

1. On 24th June 2005, the First Defendant, via their lawyer, Michael S. Denniston of Bradley Arant Rose & White LLP, 1819 Fifth Avenue, North Birmingham, Alabama 35203 U.S.A, contacted WIPO to initiate administrative proceedings against me, under the Unified Domain Name Resolution Policy (UDRP).
2. On 29th June 2005, WIPO contacted me to notify me of the commencement of administrative proceedings against me, affording me 20 days in which to file a mandatory response to the proceedings.
3. The First Defendant's action of initiating administrative proceedings, via WIPO, which were mandatory upon me but not on the First Defendant, was done with the ulterior motive of shielding themselves from any criticism and to prevent me (based in the EU) from making a non-commercial use of a domain name that was "*identical or confusingly similar to the trademark*"
4. The administrative proceedings were brought in a European Union member state, Switzerland, through the World Intellectual Property Organisation (WIPO), and against myself, an EU citizen.
5. The administrative proceedings, under the UDRP, were in relation to my domain name biocrystpharmaceuticals.com, and my operation of a non commercial, free speech, criticism website which resolved at the location of the domain name.
6. The administrative proceedings were also based on an alleged infringement by me of the complainant's (First Defendant's) trademarks, in particular, "Biocryst Pharmaceuticals Inc", which is owned by the First Defendant. The First Defendant relying on their trademark rights in their complaint and citing that:

*"Complainant, BioCryst, has **never licensed or otherwise authorized Respondent to use its mark BIOCRYST PHARMACEUTICALS, INC. or any derivative of that mark, including, BIOCRYST PHARMACEUTICALS, either in domain names or otherwise.**"*

"Respondent has no rights or legitimate interest in respect of the Domain Name."

*"Respondent does not now, never has, has not prepared to, and has no intent to provide, use, sell, offer for sale, or solicit any goods or services in a bona fide offering in connection with the mark BIOCRYST PHARMACEUTICALS, INC. or any term or phrase including BIOCRYST PHARMACEUTICALS, INC. except in connection with the registration and inappropriate and **unauthorized use of the Domain Name.**"*

*"The Respondent has used the name intentionally, and **despite being on notice of BioCryst's rights**, has continued to use the name intentionally and willfully to attract for commercial gain internet users to its website by creating a **likelihood of confusion with the Complainant's mark.**"*

"The fact that Respondent's website refers to BioCryst by name, displays a distinctive logo in which BioCryst has enforceable rights, and contains a "disclaimer" that "This is not the website of BioCryst Pharmaceuticals" all are further evidence of Respondent's knowledge of BioCryst's rights in its mark."

"any claim by the Respondent of the freedom to make statements on the website about BioCryst and its products or to provide a forum for statements about BioCryst and its products are irrelevant. "Arguments based on freedom of speech laws – found in many countries – must be subservient to the terms of the [Uniform Dispute Resolution] Policy."

"A current visit to www.biocrystpharmaceuticals.com site shows a site that still has unauthorized uses of the Biocryst trademark S and a disclaimer."

*"BioCryst's BIOCRYST PHARMACEUTICALS, INC. pharmaceutical products, services, and website are well-known in the **United States and elsewhere.**"*

It is clear by such statements, that the action initiated by the First Defendant was an infringement action, and that having full knowledge that my use of the trademarks was a non-commercial one, it was a groundless infringement action.

7. For the purpose of the administrative proceedings, the First Defendant was required under UDRP Rule 3b (viii), to ***"Specify the trademark(s) or service mark(s) on which the complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used (Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future."***

The fact of the matter is that the primary trademark in question was "BIOCRYST PHARMACEUTICALS, INC". It was therefore important, and was a requirement of the UDRP Rules, that the First Defendant disclose to WIPO, for the purpose of the administrative proceedings, all vital information relating to that particular mark, in particular, ALL jurisdictions in which that particular mark is registered, and not just the US jurisdiction which the First Defendant chose to selectively provide to WIPO, omitting the registration of the mark in all other jurisdictions.

8. It is clear that the administrative proceedings initiated by the First Defendant were in fact based not only on the US registration of the mark in the words of "BIOCRYST PHARMACEUTICALS, INC" but also on the EU registration of the same mark.
9. The First Defendant, elected to provide partial information to WIPO in a deliberate attempt to mislead the panelist in order to gain control of my property and to attempt to set the jurisdiction as US jurisdiction in relation to any subsequent court proceedings.
10. Although the UDRP Rules provide that the appropriate jurisdiction is either the location of the domain name registrar (US) or the registrant (UK), the First Defendant elected only to accept US jurisdiction if WIPO transferred my domain name to the First Defendant. There was no reason for this other than to make it impossible for me to defend my property, if a transfer was effected, as I would be unable to bring a court case in the USA against the First Defendant.
11. The First Defendant was required under UDRP Rule 3(b)(xiv) to certify *"that the information contained in this Complaint is to the best of Complainant's knowledge **complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass**"*.

The First Defendant, in signing such certification, made false statement, as they were fully aware that the information that they had provided to WIPO was far from "*complete and accurate*".

12. If the First Defendant seeks to rely upon a defence, that their administrative proceedings were based on just their US registration of the mark, and not upon the EU registration of the same mark, then by initiating a complaint which does not incorporate the EU trademark, where the alleged infringer of the trademark is based, such proceedings would clearly be designed to harass me into defending my position when no infringement ever took place.

Furthermore, the statement in the First Defendant's infringement action via administrative proceedings, that:

"A current visit to www.biocrystpharmaceuticals.com site shows a site that still has unauthorized uses of the Biocryst trademark and a disclaimer."

shows that the First Defendant was not just seeking protection for the mark "BIOCRYST PHARMACEUTICALS, INC", but also protection for other marks, which would include the First Defendant's UK Trademark 2372000, CTM 002919330, CTM 0857180 and UK Trademark MADRID (EU) CASE U00000857180.

Additionally, the mere mention of other "marks" in an "action" (administrative proceedings), which leads to court proceedings, also equates to a threat in relation to the marks mentioned and as such, gives rise to a claim under Article 21 of the UK Trademark Act for declaration of non infringement against the First Defendant for their trademarks.

13. The First Defendant, being the owner of the European Community Trademark "BIOCRYST PHARMACEUTICALS, INC", was well aware of Article 92 of COUNCIL REGULATION (EC) No 40/94 in relation to Jurisdiction over infringement and validity.
14. The First Defendant, being the owner of the European Community Trademark "BIOCRYST PHARMACEUTICALS, INC", was well aware of Article 93 of COUNCIL REGULATION (EC) No 40/94 in relation to International Jurisdiction.
15. It is clear that the First Defendant's actions (via WIPO, and later the US court) were designed to impose a severe imbalance of justice and to relieve me of the rights afforded to me by the European Community and the regulations thereof (in particular Article 92(b)), in the jurisdiction where the First Defendant also has rights and obligations relating to their European Community Trademark "BIOCRYST PHARMACEUTICALS, INC".
16. The First Defendant's action via WIPO, and the First, Second and Third Defendant's action of initiating a court case in the USA by conspiracy, was an abuse of process, designed to oppress and vex.
17. It is clear that any decision made by WIPO would result in one of the parties being aggrieved, which would potentially lead to court proceedings by one of the parties against the other. Therefore, the administrative proceedings initiated by the First Defendant were clearly a threat of infringement proceedings.

18. That the administrative proceedings were a threat of infringement proceedings is supported by the fact that the First Defendant later initiated a court case in the USA, after becoming aware of court case number HC 05C02048 that I initiated against them in the UK.
19. That the administrative proceedings were a threat of infringement proceedings is further supported by Clause 4(k) and Clause 5 of the UDRP, and from which any reader of these clauses can see that the action taken by the defendant, of initiating administrative proceedings, leads either parties to possible COURT PROCEEDINGS and this equates to a threat of infringement proceedings.
20. The trademark incorporating the wording "BIOCRYST PHARMACEUTICALS, INC" around the world, falls within the scope of the Madrid Agreement and the Paris Convention for the Protection of Industrial Property.

As such, any claims made in relation to the trademark, which is also registered in other Union countries of the Convention, would automatically incorporate a claim for the trademark in all the Union countries that the same trademark is registered in. Therefore any claim by the First Defendant in relation to the wording of "BIOCRYST PHARMACEUTICALS, INC" in any country would automatically incorporate any other Union countries where the same trademark is also registered. As such, both the WIPO administrative proceedings and the US court case equates to proceedings in relation to a Community Trademark as well as the US registration of the mark "BIOCRYST PHARMACEUTICALS, INC".

21. The First Defendant, being the owner of a European Community Trademark, and myself, the alleged infringer, domiciled in the EU, it is the First Defendant's obligation to defend their Community Trademark in the Community as it is the Community Trademark Court's that have exclusive jurisdiction over the Community Trademark (CTM).
22. The Second Defendant is a representative for the First Defendant's CTM and UK trademark, and as the representative for such, is bound by certain duties and obligations under UK national law.
23. By initiating a court case in the USA, the First Defendant's action of such is one of a vexatious nature, deliberately designed to cause vexation and oppression. This act has been aided by the Second and Third Defendants.
24. On 4th August 2005, WIPO denied the complainant's (First Defendant's) complaint and announced in their decision of the administrative proceedings, that:

"The use of the domain name to criticize a company is prima facie fair use. The Respondent is entitled to use the Internet to exercise his free speech rights and express his opinion in this way, subject to other laws of course (copyright, fraud, libel, etc.)."

"absent a direct or indirect commercial element, and in the presence of a genuine, serious free speech site, the use of an exact trademark in a domain name does not, in this Panel's view, lead one automatically to a finding of illegitimacy under the Policy."

"The Panel thus finds that the Respondent has a legitimate interest in the domain name."

"The Respondent himself admitted that he has registered several other domain names that incorporate marks of other pharmaceutical companies, which the Complainant takes as evidence of the situation described in Paragraph 4(b)(ii). The Panel is of the view, however, that the admission by the Respondent on its own is not sufficient to establish bad faith. The Respondent's assertion that his actions are justified by his desire to "inform" the public about alleged issues concerning the Complainant and possibly other companies and a fair use of his free speech right are believable."

"While the Respondent's website does provide information severely critical of the Complainant and its products, that does not make him a competitor even defined very broadly. A "competitor" need not be a direct competitor, and someone may be indirectly in competition with another. However, and with respect, in this Panel's view serious, genuine, noncommercial criticism is not "competition"

"The Panel thus finds for the Respondent".

25. Shortly after WIPO's decision was announced, my website located at "biocrystpharmaceuticals.com", began receiving hundreds of postings in the forum section of the website, which had unrelated links within the text of the postings (spam).

To constantly remove this spam, took up a considerable amount of my time.

I believe this was an action initiated by the First Defendant who employed the services of others in order to manufacture evidence.

26. The First Defendant has a well documented history of manufacturing evidence and of fraudulent activity.

Indeed a Vice-President of Clinical Development at BioCryst Pharmaceuticals, Inc, participated in a fraud that resulted in investors losing an estimated \$34 million in the company Biocryst Pharmaceuticals Inc.

The Vice-President was involved in, and conspired to, create bogus data, misrepresent data, falsify results in a drug trial, defraud patients and investors, and was involved in, and conspired to, defraud the US Food and Drug Administration.

A US criminal court found the Vice-President guilty of conspiracy, mail fraud and making false statements to the FDA and conspiring to commit offenses against the United States and the judge sentenced him to three years in prison.

27. My court case (HC 05C02048) against the First Defendant, for recovery of my costs and time associated in responding to the WIPO administrative proceedings, was initiated in the United Kingdom Royal Courts of Justice on 2nd August 2005.
28. After later becoming aware that the First Defendant had a legal representative based in the UK (The Second Defendant), I contacted the First Defendant on 22nd August 2005 to ask whether they wished the court documents to be served upon their UK representative.

29. On 22nd August 2005, the First Defendant's lawyers at the time, Bradley Arant Rose and White LLP, responded that I should take the steps that I deem appropriate. At no time did either the First Defendant, or their lawyer, discourage me from serving upon the First Defendant at the address of their UK representative (the Second Defendant's address).
30. Upon amending the claim form to show the First Defendant's UK representative address, I served the claim form at that address (35 Vine Street, London EC3N2NN) on 20th October 2005.
31. The First Defendant's UK representative, listed as their "representative" under the Detailed Trademark Information for the Community Trademark, and listed as "service" under the Detailed Trademark Information for a UK Trademark (the Second Defendant), replied by filing an Application Notice on 4th November 2005 suggesting that they had no association or relationship with the First Defendant and claimed that the claim form had been improperly served and requested that the *"proceedings in this matter be stayed until the claim form has been validly served on the defendant"*.
32. In the Application Notice, the UK Representative (Second Defendant) stated that:

"we are not now, and never have been, authorised to accept service of any court proceedings on behalf on the defendant" also that "the defendant has no address for service within the jurisdiction" and "the defendant has no established place of business in the UK".

These statements are a direct violation of the obligations of a UK and Community Trademark Representative and were also designed to mislead the court into believing that the Second Defendant has no ongoing association with the First Defendant in relation to the trademarks in question.

33. After the Second Defendant received the UK court claim form in case number HC 05C02048 on 21st October 2005, the First Defendant, already a client of the Second Defendant since at least 11th June 2002, in relation to Community Trademark matters, filed a court case in the US District Court of California on 24th October 2005, against third parties, (US Court Case No. 2:05-cv-07615-JFW-RZ) aided by the Second and Third Defendants.
34. The court case filed by the First Defendant in the USA, against third parties, via the Third Defendant Silverberg, Goldman and Bikoff, was a fraudulent and tortious one, and was initiated in conspiracy with the Second Defendant.
35. The Defendants, having full knowledge of who the owner of the domain name was, myself, they initiated a civil action, not against me, but instead against a service provider and a registrar and all information relating to the case was deliberately withheld from me by all three Defendants.
36. All three Defendants, acted in concert with each other, and conspired, and conspired in tort to defraud me of my property, and to tortiously interfere with my property and with my contracts.
37. The Defendants act of conspiracy to defraud by lawful and unlawful means in order to permanently deprive me of my property and my rights, was successful as the Defendants obtained my property on 11th June 2006.

38. In order to obtain my property and to deprive me of my rights, the Defendants in conspiracy and in concert with each other, initiated a malicious prosecution/civil action which was an abuse of process designed to obstruct and pervert the course of justice and to permanently deprive me of my property.
39. In order to obtain my property, the Defendants, tortfeasors, participated in conspiracy, tortious conspiracy, a collective action of conspiring to defraud, conspiracy to induce breach of contract, inducing breach of contract, tortious interference with contracts, intentional interference, tort of conspiracy to injure, conspiracy to injure by lawful and unlawful means, deception, tort of deceit, aiding and abetting a tort, dishonesty, theft, conversion, professional misconduct, misrepresentation, wrongful declaration, targeted malice, distortion of the true facts, suppression of the true facts, concealment of material facts, concealment, malicious falsehood and fraud and each contributed to the damage caused by their collective actions, and were the cause of such damage.
40. The Second Defendant, participating in the conspiracy to defraud, and in order to pervert the course of justice, made no reference of the US court case to the UK court in their Application Notice filed on 4th November 2005 (ten days after the Second Defendant's co-conspirator's filed a court case in the US against third parties). This was a material fact that the Second Defendant consciously and deliberately withheld from the UK court and myself.
41. The Second Defendant, in addition to other acts, participated in concealment of material facts, distortion and/or suppression of the true facts in order to aid all three Defendants collective goal of taking control of my domain name for the benefit of the First Defendant.
42. On 3rd March 2006, the Second Defendant, with full knowledge of the US court case, and whilst concealing the existence of that court case from me, made an offer to settle the costs order made by the UK court on 20th February 2006 in relation to case number HC 05C02048, on the basis that I relinquish my ownership of the domain name, transfer the domain name to their client (the First Defendant) and discontinue the UK court case against the First Defendant.
43. On 5th March 2006 I rejected the Second Defendant's proposal in 42 above.
44. It is clear that the First Defendant employed the services of the Second and Third Defendant for the purpose of fraudulently depriving me of my property permanently.
45. The Second Defendant conspired with, and acted in concert with, the First and Third Defendants, for the benefit of the First Defendant and misled the US and UK courts for the purpose of obtaining my property fraudulently and by deception.
46. At the First and Second Defendant's Application Hearing before Master Bragg on 20th February 2006, the Second Defendant was asked by the Master who their point of contact was in the USA. The Second Defendant reluctantly replied that their point of contact was Silverberg, Goldman and Bikoff (The Third Defendant) even though the First Defendant has been a direct client of the Second Defendant since 2002, without the involvement of the Third Defendant. The Third Defendant was not involved in the administrative proceedings via WIPO, the First Defendant's lawyers at that time being Bradley Arant Rose and White LLP.

47. It seems that upon advice given to the First Defendant, by the Second Defendant, after service of the UK court claim HC 05C02048 on 21st October 2005, the Third Defendant became involved in order to initiate US court proceedings against third parties and to conceal those proceedings from me until the Defendants succeeded in obtaining my property.
48. On 23rd March 2006, I became aware of the First Defendant's US court case against third parties in relation to my property. I became aware of the court case by accident, as it was mentioned by two other pharmaceutical companies in their complaints in yet another frivolous administrative proceeding.
49. After becoming aware of the US court case, I contacted the US court on 29th March 2006 to ask if I was a party to the proceedings in relation to my property, as I had received no communication from either the First Defendant, their lawyers, or the US court. The US court replied on the same day stating that:

*"It appears to me that the Clerk has entered default on all parties in this matter. **I don't know if you are a party or not.** Soon the Plaintiff will move to enter Default Judgement. I can be of no further help to you."*

*"Further emails and or phone calls will not be returned if you are seeking legal advice and or action **on your case** from me."*

50. On numerous occasions I contacted the Second Defendant, in relation to their client (the First Defendant) and their actions in relation to the trademark "BIOCRYST PHARMACEUTICALS INC", the subject of the UK court case, requesting disclosure in relation to the US court case, as to whether or not I was a party to the US court case, the subject of which was my property. The Second Defendant continuously and deliberately avoided answering the question.
51. On 28th April 2006, I eventually realised that the Second Defendant was engaging in a time wasting exercise and conspiring with, and acting in concert with, the First and Third Defendants in order to obtain my property by deception, by deceiving the US court as to the owner of the property.
52. The Second Defendant previously advised their client, the First Defendant, to file an Application for the service of claim form in the UK court case HC 05C02048 to be set aside citing that the claim form had not been served properly. This was also a time wasting exercise designed to gain time in which to conclude the US court case, without disclosing the existence of that court case to either myself or the UK court, and to take control of my property.
53. In relation to the Second Defendant's claim that the claim form had not been served upon the First Defendant correctly, the Second Defendant instead of following the overriding objective of the Civil Procedure Rules (CPR) of saving costs, chose to file an Application which would incur unnecessary and unreasonable costs.
54. The Defendants did this with the intention of giving themselves a bargaining position in order to force me to relinquish my property and my rights. Indeed, I later refused an offer by the Second Defendant to give up my property and discontinue the UK court case in exchange of the First and Second Defendant's conditional waiver of the costs in relation to the Application of 20th February 2006.

55. The Second Defendant should have simply returned the court claim form to myself, or to the court, along with a short letter to the effect that they were *"not authorised to accept service of any court proceedings on behalf of the Defendant"*. This would have been in line with the overriding objective of the CPR, in relation to saving costs.
56. On 28th April 2006, now being aware of the Second Defendant's time wasting exercises, I put the Second Defendant on express notice that if I did not receive an answer by Monday 1st May 2006, as to whether or not I was a party to the US court case, then I would make an application to Master Bragge for full disclosure by the Second Defendant.
57. The time wasting exercise by the Second Defendant was clearly designed to facilitate a transfer of my property to the First Defendant by default, as the First Defendant had initiated a US court case against third parties and withheld the existence of that court case from me aided by the Second and Third Defendants, and upon their advice.
58. All three Defendants intended to steal my property and to permanently deprive me of my property.
59. On 28th April 2006, I discovered that someone had deleted my personal details on the domain name register and replaced my details with WhoisGuard details.
60. On 28th April 2006, I contacted the law firm that the Second Defendant was obliged to divulge to Master Bragge by the Master's request at the Hearing on 20th February 2006. This law firm is the Third Defendant. I contacted them by telephone in late afternoon on 28th April 2006 and spoke to Mr Bikoff, who confirmed that I was **not** a party in the US court proceedings and said he was not aware that I was the owner of the domain name and in any event he was *"not going to be interrogated"* by me.

A transcript from that telephone conversation:

Myself: *You do know that I am the owner of the domain name, do you?*

Third Defendant: *Sorry, I'm having trouble hearing you, can you speak up please? Who is this first of all, who is this?*

Myself: *Who am I speaking to?*

Third Defendant: *This is James Bikoff.*

Myself: *And why am I speaking to you? Because I was speaking to somebody called David, one second.....(interrupted by Mr Bikoff)*

Third Defendant: *You are speaking, I am the principal attorney here representing Biocryst Pharmaceuticals.*

Myself: *OK. Now you do know the domain name is owned by me, not WhoisGuard?*

Third Defendant: *The records show WhoisGuard is the owner.*

Myself: *No, No, No, forget what the record shows, you do know I own the domain name don't you?*

Third Defendant: *I do not know that.*

Myself: *You don't know that!, well now you do!*

Third Defendant: *Well, that's what you say.*

Myself: *That's what I say! Right so, going through the WIPO arbitration, you are not aware of that are you not?*

Third Defendant: *I can't hear you. You wanna speak.....(Interrupted by me).*

Myself: *I'm speaking as loud as I can possibly speak.*

Third Defendant: *Well, what are you saying?*

Myself: *What I'm saying is WIPO arbitration, are you aware of that?*

NO RESPONSE

The WIPO arbitration between Biocryst and myself, you are aware of that, aren't you?

Third Defendant: *Of the Biocryst arbitration?*

Myself: *Yes.*

Third Defendant: *I was aware that Biocryst was involved in an arbitration, yes.*

Myself: *And you were aware of that the arbitration was between myself and them?*

Third Defendant: *I'm aware of an older case that was brought in arbitration, yes.*

Myself: *Right! And I was involved in that between myself and Biocryst, you were aware of that as well?*

Third Defendant: *I don't have the papers in front of me but if you say so, I'm listening to you.*

Myself: *Right. Have you recently tried to change the record on the register for WhoisGuard to be the owner of the domain name?*

Third Defendant: *First of all, Mr Patel, if you want to make any requests from us, I suggest you do it in writing. I don't like these oral contacts. Why don't you send me an email or a letter, you know where we are located and I'll be glad to consider your letter with our client but I'm not going to be interrogated by you.*

Myself: *Right. I'm not trying to interrogate you. I'm just trying to let you know that what you are trying to do at the moment is..... (interrupted by Mr Bikoff).*

Third Defendant: *If you put it in writing I'll be happy to reply to you.*

Myself: *OK, OK. We can correspond in writing but can you just give me your email address and exactly who I'm dealing with?*

Third Defendant: *My email address is jbikoff@sbgdc.com.*

Myself: *OK. Right, what I'll do is I'll contact you by email, we'll keep it in writing so we both know where we stand. And, that sounds OK anyway, that's reasonable.*

Third Defendant: *OK.*

Myself: *Right. One question I would like to ask you before we finish.*

Third Defendant: *Yes.*

Myself: *The case you have started in the United States, have you named me as a defendant? Simple question.*

Third Defendant: *No.*

Myself: *You haven't?*

Third Defendant: *No.*

Myself: *Right. even though you were aware I am the owner. That's OK, I'll keep it in writing.*

Third Defendant: *OK. Thank you.*

Myself: *OK. Cheers. Bye.*

END

A point of note, is that at no point did I say to Mr Bikoff who I was. In fact it is clear from the above transcript that Mr Bikoff asked me who I was and I did not furnish him with an answer. However, when I asked Mr Bikoff if he had changed my registration details to show the details of WhoisGuard instead of my own, his voice changed dramatically, he became very agitated and referred to me as "Mr Patel".

It is therefore clearly evident that the Third Defendant knew exactly who owned the domain name.

I subsequently put the main points of the telephone conversation that we had in writing and sent it to him via email immediately after the telephone conversation.

61. The Third Defendant did not reply to my email of 28th April 2006, or the subsequent email that I sent to them.
62. Within hours of my telephone conversation with the Third Defendant, I received an email from the Second Defendant at approx. 7 pm, now answering the question that they had previously continuously avoided answering, they now clarified that I was not a party to the US court case and attempted to disassociate themselves from the actions of the First and Third Defendants.
63. The Second Defendant, in concert with the First and Third Defendants conspired to withhold vital information from the US court, the UK court and myself in order to obstruct and pervert the course of justice and to obtain my property by fraud and deception.
64. The Defendants acted in concert with each other, conspired with each other and initiated a court case in the USA after the UK court case was initiated against the First Defendant and served upon them at their UK representative address (the address of the Second Defendant).
65. The Defendants supported their court case in the USA by malicious falsehood and baseless and groundless allegations, in order to cause oppression and vexation to myself and to the case in the UK, and to defraud me of my property and rights.
66. On 8th May 2006, the First and Third Defendants amended the US court case to include me as a Defendant, citing that *"In late April 2006, long after this suit was brought, Defendant Kumar Patel finally admitted to Plaintiff's counsel that he was the undisclosed principal exercising control over the domain name in concert with the Name Cheap Defendant's"*. The Third Defendant, having signed and submitted the amended complaint to the US court on 8th May 2006.

This is obviously in relation to my telephone call and email sent to the Third Defendant on 28th April 2006 in which I put Mr Bikoff on express notice that I was the owner of the domain name, if he was unaware of the fact, however I do not believe that he was unaware, and indeed his own actions previous to 28th April 2006 prove that the Third Defendant was in fact very aware that I was the owner of the domain name. This is supported by the transcript at 60 above and the chain of events set out below.

67. After becoming aware on 23rd March 2006, that the First and Third Defendants had filed a court case in the USA against third parties (service providers), and therefore becoming aware of their fraudulent attempt to take control of my domain name, I contacted the registrar by email on 27th March 2006 and asked them to *"Please remove your whoisguard service"* (To: legal@enom.com, c.c. support@namecheap.com)
68. On 30th March 2006, the WhoisGuard service was removed after lengthy correspondence with the registrar (Enom) and their sub registrar/reseller (Namecheap).

69. On 28th April 2006, I noticed that the whois information for my domain name had been changed to show the details of WhoisGuard. As I no longer had the WhoisGuard service, I sent an email to the registrar on the same date stating *"someone has changed the details on my whois records to show the whoisguard as the registrant. I have paid for the domain name, whoisguard has not. I am the owner, whoisguard is not. Who has changed my details?"* (To: legal@enom.com)
70. On 28th April 2006, the registrar replied by email that *"It was an error on our part to allow the removal of the WHOIS Guard information. We have been under order of the court in the US not to allow the WHOIS to be changed until the conclusion of case. When this **error was brought to our attention by the plaintiff**, we changed the WHOIS to be what it had been at the time the court ordered us not to change it."* (From: Legal <legal@enom.com>)
71. The above action by the First and Third Defendants proves that they had checked the Whois record for my domain name prior to 28th April 2006 and noticed that the WhoisGuard service was no longer active on my domain name and that my details were open to the public on the Whois record.
72. This of course did not suit the Defendants purpose of attempting to steal my property and committing tort by legal and illegal means. They therefore contacted the registrar and forced them to remove my personal details from the record and replace them with the WhoisGuard details on my domain name record even though that service was no longer active on the domain name as I had cancelled the service with Namecheap.com on 27th March 2006.
73. This action again proves that the First and Third Defendants knew prior to me contacting the Third Defendant on 28th April 2006, that I was the domain name owner. It also proves that the Third Defendant made false statement in the their amended US court proceedings that they only became aware that I was the owner of the domain name after I contacted them on 28th April 2006.
74. The Third Defendant was also aware that I was the domain name owner by virtue of the UK court case HC 05C02048 against the First Defendant and by virtue of the fact that the Third Defendant is the point of contact for the Second Defendant, who is also legal counsel and representative of the First Defendant.
75. The Third Defendant was aware that I was the domain name owner by virtue of the fact that the First and Third Defendants, in the amended complaint/claim to the US court, stated:

"18. In or about April 2005, Plaintiff's registration of the Domain Name, BiocrystPharmaceuticals.com, which was supposed to renew automatically, accidentally lapsed because Plaintiff's registrar, which originally registered the Domain Name on Plaintiff's behalf, did not have up-to-date credit card information from Plaintiff.

*19. When Plaintiff learned that its registration of its Domain Name, containing its federally registered Mark, had accidentally lapsed, it sought to re-register the Domain Name, **but found that shortly after the registration had lapsed Defendant Kumar Patel had, on June 4, 2005, registered the Domain Name without Plaintiff's knowledge or authorization.**"*

The above proves that the First and Third Defendants did in fact have knowledge of my ownership of the domain name and had no cause of action against third parties in relation to my property.

76. The Defendants have never provided me with any details of the particulars of claim in relation to the US court case at any stage, save for the amended particulars of claim.
77. The Third Defendant was aware that I was the domain name owner by virtue of the fact that two other pharmaceutical companies, (Endo Pharmaceuticals and Auxilium Pharmaceuticals), who also chose to initiate a groundless infringement action via administrative proceedings through NAF, mentioned the First Defendant's court case against **me** in the USA in their complaint to NAF dated 16th February 2006, and noticed by me on 23rd March 2006.

It is therefore inconceivable that these two companies knew on at least 16th February 2006, that I was the owner of the domain name biocrystpharmaceuticals.com, but the First Defendant's lawyer (the Third Defendant) did not.

78. Endo and Auxilium Pharmaceuticals stated in their administrative proceedings complaint that:

"On October 24, 2005, Richard Kirkendall and Kumar Patel were named as codefendants in a suit by a similarly aggrieved pharmaceutical company, see BioCryst Pharmaceuticals Inc. v. Namecheap.com, Whoisguard-namecheap.com, Richard Kirkendall, and Does 1-10, inclusive, Case No. 2:05-cv-07615-JFW-RZ (C.D.Cal.)."

79. The above case No. 2:05-cv-07615-JFW-RZ (C.D.Cal.), and any public records of it, would have no mention of my name in the list of defendants, yet the lawyer (based in Washington DC) representing both Endo and Auxilium Pharmaceuticals, cited to NAF with confidence, on 16th February 2006, that I was named as co-defendant in the case. However, the Third Defendant (also based in Washington DC), who is lead counsel in the case, was unaware that I was the domain name owner, was unaware of my name, address and other contact details such as email address, and therefore did not cite me as a defendant.
80. It is clear by the statement from these companies that although the First and Third Defendants knew that I was the owner of the domain name, they chose to deliberately bring a court case against third parties in order to facilitate their theft of my property.
81. It is clear that Endo and Auxilium Pharmaceuticals were aware of this conspiracy and although they were supposed to keep the situation quiet, they could not help themselves but to mention the First Defendant's US court case, in the belief that it may help them in their administrative proceedings complaint to NAF, which it did and resulted in a decision against me in those proceedings.

This has resulted in my having to file a court case against these two companies which will result in me spending a large amount of my time in defending my position against the decision in the administrative proceedings.

This is a direct causal effect of the actions by the Defendants.

82. It is clear, by Endo and Auxilium Pharmaceuticals statement, that both these companies were party to the knowledge that although I owned the domain name biocrystpharmaceuticals.com, the case had deliberately been brought against the wrong parties to facilitate theft of my property.
83. The Third Defendant's statement to the US court that I said I "*was the undisclosed principal exercising control over the domain name in concert with the Name Cheap Defendant's*" is a false one. What I did in fact say in an email to the Third Defendant on 28th April 2006 was:
- "your client, FFW and yourself are all fully aware that I am the owner of the domain name. What you have chosen to do, is to attempt to relieve me of my rightful property via a fraudulent act. In addition to having full knowledge that I am the owner of the domain name, I also credit you with enough intelligence to know that WhoisGuard is a service and not a registrant"*
84. It is evident that the Defendants participated in deliberately manufacturing a court case against wrong parties who would have no interest in defending such a case. The US court case was initiated against Namecheap.com (sub registrar/reseller for Enom), WhoisGuard-Namecheap.com (a service that Namecheap.com provides), Richard Kirkendall (unknown to me) and Does 1-10 (also unknown to me).
85. By initiating such a court case, the First and Third Defendants obviously familiarised themselves with the business of Namecheap.com, the main defendant in the US court case. This would have lead them to the website of Namecheap.com. This being a website of a company that provides a registration service for domain names.
86. At the website of Namecheap.com, it is evident that WhoisGuard is a subscription based service provided by Namecheap.com, indeed it is stated on the website:

Purchase WhoisGuard Subscriptions -

Did you know that you must have accurate address information in Whois? This opens up your private address and phone number information to the public. WhoisGuard is a whois privacy protection option that puts our address information to the public instead of yours to protect you from potential spam and even identity theft.

87. It is evident that the First and Third Defendants were well aware that Namecheap.com was not, and never has been, the owner of the domain name. It is also evident that the First and Third Defendants were well aware that the other "defendant's" cited by them in the US court case, were also not the owner of the domain name.
88. It is clear that the Defendants chose not to request Namecheap.com to remove the WhoisGuard service, which upon basic discovery or application to Namecheap.com would have resulted in either the WhoisGuard service being removed, or Namecheap.com requesting me to remove the WhoisGuard service for legal reasons, or Namecheap.com providing the Defendants with the domain name owner's details (my details). The Defendants knew this, but it did not suit their purposes to contact Namecheap.com to request this.

89. On the First Defendant's amended complaint to the US court, the Defendants stated that I was included in the initial US court case as "*John Doe 1*". John Doe, i.e. "identity unknown". However in my telephone conversation with Mr Bikoff, a partner in the law firm, being the Third Defendant, and my subsequent email to the Third Defendant, it is clear that Mr Bikoff made it clear that I was not a party to the US court case.

Also, in a subsequent email from Mr Caunt (Second Defendant) sent to me later on in the same day, 28th April 2006, he clarified that "*I understand that you are not party to proceedings brought by Biocryst Pharmaceuticals Inc in the US in relation to the domain name Biocrystpharmaceuticals.com*".

Once again, the First and Third Defendants therefore made false statement in the amended US court proceedings.

90. The First and Third Defendants filed their amended complaint/claim to the US court on 8th May 2006, after my telephone and email correspondence with the Third Defendant on 28th April 2006. However, obviously having full knowledge of my email address, which the Defendants have also cited in their amended claim to the US court, they chose not to contact me to disclose the fact that they had amended their US court claim to include me as a Defendant. Again, this was done to aid their intent to take control of my domain name before I became aware of what was happening.

91. Although the First and Third Defendants filed their amended claim on 8th May 2006, they chose to only apply for service upon me out of jurisdiction on 24th May 2006. They did this in order to buy time as they had made an Application for Judgment in Default against Namecheap.com (Registrar) WhoisGuard-Namecheap.com (Registrar) and Richard Kirkendall (Unknown to me) on 12th May 2006, four days after amending the claim and including me as a Defendant.

92. On 31st May 2006, the US court granted permission to serve upon me out of jurisdiction.

93. On 1st June 2006, the day after granting permission to serve upon me out of jurisdiction, the US court granted Judgment in Default against the third parties in relation to my property, even though the court case was still ongoing as documents had not been served upon me at that stage.

94. On 8th June 2006, the First Defendant, via the Third Defendant, served the amended claim upon me by email, and later by post.

The US court gave me 20 days, after receipt of the amended claim, in which to respond. The date by which my response would be due was 28th June 2006.

95. However, on 11th June 2006, only three days after the First and Third Defendants served the amended claim upon me by email, the First and Third Defendants served the Judgment in Default (given by the US court, against the third parties, on 1st June 2006) upon Enom (Accredited Registrar), in order to effect a transfer of my domain name to the First Defendant.

96. On 11th June 2006, my domain name biocrystpharmaceuticals.com was transferred to the First Defendant by Enom, under order from the US court.

97. On 11th June 2006, the Defendants were well aware of the fact that the judgment in default awarded to them by the US court, was against the wrong parties, and that as the owner of the domain name, I had been afforded until 28th June 2006 by which to file my defence, yet the Defendants chose to ignore the interests of justice and instead implemented/utilised the order which they knowingly, deliberately and tortiously obtained against the wrong parties in default, in order to obtain my property by fraud and deception and to permanently deprive me of my property and my rights.

This resulted not only in the theft of my property, but also interference with my contract with the registrar, and furthermore also resulted in termination of my website located at biocrystpharmaceuticals.com, which was operated from the UK, which resulted in me being prevented from exercising my fundamental human rights, particularly Article 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Defendants actions also contravene section 12 of the Human Rights Act 1998.

The Second Defendant, being a party to the collective conspiracy to defraud, has also violated Article 17 of the same Convention.

98. The Defendants were aware of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, in particular Article 2.1 of the Convention and Council Regulation (EC) No 40/94 Article 92(a), yet chose to initiate a court case against me (an EU citizen) in a non member state and in a non-Community trademark court in relation to the trademark "BIOCRYST PHARMACEUTICALS INC" which is also registered in the EU, and affords the First Defendant the same rights, under the Paris Convention, as the US registered mark. This action was an act of tort to defraud by legal means.
99. The Second Defendant has stated that their only involvement in the case was in relation to their, and their client's (the First Defendant's) Application in case number HC 05C02048 made on 4th November 2005.
100. The Second Defendant can not credibly argue that the scope of their involvement only extended to the Application made on 4th November 2005. It is admitted by the Second Defendant that their point of contact for the First Defendant is the Third Defendant. However, if the Second Defendant's scope of involvement was only in relation to the Application, then there would be no reasonable excuse for their point of contact to be the Third Defendant, who only became involved for the purposes of the US court case. Surely, the Second Defendant's point of contact in the US would be their client of four years, the First Defendant, and not a third party law firm. The line of communication would obviously be from the Second Defendant to the First Defendant directly.
101. The involvement of the communication between the Second Defendant and the Third Defendant was clearly in order to facilitate a theft of my property on behalf on the First Defendant by deception, concealment and conspiracy to commit fraud.
102. The Second Defendant, in their email to me of 28th April 2006, states that *"we are under no obligation to provide you with any information in relation to any proceedings to which you may or may not be party, however I understand that you are not party to proceedings brought by Biocryst Pharmaceuticals Inc in the US in relation to the domain name <biocrystpharmaceuticals.com>, if you were party to any proceedings in the USA or otherwise you would be served with the appropriate documentations"* Signed by Dan Caunt, solicitor, FFW (Second Defendant).

103. The Second Defendant's statement at 102 above, received only hours after my communication with the Third Defendant, shows that they had full knowledge of the US court case in relation to my property but consciously chose to withhold that information from myself and the UK court.
104. The Second Defendant, being the First Defendant's trademark lawyer and legal representative in the EU since at least 2002, can not reasonably rely upon their statement that they were "*under no obligation to provide you with any information in relation to any proceedings to which you may or may not be party*", especially when the matter centers around my domain name, the First Defendant, and the internationally registered trademark "BIOCRYST PHARMECUTICALS INC", all of which are the subject of a UK and US court case, in which the Second Defendant is also involved in, directly or indirectly.
105. I have a right to know when my property is the subject of a court case, which has been initiated in order to deprive me of my property and rights, by obtaining my property by deception, and the Second Defendant, contrary to their statement, IS under an obligation and/or duty to disclose to me any information that they are in possession of, or have knowledge of, which they know if not disclosed would cause me damage.

The Second Defendant does have an obligation and/or duty to me, either by a care of duty under the neighbour principal, standard disclosure, the Legal Services Act 1990, Solicitors Act 1974, Solicitors' Practice Rules 1990, Solicitors Code of Conduct, Law Society's Code for Advocacy and/or the Law Society rules.

106. It was reasonably foreseeable by the Second Defendant, that non disclosure of such information would result in harm and damage to me and would result in benefit to their client, the First Defendant.
107. By the Second Defendant's willful act of deliberately withholding such vital information from me, and from the UK court, in order to benefit their client (the First Defendant) and to harm me and permanently deprive me of my property, the Second Defendant participated in conspiracy, tortious conspiracy, collective action of conspiring to defraud, conspiracy to induce breach of contract, inducing breach of contract, tortious interference with contracts, intentional interference, tort of conspiracy to injure, conspiracy to injure by lawful and unlawful means, deception, tort of deceit, aiding and abetting a tort, dishonesty, theft, conversion, professional misconduct, misrepresentation, wrongful declaration, targeted malice, distortion of the true facts, suppression of the true facts, concealment of material facts, concealment, non disclosure, malicious falsehood and fraud and directly contributed to the damage caused by their actions, and were the cause of such damage.
108. By the Second Defendant's attributable behaviour, actions and/or omission, I have been permanently deprived of my property and my rights of freedom of expression.
109. The Defendants aided and abetted each other and were party not only to a civil tort, but also to criminal acts of fraud and theft leading from the civil proceedings.

110. The Second Defendant, having knowledge of the fraud, and by not willfully disclosing that their client intended to defraud me, made themselves a party to the act of fraud and to conspiracy to defraud along with the First and Third Defendants.

UK THEFT ACT 1968

1. Basic definition of theft

*(1) A person is **guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and 'theft' and 'steal' shall be construed accordingly.***

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

7. Theft

A person guilty of theft shall on conviction on indictment be liable to imprisonment for a term not exceeding seven years.

15. Obtaining property by deception

(1) A person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, shall on conviction on indictment be liable to imprisonment for a term not exceeding ten years.

*(2) For purposes of this section a person is to be treated as obtaining property if he obtains ownership, possession or control of it, and 'obtain' **includes obtaining for another or enabling another to obtain** or to retain.*

(3) Section 6 above shall apply for purposes of this section, with the necessary adaptation of the reference to appropriating, as it applies for purposes of section 1.

(4) For purposes of this section 'deception' means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.

18. Liability of company officers for certain offences by company

*(1) Where an offence committed by a body corporate under section 15, 16 or 17 of this Act is proved to have been committed with the **consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.***

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

20. Suppression, etc., of documents

*(1) A person who dishonestly, **with a view to gain for himself or another or with intent to cause loss to another**, destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court of justice or any government department shall on conviction on indictment be liable to imprisonment for a term not exceeding seven years.*

(2) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, by any deception procures the execution of a valuable security shall on conviction on indictment be liable to imprisonment for a term not exceeding seven years; and this subsection shall apply in relation to the making, acceptance, indorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security, as if that were the execution of a valuable security.

(3) For the purposes of this section ‘deception’ has the same meaning as in section 15 of this Act, and ‘valuable security’ means any document creating, transferring, surrendering or releasing any right to, in or over property, or authorising the payment of money or delivery of any property, or evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

111. It is clear that the Second Defendant was in communication with the Third Defendant, and this has been admitted by the Second Defendant during the Application Hearing before Master Bragge on 20th February 2006.
112. The Third Defendant initiated a court case in the US on behalf of the First Defendant, against third parties (Namecheap.com, WhoisGuard-Namecheap.com, Richard Kirkendall and Does 1-10), and if it were to be believed that the Third Defendant was unaware that I was the owner of the domain name, because of the WhoisGuard service, then the First and Second Defendant obviously withheld information from the Third Defendant in order to facilitate theft of my property by deceiving the Third Defendant, as it is clear that the First and Second Defendants knew that I was the owner of the domain name by virtue of the WIPO administrative proceedings and the subsequent UK court case against the First Defendant.

113. The relationship between the First and Second Defendant is a long term one, from at least 2002. The relationship between the First and Third Defendant is a recent one, the Third Defendant only becoming involved with the First Defendant in late October 2005 for the purposes of the US court case, as in relation to the First Defendant's trademark matters, the First Defendant's lawyer was, and still is, Carla B. Oakley of Morgan, Lewis & Bockius LLP, One Market Spear Street Tower, San Francisco CA 94105 USA, and for the purpose of the WIPO administrative proceedings, it was Michael S. Denniston of Bradley, Arant Rose & White LLP, 1819 Fifth Avenue, North Birmingham, Alabama 35203 U.S.A.

There is therefore no reasonable excuse for the Second Defendant to be in communication with the Third Defendant unless it was in relation to the US court case and the conspiracy to defraud.

Similarly, there is no reasonable excuse for the Second Defendant's point of contact to be the Third Defendant, and not the First Defendant directly, or via their longterm trademark lawyers, Morgan, Lewis & Bockius.

Similarly, there is no reasonable excuse for the Third Defendant to be in contact with the Second Defendant.

114. The Defendants engaged in a multitude of activities and performed many acts aimed at destroying the rights and freedoms afforded to me by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

115. The Second Defendant was, and is, listed under "**Names and Addresses**" on the First Defendant's CTM trademark details as "**Representative**" and "**Correspondence Address**" in relation to Community Trademark **E2960995** and as "**Service**" in relation to the First Defendant's UK Trademark **2372000**.
116. On 13th July 2006, I asked the UK Trademark and Patent Office the question:

"is the agent listed under "representative" or "service" obliged to receive court documents on behalf of the proprietor, served by a third party. What the agent and proprietor do afterwards is between themselves, I am simply asking that is FFW in this case, by being a representative for the proprietor, obliged to accept service of documents on behalf of the proprietor in relation to a trademark that is registered in the UK and EU. Such documents being addressed to the proprietor at the representative's address."

The UK Trademark and Patent Office replied on the same date and clarified that:

"if the Trade Mark was a UK registration the Address for Service would be obliged to receive court documents on behalf of the proprietor if they were trade mark related."

117. I also asked the European Trademark Office the question:

"If a company has no office or place of business within the European Union, I understand that the company must appoint a natural or legal representative who resides in/has an office within the European Union, in order for the company to be able to have a Community Trademark (CTM).

My question is, what are the obligations of the legal representative appointed by the company in relation to the company's CTM?

For example, if a third party sues the company in relation to a trademark matter, then is the legal representative obliged by any EC regulations, directive, or other, to receive service of documents?"

The European Trademark Office replied and clarified that:

"the obligations of the legal representative appointed by the company in relation to the company's CTM. In this respect, national law regarding legal representation would apply."

118. **Civil Procedure Rules (CPR) 63.16** state:

III SERVICE

Service

63.16 (1) *Subject to paragraph (2), Part 6 applies to service of a claim form and any document under this Part.*

(2) *A claim form relating to a registered right may be served –*

(a) on a party who has registered the right at the address for service given for that right in the United Kingdom Patent Office register, provided the address is within the jurisdiction; or

(b) in accordance with rule 6.19(1) or (1A) on a party who has registered the right at the address for service given for that right in the appropriate register at –

(i) the United Kingdom Patent Office; or

(ii) the Office for Harmonisation in the Internal Market.

119. The address for "representative" is in fact an "address for service".

COMMISSION REGULATION (EC) No 2868/95

*(e) if the applicant has appointed a representative, his name and the address of his place of business in accordance with point (b); if the representative has more than one business address or if there are two or more representatives with different business addresses, **the application shall indicate which address shall be used as an address for service**; where such an indication is not made, only the first-mentioned address shall be taken into account as an address for service;*

*(b) the name, address and nationality of the applicant and the State in which he is domiciled or has his seat or an establishment. Names of natural persons shall be indicated by the person's family name and given name(s). Names of **legal entities**, as well as bodies falling under **Article 3** of the Regulation, shall be indicated by their official designation and include the legal form of the entity, which may be abbreviated in a customary manner. The telephone numbers, fax numbers, electronic mail address and details of other data communications links under which the applicant accepts to receive communications may be given. **Only one address shall, in principle, be indicated for each applicant. Where several addresses are indicated, only the address mentioned first shall be taken into account, except where the applicant designates one of the addresses as an address for service;***

Regulation (EC) No 40/94 (the Regulation)

Article 3: Capacity to act

For the purpose of implementing this Regulation, companies or firms and other legal bodies shall be regarded as legal persons if, under the terms of the law governing them, they have the capacity in their own name to have rights and obligations of all kinds, to make contracts or accomplish other legal acts and to sue and be sued.

Trade Marks Rules 2000 as amended by the Trade Marks (Amendment) Rules 2001 (1st January 2002) and the Trade Marks (Amendment) Rules 2004 (5th May 2004)

10. Address for service

(2) The address for service of an applicant for registration of a trade mark shall upon registration of the mark be deemed to be the address for service of the registered proprietor, subject to any filing to the contrary under paragraph (1) above or rule 44(2) below.

(4) Anything sent to any applicant, opponent, intervener or registered proprietor at his address for service shall be deemed to be properly sent; and the registrar may, where no address for service is filed, treat as the address for service of the person concerned his trade or business address in the United Kingdom, if any.

120. It is evident that the Second Defendant was legally obliged to accept service of the documents on behalf of their client, the First Defendant. The claim form being served upon the First Defendant at the address of the Second Defendant.
121. It is clear that the First and Second Defendants deliberately refused to accept service of the court claim form served by me, in order to obstruct and pervert the course of justice and to allow sufficient passage of time in which to secure a judgment in default against third parties in the US in order to obtain my property with the intent to keep me occupied with the First and Second Defendant's Application of 4th November 2005.
122. The First and Second Defendant's Application of 4th November 2005 was set for a Hearing on 20th February 2006. Therefore the First and Second Defendant's Application put me out of time to proceed with claim number HC 05C02048 as by the time of the Hearing over six months had passed since I initiated the claim. I was however, unaware of the issue of time limitation in relation to service of the claim form at that stage and only later became aware of the issue at a Hearing on 28th June 2006, in relation to the costs order resulting from the Hearing of 20th February 2006, when Mr Caunt of the Second Defendant enquired whether the six months to serve would count from the time when the claim was initiated, or as service of the claim form was set aside, would it count from the date of the hearing 20th February 2006. Master Bragge understood that it would be from the time the claim form was initiated. Therefore at that point, my claim had expired.

After becoming fully aware of the issue of time limitation, I applied to Master Bragge for an extension of time but this was refused and I therefore asked Master Bragge if I needed permission to start a new claim. Master Bragge explained that permission was not necessary since claim number HC 05C02048 was deemed not to be served and had expired.

123. The First and Second Defendants have obtained money by deception in relation to the costs order of 20th February 2006.

The First and Second Defendants obtained the costs order by false statements designed to mislead the court and to obstruct and pervert the course of justice and with the intent to defraud me of £2,173.75.

To date, the First and Second Defendants have obtained 20 payments of £25 each.

124. In order to obtain money by deception and to pervert the course of justice, the Second Defendant resorted to perjury having stated on their Application Notice of 4th November 2005, "***we are not now, and never have been, authorised to accept service of any court proceedings on behalf of the defendant***", and "***the defendant has no address for service within the jurisdiction***" supported by a Statement of Truth signed by Daniel Caunt, solicitor at the firm Field, Fisher, Waterhouse, and listing Zoe Allenby, also a solicitor at FFW, as a reference and point of contact (the Second Defendant).
125. The Second Defendant knowingly and willfully made false statement which was designed to mislead the court, pervert the course of justice and done with the intent to create and secure a costs order against me.

126. The Second Defendant, by tortiously claiming that I had served the claim form improperly upon their client (the First Defendant) caused unnecessary and unacceptable delay in the case and caused me to attend two Court Hearings (20th February 2006 and 28th June 2006) unnecessarily and caused me financial loss in relation to attending those Hearings, and in relation to the costs order, as well as loss of my time in attending the Hearings and loss of my time in preparing for the Hearings, including legal research and preparation of documents.
127. As a direct result of the Second Defendant's tortious action above, the First and Third Defendants were able to execute a theft of my property.
128. The Second Defendant abused the legal process.
129. From the point when the First Defendant initiated administrative proceedings, which was the very first time I had any involvement in administrative proceedings, the Defendants have occupied my time.
130. The constant time that I have had to spend on this case, including defending my position against the First and Second Defendant's Application to Set Aside, has meant that I have had to take that time from elsewhere, instead of being able to spend that time on my business and with my family.
131. My nursery business stock, worth in excess of £1,000,000, has been ruined as a direct result of the vast amount of time that I have had to spend on the administrative proceedings and the subsequent court cases resulting from what was a groundless infringement action by the First Defendant, who were later joined in their actions by the Second and Third Defendants.

Consequently, the Defendants individual and/or collective actions, have resulted in damage to business stock, loss of business, loss of revenue, and has seriously affected the future earnings, customer base and potential of my business.

132. By the Defendants actions, and their actions of occupying my time, I have been unable to spend any meaningful amount of time with my family.

Family holidays have had to be cancelled in order to prepare for the administrative proceedings and subsequent court cases and for the last year I have been unable to participate in any of my hobbies, unable to attend any religious ceremonies, have had to put my child into full time nursery school, have had to cancel most of my child's activities and have been unable to take my child to any auditions resulting in an unknown amount of loss of assignments for her.

133. By the Defendants actions, and their actions of occupying my time, I have been unable to spend any amount of time on maintenance of my family home.
134. By the Defendants actions, and their actions of occupying my time, I have been unable to spend any amount of time on maintaining and developing my other criticism websites.
135. Until I receive justice in relation to the Defendants actions, my time remains hostage and what little stock there is left in my business is continuously deteriorating, consequently my business is spiraling downwards every day.