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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,
a Massachusetts Charitable Corporation,

Plaintiff,

v.

MICHAEL RHYS d/b/a WEB-PRO
and MICHAEL DOUGLAS d/b/a
WEB PRODUCTIONS,

Defendants.

RECEIPT # 18770
AMOUNT \$ 5000
FEDERATION IBA. yes
LOCAL RULE 4.1 yes
WAIVER OF SERV. yes
MCF ISSUED yes
AG 120 OR 121 yes

Civil Action No. 12-69

99cv1248 SRCL

FILED IN OFFICE
 U.S. DISTRICT COURT
 DISTRICT OF MASSACHUSETTS
 DEC 6 3 52 PM '99

**COMPLAINT FOR FEDERAL TRADEMARK CYBERPIRACY,
TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, DILUTION
AND RELATED COMMONWEALTH LAW VIOLATIONS**

Plaintiff, PRESIDENT AND FELLOWS OF HARVARD COLLEGE ("Harvard University" or "Harvard"), for its Complaint against defendants, MICHAEL RHYS d/b/a WEB-PRO and MICHAEL DOUGLAS d/b/a WEB PRODUCTIONS (collectively "Defendants"), states as follows:

NATURE OF ACTION

1. This is an action by Harvard University for federal trademark cyberpiracy, trademark infringement, unfair competition and dilution in violation of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), 1125(c) and 1125(d), and related violations of the laws of the Commonwealth of Massachusetts. Defendants are cybersquatters who have appropriated Harvard's HARVARD and RADCLIFFE marks by willfully adopting, registering, maintaining and offering to sell or license numerous Internet domain names incorporating these marks,

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including <www.harvard-lawschool.com>, <www.harvarddivinity.com>, <www.harvardgraduateschool.com> and <www.radcliffecollege.com>.

PARTIES

2. Harvard is a charitable corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business located at Massachusetts Hall, Cambridge, Massachusetts 02138.

3. Upon information and belief, defendant Michael Rhys d/b/a Web-Pro is an individual residing and/or doing business at 8 Woodlawn Street, Jamaica Plain, Massachusetts 02130. Upon information and belief, defendant Michael Douglas d/b/a Web Productions is an individual residing and/or doing business at 8 Woodlawn Street, Jamaica Plain, Massachusetts 02130. Upon information and belief, defendant Michael Rhys d/b/a Web-Pro and defendant Michael Douglas d/b/a Web Productions may be one and the same person.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1121, and supplemental jurisdiction over the Commonwealth claims under 28 U.S.C. § 1367.

5. Pursuant to 28 U.S.C. § 1391(b), venue is proper in this Court because Defendants reside in this District or, in the alternative, because a substantial part of the events giving rise to the claims herein occurred in this District.

FACTS APPLICABLE TO ALL CAUSES OF ACTION

A. History of Harvard University

6. Established in 1636, Harvard University is the oldest institution of higher learning in the United States.

7. Over the course of the last 363 years, Harvard has grown from a student body of nine and one Master to an enrollment of more than 18,000 students and 2,000 faculty members. Harvard comprises several schools, including Law, Business, Medical, Dental, Divinity, Public Health, and the John F. Kennedy School of Government, as well as an undergraduate school

8. Harvard is steeped in history and tradition. Six presidents of the United States graduated from Harvard: John Adams, John Quincy Adams, Theodore Roosevelt, Franklin Delano Roosevelt, Rutherford B. Hayes and John F. Kennedy. Harvard's faculty has produced more than thirty Nobel laureates.

9. Harvard is home to the famous Harvard Yard, a 22-acre fenced-in area comprising the central part of its campus in Cambridge, Massachusetts

10. Harvard enjoys a world class reputation throughout the United States and the world as a preeminent learning institution.

B. History of Radcliffe College

11. Radcliffe College ("Radcliffe") was founded in 1879 as the "Harvard Annex" to provide women with access to Harvard education

12. Until World War II, Harvard professors crossed Harvard Yard to repeat their lectures to Radcliffe students. In 1943, Harvard and Radcliffe undergraduate students started to attend classes together. In 1975, the two admissions offices were joined. Ultimately, Harvard

College and Radcliffe College were merged, Harvard succeeding to Radcliffe's rights in the RADCLIFFE name and mark

13 Today, Harvard is responsible for all aspects of undergraduate education of both men and women, and the Radcliffe Institute for Advanced Study, a newly-formed unit of Harvard, carries out many of the functions of the former Radcliffe College, including the study of issues relating to women, gender and society.

C. The HARVARD and RADCLIFFE Marks

14 Harvard University has used the trademark and service mark HARVARD, and other marks incorporating the HARVARD mark, since at least as early as 1827. These marks have become among the world's most famous and well known.

15 Harvard is the owner of numerous United States trademark registrations for marks which comprise or include the HARVARD mark, all of which are legally and validly registered on the Principal Register of the United States Patent and Trademark Office. The following chart lists Harvard's federal trademark registrations for marks comprising solely the HARVARD mark (copies of registration certificates for these marks are attached as Exhibit A):

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>First Use Date</u>	<u>Goods/Services</u>
HARVARD	1,608,533	Jul. 31, 1990	1827	Educational services, namely, providing instruction and training at the undergraduate, graduate, post-graduate and professional levels.
HARVARD	1,624,908	Nov. 27, 1990	Jun. 30 1982	Drinking glasses, polo shirts, t-shirts, hats and ties.

HARVARD	1,842,914	Jul. 5, 1994	1827	Paper goods and printed matter; namely, stationery, notebooks, brochures, newspapers, journals, programs, catalogues, books and magazines relating to general news, business, political, educational, sports, travel and alumni affairs issues, year books, class albums, media guides, registers, stationery-type portfolios, bulletins, pen and/or pencil cases, calendars, telephone and address directories, pocket and desk diaries, weekly formats, appointment books, desk pads, theme books; namely, paper notebooks, memo pads, scrap books, book covers, binders, date books and stationery, notebook and binder folders.
HARVARD	2,002,662	Sept. 24, 1996	May 31, 1962	Jewelry, watches, parts for watches, ornamental lapel pins, clocks, parts for clocks and money clips of precious metal.
HARVARD	2,042,969	Mar. 11, 1997	Jun. 20, 1984	Tote bags, backpacks, all purpose athletic bags, bookbags, jean bags, pocketbooks, briefcase-type portfolios, school bags, umbrella covers and umbrellas.
HARVARD	2,119,339	Dec. 9, 1997	Dec. 31, 1953	Athletic uniforms, boxer shorts, briefs, caps, coats, leather coats, sport coats, gym shorts, infant jackets, leather jackets, night shirts, shirts, socks, sweat pants, sweatshirts, sweaters, underwear.

16. Since at least as early as 1827, Harvard has continuously used in interstate commerce the HARVARD mark, and other marks incorporating the HARVARD mark, in connection with the sale of various goods and the providing of educational and other services.

17. Since 1879, Harvard, by itself and through its predecessor in interest, has continuously used in interstate commerce the RADCLIFFE mark in connection with the

providing of educational and other services and, at least for several decades, in connection with the sale of various goods.

18 Pursuant to 15 U.S.C. § 1057(b), Harvard's registration certificates are *prima facie* evidence of the validity of said registrations, Harvard's ownership of the marks portrayed therein, and Harvard's exclusive right to use said marks in commerce in connection with the goods and services specified in the registration certificates. Pursuant to 15 U.S.C. § 1065, Harvard's right to use the HARVARD marks in Reg. Nos. 1,608,533, 1,624,908 and several other "HARVARD" registrations has become incontestable.

19. Harvard consistently and prominently displays and advertises the HARVARD and RADCLIFFE marks in connection with its goods and services. Through the years, Harvard has spent incalculable sums of money extensively promoting and advertising its goods and services under the HARVARD and RADCLIFFE marks.

20. As a result of Harvard's extensive and esteemed history, and the advertising and promotion of its goods and services, the HARVARD and RADCLIFFE marks have become, long prior to the unlawful acts of Defendants complained of herein, assets of incalculable value to Harvard.

21 As a result of Harvard's extensive and esteemed history, and the advertising and promotion of its goods and services, the HARVARD mark has become famous and the RADCLIFFE mark distinctive and well known, long prior to the unlawful acts of Defendants complained of herein.

**D. Harvard's Use of HARVARD and RADCLIFFE
in Connection With the Internet**

22. Since long prior to said acts, Harvard has used the HARVARD and RADCLIFFE marks in connection with the Internet.

23. Harvard was one of the pioneering institutions in the development of the Internet.

24. Harvard offers a wide range of Internet-related services to its students, faculty and staff, including Internet e-mail and post office services. Harvard also offers Internet e-mail and post office services to each of its alumni across the country, and, in fact, around the world. These services are generally provided in connection with Harvard's Internet servers in association with the <www.harvard.edu> domain name. Harvard also owns several other "Harvard" domain names.

25. Harvard also uses the Internet for a variety of other functions, and the Internet has become an extremely important communications and marketing tool for the University. Harvard's web site, located at the Internet domain name <www.harvard.edu>, has been visited over 5.6 million times during the last 12 months. Moreover, hundreds of thousands of e-mail messages are sent and received each year through Harvard's Internet servers in association with the <www.harvard.edu> and other "Harvard" domain names.

E. Defendants' Unauthorized Use of HARVARD and RADCLIFFE

26. Defendants have, without Harvard's authorization or permission, registered over sixty-five (65) Internet domain names incorporating the HARVARD or RADCLIFFE marks, linking them with Harvard's activities, schools, graduates and reputation. Defendants, as though they were authorized by Harvard to do so, are offering to sell or license many of these domain names to the general public over the Internet. They are also representing harvardyardsale.com, as well as others, as a client of Defendants and promoting the domain names based on the close

relationship between Harvard Yard and Harvard. Defendants are thereby attempting to convey the false and misleading impression that Defendants' activities are somehow sponsored, approved or authorized by Harvard, when, in fact, they are not.

27 On information and belief, defendant Michael Douglas d/b/a Web Productions owns and operates an Internet web site located at the domain name <www.web-pro.com>.

28 The <www.web-pro.com> home page contains a list of purported "clients," including harvardyardsale.com, umassboston.com and umassmedical.com. When the user clicks on "harvardyardsale.com," he or she is immediately linked to the web site located at <www.harvardyardsale.com>. On information and belief, the web site located at <www.harvardyardsale.com> is owned and operated by defendant Michael Rhys d/b/a Web-Pro.

29 Defendants have registered and are offering for sale or license the following domain names at the <www.harvardyardsale.com> web site:

- <www.harvard-doctor.com>
- <www.harvard-lawyer.com>
- <www.virtualharvard.com>
- <www.harvard2.com>
- <www.harvard2k.com>
- <www.harvard2000.com>
- <www.harvardcampus.com>
- <www.harvard-alumni.com>
- <www.harvard-certified.com>
- <www.harvard-club.com>
- <www.harvardevents.com>
- <www.harvard-events.com>
- <www.harvardeducation.com>
- <www.harvard-education.com>
- <www.harvard-business.com>
- <www.harvardcertified.com>
- <www.harvard-doctors.com>
- <www.harvardfaculty.com>
- <www.harvardfellows.com>
- <www.harvardlawgraduate.com>

<www.harvard-lawschool.com>
<www.harvardgrad2000.com>
<www.harvard-graduate.com>
<www.harvardgraduate2000.com>
<www.harvard-lawyers.com>
<www.harvardlawyer2000.com>
<www.harvardmba2000.com>
<www.harvard-md.com>
<www.harvardmedgrad.com>
<www.harvardmedgraduate.com>
<www.harvardparents.com>
<www.harvardtexts.com>
<www.harvardtextbooks.com>
<www.virtual-harvard.com>
<www.wiredharvard.com>

According to Network Solutions, Inc.'s ("NSI") records, all of these domain names are owned by defendant Michael Rhys d/b/a Web-Pro.

30 Upon information and belief, defendant Michael Rhys d/b/a Web-Pro has also registered the following domain names, the vast majority of which have been previously offered for sale or license, or sold or licensed, by Defendants:

<www.harvard1999.com>
<www.harvard2001.com>
<www.harvardcollegeonline.com>
<www.harvardfellow.com>
<www.radcliffecollege.com>
<www.virtualradcliffe.com>
<www.harvardgraduateschool.com>
<www.harvardgraduateschools.com>
<www.harvardfellowship.com>
<www.harvardfellowships.com>
<www.harvard-online.com>
<www.harvard-web.com>
<www.virtual-radcliffe.com>
<www.harvard-books.com>
<www.harvarddivinity.com>
<www.harvard-divinity.com>
<www.harvard-dorm.com>
<www.harvard-jobs.com>

<www.harvardmedicalgraduate.com>
<www.harvardparent.com>
<www.harvardlaw1998.com>
<www.harvardlaw2001.com>
<www.harvardlaw2002.com>
<www.harvardlawyer2001.com>
<www.harvardmba2001.com>
<www.harvard-medical.com>
<www.harvard-radcliffe.com>
<www.harvard-surgeon.com>
<www.radcliffeseminars.com>
<www.radcliffe-seminars.com>
<www.harvardmedicalgrad.com>

31. The Internet domain names identified above in paragraphs 29 and 30, and the <www.harvardyardsale.com> domain name, are sometimes hereinafter referred to collectively as the "Infringing and Diluting Domain Names "

32. Defendants' unauthorized registration, maintenance and use of, and offer to sell or license, the Infringing and Diluting Domain Names constitute a commercial use in interstate commerce.

33. On October 5, 1999, defendant Michael Rhys d/b/a Web-Pro sent an e-mail message to Harvard, offering Harvard the "first right of refusal" for the Infringing and Diluting Domain Names before he offered them for sale to the general public. A copy of this e-mail message is attached as Exhibit B. Harvard did not respond to this e-mail.

34. On information and belief, when defendant Michael Rhys d/b/a Web-Pro offered Harvard the "first right of refusal" for the Infringing and Diluting Domain Names, he had not used, nor did he have an intent to use, the Infringing and Diluting Domain Names in the bona fide offering of any goods or services.

35. Defendants own no rights in the HARVARD or RADCLIFFE marks.

36. On information and belief, none of the Infringing and Diluting Domain Names consists of the legal name of Defendants or a name that is otherwise commonly used to identify Defendants

37. On information and belief, as of the date of filing of this Complaint, Defendants have not used the Infringing and Diluting Domain Names in connection with the bona fide offering of any goods or services.

38. On information and belief, as of the date of filing of this Complaint, Defendants have not made a bona fide noncommercial or fair use of the HARVARD or RADCLIFFE marks in a web site accessible under the Infringing and Diluting Domain Names

39. On November 11, 1999, Harvard sent a letter to Defendants, requesting that they provide written assurances by November 22, 1999 that they would immediately cease and desist from further use or offering for sale of the Infringing and Diluting Domain Names and instruct NSI to terminate the domain name registrations. As of the date of filing of this Complaint, Defendants had not responded to Harvard's November 11 letter.

40. Harvard has never authorized, licensed or otherwise permitted Defendants to use the HARVARD or RADCLIFFE marks, or any confusingly similar variations thereof.

41. At the time Defendants began their infringing and diluting use of the HARVARD and RADCLIFFE marks, Defendants had constructive notice of Harvard's rights under Section 22 of the Lanham Act, 15 U.S.C. § 1072, and knew or should have known of the valuable reputation and good will symbolized by the HARVARD and RADCLIFFE marks. Defendants' unlawful activities are willful and intentional and intended to trade on the reputation and good

will of Harvard, to confuse and deceive consumers, and for the purpose of giving Defendants an opportunity which they would not otherwise have.

42. Defendants' unlawful activities have resulted, and, unless restrained by this Court, will continue to result, in unjust enrichment to Defendants and serious and irreparable harm and injury to Harvard. Moreover, Defendants' unlawful activities have lessened and diluted, and, unless restrained by this Court, will continue to lessen and dilute, the strength and distinctiveness of the HARVARD and RADCLIFFE marks

43. If Defendants' unlawful activities are not immediately enjoined, Defendants will continue to offer to sell or license, and sell or license, the Infringing and Diluting Domain Names to the general public, thereby placing the tools of infringement and dilution in the hands of third parties who Defendants know, or have reason to know, will use the Infringing and Diluting Domain Names in a manner which infringes and/or dilutes the HARVARD and RADCLIFFE marks, causing further serious and irreparable harm and injury to Harvard.

44. Harvard has no adequate remedy at law.

COUNT I

FEDERAL TRADEMARK CYBERPIRACY

VIOLATION OF SECTION 43(d) OF THE LANHAM ACT

45. Harvard repeats and realleges the allegations of paragraphs 1 through 44 of the Complaint as though fully set forth herein.

46. As a result of, among other things, Harvard's continuous and substantial use, and extensive advertising and publicity, of the HARVARD and RADCLIFFE marks throughout the United States and the world in connection with its goods and services, the HARVARD mark has

become famous and the RADCLIFFE mark distinctive and well known, long prior to the unlawful acts of Defendants complained of herein.

47. The unlawful acts of Defendants complained of herein were committed by Defendants with a bad faith intent to profit from Harvard's HARVARD and RADCLIFFE marks

48. The Infringing and Diluting Domain Names are confusingly similar to the HARVARD and RADCLIFFE marks.

49. The Infringing and Diluting Domain Names are dilutive of the HARVARD mark.

50. As a result of Defendants' unlawful acts, Harvard has suffered, and continues to suffer, substantial damages and irreparable injury, which damages and injury cannot be accurately computed at this time.

51. Defendants' aforesaid acts constitute trademark cyberpiracy in violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

COUNT II

FEDERAL TRADEMARK INFRINGEMENT

VIOLATION OF SECTION 32(1) OF THE LANHAM ACT

52. Harvard repeats and realleges the allegations of paragraphs 1 through 44 of the Complaint as though fully set forth herein.

53. Defendants' unauthorized registration, maintenance and use of, and offer to sell or license, the Infringing and Diluting Domain Names are likely to cause confusion, mistake or deception as to the source, sponsorship or approval by Harvard of Defendants' goods or services. The public is likely to believe that Defendants' goods or services originate with Harvard, are licensed by Harvard, or are sponsored by, connected with or related to Harvard.

54. Defendants' unauthorized registration, maintenance and use of, and offer to sell or license, the Infringing and Diluting Domain Names constitute a commercial use in interstate commerce

55. As a result of Defendants' unlawful acts, Harvard has suffered, and continues to suffer, substantial damages and irreparable injury, which damages and injury cannot be accurately computed at this time.

56. Defendants' aforesaid acts constitute federal trademark infringement in violation of Harvard's rights under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

COUNT III

FEDERAL UNFAIR COMPETITION

VIOLATION OF SECTION 43(a) OF THE LANHAM ACT

57. Harvard repeats and realleges the allegations of paragraphs 1 through 44 of the Complaint as though fully set forth herein.

58. Defendants' unauthorized registration, maintenance and use of, and offer to sell or license, the Infringing and Diluting Domain Names constitute use of a false designation of origin or a false or misleading representation, which wrongfully and falsely designates, describes and represents the origin of Defendants' goods or services as originating from or being connected with Harvard, and are likely to cause confusion as to Defendants' affiliation, connection or association with Harvard or as to the origin, sponsorship or approval of Defendants' goods or services by Harvard

59. Defendants' unauthorized registration, maintenance and use of, and offer to sell or license, the Infringing and Diluting Domain Names constitute a commercial use in interstate commerce.

60. As a result of Defendants' unlawful acts, Harvard has suffered, and continues to suffer, substantial damages and irreparable injury, which damages and injury cannot be accurately computed at this time.

61. Defendants' aforesaid acts constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT IV

FEDERAL TRADEMARK DILUTION

VIOLATION OF SECTION 43(c) OF THE LANHAM ACT

62. Harvard repeats and realleges the allegations of paragraphs 1 through 44 of the Complaint as though fully set forth herein.

63. As a result of, among other things, Harvard's continuous and substantial use, and extensive advertising and publicity, of the HARVARD mark throughout the United States and the world in connection with its goods and services, the HARVARD mark has become famous, long prior to the unlawful acts of Defendants complained of herein.

64. Defendants' unauthorized registration, maintenance and use of, and offer to sell or license, the Infringing and Diluting Domain Names have lessened and diluted and will continue to lessen and dilute, the distinctive quality of Harvard's famous HARVARD mark, and were

willfully intended to lessen and dilute the distinctive quality of the HARVARD mark and to trade on Harvard's established and esteemed reputation.

65. Defendants' unauthorized registration, maintenance and use of, and offer to sell or license, the Infringing and Diluting Domain Names constitute a commercial use in commerce.

66. As a result of Defendants' unlawful acts, Harvard has suffered, and continues to suffer, substantial damages and irreparable injury, which damages and injury cannot be accurately computed at this time.

67. Defendants' aforesaid acts constitute trademark dilution in violation of Section 43(c) of the Lanham Act. 15 U.S.C. § 1125(c).

COUNT V

COMMONWEALTH TRADEMARK DILUTION

VIOLATION OF MASS. GEN. LAWS ANN. CH. 110B § 12

68. Harvard repeats and realleges the allegations of paragraphs 1 through 44 of the Complaint as though fully set forth herein.

69. As a result of, among other things, Harvard's continuous and substantial use, and extensive advertising and publicity, of the HARVARD and RADCLIFFE marks in the Commonwealth of Massachusetts and throughout the United States and the world, these marks have become well known and distinctive, long prior to the unlawful acts of Defendants complained of herein.

70. Defendants' unauthorized registration, maintenance and use of, and offer to sell or license, the Infringing and Diluting Domain Names in the Commonwealth of Massachusetts and in commerce have lessened and diluted, and will continue to lessen and dilute, the distinctive quality of Harvard's HARVARD and RADCLIFFE marks, and were willfully intended to lessen and dilute the distinctive quality of the HARVARD and RADCLIFFE marks and to trade on and injure Harvard's established and esteemed reputation.

71. As a result of Defendants' unlawful acts, Harvard has suffered, and continues to suffer, substantial damages and irreparable injury, which damages and injury cannot be accurately computed at this time.

72. Defendants' aforesaid acts constitute trademark dilution in violation of the Massachusetts Anti-Dilution Statute, Mass. Gen. Laws Ann. ch. 110B § 12.

COUNT VI

UNFAIR METHODS OF COMPETITION AND DECEPTIVE PRACTICES

VIOLATION OF MASS. GEN. LAWS ANN. CH. 93A §§ 2 AND 11

73. Harvard repeats and realleges the allegations of paragraphs 1 through 44 of the Complaint as though fully set forth herein.

74. Harvard and Defendants are both engaged in trade or commerce.

75. Defendants' unauthorized registration, maintenance and use of, and offer to sell or license, the Infringing and Diluting Domain Names in the Commonwealth of Massachusetts and in commerce constitute use of a false designation of origin or a false or misleading representation, which wrongfully and falsely designates, describes and represents the origin of

Defendants' goods or services as originating from or being connected with Harvard, and are likely to cause confusion as to Defendants' affiliation, connection or association with Harvard or as to the origin, sponsorship or approval of Defendants' goods or services by Harvard.

76. As a result of Defendants' unlawful acts, Harvard has suffered, and continues to suffer, substantial damages and irreparable injury, including monetary loss and/or loss of property. The damages and injuries that Harvard has incurred cannot be accurately computed at this time.

77. Defendants' aforesaid acts constitute unfair methods of competition and knowing and willful unfair or deceptive acts or practices in violation of Mass. Gen. Laws. Ann. Ch. 93A §§ 2 and 11.

78. Defendants' aforesaid unfair methods of competition and unfair or deceptive acts or practices have taken place primarily and substantially in the Commonwealth of Massachusetts.

COUNT VII

UNFAIR COMPETITION -- VIOLATION OF THE COMMON LAW OF THE COMMONWEALTH OF MASSACHUSETTS

79. Harvard repeats and realleges the allegations of paragraphs 1 through 44 of the Complaint as though fully set forth herein.

80. Defendants' unauthorized registration, maintenance and use of, and offer to sell or license, the Infringing and Diluting Domain Names in the Commonwealth of Massachusetts and in commerce constitute use of a false designation of origin or a false or misleading representation, which wrongfully and falsely designates, describes and represents the origin of Defendants' goods or services as originating from or being connected with Harvard, and are

likely to cause confusion as to Defendants' affiliation, connection or association with Harvard or as to the origin, sponsorship or approval of Defendants' goods or services by Harvard.

81. Harvard's HARVARD and RADCLIFFE marks have acquired a reputation in the market such that the public inevitably associates those marks with the goods and services Harvard provides under them.

82. Defendants knew of this reputation.

83. Defendants adopted the Infringing and Diluting Domain Names in a deliberate effort to trade on this reputation and mislead the public.

84. The public will be misled by the Infringing and Diluting Domain Names

85. As a result of Defendants' unlawful acts, Harvard has suffered, and continues to suffer, substantial damages and irreparable injury, which damages and injury cannot be accurately computed at this time.

86. Defendants' aforesaid acts constitute unfair competition in violation of Harvard's rights under the common law of the Commonwealth of Massachusetts.

PRAYER FOR RELIEF

WHEREFORE, Harvard prays:

1. That Defendants, their officers, agents, servants, employees and attorneys, and all those in active concert or participation with them, including purchasers and licensees of the Infringing and Diluting Domain Names, be preliminarily and permanently enjoined and restrained, from:

A. further using, maintaining, offering to sell or license, or selling or licensing the Infringing and Diluting Domain Names or any colorable variations thereof

that give rise to a likelihood of confusion, mistake or deception with respect to Harvard's HARVARD and RADCLIFFE marks, or in any way dilute the distinctiveness of the HARVARD and RADCLIFFE marks;

B. using the HARVARD or RADCLIFFE marks, or any other mark, logo, name or designation that gives rise to a likelihood of confusion, mistake or deception with respect to the HARVARD and RADCLIFFE marks, or in any way dilutes the distinctiveness of the HARVARD and RADCLIFFE marks; and

C. Doing any other act likely to induce the mistaken belief that Defendants, their products, services, information or Internet domain are in any way affiliated, connected, or associated with Harvard or its goods or services.

2. That Defendants be required to immediately remove all references to the HARVARD and RADCLIFFE marks from the Internet web sites located at the domain addresses <www.web-pro.com> and <www.harvardyardsale.com> or any other Internet web site owned, operated, controlled or in any way affiliated with Defendants.

3. That Defendants be required to immediately notify in writing Network Solutions, Inc. of Harvard's prior rights in and to the marks HARVARD and RADCLIFFE and request that the Infringing and Diluting Domain Names be immediately cancelled or transferred to Harvard.

4. That the Court order an equitable accounting of the proceeds from the sale or license, if any, of any of the Infringing and Diluting Domain Names by Defendants, and require Defendants to deliver up and turn over such proceeds to Harvard.

5. That, pursuant to 15 U.S.C. § 1118, Defendants be required to deliver up and destroy all labels, packages, brochures, wrappers, advertisements, promotions and all other

matter in the custody or under the control of Defendants bearing the names and marks HARVARD and RADCLIFFE, the Infringing and Diluting Domain Names, or any other designation likely to cause confusion with the HARVARD or RADCLIFFE marks

6. That, pursuant to 15 U.S.C. § 1116, Defendants be directed to file with the Court and serve on Harvard within thirty (30) days after issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the injunction.

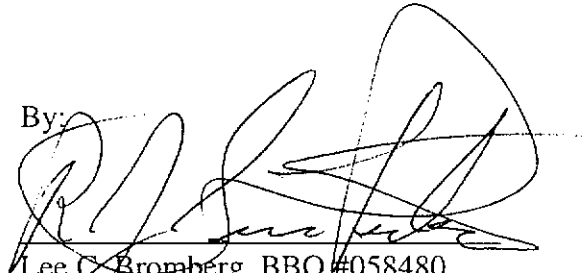
7. That Harvard shall have such other and further relief as this Court may deem just.

Respectfully submitted,

**PRESIDENT AND FELLOWS OF
HARVARD COLLEGE**

Dated: December 6, 1999

By:

A handwritten signature in black ink, appearing to read 'Lee C. Bromberg', written over a horizontal line.

Lee C. Bromberg, BBO #058480

Kerry L. Timbers, BBO #552293

R. Sims Preston, BBO #634882

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Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,119,339

United States Patent and Trademark Office

Registered Dec. 9, 1997

**TRADEMARK
PRINCIPAL REGISTER**

HARVARD

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (MASSACHUSETTS CORPORATION)
TRADEMARK LICENSING PROGRAM
22 HILLIARD STREET
CAMBRIDGE, MA 02138

FOR: ATHLETIC UNIFORMS, BOXER
SHORTS, BRIEFS, CAPS, COATS, LEATHER
COATS, SPORT COATS, GYM SHORTS,
INFANT JACKETS, LEATHER JACKETS,
NIGHT SHIRTS. SHIRTS. SOCKS. SWEAT

PANTS, SWEATSHIRTS, SWEATERS, UNDER-
WEAR, IN CLASS 25 (U.S. CLS. 22 AND 39).
FIRST USE 12-31-1953; IN COMMERCE
12-31-1953.

OWNER OF U.S. REG. NOS. 1,602,960, 1,619,827
AND OTHERS.

SER. NO. 75-162,395, FILED 9-9-1996.

DOMINICK J. SALEMI, EXAMINING ATTOR-
NEY

Int. Cl.: 41

Prior U.S. Cl.: 107

United States Patent and Trademark Office

Reg. No. 1,608,533
Registered July 31, 1990

SERVICE MARK
PRINCIPAL REGISTER

HARVARD

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (MASSACHUSETTS CHARITA-
BLE CORPORATION)
17 QUINCY STREET
CAMBRIDGE, MA 02138

POST-GRADUATE AND PROFESSIONAL
LEVELS, IN CLASS 41 (U.S. CL. 107).

FIRST USE 0-0-1827; IN COMMERCE
0-0-1827.

FOR: EDUCATIONAL SERVICES, NAMELY,
PROVIDING INSTRUCTION AND TRAINING
AT THE UNDERGRADUATE, GRADUATE,

SER. NO. 73-823,064, FILED 9-5-1989.

H. M. FISHER, EXAMINING ATTORNEY

Int. Cls.: 21 and 25

Prior U.S. Cls.: 2, 33 and 39

United States Patent and Trademark Office Reg. No. 1,624,908
Registered Nov. 27, 1990

**TRADEMARK
PRINCIPAL REGISTER**

HARVARD

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (MASSACHUSETTS CHARITA-
BLE CORPORATION)
17 QUINCY STREET
CAMBRIDGE, MA 02138

FOR: DRINKING GLASSES, IN CLASS 21
(U.S. CLS. 2 AND 33).
FIRST USE 6-30-1982; IN COMMERCE
6-30-1982.

FOR: POLO SHIRTS, T-SHIRTS, HATS AND
TIES, IN CLASS 25 (U.S. CL. 39).

FIRST USE 6-0-1980; IN COMMERCE
6-0-1980.

SER. NO. 73-839,443, FILED 11-15-1989.

ELLEN A. RUBEL, EXAMINING ATTORNEY

Int. Cl.: 16



Prior U.S. Cls.: 2, 37, 38 and 50

Reg. No. 1,842,914

United States Patent and Trademark Office

Registered July 5, 1994

**TRADEMARK
PRINCIPAL REGISTER**

HARVARD

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (MASSACHUSETTS CHARITA-
BLE)
17 QUINCY STREET
CAMBRIDGE, MA 02138

FOR: PAPER GOODS AND PRINTED
MATTER; NAMELY, STATIONERY, NOTE-
BOOKS, BROCHURES, NEWSPAPERS, JOUR-
NALS, PROGRAMS, CATALOGUES, BOOKS
AND MAGAZINES RELATING TO GENERAL
NEWS, BUSINESS, POLITICAL, EDUCATION-
AL, SPORTS, TRAVEL AND ALUMNI AF-
FAIRS ISSUES, YEAR BOOKS, CLASS
ALBUMS, MEDIA GUIDES, REGISTERS, STA-
TIONERY-TYPE PORTFOLIOS, BULLETINS,
PEN AND/OR PENCIL CASES, CALENDARS,

TELEPHONE AND ADDRESS DIRECTORIES,
POCKET AND DESK DIARIES, WEEKLY FOR-
MATS, APPOINTMENT BOOKS, DESK PADS,
THEME BOOKS; NAMELY, PAPER NOTE-
BOOKS, MEMO PADS, SCRAP BOOKS, BOOK
COVERS, BINDERS, DATE BOOKS AND STA-
TIONERY, NOTEBOOK AND BINDER FOLD-
ERS, IN CLASS 16 (U.S. CLS. 2, 37, 38 AND 50).

FIRST USE 0-0-1827; IN COMMERCE
0-0-1827.

OWNER OF U.S. REG. NOS. 1.491.123. 1.624.908
AND OTHERS.

SER. NO. 74-372,373, FILED 3-29-1993.

HOPE SLONIM, EXAMINING ATTORNEY

Int. Cl.: 14

Prior U.S. Cls.: 2, 27, 28 and 50

United States Patent and Trademark Office

Reg. No. 2,002,662

Registered Sep. 24, 1996

**TRADEMARK
PRINCIPAL REGISTER**

HARVARD

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (MASSACHUSETTS CHARITA-
BLE)
17 QUINCY STREET
CAMBRIDGE, MA 02138

FOR: JEWELRY, WATCHES, PARTS FOR
WATCHES, ORNAMENTAL LAPEL PINS,
CLOCKS, PARTS FOR CLOCKS AND MONEY
CLIPS OF PRECIOUS METAL, IN CLASS 14
(U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 5-31-1962; IN COMMERCE
5-31-1962.

OWNER OF U.S. REG. NOS. 1,619,827 AND
1,842,914.

SER. NO. 74-701,105, FILED 7-14-1995.

DOMINICK J. SALEMI, EXAMINING ATTOR-
NEY

Int. Cl.: 18

Prior U.S. Cls.: 1, 2, 3, 22 and 41

Reg. No. 2,042,969

United States Patent and Trademark Office

Registered Mar. 11, 1997

**TRADEMARK
PRINCIPAL REGISTER**

HARVARD

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (MASSACHUSETTS CHARITA-
BLE CORPORATION)
17 QUINCY STREET
CAMBRIDGE, MA 02138

COVERS, AND UMBRELLAS, IN CLASS 18
(U.S. CLS. 1, 2, 3, 22 AND 41).
FIRST USE 6-20-1984; IN COMMERCE
6-20-1984.
OWNER OF U.S. REG. NOS. 1,491,123, 1,842,914
AND OTHERS.

FOR: TOTE BAGS, BACKPACKS, ALL PUR-
POSE ATHLETIC BAGS, BOOKBAGS, JEAN
BAGS, POCKETBOOKS, BRIEFCASE-TYPE
PORTFOLIOS, SCHOOL BAGS. UMBRELLA

SER. NO. 75-006,438, FILED 10-16-1995.

DOMINICK J. SALEMI, EXAMINING ATTOR-
NEY

>> >=====

>> >----- Original Message -----

>> >From: Mike Rhys <mikerhys@yahoo.com>

>> >To: <jay_tumas@HARVARD.EDU>

>> >Sent: Tuesday, October 05, 1999 6:07 PM

>> >Subject: harvard domains-second notice (<http://harvardyardsale.com>)

>> >

>> >

>> >> Jay Tumas;

>> >> jay_tumas@HARVARD.EDU

>> >>

>> >>

>> >> Hi.

>> >> I noticed from InterNIC records that

>> >> you are the administrative contact for:

>> >> HARVARDEXTENSIONSCHOOL.com

>> >>

>> >> I will soon be offering many Harvard

>> >> related domains for sale to the general

>> >> public.

>> >>

>> >> I would like to offer the first

>> >> right of refusal to Harvard itself.

>> >>

>> >> If you are the proper contact, or can

>> >> direct me to the proper contact person,

>> >> I would be thankful for a reply.

>> >>

>> >> The names I currently own are listed

>> >> (in part) at <http://harvardyardsale.com>

>> >>

>> >> Thank you for your time.

>> >>

>> >> Michael Rhys

>> >> mike@web-pro.com

>> >> (mikerhys@yahoo.com)

>> >>

>> >>

>> >> Do You Yahoo!?

>> >> Bid and sell for free at <http://auctions.yahoo.com>