

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**(1) THE OKLAHOMA PUBLISHING )  
COMPANY, a Delaware corporation, )**

**(2) JACOB “JAKE” TROTTER, )  
an individual, )**

**Plaintiffs, )**

**vs. )**

**(1) JAMES W. CONRADT )  
a/k/a DARTH HUSKER, )  
an individual, )**

**Defendant. )**

**Case No. \_\_\_\_\_**

**JURY TRIAL DEMANDED**

**INJUNCTIVE RELIEF REQUESTED**

**COMPLAINT**

Plaintiffs, The Oklahoma Publishing Company (“OPUBCO”), and Jacob “Jake” Trotter (“Trotter”) (collectively, “Plaintiffs”), for their causes of action against Defendant, James W. Conradt a/k/a Darth Husker (“Defendant”), allege and state as follows:

**NATURE OF COMPLAINT**

1. This is an action for injunctive relief and monetary damages arising out of, *inter alia*, Defendant’s infringement and unauthorized use of OPUBCO’s federally registered service marks NEWSOK.COM® and THE OKLAHOMAN®; Defendant’s infringement and unauthorized use of OPUBCO’s trade dress and copyrighted NEWSOK.COM® website; false light; right of publicity violation; deceit; libel; false designation of origin, deceptive and unfair trade practices, trademark dilution, common law trademark infringement, unfair competition, and passing off.

## **PARTIES**

2. OPUBCO is a Delaware corporation having a principal place of business at 9000 North Broadway, Oklahoma City, Oklahoma 73114.

3. Trotter is an employee of OPUBCO and an individual residing in Norman, Oklahoma.

4. Defendant is an individual residing at 1512 Mussett Street, Austin, Texas 78754.

## **JURISDICTION AND VENUE**

5. This is an action arising in part under the laws of the United States, specifically 15 U.S.C. §§ 1114 and 1125(a) and 17 U.S.C. § 101 *et seq.* The Court has original jurisdiction of these claims pursuant to 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121. Jurisdiction as to all other causes of action is proper pursuant to 28 U.S.C. § 1367 because the causes of action set forth are so related that they form a part of the same cause or controversy.

6. Defendant is subject to personal jurisdiction in this Court as a result of his actions that were intentionally targeted at the Plaintiffs, which are located in this District. In addition, Defendant's actions were intentionally targeted at the University of Oklahoma and football players on scholarship with the University of Oklahoma.

7. Venue is proper in the Western District of Oklahoma pursuant to 28 U.S.C. § 1391.

## **BACKGROUND**

8. OPUBCO operates a newspaper with the largest distribution in the state of Oklahoma. OPUBCO distributes over 1.2 million newspapers on a weekly basis throughout the United States.

9. Since at least as early as 1907, OPUBCO has been using THE OKLAHOMAN® service mark to identify its newspaper publishing services. OPUBCO is the owner of a federal service mark registration for the mark THE OKLAHOMAN®,

Registration No. 2,299,554 for “newspaper publishing services”. A copy of this federal registration is attached as Exhibit 1.

10. For more than one hundred years, OPUBCO has meticulously built its reputation and goodwill in the newspaper industry. Its newspaper publishing services are readily recognizable throughout the United States and testify to the quality of OPUBCO’s services.

11. Since at least as early as 2001, OPUBCO has been using the NEWSOK.COM® service mark in association with online news services. OPUBCO is the owner of a federal trademark registration for the mark NEWSOK.COM®, Registration No. 2,954,538 for “providing on-line news in the nature of current news”. A copy of this federal registration is attached as Exhibit 2.

12. Since at least as early as 2007, OPUBCO has been using in interstate commerce the design of its NEWSOK.COM® website as trade dress (the “NEWSOK.COM® Trade Dress”). Consumers recognize the trade dress of the NEWSOK.COM® website as indicating OPUBCO as the source of the services provided on the NEWSOK.COM® website.

13. Through its THE OKLAHOMAN® newspaper and NEWSOK.COM® website, OPUBCO is recognized as the leading provider of news in the state of Oklahoma. Over 900,000 users have registered with the NEWSOK.COM® website. The NEWSOK.COM® website receives over three million page views on a weekly daily basis. The NEWSOK.COM® website has over 1 million unique visitors per month.

14. In addition, OPUBCO is recognized as a leading providing of information concerning the University of Oklahoma football program. Its NEWSOK.COM® website receives over 11.4 million page views each year specifically related to the University of Oklahoma’s football program.

15. Trotter is a staff writer for THE OKLAHOMAN® and the NEWSOK.COM® website who covers matters related to the University of Oklahoma football program.

16. The NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress are distinctive and consumers believe the associated services have a single source of origin -- OPUBCO. The NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress serve to distinguish the high quality services of OPUBCO from those provided and sold by others.

17. Due to the widespread and extensive use of the NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress, strict control over the nature and quality of the services provided, extensive advertising and promotions activities and substantial sales as a result thereof, OPUBCO has built up an excellent reputation and valuable goodwill in the NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress, and the marks are famous and distinctive. The NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress have been established in the minds of consumers as designating OPUBCO as the source of the services provided.

### **DEFENDANT'S UNLAWFUL CONDUCT**

18. On or about July 9, 2008, Defendant published a false and defamatory article on the internet entitled "Two Sooner Quarterbacks Arrested for Intent to Distribute Cocaine" (the "Article"). A copy of Defendant's Article is attached as Exhibit 3.

19. Defendant posted a link to his Article on his website, [www.darthhusker.com](http://www.darthhusker.com), and on a Rivals.com Internet message board using his screen name "Darth Husker".

20. Defendant's Article stated, among other things, that two University of Oklahoma football players -- Sam Bradford and Landry Jones -- had been arrested for intent to distribute cocaine.

21. Defendant's Article appeared to be completely factual in nature and appeared to be a legitimate story originating from OPUBCO and the NEWSOK.COM® website.

22. None of the substantive information in Defendant's Article was true.

23. Defendant intentionally copied the format and template of OPUBCO's NEWSOK.COM® website in creating his Article to make it appear as though the story was created by OPUBCO.

24. Defendant's Article used OPUBCO's NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress without authorization in an attempt to cause consumers to believe the Article originated from OPUBCO.

25. Defendant intentionally used the NEWSOK.COM® and THE OKLAHOMAN® marks, NEWSOK.COM® Trade Dress and NEWSOK.COM® copyrighted website to mislead consumers into believing the accuracy of Defendant's article.

26. The links on Defendant's Article were all operable.

27. Defendant used Trotter's name as the author of his Article without permission from Trotter.

28. Defendant used Trotter's name to further give his Article the appearance of legitimacy.

29. At least two radio stations in Texas reported the alleged facts in Defendant's Article regarding Sam Bradford and Landry Jones as true and upon information and belief, reported OPUBCO's NEWSOK.COM® website as the source of the allegations against Sam Bradford and Landry Jones.

30. Defendant has admitted that he created the Article. *See* July 10, 2008 article attached as Exhibit 4.

31. Defendant is well aware of the dangers that can be caused by posting harmful attacks anonymously on the Internet. A January 10, 2005 article from the

Lincoln Star Journal detailing how easily people can post untrue rumors on Internet message boards contained several quotes from Defendant. *See* January 10, 2005 Lincoln Star Journal article attached as Exhibit 5. The January 10, 2005 article contained the following excerpts:

“It’s kind of a hierarchy, you know. The more people give their insider info that turns out to be true, the more they build their credibility. I’m not one of those people,” said James Conradt, aka DarthHusker. “It’s funny. New people come along all the time and are naive and believe too much of what they read. A lot of people just post stuff to stir the pot.”

“I think anonymity brings out the worst in people,” Conradt said. “There are no consequences for saying what you say. I think that’s probably where the whole concept of flaming comes from. They probably didn’t have that in the old days around the coffee pot at work, the profanity-laced, ultra-negative outbursts.”

32. Defendant’s use of the NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress caused confusion, caused mistake and deceived as to the affiliation, connection or association of Defendant with OPUBCO, and the origin, sponsorship or approval of Defendant’s Article by OPUBCO.

33. Defendant’s unauthorized use of the NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress was a deliberate, willful and intentional attempt to trade upon OPUBCO’s reputation and goodwill in its NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress.

34. Defendant’s use of OPUBCO’s copyrighted NEWSOK.COM® website was a deliberate, willful and intentional attempt to interfere with OPUBCO’s copyrights.

35. Defendant’s actions have caused harm to the journalistic reputation of OPUBCO and Trotter.

**COUNT I**  
**INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARKS**

36. Plaintiffs re-allege and incorporate by reference the allegations contained in each preceding paragraph.

37. This is an action under the trademark laws of the United States, specifically, Section 32 of the Lanham Act, 15 U.S.C. § 1114, for Defendant's unlawful use and infringement of OPUBCO's federally registered NEWSOK.COM® and THE OKLAHOMAN® marks.

38. Defendant's use of the NEWSOK.COM® and THE OKLAHOMAN® marks in association with online news infringes OPUBCO's federally registered NEWSOK.COM® and THE OKLAHOMAN® marks. Defendant's use of the NEWSOK.COM® and THE OKLAHOMAN® marks caused confusion, or caused mistake, or deceived as to the source, origin and sponsorship of Defendant and his services and misled the public into believing that Defendant and his Article was affiliated, connected, or associated with OPUBCO, and that Defendant's Article originated, was sponsored by, or somehow approved by OPUBCO.

39. As a result of Defendant's unlawful conduct, OPUBCO's reputation and goodwill have been damaged.

40. OPUBCO's remedy at law is not by itself adequate to compensate for the injuries inflicted. Defendant's activities have caused irreparable harm to OPUBCO for which OPUBCO has no remedy at law in that if Defendant's wrongful conduct continues, customers and others are likely to become further confused as to the source of the services provided by Defendant, and any infringement by Defendant constitutes an interference with OPUBCO's goodwill and customer relationships.

41. Defendant's acts were in bad faith, willful and in conscious or reckless disregard of OPUBCO's rights such that this is an exceptional case for which OPUBCO is entitled to treble damages and attorneys' fees in accordance with 15 U.S.C. § 1117.

**COUNT II**  
**TRADEMARK DILUTION**

42. Plaintiffs re-allege and incorporate by reference the allegations contained in each preceding paragraph.

43. Defendant's incorporation and use of OPUBCO's famous and distinctive THE OKLAHOMAN® mark in his false and defamatory Article dilutes the distinctive quality of and tarnishes the public image of OPUBCO's THE OKLAHOMAN® mark and harms the reputation of OPUBCO.

44. OPUBCO's remedy at law is not by itself adequate, and OPUBCO has suffered and continues to suffer irreparable harm such that OPUBCO is entitled to injunctive relief.

45. Defendant has willfully and intentionally traded on, diluted and tarnished OPUBCO's THE OKLAHOMAN® mark and the reputation of OPUBCO so that OPUBCO is entitled to damages pursuant to Section 36 of the Lanham Act.

**COUNT III**  
**COPYRIGHT INFRINGEMENT**

46. Plaintiffs re-allege and incorporate by reference the allegations contained in each preceding paragraph.

47. OPUBCO owns copyrights in and to its NEWSOK.COM® website.

48. Defendant had access to OPUBCO's copyrighted website.

49. Without the consent, approval, or license of OPUBCO, Defendant copied OPUBCO's website for his Article.

50. Defendant has admitted that he copied OPUBCO's website.

51. Defendant knowingly copied OPUBCO's NEWSOK.COM® website for his Article.

52. The acts complained of constitute willful copyright infringement in violation of the Copyright Act, 17 U.S.C. § 101 *et. seq.*, and OPUBCO is entitled to damages as a result of Defendant's unlawful infringement.



**COUNT IV**  
**UNFAIR COMPETITION/ FALSE DESIGNATION OF ORIGIN**

53. Plaintiffs re-allege and incorporate by reference the allegations contained in each preceding paragraph.

54. This is an action under the trademark laws of the United States, specifically, Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), for Defendant's unlawful use and infringement of OPUBCO's NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress in connection with his Article.

55. Defendant's use of the NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress infringes OPUBCO's NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress, and caused confusion, or caused mistake, or deceived as to the source, origin and sponsorship of Defendant and his Article and misled the public into believing that Defendant and his Article were affiliated, connected, or associated with OPUBCO, and that Defendant's Article originated, were sponsored by, or somehow approved by OPUBCO.

56. Defendant's use of the NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress constitutes a false designation of origin, false description and false representation that the services provided by Defendant, originated from or are sponsored, approved, or authorized by OPUBCO, and caused confusion, or caused mistake, or deceived in violation of 15 U.S.C. § 1125(a).

57. As a result of Defendant's unlawful conduct, OPUBCO has been and will continue to be damaged.

58. OPUBCO's remedy at law is not by itself adequate to compensate for the injuries inflicted and threatened by Defendant.

59. Defendant's acts are in bad faith, willful and in conscious or reckless disregard for the truth such that this is an exceptional case for which OPUBCO is entitled to treble damages and attorneys' fees in accordance with 15 U.S.C. § 1117.

**COUNT V**  
**VIOLATION OF THE OKLAHOMA DECEPTIVE TRADE PRACTICES ACT**

60. Plaintiffs re-allege and incorporate by reference the allegations contained in each preceding paragraph.

61. This claim is brought pursuant to 78 Okla. Stat. § 53, the Oklahoma Deceptive Trade Practices Act, for Defendant's unlawful use of the NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress, which constitutes the knowing and false representation as to sponsorship, approval, affiliation, connection, association with or certification by OPUBCO, and efforts to pass off Defendant's Article as that of OPUBCO and to trade on OPUBCO's goodwill.

62. This claim is also based on Defendant's unauthorized use of Trotter's name to deceive consumers into believing that Trotter was the author of Defendant's false and defamatory Article.

63. As a result of Defendant's unlawful conduct, Plaintiffs have been damaged and are entitled to recover their attorneys' fees pursuant to 78 Okla. Stat. § 54.

64. Plaintiffs' remedy at law is not by itself adequate to compensate them for the injuries inflicted. Defendant's activities have caused and will continue to cause irreparable harm to Plaintiffs, for which Plaintiffs have no sufficient remedy at law.

**COUNT VI**  
**UNFAIR COMPETITION, COMMON LAW TRADEMARK**  
**INFRINGEMENT, PASSING OFF**

65. Plaintiffs re-allege and incorporate by reference the allegations contained in each preceding paragraph.

66. This claim is brought under the common law of the state of Oklahoma for unfair competition, trademark infringement and trade dress infringement.

67. By using the NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress, Defendant created confusion regarding the source of Defendant's services, traded on the reputation and goodwill of, and infringed OPUBCO's NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress and passed off his Article as that of OPUBCO, all in violation of the common law of the state of Oklahoma.

68. Defendant intentionally, knowingly and willfully engaged in common law unfair competition, trademark infringement and passing off, acted in bad faith and in conscious and reckless disregard for the rights of OPUBCO, for which OPUBCO is entitled to attorneys' fees and costs.

69. As a result of Defendant's conduct, OPUBCO has suffered and continues to suffer damages.

70. OPUBCO's remedy at law is not by itself adequate, and OPUBCO has suffered and continues to suffer irreparable harm such that OPUBCO is entitled to injunctive relief.

#### **COUNT VII** **RIGHT OF PUBLICITY**

71. Plaintiffs re-allege and incorporate by reference the allegations contained in each preceding paragraph.

72. Defendant knowingly used Trotter's name as the alleged author of Defendant's Article.

73. Trotter had no role whatsoever in the creation of Defendant's Article, nor did Trotter give Defendant consent to use his name in association with the Article.

74. As a result of Defendant's unlawful actions, Trotter has been damaged in an amount to be proven at trial.

75. Defendant's acts were in bad faith, willful and in conscious or reckless disregard of Trotter's rights, and Trotter is entitled to punitive damages and attorneys' fees in accordance with 12 Okla. Stat. § 1449.

**COUNT VIII**  
**FALSE LIGHT**

76. Plaintiffs re-allege and incorporate by reference the allegations contained in each preceding paragraph.

77. Defendant placed Trotter in a false light by identifying Trotter as the author of Defendant's false and defamatory Article.

78. The false light in which Defendant placed Trotter would be highly offensive to a reasonable person.

79. Defendant had knowledge of and acted in reckless disregard in placing Trotter in a false light by identifying Trotter as the author of Defendant's false and defamatory Article.

80. Trotter has suffered damages to his reputation and occupation as a result of Defendant's actions.

81. As a result of Defendant's unlawful actions, Trotter has been damaged in an amount to be proven at trial.

82. Defendant's acts were in bad faith, willful and in conscious or reckless disregard of Trotter's rights, and Trotter is entitled to punitive damages and attorneys' fees.

**COUNT IX**  
**LIBEL**

83. Plaintiffs re-allege and incorporate by reference the allegations contained in each preceding paragraph.

84. Defendant published false statements that Trotter was the author of Defendant's false and defamatory Article.

85. Defendant knew that Trotter was not the author of the Article at the time he made these false statements.

86. As a result of Defendant's false statements, Trotter suffered damages to his reputation and occupation.

87. As a result of Defendant's unlawful actions, Trotter has been damaged in an amount to be proven at trial.

88. Defendant's acts were in bad faith, willful and in conscious or reckless disregard of Trotter's rights, and Trotter is entitled to punitive damages and attorneys' fees.

**COUNT X**  
**DECEIT**

89. Plaintiffs re-allege and incorporate by reference the allegations contained in each preceding paragraph.

90. Defendant published his false and defamatory Article with the intent to deceive the public into believing that the Article was true and that OPUBCO and Trotter were the sources of the Article.

91. Members of the public were actually deceived by Defendant's Article.

92. As a result of Defendant's unlawful actions, OPUBCO and Trotter have been damaged in an amount to be proven at trial.

93. Defendant's acts were in bad faith, willful and in conscious or reckless disregard of OPUBCO and Trotter's rights, and they are entitled to punitive damages and attorneys' fees.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs requests that the Court enter judgment in their favor as follows:

A. Judgment be entered in favor of Plaintiffs against Defendant as to each of the above counts;

B. Defendant be preliminarily and permanently enjoined from using OPUBCO's federally registered NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress, and from any and all other conduct which is likely to cause confusion or to cause a mistake or deceive as to affiliation, connection or association of Defendant with OPUBCO, as to origin, sponsorship or approval of Defendant's services by OPUBCO;

C. Defendant be ordered to file with this Court and serve on Plaintiffs within thirty (30) days after service of the injunction, a report in writing, under oath, setting forth in detail the manner and form in which the Defendant has complied with the injunction;

D. Defendant be ordered to publish corrective advertising to correct the confusion and harm he created and to prevent Defendant from further benefiting from the goodwill and strength of the NEWSOK.COM® and THE OKLAHOMAN® marks and NEWSOK.COM® Trade Dress;

E. Defendant be required to pay such damages as OPUBCO and Trotter have sustained as a consequence of the Defendant's unlawful acts, including treble damages pursuant to 15 U.S.C. § 1117;

F. Defendant be required to pay OPUBCO and Trotter's costs, expenses, and reasonable attorneys' fees in connection with this action, as provided in 15 U.S.C. § 1117, 78 Okla. Stat. § 53, and other applicable statutory and common law authorities;

G. Defendant be required to pay damages and costs incurred by OPUBCO as provided in 17 U.S.C. § 501 *et seq.*;

H. Defendant be required to pay damages incurred by OPUBCO and Trotter as a result of the unfair competition, dilution, deceptive trade practices, deceit, libel, false light and violation of Trotter's right of publicity perpetrated by Defendant; and

I. Plaintiffs be granted such other and further relief as this Court may deem appropriate and just.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all claims that may be tried before a jury.

Respectfully submitted this 14th day of July 2008.

***s/ Spencer F. Smith***

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