


FEB 13 2001

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Catherine Harrington-McBride
Federal Trade Commission
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Washington, DC 20580
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LUTHER D. THOMAS, Clerk
By:  Deputy Clerk

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**1268957 ONTARIO INC.,
1371772 ONTARIO INC.,
both doing business as
NATIONAL DOMAIN NAME
REGISTRY, ELECTRONIC DOMAIN
NAME MONITORING, AND
CORPORATE DOMAIN NAME
MONITORING, AND
DARREN J. MORGENSTERN,
individually and as officer and director
of 1268957 Ontario Inc. and 1371772
Ontario Inc.,**

Defendants.

Civil Action No.

1 U1-CV-0423

**COMPLAINT FOR
PERMANENT
INJUNCTION AND
OTHER EQUITABLE
RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), for its complaint alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).
2. Venue in the United States District Court for the Northern District of Georgia, Atlanta Division is proper under 28 U.S.C. §§ 1391 (a), (b), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

3. Plaintiff, the Federal Trade Commission, is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission, *inter alia*, enforces Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission has the authority to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 53(b), 56(a)(2).

4. The Commission brings this action under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants' deceptive and unfair acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANTS

5. Defendant 1268957 Ontario Inc., doing business as National Domain Name Registry ("NDNR"), Electronic Domain Name Monitoring ("EDNM"), and Corporate Domain

Name Monitoring ("CDNM") is an Ontario corporation with a registered office at 2300 Yonge Street, Suite 907, Toronto, Ontario, Canada M4P 1E4. It transacts or has transacted business in this District and throughout the United States from its offices at 5555 Glenridge Connector, Suite 200, Atlanta, Georgia 30342.

6. Defendant 1371772 Ontario Inc., doing business as NDNR, EDNM, and CDNM is an Ontario corporation with a registered office at 2300 Yonge Street, Suite 907, Toronto, Ontario, Canada M4P 1E4. It transacts or has transacted business in this District and throughout the United States from its offices at 5555 Glenridge Connector, Suite 200, Atlanta, Georgia 30342.

7. Defendant Darren J. Morgenstern ("Morgenstern") is a director or officer of both 1268957 Ontario Inc and 1371772 Ontario Inc. He resides at 39 Roehampton Avenue, Toronto, Ontario, Canada M4P 8P9. At all times material to this complaint, acting alone or in conjunction with others, he has formulated, directed, controlled, or participated in the acts and practices of NDNR, EDNM, and CDNM, including the acts and practices set forth in this complaint. Morgenstern transacts or has transacted business in this District and throughout the United States.

COMMERCE

8. At all times relevant to this complaint, defendants have maintained a substantial course of trade, advertising, offering for sale, and selling of information and services by facsimile and via the Internet in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

9. "Domain Name" means a globally unique means to identify a specific Web site using standard Internet protocols. All presently-available commercial domain names in the United States end with a suffix of .com, .net, or .org.

DEFENDANTS' COURSE OF BUSINESS

10. Defendants send unsolicited facsimiles, representative copies of which are attached to this Complaint as Attachment A, to business owners and other consumers who currently possess a domain name related to their business or enterprise. Defendants' faxes, sent under both the EDNM and CDNM logos, claim that an undisclosed third party has applied for a domain name that is identical (other than the final suffix) to the domain name already owned by the targeted consumer. According to defendants' faxes, ignoring defendants' notice may result in defendants assigning the domain name in question to someone else. Defendants urge consumers to "secure this domain name" by sending them a fee of \$70 U.S.

11. If consumers do not respond to defendants' initial fax, defendants send a second fax, headlined FINAL NOTICE. This second fax is usually sent one or two days after the initial fax and contains the same false statements as the initial fax. None of these unsolicited faxes displays the telephone number from which they are transmitted.

VIOLATIONS OF THE FTC ACT

COUNT I

12. In the course of advertising, offering for sale, and selling domain name monitoring services, defendants have represented, expressly or by implication, that an undisclosed third party has applied for a domain name that is identical or similar to a domain name owned by the targeted consumer.

13. In truth and in fact, in numerous instances, no third party has applied for a domain name that is identical or similar to a domain name owned by the targeted consumer.

14. Therefore, defendants' representation, as set forth above, is false and misleading and constitutes deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

15. In the course of advertising, offering for sale, and selling domain name monitoring services, defendants have represented, expressly or by implication, that they are monitoring or have the ability to monitor applications for domain names by third parties.

16. In truth and in fact, defendants are not monitoring, nor do they have the ability to monitor applications for domain names by third parties.

17. Therefore, defendants' representation, as set forth above, is false and misleading and constitutes deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

18. Consumers throughout the United States have been injured as a result of defendants' unlawful acts or practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest. By granting the requested injunctive relief, the Court can immediately halt defendants' law violations.

THIS COURT'S POWER TO GRANT RELIEF

19. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

20. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Award plaintiff such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

2. Permanently enjoin the defendant(s) from violating the FTC Act, as alleged herein;

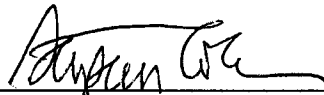
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act including, but not limited to, refund of monies paid, rescission of contracts, and the disgorgement of ill-gotten gains; and

4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

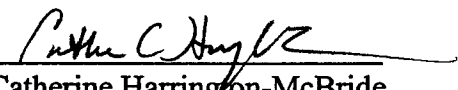
Dated: 2/12/09

Respectfully Submitted,

DEBRA A. VALENTINE
General Counsel



Stephen L. Cohen



Catherine Harrington-McBride
Attorneys for the Federal Trade Commission

FROM : Wendy Lee@Sobi-Sky
NDN Registry To:Sobi Sky Indian Arts & Wears (18189960941)
PHONE NO. : 18189960941

May. 18 2000 12:39PM P1
11:59 05/18/00 EST Pg 1-1

EDNM104A 9906 - SUPPLEMENTARY
ELECTRONIC DOMAIN NAME MONITORING

5555 Glenridge Connector, Suite 200, Atlanta, Georgia 30342 Toll-Free: 1.877.450.0607

DOMAIN NAME APPLICATION

www.SOBI-SKY.net

DATE

REPLY DEADLINE

2000/05/18

2000/05/19

URGENT NOTICE OF IDENTICAL DOMAIN NAME APPLICATION BY A THIRD PARTY

ATTN: BUSINESS OWNER OR MANAGER

TRACKING NUMBER: 52316

Sobi Sky Indian Arts & Wears
18141 Hatton St
Reseda California
Tel: 818 345-6832 Fax: 18189960941

REGARDING:
ELECTRONIC DOMAIN NAME
MONITORING
(EDNM)

7 (6) 031 016

PLEASE BE ADVISED THAT THE ABOVE NOTED DOMAIN NAME HAS BEEN SUBMITTED TO THE NATIONAL DOMAIN NAME REGISTRY (NDNR) FOR REGISTRATION. CONSEQUENTLY, IT IS OUR OPINION THAT THIS APPLICATION MAY HAVE BEEN SUBMITTED IN BAD FAITH FOR ONE OR MORE OF THE FOLLOWING REASONS:

EVIDENCE OF REGISTRATION AND USE IN BAD FAITH -- The following circumstances, in particular but without limitation shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the domain name has been applied for primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the authorized entity who is the owner of the trademark or service mark or to a competitor of that entity, for valuable consideration in excess of documented costs directly related to the domain name; or,
- (ii) the domain name has been registered in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name; or,
- (iii) the domain name has been registered primarily for the purpose of disrupting the business of a competitor; or,
- (iv) by using the domain name, applicant has intentionally attempted to attract, for commercial gain, internet users to their web site or other online location, by creating a likelihood of confusion with the owner's mark as to the source, sponsorship, affiliation, or endorsement of a website or location, or of a product or service on a web site or location.

In addition to remedies provided for by the Uniform Domain Name Dispute Policy, Section 4a (1)(2)(3) & b(1)(2)(3)(4), NDNR provides trademark or service mark owners with a first-right-to-use preference on domain names which are identical or confusingly similar to their own.

YOU ARE REQUIRED TO SUBMIT TO NDNR YOUR OPPOSITION TO THE THIRD PARTY DOMAIN NAME REGISTRATION CONTEMPLATED HEREIN AND EXPRESSLY ADVISE US OF YOUR INTENT TO LICENSE THIS DOMAIN NAME PRIOR TO THE EXPIRATION OF THIS NOTICE.

NOTE: YOU MAY DISREGARD THIS NOTICE. IF YOU DISREGARD THIS NOTICE OR FAIL TO REPLY BY THE DEADLINE INDICATED ABOVE: (A) NDNR MAY ASSIGN THE LICENSING RIGHTS OF THIS DOMAIN NAME TO ANY APPLICANT; (B) NDNR WILL NOT BE LIABLE FOR LOSS OF DOMAIN NAME LICENSE; IDENTICAL OR CONFUSINGLY SIMILAR USE OF YOUR COMPANY'S NAME; OR INTERRUPTION OF BUSINESS ACTIVITY OR BUSINESS LOSSES.

TO SECURE THIS DOMAIN NAME, COMPLETE BELOW AND FAX TO (1).877.450.0698

I OPPOSE ANY THIRD PARTY REGISTRATION OF THE ABOVE NOTED DOMAIN NAME. ACCORDINGLY, PLEASE SECURE THIS DOMAIN NAME ON MY/OUR BEHALF. INTERNIC RIGHT-TO-USE FEE APPLIES. \$36/ YR (MIN 2 YEARS).

NAME OF AUTHORIZED COMPANY REPRESENTATIVE _____ CONTACT TEL NO. _____

SIGNATURE AND TITLE _____ CONTACT FAX NO. _____

CDNMONIA 9988 - SUPPLEMENTARY - WEBSITE: CONMONITORING.COM
CORPORATE DOMAIN NAME MONITORING

5555 Glenridge Connector, Suite 200, Atlanta, Georgia 30342 Toll-Free: **1.888-886-7088**
120 Eglinton Ave. E., Suite 500, Toronto, Canada M4P1E2 Toll-Free Fax: **1.888-896-2766**

DOMAIN NAME APPLICATION

DATE

REPLY DEADLINE

www. BEERNTSEN.net

1/24/2001

1/25/2001

URGENT NOTICE OF IDENTICAL DOMAIN NAME APPLICATION BY A THIRD PARTY

ATTN: BUSINESS OWNER OR MANAGER

TRACKING NUMBER: 520610

Beerntsen Candy Shop
200 N Broadway
Green Bay, WI 54303
Tel: 9204374400 Fax: 19204374481

REGARDING:
CORPORATE DOMAIN NAME
MONITORING
(CDNM)

7 (G) 031 016

PLEASE BE ADVISED THAT THE ABOVE NOTED DOMAIN NAME HAS BEEN SUBMITTED FOR REGISTRATION. CONSEQUENTLY, IT IS OUR OPINION THAT THIS APPLICATION MAY BE SUBMITTED IN BAD FAITH FOR ONE OR MORE OF THE FOLLOWING REASONS:

EVIDENCE OF REGISTRATION AND USE IN BAD FAITH - The following circumstances, in particular but without limitation shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the domain name has been applied for primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the authorized entity who is the owner of the trademark or service mark or to a competitor of that entity, for valuable consideration in excess of documented costs directly related to the domain name; or
- (ii) the domain name has been registered in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name; or
- (iii) the domain name has been registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, applicant has intentionally attempted to attract, for commercial gain, Internet users to their web site or other online location, by creating a likelihood of confusion with the owner's mark as to the source, sponsorship, affiliation, or endorsement of a website or location, or of a product or service on a web site or location.

In addition to remedies provided for by the Uniform Domain Name Dispute Policy, Section 4a (1)(2)(3) & b (1)(2)(3)(4) CDNM provides existing registrants, trademark and service mark owners with a first-right-to-use preference on domain names which are identical or confusingly similar to their own.

YOU ARE REQUIRED TO SUBMIT TO US YOUR OPPOSITION TO THE THIRD PARTY DOMAIN NAME REGISTRATION CONTEMPLATED HEREIN AND EXPRESSLY ADVISE US OF YOUR INTENT TO LICENSE THIS DOMAIN NAME PRIOR TO THE EXPIRATION OF THIS NOTICE.

NOTE: YOU MAY DISREGARD THIS NOTICE IF YOU DISREGARD THIS NOTICE OR FAIL TO REPLY BY THE DEADLINE INDICATED ABOVE: (A) CDNM MAY ASS GN THE LICENSING RIGHTS OF THIS DOMAIN NAME TO ANY APPLICANT; (B) CDNM WILL NOT BE L ABLE FOR LOSS OF DOMAIN NAME LICENSE; IDENTICAL OR CONFUSINGLY SIMILAR USE OF YOUR COMPANY'S NAME; OR INTERRUPTION OF BUSINESS ACTIVITY OR BUSINESS LOSSES.

PLEASE READ CAREFULLY:

UPON EXPIRY, THIS DOMAIN NAME MAY BE REGISTERED BY ANY THIRD PARTY WITHOUT FURTHER NOTICE. ACCORDINGLY, PROMPTLY ADVISE US OF YOUR INTENT TO (a) SECURE THIS DOMAIN NAME OR, (b) OPPOSE THE THIRD PARTY APPLICATION CONTEMPLATED HEREIN.
CALL (1) 888.886.7088

NOTE: YOU ARE NOT REQUIRED TO CONTACT NETWORK SOLUTIONS. THIS NOTICE IS CONVEYED IN ACCORDANCE TO DOMAIN NAMES, TRADEMARKS AND SERVICE MARKS THAT REMAIN AVAILABLE AS AT THE REPLY DEADLINE INDICATED ABOVE. INTERNIC RIGHT-TO-USE FEE APPLIES.