

E-filing

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ADR FILED

SEP - 3 2014

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAW

DISTRICT COURT OF THE STATE OF CALIFORNIA
IN THE COUNTY OF SANTA CLARA

CV 14.03995

Andre Rossouw	)	CASE NO
Plaintiff,)	
	)	TRADEMARK INFRINGEMENT;
	)	TRADEMARK HIJACKING; INTENTIONAL
	)	INTERFERENCE FOR ECONOMIC ADVANTAGE;
VS	)	NEGLIGENT INTERFERENCE OF ECONOMIC
	)	ADVANTAGE; CALIFORNIA STATUTORY UNFAIR
	)	COMPETITION; COMMON LAW UNFAIR
Google Inc.	)	COMPETITION; CALIFORNIA STATUTORY FALSE
Eric J. Ball	)	ADVERTISING; EXTORTION; CRIMINAL
Fenwick & West)	)	THREATS TO ASSIST IN A CIVIL
	)	PROCEEDING; SECURITY LAWS VIOLATIONS;
Defendants	)	DEVIUS ACTS FOR A FAVORABLE
	)	OUTCOME.
	)	[JURY TRIAL DEMANDED]

Plaintiff alleges that:

1. Pursuant to 28 U.S.C. § 1332 Jurisdiction in this case is based on **diversity of citizenship** of the parties.
 - (a) Plaintiff is a citizen of the state of TENNESSEE.

b) Defendant one is a corporation incorporated under the laws of the State of California having its principal place of business at **1600**

Amphitheater Pkwy, Mountain View, CA. 94041 (Northern District)

Defendant two has it's place of business at **801 California Street Mountain View, CA 94041 (Northern District)**

2. The **amount of controversy** exceeds the amount of seventy five thousand dollars (\$75,000) exclusive of interest and cost.

3. **INTRA DISTRICT ASSIGNMENT:** Division to be set at **San Jose.**

This complaint comes about pursuant to:

4. California Business & Professional Code §§17200 *et seq.* and 17500 *et seq.*

5. Trademark Act of 1946, 15 U.S.C. §§1051-1127

6. Trademarks and unfair competition, §§1338(a) and 1338(b) 28 U.S.C.

7. Federal question) §1331 , 15 U.S.C. §1121 (Lanham Act), and 15 U.S.C.

8. Securities Act of 1933.

9. Extortion laws governing threats(all defendant's), 18 U.S. Code, chapter 14.

10. Supplemental jurisdiction)§1367 .

11. This Court has jurisdiction over such claims pursuant to 28 U.S.C.

EXHIBITS ATTACHED:

1. **Plaintiff proof of first use.**
2. **Plaintiff Trademark Registered**
3. **Defendant Trademark application (Google+)**
4. **TTAB DENIAL ruling on defendant Summary Judgment.**
5. **Defendant Trademark application (Google+ hangouts)**
6. **Defendant Marketing Director for opposed mark comments.**
7. **Plaintiff's mark decline since defendant's conduct described**

- herein. (keep in mind damage is also calculated for FUTURE losses)
8. ~~Plaintiff Survey Results.~~ *EXCESSIVE PAPERWORK FOR INITIAL COMPLAINT*
 9. Defendant integrating it's Social Network pronounced "Googleplus" with their existing "Youtube" video service.
 10. Public petitions against the "Googleplus/ You Tube" integration.
 11. Defendant integrating it's Social Network pronounced "Googleplus" with it's existing service "GMAIL", email service.
 12. The opposed mark "Google+" other appearances (1) (2) (3) (4) (5)
 13. Defendant's devious past (1) (2) (3) (4) (5)

Case Law And Trademark Guidelines

Witco Chemical, § 2(d) of the Lanham Act
Estee Lauder, Inc. v. The Gap, Inc., 932 F. Supp. 595(S.D.N.Y. 1996).
Franklin Mint v. Master Mfg. Co., 667 F.2d 1005, 1007 (C.C.P.A.1981)
3 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, Section 25:21 (4th ed. 1999).
Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106, 108 (TTAB 1975).
Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992),
Division of E-Systems, Inc. v. Environmental Communications Inc., 207 USPQ 443 (TTAB 1980).
Lloyd's Food Products Inc. v. Eli's Inc., 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).
T.M.E.P. § 1207.01 Likelihood of Confusion at 1207.01(b)(iii)
Google, Inc. v. Richard Wolfe Claim Number: FA0405000275419
United States Court of Appeals 961 F.2d 200: Olde Tyme Foods, Inc., Appellant, v. Roundy's, Inc., Appellee)
E.I. duPont de Nemours & Co, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973)
Fits Corporation KKSerial# 76501790
Wyeth vs Graham, Opposition # 91124967
Anchorage Assocs. v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990).
Lamson Oil Co., 6 USPQ2d 1041, 1043 (TTAB 1987).
Trademark Manual of Examining Procedure 1207.01 Likelihood of Confusion
Trademark Manual of Examining Procedure 1207.01(b)(i) Word Marks

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COMPLAINT:

11. Plaintiff adopted the trade names "GOOGABOX" and "GOOGABOX.COM" inspired by two famous POP BANDS, (**Goo-goo dolls and Matchbox 20**) and has used it continuously in commerce since around March 2007 for the service of a Social Network. (Exh. 1)

12. Plaintiff Federally Trademarked the Trade name "GOOGABOX" for the service of a Social Network in (class 045) with appropriate amendments U.S. 100 and U.S. 101 classes on the U.S Trademark roster and earned Registration December 2nd 2008. (Exh. 2)

13. Plaintiff's mark "GOOGABOX" has been in use since March 2007 for the service of a Social Network without pause.

14. Defendant infringed upon plaintiff's mark by creating a mark "GOOGLE+", pronounced and written as "GOOGLEPLUS" and "GOOGLE PLUS" respectively all over the internet, and for the exact same service namely a Social Network. (Exh. 3)

15. Pronounced "Googleplus/ Googabox", the two marks are claimed by plaintiff to be confusingly too similar to both representing the exact same service. Plaintiff claims it's because of the letter string "GOOG", as well as the marks having THE EXACT SAME SYLLABLES, as well as the "a" sound in the middle of both marks as well as the "s" SOUND on the end of both marks, creating a too much alike SAME pronunciation, appearance and Commercial impression for the exact same service. *Where the goods are identical, "the degree of similarity [between the marks] necessary to support a conclusion of likely confusion declines."* *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), cert. denied 506 U.S. 1034 (1992); *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980).

[It MUST be noted here that defendant has another Social Network trading by the name of "ORKUT" they PURCHASED from "ORKUT LLC" in 2006 and still in use today that does NOT contain the "GOOG" letter string.

16. Defendant created the opposed mark four years after the Registration of plaintiff's mark, promoting it aggressively with huge amounts of resources and funds, creating an "adverse effect" to plaintiff's mark by "HIJACKING and REVERSING plaintiff's mark (that was intended as original for a Social Network), to cause plaintiff's mark to appear as part of defendant's mark or as an intentional copy of the defendant's mark.

17. When defendant's application with the Trademark Office was published for opposition, plaintiff immediately requested defendant to Cease and Desist from it's act of infringement, and has given defendant actual notice of plaintiff's Trade name and rights in his Trade name and defendant has refused to cease such act.

18. Plaintiff filed an opposition with the TRADEMARK TRIAL AND APPEALS BOARD against said mark January 25th 2012. The TTAB then denied a Motion to dismiss by defendant as well as denied a Summary Judgment filed by defendant around two years after proceedings commenced (Exh 4).

18. Defendant claimed alleged "affirmative defenses" however The TTAB ruled that the [re *E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973)]. is favorable to plaintiff. Defendant in lieu of this ruling is still refusing to admit to the viability of plaintiff's complaints and refuses to compensate plaintiff for damages, past, present and future. According to defendant's counsel

statement, Attorneys employed at the Trademark Office are more qualified than three panel Judges of the TTAB. This statement was made by defendant's counsel as he argued the Trademark Office allowed the opposed mark to move to publication in the Gazette for opposition. This argument is nonsensical, as Trademark attorneys for the Trademark Office do NOT conduct intricate investigation. This is why they PUBLISH marks for opposition. Defendant's counsel is grabbing at straws to overcome the opposition by attempting to DISSUADE plaintiff.

19. The TTAB proceeding is ongoing, however Federal Court supersedes the TTAB as to the extend of charges in this instance as well as the TTAB does not award damages should they ultimately rule in favor of plaintiff. Therefore plaintiff is proceeding to this Court rather sooner than later to claim damages and pray for preliminary injunction.

COUNT ONE (Trade Name Infringement)

20. Plaintiff hereby re-alleges, as if fully set forth, the

allegations of paragraphs eleven through nineteen. *"The degree of similarity between two marks is generally determined by comparing the overall impression created by the marks, their pronunciation, and the meanings of their words and pictorial representations (i.e., the "sound, sight and meaning" trilogy). The mark[s] should be compared with respect to similarity of appearance, pronunciation, verbal translation of designs (drawings and pictures), and suggestion (of the marks). 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, Section 25:21 (4th ed. 1999).*

21. Trademark rules specify, Trademarks do not have to be exactly alike for trademark law to apply. (see paragraph 15)

22. When both marks represent the exact same service the DEGREE OF similarity of the marks necessary to constitute confusion, DECLINES. (see paragraph 15) *(In Fits Corporation KK Serial No. 76501790) The TTAB found LOVE PASSPORT and PASSPORT confusingly similar for perfume, (same product/ service) thus the TTAB rejected defendant's argument regarding the differing connotations of the marks. Note: (In this case defendant is ignoring*

the letter string "GOOG" as well as the overall appearance and pronunciation "Googleplus/ Googabox" for the EXACT same service and rather "dissect" the marks and focuses on the differing connotations

"plus" and "box" *Also see (Wyeth vs Graham, opposition # 91124967) (October 24, 2005) [not citing] In finding confusion likely, the TTAB provided an analysis of the similarities between the marks ADVIL for analgesics and ADVALIFE for vitamins, minerals, and nutritional supplements. (notice the different spellings. "ADVIL/ ADVALIFE" Plaintiff notes: It seems the TTAB clearly went by pronunciation as well as overall appearance, disregarding the connotation of "LIFE". Here we are dealing with pronounced and presented "Googleplus/ Googabox"*

COUNT TWO (Trademark Hijacking by devious acts)

23. Defendant successfully hijacked plaintiff's mark and confused it's origin, by making it appear as though plaintiff's mark is now either part of defendant OR a copy of defendant's mark. In other words, changing plaintiff's unique idea to that of the appearance of copying defendant. Defendant accomplished this by knowingly and willfully disregarded plaintiff's mark by aggressively promoting their newly created mark using exorbitant amounts of monies and resources, causing their new mark to achieve virtual "overnight" fame, regardless of their mark being opposed. Defendant knew well that "overnight fame" of their opposed mark would have a severe adverse effect to plaintiff's mark, KNOWING their mark is opposed. Defendant's marketing strategies also included false advertising, threats to their members of their other services further discussed in COUNT SIX. Plaintiff was at a slower pace developing success for his mark AND made defendant aware of this.

Plaintiff was on the verge of initiating a new phase following viable growth of membership sign ups of 300 per day. Although many of these were bloggers and automated bloggers, it was a sure sign

that keeping the site in operation has paid off. It so happened that defendant is worth an estimated \$350 Billion with vast internet resources and thus exercising devious monopolizing tactics halting plaintiff's mark and site in it's tracks, preventing it from further success and erasing all past efforts of plaintiff's invested strive. This as well constitutes unfair competition.

**COUNT THREE (Intentional Interference
For Economic Advantage)**

24. Plaintiff re-alleges paragraphs twenty three. These actions by defendant were intentional, knowingly and recklessly without regard of the effect on plaintiff's economic strive. Defendant itself, is opposing or has opposed marks on the Trademark roster with less similar elements than plaintiff's mark, which should demonstrate that defendant itself should agree with plaintiff's complaint herein of confusingly similar marks. (see defendant numerous Trademark oppositions on the Registrar which is too numerous to include herein) However in this instance, they choose to disagree for a favorable outcome.

**COUNT FOUR (Negligent Interference
For Economic Advantage)**

25. Defendant claimed during Discovery in the TTAB proceeding they did not search for similar marks for the service of a Social Network prior to using and applying their new mark. Although not "required" to do so by law, the TTAB advocates that ALL entities should search for similar marks BEFORE using a newly created mark. This would be a responsible action. However, even AFTER defendant was made aware by

Cease and Desist defendant STILL decided to continue promoting their new mark vehemently and aggressively, creating overnight fame for the mark. This should be deemed NEGLIGENT, intentional and reckless.

COUNT FIVE (Unfair Competition)

26. Defendant created a too similar mark to that of plaintiff by arguing they are entitled to use their "house mark" in this

instance. Plaintiff disagrees. Trademark rules advocates the following: See *T.M.E.P. § 1207.01 Likelihood of Confusion at 1207.01(b)(iii) Comparing Marks That Contain Additional Matter, It is a general rule that likelihood of confusion is not avoided between otherwise confusingly similar marks merely by adding or deleting a "house" mark.*

Furthermore, defendant does not have any right to the letter string "GOOG" to prevent plaintiff from the rights of his mark "GOOGABOX" especially since plaintiff has used this letter string in his mark since 2007 and defendant had NO Social Networks with the letter string "GOOG" BEFORE plaintiff's mark was REGISTERED.

27. Furthermore, there are no "automatic" rights for a "housemark" famous or not without investigation. Exh 4). It is a known fact that attorneys for the Trademark Office do not apply intricate investigation, exactly why new applications are PUBLISHED in the official Gazette to make available for opposers. Defendant implies that a Trademark attorney is more intricate on it's investigation than the TTAB. This is nonsensical. There is also not "automatic" rights to defendant for a "part" or "portion" of their "housemark, in this case the letter string "GOOG". Defendant specifically of this fact filed for Registration protection for their newly created mark. To allow defendant's "housemark" for this class of goods

to supersede that of plaintiff's mark, would certainly constitute "UNFAIR COMPETITION" especially keeping in mind defendant's extreme financial advantage. Plaintiff should have first right of use of the letter string "GOOG" for this service as plaintiff was FIRST as a Social Network specifically with the letter string "GOOG".

28. Furthermore, It will be shown, that Defendant engaged in false advertizing (see paragraph 29 below)

COUNT SIX (California Statutory False Advertising, Extortion, Fraud, Unfair Business Practices, Securities Law Violations)

29. Plaintiff charges that defendant engaged in false advertizing inflating false figures on the success of their new service represented by the opposed mark by fraudulent action, using "trickery", and "smoke and mirrors" to create a false image of their success with the new service represented by the opposed mark. This directly affected plaintiff's mark as well as the PUBLIC. Defendant created profiles for unsuspecting members of their "other" services and advertised those as members of their new service presented by the opposed mark. Plaintiff also counts daily "internet traffic" of their "other" services, advertising that "traffic" as "traffic" for their new service presented by the opposed mark.

(Exh. 6,9,10,11) The "new" service referred to here is in fact a Social Network that has nothing to do with defendant's "other" services. However, defendant is integrating their Social Network into their "other" services specifically to serve the purpose of creating false readings of membership and traffic for their Social

Network. Defendant then is broadcasting these false figures in an effort to overcome competition such as Facebook and Googabox. These figures defendant publicly "brags about" when in fact defendant obtains the figures fraudulently. The mark representing their Social Network service is the mark being opposed by plaintiff. These fraudulent figures also assists defendant in monetary gain such as, when a Company introduces a new service and then "brags" about it's success, certainly causes first, the public to want to be part of the new "success", and second, causes defendant's shares to be more attractive and gain price. This in itself constitutes a violation of the Securities Act of the United States which specifically states that the goal of the Securities law is to require issuers to fully disclose all material information that a reasonable shareholder would require, in order to make up his or her mind about the potential investment. Even though defendant admitted their fraudulent conduct, it does NOT take away from the act. The defendant's FRAUDULANT actions has been and still is, causing UNFAIR BUSINESS PRACTICE.

[The above topic is thoroughly presented in plaintiffs MOTION FOR A RESTRAINING ORDER AND PRELIMINARY INJUNCTION attached hereto].

COUNT SEVEN(defendant Eric J. Ball) (Criminal Threats To Assist In a Civil Proceeding)

30. That this defendant is very much a part of this complaint and should amalgamate in this complaint. First and foremost because plaintiff would want the same jury to review evidence on both defendants simultaneous as this injury to plaintiff occurred also

as a result of defendant Google Inc. infringement on plaintiff's mark. Second it is counsel's duty to inform their clients about the course of the case, including what arguments counsel presented plaintiff with during the course of Discovery. Plaintiff assumes that defendant Google Inc. was indeed informed by Counsel and decisively KEPT their counsel in spite of this incident. Also, plaintiff informed Google Inc. of this incident. Plaintiff forwarded all correspondence between himself and counsel to defendant. Plaintiff will testify that: Defendant's counsel, Eric J. Ball, on numerous occasions during the TTAB proceeding, attempted to dissuade plaintiff from proceeding with the opposition by denying the evidence presented to him without conferring with his client first. Defendant also threatened that plaintiff faces criminal charges as well as charging that plaintiff has "ulterior motives" opposing his client Google Inc.. Defendant's counsel stated that plaintiff's site was not adhering to privacy laws of California and that plaintiff faces criminal charges from the state. Counsel went further stating plaintiff's opposition is unlawful because of this "alleged violation". He further attempted to explain the consequences plaintiff may face if plaintiff continues the opposition because of this "alleged violation". Plaintiff disagreed on the "privacy law" issue charge from defendant's counsel. This conduct by counsel is unlawful. *A lawyer shall not present, participate in presenting or threaten to present criminal*

charges solely to obtain an advantage in a civil matter. [The Rules of Professional Conduct] Plaintiff was a "pro se" litigant during TTAB proceedings. Counsel, knowing this, clearly conducted an unlawful action in an attempt to dissuade plaintiff from proceeding with the opposition against his client.

COUNT EIGHT (Devious Acts For a Favorable Outcome)

31. Apart from defendant denying the pronounciation of the opposed mark being "Googleplus" as well as denying it's a "continuous pronounciation" as well as denying they monitor new applications with the Trademark Office, as well as claiming in one breath the opposed mark is "arbitrary" then in another breath claim the opposed mark as "descriptive", depending on the circumstance faced with, defendant is also attempting to overcome this opposition against the opposed mark pronounced "Googleplus" by attempting to Register another mark for the same classes as the opposed mark namely "Google+ Hangouts" (Exh.5) pronounced "Googleplus hangouts". Plaintiff asserts this mark in essence is the SAME mark being opposed by plaintiff currently with the addition of a "descriptive" connotation. This mark was filed for Registration application August 15th 2012, eight months after the opposition on the first mark commenced. Counsel for defendant stated, that plaintiff should have opposed this mark as well because a jury will certainly ask why plaintiff opposed the first mark and not the latter and thus plaintiff will loose his case. Plaintiff indeed DID sent a letter of protest on the latter mark as well as informing defendant's counsel of this as well as

asking the Registrar Office for an extension to oppose. However after consideration, plaintiff felt the letter of protest should suffice as both marks should be placed under the SAME proceeding. Defendant filed this essentially SAME mark KNOWING they were already being opposed for the first mark. The descriptive connotation to the second mark does NOT suffice in altering the opposed mark sufficiently to allow for non confusion.

32. Plaintiff asserts this was intentional conduct by defendant to overcome the first opposition, firstly by attempting to dissuade plaintiff from opposing altogether by placing the burden of another opposition to be filed on defendant, and secondly relying on the Trademark Office attorney to allow the mark for Registration and being it essentially the same mark, would call into question plaintiff's opposition on the first mark. This is exactly how defense counsel then stated to plaintiff that he would "lose" his case because of the 2nd mark not being opposed as well. This is devious and unscrupulous on the part of the defendant to say the least.

33. Evidence shows that this defendant has faced numerous charges of unlawful conduct in the past and was fined by the Government as well. (Exh. 13) It seems this defendant, judging by their past conduct, believes they are "above the law" and because of their status "owns" the law and can do as they please. This is yet another case of such conduct of disregard and thought.

ALLEGATION OF DAMAGE

34. By reason of defendant's acts alleged herein, plaintiff has and will suffer ongoing damage to its business, reputation and good will and the loss of sales and profits plaintiff would have made but for defendant's acts. Plaintiff's member sign ups dramatically declined since the unfair and disregard actions of defendant. (Exh. 7) Future losses is calculated in the millions of dollars due to defendants unscrupulous and disregard actions towards plaintiff and the stall of his business for the last two and a half years.

35. Defendant threatens to continue doing the acts complained of herein, and unless restrained and enjoined, will continue to do so, mounting to plaintiff's irreparable damage and continuing to commit unlawful acts as described herein against the people of California as well as all the people of the United States. It would be difficult to ascertain the amount of compensation which could afford plaintiff adequate relief for such continuing acts, and a multiplicity of judicial proceedings would be required.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

36. That this Court FIRST AND FOREMOST grant a MOTION for temporary RESTRAINING ORDER and preliminary Injunction attached hereto as part of this complaint to force defendant to Cease.

38. That defendant be required to account to plaintiff for any and all profits derived by defendant from the use of the opposed marks herein for calculation of damages sustained by plaintiff by reason of said acts CHARGED and COMPLAINED of herein.

39. That this Court award punitive damages against defendant and in favor of plaintiff in the sum of three times the profits of defendant of the opposed mark to date and/ or calculated damages past, present and future sustained by plaintiff by reason of defendant's malicious and willful conduct rendering plaintiff in an extreme oppressed reefed condition.

40. That costs of this action be awarded plaintiff.


41. That defendant's knowingly, willfull and reckless be seized by this Court immediately because even though defendant was made aware by Cease and Desist and even after the TTAB denied their Summary Judgment, defendant still continued with the conduct complained of herein.

42. That this is an exceptional case and that plaintiff be awarded reasonable attorney and/ or assistance fees from an attorney.

43. That this Court grant such other and further relief as it shall deem just under the laws stated herein as well as any other applicable law deemed appropriate by this Court.

44. Plaintiff nevertheless demands a Jury Trial.

So presented this 26th day of August 2014.



Plaintiff (Pro Se)

DISTRICT COURT OF THE STATE OF CALIFORNIA
IN THE COUNTY OF SANTA CLARA

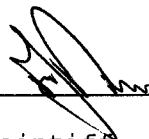
Andre Rossouw)
 Plaintiff,)
)
 VS)
)
Google Inc.)
 Defendant.)

CASE NO. _____

DECLARATION OR AFFIDAVIT OF PETITIONER ANDRE ROSSOUW
IN SUPPORT OF PETITION FILED IN THIS COURT

I, Andre Rossouw hereby declare under penalty of perjury that the facts on the COMPLAINT AGAINST GOOGLE INC. are true and correct. That I am the plaintiff in this case and that I will testify to to ALL statements AND EXHIBITS attached to this COMPLAINT as genuine, true and correct. That I make these statements under oath and all applicable laws of the State Of California and Federal Law.

So stated UNDER PENALTY OF PERJURY this 26th Aug. day of 2014



Plaintiff

General Information

Court	United States District Court for the Northern District of California; United States District Court for the Northern District of California
Nature of Suit	Property Rights - Trademark[840]
Docket Number	4:14-cv-03995