

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CROWN PONTIAC, INC., dba)
Crown Pontiac Nissan,)
Crown Pontiac-Nissan,)
)
)
Plaintiff,)
)
vs.)
)
)
THOMAS BALLOCK,)
Defendant.)
_____)

Case No. CV-02.C-1001-S

ANSWER

Defendant Thomas Ballock answers the complaint against him as follows:

1. Admitted.
2. Admitted.
3. Admitted that this paragraph correctly characterizes the complaint, but denied that defendant has violated plaintiff's federal or state trademark rights.
4. Denied that the court has supplemental jurisdiction, because the federal claims are subject to dismissal before trial.
5. The first two sentences of the paragraph are admitted. Defendant lacks sufficient information to admit or deny that plaintiff obtained and registered its Internet domain names entitled "www.crown-pontiac.com," "www.crown-nissan.com" and "www.shopcrown.com."
6. Admitted.
7. Defendant lacks sufficient information to admit or deny this allegation, and it is consequently denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. It is admitted that defendant has registered with search engines and has used meta tags as alleged, but denied that the registration and use were done with the intent that is alleged, and denied that defendant's web site is infringing.

14. Denied.

15. The first sentence is denied, because defendant does not currently have a hyperlink to Crown's website. Defendant had established a hypertext link on his website to plaintiff's website, but removed that hyperlink after plaintiff objected to it. The second sentence of the paragraph is denied.

16. Denied.

17. It is admitted that defendant has control over his website and has published materials critical of defendant on that website. It is denied that he published those materials with the intent that is alleged.

18. Denied.

19. Denied.

20. No response is required to the prayer for relief, but to the extent that any response is required, defendant denies that any relief is appropriate save an award of attorneys fees and costs in favor of defendant and against the plaintiff and its attorneys.

AFFIRMATIVE DEFENSES

1. Plaintiff does not state a claim on which relief can be granted,
2. Plaintiff's claims are barred by the First Amendment.
3. Plaintiff's state law claims are barred by Section 4 of the Alabama Constitution
4. There is no likelihood of confusion.
5. Defendant has made a fair use of plaintiff's mark.
6. Defendant has made a permissible nominative use of plaintiff's mark.
7. Defendant's actions are protected because they constitute non-commercial criticism of the plaintiff.
8. Defendant has not used plaintiff's trademark in commerce.
9. Defendant's use of plaintiff's trademark is non-commercial.
10. Defendant has not used plaintiff's mark or name in connection with the sale of goods or services.
11. Defendant has not "used" plaintiff's mark or name under Alabama law.
12. Plaintiff's trademark is not registered.
13. Plaintiff's trademark is not famous.
14. Defendant has not registered or used plaintiff's mark with a bad faith intent to profit.
15. The Court lacks subject matter jurisdiction of the state law claims once the federal claims are dismissed.

Plaintiff requests a jury trial.

Wherefore, the complaint should be dismissed, and defendant should be awarded his reasonable attorney fees because the action is groundless and plaintiff knows it to be so.

DATED: June 10, 2002

Respectfully submitted,

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