

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

VIDEO PROFESSOR, INC., a Colorado corporation,

Plaintiff,

v.

DEAN GRAZIOSI, an individual;
RYAN PATTEN a/k/a RYAN JACKSON, an individual;
MICHAEL SAVAGE, an individual;
EDWARD JOHNSON, an individual;
THE TAX CLUB, INC., a Utah corporation;
INFOMERCIAL CONSUMER AWARENESS, INC., a Nevada corporation;
JUSTIN LEONARD, an individual;
LEONARD FITNESS, INC., a Nevada corporation;
JOHN DOES 1-10, all whose true names are unknown;
All the above d/b/a INFOMERCIALSCAMS.COM,

Defendants.

COMPLAINT

Plaintiff Video Professor, Inc. ("VPI"), for its complaint against the Defendants, states:

NATURE OF THE ACTION

This action at law and in equity is to remedy acts of, *inter alia*, attempted extortion through a racketeering enterprise under the Racketeer Influenced and Corrupt Organizations Act ("RICO") and the Colorado Organized Crime Control Act ("COCCA"), constructive fraud, deceptive trade practices under the Colorado Consumer Protection Act, unfair competition, tortious interference with business opportunities, business disparagement, and libel per ser, all caused by Defendants' unauthorized Internet disparagement of VPI and its products knowingly

and infringement of its trademarks, willfully, and intentionally undertaken by Defendants for the purpose of usurping the value and goodwill embodied by VPI's mark, disrupting VPI's business, and establishing its vulnerability to enable Defendants pattern of racketeering activities designed to extort moneys from VPI and similar companies.

VPI seeks damages including compensatory, punitive, statutory, and treble damages, an accounting, the imposition of a constructive trust upon Defendants' illegal profits, the entry of a preliminary and permanent injunction, and its costs and attorney's fees.

PARTIES

1. VPI is a Colorado corporation with its principal place of business in Lakewood, Colorado.

2. Upon information and belief, Infomercial Consumer Awareness, Inc. is a Nevada corporation having its address of record with the Nevada Secretary of State as 1802 N. Carson St., Suite 212-215, Carson City, Nevada 89701 ("Consumer Awareness"). Consumer Awareness has an ownership interest in, and does business as, Infomercialscams.com ("Infomercialscams").

3. Upon information and belief, The Tax Club, Inc. ("The Tax Club") is a Utah corporation, which founded, and continues to have an ownership interest in, Consumer Awareness. The Tax Club has its principal place of business at 50 East 100 South, #100, Saint George, Utah, 84770.

4. Upon information and belief, Edward Johnson ("Johnson") is the owner of and does business as The Tax Club. Upon information and belief, Johnson resides at 2005 West 14th St., #125, Tempe, Arizona 85281.

5. Upon information and belief, Michael Savage (“Savage”) is a principal with and works for Johnson in The Tax Club. Upon information and belief, Savage resides at 310 W 140th St., New York, New York 10030.

6. Upon information and belief, Dean Graziosi (“Graziosi”) is a principal and has an ownership interest in Consumer Awareness, together with Johnson, Savage and The Tax Club. Upon information and belief, Graziosi resides at 6620 N. Kasba Circle, Paradise Valley, Arizona 85253.

7. Upon information and belief, Ryan Patten a/k/a Ryan Jackson is an associate and partner of Graziosi in, and primary spokesman for, Consumer Awareness. Upon information and belief, Patten resides at 453 Sunburst Lane, Tempe, Arizona 85284, in a home owned by Graziosi.

8. Upon information and belief, Justin Leonard (“Leonard”) is the founder and owner of Leonard Fitness, Inc. (“Leonard Fitness”) and both he and Leonard Fitness are associated with Johnson, Savage, The Tax Club, Graziosi, Patten, and Consumer Awareness, and do business as Infomercialscams. Leonard resides at 4701 North 68th St., #114, Scottsdale, Arizona 85251.

9. Upon information and belief, Leonard Fitness is a Nevada corporation having an ownership interest in Infomercialscams and its principal places of business at 3116 S. Mill Ave. Box 148, Tempe, Arizona 85282.

10. Upon information and belief, Defendant John Does one through 10 are persons associated with Infomercialscams whose names and addresses of residences are unknown.

JURISDICTION AND VENUE

11. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); 18 U.S.C. § 1964(a) and (c)(action arising under RICO); 28 U.S.C. § 1338(b)(action asserting a claim of unfair competition joined with a substantial and related claim under the trademark laws); and 28 U.S.C. § 1367 (supplemental jurisdiction).

12. Upon information and belief, this Court has personal jurisdiction over the Defendants because Defendants have engaged in acts or omissions within this judicial district causing injury, have engaged in acts or omissions outside of this judicial district causing injury within the district; have established sufficient minimum contacts with this judicial district sufficient to permit the exercise of personal jurisdiction, have committed torts as more particularly described in this complaint within this judicial district, or have had continuous and systematic contacts with this forum as a result of business regularly conducted within this judicial district through advertising and sales over the World Wide Web and Internet to residents of this judicial district.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the wrongful conduct, and a substantial part of the events or omissions giving rise to the claims, occurred in the District of Colorado.

VPI'S BUSINESS AND INTELLECTUAL PROPERTY RIGHTS

14. VPI has been in the business of developing, marketing, and distributing for sale to retailers and the general public computer learning products including video tapes and CD-ROMs for over 20 years.

15. VPI has continuously used the name VIDEO PROFESSOR in connection with the marketing and promotion of its business and products since at least as early as April, 1987.

16. Since 1987, VPI has invested millions of dollars in advertising, marketing and promoting the VIDEO PROFESSOR brand and designated products, including the running of television advertisements and infomercials throughout the United States, and advertisement and marketing on the Internet through its website located at "videoprofessor.com" and other forms of Internet advertising.

17. Millions of VPI's VIDEO PROFESSOR-branded products have been distributed and are used worldwide. VPI is the worldwide leader in the computer learning products industry.

18. The VIDEO PROFESSOR mark, as used in connection with VPI's business and the sale of its products, is world-famous, inherently distinctive, and as a result of VPI's extensive use, advertising and promotional efforts as described above, the VIDEO PROFESSOR mark is well-known and is recognized by customers around the world as signifying and representing VPI's business and high quality products.

19. On August 29, 1989, VPI was duly issued United States Trademark Registration Number 1566793 for the trademark words "VIDEO PROFESSOR" used in connection with a design, and on January 2, 1990, United States Trademark Registration Number 1574578 for the trademark words "VIDEO PROFESSOR."

20. As a result of the advertising and expenditures previously described, VPI has established considerable goodwill in the VIDEO PROFESSOR trademark, which is an invaluable asset of substantial and inestimable worth to VPI.

21. VPI has a long-established presence as an Internet retailer. VPI uses, among others, the domain name “videoprofessor.com” as a link to its website. Through its website, VPI provides important information to its customers and potential customers regarding VPI's products, as well as an interactive means by which its customers and potential customers may order its products online. VPI's website advertising and sales are a significant and rapidly expanding portion of its business.

DEFENDANTS' WRONGFUL CONDUCT

The Google Search Engine

22. The most common way that users locate VPI's website to review and purchase its products is by use of Internet search engines, including the Internet's most popular search engine, Google.

23. By “googling” the name “Video Professor,” the user is taken to a webpage containing the search results, which at the top of the page lists a link to VPI's home page.

24. Below the link to its home page are listed many other links to various other pages of VPI's website.

25. The order or ranking of these search results is a function of various search criteria used by the Google search engine.

26. One important ranking criterion relates to metadata and metatags.

27. “Metadata” and “metatags” are text buried in a website's source code invisible to the public that are read and later used by search engines to classify the website and to rank its relevance in response to a given Internet search query.

28. By the inclusion of certain metadata and metatags in a website, a website owner can influence and improve the Google ranking of its site—called search engine optimization—in response to specific search inquiries by making the link to its website appear closer to the top of the search results page, thereby improving its visibility to the individual searching on Google.

29. For example, a competitor of VPI might legitimately include the phrase “computer learning” in its website metadata so that when a user searching the Internet for computer learning products “googles” the words “computer learning,” a link to the competitor’s website would appear in the search results.

30. However, while the use of generic metadata by website owners is entirely lawful, the use of trademarked metadata in commerce by persons other than the owner or licensee of such trademark constitutes illegal trademark infringement. *See Australian Gold, Inc. v. Hatfield*, 436 F.3d 1228 (10th Cir. 2006).

The Infomercialscams Website

31. For several years VPI has been aware of a website by the name of Infomercialscams having the website address of “infomercialscams.com.”

32. Upon information and belief, the Infomercialscams website was founded by Leonard and operated by Leonard through Leonard Fitness. Upon information and belief, Leonard remains active and involved in the Infomercialscams website, as well as the Consumer Protection Program, described *infra*.

33. The Infomercialscams website is represented to be a website where persons may anonymously post complaints regarding companies that advertise their products through television infomercials (“Infomercial Companies”).

34. The Infomercialscams website has an individual webpage on its site for each of the many Infomercial Companies, including VPI.

35. When a person desires to post a complaint against a particular Infomercial Company, it is directed by the website to the appropriate webpage for that company and may thereafter “bash” the company with total anonymity, and, therefore, without regard or concern for the truth of posting’s contents or for potential liability for defamation.

36. With regard to the VPI postings on Infomercialscams, VPI has long believed that the vast majority are false and libelous.

37. Due to the protections afforded anonymous speech, it is extremely difficult for VPI to protect itself from these libelous statements.

38. The Communications Decency Act of 1996, 47 U.S.C. §203, protects providers of “interactive computer services,” including websites operators, from defamation liability for their republication of defamatory postings by third parties on their websites.

39. Court pronouncements regarding individual postings generally hold that the posters are entitled to anonymity under the First Amendment’s protection of free speech.

40. Based upon Congressional legislation and the Constitutional protection of free speech, VPI and other subjects of anonymous defamatory postings often find themselves defenseless against the resulting damage to their reputations, being unable to hold the website operator responsible and unable to identify the posting party.

41. For several years, VPI has been aware of the defamatory postings on Infomercialscams which have, no doubt, resulted in lost sales to VPI and a diminution of its reputation and goodwill.

42. Any prospective customer of VPI having seen the Infomercialscams postings regarding VPI would have reservations about purchasing its products.

43. The Defendants were at all times relevant hereto aware of the deleterious effects of the Infomercialscams website on the reputation, goodwill and sales of VPI, as well as that of other Infomercial Companies.

Defendants Turn Up the Heat

44. VPI became aware that when a user “Googled” the name “Video Professor,” in addition to various VPI links appearing on the first page of the search results, the following listing appeared:

INFOMERCIAL SCAMS.COM - VIDEO PROFESSOR COMPLAINTS

Read real consumer complaints, reviews & ratings for Video Professor. Before you buy Video Professor, read what other buyers have to say.

www.infomercialscams.com/scams/video_professor-24k-Cached
- Similar pages

Most recently, this listing appeared as the third highest ranked listing on a Google search for “Video Professor.” *See Exhibit A.*

45. Given this ranking, it is highly likely that any person searching for “Video Professor” on Google would be exposed to the Infomercialscams’ link to its webpage of “Video Professor Complaints.”

46. VPI recently discovered that the high Google ranking for the Infomercialscams’ link on the “Video Professor” search results is in large part due to Defendants’ use of improper metadata in the Infomercialscams’ website.

47. Examination of the Infomercialscams website metadata reveals the existence of VPI's trademarked name "Video Professor" being used repeatedly and in every conceivable fashion in order to drive up Infomercialscams' ranking on the Google search results page for the term "Video Professor."

48. This use of VPI's trademark is an unlawful use in commerce and is an infringement of VPI's mark undertaken by all Defendants willfully, intentionally, and recklessly to damage VPI's reputation, interfere with its product sales, reduce its profits and interfere with its customer relations.

49. This is particularly true of the Infomercialscams website which offers for sale products that compete directly with those of VPI.

50. More importantly, Defendants' use of the metadata and metatags is done intentionally in order to create extreme economic leverage over VPI to Defendants' ultimate considerable economic advantage, as more fully detailed below.

Defendants' "Consumer Protection Program"

51. Within the last few months, VPI noticed a significant change in the historical *modus operandi* of the Infomercialscams site.

52. The home page of Infomercialscams now contains, as its lead article, the following highly conspicuous message:

Latest News

InfomercialScams.com Launches Consumer Protection Program

To help consumers get quality products and services, and companies improve customer satisfaction and client relations

InfomercialScam.com has launched the Consumer Protection Program (CPP).

If your company is listed on InfomercialScams.com and you would like help improving client satisfaction, which will improve your overall image, fill out the CPP application form

See Exhibit B (Emphasis in original).

53. By “clicking” on the “CPP application form” link in the above article, one is taken to a page stating:

Feel like you or your companies [sic] misrepresented on Infomercial Scams? Have you improved parts of your company? Are there reviews you don't think are from real clients? Want the chance to defend yourself?

Fill out the form below to see if you qualify for our Consumer Protection Program (CPP). Once you have submitted all the information we will review it thoroughly so we have a better understanding of your company. All answers will be kept strictly confidential and will only be used for internal CPP use. We will contact you within 48 hours of the form submission.

See Exhibit C (Emphasis in original).

54. Interested in learning more about the “Consumer Protection Program,” in March 2009, VPI completed and submitted the “application form” electronically.

55. Shortly thereafter, VPI received a telephone call at its offices in Lakewood Colorado from an individual identifying himself as Ryan Jackson, who stated he was a “partner” of “Doug Smith” in the Infomercialscams “Consumer Protection Program.”

56. When asked by VPI how Infomercialscams was able to achieve such a high ranking on the Google and other engine search results, Mr. Jackson took pride in claiming to be an expert in search engine optimization.

57. Upon information and belief, Defendants have not only “optimized” the Infomercialscams website, but have also re-written some or all of the consumer postings to further optimize their search engines rankings.

58. Mr. Jackson set out how the “Consumer Protection Program” scheme operated. He stated that if a company “qualifies” for the program, Infomercialscams announces on its site that fact and makes very favorable comments about the company and how it wants to work with its customers to insure complete customer satisfaction.

59. Mr. Jackson stated that “qualification” for the program consisted of making the requisite payments associated with membership in the program.

60. Very early on in the conversation, VPI became suspicious that the “Consumer Protection Program” was in fact a blatant means to extort money from Infomercial Companies by offering them the only possible means to remove the defamatory and negative anonymous postings on the Infomercialscams website, which postings negatively impact their reputations, goodwill and sales.

61. Mr. Jackson stated that the goal of the program was to “clean-up” a company’s public image.

62. Mr. Jackson stated that once the funds were paid that, with respect to existing customer postings, those consumers would be emailed by Infomercialscams and given an email address at VPI to contact to rectify the consumer’s complaint.

63. Once the consumer was notified by Infomercialscams, Infomercialscams would assume that after a short period of time—approximately 10 days—the complaint would be resolved and Infomercialscams would remove the posting.

64. Similarly, with respect to postings made after VPI joined the program, Infomercialscams would immediately upon receipt of a posting send the consumer the email to contact VPI. Following a period of again, approximately 10 days, Infomercialscams would assume the complaint had been resolved and the posting would be deleted.

65. In the case of a new posting, Mr. Jackson explained that the public would never see it. Rather, between the time it was received and the time it was deleted, it would be lodged on a “holding” page not accessible to the public.

66. Mr. Jackson was clear that as long as VPI kept making its monthly payments, none of the postings would be visible to the public.

67. When asked about the cost of membership in the “Consumer Protection Program,” Mr. Jackson stated that it would require an initial payment of \$157,500.00, followed by monthly payments of \$23,750.00. *See Exhibit D*, at 3, ¶¶ 4, 5, which is a true and correct copy of the agreement provided to VPI by Mr. Jackson.

68. VPI had several telephone conversations with Mr. Jackson from its offices in Lakewood.

69. In a subsequent conversation VPI asked how long the monthly payments would last and Mr. Jackson replied that he “understood the period to be five (5) years.”

70. If VPI had given in to the pressure and accepted this “option” under the “Consumer Protection Program,” Infomercialscams would have extorted approximately 1.5 million dollars from VPI over the five-year period.

71. Following some price negotiation, the membership fee in the “Consumer Protection Program” for VPI was reduced to a \$100,000.00 up-front payment and monthly payments of \$10,000.00 thereafter.

72. At some point, VPI asked what it would cost to simply remove the Video Professor webpage for the Infomercialscams site so that all the current postings would disappear, and there would be no webpage to allow for new postings about VPI.

73. Mr. Jackson referred to this as its “Delisting Option,” and replied saying that option would cost more. He later informed VPI that the price for delisting would be \$400,000.00 up-front and \$10,000.00 per month for five years.

74. If VPI had given in to the pressure and accepted the “Delisting Option” Infomercialscams would have extorted a million dollars from VPI over a five-year period.

75. On several occasions during the telephone conversations between VPI and Mr. Jackson, when asked a question he was unable to answer, Mr. Jackson would say that he would have to consult with his attorney before responding.

76. One such occasion involved the “Delisting Option” contract.

77. VPI requested Mr. Jackson provide contract agreements for both the “Consumer Protection Program” and the “Delisting Option” for its review.

78. Mr. Jackson said he would have to obtain the contract for the “Delisting Option” from its attorneys.

79. VPI was advised that Infomercialscams attorneys were Bryan Cave LLP.

80. Upon information and belief, Bryan Cave was instrumental in the development of the Infomercialscams “Consumer Protection Program” and its “Delisting Option.”

“Doug Smith”

81. During VPI’s conversations with Mr. Jackson, VPI asked who owned Infomercialscams; Mr. Jackson replied “Doug Smith” and that he, Mr. Jackson, was his partner.

82. In a subsequent telephone call with Mr. Jackson and in an effort to determine more information about the scheme, VPI said it would like to talk to another company that had already signed on to the “Consumer Protection Program.”

83. Mr. Jackson called back with Graziosi on the telephone line with him.

84. Graziosi is a well-known person in the infomercial business, with his book entitled “Profit from Real Estate Right Now” infomercials.

85. Graziosi made exceptionally favorable comments about the Consumer Protection Program and his book infomercials that were previously bashed by consumers now receive Infomercialscams’ five-star rating.

VPI’s Investigative Findings

86. Upon information and belief, Savage, acting on behalf of Johnson and The Tax Club, caused Consumer Awareness to be incorporated in Nevada in March 2008, showing a nominee, Brian Morgan, as holding all officer positions in the corporation and advising Morgan that Doug Smith was the sole owner of Consumer Awareness.

87. The address and telephone number given Brian Morgan by Savage for Doug Smith is in reality the address and phone number of Graziosi.

88. Upon information and belief, Doug Smith, the purported owner of Consumer Awareness, is a fictitious individual; the real owner being Graziosi, Johnson, Savage, The Tax Club, or Awareness, or some combination thereof.

89. Graziosi is himself an infomercial “pitchman,” who, upon information and belief, along with Jackson, Leonard, Johnson, and Savage, now “bashes” his fellow Infomercial Companies and competitors, and extorts and attempts to extort money from their businesses allegedly to “clean-up” their public images, while touting the quality and results of his own improper sales scheme on the Infomercialscams website.

90. VPI has also learned that Ryan Jackson is also a fictitious name for Ryan Patten who lives in a home and drives a vehicle owned by Graziosi.

91. The investigation was made especially difficult due to the use of fictitious names and untraceable, pre-paid disposable cells phones, used by two or more of the defendants.

92. VPI has also learned that in addition to Graziosi’s purported membership in the Infomercialscams’ “Consumer Protection Program,” at least one other Infomercial Company; *i.e.*, Direct Buy, has “signed-up” for the program by paying the Defendants’ extortionate demands.

93. Immediately following Direct Buy’s membership in the “Consumer Protection Program,” all negative postings about Direct Buy disappeared from the Infomercialscams website and were replace with glowing testimonials.

94. Further, at least one other company has inquired into participation in the “Consumer Protection Program.” In that case, the company was quoted an initial payment of \$500,000.00, and \$25,000.00 a month thereafter for the “Delisting Option.”

95. The cost to this victim over a five-year period would be \$2 million.

Infomercialscams is the Scam

96. In the course of their conversations, Mr. Jackson explained to VPI that even without the “Consumer Protection Program,” Infomercialscams is a revenue generating site.

97. Mr. Jackson explained that the Video Professor complaint webpage alone on the Infomercialscams website receives 20,000 “hits” or visits per month from people conducting search engine searches for Video Professor and seeing and clicking on the Infomercialscams link in the search results.

98. When the person arrives at the Infomercialscams webpage for Video Professor complaints, he is presented with linked ads to the websites of numerous companies some of which are competitors of VPI.

99. Each of the competitors is rated, with the highest-rated product receiving a five-star rating from Infomercialscams.

100. Mr. Jackson explained that Infomercialscams receives a “bounty” for each of the 20,000 viewers that Infomercialscams converts to a sale for any one of these companies. Upon information and belief, the five-star ratings are given by Infomercialscams to the company paying Infomercialscams the greatest bounty with little to no consideration given to the quality of its products.

101. Mr. Jackson indicated that Infomercialscams is already generating \$21,000.00 per month off of the conversions from the Video Professor hits alone.

102. Infomercialscams tells the public that “protecting you is not cheap,” and its requests donations to its “Legal Defense Fund.” The public is told that the aim of Infomercialscams is “helping consumers like yourself.” See **Exhibit E**.

103. Consumers visit the Infomercialscams site believing it to have only the consumers' best interests in mind.

104. Nowhere on the site are they advised that the site is a revenue generating business making millions of dollars off the postings of the unsuspecting consumers by recommending products based on secret kickbacks and extorting money from infomercial companies in exchange for removing the consumers' posts from the site.

105. The injuries complained of herein are attended by circumstances of fraud, malice, and willful and wanton conduct.

FIRST CLAIM FOR RELIEF
(Violation of RICO – 18 U.S.C. § 1962(c))

106. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

107. At all relevant times, VPI was a person within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1964(c).

108. At all relevant times, Defendants were "persons" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1962(c).

109. At all relevant times, Defendants formed an association-in-fact for the purpose of extorting money from VPI and others. This association-in-fact was an "enterprise" within the meaning of RICO, 18 U.S.C. § 1961(4).

110. At all relevant times, the enterprise was engaged in and its activities affected, interstate and foreign commerce within the meaning of RICO 18 U.S.C. § 1962(c).

111. At all relevant times, the Defendants conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a "pattern of racketeering activity" within the meaning of RICO, 18 U.S.C. § 1961(5), in violation of RICO, 18 U.S.C. § 1962(c).

112. Specifically, at all relevant times, Defendants engaged in "racketeering activity" within the meaning of 18 U.S.C. § 1961(1) by engaging in the acts set forth above. The acts set forth above constitute a violation of one or more of the following statutes: 18 U.S.C. § 1951 (the Hobbs Act), C.R.S. § 18-4-401 (theft by threat or deception), and C.R.S. § 18-3-207 (criminal extortion). Defendants each committed and/or aided or abetted the commission of two or more of these acts of racketeering activity.

113. The acts of racketeering activity referred to in the previous paragraph constituted a "pattern of racketeering activity" within the meaning of RICO, 18 U.S.C. § 1961(5). The acts alleged were related to each other by virtue of common participants, a common victim industry (infomercial advertisers), a common method of commission (the Infomercial Scams' website and its "Consumer Protection Program" scheme), and the common purpose and common result of extorting or attempting to extort Infomercial Companies of millions of dollars and enriching Defendants at the expense of VPI and other Infomercial Companies.

114. Upon information and belief, the criminal extortion scheme was initiated in or before March, 2008, with the formation of Infomercial Consumer Awareness, Inc. and the "Consumer Protection Program," which scheme continues to the date of the filing of this civil action.

115. As a result of Defendants' violation of 18 U.S.C. § 1962(c), VPI has been damaged through lost sales and goodwill in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
(Violation of COCCA – C.R.S. § 18-17-101, et seq.)

116. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

117. At all relevant times, VPI was a person within the meaning of COCCA, C.R.S. §§ 18-17-103(4) and 18-17-106(6) and (7).

118. At all relevant times, Defendants were “persons” within the meaning of COCCA, C.R.S. §§ 18-17-103(4) and 18-17-104(3).

119. At all relevant times, Defendants formed an association-in-fact for the purpose of extorting money from VPI and others. This association-in-fact was an “enterprise” within the meaning of COCCA, C.R.S. § 18-17-103(2).

120. At all relevant times, the Defendants conducted or participated, directly or indirectly, in the conduct of the enterprise’s affairs through a “pattern of racketeering activity” within the meaning of COCCA, C.R.S. § 18-17-103(3), in violation of COCCA, C.R.S. § 18-17-104(3).

121. Specifically, at all relevant times, Defendants engaged in “racketeering activity” within the meaning of C.R.S. § 18-17-103(5) by engaging in the acts set forth above. The acts set forth above constitute a violation of one or more of the following statutes: 18 U.S.C. § 1951 (the Hobbs Act), C.R.S. § 18-4-401 (theft by threat or deception), C.R.S. § 18-3-207 (criminal extortion) and C.R.S. § 18-5-113 (criminal impersonation). Defendants each committed and/or aided or abetted the commission of two or more of these acts of racketeering activity.

122. The acts of racketeering activity referred to in the previous paragraph constituted a “pattern of racketeering activity” within the meaning of COCCA, C.R.S. § 18-17-103(3). The

acts alleged were related to each other by virtue of common participants, a common victim industry (infomercial advertisers), a common method of commission (the Infomercial Scams' website and its "Consumer Protection Program" scheme), and the common purpose and common result of extorting or attempting to extort Infomercial Companies of millions of dollars and enriching Defendants at the expense of VPI and other Infomercial Companies.

123. Upon information and belief, the criminal extortion scheme was initiated in or before March, 2008, with the formation of Infomercial Consumer Awareness, Inc. and the "Consumer Protection Program," which scheme continues to the date of the filing of this civil action.

124. As a result of Defendants' violation of C.R.S. § 18-17-104(3), VPI has been damaged through lost sales and goodwill in an amount to be determined at trial.

**THIRD CLAIM FOR RELIEF
(Constructive Fraud)**

125. VPI sets forth all allegations in its cross-claims as if fully set forth herein.

126. There exists an inequality between the defendants and VPI brought about by the Infomercialscams website postings and its high ranking on search engine search results for the terms "Video Professor."

127. The same is equally true for many other Infomercial Companies.

128. The inequality places VPI and other Infomercial Companies in a position of weakness through the resulting damage to its reputation and lost sales.

129. Defendants are taking advantage of VPI's position of weakness by agreeing to discontinue postings in exchange for exorbitant sums of money.

130. Defendants brought about VPI's weakness or, finding it ready at hand, utilized and traded on it in an attempt to extract money from VPI.

131. Defendants are in dominant positions with respect to VPI and are able to exercise influence and dominion over VPI.

132. Such influence and dominion is presently operating upon VPI, with the intent that defendants will inequitably procure from VPI funds to which they are not lawfully entitled.

133. There is a gross inadequacy of consideration supporting defendants' Consumer Protection Program.

134. Defendants should be ordered to cease and desist from the operation of its "Consumer Protection Program" and enjoined from its use of the site as a commercial business venture.

FOURTH CLAIM FOR RELIEF
(Violation of Colorado Consumer Protection Act—C.R.S. § 6-1-105)

135. VPI incorporates by reference each and every allegation contained in this Complaint as if fully set forth herein.

136. The state of Colorado has an important interest in ensuring that persons and entities doing business with Colorado residents fully comply with Colorado laws.

137. Defendants' conduct complained of herein is a deceptive trade practice in that, *inter alia*, knowingly makes false representations as to the characteristics of VPI's goods and services as well as to those of its competitors; knowingly disparages the business and goods of VPI by false and misleading representations of fact; knowingly makes a false representation as to the sponsorship, status, approval, affiliation, or connection with a person therewith; and knowingly fails to disclose material information concerning VPI's goods, which information was

known to Defendants at the time of their advertisements, and was intended to induce consumers to enter into the transactions.

138. Defendants' conduct occurred in the course of their business, vocation or occupation.

139. The products offered by VPI and Defendants implicate the public interest.

140. The conduct alleged herein occurs and continues to occur in the course of the Defendants' business. The conduct is part of a pattern or generalized course of conduct repeated on numerous occasions daily.

141. Defendants have engaged and continue to engage in these activities knowingly, willfully, and deliberately.

142. VPI has been directly and proximately injured in its business and property by the Defendants' conduct complained of herein in violation of VPI's rights under C.R.S. § 6-1-105.

143. Defendants' violations of C.R.S. § 6-1-105 have caused VPI to sustain monetary damages, loss, and injury in an amount to be determined at the time of trial.

144. In addition, pursuant to C.R.S. § 6-1-113, VPI is entitled to treble damages, attorney's fees and costs of suit, all in amounts to be determined at trial.

145. Unless enjoined by this Court, Defendants' violation of C.R.S. § 6-1-105 will continue to cause VPI to sustain irreparable damage, loss, and injury for which VPI has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF
(Unfair Competition)

146. VPI realleges and incorporates by reference each of the preceding allegations of this Complaint as though fully set forth here.

147. The acts and conduct of Defendants as alleged above constitute unfair competition with VPI under Colorado and federal common law.

148. Defendants' acts and conduct as alleged above have damaged and will continue to damage VPI in an amount that is unknown at the present time.

SIXTH CLAIM FOR RELIEF
(Tortious Interference with Business Relationships)

149. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

150. VPI has entered into and/or had a reasonable expectation that it would maintain or enter into contracts or business relationships with certain third parties who were existing VPI customers or who had communicated their interest in establishing prospective contractual relationship with VPI. VPI is aware that numerous of its existing and/or prospective customers have attempted to communicate with VPI or to obtain additional information about VPI and its products through VPI's Internet website.

151. Defendants were aware of these contracts and/or prospective business relations of VPI, and of the fact that prospective customers in the industry utilize the Internet as a means of contacting or obtaining additional information concerning computer learning products such as those marketed and sold by VPI.

152. Defendants knowingly and willfully interfered in VPI's contracts and/or business expectancies by diverting customers from VPI's website through their acts of trademark infringement, unfair competition, deceptive trade practices and other unlawful conduct. As a result of the Defendants' conduct, customers were induced to breach or terminate contracts, business relationships or expectancies with VPI.

153. Defendants' conduct as complained of herein was knowing, willful, malicious and deliberate.

154. VPI has been damaged by the Defendants' conduct as complained of herein, in an amount to be determined at trial.

**SEVENTH CLAIM FOR RELIEF
(Commercial Disparagement)**

155. VPI incorporates all allegations of this Complaint as if fully set forth herein.

156. On account of defendants' acts of extortion, deception, and other tortious conduct against VPI, other Infomercial Companies, and the public-at-large, Defendants have forfeited any immunity they may have had under the Communications Decency Act of 1996, and are liable for their republication of any false, disparaging, and defamatory postings on the Infomercialscams website.

157. The Infomercialscams site is replete with such postings concerning the products and services of VPI.

158. Defendants republished or caused to be republished the defamatory statements over the Internet with the intent to harm VPI's interest or with knowledge that harm would inevitably result.

159. At the time Defendants originated their "Consumer Protection Program," Defendants knew that statements contained in some or all of the postings concerning VPI were false, disparaging or defamatory, or they republished such postings with reckless disregard as to whether they were false or not.

160. Defendants' acts of commercial disparagement have caused VPI to sustain monetary damage, loss, and injury, in an amount to be determined at the time of trial.

161. Defendants have engaged in and continue to engage in these activities knowingly, willfully maliciously and deliberately, so as to justify the assessment of exemplary damages against them, in an amount to be determined at the time of trial.

162. Defendants' acts of commercial disparagement, unless enjoined by this Court, will continue to cause VPI to sustain irreparable damage, loss, and injury for which VPI has no adequate remedy at law.

**EIGHTH CLAIM FOR RELIEF
(Libel Per Se)**

163. VPI incorporates all allegations of this Complaint as if fully set forth herein.

164. On account of defendants' acts of extortion, deception, and other tortious conduct against VPI, other Infomercial Companies, and the public-at-large, Defendants have forfeited any immunity they may have had under the Communications Decency Act of 1996, and are liable for their republication of any false, disparaging, and defamatory postings on the Infomercialscams website.

165. The Infomercialscams site is replete with false, disparaging, and defamatory statements concerning the products and services of VPI.

166. Defendants republished or caused to be published the statements over the Internet.

167. The substance or gist of the statements was false and defamatory at the time of their republication.

168. At the time Defendants originated their "Consumer Protection Program," Defendants knew that statements contained in some or all of the postings concerning VPI were false, disparaging or defamatory, or they republished such postings with reckless disregard as to whether they were false or not.

169. Defendants' libelous conduct has caused VPI to sustain actual damages, loss, and injury in an amount to be determined at the time of trial.

170. Unless enjoined by this Court, Defendants' libelous conduct will continue to cause VPI to sustain irreparable damage, loss, and injury for which VPI has no adequate remedy at law.

**NINTH CLAIM FOR RELIEF
(Accounting)**

171. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

172. VPI is entitled, pursuant to C.R.S. § 18-17-106(7)(b), to recover any and all property, real and personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the provisions of C.R.S. § 18-17-104.

173. The amount of money due from Defendants is unknown to VPI and cannot be ascertained without a detailed accounting by Defendants of such property.

**TENTH CLAIM FOR RELIEF
(Imposition of a Constructive Trust upon Illegal Profits)**

174. VPI incorporates by reference each and every allegation contained in this complaint as if fully set forth herein.

175. Defendants' conduct constitutes deceptive, fraudulent and wrongful conduct. By virtue of Defendants' wrongful conduct, Defendants has illegally received money and profits that rightfully belong to VPI.

176. Upon information and belief, Defendants holds the illegally received money and profits in the form of bank accounts, real property or personal property that can be located and traced.

177. Defendants hold the money and profits they have illegally received as constructive trustee for the benefit of VPI.

WHEREFORE, VPI prays for judgment against Defendants as follows:

A. That Defendants, their agents, servants, employees, and attorneys, and all other persons in active concert or participation with it who receive actual notice of the injunction, be temporarily, preliminarily, and permanently enjoined from the continued operation of their criminal enterprise, their continued attempts to extort VPI and others; their continued operation of the Infomercialscams website; their continued disparagement of and libel against VPI; their continued deception of consumers and the public; and their constructive fraud against VPI and the infomercial industry;

B. That VPI be awarded damages, including compensatory and punitive, in an amount to be determined at trial based on each of the claims set forth herein;

C. That VPI be awarded treble damages for Defendants' deceptive trade practices and COCCA and RICO violations under C.R.S. §§ 6-1-113, 18-17-106(7), and 18 U.S.C. § 1964(c);

D. That Defendants disgorge to VPI all amounts obtained by way of their undisclosed bounty payments from consumers lured away from VPI's website to Infomercialscams;

E. That VPI be awarded, pursuant to C.R.S. § 18-17-106(7)(b), any and all property, real and personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the provisions of C.R.S. § 18-17-104;

F. That Defendants be ordered to make a written report within a reasonable period, to be filed with the Court, detailing the manner of Defendants' compliance with the requested injunctive and mandatory relief above;

G. That the Court order an accounting be made of Defendants' sales, accounts and assets;

H. That a constructive trust be imposed on the illegal profits generated as a result of Defendants' wrongful conduct;

I. VPI be awarded its reasonable attorney's fees and costs of suit under C.R.S. §§ 6-1-113, 18-17-106(7), and 18 U.S.C. § 1964(c);

J. That VPI be awarded pre-judgment and post-judgment interest and its costs of the litigation;

K. Ordering Defendants to divest themselves of any interest in any enterprise, including real property; and

L. That VPI be awarded such other relief as the Court may deem just and proper.

Respectfully submitted this 3rd day of May, 2009.

s/ Gregory C. Smith

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