

COURT
ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

MIKE WILEY
183 AQUEDUCT RD.
CRANSTON, R.I. 02910

-against-

YELP! INC.
140 NEW MONTGOMERY
SAN FRANCISCO, CA 94105

Complaint for a Civil Case

Case No. **CA 16-433**

Jury Trial: Yes No

I. The Parties to This Complaint

A. The Plaintiff(s)

Name Mike Wiley
Street Address 183 Aqueduct Rd.
City and County Cranston – Providence County
State and Zip Code Rhode Island 02910
Telephone Number 702-817-9733
E-mail Address mwiley@wileyinfonet.com

B. The Defendant(s)

Name YELP! INC.
Employee Lawrence Wilson – General Counsel
Street Address 140 New Montgomery St. 9th Floor
City and County San Francisco, San Francisco County
State and Zip Code CA 94105
Telephone Number 415-908-3801
Agent for Service of Process – National Registered Agents, Inc.
Agent Address - 818 W. Seventh St. Ste 930
Agent City, State, Zip: - Los Angeles, Ca 90017

II. Basis for Jurisdiction

What is the basis for federal court jurisdiction?

Federal question

Diversity of citizenship

If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff

The plaintiff is an individual named Mike Wiley, who is a citizen of the State of Rhode Island and was formerly a citizen of the State of Nevada.

2. The Defendant

The Defendant, YELP! Inc., is incorporated under the laws of the State of Delaware, and has its principal place of business in the State of California.

3. The Amount in Controversy

The amount in controversy is more than \$75,000, not counting interest and costs of court.

III. Complaint

- 1) Defendant YELP! Inc. violates Section 5 of the Federal Trade Commission Act (15 USC 45) by employing a Deceptive Business Practice through its sales employees and agents to intentionally harm those who decline "Paid Advertising" offers, not required to continue the "Free" use of the "Yelp Business Page" (See Exhibit 1) nor is it advertised as a warning in advance that adversarial actions will be taken by Yelp! Should the future consumer not accept the Paid Advertising Offers to be presented later while in use of the "Free" Yelp Business Page.

- 2) The Omission of a warning; advising the prospective consumers, that actions by Yelp to be taken in the future could do irreparable harm to their business should they "*Claim their business*" on the YELP "Claiming your business webpage" is a clear Deceptive Act covered by Federal Law and thus allows Jurisdiction in a US District Court.

- 3) These acts by Yelp employees to harm consumers, who chose not to purchase paid advertising programs are well documented in "*Levitt v Yelp! Inc. U.S. District Court California Northern District (San Francisco) CIVIL DOCKET FOR CASE #: 3:10-CV-01321-EMC*". Hence, this is not an abnormal situation but leads one to recognize a pattern within a specific department of the Defendant, exists and its harmful effects are approved by the Management of the Defendant, since all of these calls are recorded for training purposes.

- 4) Plaintiff, Mike Wiley, an individual, who purchased the specific assets of CJ Auto, Inc.'s Euro-Asian Motorworks operation, has personally incurred damages over \$75,000, having been forced to close his two operations after adversarial actions were taken by Yelp, when he refused to purchase a Paid Advertising program. Therefore the Plaintiff, as an individual, is entitled to seek relief.

IV. Statement of Facts

- 5) On **December 5th 2013**, Plaintiff Mike Wiley, an individual, purchased the assets of CJ Auto, Inc., a corporation in the State of Nevada that was operating an automotive repair company known as Euro-Asian Motorworks. (See Exhibit 2 - two pages)

- 6) Plaintiff, Mike Wiley at the time had a management agreement with the prior owner of CJ Auto, Inc. Mark Keefer to operate the business for six months until March 31, 2014, under a separate Partnership agreement, until a series of conditions could be met to transfer the operation to another company.

- 7) These conditions included a new lease by the landlord at 4110 West Desert Inn, acceptance of the transfer of assets by the State of Nevada and approval of the Nevada State Department MVD for an operator's license.
- 8) While the State of Nevada approved the transfer of assets to Mike Wiley, an individual, with the signing of the promise to pay the liability by Mike Wiley, the landlord refused to establish a new lease for that location.
- 9) Due to theft and misappropriation of operating monies by the partner of Mike Wiley at the time, the management agreement was terminated by Mr. Keefer and the management of the company Euro-Asian Motorworks was then contracted to Mike Wiley, an individual.(See Exhibit 3)
- 10) On March 5, 2014, Mike Wiley and Mark Keefer entered into an addendum to the Dec 5, 2013 sales value to reflect a more accurate value since the initial documents presented had material misrepresentations, reducing the purchase price of the Assets to \$30,700. (See Exhibit 4 2 pages) The loss of these assets owned by Mike Wiley represents damages that the Plaintiff, as an individual, has the right to seek relief through restitution.
- 11) When the Landlord chose not to renew the lease and returned the rental payment in May, 2014, Mike Wiley moved the operation and his assets to 3601 Meade Ave and operated under the Automotive license of Mechanics Towing and Repair LLC, a fleet maintenance company that had approached the Plaintiff with an interest in merging with the At Your Service Auto Center, Inc. company that already had fleet business.
- 12) The Euro-Asian Motorworks Company (Retail) was being operated in tandem with the At Your Service Auto Center, Inc., (Fleet) handling the Luxury lines of BMW and Mercedes, etc.

- 13) On June 24, 2014, Jessica Cooper an employee or agent of YELP Inc. contacted Plaintiff via e-mail to inform him as to how much business the Euro-Asian Motorworks webpage which he now owned was generating. This equated to approx. \$10,248 a month in revenues based on Yelp's own figures.(See Exhibit 5). In the body of the E-Mail one finds the following statement: "I wanted to reach out and talk about getting more business from Yelp to your new location! We have already seen you get traffic from Yelp and now it is time to get more from our advertising program."
- 14) On July 7, 2014, Defendant's employee issues an e-mail establishing the day and time for the phone appointment and informs the Plaintiff that the phone call may be monitored or recorded for training purposes. This leads one to believe that these employees are trained to punish the consumers should they choose not to purchase paid advertising. And these calls made to Yelp consumers are recorded and presented to new employees as training tools to in fact employ Deceptive Trade Practices.
- 15) For a period of several weeks Plaintiff and Defendant discussed via e-mail and telephone potential advertising programs that Jessica Cooper of Yelp recommended, Plaintiff purchase.
- 16) On July 30, 2014, Plaintiff informed Defendant of his decision over the phone not to change anything to what he was doing considering that the Euro-Asian Motorworks page was providing \$8k to \$10k of monthly revenues as Defendant had presented and there was no need to advertise on the "At Your Service Auto Center" page considering most fleet business came from word of mouth. The additional investment would not make sense.
- 17) Defendant's employee went into a huff and became unfriendly. Her next comment on the phone to the Plaintiff is what triggered the belief that she was trained to establish a form of punishment to the client should they choose not to purchase advertising. Her immediate response was, "**Well we have to do something**" She stated that she was going to remove my Euro-Asian Motor web Page, which had three years of accumulated

reviews and was providing \$8,000 to \$10,000 a month in revenues to Plaintiff Mike Wiley's Euro-Asian Motorworks.

- 18) Since the phone number on the web page rang to our operation things were working just fine, even after we had changed operating locations less than two miles away. We had established a new Business Name called "At Your Service Auto Center" to widen the customer base and begin performing fleet service, that Euro-Asian Motors did not provide. These are two distinct Market Segments, with specific Operating Names for consumers to relate to and market to. This is a normal business strategy for many diverse operations. We do not see 2016 Mazda's being sold at the Chevy store, nor would the owners of a 2016 Mazda bring their vehicle to a Chevy store for repair.
- 19) When asked why she would suggest such a harmful action since it did not make any sense, she put me on hold to talk to a supervisor and when she returned she stated that they "**Had to do something**". Her next comment was that they would place a link at the top of the Euro-Asian Motors webpage which would cause those on mobile phones to bypass the ability to see the reviews and go directly to the AYSAC Webpage that had no reviews.
- 20) This action also made no sense because it would render three years of customer reviews of Euro-Asian consumers unattainable for the potential phone customer to see and react to, but she was adamant about having to do something (to effectively punish me). This threat was designed to get me to change my mind and commit to an advertising program.
- 21) This is why twenty companies in California filed an Extortion case against Yelp for these same adversarial actions designed to intentionally harm the consumers who make a choice that the Defendant does not approve of.
- 22) Sometime in mid-August 2014 the link was placed on the Euro-Asian Page and my revenues from that operation dropped by half or \$6,000 in the months of August and

September of 2014. Within two more months I had to shut the doors. The businesses were generating close to \$20,000 a month in revenue or approx. \$250,000/yr. With the loss of Plaintiff's Euro-Asian Motorworks operation bringing in half that amount Plaintiff could not stay open. The two year loss of monthly revenues from the Euro-Asian Motorworks Operation or \$193,949 is sought as damages to be recovered by the Plaintiff, as an individual, who owned the assets that were to be employed to generate those monies for the non-incorporated business operation.

- 23) The attached revenue schedule (Exhibit 6) shows the degradation of the Retail Euro-Asian Motorworks(EAM) segment of which I personally owned. Over the remaining four months that we stayed in business where I lost \$32,323 in revenues, which I am entitled to seek restitution for as an individual.
- 24) At the age of 62 and still partially disabled from the recovery of open heart surgery for a Massive Aortic Aneurism, that I survived, I had no other method of income and was forced to sign up for Social Security three years early of normal retirement costing me approx.. \$1,000 a month in earned Social Security benefits. This alone cost me \$12,000 a year for a projected life span of twenty some odd years or \$240,000, which I seek damages as relief.
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V. Conclusion

Plaintiff survived a Triple A open heart surgery in July 2012. Three months after the surgery Plaintiff was employed part time as an accountant for an automotive repair shop, where he worked for a year until being let go for refusing to file false Nevada State Sales Tax returns. Plaintiff after a year became stronger but still was unable to work an 8 hour day due to exhaustion.

Unable to gain full employment due to age and his disability, Plaintiff chose to enter into a Partnership agreement with a former employee of the last auto repair company. After a rocky start of just four months it was discovered that the criminal business partner in

EVP-VM LLC Company was defrauding the partnership of an excess of ten thousand dollars.

Plaintiff found himself in the middle of a deteriorating situation where he tried to save all sides so he took over the management of the operation known as Euro-Asian Motorworks as his own and agreed to the purchase of the assets as an individual and sign the Guarantee to the State of Nevada, which placed a lien on his home.(See Exhibit 7)

On March 2, 2014 Plaintiff establish a new Corporation "At Your Service Auto Center Inc." to take over the Fleet Maintenance operations created by the Partnership EVP-VM LLC d/b/a "At Your Service Auto Center" and continued to operate it under the Motor Vehicle License of the Euro-Asian Motorworks which was still active through to April. 2014.

At this time a complete reconciliation of the assets and their values was performed and a reduction in value was established and agreed upon and the transaction closed between Plaintiff, as an individual and the owner of CJ Autos Inc.

Without a lease from the Landlord in May 2014, Plaintiff accepted the offer to move both operations around the corner to Mechanics Towing and Repair LLC, whose owner had visited Plaintiff back in April 2014 interested in merging the fleet businesses or at least having Plaintiff's operations move to his larger facility since he was underutilized with regard to capacity and desired rental income to offset is heavy rent burden.

The potential existed to sell off the AYSAC Fleet Business and keep his Euro-Asian Business until the economy picked up. However, all of those plans died when the Defendant Yelp! killed the retail Euro-Asian business with their harmful link interference. Defendant knew actions taken would intentionally harm the Plaintiff. Plaintiff had to close down. The Mechanic Towing and Repair LLC Company hired Plaintiff's mechanic in secret and basically stole Plaintiff's Fleet Business and took \$5,000 in assets to cover the two months of rent that Plaintiff could not pay due to

Defendant's actions.

Through all of this there is only one Plaintiff who suffered damages, for the loss of revenues, loss of assets and loss of proceeds on the sale of his home besides the personal loans borrowed to keep the businesses running. That individual with standing to seek relief from the Defendant for damages incurred is Mike Wiley.

VI. Prayer for Relief

Plaintiff prays that the Honorable Court find in favor of the Plaintiff; that Defendant Yelp's Deceptive Trade Practices resulted in Plaintiff incurring a series of losses that he seeks restitution for with trebled damages and asks the court to award the following compensatory damages:

- The direct loss in personal revenues for the last four months through the Euro-Asian Motorworks operation that Plaintiff personally owned before having to close in 2014 was \$32,323. Trebled these damages equate to \$96,969.
- The loss of personally owned assets from the closing of the business for the year of 2014 was \$30,700. Trebled these damages equate to \$92,100.
- Mike Wiley's personal average monthly revenue loss from the closing of his Euro-Asian Motorworks operations of about \$8,081 for twenty four months equates to \$193,944. Trebled these damages equate to \$581,832
- Mike Wiley's personal loss due to the reduction of his monthly benefits earned from Social Security of about \$1,000 a month over twenty years is \$240,000. Trebled these damages equate to \$720,000.
- Mike Wiley also seeks any and all other relief the honorable court should find appropriate.

VII. Certification and Closing

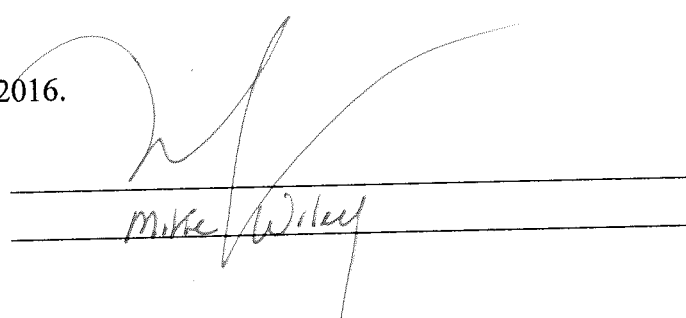
Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: August 4, 2016.

Signature of Plaintiff

Printed Name of Plaintiff



Mike Wiley

VIII – Table of Exhibits

Exhibit 1 – Claiming your Business – Yelp Business Page

Exhibit 2 – Purchase & Sale Agreement – CJ Autos.Inc.

Exhibit 3 – EVP-VM Termination Letter

Exhibit 4 – Purchase & Sale Addendum

Exhibit 5 – Yelp E-mail from J Cooper 06-24-14

Exhibit 6 – Revenue Degradation Schedule

Exhibit 7 – Certificate of Tax Lien - Nevada