

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

TRS QUALITY, INC.,

Plaintiff,

v.

YELL ADWORKS, INC.,

Defendant.

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CIVIL ACTION NO. \_\_\_\_\_

**PLAINTIFF’S ORIGINAL COMPLAINT, JURY DEMAND, AND  
APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

Plaintiff TRS Quality, Inc. (“TRS Quality”) complains of Defendant Yell Adworks, Inc. (“Yell Adworks”) as follows:

**I.**

**PARTIES**

1. Plaintiff TRS Quality is a corporation duly organized and existing under the laws of the State of Delaware with its principal place of business in Fort Worth, Texas.

2. On information and belief, Defendant Yell Adworks is a corporation duly organized and existing under the laws of the State of Delaware with its principal address at 2201 Renaissance Boulevard, King of Prussia, PA 19406. Yell Adworks may be served with process by serving its registered agent, The Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

**II.**

**JURISDICTION AND VENUE**

3. This action arises under the Anticybersquatting Consumer Protection Act of 1999, 15 U.S.C. § 1125(d), which is contained in the federal Lanham Act. Accordingly, this Court has subject matter jurisdiction under 28 U.S.C. § 1338(a) and 15 U.S.C. § 1121(a).

4. Yell Adworks has had continuous and systematic contacts with Texas and this District sufficient for this Court to establish personal jurisdiction over it. Specifically, Yell Adworks is believed to conduct extensive business in this District by knowingly providing and directing services to residents located in this District.

5. Based on Yell Adworks' contacts with this District, Yell Adworks is deemed to reside in this District pursuant to 28 U.S.C. § 1391(c). Therefore, venue is proper in this District under 28 U.S.C. § 1391(b)(1).

**III.**

**FACTUAL BACKGROUND**

**Background of Plaintiff TRS Quality**

6. TRS Quality is a wholly-owned subsidiary of New York Stock Exchange publicly traded RadioShack Corporation ("RadioShack"). It is the entity within the RadioShack corporate family that owns and enforces the famous RADIOSHACK brand, which is a coined term and is highly distinctive. TRS Quality licenses the RADIOSHACK brand to RadioShack operating entities that use the RADIOSHACK brand in connection with their retail sale of consumer electronic goods and services within the United States and other countries and in connection with their other related activities.

7. RadioShack sells products through a variety of channels, including through

unaffiliated dealers who enter into Authorized Sales Center Agreements with RadioShack (the “RadioShack Dealers”). RadioShack also has approximately 4,680 company-operated stores in the United States and Mexico; 1,300 dealer outlets worldwide; and 500 wireless phone kiosks that operate under the RADIOSHACK trademark.

8. Since 1923, TRS Quality and RadioShack, through their respective predecessors-in-interest, have actively promoted the RADIOSHACK trademark through advertising, publications, and other means in both traditional media and on the Internet. Such advertising has reached millions of people in the United States and around the world. As a result, the RADIOSHACK mark has acquired substantial goodwill and reached famous status, and has thus become a valuable intellectual property asset of TRS Quality and RadioShack.

9. To protect the RADIOSHACK brand and its substantial goodwill, TRS Quality, through its predecessors-in-interest, has obtained numerous trademark registrations covering the RADIOSHACK mark throughout the world. As representative examples of those registrations, attached as **Exhibit A** are copies of the following U.S. trademark registrations, including printouts from the U.S. Patent and Trademark Office website showing the chain of title of the registrations into TRS Quality:

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Status</u>
RADIO SHACK	706,962	November 8, 1960	Registered
RADIO SHACK	796,908	September 28, 1965	Registered
RADIO SHACK	1,076,858	November 8, 1977	Registered
RADIO SHACK	1,126,234	October 23, 1979	Registered
RADIO SHACK	1,355,845	August 20, 1985	Registered
RADIO SHACK	1,676,195	February 18, 1992	Registered
RADIOSHACK	2,019,438	November 26, 1996	Registered
RADIOSHACK	2,164,296	June 9, 1998	Registered

10. All of the foregoing trademark registrations have been afforded “incontestable” status by the U.S. Trademark Office. The RADIOSHACK marks owned by TRS Quality, including those listed above, are collectively referred to in this Complaint as the “RADIOSHACK Mark.”

11. TRS Quality’s priority and use of the RADIOSHACK Mark predates, by many decades, Yell Adworks’ registration of the RADIOSHACK domain names listed below.

**Background of Defendant Yell Adworks**

12. Yell Adworks is a self-proclaimed leading provider of multimedia advertising services in the United States and other countries. Yell Adworks is a division of Yellow Book USA, Inc. (“Yellow Book”). Yellow Book is a national yellow pages and online local search company that connects buyers with sellers through, among other things, print directories, the Yellow Book website located at *www.yellowbook.com*, and a search engine advertising program. On information and belief, Yell Adworks and Yellow Book direct their marketing services to customers throughout the United States, including to customers in this District.

**Yell Adworks’ Unlawful Registration of RADIOSHACK Domain Names**

13. In early 2010, TRS Quality discovered that Yell Adworks had registered the domain name *northstarelectronicradioshack.com*, which uses the RADIOSHACK Mark.

14. In response to this registration, counsel for TRS Quality sent Yell Adworks a cease and desist letter on February 9, 2010 (the “First Cease and Desist Letter”). This letter described TRS Quality and RadioShack’s interests in the RADIOSHACK Mark, explained that Yell Adworks’ use of the mark was illegal, and demanded that Yell Adworks immediately and permanently desist from using the RADIOSHACK Mark in domain names or in any other way. A true and correct copy of the First Cease and Desist Letter is attached hereto as **Exhibit B**.

15. Yell Adworks acknowledged receipt of the First Cease and Desist Letter, but continued to register domain names using the RADIOSHACK Mark, including *radioshackofwarrenton.com*, *sylvaradioshackdealer.com*, *southhavenradioshack.com*, and *fraserradioshack.com*. On information and belief, Yell Adworks registered each of these domain names between February 9, 2010, when counsel for TRS Quality sent the First Cease and Desist Letter, and August, 2010.

16. On August 23, 2010, counsel for TRS Quality sent a second cease and desist letter to Yell Adworks (the “Second Cease and Desist Letter”), which once again demanded that Yell Adworks immediately and permanently desist from using the RADIOSHACK Mark in domain names or in any other way. A true and correct copy of the Second Cease and Desist Letter is attached hereto as **Exhibit C**.

17. Yell Adworks then registered another domain name, *radioshackwillcox.com*, which also uses the RADIOSHACK Mark.

18. Counsel for TRS Quality then sent a third cease and desist letter on August 25, 2010 (the “Third Cease and Desist Letter”), again demanding that Yell Adworks desist from all uses of the RADIOSHACK Mark. A true and correct copy of the Third Cease and Desist Letter is attached hereto as **Exhibit D**. Yell Adworks never responded to the Second Cease and Desist Letter or the Third Cease and Desist Letter.

19. Despite receiving three cease and desist letters from TRS Quality, Yell Adworks continues to register domain names using the RADIOSHACK Mark. Since TRS Quality sent the Third Cease and Desist Letter, Yell Adworks has registered the domain names *radioshackgc.com* and *radioshackhastings.com*.

20. On information and belief, Yell Adworks registered each of these domain names

after a RadioShack Dealer signed up to use Yellow Book's marketing services.

21. Neither TRS Quality nor RadioShack ever authorized Yell Adworks to use the RADIOSHACK Mark, nor has Yell Adworks ever sought TRS Quality or RadioShack's permission to use the RADIOSHACK Mark. On information and belief, the majority of RadioShack Dealers also never authorized Yell Adworks to register domain names using the RADIOSHACK Mark. Moreover, the RadioShack Dealers do not have intellectual property rights in the RADIOSHACK Mark sufficient to authorize Yell Adworks' use of the mark in domain names.

22. Attached as **Exhibit E** are true and correct copies of WHOIS reports identifying Yell Adworks as the owner and registrant of *radioshackofwarrenton.com*, *southhavenradioshack.com*, *fraserradioshack.com*, *radioshackwillcox.com*, *radioshackgc.com*, and *radioshackhastings.com*. On information and belief, Yell Adworks has deactivated the *northstarelectronicsradioshack.com* and *sylvaradioshackdealer.com* webpages. As such, the WHOIS reports for these domain names are not currently available online, but TRS Quality has previously confirmed that these domain names were registered to Yell Adworks.

#### IV.

#### CAUSE OF ACTION

##### Count One: Violations of the Anticybersquatting Consumer Protection Act ("ACPA")

23. Yell Adworks adopts and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as though set forth fully herein.

24. Yell Adworks has registered, trafficked in, and/or used the domain names *northstarelectronicsradioshack.com*, *radioshackofwarrenton.com*, *sylvaradioshackdealer.com*, *southhavenradioshack.com*, *fraserradioshack.com*, *radioshackwillcox.com*, *radioshackgc.com*,

and *radioshackhastings.com* (the “Infringing Domain Names”), which are identical or confusingly similar to the RADIOSHACK Mark owned by TRS Quality. Yell Adworks has done so with a bad faith intent to profit from TRS Quality’s trademark rights, in violation of 15 U.S.C. § 1125(d). Yell Adworks’ bad faith intent to profit from the RADIOSHACK Mark is demonstrated by numerous factors, including the following, which are alleged on information and belief:

- (a) Yell Adworks has no trademark rights or other intellectual property rights in the Infringing Domain Names;
- (b) The Infringing Domain Names do not consist of Yell Adworks’ legal name or a name that is otherwise commonly used to identify Yell Adworks;
- (c) Yell Adworks did not previously use the Infringing Domain Names in connection with the bona fide offering of goods or services;
- (d) Yell Adworks has no bona fide noncommercial or fair use of the RADIOSHACK Mark in a site accessible under the Infringing Domain Names;
- (e) The RADIOSHACK Mark was distinctive and famous at the time of Yell Adworks’ registration of the Infringing Domain Names;
- (f) Yell Adworks registered the Infringing Domain Names with knowledge of TRS Quality’s rights in the RADIOSHACK Mark and knowing that the Infringing Domain Names were identical or confusingly similar to the RADIOSHACK Mark; and

(g) Yell Adworks never sought or received authorization to use the  
RADIOSHACK Mark.

25. The RADIOSHACK Mark was distinctive at the time Yell Adworks registered the Infringing Domain Names.

26. Pursuant to 15 U.S.C. § 1125(d)(1)(C), the Court should order the transfer of the registration of the Infringing Domain Names to TRS Quality. Alternatively, pursuant to 15 U.S.C. § 1125(d)(1)(C), the Court should order the forfeiture or cancellation of the Infringing Domain Name registrations.

27. Pursuant to 15 U.S.C. § 1117(d), TRS Quality is entitled to recover statutory damages in an amount up to \$100,000 and not less than \$1,000 for each of the Infringing Domain Names.

28. Pursuant to 15 U.S.C. § 1117(a), TRS Quality is entitled to recover its costs. Moreover, because this case is exceptional under 15 U.S.C. § 1117(a), TRS Quality is also entitled to its attorneys' fees.

**V.**

**REQUEST FOR INJUNCTIVE RELIEF**

29. TRS Quality adopts and incorporates by reference the factual allegations contained in the preceding paragraphs of this Complaint as though set forth fully herein.

30. Yell Adworks has violated 15 U.S.C. § 1125(d), and TRS Quality is therefore entitled to injunctive relief under 15 U.S.C. § 1116.

31. TRS Quality requests that the Court issue preliminary and permanent injunctions enjoining Yell Adworks and its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with Yell Adworks or its officers, agents, servants,



employees, and attorneys, who receive actual notice of the injunction by personal service or otherwise, from doing, aiding, causing, or abetting the following:

- (a) registering, trafficking, using, or maintaining the registrations of the domain names *northstarelectronicradioshack.com*, *radioshackofwarrenton.com*, *sylvaradioshackdealer.com*, *southhavenradioshack.com*, *fraserradioshack.com*, *radioshackwillcox.com*, *radioshackgc.com*, and *radioshackhastings.com*, or any other domain name that includes the string radioshack or that is otherwise identical or confusingly similar to TRS Quality's trademarks; and
- (b) engaging in any acts or activities directly or indirectly calculated to trade upon TRS Quality's trademarks, names, logos, reputation, or goodwill.

32. TRS Quality will suffer immediate and irreparable harm for which there is no adequate remedy at law if Yell Adworks is not immediately and permanently enjoined from the conduct listed above, because Yell Adworks' use of the RADIOSHACK Mark will continue to cause a likelihood of confusion among consumers.

33. There is a substantial likelihood that TRS Quality will succeed on the merits of its case.

34. The injury that will result to TRS Quality if Yell Adworks is allowed to continue using the RADIOSHACK Mark will far outweigh any harm that will result to Yell Adworks if this request for injunctive relief is granted.

35. Moreover, if this request for injunctive relief is granted, the public interest will be

served by preventing consumer confusion with the RADIOSHACK Mark.

**VI.**

**JURY DEMAND**

TRS Quality hereby demands a trial by jury of all issues alleged in this Complaint.

**VII.**

**PRAYER**

WHEREFORE, Plaintiff TRS Quality prays for the following relief:

1. That the Court order the transfer of the registrations of the Infringing Domain Names to TRS Quality pursuant to 15 U.S.C. § 1125(d)(1)(C). Alternatively, pursuant to 15 U.S.C. § 1125(d)(1)(C), the Court should order the forfeiture or cancellation of the Infringing Domain Name registrations.

2. That Defendant Yell Adworks and its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with Yell Adworks or its officers, agents, servants, employees, and attorneys, who receive actual notice of the injunction by personal service or otherwise, be enjoined and restrained preliminarily during the pendency of this action, and then permanently, from doing, aiding, causing or abetting the following:

- (a) registering, trafficking, using, or maintaining the registrations of the domain name *northstarelectronicradioshack.com*, *radioshackofwarrenton.com*, *sylvaradioshackdealer.com*, *southhavenradioshack.com*, *fraserradioshack.com*, *radioshackwillcox.com*, *radioshackgc.com*, and *radioshackhastings.com*, or any other domain name that includes

the string radioshack or that is otherwise identical or confusingly similar to TRS Quality's trademarks; and

- (b) engaging in any acts or activities directly or indirectly calculated to trade upon TRS Quality's trademarks, names, logos, reputation, or goodwill.

3. That Yell Adworks be ordered to file with the Court and serve upon counsel for TRS Quality within thirty (30) days after the service on Yell Adworks of the preliminary and permanent injunctions prayed for in this Complaint, a written report, sworn to under oath, setting forth in detail the manner and form in which Yell Adworks has complied with the respective injunction;

4. That Yell Adworks be ordered to pay TRS Quality statutory damages under 15 U.S.C. § 1117(d) of \$100,000 per domain name found to be in violation of 15 U.S.C. § 1125(d);

5. That the Court find this is an "exceptional" case pursuant to 15 U.S.C. § 1117;

6. That TRS Quality be awarded its costs of suit, including reasonable and necessary attorneys' fees and expenses for prosecution and appeal, if any, of this matter;

7. That TRS Quality be awarded prejudgment and postjudgment interest at the highest legal rate on all sums awarded in the Court's judgment; and,

8. That TRS Quality be awarded such other and further relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

/s/ David H. Harper

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