

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**THE AMERICAN AUTOMOBILE)
ASSOCIATION, INC.)**

Plaintiff,)

v.)

**JAMES M. VAN JOHNS aka)
DAMIAN MACAFEE)**

CIVIL ACTION NO. 09- ERIE

and)

**QTK INTERNET, INC. aka)
QTK INTERNET LLC/NAME PROXY)
aka DAMIAN MACAFEE)**

Defendants.)

ELECTRONICALLY FILED

COMPLAINT

Plaintiff The American Automobile Association, Inc. (hereinafter “AAA”) brings this Complaint for injunctive, monetary, and other relief against Defendants James M. Van Johns (aka Damian Macafee) and QTK Internet, Inc. (aka QTK Internet LLC/Name Proxy aka Damian Macafee). AAA alleges as follows:

NATURE OF ACTION

1. This action is for trademark cyberpiracy in violation of Section 43(d) of the Federal Trademark Act (the “Lanham Act”), 15 U.S.C. § 1125(d); for trademark infringement, false designation of origin, and unfair competition in violation of Sections 32 and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a); for trademark infringement in violation of the Pennsylvania Trademark Act, 54 Pa. C.S.A. § 1123; for trademark dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and the Pennsylvania Trademark Act, 54

Pa. C.S.A. § 1124; and for unfair competition in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. C.S.A. § 201 *et seq.* AAA seeks an order requiring transfer of the AAA.NET domain name to AAA, injunctive relief, statutory damages, AAA's actual damages, trebled in accordance with law, Defendants' profits derived from their unlawful conduct, AAA's costs and attorneys' fees, and all other appropriate relief.

2. Defendants are well-known cybersquatters with a history of registering domain names containing famous marks with the bad faith intent to profit from them. This action arises out of Defendants' violation of Plaintiff's rights in its famous and distinctive AAA trademarks and service marks (the "AAA Marks").

3. Specifically, Defendants have registered, used, and trafficked in the domain name AAA.NET with the bad faith intent to profit from Plaintiff's AAA Marks. Defendants have admitted that they do not conduct business under an AAA mark or name and otherwise have no legitimate interest in any AAA related marks. (Rather, they assert that they registered the AAA.NET domain name because it is a "very desirable 3-letter term" owing to other third party uses of the "AAA" designation.) Defendants have demonstrated their intent to profit from use of the AAA.NET domain name by hosting websites displaying pay-per-click advertisements, including advertisements for products and services offered by AAA's direct competitors. Defendants have further demonstrated their bad faith by, among other things, registering, trafficking in, and using the AAA.NET domain name and over 1,300 other domain names—many of which incorporate famous trademarks of others.

4. Defendants' registration and use of the AAA.NET domain name has caused, and/or is likely to cause, consumers to go to Defendants' website associated with the AAA.NET domain name in the mistaken belief that it will take them to the website of Plaintiff AAA.

Defendants' registration and use of the AAA.NET domain name is also likely to cause consumers to believe, erroneously, that Defendants' AAA.NET domain name and related website are associated, affiliated, or connected with Plaintiff AAA or that AAA has authorized, sponsored, or approved Defendants' use of the AAA.NET domain name and related website. Defendants' registration and use of the AAA.NET domain name also has caused, and is likely to cause, dilution and tarnishment of Plaintiff's AAA Marks by impairing the distinctiveness and harming the reputation of the famous AAA Marks, including through Defendants' display of vulgar and exclamatory profanity in large block letters on the website associated with the AAA.NET domain name.

PARTIES

5. Plaintiff AAA is a not-for-profit, non-stock corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in Heathrow, Florida. AAA provides its more than 50 million members with products and services throughout the United States, including in Pennsylvania. These include, among others, automobile, travel, insurance, financial, and discount products and services.

6. On information and belief, Defendant James M. Van Johns resides at 2915 Pittsburgh Avenue, Erie, Pennsylvania 16508 and/or 900 Highland Avenue, Johnstown, Pennsylvania 15902. On information and belief, Defendant Van Johns individually, and/or collectively with Defendant QTK Internet, Inc., owns and controls the AAA.NET domain name.

7. On information and belief, Defendant QTK Internet, Inc. ("QTK Internet") is a business registered in the Commonwealth of Pennsylvania with its primary place of business at 900 Highland Avenue, Johnstown, Pennsylvania 15902. On information and belief, Defendant Van Johns is the president and sole officer of QTK Internet. On information and belief,

Defendant QTK Internet, individually and/or collectively with Defendant Van Johns, owns and controls the AAA.NET domain name.

8. On information and belief, Damian Macafee is an alias of the Defendants, which Defendants have used to register over 1,300 domain names. On information and belief, the contact information for Damian Macafee that Defendants once provided for the AAA.NET domain name—namely, BCM Box 1768, London, London WC1n 3XXGB—is false. On information and belief, Defendants’ alias Damian Macafee may be contacted at the addresses provided for the other Defendants.

9. UK2 Group Ltd. (“UK2 Group”) is a registrar of domain names. UK2 Group is not a party to this action, but is the registrar of the AAA.NET domain name. UK2 Group is located and has its principal place of business in Gibraltar.

JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction under 15 U.S.C. §§ 1121 and 1125 and under 28 U.S.C. §§ 1331 and 1338 in that this case arises under the trademark laws of the United States, 15 U.S.C. § 1051 *et seq.* The Court has jurisdiction over the state law claims under 28 U.S.C. §§ 1338(b) and 1367(a).

11. Venue is proper under 28 U.S.C. §§ 1391(b) and (c). Defendants are an individual and a corporation both subject to personal jurisdiction within the Commonwealth of Pennsylvania and the Western District of Pennsylvania. Moreover, on information and belief, a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Pennsylvania.

FACTS ENTITLING AAA TO RELIEF

A. AAA's Widespread and Substantial Trademark Use

12. Since its founding over a century ago, AAA has enjoyed a reputation as one of the world's premier client service organizations. That reputation is largely based upon the quality and reliability of the many products and services it offers through its AAA member clubs. AAA has more than 50 million members.

13. Originally formed in 1902 with the dual purposes of combating unfair automobile laws and campaigning for better roads and more reliable vehicles, AAA has substantially expanded from its roots and today offers a broad range of automotive, insurance, financial, travel, and discount products and services.

14. AAA has invested significant resources to develop and foster the reputation, recognition, and goodwill associated with its products and services. AAA's efforts include extensive advertising campaigns and promotional efforts, including on the Internet via AAA-related domain names and websites (*e.g.*, <http://www.aaa.com>), along with retaining that goodwill by maintaining AAA's commitment to quality and reliability.

15. AAA has for decades used the AAA Marks and logo designs in interstate commerce to identify a wide range of products and services. Only AAA member clubs and those businesses that are part of AAA's network of approved service providers are authorized to use or display the AAA Marks. AAA has been selective in permitting other businesses and organizations to use the AAA Marks in connection with their products and services. Consequently, AAA members and the public know that local businesses displaying AAA Marks have been granted permission to do so only because the businesses maintain an excellent reputation for quality, integrity, reliability, and service.

16. As a result of AAA's history and experience providing high quality products and services through its AAA member clubs, and as a result of the continuous and extensive advertising, promotion, and sale of products and services under the AAA Marks, those trademarks have acquired substantial value and fame in the United States and in other countries.

17. Further, the AAA Marks are widely recognized by consumers in this country and abroad and have acquired enormous goodwill as trademarks identifying high quality and reliable products and services. Indeed, the AAA Marks are distinctive such that consumers recognize that goods and services marketed under the AAA Marks originate, or are approved or endorsed by, AAA and the AAA member clubs.

18. AAA has registered with the United States Patent and Trademark Office more than 70 of its AAA Marks, which AAA has used since at least 1902 in connection with the broad array of products and services offered to its members. Among these federal registrations are:

- a) Reg. No. 829,265 for the "AAA" Mark, used in connection with offering automobile association services to motor vehicle owners, motorists, and travelers; arranging discount purchases; placing insurance with underwriters; providing emergency road service; and disseminating travel information and making travel arrangements;
- b) Reg. No. 2,158,654 for the "AAA" Mark & Design, used in connection with offering travel agency services, namely making reservations and booking for transportation; arranging for discount purchases; insurance brokerage services; adjusting and collecting insurance damage claims; financial services; banking services; investment advice counseling services; credit card and auto loan services; travel agency services; and emergency road services;

- c) Reg. No. 3,162,780 for the “AAA” Mark & Design, used in connection with printed maps, magazines, pamphlets and books featuring travel information, traffic safety information, vehicle and vehicle repair information, driver instruction information, and touring and route information; and
- d) Reg. No. 3,316,227, for the “AAA” Mark & Design used in connection with membership in an automobile membership club.

19. Pursuant to 15 U.S.C. § 1057(b), the registration certificates for the AAA trademarks, including those marks identified in paragraphs 18(a)-(d), constitute *prima facie* evidence of the validity of those registrations, of AAA’s ownership of the trademarks set forth therein, and of AAA’s exclusive right to use those trademarks in commerce and in connection with the products and services specified in the registration certificates. Pursuant to 15 U.S.C. § 1065, AAA’s right to use many of its registered AAA Marks, including Reg. Nos. 829,965 and 2,158,654 identified above, have become incontestable.

B. Defendants’ Conduct in Violation of Plaintiff’s Rights In Its AAA Marks.

1. Defendants’ History of Cybersquatting.

- 20. Defendants have an extensive history of domain name cybersquatting.
- 21. Indeed, the National Arbitration Forum (“NAF”) and the World Intellectual Property Organization (“WIPO”) have collectively issued at least 20 decisions ordering Defendants to transfer 23 domain names that were deemed identical or confusingly similar to registered trademarks of third parties, including:

THEGUESSWHO.COM
MAMASANDPAPAS.COM
MICOROSFT.COM
ADM.ORG (Archers-Daniel-Midland Company)
CARREFOUR.NET
FREDRICKSOFHOLLYWOOD.COM
ATTWORLDNET.COM

RESICOM.COM
OXFORD-ONLINE.COM
BASEBALLWEEKLY.COM
CANADIAN-LIVING.COM
POLAROID.NET
B94.COM
AAVS.ORG
POLOMAGAZINE.COM
RADISSONSEATTLE.COM
RADISSONNEWORLEANS.COM
RADISSONMIABCHRESORT.COM
COMFORTINN-BELLINGHAM.COM
ECONOLODGE LAS VEGAS.COM
ECONOLODGE OF RICHMOND.COM
HILTONNEWORLEANS.COM, and BESTWESTON.COM

See Choice Hotels Int'l, Inc. v. Damian Macafee c/o QTK Internet/Name Proxy, NAF Case No. FA1249545 (Apr. 10, 2009); *The Guess Who v. QTK Internet/Name Proxy, James M. van Johns*, WIPO Case No. D2007-0081 (Apr. 5, 2007); *Radisson Hotels Int'l, Inc. v. Damian Macafee d/b/a QTK Internet (Name Proxy)*, NAF Case No. FA652870 (Apr. 19, 2006); *Tom Leykis v. Damian Macafee d/b/a QTK Internet/Name Proxy*, NAF Case No. FA636552 (Mar. 17, 2006); *SAZ Marketing AG v. James 'SAZ' van Johns*, WIPO Case No. D2004-0781 (Nov. 26, 2004); *Mamas & Papas (Holdings) Ltd., Mamas & Papas (Retail) Ltd. v. QTK Internet/Name Proxy*, WIPO Case No. D2004-0496 (Aug. 14, 2004); *Microsoft Corp. v. Damian Macafee*, WIPO Case No. D2004-0027 (Mar. 1, 2004); *Archer-Daniels-Midland Co. v. Damian Macafee*, WIPO Case No. D2003-0198 (Apr. 23, 2003); *Carrefour S.A. v. Damian Macafee*, WIPO Case No. D2002-1060 (Jan. 22, 2003); *Frederick's of Hollywood, Inc. v. Damian Macafee*, WIPO Case No. D2002-0626 (Aug. 22, 2002); *Transcontinental Media Inc. v. Infa Dot Web Services/Mr. James M. Van Johns*, WIPO Case No. D2001-0908 (Sept. 9, 2001); *Polaroid Corp. v. Damian Macafee*, NAF Case No. FA96660 (Mar. 26, 2001); *AT&T Corp. v. Damian Macafee*, WIPO Case No. D2001-1159 (Nov. 19, 2001); *Resicom Corp., Inc. v. Damian Macafee*, WIPO Case No. D2001-

0988 (Sept. 25, 2001); *The Chancellor, Masters, and Scholars of the Univ. of Oxford v. Damian Macafee*, WIPO Case No. D2001-0975 (Sept. 25, 2001); *Westchester Media Co. LP v. Infa dot Net Web Services*, NAF Case No. FA97759 (Aug. 3, 2001); *EZ Pittsburgh, Inc. v. James M. Van Johns*, WIPO Case No. D2001-0612 (Jul. 27, 2001); *American Anti-Vivisection Society v. James M. Van Johns Infa Dot Net Web Services*, NAF Case No. FA95685 (Nov. 6, 2000); and *Media West-GSI, Inc., and Gannett Satellite Information Network, Inc. v. Damian Macafee*, WIPO Case No. D2000-1032 (Oct. 6, 2000).

22. In ordering transfer of the above domain names, the NAF and WIPO panels repeatedly found that Defendants had no legitimate interest or rights in the disputed domain names, that use of the domain names by Defendants as pay-per-click parking pages, similar to the use at issue in this case, does not constitute legitimate use, and that Defendants had acted in bad faith by: (1) using the domain names as pay-per-click advertising websites for commercial gain, creating confusion as to the source, sponsorship, affiliation, or endorsement of the websites; (2) attempting to evade detection by trademark owners seeking to protect their rights by providing false registrant information to domain name registrars, trademark holders, and administrative panels by (a) using aliases such as QTK Internet LLC/Name Proxy and Damian Macafee, (b) falsely holding themselves out as residents of the United Kingdom to evade application of U.S. trademark law, and (c) providing false contact details for the registrant; (3) registering domain names to prevent trademark owners from using the mark in a corresponding domain name, including through passive holding of the domain name; (4) deliberately registering domain names that would capitalize on typographic errors based on registered trademark holders' trademarks; (5) offering to sell domain names to registered

trademark holders for sums in excess of its out-of-pocket expenses; and (6) registering multiple domain names that infringe on the trademark rights of others.

23. On information and belief, as of the date of this Complaint, Defendants' domain name portfolio includes over 1,300 domain names, many of which include other well-known and famous trademarks owned by others. A sampling of domain names identical or confusingly similar to well-known and famous trademarks that, on information and belief, are registered to and controlled by Defendants include:

AVIATIONWEEKLY.COM
BESTWESTERNHOLLYWOOD.COM
BESTWESTERNPLAZAHOTEL.COM
BMGINTERACTIVE.COM
COLLEGE-REPUBLICANS.ORG
COLUMBIAHOMEVIDEO.COM
DRUDGE.NET
EARHTLINK.NET
ELTONJOHN.ORG
ERIEHOLIDAYINN.COM
HOWARDJOHNSONS.COM
LONGBEACHDAYINN.COM
MONNSTER.COM
MONSSTER.COM
MONSTEER.COM
MONSTTER.COM
STUDENTTRAVEL.COM
THE-CRANBERRIES.NET and
VARSITYBLUESMOVIE.COM

Copies of the reports documenting Defendants' registration of these domain names are attached as Exhibits A through C to this Complaint.

24. On information and belief, Defendants are in the business of registering, trafficking, and using domain names in commerce for their commercial gain and at the expense of trademark owners, including Plaintiff AAA.

2. Defendants' Registration and Use of AAA.NET.

25. On information and belief, Defendants, individually or collectively, are the registrants of the AAA.NET domain name and, as such, they can and do control the use of the AAA.NET domain name.

26. According to the records located in the WHOIS registry, Defendants registered the AAA.NET domain name on March 4, 1999.

27. On information and belief, Defendants do not conduct—and have not ever conducted—business under the AAA name or mark. Defendants have no trademark or intellectual property rights in the mark or domain name AAA.NET. Defendants have no intention to conduct business under the AAA mark or the AAA.NET domain name. Rather, on information and belief, Defendants' purpose is either to sell the AAA.NET domain name for profit or to continue to generate profit by passively using the AAA.NET domain name to host a pay-per-click advertising website.

28. On information and belief, at the time Defendants registered the AAA.NET domain name and at all times thereafter, they were well aware of Plaintiff's AAA Marks, that Plaintiff's AAA Marks are famous and valuable, and that AAA.NET is identical to Plaintiff's AAA Marks except for the generic .NET top-level domain. On information and belief, at the time Defendants registered the AAA.NET domain name and at all times thereafter, they were well aware that, because of the fame and value of the AAA Marks, the AAA.NET domain name was also valuable and could be sold for more than the cost of registering the domain name and well in excess of any value the domain name otherwise might have. In fact, Defendants have admitted that they registered the domain name because it is a "very desirable 3-letter term." Defendants do not dispute that the desirability of the AAA.NET domain name is due at least in part to the fame and value of Plaintiff's AAA Marks.

29. On information and belief, at the time Defendants registered the AAA.NET domain name and at all times thereafter, Defendants knew: (a) that its AAA.NET domain name is likely to cause confusion among consumers in that many consumers who want to reach Plaintiff's AAA website would likely assume, erroneously, that the AAA website could be found at AAA.NET and (b) that such consumers would go to Defendants' AAA.NET website because of this mistaken belief. In fact, Defendants acknowledged in at least one response to AAA's notices (discussed in detail below) that its use of the AAA.NET domain name was "producing results that could fit the criterium [sic] you are suggesting"—namely, use of the AAA trademark in the domain name and content of the website in a manner likely to confuse and mislead consumers.

30. On information and belief, at the time Defendants registered the AAA.NET domain name and at all times thereafter, Defendants believed that they would benefit commercially from such confusion in that it would cause consumers to visit their website who otherwise would not have done so. On information and belief, Defendants have in fact benefited commercially from such confusion.

31. In particular, Defendants admit that the primary use of the AAA.NET domain name has been to host pay-per-click advertising websites. Defendants further admit that some of the pay-per-click advertisements appearing in connection with the AAA.NET website are for products and services that compete with those offered by AAA. On information and belief, Defendants receive compensation each time a consumer clicks through the advertising links displayed on Defendants' website.

32. Defendants' registration and use of the AAA.NET domain name has diverted and is likely to continue to divert Internet traffic from AAA's own website, has caused confusion and

is likely to continue to cause confusion among consumers attempting to reach Plaintiff's AAA website, and has frustrated and is likely to continue to frustrate consumers' efforts to reach Plaintiff's AAA website. Indeed, based on Defendants' use of the AAA.NET domain name to host pay-per-click advertisements for AAA's direct competitors, consumers seeking to reach a website affiliated with or endorsed by AAA may instead find Defendants' website, may click through to those competitors' websites and so may never reach a AAA website.

33. Plaintiff's AAA Marks are famous and distinctive, became famous and distinctive before Defendants registered or began using the AAA.NET domain name or any other AAA name or mark, and are entitled to a broad scope of protection. Defendants' registration and use of the AAA.NET domain name has caused and is likely to continue to cause dilution or tarnishment of the famous AAA Marks by impairing their distinctiveness and/or by harming their reputation. Apart from the similarity of AAA.NET to AAA's Marks, Defendants have used the AAA.NET domain name to display a website containing the words "FUCK YOU!" in large green block letters. On information and belief, consumers in search of AAA's website who have instead encountered this vulgar message are and have been left with the mistaken and false impression that AAA has endorsed or approved such a message, thereby diminishing consumers' assessment of AAA and its products and services.

3. Defendants' Failure to Address AAA's Multiple Notices.

34. In or around April 2008, AAA became aware that Defendants had registered and were using the AAA.NET domain name to display a website displaying the words "FUCK YOU" in large green block letters. Upon discovering this offensive and tarnishing use of its trademark, AAA further investigated Defendants' registration and use of the AAA.NET domain name and determined that Defendants were at other times using the AAA.NET domain name to

host a pay-per-click advertising website, offering advertising links to other products and services, some of which compete directly with those offered by AAA.

35. Thereafter, AAA took immediate action to inform Defendants of its concerns. Between April and July 2008, AAA sent three separate notices to Defendants at the email addresses listed in connection with the AAA.NET name contained in the WHOIS registry. In particular, AAA informed Defendants that the AAA.NET domain name and associated websites are likely to mislead consumers who are likely to confuse Defendants and their products and services with those offered by AAA.

36. On July 30, 2008, Defendants responded to AAA's third notice and acknowledged that they were aware that the pay-per-click advertising website associated with the AAA.NET domain name was "producing results that could fit the criterium [sic] you are suggesting." Defendants claimed that they had taken measures to "pre-empt" such results. Defendants, however, persisted in their use of the AAA.NET domain name with full knowledge that such use was likely to cause consumer confusion.

37. Thereafter, AAA's outside counsel made numerous subsequent attempts to contact Defendants regarding their damaging conduct, but those efforts were thwarted by Defendants' intentional provision of material and misleading false contact information to the WHOIS registry. In particular, on January 15, 2009 and February 10, 2009, AAA's counsel attempted to contact Defendants at the email and mailing addresses provided in the WHOIS registry for Damian Macafee (*see* paragraph 8 above). AAA's counsel's letters to Defendants were returned with a notation that the Defendants were "no longer at this address," and the emails received no response. Defendant Van Johns later tacitly admitted in a related administrative proceeding that the contact information provided was false.

38. Having received no response from Defendants to its numerous emails and letters, on May 6, 2009, AAA filed a Uniform Domain Dispute Resolution Policy (“UDRP”) complaint with the National Arbitration Forum (“NAF”).

39. AAA’s UDRP complaint elicited multiple responses by Defendants, which, on information and belief, contained intentionally false and materially misleading representations (many of which were offered under oath in signed declarations), including, for example:

a) that Defendants did not have AAA in mind when they registered the AAA.NET domain name;

b) that Defendants did not register the AAA.NET domain name for the purpose of selling it to AAA;

c) that Defendants did not register the AAA.NET domain name to profit from pay-per-click advertising resulting from confusion by consumers seeking to find AAA’s websites;

d) that Defendants did not register the AAA.NET domain name to prevent AAA from owning a domain name incorporating its trademark;

e) that “at no time have advertisements appeared on [Defendants’] web site related to [AAA’s] goods and services”;

f) that Defendants have no control over the content on the website affiliated with AAA.NET, including the pay-per-click advertisements or the vulgar profanity displayed;

g) that Defendants’ use of “modified contact information” was intended as a means of protecting their privacy; and

h) that Defendant Van Johns is the manager of QTK Internet LLC Name Proxy c/o Damian Macafee” when in fact no such entity exists.

40. On information and belief, Defendants knew or should have known that the above statements and representations were and are false and/or materially misleading.

41. Without benefit of discovery, cross-examination, or any other mechanism for evaluating the credibility of Defendants’ statements, a divided NAF panel issued a split decision denying AAA’s request that the AAA.NET domain name be transferred to it. *See The American Automobile Association, Inc. v. QTK Internet c/o James M. Van Johns*, NAF Case No. FA1261364 (July 25, 2009).

42. Because a full record will show that Defendants have acted willfully and in bad faith in registering and using the AAA.NET domain name, AAA is filing the instant Complaint. Defendants have in no way been prejudiced by the timing of this action.

COUNT I
FEDERAL TRADEMARK CYBERPIRACY
(LANHAM ACT § 43(d), 15 U.S.C. § 1125(d))

43. AAA repeats and realleges the allegations set forth in paragraphs 1–42 above.

44. Defendants’ unauthorized registration and use of the AAA.NET domain name constitutes cyberpiracy and violates Plaintiff’s rights under Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d), because: Plaintiff is the owner of the AAA Marks, which are registered in the United States Patent and Trademark Office and protected under the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), (c) and (d); Plaintiff’s AAA Marks were distinctive and famous at the time of the registration of the AAA.NET domain name by Defendants; the AAA.NET domain name is identical or confusingly similar to Plaintiff’s AAA Marks and is dilutive of Plaintiff’s AAA Marks; and Defendants registered, trafficked in, and/or used (and continue to use) Plaintiff’s

AAA Marks and the AAA.NET domain name in commerce and have done so with a bad faith intent to profit from Plaintiff's famous and distinctive AAA Marks.

45. Plaintiff took action to address these violations as soon as it became aware of Defendants' infringing and tarnishing uses of the AAA Marks and the AAA.NET domain name. Defendants have in no way been prejudiced by the timing of this action.

46. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willful, deliberate, and in bad faith, and Defendants neither believed nor had reasonable grounds to believe that their use of the AAA.NET domain name is a fair use or otherwise lawful.

47. These violations have irreparably damaged AAA, and it has no adequate remedy at law. Unless enjoined, defendants will continue to use the AAA Marks and will continue to use and traffic in the AAA.NET domain name, further injuring AAA and the public.

48. On information and belief, Defendants have received revenues and profits as a result of their Infringing Uses, to which Defendants are not entitled, and AAA has suffered other damages as a result of the infringing uses, for which Defendants are responsible.

COUNT II
FEDERAL TRADEMARK INFRINGEMENT
(LANHAM ACT § 32, 15 U.S.C. § 1114)

49. Plaintiff repeats and realleges the allegations set forth in paragraphs 1–48 above.

50. Defendants' unauthorized use of the AAA Marks and their registration and use of the AAA.NET domain name violate Section 32 of the Lanham Act, 15 U.S.C. § 1114, because they constitute willful and deliberate uses in commerce of reproductions, counterfeits, copies, and/or colorable imitations of AAA's federally registered AAA Marks in connection with the sale, offering for sale, distribution, and/or advertising of goods and services in a manner likely to cause confusion, mistake, and deception.

51. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willful, deliberate, and in bad faith.

52. AAA has been, and continues to be, irreparably damaged by the violation of this statute, and it has no adequate remedy at law. Unless enjoined, Defendants will continue to use the AAA Marks and AAA.NET domain name, further injuring AAA and confusing the public.

53. On information and belief, Defendants received revenues and profits as a result of their unauthorized use of the AAA Marks and the AAA.NET domain name, to which Defendants are not entitled, and AAA has suffered other damages as a result of these unauthorized uses, for which Defendants are responsible.

COUNT III
FEDERAL TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION
(LANHAM ACT § 43(a), 15 U.S.C. § 1125(a))

54. Plaintiff repeats and realleges the allegations set forth in paragraphs 1–53 above.

55. Defendants' unauthorized use of the AAA Marks and their registration and use of the AAA.NET domain name violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), because such uses constitutes willful and deliberate commercial uses of Plaintiff's AAA Marks, which are likely to cause confusion, mistake, and deception as to the origin, affiliation, connection, or association of Defendants with AAA or as to the origin, sponsorship, or approval by Plaintiff of the goods, services, and/or commercial activities promoted by Defendants and their AAA.NET domain name. These uses accordingly constitute unfair competition and infringement of Plaintiff's AAA Marks.

56. On information and belief, Defendants' unlawful conduct as set forth herein is willful, deliberate, and in bad faith.

57. Plaintiff AAA has been, and continues to be, irreparably damaged by the violation of this statute, and it has no adequate remedy at law. Unless enjoined, Defendants will continue

to use the AAA Marks and AAA.NET domain name, further injuring AAA and confusing the public.

58. On information and belief, Defendants have received revenues and profits as a result of their unauthorized uses, to which Defendants are not entitled, and AAA has suffered other damages as a result of the unauthorized uses, for which Defendants are responsible.

COUNT IV
FEDERAL TRADEMARK DILUTION
(LANHAM ACT § 43(c), 15 U.S.C. § 1125(c))

59. Plaintiff repeats and realleges the allegations set forth in paragraphs 1–58 above.

60. Defendants' unauthorized use of the AAA Marks and their registration and use of the AAA.NET domain name violate Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). Plaintiff's AAA Marks are famous. Defendants have made and continue to make commercial use of the AAA Marks in commerce. Defendants' use in commerce of the AAA Marks and AAA.NET domain name, which use commenced after Plaintiff's AAA Marks became famous, is likely to cause, and in fact has caused, dilution of the distinctive quality of Plaintiff's famous AAA Marks by impairing the distinctiveness, and harming and tarnishing the reputation, of the famous AAA Mark.

61. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willful, deliberate, and in bad faith.

62. These violations have irreparably damaged AAA, and it has no adequate remedy at law. Unless enjoined, defendants' unlawful conduct will continue, further injuring AAA and confusing the public.

COUNT V
TRADEMARK INFRINGEMENT AND DILUTION IN VIOLATION OF
PENNSYLVANIA TRADEMARK ACT
(54 Pa. C.S.A. §§ 1101 *et seq.*)

63. Plaintiff repeats and realleges the allegations set forth in paragraphs 1–62 above.

64. Defendants' infringing and tarnishing use of the AAA Marks and their registration and use of the AAA.NET domain name violate the Pennsylvania Trademark Act, 54 Pa. C.S.A. §§ 1101 *et seq.*

65. Defendants' unauthorized use of the AAA Marks and their registration and use of the AAA.NET domain name constitute trademark infringement under the Pennsylvania Trademark Act, 54 Pa. CSA § 1123, because Defendant, without consent of AAA and with the intent to cause confusion or mistake or to deceive, reproduced, counterfeited, copied, and/or colorably imitated Plaintiff's AAA Marks in connection with the sale, offering for sale, and/or advertising of goods or services in a manner likely to cause confusion or mistake or to deceive as to the source or origin of such goods or services.

66. Defendants' unauthorized use of the famous and distinctive AAA Marks constitutes trademark dilution under the Pennsylvania Trademark Act, 54 Pa. C.S.A. § 1124. Defendants have made and continue to make commercial use of Plaintiff's famous AAA Marks in commerce, that use commenced after Plaintiff's AAA Marks became famous, and that use is likely to cause, and in fact has caused, dilution of the distinctive quality of Plaintiff's famous AAA Marks by impairing the distinctiveness, and harming and tarnishing the reputation, of the famous AAA Mark.

67. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willful, deliberate, and in bad faith.

68. These violations have irreparably damaged AAA, and it has no adequate remedy at law. Unless enjoined, Defendants' unlawful conduct will continue, further injuring AAA and confusing the public.

69. On information and belief, Defendants have received revenues and profits as a result of their unauthorized uses, to which Defendants are not entitled, and AAA has suffered other damages as a result of the unauthorized uses, for which Defendants are responsible.

COUNT VI
COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

70. Plaintiff repeats and realleges the allegations set forth in paragraphs 1–69 above.

71. Defendants' foregoing registration and use of the AAA.NET domain name are in violation of the common law, including the common law of the Commonwealth of Pennsylvania, because they constitute willful and deliberate trademark infringement and unfair competition. In particular, Defendants are using the AAA mark and AAA.NET domain name in commerce for their own commercial benefit in a manner that is likely to and in fact has caused confusion or mistake among consumers in the marketplace.

72. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willful, deliberate, and in bad faith.

73. Plaintiff AAA has been, and continues to be, irreparably damaged by these violations, and it has no adequate remedy at law. Unless enjoined, Defendants will continue to use the AAA Marks and AAA.NET domain name, further injuring AAA and confusing the public.

74. On information and belief, Defendants have received revenues and substantial profits as a result of their unauthorized uses, to which Defendants are not entitled, and AAA has suffered other damages as a result of the unauthorized uses, for which Defendants are responsible.

PRAYER FOR RELIEF

Wherefore, AAA prays for the following relief:

1. An order requiring Defendants to transfer to AAA their registration for the domain name AAA.NET and any registrations for other domain names confusingly similar to Plaintiff's AAA Marks.

2. An injunction prohibiting Defendants, their agents, servants, employees, attorneys, and any and all persons in active concert or participation with any of them, from registering, using, and/or trafficking in any domain name that includes the AAA Marks.

3. An injunction prohibiting Defendants, their agents, servants, employees, attorneys, and any and all persons in active concert or participation with any of them, from using without AAA's authorization any of AAA's Marks, logos, and trade names, including, but not limited to, the designation "AAA" or any other name, logo, or mark that includes the designation "AAA" or that is confusingly or deceptively similar to any of AAA's Marks, logos, and trade names, either alone or in conjunction with other words or symbols, as part of any trademark, service mark, logo, trade name, corporate name, assumed name, domain name, sub-domain name, website, or email address, on or in relation to any goods or services sold or provided by the Defendants, or in any other manner.

4. Damages in an amount to be determined at trial and trebled pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, and the Pennsylvania Trademark Act, 54 Pa. C.S.A. § 1125.

5. An award of Defendants' profits wrongfully derived from Defendants' unauthorized use of the AAA Marks and the AAA.NET domain name and from Defendants' unlawful trafficking in the AAA.NET domain name.

6. An award of AAA's attorneys' fees pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, and Pennsylvania law.
7. An award of AAA's costs and expenses incurred in litigating this action.
8. An award of prejudgment interest on all liquidated sums.
9. An award of punitive damages.
10. An order requiring Defendants to file with the Court and serve on Plaintiff's counsel within thirty (30) days after entry of an injunction, a report in writing, under oath, setting forth in detail the manner in which Defendants have complied with the Court's orders.
11. Such additional relief as the Court deems just and proper.

August 21, 2009

Respectfully submitted,

s/W. Patrick Delaney

W. Patrick Delaney

PA 23956

Catherine Moodey Doyle

PA 81743

MacDONALD, ILLIG, JONES & BRITTON LLP

100 State Street, Suite 700

Erie, Pennsylvania 16507-1459

Tel: (814) 870-7658

Fax: (814) 454-4647

Email: wdelaney@mijb.com

cdoyle@mijb.com

Attorneys for Plaintiff

The American Automobile Association, Inc.

OF COUNSEL:

Neil K. Roman

Hope Hamilton

COVINGTON & BURLING LLP

1201 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2401

Tel: (202) 662-6000

Fax: (202) 778-5529

Email: nroman@cov.com

hhamilton@cov.com