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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION**

**CYNDI'S LIST,**  
a dba of **CYNTHIA HOWELLS**, and  
**CYNTHIA HOWELLS**, an  
individual,  
  
Plaintiff(s),  
  
**v.**

**MYGENSHARE.COM, LLC**, a Utah  
limited liability company, and  
**BARRY J. EWELL**, an individual,  
  
Defendant(s).

Case No. \_\_\_\_\_

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT, UNFAIR  
TRADE PRACTICES, TORTIOUS  
INTERFERENCE, UNJUST  
ENRICHMENT, AND EQUITABLE  
RELIEF**

**JURY TRIAL DEMANDED**

COMES NOW Plaintiff, CYNDI'S LIST and CYNTHIA HOWELLS, and  
by this Complaint seeks money damages and equitable relief against  
Defendants MYGENSHARE.COM, LLC and BARRY J. EWELL for: (1)  
copyright infringement; (2) unfair trade practices in violation of Washington's  
Consumer Protection Act; (3) tortious interference; and (4) unjust enrichment,  
and other equitable relief, and alleges as follows:

## JURISDICTION AND VENUE

1  
2           1.       This Court has subject matter jurisdiction over this action   This  
3 Court has Federal Question jurisdiction over this action pursuant to 28 U.S.C.  
4 §§ 1331 and 1338 as an action arising under the laws of the United States,  
5 including Title 17 of the United States Code relating to copyrights.  
6

7           2.       This Court has pendent jurisdiction over the state claims under  
8 28 U.S.C. § 1338(b) in that said claims are joined with substantial and related  
9 claims under the Copyright Laws of the United States, Title 17 United States  
10 Code.   This Court also has supplemental jurisdiction pursuant to 28 U.S.C. §  
11 1367. Pursuant to Rule 9(c), Plaintiff pleads that all acts and conditions  
12 precedent for establishing jurisdiction have been performed or have occurred.  
13

14           3.       Venue and personal jurisdiction are proper in this district  
15 pursuant to 28 U.S.C. § 1400, 28 U.S.C. § 1391(b) and (c), and, pursuant to  
16 FRCP 4, Washington's long arm jurisdictional rules and statutes in that  
17 Plaintiff is informed and believes and on that basis alleges that Defendant(s)  
18 reside in this district and/or can be found in this district by virtue of their  
19 activities, are engaged in substantial and not isolated activities in this district,  
20 and engaged in acts in this district and/or injured persons in this district in  
21 conjunction with activities carried on within this district by Defendants and/or  
22 in the ordinary course of trade of Defendants.  
23  
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25           4.       Plaintiff is informed and believes and on that basis alleges that  
26 this Court has personal jurisdiction over Defendants by virtue of Defendants

1 transacting and doing business in this judicial district.

2           5.     Plaintiff is informed and believes that Defendants have contacted  
3 Washington residents seeking advertising for Defendants website on  
4 Washington residents' internet sites; that Defendants operate online highly  
5 interactive webstores that take orders from and ship nationally,  
6 internationally, and to the State of Washington; that Defendants operate  
7 online digital subscriptions services that take subscriptions and payment from  
8 and grant access to national and international entities, including entities in  
9 the State of Washington; that Defendants conduct business with Washington  
10 residents; and that Defendants have otherwise by their activity submitted to  
11 the jurisdiction of the State of Washington.  
12

13  
14                                   **PARTIES**

15           6.     **CYNDI'S LIST.** Plaintiff, CYNTHIA HOWELLS maintains a  
16 professional website addressed to genealogy under the sole proprietorship  
17 name of CYNDI'S LIST, with principal place of business in Edgewood,  
18 Washington.  
19

20           7.     **MYGENSHARE.COM LLC.** Plaintiff is informed and believes  
21 and on that basis alleges that Defendant MYGENSHARE.COM, LLC is a  
22 Utah limited liability company, conducting business nationwide including in  
23 the State of Washington, and by such extensive conduct, residing in the State  
24 of Washington, including by, among other things, contacting Washington  
25 residents and Washington based websites for advertising on Washington  
26

1 based websites, operating on line store(s) and subscription(s) addressed to  
2 Washington residents.

3 8. **BARRY J. EWELL.** Plaintiff is informed and believes and on  
4 that basis alleges that Defendant BARRY J. EWELL is the owner, operator,  
5 and principal of MYGENSHARE.COM LLC, that he operates and maintains  
6 the [www.mygenshare.com](http://www.mygenshare.com) website, and that he dominates, controls, and  
7 otherwise is the principal actor in the offending, infringing, tortious, and  
8 illegal actions complained of herein.  
9

#### 10 **COMMON ALLEGATIONS OF FACT**

11 9. Plaintiff CYNDI'S LIST is a professional genealogy website,  
12 having address [www.cyndislist.com](http://www.cyndislist.com), that has been operating since March 4,  
13 1996. It is a comprehensive resource for genealogical research, with  
14 categorization and organization that is extremely creative and unique to  
15 CYNDI'S LIST, different from other genealogical research websites.  
16 CYNDI'S LIST is continually updated. Copyright protection has been  
17 claimed on the website and its related works since inception. Copyright  
18 registration protection is continually updated. Copyright registrations  
19 and/or copyright registration applications have been secured and/or applied  
20 for every year from 1997 through 2012, on at least a yearly basis. The first  
21 copyright was filed and registered in 1997. Copyright statements have  
22 appeared on the site since inception.  
23  
24  
25  
26

1           10. Plaintiff was and is the sole owner of her copyrighted work in the  
2           [www.cyndislist.com](http://www.cyndislist.com) website (hereinafter "Copyrighted Work"). Plaintiff holds  
3           Copyright Registration No. TXu000787268 and TX 7615575 for the CYNDI'S  
4           LIST website including the comprehensive, categorized and cross-referenced  
5           compilation of internet links that point to genealogical research sites online, as  
6           well as other pending or issued registrations. CYNDI'S LIST website gives a  
7           clear notice of the existence of the copyright registration. In addition  
8           CYNDI'S LIST holds Copyright Registration No.'s TX0005399878 and  
9           TX000426087 for CYNDI'S LIST books. These books also include prior  
10          compilations of the copyright materials included on the CYNDI'S LIST  
11          website.  
12

13  
14          11. Plaintiff has also applied for registration for, and or received  
15          registration on, its website for each year from 1997 through 2012.  
16

17          12. Plaintiff's copyright registration(s) are *prima facie* evidence of  
18          the validity, ownership, and originality of her Copyrighted Work.

19          13. People accessing CYNDI'S LIST are notified of the copyright  
20          claimed in the work.

21          14. Plaintiff is informed and believes and on that basis alleges that  
22          Defendants copied Plaintiff's Copyrighted Work.  
23

24          15. Plaintiff is informed and believes that Defendants were aware of  
25          Plaintiff's Copyrighted Work, accessed Plaintiff's Copyrighted Work numerous  
26          times, and, despite the copyright notice, willfully copied Plaintiff's

1 Copyrighted Work and incorporated Plaintiff's Copyrighted Work in  
2 Defendants' competing website [www.mygenshare.com](http://www.mygenshare.com).

3 16. Defendants maintain a competing genealogical research website  
4 for profit. Defendant's website competes with Plaintiff's website.  
5

6 17. Defendant's copying of Plaintiff's Copyrighted Work was done for  
7 profit and is in no guise a fair use of Plaintiff's Copyrighted Work.

8 18. Defendants gave a public presentation in 2012 at a  
9 Genealogical Society Jamboree in which Defendants admitted to accessing and  
10 reviewing Plaintiff's Copyrighted Work. Defendants admitted in a 2007  
11 presentation accessing Plaintiff's Copyrighted Work numerous times.  
12

13 19. Defendants' copying of Plaintiffs' Copyrighted Work is obvious  
14 throughout the Defendants' links directory. Examples include the word for  
15 word heading and category arrangements throughout Defendants' links  
16 directory. Other obvious examples are that the broken links within CYNDI'S  
17 LIST are the same broken links within Defendants' links for the same  
18 directory items. Defendants make a point in its live-streaming webinar from a  
19 2012 genealogical jamboree that it developed its own links directory and  
20 thereby avoided the broken links that were within CYNDI'S LIST and other  
21 genealogy reference sites. The fact that the broken links are identical from one  
22 to the other is an obvious sign of copying.  
23  
24

25 20. The Copyrighted Work in CYNDI'S LIST website, including the  
26 unique information and compilations of information on Plaintiffs' website,

1 were created personally by Cyndi Howells. Plaintiff started her website in  
2 1996, and over the last 16 years has, in fact, started from scratch and built her  
3 compilation in a unique manner and style. Every affiliate link on CYNDI'S  
4 LIST was hand created by Ms. Howells. She visited the affiliate website,  
5 found the page/material/database to link to, confirmed the categorizations,  
6 wrote the code, inserted her affiliate ID number, and applied an appropriate  
7 item description for each link. This from-scratch effort was done one-by-one  
8 and not through an automated process. For example, more than 12 years ago  
9 CYNDI'S LIST made a specific set of Amazon.com affiliate links with a specific  
10 title and specific parameters.  
11  
12

13 21. Defendants illegally copied Plaintiffs' Copyrighted Work and  
14 then changed the affiliate codes—with, for example the name of Amazon.com  
15 stripped out and CYNDI'S LIST own affiliate ID replaced with that of  
16 Defendants' affiliate account. There are many other examples of this same  
17 copying, stripping, and publishing on the Defendants' website. It would be  
18 impossible for this to happen if Defendants created its list on its own.  
19 Defendants copied CYNDI'S LIST Copyrighted Work, inserted its own affiliate  
20 account numbers into those links created by CYNDI'S LIST, and is using those  
21 links in its affiliate relationships for profit.  
22  
23

24 22. On October 31, 2012, Plaintiff transmitted to Defendants a  
25 Notice of Infringement.  
26

1           23. In response, Defendants did little to change titles and names of  
2 its categories. In many cases, Defendants simply lopped off several words  
3 and added the phrase “and related” to make a new title. CYNDI’S LIST  
4 includes numerous categories of titles that are entirely unique to CYNDI’S  
5 LIST and were created by Cyndi Howells over the many years that she has  
6 worked on her website and list. Many names are non-traditional genealogical  
7 titles and topics, but they are copies word for word onto the Defendants’  
8 website links directory. These titles have been witnessed by professionals in  
9 the field of genealogy prior to Defendants changing of those titles after  
10 receiving Plaintiffs’ October 31, 2012 Notice of Infringement. Also, copies of  
11 the original titles have been made as proof of the exact duplication of those  
12 found on CYNDI’S LIST and the resulting alteration after being notified by  
13 CYNDI’S LIST of the copyright infringement.  
14  
15

16           24. Plaintiff is informed and believes, and on that basis alleges, that  
17 as a result of the copying of CYNDI’S LIST and its hundreds of thousands of  
18 links, categories, and subcategories, Defendants have diverted, and will  
19 continue to divert, people from CYNDI’S LIST to Defendants’ website for  
20 financial gain. Persons searching on an exact link title or category found on  
21 CYNDI’S LIST will also receive Defendants’ website as a search hit for that  
22 same category. Defendants’ intentions in this matter are clearly to divert  
23 internet traffic away from CYNDI’S LIST and create new subscription  
24 customers for Defendants’ site and revenues from Defendants’ affiliate  
25  
26



1 contracts. At the same time this is taking income and revenue away from  
2 CYNDI'S LIST's affiliate contracts and otherwise from Plaintiffs' website

3 25. Plaintiff is informed and believes, and on that basis alleges, that  
4 Defendants copied, published and publicly displayed the Copyrighted Work,  
5 and/or unauthorized derivative works created from the Copyrighted Work, in  
6 Washington, and throughout the United States and internationally.  
7

8 26. Plaintiff is informed and believes and on that basis alleges that  
9 Defendants used Plaintiff's Copyrighted Work, without permission, to sell  
10 Defendants' goods and/or services, and did not attribute that work to Plaintiff,  
11 and instead altered and removed attribution to Plaintiff.  
12

13 27. Plaintiff is informed and believes and on that basis alleges that  
14 Defendants are sophisticated internet designers and webhosts and are aware  
15 of U.S. copyright laws and the consequences for willful copy of the Copyrighted  
16 Work of another. Defendants themselves prominently display copyright  
17 statements on their website, showing their sophisticated knowledge and the  
18 willfulness of their illicit copying.  
19

20 28. Plaintiff is informed and believes and on that basis alleges that  
21 Defendants altered all affiliate links in the illegally copied Copyrighted Work  
22 to commercial sites such as Ancestry.com and Amazon.com, removed  
23 Plaintiff's affiliate code and inserted Defendants' own. This is also a violation  
24 of the terms of use for each of the affiliate and a clear violation of the terms of  
25 use for Google AdSense terms.  
26

1           29. Plaintiff is entitled to compensation to the extent possible for  
2 damages, general and special, consequential, and incidental, in an amount to  
3 be proven at trial, for the harm caused by Defendant, and for attorneys' fees,  
4 costs, and pre- and post-judgment interest.  
5

6           30. Plaintiff has suffered and likely will suffer immediate irreparable  
7 damage and ongoing harm by reasons of Defendants' unlawful acts unless  
8 Defendants are restrained and enjoined, and Plaintiff is without adequate  
9 remedy at law.  
10

11           31. Defendants' unlawful activities caused, and likely will continue  
12 to cause, irreparable harm to Plaintiff, which cannot be fully compensated by  
13 money damages.  
14

15           32. The public has an overriding interest in avoiding unlawful  
16 copying of the work of artists and in the enforcement of copyright and trade  
17 practices laws, and in the proper attribution of source and association for  
18 goods and services in commerce.  
19

20           33. Accordingly, Plaintiff demands an amount of money damages to  
21 compensate the Plaintiff for the harm caused, including but not limited to  
22 Defendants' profits, statutory and/or punitive damages, as well as equitable  
23 relief, attorneys' fees, costs, and interest.  
24

#### 25           **FIRST CLAIM FOR RELIEF--COPYRIGHT INFRINGEMENT**

26           34. Plaintiff re-alleges every paragraph in this Complaint.

          35. Plaintiff is informed and believes and on that basis alleges that

1 by its aforesaid conduct Defendants willfully infringed Plaintiff's Copyrighted  
2 Works; that Defendants' actions willfully and for profit violated exclusive  
3 rights of the Copyright Laws of the United States; that Plaintiff owned valid  
4 copyright on works which Defendants violated in acts of improper  
5 appropriation.  
6

7 36. Accordingly, Defendants are liable to Plaintiff for statutory  
8 damages, and/or actual damages, including Defendants' profits, at Plaintiff's  
9 election, and Defendants should be enjoined to remove from their website all  
10 Copyrighted Work of Plaintiff, including Defendants' link directory.  
11

## 12 **SECOND CLAIM FOR RELIEF—UNFAIR TRADE PRACTICES**

13 37. Plaintiff re-alleges every paragraph in this Complaint.

14 38. Plaintiff is informed and believes and on that basis alleges that  
15 Defendant, by its aforesaid conduct, committed unfair trade practices in  
16 violation of Washington's Consumer Protection Act, RCW 19.86 *et seq.*, that  
17 Defendants willfully engaged in practices and acts that cause likelihood of  
18 confusion or of misunderstanding as to the source, sponsorship, approval, or  
19 certification of Defendants' goods or services and/or as to affiliation,  
20 connection, or association with, or certification by, Plaintiff and/or Plaintiff's  
21 products and/or that represent Defendants' goods to have sponsorship or  
22 approval that they do not have or a status, qualification, affiliation, or  
23 connection that Defendants do not have.  
24  
25  
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1           39. Plaintiff is informed and believes and on that basis alleges that  
2 Defendants' unlawful acts were and are knowing, willful, and malicious.

3           40. Plaintiff is entitled to compensation to the extent possible in  
4 damages, general and special, consequential, and incidental, in an amount to  
5 be proven at trial, for the harm caused by Defendant, and for attorneys' fees,  
6 costs, and pre- and post-judgment interest.

7           41. Plaintiff has and will suffer immediate irreparable damage and  
8 ongoing harm to its business, reputation, and goodwill by reasons of  
9 Defendants' unlawful acts unless Defendants are restrained and enjoined, and  
10 Plaintiff is without adequate remedy at law.

11           42. Accordingly, Plaintiff demands an amount of money damages to  
12 compensate the Plaintiff for the harm caused, including but not limited to  
13 Defendant's profits, statutory and/or punitive damages, as well as equitable  
14 relief, attorneys' fees, costs, and interest.

15           **THIRD CLAIM FOR RELIEF-TORTIOUS INTERFERENCE**

16           43. Plaintiff re-alleges every paragraph in this Complaint.

17           44. Plaintiff is informed and believes and on that basis alleges that  
18 Plaintiff had and has valid business relationships and/or business  
19 expectancies based on its affiliate relationships; Defendants were and are  
20 aware of those relationships and expectancies; Defendants intentionally, with  
21 improper purpose and improper means, removed affiliate codes from Plaintiff's  
22 Copyrighted Work and replaced those codes with Defendants' own affiliate  
23  
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1 codes, interfering with those relationships and expectancies and directly and  
2 proximately causing damage to Plaintiff thereby, including but limited to loss  
3 of revenue, emotional distress.

#### 4 **FOURTH CLAIM FOR RELIEF-UNJUST ENRICHMENT**

5 45. Plaintiff re-alleges every paragraph in this Complaint.

6 46. Plaintiff is informed and believes and on that basis alleges that  
7 Defendants are unjustly enriched Plaintiff's detriment by taking Plaintiff's  
8 Copyrighted Work, placing it on Defendants' website, and changing the  
9 affiliate codes in Plaintiff's Copyrighted Work to Defendants affiliate codes to  
10 divert revenue that Defendants was not entitled to from Plaintiff to  
11 Defendants; that these acts are contrary to justice and equity.

12 47. Plaintiffs are entitled to an accounting by Defendants, and  
13 disgorgement from Defendants, of and for all monies and/or other revenue by  
14 which Defendants were unjustly enriched

#### 15 **DEMAND FOR JUDGMENT & PRAYER FOR RELIEF**

16 WHEREFORE Plaintiff prays for judgment against Defendants as  
17 follows:

18 (a) Granting judgment in favor of Plaintiff against Defendants on all  
19 claims;

20 (b) Awarding actual, general and specific, consequential and  
21 incidental, damages against Defendants, jointly and severally, in an amount  
22 to be determined at trial;

1 (c) Awarding Plaintiff exemplary, statutory, treble damages against  
2 Defendants, jointly and severally;

3 (d) Adjudging Defendants liable under United States copyright laws  
4 to Plaintiff for statutory, and/or actual damages and disgorgement of  
5 Defendants' profits, at the election of Plaintiff;  
6

7 (e) Enjoining Defendants to account for all gains and advantages  
8 derived from its acts of infringement, misattribution, unfair trade practices,  
9 tortious interference, unjust enrichment, and for its other violations of law,  
10 and in disgorgement, reduce all such gains and advantages to money  
11 judgment in favor of Plaintiff;  
12

13 (f) Enjoining Defendants to remove Plaintiffs' Copyrighted Work  
14 from Defendants' website, such removal to include at a minimum, Defendants'  
15 Links Directory from its website;  
16

17 (g) Awarding Plaintiffs its reasonable attorneys' fees and costs,  
18 including costs for experts, pursuant to State and Federal law;

19 (h) Awarding Pre- and post- judgment interest; and

20 (i) Entering such other and further relief as the Court deems  
21 appropriate under the circumstances.  
22  
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1 **JURY DEMAND**

2 Plaintiff hereby demands trial by jury in this action.

3  
4 DATED \_\_\_\_\_ /s/ Steve Burnham  
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