

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

PIRATE WATER TAXI, LLC, a  
Florida limited liability company,  
YACHT STARSHIP DINING  
CRUISES, L.L.C., a Florida limited  
liability company, and DARA  
HINDMAN, an individual,

Case No:

Plaintiffs,

vs.

TAMPA WATER TAXI,  
COMPANY LLC, a Florida  
limited liability company,

Defendant.

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**COMPLAINT FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

Plaintiffs, Pirate Water Taxi, LLC, Yacht Starship Dining Cruises, L.L.C., and Dara Hindman sue Defendant, Tampa Water Taxi Company, LLC and allege as follows:

1. This is an action for declaratory judgment under the Declaratory Judgment Act 28 U.S.C. §§ 2201 and 2202 to find that Plaintiffs' registration and use of the domain <tampawatertaxi.com> (the "Domain") is lawful and does not infringe on any rights of the Defendant under the Lanham Act (15 U.S.C. § 1051 *et. seq.*), the Anti-Cybersquatting Consumer Protection Act ("ACPA") (15 U.S.C. § 1114), or any other law.

2. Plaintiffs also seek an injunction pursuant to 15 U.S.C. § 1114(2)(D)(v) to prevent the transfer of the Domain to Defendant, which was ordered in an administrative panel decision notified on August 2, 2022 under the Uniform Domain Name Dispute Policy (“UDRP”), as prescribed by the Internet Corporation for Assigned Names and Numbers (“ICANN”), in a proceeding before the National Arbitration Forum, Claim Number FA2206001999291.

### **PARTIES**

3. Plaintiff Pirate Water Taxi, LLC (“PWT”) is a Florida limited liability company with its principal place of business in Hillsborough County, Florida.

4. Plaintiff Yacht Starship Dining Cruises, L.L.C. (“Yacht Starship”) is a Louisiana limited liability company with its principal place of business in Hillsborough County, Florida and is a managing member of PWT.

5. Plaintiff Dara Hindman is an individual residing in Pinellas County, Florida and is an officer of PWT and Yacht Starship.

6. Defendant is a Florida limited liability company with its principal place of business in Hillsborough County, Florida.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121(a) because this action involves a federal question arising under 15 U.S.C. § 1114(2)(D)(iv) and (v) and 15 U.S.C. § 1125(d).

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant resides and conducts business in this District.

9. The Court has personal jurisdiction over Defendant because Defendant resides and conducts business in Florida. Defendant also submitted to the jurisdiction of this Court pursuant to UDRP Rule 3(b)(xii), which provides, in part, that “[Defendant] will submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least on specified Mutual Jurisdiction.” Defendant selected the Mutual Jurisdiction where the Plaintiffs are located, as shown by the address given for the domain name holder in the Whois Database, which is within this District.

### **GENERAL ALLEGATIONS**

10. Upon information and belief, Defendant primarily operates historical and dolphin tours, but also provides water taxi and related services, in Tampa, Florida.

11. PWT provides water taxi services and related services in Tampa, Florida.

12. PWT currently has seven water taxi vessels in operation in Tampa. The vessels collectively have a 301 total fleet passenger capacity and provide taxi services in Tampa to more than 100,000 passengers per year.

13. PWT is the official water taxi of the Tampa Downtown Partnership and Visit Tampa Bay.

14. PWT purchased the Domain from a public sale available by GoDaddy, LLC on the GoDaddy.com website on June 20, 2019. PWT did not pay a premium for the Domain, which was available for anyone to purchase. Ms. Hindman entered contact information for herself and Yacht Starship in connection with registering the

Domain with GoDaddy. However, at all material times, through a license, PWT has owned and operated the Domain.

15. Defendant has attempted to prevent PWT from using the generic words “Tampa Water Taxi” (the “Alleged Mark”) to describe Plaintiff’s water taxi business located in Tampa in connection with the Domain.

16. At the time Plaintiffs registered the Domain, the Alleged Mark was neither “distinctive” nor “famous” as provided under 15 U.S.C. § 1125(d)(1)(A)(ii).

17. In connection with the registration of the Domain, Plaintiffs did not have a bad faith intent to profit from Defendant’s non-existent trademark rights in the generic term “Tampa water taxi,” as provided under 15 U.S.C. § 1125(d)(1)(A)(i).

18. Plaintiffs had reasonable grounds to believe that their registration and/or use of the Domain was a fair use or otherwise lawful, as provided in 15 U.S.C. § 1125(d)(1)(B)(ii) due to the genericism of the phrase Tampa water taxi and/or the geographic descriptiveness and genericism of the phrase Tampa water taxi.

19. Plaintiffs had no knowledge of any alleged trademark rights being claimed by Defendant in connection with this generic three-word term.

20. PWT purchased the Domain to identify and describe PWT’s water taxi services in the Tampa market. PWT has been using the Domain in that capacity since June 2019.

21. Plaintiffs own and have used the Domain in good faith since the registration of the Domain.

22. On June 6, 2022, Defendant initiated an arbitration with the National Arbitration Forum pursuant to the UDRP seeking the transfer of the Domain (the “Arbitration”).

23. Dara Hindman and Yacht Starship were identified as the Respondents in the Arbitration, presumably due to their contact information being associated with the registration of the Domain.

24. On August 2, 2022, a single-arbitrator panel entered a Decision directing the Registrar of record to transfer the Domain to Defendant, which included a finding that Defendant owns an active Florida state trademark registration for TAMPAWATERTAXICO.COM.

25. The Florida registration for TAMPAWATERTAXICO.COM expired on July 27, 2015, and Defendant never renewed the registration. The registration was expired and inactive when the panel issued its Decision.

26. The expired Florida registration for TAMPAWATERTAXICO.COM expressly disclaimed any rights to the words TAMPA and WATER TAXI, further supporting the lack of any legitimate trademark claim to these generic words.<sup>1</sup>

27. Defendant does not own a federal registration of the Alleged Mark from the United States Patent and Trademark Office.

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<sup>1</sup> The registration is available at:

<https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=TrademarkName&directionType=Initial&searchNameOrder=TAMPAWATERTAXICOCOM%20T100000008360&aggregateId=trade-t10000000836-0a68b62e-64d6-4276-b2fa-290692181b06&searchTerm=tampa%20water%20taxi&listNameOrder=TAMPAWATERTAXICOCOM%20T100000008360>

28. Defendant does not own a state registration of the Alleged Mark from the state of Florida or any other state.

29. The Alleged Mark is generic and incapable of distinguishing one seller of a service from another. The Alleged Mark is in the public domain and free for all to use.

30. Alternatively, the Alleged Mark is so highly descriptive that it is incapable of acquiring distinctiveness and cannot function as a trademark.

31. Alternatively, the Alleged Mark is merely descriptive and has not acquired secondary meaning, such that Defendant does not have common law rights in the Alleged Mark.

32. The generic words in the Domain are necessary to describe PWT's services. PWT is a Tampa water taxi service.

33. PWT uses the Alleged Mark fairly in a descriptive manner. Indeed, the words "Tampa water taxi" are the most accurate and appropriate words in the English language that could be used to describe PWT's services.

34. All conditions precedent to the bringing and maintenance of this action have been met, have occurred, or have been waived, including the notice requirement of 15 U.S.C. § 1114(2)(D)(v).

### **COUNT I – DECLARATORY RELIEF**

35. Plaintiffs reallege Paragraphs 1 through 34.

36. There exists a present case or controversy under 28 U.S.C. § 2201.

37. The dispute between Plaintiffs and Defendant is definite and concrete, real and substantial, and touches upon the legal relations of parties having adverse interests.

38. Based on the Decision in the Arbitration, Plaintiffs face the prospect of being required to transfer the Domain if this Court does not provide the requested declaratory judgment.

39. Plaintiffs' registration and use of the Domain does not, and is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Plaintiffs with Defendant, or as to the origin, sponsorship, or approval of Plaintiffs' goods, services, or commercial activities by Defendant.

40. Plaintiffs' registration and use of the Domain does not violate federal trademark law and is wholly permissible under both federal and state law. Defendant has no registration-based or common law rights in the generic Alleged Mark.

41. The controversy is sufficiently imminent to warrant the issuance of a declaratory judgment.

WHEREFORE, Plaintiffs request the Court enter a judgment:

- (a) Declaring Plaintiffs' registration, ownership, and use of the Domain and use of the Alleged Mark are lawful and do not infringe on any right Defendant may claim, including under the Lanham Act or the ACPA;
- (b) Declaring Plaintiffs are not required to transfer the Domain;
- (c) Awarding Plaintiffs their costs and attorneys' fees pursuant to 15 U.S.C. § 1114(2)(D)(iv)-(v);

- (d) As this is an action “involving a violation” of 15 U.S.C. § 1125(d)(1) by way of determining that no such violation has occurred, “an award of statutory damages in the amount of not less than \$1,000 and not more than \$100,000 per domain name, as the court considers just” as provided under 15 U.S.C. § 1117(d); and
- (e) Awarding such further relief as the Court deems just and proper.

**COUNT II – INJUNCTIVE RELIEF PURSUANT TO 15 U.S.C. § 1114(2)(D)(v)**

- 42. Plaintiffs reallege Paragraphs 1 through 34.
- 43. The ACPA provides that the Court may grant injunctive relief to a domain name registrant who has been ordered to transfer a domain in an administrative proceeding.
- 44. Plaintiffs are and will be irreparably harmed if the Domain is transferred to Defendant.
- 45. Plaintiffs do not have an adequate remedy at law if the Domain is transferred to Defendant.
- 46. The threatened injury to Plaintiffs outweighs whatever damage the proposed injunction may cause Defendant.
- 47. If issued, the injunction would not be adverse to the public interest.

WHEREFORE, Plaintiffs request the Court enter a judgment:

- (a) Enjoining the Registrar from transferring the Domain and the Defendant from attempting to effectuate transfer of the Domain or accepting transfer of the Domain;
- (b) Awarding Plaintiffs their costs and attorneys’ fees pursuant to 15 U.S.C. § 1114(2)(D)(iv)-(v);
- (c) Awarding such further relief as the Court deems just and proper.



DATED: August 16, 2022.

*/s/ Brad F. Barrios*

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