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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SAN FRANCISCO**
9

10 WIKIMEDIA FOUNDATION, INC.)

CASE NO. CGC-12-523971

11 Plaintiff,)

12 v.)

13 INTERNET BRANDS, INC.,)

**DEFENDANT'S REPLY IN SUPPORT OF
DEMURRER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

14 Defendant.)

Date: December 14, 2012

15 Time: 9:30 a.m.)

Dept: 302)

16 Trial Date: None)

First Amended Complaint filed: 9/13/12

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22 Defendant Internet Brands, Inc. files this brief reply in support of its Demurrer to
23 Plaintiff's First Amended Complaint.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. A JUSTICIABLE CONTROVERSY CANNOT BE MANUFACTURED BY MERE ALLEGATIONS; THERE MUST BE SOME FACTUAL SUPPORT IN THE COMPLAINT

As Defendant explained in its Demurrer, Plaintiff’s First Amended Complaint (“FAC”) fails to provide sufficient facts to support Plaintiff’s contention that there is a ripe or justiciable controversy presently existing between the parties. (Demurrer, pp. 6-7). Defendant further explained that the *only* allegation in the FAC that Plaintiff offered to meet its burden of substantiating the underpinnings of its claim was the fact that Plaintiff filed a separate trademark infringement lawsuit in Los Angeles to which Plaintiff is not even a named party. The Opposition essentially concedes this point, as this is the only allegation in the Amended Complaint that the Opposition points to before then seeking to add new facts which are, of course, inappropriate on this Motion.

One cannot manufacture a dispute by pointing to a statement that does not indicate a dispute. A plain reading of the one statement on which this entire suit is based – a hypothetical statement in the complaint in *Internet Brands, Inc. vs. William Holliday, Holliday IT Services & James Heilman*, Central District of California, Case No. CV12-8088-SVW (“Holliday Complaint”) (of which Defendant requested this Court take judicial notice) makes clear that nothing in that pleading supports Plaintiff’s statement that “a dispute exists over the public’s right to use, reproduce, sell, or modify the content volunteer contributors created and donated to IB’s Wikitravel Website.” (Opposition, p. 2).¹ Plaintiff argues that Defendant is offering improper factual evidence in its demurrer by stating that there is no controversy here. This is wrong as a

¹ Worse still, on November 10, 2012, a few weeks after defendant filed the demurrer, the Wikimedia Foundation launched the very travel wiki they seek judicial permission to launch. Internet Brands made no preliminary motion to stop the launch, has made no subsequent motion, pleading, or taken any action, formal or informal, with respect to the launch or operation of the new site. The Wikimedia Foundation, in this action, seeks a judicial determination that they can do what they’ve already done.

1 matter of law. Defendant is not asking the Court to take its word that it does not oppose the relief
2 Plaintiff seeks; rather, Defendant is claiming that none of allegations in its trademark infringement
3 lawsuit in any way support Plaintiff's claim that a dispute presently exists between Plaintiff and
4 Defendant. (Demurrer, p. 7) Thus, Defendant is basing its argument simply on the face of the
5 pleading, not on any improper factual evidence or opinion.

6 The statement in question states that "Additional defendants and causes of action are
7 expected through amendment, potentially including other Administrators that have been most
8 corrupt in this scheme. This potentially includes the Wikimedia Foundation, members of its
9 Board, other individual members of the Foundation, or anyone else who acted tortiously."
10 (Holliday Complaint, Paragraph 35). The complaint in question is a case against two individuals
11 for making unlawful statements in the nature of trademark infringement, false designation of
12 origin and related unfair competition. So, on its face, the statement does two things: 1) references
13 an actual dispute between those other individuals and IB over whether those individuals made
14 these wrongful statements, and 2) indicates that if, at some point in the future, facts potentially
15 arise that indicate Wikimedia had a role in this wrongful behavior, amendment may be sought and
16 potentially could include them as defendants.

17 Referring to a dispute between others (1, above) does not provide a basis to manufacture
18 the existence of a dispute or threatened dispute between these parties. And stating that some
19 hypothetical, future facts might justify an amendment (2, above) does not indicate a present or
20 threatened dispute in any way. In fact, it indicates the opposite – the clear logic of the statement is
21 that there is not a present, or threatened, justiciable dispute, but "potentially" there may be. This
22 does not make a justiciable controversy – the facts have not "sufficiently congealed", as our
23 Courts have held they must. *California Water & Telephone Co. v County of Los Angeles* (1967)
24 253 Cal.App.2d 16, 61 (facts must have sufficiently congealed to present an actual controversy).
25 Wikimedia has pointed to no statement that says what they claim this one says, including this one.

26 Courts do not have to abandon all logic and reason in reading complaints; the Court is
27 allowed to determine that the only statement alleged as the basis of a justiciable controversy does
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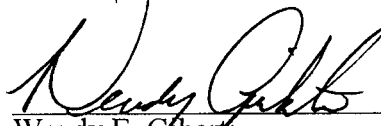
1 not, in fact, point to a controversy at all. This is not evaluating the “truth” of the statement; it is
2 simply determining whether there is a sufficient factual predicate for jurisdiction, not mere
3 “potentialities”, which our courts must do. *Pacific Legal Foundation v. California Coastal Com.*
4 (1982) 33 Cal.3d. 158, 170 (judicial decision-making is best conducted on an actual set of facts,
5 not hypothetical occurrence).

6 As only one statement is alleged as a basis for jurisdiction, and there is nothing in the
7 statement that indicates a present, justiciable dispute, the Court is unable to award any relief that is
8 contested. Wikimedia has asked the Court for permission to do something it is already fully
9 capable of doing and has already done (start its new Wiki website), and which IB has not
10 prevented it from doing or threatened to prevent it from doing. The Court is being asked to issue
11 an advisory opinion, or to “bless in advance” something Wikimedia has already done, of which it
12 suspects IB may “potentially” complain in the future (but has not, as of yet). This Court is
13 occupied with actual disputes. It is not in the business of issuing advisory opinions on
14 hypothetical, potential future occurrences. The Demurrer should be sustained.

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17 DATED: December 7, 2012

iGeneral Counsel, P.C.

19
20 By:



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Attorneys for Defendant
Internet Brands, Inc.

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6 INTERNET BRANDS, INC., a Delaware Corporation;

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**

10 WIKIMEDIA FOUNDATION, INC.)

Case No.: CGC-12-523971

11)
12 Plaintiff,)

PROOF OF SERVICE

13 v.)

Dept.: 302

14 INTERNET BRANDS, INC.,)

15 Defendant.)
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20 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

21 I am a citizen of the United States, over the age of 18, and not a party to this case.

22 I am a resident of the county of Los Angeles, where this mailing took place. My business
23 address is:

24 9595 Wilshire Blvd., STE 900, Beverly Hills, CA 90212

25 On December 7, 2012, I served a true and accurate copy of: DEFENDANT'S
26 REPLY IN SUPPORT OF DEMURRER TO PLAINTIFF'S FIRST AMENDED
27 COMPLAINT and this PROOF OF SERVICE on counsel of record and/or unrepresented
28 parties listed below:

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PATRICK P. GUNN (172258)
COOLEY LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Telephone: (415) 693-2000

Service was accomplished as follows:

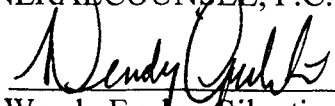
BY FEDERAL EXPRESS OVERNIGHT DELIVERY

I caused personal delivery of the copies of the documents listed above by placing them in envelopes, each with the name and address of the persons being served, prepaid, and deposited them in a location at which Federal Express regularly collects items for overnight delivery.

DATED: December 7, 2012

Respectfully submitted,

iGENERAL COUNSEL, P.C.

By: 
Wendy Evelyn Giberti
Attorney for Defendant