

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

HOMEVESTORS OF AMERICA, INC.,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. _____
	§	
v.	§	
	§	
DUANE LEGATE AND	§	
HOUSE BUYER NETWORK, INC.,	§	JURY TRIAL DEMANDED
	§	
Defendants.	§	

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff HomeVestors of America, Inc. (“HomeVestors”) files this Original Complaint asserting claims against Defendants Duane LeGate and House Buyer Network, Inc. (“HBN”) (collectively, “Defendants”) for trademark infringement in violation of 15 U.S.C. § 1114 (Section 32 of the Lanham Act) and unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A) (Section 43(a)(1)(A) of the Lanham Act), as well as trademark infringement, unfair competition, unjust enrichment, injury to business reputation, and breach of contract under Texas law.

HomeVestors seeks: (1) actual, treble, and exemplary damages from Defendants; (2) a preliminary injunction, and after trial, a permanent injunction; and (3) HomeVestors’ attorneys’ fees and costs of court.

I. PARTIES

1. HomeVestors is a Delaware corporation, with its principal place of business at 6500 Greenville Avenue, Suite 400, Dallas, Texas 75206. Accordingly, HomeVestors is a citizen of Texas and Delaware.

2. On information and belief, Defendant Duane LeGate is an individual residing at 911 Gresham Avenue NE, Marietta, Georgia 30060. On information and belief, LeGate is a citizen of the State of Georgia. LeGate is the registrant of the domain name <housebuyernetwork.com>, from which domain name he operates a website. The <housebuyernetwork.com> domain is available to residents of this judicial district. On information and belief, LeGate owns a number of other domain names from which he operates websites and through which he does business.

3. On information and belief, Defendant HBN is a Georgia corporation with its principal place of business located at 911 Gresham Avenue NE, Marietta, Georgia 30060. On information and belief, HBN is a citizen of Georgia. HBN operates its business through the website www.housebuyernetwork.com and, on information and belief, is affiliated with a number of other websites that conduct business throughout the country, including the state of Texas.

II. JURISDICTION AND VENUE

4. The Court has subject-matter jurisdiction over the Lanham Act claims in this action under 28 U.S.C. §§ 1331 and 1338. The Court has supplemental jurisdiction over the Texas state law claims in this action under 28 U.S.C. § 1367 because these claims arise out of the same transactions and occurrences giving rise to the federal Lanham Act claims and are so related to those claims as to be a part of the same case or controversy. Additionally, the Court has subject-matter jurisdiction over these claims under 28 U.S.C. § 1362 because HomeVestors and Defendants are citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs. Finally, the Court has original jurisdiction over HomeVestors' unfair competition claim under 28 U.S.C. § 1338(b).

5. The Court has personal jurisdiction over Defendants because the acts that are the subject of HomeVestors' claims, including trademark infringement and unfair competition, were committed by Defendants, in part, in the State of Texas in this judicial district. Defendants conduct business primarily through the Internet website www.housebuyernetwork.com and other affiliated websites, each of which improperly uses Plaintiff's registered trademarks. Each website is an active site allowing customers to contact Defendants and submit or receive information about homes the customers wish to sell or buy. Defendant HBN boasts that it has a network of affiliated homebuyers, presumably investors, throughout the United States, including Texas. See Exhibit A. Defendants actively market their services in Texas, including a page on the www.housebuyernetwork.com website devoted to sales in Texas, and which goes so far as to include a listing of all counties in Texas in which the Defendants have made sales. See Exhibit B. Additionally, Defendants are making commercial use Plaintiff's registered trademarks in this judicial district. As a result, Defendants are doing business in this judicial district and committing acts of infringement, unfair competition, and other wrongs in this judicial district. As a consequence, Defendant has purposefully availed itself of the laws of the State of Texas, and therefore, exercising personal jurisdiction over Defendant is fair and proper.

6. Under 28 U.S.C. § 1391(b), venue is proper in this judicial district because a substantial part of the events giving rise to the claims of this action occurred in this judicial district. Venue is also proper under 28 U.S.C. § 1391(c) because HBN is a company and the federal courts in this judicial district have personal jurisdiction over HBN related to HomeVestors' claims.

7. Additionally, the Settlement Agreement that is related to some of the claims brought herein specifically contains a jurisdiction and venue clause for any suit relating to a dispute arising out of or relating to the Settlement Agreement that requiring such dispute to be brought in the Federal courts of the Northern District of Texas, Dallas Division.

III. FACTUAL BACKGROUND

A. Plaintiff's business.

8. HomeVestors was founded and began franchising its business in 1996. HomeVestors has about 200 franchisees in 33 states that operate under strict codes and systems to ensure high ethical standards and responsible business practices. Over the years, HomeVestors and its franchisees have bought more than 45,000 houses.

9. HomeVestors is known as the WE BUY UGLY HOUSES® people and is the number one buyer of houses in the United States. HomeVestors franchisees buy homes that are difficult to sell and pay cash to owners in challenging situations. HomeVestors franchisees rehabilitate the houses and then sell or lease the homes. This process improves neighborhood aesthetics and provides opportunities for first-time homebuyers, other homebuyers, and renters.

10. HomeVestors offers low-cost franchising opportunities to investors seeking to enter the business. Its unique business model includes a proprietary software system used in evaluating the potential value of single-family homes for purchase and repair. HomeVestors and its franchisees also employ a mass advertising campaign based on high-impact billboards and widespread Internet advertising that has achieved nearly universal market awareness for HomeVestors' trademark portfolio, which is discussed in detail below. HomeVestors also utilizes a direct-selling program that assists franchisees in identifying buyers or investors who may already have a vested interest in improving the relevant neighborhoods.

11. HomeVestors has received numerous honors and awards. HomeVestors was ranked on Entrepreneur Magazine's "Franchise 500" companies for five consecutive years. It was also ranked on Entrepreneur Magazine's "Fastest-Growing Franchises" for four consecutive years. Furthermore, SMU Cox School of Business named HomeVestors as one of "Dallas 100" fastest-growing private companies based in Dallas in four consecutive years. HomeVestors was the only home-buying franchise on each of those lists. Additionally, HomeVestors was named to the prestigious Franchise Business Review "Top 50 Franchises" for the sixth consecutive year in 2011. HomeVestors has built substantial goodwill in its name and business practices among both consumers and its franchisees.

B. HomeVestors owns substantial trademark rights through its significant use in commerce of its trademarks.

12. HomeVestors possesses extensive valuable rights in its intellectual property, including a family of U.S. trademarks listed in the chart attached hereto as Exhibit C (the "HomeVestors Registered Marks").

13. HomeVestors owns and has used the Ugly Houses Marks (defined below) since at least as early as 2000 and has built substantial brand name recognition through the use of these marks. Through continuous and exclusive use in commerce, the HomeVestors Registered Marks have achieved incontestable status. Specifically, the following marks have become widely recognized in the industry and HomeVestors has built significant goodwill in those marks: WE BUY UGLY HOUSES® & Design (Reg. No. 2,761,385); WE BUY UGLY HOUSES® (Reg. No. 3,099,814); COMPRAMOS CASAS FEAS® (Reg. No. 2,988,337); COMPRAMOS CASAS FEAS® (Reg. No. 2,982,363); WE BUY UGLY HOUSES® (Reg. No. 2,999,705); WE BUY UGLY HOUSES AND MAKE THEM NICE AGAIN® & Design (Reg. No. 2,827,136); UGLY'S OK® &

Design (Reg. NO. 2,797,429); UGLY'S OK[®] & Design (Reg. No. 2,797,480); WE SELL LUVLY HOUSES.COM[®] (Reg. No. 3,658,442); THE UGLIEST HOUSE OF THE YEAR[®] (Reg. No. 3,641,362); THE UGLIEST HOUSE OF THE YEAR[®] & Design (Reg. No. 3,641,361); THE GOOD, THE BAD AND THE UGLY[®] (Reg. No. 3,350,752); WE BUY THE GOOD, THE BAD AND THE UGLY[®] (Reg. No. 3,307,918); SOLUTIONS FOR UGLY SITUATIONS[®] (Reg. No. 3,188,593); SOLUTIONS FOR UGLY SITUATIONS[®] (Reg. No. 3,185,390); UG BUYS UGLY HOUSES[®] (Reg. No. 2,999,978); and UG BUYS UGLY HOUSES[®] (Reg. No. 2,935,916) (Registration Nos. 2,761,385; 3,099,814; 2,988,337; 2,982,363; 2,999,705; and 2,827,136 are collectively referred to as the "Ugly Houses Marks").

14. Over the years, HomeVestors has spent significant amounts of time and resources in developing its brand and maintaining the goodwill it has built in its trademarks. HomeVestors and its network of franchisees have spent over \$100 million on advertising over the course of the past 10 years, which includes advertising on the Internet, radio, television, magazines, and billboards seen throughout the country. The HomeVestors brand is readily and widely recognized in the industry and among the general public. Indeed, the Ugly Houses Marks have become famous to designate HomeVestors' business.

C. In November 2006, LeGate entered into a settlement agreement with HomeVestors whereby he agreed to stop purchasing domain names and internet advertising keywords containing the HomeVestors Registered Marks.

15. In 2006, Plaintiff became aware that Defendants, as a business practice, systematically purchased domain names that incorporated, in whole or in part, the HomeVestors Registered Marks.

16. Plaintiff also became aware of Defendants' practice of bidding on and purchasing internet advertising keywords and using metatags containing the HomeVestors Registered Marks.

17. Effective as of November 30, 2006, Plaintiff and Defendants entered into a Settlement Agreement, whereby LeGate transferred a number of domain names to Plaintiff and whereby LeGate agreed to stop purchasing keywords incorporating the HomeVestors Registered Marks (the "Settlement Agreement").

18. Notably, the Settlement Agreement specifically contains a jurisdiction and venue clause for any suit relating to a dispute arising out of or relating to the Settlement Agreement that requires such dispute to be in the Federal courts of the Northern District of Texas, Dallas Division or the state courts in Dallas County if the federal court does not have subject matter jurisdiction.

D. LeGate violates the terms of the Settlement Agreement.

19. In 2010, HomeVestors learned that LeGate was purchasing keyword advertising containing HomeVestors Registered Marks in violation of the terms of the Settlement Agreement. In addition, HomeVestors learned that LeGate and/or HBN were operating websites using the Ugly Houses Marks in violation of the terms of the Settlement Agreement.

- i. Defendants continue to purchase internet advertising keywords containing HomeVestors Registered Marks to advertise Defendants' own products and services and gain search-engine popularity.**

20. On information and belief, Defendants bid on and purchased Internet advertising keywords containing the Ugly Houses Marks to gain popularity on search engines including Bing.com, Yahoo.com, Google.com, and Local.com.

21. As recently as May 14, 2012, Defendants were advertising HBN's website, housebuyersnetwork.com, (the "HBN Website") through the use of HomeVestors' Ugly Houses Marks. See Exhibit D.¹ On information and belief, Defendants directly or indirectly purchase key-

¹ Defendants' advertisements, which are highlighted for the Court's convenience, read in part, "We Buy Ugly Houses, Fast."

word advertisements containing the Ugly Houses Marks from multiple sources, including Local Corporation, Microsoft Corporation, Yahoo!, Inc., and Google Inc. *See id.*

22. On December 3, 2010, Plaintiff's counsel contacted LeGate regarding Defendants' purchase of the HomeVestors Registered Marks as keywords to advertise Defendants' business on the search engine website located at Local.com. Despite multiple demands, LeGate continues to purchase keywords containing HomeVestors' Ugly Houses Marks for the purpose of advertising the HBN Website.

23. Defendants have been advertising the HBN Website through the use of HomeVestors' Ugly Houses Marks since at least December 2010. Exhibit E is an email from December 22, 2010, containing a screen shot sent from HomeVestors' counsel to LeGate showing a HBN Website advertisement displayed by the Local.com search engine.²

24. On information and belief, advertisers including Local.com, Bing.com, Google.com, and Yahoo.com, only place specific words in the titles of sponsored advertisements if the advertiser designates the term and purchase the keywords for such placement.

25. Internet advertising keyword bidding raises the price of the Ugly Houses Marks as keywords so that HomeVestors is forced to pay more to use its own registered trademarks for keyword advertising on various search engine webpages.

26. Defendants use the Ugly Houses Marks in keyword advertisements to capitalize on consumer confusion, trade on HomeVestors' goodwill, and drive traffic to Defendants' websites.

² Defendants' advertisement, which is highlighted for the Court's convenience, appears on the right of the screen under the "Advertisements" section.

- ii. **Defendants operate websites using the Ugly Houses Marks to capitalize on the success and good will of HomeVestors.**

27. Upon information and belief, Defendants operate websites using the Ugly Houses Marks. This unauthorized use of the Ugly Houses Marks results in acts of infringement and unfair competition.

28. Upon information and belief, LeGate and/or HBN own the domain name <housebuyernetwork.com>, at which location LeGate operates the HBN Website. The HBN Website is a direct competitor of HomeVestors and advertises the buying and selling of houses in distressed situations.

29. On information and belief, and based on representations made on the HBN Website, Defendants own numerous other domain names and websites many of which are believed to use the Ugly Houses Marks directly on the websites to direct traffic to third-party competing businesses. Such advertising is directed to Texas residents, including those located in Dallas.

30. On information and belief, Defendants purchase keyword advertising containing HomeVestors Registered Marks to advertise and drive traffic to Defendants' other domain names.

E. Unless enjoined, HomeVestors will suffer irreparable harm for which it has no remedy at law.

31. Unless Defendants are enjoined, HomeVestors will suffer irreparable harm. Defendants will continue to trade on the goodwill HomeVestors has built in its marks and profit unfairly from their trademark infringement, unfair competition, and other wrongs. Defendants will continue to purchase the trademarks in which HomeVestors has built substantial goodwill as keyword advertisements on search engine websites. Such keyword advertising diverts business that otherwise would belong to HomeVestors and causes initial interest confusion. Moreover,

HomeVestors has no ability to control the quality of the services provided by Defendants in conjunction with the Ugly Houses Marks, and therefore, is at an extreme risk of irreparable harm for which there is no remedy at law and for which money damages cannot repair.

32. By way of example, if customers of Defendants experience inferior services, they will likely mistakenly attribute that bad experience to HomeVestors and its franchisees due to Defendants' adoption of the same marks. This is heightened by Defendants' strategy to provide the same or similar services to the same customer base using the same advertising channels in connection with the same marks. As established above, these actions are taken intentionally by Defendants as part of a scheme to trade on the goodwill built by HomeVestors through its investment of time, efforts, and advertising in the HomeVestors Registered Marks. Defendants are intentionally trading off the goodwill HomeVestors has built up in its marks over years of use and promotion.

IV. CLAIMS

A. Count I – Trademark Infringement Under 15 U.S.C. § 1114 (Section 32 of the Lanham Act)

33. HomeVestors repeats and realleges paragraphs 1 through 32 as if fully set forth herein.

34. Defendants' acts committed in the course of Internet commerce constitute trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, of the Ugly Houses Marks. As established by the registration for the marks, the marks are protectable and enforceable against Defendants, HomeVestors is the owner of the marks, and HomeVestors is the senior user of the marks. Moreover, Defendants' actions have caused a likelihood of confusion and damage to HomeVestors. In particular, through the infringing use of the Ugly Houses Marks,

Defendants are harming HomeVestors and diverting sales that would otherwise go to HomeVestors. Defendants' use of the Ugly Houses Marks is likely to cause confusion and mistake as to the source of Defendants' services.

35. In accordance with Section 34 of the Lanham Act, 15 U.S.C. § 1116, Defendants should be primarily and, upon hearing, permanently enjoined from using the Ugly Houses Marks or any confusingly similar variation thereof, alone or in combination with other words, as a trademark, service mark, corporate name, trade name component, domain name or domain name component, in Internet keyword advertising or bidding, in meta tag data, or otherwise, to market, advertise, or identify Defendants' services.

36. Under Section 35 of the Lanham Act, 15 U.S.C. § 1117(a), HomeVestors is entitled to recover from Defendants: (i) Defendants' profits, (ii) the damages sustained by HomeVestors, and (iii) the costs of this action. Due to the knowing, intentional, and purposeful nature of Defendants' conduct, HomeVestors seeks treble the amount of its actual damages. Due to the exceptional nature of this case, HomeVestors also seeks its reasonable attorney's fees.

B. Count II – Unfair Competition Under 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act)

37. HomeVestors repeats and realleges paragraphs 1 through 36 as if fully set forth at herein.

38. Defendants' acts committed in the course of interstate commerce constitute materially false and misleading misrepresentations of fact with respect to the origin of Defendants' services, and the affiliation, sponsorship, and approval of Defendants' products and services in violation of Section 43(a)(1)(A) of the Lanham Act. 15 U.S.C. § 1125(a)(1)(A).

39. In accordance with Section 34 of the Lanham Act, 15 U.S.C. § 1116, Defendants should be preliminarily and, upon hearing, permanently enjoined from using the Ugly Houses Marks or any confusingly similar variation thereof, alone or in combination with other words, as a trademark, service mark, corporate name, trade name component, domain name or domain name component, in Internet keyword advertising or bidding, in meta tag data, or otherwise, to market, advertise, or identify Defendants' services.

40. Under Section 35 of the Lanham Act, 15 U.S.C. § 1117(a), HomeVestors is entitled to recover from Defendants: (i) Defendants' profits, (ii) the damages sustained by HomeVestors, and (iii) the costs of this action. Due to the knowing, intentional, and purposeful nature of Defendants' conduct, HomeVestors seeks treble the amount of its damages. Due to the exceptional nature of this case, HomeVestors seeks its reasonable attorney's fees.

C. Count III – Trademark Dilution under 15 U.S.C. § 1125(c)

41. HomeVestors repeats and realleges each of the allegations contained in paragraphs 1 through 40 above as if fully set forth herein.

42. Defendants' use of the Ugly Houses Marks has caused, and will continue to cause, dilution of the distinctive quality of the Ugly Houses Marks as a unique identifier in the minds of consumers and will tarnish the Ugly Houses Marks.

43. The Ugly Houses Marks are famous marks within 15 U.S.C. § 1125(c). Defendants should be preliminarily and, upon hearing, permanently enjoined from using the Ugly Houses Marks or any confusingly similar variation thereof, alone or in combination with other words, as a trademark, service mark, corporate name, trade name component, domain name or domain name component, in Internet keyword advertising or bidding, in meta tag data, or otherwise, to market, advertise, or identify Defendants' services.

44. Defendants have engaged and continue to engage in this activity knowingly and willfully, so as to justify the assessment of treble damages against them.

45. Defendants have willfully traded on HomeVestors' reputation and willfully diluted HomeVestors' famous Ugly Houses Marks in violation of 15 U.S.C. § 1125(c). Accordingly, HomeVestors is entitled to remedies as set forth in 15 U.S.C. § 1117(a).

D. Count IV – Trademark Infringement in Violation of Texas Law

46. HomeVestors repeats and realleges each of the allegations contained in paragraphs 1 through 45 above as if fully set forth herein.

47. As established above, HomeVestors is the senior user of its marks and enjoys priority over Defendants. HomeVestors' substantial use of these marks in commerce has resulted in the marks being protectable and enforceable. Defendants' use in commerce of the Ugly Houses Marks in connection with competing services constitute infringement of HomeVestors' common-law rights to its marks. Defendants' use of the marks is likely to cause confusion or mistake as to the source of Defendants' services.

48. In accordance with Texas law, Defendants should be preliminarily and permanently enjoined, upon hearing, from using the Ugly Houses Marks or any confusingly similar variation thereof, alone or in combination with other words, as a trademark or service mark, corporate name, trade name component, domain name or domain name component, in Internet keyword bidding or advertising, in meta tag data, or otherwise, to market, advertise, or identify Defendants' services.

E. Count V – Unfair Competition under Texas Law

49. HomeVestors repeats and realleges each of the allegations contained in paragraphs 1 through 48 above as if fully set forth herein.

50. Defendants have engaged in commerce in the State of Texas and this judicial district by marketing, offering to sell, and selling Defendants' competing services. Defendants have advertised their services on their active websites as well as in conjunction with other marketing material, including, without limitation, electronic mail messages. Defendants have competed unfairly in violation of Texas law by misrepresenting or misleading the public to believe that their services are sponsored by, approved by, affiliated with, associated with, or originated by HomeVestors.

51. In accordance with Texas law, Defendants should be preliminarily and permanently enjoined, upon hearing, from using the Ugly Houses Marks or any confusingly similar variation thereof, alone or in combination with other words, as a trademark or service mark, corporate name, trade name component, domain name or domain name component, in Internet keyword advertising or bidding, in meta tag data, or otherwise, to market, advertise, or identify Defendants' services.

52. HomeVestors has been damaged by Defendants' actions. Under Texas law, HomeVestors is entitled to recover its actual damages caused by Defendants' unfair competition and exemplary damages due to the knowing, willful, and intentional nature of Defendants' actions.

F. Count VI – Unjust Enrichment Under Texas Law

53. HomeVestors repeats and realleges each of the allegations contained in paragraphs 1 through 52 as if fully set forth herein.

54. As set forth above, Defendants have used the Ugly Houses Marks and HomeVestors' goodwill as an integral step of Defendants' sales of its services. On information and

belief, Defendants have received a direct pecuniary benefit from these unlawful acts. Defendants are therefore unjustly enriched to HomeVestors' detriment. As a result, HomeVestors is entitled to recover its actual damages caused by Defendants' unjust enrichment.

G. Count VII – Injury to Business Reputation In Violation of TEX. BUS. & COMM. CODE §16.29

55. HomeVestors repeats and realleges each of the allegations contained in paragraphs 1 through 54 above as if fully set forth herein.

56. As established above, HomeVestors has established valuable rights in the Ugly Houses Marks. Such use has resulted in the marks being distinctive, protectable, and enforceable. Defendants' use of the marks is likely to injure the business reputation or to dilute the distinctive quality of the Ugly Houses Marks.

57. In accordance with Texas law, Defendants should be preliminarily and permanently enjoined, upon hearing, from (1) representing that Defendants' services are in any way sponsored by, approved by, affiliated with, associated with, or originated by HomeVestors, (2) using the Ugly Houses Marks or any confusingly similar variation thereof, alone or in combination with other words, as a trademark or service mark, corporate name, trade name component, domain name or domain name component, in Internet keyword bidding or advertising, in meta tag data, or otherwise, to market, advertise, or identify Defendants' services, and (3) otherwise competing unfairly with HomeVestors or injuring its business reputation in any manner.

H. Count VIII – Breach of Contract Under Texas Law

58. HomeVestors repeats and realleges each of the allegations contained in paragraphs 1 through 57 above as if fully set forth herein.

59. As established above, Defendants entered into a binding Settlement Agreement with Plaintiff, effective November 30, 2006.

60. HomeVestors has fully performed all its obligations under the Settlement Agreement.

61. Through Defendants' willful actions, including, without limitation, the purchase of keyword advertisements that incorporate the HomeVestors Registered Marks, Defendants have breached the terms of the Settlement Agreement.

62. HomeVestors has been damaged as a result of Defendants' breaches of the Settlement Agreement, and is therefore entitled to actual damages caused by Defendants' breaches.

63. In accordance with Texas law, Defendants should be preliminarily and permanently enjoined, upon hearing, from using the Ugly Houses Marks or any confusingly similar variation thereof, alone or in combination with other words, as a trademark or service mark, corporate name, trade name component, domain name or domain name component, in Internet keyword bidding or advertising, in meta tag data, or otherwise, to market, advertise, or identify Defendants' services. Defendants should further be held liable for its breach of the Settlement Agreement.

I. Attorneys' Fees and Costs of Court

64. HomeVestors repeats and realleges each of the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

65. HomeVestors has retained the law firm of Klemchuk Kubasta LLP to represent it in this action and has agreed to pay the firm reasonable and necessary attorneys' fees. Under § 38.001 of the Texas Civil Practice and Remedies Code, HomeVestors is entitled to recover its attorneys' fees from Defendants. HomeVestors has presented its claim to Defendants, and Defendants have not paid the claim.

66. All conditions precedent to HomeVestors' claims for attorneys' fees have been performed or have occurred.

J. Application for Preliminary and Permanent Injunction

67. HomeVestors repeats and realleges each of the allegations set forth in paragraphs 1 through 66 above as if fully set forth herein.

68. On information and belief, Defendants, unless enjoined, will continue to misrepresent to or mislead the public into believing that their services are sponsored by, approved by, affiliated with, associated with, or originated by HomeVestors and infringe the Ugly Houses Marks by using those marks or confusingly similar variations thereof to identify Defendants' competing services. All of these acts violate the Lanham Act and Texas law.

69. These actions entitle HomeVestors to a preliminary injunction and, upon hearing, permanent injunction enjoining Defendants and their officers, agents, servants, employees, franchisees, and attorneys, and all those persons in active concert or in participation with them from:

(i) Representing that Defendants' services are in any way sponsored by, approved by, affiliated with, or originated by HomeVestors;

(ii) Representing that Defendants are HomeVestors;

(iii) Using the Ugly Houses Marks or any confusingly similar variation thereof, alone or in combination with other words, as a trademark, service mark, corporate name, trade name component, domain name or domain name component, in Internet keyword advertising or bidding, in meta tag data, or otherwise, to market, advertise, or identify Defendant's services; and

(iv) Otherwise competing unfairly with HomeVestors or injuring its business reputation in any manner.

70. For these actions, there is no adequate remedy at law. Further, HomeVestors is substantially likely to prevail on the merits of these claims. The injury to HomeVestors greatly outweighs any injury to Defendants that the requested injunction may cause. The balance of hardships tips strongly in favor of HomeVestors. Finally, the injunction will not disserve the public interest. Therefore, HomeVestors is entitled to preliminary and permanent injunctive relief against Defendants.

V. JURY REQUEST

In accordance with Federal Rule of Civil Procedure 38, HomeVestors hereby demands a trial by jury on its claims alleged against Defendants.

VI. REQUEST FOR RELIEF

For the foregoing reasons, HomeVestors respectfully requests the Court to:

1. Award HomeVestors its actual, treble, and exemplary damages;
2. In accordance with Texas law and 15 U.S.C. § 1116, issue a preliminary and permanent injunction enjoining Defendants and their officers, agents, servants, employees, franchisees, and attorneys, and all those persons in active concert or participation with Defendants from the acts described in this Complaint;
3. Order Defendants and their officers, agents, servants, employees, franchisees, and attorneys, and all those persons in active concert or participation with them, to identify all third parties to whom Defendants have represented themselves to be the organization behind the Ugly Houses Marks or somehow sponsored by, approved by, affiliated with, or associated with HomeVestors and all third parties to whom Defendants have distributed any type of materials incorporating the Ugly Houses Marks;

4. Order Defendants and their officers, agents, servants, employees, franchisees, if any, and attorneys, and all those persons in active concert or participation with them, to identify all prior transfers of websites containing the Ugly Houses Marks;

5. Order Defendants to provide an accounting of all sales, revenues, and profits related to Defendants' services that infringe the Ugly Houses Marks and that are falsely designated as being sponsored by, approved by, affiliated with, or associated with HomeVestors;

6. In accordance with 15 U.S.C. § 1118, order all materials in Defendants' possession or control bearing the Ugly Houses Marks be surrendered for destruction;

7. In accordance with Texas law and 15 U.S.C. §§ 1117(a) and 1117(d), award HomeVestors all of Defendants' profits and Homevestors' lost sales damages from the aforesaid acts of unjust enrichment, trademark infringement, and unfair competition;

8. In accordance with Texas law and 15 U.S.C. § 1117(a), find this case to be exceptional in HomeVestors' favor and award HomeVestors its reasonable attorney's fees, costs, and expenses of this action;

9. Award HomeVestors its costs and pre-judgment and post-judgment interest at the maximum allowable interest rate;

10. Award HomeVestors its reasonable attorneys' fees pursuant to Texas Civil Practice and Remedies Code § 38.001; and

11. Grant HomeVestors such other relief, at law or in equity, to which it is justly entitled.

Dated: June 14, 2012

Respectfully submitted,

KLEMCHUK KUBASTA LLP

s/ Darin Klemchuk _____

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