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November 2, 2017

VIA E-MAIL ONLY
Stephen J. Padula, Esq.
Padula Bennardo Levine
3837 NW Boca Raton Boulevard, Suite 200
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sjp@pbl-law.com

RE: ***Delaire Country Club, Inc. v. Perfect Privacy, LLC, et al.***
WIPO Case No. D2017-1547
Our File No. 10026-015

Brecker v. Delaire Country Club, Inc.
Case No. 50 2017 CA 010245 XXXX MB AD
Our File Nos. 10250-001

Dear Mr. Padula:

As you know, this firm represents Delaire Country Club, Inc. in connection with the above referenced matters. Please be advised that your October 30, 2017 correspondence addressed to Jim Krivok, the Club's general counsel, wherein you demand payment of $7,430.00 on behalf of your client Manfred Brecker, has been referred to our office for response.

Before discussing your client's demand, however, we will address your November 2, 2017 email to Mr. Krivok, in which you discuss and encounter with Club President, Curt Karpel, which took place outside the presence of Club counsel, and our position regarding same. Specifically, on October 22, 2017, you attempted to attend the Club's membership meeting in the company of your client Mr. Brecker. You did not notify either me or Mr. Krivok of these plans in advance, and the Club did not have its counsel present at this meeting. In the email received this morning, you state that Mr. Karpel denied entry to both you and Mr. Brecker, contrary to past representations that Mr. Brecker could attend members meetings while he is suspended. In fact and in truth, Mr. Karpel expressly informed you that Mr. Brecker was permitted to attend and participate in the meeting as promised, but that you were not a member of the Club, and were not entitled to attend with him. According to your email, you tried to persuade Mr. Karpel into permitting you entry by offering to remain silent and by claiming that you were attending this meeting as the personal representative of Mrs. Brecker. When you were still refused, Mr. Brecker made a decision not attend the meeting alone, and you both departed.

On October 26, 2017, your client filed a grievance complaint against Mr. Karpel, which was based in part on your efforts to attend the October 22, 2017 meeting. In the complaint, Mr.

Brecker claims that Mr. Karpel engaged in misconduct by refusing to allow his attorney to be present at the October 22, 2017 members meeting. He specifically claims that Mr. Karpel was wrong to deny you entry because "there is currently pending litigation which deals with the same issues that were being discussed at the meeting" and "it is unfair under those circumstances, not to allow Mr. Brecker to have legal representation with him." The complaint makes clear that Mr. Brecker was not prevented from attending the meeting alone, but that he refused to do so.

This situation is unacceptable. Your failure to notify the Club's counsel of your plans to attend this meeting and your resulting discussion with Mr. Karpel are inappropriate and should not have occurred. We find it especially troubling that your client has filed a grievance complaint about this encounter, wherein he describes what occurred and why in terms that contrast so sharply with your own. We expect there will be no further contact between you between you and Mr. Karpel, or with any of the other members of the Board of Governors, outside the presence of Club counsel, and will not tolerate any in the future. Failure to comply with this directive will force us to seek the court's intervention as necessary.

Please also be advised that we are in complete agreement with Mr. Karpel's decision to prohibit you from attending the subject members meeting. You are not a member of the Club, and you have no right to accompany a client, or represent their interests at a Club meeting. For this reason you will not be permitted to attend the November 12, 2017 meeting as requested. Mr. Brecker may attend and participate in any upcoming Club meeting during his suspension, but he is not entitled to bring legal counsel, and you will not be permitted entry in the future.

We move now to your October 30, 2017 letter, which claims the amount demanded represents the attorneys' fees and costs Mr. Brecker incurred in connection with the World Intellectual Property Organization arbitration proceeding identified above, for which you allege the Club is contractually obligated to reimburse Mr. Brecker. You further state that the Club's failure to tender payment in the full amount of your demand will result in Mr. Brecker filing a new lawsuit for breach of contract and other causes of action you may identify. However, there is simply no legal basis for your client's demand or the threatened lawsuit, and the Club is under no obligation to reimburse his attorneys' fees or costs incurred in defense of the referenced arbitration. In short, this claim has no merit, and your demand is rejected on behalf of the Club.

The arbitration proceeding on which your client bases this demand was an administrative proceeding filed pursuant to Section 4(i) of the Uniform Domain Name Dispute Resolution Policy (the "Policy") and governed pursuant to the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules of Procedure"). We first note that neither the Policy nor the Rules of Procedure authorize an award of prevailing party attorneys' fees or costs at the conclusion of the subject arbitration. In fact, Section 4(i) of the Policy provides that the only remedies available in these administrative proceedings are cancellation of the subject domain name or re-registration and transfer of control of the domain name from Respondent to Complainant. Simply put, neither the Club nor Mr. Brecker would be entitled to recover their attorneys' fees or costs from the other, under any circumstance, in connection with such an administrative proceeding. The limited scope of remedies available under the Policy is further reflected by the parties' own submissions to the arbitrator, which were devoid of any requests for attorneys' fees or costs as a form of relief, and which sought only the limited remedies specifically authorized in

Section 4(i). Further, both parties' submissions at arbitration complied with the pleading requirements under the Policy and the Rules of Procedure at all times, which necessarily precludes any requests for unauthorized remedies, such as any attorneys' fees or costs, in either parties' filing. The assigned arbitrator likewise complied with the Policy and Rules of Procedure as expected, and no effort was made to award either party with an unauthorized remedy.

Ultimately, the Club was disappointed in the arbitrator's decision to deny the UDRP complaint; as we believe the arbitrator failed to properly recognize your client's various commercial motivations, or the substantial amount of bad faith involved with the manner in which he continues to operate his website. Nevertheless, we respect the procedures established by the Policy, and would have expected the proceeding to fully conclude once the arbitrator issued his ruling. Mr. Brecker it seems would rather reopen and expand this dispute, whether or not there is a legal or factual basis to do so. To this end, your client threatens the Club with a civil lawsuit to recover attorneys' fees and costs incurred in a completely separate administrative proceeding, which is now concluded, and which prohibited the exact kind of relief Mr. Brecker now seeks.

Your client attempts to overcome the gross procedural inappropriateness of his demand by claiming he has a separate contractual right to recover the attorneys' fees and costs incurred during the now closed administrative proceeding, which obligates reimbursement from the Club. The demand letter provides no legal authority to support the filing of an independent civil action solely to recover the attorneys' fees incurred in a separate arbitration; and there's no effort to identify either the contract on which this claim relies, or any specific provisions that have allegedly been violated. That said, your client previously identified Article XVII, Section 6 of the Restated By-Laws for Delaire Country Club, Inc. (the By-laws") in prior correspondence to the Club's President as his basis for seeking reimbursement of his attorneys fees from the Club. However, your client is fundamentally wrong to rely on that section of the By-laws, as it has no application to an administrative proceeding or the attorneys' fees incurred therein.

Specifically, Article XVII, Section 6 provides for the recovery of prevailing party attorneys' fees "in the event of litigation between the Club and a member." We note that your client often misquotes this By-law as he did in his October 16, 2017 correspondence to the Club President, wherein he omitted the word "litigation" from the quoted text and misleadingly claimed this provision would apply to disputes outside the context of litigation, such as the administrative proceeding at issue. Obviously, the parties' administrative proceeding was not litigation between the Club and Mr. Brecker and therefore Article XVII, Section 6 does not apply by the plain meaning of its terms. This interpretation is the only one that's consistent with the plain and ordinary meaning of language contained in Article XVII, Section 6, which was seemingly acknowledged when your client purposely omitted the word "litigation" while he was seeking to apply Article XVII, Section 6 to a broader range of disputes. Furthermore, an interpretation that limits the application of this By-law to actual lawsuits is consistent with Florida case law requiring a contract provision governing an award of attorneys' fees must be strictly construed due to the fact that such provisions abrogate the common law. Thus, strict construction of Article XVII, Section 6 limits the application of this provision to actual litigation between the Club and a member. The provision would have no application to arbitrations, administrative hearings, or other pre-suit proceedings or disputes between the Club and one of its members.

I would also note as we have in the past that Article VI, Section 5 of the By-laws vests the Club's Board of Governors with the authority to determine the interpretation or construction of the By-laws, or any part thereof, which may be of doubtful meaning. While we believe the language of Article XVII, Section 6 clearly precludes any claim for attorneys' fees incurred outside the context of actual litigation, any doubtful meaning created by your client's demand or threatened legal action would be resolved by the Board of Governors. As indicated above, the Club did not include a claim for attorneys' fees or costs in its UDRP complaint because it was clear such a remedy is unavailable under the Policy. Moreover, the Club made no effort to include a claim for attorneys' fees or costs pursuant to Article XVII, Section 6 as an alternative theory in arbitration because the Board already concluded that this provision would not apply to an administrative proceeding that falls short of actual litigation with a member. Accordingly, and to the extent your client insists Article XVII, Section 6 contains doubtful meaning, and should therefore apply to the subject proceeding, this position has already been rejected, and pursuant to Article VI, Section 5, such decision is final.

For these reasons, we see no merit in the threatened claim for attorneys' fees and costs, and no basis for further response. Additionally, we believe any lawsuit you were to file in pursuit of this these fees or your client's theory would have no reasonable basis in fact or law, and would warrant the imposition of sanctions pursuant to Florida Statutes § 57.105.

We therefore urge you to reconsider this claim, and expect you will not file an ill-advised legal action, with no reasonable chance of recovery. Should you instead proceed with this matter, the Club will defend itself, and we will seek the recovery of all attorneys' fees and defense costs incurred from both you and your client.

Very truly yours,

BOYD RICHARDS PARKER & COLONNELLI, P.L.

Kyle T. Berglin, Esq.

Kyle T. Berglin, Esq.

KTB/ain

cc: Jim Krivok, Esq.