

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

TPW MANAGEMENT, LLC,)
Plaintiff,)
v.)
YELP INC.,)
Defendant.)
_____)

CASE NO. 1:15-cv-232

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U.S. DISTRICT COURT
DISTRICT OF VERMONT
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COMPLAINT AND JURY DEMAND

In this action, Plaintiff, TPW Management, LLC, (hereinafter "Plaintiff" or "TPW") by and through its attorneys, Lisman Leckerling, P.C., seeks injunctive relief, compensatory and treble damages, an accounting, the imposition of a constructive trust, and other relief arising from the infringement by Yelp Inc. (hereinafter "Defendant" or "Yelp") of TPW's registered trademark and other misconduct.

THE PARTIES
TPW

1. TPW is a limited liability company registered in Vermont and has its principal place of business in Manchester Center, Vermont.
2. TPW is a family owned business that provides professional community and property management, home services, vacation rentals, and real estate sales services. TPW provides services to owners and renters of vacation homes in Vermont and New Hampshire.

DEFENDANT
Yelp

3. Upon information and belief, Yelp is a Delaware corporation with its headquarters in San Francisco, California.

4. Upon information and belief, Yelp owns and operates the “Yelp” internet site; the site features information concerning local businesses, including ratings and reviews for local businesses around the world, including Vermont.

Jurisdiction and Venue

5. TPW’s First, Second, and Third Claims for Relief arise under the federal Lanham Act, 15 U.S.C. § 1051, *et seq.* Accordingly, this Court has subject matter jurisdiction over this action pursuant 28 U.S.C. §§ 1331 and 1338.

6. This Court has supplemental jurisdiction over the pendent state law claims and parties under 28 U.S.C. § 1367, because these claims are so related to TPW’s claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative facts.

7. Venue exists pursuant to 28 U.S.C. § 1391 (b).

TPW’s Services and its Market

8. From its beginnings as a technical consulting and community management business in the 1990’s, TPW has expanded its scope and now provides property management, homeowner services, technical consulting, and residential construction services to community associations and homeowners at resort and vacation communities and areas in New Hampshire and Vermont.

9. TPW currently provides management, home services, vendor sourcing, rental management and booking, and sales to over 20,000 rental, sales and service customers, 3000 resort homeowners, in 50 resort area community associations in New England.

10. TPW maintains a database of over 500 service vendors and connects community associations, homeowners and rental consumers to these service providers.

11. TPW helps its more than 20,000 customers find businesses and service providers through property services, rental properties, lodging, concierge services, and referrals.

12. TPW connects property owners to plumbers, electricians, painters, housekeepers, and other service providers as well as connects renters to rental properties.

13. TPW also recommends local restaurants, service providers, and local attractions to property owners and renters.

14. Many of the TPW customers (owners and renters of vacation homes) have primary residences in the New York City, Boston, Philadelphia, and Washington D.C., metropolitan areas, as well as other New England and Mid-Atlantic States.

15. TPW markets services to these customers with its Trademark, "We Know Just the Place." (the "TPW Mark"). *[TPW Mark Registration attached at Exhibit 1]*

16. TPW developed its rental and sales business to complement its management home services business. The TPW Mark has been and is an integral part of that development.

17. TPW creates preferential selection to service providers on behalf of its customers through a historical reference of customer satisfaction, compliance with insurance and payment policies, and work quality. TPW has an active roster of over 500 service providers to source and refer to its customers.

18. TPW developed an online booking service on June 1, 2012, this service places traveling guests in rental properties (condos/homes/rooms). The online booking service relies on, and features prominently, the TPW Mark. TPW markets this service through the internet, its website, marketing brochures, paid per advertisements in print, radio, and internet, Facebook, LinkedIn, paid listings on HomeAway.com, VRBO.com, FlipKey, and by word of mouth. *[See examples attached at Exhibit 2]*

19. Existing and future customers access TPW's property management, home services, vacation rental, and real estate sales services through reviewing available services online, marketing material, online bookings on TPW websites or through channel partner websites, word of mouth/in person, email, telephone, or fax. Channel partners are other web booking engines, such as KAYAK, Priceline.com, booking.com, flip key, HomeAway, VRBO, Air BnB, Expedia, Hipmunk, etc., that are populated with property descriptions, rates, photos, availability, and other information in real time.

20. Consumers and TPW customers can access the TPW inventory through the selected channel partner. A substantial portion of TPW's new rental customers come to TPW through channel partner booking engine inquiries.

The TPW Mark

21. TPW is the owner of U.S. Trademark Registration No. 4,308,732, duly issued by the United States Patent and Trademark Office on March 26, 2013, for the trademark "We Know Just the Place." for real estate services, namely vacation home rental management services. *[See Exhibit 1]*

22. TPW applied for the registration on or about July 28, 2012, with its first use on October 1, 2010.

23. TPW acquired the slogan, "We Know Just the Place" as a result of its purchase of Mountain Management, Inc. (d/b/a Wise Vacations), on June 1, 2012. In that purchase, TPW acquired the assets and the Intellectual property of Mountain Management, Inc., including the slogan, "We Know Just the Place."

24. Upon information and belief, Mountain Management, Inc., used the slogan, “We Know Just the Place” consistently from at least 2008 through June 1, 2012, in its marketing materials, online booking engine, property listings, and home service listings.

25. TPW has used and continues to use the TPW Mark in its marketing materials, internet and social media platforms, direct communications and contacts with customers.

26. TPW has made a significant financial investment in its online marketing and booking platform which features the TPW Mark. TPW established an online booking service on June 1, 2012 for placing traveling guests in rental properties (condos/homes/rooms). The online booking service relies on and features prominently the TPW Mark. *[See TPW online booking pages attached at Exhibit 3]*

27. TPW’s use of the TPW Mark includes all service sectors and on line vacation rental and real estate sales websites.

28. TPW has used the TPW Mark on web advertising, printed marketing material, coasters, coffee mugs, signage, promotional material, YouTube videos, LinkedIn profiles, Facebook ads/sites, at award ceremonies, on business cards, and in radio promotions in New England and beyond. *[See examples attached at Exhibit 4]*

29. TPW also sponsors sporting, charitable, and performing arts events where the TPW Mark is featured and displayed to audiences of participants and spectators that range up to tens of thousands of people. *[See examples attached at Exhibit 5]*

30. TPW has made a substantial investment in the development, support, and marketing of its reputation, name, and TPW Mark. TPW has developed a customized website, online booking engine, and marketing campaign to support and integrate the TPW Mark with its name and reputation.

Defendant Yelp's Unlawful Conduct

31. Upon information and belief, Yelp is an on-line referral service that connects users with local service providers.
32. TPW has not contracted with, registered, nor signed up with Yelp to create a business profile for TPW.
33. Yelp has listed TPW and its services and listed TPW for referral and review to consumers. *[See Yelp pages for TPW attached at Exhibit 6]*
34. The Yelp listings can link or connect a Yelp user to the TPW website which will include the TPW trademark "We Know Just the Place."
35. Upon information and belief, Yelp has also listed Mountain Management, Inc. (d/b/a Wise Vacations) as a referral and included the then Wise slogan, "We Know Just the Place" in the Yelp listing. *[See Exhibit 7]*
36. TPW is listed on Yelp's websites and the TPW Mark is displayed on the webpages of the TPW website.
37. Yelp is aware of TPW and its use of the TPW Mark.
38. Yelp is aware of, and has represented that it will comply with, applicable laws regarding trademark infringement and intellectual property rights. *[See Yelp's Infringement Policy attached at Exhibit 8]*
39. Yelp has an infringement policy under which it claims that "[w]e do not take kindly to those who abuse the intellectual property rights of others."
40. Upon information and belief, on or about October 19, 2015, Yelp filed an application for a registration with the United States Patent and Trademark Office for a registration for the

trademark “We Know Just the Place.” In its registration application, Yelp claims that it first used the mark in commerce on 12/4/2013. *[See Exhibit 9]*

41. The United States Patent and Trademark Office Website which lists the registration application for Yelp of the service mark “We Know Just the Place” also discloses that TPW has a valid registration number 4308732 for the trademark “We Know Just the Place.” *See Exhibit 10.*

42. Upon information and belief, Yelp has initiated a multi-million dollar multi-media advertising campaign as part of its tenth anniversary celebration. As part of this campaign, Yelp will be relying upon and featuring the phrase, “We Know Just the Place.” *See Exhibit 11.*

43. Yelp has advertised in Vermont, and in the same geographic regions marketed by TPW and in which its customers reside, using the TPW Mark.

44. The Yelp advertisements that include the TPW Mark, also advertise vacation destinations.

45. On or about October 12, 2015, Paul W. Carroccio (the Chief Executive Officer of TPO) along with several employees noticed on national TV (HGTV and TBS specifically) that Yelp was airing a television commercial which ended with the tag line “We Know Just the Place.”

46. TPW discovered that Yelp is promoting the new slogan “We know Just the Place” not only with TV advertisements, but online with YouTube, blogs, articles, press releases, and advertisements. *See Exhibit 12.*

47. TPW also discovered press information surrounding Yelp’s plan to create an advertising campaign around its tenth anniversary which appears to be based around this new message “We Know Just the Place.”

48. TPW has not authorized Yelp to use or otherwise provided Yelp with its consent to use the TPW Mark.

Likelihood of Confusion
Irreparable Harm to TPW

49. Yelp's use of the phrase "We Know Just the Place" is creating confusion between the two companies, the services they provide, and will continue to create confusion for and mislead TPW customers, potential consumers, and the public.

50. Upon information and belief, Yelp has online booking engines for lodging and restaurant reservations. *[See Exhibit 13]*

51. Upon information and belief, Yelp has partnered with at least one channel partner, Hipmunk, through which it can make its inventory, including lodging and vacation rentals, available to consumers. *[See Exhibit 14]*

52. Upon information and belief, Yelp is booking vacation properties, in Vermont and throughout the country, through its partnership with Hipmunk. *[See Exhibit 15]*

53. Yelp lists TPW's office locations and provides reviews of TPW's services. TPW and Mountain Management, Inc. (d/b/a Wise Vacations) are listed on Yelp's websites and the slogan "We Know Just the Place" is on these pages or via a click through to TPW's websites.

54. TPW and Yelp both have a booking service for placing traveling guests in rental properties (condos/homes/rooms). TPW and Yelp both have online services for this purpose and disclose location, rates, and property details.

55. TPW and Yelp both use channel partners and Yelp is using the TPW Mark to attract potential customers from the same pool of consumers for vacation rental properties.

56. Yelp and TPW appear to both be in the same business of sourcing local vendors/service providers for their customers as well as being in the "booking" business.

57. To explain its marketing and use of the phrase “We Know Just the Place” Yelp has published a blog post by Andrea R, VP of Community Management. TPW is engaged in and markets itself to consumers as providing community management. A blog post by someone identified as a Vice-President of Community Management under the TPW Mark is confusing and misleading to consumers. *See Exhibit 16.*

58. TPW customers, employees, and vendors have begun to question whether TPW acquired Yelp or vice versa as the mark or slogan is identical and the services are similar. Persons renting lodging through TPW or seeking other services or referrals it provides, will be confused when visiting Yelp’s site and seeing the TPW Mark on that site. TPW customers will mistake the Yelp site and vendors with TPW and its vendors.

59. There is an overlap and similarity in the services provided by TPW and Yelp, and how each markets these services to consumers. Yelp’s use of the TPW Mark will cause confusion to consumers and the public.

60. TPW has an online booking engine for lodging and provides restaurant reservations through its customer service representatives. Yelp lists TPW’s office locations and provides reviews of TPW’s services.

61. TPW and Mountain Management, Inc. (d/b/a Wise Vacations) are listed on Yelp’s websites and the slogan “We Know Just the Place” is on these pages or via a click through to TPW’s websites.

62. Yelp rates the same vendors TPW suggests or sub-contracts to its customer’s homes.

63. Customers will confuse the reviews and comments on the Yelp site and mistake them for TPW recommendations. The trust and credibility TPW has developed with its customers and the public will be degraded by this confusion.

64. The confusion and resulting loss to TPW, its reputation, and the strength of the TPW Mark will continue until Yelp ceases use of the TPW Mark.

Causes of Action

FIRST CLAIM FOR RELIEF

Trademark Infringement (Lanham Act; 15 U.S.C. § 1114)

65. TPW realleges and incorporates by reference the allegations of paragraphs 1 through 64, and 75 through 118, as though fully set forth herein.

66. TPW is the owner of all rights in the TPW Mark that is the subject of the following Registration at the United States Patent and Trademark Office:

REGISTRATION NUMBER: 4,308,732

SERIAL NUMBER: 85-689,447

SERVICES: International Class 36. U.S. 100 101 102. G&S: Real estate services, namely estate services, namely, vacation home rental management services.

67. The TPW Mark is a valid, protectable service mark that has been registered as a mark on the principle register in the United States Patent and Trademark Office.

68. TPW is the owner and registrant of the TPW Mark.

69. Defendant has used the TPW Mark in its marketing to consumers without TPW's consent, in a manner that is likely to cause confusion, or to cause mistake, or to deceive.

70. Defendant's infringement of the TPW Mark is willful.

71. TPW has been and continues to be damaged by Defendant's infringement.

72. As a consequence of Defendant's infringement of the TPW Mark, TPW is entitled to an injunction, as set forth below, and an order of destruction of all of Defendant's' infringing materials.

73. As a consequence of Defendant's willful infringement, TPW is entitled to recover from Defendant three times the amount of actual profits or damages, whichever is greater, as well as TPW's attorneys' fees incurred in connection with this Action.

74. Because this is an exceptional case, TPW is entitled to recover its attorney's fees incurred in connection with this action under 15 U.S.C. § 1117(a).

SECOND CLAIM FOR RELIEF

Federal Unfair Competition (Lanham Act, 15 U.S.C. § 1125(a))

75. TPW realleges and incorporates by reference the allegations of paragraphs 1 through 74, and 85 through 118, as though fully set forth herein.

76. The TPW Mark is a valid, protectable service mark that has been registered as a mark on the principal register in the United States Patent and Trademark Office.

77. TPW is the owner and registrant of the TPW Mark.

78. Defendant has made commercial use of the TPW Mark.

79. Defendant's use of the TPW Mark has been done in a manner that is likely to cause confusion to or to cause mistake, or to deceive as to the affiliation, connection, or association of TPW with Defendant, or as to the origin, sponsorship, or approval of Defendant's goods, services, or commercial activities.

80. TPW has not consented to Defendant's use of the TPW Mark.

81. Defendant's unauthorized use of the TPW Mark was willful.

82. Defendant's acts constitute false statements in connection with products and/or services distributed in interstate commerce, in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

83. Defendant's acts have caused irreparable injury to TPW's good will and reputation. The injury to TPW is and continues to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate TPW for its injuries and TPW lacks an adequate remedy at law.

84. TPW is entitled to an injunction against Defendant's use of the TPW Mark, as well as all other remedies available under the Lanham Act, including, but not limited to, compensatory damages, treble damages, disgorgement of profits, and costs and attorneys' fees.

THIRD CLAIM FOR RELIEF

Dilution of a Famous Mark (15 U.S.C. § 1125(c))

85. TPW realleges and incorporates by reference the allegations of paragraphs 1 through 84, and 93 through 118, as though fully set forth herein.

86. The TPW Mark is a famous trademark within the meaning of the Anti-Dilution Act, 15 U.S.C. § 1125(c).

87. As a result of Defendant's use of the TPW Mark, over which TPW has no control, the distinctive qualities of the TPW Mark are being and will continue to be diluted.

88. Defendant's acts have diluted and will continue to result in the dilution of the distinctive nature of the TPW Mark through blurring, in violation of 15 U.S.C. § 1125(c).

89. Defendant's wrongful conduct constitutes an extreme threat to the distinctiveness of the TPW Mark that TPW has expended great efforts to develop and maintain.

90. The distinctive nature of the TPW Mark is of enormous value, and TPW is suffering and will continue to suffer irreparable harm and blurring of the TPW Mark if Defendant's wrongful conduct is allowed to continue.

91. The dilution of the TPW Mark will likely continue unless the Court orders injunctive relief against Defendant.

92. TPW is entitled to an injunction against Defendant, as well as all other remedies available under the Lanham Act, including, but not limited to, compensatory damages, treble damages, disgorgement of profits, and costs and attorneys' fees.

FOURTH CLAIM FOR RELIEF

Common Law Unfair Competition Trademark Infringement

93. TPW realleges and incorporates by reference the allegations of paragraphs 1 through 92, and 101 through 118, as though fully set forth herein.

94. By reason of all of the foregoing, TPW has acquired common law trademark rights in the TPW Mark.

95. The actions of Defendant complained of herein are likely to create confusion, mistake and deception of consumers into believing that Defendant is authorized by, licensed by, sponsored by or otherwise associated with the common law trademark rights in the TPW Mark and trade name.

96. Upon information and belief, the acts and conduct of Defendant complained of constitute willful and deliberate misuse and infringement of TPW's common law rights in the TPW mark and tradename and will continue in willful and wanton disregard of TPW's valuable rights.

97. The acts of Defendant complained of constitute misuse and infringement of the TPW Mark and tradename in violation of the common law of the State of Vermont.

98. By reason of all the foregoing, TPW has been and is being damaged by Defendant's willful use of the TPW Mark in the manner set forth above and will continue to be damaged unless Defendant is enjoined from using the TPW Mark.

99. By reason of all the foregoing, Defendant is engaged in unfair competition and TPW has been is being damaged by Defendant's willful use of the TPW Mark in the manner set forth

above and will continue to be damaged unless Defendant is enjoined from using the TPW Mark.

100. As a consequence of Defendant's willful infringement, TPW is entitled to recover from Defendant three times the amount of actual profits or damages, whichever is greater, as well as TPW's attorneys' fees incurred in connection with this action.

FIFTH CLAIM FOR RELIEF

Unfair Competition (Vermont Consumer Protection, 9 V.S.A. § 2453(a))

101. TPW realleges and incorporates by reference the allegations of paragraphs 1 through 100, and 109 through 118, as though fully set forth herein.

102. The actions of Defendant complained of herein constitute a misuse and misappropriation of TPW's rights by the unlawful use by Defendant of the TPW mark and the goodwill associated therewith.

103. Defendant has engaged in the use and misuse and misappropriation of TPW's rights by the unlawful use of the TPW Mark and the goodwill associated therewith, in an effort to gain unfair competitive advantage over TPW.

104. These unlawful business acts or practices were committed pursuant to business activity related to the Yelp Site.

105. Through its acts and conduct, Defendant has engaged in unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of the 9 V.S.A. § 2453 (a).

106. Defendant has improperly and unlawfully taken commercial advantage of TPW's investment in the TPW Mark. In light of Defendant's conduct, it would be inequitable to allow Defendant to retain the benefit of the funds obtained through the unauthorized and unlawful use of that property.

107. Defendant's unfair business practices have unjustly harmed TPW and are causing TPW to suffer damages.

108. As a result of such unfair competition, TPW has also suffered irreparable injury and, unless Defendant is enjoined from such unfair competition, will continue to suffer irreparable injury, whereby TPW has no adequate remedy at law.

SIXTH CLAIM FOR RELIEF

Vermont Common Law

Unjust Enrichment/Restitution

109. TPW realleges and incorporates by reference the allegations of paragraphs 1 through 108, and 114 through 118, as though fully set forth herein.

110. The actions of Defendant complained of herein constitute a misuse and misappropriation of TPW's rights by the unlawful use by Defendant of the TPW Mark and the goodwill associated therewith.

111. Defendant's use of the TPW Mark has conferred a benefit upon Defendant, which Defendant has retained and which benefits would be inequitable for Defendant to retain without payment of the value thereof to TPW.

112. Defendant has been unjustly enriched under Vermont law and should be required to make restitution to TPW in an amount to be determined at trial.

113. Defendant's acts have caused and will continue to cause irreparable injury and damage to TPW for which TPW has no adequate remedy at law.

SEVENTH CLAIM FOR RELIEF

Accounting

114. TPW realleges and incorporates by reference the allegations of paragraphs 1 through 113,

as though fully set forth herein.

115. TPW incorporates by reference the allegations of each and every one of the preceding paragraphs as though fully set forth herein.

116. Since at least December 11, 2013 Defendant has obtained business through unlawful conduct, as alleged in this Complaint.

117. Defendant has received money as a result of its misconduct, at TPW's expense, and some or all such money is rightfully due to TPW.

118. The amount of money due from Defendant to TPW cannot be ascertained without an accounting of the income and gross profits Defendant has obtained through its wrongful and unlawful conduct. Yelp is entitled, therefore, to a full accounting.

Relief Requested

WHEREFORE, TPW prays for the following relief:

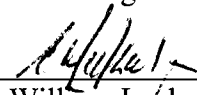
1. Orders that preliminary and permanently enjoining Defendant, its parents, subsidiaries, and affiliates, their respective officers, agents, servants, employees, users, subscribers, contractors, dealers, licenses, and attorneys, and those in active concert or participation with any of them (collectively "Yelp"), to: Cease and desist from using the TPW Mark and from using, affixing, offering for sale, selling, advertising, promoting, or rendering goods or services with the TPW Mark.
2. Orders that preliminarily and permanently enjoining Yelp from the use of any false descriptions or representations or any false designations of origin or from otherwise committing any acts of unfair competition by using TPW Mark or any trade name or trademark confusingly similar to the same.

3. Orders that preliminarily and permanently enjoining Yelp from use and removing all advertisements in any form, including, without limitation, advertisements purchased for display on Internet search engines bearing the TPW Mark or any trade name of trademark confusingly similar on the same.
4. An Order that requires Yelp to alter all web pages to promptly remove the TPW Mark from all websites owned or operated on behalf of Yelp.
5. An Order requiring Yelp to file and deliver to TPW a written declaration, under oath, setting forth in detail the manner and form in which Yelp has (or has not) complied with the injunctions requested by TPW;
6. An award of money damages to be proven at trial;
7. An award of prejudgment interest;
8. An accounting;
9. An Order awarding TPW its attorney's fees and costs;
10. An Order awarding TPW punitive damages in a sum to be determined at trial;
11. An Order awarding TPW treble damages on the basis of Yelp's violation of the Lanham Act;
12. An Order establishing a constructive trust for TPW's benefit, consisting of all revenues received by Yelp from its wrongful conduct and all profits derived from that wrongful conduct, and directing Yelp to pay all such sums to TPW;
13. An Order awarding TPW such other and further relief as the Court deems just and proper.

DATED at Burlington, Vermont, this 29th day of October, 2015.

LISMAN LECKERLING
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TPW Management, LLC

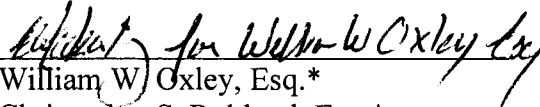
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* Motions for Admission Pro Hac Vice will be forthcoming

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT


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)	
YELP INC.,)	
Defendant.)	
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JURY DEMAND

Plaintiff hereby demands a trial by jury in this action.

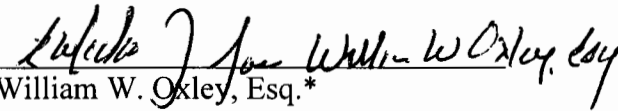
DATED at Burlington, Vermont, this 21st day of October, 2015.

LISMAN LECKERLING
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* Motions for Admission Pro Hac Vice will be forthcoming

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