

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION**

BIOZYME, INCORPORATED,

Plaintiff,

v.

THE BEEF CONNECTION LLC,

Defendant.

Civil No. _____

Complaint and Jury Demand

COMES NOW PLAINTIFF, Biozyme, Incorporated, for its Complaint against The Beef Connection LLC, and alleges as follows:

Parties

1. Plaintiff Biozyme, Incorporated (“Biozyme”) is a corporation duly organized under the laws of the State of Missouri with its principal place of business located at 6010 Stockyards Expressway, St. Joseph, Missouri 64504.

2. Upon information and belief, Defendant The Beef Connection LLC (“TBC”) is a Kentucky limited liability company with a principal place of business at 10667 Bridlepath Lane, Union, Kentucky 41091.

Jurisdiction and Venue

3. This is an action for trademark infringement, false designation of origin, unfair competition, and cybersquatting arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and the common law of the State of Missouri.

4. This Court has jurisdiction over the subject matter of the complaint pursuant to 15 U.S.C. § 1121; 28 U.S.C. § 1331; and 28 U.S.C. § 1338(a), and over the unfair competition cause of action under 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over TBC. Upon information and belief, TBC owns and operates a website, further described below, which provides services to consumers and businesses residing in the State of Missouri and throughout this judicial district. Thus, TBC is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Missouri long arm statute, due to at least TBC's substantial business in this forum, including, but not limited to: (1) at least a portion of the infringements and unfair competition alleged herein; (2) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals or businesses in Missouri and in this judicial district; and (3) travelling to Missouri on multiple occasions for business purposes.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events giving rise to the claims stated herein occurred in this judicial district and TBC is subject to personal jurisdiction in this judicial district.

Facts Common to All Counts
Biozyme's Background and Trademark

7. Through extensive research and development over the past 50 years, Biozyme has become a preeminent expert in the agricultural fields of animal nutrition and microbiology. Capitalizing on its prestige and extensive knowledge in the industry, Biozyme offers numerous products for naturally improving the performance and health of animals, such as cattle. Biozyme's products include, without limitation, vitamin, mineral, and microbial supplements for animals. To that end, Biozyme offers extensive information and consultation services to

agricultural producers, most notably livestock growers. Biozyme’s goods and services are of the highest quality. The marketing and sales of Biozyme’s goods and services constitute a substantial and important part of Biozyme’s business.

8. Biozyme has promoted its goods and services through a variety of media. Biozyme has spent substantial time, money, and effort developing many distinctive trademarks, designs, forms of advertisement, and slogans, which Biozyme has actively, continuously, and prominently used in interstate commerce in association with its goods and services. For instance, Biozyme has long used in connection with its goods and services the trademark PREMIUM BEEF CONNECTION, and by virtue of such use, Biozyme has acquired extensive trademark rights throughout the United States. For purchasers, potential purchasers, and members of the general public, the PREMIUM BEEF CONNECTION mark symbolizes Biozyme and the affection, favorable recognition, and substantial goodwill that is associated with Biozyme. The PREMIUM BEEF CONNECTION mark exclusively symbolizes Biozyme and is associated in the potential consuming public’s mind with Biozyme, and Biozyme’s valuable goodwill.

9. Biozyme also owns a registration of the PREMIUM BEEF CONNECTION mark, which is registered with the United States Patent and Trademark Office as summarized in the following table:

Trademark	Services	Status	Exhibit
PREMIUM BEEF CONNECTION Registration No: 2,269,138	(Int'l Class: 42) Providing information and consultation to livestock growers.	Registered: August 10, 1999	A

10. Registration No. 2,269,138 is presently alive, in good standing, unrevoked, and uncancelled. The certificate of registration attached as Exhibit A is prima facie evidence of Biozyme’s ownership of the registration, the validity thereof, and Biozyme’s exclusive right to

use the mark shown therein in connection with the services set forth in the certificate of registration. Furthermore, Biozyme's above-noted registration is incontestable.

11. The PREMIUM BEEF CONNECTION mark is presently used by Biozyme in association with Biozyme's information and consultation services. Biozyme actively promotes the PREMIUM BEEF CONNECTION mark in its advertisements, including, but not limited to, print advertising.

12. Biozyme has used its PREMIUM BEEF CONNECTION mark for almost fifteen years. Biozyme has also expended money promoting its PREMIUM BEEF CONNECTION mark. As such, the PREMIUM BEEF CONNECTION mark serves to identify Biozyme as the source of the services bearing the mark.

TBC's Infringing Conduct

13. Upon information and belief, TBC owns and operates the website accessible at www.thebeefconnection.com (the "Website"). A true and accurate printout of webpages from the Website is attached hereto as Exhibit B. The Website prominently uses BEEF CONNECTION nominative phrases, including without limitation, BEEF CONNECTION, THE BEEF CONNECTION, and THE BEEF CONNECTION FROM CONCEPTION TO CONSUMPTION (collectively the "Infringing Marks"), in its domain name and throughout the content of the webpages accessible at the Website.

14. As described on the Website, TBC offers consulting services to its members relating to the production of beef and methods for maximizing the profitability thereof. In particular, TBC uses the Infringing Marks in connection with services relating to the compilation and management of an online herd management computer database consisting of performance data, conversion data and carcass/premium data for commercial producers in the area of cattle,

beef, and beef products. Notably, the Website states: “A Beef Connection member can utilize the technology of herd database management, feed performance data, and carcass/premium data to reveal the true value of the herd and overall beef operation.”

15. Further, the Website states: “The Beef Connection is a bridge between traditional cattle production methods and the reality of today’s much more complicated marketplace. You see, we’ve learned that to maximize your return on investment you need to develop highly efficient cattle that command top dollar at harvest, and have a marketing plan that identifies the best opportunities for your operation. That’s why we make the following tools available to every member. We encourage you to explore each tool and consider how it can help you maximize your ROI.”

16. TBC also regularly offers events, such as seminars, in connection with its use of the Infringing Marks.

17. TBC offers, and its affiliated Website offers, goods and services identical or nearly identical to, or highly related to, those of Biozyme.

**TBC’s Knowledge of
Biozyme’s PREMIUM BEEF CONNECTION Mark**

18. Upon information and belief, Bob Sand (“Sand”) is the owner of TBC. Sand has had numerous meetings and communications with Biozyme, and is aware of Biozyme’s prior use of the PREMIUM BEEF CONNECTION mark. Indeed, Sand has purchased products from Biozyme and offered featured testimonials complementary of Biozyme’s goods and services.

19. Recognizing the strength and substantial goodwill represented by Biozyme’s PREMIUM BEEF CONNECTION mark, Sand, on behalf of TBC, has approached Biozyme and offered to purchase the PREMIUM BEEF CONNECTION mark from Biozyme. Biozyme has,

however, not sold its PREMIUM BEEF CONNECTION mark to TBC and the parties have not entered into any agreement concerning the PREMIUM BEEF CONNECTION mark.

20. After failing to obtain permission from Biozyme to operate under, or in connection with, Biozyme's PREMIUM BEEF CONNECTION mark, on August 1, 2011, TBC filed a cancellation petition at the United States Patent and Trademark Office (Cancellation No. 92/054,313) (the "Cancellation Petition"), in attempt to cancel Biozyme's registration number 2,269,138.

**Confusion Arising from TBC's Use
of Biozyme's PREMIUM BEEF CONNECTION Mark**

21. TBC's allegations in the Cancellation Petition demonstrate that TBC's use of the Infringing Marks in association with TBC's consulting services is confusingly similar to Biozyme's PREMIUM BEEF CONNECTION mark.

22. Notably, the Cancellation Petition itself has confused the corporate name of TBC with Biozyme's PREMIUM BEEF CONNECTION mark. Indeed, both the caption and signature block in the Cancellation Petition identify TBC as "PREMIUM BEEF CONNECTION, LLC" and "Premium Beef Connection, LLC," respectively, rather than the true corporate name The Beef Connection LLC. Thus, upon information and belief, the highly sophisticated trademark attorneys retained by TBC to prepare the Cancellation Petition have confused TBC and its Infringing Marks with Biozyme and its PREMIUM BEEF CONNECTION mark.

23. Moreover, TBC has affirmatively alleged and admitted in the Cancellation Petition that confusion between its Infringing Marks and Biozyme's PREMIUM BEEF CONNECTION mark is likely. Thus, TBC claims it will be damaged by the continued registration of Biozyme's PREMIUM BEEF CONNECTION mark.

24. In addition, relevant consumers of Biozyme's services cannot escape confusion arising from TBC's use of the Infringing Marks. Indeed, conducting searches using Biozyme's PREMIUM BEEF CONNECTION mark on search engines, such as Google or Bing, returns TBC's Website as the top natural search result. Attached hereto as Exhibit C is a true and accurate printout of search results from Google and Bing showing their respective results when searched for "Premium Beef Connection."

Count 1 – Trademark Infringement
15 U.S.C. § 1114

25. Biozyme incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

26. Biozyme owns the PREMIUM BEEF CONNECTION mark.

27. Biozyme's Registration No. 2,269,138 is incontestable.

28. Biozyme has used the PREMIUM BEEF CONNECTION mark continuously and consistently for an extended period of time to advertise and promote its services. Biozyme's use of the PREMIUM BEEF CONNECTION mark in interstate commerce has indelibly impressed on the consuming public's minds the impression that the PREMIUM BEEF CONNECTION mark identifies Biozyme as the source of its service. Thus, the PREMIUM BEEF CONNECTION mark serves to identify Biozyme as the source of the services bearing the PREMIUM BEEF CONNECTION mark because the relevant consumers have come to associate the PREMIUM BEEF CONNECTION mark with Biozyme.

29. TBC adopted and used the Infringing Marks as shown on its Website and in the domain name thebeefconnection.com after Biozyme first began using the PREMIUM BEEF CONNECTION mark.

30. TBC's adoption and use of the Infringing Marks, including in the domain name for its Website and on the webpages accessible on its Website, to identify TBC's services constitutes use of a copy and colorable imitation of Biozyme's PREMIUM BEEF CONNECTION mark, and is likely to cause confusion, mistake, or to deceive the purchasing public into believing that the goods and services of TBC emanate from the same source of the goods and services previously provided by Biozyme, or that there is some connection, sponsorship, or affiliation between the services of Biozyme and TBC, all of which are contrary to fact.

31. Biozyme has no control over the nature and quality of the goods and services of TBC. Any failure, neglect, or default by TBC in providing goods or services will reflect adversely on Biozyme as the believed source or origin thereof, which will hinder Biozyme's effort to continue to protect its outstanding reputation in the industry and subject Biozyme to loss of sales and service and the considerable expense to promote its goods and services in association with the PREMIUM BEEF CONNECTION mark, all to the irreparable harm of Biozyme.

32. TBC's conduct constitutes an infringement of Biozyme's registered PREMIUM BEEF CONNECTION mark, and is actionable under the provisions of 15 U.S.C. § 1114.

33. Upon information and belief, TBC has deliberately and willfully infringed Biozyme's registered PREMIUM BEEF CONNECTION mark in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114 and Biozyme has been, and will continue to be, irreparably harmed by such infringement unless this Court enjoins TBC from its continuing infringement pursuant to 15 U.S.C. § 1116.

34. Upon information and belief, TBC is willfully infringing Biozyme's registered PREMIUM BEEF CONNECTION mark. As a result of TBC's deliberate and willful infringement of Biozyme's registered PREMIUM BEEF CONNECTION mark, Biozyme is entitled to damages, TBC's profits, attorneys' fees and costs, and any and all other relief authorized by 15 U.S.C. § 1117.

Count 2 – False Designation of Origin
15 U.S.C. § 1125

35. Biozyme incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

36. TBC's conduct as recited herein, including its use of the Infringing Marks on and in connection with its goods and services and associated Website and thebeefconnection.com domain name constitutes a false designation of origin in that the use of the terms "BEEF CONNECTION" in connection with the services of TBC, is likely to cause confusion, to cause mistake, or to deceive others as to the affiliation, connection, or association of TBC with Biozyme, or as to the origin, sponsorship, approval of its goods, services and commercial activities with Biozyme and constitutes a violation of 15 U.S.C. § 1125(a).

37. Upon information and belief, TBC's conduct is willful and intentional with the purpose of misleading the public into believing that the goods and services of TBC are in some way sponsored by, affiliated with, or connected to the services previously provided by Biozyme under its PREMIUM BEEF CONNECTION mark, all of which are contrary to fact. Biozyme has been and will continue to be irreparably harmed by TBC's conduct unless this Court enjoins TBC from its unlawful conduct pursuant to 15 U.S.C. § 1116.

38. As a result of TBC's deliberate and willful conduct, Biozyme is entitled to damages, TBC's profits, attorneys' fees and costs, and any and all other relief authorized by 15 U.S.C. § 1117.

Count 3 – Unfair Competition
15 U.S.C. § 1125

39. Biozyme incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

40. Biozyme uses its PREMIUM BEEF CONNECTION mark to identify it as the source of services in providing information and consultation to livestock growers.

41. As a result of the facts alleged above, Biozyme has developed its PREMIUM BEEF CONNECTION mark to be closely associated with, and to be an indication of source of origin of, services rendered by Biozyme. Biozyme's PREMIUM BEEF CONNECTION mark has acquired a substantial and favorable reputation and goodwill in connection with the goods and services provided by Biozyme.

42. TBC's continued and unauthorized use of the Infringing Marks in advertising is likely to, and upon information and belief is intended to, cause confusion or mistake or to deceive as to the affiliation, connection or association of TBC with Biozyme or the possible origin, sponsorship or approval of TBC's services by Biozyme.

43. TBC's use of the Infringing Marks is a misrepresentation that TBC is affiliated with Biozyme, which constitutes unfair competition with Biozyme.

44. Upon information and belief, TBC has deliberately and willfully committed acts of unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125. TBC's conduct has, and continues to, irreparably harm Biozyme.

45. Unless TBC is restrained and enjoined, Biozyme will suffer further and irreparable damage for which Biozyme has no full and adequate remedy at law. As a result of TBC's deliberate and willful conduct, Biozyme is entitled to damages, TBC's profits, attorneys' fees and costs, and any and all other relief authorized by law.

Count 4 – Unfair Competition Under Missouri Common Law

46. Biozyme incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

47. TBC's acts have created, and unless restrained by this Court, will continue to create, a likelihood of confusion and deception of the consuming public, causing irreparable injury to Biozyme for which Biozyme has no adequate remedy at law.

48. TBC's conduct constitutes unfair competition under the common law of Missouri by a deliberate course of conduct, all without authorization, license, privilege, or justification.

49. Upon information and belief, TBC acted with full knowledge of Biozyme's use of the PREMIUM BEEF CONNECTION mark and without regard to the likelihood of confusion and deception of the public created by those activities.

50. TBC's conduct demonstrates an intentional, willful, and malicious intent to trade on the goodwill associated with Biozyme to the substantial and irreparable injury of Biozyme.

51. As a result of TBC's acts, Biozyme has been damaged and will continue to be damaged in an amount not as yet determined or ascertainable. At a minimum, however, Biozyme is entitled to injunctive relief, an accounting of TBC's profits, actual damages, punitive damages, attorneys' fees, the costs of this action, and any and all other relief authorized by law.

Count 5 – Cybersquatting
15 U.S.C. § 1125(d)

52. Biozyme incorporates by reference the allegations of each of the above paragraphs as if fully set forth herein.

53. TBC has registered and/or is using the domain name thebeefconnection.com (the “Domain Name”), which is identical and/or confusingly similar to Biozyme’s PREMIUM BEEF CONNECTION mark. TBC’s Domain Name consists of or contains a mark that is owned by Biozyme, is the subject of a federal trademark registration, and which was distinctive at the time of TBC’s registration and/or use of the Domain Name.

54. TBC has unjustly obtained gains, profits, and advantages as a result of its wrongful acts of federal trademark cyberpiracy in amounts thus far not determined.

55. Upon information and belief, TBC has a bad faith intent to profit from Biozyme’s PREMIUM BEEF CONNECTION mark.

56. Upon information and belief, the foregoing acts were done willfully and deliberately and with an intent to engage in cyberpiracy at Biozyme’s expense in violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

57. TBC’s unlawful acts in violation of Section 1125(d) of the Lanham Act have caused, and unless enjoined by this Court, will continue to cause, irreparable harm and damage to Biozyme. Accordingly, Biozyme seeks permanent injunctive relief pursuant to 15 U.S.C. § 1116.

58. Biozyme has no adequate remedy at law and is suffering irreparable harm and damage as a result of TBC’s acts of federal trademark cyberpiracy in an amount thus far not determined, but within the jurisdiction of this Court, which amount should be trebled pursuant to 15 U.S.C. § 1117.

Prayer for Relief

WHEREFORE, Biozyme demands a judgment against Defendant and prays that this Court:

- a. Preliminarily and permanently enjoin The Beef Connection LLC and its respective agents, servants, employees, and attorneys and all persons in active concert or participation with it or acting for, with, by, through, or under it, from infringing Biozyme's PREMIUM BEEF CONNECTION mark; from unfair competition with Biozyme; from falsely designating the origin of Biozyme's services; and from cyberpiracy;
- b. Order The Beef Connection LLC to deliver up for destruction to Biozyme all unauthorized products and/or advertisements in its possession or under its control bearing the PREMIUM BEEF CONNECTION mark or any simulation, reproduction, counterfeit, copy, or colorable imitation thereof, pursuant to 15 U.S.C. § 1118;
- c. Grant to Biozyme, should Biozyme so elect, an award of statutory damages of up to \$100,000 per domain name as authorized under 15 U.S.C. §§ 1117(d) and 1125(d) as a result of The Beef Connection LLC's acts of cyberpiracy;
- d. Grant to Biozyme an award and accounting of The Beef Connection LLC's profits, any damages sustained by Biozyme, and that all profits or damages be trebled, the costs of this action, and Biozyme's attorneys' fees, pursuant to 15 U.S.C. § 1117;
- e. Award Biozyme punitive damages for The Beef Connection LLC's acts of unfair competition;
- f. Order and direct The Beef Connection LLC to immediately transfer the domain name thebeefconnection.com to Biozyme; and
- g. Grant to Biozyme such further relief as may be equitable and proper.

Jury Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Biozyme, Incorporated hereby demands a trial by jury.

Dated: September 26, 2011

Respectfully Submitted,

s/ Cheryl L. Burbach

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