obscure and special-purpose service called “Domain Surfer” (instead of any general-purpose search engine).

16. Prior to last Friday, in all my years of using the Internet, I had never heard of “Domain Surfer.” Subsequently, I have tested the “Domain Surfer” service and determined that it emphatically is **not** a general-purpose “search engine” as Ms. McFee seems to suggest. Rather, “Domain Surfer” is a very special-purpose service that is targeted specifically at people who are involved in the process of registering, buying, or selling Domain Names. This narrow and specialized audience is extraordinarily likely to be disproportionately familiar with “Whois” services generally, and the various places that one can go in order to secure “Whois” information.

17. In contrast to Ms. McFee’s skewed sample, I have gone ahead and examined the “search engine” hypothesis from a much more scientific, accurate, and systematic perspective. The results of this survey demonstrate conclusively that the hypothetical “accidental” events that Ms. McFee hypothesizes are extraordinarily unlikely and improbable. Tab 5 (Def. Exh. 515) shows the February 2001 “Media Metrix” numbers for search engines, quantifying which search engines are the most popular on the Internet. These are the most recent numbers available to me. According to the February 2001 Media Metrix numbers, the ten most popular “search engines” – in order – are: (1) Yahoo!, (2) Microsoft Network, (3) America Online, (4) Lycos, (5) Go.com, (6) Netscape Netcenter, (7) NBCi, (8) Excite, (9), Ask Jeeves, and (10) AltaVista. I have personally run searches both for “General Motors” and for the same two words preceded by the F-word, on each of these search

engines. I have also run the same searches on Google, which I understand this Court has relied upon in the past. The results are set forth below. Not a single one of the top eleven search engines turns up any links that would create any mis-impression that the said speech might be “attributable” to FORD. Interestingly, although searches for the concatenated text string “f__generalmotors” (as opposed to the three words separately) are improbable – unless someone is already “in on the joke” – such a search on many if not all of these top-11 search engines will turn up articles (in multiple languages) explaining that the speech in this case is attributable to 2600 Enterprises.

18. **Yahoo!** Tab 6 (Def. Exh. 516) shows the results of a search for “General Motors” using the highly popular Yahoo! search engine. Viewing the results, I detect not the slightest chance (let alone any “likelihood) of any confusion here. Tab 7 (Def. Exh. 517) shows the results of a search for the F-word “General Motors,” using Yahoo!. The results of this search turn up no references to the Domain Name in question – although one of the “hits” turns out to be content published on the ClassicVolvo.com Website published by Hans Rekestaad, a defendant named in the Ford v. Great Domains litigation. In fairness, a Yahoo! search for “f***generalmotors” DOES turn up eleven (11) “hits” – explaining 2600's involvement in no fewer than four different languages (including English). See Tab 8 (Def. Exh. 518).

19. **Microsoft Network** Tab 9 (Def. Exh. 519) shows the results of a search for “General Motors” using the Microsoft Network (“MSN”) search engine. Again, based on the results, I detect not the slightest chance of any confusion here. Tab 10 (Def. Exh. 520)

shows the results of a search for the F-word “General Motors,” using MSN. As an added bonus, MSN offers a link to its partner, the Direct Hit search engine, for the “Top 10 Most Popular Sites for F[-word] General Motors.” See Tab 10. Tab 11 (Def. Exh. 521) shows the results of the “Direct Hit” search – again, no confusion on MSN OR on Direct Hit.

20. **America Online** Tab 12 (Def. Exh. 522) shows the results of a search for “General Motors” using the America Online (“AOL”) search engine. Again, based on the results, I detect not the slightest chance of any confusion here. Tab 13 (Def. Exh. 523) shows the results of a search for the F-word “General Motors,” using AOL. AOL turns up no links involving the 2600 referral.

21. **Lycos** Tab 14 (Def. Exh. 524) shows the results of a search for “General Motors” using the Lycos search engine. Again, based on the results, I detect not the slightest chance of any confusion here. Tab 15 (Def. Exh. 525) shows the results of a search for the F-word “General Motors,” using Lycos. Some parts of this result (images) have been redacted because they clearly are irrelevant and do not belong in a court filing.

22. **Go.com** Tab 16 (Def. Exh. 526) shows the results of a search for “General Motors” using the GO.com search engine. Again, based on the results, I detect not the slightest chance of any confusion here. Tab 17 (Def. Exh. 527) shows the results of a search for the F-word “General Motors,” using GO.com. This set of search terms turns up no “hits.”

23. **Netscape Netcenter** Tab 18 (Def. Exh. 528) shows the results of a search for “General Motors” using the Netscape search engine. Again, based on the results, I detect not the slightest chance of any confusion here. Tab 19 (Def. Exh. 529) shows the results of a

search for the F-word “General Motors,” using Netscape. No “confusion” here either.

24. **NBCi** Tab 20 (Def. Exh. 530) shows the results of a search for “General Motors” using the NBCi search engine. Again, based on the results, I detect not the slightest chance of any confusion here. Tab 21 (Def. Exh. 531) shows the results of a search for the F-word “General Motors,” using NBCi. No “confusion” here either.

25. **Excite** Tab 22 (Def. Exh. 532) shows the results of a search for “General Motors” using the Excite search engine. Again, based on the results, I detect not the slightest chance of any confusion here. Tab 23 (Def. Exh. 533) shows the results of a search for the F-word “General Motors,” using Excite. No “confusion” here either.

26. **Ask Jeeves** Tab 24 (Def. Exh. 534) shows the results of a search for “General Motors” using the Ask Jeeves search engine. Again, based on the results, I detect not the slightest chance of any confusion here. Tab 25 (Def. Exh. 535) shows the results of a search for the F-word “General Motors,” using Ask Jeeves. No “confusion” here either.

27. **AltaVista** Tab 26 (Def. Exh. 536) shows the results of a search for “General Motors” using the AltaVista search engine. Again, based on the results, I detect not the slightest chance of any confusion here. Tab 27 (Def. Exh. 537) shows the results of a search for the F-word “General Motors,” using AltaVista. No “confusion” here either.

28. **Google** Tab 28 (Def. Exh. 538) shows the results of a search for “General Motors” using the Google search engine. Again, based on the results, I detect not the slightest chance of any confusion here. Tab 29 (Def. Exh. 539) shows the results of a search for the F-word “General Motors,” using Google. Just to round things out, I have also

searched Google for the prefix portion of the Domain Name in question. Tab 30 (Def. Exh. 540) shows the results of that search – including explanations of what 2600 is up to in multiple languages again.

29. **HotBot** Ms. McFee attempts to mislead the Court with her HotBot exhibit. The way she has manipulated the exhibit is to enlarge the fonts in the printout, in order to wrap results 8-10 onto a subsequent page, thereby suppressing information about how accessible articles are explaining that 2600 is the entity to which the speech must be “attributed.” Anybody searching for “General Motors” or even “F__ General Motors” on HotBot won’t encounter the 2600 “hyperlink joke.” In this extraordinarily unlikely event they run the search that Ms. McFee has run, then among the top-10 “hits,” these people will receive explanations in multiple languages as to who, exactly, the speech should be attributed to. Specifically, the remainder of the text of the search result (the part Ms. McFee wants this court not to know about) is as follows:

3. Hacker Site Raises GM's Hackles
Lycos Home | Site Map | My Lycos LOOK FOR Wired News Wired Magazine HotBot Print this E-mail it · Set E-mail Alerts Hacker Site Raises GM's Hackles by Leander Kahney 2:00 a.m.

Oct. 21, 2000 PDT Bloodied but not bowed from recent co
5/12/2001 <http://www.wired.com/news/politics/0,1283,39585,00.html>
See results from this site only.

4. www.russ.ru [Russian Website]
îÁÓÔËË çÒÙÚÛÛÛ×Á. îÁ×ÛÄ: ×ÙÐÕÓË 116 11.05.2001 / 22:20
îÁ×ÛÄ | âÁÓÓÒÏÏÁÑ óÓÙËËÁ | îÁÓîÁÔ | çÛÄÔÓîÁÔ |
éÛÔÁÒ(ÁËÔË)×ØÀ | äÕÒÁÃËËË îÕÚÁË | ëÁÆÁÄÒÁ /
Net-ËÏÏØÏÏÒÁ/îÁ×ÛÄ <÷Ù ÚÁÁÓØîÁ×ÛÄ: ×ÙÐÕÓË 116 äÁÔÁ
ÐÕÂËËÁÃËË: 23 ïËÕÑÂÕÑ 2000 ÐÛÏÏÏÏÏÏ ÐÏ E-mail ×ÁÒÓËÑ
ÄÏÑ ÐÁÏÁËË ïÁÛÏÒ ÒÁËÏÏËË ÒÁ

5/11/2001 <http://www.russ.ru/netcult/nevod/20001023.html>

See results from this site only.

5. Linux Tech - NOTICIAS ALTERNATIVAS - ECOLOGÍA POLÍTICA
LINUX - Politica,

5/12/2001 <http://www.linux-tech.org/>

See results from this site only.

6. SF Bay Area Independent Media Center
Indymedia is a collective of independent media organizations and journalists offering non-corporate, non-commercial coverage of important social and political issues in the San Francisco Bay Area and worldwide. Get involved: meeting and volunteer in

5/15/2001 <http://www.indybay.org/>

See results from this site only.

7. SF Bay Area Independent Media Center
Indymedia is a collective of independent media organizations and journalists offering non-corporate, non-commercial coverage of important social and political issues in the San Francisco Bay Area and worldwide. Get involved: meeting and volunteer in

5/12/2001 <http://sf.indymedia.org/>

See results from this site only.

8. SF Bay Area Independent Media Center
Indymedia is a collective of independent media organizations and journalists offering non-corporate, non-commercial coverage of important social and political issues in the San Francisco Bay Area and worldwide. Get involved: meeting and volunteer in

5/12/2001 <http://www.sf.indymedia.org/>

See results from this site only.

9. om e g a d r o n e digital depression
www.omegadrone.com - your source for what's going on in our minds
- includes music reviews, news, exclusive interviews, and other vapid,
self-gratifying crap

5/11/2001 <http://www.omegadrone.com/>

See results from this site only.

10. Declan McCullagh's technology and politics list
Declan McCullagh's politechbot.com INFO about politech declan
mccullagh subscribe unsubscribe cluebot.com cyberpatrol lawsuit JOIN
POLITECH PHOTO HIGHLIGHTS cfp '00 dmca protest eff fc '00
politechnicals privacy white house wired SEARCH LIST ARCHIVE

5/11/2001 <http://www.politechbot.com/>

In short, if Ms. McFee had provided the Court with a **typical** HotBot search result (even for this extraordinarily unlikely search term), the evidence would have demonstrated that alleged “confusion” is simply out of the question here as well.

30. I have also checked the accuracy of the most popular “Whois” databases on the Internet (over and above the OpenSRS and NSI databases). Tab 31 (Def. Exh. 541) shows the results of a search using the “CORE” Whois Database for “generalmotors.com.” No confusion here – GM owns it. Tab 32 (Def. Exh. 542) shows the results of a search using the “CORE” Whois Database for “f__generalmotors.com.” No confusion here either – the “attribution” is clearly made truthfully to 2600, along with accurate and truthful address and other contact information.

31. **InterNIC** InterNIC (www.internic.net) is probably the best-known place to do a “Whois” search. Tab 33 (Def. Exh. 543) shows the results of a search using InterNIC for “generalmotors.com.” No confusion here – GM owns it. Tab 34 (Def. Exh. 544) shows the results of a search using InterNIC for “f__generalmotors.com.” No confusion here either – the “attribution” is clearly made truthfully to 2600, along with accurate references explaining how to get truthful address and other contact information.

32. **NameProtect.com** One of the best-known (along with MarkMonitor, which

charges high fees) “search engines” that caters to the trademark and Domain Name constituencies is called NameProtect.com. NameProtect is much better-known and more widely used than the obscure “Domain Surfer.” I have carefully checked the reliability of the NameProtect database. It is important to remember that **anybody** using either NameProtect or DomainSurfer is likely to have a great deal of specialized knowledge about Domain Names, including the “Whois” function available at a number of places. Neither of these services has any utility as a “general purpose” search engine for finding information. These specialized services are about finding, buying, and selling addresses.

33. As clearly shown on the second page of Exh. 35 (Def. Exh. 545), the NameProtect “SuperWhois” database clearly delivers accurate and up-to date information about the identity and contact information of the registrar for “F___GeneralMotors.com” (namely, 2600).

34. Even more importantly, it is important to look at a NameProtect search for “General Motors.” This search (results at Tab 36 – Def. Exh. 546) turns up 147 “hits.” The Domain Name in question in this case only appears on the second-to-last page, buried as “hit” No. 126.

35. Similar results are obtained using other lesser-known services – Domainsearch.com (Tab 37 – Def. Exh. 547), DomainIT.com (Tab 38 – Def, Exh. 548), and Tucows Domain Direct (Tab 39 – Def. Exh. 549).

36. Evidently, given the amount of **accurate** information out there, Ms. McFee had to search far and wide for some service (**any** service) with a substandard and defective

database. Not surprisingly, once she found one with a defective “Whois” database, she picked that one out of all the myriad alternatives and emphasized the defective service to this Court for the purpose of misleading it. As just a few examples of the magnitude of the defectiveness of the database Ms. McFee has attempted to rely upon, I have attached printouts for “FreeGeneralMotors.com,” “4GeneralMotors.com,” “BuyGeneralMotors.com,” “FordGeneralMotors.com,” and “GeneralMotorsBlows.com.” (Tab 40 – Def. Exh. 550). **Only** in Ms. McFee’s hand-picked database are **all** of these “whois” records (and many others) systematically missing. The reason seems to be that Ms. McFee’s database only published “Whois” information **if** a Domain Name has been registered through Network Solutions and not any of the other 160-or-so-odd Registrars in business today. In fact, Ms. Mcfee’s database does not even include a “Whois” for the well-known service “Register.com” Importantly, it is trivially easy using any of the half-dozen **other** services identified in this affidavit to get “whois” information for any of these Domain Names. 2600 has no obligation to police the integrity of databases maintained by third-parties.

37. Finally, I think it is necessary to debunk certain other misrepresentations by Mr. Lee at the May 18, 2001 hearing. Mr. Lee posited “months” of effort by “software engineers,” including “months” of “testing.” Mr. Lee has not presented any evidence of his parade of horrors – and with good reason. In reality, substantially less time, effort and code would be required. If FORD’s task were really as difficult as Mr. Lee has posited, then FORD certainly would have been able to find **somebody** in their Information Technology Department to swear under oath to the posited difficulty. Mr. Lee knows he has no factual

basis for his exaggerated claims.

38. To summarize, there has never been any “attribution” to FORD at any time whatsoever, FORD has trivially easy, permissible, and effective non-legal alternatives available to it (meaning that “irreparable injury” cannot possibly be present in this case), and the Defendants had every reason to believe that their “referral joke” or “hyperlink joke” would not be misunderstood by any population of Internet users significant enough to constitute any “likelihood” (as opposed to a hypothetical possibility) of actionable “confusion.”

I declare under penalty of perjury under the laws of the United States of America, including 28 U.S.C. § 1746, that the foregoing is true and correct.

Date: _____

ERIC CORLEY p/k/a Emmanuel Goldstein