

Steven T. Lovett, OSB No. 910701  
Email: stlovett@stoel.com  
Marc Alifanz, OSB No. 071868  
Email: mealifanz@stoel.com  
STOEL RIVES LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204  
Telephone: (503) 224-3380  
Facsimile: (503) 220-2480

**Of Counsel:**

Jordan A. LaVine  
Alexis Arena  
FLASTER/GREENBERG, P.C.  
1628 John F. Kennedy Blvd., Suite 1500  
Philadelphia, PA 19103  
(215) 279-9393

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

**ASCENTIVE, LLC,**

Civil No. \_\_\_\_\_

Plaintiff,

v.

**ISHOPPINGCART.COM, ROB  
CHENG, PCPITSTOP, LLC, and JOHN  
DOES 1-10,**

COMPLAINT FOR TRADEMARK  
INFRINGEMENT

DEMAND FOR JURY TRIAL

Defendants.

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Plaintiff Ascentive, LLC (“Ascentive”), brings this complaint against 1ShoppingCart.com, Rob Cheng, PCPitstop, LLC, and John Does 1-10 (collectively referred to as “Defendants”), and alleges as follows:

### **Introduction and Nature of Action**

1. This action seeks to enjoin Defendants’ unlawful use of Ascentive’s trademarks in connection with the advertisement and sale of similar and competing computer software products offered by Defendants Rob Cheng and PCPitstop, LLC (“PCPitstop”) and advertised and sold through defendant 1ShoppingCart.com (“1ShoppingCart”).

2. This action is brought subsequent to numerous communications between Ascentive and the Defendants, and subsequent to Mr. Cheng’s and PCPitstop’s prior written agreement to cease using Ascentive’s trademarks in this unlawful manner.

3. The parties’ prior agreement has been breached, and PCPitstop and 1ShoppingCart have acknowledged their use of Ascentive’s trademarks, but have refused to cease using Ascentive’s trademarks.

4. In addition, PCPitstop has published an online “Forum” that contains false and defamatory factual statements regarding its competitor, Ascentive, including that: (1) Ascentive “promotes adware and phishing scams”; (2) “[o]nce Ascentive’s software gets on a computer it is very difficult to get off”; (3) Ascentive sells “rogue antispyware products” that produce “false positive results”; (4) Ascentive’s software products are “cheap knock-offs”; (5) Ascentive’s software harms computers; and (6) Ascentive overcharges for “mediocre” software.

5. Ascentive brings this action for damages and preliminary and permanent injunctive relief for trademark infringement pursuant to 15 U.S.C. § 1114, false designation of

origin pursuant to 15 U.S.C. §1125(a), vicarious and contributory violations of the Lanham Act, breach of contract, and defamation.

6. Accordingly, Ascentive requests that the Court preliminarily and permanently enjoin Defendants from using Ascentive's trademarks and any terms confusingly similar thereto, and from publishing false and defamatory factual statements regarding Ascentive and its products online, in addition to the relief requested in the prayer for relief, set forth below.

### **Jurisdiction and Venue**

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 as this case arises under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, as amended, and as is more fully described below.

8. All claims asserted in this action arise out of the same transaction or occurrence, so that this Court has supplemental jurisdiction over all additional claims asserted in this action under 28 U.S.C. § 1367(a).

9. This Court has personal jurisdiction over Defendants as they may be found to do business in the state of Oregon. On information and belief, Defendants have substantial, and not isolated, contacts with the State of Oregon, including with respect to the infringing advertising sued upon in this action.

10. On information and belief, PCPitstop's software is advertised and sold through 1ShoppingCart, which is headquartered in the state of Oregon.

11. On information and belief, Defendants conduct business and sell products in connection with the trademarks at issue in this action, in this district and elsewhere.

12. On information and belief, Defendants have committed acts of trademark infringement, unfair competition, and deceptive trade practices, as further described below, in this district and elsewhere.

13. Jurisdiction in this district is consistent with the requirements of federal due process.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because defendant 1ShoppingCart is found in this district and a substantial part of the events giving rise to the claims alleged herein occurred in this district.

#### **Parties**

15. Ascentive is a limited liability company organized and existing under the laws of Delaware with its principal place of business at 201 Spring Garden Street, Philadelphia, Pennsylvania, 19123.

16. PCPitstop is a company that owns and/or operates the websites located at <http://www.pcpitstop.com> and <http://forums.pcpitstop.com>.

17. Rob Cheng is Chief Executive Officer of PCPitstop.

18. On information and belief, Rob Cheng is located at 1067 Links Rd., Myrtle Beach, South Carolina 29575.

19. PCPitstop's computer software is advertised and sold through 1ShoppingCart.

20. On information and belief, defendant 1ShoppingCart is a company that owns and operates the websites [www.1shoppingcart.com](http://www.1shoppingcart.com) and [www.mcssl.com](http://www.mcssl.com).

21. 1ShoppingCart is located at 1430 Willamette Street, Ste 333, Eugene, Oregon 97401.

22. 1ShoppingCart is owned by Website Pros, Inc.

23. The identity of John Does 1-10 is unknown. These individuals anonymously authored the postings discussed below and located at PCPitstop's website, <http://forums.pcpitstop.com>.

### Facts

#### **A. Ascentive's Software Products and Trademarks**

24. For many years, Ascentive has developed and sold computer software products to address various computer needs, including improving system performance, increasing speed, ensuring privacy, and eliminating the threat of spy ware.

25. With a line of 13 products, Ascentive is a market leader in corporate and consumer software and has received accolades from media outlets like *The Wall Street Journal*, *Newsweek*, *Forbes*, Tech TV and NBC.

26. Ascentive has used its "FinallyFast," "Finally Fast," "FinallyFastPC," and "FinallyFast.com" trademarks (collectively referred to as "Ascentive's trademarks") in commerce in connection with the sale of computer software products since early March, 2008.

27. Ascentive launched its "FinallyFast.com" software with an aggressive advertising campaign in early March, 2008, and has run nationwide advertisements for the software since that time.

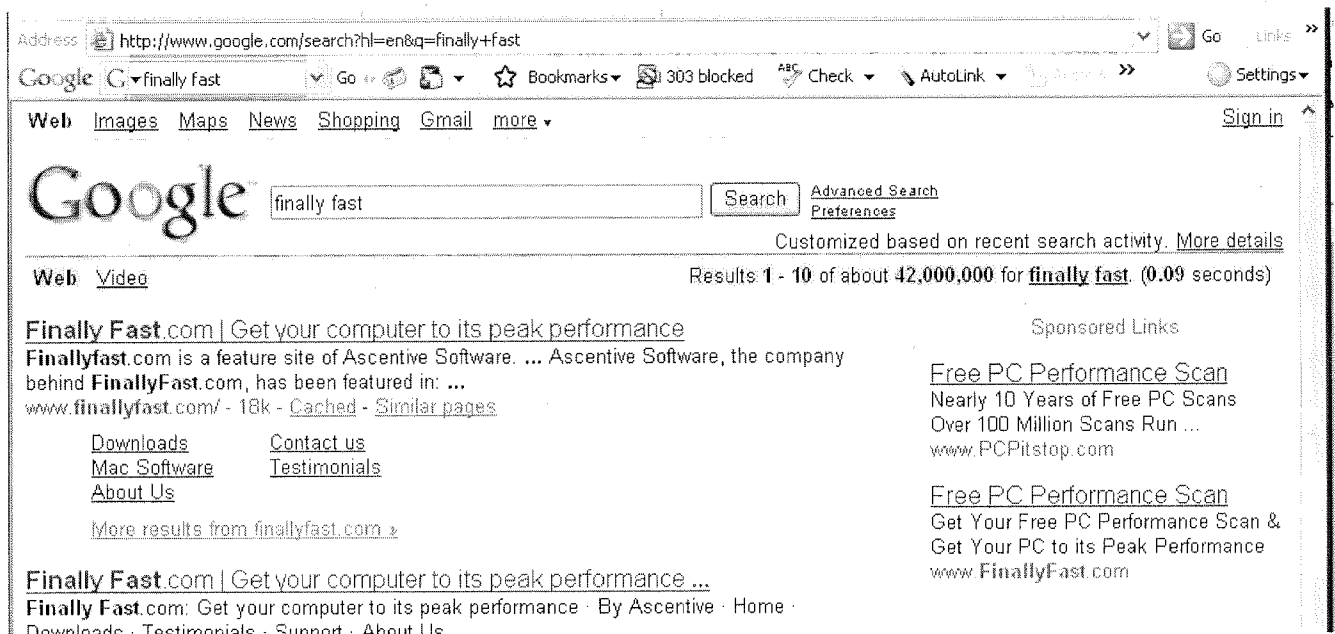
28. The FinallyFast.com software identifies computer errors that hinder performance and removes those errors, improving system performance.

29. Ascentive owns a registration for its "FinallyFast.com" trademark in the U.S. Patent and Trademark Office, Reg. No. 3,533,775, issued November 18, 2008. *See* FinallyFast.com Trademark Registration, attached hereto as Exhibit A.

30. Ascentive's trademarks are inherently distinctive.

31. Additionally, Ascentive develops and maintains online retail websites located at www.finallyfast.com and www.finallyfastpc.com to generate revenue from the purchase and sale of its products and to allow customers to download its products online.

32. Ascentive advertises its FinallyFast.com software by offering a “Free PC Performance Scan.” See advertisements listed under “Sponsored Links” on Google (last viewed Feb. 10, 2009), attached hereto as Exhibit B, and the second advertisement offering a “Free PC Performance Scan” in the screenshot below:



**B. PCPitstop’s Use of Ascentive’s Trademarks As Internet Advertising “Keywords”**

33. PCPitstop’s computer software is sold on the website www.pcpitstop.com.

34. PCPitstop also markets its software through an affiliate program that allows third party affiliates to advertise PCPitstop’s software online in exchange for commissions on the affiliate sales of PCPitstop’s products.

35. PCPitstop advertises and sells software which it claims improves computer performance and increases computer speed, similar to the software sold by Ascentive.

36. As seen in the screenshot above, PCPitstop also advertises a “Free PC Performance Scan” under the “Sponsored Links” on Google’s search engine.

37. Search engines such as Google, MSN and Yahoo! allow advertisers to purchase and/or bid on certain terms, or “keywords,” that trigger the display of advertiser-defined “Sponsored Links,” “Sponsored Sites” or “Sponsored Results” in internet search results when internet users enter those search terms in a search engine.

38. When an internet user enters the selected keyword into the search engine, advertisers that have purchased and/or bid on that keyword have their advertisements displayed among the search engine’s “Sponsored Links,” “Sponsored Results” or “Sponsored Sites.”

39. For example, when an internet user performs a search at [www.google.com](http://www.google.com) for “FinallyFast.com,” an advertisement for PCPitstop’s website is displayed in the “Sponsored Links” section next to the advertisement for Ascentive’s software. *See* Ex. B.

40. These advertisements link to websites that advertise PCPitstop’s software and make the software available for download.

41. This occurs because a PCPitstop advertiser has selected and purchased Ascentive’s trademarks, such as “FinallyFast.com,” as keywords to trigger PCPitstop advertisements on Google.

42. A PCPitstop advertiser pays Google to be displayed among the Sponsored Links in response to an internet user searching for “FinallyFast.com” and other keywords.

43. On information and belief, PCPitstop and its advertisers did not make any use of these keywords or Ascentive’s trademarks in commerce before Ascentive began using these trademarks in March, 2008.

44. A PCPitstop advertiser is currently bidding on or purchasing Ascentive's trademarks as keywords on Google's search engine, which constitutes a use of those trademarks in commerce.

45. A PCPitstop advertiser also previously purchased Ascentive's trademarks as keywords on Yahoo's search engine.

**B. 1ShoppingCart Provides Marketing Services to PCPitstop, Including Tracking the Advertisements at Issue in this Matter.**

46. 1ShoppingCart is advertised as an "all-in-one, one-stop-shop for eCommerce," and much more than just an online "shopping cart."

47. 1ShoppingCart provides programs to market the online products of businesses such as PCPitstop, including: website hosting, autoresponders, ad trackers, affiliate programs, online database management, calculation and payment of online commissions, and other marketing and communication tools.

48. 1ShoppingCart's affiliate programs allow third parties ("affiliates" or "merchants") to market products such as PCPitstop's software online, and to receive commissions from doing so.

49. On information and belief, 1ShoppingCart has a contractual relationship with PCPitstop and is paid by PCPitstop.

50. On information and belief, 1ShoppingCart also has a contractual relationship with PCPitstop merchants or affiliates, and monitors and controls advertisements for PCPitstop's software for the purpose of tracking sales from those advertisements.

51. 1ShoppingCart provides ad-tracking services to PCPitstop advertisers in connection with the advertisements displayed on Google, including the advertisement shown in Exhibit B.



52. As evidence of this fact, when the PCPitstop link shown in Exhibit B is selected, the internet user is redirected through web pages such as [www.mcssl.com/app/log/Ads.asp?AdID=155557](http://www.mcssl.com/app/log/Ads.asp?AdID=155557). See HttpWatch Log File, attached hereto as Exhibit C.

53. The website [www.mcssl.com](http://www.mcssl.com) is owned and operated by 1ShoppingCart. See [www.mcssl.com](http://www.mcssl.com) and registration information attached hereto as Exhibit D.

54. The advertisement shown in Exhibit B is associated with the 1ShoppingCart Advertisement ID No. 155557, and the 1ShoppingCart Merchant ID No. 56248. Ex. C; Ex. D.

55. On information and belief, “Merchant ID No. 56248” is a PCPitstop advertiser that has a contractual relationship with 1ShoppingCart.

56. 1ShoppingCart provides marketing and commercial services to PCPitstop and PCPitstop’s advertisers, in connection with the advertisement and sale of PCPitstop’s software.

57. 1ShoppingCart refused to cease providing these services to PCPitstop and its advertisers when presented with evidence of PCPitstop’s unauthorized use of Ascentive’s trademarks in connection with the advertisement shown in Exhibit B.

**D. PCPitstop and Mr. Cheng’s Prior Agreement To Cease Using Ascentive’s Trademarks**

58. In July, 2008, Ascentive first discovered that PCPitstop was using Ascentive’s trademarks as keywords and was even using Ascentive’s “Finally Fast” trademark in a domain name it owned at that time – [www.finallyfastpc.com](http://www.finallyfastpc.com). Ascentive’s counsel sent PCPitstop a cease and desist letter shortly thereafter. See Correspondence with PCPitstop and Mr. Cheng, attached hereto as Exhibit E.

59. Mr. Cheng responded on July 30, 2008, acknowledging that PCPitstop was bidding on Ascentive's trademarks, but stating that he did not believe this conduct was a trademark violation based on his conversation with Google. Ex. E.

60. The parties exchanged numerous other emails, with Mr. Cheng and PCPitstop finally agreeing to cease purchasing Ascentive's trademarks as keywords. Mr. Cheng stated: "I have decided to stop buying your keywords...If you check now, you will see that we are no longer buying your keywords." *Id.*

61. However, in approximately late January 2009, Mr. Cheng subsequently began purchasing Ascentive's trademarks again, and expanded its use of Ascentive's trademarks to include bidding on those trademarks on Google.

62. Counsel for Ascentive has made repeated attempts to contact PCPitstop and Mr. Cheng regarding PCPitstop's renewed violations of Ascentive's trademark rights, but neither Mr. Cheng nor PCPitstop have responded to Ascentive's most recent correspondence. Ex. E.

**E. False Statements Regarding Ascentive and the "FinallyFast" Software Posted on PCPitstop's Forum**

63. PCPitstop's website includes a "Forum" where PCPitstop employees and third parties can post information online. *See* <http://forums.pcpitstop.com>.

64. PCPitstop has Forum "Moderators" it has appointed to monitor and approve the content of the Forum. *See* Forum Printouts, attached hereto as Exhibit F.

65. PCPitstop's Moderators have posted false and defamatory statements regarding Ascentive's software, including statements that Ascentive's software is a "scam." *Id.*

66. PCPitstop has knowledge of the statements posted on its Forum, controls the statements posted on its Forum, and monitors and approves the statements posted on its Forum.

67. PCPitstop Forum postings include false and defamatory statements posted by its employees and/or by third parties (“John Does 1-10”), such as the following:

- a. “The software company behind FinallyFast.com is Ascentive, a company that promotes adware and phishing scams. Once their software gets on a computer it is very difficult to get off.”
- b. “FinallyFast is from a company called Ascentive. Ascentive also sells ‘rogue’ antispymware products...Ascentive products are known to scare the user with a long list of false positive results. Then they attempt to sell you mediocre (at best) software to remove the threat. It is likely that these products are cheap knock-offs of well known freeware products. There is always a danger, when dealing with this sort of company, that the program will actually do your computer more harm than good. Finally Fast is NOT free...you will be asked to over-pay for their ‘fixes.’...”

Ex. F.

68. The statements quoted above are available to the public online and have caused specific damage to Ascentive’s reputation, in that these false and misleading statements are viewed by potential purchasers of Ascentive’s software and dissuade these potential purchasers from buying Ascentive’s software.

**Count I (against Defendants PCPitstop, Rob Cheng, and 1ShoppingCart)  
Trademark Infringement Under 15 U.S.C. § 1114**

69. Ascentive repeats and re-alleges the allegations contained in the preceding paragraphs in this Complaint as though the same were fully rewritten herein.

70. Section 1114(1)(a) of Title 15 of the United States Code states, in pertinent part:

Any person who shall, without the consent of the registrant -- (a) use in commerce any reproduction, counterfeit, copy or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive...shall be liable in a civil action...

71. Ascentive has not consented directly or indirectly to Defendants’ use of Ascentive’s trademarks in any manner and Ascentive has expressed its strong written objection

to the unauthorized use of Ascentive's trademarks in connection with the sale of PCPitstop's computer software, which is similar to the computer software sold by Ascentive.

72. As stated, *supra*, Ascentive has used Ascentive's trademarks in connection with its computer software products since early March, 2008, and Ascentive has secured a registration for its "FinallyFast.com" mark in the U.S. Patent and Trademark Office.

73. Ascentive's trademarks are inherently distinctive. Moreover, Ascentive's trademark registration provides it with the presumption that the mark is valid and distinctive.

74. By virtue of the success of the products sold under Ascentive's trademarks, in addition to Ascentive's efforts to promote its products and business, Ascentive's trademarks have come to have significance in the mind of the relevant trade and purchasing public as an indicator of products originating with, sponsored by, or otherwise associated with Ascentive.

75. Ascentive's trademarks are entitled to protection under the Lanham Act.

76. Defendants use Ascentive's trademarks in commerce in a number of ways, including (but not limited to): (a) preparing, tracking, supporting and publishing advertisements for PCPitstop's software that are triggered by Ascentive's trademarks and contain the same text as Ascentive's advertisements, but link to PCPitstop's website; (b) causing Defendants' advertisements to appear in close proximity to Ascentive's trademarks and to be displayed in a manner that increases the likelihood of confusion between Ascentive's software products and PCPitstop's software products; (c) purchasing Ascentive's trademarks as keywords; and (d) publishing false and misleading statements about Ascentive and its products.

77. PCPitstop's unauthorized and willful use of Ascentive's trademarks in connection with the sale of its software products constitutes a use in commerce that infringes Ascentive's

exclusive rights in its marks and is likely to cause confusion, mistake or deception as to the source of the products offered.

78. Such actions are also likely to cause confusion as to whether Ascentive is sponsoring, has authorized or is somehow affiliated with the products or services advertised.

79. The products of Ascentive and PCPitstop are related, as are the trade channels and purchasers for such products. The same classes and types of persons will purchase the computer software offered by Ascentive and PCPitstop in connection with the marks at issue.

80. Defendants' conduct constitutes trademark infringement in violation of 15 U.S.C. § 1114 and is being conducted with willful disregard of Ascentive's valuable trademark rights in Ascentive's trademarks. Defendants' use of Ascentive's trademarks in connection with the PCPitstop software products is a willful attempt to trade upon the goodwill that Ascentive has developed in its trademarks, including its "FinallyFast.com" trademark.

81. Ascentive has no adequate remedy at law. The said conduct of Defendants, if not enjoined, will cause irreparable damage to the rights of Ascentive in its trademarks and its business, reputation and goodwill. Ascentive's damages from the aforesaid unlawful actions of Defendants are not yet determined.

**Count II (against Defendants PCPitstop, Rob Cheng, and 1ShoppingCart)**  
**Unfair Competition Under 15 U.S.C. §1125(a)**

82. Ascentive repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint as though the same were fully rewritten herein.

83. Section 1125(a) of Title 15 of the United States Code states, in pertinent part:

Any person who, on or in connection with any good or services, ... uses in commerce any word, term, name, symbol, ... or any false designation of origin, ... which -- is likely to cause confusion, or to cause mistake, or to deceive...as to the origin, sponsorship, or

approval of his or her goods, services, or commercial activities by another person...shall be liable in a civil action.

84. Defendants' use of Ascentive's trademarks falsely suggests that Ascentive is the source of, or has authorized, Defendants' use of Ascentive's trademarks and is likely to deceive purchasers, prospective purchasers, and members of the relevant trade and public into believing that PCPitstop's products are affiliated with Ascentive's products, or that such products are authorized or approved by Ascentive, or are provided in affiliation with Ascentive, in violation of 15 U.S.C. § 1125(a).

85. Defendants' conduct constitutes trademark infringement, unfair competition and false designation of origin in violation of 15 U.S.C. § 1125(a).

86. Defendants' conduct is being conducted with willful disregard of Ascentive's valuable trademark rights in its trademarks. Defendants' use of Ascentive's trademarks in connection with PCPitstop's products is a willful attempt to trade upon the goodwill that Ascentive has developed in its trademarks.

87. Ascentive has no adequate remedy at law. The said conduct of Defendants will cause, if not enjoined, irreparable damage to Ascentive's rights in its trademarks and its business, reputation and goodwill. Ascentive's damages from the aforesaid unlawful actions are not yet determined.

**Count III (against 1ShoppingCart)**  
**Vicarious and Contributory Lanham Act Violations**

88. Ascentive repeats and re-alleges the allegations contained in the preceding paragraphs in this Complaint as though the same were fully rewritten herein.

89. 1ShoppingCart assists PCPitstop and its advertisers in creating and tracking advertisements for PCPitstop's software.

90. 1ShoppingCart has actual or constructive knowledge that these advertisements violate the Lanham Act.

91. With full knowledge and willful disregard of Ascentive's rights in the trademarks, 1ShoppingCart continues to enable PCPitstop advertisers to use Ascentive's trademarks, to assist in the use of Ascentive's trademarks, and to promote the use of Ascentive's trademarks.

92. 1ShoppingCart contracts with PCPitstop and PCPitstop advertisers and has the right, ability and obligation to control the use of Ascentive's trademarks by PCPitstop and its advertisers.

93. 1ShoppingCart receives a direct financial benefit as a result of its contractual relationship with parties advertising PCPitstop's software.

94. The conduct 1ShoppingCart enables is likely to cause confusion, mistake or deception as to whether Ascentive is the source of, or is sponsoring or affiliated with, the software products offered.

95. 1ShoppingCart provides PCPitstop advertisers with aid and materially contributes to their violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a).

96. 1ShoppingCart is therefore contributorily and vicariously liable for the infringing use of Ascentive's trademarks by advertisers of PCPitstop's software.

97. Ascentive has no adequate remedy at law. The said conduct of 1ShoppingCart will cause, if not enjoined, irreparable damage to Ascentive's rights in its trademarks and its business, reputation and goodwill. Ascentive's damages from the aforesaid unlawful actions are not yet determined.

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**Count IV (against PCPitstop)**  
**Vicarious and Contributory Lanham Act Violations**

98. Ascentive repeats and re-alleges the allegations contained in the preceding paragraphs in this Complaint as though the same were fully rewritten herein.

99. When persons other than PCPitstop (PCPitstop's "affiliates" or "merchants") purchase and bid on Ascentive's trademarks and violate the Lanham Act in connection with advertising PCPitstop's software and receiving commissions from Defendants, PCPitstop has actual or constructive knowledge of those Lanham Act violations.

100. With full knowledge and willful disregard of Ascentive's rights in the trademarks, PCPitstop continues to assist and enable affiliate advertisers that use Ascentive's trademarks to market its software.

101. PCPitstop contracts with its affiliates and has the right, ability and obligation to control the use of Ascentive's trademarks by PCPitstop affiliates.

102. PCPitstop receives a direct financial benefit as a result of its affiliates' conduct.

103. The conduct of PCPitstop and its affiliates is likely to cause confusion, mistake or deception as to whether Ascentive is the source of, or is sponsoring or affiliated with, the software products offered.

104. Through its conduct, PCPitstop provides its affiliates with aid and materially contributes to their violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a).

105. PCPitstop is therefore contributorily and vicariously liable for the infringing use of Ascentive's trademarks by its affiliates.

106. Ascentive has no adequate remedy at law. The said conduct of PCPitstop and its affiliates will cause, if not enjoined, irreparable damage to Ascentive's rights in its trademarks



and its business, reputation and goodwill. Ascentive's damages from the aforesaid unlawful actions are not yet determined.

#### **Count V**

#### **Breach of Contract Against Defendants PCPitstop and Mr. Cheng**

107. Ascentive repeats and re-alleges the allegations contained in the preceding paragraphs in this Complaint as though the same were fully rewritten herein.

108. There was a contract between Ascentive and PCPitstop and Mr. Cheng.

109. Mr. Cheng and PCPitstop agreed to stop bidding on and using Ascentive's trademarks as keywords.

110. Mr. Cheng and PCPitstop breached this agreement, and resumed bidding on Ascentive's trademarks as keywords.

111. Ascentive was damaged as a result of the breach, and Defendants' resumed use of Ascentive's trademarks by PCPitstop's advertisers caused Ascentive to lose revenue.

#### **Count VI**

#### **Defamation Against PCPitstop and John Does 1-10**

112. Ascentive repeats and re-alleges the allegations contained in the preceding paragraphs in this Complaint as though the same were fully rewritten herein.

113. PCPitstop has published false factual statements on its website concerning the quality of Ascentive's services and products, including but not limited to: (1) Ascentive "promotes adware and phishing scams"; (2) "[o]nce Ascentive's software gets on a computer it is very difficult to get off"; (3) Ascentive sells "rogue antispymware products" that produce "false positive results"; (4) Ascentive's software products are "cheap knock-offs"; (5) Ascentive's software harms computers; and (6) Ascentive overcharges for "mediocre" software.

114. These statements were authored anonymously by John Does 1-10 and/or PCPitstop.

115. PCPitstop and its moderators exercised control over the content of its website and the online postings.

116. The false statements were made with actual malice and were intended to cause Ascentive financial harm.

117. As a result of the statements and acts as alleged above, Ascentive has incurred damages to its reputation, as well as monetary damages in an amount to be proven at trial.

118. PCPitstop's acts as alleged above, if not enjoined, will continue. Ascentive's remedy at law is not adequate and Ascentive is entitled to injunctive relief.

#### **Prayer for Relief**

WHEREFORE, Ascentive respectfully demands judgment:

- a. that Defendants and their officers, directors, agents, servants, employees, attorneys, confederates, related companies, licensees, and all persons acting for, with, by, through and under them, be preliminarily and permanently enjoined:
  - (1) from using, purchasing, or permitting a PCPitstop advertiser or affiliate to use or purchase, the "FinallyFast.com," "FinallyFast," "Finally Fast," and "FinallyFastPC" marks and names, and any other confusingly similar marks, reproduction or colorable imitations of these marks and names in connection with any products not originating with Ascentive or authorized by Ascentive;
  - (2) from using, purchasing, or permitting a PCPitstop advertiser or affiliate to use or purchase, the "FinallyFast.com," "FinallyFast," "Finally Fast," and "FinallyFastPC" marks and names, and any other confusingly similar marks, reproduction or colorable imitations of these marks and names as keywords on internet search engines;
  - (3) from committing, or permitting a PCPitstop advertiser or affiliate to commit, any acts calculated to cause purchasers to believe that any of PCPitstop's products are associated with or authorized by Ascentive;

- (4) from otherwise competing or permitting a PCPitstop advertiser or affiliate to compete unfairly with Ascentive in any manner; and
- (5) from publishing or posting false and defamatory factual statements regarding Ascentive or its products on the PCPitstop website.

b. that Defendants pay to Ascentive such damages as Ascentive has sustained in consequence of the infringement and unfair competition of Defendants, and to account for and to pay to Ascentive:

- (1) all gains, profits and advantages derived from their infringement;
- (2) all gains, profits and advantages derived from their unfair competition; and
- (3) that PCPitstop and Mr. Cheng pay to Ascentive such damages as

Ascentive has sustained in consequence of their breach of contract.

d. that PCPitstop and John Does 1-10 pay to Ascentive such damages as Ascentive has sustained in consequence of its defamation;

e. that Ascentive be awarded damages, costs and attorneys' fees to the full extent provided for by Section 35 of the Lanham Act, 15 U.S.C. § 1117;

f. that Ascentive be awarded statutory, actual and trebled damages to the full extent allowed under 15 U.S.C. § 1117; and

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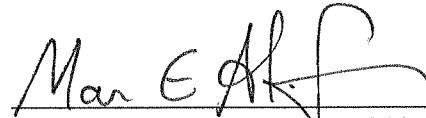
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g. that Ascentive have such other and further relief as the Court may deem equitable.

DATED: February 13, 2009.

STOEL RIVES LLP

A handwritten signature in black ink, appearing to read "Marc E. Alifanz", written over a horizontal line.

Steven T. Lovett, OSB No. 910701  
Marc E. Alifanz, OSB No. 071868  
Telephone: (503) 224-3380

Of Counsel:

Jordan A. LaVine  
Alexis Arena  
FLASTER/GREENBERG, P.C.  
1628 John F. Kennedy Blvd., Suite 1500  
Philadelphia, PA 19103  
(215) 279-9393

Attorneys for Plaintiff Ascentive, LLC.

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,533,775

Registered Nov. 18, 2008

SERVICE MARK  
PRINCIPAL REGISTER

FinallyFast.com

ASCENTIVE LLC (DELAWARE LIMITED LIABILITY COMPANY)  
SUITE 400  
201 SPRING GARDEN STREET  
PHILADELPHIA, PA 19123

FOR: ONLINE RETAIL STORES FEATURING COMPUTER SOFTWARE FOR IMPROVING THE PERFORMANCE OF PERSONAL COMPUTERS, INCREASING THE SPEED OF PERSONAL COMPUTERS, INCREASING THE SPEED OF ACCESS TO GLOBAL COMPUTER NETWORKS, IMPROVING THE SECURITY OF PERSONAL COMPUTERS, ASSESSING COMPUTER AND INTERNET PERFORMANCE, SCANNING PERSONAL COMPUTERS FOR SPYWARE AND ADWARE, RUNNING DIAG-

NOSTICS ON PERSONAL COMPUTERS, AND CLEANING JUNK AND CLUTTER FILES FROM PERSONAL COMPUTERS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-3-2008; IN COMMERCE 3-3-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-442,284, FILED 4-7-2008.

CHRISTINA SOBRAL, EXAMINING ATTORNEY

Finally fast - Google Search - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites Print Mail News RSS Settings

Address http://www.google.com/search?hl=en&q=finally+fast

Google G finally fast Go 303 blocked Check AutoLink AutoFill Settings

Web Images Maps News Shopping Gmail more Sign In

Google finally fast Search Advanced Search Preferences

Customized based on recent search activity. More details

Web Video Results 1 - 10 of about 42,000,000 for finally fast. (0.09 seconds)

**Finally Fast.com | Get your computer to its peak performance**  
 Finallyfast.com is a feature site of Ascentive Software. ... Ascentive Software, the company behind FinallyFast.com, has been featured in: ...  
 www.finallyfast.com/ - 18k - [Cached](#) - [Similar pages](#)

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**Finally Fast.com | Get your computer to its peak performance ...**  
 Finally Fast.com: Get your computer to its peak performance - By Ascentive - Home -  
[Downloads](#) - [Testimonials](#) - [Support](#) - [About Us](#) ...  
 www.finallyfast.com/downloads.html - 12k - [Cached](#) - [Similar pages](#)

**Finally Fast? - Yahoo! Answers**  
 So I was watching ESPN and then a commercial came ...  
 answers.yahoo.com/question/index?qid=20080603190855AAKxFd3 - 47k - [Cached](#) - [Similar pages](#)

**Is Finally Fast.com safe to use? ? - Yahoo! Answers**  
 Most things similar to that have adware or viruses...  
 answers.yahoo.com/question/index?qid=20080819055713AAmfpV - 39k - [Cached](#) - [Similar pages](#)

**Finally Fast.com - Fast Scam! Free Alternative Software « Bill ...**  
 When it came to titling this article I was stuck between, what's up on top of this article and this, "Finally Fast.com - Computing for Dummies with Money!" ...  
 billmullins.wordpress.com/2008/10/27/finally-fastcom-fast-scam-free-alternative-software/ - 115k - [Cached](#) - [Similar pages](#)

**YouTube - Finally Fast Scam**  
 EDIT: EVERYONE CHECK OUT FINALLY FAST SCAM 3 ON MY VIDEOS. Everyone who whatches G4 knows about this very stupid commercial. But now with text comments.  
 www.youtube.com/watch?v=In9jCKDca0 - 103k - [Cached](#) - [Similar pages](#)

**YouTube - Finally Fast Commercial**  
 1 min 2 sec - May 25, 2008 - ★★★★★  
 Finally Fast Commercial.Horrid. ... youtube poop: Finally fast.com makes everything better ... YouTube Poop -

Internet

finallyfast.com Google Search Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Stop Search Favorites

Address <http://www.google.com/search?hl=en&q=finallyfast.com&aq=f&oq=>

Google [finallyfast.com](#) Go Bookmarks 303 blocked Check AutoLink AutoFill Settings

Web Images Maps News Shopping Gmail more Sign in

# Google

Search [Advanced Search](#) [Preferences](#)

Web Video Results 1 - 10 of about 72,200 for finallyfast.com. (0.14 seconds)

**Finally Fast.com | Get your computer to its peak performance**  
 Finallyfast.com is a feature site of Ascentive Software. ... Ascentive Software, the company behind FinallyFast.com, has been featured in: ...  
[www.finallyfast.com/](#) - 18k - [Cached](#) - [Similar pages](#)

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 Finally Fast.com: Get your computer to its peak performance · By Ascentive · Home · Downloads · Testimonials · Support · About Us ...  
[finallyfast.com/downloads.html](#) - 12k - [Cached](#) - [Similar pages](#)

**FinallyFast.com**  
 Apr 20, 2008 ... FinallyFast.com - The website FinallyFast.com advertises a free download of a Windows registry cleaner to speed up your computer, ...  
[a11news.com/33/finallyfast-com/](#) - 56k - [Cached](#) - [Similar pages](#)

**FinallyFast.com - Does It Work? ~ The Blade by Ron Schenone, MVP**  
 Last evening I was watching the History Channel and a advertisement came on for a web site called FinallyFast.com. It claimed to be a all in one, PC fix, ...  
[www.lockergnome.com/blade/2008/08/19/finallyfastcom-does-it-work/](#) - [Similar pages](#)

**Is Finally Fast.com safe to use? ? - Yahoo! Answers**  
 Most things similar to that have adware or viruses...  
[answers.yahoo.com/question/index?qid=20080819055713AAmfspV](#) - 39k - [Cached](#) - [Similar pages](#)

[I saw a commercial for FinallyFast.com which is a PC performance ...](#)  
 Is this a reputable download or is some type of ma...  
[answers.yahoo.com/question/index?qid=20080426135239AADnMmo](#) - 42k - [Cached](#) - [Similar pages](#)

**Finally Fast.com - Fast Scam! Free Alternative Software « Bill ...**  
 When it came to titling this article I was stuck between, what's up on top of this article and this, "Finally Fast.com - Computing for Dummies with Money!" ...

Internet

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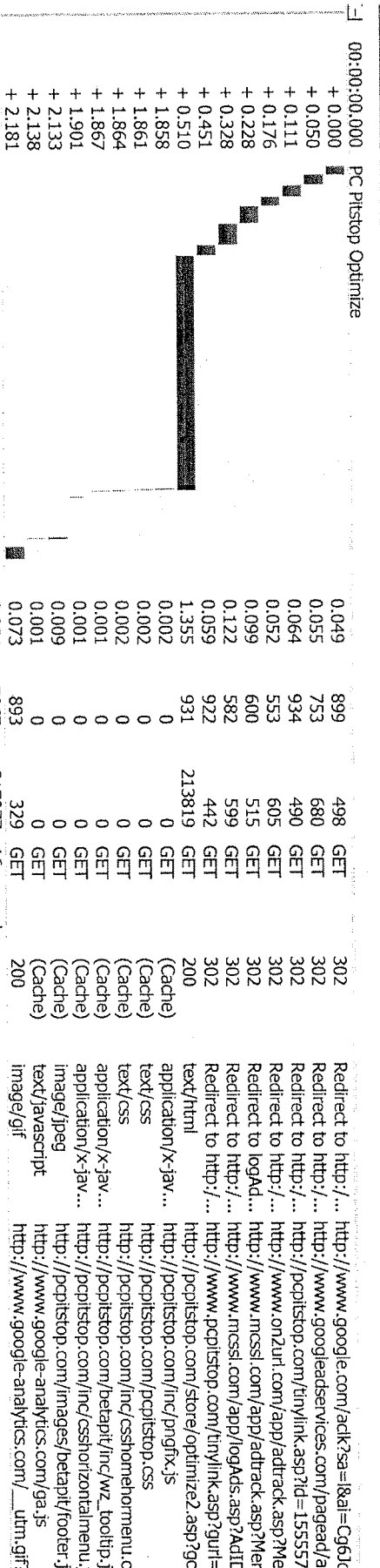
2009-Feb-02 12:06:49.984

Started	Time Chart	Time	Sent	Received	Method	Result	Type	URL
00:00:00.000	PC Plistop Optimize	0.391	899	498	GET	302	Redirect...	http://www.google.com/ack?sa=l&ai=C6qLVdS6hSeh_J1WkTger2LDUCLH2njl
+ 0.000		0.617	753	679	GET	302	Redirect...	http://www.googleadservices.com/pagead/ack?sa=l&ai=C6qLVdS6hSeh_J1W
+ 0.391		0.658	934	490	GET	302	Redirect...	http://pclistop.com/tinylink.asp?tid=155557&gclid=CKL7aWovpgCFQFqkwod
+ 1.014		0.678	553	672	GET	302	Redirect...	http://www.on2url.com/app/advertack.asp?merchantID=562488&ADID=155557
+ 1.673		0.651	673	515	GET	302	Redirect...	http://www.mcssl.com/app/advertack.asp?merchantID=562488&ADID=155557
+ 2.352		0.227	655	599	GET	302	Redirect...	http://www.mcssl.com/app/ogAds.asp?adID=155557
+ 3.004		1.632	922	442	GET	302	Redirect...	http://www.pclistop.com/app/tinylink.asp?gurl=/store/optimized2.asp?
+ 3.232		3.307	931	213819	GET	200	text/html	http://pclistop.com/store/optimized2.asp?gclid=CKL7aWovpgCFQFqkwodV-
+ 4.865		0.288	743	1814	GET	200	applicati...	http://pclistop.com/inc/pngfx.js
+ 8.137		1.183	743	14580	GET	200	text/css	http://pclistop.com/inc/csshomehormenu.css
+ 8.138		0.538	752	1882	GET	200	text/css	http://pclistop.com/betapit/inc/wz_tooltip.js
+ 8.139		1.255	755	35325	GET	200	applicati...	http://pclistop.com/images/logo172x70.jpg
+ 8.139		0.285	751	6155	GET	200	image/j...	http://pclistop.com/inc/csshorizontalmenu.js
+ 9.461		0.252	754	1493	GET	200	applicati...	http://pclistop.com/images/optimized2/opt1.gif
+ 9.461		0.337	755	12009	GET	200	image/gif	http://pclistop.com/images/optimized2/freescanow.gif
+ 9.778		0.370	762	3024	GET	200	image/gif	http://pclistop.com/images/optimized2/mailbox.jpg
+ 9.779		0.609	758	6353	GET	200	image/j...	http://pclistop.com/images/optimized2/screenthumb1.jpg
+ 9.780		0.981	763	11005	GET	200	image/j...	http://pclistop.com/images/optimized2/thumbs.gif
+ 9.780		0.652	757	1426	GET	200	image/gif	http://pclistop.com/images/optimized2/freescan.gif
+ 9.781		0.862	759	1638	GET	200	image/gif	http://pclistop.com/images/betapit/footer.jpg
+ 9.783		1.022	755	10195	GET	200	image/j...	http://www.google-analytics.com/ga.js
+ 9.977		0.001	0	0	GET	(Cache)	text/jav...	http://www.google-analytics.com/_utm.gif?utmwv=4.3&utmn=1267066125&
+ 9.980		0.499	892	329	GET	200	image/gif	http://www.google-analytics.com/_utm.gif?utmwv=4.3&utmn=1267066125&
+ 10.163		11.000	17019	324942	23 requests			



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Started Time Chart



00:00:27.930 PC Pitstop Store

Time	Sent	Received	Method	Result	Type	URL
+ 0.000	0.651	1006	GET	200	text/html	https://cart.pcpitstop.com/default.asp?add_f
+ 0.482	0.474	1109	GET	304	text/css	https://cart.pcpitstop.com/css/styles.css
+ 0.484	0.232	1105	GET	304	application/x-jav...	https://cart.pcpitstop.com/js/common.js
+ 0.994	0.056	1104	GET	304	application/x-jav...	https://cart.pcpitstop.com/js/ajax.js
+ 1.088	0.067	1107	GET	304	image/png	https://cart.pcpitstop.com/img/logo.png
+ 1.096	0.146	1022	GET	304	text/x-component	https://cart.pcpitstop.com/css/leppngfx.htc
+ 1.110	0.098	1110	GET	304	image/png	https://cart.pcpitstop.com/img/refresh.png
+ 1.121	0.143	1109	GET	304	image/png	https://cart.pcpitstop.com/img/help.png
+ 1.123	0.107	1105	GET	304	image/gif	https://cart.pcpitstop.com/img/paypal.png
+ 1.124	0.145	1109	GET	304	image/gif	https://cart.pcpitstop.com/img/wait.gif
+ 1.227	0.107	1110	GET	304	image/png	https://cart.pcpitstop.com/img/flag_en.png
+ 1.228	0.093	1109	GET	304	image/png	https://cart.pcpitstop.com/img/flag_de.png
+ 1.229	0.146	1109	GET	304	image/png	https://cart.pcpitstop.com/img/flag_es.png
+ 1.230	0.159	1110	GET	304	image/png	https://cart.pcpitstop.com/img/flag_fr.png
+ 1.238	0.197	1109	GET	304	image/png	https://cart.pcpitstop.com/img/flag_it.png
+ 1.242	0.201	1111	GET	304	image/png	https://cart.pcpitstop.com/img/flag_ptb.png
+ 1.246	0.238	1109	GET	304	image/png	https://cart.pcpitstop.com/img/flag_uk.png
+ 1.247	0.001	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/leppngfx.htc
+ 1.251	0.254	1107	GET	304	image/png	https://cart.pcpitstop.com/img/lock.png
+ 1.314	0.322	326	GET	200	image/png	https://ssl.google-analytics.com/ga.js
+ 1.774	0.050	871	GET	200	image/gif	https://ssl.google-analytics.com/utm.gif?u
+ 1.795	0.001	0	GET	(Cache)	text/javascript	https://cart.pcpitstop.com/css/leppngfx.htc
+ 1.816	0.062	1125	GET	304	image/gif	https://cart.pcpitstop.com/img/blank.gif
+ 1.829	0.001	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/logo.png
+ 1.858	0.001	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/leppngfx.htc
+ 1.878	0.063	1125	GET	304	image/gif	https://cart.pcpitstop.com/img/blank.gif
+ 1.880	0.000	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/refresh.png

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Started	Time Chart	Time	Sent	Received	Method	Result	Type	URL
+ 1.897		0.001	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 1.915		0.001	0	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/help.png
+ 1.935		0.001	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 1.953		0.001	0	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/paypal.png
+ 1.971		0.001	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 1.999		0.001	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 2.017		0.001	0	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/flag_en.png
+ 2.041		0.001	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 2.058		0.000	0	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/flag_de.png
+ 2.082		0.001	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 2.101		0.000	0	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/flag_es.png
+ 2.123		0.001	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 2.141		0.001	0	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/flag_fr.png
+ 2.163		0.001	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 2.184		0.001	0	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/flag_it.png
+ 2.206		0.000	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 2.223		0.001	0	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/flag_jp.png
+ 2.245		0.001	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 2.262		0.001	0	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/flag_uk.png
+ 2.284		0.001	0	0	GET	(Cache)	text/x-component	https://cart.pcpitstop.com/css/iepngfix.htc
+ 2.304		0.001	0	0	GET	(Cache)	image/png	https://cart.pcpitstop.com/img/lock.png
		2.306	23205	64916	48 requests			

Exhibit C  
Page 3 of 3

# who.is

[Whois](#) [Domain Suggestions](#) [Premium Domains](#) [Web Search](#) [DNS](#) [Whois Index](#) [IP Index](#) [FAQ](#)

Who.is Search

mcssl.com

[Whois](#) [Archive](#) [Information](#) [Suggestions](#) [Premium Domains](#) [Web Search](#) [DNS Records](#)

Premium Domains Available for Purchase at **name.com**: (info? call: 866-830-6479)

[Mccy.com](#) \$4653.00 [MCNO.com](#) \$4264.00 [MCBB.net](#) \$1687.00 [Mcce.net](#) \$2521.00 [MCEL.net](#) \$1456.00 [Mcfm.net](#) \$2088.00

TLD Availability\*

Taken Domains

Available Domains

[mcssl.com](#) [mcssl.org](#) [mcssl.info](#)

[mcssl.net](#)  [mcssl.us](#)  [mcssl.biz](#)

Buy Now! \$8.99 at **name.com**

Purchase

Ads by Google

### Register Domain Names

Find & Register Domains For \$10 at Register.com. Limited Time Only! [Register.com](#)

### Buy Domain Names

Generate More Revenue for Your Business with a Quality Domain. [www.BuyDomains.com](#)

### GoDaddy #1 domain names

\$7.99 .COM Domains - Save Today  
Inc: Hosting, Blogcast, Email, More  
[GoDaddy.com](#)

Registry Whois

Domain Name: mcssl.com

Status: clientDeleteProhibited, clientTransferProhibited

Registrar: ENOM, INC.  
Whois Server: whois.enom.com  
Referral URL: http://www.enom.com

Expiration Date: 2010-02-27  
Creation Date: 2002-02-27  
Last Update Date: 2009-01-29

Name Servers:  
[dns1.gta-tech.com](#)  
[dns2.gta-tech.com](#)

## name.com + Google Apps

Every domain name now comes with select Google Apps FREE

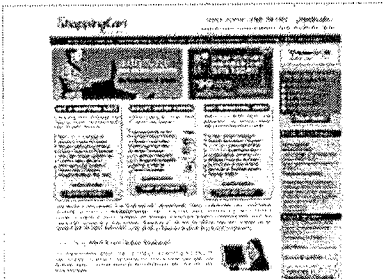
- Personalized Email
- Google Talk
- Custom Start Page
- Web Page Creator
- And More!

Powered by  
**Google**

**\$8.99**

Domain Search:

Extended Info



IP Address: 69.10.237.101

Website Status: active

Server Type: Microsoft-IIS/6.0

Alexa Trend/Rank: 1 Month: 3,324 3 Month: 3,315

Page Views per Visit: 1 Month: 2.3 3 Month: 2.3

Cache Date: 2009-02-01 16:06:59 MST

Premium Domains

Purchase these domains at **name.com**: (info? call: 866-830-6479)

[Mccy.com](#) \$4653.00

[MCNO.com](#) \$4264.00

[MCBB.net](#) \$1687.00

[Mcce.net](#) \$

- MCEL.net \$1456.00
- McMd.net \$1588.00
- MCTM.net \$1575.00
- McKen.com \$2088.00
- McKey.net \$2988.00
- MccAdams.com \$2688.00
- Mcfm.net \$2088.00
- Mcmp.net \$1988.00
- MCTT.net \$1504.00
- McMen.com \$3388.00
- McAccessories.com \$1088.00
- Mccade.com \$3188.00
- Mcib.net \$2088.00
- Mcst.net \$2521.00
- Mcsc.net \$3388.00
- Mccay.net \$2588.00
- MCAgency.com \$3288.00
- McCalc.com \$3288.00
- Mcll.net \$1
- MCSS.net
- McIce.com \$1888.00
- Mcdev.net
- McBryan.c \$3588.00
- McCarrel.c \$2588.00

Buy Now! at name.com

Available Domains Register these domains at name.com:

- McRial.com
- Mymcssl.com
- McsSsl.net
- RialMcSsl.net
- RialSsl.com
- mcsslCentral.net
- RateSsl.com
- RialMcSsl.com
- Hestreet.net
- Themcssl.net
- mcsslCentral.com
- ReeSsl.net
- RateSsl.net
- Themcssl.com
- HestreetSsl.net
- Webmcssl.net
- HestreetMcSsl.net
- Bestmcssl.com
- HestreetSsl.com
- Webmcssl.com
- McHestreet.net
- mcsslOnline.net
- RialSsl.net
- McHestr
- mcsslOn
- Mymcssl
- Hestreeti
- ReeSsl.c

Buy Now! \$8.99 at name.com

Whois =====

Registration Service Provided By: Enom, Inc  
Contact: **CustomerSupport@enom.com**  
Visit: www.enom.com

Domain name: mcssl.com

Registrant Contact:  
1ShoppingCart.com  
Robert Bell ()

Fax:  
1430 Willamette St. #333  
Eugene, OR 97401  
US

Administrative Contact:  
1ShoppingCart.com  
Robert Bell (**domainregistrar@1shoppingcart.com**)  
+1.7057921961  
Fax: +1.7057925253  
1430 Willamette St. #333  
Eugene, OR 97401  
US

Technical Contact:  
1ShoppingCart.com  
Robert Bell (**domainregistrar@1shoppingcart.com**)  
+1.7057921961  
Fax: +1.7057925253  
1430 Willamette St. #333  
Eugene, OR 97401  
US

Status: Locked

Name Servers:

2/2/2009

dns1.gta-tech.com  
dns2.gta-tech.com

Creation date: 28 Feb 2002 00:06:03  
Expiration date: 28 Feb 2010 00:06:00

Get Noticed on the Internet! Increase visibility for this domain name by listing it at [www.whoisbusinesslistings.com](http://www.whoisbusinesslistings.com)  
=====

The data in this whois database is provided to you for information purposes only, that is, to assist you in obtaining information about or related to a domain name registration record. We make this information available "as is," and do not guarantee its accuracy. By submitting a whois query, you agree that you will use this data only for lawful purposes and that, under no circumstances will you use this data to: (1) enable high volume, automated, electronic processes that stress or load this whois database system providing you this information; or (2) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, electronic mail, or by telephone. The compilation, repackaging, dissemination or other use of this data is expressly prohibited without prior written consent from us.

We reserve the right to modify these terms at any time. By submitting this query, you agree to abide by these terms.  
Version 6.3 4/3/2002

---

**Sponsored Links**

Ads by Google

Free Domain Names

Get Free Domain Name & Hosting!  
Free Custom Website - No Setup Fees  
[www.101freedomain.com](http://www.101freedomain.com)

Registering a Domain?

Earn revenue from Google ads on your site. Sign up for AdSense.  
[www.google.com/adsense](http://www.google.com/adsense)

Limited Time Domain Sale

A Deal For New Network Solutions® Customers. \$9.99 Domains!  
[NetworkSolutions.com](http://NetworkSolutions.com)

---

Who.is Search

---

[Give Us Feedback](#) - [bluerider.com](#), [tld info](#), [WikiName](#), [Domain Registration](#)  
©2005-2009 Who.is

**Arena, Alexis**

---

**From:** Arena, Alexis  
**Sent:** Tuesday, January 20, 2009 2:24 PM  
**To:** 'rob@pcpitstop.com'  
**Cc:** LaVine, Jordan  
**Subject:** FW: RE: FW: Violation of Intellectual Property of Ascentive, LLC

Mr. Cheng:

PC PitStop is again purchasing Ascentive's trademarks as keywords on search engines, in breach of your prior agreement to cease buying Ascentive's trademarks. The trademarks recently purchased by PC PitStop on Google include the trademark "FinallyFast.com", for which Ascentive now owns a registration with the United States Patent and Trademark Office, Registration No. 3533775, issued November 18, 2008.

Be advised that if this use of Ascentive's trademarks does not immediately cease, this is the last communication we will send to you before filing a complaint against you and your company in federal court. In such an action, we will pursue trebled monetary damages, costs and attorney's fees. We are confident that we will prevail given the blatant nature of your infringement and the breach of your prior written agreement to stop buying Ascentive's trademarks as keywords.

Alexis Arena  
Flaster/Greenberg P.C.  
1628 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103  
(215) 279-9908 (Phone)  
(215) 701-1151 (Fax)  
www.flastergreenberg.com

---

**From:** LaVine, Jordan  
**Sent:** Wednesday, October 22, 2008 11:38 AM  
**To:** 'Rob Cheng'  
**Subject:** RE: RE: FW: Violation of Intellectual Property of Ascentive, LLC

Mr. Cheng:

I note that PC Pitstop is still purchasing the "Finally Fast" trademark with Yahoo! I assume this is an oversight. Can you please confirm that your company will cease bidding on this trademark, as you previously represented that you would?

Please let us hear from you as soon as possible.

Sincerely,  
Jordan LaVine

---

**From:** LaVine, Jordan  
**Sent:** Friday, September 05, 2008 3:28 PM  
**To:** 'Rob Cheng'  
**Subject:** RE: RE: FW: Violation of Intellectual Property of Ascentive, LLC

Mr. Cheng:

Thank you for your cooperation. We wish you luck as well.

Regards,  
Jordan LaVine

1/31/2009

Exhibit E  
Page 1 of 12

---

**From:** Rob Cheng [mailto:rob@pcpitstop.com]  
**Sent:** Friday, September 05, 2008 12:46 PM  
**To:** LaVine, Jordan  
**Subject:** Re: RE: FW: Violation of Intellectual Property of Ascentive, LLC

Please send this response to your client.

Good bye.

=====  
Dear Sirs,

To be honest, I am shocked at the veracity of your latest response. Treble damages? Wow!

Although you can pursue your current legal course, I still believe at the heart of the issue is whether Google can sell your trademark as a keyword. To me, one of your competitors, or anyone else. My opinion is that they can. I don't like the fact that they have so much control over my company's destiny, but I have accepted this fact. You have not.

Furthermore, there is NO case law that suggest that Google does not have the right to sell me the keyword. But to be honest, I really don't want to have this conversation with your attack dog.

I have already stated that if we desist, the improvement in Ascentive's business will be marginal (very low four digits per month). To be honest, I was unaware of this activity in our company because it is so small relative to the size of our business.

My sense is that your business is searching for a sustainable business model, or at the very least get the advertising line below the revenue line. This is about your company's survival, and I knew that from the beginning. Nor should you believe just me, that is why I offered to allow you to talk to our Google representative.

That said, since this is about your company's survival, I understand why you just don't take my word for it. But I know the numbers, and I can tell you that you are hard pressed to pay your attorney's fees, much less bridge the gap between your ad spend and your revenue.

But after that I have to ask myself, why are we arguing about such a small amount of money? Part of this is me. Your approach is one of the bully and I have stood up to bullies all my life. Your legal case is poor (despite what your lawyer tells you) and in my book, you lost more on style points.

Anyways, the real issue for me and the company is that this stupid and minute issue is consuming a lot more of my time than it merits. I still feel it is wrong to use the legal system to waste my time, but I cannot change the world. My company has real issues that require my attention to continue to grow and thrive. We have a clear vision of the future, and I have let this issue distract me.

For this reason, I have decided to stop buying your keywords. Please be aware that I do not agree nor relent on the issues you bring before us. Your case is poor and your so is your legal advice. If you check now, you will see that we are no longer buying your keywords.

Good bye and good luck.

Rob Cheng  
CEO  
PC Pitstop

LaVine, Jordan wrote:

Mr. Cheng,

I have indeed shared your thoughts with my client. My client has provided his thoughts in response, as follows:

By advertising on our trademarks he is skimming off of our own advertising that is driving people to look for our trademarks online. So rather than bullying him, we are putting an end to parasitic behavior that is damaging our marketing results. If we do not pursue suit against him, the other folks are likely to come back. So we really have no choice from a cost/benefit perspective, as it's not only the revenue from his own skimming that we're considering, but preventing a plethora of parasites who skim off of our trademarks and damage our profitability.

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Exhibit **E**  
Page **2** of **12**

Pursuing action against parasitic marketers will probably not harm us publicly. Casting himself as the bullied victim in this case is not appropriate. We are protecting our intellectual property and marketing efforts. His marketing and products should stand on their own two feet and not be on the back of Ascentive's investments. We are experienced and 100% (so far) successful at protecting our business in federal court litigation.

I would only add that your repeated mentioning of Google's opinion on these matters is not relevant whatsoever. Google and Yahoo are no doubt providing the means by which you and other companies can commit acts of trademark infringement, but Google and Yahoo are not the parties actually purchasing the trademarks of my client as keywords. It is moreover in Google's best interest to take the position it has because the Ad Words program is highly profitable for them. That does not mean it's a legally correct or defensible position under the trademark laws.

For the reasons stated in my prior emails and the reasons stated in my client's comments above, Ascentive intends to further pursue this matter in court if you do not agree to cease purchasing Ascentive's trademarks as keywords. Ascentive does not initiate litigation without careful thought and would not do so to be a "bully" as you suggest in your email. Ascentive is merely seeking to protect an asset in which it has invested significant time and resources. If Ascentive is compelled to initiate litigation against your company, it would seek its damages, your company's profits, and its attorney's fees. Ascentive will additionally seek to have its damages tripled based upon the willful nature of the infringement.

Please let us hear from you by the close of business tomorrow whether you will agree to cease using Ascentive's trademarks as Internet advertising key words.

Regards,  
Jordan LaVine

---

**From:** Rob Cheng [<mailto:rob@pcpitstop.com>]  
**Sent:** Thursday, September 04, 2008 12:35 PM  
**To:** LaVine, Jordan  
**Subject:** Re: FW: Violation of Intellectual Property of Ascentive, LLC

Jordan,

Please consider sending this response to your client.

=====

Dear Sir:

I highly recommend that you desist on pursuing this matter through legal means. There are many reasons why this is not a good business decision.

1. I am sure your lawyer has told you otherwise, but I personally believe your case is poor. The biggest beneficiary is all of this is Google and to a lesser degree Yahoo and MSN. The issue at hand is that Google (et al) believes that it is OK to sell advertising on keywords related to your trademark. We are victims of this issue as well as beneficiaries. Just about any company that does business over the web has encountered these type of issues. If you want further clarification, I suggest filing a complaint with Google. As I indicated, I have already discussed your complaint with Google and they feel that we have done nothing wrong.
2. Our research shows that in fact your trademark application on FinallyFast has not yet been granted. I think this weakens your case considerably.
3. I made a concession. I had hoped that making a concession would be sufficient to call an end to this pursuit. I was trying to be reasonable, and no matter what I had hoped that you would be reasonable in response. Had I known that it was an all or nothing deal, I certainly would never had made the concession.
4. I will share some information with you. In the month of August, we spent just a little more than \$1000 with Google on the ad campaign. The campaign is profitable but not by much. So therefore, if you are successful in resolving

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Exhibit E  
Page 3 of 12



this matter, your client can stand to gain low four digit income per month. That gain should be weighed against the cost of a law suit. A law suit will cost me at a minimum \$20,000, and judging by the veracity of your lawyer, I would best that a law suit will cost you even more. You are using a machete to cut a hang nail. Based on the numbers, I promise you that there will be no winners other than the lawyers and perhaps Google. We will both lose it is only a matter of degree. On top of this, please also take into consideration (despite the advice of your lawyer) that there is a good chance you might lose the lawsuit. Again, I suggest that you take your grievance straight to Google and listen to their response and then weigh your alternatives.

5. My name is Rob Cheng. Please do some research on me and our company. We have been the victim of these specious and intimidating law suits before. When I was growing up, I was rather small for my age. But the one thing that I have learned in close to 50 years on earth, is you don't back down to a bully. If I really thought there was even an ounce of validity to your claims, I would consider another action.

6. The largest factor in a law suit is your personal time. It consumes valuable time that could be used to give better direction to your company or devise new strategies. Like I said, I have been through this before.

7. One last factor. Publicity. We are a rather high profile company, and if this goes to trial, I do not believe the publicity for your company will be good.

I hope this note makes it to you. This lawsuit is not going to make or break either company. I made a genuine concession and implore you to drop this single minded law suit mentality.

LaVine, Jordan wrote:

Mr. Cheng,

Am I understanding you correctly that your company will not agree to cease purchasing Ascentive's trademarks as advertising keywords with Google, Yahoo and other search engine providers? If that is the case, Ascentive will simply proceed with initiating litigation against your company. Please clarify your position.

Jordan LaVine

---

**From:** Rob Cheng [mailto:rob@pcpitstop.com]  
**Sent:** Thursday, September 04, 2008 10:23 AM  
**To:** LaVine, Jordan  
**Subject:** Re: FW: Violation of Intellectual Property of Ascentive, LLC

I stated in my email that the domains that we had purchased would no longer point to our web site. You can check that that was done. You can read the paragraph from my original email below. I hope that this clears up the confusion.

=====

It is also not illegal for us to buy domains that are similar to yours. That said, I was unaware of that activity, and there seems little upside in owning these domains. If you check now, you will find that these domains no longer point to our site.

LaVine, Jordan wrote:

Dear Mr. Cheng,

This is further to our email correspondence of July 30 (included below). In your email, you indicated that your company would cease purchasing Ascentive's trademarks as key words with Internet search engines. Notwithstanding your representation, we note that a search directed to

Ascentive's "Finally Fast" trademark in the Yahoo! search engine currently results in your company's website being listed among the "Sponsor Results." In fact, your company is currently the only company listed in the "Sponsor Results" as others have agreed to cease this activity after hearing from our office.

For the reasons stated in our prior correspondence, we renew our request that PC PitStop immediately cease purchasing Ascentive's trademarks as advertising keywords.

Please confirm that you will address this matter promptly.

Regards,  
Jordan LaVine

Jordan LaVine  
Flaster/Greenberg, P.C.  
1628 JFK Boulevard  
Suite 1500  
Philadelphia, PA 19103  
Tel 215-279-9389  
Fax 215-279-9394  
[jordan.lavine@flastergreenberg.com](mailto:jordan.lavine@flastergreenberg.com)

---

From: LaVine, Jordan  
Sent: Wednesday, July 30, 2008 5:40 PM  
To: 'Rob Cheng'  
Subject: RE: Violation of Intellectual Property of Ascentive, LLC

Mr. Cheng,

We appreciate your having taken these steps. However, as a point of reference, many courts throughout the United States have found that purchasing a competitor's trademark as a Google keyword (or "ad word") is a violation of the trademark owner's rights. I would be happy to provide you with copies of the decisions of these courts if you think it would be useful to you. Google's perspective or opinion on the issue is not really salient as they obviously have their own bias and may not themselves be liable because they are merely providing the keyword service.

As to the finallyafastpc.com domain name, you are not entirely right that the described domain name registration activities are not "illegal" and that you are free to register other party's trademarks as domain names. If you purchase a domain name that is confusingly similar to a trademark owner's trademark, do not use it for a legitimate business purpose, and register it in bad faith, that's a violation of Federal law and the ICANN rules governing domain name registrations. As the domain name at issue was registered after my client began using its mark and with clear knowledge of my client's existing use of the "FinallyFast" trademark, it is likely that the registration of the domain name was improper.

Please let me know if you would like to discuss these matters.

Sincerely,  
Jordan LaVine

Jordan LaVine  
Flaster/Greenberg, P.C.

1628 JFK Boulevard  
Suite 1500  
Philadelphia, PA 19103  
Tel 215-279-9389  
Fax 215-279-9394  
[jordan.lavine@flastergreenberg.com](mailto:jordan.lavine@flastergreenberg.com)

---

From: Rob Cheng [<mailto:rob@pcpitstop.com>]  
Sent: Wednesday, July 30, 2008 5:16 PM  
To: LaVine, Jordan  
Subject: Re: Violation of Intellectual Property of Ascentive, LLC

Hello,

We have reviewed your complaint and we have also discussed it with Google. To be honest, I empathize with your client because we are in the same boat. People are bidding on our key words all the time and we have no control of it. The sad fact of the matter is that despite the fact that they are our trademarks, Google views it as OK to sell keywords for our trademarks to our competitors. This is just not us. It is not uncommon for Ford to bid on GM keywords. As you surmise, the only one that wins is Google. But best I can tell (and Google confirms) it is not a trademark violation.

It is also not illegal for us to buy domains that are similar to yours. That said, I was unaware of that activity, and there seems little upside in owning these domains. If you check now, you will find that these domains no longer point to our site.

Sincerely,

Rob Cheng  
CEO PC Pitstop

LaVine, Jordan wrote:

Attention: Robert Cheng

Please see attached.

Very truly yours,  
Jordan LaVine

Jordan LaVine  
Flaster/Greenberg, P.C.  
1628 JFK Boulevard  
Suite 1500  
Philadelphia, PA 19103  
Tel 215-279-9389  
Fax 215-279-9394  
[jordan.lavine@flast](mailto:jordan.lavine@flast) <<PC PITSTOP.PDF>> [ergreenberg.com](http://ergreenberg.com)

**Arena, Alexis**

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**From:** LaVine, Jordan  
**Sent:** Wednesday, October 22, 2008 11:38 AM  
**To:** 'Rob Cheng'  
**Subject:** RE: RE: FW: Violation of Intellectual Property of Ascentive, LLC

Mr. Cheng:

I note that PC Pitstop is still purchasing the "Finally Fast" trademark with Yahoo! I assume this is an oversight. Can you please confirm that your company will cease bidding on this trademark, as you previously represented that you would?

Please let us hear from you as soon as possible.

Sincerely,  
Jordan LaVine

---

**From:** LaVine, Jordan  
**Sent:** Friday, September 05, 2008 3:28 PM  
**To:** 'Rob Cheng'  
**Subject:** RE: RE: FW: Violation of Intellectual Property of Ascentive, LLC

Mr. Cheng:

Thank you for your cooperation. We wish you luck as well.

Regards,  
Jordan LaVine

---

**From:** Rob Cheng [mailto:rob@pcpitstop.com]  
**Sent:** Friday, September 05, 2008 12:46 PM  
**To:** LaVine, Jordan  
**Subject:** Re: RE: FW: Violation of Intellectual Property of Ascentive, LLC

Please send this response to your client.

Good bye.

=====  
Dear Sirs,

To be honest, I am shocked at the veracity of your latest response. Treble damages? Wow!

Although you can pursue your current legal course, I still believe at the heart of the issue is whether Google can sell your trademark as a keyword. To me, one of your competitors, or anyone else. My opinion is that they can. I don't like the fact that they have so much control over my company's destiny, but I have accepted this fact. You have not.

Furthermore, there is NO case law that suggest that Google does not have the right to sell me the keyword. But to be honest, I really don't want to have this conversation with your attack dog.

I have already stated that if we desist, the improvement in Ascentive's business will be marginal (very low four digits per month). To be honest, I was unaware of this activity in our company because it is so small relative to the size of our business.

My sense is that your business is searching for a sustainable business model, or at the very least get the advertising line below the revenue line. This is about your company's survival, and I knew that from the beginning. Nor should you believe just me, that is why I offered to allow you to talk to our Google representative.

That said, since this is about your company's survival, I understand why you just don't take my word for it. But I know the

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Exhibit 5  
Page 9 of 12

numbers, and I can tell you that you are hard pressed to pay your attorney's fees, much less bridge the gap between your ad spend and your revenue.

But after that I have to ask myself, why are we arguing about such a small amount of money? Part of this is me. Your approach is one of the bully and I have stood up to bullies all my life. Your legal case is poor (despite what your lawyer tells you) and in my book, you lost more on style points.

Anyways, the real issue for me and the company is that this stupid and minute issue is consuming a lot more of my time than it merits. I still feel it is wrong to use the legal system to waste my time, but I cannot change the world. My company has real issues that require my attention to continue to grow and thrive. We have a clear vision of the future, and I have let this issue distract me.

For this reason, I have decided to stop buying your keywords. Please be aware that I do not agree nor relent on the issues you bring before us. Your case is poor and your so is your legal advice. If you check now, you will see that we are no longer buying your keywords.

Good bye and good luck.

Rob Cheng  
CEO  
PC Pitstop

LaVine, Jordan wrote:

Mr. Cheng,

I have indeed shared your thoughts with my client. My client has provided his thoughts in response, as follows:

By advertising on our trademarks he is skimming off of our own advertising that is driving people to look for our trademarks online. So rather than bullying him, we are putting an end to parasitic behavior that is damaging our marketing results. If we do not pursue suit against him, the other folks are likely to come back. So we really have no choice from a cost/benefit perspective, as it's not only the revenue from his own skimming that we're considering, but preventing a plethora of parasites who skim off of our trademarks and damage our profitability. Pursuing action against parasitic marketers will probably not harm us publicly. Casting himself as the bullied victim in this case is not appropriate. We are protecting our intellectual property and marketing efforts. His marketing and products should stand on their own two feet and not be on the back of Ascentive's investments. We are experienced and 100% (so far) successful at protecting our business in federal court litigation.

I would only add that your repeated mentioning of Google's opinion on these matters is not relevant whatsoever. Google and Yahoo are no doubt providing the means by which you and other companies can commit acts of trademark infringement, but Google and Yahoo are not the parties actually purchasing the trademarks of my client as keywords. It is moreover in Google's best interest to take the position it has because the Ad Words program is highly profitable for them. That does not mean it's a legally correct or defensible position under the trademark laws.

For the reasons stated in my prior emails and the reasons stated in my client's comments above, Ascentive intends to further pursue this matter in court if you do not agree to cease purchasing Ascentive's trademarks as keywords. Ascentive does not initiate litigation without careful thought and would not do so to be a "bully" as you suggest in your email. Ascentive is merely seeking to protect an asset in which it has invested significant time and resources. If Ascentive is compelled to initiate litigation against your company, it would seek its damages, your company's profits, and its attorney's fees. Ascentive will additionally seek to have its damages tripled based upon the willful nature of the infringement.

Please let us hear from you by the close of business tomorrow whether you will agree to cease using Ascentive's trademarks as Internet advertising key words.

Regards,  
Jordan LaVine

---

**From:** Rob Cheng [mailto:rob@pcpfitstop.com]  
**Sent:** Thursday, September 04, 2008 12:35 PM  
**To:** LaVine, Jordan  
**Subject:** Re: FW: Violation of Intellectual Property of Ascentive, LLC

Jordan,

Please consider sending this response to your client.

=====

Dear Sir:

I highly recommend that you desist on pursuing this matter through legal means. There are many reasons why this is not a good business decision.

1. I am sure your lawyer has told you otherwise, but I personally believe your case is poor. The biggest beneficiary is all of this is Google and to a lesser degree Yahoo and MSN. The issue at hand is that Google (et al) believes that it is OK to sell advertising on keywords related to your trademark. We are victims of this issue as well as beneficiaries. Just about any company that does business over the web has encountered these type of issues. If you want further clarification, I suggest filing a complaint with Google. As I indicated, I have already discussed your complaint with Google and they feel that we have done nothing wrong.
2. Our research shows that in fact your trademark application on FinallyFast has not yet been granted. I think this weakens your case considerably.
3. I made a concession. I had hoped that making a concession would be sufficient to call an end to this pursuit. I was trying to be reasonable, and no matter what I had hoped that you would be reasonable in response. Had I known that it was an all or nothing deal, I certainly would never had made the concession.
4. I will share some information with you. In the month of August, we spent just a little more than \$1000 with Google on the ad campaign. The campaign is profitable but not by much. So therefore, if you are successful in resolving this matter, your client can stand to gain low four digit income per month. That gain should be weighed against the cost of a law suit. A law suit will cost me at a minimum \$20,000, and judging by the veracity of your lawyer, I would best that a law suit will cost you even more. Your are using a machete to cut a hang nail. Based on the numbers, I promise you that there will be no winners other than the lawyers and perhaps Google. We will both lose it is only a matter of degree. On top of this, please also take into consideration (despite the advice of your lawyer) that there is a good chance you might lose the lawsuit. Again, I suggest that you take your grievance straight to Google and listen to their response and then weigh your alternatives.
5. My name is Rob Cheng. Please do some research on me and our company. We have been the victim of these specious and intimidating law suits before. When I was growing up, I was rather small for my age. But the one thing that I have learned in close to 50 years on earth, is you don't back down to a bully. If I really thought there was even an ounce of validity to your claims, I would consider another action.
6. The largest factor in a law suit is your personal time. It consumes valuable time that could be used to give better direction to your company or devise new strategies. Like I said, I have been through this before.
7. One last factor. Publicity. We are a rather high profile company, and if this goes to trial, I do not believe the publicity for your company will be good.

I hope this note makes it to you. This lawsuit is not going to make or break either company. I made a genuine concession and implore you to drop this single minded law suit mentality.

LaVine, Jordan wrote:

Mr. Cheng,

Am I understanding you correctly that your company will not agree to cease purchasing Ascentive's

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Exhibit **E**  
Page 9 of 12

trademarks as advertising keywords with Google, Yahoo and other search engine providers? If that is the case, Ascentive will simply proceed with initiating litigation against your company. Please clarify your position.

Jordan LaVine

---

**From:** Rob Cheng [mailto:rob@pcpitstop.com]  
**Sent:** Thursday, September 04, 2008 10:23 AM  
**To:** LaVine, Jordan  
**Subject:** Re: FW: Violation of Intellectual Property of Ascentive, LLC

I stated in my email that the domains that we had purchased would no longer point to our web site. You can check that that was done. You can read the paragraph from my original email below. I hope that this clears up the confusion.

=====

It is also not illegal for us to buy domains that are similar to yours. That said, I was unaware of that activity, and there seems little upside in owning these domains. If you check now, you will find that these domains no longer point to our site.

LaVine, Jordan wrote:

Dear Mr. Cheng,

This is further to our email correspondence of July 30 (included below). In your email, you indicated that your company would cease purchasing Ascentive's trademarks as key words with Internet search engines. Notwithstanding your representation, we note that a search directed to Ascentive's "Finally Fast" trademark in the Yahoo! search engine currently results in your company's website being listed among the "Sponsor Results." In fact, your company is currently the only company listed in the "Sponsor Results" as others have agreed to cease this activity after hearing from our office.

For the reasons stated in our prior correspondence, we renew our request that PC PitStop immediately cease purchasing Ascentive's trademarks as advertising keywords.

Please confirm that you will address this matter promptly.

Regards,  
Jordan LaVine

Jordan LaVine  
Flaster/Greenberg, P.C.  
1628 JFK Boulevard  
Suite 1500  
Philadelphia, PA 19103  
Tel 215-279-9389  
Fax 215-279-9394  
[jordan.lavine@flastergreenberg.com](mailto:jordan.lavine@flastergreenberg.com)

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From: LaVine, Jordan  
Sent: Wednesday, July 30, 2008 5:40 PM  
To: 'Rob Cheng'

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Exhibit E  
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Subject: RE: Violation of Intellectual Property of Ascentive, LLC

Mr. Cheng,

We appreciate your having taken these steps. However, as a point of reference, many courts throughout the United States have found that purchasing a competitor's trademark as a Google keyword (or "ad word") is a violation of the trademark owner's rights. I would be happy to provide you with copies of the decisions of these courts if you think it would be useful to you. Google's perspective or opinion on the issue is not really salient as they obviously have their own bias and may not themselves be liable because they are merely providing the keyword service.

As to the finallyafastpc.com domain name, you are not entirely right that the described domain name registration activities are not "illegal" and that you are free to register other party's trademarks as domain names. If you purchase a domain name that is confusingly similar to a trademark owner's trademark, do not use it for a legitimate business purpose, and register it in bad faith, that's a violation of Federal law and the ICANN rules governing domain name registrations. As the domain name at issue was registered after my client began using its mark and with clear knowledge of my client's existing use of the "FinallyFast" trademark, it is likely that the registration of the domain name was improper.

Please let me know if you would like to discuss these matters.

Sincerely,  
Jordan LaVine

Jordan LaVine  
Flaster/Greenberg, P.C.  
1628 JFK Boulevard  
Suite 1500  
Philadelphia, PA 19103  
Tel 215-279-9389  
Fax 215-279-9394  
[jordan.lavine@flastergreenberg.com](mailto:jordan.lavine@flastergreenberg.com)

---

From: Rob Cheng [<mailto:rob@pcpitstop.com>]  
Sent: Wednesday, July 30, 2008 5:16 PM  
To: LaVine, Jordan  
Subject: Re: Violation of Intellectual Property of Ascentive, LLC

Hello,

We have reviewed your complaint and we have also discussed it with Google. To be honest, I empathize with your client because we are in the same boat. People are bidding on our key words all the time and we have no control of it. The sad fact of the matter is that despite the fact that they are our trademarks, Google views it as OK to sell keywords for our trademarks to our competitors. This is just not us. It is not uncommon for Ford to bid on GM keywords. As you surmise, the only one that wins is Google. But best I can tell (and Google confirms) it is not a trademark violation.

It is also not illegal for us to buy domains that are similar to yours. That said, I was unaware of that activity, and there seems little upside

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Exhibit **B**  
Page 11 of 12



in owning these domains. If you check now, you will find that these domains no longer point to our site.

Sincerely,

Rob Cheng  
CEO PC Pitstop

LaVine, Jordan wrote:

Attention: Robert Cheng

Please see attached.

Very truly yours,  
Jordan LaVine

Jordan LaVine  
Flaster/Greenberg, P.C.  
1628 JFK Boulevard  
Suite 1500  
Philadelphia, PA 19103  
Tel 215-279-9389  
Fax 215-279-9394  
jordan.lavine@flast <<PC PITSTOP.PDF>> ergreenberg.com



- Home
- Store
- Support
- Affiliates
- Libraries
- Forums
- Tech Talk

## About PC Pitstop

Welcome to PC Pitstop! We sincerely hope that you find our site informative, enjoyable, and most importantly that your PC is running faster, more securely and reliably after visiting our site.

PC Pitstop opened its doors to the public in March 2000 with the vision of creating a better way for people to diagnose and fine tune their PC's. The foundation of our site is our online diagnostics which quickly and automatically diagnose most common PC ailments. Since our humble beginnings, millions upon millions of PC's have been tested on our site. Thanks for all of your support, and in this section, you can learn all there is to know about us.

- About PC Pitstop**
- About PC Pitstop Home
  - Employment at Pitstop
  - Advertise w/ Us
  - Link to Us
  - Our Privacy Policy
  - Support Us
  - Our Technology
  - Our Legal Stuff
  - Testimonials

## Behind the Wheel at PC Pitstop



**Rob Cheng**  
*Chief Executive Officer*

Rob is the former Senior Vice President of Gateway Direct. Rob lives in South Carolina, USA and Rio de Janeiro, Brazil.

[Message from Rob](#)



**Dave Methvin**  
*Chief Technology Officer*

Dave is the former Executive Editor at *WINDOWS Magazine* and a co-author of the book *Networking Windows NT*. He has been a computer journalist since 1986. Dave lives in Maryland, USA.

[Message from Dave](#)

## The Pit Crew

### Keith Linden

Keith worked 11 years at Gateway, Inc in their product marketing organization. He was appointed Vice President of Marketing at PC Pitstop in June 2004. He is committed to produce and grow PC Pitstop's products and services to be in the world. Keith lives in South Dakota, USA.

### Sheila Molden

Sheila worked as an Executive Assistant at Gateway, Inc. for more than 14 years. She joined PC Pitstop in 1999 keeping all the important financial and administrative details and also helps out with Customer Service. Sheila lives in Iowa.

### Lyle Schuknecht

Lyle is a former Gateway, Inc. employee with more than 13 years of experience in their operations and marketing organizations. He is responsible for creating coherence out of the gigabytes of PC data in our database. PC Pitstop is committed to analyzing and sharing emerging PC market trends as well as servicing your custom research projects.

in Iowa, USA.

**Doug Bender**

Doug came to PC Pitstop after a 38 year career in the technical side of the USPS, where he was often in the forefront technology was being rolled out. At PC Pitstop, he provides technical support for our customers who need assistance Californian, Doug is our West Coast connection and an over-the-hill overclocker.

**Corey Munson**

Corey comes to PC Pitstop as an 8 year veteran of Gateway, Inc. He is responsible for managing all PC Pitstop marketing campaigns. Corey lives in Iowa, USA.

**Matthew R. Miller**

Matthew comes from a diverse background in programming languages on both Windows and Linux over the last 10 years works as a Software Engineer for PC Pitstop, and in the past has been responsible for such projects as Disk MD, the Help Desk, the Shopping Cart, Vista Readiness Test, and more. Matthew lives in North Carolina, USA.

**RJ Riemer**

RJ came to PC Pitstop after nearly 16 years with Gateway, Inc in just about every department within the company. In charge of Business Development. He lives in Iowa, USA.

**Steve Hogan**

Steve came to PC Pitstop to get help with his computer almost 8 years ago and became interested in overclocking at extreme hardware and cooling. He has been a moderator on the the forums and participated in the Overclocking Contests between members and forums. He also spends time testing the software we offer to make your life easier. Steve is in Florida, USA.

**Mark Lussier**

Mark comes to PC Pitstop with 20 years of experience in technology. He was Co-Founder and CTO of Actual Software purchased by Palm, Inc, June 2000. The e-mail software he developed is now included on nearly every handheld device sells. Mark lives in South Carolina, USA.

**Sandra Eisen**

Sandra is PC Pitstop's web developer. She has an engineering degree from the University of Florida, and numerous years of artistic experience. She has both creative and technical skills that will help us as our site updates with new information. Sandra lives in Florida, USA.

**Megan Culbertson**

Megan graduated as the valedictorian of her high school class and is currently attending college to study ministry. She works with Customer Service part time. She lives in Iowa, USA.

**Kevin Jackson**

Kevin has a Business Management Systems degree from Ferris State University, and Data / database Analysis experience with Electronic Data Systems. He provides both data and research Analysis support on projects. Kevin lives in Michigan, USA.

**The Moderators at the Pit**

No roster would be complete without our dedicated mods at The Pit.

Handle	Location
Doug	California, USA
Lou	Texas, USA
Hammerslammer	Alabama, USA
stormy13	Ontario, Canada
IntelGuy	California, USA
Jacee	Washington, USA

1/31/2009

Jazzy	Sussex, England
kd5	Ohio, USA
Radio	Connecticut, USA
shogan191	Florida, USA
Volt	Indiana, USA
Y kawika	New York, USA

### **Need to reach someone at PC Pitstop?**

If you have a technical issue (e.g., your PC isn't working, you're having trouble with the site, or you want computer . we handle all those questions through our [forums](#) but you may also find your answer in the [frequently asked questio](#) section. For products you have purchased directly from us, please use our [customer service page](#). For business relat (e.g., you want to advertise or license our technology) please use our [contact page](#).

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PC Pitstop  
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RECOMMENDED  
Free Anti-Spyware Scan!

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FinallyFast.com advertising on TV [Options](#) ▾

kd5 Post #1



Format Junky and  
**Moderator**

Group: Moderators  
Posts: 14,483  
Joined: 1/26/03  
From: Austintown, Ohio  
Member No.: 29  
*PC Builders Club*

12:47pm Thu Oct 16 2008

Just out of curiosity I wanted to find out what this FinallyFast.com was all about. Did a Google search for it, got a lot of results, here's one:

<http://a11news.com/33/finallyfast-com/>

My Google search for FinallyFast.com:

<http://www.google.com/search?q=FinallyFast...tf8&oe=utf8>

Confirms my suspicions, wish there were more ways to let people know it's a scam. I would DEFINITELY recommend against downloading it from the link in my Google search. -kd5-

-----  
Gettin' old ain't for sissys...

-----  
Time is the fire in which we burn. (Sorah)

-----  
That which can be imagined need never be lost. (Weaveworld)

 **P. CARD** **SEND PM** **UP**

**QUOTE +** **REPLY**

**adam22**

2:25pm Thu Oct 16 2008

Post #2



I actually had the curiosity to search this up a few weeks ago and found similar results..pretty much anything on TV is false advertising yet so many will get their money taken by a bad product.

Advanced Member  
*Member*

-----  
Group: Advanced Member  
Posts: 407  
Joined: 11/30/07  
From: United States  
Member No.: 63,453  
*Folding@Home Team*

 **P. CARD** **SEND PM** **UP**

**QUOTE +** **REPLY**

**markcynt**

2:57pm Thu Oct 16 2008

Post #3



Every time I see that commercial I cringe.

The software company behind FinallyFast.com is Ascentive, a company that promotes adware and phishing scams.

Once their software gets on a computer it's very difficult to get off.

Advanced Member  
*Member*

Mark

-----  
Group: Advanced Member  
Posts: 2,683  
Joined: 3/29/05  
From: RI 02908  
Member No.: 31,332

P5N-E SLI, Core2Duo E6850 @ 3.45 GHZ  
2 GB DDR2 800MHZ  
EVGA 8800GTS 320MB  
2x320GB Stripe  
Arctic Cooling Freezer 7 Pro  
Vista Ultimate SP1, XP Pro SP3

 **P. CARD** **SEND PM** **UP**

**QUOTE +** **REPLY**

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**PC Pitstop 2.0**  
**Optimize** 

**Scan Now!**  
 Speed up your PC with NEW features!

- ★ Deeper Registry Cleaning
- ★ Better Internet Optimization
- ★ More Performance Tweaks
- ★ New Automatic Update



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**Finally fast, rebranded pit test for sale?** [Options ▾](#)

\_\_\_\_\_

**psicon**

□ 7:40am Thu Aug 7 2008

Post #1



Saw a commercial this morning for an app called Finally Fast. Silliest commercial i've seen in a while. At least two of the computers in the commercial are Macs, but the application is for Windows PCs only... Go figure..

Anyway, it looks like a rebranded PC Pitstop Optimize..

The Pit's Favorite Little Black Man  
*Anti-Spyware Brigade*

Not recommending the product, just curious if you guys have seen this..

Group: Anti-Spyware Brigade  
 Posts: 3,189  
 Joined: 2/7/03  
 From: Jackson, TN USA  
 Member No.: 823  
*Linux Users Club*

[www.finallyfast.com](http://www.finallyfast.com)

later,  
 -myk

-----  
 He who guards his mouth preserves his life, but he who opens wide his lips shall have destruction. —  
 Proverbs 13:3

Exhibit F  
 Page 9 of 11



-----  
He who guards his mouth preserves his life, but he who opens wide his lips shall have destruction. —  
Proverbs 13:3

View my blog at <http://myk-robinson.blogspot.com>

**Bruce**

8:03am Thu Aug 7 2008

Post #4



A ggogle search brought up a link to pcpitstop forums in June about finallyfast.

Interesting that a couple people said, the finallyfast test was designed to scare you into buying their products ☹

Sounds like it might be closer to overdrive then I thought ☹

Geezer

*SWAT Team*

Group: The SWAT Team

Posts: 35,116

Joined: 1/24/03

From: Wales Massachusetts

Member No.: 8

*Linux Users Club*

**TechExpress**

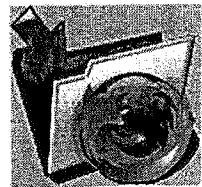
-----  
[GoodBye George](#)

Visit the Photo Gallery of Photographs, landscapes and scenery submitted by several member here at PcPitstop [The Gallery](#)

**PORTHOS**

5:11pm Thu Aug 7 2008

Post #5



Here is what siteadvisor has to say

<http://www.siteadvisor.com/sites/finallyfa...?page=2#reviews>

Format and be done with it  
already  
*Member*

Group: Advanced Member

Posts: 3,083

Joined: 1/26/04

-----  
Core 2 Quad CPU **Q6600** @ 2.40GHz  
Gigabyte P35-DS3R  
Corsair 620watt (620HX modular)  
DVDRW  
G-Skill (2 x 2GB) DDR2 1066



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finally fast

[Options](#) ▾

**osiris1**

☐ 4:58am Sun Jun 22 2008

Post #1

Does anyone know if the program "Finally Fast" is any good?

Member  
*Member*

<http://www.finallyfast.com/>

Group: Members  
Posts: 113  
Joined: 3/14/04  
Member No.: 15,700

This post has been edited by **osiris1**: 5:36am Sun Jun 22 2008

[P. CARD](#) [SEND PM](#) [UP](#)

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**Inprofile**

☐ 6:45am Sun Jun 22 2008

Post #2

What can i tell you?

Exhibit **F**  
Page 9 of 11

Stop that! Jacee was here....

**Member**

Group: Advanced Member  
Posts: 4,581  
Joined: 2/2/03  
Member No.: 537

It scans your pc.

It will tell you what is wrong with your pc.

To remove anything it finds, you pay them an annual fee.

Do yourself a favour and stick to free programmes.

As it's a new programme, there is not a lot of useful info on it.

However, i have read that it can be a bugger to remove.

 **P. CARD** **SEND PM** **UP**

**QUOTE +** **REPLY**

**osiris1**

3:01pm Sun Jun 22 2008

Post #3

Thanx.

Member  
**Member**

Group: Members  
Posts: 113  
Joined: 3/14/04  
Member No.: 15,700

 **P. CARD** **SEND PM** **UP**

**QUOTE +** **REPLY**

**Wademan**

3:17pm Sun Jun 22 2008

Post #4



Advanced Member  
**Anti-Spyware Brigade**

Group: Anti-Spyware Brigade  
Posts: 3,764  
Joined: 5/9/04  
Member No.: 17,612

Hello Osiris,

Well, if you've ever thought about giving FinallyFast a try, I'm here to warn you against it.

FinallyFast is from a company called Ascentive. Ascentive also sells "rogue" antispyware products:

[http://www.spywarewarrior.com/rogue\\_anti-spyware.htm](http://www.spywarewarrior.com/rogue_anti-spyware.htm)

McAfee's Site Advisor also warns about the safety of Ascentive.com:

<http://www.siteadvisor.com/sites/ascentive.com>

Exhibit **F**  
Page **10** of **11**

Ascentive products are known to scare the user with a long list of false positive results. Then they attempt to sell you mediocre (at best) software to remove the threat. It is likely that these products are cheap knock-offs of well known freeware products. There is always a danger, when dealing with this sort of company, that the program will actually do your computer more harm than good.

FinallyFast is NOT free...the initial scare-tactic scan is free. Then you will be asked to over-pay for their "fixes". There have also been stories of overcharging and recurring charges.

**BEWARE** of FinallyFast.

I would stick with well trusted anti-Virus and anti-spyware applications. ☺

Wademan

-----  
Please don't email or pm me for "personal" help. We all benefit when a problem is discussed on the open forum, thank you :-)

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