

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION

Merrily A. Teasley, and )  
BALSAM MOUNTAIN SPRINGS )  
HOTEL, LLC )

Plaintiffs, )

vs. )

FIRST COAST GROUP, INC., )  
Harold Read Shailer, and )  
Sharon Kaye Shailer, )

Defendants. )

File No.: 2:13-cv-43

CONSENT JUDGMENT

THIS MATTER is before the Court on the consent and joint request of the parties, Plaintiffs Merrily A. Teasley and Balsam Mountain Springs Hotel, LLC, and Defendants First Group Inc., Harold Read Shailer, and Sharon Kaye Shailer, through their respective counsel, for entry of Judgment; the parties having stipulated to certain findings of fact as set forth in this Judgment, having waived all objection to certain conclusions of law as set forth in this Judgment and having consented to entry of this Judgment and the relief set forth herein; and waiving all rights of appeal from this Judgment, as shown by their signatures below, upon review of the pleadings, the

stipulations of the parties and the Court being otherwise fully advised in the premises:

Upon the stipulation of the parties, the Court makes the following

Findings of Fact:

1. Plaintiff Merrily A. Teasley (Ms. Teasley) is an individual and the sole owner of Balsam Mountain Inn.
2. Plaintiff BALSAM MOUNTAIN SPRINGS HOTEL, LLC is a North Carolina Limited Liability Company formed on behalf of Ms. Teasley on February 16, 2012 for the purpose of operating Balsam Mountain Inn beginning with the calendar quarter April 1, 2012.
3. Plaintiff Merrily A. Teasley is the owner of Federal Registration No. 4,217,151 of BALSAM MOUNTAIN INN as a service mark for "Inn services; Restaurant and hotel services; Restaurant services; Tourist inns." The mark is licensed to Plaintiff Balsam Mountain Springs Hotel, LLC as operator of Balsam Mountain Inn.

4. Defendants Harold Read Shailer and Sharon Kaye Shailer are former owners of Balsam Mountain Inn. The Shailers each also owned 50 shares of BALSAM MOUNTAIN INN, INC., a now-dissolved North Carolina Corporation which, prior to approximately July of 2012, was the registrant of the ".com" internet domain names www.balsaminn.com and www.balsammountaininn.com. Defendant Harold Read Shailer, as "H. R. Shailer," is listed as the "Registrant Name" of the internet domain name melhell.com.

5. Defendant FIRST COAST GROUP, INC. is listed as the "Registrant Organization" and is the owner of the internet domain name melhell.com.

6. Defendants the Shailers purchased Balsam Mountain Inn from Ms. Teasley in 2004, along with the on-going business of operating the inn. As part of that transaction, the ".com" internet domain names www.balsaminn.com and www.balsammountaininn.com, along with a live website, were transferred from Ms. Teasley to the Shailers. Seller financing facilitated the transaction. The Shailers defaulted on their obligations to

make payments on the seller-financed mortgage loan, and lost Balsam Mountain Inn through foreclosure in 2011. On December 6, 2011, Plaintiff Ms. Teasley regained ownership of Balsam Mountain Inn.

7. Plaintiffs allege that even so, and despite having no ownership or other legitimate interest in Balsam Mountain Inn after December 6, 2011, the Shailers refused to relinquish control of the ".com" www.balsaminn.com and www.balsammountaininn.com internet domain names, and continued to operate a website under the ".com" internet domain names balsaminn.com and balsammountaininn.com up and purporting to offer inn and restaurant services at Balsam Mountain Inn until July of 2012. Plaintiffs allege that Defendants continued to operate a website purporting to offer inn and restaurant services as Balsam Mountain Inn under the domain name melhell.com until after the Complaint in this action was filed November 15, 2013.

8. Plaintiffs allege that the use of the internet domain names balsammountaininn.com and balsaminn.com at least from December 6, 2011 until July of 2012, and corresponding website content, diverted business from

the Balsam Mountain Inn, was deceptive and unlawful, and created significant actual confusion and likelihood of confusion.

9. Plaintiffs allege that over the last twenty years, Balsam Mountain Inn, with its "toll free" telephone number 800-224-9498, and, more recently, its internet website balsammountaininn.com or balsaminn.com have been listed in printed guide books, magazine articles, and postcards. Up until July of 2012, well after The Shailers had no ownership interest in Balsam Mountain Inn, none of those contact sources reached the owner of Balsam Mountain Inn, to the great detriment of potential customers seeking to contact Balsam Mountain Inn to make a reservation, and to the detriment of Plaintiffs.

10. As part of a settlement agreement reached during 2012, the Shailers ultimately relinquished control of the ".com" internet domain names balsammountaininn.com and balsaminn.com, and dissolved the North Carolina Corporation BALSAM MOUNTAIN INN, INC.

11. As another part of the settlement agreement reached during 2012, Ms. Teasley paid \$2,000.00, which the Parties believe is still being held in the client trust account of attorney E.W. Chip Angell, P.C.

12. Defendant Harold Read Shailer currently owns a parcel of land on a road approaching The Balsam Mountain Inn, identified as Jackson County PIN 7683-46-3771, on which land there is a sign for Balsam Mountain Inn.

13. Plaintiffs allege that the conduct of Defendants described above constitutes infringement of the federally-registered BALSAM MOUNTAIN INN service mark, as well as unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

14. Plaintiffs allege that Defendants' actions as described above are unfair and deceptive trade practices in or affecting commerce that proximately caused injury to Plaintiffs, and that Defendants therefore have violated the North Carolina statutory prohibition of unfair and deceptive trade practices, N.C. Gen. Stat. § 75.1-1.

15. It is expressly understood and agreed by the Parties that there is no admission by Defendants of any violation of law, wrongdoing or fault whatsoever; no admission by Defendants of liability to Plaintiffs or any third party, and liability or fault for any and all damages is expressly denied.

**THE COURT**, taking into consideration the foregoing stipulated facts, makes the following Conclusions of Law:

1. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121; 28 U.S.C. § 1331; 28 U.S.C. § 1338(a); 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367(a).

2. This Court has jurisdiction over the parties as demonstrated by their signatures below in support of the entry of this Judgment.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that

A. Defendants, and all others in active concert of participation with them, are hereby forever prohibited and enjoined from any interference whatsoever with Plaintiffs' ownership and operation of Balsam Mountain Inn,

including advertising Balsam Mountain Inn in any way, and including operating or maintaining any internet websites referring to Balsam Mountain Inn in any way.

B. The \$2,000.00 held in the client trust account of attorney E.W. Chip Angell, P.C. shall be returned to Ms. Teasley.

C. Defendant Harold R. Shailer shall immediately convey to Ms. Teasley the parcel of land identified as Jackson County PIN 7683-46-3771.

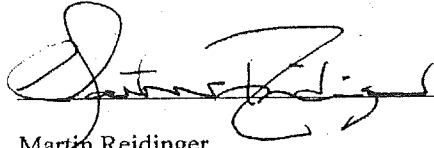

D. Defendants shall pay to Ms. Teasley the amount \$10,000 within one year of the date of this Order in at least monthly installments each equal to one-eleventh of \$10,000 commencing one month from the date of this Order.

The Court shall retain jurisdiction over this matter as necessary to enforce the provisions of this Order.



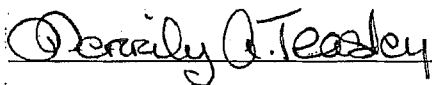
**IT IS SO ORDERED.**

Signed: February 24, 2014


  
Martin Reidinger  
United States District Judge 

The Undersigned Parties, by signatures of their authorized representatives and counsel, stipulate and consent to the Findings of Fact stated above, waive all objection to the Conclusions of Law stated above, consent to the entry of this Judgment and the relief set forth above and waive all rights of appeal from this Judgment.

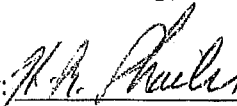
Balsam Mountain Springs Inn, LLC

By: 


Merrily A. Teasley  
Authorized Representative

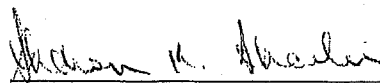
  
Merrily A. Teasley

First Coast Group, Inc.

By: 

Print Name: Harold R. Shailer  
Authorized Representative

  
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Sharon Kaye Shailer

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