

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

VIDEO PROFESSOR, INC., a Colorado corporation,

Plaintiff,

v.

CAMERON MONTGOMERY,

Defendant.

COMPLAINT

Plaintiff Video Professor, Inc. ("VPI") for its complaint against Defendant Cameron Montgomery, states as follows:

I. NATURE OF PROCEEDINGS

This is an action at law and in equity to remedy acts of, *inter alia*, trademark infringement, false designation of origin and misrepresentation in commerce, deceptive trade practices, business disparagement, and tortious interference with business opportunities, all caused by Defendant's unauthorized Internet use of VPI's distinctive, strong and exclusive mark of "Video Professor," and disparagement of VPI and its products knowingly, willfully, and intentionally undertaken by Defendant for the purpose of usurping the value and goodwill embodied by VPI's mark and disrupting VPI's business.

VPI seeks damages, an accounting, the imposition of constructive trust upon Defendant's illegal profits, the entry of a permanent injunction, and its costs and attorney's fees.

II. PARTIES

1. VPI is a Colorado corporation with its principal place of business in Lakewood, Colorado.
2. Upon information and belief, Defendant Cameron is an individual who resides at 4455 South 700 East #206, Murray, Utah 84107

III. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over VPI's claims pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, 28 U.S.C. § 1338(a) and (b), and 28 U.S.C. § 1331.
4. This Court has supplemental jurisdiction over VPI's claims arising under the laws of Colorado and the common law pursuant to 28 U.S.C. § 1367(a) because these claims are so related to VPI's claims under federal law that they form a part of the same case or controversy and derive from a common nucleus of operative fact.
5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b) because the acts of infringement, disparagement and other wrongful conduct, and a substantial part of the events or omissions giving rise to the claims, occurred in the District of Colorado.

IV. VPI's BUSINESS AND INTELLECTUAL PROPERTY RIGHTS

6. VPI has been in the business of developing, marketing, and distributing for sale to retailers and the general public computer learning products including video tapes and CD-ROMs for over 15 years.
7. VPI has continuously used the name VIDEO PROFESSOR in connection with the marketing and promotion of its business and products since at least as early as April 1987.

8. Since 1987, VPI has invested millions of dollars in advertising, marketing and promoting the VIDEO PROFESSOR brand and designated products, including the running of television advertisements and infomercials throughout the United States, and advertisement and marketing through the Internet via its website located at "videoprofessor.com" and other forms of Internet advertising.

9. Millions of VPI's VIDEO PROFESSOR-branded products have been distributed and are used worldwide. VPI is the worldwide leader in the computer learning products industry.

10. The VIDEO PROFESSOR mark, as used in connection with VPI's business and the sale of its products, is world-famous, inherently distinctive, and as a result of VPI's extensive use, advertising and promotional efforts as described above, the VIDEO PROFESSOR mark is well-known and is recognized by customers around the world as signifying and representing VPI's business and high quality products.

11. On August 29, 1989, VPI was duly issued United States Trademark Registration Number 1566793 for the trademark words "VIDEO PROFESSOR" used in connection with a design, and on January 2, 1990, United States Trademark Registration Number 1574578 for the trademark words "VIDEO PROFESSOR."

12. As a result of the advertising and expenditures previously described, VPI has established considerable goodwill in the VIDEO PROFESSOR trademark. The VIDEO PROFESSOR trademark is an invaluable asset of substantial and inestimable worth to VPI.

13. Video Professor has a long-established presence on the Internet. Currently, VPI uses, among others, the domain name "videoprofessor.com" as a link to its Website. Through its

Website, VPI provides important information to its customers and potential customers regarding VPI's products, as well as an interactive means by which its customers and potential customers may order its products online. VPI's Website advertising and sales is a significant and rapidly expanding portion of its business.

V. DEFENDANT'S BUSINESS

14. VPI has conducted a Google search of its Trademarks by "Googling" the words "Video Professor." The search results of this search list a Web site having the domain name "RipOff-Review.org/r/Video-Professor" as a "Sponsored Link."

15. Upon information and belief, Montgomery is the registrar and owner of the domain name RipOff-Review.org/r/Video-Professor.

16. A company obtains a sponsored link through Google by compensating Google for displaying the company's advertisement as one of the search results listed by Google when a person conducts an internet search query and enters certain keywords selected by the company.

17. Montgomery has paid Google a fee for triggering its ad when a person "Googles" the trademarked name "Video Professor."

18. By doing so, Montgomery intends that traffic initially seeking the Video Professor Web site will be diverted to RipOff-Review.org/r/Video-Professor.

19. To further entice traffic diversions to his Web site, Montgomery's ad reads: "NEW VIDEO SCAM RipOff-Review.org/r/Video-Professor Stop! Dont [sic] fall for this Scam. Read this Report before you Buy." See Exhibit A.

20. Clicking on Montgomery's link displays a site entitled:

Updated February 2009: Urgent consumer report from Dr. William Tomlin

**“Online Fraud Investigator Dr. William J. Tomlin
Reveals the Shocking Truth You MUST Know About
Video Professor
Program...”**

From Dr. William J. Tomlin
Investigator
Ripoff-Review.org

345 18th Street, SW,
2nd Floor Washington, DC 20037

See Exhibit B.

21. This Web site purports to present an unbiased report regarding the illegitimacy of VPI's products.

22. In the report, Dr. Tomlin states that he himself “was scammed by the Video Professor.

23. The truth is that Video Professor has never sold any of its products to a William Tomlin or William J. Tomlin.

24. Similarly, there is no Dr. William J. Tomlin located at the 345 18th Street address given by “Dr. Tomlin” as shown above.

25. In fact, there is no such address in Washington, D.C.

26. Following further libelous and disparaging comments about VPI, the Web site introduces its “Top 3 Work at Home Certified™ Programs,” suggesting these programs to the public over the products of VPI.

27. For each of these three programs, the Web site provides glowing reviews of the product and rates each with its “Five Star Rating.”

28. The Web site encourages readers to visit the separately listed Web sites for each of the three top rated sites and provides a link to each.

29. The first pages of each of the linked sites are attached hereto as **Exhibits C, D and E**.

30. An investigation by VPI indicates that, and upon information and belief, each of the three top rated sites are commonly owned by Montgomery.

31. Upon information and belief, Dr. William J. Tomlin is a fictitious name and person.

32. Upon information and belief, the Montgomery is the author of the statements attributed to "Dr. William J. Tomlin."

33. No where does the Tomlin or the RipOff-Review.org/r/**Video-Professor** site disclose to the consumer that the sites recommends as "five star" programs are under common control/ownership with RipOff-Review.org/r/**Video-Professor**.

34. If a consumer clicks on the RipOff-Review.org/r/**Video-Professor**, the consumer is exposed to what appears to be an unbiased, unaffiliated site highly critical of VPI.

35. Based on Defendants' failure to disclose the common control/ownership that exists between the sites, a consumer is unaware that the owners of the RipOff-Review.org/r/**Video-Professor** site and the three highly recommended sites are one in the same.

36. In fact, unbeknownst to the consumer, the RipOff-Review.org/r/**Video-Professor** site is a commercial ad site for Montgomery's own competing products.

37. The injuries complained of herein are attended by circumstances of fraud, malice, and willful and wanton conduct.

FIRST CLAIM FOR RELIEF
(False designation of origin and false representation (15 U.S.C. § 1125(a))

38. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

39. The Defendant's activities constitute false designation of origin, false descriptions and representations, and false advertising in commerce in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), because they are likely to mislead the trade and public into believing that Defendant's products originate from, are affiliated with, or are sponsored, authorized, approved or sanctioned by VPI, and because Defendant misrepresents the nature, characteristics, and qualities of VPI's goods and commercial activities in connection with the commercial advertising and promotion of his products.

40. The Defendant's acts of false designation of origin, false representation, and false advertising have caused VPI to sustain monetary damage, loss, and injury, in an amount to be determined at the time of trial.

41. The Defendant has engaged in and continues to engage in these activities knowingly, willfully maliciously and deliberately, so as to justify the assessment of exemplary damages against them, in an amount to be determined at the time of trial.

42. The Defendant's acts of false designation of origin, false representation, and false advertising, unless enjoined by this Court, will continue to cause VPI to sustain irreparable damage, loss, and injury, for which VPI has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
(Trademark Infringement (15 U.S.C. § 1125(a))

43. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

44. The VIDEO PROFESSOR trademark is inherently distinctive and has acquired secondary meaning. The public associates the VIDEO PROFESSOR trademark exclusively with VPI's products and services. This is a result of the VIDEO PROFESSOR trademark's inherent distinctiveness and of distinctiveness acquired through extensive advertising, sales, and use in commerce throughout the world in connection with VPI's computer learning products bearing or using the VIDEO PROFESSOR trademark.

45. By Defendant's unauthorized registration, use, and/or claim of ownership of the VIDEO PROFESSOR trademark, Defendant has, without VPI's consent, used and/or is using in commerce a reproduction, counterfeit, copy, or colorable imitation of the VIDEO PROFESSOR trademark. Defendant's actions are likely to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. § 1114(1).

46. By committing the acts alleged herein, Defendant has intentionally, knowingly, maliciously, and willfully infringed the VIDEO PROFESSOR trademark.

47. Because of Defendant's infringement, VPI has been irreparably harmed in its business. Moreover, VPI will continue to suffer irreparable harm unless Defendant is restrained from infringing the VIDEO PROFESSOR trademark.

THIRD CLAIM FOR RELIEF
(Common Law Trademark and Trade Name Infringement)

48. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

49. VIDEO PROFESSOR is a trademark and trade name belonging to VPI. VPI has used this mark continuously since at least 1987 and its use is prior to that of the Defendant's use of the VP Domain Names.

50. The Defendant's activities have caused and are likely to continue to cause confusion between the Defendant and/or his products and VPI and/or its products, and such unlawful activities infringe the valuable common law trademark and other rights of VPI in its VIDEO PROFESSOR mark. The Defendant's actions, as alleged herein, misrepresent the nature characteristics or qualities of his goods or commercial activities.

51. The acts and conduct of the Defendant, as alleged herein, constitute the infringement of VPI's common law rights in its trademark and trade name, and an effort to misappropriate VPI's trademark and trade name.

52. The Defendant's aforesaid acts have caused VPI to sustain monetary damage, loss and injury, in an amount to be determined at the time of trial.

53. The Defendant has engaged and continues to engage in these activities knowingly, willfully, maliciously and deliberately, so as to justify the assessment of exemplary damages against them, in an amount to be determined at the time of trial.

54. The Defendant's aforesaid acts, unless enjoined by this Court, will continue to cause VPI to sustain irreparable damage, loss and injury, for which VPI has no adequate remedy at law.

**FOURTH CLAIM FOR RELIEF
(Commercial Disparagement)**

55. VPI incorporates all allegations of this Complaint as if fully set forth herein.

56. The RipOff-Review.org/r/**Video-Professor** site is replete with disparaging statements concerning the products and services of VPI.

57. Defendant published or caused to be published the disparaging statements over the Internet with the intent to harm VPI's interest or with knowledge that harm would inevitably result.

58. At the time of publication, Defendant knew that the statements were false or the statements were made with reckless disregard as to whether they were false or not.

59. Defendant's acts of commercial disparagement have caused VPI to sustain monetary damage, loss, and injury, in an amount to be determined at the time of trial.

60. Defendant has engaged in and continue to engage in these activities knowingly, willfully maliciously and deliberately, so as to justify the assessment of exemplary damages against them, in an amount to be determined at the time of trial.

61. Defendant's acts of commercial disparagement, unless enjoined by this Court, will continue to cause VPI to sustain irreparable damage, loss, and injury for which VPI has no adequate remedy at law.

**FIFTH CLAIM FOR RELIEF
(Violation of Colorado Consumer Protection Act)**

62. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

63. The District of Colorado has an important interest in ensuring that persons and entities doing business with Colorado residents fully comply with Colorado laws.

64. The Defendant's conduct complained of herein is a deceptive trade practice, *inter alia*, in that, Defendant knowingly passes off his goods as those of VPI, knowingly makes false representations as to the source of his goods, knowingly makes false representations as to his affiliation with VPI, knowingly makes false representations as the characteristics of VPI's goods; knowingly disparages the business and goods of VPI by false and misleading representations of fact; and knowingly fails to disclose material information concerning his goods and VPI's goods which information is known to Defendant at the time of his advertisements, which failure to disclose is intended to induce consumers to enter into transactions with Defendant.

65. The Defendant's conduct occurred in the course of Defendant's business, vocation or occupation.

66. The products offered by VPI and the Defendant implicate the public interest.

67. All the conduct alleged herein occurs and continues to occur in the course of the Defendant's business. The conduct is part of a pattern or generalized course of conduct repeated on numerous occasions daily.

68. The Defendant has engaged and continues to engage in these activities knowingly, willfully and deliberately.

69. VPI has been directly and proximately injured in its business and property by the Defendant's conduct complained of herein, in violation of VPI's rights under C.R.S., § 6-1-105.

70. The Defendant's violations of C.R.S. § 6-1-105 have caused VPI to sustain monetary damages, loss and injury, in an amount to be determined at the time of trial.

71. In addition, pursuant to C.R.S., § 6-1-113, VPI is entitled to trebled damages, attorney's fees and costs of suit, all in amounts to be determined at trial.

72. The Defendant's violation of C.R.S., § 6-1-105, unless enjoined by this Court, will continue to cause VPI to sustain irreparable damage, loss and injury, for which VPI has no adequate remedy at law.

**SIXTH CLAIM FOR RELIEF
(Tortious Interference with Business Relationships)**

73. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

74. VPI has entered into and/or had a reasonable expectation that it would maintain or enter into contracts or business relationships with certain third parties who were existing VPI customers or who had communicated their interest in establishing prospective contractual relationship with VPI. VPI is aware that numerous of its existing and/or prospective customers have attempted to communicate with VPI or to obtain additional information about VPI and its products through VPI's Internet website.

75. The Defendant was aware of these contracts and/or prospective business relations of VPI, and of the fact that prospective customers in the industry utilize the Internet as a means of contacting or obtaining additional information concerning computer learning products such as those marketed and sold by VPI and the Defendant.

76. The Defendant knowingly and willfully interfered in VPI's contracts and/or business expectancies by diverting customers from VPI's Internet website. As a result of the Defendant's activities, customers were induced to breach or terminate contracts, business relationships or expectancies with VPI.

77. The Defendant's conduct as complained of herein was knowing, willful, malicious and deliberate.

78. VPI has been damaged by the Defendant's conduct as complained of herein, in an amount to be determined at trial.

**SEVENTH CLAIM FOR RELIEF
(Common Law Business Disparagement)**

79. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

80. Defendant did publish or cause to be published false statements harmful to the interests of VPI with the intent that the publication of the statement would cause harm to the interests of VPI.

81. At the time that Defendant published the false statement he knew that the statements were false or acted in reckless disregard of its truth or falsity.

82. VPI has been damaged by the Defendant's conduct as complained of herein, in an amount to be determined at trial.

**EIGHTH CLAIM FOR RELIEF
(Accounting)**

83. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

84. VPI is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendant that are attributable to his acts of infringement.

85. VPI is entitled, pursuant to U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages, sustained by virtue of Defendant's acts of infringement.

86. The amount of money due from Defendant is unknown to VPI and cannot be ascertained without a detailed accounting by Defendant of the precise number of units of infringing material offered for distribution and distributed by Defendant.

NINTH CLAIM FOR RELIEF
(Imposition of a Constructive Trust upon Illegal Profits)

87. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

88. Defendant's conduct constitutes deceptive, fraudulent, and wrongful conduct. By virtue of Defendant's wrongful conduct, Defendant has illegally received money and profits that rightfully belong to VPI.

89. Upon information and belief, Defendant holds the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced.

90. Defendant holds the money and profits he has illegally received as constructive trustee for the benefit of VPI.

WHEREFORE, VPI prays for judgment against Defendant as follows:

A. That Defendant, and all of Defendant's agents, servants, employees, and attorneys, and all other persons in active concert or participation with him who receive actual notice of the injunction, be temporarily, preliminarily, and permanently enjoined from, without permission from VPI: (1) using in any fashion, including the purchase of VPI's Trademarks as adwords or keywords from Google, or any other search engine operator, the VIDEO PROFESSOR trademark, any colorable imitations thereof, or any marks confusingly similar thereto;

B. That VPI be awarded damages in an amount to be determined at trial based on each of the claims set forth herein;

C. That VPI be awarded damages and restitution, in an amount to be determined at trial, under 15 U.S.C. § 1117(a) for the total profits received by Defendant from, and any damages sustained by VPI as a result of Defendant's actions;

D. That VPI be awarded under 15 U.S.C. § 1117(a) enhanced damages, up to three times the amount found as actual damages for Defendant's trademark infringement and false designations of origin, descriptions and representations, in an amount to be determined at trial; (c) and 17 U.S.C. § 504(c)(2), for Defendant's willful infringement of VPI's copyrights;

E. That VPI be awarded treble damages and attorney's fees for Defendant's deceptive trade practices under C.R.S. § 6-1-113;

F. That Defendant be ordered to make a written report within a reasonable period, to be filed with the Court, detailing the manner of Defendant's compliance with the requested injunctive and mandatory relief above;

G. That VPI be awarded its reasonable attorney's fees and costs of suit under 15 U.S.C. § 1117(a), 15 U.S.C. § 285, and C.R.S. § 6-1-113;

H. That a constructive trust be imposed on the illegal profits generated as a result of Defendant's wrongful conduct;

I. That VPI be awarded pre-judgment and post-judgment interest and its costs of the litigation, and

J. That VPI be awarded such other relief as the Court may deem just and proper.

Respectfully submitted this 26th day of February 2009.

s/Gregory C. Smith
Gregory C. Smith
Fairfield and Woods, P.C.
1700 Lincoln Street, Suite 2400
Denver, CO 80203
Telephone: (303) 830-2400
Facsimile: (303) 830-1033

Plaintiff's address:
12055 West Second Place
Lakewood, Colorado 80228