

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED: AUG 12, 2008

JONES DAY,
a General Partnership,

Plaintiff,

v.

BlockShopper.com,
an unincorporated business entity,

and

Brian Timpone,
d/b/a Blockshopper.com,
an individual,

and

Edward Weinhaus,
d/b/a Blockshopper.com,
an individual,

Defendants.

Case No.: 08CV4572
JUDGE DARRAH
Judge: MAGISTRATE JUDGE COX
RCC

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, Jones Day, and for its Complaint against the Defendants,
alleges as follows:

NATURE OF THE ACTION

1. This is a civil action against Defendants for their acts of service mark infringement, service mark dilution, false designation of origin and deceptive trade practices.

PARTIES, JURISDICTION AND VENUE

2. At all times relevant hereto, Plaintiff, Jones Day, was and is a general partnership engaged in the profession and practice of law with an office in Illinois located at 77 West Wacker, Chicago, Illinois 60601-1692.

3. At all times relevant hereto, upon information and belief, the Defendant, Blockshopper.com was and is an unincorporated business entity whose address is 875 North Michigan Avenue, Suite 3100, Chicago, Illinois 60610.

4. At all times relevant hereto, upon information and belief, the Defendant, Brian Timpone was and is an individual whose address is 2024 North Racine Avenue, Apartment D, Chicago, Illinois 60614.

5. At all times relevant hereto, upon information and belief, the Defendant, Edward Weinhaus was and is an individual whose address is 102 Ladue Aire Drive, Saint Louis, Missouri 63141.

6. This Court has jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has jurisdiction over Jones Day's common law claims pursuant to 28 U.S.C. §§ 1332 and 1367.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to the claims at issue occurred in this District. Jones Day is also suffering from the effects of Defendants' conduct in this District.

FACTS COMMON TO ALL COUNTS

Jones Day's Famous Service Marks

8. Tracing its origins to 1893 in Cleveland, Ohio, Jones Day is one of the world's largest and most famous law firms, with more than 2,200 lawyers resident in 30 geographically diverse locations, worldwide.

9. In the United States, Jones Day maintains offices in Atlanta, Georgia; Chicago, Illinois; Cleveland, Ohio; Columbus, Ohio; Dallas, Texas; Houston, Texas; Irvine, California; Los Angeles, California; New York, New York; Palo Alto, California; Pittsburgh, Pennsylvania; San Diego, California; San Francisco, California; and Washington, D.C.

10. Jones Day's international practice is also significant and expanding. In addition to representing a large number of its United States-based clients in international matters, Jones Day represents many major companies based in Europe, the Middle East, Asia and Latin America. Jones Day maintains a significant presence in the principal legal and regulatory capitals of the world. In Europe, more than 400 lawyers are based in Brussels, Belgium; Frankfurt, Germany; London, England; Madrid, Spain; Milan, Italy; Moscow, Russia; Munich, Germany; and Paris, France. In Asia, more than 200 lawyers are based in Beijing, China; Hong Kong, People's Republic of China; Shanghai, China; Singapore; Taipei, Taiwan; and Tokyo, Japan. Jones Day also has offices in Sydney, Australia.

11. Jones Day is fortunate to have been selected to act as principal outside counsel to, or provide significant legal representation for, more than half of the *Fortune* 500 companies, as well as to a wide variety of other entities, including privately held companies, financial institutions, investment firms, health care providers, retail chains, foundations, educational institutions and individuals.

12. Surveys repeatedly list Jones Day as one of the law firms most frequently engaged by domestic corporations, and many of the Firm's lawyers have achieved national recognition in their disciplines. Jones Day has been ranked first among litigation departments in the United States, and consistently ranks among the finest litigation departments in the United States.

13. In October 2005, Jones Day, for the third time in five years, topped the BTI Consulting Group's National Survey of Client Service Performance for Law Firms. Jones Day is one of only two law firms honored in 2005 as a member of the BTI Client Service Hall of Fame. This exclusive list includes law firms that clients rank in the BTI Client Service Top Ten for five years in a row.

14. Jones Day is the owner of two United States Service Mark Registrations, Numbers 2,316,539 and 2,212,877, for the mark JONES DAY in connection with "Legal Services" (collectively the "Jones Day Marks"). The Jones Day Marks are incontestable. Copies of these Registrations are attached hereto as Exhibits A and B respectively.

15. As a result of the high quality of legal services it has provided to its clients for more than a century and its reputation as one of the premier law firms in the United States (and the world), Jones Day's name and service marks have become very valuable assets and are famous. Since at least as early as July 1983, Jones Day has used the service mark JONES DAY to identify the legal services the Firm provides. The Firm has used the service mark JONES DAY in commerce in various other forms since at least 1939.

16. Since 1983, Jones Day has spent millions of dollars marketing its services worldwide using the Jones Day Marks. As a direct result of the time and effort promoting the Jones Day Marks, Jones Day's clients, its competitors and the general public have come to

associate high quality legal services provided by Jones Day by its use of the name and service mark JONES DAY in both word and stylized forms.

17. Jones Day vigorously protects its rights in and to the Jones Day Marks. For example, in March 2000, Jones Day sued a cybersquatter who had registered and was using website domain names that incorporated the Jones Day Marks. Judge Nugent of the United States District Court for the Northern District of Ohio enjoined that cybersquatter from posting any content on websites at the domain names “www.jonesdayreavis.com,” “www.jonesdayreavispogue.com,” and “www.jonesdayreavisandpogue.com” or from registering any domain name that is identical or confusingly similar to any registered or common law service mark of Jones Day, including, but not limited to, the Jones Day Marks.

18. A similar result was reached in November 2005. Jones Day sued an individual who had registered and was using www.jonesdays.com to disparage Jones Day. Judge Economus of the United States District Court for the Northern District of Ohio enjoined that individual from posting any content on the web site located at www.jonesdays.com, from registering any domain name that is identical or confusingly similar to any registered or common law service mark of Jones Day, including, but not limited to, the Jones Day Marks, and from engaging in any conduct which dilutes or infringes Jones Day’s rights in and to the Jones Day Marks. Jones Day also was awarded costs, statutory damages and attorneys’ fees.

19. In 2006, Jones Day again successfully enforced its service marks against improper internet usage. Jones Day sued for trademark dilution in the United States District Court for the Northern District of Ohio (Case No. 1:06CV01174). The suit ultimately settled when the defendant agreed to refrain from referencing or using, directly or indirectly, “Jones Day” or the Jones Day Service Marks.

Defendants' Unlawful Conduct

20. Upon information and belief, Defendants Weinhaus and Timpone co-founded, registered and own the internet web site located at the domain www.blockshopper.com (the "Web Site"). Attached hereto as Exhibit C, and incorporated herein by reference, are true and correct screenshots of the Web Site that an internet user sees when it types in the domain name www.blockshopper.com.

21. Defendants Weinhaus and Timpone use the Web Site to operate the Defendant business Blockshopper.com.

22. Blockshopper.com is a business predicated upon gathering and publishing details of private residential real estate transactions.

23. Upon information and belief, Defendants publish this information in a scheme to solicit advertisements and garner advertising income: "BlockShopper.com offers special advertising and sponsorship packages created to meet your local customer acquisition or brand-building needs." See Exhibit C.

24. In order to make the Web Site more attractive to potential advertisers, Defendants use the service marks of others, link to web sites owned by others, and use material from web sites belonging to others. Id.

25. On at least two occasions, Defendants have used the Jones Day Service Marks and linked "articles" on the Web Site to the Jones Day web site. See Exhibit D.

26. The Defendants have and continue to use proprietary materials from the Jones Day web site on the Web Site. A review of the content of the Web Site reveals that the photographs of at least two Jones Day associates are identical to the photographs which appear on the Jones Day web site. Id.

27. Defendants have no business connection or association with Jones Day.

28. Use of the Jones Day Marks, the links to the Jones Day web site and the use of proprietary information from the Jones Day web site creates the false impression that Jones Day is affiliated with and/or approves, sponsors or endorses the business conducted by the Defendants. Such an impression is false and disparages Jones Day and the Jones Day Marks.

29. Upon information and belief, Defendants first used the Jones Day Marks and materials from the Jones Day web site in April of 2008.

30. Jones Day did not become aware of the use of its Marks and proprietary web site content until July of 2008.

31. After Jones Day became aware of the use of its Marks, and its proprietary web site content, it contacted Defendants on July 10, 2008, and requested that the Defendants cease all use of the Jones Day Marks, cease linking to the Jones Day web site and cease use of Jones Day's proprietary web site content. A true and correct copy of Jones Day's correspondence to Defendants is attached hereto at Exhibit E and is incorporated herein by reference.

32. Jones Day did not receive a response to its correspondence. On July 17, 2008, Jones Day again contacted Defendants and requested that the Defendants cease all use of the Jones Day Marks, cease linking to the Jones Day web site and cease use of Jones Day's proprietary web site content. A true and correct copy of Jones Day's correspondence to Defendants is attached hereto at Exhibit F and is incorporated herein by reference.

33. Defendants have never responded to Jones Day's repeated requests to cease the use of its intellectual property.

34. Jones Day has never authorized Defendants to use any intellectual property owned by Jones Day, including the Jones Day Marks.

35. As of the date of the filing of this Complaint, Defendants have failed to cease their unauthorized unlawful and disparaging use of Jones Day's intellectual property.

COUNT I
SERVICE MARK INFRINGEMENT
15 U.S.C. §§ 1114 AND 1125(a)

36. Jones Day incorporates each and every allegation of Paragraphs 1-35 of this Complaint as though fully set forth herein.

37. Jones Day's use of the Jones Day Marks predates any alleged use by Defendants in the United States.

38. Defendants' use of the Jones Day Marks, in connection with their real estate advertisement scheme, is likely to deceive and cause confusion and mistake among customers as to the source or origin of the services provided or offered for sale by Defendants and the affiliation of Jones Day with those services and/or the sponsorship or endorsement of those services by Jones Day.

39. Jones Day has never authorized, licensed or otherwise condoned or consented to Defendants' use of the Jones Day Marks.

40. Defendants have misappropriated and continue to misappropriate Jones Day's substantial property rights in the Jones Day Marks, as well as the goodwill associated therewith. Unless restrained and enjoined by this Court, such conduct will continue and will permit Defendants to improperly interfere with Jones Day's continued promotion and expansion of the Jones Day Marks.

41. As a result of Defendants' ongoing unlawful activities, Jones Day continues to suffer irreparable harm.

42. As a direct and proximate result of Defendants' unlawful activities, Jones Day has and continues to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

COUNT II
FEDERAL FALSE DESIGNATION OF ORIGIN
15 U.S.C. § 1125(a)

43. Jones Day incorporates each and every allegation of Paragraphs 1-42 of this Complaint as though fully set forth herein.

44. Defendants' use of the Jones Day Marks, in connection with their real estate advertisement scheme, is likely to deceive and cause confusion among consumers as to the source of origin of the services offered by Defendants and the sponsorship or endorsement of those services by Jones Day.

45. Jones Day has never authorized, licensed or otherwise condoned or consented to Defendants' use of the Jones Day Marks.

46. Defendants have misappropriated and continue to misappropriate Jones Day's substantial property rights in the Jones Day Marks, as well as the goodwill associated therewith. Unless restrained and enjoined by this Court, such conduct will permit Defendants to gain an unfair competitive advantage over Jones Day and allow Defendants to improperly interfere with Jones Day's continued promotion and expansion of its business.

47. The acts of Defendants alleged above were committed willfully, with full knowledge of Jones Day's rights and with the intention to deceive and mislead the public.

48. The acts of Defendants alleged above were committed willfully, with full knowledge of Jones Day's rights and with the intention of causing harm to Jones Day.

49. The acts of Defendants alleged above were committed willfully, with full knowledge of Jones Day's rights and with the intention of misappropriating and wrongfully trading upon the valuable goodwill and reputation of Jones Day and the Jones Day Marks.

50. Defendants will continue their ongoing acts of false designation of origin, causing irreparable injury to Jones Day, unless such activities are enjoined by this Court.

51. As a direct and proximate result of Defendants' unlawful activities, Jones Day has and continues to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

COUNT III
FEDERAL SERVICE MARK DILUTION, 15 U.S.C. § 1125(c)

52. Jones Day incorporates each and every allegation of Paragraphs 1-51 of this Complaint as though fully set forth herein.

53. The Jones Day Marks have acquired fame in the United States.

54. Defendants began using the Jones Day Marks after they became famous.

55. Defendants' use of the Jones Day Marks is diluting and blurring the distinctiveness of the Jones Day Marks.

56. Defendants' use of the Jones Day Marks is disparaging the distinctiveness of the Jones Day Marks.

57. Defendants have diluted the famous Jones Day Marks.

58. Defendants will continue their acts of dilution, causing irreparable injury to Jones Day, unless such activities are enjoined by this Court.

59. As a direct and proximate result of Defendants' acts of dilution, Jones Day has and continues to suffer damages in an amount that is not presently ascertainable, but will be established at trial. Jones Day is entitled to all available remedies provided for in 15 U.S.C.

§§ 1117, 1118 and 1125, including preliminary and permanent injunctive relief, Defendants' profits, treble damages, costs and reasonable attorneys' fees.

COUNT IV
UNFAIR BUSINESS PRACTICES UNDER THE
ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT

60. Jones Day incorporates each and every allegation of Paragraphs 1-59 of this Complaint as though fully set forth herein.

61. Defendants' activities set forth above have caused and will continue to cause a likelihood of confusion or misunderstanding as to the sponsorship, approval, affiliation or connection of Defendants with Jones Day.

62. In addition, Defendants' activities have given rise to and will continue to give rise to the incorrect belief that Defendants have some connection with Jones Day, irreparably damaging Jones Day's goodwill and reputation, in violation of the Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510/1 et seq.).

63. As a direct and proximate result of Defendants' actions, Jones Day has and continues to suffer irreparable harm.

64. As a direct and proximate result of the Defendants' actions, Jones Day has and continues to suffer damages in an amount which is not presently ascertainable, but will be established at trial.

COUNT V
ILLINOIS COMMON LAW INFRINGEMENT AND UNFAIR COMPETITION

65. Jones Day incorporates each and every allegation of Paragraphs 1-64 of this Complaint as though fully set forth herein.

66. By virtue of Jones Day's continuous use of the Jones Day Marks in connection with legal services, Jones Day owns and enjoys common law rights in the Jones Day Marks in the State of Illinois.

67. Defendants have committed common law infringement and unfair competition by referring to "Jones Day" in promoting their real estate advertisement scheme. The public is likely to believe that Defendants' services are affiliated with, connected to, or associated with Jones Day. Defendants' use of the Jones Day Marks is likely to cause confusion or mistake or deception of the public as to the affiliation of the services provided by Defendants.

68. Defendants' acts are fraudulent and calculated to cause deception and confusion.

69. Defendants have engaged in infringement and unfair competition in violation of the common law of the State of Illinois.

70. As a direct and proximate result of Defendants' actions, Jones Day has and continues to suffer irreparable harm.

71. As a direct and proximate result of Defendants' actions, Jones Day has and continues to suffer damages in an amount which is not presently ascertainable, but will be established at trial.

WHEREFORE, Jones Day prays that this Court enter an Order:

- A. Preliminarily and permanently enjoining Defendants, or anyone else acting in concert with it, or on its behalf, from:
 1. Using any reproduction or colorable imitation of the Jones Day Marks, or any mark confusingly similar thereto;
 2. Linking to and/or using any materials from the Jones Day web site www.jonesday.com;

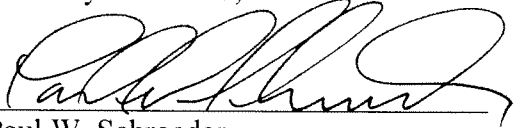
3. Engaging in any other conduct that suggests or tends to suggest to the public that Defendants are in any manner, directly or indirectly, affiliated, connected or associated with Jones Day or that the Defendants' services, goods or commercial activities originate from or are sponsored or approved by Jones Day;
- B. Requiring Defendants to account to Jones Day for all profits made by it in connection with any and all commercial activity relating to its use of the Jones Day Marks;
- C. Awarding to Jones Day the damages it sustained as a result of Defendants' wrongful acts;
- D. Awarding to Jones Day Defendants' profits pursuant to 15 U.S.C. § 1117;
- E. Awarding to Jones Day treble damages pursuant to 15 U.S.C. § 1117;
- F. Awarding to Jones Day its costs and attorneys' fees pursuant to 15 U.S.C. § 1117;
- G. Awarding to Jones Day punitive damages as a result of Defendants' wrongful acts; and
- H. Granting Jones Day any further relief that the Court deems to be just and proper.

JURY DEMAND

Jones Day respectfully requests a trial by jury on all issues triable thereby.

Dated: August 12, 2008

Respectfully submitted,

By: 

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