

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y.

★ MAY 30 2007 ★

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ROBERT NOVAK, d/b/a PetsWarehouse.com
Plaintiff,

LONG ISLAND OFFICE

-against-

No. CV 01 3566
(DLI)(WDW)

ACTIVE WINDOW PUBLICATIONS, INC., Mark Rosenstein,
ROBERT HUDSON d/b/a AQUABOTANIC.COM

Defendants,
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AMENDED COMPLAINT

Robert Novak, d/b/a Petswarehouse.com, brings this diversity action for it's Complaint against Active Window Publications, Inc., Mark Rosenstein, Robert Hudson d/b/a aquabotanic.com (hereinafter collectively the "Defendants"), states as follows:

Nature of the Action

Robert Novak is bringing this action to protect his rights in the trademark "Pets Warehouse" and its use in the Internet business Petswarehouse.com for damages from Trademark infringement, dilution, false description and unfair competition, Tortious interference with contractual relations and prospective business relations, product disparagement, trade libel, libel, libel per se,

cyberlibel, commercial defamation, false light, cybersquatting and infliction of emotional distress.

Jurisdiction and Venue

1. This Court has diversity jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 in that the parties are citizens of different states and the amount in controversy exceeds \$75,000.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(a)(2) & (3).

3. This Court has personal jurisdiction over the defendants under the New York State Long Arm Statute, Sections 302(a)(1) and 302(a)(3)(i) of the CPLR.

4. Venue is proper in this District pursuant to 28 U.S.C. §1391 because most of the Defendant's transacted business within this District, a substantial number of the transactions complained of in this Complaint occurred in this District, and Defendant's acknowledged New York as the location of jurisdiction when accepting the terms and conditions of sale at the time of the transactions, and their orders were processed and shipped from within this District.

Defendants actively and voluntarily accessed the web site Petswarehouse.com in this District. In addition, Robert Novak maintains its principal office in this District at 1550 Sunrise Hwy, Copiague, New York 11726. As such, a substantial part of the events giving rise to the claims set forth below, and the injuries suffered there from, occurred in this District.

5. This Complaint sets forth claims for trademark infringement, dilution, false description and unfair competition under the Lanham Act, § 43 (a), (c), (d) and 15 U.S.C. § 1051 *et seq.*,

6. This Court has jurisdiction over the subject matter of these claims pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1121 (action arising under the Lanham

Act) and 28 U.S.C. § 1338(a) and (b) (action arising under an Act of Congress relating to trademarks and related unfair competition claims).

7. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Robert Novak's claims occurred in this District,

8. Events involved in the litigation have occurred in numerous jurisdictions throughout the United States. New York and specifically this District are directly involved in this suit as the Defendants' actionable conduct has either been produced, or electronically published to New York residents and/or has been knowingly published by one or all of the Defendants into New York. Moreover, Robert Novak and his Petswarehouse.com business in its principal sales office that is located in this District have felt most of the impact of the Defendants' actionable conduct.

The Parties

9. Plaintiff Robert Novak is an individual with his principal office and place of business at 1550 Sunrise Highway, Copiague, New York doing business as Petswarehouse.com, an Internet pet and pet supplier which among other items sells aquatic plants. Plaintiff licenses the trademark "Pets Warehouse" to several entities including Petswarehouse.com among others. For which he receives royalties and commissions for its use.

10. Upon information and belief, Defendant, Active Window Productions, Inc. is a domestic corporation organized under the laws of Massachusetts with its principal place of business in Cambridge, Massachusetts. The defendant corporation owns, operates, disseminates and publishes the website actwin.com, Aquatic Plants Digest (AWP) a subscriber based e-mail listserv operated within the domain name of actwin.com/fish/aquatic-plants/index.php_a fish and aquatic plant published e-mail list.

11. Upon information and belief, Defendant Mark Rosenstein resides in Massachusetts is the editor and officer of Active Window Publications, Inc. operating the aquatic chat room and listserve, within actwin.com.

12. Upon information and belief Robert Hudson resides at 3760 Market St NE #153, Salem, OR 97301 d/b/a aquabotanic.com operating an e-commerce site using the screen name of "RobertH" among others.

The Internet

13. At all times relevant to the allegations of this Complaint, persons obtained access to the Internet through many different networks linked directly to the Internet, including but not limited to those networks operated by employers, schools, community organizations, libraries, and small commercial establishments.

14. At all times relevant to the allegations of this Complaint, persons accessed information on the Internet via chat rooms, newsgroups, bulletin boards, e-mail, and subscriber based news groups mail lists and herein after "chat rooms".

15. Messages entered for publication to a chat room are placed in a form online or e-mailed to a specific e-mail address. These messages are referred to as "posts".

16. At all times relevant to the allegations of this Complaint, persons who did not know the address or specific name of a given Web site, or who conducted generalized searches, accessed Web sites by means of a "search engine/directory," which found the Web sites by using a keyword or strings of words to locate those sites.

17. At all times relevant to the allegations of this Complaint, persons also "surf" the Web by "linking" from one Web site to another, which they did by clicking on "links," which were segments of text or "banner" images in one Web site that referred and linked to another Web site.

18. As a result of AWP's advertising banners that incorporate the use of the Pets Warehouse marks, consumers using the Pets Warehouse marks as search terms or keywords are likely to be confused as to whether the "sponsored banner listings" have some connection or affiliation with Pets Warehouse. Furthermore, when

consumers click on the sponsored banner seeking information on Pets Warehouse's pets supplies they are likely to be deceived into believing that they will be provided with accurate information on Pets Warehouse's products. By this deceitful conduct consumers find themselves at a disparaging website with misleading information about Pets Warehouse and its products. Defendants have intentionally infringed and diluted, and continue to infringe and dilute, Pets Warehouse's marks and have profited from their illegal use of those marks.

19. This is the banner used by the defendants clearly using the registered trademark Pets Warehouse

20.



21. Plaintiff Robert Novak is the sole and exclusive owner of the entire right, title and interest in and to the Internet domain name <PetsWarehouse.com> granted to him on or about November 1997 and the famous distinctive trademark Pets Warehouse granted to him on July 30, 2001 No. 2,600,670. Thus, this trademark protects the domain name PetsWarehouse.com

22. Certain chat rooms are also called Listserv wherein the posts are not only displayed on its website but are additionally re-published via e-mail to its subscribers

Factual Background

23. Defendants using a pattern of messages posted to pet hobbyist related chat rooms, infringing Plaintiff's mark utilizing advertising banners placed on numerous web sites additionally linking to a defamatory web site, with deception and flat-out lies, the defendants have conspired to damage Robert Novak and his mark by, *inter alia*, (i) tortiously interfering with Robert Novak's mark licensed to existing contracts with customers; (ii) tortiously interfering with Robert Novak's prospective contracts with

investors and customers; (iii) threatening boycotts of Pets Warehouse trademark used in conjunction with Petswarehouse.com and Pets Warehouse; (iv) threatening disparagement of plaintiffs mark; (v) threatening to harm future business of the Pets Warehouse mark; (vi) disparaging Robert Novak's trademark used in conjunction with Pets warehouse.com and Pets Warehouse selling pets, pet supplies and related products. The mark provides hobbyists pursuant to its Pets Warehouse brand, which is the third most popular pet-related web site in the world,; (vii) diluting the significant goodwill and value Robert Novak has developed in its Pets Warehouse mark.

24. Defendants castigate and vilify Robert Novak and Pets Warehouse.com and his mark. Most appallingly, defendant's actions are knowingly malicious and false.

25. As set forth herein, Defendants acts which victimize, disparage, defame and/or tarnish Pets Warehouse as an essential part of the schemes through a pattern of deliberate and malicious lies and repeated interferences with the Pets Warehouse trademark as used in interstate commerce, all of which causes great damage to Robert Novak.

26. Defendant Rosenstein and his solely owned company Active Windows Publications purchased the domain name Pets-warehouse.net, intentionally cybersquatting on the registered trademark Pets Warehouse®. The website is being used to embarrass and place in false light the status of litigation that is false.

27. The defendants' portrayal of Petswarehouse.com as a bully that "sues its customers" for stating opinions. When in truth the statements (opinions) are factually false. Plaintiff notified users of the chat rooms when brought to his attention that their statements were inaccurate or factually false, requesting that they cease desist and/or remove or retract the libelous comments. Defendants claim in numerous messages posted that putting anyone on notice constitutes a threat, or bullying, rather than a notice of incorrect information allowing the Defendants and others an opportunity to mitigate their damages.

28. Defendants developed a strategy to run an advertising banner campaign the way e-commerce site draws traffic to generate sales. In this case the commerce

was fund raising. Banners are much like a billboard found on the highway to advertise a product or service.

29. Upon information and belief, in June 2001 Defendants became increasingly frustrated faced with the costs of defending their wrongful actions and need to raise money they embarked on a fundraising campaign using advertising banners links.

30. Defendants interfered with websites advertising the Pets Warehouse banner and had created and placed similar banners displaying the "Pets Warehouse" Mark boldly displayed within Defendants websites also recruiting others to display the infringing banner, thereby infringing plaintiff's mark.

31. The banners when clicked on with the users mouse would not take them to a Pets Warehouse related link rather one of the disparaging hate commerce site disfavoring Petswarehouse which solicits money allegedly for the defense of the defendants.

32. Defendants recruited any website related to pets or aquariums to help them raise funds; they created a new untruth from the untruths of their own libelous remarks which gave rise to this action. Defendants claimed they and others were only voicing their *opinion* about Pets Warehouse.com's shopping experience when in fact their statements were factually false. Defendants placed a "spin" on their actions saying that the plaintiff wishes to stop Defendants from stating their opinions.

33. Defendants do not have, and never had any factual basis to support such claims and knew such claims were false. Plaintiff only raised objection to the statements, which were factually false never to truthful statements of opinion.

34. Defendants in concert with a larger website and chat room owned by John Benn who operates Petsforum.com and a chat forum in partnership with CompuServe.com a wholly owned subsidiary of AOL Time Warner all of which are e-commerce sites.

35. Thereby receiving greater exposure to their fund raising campaign by infringing on plaintiffs mark in receiving monies in its fundraising efforts. According to John Benn the fund administrator \$ 10,000 was raised and paid to a New York attorney representing the Defendants. Upon information and belief an additional two hundred

thousand dollars were raised. Those monies were collected by the infringement of the Pets Warehouse mark.

36. Defendants coerced current and potential customers and affiliates of Pets Warehouse.com by besieging them with blatant misrepresentations and flat-out lies to disparage and tarnish Pets Warehouse.com in AWP chat forums that view such websites and the electronic transmission of e-mails through AWP.

37. Defendants willfully, systematically and maliciously made and allowed others to post to create a false impression, directly and/or by inference, that the Defendants requested any reader to boycott Pets Warehouse goods and services. Defendants exploited their false impression or "spin" that plaintiff wished to halt negative opinions. This is factually incorrect Plaintiff never sought to halt negative opinions provided they were based on the truth not repeated false and erroneous accusations.

38. This pattern of activity continues to date.

39. Defendants willfully made these defamatory statements to financially harm the Pets Warehouse name and to increase Petsforum.com fundraising and Petsforum.com's notoriety.

40. Commencing in May 2001, defendants sent e-mails to any one supporting Petswarehouse.com on any chat rooms. Requesting them not to say anything about this case "you will become a Defendant" and encourage them not to place questions that may place plaintiff in a positive light.

41. On or about July 29, 2001, AWP published on their plant related chat room website a statement from John Benn an attorney in Alabama, who set up a web site on the request of the defendants claiming that "Petswarehouse.com sues it's customers for voicing their opinions" relating to customer service targeting anyone who may say anything positive. Benn serves largely as a spokesman for the Defendants' schemes and campaigns, including those set forth in this Complaint and maintains a blind trust escrow account to finance Defendants legal representation and fundraising campaign.

42. The following commercially defamatory statements were published, republished and/or displayed "concerning" Robert Novak the Pets Warehouse mark and Pets Warehouse.com by defendants on the AWP chat room.

43. On or about July 14, 2001, AWP posted a statement on its Internet site, which was disseminated throughout the world from "The Better Business Bureau of Metropolitan New York, Inc. has provided an unsatisfactory rating, the Bureau's lowest, for PetsWarehouse.com. Then miss quotes the report.

44. Also Petsforum.com displayed "PetsWarehouse Gomez Rating The Petswarehouse.com web site claims that it has a "High Pass" rating from Gomez. The current rating from Gomez (12-28-01) provides a three star rating. This is factual. However, the statement "The actual PetsWarehouse.com profile indicates that it ranks 14th in the "Overall" category of Pet Supply web sites. For Customer Confidence, the site ranks 11th" is factually false.

45. Defendants all knew or should have known through reasonable investigation that these statements were factually false they willfully made these defamatory statements to financially hurt Robert Novak's Pets Warehouse mark and Internet e-commerce web site and increase defendants fundraising and notoriety in concert with the website Petsforum.com.

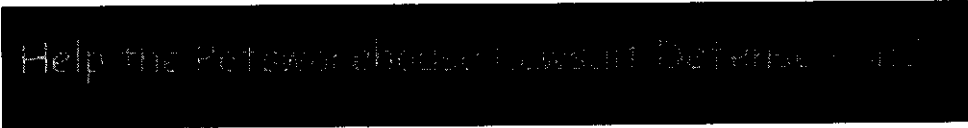
46. On or about March 2002, the defendant AWP in concert with Petsforum.com developed a "psw-lawsuit-news" newsletter, which is e-mailed to its supporters purporting to respond to this lawsuit.

47. As part of its campaign against Pets Warehouse to "let everybody know", the defendants engaged in concert with others the following: "Tell a Friend" and Cynthia Powers (Powers was a employee or agent designated by AWP to serve as a moderator in the chat room of AWP Listserv) used her editorial content on the AWP chat room to aid in the fundraising activities of the defendants asking for donations.

48. Defendants used web advertising banners and links to commercial commerce web sites "petsforum.com" and others. The Petsforum.com site is operated by an attorney John Benn located in Alabama; he accepts credit cards into his blind trust escrow account. The defendants claim to have raised over of \$200,000 however the receipts and expenditures are not made public but secreted.

49. Through banners using the Plaintiff's Mark confused the web user in thinking they are being taken or directed to a sponsored web site of Pets Warehouse.com. Linking to this site creates a false impression about their relationship

to the site linked. Additionally, the link misrepresents the nature of the linked site or casts it in an unfavorable way.



linking to:

Robert Novak v. AWP List Members - Microsoft Internet Explorer

http://web.archive.org/web/20040214115324/www.petswarehouse.com/Fund.htm

archive.org

If you wish to contribute by credit card or PayPal, please visit the web site at <http://www.paypal.com>. The email ID for contributions is psw@defund.com.

DefFund@pswforum.com

contributions will be acknowledged. A special web page listing all contributors by name or initials will be established shortly. Your contributions may remain anonymous if that is your choice, but please note it when you send in your contribution. If you wish to contribute by credit card or PayPal, please visit the web site at <http://www.paypal.com>. The email ID for contributions is jbenn@law.org.

If you are interested in learning more about this lawsuit, the individual squanets who have been sued, or the latest litigation news, please visit CompuServe's Aquaria/Fish Forum at URL <http://us.compuServe.com/1ahnet>. If you are interested in contributing any professional services to the defense effort, please contact John Benn at jbenn@law.org.

Please feel free to distribute this notice to other squanets, hobbyists, pet lovers and all those you think feel strongly about defending the issues at stake, on behalf of the defendants in this lawsuit. I express our collective appreciation for your contributions.

bono basis. The defendants will still need to retain local counsel to defend them in the lawsuit.

This is a special request for financial assistance to aid in the defense of this lawsuit. All contributions are important no matter how large or small. If you would like to contribute to the defense fund, please send your monetary contribution (check, money order or bank draft), payable to "John Benn, Trust Account", Law Office of John R. Benn & Associates, 104 West Third Street, Sheffield, AL 36888. All

Use this form to contribute to the Defense Fund through PayPal

Enter the amount to donate and click "Go"

\$

John Benn
Edna Benn
FishesAquaria
FishiesBuddies
Daphne Fishman & Loh Wee
Liang
Sharon Sanchez
Sue's Fish
Scott Miller
International Gold Dragon
Robert Jordan
Alan Kaufman
David Lee
Matthew Mendel
Roger Miller
Oly
Eli Olson
Philadelphia Area Beta Box
David Pagan
Bob Walker
San Fran Bay Area Aquaria
Pilot Box
Jaeger Sanchez
Monika F. Stone
Megan Subramanian
John Vandewall
David Vandewall
Clt Winner

\$50 & over

Anonymous04
Anonymous07

50. AWP March 4, 2002 republished the following posted statement by Alan Kaufman

"Upon learning today of Mr. Novack's self-representation I telephoned the IRS's Criminal Investigations division and reported him for probable tax fraud. I explained to them that I was confident that he was using costs of his suit as a business expense deduction and it was questionable due to his personal involvement and his personal attacks on others. I offered that another possible avenue of investigation would be his reporting of expenses, as he was self-representing. Their interest definitely seem to increase when I mentioned that over \$10,000 had already been spent in defense and that I assumed his claimed deductions would be at least as much.... I asked if further calls from other parties would increase the likelihood of their starting an investigation and was told that input from more then one source their investigating almost a certainty.

Their number is 1-800-829-0433. Why don't you call too? It can be anonymous if you wish. Remember, actions speak louder than words. Alan"

51. I immediately faxed Robert Folks the law firm representing AWP with the content of the message by Kaufman and asked that it be removed, I never received a reply. Later that day this message was posted and republished by AWP to New York subscribers and the rest of the world.

52. The response, *after it was republished by AWP's Rosenstein, on March 5, 2002* in part from Rosenstien "a recent posting on this list advocates reporting Robert Novak of Pets Warehouse to the IRS for tax fraud...If you have reason to believe that tax fraud has been committed, then by all means call the IRS and report this...Alan thinks it likely that there is fraud. I really don't know. Mark Rosenstein Editor, FINS" AWP took no steps to remove the offending material.

53. AWP, Rosenstein and Powers are grossly negligent in not responding when notified to delete posts which defame, harass, infringe a trademark, abuse, threaten or otherwise violate the legal rights of others.

54. AWP has published and re-published with actual malice, that is, with the knowledge of falsity or reckless disregard of the truth of and concerning Robert Novak and the mark Pets Warehouse in all of the statements in posts made by the defendants and while fundraising from the public. As will be shown below, the Defendants developed other schemes and lies to further harm Robert Novak and his Pets Warehouse mark.

55. Defendants rely on their PetsWarehouse attacks, to champion themselves and to raise the profile of their cause so their proponents would keep financially supporting a successful group. This would allow them to continue the concerted efforts to harm Plaintiff. Defendants' ultimate goal is to raise money without regard to the means. Also the effect of their actions had an adverse impact on commerce negatively affecting the Petswarehouse e-commerce business. In so doing the defendants' speech is commercial.

56. AWP, Rosenstein and Powers are not immune by the Communications Decency Act and are liable for their actions and or inactions. Immunity from suit and liability found in the Communications Decency Act, 47 U.S.C. §230 does not offer AWP

a safe haven of immunity. While it may protect them to some degree to make available messages of others on the actwin.com web site, it does not protect them from (i) trademark infringement or (ii) content they create or the (iii) electronic re-publishing world wide of the posts they receive. Moreover immunity provision of the CDA should not be construed in a matter that would limit or expand any law pertaining to intellectual property including commercial speech.

57. On March 1, 2002 Judge D. Hurley "So Ordered" a settlement agreement with previous named parties. One of the provisions of that settlement was that the parties delete any posts in any chat room that pertains to the Plaintiffs. Joann Vandersarl one of the settling parties in attempting to comply with the terms and conditions was successful with every other such chat rooms and forums except AWP. When the request was made on March 20, 2002 by Joann Vandersarl defendant Rosenstein replied to her "I assume you're referring to postings made via the aquatic-plants mailing list. The web archive of this list is a recording of a public discussion which has taken place. It is the policy of FINS not to edit or censor such archives...

We're sorry, but these postings will remain online. -Mark Rosenstein, Editor"

58. Interestingly no such policy is published anywhere on actwin.com's web site. AWP should comply with the wishes of a poster, rather than abuse her rights, especially when the removal was "So Ordered" by Judge D. Hurley. A position entirely inconsistent with similar chat rooms web sites.

59. AWP is declining to comply with the removal of these defamatory statements to financially hurt Robert Novak and the Pets Warehouse mark and Internet e-commerce web site Pets Warehouse.com thereby increasing defendants fundraising ability and allow the search engines to index the pages of the AWP when doing a search on the keyword "petswarehouse" infringing on its mark.

60. Robert Novak and Pets Warehouse.com received obscene emails, some containing viruses that wound up destroying more than one computer system. There were threats of violence and even death threats against Robert Novak and the staff as a result of Defendants concerted efforts.

61. Beginning on July 7, 2001 thru July 24, 2001 Plaintiff's computer servers were comprised by the defendants and others hacking into Robert Novak's computer

server farm which contains the Pets Warehouse website and its contents, committing computer crimes to harm the Internet e-commerce web site Petswarehouse.com.

62. This pattern of harassment continues, on March 5, 2002 Alan Kaufman in an email to petswarehouse.com, threatened to damage the web servers of Robert Novak stating "Get ready for my next move. You will really like this one. But it might hurt in the pocket. As a kindness I suggest you go out and buy the best firewall you can find...not that it will help".

63. On March 5, 2002 another threat by Edward Venn stated "It's amazing what some Filipino hackers can do while your on the web...havoc with your credit by now." Both of these threats were reported to the FBI and sent to forums to expose the threats.

64. Defendants knew or should have known that their activities were illegal, but continued to publish and email these posts.

65. As a direct and proximate result of Defendants' acts described herein, Robert Novak has been injured.

Claim One - Trademark Under § 43 of the Lanham Act Infringement, Dilution, False Description and Unfair Competition

66. Each of the foregoing allegations are incorporated herein by reference as though fully set forth at length.

67. Defendants unauthorized and willful use of the Pets Warehouse registered trademark in connection with their website advertising programs constitutes use and *commerce which infringes Pets Warehouse's exclusive rights and is likely to cause confusion, mistake or deception as to the source of the services offered by Mark Rosenstien who use the Pets Warehouse mark on his website. Such actions are also likely to cause confusion as to whether Pets Warehouse is sponsoring, or authorized the products or services advertised on AWP and or Mark Rosenstein's website using Pets Warehouse's mark.

68. Consumers are likely to be initially confused into believing that clicking on a banner incorporating the famous Pets Warehouse mark will lead to Pets Warehouse's website.

69. An additional use of the trademark is when a user of AWP's chat forum makes a post incorporating the term Pets Warehouse in the title. It gains higher relevance in the search engine. When a consumer searches, by example, for the term "Pets Warehouse" in Google, Yahoo, or AOL, etc. The derogatory posts are displayed to that user.

70. Consumers are likely to be confused by either clicking on the banner or doing a search for the term "Pets Warehouse" into believing that the websites they are linking to contain information associated with or otherwise affiliated with or connected to Pets Warehouse.

71. Defendants' use of such false and/or misleading descriptions of fact and false and/or misleading representations of fact in commercial advertising and/or promotion misrepresented the nature, characteristics and/or quality of Pets Warehouse.com's commercial activities and the goods and services provided pursuant to the Pets Warehouse brand.

72. Defendants unauthorized and unlawful use of Pets Warehouse registered trademark in connection with their chat forum advertising program constitutes trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. §1114.

Lanham Act – Dilution

73. Each of the foregoing allegations are incorporated herein by reference and reasserted as though fully set forth at length.

74. Defendants' use of the Pets Warehouse mark in connection with their web based chat forum advertising program has and will continue to lessen the capacity of Pets Warehouse's famous and distinctive mark to distinguish Pets Warehouse's product and services from those of others, and has diluted the distinctive quality of Pets Warehouse's famous and distinctive Pets Warehouse mark.

75. Defendants use of the Pets Warehouse mark constitutes dilution in violation of Section 43 (c) of the Lanham Act , 15 U.S.C. § 1125 (c).

76. Defendants are deriving direct revenue by infringing the Mark Pets Warehouse with its confusing miss leading use in web banner advertisements linked to among others Petsforum.com e-commerce fundraising web site. The core element of trademark infringement is the likelihood of confusion, i.e., whether the similarity of the marks is likely to confuse customers about the source of the products.

77. Since 1974, Robert Novak has been using the Mark "Pets Warehouse" to identify itself in connection with goods and services it offers to pet hobbyists. The Plaintiff is the exclusive owner of all rights, title, and interest in the "Pets Warehouse" Mark. As such, Robert Novak does not authorize or permit any individual or corporation to use the Mark without written permission or authorization.

78. The primary agreement pertaining to this action is with petswarehouse.com operating a web site at this Internet address commencing in July 1997. Petswarehouse.com provides information about keeping and maintaining pets in general, engages in interstate commerce selling pets and related supplies. In 1999 through a consumer study achieved national prominence in becoming the 4th most visited pet related web site in the USA, therefore plaintiff's mark is famous.

79. PetsWarehouse.com acquired secondary meaning in the minds of the consuming public linking the Mark to a source of pets and pet supplies.

80. Defendants AWP and Hudson intentionally copied or plagiarized the Mark in their advertising banners "linking" to Petsforum.com, defensefund.com and CompuServe.com's web sites and HTML code.

81. It was precisely the reconcilability of the Pets Warehouse mark that led defendants to adopt its use of it. Many persons searching for Pets Warehouse's web site, but unaware of its precise address, would attempt to access it by typing the Pets Warehouse Mark into a search engine, or the Internet commonly uses advertising banners located on web pages to direct consumers to other web sites for what consumers believe to be related material. Clicking on an advertising banner with the Pets Warehouse Mark, those persons seeking plaintiff's site with the intension of viewing pet related information and or supplies to purchase – but who are diverted to

the Petsforum.com and other fundraising sites by means of the false designation of origin in Defendants AWP and Hudson placing commerce advertising banners or the Pets Warehouse Mark in the sites code, consumers would be confused to find a web site <http://www.petsforum.com/psw> containing unwholesome, unsavory context likely to evoke unflattering thoughts defaming and or otherwise negative information placing the PetsWarehouse.com in false light.

82. The Defendants AWP and Hudson links to the petsforum.com and CompuServe are maliciously designed to infringe the Mark Pets Warehouse, confuse, defame, disparage and divert consumer's, tortiously interfering with prospective contracts. Linking to this site knowingly with malicious intent sought to infringe Plaintiff's Mark. Defendants could not have reasonably thought that its usage was not barred by statute.

83. Defendants AWP and Hudson sites compete for the same audience namely, an Internet user who are searching for a web site seeking pet related information and products that uses plaintiff's Mark as it address, or direct name in advertising banners.

84. This confusion as to the source, sponsorship, affiliation, or endorsement of the site is acknowledged by the telephone calls and e-mails from consumers and in fact from several defendants as more fully described below.

85. Defendants AWP and Hudson use of the mark in their banners to divert web citizens, raises the possibility that the mark will be "blurred" losing its ability to serve as a unique identifier of Plaintiff's services.

86. Defendants AWP and Hudson misused the Pets Warehouse Mark with malicious intent to falsely describe by using a capital "S" the mark as such "petsSwarehouse". They also used the term PetSWEARhouse" stating, "because if you buy from them you will be swearing".

87. Plaintiff's mark is "tarnished" as used by the Defendants. It is linked and portrayed in an unwholesome or unsavory context likely to evoke unflattering thoughts about the Pets Warehouse products and services. Moreover reducing the trademark's reputation and standing in the eyes of consumers as a wholesome identifier.

88. Defendant's intent to divert consumers to a unflattering site that harmed the goodwill represented by the Mark since 1974, for commercial gain and with the intent to tarnish and disparage the Mark.

89. Defendant Hudson is promoting his own e-commerce web site. Since his outspoken role relating negatively to Pets Warehouse and Robert Novak in chat rooms, his own website has benefited, Hudson reports 30, 000 unique visitors a month now come to his e-commerce web site.

90. The defendants have collected monies infringing on the trademarks misuse. Moreover these funds are being used to pay for the legal services in defense to this very complaint.

91. Initial interest confusion by the use of the word or words "petswarehouse" in links and banner advertisements is a brand of confusion particularly applicable to the Internet. Confusion may result when a user conducts a search using a trademark term and the results of the search include web sites not sponsored by the holder of the trademark search term, but rather of sites competing for the same traffic as competitors. That the user may be diverted to an un-sponsored site, and only realize that she has been diverted upon arriving at the competitor's site. Confusion does not require the customer to be actually deceived upon arriving at the site; it is sufficient to show that being drawn into the site in the first instance deceived the customer. The underlying premise of trademark and unfair competition law is that no one should be permitted to trade and profit off the good name or mark of another. Once there, however, even though the user is confused he/she is not in the site initially sought, she may stay. In that way, the defendants have captured the trademark holder's potential visitors or customers.

92. Analogized the capture of unsuspecting Internet users by a competitor to highways and billboards: Suppose a Pets warehouse's competitor puts up a billboard on a highway reading — "PetsWarehouse 2 miles ahead at Exit 4" — where PetsForum.com is really located at Exit 4 but Petswarehouse is located at Exit 5. Customers looking for Petswarehouse store will pull off at Exit 4 and drive around

looking for it. Unable to locate PetsWarehouse, but seeing the PetsForum.com store right by the highway entrance, they may simply shop there.

93. Although the customer is not confused as to where he/she ultimately transacts commerce, AWP has misappropriated Pets warehouse's goodwill through causing initial consumer confusion. The customer has been captured by the competitor through the use of Plaintiff's mark in banners in much the same way that Defendants AWP and Hudson capture Internet users looking for plaintiff's web site, only to find Petsforum.com site which is commercially fundraising monies, goods and services based on the original use of the PetsWarehouse Mark.

94. In this case actual confusion was admitted in the posts to the AWP chat room. On August 11, 2001 Defendant Hudson stated "I am also getting comments from my readers that the "Petswarehouse defense" banner/link is worded in such a way that it sounds like its in support of Pets warehouse, not the people who are being sued. Perhaps a little re-wording? Robert Paul H <http://www.aquabotanic.com>."

95. August 12, 2001 defendant Powers posted "As for people thinking the fund is to benefit PsW - hmmm . . . Thanks for letting us know. Cynthia"

96. August 15, 2001 defendant Hudson posted "Now realize I am only talking about the wording of the banner ad..not what they see if they click on it. I've had three people ask me why I am supporting Pets Warehouse in this...when I told them to click on the banner...their response was, oh, duh! Some people have the banner linked to CompuServe, others to a Usenet posting of Johns email, and others to the krib, none of which I have seen a link to the list of contributors. Robert Paul H."

97. On August 16, 2001 R. Sexton posted in that same chat room "Change the banner ad then. If 3 people write that means 1500 were similarly confused and didn't write if the net is true to form. Why even mention PetSwarehouse in the banner? "

98. Defendants use of the mark confused consumers thinking there is a connection with the trademark owner. Defendants have used the plaintiff's mark willfully, fraudulently, and in bad faith, improperly benefiting from the goodwill

developed in his mark, reaping improperly benefiting from the plagiarism for their own economic goals.

99. Plaintiff's PetsWarehouse mark was and continues to be diluted lessening of the capacity of a it's mark to identify and distinguish Pets Warehouse's goods or services 15 U.S.C. § 1127. Defendants have made use of a Plaintiff's mark sufficiently similar to the mark to evoke in a relevant universe of consumers a mental association of the two that has caused actual economic harm to the mark's economic value by lessening its former selling power as an advertising agent for its goods and services additionally by blurring the trademark association, thus weakening it, or by tarnishing the trademark, giving it a bad association along with its original trademark association. Consumers still associate the trademark with its owner, but that association is blurred making the mark weaker than before or a negative connotation of tarnishment is added to the mark.

100. The publication and re-publication circulation of the statements or posts by the defendants AWP, Rosenstein and Powers concerning the plaintiff were false and defamatory.

101. The statements/messages constituting commercial speech are libelous per se since they falsely accuse the plaintiff's company of fraudulent acts and accuse Pets Warehouse and the plaintiff of conducting a disreputable and dishonest on-line business.

102. By reason of the publication and circulation of the statements/messages the plaintiff has been publicly disgraced and humiliated, and has been injured in his good name and reputation in the community in which he resides and does business and throughout the entire country in which the publication and circulation of he statements/messages occurred.

103. At the time defendants AWP, Rosenstein and Powers published and republished the defamatory matter, namely the statements/posts, defendant knew, or had reason to know, that the statements were false, or failed to take the proper steps to ascertain their accuracy and, instead, published the statements /messages with reckless disregard of whether the statements/messages were true or not.

104. In publishing and circulating the statements/messages and refusing to allow the plaintiff to refute same, defendants AWP, Rosenstein and Powers acted with malice, and intent to injure the plaintiffs' business and reputation.

105. Robert Novak attempted to post by e-mail rebuttals in reference to Defendants factually false posts. However AWP maliciously blocked the e-mails sent to AWP list by the plaintiff thus not affording him an opportunity to defend Pets Warehouse.com.

106. After several attempts and e-mails directly to defendants AWP and Rosenstein of the inability of Robert Novak as a subscriber since 1997 had in getting his e-mailed posts published by AWP, the response from Mr. Rosenstein was "calm down". AWP by Rosenstien offered no assistance in removing the posts in question or getting Robert Novak's rebuttal comments as to the false allegations published.

107. Defendants Rosenstein and Powers further humiliated plaintiff by posting in AWP chat room that Robert Novak was unaware or lacked knowledge of how to post to the chat room, and I attempted by adding an attachment to my attempted rebuttal post in May 2001. Their response was factually false.

108. Robert Novak was being blocked from publishing to the AWP chat room timely Plaintiff's reputation cannot be repaired by counter speech at a later date, however persuasive or effective. The damage was done.

109. AWP's software used in their chat room can block messages. AWP's C. Powers as the websites moderator attested to the fact that blocking is possible several times.

110. AWP is not immune and is liable for their actions or inactions. Immunity from suit and liability found in the Communications Decency Act, 47 U.S.C. §230 does not offer AWP a safe haven of immunity. While it may protect them to some degree to make available messages of others on the AWP web site, it does not protect from (i) trademark infringement or (ii) content they create or the (iii) electronic re-publishing world wide of the statements/posts they receive. Moreover immunity provision of the CDA should not be construed in a matter that would "limit or expand any law pertaining to intellectual property including commercial speech.

111. The statements pertaining to plaintiffs' business practices and the quality of the goods sold by the plaintiff are false and were known, or defendants had reason to know, to be false by defendants when the statements/messages were published and circulated. Defendant's tortiously interfered with the e-mail transmissions.

112. As a willful, systematic and malicious disparagement direct and proximate result of Defendants willful, systematic and malicious conspiracy to disparage the Pets Warehouse Mark which has caused the dilution tarnishment and blurring of the distinctive quality of the Pets Warehouse Mark, Pets Warehouse.com and the products and services sold under that Mark. Robert Novak has been injured. In violation of Section 43 of the Lanham Act.

113. Plaintiff seeks disgorgement of all monies acquired in Defendants fundraising efforts received in violation of Section 43 of the Lanham Act.

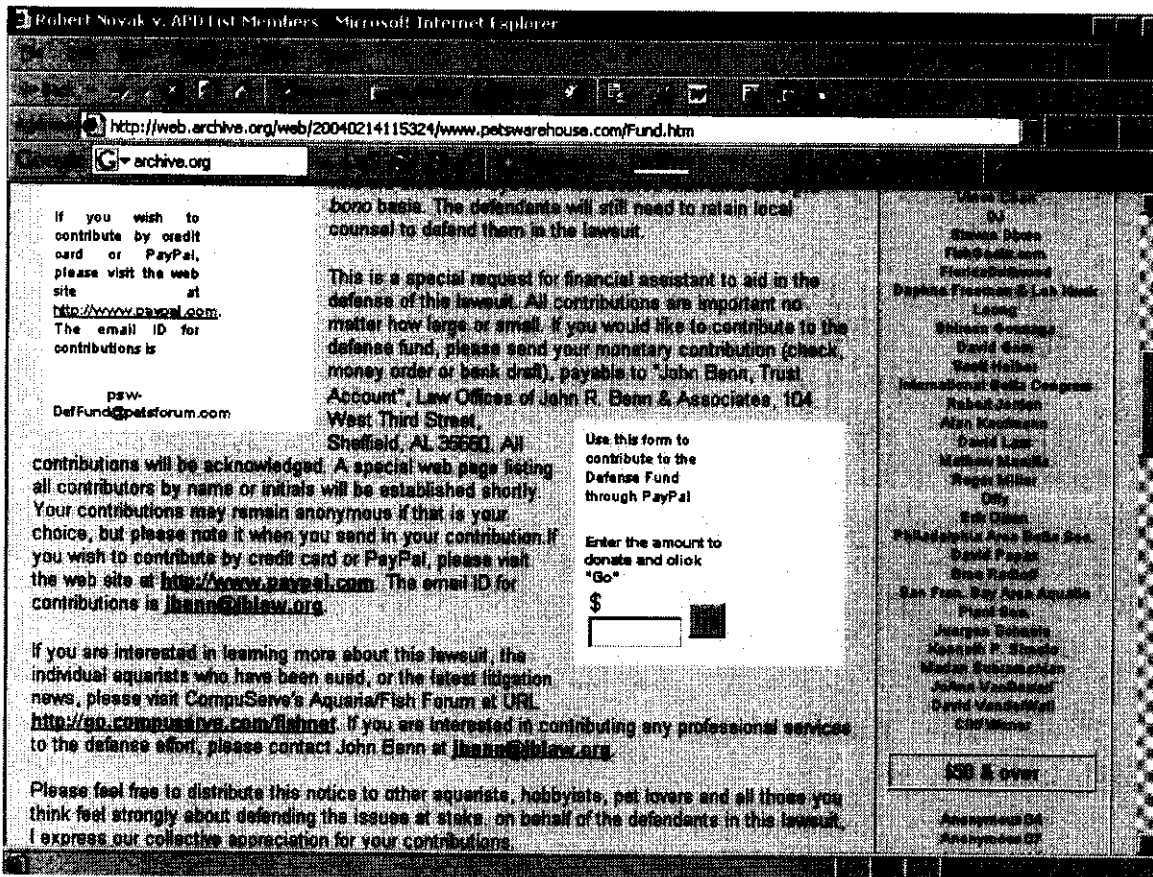
114. Defendant's infringement has damaged Novak in an amount to be determined at trial.

Claim Two - Lanham Act Contributory Trademark Infringement

115. Each of the foregoing allegations are incorporated herein by reference and reasserted as though fully set forth at length.

116. The use of the Pets Warehouse mark on defendants website is likely to cause confusion, mistake, and deception among consumers as to whether Pets Warehouse is the source of, or is sponsoring or affiliated with the products and services offered on such third party advertisers websites such as Petsforum.com/PSW

this is an actual webpage image of that link



117. Defendants provide such third parties with aid and material contribution to the third parties violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a).

118. Defendants are therefore contributory liable for the infringing use of the Pets Warehouse mark who such mark triggers their advertisement.

119. Novak has been damaged by defendant's contributory infringement in an amount to be determined at trial.

Claim Three - Tortious Interference With Perspective And Past Economic Advantage.

120. Each of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.

121. By providing exceptional customer service under the Pets Warehouse mark and by expending hundreds of thousands of dollars in advertising promoting the

Pets Warehouse mark, consumers have come to know Pets Warehouse and PetsWarehouse.com as a reliable source of livestock and pet supplies and excellent customer service.

122. Those consumers with a favorable view of Pets Warehouse, based upon Pets Warehouse's customer service and advertising effort are likely to become Pets Warehouse customers. Such customers are likely to use the Pets Warehouse mark in search engines to find the PetsWarehouse.com website.

123. Pets Warehouse has an expectation that those customers indicating an interest in Pets Warehouse as demonstrated by their decision to use the Pets Warehouse Marks as search terms will enter into a business relationship with Pets Warehouse.

124. In addition, many of Pets Warehouse's customers regularly purchase from Pets Warehouse's Web site, and are repeat customers. It is probable that such customers and others will continue to seek to visit Pets Warehouse's Web site and purchase Pets Warehouse's goods and services in the future. Accordingly, Pets Warehouse has actual business relationship with such customers.

125. Upon information and belief, Defendants were actually aware or should have been aware of the existence of Pets Warehouse's reasonable expectation of future transactions with customers using the Pets Warehouse Marks as search terms.

126. Absent Defendants intentional and tortious interference through their deceptive advertising banners and manipulated search engine "results", it is reasonably certain that Pets Warehouse would have realized additional sales from existing customers and/or new customers.

127. Defendants have intentionally and tortiously interfered with Pets Warehouse's future and prospective sales through their deceptive and manipulated search engine "results" that divert consumers from Pets Warehouse's Web site and business.

128. Robert Novak has numerous agreements with commercial entities that permit the use of the Mark to promote certain goods and services marketed by such entities. Revenue generated from these agreements is paid to Robert Novak as royalties and or commissions

129. Pets Warehouse maintained valid contracts with various third parties as commissioned affiliated sellers, these sellers having websites which advertise and link to the Pets Warehouse.com web site for sales of pets and pet supplies.

130. Defendants intentionally sought to induce such third parties to terminate their contacts with Petswarehouse.com. Defendants acted with malicious purpose and/or dishonest, unfair or improper means to harm plaintiff. As a result numerous contracts of sale were cancelled.

131. Defendants intentionally interfered by attempting to induce and urge consumers, being prospective customers, to avoid doing business with Petswarehouse.com.

132. The following posts were made on defendant Active Windows website. Additionally copies were email to all its members.

133. On June 15, 2001 defendant Chan using the screen name arakis13 posted "I've also contacted once popular aquarist website who I've seen carrying the petSwarehouse ad banner and inform them about this matter. Turns out that the site manager is a friend of the ListMom (meaning moderator) and he immediately agreed to terminate relationship with petSwarehouse."

134. Again on June 16, 2001 defendant Chan posted "I realize Petwarehouse engages in an "Affiliate" program and have their link all over the place. Also, many private aquarist sites have links to them as well. An effective way to boycott these people would be to remove as many links to them as possible: Go on the Google.com Search for "PetSwarehouse" Email a plea to each of the hits. explain what's going on and urge them to support their fellow hobbyists and remove links to Petswarehouse.com".

135. Pets Warehouse.com had lost the participation of numerous affiliates. (Affiliates are web sites which advertise goods and services on a commission basis which are affiliated with Pets Warehouse.com's commerce)

136. Karen Randall on July 6, 2001 posted the following message "strong sense of community has developed....natural to warn your friends", "the more noise we make".

137. Defendant Hudson 2002-03-12 "Are you in Long Island New York? Pets Warehouse runs a full page ad in their newsletter. Perhaps you could persuade them to think more seriously about continuing to run their ad and to look at this case more closely....what I meant to say was PetsWarehouse runs a full page ad in the Long Island Aquarium Club newsletter. Perhaps you could ask the club why???"

138. Plaintiff was in fact contacted by LI Aquarium Club and damaged Plaintiff advertising relations.

139. The chat rooms of AWP, CompuServe's Aquaria Fish Forum, TomsBoard, FishlinkCentral and Aquarists & The Law all disseminated through the Web numerous posts with similar tortious Interfering statements.

140. By example the effect of which on AWP chat room published November 21, 2001 this post by Hank norsek2@yahoo.com after asking about ordering live plants from Pets Warehouse.com "Oops...I just checked the archives....so we won't go there!" Meaning he found in AWP database the defamatory posts of and concerning Pets Warehouse.

141. Pets Warehouse.com received over one hundred cancellations of existing orders and received a like amount of e-mail saying they would not purchase based on what was published on the Defendant AWP chat room.

142. Defendants interfered with Pets Warehouse.com's relations with such perspective third parties with such malicious purpose and or using dishonest, unfair or improper means to harm plaintiff. Plaintiff's business relation with such parties has been injured.

143. Defendants' tortious interference has damaged Pets Warehouse in an amount to be determined at trial.

Claim Four - Product Disparagement and Trade Libel

144. Each of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.

145. Defendant's intent to divert consumers to several sites that harmed the goodwill represented by the Pets Warehouse Mark, for commercial gain and with the

intent to tarnish and disparage the Mark, by confusing as to the source, sponsorship, affiliation, or endorsement of the site.

146. Defendants have disparaged Pets Warehouse brand products and services pursuant to its Pets Warehouse Mark by falsely misrepresenting Pets Warehouse business practices. As a result of Defendants disparagement and cybersmearing campaign and falsely inferring that the company has inept and discourteous customer service, is dishonest and does not fulfill it's customer's orders.

147. Defendants have disparaged petswarehouse.com products and services provided pursuant to its Pets Warehouse brand claiming plaintiffs "sued its customers for stating their opinions", inter alia, at least the following statements: "unhappy customers....have posted on the AWP many times" AWP moderator Cynthia Powers stated on July 27, 2001. This statement is factually false. The characterization of Powers many times was grossly inaccurate. In searching the database of AWP prior to May 15, 2001 I found about six so-called unhappy customer posts. Given Pets Warehouse.com processes thousands of orders annually this statement was made with reckless disregard for the truth, but the post created and published by AWP and Powers was electronically e-mailed world wide to libel and disparage Plaintiff's goods and services.

148. Defendants continually with reckless disregard impeach and reflect Plaintiffs honesty, integrity, virtue, and sanity by defendant's statements and wrongful acts.

149. Defendants have published intentional numerous disparaging remarks in chat rooms posting those statements to third parties.

150. These statements now appear on the Internet in a permanent form accessible to millions. As exemplified in Claim Five.

151. Defendants' Product Disparagement and Trade Libel have damaged Pets Warehouse in an amount to be determined at trial.

Claim Five - The Libel, CyberLibel, Commercial defamation,
False Light and Libel Per Se of the Defendants.

152. Each of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.

153. On May 15, 2001 Dan Resler sent an e-mail message to defendant AWP at it's website aquatic-plants@actwin.com knowing that that message would be posted to the news groups website to be seen by anyone coming to that website and knowing that his statements would be e-mailed to all subscribers of that plant digest and further harassed plaintiff knowing that other search engines/indexes, news groups would automatically pick up, index and disseminate that message to numerous websites, news groups and chat rooms. Mr. Resler's e-mail made the following statements of and concerning Plaintiff and the Mark: "Thinking of buying plants from Pet Warehouse? Don't. What is crappy is their service! And they're maybe even A bit dishonest." "to clarify: Pet warehouse OK, Pets Warehouse NOT" also on May 18, 2001"note deliberate use of name so search engines will pull this message up"

154. Mr. Resler's e-mail was responded to by over fifteen hundred (1500) individual e-mails sent to chat rooms such as AWP, CompuServe and Petsforum "of and concerning" Plaintiff and the Mark "Pets Warehouse":

Sean Carney-May 16, 2001 "I believe they call that deceptive advertising. Or bait-and-switch. Take your pick." "Stay away from them"

Jared Weinberger-May 21, 2001 "as a source for purchasing plants, they do not have a good reputation"

Dan Resler-May 18, 2001 "But you don't have to take my word as the last word on their horrible service. Feeling lucky? Go ahead - try them out yourselves. After all, it's only your time and money, right?"

Barr-May 17, 2001 "I think I have the record with these nit wits. I've talked to Bob Novak several times etc(the owner). A number of years back they did have a person that could do the job well, Donna. But they drove her off fast. I've been through some 5 or more order folks there now. There will not be a 6th. Also the only one that gave decent service, owner included. They claim to fill 90% of the orders. Well I can tell everyone it's more like 20%. Or less. If it at all. I order from them every 2 weeks for about 2 years.... Didn't matter if you order 300\$ worth of plants or 25\$ worth of plants, every sized order is ignored equally. The high shipping cost are a complete joke...And certainly the customer is last, rather than first...but many years and 5 different service employees?? They get Tom's official: Worse service award of any plant MO place. And they deserve every bit of it beyond any reasonable doubt. Regards, Tom Barr "

Defendant Hudson-May 18, 2001 Don't allow Bob under any circumstances to have anything to do with any of your customers. In fact don't even admit to

anyone he is the President of your company. improve customer access. Have someone that checks your email more than once a week. Get someone to answer your phone. And teach your people good phone manners. People should sound professional on the phone, not like a street vendor in the Bronx.

"Hey..Adrian...yo" What they don't want is to be given bold faced lies.

Sean Carney May 22, 2001"Remember petSWEARhouse, buy their plants and you'll be swearing!"

Defendant Hudson 2001-06-16 "Some people are just mentally challenged, we shouldn't discriminate against those that can not fend for them selves. There are many company presidents out there that are mentally handicapped."

Barr June 30, 2001 " PsW has little (no) honor"

Hahn-July 3, 2001 "dissatisfied customers now need to fear lawsuits for the headaches a business owner caused himself from the handling of customer service"

Powers-July 5, 2001 "do you want to lose your right to complain about the bad service you receive from a company. Because doing that appears to be what PetsWarehouse wants to accomplish"

Barr July 6, 2001 "So don't be intimidated!!!!... Say what you will"

Defendant Hudson 29 Jul 2001 "I noticed Jared has put a banner link on his WEB site to Cynthias post. I would suggest anyone with a high traffic WEB site follow his example."

Defendant Hudson 11 Aug 2001 "A special web page listing all contributors by name or initials will be established shortly. " Has this been done yet? I haven't seen any link for this. BTW, myself and members of my newsletter are supporting this: Getting the media involved

Barr August 14, 2001 "any internet user who typed the right alphanumeric characters in address line of his browser-displayed Dr. Resler's credit card number unencrypted. I have direct proof of this"

Defendant Hudson 22 Aug 2001 "To Bob Novak, Jack Nolan and the rest of the characters at PetSwarehouse, I tip my hat and salute you! Through your misdeeds and indiscretions a collection of rabble hobbyists have shown themselves to be a better group of people than any of us would ever have imagined. Without your challenge to our right to speak freely and openly over the Internet, we would never have learned this much about who we really are. For that I thank you. Further quoting another user "Very well said Steve!" And you are correct, as time has past peoples resolve and support has only grown stronger. We have to make the momentum grow even stronger. We are still a long, long ways off from 50K. Perhaps the local reporter will open a new floodgate to the media. Something should be done to take it up a notch. The editor of APD suggested a "press release" type of story to give to many print magazines of the computer and entertainment industry. This is an excellent idea. Is anyone doing this?"

Defendant Hudson 22 Nov 2001 Quoting Tom Barr wrote "<< Support the Defense fund. Don't let Bullies USE others, use the law, invade other's rights to privacy(screen names, private web addresses, personal passwords have been publicly disclosed by plaintiff on open forums) and suppress free speech. If you

just give a little bit, it helps greatly. Do not think otherwise. It's all the small \$ donations that really add up and give a sense of community & solidarity...Most of my knowledge comes from everyone's posts on this list. I would like to help out and was wondering if you can explain how we can contribute again.<<

R. Hudson replied; You can contribute by going to the following WEB address <http://216.168.47.67/psw/Fund.htm> Paypal is an online money transfer service, and an easy and hassle free way of contributing money to the defense fund, which is critically in need, even with all the fine efforts and generosity of people here in the last few months. <http://www.paypal.com/>

If you think this issue does not affect you, then I am a prime example of why this is not true. Besides myself, other people now named in the suit include people who run our favorite WEB sites in this hobby both high traffic and personal WEB sites. Places where you buy and trade your plants, enjoy conversation, and see wonderful pictorial examples of our hobby.

.... The fund raising efforts thus far have been wonderful and very generous, but quite frankly it is not enough. Read about the suit/complaint and the background about the plaintiff, and read the comments on CompuServe. Tell as many people that you feel comfortable that may offer assistance. This is a time in current events that is worthy of protecting our rights and freedom more than any other.. I would hate to see this go away because of corporate interest, and not enough participation.

Defendant Hudson 2001-12-11 "I humbly encourage everyone to donate whatever you can. If the suit continues, some people will not be able to put their kids through college, or pay for cancer surgery, or pay off student loans, and small businesses may be in jeopardy. In the end if some of the WEB sites go away, it will be for lack of funds. This is no joke. This is the hard reality of our legal system which allows anyone like Novak to force people to spend their life's savings just to defend themselves."

Barr November 23, 2001 "It really shows that PSW is blatantly lying to their customers about the security of their online web site...It says they have secure on line ordering, yet do not."

Defendant Hudson 2002-03-12 "Are you in Long Island New York? Pets Warehouse runs a full page ad in their newsletter. Perhaps you could persuade them to think more seriously about continuing to run their ad and to look at this case more closely....what I meant to say was PetsWarehouse runs a full page ad in the Long Island Aquarium Club newsletter. Perhaps you could ask the club why???"

155. Defendants AWP, Rosenstein enlisted the services of C. Powers who received and posted/published and re-published via electronic e-mail on/from their web site at AWP, numerous other commercially defamatory statements subject to being viewed by millions of Internet users.

156. The publication and circulation of the statements or messages by defendants concerning the plaintiffs were "defamatory falsehoods", factually and knowingly false.

157. The Statements are libelous per se since they falsely accuse the plaintiff of bad business practice, fraud, dishonesty and bad customer service.

158. By reason of the re-publication of the Statements/posts now deemed the content of AWP which is assembled in a daily e-mail to various aquarium owners and others being third parties does not offer AWP a safe haven of immunity from suit and liability found in the Communications Decency Act, 47 U.S.C. §230.

159. The plaintiff has been publicly disgraced and humiliated, and has been injured in its good name and reputation in the business community in which its business are located and throughout the entire country and internationally in which the publication and re-publication of the statements/posts occurred. Further the publication of the statements/posts have placed the plaintiff, Robert Novak and the entities that use the mark Pets Warehouse in a false light in the public eye and constitutes an invasion of privacy.

160. As a direct and proximate result of Defendants' acts described herein, Robert Novak, petswarehouse.com and the mark Pets Warehouse has been injured. Defendants' have damaged Pets Warehouse in an amount to be determined at trial.

Claim Six Cybersquatting Pursuant to 15 U.S.C. §1125 (a)(d)

161. Each of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.

162. Plaintiff's Pets Warehouse is a distinctive and famous mark, and was a distinctive and famous mark at the time the domain name "Pets-Warehouse.net" was registered, and at all other times relevant hereto, pursuant to 15 U.S.C. §1125(d) (hereinafter the "Anticybersquatting Act"), 15 U.S.C. §1125(d)(1).

163. On information and belief, the Active Windows and Mark Rosenstein, have had, and continue to have, a bad faith intent to profit from the name Pets

Warehouse , which is protected as a distinctive mark. Specifically, Active Windows and Mark Rosenstein registered the domain name "Pets-Warehouse.net" without the prior knowledge, permission or consent of Plaintiff, attempting to coerce plaintiff into dropping this lawsuit by displaying false information about the famous website PetsWarehouse.com and harass Novak. Such actions constitute a violation of 15 U.S.C. 1125 §§(d)(1)(A)(ii)(I), (II); (d)(1)(B)(i)(I), (III), (V), (VIII) and (d)(1)(E).

164. Plaintiff is therefore entitled to a judgment from this Court compelling the Active Windows and Mark Rosenstein, and each of them, to transfer all ownership in the domain name "Pets-Warehouse.net" to Plaintiff, pursuant to 15 U.S.C. §1125(d)(1)(C).

165. Plaintiff is further entitled to a Preliminary and Permanent Injunction enjoining the Active Windows and Mark Rosenstein from any use of the domain name "Pets-Warehouse.net" pursuant to 15 U.S.C. §1116(a).

166. Plaintiff is further entitled to a judgment from this Court awarding Plaintiff all actual damages proximately caused by Active Windows and Mark Rosenstein or, in the alternative, statutory damages of not less than \$1,000 and not more than \$100,000, as the Court considers just, pursuant to the Anticybersquatting Act, 15 U.S.C. §1117(a) and (d).

167. Plaintiff is informed and believes and based thereon alleges that Active Windows and Mark Rosenstein, and each of them, have violated Section 43(a) of the Lanham Act, 15 U.S.C. 1125 (a), by expressly and impliedly making false designations or representations in registering the domain name "Pets-Warehouse.net", and by using said domain name for a commercial purpose, namely, attempting to coerce plaintiff into dropping this lawsuit by displaying false information about the famous website PetsWarehouse.com and harass Novak. Said false designations or representations include, without limitation, the implied representation that Plaintiff endorses, sponsors, operates and for is affiliated with the domain name "Pets-Warehouse.net" and/or any and all information, products and services offered on any website located at said domain name.

168. Plaintiff is informed and believes and based thereon alleges that the conduct of Active Windows and Mark Rosenstein, and each of them, has caused, and is continuing to cause confusion among Internet users in that persons accessing the domain name "Pets-Warehouse.net" are led to believe that such domain name, and any website accessed by using that domain name, are owned, operated, sponsored, endorsed by and/or affiliated with Plaintiff, which they are not. Moreover, Internet users are further led to believe that, if Plaintiff does not operate a website on the domain name "Pets-Warehouse.net", Plaintiff must not have a domain name or website of his own.

169. Active Windows and Mark Rosenstein is in the business of registering and trafficking in domain names.

170. The domain name Pets-Warehouse.net is identical to the registered trademark Pets Warehouse.

171. Defendants' cybersquatting have damaged Pets Warehouse in an amount to be determined at trial.

Claim Seven-Intentional Infliction of Emotional Distress to Robert Novak

172. Each of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.

173. The acts and omissions of defendants, jointly and severally, in publishing false information about plaintiff Robert Novak with knowledge that the information was false, or with reckless disregard for whether it was false, constituted extreme and outrageous conduct.

174. As a direct and proximate result of the acts and omissions of defendants, jointly and severally, plaintiff, Robert Novak suffered severe emotional distress, including but not limited to headaches, nausea, nervousness, anxiety, embarrassment, humiliation, and mental distress. Wherefore, plaintiff Robert Novak demands judgment

against defendants, jointly and severally, in the form of damages in the amount of One Dollar (\$1.00) in nominal damages, One Million Dollars (\$1,000,000.00) in compensatory damages, and One Million Dollars (\$1,000,000.00) in punitive damages; and in the form of an award to plaintiff Robert Novak of his costs in this action and such further relief as justice requires, alternately in an amount to be determined at trial.

WHEREFORE, Robert Novak respectfully requests judgment on Claim One, Claim Two and Claim Three as stated, that this Honorable Court enters judgment in favor of Robert Novak and award Robert Novak additionally the following relief:

(1) Awarding damages suffered by Robert Novak as a result of the unlawful conduct complained of herein;

(2) Disgorgement of all monies, including, but not limited to, all monies obtained by fundraising schemes which diluted Pets Warehouse's mark as a necessary part of the scheme, raised by Defendants as a result of the unlawful conduct complained of herein;

(3) Awarding statutory damages, as permitted by the Lanham Act, augmented as a result of Defendants' willful and unlawful conduct complaint of herein;

(4) Awarding actual and punitive damages, as permitted by law, as a result of Defendants' willful and malicious conduct complained of herein;

(5) A permanent injunction enjoining Defendants' further unlawful conduct;

(6) Awarding Novak his costs and attorneys' fees;

(7) Permanently enjoining defendants and all others acting in concert or participating with them or with actual notice of such order from:

Directly or indirectly using the Pets Warehouse mark for use with any posts including the title in any post appearing on the chat forum or any other affiliated website

(8) Special damages.

(9) Forfeiture of the Pets-Warehouse.net domain name to plaintiff and award pursuant to 15 U.S.C. §1117(a) and (d).

(10) Such other and further relief as this Court deems just and appropriate.

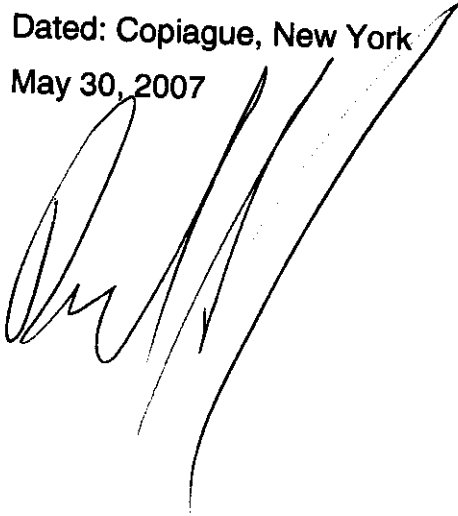
JURY TRIAL DEMANDED

Respectfully submitted,

Robert Novak, Plaintiff
1550 Sunrise Highway
Copiague, New York 11726
1-631-789-5400 | Fax 789.9340

Dated: Copiague, New York

May 30, 2007

A large, stylized handwritten signature in black ink, likely belonging to Robert Novak, is written over the date and extends upwards and to the right.