

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

VIDEO PROFESSOR, INC., a Colorado corporation,

Plaintiff,

v.

HARRY ("SKIP") E. MCGRATH, an individual,

Defendant.

COMPLAINT

Plaintiff, Video Professor, Inc. ("VPI"), through counsel, for its complaint against Harry ("Skip") E. McGrath, states:

I. NATURE OF PROCEEDINGS

This is an action at law and in equity to remedy acts of, *inter alia*, commercial disparagement, false advertising, and misrepresentation in commerce under the Lanham Act; deceptive trade practices under the Colorado Consumer Protection Act; common law commercial disparagement; and tortious interference with business opportunities, all caused by Defendant's unauthorized Internet disparagement of VPI and its products, knowingly, willfully, and intentionally undertaken by Defendant for the purpose of usurping the value and goodwill embodied by VPI's mark and disrupting VPI's business.

VPI seeks damages including punitive and statutory damages, an accounting, imposition of a constructive trust upon Defendant's illegal profits, the entry of a preliminary and permanent injunction, and its costs and attorneys' fees.

II. PARTIES

1. VPI is a Colorado corporation with its principal place of business in Lakewood, Colorado.

2. Upon information and belief, Defendant Harry ("Skip") E. McGrath is an individual who resides at 3818 Sutton Place, Anacortes, Washington 98221.

III. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over VPI's claims pursuant to 28 U.S.C. § 1338(a) and (b), and 28 U.S.C. § 1331.

4. This Court has supplemental jurisdiction over VPI's claims arising under the laws of Colorado and the common law pursuant to 28 U.S.C. § 1367(a) because these claims are so related to VPI's claims under federal law that they form a part of the same case or controversy and derive from a common nucleus of operative fact.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b) because the acts of infringement, disparagement and other wrongful conduct, and a substantial part of the events or omissions giving rise to the claims, occurred in the District of Colorado.

IV. VPI'S BUSINESS AND INTELLECTUAL PROPERTY RIGHTS

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 and CD-ROMs 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.

8. Since 1987, VPI has invested 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 advertisement and marketing through the Internet via its Website located at "videoprofessor.com" and other forms of Internet advertising.

9. 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.

10. The VIDEO PROFESSOR mark, as used in connection with VPI's business and the 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.

11. On August 29, 1989, VPI was duly issued United States Trademark Registration Number 1566793 for the trademark words "VIDEO PROFESSOR" used in connection with a design, and on January 2, 1990, United States Trademark Registration Number 1574578 for the trademark words "VIDEO PROFESSOR."

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

13. Video Professor has a long-established presence on the Internet. Currently, VPI uses, among others, the domain name “videoprofessor.com” as a link to its Website. Through its Website, VPI provides important information to its customers and potential customers regarding VPI's products, as well as an interactive means by which its customers and potential customers may order its products online. VPI's Website advertising and sales is a significant and rapidly expanding portion of its business.

14. VPI sells learning products on how to start and operate businesses using eBay.

V. DEFENDANT'S BUSINESS

15. Defendant sells learning products on how to start and operate businesses using eBay.

16. Defendant markets, sells, and distributes his learning products over the Internet through a Website having the domain name “www.skipmcgrath.com,” on eBay, and possibly on other Websites.

17. Defendant's Website is an interactive site on the Internet on which Defendant advertises his instructional products, and through which interested consumers place orders for, and purchase, his products online from anywhere in the country, including the district of Colorado.

VI. DEFENDANT'S DISPARAGEMENT OF VPI'S BUSINESS AND PRODUCTS.

18. Defendant authored the article attached hereto as **Exhibit A**, which is published on the blog on his Website, at <http://blog.skipmcgrath.com/public/blog/142092>. An almost identical article, attached as **Exhibit B**, was published on the eBay Website, at:

http://reviews.ebay.com/Is-the-eBay-Video-Professor-a-Scam_W00QugidZ10000000002187060

19. These articles contain the following statement:

According to [VPI's] commercials the CD is FREE and all you pay is \$6.95 for shipping and handling. What could be more fair? The problem with their "FREE" CD is that it isn't free. They talk you through a convoluted process that allows them to charge your credit card \$69.95 once they send you the CD.

Exhibits A and B.

20. This statement is false and is understood by Defendant to cause VPI injury in its home state of Colorado.

21. The articles include links to Websites advertising and offering to sell Defendant's learning products.

22. Defendant's articles portray VPI's business in a bad light to create an unfair competitive advantage in favor of Defendant's business and products.

23. Defendant's above-described conduct is continuing and is attended by circumstances of fraud, malice, or willful and wanton conduct, and committed with knowledge that such conduct was dangerous, done heedlessly and recklessly, without regard to the consequences, or the rights and safety of others, particularly VPI. At a minimum, Defendant is willfully blind and has acted in reckless disregard of VPI's rights and claims.

**FIRST CLAIM FOR RELIEF
(False Designation of Origin and False Representation (15 U.S.C. § 1125(a)))**

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

25. Defendant's activities constitute false descriptions and representations and false advertising in commerce in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), because Defendant misrepresents the nature, characteristics, and qualities of VPI's goods and commercial activities in connection with the commercial advertising and promotion of Defendant's products.

26. Defendant's acts of false representation and false advertising have caused VPI to sustain monetary damage, loss, and injury, in an amount to be determined at the time of trial.

27. Defendant's have engaged in and continue to engage in these activities knowingly, willfully, maliciously and deliberately, so as to justify the assessment of exemplary damages against them, in an amount to be determined at the time of trial.

28. Defendant's acts of false representation and false advertising, unless enjoined by this Court, will continue to cause VPI to sustain irreparable damage, loss, and injury, for which VPI has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
(Violation of Colorado Consumer Protection Act)

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

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

31. The conduct complained of herein is a deceptive trade practice, *inter alia*, in that, Defendant knowingly makes false representations as to the characteristics VPI's goods; knowingly disparages the business and goods of VPI by false and misleading representations of fact; and knowingly fails to disclose material information concerning VPI's goods which

information is known to Defendant at the time of his article and advertisements, which failure to disclose is intended to induce consumers to enter into transactions with Defendant.

32. The conduct of Defendant described herein occurred and is occurring in the course of Defendant's business, vocation or occupation.

33. The products offered by VPI and Defendant implicate and impact on the public interest.

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

35. Defendant has engaged and continues to engage in these activities knowingly, willfully and deliberately.

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

37. Defendant'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.

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

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

THIRD CLAIM FOR RELIEF
(Tortious Interference with Business Relationships)

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

41. Upon information and belief, VPI has entered into and/or had a reasonable expectation that it would maintain or enter into contracts or business relationships with certain third parties who were existing VPI customers or who had communicated their interest in establishing prospective contractual relationship with VPI. VPI is aware that numerous of its existing and/or prospective customers have attempted to communicate with VPI or to obtain additional information about VPI and its products through VPI's Internet Website.

42. Defendant was aware of these contracts and/or prospective business relations of VPI, and of the fact that prospective customers in the industry utilize the Internet as a means of contacting or obtaining additional information concerning computer learning products such as those marketed and sold by VPI.

43. Defendant knowingly and willfully interfered in VPI's contracts and/or business expectancies by diverting customers from VPI's Website through their disparagement of VPI. Deceptive trade practices and other unlawful conduct. As a result of the Defendant's conduct, customers were induced to breach or terminate contracts, business relationships or expectancies with VPI.

44. Defendant's conduct as complained of herein was knowing, willful, malicious and deliberate.

45. VPI has been damaged by the Defendant's conduct as complained of herein, in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF
(Common Law Business Disparagement)

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

47. Defendant's did publish or cause to be published false statements harmful to the interests of VPI with the intent that the publication of the statement would cause harm to the interests of VPI.

48. At the time Defendant published the false statements he knew that the statements were false or acted in reckless disregard of their truth or falsity.

49. VPI has been damaged by the Defendant's conduct as complained of herein, in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF
(Accounting)

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

51. VPI is entitled, pursuant to 15 U.S.C. § 1117, to recover any and all profits of Defendant's that are attributable to their acts of infringement.

52. VPI is entitled, pursuant to 15 U.S.C. § 1117, to actual damages or statutory damages, sustained by virtue of Defendant's acts of infringement.

53. The amount of money due from Defendants' is unknown to VPI and cannot be ascertained without a detailed accounting by Defendants' of the precise number of units of infringing material offered for distribution and distributed by Defendants'.

SIXTH CLAIM FOR RELIEF
(Imposition of a Constructive Trust upon Illegal Profits)

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

55. Defendant's conduct constitutes deceptive, fraudulent, and wrongful conduct in the nature of intentional business disparagement, false representations, deceptive business practices, and tortious interference with VPI's business relationship.

56. By virtue of Defendant's wrongful conduct, Defendant has illegally received money and profits that rightfully belong to VPI.

57. Upon information and belief, Defendant holds the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced.

58. Defendant holds the money and profits it has illegally received as a constructive trustee for the benefit of VPI.

WHEREFORE, VPI prays for judgment against Defendant as follows:

A. That Defendant and his agents, servants, employees, and attorneys, and all other persons in active concert or participation with him who receive actual notice of the injunction, be temporarily, preliminarily, and permanently enjoined from, without permission from VPI:

- (1.) using the VIDEO PROFESSOR trademark, any colorable imitations thereof, or any marks confusingly similar thereto;
- (2.) disparaging VPI, its business, or its products in any manner, either orally, in writing, on the Internet, or otherwise; and

(3.) making or causing to be made any false representations of fact with regard to either VPI's business or products.

B. That VPI be awarded damages including statutory treble damages and punitive damages in an amount to be determined at trial;

C. That VPI be awarded damages and restitution, in an amount to be determined at trial, under 15 U.S.C. § 1117(a) for the total profits received by Defendant from, and any damages sustained by VPI as a result of Defendant's actions;

D. That VPI be awarded under 15 U.S.C. § 1117(a) enhanced damages, up to three times the amount found as actual damages for Defendant's false descriptions and representations, in an amount to be determined at trial;

E. That Defendant be required to pay to VPI such actual, statutory and exemplary damages as it has sustained as a consequence of Defendant's willful and intentional unfair competition;

F. That VPI be awarded treble damages and attorneys' fees for Defendant's deceptive trade practices under C.R.S. § 6-1-113;

G. That VPI be awarded punitive damages for Defendant's oppressive, fraudulent, and malicious acts of business disparagement;

H. That Defendant be ordered to make a written report within a reasonable period, to be filed with the Court, detailing the manner of Defendant's compliance with the requested injunctive and mandatory relief above;

O. That VPI be awarded its reasonable attorney's fees and costs of suit under 15 U.S.C. § 1117(a), 15 U.S.C. § 285, and C.R.S. § 6-1-113;

P. That a constructive trust be imposed on the illegal profits generated as a result of Defendant's wrongful conduct;

Q. That VPI be awarded pre-judgment and post-judgment interest and its costs of the litigation, and

R. That VPI be awarded such other relief as the Court may deem just and proper.

Respectfully submitted this 13th day of July, 2007.

s/ Gregory C. Smith

Gregory C. Smith
Fairfield and Woods, P.C.
1700 Lincoln Street, Suite 2400
Denver, CO 80203
Telephone: (303) 830-2400
Facsimile: (303) 830-1033

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Is the eBay Video Professor a Scam ?

You've see the TV ads. "Get my FREE ebay CD and learn how to sell on ebay. I wonder --just how many eBay auctions has the video professor actually run?"

My wife was standing in line at the post office yesterday shipping out our ebay sales for the day when she overheard the lady ahead of her at the counter saying loudly: "This eBay Professor is nothing but a scam! I want to send this back registered and insured. This free CD cost me over \$70 and its just a bunch of crapi" That is as near as Karen could come to remembering the lady's exact words but she read this and thinks it's pretty close.

Like you, I have see the ads --they are all over late night TV and cable TV. John W. Scherer, aka The Video Professor, aka The eBay Professor, wants to send you a Free CD that will tell you how to make money on eBay.

He wants you to call the toll-free number and order a free eBay lesson on CD that claims to teach you how to make money on ebay, or one of his other ads for learning applications such as Windows, Word or Excel.

According to the commercials the CD is FREE and all you pay is \$6.95 for shipping and handling. What could be more fair?

The problem with their "FREE" CD is that it isn't free. They talk you through a convoluted process that allows them to charge your credit card \$69.95 once they send you the CD.

A lot of people then make the mistake of just returning the CD or mark it refused or return to sender. This does nothing for you. If you have been taken in by this apparent scam, you must call the company and get a Return Authorization first and follow their instructions to return it. This way you will eventually (can take up to 30 days) get the amount you were billed credited back to your credit card.

There are so many internet and eBay scams out there today that it pays to be careful. For example if you were to Google the term *Video Professor* you will get several results from web

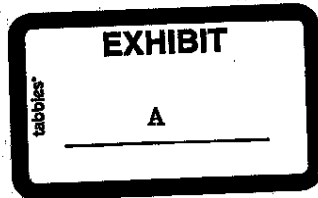
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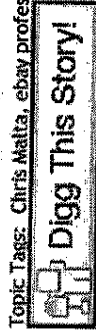
sites and blogs alerting you to this apparent scam.

The other question I always ask before buying any type of learning material is: "Has this person, or is this person, currently making money this way or do they just make money writing about it?"

I am very proud of the fact that I teach people how to make money on eBay and I still do what I teach every day. If you want to make money on eBay or the internet, there is no substitute for education and hard work. There are plenty of good books and courses available about selling on eBay and the internet. I am of course biased towards mine --but in fact there are some very good books by other authors such as Chris Malta, Ina Steiner, Julia Wilkerson, Lissa McGrath, Jim Cockrum, LynnDraille, Mike Enos and others. These are all people who actually can do and do what they teach.

The Complete eBay Marketing System by eBay PowerSeller, Skip McGrath

Learn how to sell on eBay and make money on eBay from a real PowerSeller who sells on eBay every day.



Topic Tags: Chris Malta, ebay professor, ebay scam, ebay selling, make money on ebay, video professor

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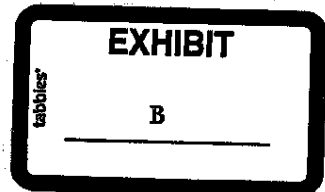
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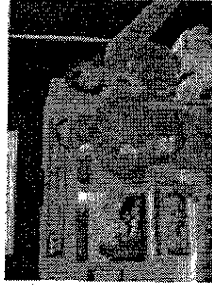
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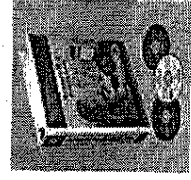
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So just how good is the eBay Video Professor stuff? I did get a copy of the CD and review it. As far as learning the basics of selling on eBay I would rate it OK, but most of the information is available for free right here on eBay in the tutorials. If you do want to buy a copy, buy it here on eBay from other sellers, rather than direct from the company.

Skip McGrath - eBay username mcgrrrr


Guide created: 10/27/06 (updated 06/24/07)

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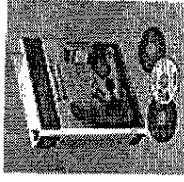
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MARKETING SYSTEM BY SKIP

MCGRATH ~FS

Current Price: **\$97.00**



THE COMPLETE eBay

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