IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WOODBRIDGE STRUCTURED FUNDING, LLC *

Plaintiff *

vs. * CIVIL ACTION NO. MJG-11-3421

DAVID SPRINGER *

Defendant *

* * * * * * * * *

SUPPLEMENTAL BENCH TRIAL DECISION

The Court has heard the evidence, reviewed the exhibits, considered the materials submitted by the parties, and had the benefit of the arguments of the parties.

On March 30, 2015, the Court issued the Bench Trial Decision [Document 121]. The Court now issues this Supplemental Bench Trial Decision as its supplemental findings of fact and conclusions of law in compliance with Rule 52(a) of the Federal Rules of Civil Procedure. The Court finds the facts stated herein based upon its evaluation of the evidence, including the credibility of witnesses, and the inferences that the Court has found it reasonable to draw from the evidence.

I. BACKGROUND

Since 1993, Woodbridge Structured Funding, LLC ("Woodbridge") has been in the "structured settlement" business.

It provides lump sum payments to clients who receive periodic payments from lawsuit settlements, annuities, lottery winnings, and the like.

During all times relevant hereto, Defendant David Springer ("Springer") was a sole proprietor in competition with Woodbridge using the name "Sovereign Funding"[1] ("Sovereign"). Beginning in 2011, Springer caused Internet search engine inquiries regarding Woodbridge to be redirected to Springer's Sovereign site and/or to yield results that combined Woodbridge's name with derogatory terms.

When Springer failed to comply with a cease and desist letter, Woodbridge filed the Complaint [Document 1] asserting claims in five Counts:

- Count 1 – Trademark Infringement (Lanham Act)
- Count 2 – False Advertisement (Lanham Act)
- Count 3 – Unfair Competition and False Designation of origin (Lanham Act)
- Count 4 – Common Law Trade Libel and Product Disparagement
- Count 5 – Common Law Defamation

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[1] Plaintiff's Complaint [Document 1] referred to the business as "Sovereign Funding D/B/A/ We Buy Payments." Springer owned a website named www.webuypayments.net as well as "www.sovereignfunding.com."

In the Bench Trial Decision, the Court found Springer liable on Woodbridge's claims for trademark infringement and common law defamation, not liable on the claim for common law trade libel, and found moot the claims for unfair competition, false advertising, and false designation of origin.

II. DISCUSSION

A. Springer's Actions

In or about 2003, Springer began operating a sole proprietorship in the structured settlement business under the Sovereign name. By the fall of 2011 and continuing thereafter, Springer had utilized and/or was using questionable business methods, including:

- Falsely claiming that Sovereign was a corporation.
- Misrepresenting[2] Sovereign as a corporation, and misrepresenting as real persons who were officers of Sovereign, fictitious persons created by Springer.
- Falsely claiming that Sovereign itself was a purchaser of structured settlements rather than merely a broker.
- Utilizing the website with the address www.webuypayments.net and other websites anonymously

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[2] In various contexts, including sites such as Facebook and LinkedIn and to the Better Business Bureau.

connected to it[3] to redirect Internet inquiries intended for competitors to the Sovereign website.[4]

At some time prior to October 2011, Woodbridge became aware that Springer was (1) utilizing the www.webuypayments.net website to redirect to his own Sovereign website Internet users who would otherwise have been connected with Woodbridge, and (2) using deceptive search engine optimization ("SEO") techniques that resulted in search engine results combining Woodbridge's name with derogatory terms such as "funding lie," "funding scam," and "funding complaint."

In October 2011, Woodbridge sent a cease and desist letter to Springer at Sovereign regarding the redirection of Internet "hits" from Woodbridge and the inclusion of terms derogatory to Woodbridge in search engine results. Springer did not respond to Woodbridge, but he "parked" the www.webuypayments.net website and had the search engine redirects no longer directed to the

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[3] Springer denied that he owned or controlled the websites utilized in Internet redirects to webuypayments.net. The registrations of these domains are "private" and anonymous. However, based upon its evaluation of Springer's testimony and the fact that the beneficiary of the redirects was Springer, the Court finds that Springer owned, or at least controlled, these websites.

[4] The www.webuypayments.net website included links to the Sovereign website.

Sovereign websites.[5] Nevertheless, he continued to have potential customers directed away from Woodbridge and to cause search engines results to combine Woodbridge's name with derogatory terms.

B. Liability Determinations

1. Trademark Infringement

To establish trademark infringement under the Lanham Act, a plaintiff must prove that:

- It owns a valid mark;
- The defendant used the mark in commerce and without plaintiff's authorization;
- The defendant used the mark or imitation of it in connection with the sale, offering for sale, distribution, or advertising of goods or services; and
- The defendant's use of the mark was likely to confuse consumers.

Lamparello v. Falwell, 420 F.3d 309, 313 (4th Cir. 2005); 15 U.S.C. § 1114(1); 15 U.S.C. § 1125(a).

[5] The redirects were sent to other sites – for example, a blog of a person against whom he had a grudge and to blank pages on www.wikipedia.org.

a. Ownership of Valid mark

There is no doubt that Woodbridge owned valid registered trademarks for “Woodbridge” and “Woodbridge Structured Funding.” Pls.’ Exs. 1, 2.

b. Defendant’s Unauthorized Use in Commerce

Springer used Woodbridge’s trademark in commerce to divert internet searches for “Woodbridge” to a website owned by Springer, and to be combined with derogatory terms. These uses of the trademarks were not authorized by Woodbridge.

c. In Connection With Sale of Services

Springer used Woodbridge’s trademarks as a search engine keyword. Use of a mark as a search engine keyword is considered a use in commerce. Network Automation, Inc. v. Advanced Sys. Concepts, Inc., 638 F.3d 1137, 1149-50 (9th Cir. 2011). The uses at issue were in connection with the offering for sale of services. The evidence establishes that Springer’s use of the trademarks did not constitute non-infringing fair[6] uses.

[6] “[P]rotected uses of trademarked names for such things as parody, comment, criticism, comparative advertising, news reporting, etc.” Lamparello, 420 F.3d at 314.

d. Likelihood of Confusion

It is commonly stated that likelihood of confusion exists if the defendant's use of a plaintiff's trademark is "likely to produce confusion in the minds of consumers about the origin of the goods or services in question." Rosetta Stone Ltd. v. Google, Inc., 676 F.3d 144, 153 (4th Cir. 2012)(quoting CareFirst of Md., Inc. v. First Care, P.C., 434 F.3d 263, 267 (4th Cir. 2006)).

If the United States Court of Appeals for the Fourth Circuit were to apply the initial interest confusion doctrine, Woodbridge could establish likelihood of confusion with regard to the redirected potential customers by virtue of that concept. However, in Lamparello, 420 F.3d at 315-16, the United States Court of Appeals for the Fourth Circuit was presented with a case in which a website domain owner sought to capture internet contacts by using a misspelling of a markholder's name[7] in order to present a parody of the markholder's views. The Lamparello court stated that it had not adopted the "initial interest confusion" doctrine that "holds that the Lanham Act forbids a competitor from luring potential customers away from a producer

[7] The website's name was fallwell.com and it criticized Reverend Falwell's religious and political views.

by initially passing off its goods as those of the producer's, even if confusion as to the source of the goods is dispelled by the time any sales are consummated." Id. (internal quotations omitted). Rather, the Fourth Circuit "require[s] courts to determine whether a likelihood of confusion exists by examining the allegedly infringing use in the context in which it is seen by the ordinary consumer." Id. at 316 (internal quotation and alteration omitted).

The Lamparello court held that, in view of the underlying context of the website, namely criticism rather than an attempt to capture the markholder's customers and profits, there was no likelihood of confusion. Id. The parties did not offer similar goods or services, and in fact, had opposing ideas.

In the instant case, the defendant's use of Woodbridge's trademarks was in the very same commercial context as the plaintiff. Moreover, Springer's use of the Woodbridge trademarks was intended to lure potential customers away from Woodbridge's website towards Springer's website. This could also tend to indicate that Woodbridge was sponsoring Sovereign.

Furthermore, Springer's use of Woodbridge's trademarks to cause search engines to link Woodbridge's name to derogatory remarks was likely to cause confusion because it created an impression that Woodbridge had committed or was accused of committing unethical conduct.

In sum, the Court finds that Springer's unauthorized use of Woodbridge's mark was likely to confuse consumers.

2. Common Law Defamation[8]

The statements on which Plaintiff based its defamation claim are the assertions that Woodbridge was connected with fraud and other types of impropriety. These statements were caused by Springer to be made in a commercial context, i.e., to prospective Woodbridge customers using the internet to search for information relating to Woodbridge.

To recover for defamation under Maryland law, a plaintiff must prove:

- The defendant made a defamatory communication to a third person;
- The statement was false;

[8] Woodbridge also claimed common law trade libel and product disparagement (Count 4). In an action for product disparagement or trade libel, the burden is on the plaintiff to prove falsity, special damages, and malice. Horning v. Hardy, 373 A.2d 1273, 1278-79 (Md. 1977); Rite Aid Corp. v. Lake Shore Investors, 471 A.2d 735, 741 (Md. 1984). Woodbridge agreed that it did not prove malice. Trial Tr. 143:12-14, Aug. 21, 2014. Therefore, Woodbridge has not proven its claims for common law trade libel and product disparagement.

- The defendant was at fault in communicating the statement; and
- The plaintiff suffered harm.

Ziemkiewicz v. R+L Carriers, Inc., 996 F. Supp. 2d 378, 393 (D. Md. 2014) (quoting Samuels v. Tschechtelin, A.2d 209, 241–42 (Md. Ct. Spec. App. 2000)).

a. Defamatory

The statements on which the claim is based are not, as Springer contends, statements of opinion regarding Woodbridge's conduct. Rather, they are statements of purported fact that Woodbridge had been determined to have committed, or at least have been accused of, business-related misconduct.

Moreover, even if the Court were to characterize the statements made as opinion, Woodbridge would still prevail. Opinion may constitute actionable defamation "if the opinion can be reasonably interpreted to declare or imply untrue facts." Biospherics, Inc. v. Forbes, Inc., 151 F.3d 180, 184 (4th Cir. 1998) (citing Milkovich v. Lorain Journal Co., 497 U.S. 1, 20 (1990)).

The instant case does not pertain to a consumer complaint or review site containing grievances by dissatisfied customers, or to statements made on a social media site. Rather, Springer caused derogatory statements to be made in the commercial context of a potential Woodbridge customer's internet search result.

The Court finds that statements such as "Woodbridge structured funding scam" in this context are most reasonably interpreted to imply that Woodbridge has been found culpable, or has been accused, of dishonest conduct in connection with its business operations.

The Court finds that the statements are defamatory.

b. Falsity

The statements at issue were false.

c. Fault

In Maryland law, the degree of fault required to support a defamation claim depends upon the status of the plaintiff. Gooch v. Maryland Mech. Sys., Inc., 567 A.2d 954, 961 (Md. Ct. Spec. App. 1990). Unless the plaintiff is some type of public figure (whether a public official, a general public figure or a limited purpose public figure) the plaintiff need only prove negligence on the part of the defendant.

Woodbridge is not any type of public figure. It is, of course, not a public official. Nor is it a "general purpose public figure."[9] Moreover, there is no basis whatsoever for a finding that Woodbridge was a "limited purpose" public figure.[10]

Thus, to establish the requisite fault, Woodbridge need only prove that Springer negligently made the false statement at issue. That is, that he "failed to act as a reasonable person under the circumstances." Henderson v. Claire's Stores, Inc., 607 F. Supp. 2d 725, 731 (D. Md. 2009). Of course, Springer failed to act as would a reasonable person. Indeed, Woodbridge

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[9] See Nat'l Life Ins. Co. v. Phillips Pub., Inc., 793 F. Supp. 627, 633 (D. Md. 1992) ("[T]he evidence standard for determining a general purpose public figure is a strict one, requiring clear and convincing evidence of the general fame and pervasive influence in societal affairs.").

[10] The Fourth Circuit recognizes a five-part test for determining whether a plaintiff is a limited purpose public figure:

> 1) The Plaintiff has access to channels of effective communications; 2) the Plaintiff voluntarily assumed a role of special prominence in a public controversy; 3) the Plaintiff sought to influence the resolution or outcome of the controversy; 4) the controversy existed prior to the publication of the defamatory statements; and 5) the Plaintiff retained public figure status at the time of the alleged defamation.

Nat'l Life, 793 F. Supp. at 635 (quoting Fitzgerald v. Penthouse Int'l, Ltd., 691 F.2d 666, 668 (4th Cir. 1982)).

has proven far more than negligence on the part of Springer. The Court finds that Springer made the false statements at issue, knowing of their falsity, with the intent to harm Woodbridge and benefit himself by diverting prospective customers.

d. Harm

The Court finds credible the opinion testimony presented by Woodbridge to the effect that false statements of the type at issue can, and most likely will, cause potential customers to question Woodbridge's reputation and, in some instances, to bypass a link to Woodbridge and proceed to a competitor. Trial Tr. 10:25-11:10, 14:22-15:19, 21:11-24:12, 26:21-27:8. Aug. 21, 2014; Pl.'s Ex. 73.

Woodbridge has introduced evidence proving that there was a reduction in the number of leads generated by its marketing efforts during the time that the statements at issue were being made. Moreover, it is obvious that the association of the Woodbridge name with derogatory terms would, inevitably, cause reputational erosion.

The Court concludes, therefore, that Woodbridge has proven that the statements at issue caused it harm.

C. Remedy

Woodbridge seeks injunctive relief, an award of compensatory damages, and an award of legal fees under 15 U.S.C. § 1117(a).

1. Injunctive Relief

A district court has authority under the Lanham Act to grant injunctive relief to prevent further violations of a plaintiff's trademark rights. See 15 U.S.C. § 1116. To obtain a permanent injunction, the plaintiff must demonstrate:

> (1) that it has suffered an irreparable injury;
>
> 2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
>
> (3) that, considering the balance of the hardships between the plaintiff and defendant, a remedy in equity is warranted; and
>
> (4) that the public interest would not be disserved by a permanent injunction.

eBay Inc. v. MercExchange, LLC, 547 U.S. 388, 391 (2006).

a. Irreparable Injury

Woodbridge has suffered harm to its reputation and, without a doubt, the loss of an opportunity to present its services to a number of potential customers. Moreover, the harm resulting from any future unjustified adverse comments regarding Woodbridge would be augmented by virtue of Springer's defamatory conduct at issue in the instant case. That is, any future connection of Woodbridge with false accusations would restate the prior defamation and reinforce the harm done.

b. Adequate legal remedy

There is an inherent difficulty in determining the amount of monetary compensation to be awarded for damage to reputation. Lone Star Steakhouse & Saloon, Inc. v. Alpha of Virginia, Inc., 43 F.3d 922, 939 (4th Cir. 1995). Moreover, there is every reason to doubt that Springer is, or would become, in a position to pay a substantial monetary award. Furthermore, absent an injunction, there would be inadequate deterrence of future infringement of Woodbridge's trademarks by Springer.

c. Balance of Hardships

An injunction requiring Springer to desist from future infringement of Woodbridge's trademark rights would cause no undue hardship. As the Fourth Circuit has recognized in a false advertising context, defendants have "no equitable interest in perpetuating the false and misleading claims." PBM Products, LLC v. Mead Johnson & Co., 639 F.3d 111, 127 (4th Cir. 2011). The absence of such an injunction, requiring Woodbridge to file a second lawsuit rather than proceeding herein for a contempt determination, would impose a hardship on the plaintiff.

The balance of hardships favors Woodbridge.

d. Public Interest

To the extent that there is a public interest concern[11] in the case, it would favor Woodbridge. The Lone Star Court noted that "an injunction in [a trademark infringement case] would serve the public interest by preventing future consumers from being misled." 43 F.3d at 939.

[11] The instant case does not present the types of public interests (such as health and safety) that would have substantial weight in deciding to issue injunctive relief.

e. Resolution

The Court concludes that, based upon the eBay factors, it shall provide Woodbridge with injunctive relief to prevent Springer from engaging in any further infringement of Woodbridge's trademark rights. Such an injunction will serve to prevent Springer from further harming Woodbridge's reputation through defamatory and misleading internet search results and from further diversion of potential customers.

2. Compensatory[12] Damages

The Court has found Springer liable to Woodbridge on its claims for trademark infringement and common law defamation.

Under the Lanham Act, a successful plaintiff may, "subject to the principles of equity . . . recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action." 15 U.S.C. 1117(a).

Woodbridge has not proven that Springer actually realized any profits attributable to his infringement of Woodbridge's trademarks. Hence, the damages recoverable for the trademark infringement are those sustained by virtue of the infringing actions – the redirection of potential customers and the

[12] Woodbridge is not seeking punitive damages.

creation of derogatory search engine results. The damages recoverable for Springer's defamation are those damages that were sustained due to Springer's defamatory actions – the creation of derogatory search engine results. Accordingly, the compensatory damages awarded for defamation will be included within, and subsumed by, the damages awarded for trademark infringement.

a. Lost Sales

Woodbridge provided expert opinion testimony regarding the value of lost leads to customers that would have been generated by online keyword search advertising had Springer not used deceptive online marketing tactics and defamed the Woodbridge name.

The witness determined that each lead cost Woodbridge $160.00 and that there was a drop of 4.7% in the conversion rate of internet traffic to leads during the period at issue. Based on this, the expert determined that Woodbridge lost 3,505 leads, which, multiplied by the value of $160.00 per lead, yielded a total of $560,800.

"Trademark remedies are guided by tort law principles. . . . As a general rule damages which result from a tort must be established with reasonable certainty." Microsoft Corp. v. Grey Computer, 910 F. Supp. 1077, 1092 (D. Md. 1995)(quoting Lindy Pen Co. v. Bic Pen Corp., 982 F.2d 1400, 1407 (9th Cir. 1993)). Of course, for violations of the Lanham Act, "the court has broad discretion to award any monetary relief necessary to serve the interests of justice." Shell Oil Co. v. Commercial Petroleum, Inc., 928 F.2d 104, 108 (4th Cir. 1991) (citing 15 U.S.C. § 1117)).

While the Court does not fault the expert's methodology or logic, it does not find his bottom line result sufficiently reliable to justify a reasonably certain determination of actual damages. Nevertheless, the Court finds that Woodbridge suffered substantial (albeit not reasonably quantifiable) damages due to the loss of leads caused by Springer's trademark infringement. This is a factor to be considered in regard to the compensatory damages award as discussed below.

b. Consulting Service Costs

Woodbridge presented evidence that it expended approximately $25,000.00 for consulting services necessary to mitigate the search results problems caused by Springer's trademark infringement. Springer has agreed that $25,000.00 was a reasonable cost of this service. Trial Tr. 163:20-165:5, Aug. 21, 2014.

The Court finds that Woodbridge has proven precisely that it sustained actual damages of $25,000.00 for mitigation services due to Springer's trademark infringement.

c. The Total Compensatory Award

The Court finds that Woodbridge has proven that it sustained actual damages of $25,000.00 for consulting services plus a substantial – but not quantifiable – amount of lost sales due to Springer's trademark infringement. The total compensation award is not limited to the $25,000.00 of actual damages that Woodbridge precisely proved.

The Lanham Act provides, in pertinent part:

> The court shall assess such profits and damages or cause the same to be assessed under its direction. . . . In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. Such sum . . . shall constitute compensation and not a penalty.

15 U.S.C. § 1117(a).

The Fourth Circuit has identified six nonexclusive factors for courts to consider in connection with a damage award in a Lanham Act case:

> (1) whether the defendant had the intent to confuse or deceive, (2) whether sales have been diverted, (3) the adequacy of other remedies, (4) any unreasonable delay by the plaintiff in asserting his rights, (5) the public interest in making the misconduct unprofitable, and (6) whether it is a case of palming off.

Synergistic Int'l, LLC v. Korman, 470 F.3d 162, 175 (4th Cir. 2006). A prevailing party is not required to make a showing on any one factor or even a majority of the factors, see id. at 175–76, and different or additional factors may be considered if the circumstances require, id. at 176.[13] In all cases, the Court must "weigh the equities of the dispute and exercise its discretion on whether an award is appropriate and, if so, the amount thereof." Id.

i. Defendant's intent

"The first [Synergistic factor]—whether the defendant had an intent to confuse or deceive—addresses whether there has been

[13] Although most circuits have conditioned monetary awards on proof of actual confusion, the Fourth Circuit has not. See Synergistic, 470 F.3d at 174.

a willful infringement on the trademark rights of the plaintiff, or whether the defendant has acted in bad faith." Id. at 175.

The Court finds that Springer intended to confuse and/or deceive potential Woodbridge customers for his personal benefit.

ii. Diverted Sales

The Court finds that there were a substantial, but not quantifiable, number of sales diverted away from Woodbridge. The extent to which such sales were diverted to Springer cannot be determined.

iii. Other remedies

"The third of the six [Synergistic] factors—the adequacy of other remedies—addresses whether another remedy, such as an injunction, might more appropriately correct any injury the plaintiff suffered from the defendant's infringement activities. If an injunction is an adequate remedy, this factor should weigh against a damages award." Id. at 176.

The Court finds that, in the instant case, an injunction is a necessary remedy, but not an adequate one on its own.

iv. Delay

Woodbridge did not unreasonably delay in asserting its rights.

v. Public interest

The Court does not find there to be a particular public interest in regard to the damages award to be made in the instant case. There is, however, certainly an interest in preventing consumer confusion in the marketplace.

vi. Palming Off

Springer did not "palm off"[14] his services as those of Woodbridge.

vii. Total Compensatory Damage Award

Woodbridge has proven that it sustained damages in the precise amount of $25,000.00 for the cost of pertinent consulting services. Woodbridge has also proven that it sustained substantial – but not reasonably determinable – damages attributable to the value of lost sales opportunities.

[14] Palming off occurs when a person misrepresents his or her own goods as someone else's.

The Court finds, upon consideration of the Synergistic factors discussed above, that it is fair and equitable to enter judgment in the instant case for compensatory damages in excess of the $25,000.00 that Woodbridge was able to prove precisely. In the circumstances of the instant case, the Court shall exercise its discretion to double, but not treble, the $25,000.00 precisely proven.

Accordingly, the Court shall award compensatory damages on Woodbridge's trademark and defamation claims in the total amount of $50,000.00.[15]

3. Prejudgment Interest

Under Maryland law, the matter of prejudgment interest in a case[16] is left to the discretion of the jury, or the trial court when sitting without a jury. See I.W. Berman Props. v. Porter Bros., Inc., 344 A.2d 65, 75 (Md. 1975). Inasmuch as the Court has found it equitable to award Woodbridge compensatory damages

[15] This consists of $50,000.00 awarded on the trademark claims of which $25,000.00 is duplicative of the amount awarded on Woodbridge's defamation claim.

[16] Prejudgment interest is recoverable as a matter of right in a case – unlike the present one – in which the money claimed has actually been used by the defendant. Travel Comm., Inc. v. Pan American World Airways, Inc., 603 A.2d 1301, 1333 (Md. Ct. Spec. App. 1992).

in excess of the $25,000.00 that it proved precisely, it declines to exercise is discretion to award prejudgment interest.

4. Attorney's Fees

Title 15 U.S.C. § 1117 provides for recovery for violations of any right of the registrant of a mark registered in the Patent and Trademark Office. Section 1117(a) states, in pertinent part: "The court in exceptional cases may award reasonable attorney fees to the prevailing party." The United States Court of Appeals for the Fourth Circuit has held that a prevailing plaintiff may be awarded attorney's fees under this provision. See, e.g., Retail Servs., Inc. v. Freebies Publ'g, 364 F.3d 535, 550 (4th Cir. 2004). The term "exceptional" is not defined in the statute.

In Georgia-Pac. Consumer Products LP v. Von Drehle Corp., --- F.3d ----, No. 13-2003, 2015 WL 1404765 (4th Cir. Mar. 30, 2015), as amended (Apr. 15, 2015), a trademark infringement case,[17] the United States Court of Appeals for the Fourth Circuit stated:

[17] In Octane Fitness, LLC v. ICON Health & Fitness, Inc., ––– U.S. ––––, 134 S. Ct. 1749 (2014), a patent infringement case,

> [W]e conclude that a district court may find a case "exceptional" and therefore award attorneys [sic] fees to the prevailing party under § 1117(a) when it determines, in light of the totality of the circumstances, that (1) "there is an unusual discrepancy in the merits of the positions taken by the parties," based on the non-prevailing party's position as either frivolous or objectively unreasonable, (2) the non-prevailing party "has litigated the case in an 'unreasonable manner,'"; or (3) there is otherwise "the need in particular circumstances to advance considerations of compensation and deterrence."

Georgia-Pac., 2015 WL 1404765 at *10 (quoting Octane Fitness, 134 S. Ct. at 1756 n.6, and Fair Wind Sailing, Inc. v. Dempster, 764 F.3d 303, 315 (3d Cir. 2014)).

The Court does not find the instant case to be exceptional so as to justify an award of attorney's fees. Springer, proceeding pro se, did not litigate the case in an unreasonable manner. Although the Court has found against Springer in many respects, he presented some non-frivolous defense contentions. Moreover, even if the case could be viewed as "exceptional" under § 1117(a), the Court would – in light of the statutory statement that the court may award attorney's fees – not exercise its discretion to award them in the instant case.

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the Supreme Court lowered the burden for proving that a case was exceptional under the Patent Act.

Accordingly, the Court shall not award Woodbridge its attorney's fees.

III. CONCLUSION

For the foregoing reasons:

1. The Court shall, by further Order, issue a permanent injunction consistent with this decision.

2. Woodbridge shall recover compensatory damages in the amount of $50,000.00.

3. Judgment shall be entered by separate Order.

SO DECIDED, on Wednesday, April 29, 2015.

/s/
Marvin J. Garbis
United States District Judge