

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

BEST LITTLE PROMOHOUSE IN	§	
TEXAS LLC,	§	
<i>Plaintiffs,</i>	§	
v.	§	
	§	CIVIL ACTION NO. _____
YANKEE PENNYSAYER, INC, AND	§	
STEVEN SILVER	§	JURY TRIAL DEMANDED
(d/b/a BESTLITTLEPROMOHOUSE.com),	§	
	§	
<i>Defendants.</i>	§	

COMPLAINT

COMES NOW Plaintiff Best Little Promohouse in Texas, LLC (“BLPH”), and for its complaint against Defendants Yankee Pennysaver, Inc. and Steven Silver, a former customer of BLPH, who is currently doing business as BestLittlePromoHouse.com, (hereinafter collectively, “BLPH.com”), states to the Court as follows:

INTRODUCTION

1. Plaintiff BLPH is a Texas limited liability company engaged in the business of providing specialty merchandising services, including the selling of high quality trade show promotional products at discounted prices and operating an online retail store featuring promotional products.

2. Defendant Steven Silver is an individual doing business as BestLittlePromoHouse.com and engaged in the business of operating an online retail store featuring promotional products.

3. Defendant Yankee Pennysaver, Inc. is a Connecticut corporation and the registrant organization associated with the domain name BESTLITTLEPROMOHOUSE.com, which

facilitates the operation of an online retail store featuring promotional products.

4. This complaint arises out of Defendants' unauthorized and infringing use of federally registered trademarks owned by BLPH.

5. This complaint seeks injunctive relief and monetary damages as remedies for Defendants' willful infringement of BLPH's trademarks.

THE PARTIES

6. Plaintiff BLPH is a Texas limited liability company with a mailing address of 102 Love Bird Lane, Murphy, Texas 75094.

7. Defendant Steven Silver is an individual with a residential mailing address of 111 Peaceable Hill Road, Ridgefield 06877. Upon information and belief, Defendant Steven Silver does business in the State of Texas and the Northern District of Texas.

8. Defendant Yankee Pennysaver, Inc. is a Connecticut corporation with a principal place of business at 246 Federal Road, Brookfield, Connecticut 06804. Yankee Pennysaver, Inc. may be served with process through its Registered Agent, Susan K. Blumenthal, at 640 Federal Road, Brookfield, Connecticut 06804. Upon information and belief, Defendant Yankee Pennysaver does business in the State of Texas and the Northern District of Texas.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction over this cause of action pursuant to 28 U.S.C. §§ 1331 (federal question), 1338(a) and (b) (act of Congress relating to trademark and unfair competition), 1367(a) (supplemental jurisdiction), and 15 U.S.C. § 1051 *et. seq.* (Lanham Act).

10. Venue is proper in the district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims in this action are believed to have occurred

in this judicial district.

FACTUAL BACKGROUND

11. BLPH is engaged in the business of providing specialty merchandising services, including the sale of high quality trade show promotional products at discounted prices and operating an online retail store featuring promotional products.

12. Since at least as early as February 1998, BLPH has been continuously using the trademark **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** in commerce in connection with (1) the advertising and sale of promotional products, and (2) online retail store services featuring promotional products.

13. As a result of BLPH's continuous use of the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark in interstate commerce in connection with the advertising and sale of its products/services, the purchasing public has come to exclusively associate the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark with BLPH. As such, the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark is extremely valuable to BLPH and has developed a substantial amount of goodwill and recognition among the purchasing public.

14. The **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark has been used, and continues to be used, by the purchasing public to identify the source of the BLPH's products/services and to distinguish such products/services from those offered by the BLPH's competitors.

15. BLPH is the owner of all right, title, and interest in and to the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark as used in connection with its products/services.

16. BLPH is the owner of U.S. Registration No. 4,341,554 for the mark **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** for specialty merchandising services, including

but not limited to the selling of high quality trade show promotional products.

17. Long after BLPH adopted, used, and applied to federally register its **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark, Defendants BLPH.com acquired various Internet domain names, including but not limited to www.bestlittlepromohouse.com and www.bestlittlepromohouseinbrookfield.com and commenced use of BestLittlePromoHouse in connection with advertisements displayed through AOL, Yahoo, Bing, Google, and other search engines available on the Internet. Defendants BLPH.com registered the domain names, moreover, with the bad-faith intent to profit from them.

18. Defendants BLPH.com's websites and other advertisements prominently display BestLittlePromoHouse in the advertisement text and are triggered when a consumer conducts a search using the keywords "best little promohouse in Texas" and/or "best little promohouse.

19. Defendants BLPH.com's advertisements direct consumers to a competing online retail store called "BestLittlePromoHouse," which features promotional products and other specialty merchandising services and is operated by Defendants BLPH.com.

20. On January 13, 2014, BLPH notified Defendants BLPH.com in writing of its objection to Defendants' use of BLPH's trademark in connection with competing online retail store services featuring specialty merchandising services and promotional products.

21. As of the filing date of this Complaint, Defendants BLPH.com has not ceased use of BLPH's trademark in connection with competing online retail store services featuring specialty merchandising services and promotional products.

22. BLPH.com's acts of infringement and other wrongful conduct are being committed with the deliberate purpose and intent of appropriating and trading upon the goodwill and reputation of BLPH and its **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark.

COUNT I
TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114

23. BLPH re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs, 1-22, as if fully set forth herein.

24. Defendants BLPH.com have violated 15 U.S.C. § 1114 in that their use of BestLittlePromoHouse, in connection with their websites and the advertising of their online retail store, has caused actual confusion, and is likely to cause continued confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants BLPH.com with BLPH, as well as to the origin, sponsorship, or approval of Defendants BLPH.com's products/services by BLPH.

25. Defendants BLPH.com's willful, wrongful, and infringing activities have caused, and will continue to cause, damage and irreparable harm to BLPH, and are likely to continue unabated, thereby causing further damage and irreparable harm to BLPH and to the valuable goodwill symbolized by the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark, unless enjoined by this Court.

26. BLPH has no adequate remedy at law.

COUNT II
TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1125(a)

27. BLPH re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs, 1-22, as if fully set forth herein.

28. Defendants BLPH.com has violated 15 U.S.C. § 1125(a) in that their use of BestLittlePromoHouse, in connection with their websites and the advertising of their online retail store has caused actual confusion, and is likely to cause continued confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants BLPH.com with

BLPH, as well as to the origin, sponsorship, or approval of Defendants BLPH.com's products/services by BLPH.

29. Defendants BLPH.com's willful, wrongful, and infringing activities have caused, and will continue to cause, damage and irreparable harm to BLPH, and are likely to continue unabated, thereby causing further damage and irreparable harm to BLPH and to the valuable goodwill symbolized by the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark, unless enjoined by this Court.

30. BLPH has no adequate remedy at law.

COUNT III
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION
UNDER TEXAS LAW

31. BLPH re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs, 1-22, as if fully set forth herein.

32. Defendants BLPH.com's willful, wrongful, and infringing activities as stated herein constitute unfair competition and an infringement of the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark in violation of Texas law.

33. Defendants BLPH.com's willful, wrongful, and infringing activities have caused, and will continue to cause, damage and irreparable harm to BLPH, and are likely to continue unabated, thereby causing further damage and irreparable harm to BLPH and to the valuable goodwill symbolized by the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark, unless enjoined by this Court.

34. BLPH has no adequate remedy at law.

COUNT IV
TRADEMARK INFRINGEMENT AND UNEAIR

COMPETITION UNDER COMMON LAW

35. BLPH re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs, 1-22, as if fully set forth herein.

36. Defendants BLPH.com's willful, wrongful, and infringing activities as stated herein constitute unfair competition and an infringement of the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark in violation of Texas common law.

37. Defendants BLPH.com's willful, wrongful, and infringing activities have caused, and will continue to cause, damage and irreparable harm to BLPH, and are likely to continue unabated, thereby causing further damage and irreparable harm to BLPH and to the valuable goodwill symbolized by the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark, unless enjoined by this Court.

38. BLPH has no adequate remedy at law.

COUNT V
CYBERSQUATTING CLAIM UNDER 15 U.S.C. § 1125(D)(1)(A)

39. BLPH re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs, 1-22, as if fully set forth herein.

40. Defendants BLPH.com registered various Internet domain names, including but not limited to www.bestlittlepromohouse.com and www.bestlittlepromohouseinbrookfield.com with the bad-faith intent to profit from them.

41. Defendants BLPH.com registered, traffics in, and used or uses various Internet domain names, including but not limited to www.bestlittlepromohouse.com and www.bestlittlepromohouseinbrookfield.com that are confusingly similar to BLPH's trademark, **BEST LITTLE PROMOHOUSE IN TEXAS, LLC**.

42. Defendants BLPH.com's willful, wrongful, and bad-faith activities have caused, and will continue to cause, damage and irreparable harm to BLPH, and are likely to continue unabated, thereby causing further damage and irreparable harm to BLPH and to the valuable goodwill symbolized by the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark, unless enjoined by this Court.

43. BLPH has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BLPH prays for Judgment against Defendants BLPH.com as follows:

1. That this Court issue a preliminary injunction enjoining Defendants, their affiliates, licensees, agents, sales representatives, servants, employees, associates, successors, assigns, and all persons acting under their control, from advertising and selling their products/services using the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark, and/or any other trademarks that are likely to cause confusion, to cause mistake, or to deceive;
2. That this Court issue a permanent injunction enjoining Defendants, their affiliates, licensees, agents, sales representatives, servants, employees, associates, successors, assigns, and all persons acting under their control, from advertising and selling their products/services using the **BEST LITTLE PROMOHOUSE IN TEXAS, LLC** trademark, and/or any other trademarks that are likely to cause confusion, to cause mistake, or to deceive;
3. Order Defendants to account for and pay over to BLPH all gains, profits, and other advantages derived from their acts of trademark infringement and unfair competition;
4. Order Defendants to compensate BLPH for such damages as it has sustained as a result of Defendants' acts of trademark infringement and unfair competition;

5. As provided for in 15 U.S.C. §1117, award BLPH a sum above the amount found as actual damages not exceeding three times such amount;

6. As provided for in 15 U.S.C. §1117, award BLPH statutory damages in an amount up to \$100,000 per domain name registered or used by Defendants BLPH.com in violation of the Anti-cybersquatting Consumer Protection Act;

7. As provided for in 15 U.S.C. §1117, award BLPH its costs, expenses, and reasonable attorneys' fees incurred in connection with this suit due to the exceptional and willful nature of Defendants' acts of trademark infringement, unfair competition, and cybersquatting;

8. Award to BLPH any such other and further relief that this Court deems just, proper, and equitable.

JURY DEMAND

BLPH hereby demands trial by jury of all issues triable of right by a jury.

Date: May 19, 2014

Respectfully submitted,

By: Kenneth P. Kula

Kenneth P. Kula

kkula@mcdolewilliams.com

Texas Bar No. 24004749

McDOLE & WILLIAMS, PC

1700 Pacific Avenue, Suite 1280

Dallas, Texas 75201

(214) 979-1122 - Telephone

(214) 979-1123 – Facsimile

ATTORNEYS FOR PLAINTIFF