

SEPT 29, 2008

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: **08-22714-CIV-UNGARO/SIMONTON**

THE MICCOSUKEE TRIBE OF
INDIANS OF FLORIDA, a federally-
recognized Indian Tribe, and BILLY
CYPRESS,

Plaintiffs,

vs.

STEVEN THIELE,

Defendant.

_____ /

COMPLAINT

Plaintiff Miccosukee Tribe of Indians of Florida (“Tribe”) and Billy Cypress (“Chairman Cypress”) bring this Complaint against Steven Thiele (“Thiele”) for violations of 15 U.S.C. §1125, and state as follows:

NATURE OF THE ACTION

1. The Tribe is a federally-recognized and federally-protected Indian Tribe in South Florida. Plaintiff Billy Cypress is the elected Chairman of the Tribe. Thiele is willfully infringing upon the Tribe’s federally-recognized name and Chairman Cypress’s name by using the Internet domain names *www.miccosukeetribeofindiansofflorida.com*, *www.miccosukeetribeofindians.com*, and *www.billycypress.com* to profit from the Tribe and Chairman Cypress’s goodwill and popularity. Thiele’s Internet domain names are

Lewis Tein P.L.
ATTORNEYS AT LAW

3059 GRAND AVENUE, SUITE 340, COCONUT GROVE, FLORIDA 33133

identical to those of the Tribe and Chairman Cypress and are intended by Thiele to misdirect individuals interested in the Tribe to Thiele's website.

2. As redress for the flagrant violations of the Plaintiffs' famous and distinctive marks by Thiele, Plaintiffs sue for dilution and cyberspiracy pursuant to federal law. As remedies, Plaintiffs seek statutory, actual, treble and punitive damages, attorneys' fees, costs, and preliminary and permanent injunctive relief.

PARTIES

3. The Miccosukee Tribe of Indians of Florida is a federally-recognized and federally-protected Indian Tribe, exercising powers of self-government under a Tribal constitution approved by the Secretary of the Interior in 1962, pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 476.

4. Billy Cypress is the elected Chairman of the Tribe. Chairman Cypress has the ability to supervise, direct and control the acts of the Tribe pursuant to the Tribe's federally-recognized Constitution.

5. Steven Thiele is a resident of Miami-Dade County, Florida. Thiele is the registered owner of the domain names *www.miccosukeetribeofindiansofflorida.com*, *www.miccosukeetribeofindians.com*, and *www.billycypress.com* (collectively referred to as the "Infringing Domain Names.")

JURISDICTION AND VENUE

6. This Court has jurisdiction of this civil action under 28 U.S.C. § 1331 (civil actions arising under the Constitution, laws, or treaties of the United States) and 28 U.S.C. § 1338 (civil actions arising under any Act of Congress relating to patents, plant variety protection, copyrights, mask works, designs, trademarks, or unfair competition.)

7. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred here.

GENERAL ALLEGATIONS

8. The Miccosukee Tribe of Indians of Florida (“Tribe”) is a federally-recognized and federally-protected Indian Tribe, exercising powers of self-government under a Tribal constitution approved by the Secretary of the Interior in 1962, pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 476. The Tribe is a well-known and recognized entity in the South Florida community.

9. In addition to being federally recognized as the “Miccosukee Tribe of Indians of Florida,” the Tribe is also commonly known and referred to as the “Miccosukee Tribe of Indians.” The Tribe has developed common law rights with respect to these famous marks and with respect to other similar marks, all of which are used in interstate commerce.

10. Billy Cypress is the elected Chairman of the Tribe. Chairman Cypress has the ability to supervise, direct and control actions of the Tribe pursuant to the Tribe’s federally-recognized Constitution. Chairman Cypress is a well-known and recognized public figure in the South Florida community.

11. The Plaintiffs have not agreed to allow Thiele to use their marks or names in connection with Thiele, his website or his goods or services.

12. On or around August 15, 2008, Thiele created and registered the domain name *www.miccosukeetribeofindiansofflorida.com*. On or around September 10, 2008, Thiele created and registered the domain name *www.miccosukeetribeofindians.com*. On

or around September 12, 2008, Thiele created and registered the domain name *www.billycypress.com*. The Infringing Domain Names are registered to 20031 SW 84th Avenue, Miami, Florida 33189.

13. The Infringing Domain Names are linked to Thiele's website *www.1stunna.com*. The homepage of the website displays an image of Thiele and the phrase "#1 STUNNA / THE LAST OF THE MOHICANS !". Thiele sells t-shirts in various colors with the logo "#1 Stunna" available on his website. The website automatically plays music and shows a photograph of Thiele shirtless displaying tattoos, "Infamous Gangsta" and "#1 Stunna," emblazed in large gothic letters on his chest, stomach, and neck. The website also contains other images of Thiele as well as photographs of other individuals wearing the "#1 Stunna" t-shirts. Information is posted on the website regarding Thiele's prior arrests and convictions related to a bombing, threats, and battery on a witness, for which he apparently served six and a half years in federal prison. As of September 28, 2008, Thiele's website has received over 1,484,000 website "hits" as indicated by the counter on the homepage of *www.1stunna.com*.

14. To arrive at the Tribe's website, an Internet user must enter the Tribe's registered domain name *www.miccosukee.com* in the uniform resource locator ("URL") address line of the Internet browser, or select the Tribe's website after having run a keyword search. Thus, an Internet user that enters the domain name *www.miccosukee.com* in the URL address line of the Internet browser will be brought directly to the Tribe's website. Thiele's registered domain names *www.miccosukeetribeofindiansofflorida.com* and *www.miccosukeetribeofindians.com* are almost identical to the Tribe's domain name.

15. Thiele registered the Infringing Domain Names with the specific intent of siphoning off visitors to the Tribe's website by confusing them into believing Thiele is somehow affiliated with the Tribe. Thiele is blatantly trading on the reputations of the Tribe and Chairman Cypress by registering domain names that are identical to the Plaintiffs' names. Thiele's parasitic conduct is further evidenced by the fact that Thiele has registered at least 10 other domain names which are almost identical or similar to other famous marks or names which redirect an Internet user to Thiele's website.

16. Thiele's use of the Infringing Domain Names is likely to confuse Internet users as to the source of Thiele's products or that the Tribe sponsors or is somehow affiliated with Thiele.

17. Plaintiffs have retained Lewis Tein, P.L. as its attorneys, and Plaintiffs are obligated to pay the firm the reasonable attorneys' fees, costs, and expenses incurred in connection with this action.

COUNT I
Federal Trademark Dilution
(15 U.S.C. §1125(c))
(By the Tribe)

18. Plaintiffs repeat and reallege paragraphs 1 through 17 as though fully set forth herein.

19. The Tribe's marks are entitled to protection under the Lanham Act.

20. The Tribe's marks are famous and distinctive within the meaning of the Federal Trademark Dilution Act, 15 U.S.C. § 1125(c).

21. Thiele is willfully making commercial use of The Tribe's marks and began doing so after the Tribe's marks had already become famous.

22. Thiele's use of the Tribe's name and the Internet domain names *www.miccosukeetribeofindiansofflorida.com* and *www.miccosukeetribeofindians.com* in connection with its advertising, operation, and maintenance of an Internet site has caused and will continue to cause a blurring effect of the distinctive quality of the Tribe's name and has tarnished and will continue to tarnish the Tribe's name in violation of 15 U.S.C § 1125(c).

23. Thiele has used the Tribe's name and the *www.miccosukeetribeofindiansofflorida.com* and *www.miccosukeetribeofindians.com* Internet domain names with the willful intent to trade on the Tribe's reputation in violation of 15 U.S.C § 1125(c).

24. Thiele's willful conduct constitutes trademark dilution in violation of §43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and the Tribe has been and continues to be injured by this conduct.

WHEREFORE, the Plaintiff Tribe seeks damages against Thiele, including interest, attorneys' fees, costs, preliminary and permanent injunctive relief, and all other relief this Court deems just and proper.

COUNT II
Federal Trademark Dilution
(15 U.S.C. §1125(c))
(By Billy Cypress)

25. Plaintiffs repeat and reallege paragraphs 1 through 17 as though fully set forth herein.

26. Chairman Billy Cypress's name is a mark entitled to protection under the Lanham Act.

27. Chairman Billy Cypress's name is a mark that is distinctive within the meaning of the Federal Trademark Dilution Act, 15 U.S.C. § 1125(c).

28. Thiele's use of Chairman Billy Cypress's name and the Internet domain name *www.billycypress.com* in connection with its advertising, operation, and maintenance of an Internet site has caused and will continue to cause a blurring effect of the distinctive quality of Chairman Billy Cypress's name and has tarnished and will continue to tarnish Chairman Billy Cypress's name in violation of 15 U.S.C § 1125(c).

29. Thiele has used Chairman Billy Cypress's name and the *www.billycypress.com* Internet domain name with the willful intent to trade on Chairman Billy Cypress's reputation in violation of 15 U.S.C § 1125(c).

30. Thiele's willful conduct constitutes trademark dilution in violation of §43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and Chairman Billy Cypress has been and continues to be injured by this conduct.

WHEREFORE, Plaintiff Billy Cypress seeks damages against Thiele, including interest, attorneys' fees, costs, preliminary and permanent injunctive relief, and all other relief this Court deems just and proper.

COUNT III
Federal Cyberpiracy
(15 U.S.C. §1125(d))
(By the Tribe)

31. Plaintiffs repeat and reallege paragraphs 1 through 17 as though fully set forth herein.

32. The Tribe's marks are entitled to protection under the Lanham Act.

33. The Tribe's marks are famous and distinctive within the meaning of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

34. Thiele is willfully and in bad faith attempting to profit from the Tribe's marks.

35. Thiele registered the *www.miccosukeetribeofindiansofflorida.com* and *www.miccosukeetribeofindians.com* domain names after the Tribe's marks had become distinctive and famous. Thiele registered the *www.miccosukeetribeofindiansofflorida.com* and *www.miccosukeetribeofindians.com* domain names are confusingly similar and dilutive of the Tribe's federally-recognized name.

36. Thiele's willful conduct constitutes cyberpiracy in violation of §43(d) of the Lanham Act, 15 U.S.C. § 1125(d), and the Tribe has been and continues to be injured by this conduct.

WHEREFORE, Plaintiff Tribe seeks damages against Thiele, including interest, attorneys' fees, costs, preliminary and permanent injunctive relief, and all other relief this Court deems just and proper.

COUNT IV
Federal Cyberpiracy
(15 U.S.C. §1125(d))
(By Billy Cypress)

37. Plaintiffs repeat and reallege paragraphs 1 through 17 as though fully set forth herein.

38. Chairman Billy Cypress's name is a mark that is entitled to protection under the Lanham Act.

39. Chairman Billy Cypress's mark is famous and distinctive within the meaning of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

40. Thiele is willfully and in bad faith attempting to profit from Chairman Cypress's mark.

41. Thiele registered the *www.billycypress.com* domain name after Chairman Billy Cypress's mark had become distinctive and famous. Thiele registered the *www.billycypress.com* domain name is confusingly similar and dilutive of Chairman Billy Cypress's name.

42. Thiele's willful conduct constitutes cyberpiracy in violation of §43(d) of the Lanham Act, 15 U.S.C. § 1125(d), and Chairman Billy Cypress has been and continues to be injured by this conduct.

WHEREFORE, Plaintiff Chairman Billy Cypress seeks damages against Thiele, including interest, attorneys' fees, costs, preliminary and permanent injunctive relief, and all other relief this Court deems just and proper.

Respectfully submitted,

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ATTACHMENT 1

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JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

NOTICE: Attorneys MUST Indicate All Re-filed

SEPT 29, 2008

STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

I. (a) PLAINTIFFS

THE MICCOSUKEE TRIBE OF INDIANS OF FLORIDA, a federally-recognized Indian Tribe, and BILLY CYPRESS

(b) County of Residence of First Listed Plaintiff MIAMI-DADE (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

SEE ATTACHMENT 1

DEFENDANTS

STEVEN THIELE

County of Residence of First Listed Defendant MIAMI-DADE (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF DEF 1 1
Citizen of Another State 2 2
Incorporated or Principal Place of Business In This State PTF DEF 4 4
Incorporated and Principal Place of Business In Another State 5 5

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (see VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO
b) Related Cases YES NO
JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. §1125. Federal Trademark dilution and cyberpiracy.

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

Signature of attorney

September 29, 2008

FOR OFFICE USE ONLY AMOUNT \$350.00 RECEIPT # 988009 JFP

09/29/08