

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION



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FREEDOM MORTGAGE CORPORATION,	)	
a New Jersey corporation,	)	
	)	
Plaintiff,	)	CASE NO. 4:23-cv-00022
	)	
vs.	)	JURY DEMAND
	)	
FREEDOMPOINT, LLC,	)	
a Kentucky limited liability company,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, Freedom Mortgage Corporation (“Freedom Mortgage” or “Plaintiff”), a New Jersey corporation, by and through undersigned counsel, hereby files its Complaint against Freedompoint, LLC (“Freedompoint” or “Defendant”) and alleges as follows:

**JURISDICTION**

1. This is an action for injunctive and other relief under the Federal Trademark Act, 15 U.S.C. §1051, et seq. (“Lanham Act”), particularly 15 U.S.C. §§1114 and 1125(a), for trademark infringement and related unfair competition. Plaintiff asserts corresponding claims in accordance with common law rights pursuant to the Indiana Trademark Act, I.C. § 24-2-1-15, for trademark infringement and unfair competition.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1338(a) and 1338(b). This Court also has jurisdiction pursuant to 15 U.S.C. §1121 and the doctrine of supplemental jurisdiction, as set forth in 28 U.S.C. §1367.

3. Upon information and belief, personal jurisdiction under Indiana's Long Arm Statute, Ind. R. Trial P. 4.4, is proper in that:

a. Defendant operates, conducts, engages in, or carries on a business or business venture in this State, and the Southern District of Indiana;

b. Defendant has committed tortious acts within this State, and the Southern District of Indiana, including the infringement set forth herein;

c. Defendant has caused injury to the property of Plaintiff within this state, and the Southern District of Indiana, namely Plaintiff's trademarks as set forth herein, arising out of acts or omissions by Defendant while, at or about the time of the injury, the Defendant was engaged in solicitation or service activities within this State, and the Southern District of Indiana; and/or

d. Defendant is engaged in substantial and not isolated activity within this State, and the Southern District of Indiana.

#### **VENUE**

4. Venue is proper under 28 U.S.C. §1391(b) in that, upon information and belief, a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of Indiana. Venue is also proper under 28 U.S.C. §1391(b) because, upon information and belief, a substantial part of property that is the subject of the action is situated in the Southern District of Indiana. Furthermore, upon information and belief, Defendant markets and advertises the infringing services in the Southern District of Indiana and do business in the Southern District of Indiana. Lastly, venue is proper under 28 U.S.C. §1391(b) in that Defendant is subject to the Court's personal jurisdiction in the Southern District of Indiana, for the reasons set forth above.

#### **THE PARTIES**

5. Plaintiff is a corporation duly organized and existing under the laws of New Jersey, having an address of 951 Yamato Road, Suite 175, Boca Raton, Florida 33431.

6. Upon information and belief, Defendant is a limited liability company duly organized and existing under the laws of Kentucky, having an address of 4206 Charlestown Road, New Albany, Indiana 47150.

**PLAINTIFF'S FREEDOM MORTGAGE MARKS AND INCONTESTABLE REGISTRATIONS**


7. Plaintiff is a top mortgage lender specializing in mortgages to help consumers buy or refinance homes.

8. Plaintiff is the owner of a family of FREEDOM trademarks, including the well-known trademark FREEDOM MORTGAGE.

9. Plaintiff adopted and commenced use in commerce of the FREEDOM MORTGAGE mark at least as early as December 1992.

10. Plaintiff is the owner of the following valid and subsisting U.S. trademark registrations:

a. U.S. Registration No. 4,631,944 for FREEDOM MORTGAGE for use in connection with “mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans” in International Class 036 with a date of first use in commerce at least as early as December 28, 1992; and

b. U.S. Registration No. 4,631,946 for  FREEDOM MORTGAGE for use in connection with “mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans” in International Class 036 with a date of first use in commerce at least as early as November 1, 1996 (collectively, and together with the common law trademarks the “FREEDOM MORTGAGE Marks”). See Composite Exhibit A.

11. Plaintiff's U.S. Registrations Nos. 4,631,944 and 4,631,946 ("Plaintiff's Registrations") are incontestable in accordance with §§15 and 33(b) of the Lanham Act, 15 U.S.C. §§1065 and 1115(b).

12. Plaintiff's wholly owned subsidiary, Roundpoint Mortgage Servicing Corporation ("Roundpoint"), also a top mortgage lender, is the owner of the well-known marks ROUNDPOINT and ROUNDPOINT EXCHANGE (the "ROUNDPOINT Marks"). The well-known ROUNDPOINT Marks have been continuously used in commerce for approximately 13 years and have also earned an excellent reputation in the industry and among consumers.

13. Roundpoint is the owner of U.S. Registration No. 3,595,914 for ROUNDPOINT for use in connection with "financial services, namely, mortgage planning; mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans; mortgage lending; mortgage procurement for others; real estate brokerage; real estate agencies; real estate appraisal; home appraisal services; loan financing; insurance agency services" in International Class 036, with a date of first use in commerce at least as early as January 12, 2009 and U.S. Registration No. 5,172,847 for ROUNDPOINT EXCHANGE for "loan financing; mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans; mortgage lending; mortgage procurement for others" in International Class 036 with a date of first use in commerce at least as early as December 31, 2013 (the "ROUNDPOINT Registrations"). See Composite Exhibit B.

14. Roundpoint's U.S. Registration No. 3,595,914 is incontestable in accordance with §§15 and 33(b) of the Lanham Act, 15 U.S.C. §§1065 and 1115(b).

15. Long prior to any date upon which Defendant can rely, Plaintiff adopted and used in commerce the FREEDOM MORTGAGE Marks for "mortgage banking services, namely,

origination, acquisition, servicing, securitization and brokerage of mortgage loans” (“Plaintiff’s Services”) and Roundpoint adopted and used in commerce the ROUNDPOINT Marks for identical or related services (“Roundpoint’s Services”).

16. Since its adoption of the FREEDOM MORTGAGE Marks, Plaintiff has continuously used its FREEDOM MORTGAGE Marks in commerce for and in connection with Plaintiff’s Services and has not abandoned the marks. Therefore, Plaintiff has priority of use in the FREEDOM MORTGAGE Marks.


17. Since its adoption of the ROUNDPOINT Marks, Roundpoint has continuously used its ROUNDPOINT Marks in commerce for and in connection with Roundpoint’s Services and has not abandoned the marks. Therefore, Roundpoint has priority of use in the ROUNDPOINT Marks.

18. Plaintiff has expended considerable time, money, and effort in promoting Plaintiff’s Services under the FREEDOM MORTGAGE Marks. The strength of the FREEDOM MORTGAGE Marks has grown such that Plaintiff has established exceedingly valuable goodwill in the FREEDOM MORTGAGE Marks.

19. Plaintiff and/or Roundpoint have expended considerable time, money, and effort in promoting Roundpoint’s Services under the ROUNDPOINT Marks. The strength of the ROUNDPOINT Marks has grown such that Plaintiff and/or Roundpoint have established exceedingly valuable goodwill in the ROUNDPOINT Marks.


20. Since long prior to the acts of Defendant complained of herein, the FREEDOM MORTGAGE Marks and ROUNDPOINT Marks have been readily recognizable by the public as associated exclusively with Plaintiff and its wholly owned subsidiary Roundpoint by virtue of long and continuous use and has achieved a secondary meaning to the consuming public.

### **DEFENDANT’S INFRINGING ACTIVITY**

21. Long subsequent to Plaintiff’s adoption and use of the well-known FREEDOM MORTGAGE Marks in commerce, Defendant, upon information and belief, commenced selling, advertising and marketing mortgage banking services, designated with the word mark “FREEDOMPOINT” as well as the following stylized FREEDOMPOINT MORTGAGE & Design mark:  FREEDOMPOINT MORTGAGE (the “Infringing Marks”).

22. Defendant’s unlawful use of the Infringing Marks has continued in interstate commerce in the United States, including in the Southern District of Indiana, where the Defendant uses the Infringing Marks in connection with mortgage banking services that are sold to the consuming public and advertised on its website at [www.freedompointmortgage.com](http://www.freedompointmortgage.com).

23. Defendant has utilized and continue to utilize the Infringing Marks in interstate commerce on and in connection with services, product packaging, business materials, invoices, sales receipts, advertising, websites, and social media, without Plaintiff’s permission, consent, or authorization.

24. Further, Defendant applied with the U.S. Patent and Trademark Office, and obtained subsequent registrations for, the Infringing Marks, namely U.S. Registration No. 6,472,896 for FREEDOMPOINT filed on October 16, 2020, with a claimed date of first use in commerce of April 2, 2021 and a registration date of August 31, 2021, and U.S. Registration No. 6,824,816 for  FREEDOMPOINT MORTGAGE filed on July 21, 2021 with a claimed date of first use in commerce of April 2, 2021 and a registration date of August 23, 2022 (collectively “Defendant’s Registrations”), both for use in connection with “Mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans” in International Class 036 (“Defendant’s Services”).

25. On October 27, 2022, Plaintiff filed a Consolidated Petition to Cancel the Defendant's Registrations on the basis of priority and likelihood of confusion before the United States Patent and Trademark Office's Trademark Trial and Appeal Board ("TTAB").

26. The Infringing Marks are a combination of the well-known FREEDOM MORTGAGE Marks and ROUNDPOINT Marks.

27. Defendant's Services are identical or highly related to Plaintiff's Services.

28. Defendant's depiction of the term "FREEDOM" with the term "POINT" used in connection with Defendant's Services may be likely to be confused as a secondary source indicator for Plaintiff and Plaintiff's Services.

29. Upon information and belief, Defendant's Services are sold to the same consumers as Plaintiff's Services and Roundpoint's Services.

30. Defendant's identification of services does not place any restrictions on likely trade channels and, therefore, Defendant's Services may be sold through the same or similar trade channels as Plaintiff's Services and Roundpoint's Services.

31. Defendant's advertising methods or channels are the same or highly similar to Plaintiff's advertising methods or channels because the parties use the same forums and media to advertise, namely websites and Facebook.

32. Defendant's Infringing Marks are likely to cause confusion, mistake, or deception as to the source of origin, sponsorship, or approval of Defendant's Services.

33. Such confusion, mistake, and/or deception are likely to damage and injure the purchasing public and Plaintiff.

34. Defendant's registrations and use of the Infringing Marks are without the consent or approval of Plaintiff.

35. The acts of Defendant have been willful, by virtue of at least: (a) its actual knowledge of the Plaintiff's rights in and to the FREEDOM MORTGAGE Marks through a business relationship between the parties; (b) by combining both the FREEDOM MORTGAGE and ROUNDPOINT Marks in adopting and using the FREEDOMPOINT Marks; and (c) its refusal to cease-and-desist from the use of the Infringing Marks and other acts of infringement, as demonstrated by its outright disregard for Plaintiff's cease-and-desist letter and numerous email correspondence.

36. The acts of Defendant complained of herein are in total disregard of Plaintiff's rights and were commenced, and it is believed will continue, in spite of Defendant's knowledge that its use of the Infringing Marks is in direct contravention of Plaintiff's rights.

37. Defendant intended to infringe on the FREEDOM MORTGAGE Marks, for at least the reasons that Defendant knew about Plaintiff and its FREEDOM MORTGAGE Marks, intentionally ignored the potential for infringement and because the Defendant wholly ignored Plaintiff's cease-and-desist demand.

38. Upon information and belief, Defendant has enjoyed and continue to enjoy financial gain and profit from the sale and marketing of the services that utilize the Infringing Marks. Such use is likely to cause confusion, to cause mistake, and to deceive customers and prospective customers as to the origin or sponsorship of the Defendant's services and to cause them to falsely believe that said services are the services of Plaintiff, or are sponsored, licensed, associated, authorized, or approved by Plaintiff, all to the detriment of Plaintiff, the trade, and the public.

39. Plaintiff has been damaged by Defendant's acts of infringement and unfair competition.



40. Plaintiff has no adequate remedy at law.

**COUNT I**  
**FEDERAL TRADEMARK INFRINGEMENT, 15 U.S.C. §1114(1)**

41. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40 as if fully set forth herein.

42. With full knowledge and awareness of Plaintiff's ownership and prior use of the FREEDOM MORTGAGE Marks and the Plaintiff's Registrations, as well as Roundpoint's ownership and prior use of the ROUNDPOINT Marks and corresponding Roundpoint Registrations, Defendant has willfully used, is using, and will continue to use the Infringing Marks on identical or highly related services for which Plaintiff's Registrations are issued, in a manner that is likely to cause confusion, reverse confusion, or to cause mistake, or to deceive.

43. Defendant's acts constitute infringement, use of a confusingly similar mark, which is identical with, or substantially indistinguishable from, Plaintiff's Registrations in violation of and pursuant to 15 U.S.C. §1114.

44. Defendant's acts have harmed Plaintiff's reputation, damaged Plaintiff's goodwill, and upon information and belief, have and will continue to divert sales from Plaintiff, and create the impression that Plaintiff is an infringer when in fact Defendant is the infringer. Defendant's aforesaid acts have caused and will cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will continue, and Plaintiff will continue to suffer great and irreparable injury.

45. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that the Court grant the Prayer for Relief set forth below.

**COUNT II**  
**FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN,**  
**15 U.S.C. §1125(a)**

46. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40 as if fully set forth herein.

47. Defendant's intentional and unlawful use in commerce of the Infringing Marks constitutes use in commerce of a word, term, name, symbol, or device, or a combination thereof, or a false designation of origin, false or misleading description, and false representation that is likely to cause confusion, reverse confusion, or to cause mistake, or to deceive as to affiliation, connection, or association of Defendant with Plaintiff, or as to origin, sponsorship or approval of Defendant's services or commercial activities by Plaintiff, or to cause reverse confusion thereof.

48. Defendant's aforesaid acts and use of the Infringing Marks constitutes unfair competition in violation of §43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).


49. Defendant's aforesaid acts have caused and will cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will continue, and Plaintiff will continue to suffer great and irreparable injury.

50. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that the Court grant the Prayer for Relief set forth below.

**COUNT III**  
**TRADEMARK INFRINGEMENT UNDER INDIANA COMMON LAW**

51. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40, as if fully set forth herein.

52. Plaintiff owns and enjoys common law trademark rights in the marks “FREEDOM MORTGAGE” and  in the State of Indiana in conjunction with mortgage banking services, which rights are superior to any rights that Defendant may claim in and to said trademark.

53. Defendant has used, in connection with the sale of services, a term or name that is false and misleading and likely to cause confusion or cause mistake or deception as to the affiliation, connection or association of Defendant with Plaintiff as to the origin, sponsorship or approval of services or commercial activities in violation of common law.

54. The sale by Defendant of mortgage banking services, including origination, acquisition, servicing, securitization and brokerage of mortgage loans bearing the Infringing Marks in the State of Indiana is likely to cause and has caused confusion as to the source of its services in that purchasers thereof will be likely to associate or have associated such services as originating with Plaintiff, all to the detriment of the Plaintiff.

55. Defendant’s acts have harmed Plaintiff’s reputation, damaged Plaintiff’s goodwill, and upon information and belief, have diverted sales from Plaintiff and create the impression that Plaintiff is an infringer when in fact Defendant is the infringer.

56. Defendant’s aforesaid acts have caused and will continue to cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, they will continue, and Plaintiff will continue to suffer great and irreparable injury.

57. Defendant’s aforesaid acts constitute trademark infringement, unfair competition, misappropriation, and misuse of the FREEDOM MORTGAGE Marks, palming-off, passing-off

and/or reverse-passing off against Plaintiff, and unjust enrichment of Defendant, all in violation of Plaintiff's rights at common law and under the law of the State of Indiana.

58. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that the Court grant the Prayer for Relief set forth below.

**COUNT IV**  
**UNFAIR COMPETITION UNDER INDIANA COMMON LAW**

59. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40, as if fully set forth herein.

60. Plaintiff first adopted and used the FREEDOM MORTGAGE Marks in Plaintiff's markets or trade areas, as a means of establishing goodwill and reputation and to identify particular services rendered or offered by the Plaintiff and to distinguish them from similar services rendered or offered by others.

61. Through its association with such services, the FREEDOM MORTGAGE Marks have, by actual usage, served to identify the Plaintiff as the source of the services.

62. Defendant has commenced the use of an identical or confusingly similar mark, to identify services rendered by it in the same trade areas in which the Plaintiff has already established its trademarks.

63. As a consequence of Defendant's actions, customer confusion of source or as to the sponsorship of the services offered by the Defendant is likely.

64. Defendant's aforesaid acts constitute unfair competition in violation of Plaintiff's rights at common law and under the law of the State of Indiana.

65. By reason of Defendant's actions alleged herein, Plaintiff has suffered damage to the goodwill associated with the FREEDOM MORTGAGE Marks and has suffered irreparable harm.


66. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that the Court grant the Prayer for Relief set forth below.

**COUNT V**  
**CANCELLATION OF U.S. REGISTRATION NOS. 6,472,896 and 6,824,816,**  
**15 U.S.C. §§ 1064 and 1119**

67. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40, as if fully set forth herein.

68. The first registration sought to be cancelled is U.S. Registration No. 6,472,896 for the mark FREEDOMPOINT filed on October 16, 2020, with a claimed date of first use in commerce of April 2, 2021 and a registration date of August 31, 2021, for use in connection with “Mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans” in International Class 036.


69. The second registration sought to be cancelled is U.S. Registration No. 6,824,816 for the mark  later filed on July 21, 2021 with a claimed date of first use in commerce of April 2, 2021 and a registration date of August 23, also for use in connection with “Mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans” in International Class 036.

70. Long prior to Defendant's filing dates and claimed dates of first use in commerce, Plaintiff adopted the Plaintiff's Marks.

71. Plaintiff is the owner of the valid and subsisting U.S. trademark registrations for the Plaintiff's Marks, including:

- a. U.S. Registration No. 4,631,944 for FREEDOM MORTGAGE for use in connection with “mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans” in International Class

036 with a date of first use in commerce at least as early as December 28, 1992;  
and

- b. U.S. Registration No. 4,631,946 for  for use in connection with “mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans” in International Class 036 with a date of first use in commerce at least as early as November 1, 1996.

72. Since their adoption and first use in commerce, Plaintiff has continuously used the above-listed FREEDOM MORTGAGE Marks in commerce for and in connection with its services, and has not abandoned the marks.

73. Similarly, since their adoption and first use in commerce, Plaintiff’s wholly owned subsidiary, Roundpoint, has continuously used the ROUNDPOINT Marks, namely U.S. Registration No. 3,595,914 for ROUNDPOINT and U.S. Registration No. 5,172,847 for ROUNDPOINT EXCHANGE, and has not abandoned the marks.

74. Plaintiff has common law rights in the FREEDOM MORTGAGE Marks, and has had common law rights in the FREEDOM MORTGAGE Marks long prior to Defendant's filing date and claimed date of first use in commerce.

75. Likewise, Roundpoint has common law rights in the ROUNDPOINT Marks, and has had common law rights in the ROUNDPOINT Marks long prior to Defendant's filing date and claimed date of first use in commerce.

76. Plaintiff and Roundpoint have expended considerable time, money, and effort in promoting their services under the respective FREEDOM MORTGAGE Marks and ROUNDPOINT Marks.

77. The strength of the FREEDOM MORTGAGE Marks and the ROUNDPOINT Marks has grown such that Plaintiff and Roundpoint have established exceedingly valuable goodwill in the marks.

78. The Infringing Marks identified in U.S. Registration Nos. 6,472,896 and 6,824,816 are identical or highly similar to the FREEDOM MORTGAGE Marks and the ROUNDPOINT Marks.

79. The services identified in U.S. Registration Nos. 6,472,896 and 6,824,816 are identical to, substantially similar to, complimentary to, or within the normal expansion of, the services identified in Plaintiff's Registrations and the ROUNDPOINT Registrations, as well as, the goods and services offered by the Plaintiff and Roundpoint in commerce in connection with the FREEDOM MORTGAGE Marks and the ROUNDPOINT Marks.

80. Upon information and belief, the services identified in U.S. Registration Nos. 6,472,896 and 6,824,816 would be marketed, advertised, offered for sale, or sold through the same channels of trade in connection with which the Plaintiff's Services and Roundpoint's Services are marketed, advertised, offered for sale, or sold.

81. There is a likelihood of confusion between the FREEDOM MORTGAGE Marks and the ROUNDPOINT Marks for their services, and the Defendant's Infringing Marks for the services set forth in U.S. Registration Nos. 6,472,896 and 6,824,816.

82. Plaintiff is damaged by Defendant's U.S. Registration Nos. 6,472,896 and 6,824,816, for the reasons set forth herein.

83. If the Defendant is permitted to maintain registrations for the marks shown in U.S. Registration Nos. 6,472,896 and 6,824,816, Plaintiff will be damaged, and it will lead to confusion,

mistake, and deception among the consuming public and trade, all in violation of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Plaintiff prays that the Court grant the Prayer for Relief set forth below.

**COUNT VI**  
**DECEPTION, INDIANA CODE § 35-43-5-3(a)(6)**

84. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40 as if fully set forth herein.

85. By engaging and continuing to engage in the knowing, intentional, willful, and malicious actions described herein, Defendant has disseminated to the general public information that Defendant knows is false, misleading, or deceptive, with the intent to promote Defendant's business interests and/or commercial interests.

86. Defendants have committed deception under Indiana Code § 35-43-5-3(a)(6).

87. As a direct and proximate result of Defendant's actions, Defendant has caused damage to Plaintiff's business reputation and the goodwill associated with the FREEDOM MORTGAGE Marks.

88. Defendant committed and continues to commit these acts of deception knowingly, willfully, deliberately, and maliciously, with the intent to cause confusion and mistake and to deceive. Accordingly, Plaintiff is entitled to a monetary recovery in an amount to be proven at trial and Plaintiff seeks statutory remedies under the Indiana Crime Victims Relief Act, Indiana Code § 34-24-3-1 for Defendant's violation of § 35-43-5-3(a)(6), including but not limited to treble damages, costs, and attorneys' fees.

WHEREFORE, Plaintiff prays that the Court grant the Prayer for Relief set forth below.



**COUNT VII**  
**CONVERSION, INDIANA CODE § 35-43-4-3**

89. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40 as if fully set forth herein.

90. In connection with its unlawful activities, Defendant knowingly and intentionally exerted and continues to exert unauthorized control over the property of Plaintiff, namely the FREEDOM MORTGAGE Marks and the goodwill associated with the FREEDOM MORTGAGE Marks, by making unauthorized use of the same or confusingly similar marks in the advertisement and promotion of Defendant's own goods and services.

91. Plaintiff's goodwill associated with the FREEDOM MORTGAGE Marks is valuable property.

92. The FREEDOM MORTGAGE Marks are valuable property.

93. As the owner of the FREEDOM MORTGAGE Marks and the associated goodwill, Plaintiff alone has the right to control and authorize the use of the FREEDOM MORTGAGE Marks and the associated goodwill.

94. Defendant obtained, took, encumbered, and/or possessed all or a valuable part of Plaintiff's property by making unauthorized use of the same in the advertisement and promotion of its own goods and services.

95. In connection with its unlawful activities, Defendant obtained, took, encumbered, and/or possessed all or a valuable part of Plaintiff's property for its own use and benefit and in exclusion and defiance of Plaintiff's property interests.

96. Defendant promoted and continues to promote its own goods and services by infringing the FREEDOM MORTGAGE Marks in a manner or to an extent other than that which Plaintiff consented, because Plaintiff granted no such consent.

97. In connection with its unlawful activities in Indiana, Defendant misappropriated the FREEDOM MORTGAGE Marks and associated goodwill for its own use and benefit and interfered with Plaintiff's control over the same.

98. As a direct and proximate result of Defendant's actions described herein, Plaintiff has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial, and Plaintiff seeks statutory remedies under the Indiana Crime Victims Relief Act, Indiana Code § 34-24-3-1 for Defendant's violations of Indiana Code § 35-43-4-3, including but not limited to treble damages, costs, and attorneys' fees.

WHEREFORE, Plaintiff prays that the Court grant the Prayer for Relief set forth below.

**COUNT VIII**  
**FORGERY, INDIANA CODE § 35-43-5-2(b)**

99. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40 as if fully set forth herein.

100. All advertisements and promotional materials associated with Defendant's goods and services that make infringing use of the FREEDOM MORTGAGE Marks are written instruments under Indiana Code § 35-43-5-1(s).

101. In connection with its unlawful activities, Defendant, with the intent to defraud, made, uttered, and/or possessed written instruments, namely advertisements and promotional materials in such a manner that they purport to have been made by Plaintiff.

102. Defendant was not given the authority necessary to take the actions described herein.

103. As a direct and proximate result of Defendant's actions described herein, Plaintiff has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial, and Plaintiff seeks statutory remedies under the Indiana Crime Victims Relief Act, Indiana Code § 34-

24-3-1 for Defendant's violations of Indiana Code § 35-43-5-2(b), including but not limited to treble damages, costs, and attorneys' fees.

WHEREFORE, Plaintiff prays that the Court grant the Prayer for Relief set forth below.

**COUNT IX**  
**COUNTERFEITING, INDIANA CODE § 35-43-5-2(a)**

99. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40 as if fully set forth herein.

100. All advertisements and promotional materials associated with Defendant's goods and services that make infringing use of the FREEDOM MORTGAGE Marks are written instruments under Indiana Code § 35-43-5-1(s).

101. In connection with its unlawful activities, Defendant intentionally made, uttered, and/or possessed written instruments, namely advertisements and promotional materials in such a manner that they purport to have been made by Plaintiff.

102. Defendant was not given the authority necessary to take the actions described herein.

103. As a direct and proximate result of Defendant's actions described herein, Plaintiff has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial, and Plaintiff seeks statutory remedies under the Indiana Crime Victims Relief Act, Indiana Code § 34-24-3-1 for Defendant's violations of Indiana Code § 35-43-5-2(a), including but not limited to treble damages, costs, and attorneys' fees.

WHEREFORE, Plaintiff prays that the Court grant the Prayer for Relief set forth below.

**COUNT X**  
**THEFT, INDIANA CODE § 35-43-4-2**

104. Plaintiff incorporates herein each and every allegation set forth in Paragraphs 1 through 40 as if fully set forth herein.

105. In connection with its unlawful activities, Defendant knowingly and intentionally exerted and continues to exert unauthorized control over the property of Plaintiff, namely the FREEDOM MORTGAGE Marks and the goodwill associated with the FREEDOM MORTGAGE Marks, by making unauthorized use of the same or confusingly similar marks in the advertisement and promotion of Defendant's own goods and services.

106. Plaintiff's goodwill associated with the FREEDOM MORTGAGE Marks is valuable property.

107. The FREEDOM MORTGAGE Marks are valuable property.

108. Defendant intended to deprive Plaintiff of a part of the value of the FREEDOM MORTGAGE Marks and associated goodwill by its actions described herein.

109. As the owner of the FREEDOM MORTGAGE Marks and the associated goodwill, Plaintiff alone has the right to control and authorize the use of the FREEDOM MORTGAGE Marks and the associated goodwill.

110. Defendant obtained, took, encumbered, and/or possessed all or a valuable part of Plaintiff's property by making unauthorized use of the same in the advertisement and promotion of its own goods and services.

111. In connection with its unlawful activities, Defendant obtained, took, encumbered, and/or possessed all or a valuable part of Plaintiff's property for its own use and benefit and in exclusion and defiance of Plaintiff's property interests.

112. Defendant promoted and continues to promote its own goods and services by infringing the FREEDOM MORTGAGE Marks in a manner or to an extent other than that which Plaintiff consented, because Plaintiff granted no such consent.

113. In connection with its unlawful activities in Indiana, Defendant misappropriated the FREEDOM MORTGAGE Marks and associated goodwill for its own use and benefit and interfered with Plaintiff's control over the same.

114. As a direct and proximate result of Defendant's actions described herein, Plaintiff has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial, and Plaintiff seeks statutory remedies under the Indiana Crime Victims Relief Act, Indiana Code § 34-24-3-1 for Defendant's violations of Indiana Code § 35-43-4-2, including but not limited to treble damages, costs, and attorneys' fees.

WHEREFORE, Plaintiff prays that the Court grant the Prayer for Relief set forth below.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that the Court will enter judgment in its favor and against the Defendant as follows:

A. That this Court will adjudge that the FREEDOM MORTGAGE Marks and Registrations have been infringed, as a direct and proximate result of the willful acts of Defendant as set forth in this Complaint, including Defendant's use of the Infringing Marks, in violation of Plaintiff's rights under the Lanham Act, 15 U.S.C. §1051 et seq., Indiana Code, I.C. § 24-2-1-13, and the common law of the State of Indiana.

B. That this Court will adjudge that Defendant has competed unfairly with Plaintiff in violation of Plaintiff's rights at common law and in violation of Plaintiff's rights under the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

C. That this Court will adjudge that the Defendants has committed the offenses described in Indiana Code §§ 35-43-5-3(a)(6) (deception); 35-43-4-3 (conversion); 35-43-5-2(a) (counterfeiting); 35-43-5-2(b) (forgery); and 35-43-4-2 (theft).

C. That Defendant, and all officers, directors, agents, servants, employees, attorneys, successors, and assigns, and all persons in active concert or participation therewith, be permanently enjoined and restrained:

1) From using or licensing the FREEDOM MORTGAGE Marks, the Infringing Marks, any reproduction, infringement, copy or colorable imitation and any formative variations or phonetic equivalents thereof, or any term, name or mark which incorporates any of the foregoing, or any trademarks similar thereto or likely to be confused therewith, in connection with the distribution, marketing, advertising or sale of any unauthorized goods and services;

2) From using, applying to register or registering any logo, trade name, or trademark which may be calculated to falsely represent or which has the effect of falsely representing that the unauthorized service of Defendant, or of any third parties, are sponsored by, authorized by, or in any way associated with Plaintiff and/or that the services of Plaintiff are inferior to, copies of, infringing of or imitations of the services of Defendant, or that Defendant's services are the first or original such services;

3) From applying to register, or registering the FREEDOM MORTGAGE Marks, the Infringing Marks, or any reproduction, infringement, copy or colorable imitation and any formative variations or phonetic equivalents thereof, or any term, name or mark which incorporates any of the foregoing, or any trademark similar thereto or likely

to be confused therewith, in connection with the distribution, marketing, advertising or sale of any unauthorized goods and services;

4) From using, licensing, maintaining, registering, or renewing any confusingly similar domain names (including but not limited to any which incorporate, either in whole or in part, any of the FREEDOM MORTGAGE Marks), or any reproduction, infringement, copy or colorable imitation and any formative variations or phonetic equivalents thereof, or any term, name or mark which incorporates any of the foregoing, or any trademark similar thereto or likely to be confused therewith, in connection with the distribution, marketing, advertising or sale of any unauthorized goods and services;

5) From infringing the FREEDOM MORTGAGE Marks and corresponding Registrations;

6) From doing any other act or thing likely to cause the public or the trade to believe that there is any connection between Defendant and Plaintiff, or its respective services;

7) From falsely representing themselves or its affiliates as being connected with Plaintiff, or sponsored by or associated with Plaintiff, or engaging in any act which is likely to falsely cause the trade, retailers, and/or members of the purchasing public to believe that Defendant or its affiliates are associated with Plaintiff and/or that Plaintiff is associated with Defendant or infringing upon any mark of the Defendant; and

8) From affixing, applying, annexing, or using in connection with the sale of any goods or services sold by Defendant including, without limitation, the sale of mortgage

banking services, a false description or representation including words or other symbols tending to falsely describe or represent such goods or services.

D. That Defendant be required to recall and deliver up for destruction all goods, services, labels, signs, prints, packages, wrappers, inventory, advertisements, internet advertising and other written or printed material in the possession or control of Defendant, or third party advertisers of Defendant's services which bear the Infringing Marks and corresponding Registrations or any infringement thereof, including but not limited to the Infringing Marks, and any formative variations or phonetic equivalents thereof, or any term, name or mark which incorporates any of the foregoing, or any trademarks similar thereto or likely to be confused therewith, alone or in combination with any other word or element, and all plates, molds, matrices, and other means from making the aforesaid items.

E. That Defendant be required to recall and deliver up for destruction all goods, services, labels, signs, prints, packages, wrappers, inventory, advertisements, internet advertising and other written or printed material in the possession or control of Defendant, or third-party advertisers of Defendant's services which bear claims found by this Court to be false and/or misleading.

F. That Defendant be directed to file with this Court and to serve upon Plaintiff within thirty (30) days after service of the injunction issued in this action, a written report under oath, setting forth in detail the manner of compliance with paragraphs D and E, including all subparts.

G. That Defendant be ordered to forthwith identify to Plaintiff all active and passive participants in the acts complained of herein and supply to Plaintiff a complete list of the persons and/or entities from whom Defendant purchased, and to whom Defendant distributed and/or sold any services, bearing any of the Infringing Marks.



H. That Plaintiff recover Defendant's profits and the damages of Plaintiff arising from Defendant's acts of trademark infringement and unfair competition, and that the Court, pursuant to §35 of the Lanham Act, 15 U.S.C. §1117, enter judgment, and that said sums be trebled as authorized pursuant to 15 U.S.C. §1117(b).

I. That Plaintiff recover Defendant's profits and the damages of Plaintiff arising from Defendants acts in violation of Indiana Code §§ 35-43-5-3(a)(6) (deception); 35-43-4-3 (conversion); 35-43-5-2(a) (counterfeiting); 35-43-5-2(b) (Forgery); and 35-43-4-2 (theft) and that said sums be trebled as authorized pursuant to the Indiana Crime Victims Relief Act, Indiana Code § 34-24-3-1

J. That Plaintiff recover such sums as are necessary to place or compensate for corrective advertising.

K. That Plaintiff have and recover nominal damages.

L. That Plaintiff have and recover, pursuant to the laws of the State of Indiana, and common law, in addition to its actual damages and/or nominal damages, punitive damages in an amount which the Court deems just and proper.

M. That Plaintiff have and recover both pre-judgment and post-judgment interest on each and every damage award.

N. That Plaintiff be entitled to injunctive relief as set forth in §34 of the Lanham Act, and that Plaintiff have and recover the remedies set forth in §§ 35(a) and 36 of the Lanham Act, 15 USC §§1117(a) and 1118.

O. That the Court award an accounting of Defendant's profits from the sale of services sold under the Infringing Marks through trial or final adjudication.

P. That Plaintiff have and recover its reasonable attorney fees incurred in this action, pursuant to §35 of the Lanham Act, 15 U.S.C. §1117, Indiana Statutes, and as otherwise authorized.

Q. That Plaintiff have and recover its taxable costs and disbursements herein, pursuant to §35 of the Lanham Act, 15 U.S.C. §1117, and as otherwise authorized.

R. That, pursuant to §35 of the Lanham Act, 15 U.S.C. §1119, the Court will enter an order or decree cancelling Defendant's used-based registrations referenced herein, namely U.S. Registration Nos. 6,472,896 and 6,824,816, and that the order or decree be certified to the Director of the U.S. Patent & Trademark Office, who shall be make appropriate entry upon the records of the U.S. Patent and Trademark Office.

S. That Plaintiff have and recover such further relief as the Court may deem just and proper.

### **JURY DEMAND**

Plaintiff demands a trial by jury as to all issues triable of right by a jury.

Dated: February 14, 2023

Respectfully submitted,

/s/ Louis T. Perry

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