

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

2015 FEB -0 A 10 13

CLERK OF DISTRICT COURT  
ALEXANDRIA, VIRGINIA

**Omega World Travel, Inc.,  
Cruise.com, Inc.,  
Gloria Bohan,  
Daniel Bohan,**

Plaintiff's,

v.

**MUMMAGRAPHICS, Inc.,  
dba WEBGUY INTERNET SOLUTIONS,  
WebGuy.net, SueaSpammer.com,  
Mark W. Mumma, in his individual capacity,**

Defendant's.

Case No. *1:05CV122*

**COMPLAINT**

Comes now the Plaintiff's state to the Court the following:

1. The Plaintiff, Omega World Travel, Inc., a Virginia Corporation is a Virginia based full service travel agency located at 3102 Omega Office Park, Fairfax, Virginia 22031.
2. The Plaintiff, Cruise.com, Inc. is a Delaware corporation with offices at 3102 Omega Office Park, Fairfax, Virginia and 1700 Eller Drive, Port Everglades, Florida 33316. They are wholly owned by Omega World Travel, Inc. and specialize in cruise sales.
3. The Plaintiff, Gloria Bohan, a Fairfax, County, Virginia resident, is the President, founder and majority stock holder of Omega World Travel Inc.
4. The Plaintiff, Daniel Bohan, a Fairfax, County Virginia resident, is the COO, co-founder and the only other stockholder in Omega World Travel, Inc.

5. The Defendant, Mummagraphics, Inc. is an Oklahoma Corporation with offices located at 2534 NW 18<sup>th</sup> Street, Oklahoma City, Oklahoma. Mummagraphics is an electronic mail service provider. WEBGUY INTERNET SOLUTIONS, WebGuy.net, SueaSpammer.com, OptOutByDomain.com, all dba's of Mummagraphic's, Inc. engage in a variety of internet based services including a service to limit spamming, a domain management service and a service called SueaSpammer.com, a commercial for profit venture created to extract money from companies doing business on the Internet. On information and belief SueSpammer.com is a vehicle used by Defendant's to unlawfully extort money from legitimate businesses.

6. The Defendant, Mark W. Mumma is an Oklahoma resident, residing at 11804 Silvermoon Drive, Oklahoma City, Oklahoma. On information and belief, Defendant Mumma, uses the corporate form for fraudulent activity and therefore is not entitled to the limited liability ordinarily associated with incorporation.

7. Defendants operate several web sites that advertise and solicit business in Virginia and initiate communications with Virginia residents and companies for commercial purposes. Defendants are subject to personal jurisdiction of Virginia Courts pursuant to Section 8.01-328.1(A)(3)and (4) of the Virginia Code.

8. Pursuant to 28 U.S.C. 1332 The United States District Court for the Eastern District of Virginia has jurisdiction over this matter as the Parties are from different states, the Plaintiff is domiciled in this district and damages in this controversy exceed the sum of \$75,000.

9. The Plaintiff, Cruise.com has a request box on their website wherein persons or customers interested in receiving information on cruise sales can enter their email address

and be placed on a list for regular updates. These updates are defined, by Cruise.com, as e-deals.

10. The Plaintiff, Cruise.com only sends emails to customers who have requested to receive emails and they retain a list specifically for that purpose. They are in full compliance with both state and federal regulations as they apply to spamming and carefully monitor their mailing list and electronic transmissions to remain in compliance. All of their email transmissions contain an opt-out provision, are sent from a valid mailbox address and contain only factual and accurate information.

11. On January 19, 2005, Defendant, Mummy placed a telephone call to Omega's headquarters in Fairfax, County, Virginia. The call was directed to Omega's legal department and the Defendant advised that Cruise.com was sending him unwanted emails, which advertised cruise specials. He asserted that he had not requested these emails and that Cruise.com was in violation of the Oklahoma anti-spamming statute and Defendant was going to sue Omega World Travel, Inc. and Cruise.com for the violations. Mr. Mummy was advised that his email address would be removed from the list immediately if he could provide the address. Defendant refused to provide his address, but advised that Omega personnel could access his web site and determine his address from his list of domains.

12. On or about Wednesday February 2, 2005, a letter addressed to Daniel Bohan was received at Omega headquarters from the Defendant. (Attached as Exhibit A). Attached to the letter were six (6) copies of emails sent from Cruise.com to inbox@webguy.net, Mr. Mumma's email address. The emails were Cruise.com advertisements for cruise specials. In the letter Defendant Mumma alleges that Cruise.com had committed six (6) violations of Oklahoma and United States anti-spamming laws. Mr. Mumma also alleged

that Plaintiff's violations require them to pay the Defendant \$150,000.00. Mr. Mumma goes on to say that if Plaintiff is willing to settle for five (5) cents on the dollar or \$6,250, he would drop the whole thing. If Plaintiff is not willing to settle he advised that a lawsuit would be filed in Oklahoma. He goes on to state that under federal law Cruise.com's violations are aggravated and can result in prison time for the violator. The Defendant claims the emails were false, misleading and unwanted and that he considers them a theft of his bandwidth. The letter was also to serve as notice to Cruise.com to stop sending emails to any email addresses with the domains listed at OptOutByDomain.com. The Defendant invites Mr. Bohan to go to SueaSpammer.com and read all the details about other lawsuits he has filed or anticipates filing for anti-spamming violations. Finally, The Defendant advises that soon his allegations against Plaintiff's will be plastered all over the Internet.

13. After reviewing Defendant's letter, Omega's in-house counsel drafted a response to Defendant Mumma, wherein he advised Defendant that the Federal Can-Spam Act of 2003 superseded Oklahoma Law and advised that the Can Spam Act did not provide a private remedy for violations. He also advised that inbox@webguy.net had been removed from Cruise.com's email list and that any further action on the part of Mr. Mumma would be dealt with accordingly.

14. On February 3, 2005, Defendant Mumma placed a call to Omega's in-house attorney and again threatened suit.

15. Upon receipt of the letter, (Attached as Exhibit A), Omega personnel reviewed Defendant's web sites including SueaSpammer.com.

16. The first two pages of SueaSpammer.com, (Attached as Exhibit B), contain a color photograph of Gloria Bohan and Dan Bohan. These photographs were taken

directly from the Omega World Travel's site, a site that clearly has a copyright notice. Above the Bohan's photos were the words "Spam Offender Spotlight" and "\$250,000 in Statutory Damages and Counting." Below those words was the Cruise.com trademarked logo, which was clearly pulled directly from the Cruise.com website, a site that contains a copyright notice. On Friday February 4, 2005, the Defendant had removed the Bohan's photos from the front page and replaced them with a cartoon rabbit in prison clothing. (Attached as Exhibit C). Above the rabbit is a bubble, which says, "Hi, I'm Inki and I will be going to prison for violations of the Can-Spam Act of 2003." Below the rabbit it says, "A company built on illegal spam" and right below that is the Cruise.com trademarked logo.

17. The Cruise.com logo is hyperlinked at Defendant's site and if you click it you arrive at a page, which contains a chronological synopsis of this dispute and links to other information regarding the Plaintiff's. (See attached as Exhibit D). Throughout the site Defendant directs derogatory, inflammatory, accusatory and defamatory comments at Daniel Bohan, Gloria Bohan and their companies. The Defendant characterizes the Plaintiff's as criminals, liars and unworthy of honors they have received. The Defendant characterizes Omega personnel as ignorant, stupid and unprofessional. Defendant compares one Omega employee to a marijuana addicted, intellectually challenged character named Jeff Spicoli from the infamous movie *Fast Times at Ridgemont High*. (Attached as Exhibit E). Defendant suggests this person must be suffering from a personality disorder and speculates that his "WRONG" interpretation of the law must be because he forgot to take his medication. These statements were false or made with reckless disregard for the truth with the intent and purpose of disparaging Plaintiffs and injuring them in their trade or business and therefore constitute defamation per se.

18. The Defendant's web sites are clearly commercial in nature and contain advertisements and solicitations promoting and encouraging visitors to use Defendant's services. SueaSpammer.com solicits lawyers to join Defendant's in their lawsuits and encourages other alleged spam victims to sue the companies they have listed as spammers, including Omega World Travel and Cruise.com.

19. Email communications were sent from Plaintiff, Cruise.com, to Defendant, but only upon the request of the Defendant.

### **COUNT I - DEFAMATION**

20. Plaintiff incorporates all allegations contained above and alleges the following.

21. Defendant knew that the statements were false and would injure Plaintiffs reputation and cause injury to Plaintiff's trade and profession.

22. Plaintiff Gloria Bohan has suffered injury to her trade, business and profession.

23. Plaintiff Daniel Bohan has suffered an injury to his trade, business and profession.

24. As a result of the actions of Defendant, Omega World Travel's reputation has been irreparably harmed and will continue to be affected. The impact of a tarnished reputation will affect Omega World Travel economically for years to come.

25. As a result of the actions of Defendant, Cruise.com's reputation has been irreparably harmed and will continue to be affected. The impact of a tarnished reputation will affect Cruise.com economically, now and in the future.

Wherefore Plaintiff's requests damages in excess of \$3,000,000, attorney fees, court costs and any and all relief the Court deems equitable.

## **COUNT II – FEDERAL COPYRIGHT INFRINGEMENT**

**26.** Plaintiff incorporates all allegations contained above and alleges the following.

**27.** Defendant, wrongfully used Plaintiff's registered marks for commercial gain without permission and with the intent to economically harm Plaintiff's all in violation of 17 U.S.C. 501, et seq.

Wherefore Plaintiff requests statutory damages under 17 U.S.C. 504 (c) in the amount of \$150,000 for each violation, attorney fees, court costs and any and all relief the Court deems equitable.

## **COUNT III – FEDERAL TRADEMARK INFRINGEMENT**

**28.** Plaintiff incorporates all allegations contained above and alleges the following.

**29.** Defendant willingly and knowingly and with the intent to use Plaintiff's mark to promote his business and services and also with the intent to embarrass Plaintiff's and negatively affect their business used the Trademark, Cruise.com, without Plaintiff's permission, all in violation of 15 U.S.C. 1051 and 1114.

Wherefore Plaintiff requests this Court issue and injunction pursuant to 15 U.S.C. 1114 and 1125, prohibiting Defendant from using their trademark, statutory damages pursuant to 15 U.S.C. 1117 in the amount of \$100,000, attorney fees, court costs and any and all relief the Court deems equitable.

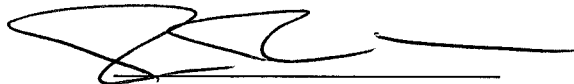
## **COUNT IV – UNAUTHORIZED USE OF LIKENESS**

**30.** The Defendant, without the permission of Plaintiff's Daniel and Gloria Bohan, used their likeness, taken from the Omega World Travel website.

31. Plaintiff's Daniel and Gloria Bohan have both suffered personal and professional embarrassment as a result of Defendants actions thereby affecting their value to the company and the value of Omega World Travel as a whole. Defendant's unauthorized use of each of Plaintiff's likeness has diluted the value of each likeness, which are both used in the promotion of their business.

Wherefore Plaintiff requests damages pursuant to Va. Code Ann. § 8.01-40 (2004) in excess of \$50,000, exemplary damages in excess of \$500,000, an injunction prohibiting Defendant's from using the Bohan's likeness on his web sites and, attorney fees, court costs and any and all relief the Court deems equitable.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'John J. Lawless', written over a horizontal line.

John J. Lawless  
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