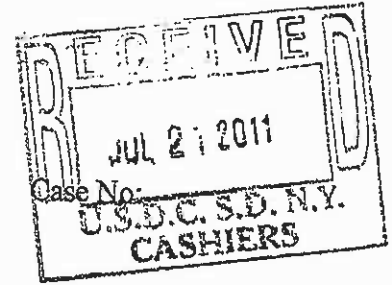


David Valicenti
Christopher Hennessey
COHEN KINNE VALICENTI & COOK, LLP
28 North Street, 3rd Floor
Pittsfield, MA 01201

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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ARDIS HEALTH, LLC, CURB YOUR CRAVINGS, LLC,
and USA HERBALS, LLC,

Plaintiffs,

-against-

COMPLAINT

ASHLEIGH NANKIVELL,

Defendant.

DEMAND FOR JURY TRIAL

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Plaintiffs Ardis Health, LLC, Curb Your Cravings, LLC, USA Herbals, LLC (collectively "Plaintiffs"), by their attorneys, Cohen Kinne Valicenti & Cook, LLP, allege as follows against Defendant Ashleigh Nankivell ("Defendant"):

PRELIMINARY STATEMENT

1. This is an action for damages and injunctive relief arising out of Defendant's perfidious acts against her former employer, including the unlawful conversion and use of Plaintiffs' intellectual and tangible property following her termination from employment. The action is brought to recover damages for trademark/service mark and trade dress infringement, breach of contract, conversion/civil theft, breach of her duty of loyalty, breach of the implied covenant of good faith and fair dealing, and defamation. This action is also brought for injunctive relief to enjoin further violations by Defendant of Plaintiffs' rights hereinafter

described.

JURISDICTION AND VENUE

2. This Court has original jurisdiction pursuant to 15 U.S.C. § 1121 and in that this action arises under the Lanham Act, 15 U.S.C. §1051 *et seq.*, as well as pursuant to 28 U.S.C. §§ 1331 and 1338, as well as supplemental jurisdiction over the state law and common law claims pursuant to 28 U.S.C. § 1367(a).

3. Defendant is subject to personal jurisdiction in that Defendant resides in this district and the cause of action arose in this district.

4. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400.

PARTIES

5. Plaintiff, Ardis Health, LLC, is a limited liability company organized under the laws of the State of New York, and maintains a principal place of business at 1001 6th Avenue, Suite 1103, New York, New York.

6. Plaintiff, USA Herbals, LLC, is a limited liability company organized under the laws of the State of New York, and maintains a principal place of business at 1001 6th Avenue, Suite 1103, New York, New York.

7. Plaintiff, Curb Your Cravings, LLC, is a limited liability company organized under the laws of the State of New York, and maintains a principal place of business at 1001 6th Avenue, Suite 1103, New York, New York.

8. Ardis Health LLC, USA Herbals LLC, and Curb Your Cravings LLC (collectively "Plaintiffs") are affiliated with one another.

9. Upon information and belief, Defendant is an individual who resides at 114 Troutman Street, #428, Brooklyn, NY 11201.

FACTUAL BACKGROUND

Plaintiffs' Business

10. Plaintiffs are a group of closely affiliated online marketing companies that develop and market a variety of herbal, natural health, wellness and beauty products throughout the United States and Europe. Plaintiffs market their products widely on the Internet and have become recognized as a leader in the online marketplace.

11. Plaintiffs expend great time and effort in the development, promotion and marketing of their products and services under a portfolio of trademarks.

12. Through Plaintiffs' extensive efforts, as well as the quality of and overwhelming customer satisfaction with Plaintiffs' products and services, Plaintiffs' trademarks have become highly successful and well known.

13. Because creative content is the lifeblood of Plaintiffs' business, Plaintiffs have undertaken significant efforts to protect and ensure their continued ownership and control over the creative content used in the advertisement and promotion of their products and services ("Proprietary Content").

14. In furthering their business, Plaintiffs operate collaboratively under the direction and control of their founder and principal member, Jordan Finger.

15. At all relevant times, Mr. Finger has, among other things, managed Plaintiffs' main office and their employees, located in Plaintiffs' Manhattan office.

Defendant's Employment

16. In or about October 2008, Plaintiffs hired Defendant as a salaried employee.

17. During her employment for Plaintiffs, Defendant held the title of Video & Social Media Producer.

18. Defendant's duties and responsibilities as Plaintiffs' employee involved the creation of Proprietary Content, including creating videos for and about Plaintiffs' products and

services. Defendant's creative work was used, among other things, on Plaintiffs' websites, blogs, email and other venues on the Internet.

19. Defendant's duties and responsibilities also encompassed designing websites for Plaintiffs' products and services, as well as designing social media fan pages on Facebook, Twitter and elsewhere.

20. Defendant also assisted in managing Plaintiffs' customer service third party phone room.

21. As part of her job, Defendant was responsible for maintaining, and she exclusively maintained, Plaintiffs' passwords, login, hosting and other information for various websites, email accounts, social media accounts and other accounts that were established on behalf of Plaintiffs.

22. Defendant also exclusively maintained password information to servers hosted by third parties, which are accessible online, where a significant amount of Plaintiffs' critical and proprietary data, including Proprietary Content, was uploaded and stored.

23. In order to perform the functions of her job, Plaintiffs provided Defendants with various computer and video equipment, including a Macintosh computer, digital camera, software and related equipment ("Equipment").

24. Throughout her employment, Defendant stored a significant amount of Plaintiffs' critical information and Proprietary Content on the Equipment.

The Work Product Agreement

25. In or about October 2008, Defendant executed a Non-Disclosure and Rights to Work Product Agreement in connection with her employment with Plaintiffs ("Work Product Agreement").

26. Pursuant to the Work Product Agreement, Defendant agreed to hold Plaintiffs' Confidential Information in strict confidence, to protect that information, and not to use any

confidential information for any purpose other than for her engagement by Plaintiffs.

27. Defendant expressly agreed that any Proprietary Content she created or developed, including names, designs, slogans, concepts, advertisements, copyrightable works, trademarks and service marks, belonged solely to Plaintiffs.

28. Pursuant to the Work Product Agreement, Defendant expressly agreed that she had no right, title or interest in any Proprietary Content.

29. Pursuant to the Work Product Agreement and her employment relationship with Plaintiffs, all of the creative work performed by Defendant in connection with her employment was Plaintiffs' Proprietary Content.

30. Upon information and belief, Defendant was aware at all times that the work she created in connection with her employment belonged to Plaintiffs.

Whatsinurs Concept

31. In or about June 2010, Mr. Finger began developing a concept for a service known as "Whatsinurs".

32. The purpose of Whatsinurs was to provide content related to cosmetic and beauty products over the Internet and mobile to a social media community. Whatsinurs would enable participants to discover, review, comment on and buy beauty and cosmetic products through the Whatsinurs platform both online and at local retailers.

33. Plaintiffs, chiefly through Mr. Finger, began to develop the Whatsinurs concept and registered the domain Whatsinurs.com.

34. Plaintiffs developed the Whatsinurs.com website and created a distinctive look and feel for the concept ("Whatsinurs Trade Dress").

35. On or about February 27, 2011, the trademark, Whatsinurs was first used in commerce (the "Whatsinurs Mark").

36. On or about April 6, 2011, Plaintiffs sought registration of the Whatsinurs Mark

with the United States Patent and Trademark Office (“USPTO”).

37. Registration of the Whatsinurs Mark, USPTO Serial No. 85287919, is pending.

38. Through Plaintiffs’ extensive and exclusive use of the Whatsinurs Mark and Whatsinurs Trade Dress, they have become distinctively connected with Plaintiffs. Customers and others in the marketplace recognize the Whatsinurs Mark and Whatsinurs Trade Dress as an indication of the high quality of services offered by Plaintiffs.

39. Plaintiff also entered into a strategic alliance with a business partner, Karl Alomar, to assist in developing Whatsinurs.

40. In or about May 2010, Plaintiffs and Mr. Alomar entered into a non-disclosure agreement in order to protect and maintain the proprietary nature of the Whatsinurs concept.

41. In connection with her employment, Mr. Finger sought the Defendant’s assistance with the creative development of Whatsinurs.

42. Defendant, as part of her employment responsibilities, assisted in creating the content for Whatsinurs, including the development of Whatsinurs.com.

Defendant’s Termination and Post Termination Conduct

43. In connection with her employment, Defendant executed an acknowledgement of Plaintiffs’ employee handbook (“Handbook”).

44. The Handbook also made clear that Defendant was an employee at will, and, as such, could be discharged for any reason and without cause.

45. Defendant’s work became marred by excessive absences, consistent lateness, and unexplained disappearances from the office for hours in the middle of the work day, sometimes for hours on end, which escalated in or about the spring of 2011.

46. Unbeknownst to Plaintiffs at the time, Defendant had commenced applying for other jobs and prepared to compete against Plaintiffs using Plaintiffs’ facilities and equipment, including her work computer at Plaintiffs’ Manhattan office.

47. Upon information and belief, Defendant engaged in a pattern of leaving work during work hours, without requesting vacation time or leave, in order to seek alternative employment and to interview for positions at competing companies.

48. Plaintiffs later discovered that Defendant had prepared at least sixty job applications, including for work at competitors, using Plaintiffs equipment and facilities, and while on the job.

49. On or about June 23, 2011, after Defendant failed to show up for work without excuse, Plaintiffs terminated Defendant's employment.

50. At the time of her termination, Plaintiffs requested that Defendant return all Equipment and information, including Proprietary Content in her possession, as well as passwords, login and other information that belonged to Plaintiffs.

51. Defendant refused to return the requested items and continues to maintain possession of, among other things, Plaintiffs' Equipment and Proprietary Content, without authorization.

52. In addition, Defendant unilaterally changed the passwords, login, hosting and other information for various hosted servers, websites, email accounts, social media accounts and other accounts that were established on behalf of Plaintiffs, and has refused to allow Plaintiffs access to this information, including a significant amount of Proprietary Content and other highly sensitive information belonging to Plaintiffs that was uploaded and stored.

53. Because Defendant changed this information, Plaintiffs do not have access to these company assets and files.

54. After her termination, Defendant commenced a campaign of publishing false and disparaging statements about Plaintiffs and their products, which has seriously affected and damaged Plaintiffs' trade.

55. On or about June 27, 2011, in a public post on Defendant's Facebook webpage,

she published a message entitled, "FINGER-less & Fancy Free!!!!!!!" and shortly thereafter posted the following public message:

"no longer raping the uk and france with fake diet patches and bullshit tooth whiteners that dont work on bogus 'free trial offers' that end up being 500 dollars. done with ardis health conniseur (sic) of snake oil"

56. After her termination, Defendant also continued to use Proprietary Content from Whatsinurs on her commercial website, www.anankivell.com.

57. Plaintiffs' counsel advised Defendant that such use constitutes unfair competition and infringes upon Plaintiffs' trademark rights and copyrights.

58. Defendant has refused to remove the content from her website.

59. At no time did Plaintiffs authorize Defendant to use any Proprietary Content, except in connection with her employment and for the benefit of Plaintiffs.

60. All conditions precedent to commencing this action have been met.

FIRST CLAIM
(Trademark/Service Mark Infringement – Whatsinurs Mark
Violation of 15 U.S.C. § 1125(a)(1)(A))

61. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth herein.

62. The Whatsinurs Mark is a valid mark that is entitled to protection under the Lanham Act.

63. By using the Whatsinurs Mark without authorization and in connection with her own commercial website, Defendant used the Whatsinurs Mark in commerce, in connection with the sale or advertising of services, and without Plaintiffs' consent.

64. Defendant's use of the Whatsinurs Mark in connection with her own commercial self-promotion is likely to cause confusion as to the affiliation, connection, or association of Defendant with Plaintiffs, or as to the origin, sponsorship, or approval of Defendant's goods,

services, or commercial activities by Plaintiffs.

65. Defendant's unlawful conduct constitutes unfair competition and false designation of origin or sponsorship in violation of the Lanham Act section 43(a), 15 U.S.C. § 1125(a).

66. Defendant's unlawful acts have been willful, deliberate, intended to benefit Defendant at Plaintiffs' expense and made in bad faith.

SECOND CLAIM
(Trademark/Service Mark Infringement – Whatsinurs Trade Dress
Violation of 15 U.S.C. § 1125(a)(1)(A))

67. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth herein.

68. The Whatsinurs Trade Dress is a valid mark that is entitled to protection under the Lanham Act.

69. By using the Whatsinurs Trade Dress without authorization and in connection with her own commercial website, Defendant used the Whatsinurs Trade Dress in commerce, in connection with the sale or advertising of services, and without Plaintiffs' consent.

70. Defendant's use of the Whatsinurs Trade Dress in connection with her own commercial self-promotion is likely to cause confusion as to the affiliation, connection, or association of Defendant with Plaintiffs, or as to the origin, sponsorship, or approval of Defendant's goods, services, or commercial activities by Plaintiffs.

71. Defendant's unlawful conduct constitutes unfair competition and false designation of origin or sponsorship in violation of the Lanham Act section 43(a), 15 U.S.C. § 1125(a).

72. Defendant's unlawful acts have been willful, deliberate, intended to benefit Defendant at Plaintiffs' expense and made in bad faith.

THIRD CLAIM
(Common Law Trademark Infringement - Whatsinurs Mark)

73. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth herein.

74. The Whatsinurs Mark is a valid mark that is entitled to protection under the Lanham Act.

75. By using the Whatsinurs Mark without authorization and in connection with her own commercial website, Defendant used the Whatsinurs Mark in commerce, in connection with the sale or advertising of services, and without Plaintiffs' consent.

76. Defendant's use of the Whatsinurs Mark in connection with her own commercial self-promotion is likely to cause confusion as to the affiliation, connection, or association of Defendant with Plaintiffs, or as to the origin, sponsorship, or approval of Defendant's goods, services, or commercial activities by Plaintiffs.

77. Defendant's unlawful acts have been willful, deliberate, intended to benefit Defendant at Plaintiffs' expense and made in bad faith.

FOURTH CLAIM
(Common Law Trademark Infringement - Whatsinurs Trade Dress)

78. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth herein.

79. The Whatsinurs Trade Dress is a valid mark that is entitled to protection under the Lanham Act.

80. By using the Whatsinurs Trade Dress without authorization and in connection with her own commercial website, Defendant used the Whatsinurs Trade Dress in commerce, in connection with the sale or advertising of services, and without Plaintiffs' consent.

81. Defendant's use of the Whatsinurs Trade Dress in connection with her own commercial self-promotion is likely to cause confusion as to the affiliation, connection, or association of Defendant with Plaintiffs, or as to the origin, sponsorship, or approval of Defendant's goods, services, or commercial activities by Plaintiffs.

82. Defendant's unlawful acts have been willful, deliberate, intended to benefit Defendant at Plaintiffs' expense and made in bad faith.

FIFTH CLAIM
(Breach Of Contract – Work Product Agreement)

83. The Work Product Agreement is a valid and enforceable contract between Plaintiffs and Defendant.

84. Plaintiffs performed all obligations under the Work Product Agreement.

85. Defendant breached the Work Product Agreement.

86. Plaintiffs have been and continue to be irreparably injured and damaged as a result of Defendant's breaches.

87. Pursuant to the Work Product Agreement, Plaintiffs are entitled to equitable relief, including injunctive relief in addition to all other remedies.

SIXTH CLAIM
(Conversion/Civil Theft – Equipment And Proprietary Content)

88. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth herein.

89. Plaintiff is the legal owner and has the immediate superior right of possession to the Equipment and Proprietary Content.

90. Defendant exercised an unauthorized dominion over the Equipment and Proprietary Content to the exclusion of Plaintiffs' superior rights.

91. Defendant's unlawful acts have been willful, deliberate, intended to benefit Defendant at Plaintiffs' expense and made in bad faith, and Plaintiffs have been damaged thereby.

SEVENTH CLAIM
(Breach Of Duty Of Loyalty)

92. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth herein.

93. During Defendant's employment with Plaintiffs, Defendant actively and secretly prepared to compete against Plaintiffs' business.

94. In preparing to compete against Plaintiffs' business while still employed by Plaintiffs, Defendant used Plaintiffs' time, facilities and/or Proprietary Content to do so.

95. Defendant's unlawful acts have been willful, deliberate, intended to benefit Defendant at Plaintiffs' expense and made in bad faith, and Plaintiffs have been damaged thereby.

EIGHTH CLAIM
(Breach Of Implied Covenant Of Good Faith And Fair Dealing)

96. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth herein.

97. Implicit in every employment relationship in New York is a covenant of good faith and fair dealing between the parties.

98. By her actions set forth above, Defendant engaged in arbitrary and unreasonable conduct which had the effect of preventing Plaintiffs from receiving the fruits of the contract.

99. By committing such actions, Defendant breached the implied covenant of good faith and fair dealing.

100. As a direct and proximate result of Defendant's breach of the implied covenant of good faith and fair dealing, Plaintiffs suffered substantial and irreparable damage.

NINTH CLAIM
(Defamation)

101. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth herein.

102. Defendant published false and defamatory statements of fact regarding Plaintiffs and their products and service on her Facebook webpage.

103. The false statements were published without privilege or authorization.

104. Defendant was negligent in causing these statements to be published and the statements were published with knowledge and/or reckless disregard of their falsity.

105. The false statements constitute defamation per se in that they tend to injure Plaintiffs in their trade or business and/or impugn the basic integrity or creditworthiness of Plaintiffs' business.

106. Defendant's conduct has injured Plaintiffs and unless restrained will continue to injure Plaintiffs, causing monetary damages to Plaintiffs in an amount to be determined at trial, as well as irreparable injury to Plaintiffs.

107. Plaintiffs have suffered pecuniary loss resulting directly from the effect of Defendant's wrongful conduct by way of lost customers, Internet traffic and profits, and increased advertising costs.

108. Defendant's wrongful conduct was knowing, willful, deliberate, malicious and intended to injure Plaintiffs.

TENTH CLAIM
(Permanent Injunction)

109. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set

forth herein.

110. Defendant's unlawful acts have caused harm to Plaintiffs and unless enjoined by this Court, Defendant's acts will continue to cause irreparable harm to Plaintiffs for which there is no adequate remedy at law.

111. Based on the foregoing, Plaintiffs seek the imposition of a permanent injunction against the Defendant and her agents, servants, employees, attorneys and all persons acting at her direction or control to:

- Cease using Plaintiffs' Proprietary Content in any way;
- Cease using Plaintiffs' trademarks or trade dress, including but not limited to any trademark, trade dress, word, phrase, expression, or logo that is in any manner confusingly similar thereto or a colorable imitation thereof, in any commercial manner or in any manner that might cause any consumer or prospective consumer of natural health, weight loss, cosmetic or wellness products to believe that there is any causal connection or association with Plaintiffs or any of their duly licensed agents;
- Return to Plaintiffs all of Plaintiffs' Proprietary Content and confidential information without retaining copies;
- Return to Plaintiffs all of Plaintiffs' passwords, login, hosting and other information used for various websites, email accounts, social media accounts and other accounts that were established on behalf of Plaintiffs;
- Remove all Proprietary Content from all websites and anywhere else that it is available to others;
- Disable or terminate all display of any Proprietary Content at any website that Plaintiff owns or controls;

- Cease publishing defamatory statements about Plaintiffs and/or Mr. Finger and to remove all offending publications; and
- Cease representing in any fashion, or holding herself out as affiliated in any manner with Plaintiffs;

WHEREFORE, Plaintiffs demand judgment as follows:

- (1) On the First through Fourth Claims, pursuant to 15 U.S.C. § 1117(a) and state law, an award of CYC's actual damages against Defendant in an amount to be proven at trial, plus interest; damages in an amount no less than treble Plaintiffs' damages; Defendant's profits; Plaintiffs' costs of the action and reasonable attorneys' fees; and injunctive relief against Defendant's use of Plaintiffs' trademarks in commerce pursuant to 15 U.S.C. § 1116(a);
- (2) On the Fifth through Tenth Claims, compensatory damages to be determined at trial in this action, punitive damages, reasonable attorneys' fees and the costs of this action and injunctive relief; and
- (3) The costs of this action, reasonable attorneys' fees and such other and further relief as this Court may find to be just.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

Dated: July 20, 2011

Respectfully submitted,

Ardis Health, LLC, USA Herbals, LLC and Curb
Your Cravings, LLC

By their attorneys,



David Valicenti
Christopher Hennessey
COHEN KINNE VALICENTI & COOK LLP
28 North Street, 3rd Floor
Pittsfield, MA 01201
Phone: 413.553.0406
Fax: 413.553.0335
dvalicenti@cohenkinne.com
chennessey@cohenkinne.com