

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

STORAGEPLUS, INC., an Idaho  
corporation,

Plaintiff,

vs.

PETTIT DEVELOPMENT, INC., d/b/a  
Storage Plus, a Massachusetts corporation,

Defendant.

Civil Action No.

**COMPLAINT**

Plaintiff Storageplus, Inc. ("SPI") brings this action for equitable relief and damages against Defendant Pettit Development, Inc., d/b/a Storage Plus ("Defendant"), and alleges as follows:

**A. JURISDICTION AND VENUE**

1. This is a complaint for an injunction, damages and other appropriate relief to stop Defendant from violating SPI's trademark and service mark rights by, *inter alia*, using a confusingly similar mark in commerce in connection with a related line of goods and services; registering one or more Internet domain names that are identical or confusingly similar to SPI's trademark and service mark; and by using such domain name(s) in bad faith to profit from SPI's mark. In this action, SPI alleges: (1) Violations of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d); (2) Trademark Infringement, 15 U.S.C. § 1114; (3) False Designation of Origin, 15 U.S.C. § 1125(a); (4) Trademark Dilution, 15 U.S.C. § 1125(c); (5) Unfair or Deceptive Acts or Practices, Mass. Gen. L. Ch. 93A, § 11; (6) Unfair Competition under

Massachusetts common law; and (7) Money Had and Received under Massachusetts common law.

2. This Court has subject matter jurisdiction over SPI's claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

3. This Court has personal jurisdiction over Defendant, who has engaged in business activities in and directed to this District and has committed a tortious act within this District.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to SPI's claims occurred in this Judicial District, and because Defendant is a resident of this Judicial District.

### **B. THE PARTIES**

5. Plaintiff SPI is an Idaho corporation with its principal place of business in Sun Valley, Idaho.

6. On information and belief, Defendant is a Massachusetts corporation with its principal place of business in Dudley, Massachusetts. On further information and belief, Defendant registered, uses, owns or co-owns the Infringing Domain name [www.storageplus.us](http://www.storageplus.us) (the "Infringing Domain") and/or has otherwise infringed upon one or more SPI trademarks or service marks, jointly and/or severally, and directly, contributorily, and/or vicariously.

### **C. SPI'S BUSINESS AND TRADEMARKS**

7. SPI is the owner of a United States federal registration in the mark "StoragePlus®" (the "Mark") (U.S. Reg. No. 2,414,266). The registration for the Mark is valid, subsisting, and incontestable under 15 U.S.C. § 1065. Attached hereto as Exhibit A is a true and correct copy of a June 28, 2010, print-out from the United States Patent and Trademark Office website showing that SPI is the owner of the Mark.

8. Through SPI's long and continuous use of the Mark, the Mark has become distinctive and has acquired secondary meaning as a source identifier of the types of services SPI offers to its customers, namely, the rental of space for the storage of goods.

9. SPI or its predecessors-in-interest have used the Mark since at least as early as February 1992 in commerce to promote its services to the public. The Mark is a famous mark, broadly recognized as a brand identifier for SPI's services provided under the Mark.

10. The Mark is used in interstate commerce by SPI in connection with the sale, offering for sale, distribution, and advertising of SPI's services. The Mark is distinctive and famous and was distinctive and famous at the time of all acts alleged herein. As a result of SPI's significant investment in developing quality services and promoting those products and services under the Mark, the Mark has developed extensive goodwill in the market. Accordingly, the Mark is extremely valuable and important to SPI.

#### **D. SPI'S INTERNET PRESENCE**

11. SPI also maintains a substantial presence on the Internet. Via the Internet, SPI advertises its products and services, transacts business with its customers, and offers its customers access to services.

12. In order to provide its customers with easy access to its online products and services, SPI has registered and now owns and uses the valuable Internet domain storageplus.com (the "Domain").

13. The Domain resolves to a SPI-created website that provides SPI's customers with information related to SPI's products and services. The Domain thus generates business and goodwill for SPI and allows SPI to develop and maintain relationships with its customers.

## **E. DEFENDANT'S UNLAWFUL ACTIONS**

14. On information and belief, Defendant is or has been the registrant, user, or owner of the Infringing Domain that contains or consists of SPI's Mark. The Infringing Domain incorporates and is confusingly similar to SPI's Marks. The Infringing Domain does not resolve to a website owned or endorsed by SPI. Rather, it resolves or at one time resolved to a website registered and controlled by Defendant (the "Infringing Website").

15. The Infringing Domain is likely to lead consumers to mistakenly believe that the Infringing Website reached through the Infringing Domain is affiliated with or sponsored or approved by SPI. Defendant has exploited this confusion by conspicuously displaying SPI's Mark, or a confusingly similar variant of the Mark, on the Infringing Website.

16. The Infringing Website advertises services that are similar to the services offered by SPI, thus promoting confusion among customers and potential customers of SPI as to the nature or origin of the services advertised on the Infringing Website. Attached hereto as Exhibit B is a true and correct copy of a print-out from the Infringing Website.

17. Consumers are likely to visit the Infringing Website and do business with Defendant in the mistaken belief that the consumer is visiting SPI's website and doing business with SPI. These consumers are diverted from SPI's website or services the consumers are seeking, and SPI accordingly loses an opportunity to interact with such consumers.

18. On information and belief, Defendant uses the Infringing Domain to profit in bad faith from the Mark by using the Mark to drive traffic to the Infringing Website.

19. On information and belief, Defendant registered, controls, uses, or owns the Infringing Domain. On further information and belief, Defendant profits from its use of the Infringing Domain by transacting business with customers who are diverted from SPI's website.

20. Defendant is not affiliated with, or sponsored or approved by SPI and has not been authorized by SPI to use the Mark. Defendant has not now or ever been authorized by SPI to use or register any name or mark that includes the Mark.

21. Defendant's purpose in registering, trafficking, and/or using the Infringing Domain is primarily to capitalize on the goodwill associated with the SPI Mark.

## **F. CLAIMS FOR RELIEF**

### **COUNT I**

#### **Cybersquatting and Contributory Cybersquatting under the Anti-Cybersquatting Consumer Protection Act –15 U.S.C. § 1125(d)**

22. SPI realleges and incorporates by this reference each and every allegation set forth in Paragraphs 1 through 21 above.

23. The Mark was both federally registered and distinctive at the time Defendant registered the Infringing Domain and remains distinctive today.

24. The Mark was famous at the time Defendant registered the Infringing Domain and remains famous today.

25. Defendant's Infringing Domain was identical or confusingly similar to or dilutive of the Mark at the time Defendant registered its Infringing Domain and remains so today.

26. Defendant has registered, trafficked in, and/or used the Infringing Domain with bad faith intent to profit from the Mark.

27. As a result of its wrongful conduct, Defendant is liable to SPI for violating the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

**COUNT II**

**Trademark and Contributory Trademark Infringement Under the Lanham Act – 15 U.S.C. § 1114**

28. SPI realleges and incorporates by this reference each and every allegation set forth in Paragraphs 1 through 27 above.

29. Defendant has used the Mark in interstate commerce.

30. Defendant's use of the Mark is likely to cause confusion, or to cause mistake, or to deceive.

31. Defendant's wrongful and unauthorized use of the Mark to promote, market, or sell products and services constitutes trademark infringement pursuant to 15 U.S.C. § 1114 et seq.

**COUNT III**

**False Designation and Contributory False Designation of Origin Under the Lanham Act – 15 U.S.C. § 1125(a)**

32. SPI realleges and incorporates by this reference each and every allegation set forth in Paragraphs 1 through 31 above.

33. Defendant's use of the Mark in connection with goods or services in commerce is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with SPI, or as to the origin, sponsorship, or approval of Defendant's goods, services, or commercial activities with SPI.

34. As a result of its wrongful conduct, Defendant is liable to SPI for violation of 15 U.S.C. § 1125(a).

**COUNT IV**

**Dilution and Contributory Dilution Under the Lanham Act – 15 U.S.C. § 1125(c)**

35. SPI realleges and incorporates by this reference each and every allegation set forth in Paragraphs 1 through 34 above.

36. Defendant's use of the Mark in commerce commenced after the Mark became famous within the meaning of 15 U.S.C. § 1125(c).

37. Defendant's use of the Mark in commerce is likely to cause dilution by blurring, or dilution by tarnishment, of the Mark.

38. Upon information and belief, Defendant willfully intended to trade on the recognition of the Mark.

39. As a result of its wrongful conduct, Defendant is liable to SPI for violation of 15 U.S.C. § 1125(c).

#### **COUNT V**

**Unfair and Deceptive Trade Acts or Practices in Violation of Mass. Gen. L. ch. 93A, § 11**

40. SPI realleges and incorporates by this reference each and every allegation set forth in Paragraphs 1 through 39 above.

41. SPI is engaged in business and commerce.

42. Defendant is engaged in business and commerce.

43. SPI has suffered the loss of money and other damages as a result of the unfair method of competition and the unfair and deceptive practices of Defendant in using SPI's Mark and the Infringing Domain to promote, market, or sell Defendant's products and services.

44. Defendant's unfair and deceptive actions took place primarily and substantially in the Commonwealth of Massachusetts.

45. Defendant's actions are willful and intentional and constitute unfair trade acts or practices which are violative of Mass. Gen. L. ch. 93A, § 11 and have caused injury to SPI.

**COUNT VI**

**Massachusetts Common Law Unfair Competition**

46. SPI realleges and incorporates by this reference each and every allegation set forth in Paragraphs 1 through 45 above.

47. Defendant is palming off Defendant's goods as those of SPI's.

48. Defendant's use of the Mark has infringed on the Mark's distinctive features in a manner that tends to confuse, in the public mind, SPI's products and/or advertising with the products and/or advertising of others.

49. Defendant engaged in such acts intentionally and adopted an Infringing Domain so similar to SPI's in order to mislead the public.

50. The acts of Defendant complained of herein constitute unfair competition in violation of Massachusetts common law.

**COUNT VII**

**Massachusetts Common Law Money Had and Received**

51. SPI realleges and incorporates by this reference each and every allegation set forth in Paragraphs 1 through 50 above.

52. Defendant has obtained money or the equivalent under such circumstances that in equity and good conscience should be returned to SPI.

53. Defendant has failed to provide any consideration to SPI for use of the Mark or of the Infringing Domain.

54. Defendant through the above complained acts of misrepresentation and mistake has gained money and benefits that rightly belong to SPI and thereby unjustly enriched the Defendant at SPI's expense.



55. The acts of Defendant complained of herein constitute money had and received or unjust enrichment of Defendant at SPI's expense in violation of Massachusetts common law.

### **G. PRAYER FOR RELIEF**

WHEREFORE, SPI respectfully requests that the Court enter judgment against Defendant as follows:

1. That the Court issue preliminary and permanent injunctive relief against Defendant, and that Defendant, its officers, agents, representatives, servants, employees, attorneys, successors and assignees, and all others in active concert or participation with Defendant, be enjoined and restrained from:
  - a) infringing upon SPI's trademarks and service marks;
  - b) using SPI's trade names, trademarks, or service marks, or any version thereof, in connection with the description, marketing, promotion, advertising, or sale of products or services not associated with or approved by SPI;
  - c) registering, using, or trafficking any domain names that are identical or confusingly similar to SPI's Mark, including but not limited to domain names containing SPI's Mark and domain names containing confusingly similar variants of SPI's Mark; and
  - d) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs a) through c) above.
2. That the Court order the forfeiture or cancellation of the Infringing Domain or the transfer of the Infringing Domain to SPI;
3. That the Court award SPI all damages caused by Defendant's unlawful acts;
4. That the Court award SPI treble damages as provided by law;

5. That the Court award SPI all gains, profits, and advantages derived by Defendant from its unlawful acts;

6. That the Court award SPI treble the gains, profits, and advantages derived by Defendant from its unlawful acts;

7. That the Court award SPI statutory damages of \$100,000 for each of Defendant's Infringing Domains;

8. That the Court award SPI its attorneys' fees and costs incurred herein, including prejudgment and post-judgment interest; and

9. That the Court grant SPI all other relief to which it is entitled and such other or additional relief as is just and proper.

### **DEMAND FOR JURY TRIAL**

Plaintiff SPI hereby demands a trial by jury in this action for all Counts so triable.

PLAINTIFF,  
STORAGEPLUS, INC.,  
By Its Attorneys,

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Date: July 6, 2010

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