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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CONSUMERINFO.COM, INC., a
California corporation,

Plaintiff,

v.

ONE TECHNOLOGIES LP, a Delaware
limited partnership; ADAPTIVE
MARKETING LLC, a Delaware
corporation; and DOES 1-50, inclusive,

Defendants.

Case No. CV 09-3783-VBF(MANx)

**SECOND AMENDED
JUDGMENT AND PERMANENT
INJUNCTION**

Hon. Valerie Baker Fairbank

Action Filed: May 28, 2009

AND RELATED COUNTERCLAIMS

1 On September 23, 2010, this Court granted in part and denied in part
2 Defendants' Joint Motion for Partial Summary Judgment of ConsumerInfo's
3 Claims and granted in part and denied in part Plaintiff ConsumerInfo.com, Inc.'s
4 Motion For Partial Summary Judgment Against Adaptive Marketing. Based upon
5 the Court Order re Motions for Partial Summary Judgment, docket number 403, (1)
6 defendants One Technologies LP ("One Tech") and Adaptive Marketing LLC
7 ("Adaptive") are entitled to final judgment against plaintiff ConsumerInfo.com, Inc.
8 ("ConsumerInfo") on ConsumerInfo's trade dress, counterfeiting, copyright
9 infringement, vicarious copyright infringement and contributory copyright
10 infringement claims; and (2) ConsumerInfo is entitled to final judgment against
11 Adaptive on Adaptive's false advertising counterclaim.

12 On January 12, 2011, the jury in this case issued a verdict as to the legal
13 claims still at issue between the parties, docket number 722, as follows:

14
15 **"VERDICT FORM**

16 **SECTION A: ConsumerInfo's Trademark Infringement Claim -**
17 **FREECREDITREPORT.COM**

18 1. Is FREECREDITREPORT.COM a valid and protectable trademark?

19 Yes X No _____

20 *If you answered "yes" to this Question, proceed to the next Question.*

21 *If you answered "no" to this Question, proceed to Section B.*

22
23 2. Does ConsumerInfo own FREECREDITREPORT.COM as a trademark?

24 Yes X No _____

25 *If you answered "yes" to this Question, proceed to the next Question.*

26 *If you answered "no" to this Question, proceed to Section B.*

27
28 3. Did the Defendant use FREECREDITREPORT.COM, or a similar term,

1 without the consent of ConsumerInfo in a manner that is likely to cause confusion
2 among ordinary purchasers as to the source of the goods?

3 Adaptive Marketing Yes _____ No X

4 One Technologies Yes _____ No X

5 *If you answered "yes" to this Question as to either Defendant, proceed to the next*
6 *Question as to that Defendant.*

7 *If you answered "no" to this Question as to either Defendant, proceed to Section B*
8 *as to that Defendant.*

9 ...

10 **SECTION B: ConsumerInfo's Trademark Infringement Claim - TRIPLE**
11 **ADVANTAGE**

12 1. Is TRIPLE ADVANTAGE a valid and protectable trademark?

13 Yes X No _____

14 *If you answered "yes" to this Question, proceed to the next Question.*

15 *If you answered "no" to this Question, proceed to Section C.*

16

17 2. Does ConsumerInfo own TRIPLE ADVANTAGE as a trademark?

18 Yes X No _____

19 *If you answered "yes" to this Question, proceed to the next Question.*

20 *If you answered "no" to this Question, proceed to Section C.*

21

22 3. Did the Defendant use TRIPLE ADVANTAGE, or a similar term, without
23 the consent of ConsumerInfo in a manner that is likely to cause confusion among
24 ordinary purchasers as to the source of the goods?

25

26 Adaptive Marketing Yes _____ No X

27 One Technologies Yes _____ No X

28 *If you answered "yes" to this Question as to either Defendant, proceed to the next*

1 *Question as to that Defendant.*

2 *If you answered “no” to this Question as to either Defendant, proceed to Section C*
3 *as to that Defendant.*

4 ...

5
6 **SECTION C: ConsumerInfo’s Cybersquatting Claim**

7 *Answer the questions in this Section C only if you found*

8 *FREECREDITREPORT.COM is a valid and protectable trademark owned by*
9 *ConsumerInfo.*

10

11 1. Did the Defendant have a bad faith intent to profit from the
12 FREECREDITREPORT.COM mark?

13 Adaptive Marketing Yes X No _____

14 One Technologies Yes X No _____

15 *If you answered “yes” to this Question as to either Defendant, proceed to the next*
16 *question as to that Defendant.*

17 *If you answered “no” to this Question as to either Defendant, proceed to Section D*
18 *as to that Defendant.*

19

20 2. Did the Defendant register, traffic in, or use a domain name that:

21 a) If the FREECREDITREPORT.COM mark was valid and protectable at
22 the time the domain name was registered, was identical or confusingly similar to
23 the FREECREDITREPORT.COM mark; **or**

24 b) If the FREECREDITREPORT.COM mark was famous at the time the
25 domain name was registered, was identical, confusingly similar or dilutive of the
26 FREECREDITREPORT.COM mark?

27

28 Adaptive Marketing Yes X No _____

1 6. Please write in the amount, if any, of damage to ConsumerInfo caused by
2 Defendant's cybersquatting.

3 Adaptive Marketing \$450,000

4 One Technologies \$120,000

5 *Proceed to the next question.*

6 7. Please write in the amount, if any, of Defendant's profits that are attributable
7 to cybersquatting.

8 Adaptive Marketing \$1,050,000

9 One Technologies \$280,000

10 *Proceed to the next question.*

11
12 8. Did ConsumerInfo fail to mitigate damages?

13 Adaptive Marketing Yes _____ No X

14 One Technologies Yes _____ No X

15 *If you answered "yes" to this Question as to either Defendant, proceed to the next*
16 *question as to that Defendant.*

17 *If you answered "no" to this Question as to either Defendant, proceed to Section D*
18 *as to that Defendant.*

19 ...

20

21 **SECTION D: ConsumerInfo's Dilution Claim**

22 *Answer the questions in this Section D only if you found*

23 *FREECREDITREPORT.COM is a valid and protectable trademark owned by*
24 *ConsumerInfo.*

25

26 1. Is FREECREDITREPORT.COM famous?

27 Yes X No _____

28 *If you answered "yes" to this Question, proceed to the next Question.*

If you answered "no" to this Question, proceed to Section E.

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2. Did the Defendant use FREECREDITREPORT.COM in commerce?
- | | | | | |
|--------------------|-----|--------------|----|---------------|
| Adaptive Marketing | Yes | <u> X </u> | No | <u> </u> |
| One Technologies | Yes | <u> X </u> | No | <u> </u> |

If you answered “yes” to this Question as to either Defendant, proceed to the next question as to that Defendant.

If you answered “no” to this Question as to either Defendant, proceed to Section E as to that Defendant.

3. Did the Defendant begin using FREECREDITREPORT.COM after it became famous?

- | | | | | |
|--------------------|-----|---------------|----|--------------|
| Adaptive Marketing | Yes | <u> </u> | No | <u> X </u> |
| One Technologies | Yes | <u> </u> | No | <u> X </u> |

If you answered “yes” to this Question as to either Defendant, proceed to the next question as to that Defendant.

If you answered “no” to this Question as to either Defendant, proceed to Section E as to that Defendant.

...

SECTION E: ConsumerInfo’s Contributory Liability Claim Against Adaptive Marketing

1. Did One Technologies infringe ConsumerInfo’s FREECREDITREPORT.COM or TRIPLE ADVANTAGE trademarks?

- | | | | |
|-----|--------------|----|---------------|
| Yes | <u> X </u> | No | <u> </u> |
|-----|--------------|----|---------------|

If you answered “yes” to this Question, proceed to the next Question.

If you answered “no” to this Question, proceed to Section F.

2. Did Adaptive Marketing intentionally induce One Technologies to infringe ConsumerInfo’s FREECREDITREPORT.COM or TRIPLE ADVANTAGE?

1 ADVANTAGE??

2 \$120,000

3 *Proceed to the next Question.*

4

5 5. Please write in the amount, if any, of One Technologies' profits that are
6 attributable to the infringement of FREECREDITREPORT.COM and/or TRIPLE

7 ADVANTAGE.

8 \$280,000

9

10 6. Did ConsumerInfo fail to mitigate damages?

11 Yes _____ No X

12 *If you answered "yes" to this Question, proceed to the next Question.*

13 *If you answered "no" to this Question, proceed to Section G.*

14

15 ...

16

17 **SECTION G: One Technologies' Claim for Fraud on the United States Patent
and Trademark Office**

18 1. Did ConsumerInfo make a false representation to the PTO trademark
19 examiner regarding a material question?

20 Yes _____ No X

21 *If you answered "yes" to this Question, proceed to the next Question.*

22 *If you answered "no" to this Question, proceed to Section H.*

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24 ...

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26 **SECTION H: One Technologies' Claim for Cancellation**

27 1. Do you find that FREECREDITREPORT.COM is generic?

28 Yes _____ No X”

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Based upon the parties' oral stipulation after the verdict was entered, Adaptive is entitled to judgment notwithstanding the verdict on ConsumerInfo's claim for vicarious trademark infringement.

On February 9, 2011, the Court granted Adaptive's motion to voluntarily dismiss with prejudice its counterclaims of trademark infringement under the Lanham Act and common law trademark infringement, docket number 767.

On February 10, 2011, One Technologies' counterclaim for monopolization and attempted monopolization was orally dismissed with prejudice on the record.

On February 10, 2011, the Court held a bench trial on Defendants' equitable affirmative defenses and to determine the scope of injunctive relief, if any, to be awarded to ConsumerInfo. Following this bench trial, the Court issued a Memorandum of Decision and Findings of Fact and Conclusions of Law After Court Trial, docket number 791, setting the amount of monetary relief ConsumerInfo is entitled to, and ordering an injunction to issue, as described below.

On June 30, 2011, the Court granted in part Defendant One Tech's Motion For Judgment As A Matter Of Law Pursuant To FRCP 50(B), docket number 872, reducing the amount of damages awarded against One Technologies.

On _____, 2011, the Court granted the Joint Motion by ConsumerInfo.com, Inc. and One Technologies LP to Partially Vacate the Amended Judgment, docket number _____.

Accordingly, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. Judgment is entered in favor of One Technologies and Adaptive and against ConsumerInfo

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- a. On ConsumerInfo’s first claim for relief for trademark infringement of FREECREDITREPORT.COM and TRIPLE ADVANTAGE under the Lanham act;
- b. On ConsumerInfo’s first claim for relief for trade dress infringement under the Lanham Act;
- c. On ConsumerInfo’s second claim for relief for dilution of FREECREDITREPORT.COM under the Lanham Act;
- d. On ConsumerInfo’s third claim for relief for counterfeiting of FREECREDITREPORT.COM under the Lanham Act;
- e. On ConsumerInfo’s sixth claim for relief for common law trademark infringement of FREECREDITREPORT.COM and TRIPLEADVANTAGE;
- f. On ConsumerInfo’s seventh claim for relief for unfair competition under the Lanham Act;
- g. On ConsumerInfo’s eighth claim for relief for vicarious liability under the Lanham Act;
- h. On ConsumerInfo’s ninth claim for relief for contributory liability under the Lanham Act;
- i. On ConsumerInfo’s tenth claim for relief for copyright infringement;
- j. On ConsumerInfo’s eleventh claim for relief for vicarious copyright infringement;
- k. On ConsumerInfo’s twelfth claim for relief for contributory copyright infringement.

2. Judgment is entered in favor of ConsumerInfo and against One Technologies

- a. [VACATED]

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- b. On One Technologies’ first counterclaim for cancellation of federal trademark registration under the Lanham Act;
 - c. On One Technologies’ second counterclaim for monopolization and attempted monopolization;
 - d. On One Technologies’ third counterclaim for trademark infringement under the Lanham Act;
 - e. On One Technologies’ fourth counterclaim for false advertising and unfair competition under the Lanham Act;
 - f. On One Technologies’ fifth counterclaim for common law trademark infringement;
 - g. On One Technologies’ seventh counterclaim for declaratory judgment of unenforceability;
 - h. On One Technologies’ eighth counterclaim for contributory liability under the Lanham Act;
3. Judgment is entered in favor of ConsumerInfo and against Adaptive
- a. On ConsumerInfo’s fourth claim for relief for cybersquatting and fifth claim for relief for cybersquatting of a famous mark Adaptive’s registering, trafficking in, and/or use of the domain names freetriplecreditreport.com, freecreditreport2009.com, freecreditreport2010.com, freecreditreport2011.com, freecreditreport2012.com, freecreditreport2013.com, freecreditreport2014.com, freecreditreport2015.com, freecreditreport2016.com, freecreditreport2017.com, freecreditreport2018.com, freecreditreport2019.com and freecreditreport2020.com;
 - b. On Adaptive’s first counterclaim for trademark infringement under the Lanham Act;

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c. On Adaptive’s second counterclaim for false advertising and unfair competition under the Lanham act;

d. On Adaptive’s third counterclaim for common law trademark infringement.

4. [VACATED]

5. Damages are awarded in favor of ConsumerInfo and against Adaptive in the amount of \$450,000.

6. Adaptive, together with its officers, directors, agents, servants, employees and attorneys, and other person who are in active concert or participation with Adaptive, are hereby enjoined and restrained from further registering, trafficking in or otherwise using the following domain names: freetriplecreditreport.com, freecreditreport2009.com, freecreditreport2010.com, freecreditreport2011.com, freecreditreport2012.com, freecreditreport2013.com, freecreditreport2014.com, freecreditreport2015.com, freecreditreport2016.com, freecreditreport2017.com, freecreditreport2018.com, freecreditreport2019.com, and freecreditreport2020.com.

7. Adaptive, together with its officers, directors, agents, servants, employees and attorneys, and other person who are in active concert or participation with Adaptive, are hereby ordered, to the extent possible and to the extent they maintain any rights, title and interest in the following domains (1) to relinquish all rights, title and interest in the following domain names: freetriplecreditreport.com, freecreditreport2009.com, freecreditreport2010.com, freecreditreport2011.com, freecreditreport2012.com, freecreditreport2013.com, freecreditreport2014.com, freecreditreport2015.com, freecreditreport2016.com,

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freecreditreport2017.com, freecreditreport2018.com,
freecreditreport2019.com, and freecreditreport2020.com; and (2) to
transfer all domains listed in this paragraph to ConsumerInfo or its
authorized representative within fourteen (14) days of entry of this
permanent injunction.

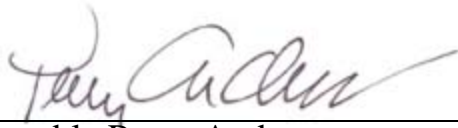
8. [VACATED]

9. [VACATED]

10. The registrar or registrars of record are hereby authorized to transfer
the *freecreditreport2017.com* *freecreditreport2018.com* *freecreditreport2019.com* *freecreditreport2020.com*
aforementioned domains to ConsumerInfo or its authorized
representative at ConsumerInfo's request accompanied by a copy of
this permanent injunction.

IT IS SO ORDERED.

Dated: September 20, 2011



Honorable Percy Anderson
United States District Court Judge