

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JEREMY SCHOEMAKER,)	
)	Case No. 8:09cv441
Plaintiff,)	
)	
vs.)	
)	COMPLAINT
DAVID SULLIVAN, individually and)	
d/b/a BIG BLUE DOTS,)	JURY DEMAND
)	
Defendant.)	

COMES NOW the Plaintiff, JEREMY SCHOEMAKER, by and through his undersigned counsel, and for his Complaint against DAVID SULLIVAN individually and d/b/a BIG BLUE DOTS, states and alleges as follows:

PARTIES

1. Plaintiff Jeremy Schoemaker is an individual and is a resident of the State of Nebraska.
2. Defendant David Sullivan is a California resident and conducts business under his personal name and under the name Big Blue Dots.

JURISDICTION AND VENUE

3. Subject matter jurisdiction is proper in this case pursuant to 28 U.S.C. §§ 1331, 1332 and 1338. The amount in controversy herein is in excess of \$75,000.
4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

BACKGROUND

5. Plaintiff Jeremy Schoemaker ("Schoemaker") is a web entrepreneur and is the founder of ShoeMoney Media Group, Inc. Schoemaker is a frequent speaker at search engine marketing and affiliate conferences, and he co-founded the Elite Retreat

conference, which provides lectures and seminars on how to run profitable internet businesses.

6. Schoemaker and his company, ShoeMoney Media Group, operate a blog found on the internet at www.shoemoney.com. Shoemoney.com is visited by more than 25,000 unique visitors each day.

7. The blog is registered to Schoemaker at his Nebraska address. The blog clearly indicates that Schoemaker is located in Nebraska. The front page of the blog states that Schoemaker and his company are "based in Lincoln, Nebraska." The front page of the blog also contains a prominent copyright notice. Elsewhere on the site, Schoemaker's contact information is listed as 5550 South 59th Street, Suite 21, Lincoln, NE 68516. Defendant Sullivan has visited Schoemaker's web site on multiple occasions.

8. Schoemaker earns substantial revenues through internet marketing and by teaching third parties how to generate revenue through internet marketing. Schoemaker is well-known within the industry as an expert and industry leader.

9. Schoemaker and his blog, www.shoemoney.com, have been featured on or appeared in The Wall Street Journal, ABC News 20/20, The New York Times, The Washington Post, The Christian Science Monitor, The New York Post, Forbes.com, Entrepreneur magazine, The Boston Globe, Tech Crunch, cnet/News.com, Google's Biggest Money Makers, Slate magazine, Skyradionet, and other publications. One commentator recently named Schoemaker the "tenth most powerful and influential man in social media," and Schoemaker's blog has made Technorati.com's "Top 100 most read blogs on the internet" for several years.

10. In September, 2005, Schoemaker received a check from Google, Inc. in the amount of \$132,994.97. The check was addressed to Schoemaker at his residential

address in Lincoln, Nebraska. The check constituted payment for Schoemaker's work with Google's AdSense on-line marketing program for the month of August, 2005.

11. Schoemaker prepared a photograph depicting him holding the \$132,994.97 check from Google. Schoemaker prominently displays that photograph on the front page, and on other pages, of his internet blog. Schoemaker uses the photograph to promote his services. The photograph is well-known by persons who are familiar with internet advertising services, including Defendant Sullivan. A true and correct copy of the photograph is displayed below:



12. Before displaying the photograph on his blog, Schoemaker placed a "ShoeMoney.com" watermark on the photograph to prevent third parties from attempting to use the photograph for their own commercial gain. At all relevant times, the web page displaying Schoemaker's photograph has contained a copyright symbol. The internet blog contains many statements to put its visitors on notice that

Schoemaker is located in Nebraska. The check depicted in the photograph is also addressed to Schoemaker's address in Lincoln, Nebraska.

13. Schoemaker owns a copyright in the photograph. Schoemaker registered the copyright with the United States Copyright Office by delivering the deposit, application, and fee required for registration to the United States Copyright Office.

14. Schoemaker recently learned that his copyrighted photograph had been copied from his web site and was being used by the Defendant on various web sites, including but not limited to <http://world-jobs-report.com>. The copyrighted photograph was being used in advertisements for Defendant's own commercial gain.

15. A true and correct copy of one of Defendant's unauthorized uses of Schoemaker's copyrighted photograph is attached hereto as Exhibit "A."

16. Defendant's web site <http://world-jobs-report.com> ("Fake News Site") is an internet site that purports to be a news site of the "San Diego Herald News," but the site is not a news site and the story on the site is not real. The web site gives the false appearance that a legitimate news outlet is endorsing the products/services offered on the Fake News Site. A true and correct copy of Defendant's Fake News Site is attached hereto as Exhibit "B."

17. The Fakes News Site is a flagrant violation of FTC guidelines which prohibit persons from disguising advertisements as "news" sites on the internet.

18. Upon information and belief, the comments/testimonials on the Fake News Site are also not real and are intended to deceive customers.

19. Schoemaker does not support or promote the products or services offered by Defendant, including those products/services for which Schoemaker's copyrighted photograph was being used to sell. Schoemaker does not support the misleading/deceptive nature of Defendant's Fake News Site. Defendant's Fake News

Site has been the subject of complaints by dissatisfied purchasers and industry observers. Many persons have charged that Defendant's Fake News Site is deceptive and tricks consumers into signing up for a monthly service for which Defendant charge the consumer. The Defendants' use of Schoemaker's copyrighted photograph on the Fake News Site is likely to confuse the public and cause them to believe Schoemaker supports and/or promotes Defendant's services and/or methods of conducting business, and is also likely to cause consumers to believe Schoemaker is blatantly violating FTC guidelines which prohibit this type of Fake News Site. Defendant has therefore caused damage to Schoemaker's name and brand in the marketplace by purporting to affiliate Schoemaker with the Defendant's products/services that are sold in misleading / deceptive ways, in violation of FTC guidelines.

20. Defendant knew or should have known that his use of Schoemaker's photograph was likely to cause consumers and the general public to believe the services offered thereunder were affiliated with and/or created, provided, and/or supported by Schoemaker.

21. Defendant's conduct caused harm to Schoemaker, and Defendants directed that harm at Schoemaker with the knowledge that said harm would directly impact Schoemaker in the State of Nebraska.

**CAUSE OF ACTION NO. 1
COPYRIGHT INFRINGEMENT**

22. Schoemaker incorporates the allegations contained in Paragraph 1-21 above as if fully set forth herein.

23. The Defendant used, displayed, reproduced, and/or distributed Schoemaker's copyrighted photograph for commercial gain.

24. Schoemaker did not authorize the Defendant to use, display, reproduce, or distribute the photograph.

25. Defendant's use of Schoemaker's copyrighted photograph constitutes an infringement of Schoemaker's copyright.

26. Defendant has profited from the infringement of Schoemaker's photograph.

27. Schoemaker has suffered damages as a result of the Defendant's infringement of his photograph.

**CAUSE OF ACTION NO. 2
INVASION OF PRIVACY --- NEB. REV. STAT § 20-202**

28. Schoemaker incorporates the allegations contained in Paragraphs 1-27 above as if fully set forth herein.

29. By using, reproducing, and distributing Schoemaker's photograph, and by facilitating the use, reproduction, and distribution of the photograph, Defendant has exploited the name, picture, portrait and personality of Schoemaker for advertising or commercial purposes.

30. Defendant used Schoemaker's photograph in an attempt to appropriate Schoemaker's good name and respected status in the community.

31. Schoemaker did not consent to Defendant's use, reproduction, or distribution of the photograph.

32. Defendant profited from the use of the photograph.

33. Schoemaker suffered damages as a result of the Defendant's use, reproduction, and distribution of the photograph.

**CAUSE OF ACTION NO. 3
CONSUMER PROTECTION ACT --- NEB. REV. STAT. §§ 59-1601 *et seq.***

34. Schoemaker incorporates the allegations contained in Paragraphs 1-33 above as if fully set forth herein.

35. Nebraska Revised Statute § 59-1602 provides:

Unfair methods of competition and unfair or deceptive or practices in the conduct of any trade or commerce shall be unlawful.

36. The Defendant's acts were unfair and deceptive and constitute a violation of the Nebraska Consumer Protection Act.

37. The Defendant's acts have an impact upon the public interest and the people of Nebraska because the photograph was communicated and/or disseminated to a wide audience and the photograph, as used, was likely to deceive the general public as more fully described above. Defendant's advertisement which contained Schoemaker's copyrighted photograph was displayed to approximately 5,000,000 consumers.

38. Defendant profited from the unauthorized use of the photograph.

39. Schoemaker suffered damage as a result of the Defendant's unauthorized use of Schoemaker's photograph.

**CAUSE OF ACTION NO. 4
UNIFORM DECEPTIVE TRADE PRACTICES ACT ---
NEB. REV. STAT. §§ 87-301 *et seq.***

40. Schoemaker incorporates the allegations contained in Paragraphs 1-39 above as if fully set forth herein.

41. Defendant's use and display of Shoemaker's photograph was done in an attempt to "pass off" the product or services of a third party as a product or service that is sold or promoted by Schoemaker.

42. Defendant's attempt to pass off the product or service as one that is sold or promoted by Schoemaker has harmed Schoemaker's good will and has caused damages to Schoemaker.

43. The acts of the Defendant as hereinbefore described constitute a violation of the Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-302.

44. Schoemaker has been damaged as a result of Defendant's violation of the Deceptive Trade Practices Act, and is entitled to injunctive relief and attorney fees for said violation.

RELIEF REQUESTED

45. Schoemaker is entitled to and seek recovery of his actual damages in an amount to be proven at trial, including but not limited to any and all damages caused to Schoemaker's brand and reputation by reason of Defendant's wrongful conduct.

46. Schoemaker demands an accounting by Defendant of his wrongful conduct hereinbefore described, and an accounting of the gross profits attributable to the wrongful conduct.

47. Schoemaker seeks to recover all of Defendant's profits, direct and indirect, attributable to the Defendant's wrongful conduct.

48. Schoemaker seeks recovery of his costs and attorney fees.

49. Schoemaker requests a permanent injunction enjoining Defendant from any further use, display, reproduction, or distribution of Schoemaker's photograph.

50. Schoemaker seeks any and all further and other relief the Court deems fair and just.

51. Schoemaker demands trial by jury in Omaha, Nebraska.

WHEREFORE, Plaintiff Jeremy Schoemaker requests judgment in his favor, and against Defendant as hereinbefore described.

Dated this 8th day of December, 2009.

JEREMY SCHOEMAKER, Plaintiff

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