

March 11, 2004

RESPONSE TO COMPLAINT

[Dustin N. Diamond v. Max Goldberg]

**Complainant Information:**

Dustin N. Diamond  
c/o Herro & Lamont, LLC  
2070 Wisconsin Avenue  
Grafton, WI 53024  
Tel: 262-377-9500  
Fax: 262-377-9700  
BHerro@herroandlamont.com

**Respondent Information:**

Max Goldberg  
847A Second Avenue, #302  
New York, NY 10017  
Tel: 917-359-8463  
max@tnug.com

**Domain Name in Dispute:**

*dustindiamond.com*

[a.] dustindiamond.com is the domain name that is the subject of this Complaint pursuant to ICANN Rule 3(b)(vii).

[b.] Registrar Information: ICANN Rule 3(b)(vii).

[i.] Registrar's name: CSL Computer Service Langenbach GmbH/joker.com

[ii.] Registrar Address: Rathausufer 16, 40213 Duesseldorf, Germany

[iii.] Telephone number: +49 211 867670

[iv.] E-mail address: info@joker.com

[c.] Trademark/Service Mark information: ICANN Rule 3(b)(viii).

**INTRODUCTION**

This response is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy.

It is unfortunate that Dustin Diamond's slick, high-priced legal team is refusing to acknowledge the obvious: that dustindiamond.com is clearly a parody site and electronic art installation. Mr. Goldberg has never attempted to use the site for personal gain, either financial or otherwise, and has, in fact, lavished considerable amounts of time and money

on the project without seeking any recompense. Yet Mr. Diamond's legal team are attempting to destroy this widely acclaimed creative project through a campaign of harassment, intimidation and blatant falsehood.

In a desperate attempt to prove that the domain is being used in bad faith, Mr. Diamond's attorneys claim that Mr. Goldberg offered to sell the domain for \$1,800. This is a lie, as is demonstrated by their inability to provide even a scrap of documentation. Mr. Diamond's attorneys claim that Mr. Goldberg has written and posted emails posing as Dustin Diamond. This too is a lie, and this too they assert without being about to offer any evidence.

The complaint is without merit. It is a heavy-handed attempt to use money and celebrity—albeit an exceedingly limited kind of celebrity—to suppress artistic freedom and the well-established First Amendment right to create and disseminate parodies of those who are famous, powerful or otherwise in the public eye. This right has been defended by ICANN itself, which specifies that use of domains for parody purposes is in fact a good faith use.

## **FACTUAL AND LEGAL GROUNDS**

1. Max Goldberg has received notoriety and fame in the United States, internationally, and in cyberspace as a creator of hilarious and provocative parody web sites and electronic art installations. He is internationally known for his site *yourethemannowdog.com* [EXHIBIT A], which has been visited by millions of people, with approximately 50,000 hits a day [EXHIBIT B] and was hailed as “Worst Web Site” by *worstwebsites.com*. Mr. Goldberg has also received extensive recognition for his installation *getyourasstomars.com*, another heavily trafficked site that increased Mr. Goldberg's renown as a parodist-artist [EXHIBIT C]. Mr. Goldberg's work has in turn inspired numerous imitations and parodies of his parody sites.
2. Mr. Goldberg admits that he has never been commonly known by Mr. Diamond's “trademark.” Mr. Goldberg created *dustindiamond.com* in 2001 as an insightful parody of the growing social phenomenon of “has-been-itis.” The site makes fun of the increasingly common spectacle of minor celebrities clinging to the vestiges of their fame long after their moment in the spotlight has passed. An integral component of his parody installation is the wide array of voices—from the public at large—in the free speech forum provided by the site guest book.
3. Mr. Goldberg is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain. Nor does Mr. Goldberg use the domain name to intentionally attempt to attract, for commercial gain, Internet users to Mr. Goldberg's website, by creating confusion, using Mr. Diamond's mark. Like Mr. Goldberg's other parody art projects, *dustindiamond.com* has no commercial aspect, sells no products, carries no advertising, and yields Mr. Goldberg no

income of any kind. Significantly, all of the cases involving domains and trademark rights cited in Mr. Diamond's complaint involved domains that attempted to financially profit from the trademark name. The issue in these cases is: who has the right to financially profit from the name in question? That it is not at issue with dustindiamond.com. Mr. Goldberg has never sought to use the site for commercial purposes, as Mr. Diamond's attorneys themselves admit on page 5 of their complaint. On the contrary, Mr. Goldberg has devoted extensive time to creating and maintaining the site and pays for the cost of registering and hosting the site without financial recompense. The site exists solely for the sake of its humorous and artistic value. It is truly art for art's sake.

4. Although Mr. Diamond's trademark rights may be valid, they are nonetheless limited by Mr. Goldberg's First Amendment rights. See *L.L. Bean, Inc. v. Drake Publishers, Inc.*, 811 F.2d 26 (1st Cir.), cert. denied, 483 U.S. 1013, 107 S.Ct. 3254, 97 L.Ed.2d 753 (1987). Under the First Amendment of the United States Constitution, Respondent has an unfettered right to hold or express his artistic freedom through oral, written or electronic means via the registration of a domain name.
5. Mr. Goldberg did not register the domain name in question, primarily for the purpose of selling, renting or otherwise transferring the domain name to Mr. Diamond or a competitor of Mr. Diamond. Mr. Diamond's expensive legal team libelously claims that Mr. Goldberg offered to sell the domain to a representative of Mr. Diamond for \$1,800. No such offer was ever made, for this or any amount of money, and no such e-mail exchange ever took place. Mr. Goldberg has **never** attempted to sell the domain to anyone and has never used the site for financial gain in any way. It is noteworthy that Mr. Diamond's lengthy legal document, with its 27 pages of exhibits, does not include a copy of this alleged e-mail or any evidence that such e-mail ever existed. The reason is that this claim is without any foundation. Clearly Mr. Diamond's attorneys are desperate to show bad faith where none exists, and so they have fabricated evidence of bad faith out of whole cloth. This charge is not only false, but it also defames Mr. Goldberg's business acumen and attempts to discredit his integrity as an artist.
6. Mr. Goldberg did not register the domain name in question, in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name. Nor did Mr. Goldberg register the domain name primarily for the purpose of disrupting the business of a competitor. Indeed, Mr. Goldberg is not a competitor of Mr. Diamond, since Mr. Goldberg is in the business of artistic parody and has no ambitions to make chess videos or appearances in celebrity wrestling matches.
7. Mr. Diamond's attorneys charge that Mr. Goldberg has "portrayed himself" as Dustin Diamond because the site includes such language as "I'M FAMOUS ACTOR DUSTIN DIMAOND." The attorneys admit that Mr. Diamond's last name is "clearly" misspelled—a mistake Mr. Diamond himself would be highly unlikely to make. Lawyers are notoriously bad at understanding how humor works. Anybody but a lawyer will instantly recognize that the site is a parody.

Why would the real Dustin Diamond misspell his own name? Why would he refer to himself as a “FAMOUS SUPERSTAR AND SEX SYMBOL” when he is clearly neither? Mr. Diamond’s fame ended when the myriad “Saved by the Bell” spin-off shows failed to gain an audience, and his public persona has consistently been the opposite of a sex symbol. [EXHIBIT D] His “Screech” character is a stereotypically asexual geek, and Mr. Diamond’s subsequent attempts to revive his show-business career have portrayed him in a similar light, notwithstanding his recent cultivation of facial stubble. By making such over-the-top claims about Mr. Diamond’s celebrity and sexual charisma, the site clearly signals that it is a humorous work not intended to be taken seriously. The outrageously ugly and low-tech graphics and numerous obvious errors and misspellings send the same clear message.

8. Further evidence of Mr. Goldberg’s good faith is his prompt addition of a disclaimer—“This site is in no way affiliated with Dustin Diamond”—to the site’s main page. Mr. Goldberg operated throughout on the assumption that all visitors to the site would immediately recognize it as an artwork and parody. When he was told by Mr. Diamond’s lawyers that potential confusion nonetheless existed, he quickly added the clarifying disclaimer. Yet in their complaint, Mr. Diamond’s attorneys portray this obvious evidence of good faith as somehow the opposite.
9. Mr. Diamond’s attorneys complain that the disclaimer has not consistently appeared on dustindiamond.com. As evidence, they present exhibits from archive.org. In fact, the disclaimer has been consistently in place since it was first installed on the site. Although a helpful reference, archive.org is by no means definitive, and because of its methodology it is prone to egregious errors. It is an automated system with no human oversight and therefore no checks and balances are in place to ensure that the information presented is accurate. Therefore, the citations from archive.org are in no way “proof” of Mr. Diamond’s assertion, which is in fact false.
10. Mr. Diamond’s attorneys claim that Mr. Goldberg has assumed the identity of Mr. Diamond on the site message board and has posted e-mail as Mr. Diamond. This charge is also completely false. The message board, as a free speech forum, allows users to post under any name they choose. As a result, many celebrity parodies, both major (e.g., “Eminem” on Complainant’s Exhibit C) and minor (e.g., “Zack” on the same exhibit) appear on the message board. Many respondents post as Mr. Diamond and as other “Saved by the Bell” characters. It is even possible that Mr. Diamond himself has submitted some of these “Dustin Diamond” messages in an attempt to discredit Mr. Goldberg. However, Mr. Goldberg has maintained logs of the IP (Internet Protocol) addresses of all message board posts. These logs conclusively prove that none of the “Dustin Diamond” or “Dustin” messages were sent by Mr. Goldberg. Given that the message board has almost 7,000 entries as of his date, it would not be feasible to attach the entire log here, but it can be provided if it is essential for the decision in this case. Attached [EXHIBIT E] is one example of the IP log that corresponds to

Complainant's Exhibit C, specifically the post under the name "Dustin Diamond." The exhibit shows that none of the postings in Complainant's Exhibit C has an IP address consistent with that of Mr. Goldberg. This demonstrates conclusively that Mr. Goldberg did not post these messages. The complete log shows that he made none of the almost 7,000 posts to the message board, under Mr. Diamond's name or any other name. Here again Mr. Diamond's attorneys have libeled Mr. Goldberg and presented lies in place of evidence.

11. Mr. Diamond's attorneys contend that Mr. Goldberg has represented himself as Mr. Diamond through use of the address screech@dustindiamond.com. Although such an address exists, it exists solely for the purpose of archiving e-mails for a future art project. Mr. Goldberg has never sent an e-mail from the address representing himself to be Mr. Diamond. This is why Mr. Diamond's attorneys have been unable to provide any evidence that such e-mails were ever sent.
  
12. In February 2003, Mr. Goldberg initiated contact with Mr. Diamond's representative in an attempt to forward the few pieces of legitimate e-mail to Mr. Diamond that had arrived at the dustindiamond.com site to Mr. Diamond. Mr. Goldberg contacted one Jack Koshick, who claims to be Mr. Diamond's manager. Neither Mr. Koshick nor Mr. Diamond expressed any interest in receiving the e-mail. Instead, the response to Mr. Goldberg's good-faith effort was the beginning of a campaign of threats and harassment that lasted more than a month. It was at this time that Mr. Diamond's representative offered to buy the domain from Mr. Goldberg, to which Mr. Goldberg made no response, as he was never interested in selling the domain or using it for financial gain of any kind. [EXHIBIT F1-F5]
  
13. Mr. Diamond's attorneys claim that their difficulty in getting a letter to Mr. Goldberg is evidence of bad faith on Mr. Goldberg's part. This is also false. The original address listed (1652 Jefferson St., Napa, CA 94559) in the Whois database was correct at the time the site was created. When Mr. Goldberg moved to the East Coast, he updated the Whois database to reflect his new mailbox at Mailboxes Etc. (847A Second Ave., #302, New York, NY 10017). He has maintained that mailbox ever since and continues to receive mail there. Mr. Diamond's attorneys attempted to deliver a registered letter to that address on Sept. 6, 2003. The failure of the mailbox site to accept delivery of the letter is in no way Mr. Goldberg's responsibility. The fact that this complaint was successfully delivered to this address is sufficient proof that the address is valid and current.
  
14. Mr. Diamond's complaint argues that "Dustin Diamond" has become a significant brand name due to Mr. Diamond's fame—that it is a trademark that has acquired secondary meaning. The fact that dustindiamond.com is clearly a parody artwork renders this point moot. However, Mr. Diamond's attorneys have sadly overstated the extent of their client's renown and the value of his "brand." This becomes embarrassingly clear when they attempt to support their claim by pointing to their

client's video, "Dustin Diamond Teaches Chess." Their Exhibit H shows an advertisement for the video on a nonexistent web site [EXHIBIT G]. Their Exhibit I shows a listing (not an advertisement, as they claim) for the video on eBay from February 3, 2004, shortly before the complaint was filed. It is very possible that the eBay offer was posted by Mr. Diamond or his representatives. Apparently Mr. Diamond's legal team can find no evidence that "Dustin Diamond Teaches Chess" is anything but a self-published vanity project, one that does not support the claim that the name "Dustin Diamond" has acquired secondary meaning. In fact, the video is listed in none of the standard on-line retail outlets (Amazon.com, bn.com, etc.), casting further doubt on Mr. Diamond's claim that the video was "sold widely nationwide in retail stores and on the Internet."

15. Rights or legitimate interest. The United States of America has a long history of protecting free speech rights, particularly rights to use material for purposes of parody and/or artistic expression. Mr. Goldberg has a history of creating parody web sites that engage in astute cultural commentary and has won considerable renown for his work. [EXHIBIT H] When Mr. Diamond's attorneys assert that Mr. Goldberg did not create the site as a parody, they are denying the obvious, with no evidence or basis in fact. As an artist, Mr. Goldberg has a legitimate interest in using this material to serve his own artistic purposes.
16. Use of the domain as a bona fide offering. While it is certainly true that Mr. Goldberg has never used dustindiamond.com to offer goods or services for sale, the site does offer a bona fide service: its value as a humorous and entertaining parody and art installation. The fan letters and traffic to all of his sites show that this service is widely recognized and appreciated. In fact, his parody site yourethemannowdog.com has spawned a legion of imitators and parodies, some of which are archived at [www.yourethemannowdog.com/contrib](http://www.yourethemannowdog.com/contrib). [EXHIBIT I]
17. Mr. Goldberg has never attempted to create consumer confusion by misportraying Mr. Diamond and dilution by tarnishment. Mr. Goldberg agrees with Complainant's assertion that his character, Screech, portrayed a "squeaky" clean image. His art installation has never attempted to tarnish this image; rather it is a parody of this "squeaky" clean image. It is an, "obvious and clearly affectionate joke." [EXHIBIT J] It is clear that the public is aware that this site is a parody, as shown by the numerous emails and letters received in support of Mr. Goldberg in this case. [EXHIBIT K1-K3]
18. Mr. Goldberg never used Mr. Diamond's likeness to pass Mr. Goldberg off as Mr. Diamond. Mr. Goldberg clearly stated on the site that he was not affiliated with Mr. Diamond in any way. Moreover, in the rare instance that Mr. Goldberg received an email intended for Mr. Diamond, he directed the sender Mr. Diamond. [EXHIBIT L]

## SUMMARY

In summary, Mr. Diamond's attorneys have concocted a case that is based on misrepresentations and blatant falsehoods. They have failed to prove that Mr. Goldberg operated in bad faith in his purchase and use of the domain, dustindiamond.com. They have been unable to show that Mr. Goldberg even considered offering the domain for sale, and have instead submitted an unproven and libelous statement which should be judged most harshly—Mr. Diamond's alleged celebrity should not make him any less culpable for lying before this panel.

Mr. Goldberg clearly has a legitimate interest in the domain name. He has been using it since 2001 for a parody art installation without intent for commercial gain. He has not misleadingly diverted consumers or attempted to tarnish Mr. Diamond's name—to the contrary, he has stated that the site is **in no way** affiliated with Mr. Diamond, and provides a link to Mr. Diamond's official website.

Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good faith and reasonable argument.

Respectfully submitted by Respondent,

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Max Goldberg

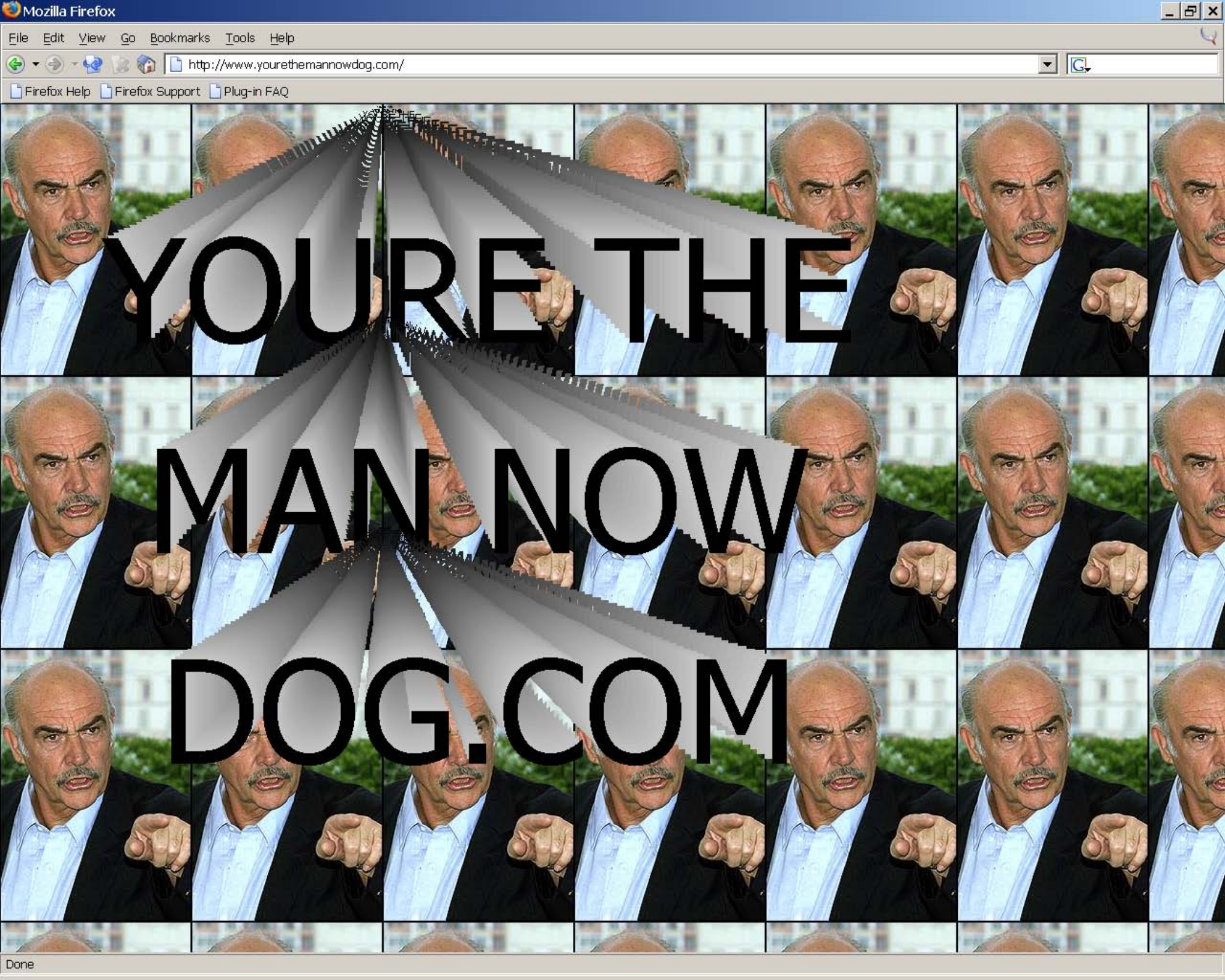
Dated this 11<sup>th</sup> day of March, 2004

## TABLE OF CONTENTS OF EXHIBITS FOR DUSTINDIAMOND.COM

EXHIBIT	CORRESPONDING PAGE NUMBER(S)	DESCRIPTION OF EXHIBITS
A	2	Screenshot of yourethemannowdog.com
B	2	Usage statistics for yourthemannowdog.com for the month of March, 2004.
C	2	Screenshot of getyourasstomars.com
D	4	Photograph of Dustin Diamond as “Screech.”
E	4	IP log for guestbook entries featured in the Complainant’s exhibit M.
F1	5	Email response from Jack Koshick including original message from Mr. Goldberg
F2	5	Email from Jack Koshick
F3	5	Email from Mr. Goldberg to Jack Koshick
F4	5	Email from Jack Koshick
F5	5	Email from Jack Koshick
G1	6	Screenshot of non-existent site, thegamester.com
G2	6	Screenshot of non-existent site, gamester.com
H	6	Letter from Tessa DeCarlo, art correspondent for the Wall Street Journal, the New York Times, and the Oxford American.
I	6	Listing of some of the parody and imitators of yourthemannowdog.com
J	6	Letter from David N. Meyer, journalist and professor at the New School University.
K1	6	Email in support of dustindiamond.com from Derek Ryan Arnold, Mason City, Iowa.
K2	6	Email in support of dustindiamond.com from Jason Fantus.
K3	6	Email in support of dustindiamond.com from Lauren.
L	6	Email from Mr. Goldberg to Shawn Cannon.





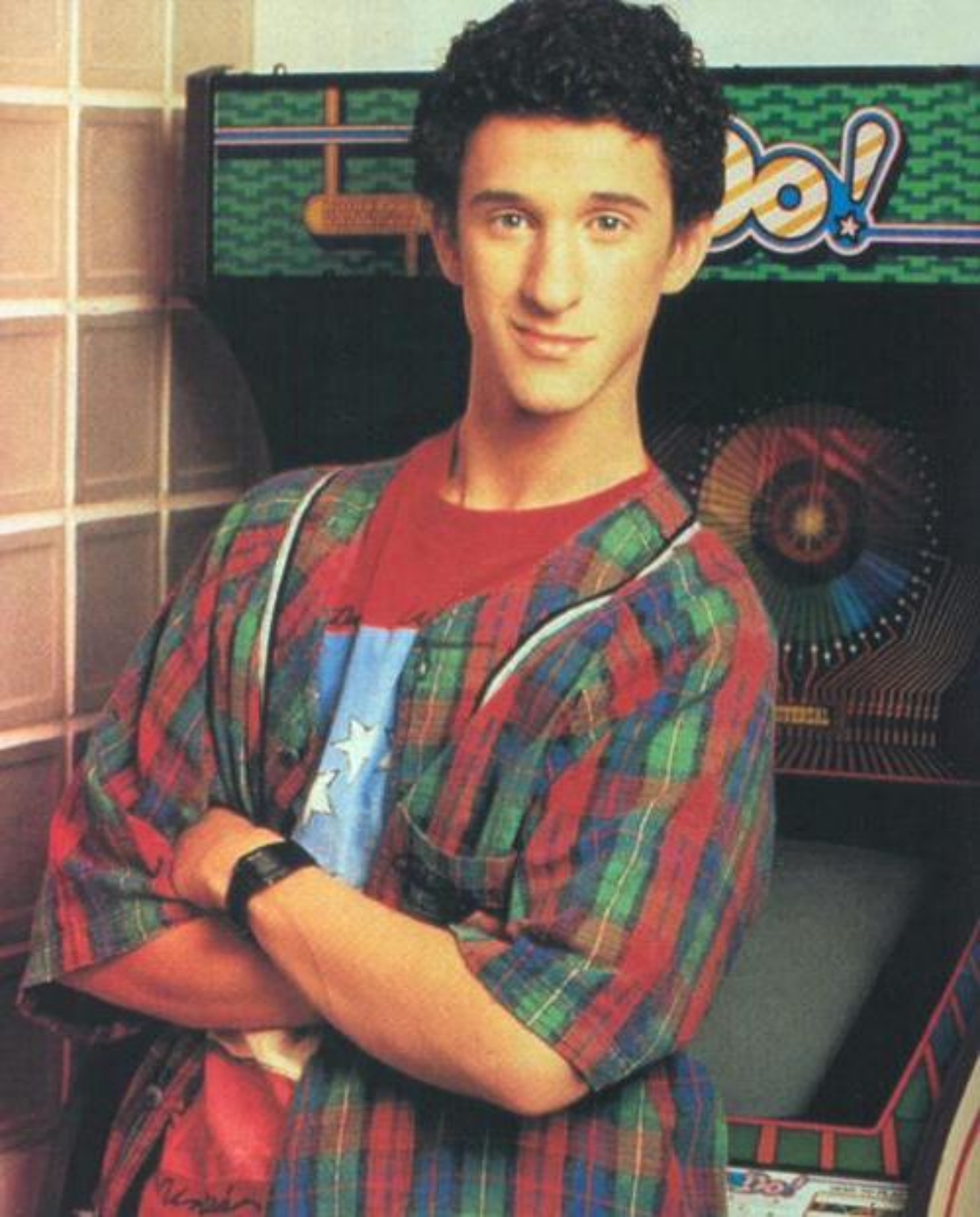


**YOU'RE THE  
MAN NOW  
DOG.COM**

### Daily Statistics for March 2004

Day	Hits		Files		Pages		Visits		Sites		KBytes	
<b>1</b>	<b>61544</b>	10.63%	<b>52741</b>	10.77%	<b>20915</b>	10.86%	<b>13341</b>	11.84%	<b>12205</b>	13.96%	<b>787140</b>	8.27%
<b>2</b>	<b>61810</b>	10.68%	<b>52223</b>	10.66%	<b>19673</b>	10.22%	<b>12809</b>	11.37%	<b>13109</b>	15.00%	<b>777896</b>	8.17%
<b>3</b>	<b>65296</b>	11.28%	<b>55486</b>	11.33%	<b>22262</b>	11.56%	<b>13581</b>	12.06%	<b>12793</b>	14.63%	<b>959549</b>	10.08%
<b>4</b>	<b>68846</b>	11.89%	<b>58577</b>	11.96%	<b>22079</b>	11.46%	<b>12335</b>	10.95%	<b>11384</b>	13.02%	<b>1466045</b>	15.40%
<b>5</b>	<b>51328</b>	8.87%	<b>43384</b>	8.86%	<b>16948</b>	8.80%	<b>9601</b>	8.52%	<b>8840</b>	10.11%	<b>871593</b>	9.16%
<b>6</b>	<b>47249</b>	8.16%	<b>40007</b>	8.17%	<b>15128</b>	7.86%	<b>8641</b>	7.67%	<b>7995</b>	9.15%	<b>887702</b>	9.33%
<b>7</b>	<b>44462</b>	7.68%	<b>37353</b>	7.63%	<b>14999</b>	7.79%	<b>9215</b>	8.18%	<b>8572</b>	9.81%	<b>668105</b>	7.02%
<b>8</b>	<b>49612</b>	8.57%	<b>42151</b>	8.61%	<b>17114</b>	8.89%	<b>9730</b>	8.64%	<b>8953</b>	10.24%	<b>789087</b>	8.29%
<b>9</b>	<b>56280</b>	9.72%	<b>47637</b>	9.73%	<b>18990</b>	9.86%	<b>10336</b>	9.17%	<b>9400</b>	10.75%	<b>1018351</b>	10.70%
<b>10</b>	<b>53820</b>	9.30%	<b>45124</b>	9.21%	<b>17996</b>	9.34%	<b>9552</b>	8.48%	<b>8619</b>	9.86%	<b>1013931</b>	10.65%
<b>11</b>	<b>18600</b>	3.21%	<b>15141</b>	3.09%	<b>6475</b>	3.36%	<b>3694</b>	3.28%	<b>3488</b>	3.99%	<b>277780</b>	2.92%





<b>Guestbook Message Number</b>	<b>IP Address</b>	<b>Date</b>
Entry: 3201;	IP: 4.41.184.49	Date: 2003-07-10 00:56:43
Entry: 3202;	IP: 4.46.84.55	Date: 2003-07-10 01:00:05
Entry: 3203;	IP: 81.69.109.47	Date: 2003-07-10 01:02:28
Entry: 3204;	IP: 4.41.184.49	Date: 2003-07-10 01:03:57
Entry: 3205;	IP: 65.128.176.1	Date: 2003-07-10 01:19:47
Entry: 3206;	IP: 4.40.34.136	Date: 2003-07-10 05:19:14
Entry: 3207;	IP: 12.6.12.40	Date: 2003-07-10 06:02:54
Entry: 3208;	IP: 62.238.35.26	Date: 2003-07-10 06:06:53
Entry: 3209;	IP: 82.35.83.125	Date: 2003-07-10 06:52:09
Entry: 3210;	IP: 62.238.35.26	Date: 2003-07-10 06:53:13
Entry: 3211;	IP: 81.136.23.231	Date: 2003-07-10 07:02:57
Entry: 3212;	IP: 81.152.131.42	Date: 2003-07-10 07:30:22
Entry: 3213;	IP: 4.40.34.136	Date: 2003-07-10 07:35:35
Entry: 3214;	IP: 66.197.0.215	Date: 2003-07-10 09:18:51
Entry: 3215;	IP: 68.7.117.151	Date: 2003-07-10 11:26:07
Entry: 3216;	IP: 65.128.176.1	Date: 2003-07-10 11:28:59
Entry: 3217;	IP: 82.35.83.125	Date: 2003-07-10 11:43:20
Entry: 3218;	IP: 83.130.209.192	Date: 2003-07-10 12:06:17
Entry: 3219;	IP: 65.30.176.201	Date: 2003-07-10 12:54:47
Entry: 3220;	IP: 4.40.34.136	Date: 2003-07-10 13:34:17
Entry: 3221;	IP: 12.223.231.47	Date: 2003-07-10 14:55:06
Entry: 5654;	IP: 4.43.130.23	Date: 2003-11-11 00:52:41
Entry: 5655;	IP: 4.40.35.218	Date: 2003-11-11 03:38:49
Entry: 5656;	IP: 64.12.96.134	Date: 2003-11-11 03:47:11
Entry: 5657;	IP: 66.197.0.215	Date: 2003-11-11 05:02:31

----- Original Message -----

**Return-Path:**

[<barneytv75@hotmail.com>](mailto:barneytv75@hotmail.com)

**Received:**

from mta5.snfc21.pbi.net (mta5.snfc21.pbi.net [206.13.28.241]) by beast.tnug.net (8.11.3/8.11.3) with ESMTMP id

h1JH9ix70686 for [<max@tnug.com>](mailto:max@tnug.com); Wed, 19 Feb 2003 09:09:44 -0800 (PST) (envelope-from [barneytv75@hotmail.com](mailto:barneytv75@hotmail.com))

**Received:**

from hotmail.com ([63.205.42.122]) by mta5.snfc21.pbi.net (iPlanet Messaging Server 5.1 HotFix 1.6 (built Oct 18 2002))

with ESMTMP id [<OHAK009AOFDF5E@mta5.snfc21.pbi.net>](mailto:OHAK009AOFDF5E@mta5.snfc21.pbi.net) for [max@tnug.com](mailto:max@tnug.com); Wed, 19 Feb 2003 09:03:16 -0800 (PST)

**Date:**

Wed, 19 Feb 2003 09:10:12 -0800

**From:**

David Latt [<barneytv75@hotmail.com>](mailto:barneytv75@hotmail.com)

**Subject:**

Re: dustin diamond

**To:**

max goldberg [<max@tnug.com>](mailto:max@tnug.com)

**Reply-to:**

[barneytv75@hotmail.com](mailto:barneytv75@hotmail.com)

**Message-id:**

[<3E53BA73.46D187A5@hotmail.com>](mailto:3E53BA73.46D187A5@hotmail.com)

**References:**

<000801c2d6ef\$96eb8360\$1500000a@baccarat>

Max,

The site is less than flattering to Dustin. We are trying to reinvent his career and the .com site of yours is making a mockery of him. The site sure may have started as a joke, but is defaming Dustins character. Call me

at 414-915-9292 and lets discuss this. We would like to have dustindiamond.com without this turning into a drag for everyone. Maybe there is something we can workout that will be rewarding for the both of us.

Sincerely,

Jack Koshick

Manager

Jack Koshick Presents

1626 N. Prospect Ave.

Ste. 1801

Milwaukee, WI 53202

414-225-9026 Phone

414-225-9025 Fax

[JcKoshick@aol.com](mailto:JcKoshick@aol.com)

max goldberg wrote:

hi, i own/host dustindiamond.com which was started as a joke, but somehow got quite popular. anyway im now recieving a good deal of email from women who want to date him after seeing him on stardates. anyway, if he cares and doesn't want to sue me, you can tell him to email me at this address. thanks-max

----- Original Message -----

**Return-Path:**

[<Link15@aol.com>](mailto:Link15@aol.com)

**X-Sieve:**

cmu-sieve 2.0

**Received:**

from imo-r04.mx.aol.com (imo-r04.mx.aol.com [152.163.225.100]) by beast.tnug.net (8.11.3/8.11.3) with ESMTP id h2KLhnd32313 for [<max@tnug.com>](mailto:max@tnug.com); Thu, 20 Mar 2003 13:43:49 -0800 (PST) (envelope-from [Link15@aol.com](mailto:Link15@aol.com))

**Received:**

from [Link15@aol.com](mailto:Link15@aol.com) by imo-r04.mx.aol.com (mail\_out\_v34.21.) id e.116.2074d489 (18707) for [<max@tnug.com>](mailto:max@tnug.com); Thu, 20 Mar 2003 16:38:29 -0500 (EST)

**From:**

[Link15@aol.com](mailto:Link15@aol.com)

**Message-ID:**

[<116.2074d489.2bab8ed5@aol.com>](mailto:116.2074d489.2bab8ed5@aol.com)

**Date:**

Thu, 20 Mar 2003 16:38:29 EST

**Subject:**

dustindiamond.com

**To:**

[max@tnug.com](mailto:max@tnug.com)

**MIME-Version:**

1.0

**Content-Type:**

multipart/alternative; boundary="part1\_116.2074d489.2bab8ed5\_boundary"

**X-Mailer:**

7.0 for Windows sub 10629

Hi Max:

Dustin got a lawyer to write the letter you were looking for to stop your website. I am not sure if you were aware that impersonating an actor (receiving and/or responding to email written to him) is against the law. The Lawyer has taken that into consideration as well. Shall we sent the paperwork to:

Max Goldberg  
1652 Jefferson St.  
Napa, CA 94559

Please let me know, so we can put an end to your games. Thank you

----- Original Message -----

**Message-ID:** [<3E7B167B.20807@tnug.com>](mailto:3E7B167B.20807@tnug.com)  
**Date:** Fri, 21 Mar 2003 08:41:15 -0500  
**From:** max goldberg [<max@tnug.com>](mailto:max@tnug.com)  
**User-Agent:** Mozilla/5.0 (Windows; U; Windows NT 5.1; en-US; rv:1.4a) Gecko/20030320  
**X-Accept-Language:** en-us, en  
**MIME-Version:** 1.0  
**To:** [Link15@aol.com](mailto:Link15@aol.com)  
**Subject:** Re: dustindiamond.com  
**References:** [<36.3c6ddf78.2bac6499@aol.com>](mailto:36.3c6ddf78.2bac6499@aol.com)  
**In-Reply-To:** [<36.3c6ddf78.2bac6499@aol.com>](mailto:36.3c6ddf78.2bac6499@aol.com)  
**Content-Type:** text/plain; charset=ISO-8859-1; format=flowed  
**Content-Transfer-Encoding:** 7bit

That's fine, but please still send a digital copy.

Thanks

-Max

[Link15@aol.com](mailto:Link15@aol.com) wrote:

> Actually we are having the police bring it because it is a \*\_felony\_\*  
> to impersonate an actor, and we would like to press charges. Thank  
you



----- Original Message -----

**Return-Path:**

[<JCKOSHICK@aol.com>](mailto:JCKOSHICK@aol.com)

**Received:**

from imo-r02.mx.aol.com (imo-r02.mx.aol.com [152.163.225.98]) by beast.tnug.net (8.11.3/8.11.3) with ESMTTP id h2N1dZd89382 for [<max@tnug.com>](mailto:max@tnug.com); Sat, 22 Mar 2003 17:39:35 -0800 (PST) (envelope-from

[JCKOSHICK@aol.com](mailto:JCKOSHICK@aol.com))

**Received:**

from [JCKOSHICK@aol.com](mailto:JCKOSHICK@aol.com) by imo-r02.mx.aol.com (mail\_out\_v34.21.) id e.1dc.5c2b986 (4004) for [<max@tnug.com>](mailto:max@tnug.com); Sat, 22 Mar 2003 20:34:16 -0500 (EST)

**From:**

[JCKOSHICK@aol.com](mailto:JCKOSHICK@aol.com)

**Message-ID:**

[<1dc.5c2b986.2bae6917@aol.com>](mailto:1dc.5c2b986.2bae6917@aol.com)

**Date:**

Sat, 22 Mar 2003 20:34:15 EST

**Subject:**

DUSTIN DIAMOND

**To:**

[max@tnug.com](mailto:max@tnug.com)

**MIME-Version:**

1.0

**X-Mailer:**

8.0 for Windows sub 6011

MAX,

I TRYED TO DEAL WITH YOU ON A ONE TO ONE LEVEL, BUT TO NO AVAIL. PLEASE BE ADVISED THAT UNLESS DUSTINDIAMOND.COM IS NOT TAKEN DOWN (NEVER TO RETURN) BY 10 PM SUNDAY EVENING C.S.T. MARCH 23, 2003 I HAVE INSTRUCTED MY ATTORNEY TO FILE CRIMINAL CHARGES AGAINST YOU, AND THAT IS JUST THE BEGINNING. I HOPE YOU REALIZE THE SEVERITY OF THIS MATTER. NOW DO THE RIGHT THING.

JACK KOSHICK - PERSONAL MANAGER

**Jack Koshick Presents**

**1626 N. Prospect Ave.**

**Ste. 1801**

**Milwaukee, WI 53202**

**414-225-9026 Phone**

**414-225-9025 Fax**

**[JcKoshick@aol.com](mailto:JcKoshick@aol.com)**

----- Original Message -----

**Return-Path:**

[<JCKOSHICK@aol.com>](mailto:JCKOSHICK@aol.com)

**X-Sieve:**

cmu-sieve 2.0

**Received:**

from imo-m06.mx.aol.com (imo-m06.mx.aol.com [64.12.136.161]) by beast.tnug.net (8.11.3/8.11.3) with ESMTP id h2OH9Jd28466 for [<max@tnug.com>](mailto:max@tnug.com); Mon, 24 Mar 2003 09:09:20 -0800 (PST) (envelope-from

[JCKOSHICK@aol.com](mailto:JCKOSHICK@aol.com))

**Received:**

from [JCKOSHICK@aol.com](mailto:JCKOSHICK@aol.com) by imo-m06.mx.aol.com (mail\_out\_v34.21.) id e.b4.1a5b9f21 (26116) for

[<max@tnug.com>](mailto:max@tnug.com); Mon, 24 Mar 2003 12:03:52 -0500 (EST)

**From:**

[JCKOSHICK@aol.com](mailto:JCKOSHICK@aol.com)

**Message-ID:**

[<b4.1a5b9f21.2bb09478@aol.com>](mailto:b4.1a5b9f21.2bb09478@aol.com)

**Date:**

Mon, 24 Mar 2003 12:03:52 EST

**Subject:**

dustin diamond

**To:**

[max@tnug.com](mailto:max@tnug.com)

**MIME-Version:**

1.0

**Content-Type:**

multipart/alternative; boundary="part1\_b4.1a5b9f21.2bb09478\_boundary"

**X-Mailer:**

8.0 for Windows sub 234

max,

its obvious that you are not taking this serious. charges will be files today.i hope it was worth it.


jack koshick



## The page cannot be displayed

The page you are looking for is currently unavailable. The Web site might be experiencing technical difficulties, or you may need to adjust your browser settings.

Please try the following:

- Click the  Refresh button, or try again later.
- If you typed the page address in the Address bar, make sure that it is spelled correctly.
- To check your connection settings, click the **Tools** menu, and then click **Internet Options**. On the **Connections** tab, click **Settings**. The settings should match those provided by your local area network (LAN) administrator or Internet service provider (ISP).
- If your Network Administrator has enabled it, Microsoft Windows can examine your network and

**gamester.com**

Please visit this site later; under construction. copyright @1999

tessa  
DeCarlo



March 6, 2004

To Whom It May Concern:

I have been covering the American art scene for more than 15 years for the *Wall Street Journal*, the *New York Times*, the *Oxford American*, and numerous other publications. I am writing to defend *dustindiamond.com* as an electronic art installation of great wit and outstanding merit. It would be a terrible violation of Max Goldberg's First Amendment rights as a creative artist to deprive him of this domain, and destruction of this site would be nothing less than an act of artistic vandalism.

Cyberspace has become one of the hottest mediums in the contemporary art scene, and on-line art projects are widely recognized as among the most intriguing artworks of our day. In this respect, *dustindiamond.com* lies within a young but already well-established artistic tradition.

Parody, and in particular parody of particular celebrities and of the very idea of celebrity, is a central concern of contemporary art. In this respect as well, *dustindiamond.com* is part of a widely recognized and well-defended trend in the arts that includes Andy Warhol's Marilyn series, Richard Prince's appropriation of the Marlboro Man, and numerous contemporary artists' use of film and TV clips.
















*Dustindiamond.com* is clearly a parody of a personal site. It pokes fun at our celebrity-obsessed culture yet also reveals the underlying pathos of that obsession. Its bad design, comically cheesy technology, and heart-breakingly clumsy prose are all calculated to add to that effect. The guest book is a particularly brilliant aspect of the work. By throwing the site open to the responses of electronic passersby, the guest book further reveals the depths of longing, fear, and even rage that fuel our society's love affair with fame. Certainly the postings in the guest book are often obnoxious, unpleasant, even obscene. But art in our era has never hesitated to use the tools of shock to make a point—and in this case it is not the artist but the audience which is revealing itself.

The *dustindiamond.com* site is a wonderful work of art and deserves wider support, not eradication. I hope that the merely commercial claims of Mr. Diamond will not be given greater weight than the artistic merits of this unique and delightful parody installation.

Very truly yours,

Tessa DeCarlo

# Index of /contrib

Name	Description
 <a href="#">Parent Directory</a>	
 <a href="#">ay2tivignogx/org/</a>	from <a href="http://ay2tivignogx.pentrou.org/">http://ay2tivignogx.pentrou.org/</a>
 <a href="#">getoffmyplane/</a>	from <a href="http://www.getoffmyplane.com/">http://www.getoffmyplane.com/</a>
 <a href="#">getthefuckoutofhere/getthefsckoutofhere.html</a>	from <a href="http://www.monkeylice.com/">http://www.monkeylice.com/</a>
 <a href="#">getyourasstomars/</a> version)	new site! see also: <a href="#">1</a> <a href="#">2</a> (old
 <a href="#">ifindyourlackoffaithdisturbing/ifindyourlackoffaithdisturbing.net/</a>	from <a href="http://www.ifindyourlackoffaithdisturbing.net/">http://www.ifindyourlackoffaithdisturbing.net/</a>
 <a href="#">imrickjamesbitch/com/</a>	from <a href="http://www.imrickjamesbitch.com/">http://www.imrickjamesbitch.com/</a>
 <a href="#">itsatrap/</a>	from <a href="http://www.itsatrap.net/">http://www.itsatrap.net/</a>
 <a href="#">khaaaaaan/khaaaaaan.htm</a>	from <a href="http://unmod2.datamachine.net/khaaaaaan.htm">http://unmod2.datamachine.net/khaaaaaan.htm</a>
 <a href="#">mannowdog/flash/mannowdog.html</a>	from <a href="http://www.century22.org/josh/flash/mannowdog.html">http://www.century22.org/josh/flash/mannowdog.html</a>
 <a href="#">needfospeed/</a>	from <a href="http://needfospeed.ath.cx/">http://needfospeed.ath.cx/</a>
 <a href="#">ohnoes/</a>	from <a href="http://www.ohnoes.org/">http://www.ohnoes.org/</a>
 <a href="#">pa/</a> bnet fiasco	penny arcade gets ytmnd'ed during
 <a href="#">served/spudnewt/served.html</a>	from <a href="http://members.shaw.ca/served/spudnewt/served.html">http://members.shaw.ca/served/spudnewt/served.html</a>
 <a href="#">soccerpractice/</a>	from <a href="http://soccerpractice.ath.cx/">http://soccerpractice.ath.cx/</a>



[spoderman/  
spoderman.html](#)

from <http://spoderman.ath.cx/>



[welcome2damoonbatman/  
ath.cx/](#)

from <http://welcome2damoonbatman.ath.cx/>



[xgongivit2ya/](#)

from <http://xgongivit2ya.ath.cx/>



[youhavefailedmeforthelasttime/  
youhavefailedmeforthelasttime.com/](#)

from <http://>

---

Apache/1.3.29 Server at www.yourethemannowdog.com Port 80



3/11/04

To Whom It May Concern.

Re: [www.dustindiamond.com](http://www.dustindiamond.com)

I'm writing in regards to the above-named website. As I understand the circumstances, this website is under scrutiny and may have its domain name taken away. I'm writing to defend this website in the strongest possible terms. My arguments in favor of it will follow in the third paragraph. If you'll permit me, I'll state my *bona fides* in the second paragraph.

My name is David N Meyer. I'm in my fifth year as an Adjunct Professor in Cinema Studies at the New School University in New York City. I'm the author of two collections of film reviews: *A Girl and A Gun*; *The Complete Guide to Film Noir* (Avon Press) and *The 100 Best Films To Rent You've Never Heard Of* (St. Martin's Press). I'm currently under contract to Villard Books for a biography of Gram Parsons, the working title is *Twenty Thousand Roads: The Ballad of Gram Parsons & His 'Cosmic American Music'*. In addition, I'm the former Music Video Columnist for Entertainment Weekly, a long-time contributor to Glamour Magazine and my writings on film have appeared in the Sunday *New York Times* Arts & Leisure section. Perhaps most relevantly, I am a co-author of two renowned books of religious parody, *The Book of the Subgenius* and *Three-Fisted Tales of Bob*.

When I first heard that this website was under attack, I was astonished. The Supreme Court's history and determination to protect the First Amendment rights of parody are well-established. And unlike more insidious, willfully harmful parodies (the famous *Penthouse* magazine story of Jerry Falwell having sex with his mother in an outhouse comes to mind; the courts found in favor of *Penthouse* on every level of appeal), this site plainly states -- in huge letters that no one could miss -- that it is in no way affiliated with the subject of its parody. Moreover, it provides links to the subject's legitimate site. It is difficult to see how Dustin Diamond is harmed in any way by such an obvious and clearly affectionate joke.

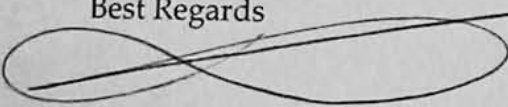


The whole point of protecting parody, from Jonathan Swift to Mark Twain to Lenny Bruce to this very site, is that our First Amendment (and in Swift's case similar guarantees in the UK) guarantees us the ability to discern between levels of truth on the page or screen. If a reader can reasonably (or, in the *Penthouse* case, not so reasonably) assume that what he or she is reading is a joke, then the courts have established that no harm is done. Our free speech protections enable us to make fun of others. Period. And public figures such as Mr. Diamond have been repeatedly subject to a much higher standard of proof-of-harm than more private persons.

It's no exaggeration to say that what has always separated American from every other nation is the noisy democracy of our big mouths. Everybody gets a say - that's the law. That say might be offensive to some, but unless it violates a rigorously upheld standard, that say is protected. [www.dustindiamond.com](http://www.dustindiamond.com) clearly falls into protected speech and I strongly urge you to support its rights.

Please do not hesitate to contact me with any questions or if I can be of help in any way.

Best Regards



Professor David N Meyer

**Received:**  
from newyork.zervers.net ([unix socket]) by newyork.zervers.net (Cyrus v2.2.3) with LMTP; Thu, 11 Mar 2004 04:53:12  
+0000

**X-Sieve:**  
CMU Sieve 2.2

**Received:**  
from apollo.1oftheservers.net (apollo.1oftheservers.net [207.44.220.106]) by newyork.zervers.net (8.12.9/8.12.9) with  
ESMTP id i2B4rBxD048577 for <[max@tnug.com](mailto:max@tnug.com)>; Thu, 11 Mar 2004 04:53:11 GMT

**Received:**  
from 12-218-229-216.client.mchsi.com ([12.218.229.216] helo=derekarnold.net ident=juggernaut) by  
apollo.1oftheservers.net with asmtmp (Exim 4.24) id 1B11Bj-0002Cq-OS for [max@tnug.com](mailto:max@tnug.com); Wed, 10 Mar 2004 23:52:55 -  
0500

**Date:**  
Wed, 10 Mar 2004 22:53:11 -0600

**To:**  
[max@tnug.com](mailto:max@tnug.com)

**Subject:**  
dustindiamond.com testimonial

Dustindiamond.com is a pretty amusing site, and I've enjoyed its time on the WWW. It reminded me of my fond memories of watching good old Screech on Saturdays, because I often found myself identifying with his goofy, geeky, yet honest and kind actions.

The site itself is very much over the top and has an air of absurdity about it, and I oftentimes check up on it and find it to be pretty hilarious. It's a magnificent spectacle of parody that I've attempted to surpass, but never have been able to. Now that I hear about the efforts to silence this work of art (and it really is a work of art, don't doubt that for a second), it makes me sad that a former idol of mine could betray me like that. I know it sounds stupid, but it really lets me down.

----- Original Message -----

**Received:** from newyork.zervers.net ([unix socket]) by newyork.zervers.net (Cyrus v2.2.3) with LMTP; Thu, 11 Mar 2004 04:51:40 +0000

**Message-ID:** <[404FF03C.8080805@softhome.net](mailto:404FF03C.8080805@softhome.net)>

**Date:** Wed, 10 Mar 2004 23:51:08 -0500

**User-Agent:** Mozilla Thunderbird 0.5 (Windows/20040207)

**X-Accept-Language:** en-us, en

**MIME-Version:** 1.0

**To:** [max@tnug.com](mailto:max@tnug.com)

**Subject:** Dustindiamond.com

**Content-Type:** text/plain; charset=us-ascii; format=flowed

Dustindiamond.com should stay under its current owner and management! It's obviously a parody. From the outdated picture to the misspellings, not to mention the guestbook, there is no possibility of a reasonable person misconstruing [www.dustindiamond.com](http://www.dustindiamond.com) for an official site.

Is comedy, not to mention free speech, now at risk on the internet due to baseless requests for domain arbitration? While libelous or damaging action has a clear legal precedent, none is involved in this case. This is simply parody and humor in the modern computer age.

Keep dustindiamond.com alive!

----- Original Message -----

by newyork.zervers.net (8.12.9/8.12.9) with ESMTP id i2B3oPx045263 for  
<[max@tnug.com](mailto:max@tnug.com)>; Thu, 11 Mar 2004 03:50:25 GMT

Thu, 11 Mar 2004 03:50:19 GMT

To: [max@tnug.com](mailto:max@tnug.com)

Subject: dustindiamond.com

Date: Wed, 10 Mar 2004 22:50:19 -0500

Hi,

Your site is hilarious. I'd completely forgotten about SCREEEECH until a friend showed me this. Sometimes I like to leave the window open so I can be mesmerized by the frog and that hideous midi file. One thing, though - why'd you put the disclaimer up at the bottom? It takes the fun out, although the site is pretty obviously fake to anyone with half a brain. No real site could have a design that bad, right?

cheers,

----- Original Message -----

**Message-ID:** <3F8B5B25.4050500@tnug.com>  
**Date:** Mon, 13 Oct 2003 22:10:45 -0400  
**From:** max goldberg <max@tnug.com>  
**User-Agent:** Mozilla/5.0 (Windows; U; Windows NT 5.1; en-US; rv:1.5) Gecko/20030916  
**X-Accept-Language:** en-us, en  
**MIME-Version:** 1.0  
**To:** Shawn Cannon <scannon@katewwdb.com>  
**Subject:** Re: Interview request with Dustin Diamond  
**References:** <017f01c391ed\$944b37e0\$4b39be42@pippy>  
**In-Reply-To:** <017f01c391ed\$944b37e0\$4b39be42@pippy>

I am in no way affiliated with Dustin Diamond. His official website is dustindiamond.net, currently content changes are under way in order to resolve some of the confusion that the parody site 'dustindiamond.com' causes.

Shawn Cannon wrote:

> Hello Mr. Goldberg,  
>  
> I'm a freelance writer from Janesville, WI (originally from  
> Milwaukee). I would love to have the opportunity to interview Dustin  
> Diamond sometime as I would like to write a piece about him. The  
> article will basically be a brief bio of his many successes, what he  
> is up to now, and what his plans are in the future.  
>  
> I see that he mentioned on his site how he would be in a position to  
> help people being famous and sexy like him. Whatever he has planned  
> it  
> sounds great already and I would love to have the pleasure to write  
> about that as well.  
>  
> Let me know when would be a good time for me and him to connect.  
>  
> Shawn Cannon  
> 317 Clark Street  
> Janesville, WI 53545  
> (608) 758-1433  
> [scannon@katewwdb.com](mailto:scannon@katewwdb.com) <<mailto:scannon@katewwdb.com>>