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Sex.com conman continues ludicrous legal fight

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The conman found guilty of fraudulently stealing domain Sex.com and ordered to pay \$65 million in damages has continued his farcical legal fight with a plea to the US Supreme Court.

Stephen Michael Cohen, filed the appeal on Wednesday after both a San Francisco court in 2001 and the US Court of Appeals last year rejected his arguments. In the latter case, the three judges dismissed all grounds because Cohen had fled the country (with his ill-gotten gains secreted in various offshore accounts) and was a fugitive from justice in Mexico.

The Supreme Court appeal has a snowball's chance in hell of even being considered by the Supreme Court but then Mr Cohen's previous legal fillings have been as unconventional in their logic as they have been creative with the facts. It is clear that Mr Cohen sees the lengthy delay in final judgement as a victory in itself, something that led the Appeal Court judges to view his purchase of significant amounts of American justice as an "egregious abuse of the litigation process".

Unfortunately, no one save Mr Cohen and his current lawyer has seen the fertile arguments set forth in the most recent appeal, so by way of background, we present some of the highlights of his time in the legal spotlight.

From thief to slave

Mr Cohen has never disputed that shortly after his release from jail for the third time in 1995, he forged a document purporting to authorise the handing over of Sex.com from Mr Gary Kremen to himself. This, he happily admits, was sent to Internet company VeriSign in order to defraud them into handing him control of the Sex.com domain. This Verisign duly did without any form of checking.

However, when asked to hand over the domain (which makes \$500,000 a month simply selling space to other companies), Mr Cohen revealed that he owned the trademark

Sex.com and so was entitled to hold onto the domain. Aside from claiming that he had owned Sex.com before the domain name system had even come into existence, Mr Cohen also provided the court with printouts of "Bulletin Board" Internet pages where he had used the Sex.com name prior to 1995 - the year when Mr Kremen registered it for the very first time. Sadly, they were fabricated.

When told to hand over the domain and \$65 million to Mr Kremen in April 2001, Mr Cohen appealed. In the meantime, efforts by the court to assess his businesses and assets in order to pay the damages were hindered by Mr Cohen's insistence that answering questions would violate the laws of another country and so he couldn't do it.

Illegally moving funds abroad, Mr Cohen provided a false audit of one of his companies and no audits at all for the others he had started, owned and ran yet claimed no control over. Failing to turn up in court, Mr Cohen found himself the subject of an arrest order. In filings, however, he revealed that he could not attend court because he was under arrest in Mexico for failing to pay creditors. The court-appointed receiver disputed this.

And the bathroom sink

One of his companies, Montano Properties, which owned two big ranches, filed for bankruptcy in September 2001, but it was dismissed as fraudulent and was handed over to Mr Kremen in part-payment. Unfortunately for Mr Kremen, when he arrived to take control of the properties everything including the wiring and plumbing had been removed by truck.

In January 2002, Mr Cohen appealed to the court to lift the injunction against him. Since the court had not allowed him to contest the injunction (it wasn't his fault he was "under arrest" in Mexico at the time), it was not valid.

What's more, Mr Kremen had been acting illegally by chasing money and so had undermined the court decision against Cohen. Presumably this illegality stemmed from the fact that the injunction was "illegal" in the first place. Kremen, Mr Cohen's court filings explained "has duped this court into believing that their [sic] exists numerous hidden bank accounts and assets hidden outside the United States" belonging to Cohen.

It seems that despite having run the Sex.com site for six years, Mr Cohen was bankrupt. Despite Mr Kremen issuing over 500 subpoenas, there is "not a nimbus [sic] of proof that their [sic] exists any such accounts, or assets located anywhere on this earth". Mr Cohen advised the court to "engage in vigilance" so it "will not be bamboozled again" by Kremen.

In fact, Mr Cohen was so poor that he was unable even to buy loo paper, the filings stated. The injunction was a "death warrant" and against his constitutional rights. But that wasn't all - Mr Cohen had some powerful legal principles to raise.

Blind, rubber-stamping courts

The court for example had no power to decide in this matter, only a grand jury would have binding status on Mr Cohen. The court had also violated the 13th amendment of the United States Constitution. How? By forcing him into the status of slavery. He was a slave to Kremen and so therefore the injunction was not enforceable. With this logic, there is no doubt that "one could only assume that this court never read the injunction it signed".

You think that's the end of it?

You won't be surprised to hear that the court didn't feel Mr Cohen had made a strong enough case to overturn the injunction. However, Mr Cohen has several aces up his sleeve. In September 2002, the court was lucky enough to receive another lesson in law. Because Mr Kremen had registered the domain in 1995 not using his real name but the name of a company he was trading under, it was impossible for Mr Kremen to sue him and so the entire case from day one would have to be thrown out. Mr Cohen would, of course, regain possession of the name in the meantime.

It had also taken Gary Kremen eight months to complain about the hijacking off the Sex.com domain and a lawsuit was only filed years later. In the meantime, Mr Cohen had invested "hundreds of thousands of dollars" in the developing the site. A review of the site of the time, which consisted solely of banners to other sites would appear to reveal that Mr Cohen was badly stung by Internet consultancies during this period.

By making decisions while Mr Cohen was not able to attend court, it had violated his rights (we've been here before) and so therefore any judgement would have to be struck out. Not only that but Mr Kremen's subsequent \$50,000 reward for anyone that brought Mr Cohen back into the country had put Mr Cohen in fear of his life. How could he now return to the US when his own life was at risk if he did? His rights had been violated again.

Not only that but because of the law-abiding citizen he is, Mr Cohen would not leave Mexico because it would be breaking that country's law to do so. Why can't the US courts see that?

In conclusion, Mr Cohen insisted the court reconsider its actions so it could "establish a consistent approach to the fugitive disentitlement doctrine in accord with governing case law and the recognition that jurisdictional considerations and international policy play a dominant role in the calculus". Mr Kremen is said to be considering posting a \$50,000 reward for anyone that can work out that is supposed to mean. ®

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