

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

COOLMATH.COM, LLC and
Plaintiff,

-v-

COOLMATHGAMES.COM,
MICHAEL GARGIULO and
JOHN DOE
Defendants.

Case No.: 14-cv-4291(LK)(SN)

**AFFIDAVIT OF MICHAEL GARGIULO
IN OPPOSITION TO PLAINTIFF'S
APPLICATION FOR PRELIMINARY
INJUNCTION**

STATE OF NEW YORK)
) SS:
COUNTY OF KINGS)

I, MICHAEL GARGIULO, declare under penalty of perjury as follows:

1. I am over 18 years of age, am the defendant in the above-entitled action and have personal knowledge of the facts and circumstances set forth herein. I submit this affidavit in opposition of Plaintiff's Application for an Order to Show Cause for a Preliminary Injunction and Temporary Restraining Order ("Application").

2. I am a member of and an officer of A Aron LLC ("A Aron"), and as such, have authority to discuss A Aron's business. A Aron LLC is not a party to the above action, but its licensed website "www.coolmathgames.com" has been implicated by various allegations made by Plaintiff Coolmath.com, LLC. ("Plaintiff") herein. I thus submit this affidavit upon personal knowledge and from review of the relevant business records of A Aron. If called as a witness could and would testify to the matters set forth herein.

3. I am an individual, however in the Complaint, Plaintiff states that "Coolmathgames.com" is a "d.b.a." under which I operate. I have never conducted business as "Coolmathgames.com" in my individual capacity.

4. A separate and distinct business entity, A Aron LLC, conducts some of its business via operation of the website located at the domain name <coolmathgames.com>. A Aron is a limited liability company formed under the laws of the State of Nevada with its principal place of business at 378 Aldrige Ave., Scottdale, GA 30079.

5. I have never conducted any business activities in the State of New York.

6. I have never received any income or revenue from business activities in New York, from interstate or international commerce involving New York.

7. I have always exclusively been a domiciliary and citizen of the State of Georgia.

8. I have never resided in New York.

9. I have never and currently do not own or lease any real or personal property located in New York, in my individual or any other capacity.

10. I have never and currently do not have any bank or investment accounts of any type in New York in my individual or any other capacity.

11. I have never bought or sold and currently do not buy or sell any assets in New York in my individual or any other capacity.

12. I have never employed and currently do not employ anyone in New York in my individual or any other capacity, other than the attorneys that temporarily represent me in relation to the instant proceeding.

13. I have never been and am currently not an owner or officer of any business that is registered in New York.

14. I have never been and am currently not a controlling shareholder of any corporation that is registered in New York.

15. I have never instituted any legal action in New York.

16. I have never in my individual or any other capacity made any contribution or donation to any charitable or non-profit organization(s) in New York.

17. I have never in my individual capacity or any other capacity had any mailing address in New York.

18. I have engaged in any activity that would subject me to the protection of the laws of the State of New York.

19. While I am a member of A Aron, I do not have authority or a license to independently operate A Aron's business, including but not limited to operating the website at <coolmathgames.com>, in my individual capacity. All operations of <coolmathgames.com> are conducted by A Aron.

20. On or about January 15, 2014, A Aron entered into a Domain Rental Agreement with Vertical Axis, Inc., the owner of the domain name <coolmathgames.com>, to license the right to use the Subject Domain for the operation of a website thereon.

21. According to publically available whois records, Vertical Axis registered <coolmathgames.com> in 2001, long before Plaintiff registered the <CoolMath-Games.com> domain name and before Plaintiff owned a trademark registration for any of its alleged marks.

22. It is my understanding that the Subject Domain has been in use in connection with the marketing and promotion of math-oriented flash games for roughly 13 years.

23. I, Michael Gargiulo, neither own the Subject Domain nor operate <coolmathgames.com> in my individual capacity or via any right conferred to A Aron in the Domain Rental Agreement.

24. A Aron LLC relied on Vertical Axis's prior registration and use of the domain name and Plaintiff's silence and failure to act for roughly 13 years, in licensing the Subject Domain for use in connection with "cool math games."

25. The website at the Subject Domain features flash games, a generic term for web browser-based graphic games played using the Flash or Java plugin on a webpage.

26. Thousands of websites, including the one operated by A Aron at the Subject Domain, offer math based flash games and use the terms "cool math" and "cool math games."

27. As a result, A Aron entered into the license agreement and operation of the website in a very crowded field of flash game websites offering, "cool math games."

28. A Aron did not copy any images, content or design from Plaintiff.

29. In choosing the general color scheme for the layout of the website, A Aron evaluated a number of different logos and colors that would be appealing to visitors. Major companies such as Google, Microsoft, eBay, Apple, Toys'R'Us, Circo, Stride Rite, CNBC, and General Mills currently use or have used multi-color logo and logotypes. The color scheme that A Aron employed on the site includes five of the top 7 colors used in logo designs of the world's top brands. A Aaron believed that these colors were commonly used and available for use, but is willing to change the look and feel of the site, and post disclaimers to alleviate any possible confusion.

30. A Aron was incorporated in the State of Nevada in 2013.

31. A Aron maintains its principal place of business in the State of Georgia.

32. A Aron does not maintain any bank account in the State of New York.

33. A Aron does not solicit customers in the State of New York.

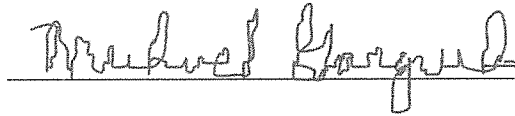
34. A Aron has conducted and will continue to conduct periodic member meetings.

35. A Aron shall file annual tax returns with the IRS and in the States of Nevada and/or Georgia.

36. A Aron does not pay for any officer or member's personal expenses, and no officer or member of A Aron charges personal expenses to the company.

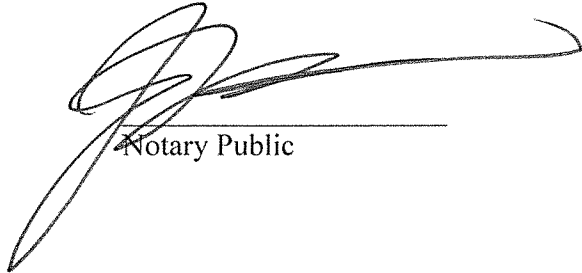
I declare under penalty of perjury that the foregoing is true and correct.

By: MICHAEL GARGIULO



Sworn to before me this

23 day of June 2014


Notary Public

JUSTIN H. R. MERCER
Notary Public, State of New York
No. 02ME6278715
Qualified in New York County
Commission Expires March 25, 2017