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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF ARIZONA**

13 SECUREX FILINGS, LLC,

14 Plaintiff,

15 vs.

16 UNITED STATES SECURITIES AND
17 EXCHANGE COMMISSION,

18 Defendants.

Case No.

COMPLAINT

19
20 Plaintiff Securex Filings, LLC (“Securex”), through its undersigned attorneys, for
21 its complaint against the United States Securities and Exchange Commission
22 (“Defendant”), alleges as follows:
23

24 **STATEMENT OF THE CASE**

25 1. This action arises out of a Complaint and Commencement of
26 Administrative Proceeding filed by Defendant before the World Intellectual Property
27 Organization Arbitration and Mediation Center improperly seeking to cancel or transfer
28

1 Securex's domain names, including, as relevant here, www.secfile.com ("UDRP
2 Proceeding"). On April 4, 2017, the WIPO Administrative Panel issued a decision
3 adverse to Securex, ordering the transfer of the domain name, secfile.com, to Defendant.
4 A copy of the decision in the UDRP Proceeding is attached hereto as **Exhibit 1**. Securex
5 herein seeks relief from the WIPO determination in the UDRP Proceeding in the form of
6 declaratory judgment that its use of "secfile.com" does not constitute unauthorized
7 misappropriation or infringement of Defendant's registered trademark, nor does it
8 constitute false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C.
9 §§ 1125(a), (c).
10

11 **JURISDICTION AND VENUE**

12
13 2. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1338. The claims
14 alleged in this Complaint arise under the Federal Declaratory Judgment Act 28 U.S.C.
15 Section 2201-02, and the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* and 1121.
16

17 3. Defendant has consented to personal jurisdiction and venue with this Court.
18 In its Complaint in the UDRP Proceeding, at Paragraphs 55-56, Defendant expressly
19 stated that, pursuant to Paragraph 3(b)(xii) of the Rules for Uniform Domain Name
20 Dispute Resolution Policy, it has consented to the jurisdiction of this Court with respect
21 to any non-monetary challenges Securex may make to decisions made by the WIPO
22 Administrative Panel in the UDRP Proceeding as to the domain name "secfile.com."
23

24 ///

25 ///

26 ///

PARTIES

4. Plaintiff Securex is a Colorado Limited Liability Company with its principal place of business at 4800 Happy Canyon Rd., Suite 220, Denver, Colorado 80237.

5. Defendant is an administrative agency of the United States government, with its principal office located in Washington, DC.

GENERAL ALLEGATIONS

6. Securex is a commercial business that offers, and has offered since 2003, services to publicly traded companies seeking assistance with organizing, formatting and filing of the complex submissions and filings required by the Securities and Exchange Commission, and timely compliance with the rules and regulations of the Defendant's government organization. Securex has owned and operated the domain name www.secfile.com since 2010, and since 2003 has utilized SEC-formative domain names as a means of directing consumers to its associated website since in connection with offering of its commercial services. *See Declaration of Alexander Zervakos*, attached hereto as **Exhibit 2**, ¶ 3. *See also*, WHOIS Lookup record for secfile.com, attached hereto as **Exhibit 3**, showing September 2010 creation date.

7. The Defendant is an administrative agency of the federal government whose function is to regulate the securities industry. It provides, among other services, access to the Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"), which performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the

1 Securities and Exchange Commission. The Defendant performs no commercial services
2 whatsoever. The Defendant does not provide the preparation and filing of securities
3 filings for third parties.

4
5 8. Defendant is commonly known by its acronym, "SEC."

6 9. The acronym "SEC" is also generically utilized as a descriptor by multiple
7 third parties, including Securex, who provide commercial services facilitating
8 understanding and compliance with Defendant's rules and regulations. Examples of
9 SEC-formative domains are attached hereto as **Exhibit 4**.

10
11 10. Securex's domain "secfile.com" specifically directs consumers to the
12 commercial Securex website offering services assisting in the preparation and filing of
13 the large complex filings that are required in order to accurately comply with the
14 Defendant's rules and regulations. Securex's clients are large public companies that
15 conduct public filings of securities at least ten times yearly. For such companies a
16 commercial securities filing company like Securex is essential.

17
18 11. The Defendant is completely different than Securex. The Defendant does
19 not offer securities filing services like Securex. Rather, it is a non-commercial public
20 entity that lists its public mission on its website as to "protect investors; maintain fair,
21 orderly, and efficient markets; and facilitate capital formation." A copy of the mission
22 statement from Defendant's webpage is attached hereto as **Exhibit 5**.

23
24 12. The Defendant on December 10, 2013, ten years after Securex first
25 registered and began using an SEC-formative domain name, obtained a narrow trademark
26 over the letters "SEC" for their service of making information available to the public. A
27
28

1 review of the SEC's description of that mark underlines the scope of the same.
2 Specifically, the description of use provided to the PTO in the two classes designated
3 reads as follows:
4

5 A: IC 016: Printed manuals for computer software **to inform the public about**
6 **investments and the regulation of securities and markets** pursuant to Chapters
7 2A-2E of the United States Code Title 15.

8 B: IC 036: Electronically provided financial information, namely, financial filings,
9 reports, disclosures and information **to inform the public about investments and**
10 **the regulation of securities and markets** pursuant to Chapters 2A-2E of the
11 United States Code Title 15.

12 **Exhibit 6.** (Emphasis added). On its face, the sole services protected under the
13 Defendant's single "SEC" trademark filing are its provision of "printed manuals for
14 computer software" and "electronically provided financial information" in order to
15 "inform the public about investments and the regulation of securities and markets." The
16 Defendant's trademark filing does not mention or include commercial securities filing
17 services. That is because the Defendant is a public entity that does not provide
18 commercial services to the public.
19

20 13. Securex's domain name, "secfile.com", truthfully, accurately and fairly
21 describes the services it offers, as it facilitates and assists publicly trading companies in
22 preparing and submitting filings to the SEC. There is no other accurate means to describe
23 the services that Securex offers. Securex uses the initials "SEC" on its website only in
24 reference to Defendant, only as much as necessary to fairly describe its own filing
25 services, and only in the same generically descriptive manner that those initials have
26 come to be commonly used by the public and securities and markets' community.
27
28

1 14. Defendant owns the non-commercial domain name “sec.gov,” which directs
2 the public to its public website containing public advisements on securities rules and
3 regulations, and providing a link to the EDGAR filing system. Absolutely no commercial
4 services are offered by Defendant’s website.
5

6 15. Securex and Defendant do not offer competing services. Unlike Securex,
7 Defendant does not provide commercial services assisting publicly traded companies in
8 preparing and formatting their filings. Defendant does not provide conversion,
9 organization, or printing services necessary to comply with the complex EDGAR filing
10 requirements. Defendant does not provide financial tagging services related to XBRL
11 (eXtensible Business Reporting Language) reporting. Defendant does not ensure that
12 filings are timely made. All of these commercial services are offered by Securex. In
13 contrast, Securex is not a government agency. Unlike Defendant, Securex provides no
14 regulatory oversight, is not a repository of securities filings, and does not provide a
15 source for the public to obtain printed and electronic information about investments and
16 the regulation of securities and markets.
17
18

19 16. Over the 14 years that Securex has been in operation, no instances of actual
20 confusion have ever resulted from Securex’s use of the domain names “secfile.net” and
21 “secfile.com.” In its fourteen years of operation, Securex has never received a single
22 telephone call or e-mail communication intended for Defendant. *See Declaration of*
23 *Alexander Zervakos*, Ex. 1, Paragraph 8. The reason why is clear. Securex is a private
24 commercial business providing commercial services to large, experienced companies in
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1 need of securities filings. Defendant is a public non-commercial entity that provides no
2 commercial services. These two entities have absolutely nothing in common.

3 17. During the fourteen years relevant to this Complaint, Defendant knew or
4 should have known of Securex's use of the domain names "secfile.net" and "secfile.com"
5 due to the number of daily filings Securex has submitted to Defendant on behalf of
6 Securex's clients over the past fourteen years. Yet, Defendant raised no objection to
7 Securex's use of this domain name until September 2016, three years after its registration
8 of its "SEC" mark and thirteen years after Securex first registered and began using an
9 SEC-formative domain name to fairly and accurately describe its services.
10

11 18. Securex's use of the "secfile.com" domain name has never, and will not
12 now, result in a likelihood of confusion, mistake, or deception as to the affiliation,
13 connection, or association of Securex with Defendant, or as to the origin, sponsorship or
14 approval by Defendant of Securex or Securex's goods and services.
15

16 19. Securex has built up considerable consumer recognition of and goodwill in
17 its domain name. The administrative decision of WIPO would result in Securex
18 improperly being deprived of the continued use of its domain name, where its use is not
19 in violation of the Lanham Act, or any other federal laws. A real and current conflict
20 exists, and unless declaratory relief is provided, Securex will suffer irreparable harm.
21

22 **COUNT I**

23 **Declaratory Judgment of Non-Infringement under 15 U.S.C. § 1114**

24 20. Securex hereby re-alleges and incorporates the allegations contained in
25 paragraphs 1 through 19 as if fully stated herein.
26
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28

1 21. Securex has been providing its commercial services continuously under its
2 SEC-formative domain names for fourteen years. Its domain name is understood by its
3 customers to signify Securex's website and the commercial services it offers, as distinct
4 from the government information and regulatory services offered by Defendant.
5

6 22. Securex adopted its domain name thirteen years prior to receiving any
7 notice of dispute from Defendant over the generically descriptive acronym, "SEC."
8

9 23. Securex's services provided under its domain names are not competing with
10 Defendant, and do not move in any of the same channels of trade.

11 24. After fourteen years of continuous use, Defendant knew or should have
12 known of Securex's use of SEC-formative domain names, and has therefore impliedly
13 consented to Securex's use.
14

15 25. The services that Securex is advertising, marketing, offering and providing
16 under its domain name are not causing, and are not likely to cause, confusion, mistake, or
17 deception as to their source, origin, or authenticity.

18 26. Further, Securex's activities are not likely to lead the public to conclude that
19 the services that Securex is advertising, marketing, offering, and providing originate with
20 or are in any authorized by Defendant, and therefore there is no harm to Defendant or the
21 public.
22

23 27. Securex's aforementioned use of the domain name secfile.com does not
24 constitute trademark infringement under, 15 U.S.C. § 1114.
25

26 28. Defendant's actions to cancel or transfer Securex's domain names in the
27 UDRP Proceeding are therefore improper, and lack a legal basis.
28

1 governmental regulatory services offered by Defendant.

2
3 34. Defendant's actions to cancel or transfer Securex's domain names in the
4 UDRP Proceeding are therefore improper, and lack a legal basis.

5 35. Defendant has engaged in conduct that gives rise to a reasonable
6 apprehension on the part of Securex that it will face suit for claims under the Lanham Act
7 if it continues its lawful commercial activities under its domain names.
8

9 36. A real and current conflict exists, and Securex will suffer irreparable
10 harm absent declaratory judgment by the Court that its activities do not constitute
11 unfair competition, false representations, or false designation of origin under
12 U.S.C. § 1125(a), and is therefore lawfully entitled to continue using its domain name.
13

14 **COUNT III**

15 **Declaratory Judgment of Securex's Right to Maintain and Use the secfile.com**
16 **Domain Name**

17
18 37. Securex hereby realleges and incorporates the allegations contained in
19 paragraphs 1 through 36 as if fully stated herein.

20 38. Securex is entitled to a declaration that it may lawfully maintain and use
21 the domain name, secfile.com, in connection with the offering of its commercial
22 services, including but not limited to, assisting publicly traded companies with the
23 compiling, organizing, and timely submission of the filings required of them by the
24 Defendant's rules and regulations.
25

26 39. Securex is entitled to a declaration that it may lawfully maintain and use
27 the domain name, secfile.com, in connection with the offering of its commercial
28

1 services, including but not limited to, assisting publicly traded companies with the
2 compiling, organizing, and timely submission of the filings required of them by the
3 Defendant's rules and regulations.

4
5 40. Securex is further entitled to a declaration that Defendant may not
6 enjoin such use of the domain name, secfile.com, nor may undertake further efforts to
7 cancel or transfer Securex's rights in the domain name.

8
9 41. A real and current conflict exists, and Securex will suffer irreparable
10 harm absent declaratory relief from this Court.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Securex Filings, LLC respectfully requests that this Court enter
13 judgment in its favor:

14 1. Declaring that Securex's conduct, including its use of the domain name,
15 www.secfile.com, for its website offering its commercial services, does not constitute
16 trademark infringement under the Lanham Act, 15 U.S.C. § 1114;

17
18 2. Declaring that Securex's conduct, including its use of the domain name,
19 www.secfile.com, for its website offering its commercial services, does not constitute
20 unfair competition, false representation, or false designation of origin under 15 U.S.C. §
21 1125(a);

22
23 3. Declaring that Defendant is not entitled to any injunctive relief under the
24 Lanham Act as against Securex with respect to its "SEC" mark;

25
26 4. Declaring that Defendant has not suffered any harm and is not entitled to
27 damages or other relief under the Lanham Act, as against Securex;
28

6. Awarding Securex any other relief that the Court deems just and proper.

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