

UNITED STATES NORTHERN DISTRICT COURT
CUYAHOGA COUNTY CLEVELAND OHIO

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CLEVELAND
FILED

In the Matter of Trademark Application Serial No. 77/145676 and
Registered trademark serial No. 77/007582

DEFENDANT,

1:08cv0691

MySpace Inc.

JUDGE _____

v.

Phenomenon Licensing

JUDGE POLSTER

PLANTIFF

CASE NO _____

MAG. JUDGE PERELMAN

Phenomenon Licensing D/B/A Donnell Mitchell, and

www.DonnellMitchell.com located at:

PO Box 93343

Cleveland Ohio 44101 as the Plaintiff,

v.

MYSACE INC., a California Company Corporation of Deleware

With a principal place of business located at

407 North Maple Drive

Beverly Hills, California 90210 ,Defendant.

A COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION,
FALSE DESCRIPTION, AND INJURY TO BUSINESS REPUTATION and
Ohio's antitrust law, found in the Ohio Revised Code §§1331.01-1331.99

DEMAND FOR JURY TRIAL

Plaintiffs Donnell Mitchell (hereinafter "Plaintiff"), as and for their Complaint
against Defendant,

MYSPACE INC., allege as follows:

I. JURISDICTION AND VENUE

1. This is a complaint for Trademark Infringement, Unfair Competition, and False Description arising under §§ 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114(1) (Trademark Infringement) and 1125(a) (Unfair Competition and False Description), for Unfair Business Practice arising under the Ohio Business and Professions Code § et seq., and for injury to business reputation.

2. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338(a) and 15 U.S.C. § 1121.

This Court has related claim jurisdiction over the state law claim pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

3. Myspace Inc's infringement and intimidation tactics constitutes a willful and malicious violation of Donnell Mitchell's trademark rights, aimed at preventing our small business www.DonnellMitchell.com and Phenomenon Licensing from continuing to build a business around a mark that it has long possessed and used as a description of financial services.

Mr. Mitchell is the business development manager for a small licensing company.

Our national vendors are afraid to distribute our brands due to tactics commonly used

by News Corp or Myspace Inc. Mr. Mitchell has used "MY SPACE" (ship) in commerce in a nationally published article written about his business as early as April 12th 2001. Myspace Inc was created July 2003 so our company has senior rights under federal law.

See Exhibit A

II. FACTUAL BACKGROUND

4. On September 26, 2006, an entity calling itself Donnell Mitchell filed a trademark for MYSPACE for prepaid services this trademark was registered with the United States Patent and trademark office on August 28th 2007.

See Exhibit B

5. On April 1st 2007 Donnell Mitchell filed another MY SPACE trademark Intent to Use (ITU) application for the mark pursuant to 35 U.S.C. § 1051(b). Refer to serial no. 77145676 covering the following goods and services: Banking; Credit card services; Debit card services; Insurance services, namely, writing property and casualty insurance; Insurance underwriting services for all types of insurance; Money order services; On-line banking services; Bonding services; Bail bonding.

See Exhibit C

6. Myspace Inc's infringement and intimidation tactics constitutes a willful and malicious violation of Donnell Mitchell's trademark and civil rights, aimed at preventing Donnell Mitchell from continuing to build a business around a mark that it has long possessed.

See Exhibit D

7. Applicant denies the claim that its use of the otherwise generic terms “my “ and “space” would cause damage to MY SPACE as MySpace Inc has previously claimed.

8. The term “my” is a common expression used in a multitude of registered trademarks. A search of the USPTO trademark Database yields 6886 LIVE applications.

See Exhibit E.

9. The term ‘space’ is also a common expression used in a multitude of registered marks. A search of the USPTO Trademark Database yields 2221 LIVE applications.

See Exhibit F

10. There are currently several registered trademarks incorporating both the terms “my” and “space”.

See exhibit G.

11. There are 7 other registered trademarks solely using the name “MySpace” not owned nor operated by Myspace Inc.

See Exhibit H

12. Denial of this lawsuit to go forward would be giving Myspace Inc the exclusive rights to the two generic words, “My” and “Space” for goods and services outside the scope of their current trademark classification of goods.

See Exhibit I

13. Opposer is fully aware they do not have the exclusive right to the name MY SPACE, further Myspace Inc knows they were not the first to file under class 036 for banking services (Chase Manhattan Bank originally filed in 2000).

See Exhibit J

14. Myspace Inc is also fully aware they have no legal right or intention on entering into banking, bail bonds, money order or insurance services as of the date of the filing of our trademark application filed on April 1st 2007 with the United States Patent and Trademark Office.

15. Myspace Inc has currently intimidated (2) potential lawyers that we contacted to possibly Represent us. We are a small business as we do not have the resources to fight a company such As MySpace Inc regarding frivolous oppositions. Myspace Inc is attempting to run us out of business.

We're asking the court to intervene and stop the harassment by Myspace Inc. We're attempting to conduct a legitimate business under the laws of the state of Ohio. Our vendors are afraid to conduct business with our company which is stopping our company from growing and/or launching properly.

16. Opposer is fully aware that we have been using our pending and registered MY SPACE trademarks in interstate commerce at least as early as the date of the filing of Registrant's applications.

See Exhibit K

17. We operate a small business in Ohio Donnell Mitchell has worked for (5) years to return to the business that he enjoys. Donnell Mitchell was the victim of an incompetent lawyer that he hired who ultimately gave him horrible legal advice in June of 2001. Myspace Inc is attempting to use their excessive monetary resources to force Donnell Mitchell to abandon MY SPACE trademarks that he has used before in commerce. Donnell Mitchell is preparing to re-launch "Back to reclaim MYSpace" in July of 2008.

See Exhibit L

18. Opposer is fully aware the term MY SPACE is not federally prohibited from registration due to Statutory Protection 1205.01.

See Exhibit M

COMPLAINT SUMMARY

19. Myspace Inc's attorney has attempted to intimidate our company by filing meritless Oppositions. We have also filed a complaint with the Department of Justice and the Ohio Attorney General's Office for violations of the **Sherman Antitrust Act**.

This Act expresses our national commitment to a free market economy in which competition free from private and governmental restraints leads to the best results for consumers. This Act outlaws all contracts, combinations, and conspiracies that unreasonably restrain interstate and foreign trade. This includes agreements among competitors to fix prices, rig bids, and allocate customers,

which usually are punishable as criminal felonies.

The Sherman Act also makes it a crime to monopolize any part of interstate commerce. An unlawful monopoly exists when only one firm controls the market for a product or service, and it has obtained that market power, not because its product or service is superior to others, but by suppressing competition with anti competitive conduct.

20. The original creator of Myspace.com Brad Greenspan who now operates www.FreeMyspace.com a website Mr. Greenspan launched to expose the fraudulent, deceptive and ruthless practices of Myspace Inc and News Corp.

LiveUniverse Inc v. MySpace Inc

Case Number: 2:2006cv06994

Filed: November 2, 2006

Court: California Central District Court [[Court Info](#)]

Nature of Suit: Other Statutes - Antitrust

Myspace Inc has a history of intimidation tactics as verified by Brad Greenspan.

See Exhibit N

21. Myspace will not challenge any companies with the means to defend their trademark in commerce Myspace Inc will only challenge small companies with little to no resources.

See Exhibit O

22. Under federal trademark law Myspace Inc had 30 days to oppose serial no. 77007582 from June 12th 2007 to July 11th 2007 and they did not. Our the trademark proceeded to registration and this application was registered with the USPTO on August 28th 2007.

The record in the application reveals that the mark was published for opposition purposes on 06/12/2007.

Thus, the time filing an opposition or request for extension of time appears to have expired on 07/11/2007. See Section 13 of the Act and Trademark Rule 2.102(c). This antitrust violation is potentially costing our company millions of dollars in prepaid card revenue.

See Exhibit P

23. Myspace and News Corp is guilty of antitrust violations. We can produce proof that Myspace Inc will only challenge individuals and small businesses that do not have the resources to defend themselves against a large corporation. On March 10th 2008 News Corp and MySpace Inc announced the following information:

News Corp will not fight Microsoft for Yahoo

Quote: Murdoch's company has been in talks with Yahoo over a transaction to combine News Corp's MySpace Internet social network and other Internet assets with Yahoo, a source familiar with the talks said earlier.

"We're not going to get into a fight with Microsoft, which has a lot more money than us,"

Murdoch told investors at the annual Bear Stearns media conference.
The entire article can be read and verified at the following listed link:
http://news.yahoo.com/s/nm/20080310/tc_nm/newscorp_yahoo_dc

or See Exhibit Q

24. Myspace Inc will only challenge small companies or individuals during the opposition period at the Trademark Trial and Appeal Board. We will provide documented proof they will only attempt to disrupt small companies from conducting business in the United States.

See Exhibit R

WHEREFORE, the plaintiffs, DONNELL MITCHELL, ask the the Court issue an injunction enjoining the defendant from continuing its discrimination and that the Court award plaintiffs such additional or alternative relief as may be just, proper, and equitable, including costs.

Respectfully submitted,



Donnell Mitchell
Phenomenon Licensing
www.DonnellMitchell.com
ProSe Applicant
P.O Box 93343
Cleveland, Ohio 44101

Date: _____