

**§ 13.14 Form: Complaint for Copyright and Trademark
Infringement Based on Web Site Framing¹**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF _____

ACME Inc., Plaintiff
COMPLAINT

-against-

XYZ Corp. and FRAMERS.COM, Inc., Defendants.

Preliminary Statement

1. This action arises out of acts of misappropriation, trademark dilution and infringement, willful copyright violations, and other related tortious acts all committed by Defendants in connection with the operation of a site on that portion of the Internet known as the World Wide Web.

2. Although Defendants derive revenue by selling advertisements placed on their website, they provide little or no content of their own. Instead Defendants have designed a website that displays the content of Plaintiff's website in order to attract both advertisers and users. Specifically, Defendants' website is designed to feature the content of Plaintiff's website, inserted within a "frame" on the computer screen that includes Defendants' website logo and URL as well as advertising that Defendants have sold.

3. As described in detail below, Defendants' conduct violates the rights of Plaintiff. At the core of Defendants' unlawful conduct, however, is that Defendants literally misappropriate (i) the Plaintiff's

¹ FN: This form is adapted from the complaint in *Washington Post Co. v. TotalNews Inc.*

own trademark, which symbolizes the strength of its reputations for high quality content, along with (ii) copyrighted material in which the Plaintiff has invested heavily to create and display. Defendants commit these acts for the purpose of selling advertising space, for their own profit, in direct competition with Plaintiff.

Jurisdiction and Venue

4. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338, 28 U.S.C. § 2201, and 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over all Defendants by virtue of their transacting, doing, and soliciting business in this district and pursuant to Civil Practice Rule ____.

Defendants have made, and continue to make, their infringing website available to countless users within this district; have republished Plaintiff's content and information originating on computer servers located in this district; have promoted, and continue to promote their website to countless users within this district, and, as a result, have gained substantial revenue from interstate advertisers wishing to reach these users to the detriment of Plaintiffs.

6. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this district.

The Parties

7. Plaintiff Acme Inc. ("Acme") is a Georgia corporation with its principal place of business at 5693 Magnolia Boulevard, Atlanta, Georgia 41433. Acme is a diversified entertainment and communications company that, inter alia, publishes its programs and content on the Internet.

8. On information and belief, defendant XYZ Corp. ("XYZ") is a Maryland corporation with its principal place of business at 893 Main Street, Baltimore, Maryland, 20814.

9. On information and belief, defendant Framers.com, Inc. ("Framers.com") is a California corporation with its principal place of

business at 15097 Santa Monica Boulevard, Santa Monica, California 90405.

Facts Common to All Claims

10. Plaintiff is a well-respected source of copyrighted content. Plaintiff spends substantial amounts of time, money and effort collecting, preparing and distributing copyrighted content in a variety of media, including, but not limited to, its website. As a result, Plaintiff is well-known to the public and owns one or more registered and famous trademarks used to indicate the origin of its high-quality content. For example, Plaintiff owns, inter alia, [list registered trademarks and copyrights].

11. In contrast to the Plaintiff, Defendants own no famous trademarks and create no copyrighted content. Instead, they recently began operating a commercial website that relies on the fame of the trademarks listed above, along with the content created by the owner of those trademarks, as their only means of attracting users and advertisers to their site.

12. At the heart of Defendants' wrongful conduct is a practice known as "framing" that causes Plaintiff's website to appear not in the form that Plaintiff intended, but in an altered form designed by Defendants for their own economic advantage. Defendants' website consists of lists of numerous "name-brand" sources, including the famous trademarks exclusively associated with Plaintiff in the public mind. When a user of Defendants' site "clicks" on one of those famous trademarks with the computer mouse, the user accesses Plaintiff's corresponding website. (In Internet parlance, the trademarks here function as "hyperlinks": areas on the screen that, when clicked on, take the user directly to another website.) Plaintiff's site, however, does not then fill the screen as it would had the user accessed Plaintiff's site either directly or by means of a hyperlink from a website that does not "frame" linked sites. Nor does Plaintiff's URL appear at the top of the screen as it normally would. Instead, part of Plaintiff's site is inserted in a window designed by Defendants to occupy only a portion of the screen. Masking part of Plaintiff's site is Defendants' "frame," including, inter alia, Defendants' logo, URL and advertisements that others have purchased from Defendants.

13. Defendants' "frame" consists of their website URL at the top; rectangular icons with the trademarked names of Plaintiff and others running down the left margin; and advertising sold by Defendants at the bottom. At the right-center portion of the screen is a window. When the user first logs on to Defendants' website, this window is occupied by a "compass"-style array of hyperlinks that lead to still more websites, run by Plaintiff and other providers of original content, that Defendants display inside their frame.

14. Defendants' site not only relies entirely on the substantive content of Plaintiff's site to attract users, but also keeps those users exposed to advertising that Defendants have sold and to Defendants' logo and URL. Absent the "framing" by Defendants described above, someone wishing to view the content of Plaintiff's sites would, upon accessing that site, see only Plaintiff's material as Plaintiff intend for it to be seen. Use of Defendants' website thus results in continuous, prolonged exposure to the logo, URL and advertising of Defendants website. Defendants have promoted their website to advertisers and the public based entirely on Defendants' ability to display the content of Plaintiff's site within the frames, including frames containing advertising.

15. Defendants also distort, and divert from, the content on Plaintiff's site that otherwise would be the only substantive material appearing on a user's screen. Among other things, by juxtaposing advertising sold by Defendants against advertising sold by Plaintiff on its own site, and by obscuring the advertising on Plaintiff's site, Defendants directly compete against Plaintiff and interfere with Plaintiff's contractual relationships with their advertisers. For example, advertisers may buy space on a website (much as they do on a television program or in a newspaper or magazine) based on the expectation that their advertisement will appear in a certain location or slot, be of a certain size or duration, or be free from the "clutter" of competing advertisements -- particularly advertisements for competing products. Yet an advertisement on Plaintiff's site, when seen through the Defendants' window, is reduced in size, may even be totally obscured by the Defendants' frame, and is forced to compete for the user's attention with the visual clutter of the Defendants' frame, including other advertising -- possibly including advertising for directly competitive products.

COUNT I: Misappropriation

16. Plaintiff repeats and realleges the allegations of paragraphs 1 through 15 above as if fully set forth herein.

17. Plaintiff expends substantial resources to gather and display the content found on its website. Defendants' advertiser-supported website openly free-rides on Plaintiff's efforts by simply lifting Plaintiff's content wholesale and selling advertising based on proximity to that content. Defendants' service not only is competitive with, but in fact consists of, Plaintiff's advertiser-supported website; Defendants even expressly hold out their website as a source of "high-quality content." Defendants' free-riding substantially reduces Plaintiff's economic incentive to expend the resources necessary to gather and display material on its own website.

18. By usurping the content of Plaintiff's website and causing Plaintiff's website to appear within a window on Defendants' site, Defendants unfairly have misappropriated valuable commercial property belonging to the Plaintiff.

19. Defendants directly compete for advertising revenue with Plaintiff, and Defendants' business -- the sale of advertising space -- depends entirely on the commercial value of the content appearing on Plaintiff's website. Defendants expressly promote their website to advertisers on the basis of their ability to feature Plaintiff's content next to commercial messages an advertiser might place in space purchased from Defendants.

20. Defendants' conduct constitutes misappropriation and unfair competition under the common law of the State of _____ because it takes the entire commercial value of the content on Plaintiff's site and literally sells it to others for Defendants' own profit.

21. Defendants' acts of misappropriation and unfair competition have caused and are causing irreparable injury and damage to Plaintiff in an amount not capable of determination and, unless restrained, will cause further irreparable injury, leaving Plaintiff with no adequate remedy at law.

COUNT II: Federal Trademark Dilution

22. Plaintiff repeats and realleges the allegations in paragraphs 1 through 21 above as if fully set forth herein.

23. Plaintiff's trademarks (including its service marks) are among the most famous trademarks used in interstate commerce in the United States. Among other things, (a) the trademarks are inherently highly distinctive and have a high degree of acquired distinctiveness; (b) Plaintiff have used its trademarks for many years throughout the United States and worldwide in connection with copyrighted content; (c) Plaintiff has advertised and publicized its trademarks for a considerable amount of time throughout the United States and worldwide; (d) Plaintiff has used the trademarks in a trading area of broad geographical scope encompassing all of the states and territories of the United States and more than 210 other nations and territories worldwide; (e) the trademarks are the predominant trademarks for the content and are important or predominant trademarks in other related channels of trade; (f) the trademarks have an extremely high degree of recognition among consumers, including users of the Internet in the United States; (g) there are no similar trademarks in use to any extent or in any nature by third parties in connection with such a broad range of products and services and (h) certain of the trademarks identified are currently registered under the Lanham Act on the Principal Register.

24. The acts of Defendants as described above dilute and detract from the distinctiveness of Plaintiff's famous trademarks, with consequent damage to Plaintiff and the business and goodwill symbolized by those trademarks, in violation of the Federal Trademark Dilution Act of 1995, codified at 15 U.S.C. § 1125(c).

25. In particular, Defendants have diluted the following trademarks of Plaintiff: [list trademarks]. Plaintiff has spent considerable resources to identify these trademarks to the public as the source of the Internet versions of the content with which the public already is familiar.

26. Defendants' willful acts of trademark dilution have caused and are causing great and irreparable injury to Plaintiff and its trademarks and to the business and goodwill represented thereby, in an amount that cannot be ascertained at this time and, unless restrained, will cause further irreparable injury, leaving Plaintiff with no adequate remedy at law.

27. By reason of the foregoing, Plaintiff is entitled to injunctive relief against Defendants restraining further acts of trademark dilution and, after trial, to recover any damages proven to have been caused by reason of Defendants' aforesaid acts of registered trademark dilution.

COUNT III: Trademark Infringement

28. Plaintiff repeats and realleges the allegations in paragraphs 1 through 27 above as if fully set forth herein.

29. Defendants' unauthorized use of Plaintiff's marks in connection with advertisements that have not been approved by Plaintiff for use on its site -- and indeed compete with the advertisers with whom Plaintiff has contractual arrangements -- is likely to cause confusion and mistake and to deceive consumers as to the source or origin of the content and advertising depicted at Defendants' website. In addition, the manner in which Defendants cause Plaintiff's website to appear within a window on Defendants' site, together with those new and competing advertisements, and under the Defendants' URL, is likely to cause confusion and mistake as to the source or origin of the content and advertising depicted at Defendants' website.

30. The acts of Defendants described above infringe Plaintiff's famous trademarks, with consequent damages to Plaintiff and the business and goodwill symbolized by those federally-registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

31. Defendants' acts of trademark infringement have caused and are causing great and irreparable injury to Plaintiff and to its trademarks and to the business and goodwill represented thereby, in an amount that cannot be ascertained at this time and, unless restrained, will cause further irreparable injury, leaving Plaintiff with no adequate remedy at law.

32. By reason of the foregoing, Plaintiff is entitled to injunctive relief against Defendants restraining further acts of trademark infringement and, after trial, to recover any damages proven to have been caused by reason of Defendants' aforesaid acts of registered trademark infringement.

COUNT IV: False Designations of Origin, False

Representations and False Advertising

33. Plaintiff repeats and realleges the allegations of paragraphs 1 through 32 above as if fully set forth herein.

34. Defendants' use of Plaintiff's marks is likely to cause and has caused consumers mistakenly to believe that some or all of the Defendants have an affiliation with Plaintiff, or that the Defendant's website is sponsored or approved of by the Plaintiff, or that Defendants are otherwise associated with or have obtained permission from Plaintiff.

35. By engaging in the activities described above, Defendants have made and are making false, deceptive and misleading statements constituting false representations and false advertising made in connection with services distributed in interstate commerce in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

36. Defendants' acts of unfair competition and false advertising have caused irreparable injury to Plaintiff's goodwill and reputation in an amount that cannot be ascertained at this time and, unless restrained, will cause further irreparable injury, leaving Plaintiff with no adequate remedy at law.

37. By reason of the foregoing, Plaintiff is entitled to injunctive relief against Defendants, restraining further acts of unfair competition and false advertising, and, after trial, to recover any damages proven to have been caused by reason of Defendants' aforesaid acts of false designations of origin, false representations and false advertising.

COUNT V: Trademark Infringement and Unfair

Competition Under State Law

38. Plaintiff repeats and realleges the allegations of paragraphs 1 through 37 above as if fully set forth herein.

39. The acts of Defendants as described above constitute trademark infringement and unfair competition in violation of Plaintiffs' rights under the common law of the State of _____.

COUNT VI: Dilution Under State Law

40. Plaintiff repeats and realleges the allegations of paragraphs 1 through 39 above as if fully set forth herein.

41. The acts of Defendants as described above are likely to dilute and detract from the distinctiveness of Plaintiff's trademarks, with consequent damage to Plaintiff and the business and goodwill symbolized by said trademarks, in violation of the State Anti-Dilution Statute.

COUNT VII: Copyright Infringement

42. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 41 above as if fully set forth herein.

43. Plaintiff owns copyrighted material found at or through, inter alia, the following URLs: [list URLs].

44. In order to provide their website service, Defendants have caused Plaintiff's site to appear within a window displayed as part of Defendants' website, surrounded and partially obscured by advertising and other material unrelated to the original content of Plaintiff's site.

45. In particular, Plaintiff has registered with the United States Copyright Office the following content from its website: [list content]. Defendants infringed all of the registered material described above by displaying this material, or otherwise making it available without Plaintiff's consent, at their website.

46. Defendants' conduct has been in willful violation of Plaintiff's repeated warnings to Defendants that Plaintiff does not want its site and/or content depicted in that way and that Defendants' conduct is unauthorized. The specific acts of infringement on [date] simply are representative of a broader pattern of infringement in which Defendants make unauthorized use of the content of Plaintiff's website 24 hours a day, every day.

47. Defendants' conduct violates several of the exclusive rights under 17 U.S.C. § 106 belonging to the Plaintiff as owner of the copyrights in its content and website, which are the subject of copyright registrations that Plaintiff has filed or now in the process of filing with the Register of Copyrights.

48. Defendants' infringing conduct has caused and is causing irreparable injury and damage to Plaintiff in an amount not capable of determination and, unless restrained, will cause further irreparable injury, leaving the Plaintiff with no adequate remedy at law.

COUNT VIII: Tortious Interference

49. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 48 above as if fully set forth herein.

50. Defendants have intentionally designed their website to display third-party advertising material simultaneously, and in competition, with material placed by Plaintiff on its own site, including material featuring Plaintiff's advertisers. By running other advertising material in the Defendant's frame adjacent to the content of Plaintiff's site, and by partially obscuring Plaintiff's site with their frames, Defendants have made Plaintiff's performance of its advertising contracts more burdensome and have interfered with the benefits that Plaintiff's advertisers bargained for when they purchased space on Plaintiff's site.

51. Defendants' conduct constitutes intentional and improper interference with Plaintiff's performance of its advertising contracts.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Declare that Defendants' unauthorized conduct violates Plaintiff's rights under common law, the Copyright Act, the Lanham Act, the State General Business Law and the State Anti-Dilution Statute;

B. Immediately and permanently enjoin Defendants, their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from:

(1) Diluting in any way Plaintiff's trademarks or representing by any means whatsoever, directly or indirectly, that any products or services offered or provided by Defendants are offered or provided by the Plaintiff, or from

otherwise taking any action likely to cause confusion, mistake or deception on the part of consumers as to the origin or sponsorship of such services;

(2) From doing any other acts or things calculated or likely to cause confusion or mistake in the mind of the public or to lead consumers into the belief that products or services sold, offered for sale, distributed or transmitted by Defendants are authorized, sponsored, licensed, endorsed, promoted or condoned by Plaintiff, or are otherwise affiliated with or connected to Plaintiff, and from otherwise unfairly competing with Plaintiff, infringing copyrights of the Plaintiff or misappropriating that which rightfully belongs to Plaintiff; and

(3) Interfering in any way with Plaintiff's performance of its commitments to its advertisers, whether by running advertising messages simultaneously with those run by Plaintiff or otherwise.

C. Order that Defendants account to Plaintiff for Defendants' profits and any damages sustained by Plaintiff arising from the foregoing acts of misappropriation, copyright infringement and unfair competition.

D. Award Plaintiff actual and/or statutory damages for Defendants' copyright infringement in an amount to be determined at trial;

E. Award Plaintiff its costs, including reasonable attorneys' fees and disbursements in this action, pursuant to 15 U.S.C. § 1117 and 17 U.S.C. § 505.

F. Award Plaintiff such other and further relief as the Court deems just and proper.

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