

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OFFICE DEPOT, INC.,

No. C 06-80356 SI

Plaintiff,

**ORDER GRANTING IN PART AND
DENYING IN PART AMENDED
MOTION TO AUTHORIZE SALE OF
DOMAIN NAMES AND DISTRIBUTION
OF PROCEEDS**

v.

JOHN ZUCCARINI,

Defendant.

DS HOLDINGS, LLC,

Judgment Creditor,

v.

JOHN ZUCCARINI,

Judgment Debtor.

Judgment creditor DS Holdings, LLC and intervenor the United States have filed an amended motion to authorize auction of domain names currently in the receiver's possession and the distribution of proceeds from the auction to satisfy DS Holdings' judgment and the United States' tax liens against defendant John Zuccarini. For the reasons set forth below, the amended motion is GRANTED as to the auction and DENIED WITHOUT PREJUDICE as to the distribution of auction proceeds.

BACKGROUND

On September 10, 2007, the Court granted DS Holdings' ex parte application for appointment of a receiver to hold certain internet domain names owned by Zuccarini, so that the domain names may

1 DS Holdings, the United States, and the receiver propose to auction the domain names in
2 conjunction with Latona's. The receiver has submitted a declaration which avers that Latona's is "one
3 of the most prominent auction houses for domain names." Blacksburg Decl. ¶ 8. Both DS Holdings
4 and the United States have agreed to the receiver's suggested auction procedure, which will involve
5 auctioning the domain names using appropriate reserve prices. *Id.* ¶ 11. Any domain names that are
6 not sold because the reserve price is unsatisfied will remain in the receiver's possession and will
7 continue to generate revenue "until the next appropriate auction, or until the Court directs otherwise."
8 *Id.* ¶ 13. In the Court's view, the receiver's recommendations, supported as they are by DS Holdings
9 and the United States, and backed up by the receiver's research, are entitled to weight. Given that it is
10 in the interest of all parties – including Zuccarini – to obtain the highest possible revenues for the
11 domain names, the Court is persuaded that the proposal to auction the domain names in conjunction with
12 Latona's is appropriate.

13 The Court wishes to note that DS Holdings and the United States initially sought to auction the
14 domain names at the T.R.A.F.F.I.C. Domain Conference & Expo. The receiver stated that
15 T.R.A.F.F.I.C. was "the domain industry's premier conference, attracting attendees that control over
16 20 million domain names with 50 million unique daily visitors." *Id.* ¶ 7. In opposing the proposed
17 auction process, however, Zuccarini argued that the use of T.R.A.F.F.I.C. raised the specter of a conflict
18 of interest because Howard Neu, an attorney who represented Zuccarini in the underlying action filed
19 by Office Depot, is a co-owner and organizer of T.R.A.F.F.I.C. The Court asked for a supplemental
20 response from DS Holdings and the United States concerning the conflict issue. They have responded
21 that although no conflict exists given the limited nature of Neu's prior representation of Zuccarini and
22 the fact that Neu and Zuccarini now share the objective of maximizing auction prices for the names, the
23 issue has become moot. Apparently as a result of certain communications sent by Zuccarini,³ Neu and
24 T.R.A.F.F.I.C. have decided not to participate in the auction. The auction will now be run by Latona's.
25 Zuccarini has not identified any conflict or other problem arising from the partnership with Latona's.

26 The amended motion to authorize auction of the domain names is therefore GRANTED. The

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28 ³ These allegedly threatening communications form the basis of a separate motion for contempt
filed against Zuccarini by DS Holdings.

1 February 20, 2007 Preservation Order is MODIFIED in order to permit the auction. DS Holdings and
2 the United States shall notify Zuccarini and the Court once they have finalized the date and location for
3 the auction.

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5 **II. Distribution of Proceeds**

6 DS Holdings and the United States also move for an order permitting distribution of the auction
7 proceeds to satisfy their judgment and tax liens, respectively. Zuccarini opposes this request on the
8 ground that DS Holdings and the United States have not provided a distribution plan or informed
9 Zuccarini of their respective priority of interests or the total amount remaining on his obligations. The
10 Court agrees that DS Holdings and the United States must inform Zuccarini and the Court of the total
11 proceeds from the auction, the order of priorities, and the total amount outstanding on Zuccarini's
12 obligations before the receiver may distribute the proceeds. The motion to authorize distribution of the
13 auction proceeds is therefore DENIED at this time. Within thirty days of the completion of the motion,
14 DS Holdings and the United States shall file with the Court and serve on Zuccarini a proposed
15 distribution plan that incorporates the information listed above.

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17 **CONCLUSION**

18 For the foregoing reasons and for good cause shown, the Court hereby GRANTS the motion to
19 authorize auction of the domain names and DENIES the motion to authorize distribution of the auction
20 proceeds. (Docket No. 140). DS Holdings and the United States shall file a proposed distribution plan
21 within thirty days of the completion of the motion.

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23 **IT IS SO ORDERED.**

24 Dated: September 7, 2010

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27 SUSAN ILLSTON
28 United States District Judge