

MAR. 16. 2005 5:44PM

FBC&P-LAW

NO. 6306 P. 3

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Attorney for Plaintiff
FAA BEVERLY HILLS, INC., dba
BEVERLY HILLS BMW

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAR 07 2005

John A. Clarke, Executive Officer/Clerk
By SUE GABB, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
WEST LOS ANGELES DIVISION

FAA BEVERLY HILLS, INC., dba
BEVERLY HILLS BMW,

Plaintiff,

v.

MARY CUMMINGS, an individual;
REGISTER.COM, INC., and DOES 1
through 20, inclusive,

Defendants.

Case No.:

BC329942

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES

Date:
Time:
Dept.:

Plaintiff alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff Beverly Hills BMW ("Beverly Hills BMW" or "Plaintiff") is an entity located in the County of Los Angeles, California.
2. Defendant Mary Cummings ("Ms. Cummings") is an individual domiciled in the County of Los Angeles, California.
3. Defendant Register.com, Inc. ("Register.com") is a foreign corporation located in New York County, New York. Register.com is named as a party hereto for the sole purpose of

MAR. 16. 2005 5:44PM

FBC&P-LAW

NO. 6306 P. 4

1 effectuating the remedy of transfer of ownership of the domain name and to change the
2 registration.

3 4. Jurisdiction is proper pursuant to Cal. Code Civ. Proc. §410.10 and venue is
4 proper in Los Angeles County as the acts alleged herein took place in the County of Los Angeles,
5 State of California.

6 FACTUAL ALLEGATIONS

7 5. Steven Waddington ("Mr. Waddington") is a former employee and former
8 manager of Beverly Hills BMW.

9 6. During his employment with Beverly Hills BMW, the company asked Mr.
10 Waddington to register the domain name of "beverlyhillsbmw.com" (the "domain name"), which
11 domain name is the de facto and the legal property of Beverly Hills BMW. California Labor
12 Code § 2860.

13 7. On or about October 24, 1999, while employed by Beverly Hills BMW and on
14 company time, Mr. Waddington made arrangements to register the domain name of Beverly Hills
15 BMW to his girlfriend, Mary Cummings.

16 8. The domain name is registered on Register.com at mary.ccbeverlyhillsbmw3-dom,
17 359 North Sweetzer Avenue, Los Angeles, California 90048, administrative contact: (323) 651-
18 1335, mmmmary@earthlink.net.

19 9. On June 25, 2003, Beverly Hills BMW terminated Mr. Waddington's employment
20 with the company.

21 10. Since the date Beverly Hills BMW terminated Mr. Waddington's employment
22 with the company, Beverly Hills BMW repeatedly has requested from both Mr. Waddington and
23 Ms. Cummings that they transfer the ownership of the Beverly Hills BMW domain name from
24 Ms. Cummings to Beverly Hills BMW.

25 11. As recently as January 2005, Mr. Waddington and Ms. Cummings refused to
26 transfer the domain name from Ms. Cummings' possession to Beverly Hills BMW and demand
27 \$2500.00 in exchange for the transfer of the domain name, which was Beverly Hills BMW's
28 property.

MAR. 16. 2005 5:44PM

FBC&P-LAW

NO. 6306 P. 5

1 12. Following this \$2500.00 demand, on February 1, 2005, counsel for Beverly Hills
2 BMW sent a demand letter to both Mr. Waddington and Ms. Cummings requesting that they
3 immediately transfer the ownership of the domain name to Beverly Hills BMW within ten days
4 from the date of the letter.

5 13. Between February 1 and February 10, 2005, counsel for Beverly Hills BMW
6 spoke with Ms. Cummings via telephone.

7 14. In this conversation, Ms. Cummings again refused to execute the documentation
8 to transfer the ownership of the domain name to Beverly Hills BMW.

9 15. Also in this conversation, Ms. Cummings stated that she had allegedly spent
10 personal funds in maintaining the website at issue.

11 16. On February 10, 2005, counsel for Beverly Hills BMW sent another letter to Mr.
12 Waddington and Ms. Cummings in which counsel recounted the conversation with Ms.
13 Cummings and reiterated Beverly Hills BMW's request to transfer ownership of the domain name
14 to Beverly Hills BMW.

15 17. In this February 10, 2005 letter, counsel for Beverly Hills BMW explained that
16 Beverly Hills BMW would reimburse Ms. Cummings for the out-of-pocket expenses that she
17 allegedly incurred in maintaining the contested domain name if she provided receipts of her
18 alleged expenditures and transferred the domain name to Beverly Hills BMW.

19 18. To date, neither Beverly Hills BMW nor its counsel have been provided receipts
20 of Ms. Cummings' alleged expenditures.

21 19. To date, Ms. Cummings continues to have the domain name registered to her and
22 refuses to transfer ownership of the domain name to Beverly Hills BMW.

23 **FIRST CAUSE OF ACTION**
24 **VIOLATION OF CALIFORNIA'S CYBER PIRACY STATUTE**

25 20. Plaintiff realleges and incorporates herein by reference all of the allegations of
26 paragraphs 1 through 19 of this Complaint, as though set forth fully herein.

27 21. Defendants' conduct as alleged in this complaint constitutes cyber piracy in
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MAR. 16. 2005 5:44PM

FBC&P-LAW

NO. 6306 P. 6

1 violation of California's Cyber Piracy Statute, Business and Professions Code sections 17525, *et*
2 *seq.* As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an exact
3 amount to be proven at trial.

4 22. By engaging in the above-described wrongful conduct, Defendants have acted in
5 bad faith with an intent to profit from a legal name by using a domain name that is identical or
6 confusingly similar to the legal name and trying to sell it to Beverly Hills BMW, the owner of the
7 legal name. Accordingly, Beverly Hills BMW is entitled to a financial award against the
8 individually-named Defendants in an amount to be determined at trial. Plaintiff is also entitled
9 to injunctive relief prohibiting Defendants from further violating California's Cyber Piracy
10 Statute and an order directing Defendants to transfer ownership of the domain name to Beverly
11 Hills BMW. Business and Professions Code §§ 17526 and 17528.5. Plaintiff is also entitled to
12 recover attorneys fees and costs as set forth in the Government Code.

13 Wherefore, Plaintiff prays for Judgment against Defendants as set forth in the Prayer for
14 Relief.

15 **SECOND CAUSE OF ACTION**
16 **CONVERSION**

17 23. Plaintiff realleges and incorporates herein by reference all of the allegations of
18 paragraphs 1 through 22 of this Complaint, as though set forth fully herein.

19 24. At all time pertinent to this complaint, Beverly Hills BMW was and currently is
20 the owner and entitled to immediate possession of the domain name.

21 25. Defendants' conduct as alleged in this complaint constitutes conversion under
22 California Civil Code section 1712 *et seq.* As a result of Defendants' maintaining in their
23 possession Beverly Hills BMW's domain name for a period of over five years, Plaintiff has been
24 damaged in an amount to be proven at trial. Accordingly, Plaintiff is entitled to an award of the
25 value of the property at the time of the conversion with interest from that time and a fair
26 compensation for the time and money expended in pursuit of recovering its domain name. Cal.
27 Civ. Code § 3336. Plaintiff is entitled to injunctive relief in the form of prohibiting further use
28 of the domain name by Defendants' and transferring ownership of the domain name to its proper

MAR. 16. 2005 5:45PM

FBC&P-LAW

NO. 6306 P. 7

1 owner, Beverly Hills BMW. Plaintiff is also entitled to recover attorneys fees and costs as set
2 forth in the Government Code.

3 Wherefore, Plaintiff prays for Judgment against Defendant as set forth in the Prayer for
4 Relief.

5 **THIRD CAUSE OF ACTION**
6 **TRESPASS TO CHATTELS**

7 26. Plaintiff realleges and incorporates herein by reference all of the allegations of
8 paragraphs 1 through 25 of this Complaint, as though set forth fully herein.

9 27. At all time pertinent to this complaint, Beverly Hills BMW was and currently is
10 the owner and entitled to immediate possession of the domain name.

11 28. Alternatively, Defendants' conduct as alleged in this complaint constitutes trespass
12 to chattels. Defendants' wrongful taking of Beverly Hills BMW's domain name for a period of
13 over five years proximately caused Beverly Hills BMW's economic injury. Plaintiff has been
14 damaged in an amount to be proven at trial. Accordingly, Plaintiff is entitled to an award of the
15 actual damages it suffered by reason of the loss of use of its domain name. Plaintiff is entitled
16 to injunctive relief in the form of prohibiting further use of the domain name by Defendants' and
17 transferring ownership of the domain name to its proper owner, Beverly Hills BMW. Plaintiff
18 is also entitled to recover attorneys fees and costs as set forth in the Government Code.

19 Wherefore, Plaintiff prays for Judgment against Defendant as set forth in the Prayer for
20 Relief.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff requests judgment as follows:

- 23 1. For an injunction prohibiting Defendants from continuing to violate California's
24 Cyber Piracy Statute and for an order requiring Defendants to execute the necessary documents
25 to transfer ownership of the domain name to Beverly Hills BMW;
- 26 2. For damages in an amount to be determined at trial;
- 27 3. For the value of the property at the time of Defendants' conversion with interest

MAR. 16. 2005 5:45PM

FBC&P-LAW

NO. 6306 P. 8

1 from that date and fair compensation to Beverly Hills BMW for the time and money expended
2 in pursuit of recovering its domain name;

3 4. For the actual damages Beverly Hills BMW suffered by reason of the loss of use
4 of its domain name;

5 5. For reasonable attorneys fees and costs according to statute and law;

6 6. For interest at the legal rate, according to proof;

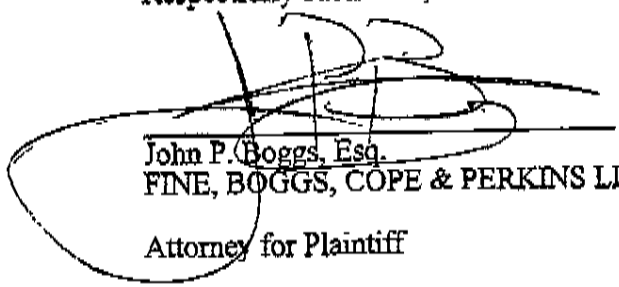
7 7. For an injunction ordering Register.com to transfer ownership of the domain name
8 beverlyhillsbmw.com to FAA Beverly Hills, Inc.; and

9 8. For any and all further equitable relief the Court deems just and proper.

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Dated: March 4, 2005

Respectfully submitted,



John P. Boggs, Esq.
FINE, BOGGS, COPE & PERKINS LLP
Attorney for Plaintiff