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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

KOCH INDUSTRIES, INC., a Kansas
corporation,

Plaintiff,

vs.

JOHN DOES 1-25,

Defendants.

Case No. 2:10-cv-01275-DAK

Judge Dale A. Kimball

COMPLAINT

Plaintiff Koch Industries, Inc. (“Koch” or “Plaintiff”) states the following for its Complaint against Defendants John Does 1-25 (“Defendants”):

Nature of the Action

1. Koch brings this action to redress Defendants’ misappropriation of Koch’s intellectual property and impersonation of Koch for the purpose of

deceiving the public and promoting Defendants' agenda. Koch supports open and honest public discourse. Defendants' impersonation of Koch and misappropriation of its intellectual property are antithetical to honest discourse because they deceive the public respecting Koch's true position on issues and respecting Defendants' motives. Accordingly, Plaintiff brings this action at law and in equity for trademark infringement, cybersquatting, and unfair competition arising under the federal Lanham Act, codified as amended at 15 U.S.C. §§ 1051-1127, the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), and state common law, and for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 arising out of the Defendants' impersonation of Plaintiff, use of Plaintiff's trademarks, and improper access to and use of Plaintiff's website.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and under 15 U.S.C. §§ 1331 and 1338.

3. Defendants have entered contracts in this district to register a domain name and to host a website and have operated a website hosted on servers located in this district, have engaged in tortious acts or omissions within this district, and have otherwise made or established contacts with this district sufficient to permit the exercise of personal jurisdiction.

4. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim have occurred and are occurring in this district.

Parties

5. Plaintiff Koch Industries, Inc. is a corporation organized under the laws of the State of Kansas. Koch Industries, Inc. is the owner of the trademarks at issue in this suit.

6. Defendants John Does 1 through 25 (the “Doe Defendants”) are individuals who acted jointly and in concert to commit the acts complained of herein. The Doe Defendants’ true names and capacities are presently unknown to Plaintiffs, but each of the fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged in this complaint and each of the fictitiously named Defendants proximately caused the damages alleged herein.

7. The Defendants and each of them are responsible for the acts and omissions of the others and are parties acting in active concert and participation with each other, and have each aided, abetted, and facilitated, and participated in the acts giving rise to the claims alleged herein.

FACTUAL BACKGROUND

Koch Industries, Inc. and Its Trademark Rights

8. Founded almost 70 years ago, Koch Industries, Inc. owns multiple companies involved in a wide variety of industry areas, including energy supply, fibers for carpeting and garments, chemicals used in manufacturing, process and pollution control equipment, forest and consumer products, and commodity trading.

9. For decades, the Koch companies have provided excellent goods and services and enjoyed tremendous success, with the company's value having grown significantly since 1960. Given the size, strength, and extent of the company's operations, policy statements by Koch on current issues, including those related to environmental matters, receive tremendous public attention

10. The Koch name is associated with innovation, operations excellence, and world class performance and is well-known and recognized in business, financial, and industrial sectors. Koch's Market Based Management® philosophy, a proprietary approach to management, is based on economic freedom and promotes the implementation of free market principles in management of a business organization, and has received substantial unsolicited publicity and is widely known and admired for the successful results it garners.

11. In addition to the KOCH name and mark, Koch has adopted and used several other trademarks to identify and promote its services, including a distinctive stylized K design, used since 1969:



(the “Stylized K Mark”), and the marks MARKET BASED MANAGEMENT®, used since 1992, and MBM®, used since 1994, in connection with Koch’s unique management system (all of Koch’s marks are hereinafter collectively referred to as the “Koch Marks”).

12. Koch owns a number of federal registrations for its marks, including Reg. No. 1,961,169 for MARKET BASED MANAGEMENT®, Reg. No. 2,072,115 for MBM®, and Reg. No. 2,633,859 for the Stylized K. Copies of the registrations for these marks are attached as Collective Exhibit A.

13. As part of the promotion of Koch’s business and the Koch Marks, since 1996, Koch has maintained a website under the domain name kochind.com, where it provides information about and promotes all of its businesses, activities, and policy viewpoints, and where it prominently displays the KOCH name and mark, together with the Stylized K, MBM®, and MARKET BASED

MANAGEMENT® marks. A true and correct copy of the homepage of Plaintiff's website is attached as Exhibit B. The website receives millions of visits each year, receiving well over 62,000 average visits per day and over 1,800,000 average visits per month during the period from December 1, 2009 to November 30, 2010.

14. As a result of Koch's tremendous success and the press the company receives, the KOCH name and Marks have become well known and associated with Koch Industries, Inc.

Defendants' Improper Acts

15. On or before December 10, 2010, Defendants registered the domain name koch-inc.com (the "Infringing Domain Name"), even though they have no legitimate interest in a KOCH formative name and were not authorized to use one. Defendants contracted with the domain registration company, Fast Domains, located in this District, to effect their registration.

16. On or about December 10, 2010, by improperly accessing and copying content from Plaintiff's website, Defendants set up a website at the koch-inc.com domain, with a homepage that was a virtual copy of the homepage on Plaintiff's website. Defendant's website included displays of the Koch Marks and links to Plaintiff's true website. To host its website, Defendants used servers provided by a web hosting company, BlueHost.com, located in this District.

17. Defendants then impersonated Plaintiff by issuing a false press release attributed to Plaintiff and containing statements regarding environmental issues, with quotes attributed to Plaintiff's Chief Executive Officer, who is a significant shareholder of Plaintiff. As shown in the copy of the press release attached as Exhibit C, Defendants embedded in the release a link to Defendants' fake website.

18. Defendants issued the false press release and set up the fake website with the intent to deceive and confuse the public, to disrupt and harm Plaintiff's business and reputation, and to draw attention to and funding for Defendants' activities.

19. As a result of Defendant's actions, the public was deceived and confused because news organizations published the false press release and Plaintiff received numerous inquiries about it. In addition, as a result of Defendants' actions, Plaintiff's business and reputation were harmed, and Plaintiff incurred monetary damages, including costs associated with spending time and money to respond to inquiries about the fake press release and Defendants' other fraudulent activities, investigative and legal expenses associated with determining the host for Defendant's website and contacting the host to have it taken down, and investigative and legal expenses associated with ascertaining the identity of

Defendants. Accordingly, Plaintiff brings this action to rectify the harm

Defendants have already caused and to prevent their causing further harm.

COUNT I
FEDERAL TRADEMARK AND SERVICE MARK INFRINGEMENT

20. Koch repeats and incorporates by reference the allegations contained in Paragraphs 1 through 19 as if set forth fully herein.

21. Defendants' unauthorized use of confusingly similar imitations of Koch's registered marks likely caused and if continued, is likely to cause confusion, deception, and mistake by creating the false and misleading impression that their imitation website and their press release are affiliated, connected, or associated with Koch Industries, Inc. or has the sponsorship, endorsement, or approval of Koch Industries, Inc., all in violation of 15 U.S.C. § 1114.

22. Defendants' unauthorized use of confusingly similar imitations of Koch Industries, Inc.'s registered marks, notwithstanding their knowledge of Koch Industries, Inc.'s ownership of the marks, demonstrates an intentional, willful, and bad faith intent to trade on the goodwill of the Koch Marks and to cause confusion, deception, and mistake in the minds of the public to the great and irreparable injury of Koch Industries, Inc.. Defendants have acted knowingly and have been unjustly enriched thereby.

23. Because Defendants' conduct caused and is likely to cause substantial injury to the public and to Koch, Koch is entitled to injunctive relief, and to recover Defendants' trebled profits associated with the infringement, Koch's costs, and Koch's reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

COUNT II
VIOLATION OF THE ANTICYBERSQUATTING CONSUMER
PROTECTION ACT

24. Koch repeats and incorporates by reference the allegations contained in Paragraphs 1 through 19 as if set forth fully herein.

25. The domain name koch-inc.com is confusingly similar to the KOCH Mark and to Plaintiff's domain name, kochind.com.

26. Defendants registered and used the Infringing Domain Name with the bad faith intent of causing harm to Plaintiff and its brands and of profiting unlawfully from Koch Industries, Inc.'s mark by using Koch's mark to call attention to and promote Defendants' agenda, and to obtain funding for their activities.

27. Defendants registered and used the Infringing Domain Name with the intent to divert consumers from Koch's online location to their website accessible through the Infringing Domain Name and with the bad faith intent to harm Plaintiff's goodwill and to profit from Plaintiff's mark by creating a likelihood of

confusion as to source, sponsorship, affiliation, or endorsement of the Defendants' site.

28. Defendants' actions constitute cyberpiracy in violation of 15 U.S.C. § 1125(d).

29. Defendants' unauthorized registration and use of the Infringing Domain Name have caused and unless enjoined, will continue to cause, irreparable injury to Koch Industries, Inc. and to the goodwill associated with the KOCH mark and domain name.

30. Because Defendants' infringing conduct has caused and is likely to cause substantial injury to the public and to Koch, Koch is entitled to injunctive relief, and to recover either statutory damages under 15 U.S.C. § 1117(d) or Defendants' trebled profits, together with Koch's costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

COUNT III
FEDERAL UNFAIR COMPETITION

31. Koch repeats and incorporates by reference the allegations contained in Paragraphs 1 through 19 as if set forth fully herein.

32. Defendants' use of confusingly similar imitations of the Koch Marks has caused and is likely to cause confusion, deception, and mistake by creating the

false and misleading impression that Defendants' website is affiliated, connected, or associated with Koch Industries, Inc. in violation of 15 U.S.C. § 1125(a).

33. Defendants' actions demonstrate an intentional, willful, and bad faith intent to trade on Koch Industries, Inc.'s goodwill and to cause confusion, deception, and mistake by implying a nonexistent affiliation or relationship between Defendants' website and press release and Koch to the great and irreparable injury of Koch.

34. Because Defendants' unfair competition has caused and is likely to cause substantial injury to the public and to Koch, Koch is entitled to injunctive relief, and to recover Defendants' trebled profits associated with the infringement, Koch's costs, and Koch's reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1116 and 1117.

COUNT IV
VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT

35. Koch repeats and incorporates by reference the allegations contained in Paragraphs 1 through 19 as if set forth fully herein.

36. Defendants have, knowingly and with the intent to defraud, fraudulently accessed Koch's protected computer via the kochind.com website and exceeded the authorized access granted by Koch to that website. As a result of

Defendants' conduct, Defendants' obtained valuable and protected content and information, which Defendants used to further their fraudulent activity.

37. Because Defendants' fraud and computer abuse has caused and is likely to cause substantial damage to Koch, Koch is entitled to injunctive relief and compensatory damages pursuant to 18 U.S.C. § 1030(g).

COUNT V
COMMON LAW INFRINGEMENT AND UNFAIR COMPETITION

38. Koch Industries, Inc. repeats and incorporates by reference the allegations contained in Paragraphs 1 through 19 as if set forth fully herein.

39. Defendants have used confusingly similar imitations of the Koch Marks with full knowledge of Koch's rights to the marks and with the willful and calculated purpose of harming or trading on Koch Industries, Inc.'s established goodwill and business reputation, and in a manner calculated to imply false sponsorship of or approval by Koch Industries, Inc., for the purpose of misleading and deceiving the public.

40. Defendants have used confusingly similar imitations of Koch's electronic URL address, with full knowledge of Koch's rights, and with the willful and calculated purpose of harming or trading on Koch's established goodwill and

business reputation, and in a manner calculated to imply false sponsorship of or approval by Koch, for the purpose of misleading and deceiving the public.

41. Defendants' conduct constitutes infringement of Koch's common law rights to the its marks and has damaged and will continue to damage irreparably Koch's goodwill and reputation unless enjoined by this Court.

42. Independent of their liability for common law infringement, Defendants also engaged in unfair competition under the common law of Utah and the other states in which they have engaged in their activities through their reliance on consumer mistakes and confusion, and their deliberate efforts to poach upon Koch Industries, Inc.'s goodwill.

COUNT VI
BREACH OF TERMS AND CONDITIONS OF SITE

43. Koch repeats and incorporates by reference the allegations contained in Paragraphs 1 through 19 as if set forth fully herein.

44. Use of Koch's website is subject to terms and conditions published on the website, including the following:

The information and materials on this Web site and all intellectual property rights in or relating to them are the property of the Koch Companies, and any reproduction, publication, broadcast or posting by you for your own benefit is prohibited unless you obtain prior written approval from the Koch Companies.

45. By using Koch's website, Defendants agreed to its terms and conditions.

46. By posting a site that copied content from Koch's website, Defendants breached the terms and conditions.

47. Defendants are thereby liable to Plaintiff for breach of contract.

PRAYER FOR RELIEF

WHEREFORE, Koch Industries, Inc. prays:

1. That Defendants, their partners, agents, employees, and all persons in active concert or participation with Defendants, be permanently enjoined and restrained from:

- a) using the Koch Marks, the Infringing Domain Name, and any trademark, company name, or domain name that is confusingly similar to any of Koch Industries, Inc.'s marks;
- b) engaging in any other conduct which will cause, or is likely to cause, confusion, mistake, deception, or misunderstanding as to source, or to the affiliation, connection, association, origin, sponsorship, or approval of Defendants' website or other activities with or by Koch Industries, Inc.;

- c) otherwise infringing upon Koch Industries, Inc.'s marks or unfairly competing with Koch Industries, Inc. in any manner whatsoever;
- d) accessing or using any content of Plaintiff's websites except as permitted by law; and
- e) impersonating Plaintiff or any of its affiliates or representatives.

2. That an accounting be ordered and judgment be rendered against Defendants for all profits received from their actions utilizing the Koch Marks, the Infringing Domain Name, and any confusingly similar imitations of Koch Industries, Inc.'s marks.

3. That the award of profits resulting from Defendants' infringement, unfair competition, and false designation of origin of products and services be trebled.

4. That Koch Industries, Inc. recover its actual damages.

5. That the award of actual damages from Defendants' infringement, unfair competition, and false designation of origin of products and services be trebled.

6. That Koch Industries, Inc. recover statutory damages in the amount of \$100,000.00 under 15 U.S.C. § 1117(d) for the Infringing Domain Name.

7. That Defendants be required to deliver up for destruction all advertising and promotional materials, all packaging materials, and all business documents, including labels, cartons, brochures, business stationary, calling cards, information sheets, posters, signs, and any and all other printed or graphic materials of any type, including the plates, molds, or other means of producing the materials, which bear references to confusingly similar imitations of Koch Industries, Inc.'s marks, or to the Infringing Domain Name.

8. That Defendants be directed to file with the Court and serve on Koch Industries, Inc., within thirty (30) days after entry of a final injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction.

9. That Koch Industries, Inc. be awarded its costs in connection with this suit, including reasonable attorneys' fees and expenses.

10. That Koch Industries, Inc. have such other and further relief as the Court may deem just and proper.

Dated this 28th day of December, 2010.

/s/ Michael W. Young

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