

May 29, 2008

Elisabeth A. Shumaker  
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

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UTAH LIGHTHOUSE MINISTRY, a  
Utah corporation,

Plaintiff-Counter-Defendant -  
Appellant,

v.

FOUNDATION FOR APOLOGETIC  
INFORMATION AND RESEARCH,  
(FAIR), a New York corporation;  
SCOTT GORDON,

Defendants - Appellees,

DISCOVERY COMPUTING, an  
Arizona corporation; ALLEN L.  
WYATT, an individual,

Defendants-Counter-  
Claimants - Appellees.

No. 07-4095

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**Appeal from the United States District Court  
for the District of Utah  
(D.C. No. 2:05-CV-00380-DAK)**

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Paul C. Oestreich, Morriss, O'Bryant Compagni, P.C., Salt Lake City, Utah,  
appearing for Plaintiff-Appellant.

Lance C. Starr, American Fork, Utah, appearing for Defendants-Appellees  
Discovery Computing, Inc. and Allen Wyatt. D. Miles Holman (Jeffrey N. Walker  
with him on the brief), Holman & Walker, L.C., Sandy, Utah, appearing for

Defendants-Appellees Foundation for Apologetic Information & Research and  
Scott Gordon.

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Before **TYMKOVICH** and **GORSUCH**, Circuit Judges, and **PARKER**, District  
Judge.\*

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**PARKER**, District Judge.

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Utah Lighthouse Ministry (UTLM) appeals from a decision of the district  
court granting Defendants' motion for summary judgment on UTLM's claims of  
trademark infringement, unfair competition, and cybersquatting.

## I. BACKGROUND

### A. Facts

Jerald and Sandra Tanner founded UTLM in 1982 to critique the Church of  
Jesus Christ of Latter-day Saints (LDS Church). In support of its mission, UTLM  
sells books at both a brick-and-mortar bookstore in Utah and through an online  
bookstore at the official UTLM website, [www.utlm.org](http://www.utlm.org).

The Foundation for Apologetic Information and Research (FAIR) is a  
volunteer organization that responds to criticisms of the LDS Church. FAIR's

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\* The Honorable James A. Parker, Senior District Judge, United States  
District Court for the District of New Mexico, sitting by designation.

website also has an online bookstore, and both FAIR and UTLM provide online publications on the subject of the LDS Church. The publications in the two bookstores overlap by thirty titles. Defendant-Appellee Allen Wyatt is the vice president and webmaster for FAIR. In November 2003, Wyatt created a website parodying the UTLM website—the Wyatt website is similar in appearance but has different, though suggestively parallel, content.

The district court’s Memorandum Decision and Order describes the design and content of the Wyatt and UTLM websites (Mem. Decision & Order at 3–4), and Appellant’s appendix includes screen shots of the websites. The design elements are similar, including the image of a lighthouse with black and white barbershop stripes. However, the words “Destroy, Mislead, and Deceive” are written across the stripes on the Wyatt website. Prominent text on the Wyatt website consists of a slight modification of the language located in the same position on the UTLM website. For example, the UTLM website states:

“Welcome to the Official Website of the Utah Lighthouse Ministry, founded by Jerald and Sandra Tanner.” In comparison, the Wyatt website states: “Welcome to an official website *about* the Utah Lighthouse Ministry, *which was* founded by Jerald and Sandra Tanner.” (emphasis added.) The Wyatt website does not have any kind of disclaimer that it is not associated with UTLM.

The Wyatt website contains no advertising and offers no goods or services for sale. The Wyatt website includes sixteen external hyperlinks. Eleven of these

hyperlinks point to the website of an organization at Brigham Young University. Three hyperlinks point to articles on the FAIR website that are critical of the Tanners, and another takes viewers directly to the FAIR homepage. The other external hyperlink is to the website of the LDS Church.

Wyatt, through his company Discovery Computing, Inc., registered ten domain names, each of which directed visitors to the Wyatt website. The domain names are combinations of “Utah Lighthouse Ministry,” “Sandra Tanner,” “Gerald Tanner,” “Jerald Tanner,” and “.com” and “.org.” Wyatt first publicized the Wyatt website to FAIR members in April 2004. Defendants assert that prior to April 2004 only Wyatt had any knowledge of or input into the website.

Wyatt ceased operation of the website and began to transfer the domain names to UTLM in April 2005.

## **B. Procedural History**

UTLM’s complaint made six claims for relief: (1) trademark infringement, 15 U.S.C. § 1125(a); (2) unfair competition, *id.*; (3) unfair competition under Utah law, Utah Code Ann. § 13-5a-101 to -103 (2008); (4) trademark dilution, 15 U.S.C. § 1125(c); (5) cybersquatting, *id.* § 1125(d); and (6) trade dress infringement, *id.* § 1125(a). The parties filed cross-motions for summary judgment, and the district court judge denied Plaintiff’s motion and granted Defendants’ motion on all six counts. UTLM appeals only the district court’s

ruling on the trademark infringement, unfair competition, and cybersquatting claims.<sup>1</sup> Furthermore, UTLM appeals with regard to only one of its trademarks, UTAH LIGHTHOUSE.

## II. DISCUSSION

### A. Standard of Review

We review a district court's grant of summary judgment *de novo*, and apply the same legal standard as the district court. *MediaNews Group, Inc. v. McCarthey*, 494 F.3d 1254, 1260 (10th Cir. 2007). Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). We consider the factual record, together with all reasonable inferences derived therefrom, in the light most favorable to the nonmoving party and we do not weigh the evidence or make credibility determinations. *Jones v. Barnhart*, 349 F.3d 1260, 1265 (10th Cir. 2003).

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<sup>1</sup>Appellant's statement of the case asserts that it is appealing all except the dilution claim, but Appellant's opening brief does not present argument on the state unfair competition and trade dress infringement claims. Arguments inadequately briefed in the opening brief are waived. *Adler v. Wal-Mart Stores*, 144 F.3d 664, 679 (10th Cir. 1998).

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