

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

VIDEO PROFESSOR, INC.,

Plaintiff,

v.

SUPRIYO MALAKER d/b/a DOTCRAFTER,

Defendant.

COMPLAINT

Plaintiff brings this action under – and seeks injunctive and, if necessary, monetary relief for Defendant's violations of – the federal Lanham Act, 15 U.S.C. §§ 1051-1127, including the Anti-cybersquatting Act, and state statutory and common law.

THE PARTIES

1. VPI is a Colorado corporation with its office and principal place of business at 12055 W. 2nd Place, Lakewood, Colorado 80228.

2. Upon information and belief, Malaker is an individual who resides at 2313 Pittner Lane, Plano, TX 75025. Upon information and belief, Malaker is the Administrator of Dotcrafter, a Canadian company that maintains its principal place of business at 2 Silver Maple Crt., Suite 2009, Brampton, ON L6T 4R1, Canada.

JURISDICTION

3. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(a) (any

Act of Congress relating to trademarks); 28 U.S.C. § 1338(b) (action asserting a claim of unfair competition joined with a substantial and related claim under the trademark laws); and 28 U.S.C. § 1367 (supplemental jurisdiction).

4. This Court has personal jurisdiction because Malaker has consented to personal jurisdiction in Colorado; he has engaged in acts or omissions within this State causing injury, has engaged in acts or omissions outside of this State causing injury within the State; or has otherwise made or established contacts with this State sufficient to permit the exercise of personal jurisdiction.

VENUE

5. Venue is proper in this Court because Malaker consented to venue in the Court, and also pursuant to 28 U.S.C. § 1391. In particular, this Court is the proper venue because Malaker does business in this district, and because part of the events and actions of Malaker that give rise to VPI's claims occurred in this district.

GENERAL ALLEGATIONS

The Mark: "VIDEO PROFESSOR"

6. VPI has been in the business of developing, marketing, and distributing for sale to retailers and the general public, computer learning products including video tapes, CD-ROMs, and Internet based products for nearly 20 years.

7. VPI has continuously used the name VIDEO PROFESSOR in connection with the marketing and promotion of its business and products since at least as early as April 1987. Since 1987, VPI has invested untold millions of dollars in advertising, marketing and promoting the VIDEO PROFESSOR brand and designated products, including the running of television

advertisements and infomercials throughout the United States and Canada. To date, VPI has over 6 million customers in the U.S. and 150,000 customers in Canada.

8. Since 1996, VPI has maintained a very visible presence on the Internet via its www.videoprofessor.com website and has registered over 250 domain names including nearly 100 domain names that include “videoprofessor” or “video-professor.” Currently, the “VideoProfessor.com” website and its other websites such as “VideoProfessorFree.com” and “VideoProfessorOnline.com,” through which VPI offers visitors interactive shopping and learning, receive approximately 600,000 unique visits per month. VPI’s Internet advertising and sales are a significant and rapidly expanding portion of its business.

9. VPI also advertises on the Internet through affiliates who agree to promote and sell VPI products through their individual websites.

10. Millions of VPI’s VIDEO PROFESSOR-branded products have been distributed and are used worldwide. VPI is the worldwide leader in the computer learning products industry.

11. In August 1989, VPI was duly issued United States Trademark Registration Number 1566793 for the trademark words “VIDEO PROFESSOR” used in connection with a design (**Exhibit A**), and in January 1990, United States Trademark Registration Number 1574578 for the trademark words “VIDEO PROFESSOR.” (**Exhibit B**). In March 1991, VPI was duly issued Canadian Trademark Registration number TMA381864 for the trademark words “VIDEO PROFESSOR” used in connection with a design (**Exhibit C**), and in April 2006, filed with the Canadian Intellectual Property Office an application to register the trademark words “VIDEO PROFESSOR.” (**Exhibit D**).

12. The VIDEO PROFESSOR mark, as used in connection with VPI's business and sale of its products, is world-famous, inherently distinctive, and as a result of VPI's extensive use, advertising, and promotional efforts as described above, the VIDEO PROFESSOR mark is well-known and is recognized by customers around the world as signifying and representing VPI's business and high quality products.

13. As a result of the advertising and expenditures previously described, VPI has established considerable goodwill in the VIDEO PROFESSOR trademark. The VIDEO PROFESSOR trademark is an invaluable asset of substantial and inestimable worth to VPI.

Malaker's Illegal Domain Name Registration And Use Of VPI's Trademark

14. Internet domain names serve as electronic addresses for sending and receiving e-mail and for posting information or providing other services through a website. An Internet domain name serves as a unique gateway for locating information, products, or services. VPI has over two hundred and fifty (250) registered domain names (**Exhibit E**), most of which are linked to "videoprofessor.com" and used to market and promote VPI's products and services.

15. VPI is preparing to increase its Canadian advertising and online presence by, among other things, creating a "dot-ca" (.ca) website. In early 2006, VPI attempted to register the domain name "videoprofessor.ca," but was prevented from doing so by Malaker's prior registration of the identical domain name in February 2005.

16. Though having had it registered for over a year, Malaker did not create any web pages for this domain (this is commonly referred to as "domain name parking") until being advised by VPI of its desire to acquire the "videoprofessor.ca" domain name (the "CA Domain Name").

17. In April 2006, Malaker was contacted by a VPI employee about a possible purchase of the CA Domain Name. Malaker expressed interest in selling the name and requested the employee make him a “serious offer.” After receiving a \$75.00 offer (which would cover Malaker’s cost to register the domain name), Malaker’s response was, “[when] anybody requests a ‘serious offer’ for a domain name, the price tag is NEVER 2-digits.” Malaker informed the employee that a “serious offer” would be many times over his cost. At no point in the discussion did Malaker suggest that he had an intended use for the domain name apart from its sale for a profit. **(Exhibit F)**.

18. In June 2006, VPI e-mailed Malaker a Cease and Desist Letter and notified him his registration of the CA Domain Name infringed VPI’s trademark. VPI requested he desist from all use of the domain name and transfer it to VPI. VPI offered to reimburse Malaker for his registration costs and release him from all liability. **(Exhibit G)**.

19. Only after passage of nearly a year and a half from registering the domain name, and receipt of VPI’s Cease and Desist Letter, did Malaker make use of the domain name by creating a “coming soon” page. The page contained in bold letters the CA Domain Name, and immediately below that, the phrase, “TIPS, TUTORIALS AND RESOURCES FOR VIDEO PROFESSIONALS AND ENTHUSIASTS.” The phrase “COMING SOON” appeared below everything. There was no other information or links on the page. **(Exhibit H)**.

20. Only after receiving a second letter from VPI in July 2006, did Malaker make any creative changes to the page. Malaker changed the “coming soon” page to a web page containing links to other sites related to digital video tips, tutorials and resources. The web page did not contain any disclaimer that it was not associated, affiliated, or otherwise endorsed by VPI. **(Exhibit I)**.

21. Later, in support of his argument that CA Domain Name did not create public confusion, Malaker placed a non-affiliation disclaimer on the website, however, that disclaimer is in smaller and less conspicuous font than the other graphics around it. Upon information and belief, none of the linked sites contain any non-affiliation disclaimers. (**Exhibit J**).

22. Upon information and belief, Malaker is paid either a “cost per acquisition” or a “cost per click” referral fee for any Internet users that click on the links found on his website.

23. By his inclusion of the links in his website, Malaker has in effect made himself a VPI competitor. One of the advertised links is for “Wireless Internet Video Cameras.” When a user clicks on the link one is taken to a discussion page about wireless Internet and networking. The user can link to many different pages discussing how to set up wireless connections and other information on the topic. This site is in direct competition with VPI, which has a video tutorial titled “Wireless Networking” that has the same type of instructions and information. The other links on the website are also in competition with VPI’s business because it limits the business areas VPI may pursue and dilutes VPI’s trademark. Though VPI does not currently have a tutorial on digital videos, it is a business area it plans to expand into.

24. Malaker has little respect for trademark owners and has engaged in a pattern of trademark infringement. Malaker has been involved in at least two documented prior disputes involving registration of trademarked domain names. *Priceline.com Incorporated v. Supriyo Malaker*, CIRA Dispute No. 00045 BCICAC (11/21/05); *Thrifty, Inc. v. Supriyo Malaker o/a Dotcrafter*, CIRA Dispute No. 00050 Resolution Canada (01/20/006). In addition, one of Malaker’s websites, “<http://www.malaker.com/gotcar>”, contains logos of 36 famous trademarks, including BMW, Cadillac, Hyundai, Jeep and Toyota. The website is set up for “car search and research” and deceives visitors into believing that they will be connected to these famous car

companies' websites. However, when a user clicks on any of the links, he is taken to a page containing sponsored links for what appears as search engine results. (**Exhibit K**). Using such famous trademarks to misdirect users constitutes a pattern of willful trademark infringement.

Malaker's Breach of the VPI Affiliate Agreement

25. In March 2004, Malaker became affiliated with Commission Junction; a major network affiliate broker for VPI. Commission Junction makes VPI products available for promotion to any of its 38,000 affiliates. In June 2005, Malaker accepted the terms of the VPI Affiliate Agreement ("Agreement") to be allowed to sell VPI merchandise through Commission Junction. (**Exhibit L**). The Agreement expressly prohibits Malaker from using VPI's name, or variations or misspellings thereof in domain names. At no time did Malaker disclose to VPI or Commission Junction that he had already registered the CA Domain Name. Malaker did not have VPI's permission to register the CA Domain Name and VPI is the only entity that has rights to the mark.

26. The Agreement accepted by Malaker states, in part, that he:

6. ... shall not use [VPI's] Marks or Intellectual Property for any purpose or activity except as expressly authorized or contemplated herein.

7. ... The Marks may be used only pursuant to the terms and conditions of this Agreement as a means of identifying VP as the owner of the Products.... [VPI] hereby grant[s] to [Malaker} a limited non-exclusive, non-transferable, revocable license to use the Marks as part of the Approved Creative or Approved Links solely in accordance with the terms of this Agreement.

27. The Agreement further states that VPI “will not accept into its Program sites that ... (d) Include “Video Professor” or variations, abbreviations, or misspellings thereof in its domain names without prior written VP approval.” Agreement ¶ 2. Malaker knew that when he accepted the Agreement, he was already violating it because he had a domain name that included “Video Professor,” and at no time did he disclose this information to VPI or Commission Junction.

28. VPI did not authorize Malaker to register a domain name containing the VIDEO PROFESSOR trademark and, other than for advertising purposes in accordance with the Agreement, VPI did not grant any of its rights in the mark to Malaker.

FIRST CLAIM FOR RELIEF
(Cybersquatting under U.S.C. § 1125(d))

29. VPI incorporates by reference each and every allegation contained in this Complaint as if fully set forth herein.

30. The CA Domain Name is confusingly similar to the VIDEO PROFESSOR trademark. The VIDEO PROFESSOR trademark is incontestable and conclusively valid and was famous, registered and protected under the Trademark Act, and presumed distinctive, at the time Malaker registered the domain name. VPI has expended and continues to expend considerable resources to develop the goodwill associated with its trademark.

31. Malaker is a classic cybersquatter in violation of the Anti-cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d). Malaker registered the CA Domain Name without the prior knowledge, permission, or consent of VPI, and, with bad faith intent to profit from VPI’s trademark, refuses to transfer the name to VPI without being paid a ransom.

32. Malaker registered the CA Domain Name with the intent to divert customers from VPI's online website to his own and to harm the goodwill represented by VPI's trademark for commercial gain, thereby creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the "videoprofessor.ca" website.

33. As a direct and proximate result of Malaker's wrongful conduct, VPI, among other things, is deprived of value in its trademark as a commercial asset and is unable fully to benefit from the strength of the VIDEO PROFESSOR trademark that has resulted from VPI's extensive advertising, sales, success, goodwill, and consumer recognition. In addition, because the CA Domain Name is confusingly similar to the VIDEO PROFESSOR trademark, Malaker has caused confusion, deception, and mistake by creating the false and misleading impression that his website is owned, sponsored, endorsed by, or otherwise affiliated with VPI.

34. Unless enjoined by this Court, Malaker's cybersquatting will continue to cause VPI to sustain irreparable damage, loss, and injury for which VPI has no adequate remedy at law. Malaker should be ordered to cease operating the "videoprofessor.ca" website. Malaker further should be ordered permanently to transfer ownership and registration of the CA Domain Name to VPI.

35. VPI has suffered and is continuing to suffer economic losses directly and proximately caused by Malaker's actions. Accordingly, VPI is entitled to injunctive relief pursuant to 15 U.S.C. § 1116, and to recover Malaker's respective profits, along with actual damages, enhanced profits and damages, costs, and reasonable attorney's fees pursuant to 15 U.S.C. §§ 1125(a) and 1117 or, in the alternative, statutory damages of \$100,000 pursuant to the Anti-cybersquatting Act, 15 U.S.C. §§ 1125(d) and 1117.

SECOND CLAIM FOR RELIEF

(Unfair Competition & False Designation Of Origin under U.S.C. § 1125(a))

36. VPI incorporates by reference each and every allegation contained in this Complaint as if fully set forth herein.

37. Malaker's use of the CA Domain Name is likely to cause confusion, mistake or deception as to the affiliation, connection or association of his website and business with VPI. Malaker's unauthorized use of the CA Domain Name is likely to cause Internet users confusion because they may reasonably believe that the domain name and any related websites are owned, sponsored, endorsed by, or otherwise affiliated with VPI.

38. Malaker's acts constitute unfair competition and false designation of origin in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

39. As a direct and proximate result of Malaker's wrongful conduct, VPI, among other things, is deprived of value in its trademark as a commercial asset and is unable fully to benefit from the strength of the VIDEO PROFESSOR trademark that has resulted from VPI's extensive advertising, sales, success, goodwill, and consumer recognition.

40. Unless enjoined by this Court, Malaker's breach will continue to cause VPI to sustain irreparable damage, loss, and injury for which VPI has no adequate remedy at law. Malaker should be ordered to cease operating the "videoprofessor.ca" website. Malaker further should be ordered permanently to transfer ownership and registration of the CA Domain Name to VPI.

41. VPI has suffered and is continuing to suffer economic losses directly and proximately caused by Malaker's actions. Accordingly, VPI is entitled to injunctive relief and

to recover Malaker's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees pursuant to 15 U.S.C §§ 1125(a), 1116 and 1117.

THIRD CLAIM FOR RELIEF
(Trademark Infringement under U.S.C. § 1114(1))

42. VPI incorporates by reference each and every allegation contained in this Complaint as if fully set forth herein.

43. Malaker's acts constitute trademark infringement of the VIDEO PROFESSOR trademarks, United States Registration Nos.1566793 and 1574578, and Canadian Registration No. TMA381864, in violation of the Lanham Act, 15 U.S.C. § 1114. VPI has informed Malaker that the VIDEO PROFESSOR trademark is registered with the United States Patent and Trademark Office and the Canadian Intellectual Property Office. The VIDEO PROFESSOR trademark is registered and protected under the Trademark Act, incontestable, conclusively valid, famous, and presumed distinctive.

44. Malaker's use of the CA Domain Name is likely to cause confusion, mistake and deception as to the source, origin, sponsorship, approval, endorsement or affiliation of the domain name and Malaker's business. Malaker continues to engage in his wrongful conduct with knowledge that his conduct is intended to cause confusion, mistake, or deception.

45. As a direct and proximate result of Malaker's wrongful conduct, VPI, among other things, is deprived of value in its trademark as a commercial asset and is unable to benefit fully from the strength of the VIDEO PROFESSOR trademark that has resulted from VPI's extensive advertising, sales, success, goodwill, and consumer recognition.

46. Malaker's conduct is continuing and will continue unless restrained by the Court. Unless enjoined by this Court, Malaker's breach will continue to cause VPI irreparable damage,

loss, and injury for which it has no adequate remedy at law. Malaker should be ordered to cease operating the "videoprofessor.ca" website. Malaker further should be ordered permanently to transfer ownership and registration of the CA Domain Name to VPI.

47. VPI has suffered and is continuing to suffer economic losses directly and proximately caused by Malaker's actions. Accordingly, VPI is entitled to injunctive relief and damages in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Dilution under U.S.C. § 1125(c))

48. VPI incorporates by reference each and every allegation contained in this Complaint as if fully set forth herein.

49. Malaker's activities constitute trademark dilution of the VIDEO PROFESSOR trademark, United States Registration Nos.1566793 and 1574578, and Canadian Registration No. TMA381864, in violation of the Lanham Act, 15 U.S.C. § 1125(c). The VIDEO PROFESSOR trademark is incontestable and conclusively valid and was famous, registered and protected under the Trademark Act, and presumed distinctive, at the time Malaker registered the CA Domain Name.

50. Malaker's use of the CA Domain Name will tarnish and dilute the distinctive qualities of the VIDEO PROFESSOR trademark, thereby causing injury to VPI. Malaker has done so and continues to trade intentionally and willfully on VPI's reputation and cause dilution of its famous mark.

51. As a direct and proximate result of Malaker's wrongful conduct, VPI, among other things, is deprived of value in its service mark as a commercial asset and is unable to

benefit fully from the strength of the VIDEO PROFESSOR trademark that has resulted from VPI's extensive advertising, sales, success, goodwill, and consumer recognition.

52. Malaker's conduct is continuing and will continue unless restrained by the Court. Unless enjoined by this Court, Malaker's breach will continue to cause VPI to sustain irreparable damage, loss, and injury for which VPI has no adequate remedy at law. Malaker should be ordered immediately to cease operating the "videoprofessor.ca" website. Malaker further should be ordered permanently to transfer ownership and registration of CA Domain Name to VPI.

53. VPI has suffered and is continuing to suffer economic losses directly and proximately caused by Malaker's actions. Accordingly, VPI is entitled to injunctive relief and to recover Malaker's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees pursuant to 15 U.S.C §§ 1125(c), 1116 and 1117.

FIFTH CLAIM FOR RELIEF
(Common Law Trademark Infringement and Unfair Competition)

54. VPI incorporates by reference each and every allegation contained in this Complaint as if fully set forth herein.

55. In addition to its rights under federal law, VPI has valid and existing state law rights with respect to its trademark.

56. Malaker's acts constitute trademark infringement in violation of VPI's state law rights, and unfair competition.

57. Malaker's use of the domain name is likely to cause confusion, mistake and deception in the public as to the source, origin, sponsorship, approval, endorsement or affiliation

of the domain name and Malaker's business. Malaker continues to engage in his wrongful conduct with knowledge that his conduct is intended to cause confusion, mistake or deception.

58. Malaker's illegal actions have been malicious, willful and wanton. Malaker purposefully committed his acts realizing that such acts were done heedlessly and recklessly, without regard to the consequences to or the rights of others, particularly VPI.

59. As a direct and proximate result of Malaker's wrongful conduct, VPI, among other things, is deprived of value in its trademark as a commercial asset and is unable to benefit fully from the strength of the VIDEO PROFESSOR trademark and state law rights that have resulted from VPI's extensive advertising, sales, success, goodwill, and consumer recognition.

60. Malaker's conduct is continuing and will continue unless restrained by the Court. Unless enjoined by this Court, Malaker's breach will continue to cause VPI to sustain irreparable damage, loss, and injury for which VPI has no adequate remedy at law. Malaker should be ordered immediately to cease operating the "videoprofessor.ca" website. Malaker further should be ordered permanently to transfer ownership and registration of the CA Domain Name to VPI.

61. VPI has suffered and is continuing to suffer economic losses directly and proximately caused by Malaker's actions. Accordingly, VPI is entitled to damages in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF

(Intentional Interference with Prospective Economic Advantage)

62. VPI incorporates by reference each and every allegation contained in this Complaint as if fully set forth herein.

63. Malaker's acts are designed to induce or otherwise cause current and prospective customers and others not to continue or enter into an economic relationships with VPI. Malaker's conduct intentionally and improperly interferes with VPI's economic relationships with its current and prospective customers and others.

64. Malaker's illegal actions have been malicious, willful and wanton. Malaker purposefully committed his acts realizing that such acts were done heedlessly and recklessly, without regard to the consequences to or the rights of others, particularly VPI.

65. Malaker's conduct causes VPI damage because VPI is prevented from fully advertising and providing its services on the Internet by using the CA Domain Name and because actual or prospective customers searching for VPI may encounter Malaker's website and its confusing contents.

66. Malaker's conduct is continuing and will continue unless restrained by the Court. Unless enjoined by this Court, Malaker's breach will continue to cause VPI to sustain irreparable damage, loss, and injury for which VPI has no adequate remedy at law. Malaker should be ordered immediately to cease operating the "videoprofessor.ca" website. Malaker further should be ordered permanently to transfer ownership and registration of the CA Domain Name to VPI.

67. VPI has suffered and is continuing to suffer economic losses directly and proximately caused by Malaker's actions. Accordingly, VPI is entitled to damages in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF
(Breach Of Contract)

68. VPI incorporates by reference each and every allegation contained in this Complaint as if fully set forth herein.

69. Malaker has breached the terms and conditions of the Affiliation Agreement through, among other things, his use of the VIDEO PROFESSOR trademark in registering the CA Domain Name and his disparagement of VPI and its products and services.

70. Malaker's breach has caused VPI to sustain monetary damages, losses, and injury in an amount to be determined at the time of trial.

71. Unless enjoined by this Court, Malaker's breach will continue to cause VPI irreparable damage, loss, and injury for which VPI has no adequate remedy at law.

EIGHTH CLAIM FOR RELIEF
(Violation of Colorado Consumer Protection Act under C.R.S. § 6-1-105)

72 VPI incorporates by reference each and every allegation contained in this Complaint as if fully set forth herein.

73 The state of Colorado has an important interest in ensuring that persons and entities doing business with Colorado residents fully comply with Colorado laws.

74 The conduct complained of herein is a deceptive trade practice, in that, *inter alia*, Malaker knowingly passes off his goods and services as those of VPI, knowingly makes false representations as to the source of his goods and services, and knowingly makes false representations as to his affiliation with VPI.

75 The Defendants' conduct occurred in the course of Defendants' business, vocation or occupation.

76 The products offered by VPI and Malaker implicate the public interest.

77 All the conduct alleged herein occurs and continues to occur in the course of the Malaker's business. The conduct is part of a pattern or generalized course of conduct repeated on numerous occasions daily.

78 Malaker has engaged and continues to engage in these activities knowingly, willfully and deliberately.

79 VPI has been directly and proximately injured in its business and property by the Malaker's conduct complained of herein, in violation of VPI's rights under C.R.S. § 6-1-105.

80 Malaker's violations of C.R.S. § 6-1-105 have caused VPI to sustain monetary damages, loss and injury, in an amount to be determined at the time of trial.

81 In addition, pursuant to C.R.S. § 6-1-113, VPI is entitled to treble damages, attorney's fees and costs of suit, all in amounts to be determined at trial.

82 Malaker's violation of C.R.S. § 6-1-105, unless enjoined by this Court, will continue to cause VPI irreparable damage, loss and injury, for which VPI has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, VPI requests that this Court grant the following relief:

1. A temporary restraining order and preliminary and permanent injunction, enjoining Malaker and his officers, agents, servants, representatives, employees, attorneys, successors, assigns, or other individuals or entities controlling, controlled by or affiliated with, and all those in privity or active concert or participation with Malaker (collectively "Malaker and his agents"), jointly and severally, from the following:
 - a. using, attempting to use, or causing to be used -- including but not limited to, registering, attempting to register, or causing to be registered, either directly or through

officers, agents, servants, representatives, employees, attorneys, successors, assigns or other individuals or entities (collectively "other entities") -- the domain name "videoprofessor.ca" or any other variations confusingly similar to the VIDEO PROFESSOR mark, or likely to cause dilution of the VIDEO PROFESSOR mark, or likely to cause injury to VPI's business reputation in connection with any activity on the Internet or in any other medium;

b. listing, printing, posting, indexing, linking, storing, or otherwise associating, either directly or through other entities, the domain name "videoprofessor.ca" or any other variations confusingly similar to the VIDEO PROFESSOR mark, or likely to cause dilution of the VIDEO PROFESSOR mark, or likely to cause injury to VPI's business reputation in connection with any activity in any form including, but not limited to, visible, invisible, encrypted, searchable, or non-searchable forms, within websites, web pages, home pages, Internet sites, Internet pages, databases programs, or any other storage means, either temporary or permanent, on the Internet or any other medium;

c. operating a website using domain names intended to, or having the effect of, diverting traffic from VPI's website, including any sites found at "videoprofessor.ca";

d. otherwise engaging in acts, either directly or through other entities, of dilution of VPI's trademarks; and

e. transferring, attempting to transfer, or causing to be transferred, to anyone other than VPI, registration and/or ownership of "videoprofessor.ca" or other domain names confusingly similar to the VIDEO PROFESSOR mark, or likely to cause dilution of the distinctiveness of the VIDEO PROFESSOR mark or likely to cause injury to VPI's business reputation.

2. A permanent injunction requiring Malaker and his agents to:

a. take all actions necessary to transfer the registration and ownership of the “videoprofessor.ca” domain name to VPI;

b. assign and transfer, or cause to be assigned and transferred, to VPI, either directly or through other entities, any websites, web pages, home pages, Internet sites, Internet pages, databases, programs, or any other storage means, using or containing the VIDEO PROFESSOR trademark, or any variations thereof, or any other mark confusingly similar to the VIDEO PROFESSOR trademark, or likely to cause dilution of the VIDEO PROFESSOR trademark or injury to VPI’s business reputation, in any form including, but not limited to, visible, invisible, encrypted, searchable, or non-searchable forms, either temporary or permanent, on the Internet, or in any other medium; and

c. file with the Court and serve upon VPI, within thirty (30) days after the entry of such order or judgment, a report in writing and under oath setting forth in detail the manner and form in which he has complied with the injunction.

3. A final judgment declaring VPI to be the lawful owner of the VIDEO PROFESSOR trademark, and that VPI’s service mark has been infringed by Malaker.

4. A declaration that Malaker’s infringement was knowing and willful.

5. Actual damages, including any statutory enhancements, or if VPI elects, statutory damages.

6. Punitive damages.

7. Prejudgment and postjudgment interest.

8. VPI’s costs and expenses, including, without limitation, reasonable attorney fees.

9. Treble damages and attorneys’ fees on VPI’s eighth claim for relief.

10. All other relief, in law or in equity, to which VPI may be entitled.

Dated: April 4, 2007.

Respectfully submitted,

By: s/ Gregory C. Smith

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