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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

AGDIA INC.,

Plaintiff,

v.

JUN Q. XIA and AC DIAGNOSTICS, INC.,

Defendants.

Case No. 3:15-CV-75

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiff Agdia Inc. (“Agdia”) for its Complaint against Defendants Jun Q. Xia (“Xia”) and AC Diagnostics, Inc. (“AC Diagnostics”), states as follows:

Parties, Jurisdiction, and Venue

1. Agdia is an Indiana corporation with its principal place of business in Elkhart, Indiana.
2. Xia is an individual and a resident of Arkansas. He is the Incorporator, President, and Treasurer of AC Diagnostics.
3. AC Diagnostics is a revoked Arkansas corporation with its principal place of business in Fayetteville, Arkansas.
4. This action arises under the trademark laws of the United States and related state law claims, including but not limited to the Lanham Act and the Indiana common law.

5. This Court has jurisdiction over the subject matter of this case under 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338(b), as well as supplemental jurisdiction under 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over the Defendants because, upon information and belief, both Xia and AC Diagnostics do business in this judicial district, they have caused harm in this judicial district, and the conduct complained of in this Complaint has occurred in this judicial district.

7. Venue is proper in this district under 28 U.S.C. § 1391(b).

General Allegations

8. For over 30 years, Agdia has been in the business of supplying testing, test kits, and associated products and services related to the presence of pathogens or quality factors in agricultural products.

9. Agdia is headquartered in Elkhart, Indiana and has a presence around the world through its distributors and business partners.

10. Since at least 1981, Agdia has used the trademark consisting of and incorporating the term AGDIA® (“the Mark”) in connection with its products and services.

11. The Mark is the subject of United States Trademark Registration No. 1747994 for use in connection with diagnostic kits and other solutions used to test for the presence of pathogens or for quality factors of agricultural products. A copy of the U.S. Registration and the most recent renewal is attached as **EXHIBIT 1**.

12. Due to its reputation for technological innovation and product quality, Agdia has attained significant goodwill among customers in the United States and around the world. The Mark and the goodwill of the business associated with it are of inestimable value to Agdia.

13. Agdia displays the Mark on its products, product literature, and advertising materials in order to assure customers that they are buying genuine Agdia products and services, which customers have come to recognize as representative of Agdia's superior quality, service, and reliability.

14. Xia was at one time an employee of Agdia. From his employment, Xia became familiar with Agdia's business, products and services.

15. Xia left Agdia's employment in 2001. At that time, he began violating the terms of his non-competition agreement with Agdia and misappropriating Agdia's trade secrets.

16. Agdia filed suit against Xia and others in this Court in 2001. That matter was resolved with the entry of a *Stipulated Permanent Injunction Order* on January 7, 2002, signed by the Honorable Allen Sharp, in Case No. 3:01-CV-0781.

17. Sometime after the conclusion of the 2001 lawsuit, Xia formed AC Diagnostics to engage in business competitive with that of Agdia. The AC Diagnostics website describes its business as being "a provider of quality diagnostic products," including "diagnostic kits and reagents for detection of more than 300 plant pathogens," along with related products and services.

18. The products and services offered by AC Diagnostics directly compete with the products and services offered by Agdia.

19. Through the AC Diagnostics website, Xia is deceptively and unfairly trading on Agdia's name by hiding the Mark, followed by the phrase "plant diagnostics," in the meta tags of nearly every product page associated with that site.

20. For example, the "Company Profiles" section of the AC Diagnostics website, available at <http://www.acdiainc.com/Comprofil.htm>, lists general information about the company. When the page is viewed in a web browser, it appears that there is nothing below the company contact information. But if the page is printed, it reveals more text at the bottom of the document, hidden as white text on a white background. (See printout attached as **EXHIBIT 2**). Similarly, lines 115 through 135 of the source code for that webpage (attached **EXHIBIT 3**), show both the inclusion of the hidden words and the obscuring of them by coding them to be colored white.

21. In the middle of these hidden words (first line of small text on Ex. 2; line # 119 of Ex. 4), is the phrase "Agdia, Plant diagnostics."

22. The "Company Profiles" page is just one example from www.acdiainc.com. Based on Agdia's investigation, dozens of individual pages from that site have the word "Agdia" hidden in white text on a white background and in source code meta tags. In most cases, the word appears hidden on a "product page" describing the technical features of a testing product that directly competes with

products offered by Agdia. The chart attached as **EXHIBIT 4** list no less than 200 separate URLs from the Defendants' website that deceptively uses the Mark.

23. Agdia has not licensed the use of the Mark to Xia, AC Diagnostics, or anyone affiliated with them.

24. AC Diagnostics and Xia know of Agdia's rights to the Mark, and they are willfully using the Mark to advertise, distribute, and sell their competing products that have no affiliation with Agdia.

25. This unauthorized use of the Mark and the associated false and misleading advertising, which are used in interstate commerce, are likely to cause, and have caused, confusion that Defendants' products are somehow endorsed by or affiliated with Agdia.

26. The conduct of AC Diagnostics and Xia has caused and is causing irreparable damage to Agdia's reputation and the goodwill associated with the Mark.

27. Defendants' conduct is willful.

28. Agdia has no adequate remedy at law.

Count I

29. Agdia reasserts the allegations of Paragraphs 1- 28.

30. Defendants' willful, intentional, unlawful and unauthorized use in commerce of the Mark constitutes a violation of 15 U.S.C. § 1114(1). Agdia is entitled to recover actual and treble damages, an accounting for Defendants' profits,

attorneys' fees and the costs of this litigation according to 15 U.S.C. § 1117, as well as injunctive relief under 15 U.S.C. § 1116.

Count II

31. Agdia reasserts the allegations of Count I.

32. Defendants' intentional, unlawful, and unauthorized use in commerce of the Mark, and Defendants' false advertising, as described above, is likely to cause confusion, mistake or deception as to origin, sponsorship, or approval of Defendants' products and therefore constitutes false designation of origin and false advertising in violation of 15 U.S.C. § 1125(a).

33. Agdia is entitled to recover actual and treble damages, Defendants' profits, Agdia's attorneys' fees, and the cost of this litigation—all according to 15 U.S.C. § 1117, as well as injunctive relief according to 15 U.S.C. § 1116.

Count III

34. Agdia reasserts the allegations of Counts I and II.

35. The second-level domain used by Defendants—"acdiainc.com"—is confusingly similar to the Mark. In fact, "acdiainc" is just one letter off from – and when spoken aloud is nearly indistinguishable from – Agdia's legal name, "Agdia Inc."

36. Defendants are using this confusingly similar web address with the bad faith intent to profit from the Mark.

37. As a result of Defendants' cyberpiracy, Agdia is entitled to recover actual and treble damages, Defendants' profits, Agdia's attorneys' fees, and the cost

of this litigation—all according to 15 U.S.C. § 1117, as well as injunctive relief according to 15 U.S.C. § 1116 and forfeiture or cancellation of the domain name under 15 U.S.C. § 1125(d)(1)(C).

Count IV

38. Agdia reasserts the allegations of Counts I through III.

39. By engaging in the conduct described above, Xia and AC Diagnostics have knowingly engaged in the unlawful passing off of their products as being Agdia products or otherwise affiliated with Agdia, in violation of the common law of unfair competition in the State of Indiana.

40. Agdia is entitled to recover actual and punitive damages for Defendants' unfair competition.

Count V

41. Agdia reasserts the allegations of Counts I through IV.

42. The conduct of Defendants described above violates and infringes Agdia's common law rights in the Mark in violation of the common law of the State of Indiana.

43. Agdia is entitled to recover actual and punitive damages for Defendants' infringement.

Prayer for Relief

THEREFORE, Agdia respectfully requests the Court to enter judgment in its favor and against the Defendants as follows:

- (a) Preliminarily and permanently enjoining Defendants and all others in active concert with them from using the Mark in any manner without Agdia's authorization.
- (b) Preliminarily and permanently enjoining Defendants and all others in active concert with them from any other act likely to cause confusion as to the sponsorship, affiliation, or endorsement of Defendants or their products by or with Agdia.
- (c) Ordering the cancellation of the domain www.acdiainc.com and/or its transfer to Agdia.
- (d) Directing Defendants and all others acting in concert with them to account and pay over to Agdia all revenues realized by them from their use of the Mark or other tortious or unlawful conduct.
- (e) Directing Defendants to pay to Agdia all damages suffered due to Defendants' actions.
- (f) Directing Defendants to pay treble and punitive damages, so as to deter Defendants and others similarly situated from like conduct in the future.
- (g) Awarding Agdia the costs of this action, including its reasonable attorneys' fees incurred.
- (h) And granting all other appropriate relief.

Jury Demand

Agdia respectfully demands trial by jury on all issues so triable.

Respectfully submitted,

/s/ Michael J. Hays

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