

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DISTRICT**

TFSC, LLC a Michigan Limited Liability
Company d/b/a TANNER FRIEDMAN,

Plaintiff,

v.

Hon.

Case No.

JOHN DOE, an individual or Michigan
Corporation,

Defendant.

TOMKIW DALTON, plc
Daniel P. Dalton (P 44056)
Attorney for Plaintiff
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**VERIFIED COMPLAINT
FOR INJUNCTIVE RELIEF AND
MONETARY DAMAGES**

NOW COMES the Plaintiff, TANNER FRIEDMAN, by and through its attorneys,

Tomkiw Dalton, plc, and for its Complaint against Defendant John Doe, states as follows:

Preamble

This is an action for injunctive relief and damages arising out of the posting of false and defamatory statements on the internet site "Twitter," under the assumed name "tannerfriedman," by or with the assistance or participation of Defendant, without authorization by Plaintiff to use its name. This is an action for cyber fraud and abuse pursuant to The Computer Fraud and Abuse Act, 18 U.S.C.A. § 1030; cyberpiracy pursuant to Section 43(d) of the Lanham Trademark Act, 15 U.S.C.A. § 1125(d); trademark infringement, trade name infringement and false designation of origin pursuant to Section 43(a) of the Lanham Trademark Act, 15 U.S.C.A. § 1125(a); for unfair competition under Federal and Michigan common law and The Michigan Consumer Protection Act, Mich. Comp. Laws Ann. §

445.901-445.922; for intentional interference with contractual and business relations; and for defamation. Plaintiff's goodwill and reputation amongst its clients and the public has been severely harmed by Defendant's use and maintenance of the "tannerfriedman" Twitter account.

Parties

1. Plaintiff, TANNER FRIEDMAN, is a Michigan limited liability company organized and existing under the laws of the State of Michigan and having a main office at 32255 Northwestern Hwy, Farmington Hills, MI 48334.

2. Defendant JOHN DOE is an unknown defendant who, upon information and belief, posted false and defamatory statements on the internet site "Twitter," under the assumed name "tannerfriedman." The true name of Defendant JOHN DOE, aka "tannerfriedman," is unknown to Plaintiff, who therefore sues this Defendant under such fictitious name. Plaintiff will ask leave of Court to amend this Complaint and insert Defendant JOHN DOE's true name in place of the fictitious name when the same has become known to Plaintiff.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction over this case pursuant to 28 USC § 1331, as this is an action pursuant to The Computer Fraud and Abuse Act, 18 U.S.C.A. § 1030; cyberpiracy pursuant to Section 43(d) of the Lanham Trademark Act, 15 U.S.C.A. § 1125(d); trademark infringement, trade name infringement and false designation of origin pursuant to Section 43(a) of the Lanham Trademark Act, 15 U.S.C.A. § 1125(a); for unfair competition under Federal and Michigan common law and to secure declaratory injunctive relief under 28 USC § 2202.

4. Venue is properly laid in the United States District Court for the Eastern District of Michigan, pursuant to 28 U.S.C. §1391, because a substantial part of the events giving rise to the claims alleged by Plaintiff occurred in this district; specifically, defamatory statements

regarding Plaintiff were posted to the internet in this district, and/or by using computers and servers located in this district. Venue is also properly laid in this District because one or more Defendants are subject to personal jurisdiction in this district and there is no other district in which the action may otherwise be brought.

5. Defendant is subject to personal jurisdiction in Michigan and this district because they are: (a) engaged in substantial and not isolated activities in Michigan and this district; (b) committed wrongful and tortious acts within Michigan and this district; (c) caused injury to persons located in Michigan and this district, while at the same time they engaged in solicitation and service activities within Michigan and this district; and/or (d) engaged in unlawful conduct in Michigan and this district, specifically, by assuming the identity of Plaintiff and publishing false and defamatory statements about Plaintiff within Michigan and this district, and/or using computers and servers located in Michigan and this district.

6. The venue in this action is proper within the Eastern District, Southern Division of Michigan pursuant to 28 USC § 1391(b), in that (i) Plaintiffs, reside and own property within this judicial district (ii) upon information and belief, Defendant is situated within this judicial district, and (iii) all of the claims asserted by Plaintiffs arose within this judicial district.

7. This Court has supplemental jurisdiction pursuant over Plaintiff's Michigan State Law claims asserted herein as those claims form part of the same case for controversy as the federal questions asserted herein pursuant to 28 USC § 1367(a).

8. Plaintiffs include their request for a speedy decision and advancement on this Court's calendar under Fed. R. Civ. P. 57 and 28 USC § 2201.

Factual Allegations

9. Since January 2007, Plaintiff Tanner Friedman has become a reputable and well-known public relations / marketing firm in Michigan. Plaintiff relies upon its goodwill and reputation amongst its clients and the public, as that is the foundation of the public relations industry.

10. The Internet is the world's largest network of computer networks. It is a decentralized, global medium of communications that links people and businesses around the world, allowing instantaneous sharing of information. In recent years, the commercial aspects of the Internet have mushroomed, with millions upon millions of individuals and commercial enterprises engaging in daily transactions and making financial and business decisions based upon information found on the Internet.

11. Currently, tens of millions of computers in the United States alone are linked directly to the Internet, and more than 100 million users connect to the Internet worldwide, scouring different sites for information relevant to their business, financial and personal decisions.

12. Twitter, Inc. ("Twitter") is a global Internet media company, whose "Twitter" Web Site (<http://twitter.com>) has recently emerged as one of the most popular social media destinations on the World Wide Web (the "Web"), in which users can publish an on-line, publicly accessible answer to the prompted question "what are you doing?" Such status updates, commonly known as "tweets," can be viewed and read by anyone with an account on Twitter. Each day, countless users around the world subscribe to Twitter to read these tweets.

13. More specifically, Twitter is a social networking and micro-blogging service that enables its users to send and read other users' updates known as *tweets*. Tweets are text-based

posts of up to 140 characters in length. Updates are displayed on the user's profile page and delivered to other users who have signed up to receive them. Senders can restrict delivery to those in their circle of friends, but delivery to everyone is the default setting. Users can send and receive updates via the Twitter website, SMS, RSS (receive only), or through applications such as Tweetie, Twiterrific, Twitterfon, TweetDeck and feedalizr.

14. On or near January 13, 2009, Defendant JOHN DOE registered an account on Twitter under the assumed name "tannerfriedman," and, as its "tweet," posted a false and defamatory statement regarding Tanner Friedman on the Twitter website using the hijacked name.

15. The "tannerfriedman" Twitter account is not an authorized account by Plaintiff nor is it run by anyone associated with Plaintiff.

16. On information and belief, Defendant JOHN DOE proceeded to post disparaging "tweets" about Plaintiff, under the assumed name "tannerfriedman," on or near February 17, 2009, March 6, 2009, March 23, 2009, March 24, 2009, and March 26, 2009.

17. The owners, employees, and representatives of Tanner Friedman had previously registered Twitter account names (@KMPriest, @kayleehawkins, @dontanner, @walzale, and @mfrieds), and Defendant John Doe would take the tweets that some of the Tanner Friedman professionals had posted, rewrite them and repost them under its assumed name "tannerfriedman." The intention was to mislead Twitter users that it was Plaintiff who was posting these tweets and to impugn its reputation

18. On March 27, 2009, Plaintiff filed a formal complaint with Defendant Twitter regarding the "tannerfriedman" account, informing Defendant Twitter that "tannerfriedman" Twitter account is not an authorized account by Plaintiff nor is it run by anyone associated with

Plaintiff, and requesting assistance in removing this account. A copy of Plaintiff's written notice and request for removal is attached as **Exhibit 1**.

19. To date, Twitter has failed and refused to remove or retract any of the defamatory material.

20. Defendant's unauthorized use of a mark, trade name, and domain name confusingly similar to Plaintiff's trade name has eroded and will continue to erode the goodwill and reputation embodied in Plaintiff's distinctive name.

21. Upon information and belief, Defendant lacks any trademark or other intellectual property rights in the term "tannerfriedman."

22. Since their posting, the false and defamatory statements regarding Tanner Friedman and falsely "from" tannerfriedman, have remained available to the millions of Twitter users, and Plaintiff has no means of removing these false and defamatory statements from the website.

23. For the above reasons, Plaintiff's rights will continue to be infringed, relevant customers will likely suffer confusion or will actually be confused, mistaken, or deceived, and Plaintiff's goodwill and reputation will continue to be harmed, if not destroyed.

COUNT I

Violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030

24. Plaintiffs restate and incorporate by reference the allegations in paragraphs 1 through 23 as fully rewritten herein.

25. Defendant has wrongfully and intentionally, without authority and with intent to defraud, accessed a protected computer, in this case computers within Twitter's network, and/or caused the transmission of false information from the Twitter system used in interstate

commerce and communication, and by means of such conduct furthered the intended fraud, including defrauding Plaintiff and Plaintiff's clients who are Twitter users.

26. These actions were unauthorized because they violated Twitter's Terms of Service.

27. Defendant's access of Twitter's computer network enabled Defendant to send large numbers of fraudulent and false "tweets," under the assumed identity of Plaintiff, to Twitter account users, including Plaintiff's clients and potential clients.

28. Such actions of Defendant are in violation of the Computer Fraud and Abuse Act of 1986, 18 U.S.C. § 1030 *et. seq.* (CFAA).

29. Pursuant to 18 U.S.C. § 1030(g), Plaintiff is entitled to injunctive and/or other equitable relief as well as compensatory damages.

30. As a direct and proximate result of Defendant's conduct in violation of the CFAA, Plaintiff has suffered and will continue to suffer damages which are not fully ascertainable at this time, but which Plaintiff will show more specifically at trial.

31. Defendant's conduct in violation of the CFAA will continue unless enjoined by this Court. Plaintiff is without adequate remedy at law and is threatened with irreparable loss, injury, and damage unless the Court grants the equitable relief requested.

COUNT II
Unfair Competition

32. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 31 as fully rewritten herein.

33. On information and belief, Defendant's use of a mark, trade name, and domain name confusingly similar to Plaintiff's common law trade name is intended to deceive the public

and is done with deliberate and willful intent to pass off its services as those of Plaintiff's services that are in no way associated with Defendant.

34. On information and belief, Defendant's acts are intended to divert and secure to Defendant the profit arising from Plaintiff's reputation and goodwill as embodied in Plaintiff's distinctive name.

35. On information and belief, as a result of Defendant's unauthorized activities, Defendant has diverted sales and has secured monetary profits arising from Plaintiff's reputation and goodwill and will continue to do so.

36. On information and belief, Defendant's use of a mark, trade name, and domain name confusingly similar to Plaintiff's distinctive name in the sale of services that are inferior to Plaintiff's sale of services, has damaged Plaintiff's reputation and the reputation of its services, and Defendant's continued use of "tannerfriedman" in any form creates a continuing risk of greater injury to the distinctiveness of Plaintiff's name.

37. Defendant's acts constitute unfair competition under the Federal and Michigan common law of unfair competition, under The Michigan Consumer Protection Act ("MCPA"), which prohibits "unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce," MICH. COMP. LAWS ANN. § 445.901-445.922, and under the Lanham Act, 15 U.S.C. §§1125(a).

38. Plaintiff has suffered money damages in an amount to be determined as a result of Defendant's past activities, and Plaintiff has no adequate remedy at law for Defendant's continuing activities.

COUNT III

***Infringement of Plaintiff's Common Law Trade Name
and False Designation of Origin or a False Description or Representation,
in Violation of the Lanham Trademark Act, 15 U.S.C.A. § 1125(a)***

39. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 38 as fully rewritten herein.

40. Defendant's use of a mark, trade name, and domain name confusingly similar or identical to Plaintiff's name is without permission or authorization by Plaintiff.

41. On information and belief, Defendant has willfully infringed, continue to willfully infringe, and will continue to willfully infringe Plaintiff's rights in its distinctive name by the use of a confusingly similar mark, trade name, and domain name with the intent to trade on the reputation and goodwill associated with Plaintiff's distinctive name.

42. On information and belief, the services by Plaintiff and Defendant John Doe are so related, and the marks so similar, that Defendant's use of "Tanner Friedman" as a mark or trade name, or "tannerfriedman" as a Twitter account name, is likely to cause or has caused actual confusion, mistake, or deceived the public.

43. On information and belief, because the services provided by Plaintiff and Defendant John Doe are so related, and the marks and trade names so similar, Defendant's use of "tannerfriedman" constitutes a false designation of origin or a false description or representation tending to falsely describe or represent Defendant's services in violation of 15 U.S.C.A. § 1125(a), and constitutes infringement of Plaintiff's common law trade name in violation of 15 U.S.C.A. § 1125(a).

44. Plaintiff has suffered money damages in an amount to be determined as a result of Defendant's past activities, and Plaintiff has no adequate remedy at law for Defendant's continuing activities.

COUNT IV

Cyberpiracy

45. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 44 as fully rewritten herein.

46. On information and belief, Defendant registered the Twitter account name “tannerfriedman” through the registrar of Twitter Inc. sometime on or near January 13, 2009.

47. Defendant’s account name is identical or confusingly similar to Plaintiff’s distinctive trademark, service mark, and common law trade name.

48. Defendant has willfully infringed, continue to willfully infringe, and on information and belief, will continue to willfully infringe Plaintiff’s rights in Plaintiff’s distinctive name by the use of the confusingly similar “tannerfriedman” account name.

49. Defendant has registered, attempted to traffic in, and profited from bad faith use of the name in violation of 15 U.S.C.A. § 1125(d).

50. Plaintiff has suffered money damages in an amount to be determined as a result of Defendant’s past activities, and Plaintiff has no adequate remedy at law for Defendant’s continuing activities.

COUNT V

Intentional interference with Contractual or Business Relations

51. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 50 as fully rewritten herein.

52. Plaintiff maintains ongoing and existing business relationships with Twitter users. Plaintiff also maintains prospective relationships with potential customers, who are Twitter users, with whom Defendant has contacted and will continue to contact via Twitter.

53. On information and belief, Defendant had knowledge of these existing and prospective business relationships.

54. On information and belief, Defendant has acted intentionally, with improper motive and/or means to harm the business relationships of Plaintiff.

55. Plaintiff's business relationship and expectancies with Twitter users had a reasonable likelihood of future economic benefit for Plaintiff.

56. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff has suffered substantial economic injury and loss of business opportunities together with attorney fees and other costs incurred as a direct result of the actions taken by Defendant.

57. Plaintiff seeks injunctive relief and compensatory and punitive damages in an amount to be proved at trial.

COUNT V
Defamation

58. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 57 as fully rewritten herein.

59. Defendant published, and re-published, false and defamatory statements about Plaintiff.

60. The false and defamatory statements published by Defendant regarding Plaintiff, as reasonably understood, impugn the integrity and competence of Plaintiff, discredit Plaintiff's business methods, undermine the confidence of the public and Plaintiff's clients in Plaintiff's business, and/or drive away the public and Plaintiff's clients from using Plaintiff's services.

61. The false and defamatory statements published by the Defendant, when considered alone, without innuendo, tend to subject Plaintiff to hatred, distrust, ridicule,

contempt, or disgrace, tend to injure Plaintiff in its trade or profession, and/or attribute to Plaintiff conduct, characteristics, or conditions incompatible with the proper exercise of a lawful business, trade, profession, or office.

62. Defendant owed and owe a duty to Plaintiff to not publish false and defamatory statements about Plaintiff. In publishing the false and defamatory statements about Plaintiff, Defendant breached that duty.

63. In publishing the false and defamatory statements about Plaintiff, Defendant knew, or in the exercise of reasonable care should have known, that the statements were false.

64. In publishing the false and defamatory statements about Plaintiff, Defendant acted with malice, actual malice, with knowledge that the statements were false, and/or with reckless disregard for their truth or falsity.

65. As a result of the foregoing publications of defamatory statements by Defendant, Plaintiff has been damaged, including but not limited to damage to his reputation, and loss of business.

66. In carrying out the foregoing conduct, Defendant acted negligently, willfully, maliciously, and/or with reckless indifference to the consequences of their actions and the rights of Plaintiff.

67. Plaintiff demands judgment against Defendant, jointly and severally, for money damages in an amount to be proved at trial but which is in excess of \$75,000.00, punitive damages, pre- and post-judgment interest, attorney's fees, litigation expenses, and costs.

Relief Requested

WHEREFORE, Plaintiff prays for a judgment against Defendant and that this Honorable Court:

- a. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declaration shall have the force and effect of final judgment and that the Court retains jurisdiction of this matter for the purpose of enforcing the Court's Order;
- b. Pursuant to 28 USC § 2201, Order the removal of the "tannerfriedman" Twitter account and find the actions of Defendant to be in violation of the Lanham Trademark Act, Computer Fraud and Abuse Act, Federal and Michigan common law, Michigan Consumer Protection Act, and other applicable state law.
- c. Pursuant to 28 USC § 2202, Fed. R. Civ. Pro. 64, 18 U.S.C. § 1030(g), and 15 U.S.C.A. § 1116, permanently enjoin Defendant from accessing, maintaining, or using the "tannerfriedman" Twitter account.
- d. Pursuant to 28 USC § 2202, Fed. R. Civ. Pro. 65, 18 U.S.C. § 1030(g), and 15 U.S.C.A. § 1117(a), award Plaintiffs compensatory damages and attorney fees; and
- e. Grant such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted,
TOMKIW DALTON, plc

By: /s/Daniel P. Dalton
Daniel P. Dalton (P 44056)
Attorney for Plaintiff
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Dated: May 27, 2009

Verification

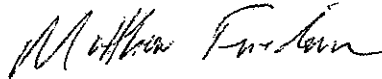
Pursuant to 28 USC § 1746, I, J. Donald Tanner and I Matthew Friedman, declare under penalty of perjury that I have personal knowledge of matters contained in this Complaint and that the allegations contained therein are true and accurate.

Signed this 12 day of May, 2009.

Tanner Friedman

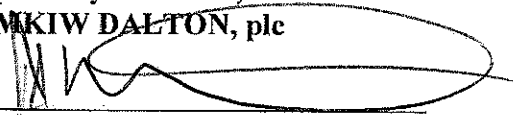


By: J. Donald Tanner
Its: Member



By: Matthew Friedman
Its: Member

Respectfully submitted,
TOMKIW DALTON, plc

By: 
Daniel P. Dalton (P 44056)
Attorney for Plaintiff
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Dated: May 27, 2009

Demand for Trial by Jury

The Plaintiff herein demands a trial by jury in this cause of action.

Respectfully Submitted,

TOMKIW DALTON, plc

By: /s/Daniel P. Dalton
Daniel P. Dalton (P 44056)
Attorney for Plaintiff

Dated: May 27, 2009

CERTIFICATE OF SERVICE

STATE OF MICHIGAN)
)SS
OAKLAND COUNTY)

I hereby certify that on May 27, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system.

Respectfully submitted,
TOMKIW DALTON, plc

/s/Daniel P. Dalton
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Dated: May 27, 2009