

INTERNET LAW

**Domain Names — Internet Law — Privacy — Banking — Intellectual Property —
Copyrights**

Swiss bank sought shutdown of whistleblower Web site

Decision (P) Liability only

Case Bank Julius Baer & Co. LTD, a Swiss entity, and Julius Baer Bank and Trust Co. LTD, a Cayman Islands entity v. Wikileaks, an entity of unknown form, Wikileaks.org, an entity of unknown form, Dynadot LLC, a California limited liability corporation, and Does 1 through 10, inclusive, No. CV08-0824 JSW

Court United States District Court, Northern District, San Francisco

Judge Jeffrey S. White

Date 2/18/2008

Plaintiff**Attorney(s)**

William J. Briggs II, Lavelly & Singer, PC, Los Angeles, CA (Bank Julius Baer & Co. LTD, Julius Baer Bank and Trust Co. LTD)

Martin D. Singer, Lavelly & Singer, PC, Los Angeles, CA (Bank Julius Baer & Co. LTD, Julius Baer Bank and Trust Co. LTD)

Evan N. Spiegel, Lavelly & Singer, PC, Los Angeles, CA (Bank Julius Baer & Co. LTD, Julius Baer Bank and Trust Co. LTD)

Defense**Attorney(s)**

Garret D. Murai, Wendel, Rosen, Black & Dean, LLP, Oakland, CA

Facts & Allegations

On Feb. 8, 2008, plaintiff Julius Baer & Co. LTD, a Swiss bank with 30 worldwide locations, and a Cayman Island subsidiary, filed an ex parte application for a temporary restraining order against Wikileaks.org and Dynadot LLC.

Wikileaks is a loosely based international organization created by anonymous persons for the purpose of publishing on the Internet internal documents "leaked" from government agencies and private companies that purportedly reveal wrongdoing and bad behavior. It also posted private bank records, tax documents and consumer records and summarized and discussed its postings. It claims to possess over a million documents which include the secret U.S. military manual used to run the detention center at Guantanamo Bay, Cuba.

Dynadot is a company that registers domain names. These names represent hard-to-remember Internet addresses composed completely of numbers, called IP addresses. A domain name--which is not the actual address itself--is translated by the registering host into the numeric address and directed to the site that hosts the Web site. Different domain names could be directed to the same numeric address. The creators of Wikileaks registered the domain using a privacy function for an additional fee so their identities would remain hidden. By this arrangement, Dynadot acted as the contact for the Wikileaks creators. Although Dynadot also offers a Web-hosting service that allows publication of the contents of a Web site on its own server, it did not host the Wikileaks Web site. Its role was limited to registering Wikileaks' domain name and redirecting visitors to the actual hosting site located in Sweden.

Sometime in 2005, a former Julius Baer employee, Rudolf Elmer, who had worked in its Cayman Island location, leaked internal bank documents to Cash, a Swiss business weekly. The documents contained

information from private accounts holding billions of dollars. The newspaper and other newspapers which also reported the story did not publish the documents. The documents were later published on Wikileaks' Web site.

Julius Baer sued Wikileaks and Dynadot. The bank claimed that the defendants had engaged in unfair competition and business practices, invasion of privacy and conversion. It argued that the leaked documents were stolen from its offices in violation of both a confidentiality agreement the bank had with Elmer and criminal statutes, and that by taking possession of and publishing the documents the defendants shared Elmer's culpability. They also argued that California and U.S. privacy laws protected the kind of personal banking information Wikileaks had posted.

Dynadot entered into a stipulated settlement with Julius Baer in which Dynadot agreed to lock the wikileaks.org domain name; to prevent its transfer to a different domain registrar, and to disable the domain name and account to prevent any changes being made to them; to turn off the account's privacy function; and to preserve the account records for the domain name and account. Julius Baer agreed to file a dismissal with prejudice in favor of Dynadot.

Wikileaks did not respond to the complaint or appear in court.

Injuries/Damages

Julius Baer sought injunctive relief to prevent Wikileaks from publishing or hyper-linking to bank documents or information on any of the Wikileaks sites, which were registered in several national jurisdictions; the deletion of all bank documents on the sites and the blocking of any new publication of bank documents; to provide the identities of the names, addresses, telephone numbers of the Wikileaks site developers, host service providers, and web operators. The plaintiff also requested that Wikileaks be precluded from offering oral arguments at the hearing on the application for the injunction because it had not responded in a timely manner to the complaint.

From Dynadot, Julius Baer sought to remove all hosting records of the domain name "wikileaks.org"; to prevent the domain name from returning to the Wikileaks Web site or any other Web site or server; to lock the Wikileaks domain name from administrative access or transfer to another registrant; and to reveal the true identity of the Wikileaks' registrant.

Result

The court granted Julius Baer's request for an injunction, ordering Dynadot to lock the wikileaks.org domain name to prevent its transfer to a different registrant; to disable the domain name and the account to prevent access to any changes from being made to the domain name and account; to turn off the privacy lock on the domain name and account; to preserve the account records and data for the domain name; to clear and remove all hosting records for the domain name and prevent the domain name from reverting to any other Web site; to park the domain name on a blank page; to produce all account records and billing information relating to the domain name and its users.

In an amended order, the court enjoined Wikileaks from publishing, disseminating or hyperlinking to any document, information or images of internal company documents on any Web sites under its control or any Web site where it can post or add content; to block and prevent any other publication, dissemination or hyperlinking, to any new or unpublished bank property; to remove all copies or images of bank documents from all the Web sites it controlled and any other information contained therein; to provide Julius Baer with the names, addresses, telephone numbers and other identifying information for the Wikileaks' hosting services and providers, Web site operators and Web site developers for the purpose of providing notice of the court's decision.

Plaintiff(s)

Bank Julius Baer & Co. LTD

Julius Baer Bank and Trust Co. LTD

Demand None reported

Offer None reported

Insurer(s)

None reported

Plaintiff**Expert(s)**

None reported

Defense**Expert(s)**

None reported

Post-Trial

After the court ruling created interest in the national and international media, the American Civil Liberties Union, the Electronic Frontier Foundation and other groups filed motions to act as interveners and sought to file amicus briefs on behalf of Wikileaks. A coalition of media companies including the Los Angeles Times, Gannet and the Hearst Corporation also moved to file amicus briefs. The court granted the amicus filing requests but did not rule on the intervener motions. At a hearing scheduled for February 29 to hear new arguments, the person who registered the wikileaks.org domain name with Dynadot, John Shipton, an Australian who resides in Kenya, will be represented by legal counsel, according to his attorney, Roger Myers. This will be the first time an agent of Wikileaks has appeared in this action.

Editor's Note

This report is based on information gleaned from court documents, news sources and information provided by plaintiff's counsel and counsel for Dynadot. Jay Lim, a Wikileaks spokesperson, referred the reporter to an attorney, Roger Myers, who also provided information.

Written By

Eddie Vega