

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Chris West and Automodeals, LLC,	§	
	§	
Plaintiffs,	§	
	§	
	§	5:16-cv-1205
v.	§	
	§	
Bret Lee Gardner, AutomoDeals Inc.,	§	
Arturo “Art” Gomez Tagle, and	§	
Elizabeth “Lizzie” Nguyen	§	
	§	JURY TRIAL DEMANDED
Defendants.	§	

PLAINTIFFS’ ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiffs Chris West and his company Automodeals, LLC (“Plaintiffs”) bring this Original Complaint seeking injunctive and monetary relief from Defendants Bret Gardner and AutomoDeals Inc. (“Defendants”), and would respectfully show as follows:

I. NATURE OF ACTION

1. This is an action to stop a convicted felon and sex offender from taking over a business name from its legitimate owner. Plaintiff Automodeals provides consulting services for car buying, and has been in continuous operation since September 2013. Plaintiff’s business ranks at the top of Google search results, and relies on its unique name to perpetuate its business. In mid-October 2016, Defendant Gardner launched a competing business – but rather than pick his own unique name – acted to misappropriate the goodwill associated with Automodeals and take it over for himself. Merely capitalizing the letter “D” in Automodeals is not a meaningful distinction. Gardner’s actions are willful and causing irreparable harm; tarnishing the good name of

Automodeals by associating it with a registered sex offender for child pornography – on full display to the public. *See* Exhibit A.

2. Plaintiffs assert causes of action for common law trademark infringement, unfair competition, and violations of the Lanham Act (15 U.S.C. § 1125 *et seq.*) including false designation of origin, blurring and tarnishment, and bad faith intent to profit from a domain name.

II. PARTIES

3. Plaintiff Chris Lenell West Jr. is an individual residing in Houston, Texas.

4. Plaintiff Automodeals, LLC (“Automodeals”) is a corporation organized and existing under the laws of the State of Texas and has its principal place of business in Houston, Texas. Automodeals is owned and managed by Chris West. Automodeals was organized in September, 2013 and has been in continuous operation since then.

5. Defendant Bret Lee Gardner is a convicted felon for child pornography, Texas Penal Code 43.26 (A), whose profile appears on the Texas Department of Public Safety Sex Offender Registry with photograph and address, and a requirement to be registered for his “lifetime.” Exhibit A. Gardner has been a resident of Harris County, Texas in 2013, residing in Law Porte. He has an address on file with the Sex Offender Registry of 144 Landa St. Apt. 854, New Braunfels, TX 78130. He may be served at any of these addresses or wherever he may be found.

6. Defendant AUTOMODEALS, INC. (“Defendant Automodeals”) is a corporation first organized and existing under the laws of the State of Delaware on October 18, 2016, and has its principal place of business at 110 East Houston, San Antonio, Texas 78205. Defendant Automodeals does business throughout the state of Texas, including Harris County, Texas and Bexar County Texas. Defendant Automodeals has a registered agent of “A REGISTERED

AGENT, INC.” located at 8 The Green, Ste A, Dover, DE 19901. Defendant AutoDeals may be served through its registered agent, corporate officer, or through the Texas Secretary of State.

7. Arturo “Art” Gomez Tagle is a Co-Founder and COO of Defendant AutoDeals. On information and belief, he resides at 217 E Dulling Ct., San Antonio, TX 78223.

8. “Lizzie” Nguyen is a Co-Founder and Chief Design Officer of Defendant AutoDeals. On information and belief, her formal name is Elizabeth Nguyen, and she resides at 8405 Yancey Ct., Plano, TX 75025.

III. JURISDICTION AND VENUE

9. All preceding paragraphs are incorporated herein as if set forth in full.

10. This action arises under the Lanham Act, including 15 U.S.C. § 1125, and under Texas state law.

11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1338(a) and 15 U.S.C. § 1121. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

12. This Court has personal jurisdiction over each Defendant. Defendants Gardner, AutoDeals, Tagle, and Nguyen have each conducted business in this district, have committed acts of trademark infringement, unfair competition, false designation of origin, blurring and tarnishment, and bad faith intent to profit from a domain name in this district and throughout the state of Texas.

13. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendants Gardner, AutoDeals, Tagle, and Nguyen have each conducted business in this judicial district and because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

IV. FACTUAL BACKGROUND

14. Plaintiff Automodeals is a consulting business owned and managed by Chris West to help people with the car buying process in Texas. This involves research and contacts with car brokers and dealers, a knowledge of dealer incentives and rebates, and familiarity with the marketplace. Mr. West has such knowledge and experience.

15. Since at least September 16, 2013, Mr. West has continuously operated under the name Automodeals throughout the state of Texas. He has helped numerous people with the car buying process, and continues to do so.

16. The name Automodeals is prominently displayed on the company website at www.getautomodeals.com, and on pens, business cards, drink can warmers/chillers, correspondence, and other items. Automodeals was also registered with the Texas Secretary of State in September 2013. The website is at or near the top of Google searches.

17. The legitimate Automodeals is known by and has had a good reputation with car buying consumers, industry professionals, dealers, and brokers.

18. The tradename Automodeals is inherently distinctive. In the alternative, the tradename Automodeals has acquired secondary meaning and has become distinctive through Plaintiffs' exclusive and continuous use, promotion, and advertising.

19. From September 2013 to mid-October 2016, the name Automodeals was unique in Texas. Around mid-October of 2016, Defendants Gardner, Tagle, and Nguyen opened a competing business, and attempted to misappropriate the name and goodwill of Automodeals for themselves. They filed a corporate entity with the same or substantially similar name in Delaware, registered a website called www.automobiles.co, started a Facebook page, and filed for a trademark on "AutomoDeals". Defendants falsely represented to the United States Patent and

Trademark Office that the AutoDeals name and internet business model was something new they had created themselves. It was not.

20. Defendants are in the process of committing a fraud on the United States Patent and Trademark Office, by claiming continuous commercial use going back to 2003, when their own videos and corporate formation paperwork admits starting in mid-October of 2016. According to the Texas Sex Offender Registry, Gardner would've been about 14 years old in 2003, and he certainly was not operating Automodeals at the time. This trademark has not been granted yet.

21. Defendants' attempt to seek exclusive protection of a mark that was actually in prior use by Chris West and Automodeals, LLC, has forced Plaintiffs to act for their protection. Plaintiffs submit that consumers in Texas are entitled to know the actual source of goods and services, and that businesses should be protected from unscrupulous competitors like Bret Gardner – who could easily have selected his own unique name, but chose rather to take the name of another business as his own. Neither Texas nor Federal law permits a business to take over a name in prior use and shut out that prior user from the marketplace.

22. There can be no mistake that Defendants Gardner, Tagle and Nguyen were aware of Plaintiffs' tradename Automodeals. Plaintiff's website and tradename are at or near the top of Google searches. Defendants claim their company is an internet business start-up, and they have an internet presence. They were aware they were unlawfully taking the name of a legitimate Texas business that appears on the internet when Defendants started in mid-October 2016.

23. Each of Defendants Gardner, Tagle and Nguyen were sent a Cease-and-Desist letter on November 7, 2016. Each of Defendants are fully aware that they are acting unlawfully. They have continued to act unlawfully since that time.

24. Defendants do not respect the intellectual property interests of others. Defendants

could easily have picked their own unique name, but have intentionally chosen not to do so. Instead, Defendants have misappropriated the goodwill associated with the name Automodeals, and attempted to take over and replace Automodeals in the marketplace here in Texas.

25. Defendants' lack of respect for the rights of others is made all the more egregious by the criminal background of Defendant Gardner. Gardner is a convicted felon for engaging in child pornography. Gardner neither respected the rights of child victims, nor has he respected the rights of the legitimate Automodeals, LLC. Instead of choosing his own unique business name and competing fairly in the marketplace, Gardner, Tagle and Nguyen chose to take the name of a successful business and claim to have innovated the business model and name on their own.

26. Gardner's business partners Tagle and Nguyen likewise participated in this act of falsely portraying their company in the marketplace as the original Automodeals and the original innovator of Automodeal's business model. Tagle and Nguyen have decided to be business partners with the convicted felon and sex offender Gardner, to make false representations in the marketplace, to falsely represent the source of their services, and to assist Gardner trying to take over the name Automodeals from Plaintiffs.

27. Gardner, Tagle, and Nguyen are causing confusion in the marketplace, misrepresenting the source of their services, and damaging the reputation of the legitimate Automodeals. Defendants are causing Plaintiff irreparable harm and loss of goodwill. Defendants are tarnishing the name of the legitimate Automodeals by associating the name with a felon and sex offender who preys on children – namely Bret Gardner. This confusion and tarnishment is happening amongst both buyers and sellers, who use Plaintiffs' services.

28. Although Defendants Gardner, Tagle, and Nguyen could easily have chosen a unique name for their start-up business, they instead choose to take the name of an existing

business and use it for themselves. Defendants are unscrupulous, and their unlawful acts should be enjoined.

V. Claim 1. Common Law Trademark Infringement

29. All preceding paragraphs are incorporated herein as if set forth in full.

30. Plaintiffs Chris West and Automodeals, LLC are the exclusive owners of the Automodeals mark in Texas, which is valid, enforceable, and eligible for protection. Plaintiffs Chris West and Automodeals, LLC are the senior users of the Automodeals mark.

31. Without Chris West's authorization, Defendants used, and continue to use, in commerce, a reproduction, counterfeit, copy, or colorable imitation of the Automodeals mark on competitive, identical, or closely related services and/or products, including in connection with the website www.automodeals.co.

32. Defendants' unauthorized use of the Automodeals mark is likely to cause confusion, mistake, or deception among consumers or potential consumers as to the source or origin of the products and services offered by Defendants, through their website, and/or the approval of those products and services by Chris West or Automodeals, LLC.

33. Defendants had actual notice of the Automodeals mark, that existed prior to Defendants' use of the mark, including through their viewing and use of content of the www.getautomodeals.com website, and/or from internet searches.

34. Defendants also had actual notice of the Automodeals mark from Plaintiffs' Cease and Desist letter.

35. Defendants' activities and conduct therefore constitute common law trademark infringement under state law.

36. Defendants have used the Automodeals mark in commerce with the knowledge and

intent that such use causes confusion, mistake, and deception to the public.

37. Defendants' past and continued activities and conduct have been willful, deliberate, and knowingly and intentionally designed to trade upon the significant goodwill of the Automodeals mark, to cause confusion or mistake, and to deceive the public. In addition, Defendants have acted with malice and bad faith with a specific intent to cause substantial injury to Plaintiffs. Accordingly, Plaintiffs are entitled to an award of exemplary damages, including attorneys' fees.

38. Defendants' use in commerce of the Automodeals mark has caused loss of goodwill and profits to Plaintiffs, has damaged the reputation of genuine services containing the Automodeals mark, and has injured the public by causing confusion, mistake and deception.

39. Defendants' use in commerce of the Automodeals mark has diminished Plaintiffs' ability to control what is sold under the Automodeals mark.

40. The goodwill and reputation of Plaintiffs' business in connection with the Automodeals mark is significant, and Plaintiffs will suffer irreparable injury should this Court allow Defendants' use to continue to the detriment of Plaintiffs' trade reputation and goodwill. Plaintiffs have no adequate remedy at law for Defendants' violations. Because this irreparable injury cannot be adequately calculated or compensated solely by money damages, Plaintiffs seeks injunctive relief.

VI. Claim 2. Unfair Competition

41. All preceding paragraphs are incorporated herein as if set forth in full.

42. The aforesaid acts of Defendants constitute unfair competition in violation of state law.

43. The acts of Defendants alleged above were committed willfully, with full

knowledge of Plaintiffs' rights, and with the intention of deceiving and misleading the public and causing harm to Plaintiffs.

44. As a direct and proximate result of Defendants' infringing and unlawful acts, Plaintiffs have suffered, and will continue to suffer, damages in an amount that is not presently ascertainable, but that will be established at trial.

45. Unless enjoined by this Court, the acts of Defendants complained of herein will cause Plaintiffs to suffer irreparable harm for which there is no adequate remedy at law.

VII. Claim 3. False Designation of Origin, False Descriptions or Representations under the Lanham Act

46. All preceding paragraphs are incorporated herein as if set forth in full.

47. Plaintiffs Chris West and Automodeals, LLC are the exclusive owners of the Automodeals mark. This mark is valid and protectable. Defendants have used, and continue to use, the Automodeals mark in commerce, including but not limited to using it on their website www.automodeals.co, as well as on Facebook and before the USPTO in a trademark application. Defendants did this without Plaintiffs' consent.

48. Defendants' use of the Automodeals mark in commerce, and without Plaintiffs' authorization, constitutes false designation of origin, false or misleading description of fact, and false or misleading representation of fact. Because Defendants are competing with Plaintiffs in the same market in Texas, consumers are likely to be confused, mistaken, or deceived as to the nature of the affiliation, connection, or association between Plaintiffs and Defendants. For the same reason, consumers are likely to be confused, mistaken, or deceived as to the origin, sponsorship, or approval of Plaintiff Automodeals or Plaintiff Automodeals' services, in violation of 15 U.S.C. § 1125(a).

49. Defendants had actual notice of the Automodeals mark through their viewing and

use of content of the www.getautomodeals.com website, and due to Plaintiffs' Cease and Desist letter.

50. Defendants' activities have harmed Plaintiffs. Accordingly, Plaintiffs are entitled to recover their damages, Defendants' profits received as a result of the infringing activities and conduct, and the costs of bringing this action pursuant to 15 U.S.C. § 1117(a). This is also an exceptional case, such that attorney fees should be awarded. *Id.*

51. Unless restrained by this Court, Defendants' actions will cause ongoing harm to Plaintiffs. Plaintiffs have no control over the quality or production of any services of Defendants. Any deficiencies in the services of Defendants will reflect adversely on Plaintiffs, by whom customers will assume the services were provided by, endorsed, or sponsored. Defendants are also associating the name of Automodeals with a convicted felon and sex offender – Bret Gardner. If Defendants are allowed to continue using the Automodeals mark, Plaintiffs will suffer irreparable injury to their reputation. Plaintiffs have no adequate remedy at law. Because this irreparable injury cannot be adequately calculated or compensated solely by money damages, Plaintiffs seek injunctive relief.

VIII. Claim 4. Dilution by Blurring and Tarnishment under the Lanham Act

52. All preceding paragraphs are incorporated herein as if set forth in full.

53. Plaintiffs Chris West and Automodeals, LLC are the exclusive owners of the Automodeals mark. This mark is valid and protectable. Defendants have used, and continue to use, the Automodeals mark in commerce, including but not limited to using it on their website www.automodeals.co, as well as on Facebook and before the USPTO in a trademark application. Defendants did this without Plaintiffs' consent.

54. Plaintiffs' Automodeals mark is famous and distinctive, inherently or through

acquired distinctiveness. Defendants' use of the Automodeals mark in the form of "AutomoDeals" with a capital "D" is not a meaningful difference. Defendants are engaged in similar business to Plaintiffs in the same market in Texas. Defendants are acting to associate with and take over the Automodeals mark away from Plaintiffs. Defendants are in violation of the Lanham Act, 15 U.S.C. § 1125(c)(1) for dilution by blurring.

55. Defendants are further tarnishing the reputation of Plaintiffs by use of Plaintiffs' Automodeals mark. Plaintiffs have no control over the quality or production of any services of Defendants. Any deficiencies in the services of Defendants will reflect adversely on Plaintiffs, by whom customers will assume the services were provided by, endorsed, or sponsored. Defendants are also associating the name of Automodeals with a convicted felon and sex offender for child pornography – Bret Gardner. Defendants are in violation of the Lanham Act, 15 U.S.C. § 1125(c)(1) for dilution by tarnishment.

56. Plaintiffs are entitled to injunctive relief under 15 U.S.C. § 1125(c)(1) for dilution by blurring and dilution by tarnishment.

57. Defendants had actual notice of the Automodeals mark through their viewing and use of content of the www.getautomodeals.com website, through any internet search for the name Automodeals, and due to Plaintiffs' Cease and Desist letter. There is no possible way that Defendants failed to notice Automodeals in a Google search, and just happened to adopt a similar business model with the same name in the same market. Defendants are acting willfully and intentionally to take over the Automodeals mark for themselves in violation of Plaintiffs' prior use trademark rights.

58. Defendants have willfully intended to trade on the recognition of the famous mark Automodeals and have willfully intended to harm the reputation of the famous mark. Under 15

U.S.C. § 1125(c)(5), Plaintiffs are entitled to the remedies set forth in sections 35(a) and 36 of the Lanham Act, which are 15 U.S.C. §§ 1117(a) and 1118, respectively. Accordingly, Plaintiffs are entitled to (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. § 1117(a). This is also an exceptional case, such that attorney fees should be awarded. *Id.* All Defendants' use of the mark Automodeals should also be delivered up and destroyed. § 1118.

IX. Claim 5. Bad Faith Intent to Profit from Domain Name under the Lanham Act

59. All preceding paragraphs are incorporated herein as if set forth in full.

60. Plaintiffs Chris West and Automodeals, LLC are the exclusive owners of the Automodeals mark. This mark is valid and protectable. Defendants have used, and continue to use, the Automodeals mark in commerce, including but not limited to using it on their website www.automodeals.co, as well as on Facebook and before the USPTO in a trademark application. Defendants did this without Plaintiffs' consent.

61. Plaintiffs' Automodeals mark is famous and distinctive, inherently or through acquired distinctiveness. Defendants' use of the Automodeals mark in the form of "AutomoDeals" with a capital "D" is not a meaningful difference. Defendants are engaged in similar business to Plaintiffs in the same market in Texas. Defendants are acting to associate with and take over the Automodeals mark away from Plaintiffs.

62. Defendants are in violation of the Lanham Act, 15 U.S.C. § 1125(d) for bad faith intent to profit from the Automodeals mark by registering a website. Specifically, Defendants have a bad faith intent to profit from the Automodeals mark. Defendants have registered and trafficked in the domain name www.automodeals.co. This domain name is identical or confusingly similar of the Automodeals mark.

63. Pursuant to 15 U.S.C. § 1125(d)(1)(C), Defendant's domain name should be ordered cancelled or forfeited.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment in its favor and against Defendants as follows:

- A. That judgment be entered in favor of Plaintiffs and against Defendants as to each of the above counts;
- B. That Defendants be adjudged to have intentionally infringed and copied Plaintiffs' Automodeals mark, that Defendants be adjudged to have falsely designated the origin of their goods and services, and, therefore, be required to pay, under applicable federal, state, and/or common law:
 1. Plaintiffs' actual damages and any profits of Defendants resulting from said infringement, said false designation of origin and false representations, including all profits received by Defendants from sales and revenues of any kind made as a result of their actions;
 2. Plaintiffs' attorneys' fees;
 3. Plaintiffs' costs and expenses; and
 4. Pre-judgment and post-judgment interest;
- C. That a preliminary and permanent injunction be issued pursuant to applicable federal, state, and/or common law, enjoining Defendants, their agents, employees, servants, attorneys, successors, and assigns, and all those controlled by, acting on behalf of, in privity with, or acting in concert or active participation with Defendants, from:
 1. Using (including, but not limited to, in connection with www.automodeals.co, Facebook, or the USPTO) the Automodeals mark, any colorable imitation thereof,

or any confusingly similar marks in their place of business, advertising, website, and promotions;

2. Doing any other act or thing likely to confuse, mislead or deceive others into believing that AutoDeals, www.automodeals.co, or Defendants, or any products or services connected therewith, are connected with, sponsored by, or approved by Plaintiffs; and
 3. Engaging in any other behavior or activity constituting unfair competition with Plaintiffs or constituting an infringement of Plaintiffs' rights in and to the Automodeals mark;
- D. That Plaintiffs be permitted to conduct expedited discovery relating to the requested preliminary injunction;
- E. That Defendants be ordered to deliver up for destruction all products or other materials in their possession or control bearing any words, terms, names, symbols, devices, or any combination thereof, that simulate, reproduce, counterfeit, copy or colorably imitate the Automodeals mark;
- F. An order directing Defendants to take corrective action to correct any erroneous impression the public may have derived from infringement and unfair competition concerning the source or origin of Defendants' products and services;
- G. Actual and exemplary damages;
- H. Reasonable and necessary attorneys' fees;
- I. All costs of suit; and
- J. Such other and further relief to which Plaintiffs may be entitled, at law or in equity.

XI. DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury on all claims that may be tried before a jury.

Dated: November 28, 2016

Respectfully submitted,

SCHREIBER | KNOCKAERT, PLLC

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