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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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**UTAH LIGHTHOUSE MINISTRY,  
INC., a Utah corporation,**

**Plaintiff,**

**vs.**

**DISCOVERY COMPUTING, INC., an  
Arizona Corporation and ALLEN L.  
WYATT, an individual, THE  
FOUNDATION FOR APOLOGETIC  
INFORMATION & RESEARCH (FAIR),  
a New York Corporation and SCOTT  
GORDON, an individual, and DOES 1-  
10, inclusive.**

**Defendants.**

**MEMORANDUM DECISION AND  
ORDER**

**Case No. 2:05CV000380DAK**

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This matter is before the court on several motions: Defendants Allen L. Wyatt (“Wyatt”) and Discovery Computing, Inc.’s (“DCI”) (collectively the “DCI Defendants”) Rule 56 Motion for Summary Judgment of No Trademark Infringement; the DCI Defendant’s Motion to Strike Plaintiff’s Motion for Summary Judgment of the Issue of Domain Name Cyberpiracy; Defendants The Foundation for Apologetic Information & Research (“FAIR”) and Scott Gordon’s (“Gordon”) (collectively the “FAIR Defendants”) Motion for Summary Judgment and Joinder in DCI Defendants’ Motion for Summary Judgment; the FAIR Defendants’ Joinder in the

DCI Defendants' Motion to Strike Plaintiff's Second Motion for Summary Judgment; the FAIR Defendants' Objection to Plaintiff's Motion to Have Court Take Evidence at Hearing on Motions for Summary Judgment; Plaintiff Utah Lighthouse Ministry, Inc.'s ("UTLM" or Plaintiff) Motion for Summary Judgment on the Issues of Trademark Infringement, Unfair Competition and Joint Tortfeasor Liability; and Plaintiff's Motion for Summary Judgment on the Issue of Cyberpiracy. The court did not hear argument on the Motions to Strike, but took them under advisement. At the hearing, Paul C. Oestreich represented Plaintiff. Ronald L. Dunn represented the FAIR Defendants and Lance Starr represented the DCI Defendants. Before hearing argument, the court ruled on the FAIR Defendants' Objection to Plaintiff's Motion to Have Court Take Evidence at Hearing on Motions for Summary Judgment and refused to allow the admittance of further evidence. Although the court did not hear argument on the Motions to Strike, both of Defendants' counsel stipulated to allow Plaintiffs' Motion for Summary Judgment on the Issue of Cyberpiracy to be allowed to be received as a response to Defendants' Motion for Summary Judgment to which the court ruled that "it comes in." Before the hearing, the court carefully considered the memoranda and other materials submitted by the parties. Since taking the motions under advisement, the court has further considered the law and facts relating to the motions. Now being fully advised, the court renders the following Memorandum Decision and Order related to the motions before the court.

### **BACKGROUND**

This matter arises out of the comparison of two similar Internet websites, and whether the

similarities are sufficient to support allegations of unfair competition, trademark infringement, dilution, trade dress and cybersquatting.

UTLM, founded by Jerald and Sandra Tanner, provides information critically analyzing the history and doctrines associated with the Church of Jesus Christ of Latter-day Saints (“LDS”) through its books, newsletters and its Internet website. UTLM offers materials for sale to the general public through its brick and mortar bookstore, as well as an online bookstore. The UTLM website can be found under the registered the domain name [utlm.org](http://utlm.org).

Wyatt, a professional website designer, is the webmaster and Vice President of FAIR, a volunteer organization that responds to criticisms of the LDS Church. In November, 2003, Wyatt created a website which attempted to parody the UTLM website (the “Wyatt Website”). Wyatt registered the following ten domain names, each of which directed visitors to the Wyatt Website: [utahlighthouse.com](http://utahlighthouse.com), [sandratanner.com](http://sandratanner.com), [geraldtanner.com](http://geraldtanner.com), [geraldtanner.org](http://geraldtanner.org), [utahlighthouse.org](http://utahlighthouse.org), [utahlighthouseministry.org](http://utahlighthouseministry.org), [sandratanner.org](http://sandratanner.org), [geraldtanner.com](http://geraldtanner.com), [utahlighthouseministry.com](http://utahlighthouseministry.com), and [geraldtanner.org](http://geraldtanner.org).<sup>1</sup>

### *The Wyatt Website v. The UTLM Website*

#### **The Wyatt Website**

The Wyatt Website has a centered heading box containing the words: “Utah Lighthouse Ministry, Shadow or Reality?” in blue text. The word “Shadow” is in green, Halloween-type font. The phrase “Shadow or Reality?” appears to reference the title of Plaintiff’s largest selling book. Below the heading box is the phrase: “Welcome to an official Website about the Utah

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<sup>1</sup>In 2004, Wyatt was gratuitously registered the domain names [utahlighthouse.info](http://utahlighthouse.info), [geraldtanner.info](http://geraldtanner.info) and [sandratanner.info](http://sandratanner.info).

Lighthouse Ministry, which was founded by Jerald and Sandra Tanner. The purpose of this site is to document problems with the claims made by Jerald and Sandra Tanner under the guise of Christianity.” Below the header box to the right is a large photograph of a lighthouse with black and white barbershop stripes. On the three white stripes, in red type are the words “destroy,” “mislead,” and “deceive.” Below the header box to the left is an identical, but faint, image of the same lighthouse with two hyperlinks printed across the photograph: “Click this Lighthouse to see Reliable Information About the LDS Church” and “Click the Lighthouse’s base for the Official LDS Site.” Down the center of the webpage, below the header box and between the images of the lighthouses, three scriptural references, followed by two hyperlinks: “Articles about the Tanners” and “Books by the Tanners.” The “Books” link gives a selection of hyperlinks to additional articles, including links to the Brigham Young University’s Foundation for Ancient Research and Mormon Studies (“FARMS”) and to the official LDS Church website, and an article posted on the FAIR website.<sup>2</sup> At the bottom of the page, is a centered box containing the following text:

“For more than three decades, Jerald and Sandra Tanner have devoted their lives to exposing and trying to destroy Mormonism. They have succeeded in upsetting Mormons of various persuasions, largely because of their abrasive writing style, which is most nearly reminiscent of FBI undercover agents reporting back to J. Edgar Hoover on the terrible continuing threat of the worldwide communist (read: Mormon) conspiracy.” [Lawrence Foster, “Apostate Believers: Jerald and Sandra Tanner’s Encounter with Mormon History,” *Differing Visions: Dissenters in Mormon History*, edited by Roger D. Launius and Linda Thatcher (Urbana, Illinois: University of Illinois Press, 1994), 343.]

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<sup>2</sup>Like UTLM, FAIR operates an informational website and an online bookstore. Visitors to the FAIR website homepage are offered a link to the FAIR LDS bookstore. Some of the books offered for sale at the FAIR online bookstore appear to overlap with some of the books offered for sale at the UTLM online bookstore.

Wyatt provided access to the Wyatt Website to FAIR's members. Gordon, FAIR's president, upon visiting the Wyatt Website, discovered that the hyperlink from the Wyatt Website to FAIR was wrong and asked that it be corrected.

### **The UTLM Website**

The UTLM Website's heading box contains the words: "Utah Lighthouse Ministry, PO Box 1884 Salt Lake City, UT 84110." Centered below the box is the phrase: "Welcome to the Official Website of Utah Lighthouse Ministry, founded by Jerald and Sandra Tanner. The purpose of this site is to document problems with the claims of Mormonism and compare LDS doctrines with Christianity." Below the header box to the right is a large drawing of a lighthouse and clouds, with black and white barbershop stripes. Below the header box to the left is a large, faint image of the same lighthouse with thirteen hyperlinks printed across the drawing: "About Us," "FAQs," "What's New," "Topical Index," "Testimony," "Newsletters," "Online Resources," "Online Books," "Booklist," "Order/Contact," "Email," "Special Thanks," "Other Websites." Down the center of the webpage, below the header box, there are three scriptural references. At the top of the next webpage there is a centered box containing the following text:

"Come on! ye prosecutors! ye false swearers! All hell, boil over! Ye burning mountains, roll down your lava! for I will come out on top at last. I have more to boast of than ever any man had. I am the only man that has ever been able to keep a whole church together since the days of Adam. A large majority of the whole have stood by me. Neither Paul, John, Peter, nor Jesus ever did it. I boast that no man ever did such a work as I. The followers of Jesus ran away from him, but the Latter-day Saints never ran away from me yet . . . When they can get rid of me, the devil will also go." (*History of the Church*, Vol. 6, p. 408, 409) [[Whole sermon click here.](#)]

- Joseph Smith: founder, prophet, seer, and revelator of The Church of Jesus Christ of Latter-day Saints.

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