**COMMONWEALTH OF PUERTO RICO**

**COURT OF FIRST INSTANCE**

**SUPERIOR CHAMBER OF SAN JUAN**

**UNIVERSITY OF PUERTO RICO**

Plaintiff

**v.**

**Oscar Moreno de Ayala;**

**Gauss Research Laboratory, Inc.;**

**Gauss Research Foundation, Inc.**

Defendant

**about:**

**Interim interdict, preliminary and permanent injunction, unjust enrichment and return of misappropriated public funds, action claiming ownership, action to pull back the corporate veil**

Demand

The Honorable Court:

APPEARS the plaintiff, UNIVERSITY OF PUERTO RICO (the "UPR" or "University") through the legal representation you subscribe and very respectfully states, claims and requests:

1. PARTIES
2. The applicant, UPR, is a public instrumentality with capacity to sue and be sued. The UPR is the main institution of university education in Puerto Rico and is composed of eleven (11) academic units, including the Rio Piedras Campus University of Puerto Rico (hereinafter the "RRP-UPR").
3. The co-defendant, Dr. Oscar Moreno de Ayala, is of age and his last known residential address is Urbanizacion Dos Pinos, Vesta Street # 801, Rio Piedras, Puerto Rico 00923. The last known mailing address is P.O. Box 21613, San Juan, Puero Rico 00931.
4. The co-defendant, Gauss Research Laboratory, Inc., a for-profit corporation organized under the laws of the Commonwealth of Puerto Rico, registered in the State Department down the number 177988, whose physical and mailing address is Urbanizacion Two Pinos, Vesta Street # 801, Rio Piedras, Puerto Rico 00923.
5. The co-defendant, Gauss Research Foundation, Inc. is a nonprofit corporation organized under the laws of the Commonwealth of Puerto Rico, registered in the State Department under the number 53962, whose physical and mailing address is Urbanizacion Dos Pinos , Vesta Street # 801, Rio Piedras, Puerto Rico 00923.

II. THE FACTS

1. Cybernetic communications network ("Internet") is a worldwide computer network that allows several individuals and organizations to exchange information through access to millions of pages within the network.
2. A domain name is an alphanumeric address of a computer, which allows the user to locate a site on the Internet without the need for the unique underlying numeric address, called "protocol address" (or "IP"). Thus, a domain name translates to a simple way to address on the Internet designed to more easily identify the site or page that searches the Internet.
3. The "Internet Corporation for Assigned Names and Numbers (better known as" ICANN "for its initials in English) is a nonprofit corporation that is responsible for maintaining the system of these domains across the world to ensure the stability and security the operation of the Internet.
4. The "Internet Assigned Numbers Authority" (better known as "IANA", for its acronym in English) is a division that assigned the Department of Commerce to ICANN United States and is responsible for assigning domains used on the Internet.
5. There are different classifications of domain, among which are the "generic top-level domains" ("gTLDs") and "country code top-level domains" ("ccTLD"). These last are given to countries such as ".es" (Spain); ".us" (United States); ".uk" (United Kingdom).
6. In 1988, the National Science Foundation United States (NSF, for its acronym in English), established a program to expand the use of the Internet outside of the United States by establishing a domain registration that would allow each country connected to the network and offer their community the opportunity to access the internet through that domain.
7. By virtue of the program established by NSF in 1988, the UPR, through its "Gauss Research Laboratory" at the RRP-UPR Faculty of Natural Sciences (the Gauss Laboratory was established in 1986), requested the inscription of the domain ".pr" proposal through the institutional research number 8818283 entitled "Support for the Participation of the University of Puerto Rico in the NSFNet”. This proposal was approved and as a result, the administration of the .pr domain designated the Gauss Research Laboratory, RRP-UPR Faculty of Natural Sciences.
8. It should be noted that the administration of the .pr domain was delegated to the Gauss Research Laboratory of the UPR because of its technical capability and knowledge to carry out this assignment, as well as their academic staff, educational and cultural development, all of this, according with the guiding principles of administration of a ccTLD for the community it serves.
9. The records show that the IANA country code .pr domain was registered by the UPR, serving as the administrative contact co-defendant, Oscar Moreno de Ayala, who at that time directed and supervised several of the network development programs communication in the UPR.
10. The development and maintenance of domain registration services (whose name was in the .pr zone) were realized on the premises of the UPR’s Gauss Research Laboratory, whose staff, equipment and services were paid with public funds from various university programs.
11. The UPR delegated the administration and coordination of these efforts at co-defendant Moreno de Ayala, who was then Professor on the RRP-UPR Natural Sciences Faculty and who served as director of UPR’s Gauss Research Laboratory.
12. Each entity interested in registering a domain or Internet address using the .pr characters should apply for registration to the UPR and pay a fee for the use thereof. Thus, for example, between the 1997-1998 fiscal year to January 24, 2007, the UPR posted revenue approximate the amount of $1,829,401.00 by way of registration of domains. Thus, the University raised funds to their coffers, to facilitate academic research within the University for the benefit of students and teachers.
13. At its inception, funds raised by the use of the .pr domain were administered by the Center for Science and Engineering Resources of RRP-UPR. However, on August 24, 2006, under the assumption to comply with new program objectives, Moreno de Ayala requested the establishment of a separate account to transfer the amount of $500,000.00 from the revenue generated by the domain registration service.
14. So, this new account was created and is in charge of co-defendant Oscar Moreno de Ayala, while it was administered by the Faculty of Natural Sciences RRP-UPR remain so subsequently transferred the amount of $400,750.79.
15. On September 5, 2006, using public funds without consent of the management of the UPR, the Gauss Research Laboratory announced the acquisition and activation of a "T1" telecommunication circuit to connect to the Internet independent and provide the domain name registration service autonomously.
16. Subsequently, on September 15, 2006, Professor Moreno ask the Vice President Research and Technology of the UPR Central Administration to refrain from announcing the Internet protocol numbers assigned Gauss Research Laboratory, as the same is announce exclusively from the Laboratory. This change was approved in force from October 20, 2006.
17. Without authorization and without the knowledge of the directors of the UPR, on 17 November 2006, Dr. Oscar Moreno incorporated a nonprofit entity called Gauss Research Laboratory, Inc. (“GRL, Inc. ") to which was assigned the number 50912 and name which carries identical to that of the laboratory established in 1986 by the UPR. Nevertheless, Dr. Moreno was interested that the newly created corporation benefits from a tax exemption available to corporations for profit, so on November 27, 2007 said corporation was terminated and was adopted as a for-profit corporation with number 177988, as recorded in the records of the Department of State.
18. Its certificate of incorporation shows that the for-profit corporation was created for the purpose of performing all activities related to the administration and records management "domain" as defined by ICANN and IANA and / or any other purpose lawful.
19. Also, the Annual Report for 2007 submitted to the Department of State by the GRL, Inc. for profit, it appears that such corporation had a total of $318,456 in cash and money ("cash on hand"), accounts receivable in the amount of $425,000 and total assets of $767,835.
20. According to the website of the GRL, Inc., the corporation is responsible for managing the "Puerto Rico's Top Level Domain", ie the domain .pr.
21. Notably, the corporation GRL, Inc. was created by Professor Moreno de Ayala shortly after the RRP-UPR Office of Legal Affairs will take several letters requesting the information related to contracts and funds of the .pr domain. as well as the operation of the Gauss Research Laboratory of the UPR.
22. Once again without permission, knowledge or consent of the university authorities, on December 21, 2006, Dr. Oscar Moreno changed the records of the IANA registries to GRL, Inc. as the sponsoring organization ("sponsoring organization" ) of the .pr domain in the IANA registry, instead of the UPR. Given that the corporation of Dr. Moreno was named as the laboratory of the UPR, which consisted in the name of the .pr domain administration, the IANA authorized the change noted in the record considered as an administrative change rather than a formal request for re-delegation.
23. Despite having illegally transferred the .pr domain to a private entity, unrelated to the purposes of the UPR, Professor Moreno requested transfers of money from the Center for Science and Engineering Resources of RRP-UPR for the payment of salaries, materials and travels related to the development of the .pr domain. Likewise, the UPR paid the bills of the 2007 ICANN conference that exceeded $150,000.00, in which the UPR is not listed as a sponsor, despite having paid for it by request of Dr. Moreno de Ayala.
24. Several UPR officials have asked the co-defendant Moreno de Ayala to explain the operation of the .pr domain, where were deposited the proceeds from its use, to which Dr. Moreno never responded. Contrariwise, retired from his position as professor of the Faculty of Natural Sciences Campus of UPR Rio Piedras, carrying all the information and documentation necessary for the management of the .pr domain.
25. Subsequently, barely a month to have resigned his post as Professor of the UPR, the January 25, 2008 Dr. Moreno de Ayala created a new nonprofit corporation called "Gauss Research Foundation, Inc." (GRF, Inc.), which, on information or belief, is the investigative arm of GRL, Inc., operates from its facilities and is subsidized in part by income generated by the administration of the .pr domain, which also accrues to GRL, Inc.
26. Professor Moreno made false representations to the University with the intention of removing the administration of the .pr domain gradually and illegally beyond the control of this without its senior management made aware of it.
27. On or about June 6, 2008, Moreno de Ayala even delete the acronym "UPRR" of instances of records from the IANA in turn replacing it by the acronym "NIC", eliminating any trace of identity between the .pr domain and UPR.
28. From some point in the year 2006, without consent and without the authorization of the directors of the University, GRL, Inc. and its President, Dr. Moreno de Ayala, have led the operation of the .pr domain, and on information or belief, have taken the money from the fees for the use of the aforementioned domain; money that has not been submitted to the UPR and that to the present amount is unknown to the quantity it amounts to, given that Dr. Moreno has refused to provide information about how many domains have been registered and prices.
29. Also, GRL, Inc. and Dr. Moreno De Ayala deposited into his coporate account donations sent by alumni of the RRP-UPR through the Internet page held by the GRL, Inc. for the Office of Development and Alumni of the RRP.
30. Accordingly, the defendant has appropriated public property, not just the money earned by the administration of the .pr domain but also of your domain, which is an extremely valuable property right for the UPR. Likewise, on information and belief, GRL, Inc. and Dr. Moreno de Ayala took all the documentation and information related to the administration and management of the .pr domain, leaving the plaintiff in a state of helplessness and unable to continue with the administration of the domain that was delegated by ICANN / IANA.
31. The above facts were investigated by the Office of Internal Auditors of the Board of Trustees of the UPR, who after conducting an audit on the operation and administration of the .pr domain, including resources and tax expenditures, presented a report which concluded, among others, that the UPR is the entity authorized to manage the .pr domain and there was a diversion of product revenue service charges to a private account since the creation of the GRL, Inc. The report also concludes that there is a basis that leads to violations of the Ethics in Government Act by Dr. Moreno de Ayala for his dual role as public officer and director of the private corporation GRL, Inc., as well as violations of the Penal Code of Puerto Rico under the figure of illicit enrichment.

**III. FIRST CAUSE OF ACTION: PROVISIONAL PROHIBITION, PRELIMINARY AND PERMANENT INJUNCTION**

1. Rejoin by reference paragraphs 1 through 35 that precede
2. The University of Puerto Rico enrolled for the administration of the .PR domain in the IANA registry, thus earning the income due to the registration of domain names by others in the .PR area. Thus, the UPR served as a sponsoring organization of the .PR domain from 1990 to December 21, 2006, when the defendant took advantage of loopholes to illegally change the records of the registrations of the IANA and allocated to its newly created corporation profit.
3. Dr. Moreno de Ayala had no access and exposure to the .PR domain had it not been for his job and relationship to the UPR, which was assigned to the administration of the .PR domain. What's more, had it not been for already included and registered to the Gauss Research Laboratory of the UPR and that this is a university with great interest entity to serve the public, the IANA will not have granted the administration of the .PR domain to Dr. Moreno de Ayala.
4. Funding for the registration of that domain and development was provided by the UPR. In addition to this, wages of employees of the Gauss Research Laboratory, from which you administer the domain, and the compensation of other technicians who were hired, came from funds of the UPR. Also, the equipment was purchased with funds from the programs of the UPR.
5. Dr. Oscar Moreno, without authorization, consent or knowledge of the UPR, formed a for-profit corporation, which currently administers the .pr domain bearing large sums for fees for the use of that domain, belonging to the UPR, thus profiting illegally from public funds.
6. The defendant has misappropriated the chattel called .pr domain, all public funds from the use of the domain and all information related thereto.
7. In addition, the UPR is in the knowledge that Dr. Moreno even sold, ceded and / or transfer to the Republic of China the right to use the .pr domain, for this use in its country and adapt to their characters (footnote: We assume that the Chinese government found useful in the domain ".pr", since the name of the government in the English language reads "People's Republic of China", the first two words begin with the characters "P" and "R" .)
8. The UPR has knowledge besides that at present there is a group of investors interested in buying the .pr domain and create a new for-profit corporation that administers it.
9. It is imperative to the issuance of an order for interim interdict to compel the defendant to perform any management services aimed at transferring the .pr domain to the UPR, starting preserve and provide a list of names and addresses of all customers used and / or using records in the .pr zone, preserve and deliver to the UPR copy of all records on the .pr domain, and preserve intact the infrastructure and equipment necessary to operate the said domain currently administered by the corporation created by Dr. Moreno. This includes all registration documentation, contracting, invoicing and any information held by the defendant related to the .pr domain, regardless of who created it.
10. The interim interdict is imperative because, since they are mostly electronic information, this is the only remedy interdictal procedural mechanism to ensure their preservation to ascertain the present case on its merits.
11. In addition, having transferred again the administration of the .pr domain from the UPR, it is inescapable that the defendant be prohibited from using the domain except for those steps necessary for the administration of the same on behalf of their users while this lawsuit is aired [as well as continue to hire and / or charging illegally if monies related to the .pr domain, which are public funds – *note:* *this sentence needs a better translation*].
12. The UPR has the right to use the remedies of interdict interim, injunction preliminary, and permanent injunction to prevent the continuation of the illegal and criminal actions of the defendant and require the defendants to cease and desist from them.
13. Not granted interdiction and preventive remedies sought, the UPR would be irreparably damaged, including but not limited to, loss of personal property that configures the .pr domain and the funds that it produces. The public interest is also being severely affected as the defendants would continue to profit illegally at the expense of public funds belonging to the UPR, as well as by recruitment policies, prices and other requirements imposed unilaterally by the defendants on the public accessing the .pr domain.
14. The UPR has no adequate remedy at law to enforce their right of property, including the administration of the services provided under the .pr domain. This then any ordinary remedy would cause the UPR continue to suffer irreparable damage that the illegal actions of the defendant have caused, including the continued appropriation of public funds illegally.
15. Under the above, the UPR requests to be given immediately and without further delay a provisional injunction ordering the defendant to: (i) directed management to carry out all domain services transferring . pr to the UPR, starting by preserving and providing a list of names and addresses of all customers who have used and / or using records in the .pr zone, preserving and delivering to the UPR copy of all records on the .pr domain, and preserving intact infrastructure and equipment necessary to operate the said domain, including all registration documentation, contracting, invoicing and any information held by the defendant related to the .pr domain, (ii) cease and desist from further receiving and using public funds for private purposes, (iii) prohibiting the respondent's use of .pr domain for their own benefit, and (iv) prohibiting the defendant from offering to sell or dispose of, to any third party the .pr domain. The UPR also requests, that after a hearing, the court grant a preliminary injunction and then a standing order to the defendant to cease and desist from their illegal actions permanently to appropriate the .pr domain and the funds produced by this, which are public funds. As a result, the defendant must return the .pr domain to the UPR, and everything related to it.
16. By separate motion, filed simultaneously with this application, the UPR has filed a memorandum of law in support of its request for an order for interim interdict and preliminary injunction.

**SECOND CAUSE OF ACTION, UNJUST ENRICHMENT AND RETURN OF ILLEGALLY APPROPRIATED PUBLIC FUNDS**

1. Reincorporated by reference paragraphs 1 through 51 above.
2. The Supreme Court has vigorously denounced the wrongdoing of public functionaries who profit from state funds.
3. In Municipality of Cayey v. Santiago Soto, 131 D.P.R. 304, 321-322 (1992), quoting Concurrent Opinion in A.E.E. v. P.N.P., 128 D.P.R. 294 (1991), the Supreme Court stated: “Corruption and improper or illegal disbursement of public funds - in multiple forms, sometimes crude and other sophisticated - are actions inconsistent with the democratic system of government enshrined in our Constitution and propped on respect for human dignity and the people's money as the only sovereign. No matter the methods they adopt and the hierarchy of official involved, they are intolerable. Ultimately, who really is harmed, not just economically but morally, is the general public regardless of political affiliation. It is therefore the obligation of the courts to vindicate those fundamental values.
4. The cause of civil action to recover misappropriated public funds by one of its officials in the doctrine of unjust enrichment.
5. The basic requirements of the latter are: (1) existence of an enrichment, (2) a correlative impoverishment, (3) a connection between the depletion and enrichment, (4) lack of a cause that justifies the enrichment and (5) the absence of a legal provision which excludes the application of unjust enrichment. E.L.A. Vazquez v. Cole, supra; Ortiz Andujar v. E.L.A., 122 DPR 817, 823 (1988).
6. Dr. Oscar Moreno de Ayala and GRL, Inc. received a profit emerging and cost savings at the expense of the UPR, who has left to earn income related to the administration of the .pr domain and who has largely funded operations of the GRL, Inc. To this extent, the actions of Dr. Moreno de Ayala and the GRL, Inc. constitute unjust enrichment at the expense of public funds for the impoverishment of the UPR, which is not justified for any cause by any contractual or legal provision.
7. Under the previous regulations, the UPR was asked to order the defendant to return all funds from the use of the .pr domain and those which were paid by the UPR to benefit the private corporation GRL, Inc., that we have not specified but that exceeds the amount of $2,000,000.00

**THIRD CAUSE OF ACTION: RECLAIMATIVE ACTION**

1. Reincorporated by reference paragraphs 1 through 58 above.
2. Our Civil Code provides that the homeowner has any action against the holder and possessor of the thing to vindicate. See Article 280 of the Civil Code of Puerto Rico, 31 L.P.R.A. Sec. 1111.
3. By the action for repossession, the owner claims its a matter of who will own it. You must properly identify the object, to prove that is yours and prove that this improperly in possession of the defendant. Once this burden of proof, for the respondent to point out and try their best title. Soto Ramirez Padilla v Quinones, 168 DPR 142 (2006).
4. According to the above, the administration of the domain. Pr was requested by and granted to the UPR, who owned, administered and costing to the defendant, by artifice, stole and illegally possessing and to the present continues to accrue all the benefits that such domain occurs.
5. Under the previous regulations, the UPR was asked to order the defendant to return the administration of the .pr domain, with all equipment, infrastructure, technology, customers and other components that it entails for its full operation on behalf of Internet user community in the .pr zone.

**FOURTH CAUSE OF ACTION: REQUEST FOR LIFTING OF THE CORPORATE VEIL**

1. Reincorporated by reference paragraphs 1 through 63 above.
2. Our Supreme Court has repeatedly decided not to hold the legal fiction of a corporation if it is to sanction a fraud, promote injustice, to evade a statutory obligation, defeat public policy, to justify inequality, protect fraud or defend crime. [multiple citations follow].
3. Dr. Moreno de Ayala created and registered a non-profit corporation called "Gauss Research Laboratory, Inc.", a name identical to the laboratory of the UPR and on behalf of whom comprised the administration of the .pr registered domain, knowing that since its inception, the administration of Internet domain will not be granted to individuals, but to non-profit-motivated, such as universities - including the UPR - as part of the NSFNET program. Thus, Morena De Ayala achieve change in their favor the .pr domain without the IANA having suspicion of the intention to remove from the hands of the UPR administration the .pr domain to dedicate for personal ends completely unrelated to those of UPR.
4. Once the .pr domain registered to the corporation, Dr. Moreno de Ayala request that the GRL, Inc. should become a for-profit corporation and to date has operated as such. Moreover, in order to refine their scheme, Dr. Moreno De Ayala created a new nonprofit corporation by the name of "Gauss Research Foundation, Inc.," which is the research arm of GRL, Inc., operates from his own offices and receives monetary contributions from this for their livelihood. Thus, through the GRL, Inc. Dr. Moreno de Ayala transferred part of their income to GRF, Inc. and thus avoid the taxation of certain revenues to the Treasury of Puerto Rico.
5. Also, through this scheme, Dr. Moreno takes over ownership of the UPR, acquired and remodeled properties in Puerto Rico and the Dominican Republic with the product of public funds and this continues exploiting them for profit, which distributes through his two corporations.
6. Clearly, Dr. Moreno De Ayala corporation created the GRL, Inc. for the sole purpose of making believe ICANN / IANA that the re-delegation of the .pr domain obeyed a mere administrative change and not a formal request for re -delegation. At the same time, once was the .pr domain administration was obtained, Moreno de Ayala created the corporation GRF, Inc. to cleave some of the revenue generated by the GRL, Inc. and thus take advantage of the tax laws of the Commonwealth of Puerto Rico. Clearly, these legal entities were created to commit fraud and illegal acts, and Dr. Moreno de Ayala hides behind the same to legitimize the illegal appropriation of UPR property and all funds it generates.
7. In keeping with this, the UPR respectfully requests the lifting of the corporate veil against Gauss Research Laboratory, Inc. and against the Gauss Research Foundation, Inc., and in consequence, to impose joint and several liabilities against Dr. Moreno De Ayala for damages claimed in this lawsuit.

**FOR ALL THESE REASONS**, you are asked, very respectfully, this Court found in favor of this application and to issue immediately and without further delay an order for interim interdict and, after a hearing, issue a preliminary injunction and later permanent ordering defendants to:

1. cease and desist immediately to continue using and appropriating funds generated by the .pr domain, which are public funds belonging to the UPR;
2. carry out all management services aimed at transferring the .pr domain to the UPR, beginning by preserving and providing a list of names and addresses of all customers who have used and / or are using records in the .pr zone , preserve and provide to UPR a copy of all records on the .pr domain, and preserve intact the infrastructure and equipment necessary to operate the said domain;
3. return to UPR immediately the administration of the .pr domain with any information and equipment necessary to operate the same;
4. refrain from selling, offering for sale or transfer to any third party the .pr domain;
5. return all the income earned from the administration of the .pr domain and the amounts that were paid by the UPR to benefit GRL, Inc. that we have not been able to ascertain but is estimated to exceed the amount of $ 2,000,000.00;
6. lift the corporate veil against the GRL, Inc. and the GRF, Inc. and impose joint and several LIABILITY on Dr. Oscar Moreno de Ayala for the damages claimed in this application;
7. cease using the name Gauss Research Laboratory;
8. order any other remedy in law.

Respectfully submitted.

In San Juan, Puerto Rico, May 31, 2011.

Signatories listed.

The University of Puerto Rico is exempt from stamp and duties, pursuant to the provisions of Act No. 1 of January 20, 1966, as amended, 18 LPRA, Section 612 (f).

**OATH**

I, Migual A. Munoz Munoz, President of the Universite de Puerto Rico ("UPR"), of age, married and resident of Aguada, Puerto Rico, under oath, declare that:

1. My name and other personal circumstances are indicated above.

2. That I have read the above Complaint and attest that the facts stated in it reflects the knowledge that I derived from the office I hold, as well as the results of investigations by the Office of Auditors of the UPR and referred to my person.

3. Stated here that for me is the truth and nothing but the truth.

And for the record, I swear and I have hereunto set in San Juan, Puerto Rico, May 31, 2011