

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

ENERGY CLEARINGHOUSE, LLC,

Plaintiff,

v.

ENERGYNET.COM, INC.,

Defendant.

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CASE NO. \_\_\_\_\_

JURY TRIAL DEMANDED

**COMPLAINT**

Energy Clearinghouse, LLC (“ECH”), Plaintiff, complains of EnergyNet.com, Inc. (“ENC”), showing as follows:

**PARTIES**

1. Plaintiff ECH is a Texas limited liability company with its principal office in Fort Worth, Texas.
2. Defendant ENC is a Texas corporation which may be served at its office located at 7201 I-40 West, Suite 319, Amarillo, Texas.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction under 15 U.S.C. § 15, and 28 U.S.C. §§ 1331, 1367(a), 1337(a), 1338(a) & (b), and 2201(a), in that ECH seeks (a) declaratory relief that ENC is advancing contentions against ECH which are predicated on alleged copyright rights and ECH is not violating any alleged rights of ENC, if any, under copyright law; (b) monopolization by ENC in the industry and market for online auction services for brokering the sale and purchase of oil and gas assets (such as royalties, mineral leases, production rights, overriding royalty interests [hereinafter “online auction services”]) in the United States marketplace; (c) tortious interference

with prospective business relationships of ECH; and (d) unfair competition by ENC.

4. This Court has venue under 28 U.S.C. § 1391(b)(1) and (c)(2), in that ENC is a resident of this District because it is a corporation which is subject to this Court's personal jurisdiction with respect to this action; and 28 U.S.C. § 1391(a)(2), in that a substantial part of the events giving rise to the claims in this case occurred in this District and Division.

### **BACKGROUND FACTS**

5. According to ENC's allegations in a Texas State Court proceeding, ENC provides continuous specialized online auction services for brokering the sale and purchase of oil and gas properties through its website at [www.energynet.com](http://www.energynet.com). ENC claims that its website is the subject of a United States copyright registration.

6. ECH is attempting to enter this specialized online auction services market which, on information and belief, ENC monopolizes, in order to compete with ENC, and thereby render the access to this specialized online auction services market more competitive to the benefit of not only ECH, but also to customers who seek services in this auction market.

7. ECH has not yet begun business in this specialized market, but is testing functionality internally and, through the use of third party programmers, is attempting to develop a website to provide online auction services in this market.

8. Pursuant to this business plan, ECH has made contacts with potential partners, investors, and/or customers with which to undertake entry into this auction market, who have shown an initial interest in dealing with ECH.

9. Upon information and belief, upon learning of ECH's efforts, ENC has attempted to "chill" ECH's efforts toward competing to close ECH out of the market; i.e., the online auction services for brokering the sale and purchase of oil and gas properties service market in

the geographic market of the United States (“online auction services market”).

10. Upon information and belief, this effort includes taking a deposition in anticipation of litigation in a Texas state court. A copy of the Petition Requesting Depositions to Obtain Testimony for Use in an Anticipated Suit and to Investigate Potential Claim or Suit is attached hereto as Pleading Exhibit “A.” ENC is subjectively aware that it has no case against ECH and is acting from anticompetitive animus, and its proceedings and claims are, in fact, objectively baseless.

11. On information and belief, ENC has been notifying third parties in the online auction services market, or persons who would otherwise be assisting ECH in entering and competing in the auction market, of ENC’s sham allegations in order to interfere with ECH’s prospective contractual or business relations.

### **CAUSES OF ACTION**

#### **COUNT 1—DECLARATION OF NONINFRINGEMENT OR INVALIDITY**

12. ECH hereby incorporates the allegations in paragraphs 5-11 hereinabove.

13. ENC claims to have a copyright for its website which is the subject of its claims against ECH.

14. A case and controversy exists with respect to the copyright dispute, as evidenced by, at least, the State Court proceeding by ENC. See Pleading Exhibit “A.”

15. ECH’s website, still being developed and not yet fully operative, does not infringe on any putative copyright of ENC in its website. More particularly, although ECH had access to the ENC website, it did not copy that website, but independently created and engaged third parties to independently create ECH’s own website (which is not yet fully operational). The ECH website is not probatively similar to either the literal or nonliteral elements of the ENC

website. Further, the ECH website is not substantially similar to protectable elements, if any, of the ENC website. There are quantitative and qualitative differences between the two websites. There was no copying by ECH of constituent elements of the ENC website that are original.

16. Further or alternatively, the ENC website constitutes procedures, processes, systems, or methods of operation which are not susceptible to copyright protection under 17 U.S.C. § 102(b), defeating any ownership of a valid copyright.

17. Further or alternatively, the ENC website is not copyright protectable under the merger doctrine.

18. ECH seeks a declaration of noninfringement or invalidity of any claimed ENC copyright pertaining to its online auction services and ECH's attorneys' fees per 17 U.S.C. § 505.

### **COUNT 2—MONOPOLIZATION**

19. ECH hereby incorporates the allegations in paragraphs 5-18 hereinabove.

20. On information and belief, ENC is the only company in the geographic market of the United States which is in the service market of providing specialized continuous online auction services for brokering the sale and purchase of oil and gas properties. Therefore, ENC has a monopoly and monopoly power in this auction market under Section 2 of the Sherman Act, 15 U.S.C. § 2. Particularly, ENC has the power to exclude competition in this specialized auction market, and is improperly using that power against ECH in this case, constituting a willful maintenance of market power.

21. ECH is attempting to enter this online auction services market by providing a new technology website that is customer "user friendly."

22. As set forth above, ENC is taking actions that are intended to and will, if not

prevented by the Court, prevent the entry into competition by ECH in the online auction services market, and is thereby engaging in exclusionary conduct. This conduct is capable of significantly contributing to maintaining ENC's monopoly power, and tends to impair the opportunities of its potential rival, ECH.

23. On information and belief, the effect of ENC's wrongful maintenance of monopoly power in this auction market will have the effect of price maintenance to the detriment of users of such online auction services, in addition to destroying ECH as a potential competitor.

24. ECH is suffering antitrust injury by the exclusionary tactics of ENC through being prevented from entry into this online auction services market, as well as financial injury.

25. ECH seeks an injunction against ENC's conduct, and also seeks its actual and treble damages and costs, including its attorneys' fees, under 15 U.S.C. § 15(a).

### **COUNT 3—TORTIOUS INTERFERENCE**

26. ECH hereby incorporates the allegations in paragraphs 5-25 hereinabove.

27. In its attempt to enter the auction market, ECH has attempted to enter business relationships or partnering arrangements with third parties in at least two instances, having a lost opportunity of well over a million dollars in investor funds and assistance.

28. Upon information and belief, ENC has willfully and intentionally interfered with these relationships by initiating a sham "investigation" proceeding and communicating with persons in the online auction market for the purpose of defeating ECH's prospective contractual and business relationships. Such actions of ENC threaten to defeat those relationships of ECH unless forestalled by this Court.

29. Upon information and belief, ENC's conduct is tortious or unlawful in nature because it is monopolistic.

30. Upon information and belief, ECH has proximately suffered actual damages of loss of income which would have resulted from entry into these partnering relationships.

31. Upon information and belief, information and belief, ENC has acted with malice in its efforts to disrupt these prospective business relationships between ECH and these third parties.

32. ECH seeks injunctive relief due to irreparable harm, actual damages, and further punitive or exemplary damages against ENC under Chapter 41, Texas Civil Practice & Remedies Code.

#### **COUNT 4—UNFAIR COMPETITION**

33. ECH hereby incorporates the allegations in paragraphs 5-32 hereinabove.

34. Through misuse of its copyright, monopolistic behavior, and tortious interference, ENC is competing unfairly with ECH, and attempting to preclude ECH from entering the specialized auction services market as a competitor. ENC's business conduct is contrary to honest practice in industrial and commercial matters.

35. ENC has, on information and belief, acted with malice in its efforts to compete unfairly with ECH.

36. ECH seeks injunctive relief, actual damages, and punitive or exemplary damages against ENC under Chapter 41, Texas Civil Practice & Remedies Code.

#### **JURY TRIAL DEMAND**

37. ECH demands a jury trial on all issues so triable.


**WHEREFORE**, ECH prays for the following relief against ENC:

1. A declaration that ECH does not infringe any valid copyright of ENC;
2. A declaration that ENC has no valid copyright on its online action services

website;

3. A declaration that ENC has violated 15 U.S.C. § 2;
4. That ECH recover its actual damages;
5. That ECH recover its treble damages;
6. That ECH recover its exemplary damages;
7. Injunctive relief seeking to enjoin ENC from:
  - (a) Making any claims to any third parties that ECH is infringing any copyright of ENC;
  - (b) Engaging in any monopolistic or anticompetitive exclusionary actions against ECH, including particularly making any efforts to prevent ECH from doing business with any third parties in the online auction services market;
  - (c) Tortiously interfering with any prospective business relationships with any third parties, including particularly suggesting to any third parties that ECH is violating any copyright of ENC; and
  - (d) Competing unfairly with ECH, including particularly suggesting to third parties that ECH is violating any copyright of ENC or otherwise engaging in any improper conduct;
8. That ECH recover its attorneys' fees;
9. That ECH recover its prejudgment and post-judgment interest;
10. That ECH recover its costs of court; and/or
11. That ECH recover its such other or further relief to which ECH may be entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard L. Schwartz". The signature is written in a cursive style with a large, looping flourish at the end that extends downwards and to the right.

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