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CLERK, US DISTRICT COURT
NORFOLK, VA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,

Plaintiff,

Civil No. 2:05cv200

v.

GOOGLE, INC.
and
JOHN DOES 1-3,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, JTH Tax, Inc. d/b/a Liberty Tax Service, by counsel, and for its Complaint against the Defendants, Google, Inc., and John Does 1-3 (collectively hereinafter "Defendant"), states as follows:

The Parties

1. The Plaintiff, JTH Tax, Inc. d/b/a Liberty Tax Service ("Liberty"), is a corporation duly organized and existing under the laws of the State of Delaware. Its corporate headquarters and principal place of business are at 1716 Corporate Landing Parkway, Virginia Beach, Virginia 23454. Liberty is primarily engaged in the business of income tax preparation and the franchising of income tax preparation offices throughout the United States.

2. The Defendant Google, Inc., ("Google") is a corporation with corporate headquarters at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google engages in business worldwide and in all 50 states through the domain name www.Google.com and related domain names.

3. The Defendants John Does 1-3 are real persons and/or entities who, upon information and belief, procured or caused to be procured, without the authorization or consent of the plaintiff Liberty, one or more Google Ad Words ads which use the title "Liberty Tax Service" and which take web users NOT to Liberty Tax Service's website but to an unrelated website, "Free Advice Center.com." The precise identities of the John Doe defendants are not presently known to Liberty, but Liberty is likely to be able to identify such defendants after discovery.

Personal Jurisdiction

4. Personal jurisdiction over Defendants exists in Virginia because:

(a) Google's internet services are accessible by persons generally with computers in the State of Virginia. The internet services which Google provides in Virginia are substantial, continuous, repeated, systematic and active, including the availability to purchase listings on Google.com and purchase other services such as e-commerce shopping carts and order fulfillment services. Further, Liberty maintains its corporate headquarters and its federal trademark registration of "Liberty Tax Service" in Virginia and the title in Google's online Ad Words which is the subject of this action primarily directs harm to Liberty in Virginia. Therefore, jurisdiction over Google is proper in Virginia; and

(b) Defendants John Does 1-3 have engaged in trademark infringement which primarily directs harm to Liberty in Virginia and therefore jurisdiction over the John Doe defendants is also proper in Virginia. Calder v. Jones, 465 U.S. 783 (1984).

Subject Matter Jurisdiction

5. Subject matter jurisdiction is based upon 28 U.S.C. § 1338(a), in that this claim is based upon federal trademark law.

Venue

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a portion of the cause of action arose in Virginia Beach.

Facts

7. In or about February 2005 Liberty learned that an unauthorized use of its trademark "Liberty Tax Service" appeared in the title of the online Google Ad Words ad that directs users to another website called "Free Advice Center.com," which is a website unrelated to Liberty Tax Service. Ex. 1.

8. On March 1, 2005, Liberty sent a letter to David Drummond, General Counsel of Google Inc., informing Google of Liberty's ownership of the federal service mark registration, "Liberty Tax Service," and the unauthorized use of such mark in the Google Ad Words link leading users to another company's website, and asked to have the link removed. Ex. 2.

9. Google never responded to this letter.

COUNT I
TRADEMARK INFRINGEMENT (15 U.S.C. § 1114 et seq.)

10. Liberty repeats and re-alleges paragraphs 1-9 as if fully set forth herein.

11. Liberty is the owner of the federally registered service mark "Liberty Tax Service," which was registered on February 1, 2000 (reg. no. 2,314,991). Ex. 3.

12. The Google Ad Words title "Liberty Tax Service" using Liberty's mark is unauthorized and constitutes infringement. Inasmuch as Google has been given actual notice of such infringement and copies of Liberty's federal service mark registration, if Google continues to publish the infringement it is liable as an infringer and contributory infringer. Defendants' use of Liberty's mark violates 15 U.S.C. §§ 1114 and 1125(a).

13. Liberty has suffered damages, including irreparable harm, and will continue to suffer damages and irreparable harm as a result of such infringement, unless Defendants are enjoined from further infringement by this Court.

14. Google has no valid defense of immunity to this claim under the 47 U.S.C. § 230 because this is a claim under intellectual property law for which an internet service provider is not given immunity. See, 47 U.S.C. § 230(e)(2); Gucci America, Inc. v. Hall & Assocs., 135 F. Supp.2d 409 (S.D.N.Y. 2001); Ford Motor Co. v. GreatDomains.com, Inc., 2001 U.S. Dist. Lexis 24780 (E.D. Mich. 2001).

15. Pursuant to 15 U.S.C. § 1116 this Court has the power to enjoin such infringement.

16. Pursuant to 15 U.S.C. § 1117 the plaintiff is entitled to an award of, among other things, the costs of the action.

WHEREFORE, in consideration of the foregoing, the plaintiff Liberty Tax Service respectfully prays for the following relief:

1. That a permanent injunction be granted compelling Defendants and all their agents, employees and all other persons in active concert or participation to remove, disable and discontinue the infringing Google Ad Words ad showing the title "Liberty Tax Service" which directs users to another company's website (Free Advice Center.com) and any other infringing use of the mark "Liberty Tax Service" or any mark confusingly similar thereto;

2. Award to Liberty its costs incurred in pursuing this action; and

3. Grant to Liberty such other and further relief as justice and the equities of the case may require.

JTH Tax, Inc. d/b/a Liberty Tax Service

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TOTAL P.06