

ORIGINAL

1 MARC E. MAYER (SBN 190969), mem@msk.com
EMILY F. EVITT (SBN 261491), efe@msk.com
2 MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
3 Los Angeles, CA 90064-1683
Telephone: (310) 312-2000
4 Facsimile: (310) 312-3100

5 Attorneys for Plaintiffs Nicholas Assef and
Lincoln Crowne & Company Pty Ltd
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 NICHOLAS ASSEF, an individual; and
LINCOLN CROWNE & COMPANY PTY
12 LTD, an Australian corporation,

13 Plaintiffs,

14 v.

15 DOES 1-10,

16 Defendants.

CASE NO. ~~CV 15-01960~~

MEJ

COMPLAINT FOR:

(1) TRADEMARK INFRINGEMENT
[15 U.S.C. § 1114]

(2) DEFAMATION

DEMAND FOR JURY TRIAL

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Filed

APR 30 2015

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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for pc
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FAXED

Mitchell
Silberberg &
Knupp LLP

1 Plaintiffs Nicholas Assef and Lincoln Crowne & Company aver as follows:

2 **PRELIMINARY STATEMENT**

3 1. This action concerns Defendants’ anonymous defamation and trademark
4 infringement on a blog hosted by Google’s “Blogger” service. Plaintiffs bring this action to seek
5 redress for Defendants’ unlawful conduct, and to bring an end to the continuing harm that
6 Defendants are causing to Plaintiffs.

7 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

8 2. This is an action arising under the Lanham Act, 15 U.S.C. § 1114, *et seq.* and under
9 California law.

10 3. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §
11 1121 and 28 U.S.C. §§ 1331 and 1338 in that it involves an action arising under the federal
12 Lanham Act. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over
13 Plaintiffs’ defamation claims, which arise under the law of the State of California.

14 4. Defendants are subject to personal jurisdiction in the State of California and in this
15 judicial district because the acts and omissions giving rise to this Complaint took place in
16 substantial part and caused impacts in the State of California, including in Santa Clara County,
17 California. Namely, the infringing and defamatory speech at issue was posted on a blog hosted by
18 Google’s “Blogger” service, and the infringing and defamatory speech has injured Plaintiffs in the
19 State of California and in this judicial district. Upon information and belief, Google made the
20 decision to remove and then reinstate the offending blog from its headquarters in Santa Clara
21 County, California.

22 5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a
23 substantial part of the acts, omissions and events giving rise to the claims asserted in this
24 Complaint occurred in this judicial district.

25 **THE PARTIES**

26 6. Plaintiff Lincoln Crowne & Company Pty Ltd (“Lincoln Crowne”) is a company
27 duly incorporated under the laws of Australia, and having its principal place of business in New

1 South Wales, Australia. Plaintiff Lincoln Crowne does business globally and has affiliates around
2 the world, including in the United States.

3 7. Plaintiff Lincoln Crowne is a boutique investment bank that provides advice on
4 corporate transactions and specific strategic engagements. Plaintiff Lincoln Crowne owns the
5 following trademarks (collectively the “Lincoln Crowne Trademarks”):

- 6 • Lincoln Crowne & Company (USPTO Reg. No. 4107955)
- 7 • Lincoln Crowne & Company (Australian Reg. No. 1423961)
- 8 • Lincoln Crowne (Australian Reg. No. 1423960)
- 9 • lincolncrowne (Australian Reg. No. 142175)

10 8. Additionally, Plaintiff Lincoln Crowne owns and operates a website located at
11 lincolncrowne.com.

12 9. Plaintiff Nicholas Assef is the founder and executive director of Plaintiff Lincoln
13 Crowne. Plaintiff Assef is a resident of New South Wales, Australia.

14 10. Plaintiffs are unaware of the true names or capacities of the Defendants, and
15 therefore sue them under the fictitious names DOES 1 through 10. Plaintiffs are informed and
16 believe, and on that basis aver, that DOES 1 through 10, and each of them, either directly
17 performed the acts alleged herein or were acting as the agent, principal, alter ego, employee,
18 representative, or otherwise participated in the acts alleged herein with other Defendants.
19 Accordingly, Defendants DOES 1 through 10 are each liable for all of the acts alleged herein
20 because they were the cause in fact and proximate cause of all injuries suffered by Plaintiffs as
21 alleged herein. Plaintiffs will amend the Complaint to state the true names of Defendants DOES 1
22 through 10 when their identities are discovered.

23 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

24 11. This case concerns an infringing and defamatory blog that Defendants posted
25 anonymously using Google’s “Blogger” service (hereinafter “the Blog”). A copy of the Blog,
26 which is located at the URL www.lincolncrowne.blogspot.com, is attached hereto as Exhibit A,
27 and incorporated by reference herein.

1 12. The Blog bears the heading, “Beware Lincoln Crowne & Company” and the
2 subheading “Warning Warning Warning – Nick Assef.” The text of the blog includes
3 unsubstantiated personal attacks on Plaintiff Assef, as well as on his company. Defendants used
4 Plaintiff’s Lincoln Crowne trademark as their Blogger username, and thus “LINCOLNCROWNE”
5 appears both in the Blog’s URL and on the Blog itself under the heading “About Me.” Defendants
6 had no authorization whatsoever to use the Lincoln Crowne Trademarks.

7 13. Defendants have no affiliation with Plaintiffs. Rather, upon information and belief,
8 they are individuals who were upset about the performance of a private investment and posted
9 false statements on the Blog in retaliation.

10 14. Defendants originally posted the Blog on or about May 25, 2007. Plaintiffs
11 discovered the Blog in late 2007, and, since discovery, Plaintiffs have repeatedly complained to
12 Google and sought removal of the Blog.

13 15. On or about January 7, 2014, Plaintiffs filed a defamation lawsuit against Google in
14 the Supreme Court of New South Wales, Australia. In response to the Australian lawsuit, on or
15 about January 18, 2014, Google removed the Blog across all Blogger domains.

16 16. However, in or around September 2014, Plaintiffs discovered that Google had
17 reinstated the Blog in the .com domain. In other words, although the Blog is no longer available at
18 the Australia-specific URL www.lincolncrowne.blogspot.com/au, it is viewable at the primary
19 URL www.lincolncrowne.blogspot.com.

20 17. Notwithstanding the Australian litigation, Google now refuses to take down the
21 Blog without a U.S. court order.

22 18. The Blog conveys the false and misleading impressions that Plaintiffs are dishonest
23 and incompetent in their professional dealings; that Plaintiffs are disreputable; that Plaintiffs do
24 not act in the best interests of their clients; and that Plaintiffs cannot be trusted by their clients.

25 19. The Blog has caused and is continuing to cause damage to Plaintiffs and their
26 reputations. The Blog has caused Plaintiff Assef embarrassment, humiliation, and emotional
27 distress. Furthermore, upon information and belief, the Blog has caused Plaintiffs to lose clients,
28 and thus significant revenue, and it has also hurt Plaintiffs’ ability to recruit employees.

FIRST CLAIM FOR RELIEF

(TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114)

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20. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 19, inclusive, and incorporate them by reference herein.

21. Plaintiff Lincoln Crowne owns all right, title, and interest in and to the Lincoln Crowne Trademarks and has standing to maintain an action for trademark infringement under 15 U.S.C. § 1114. Plaintiff Lincoln Crowne also owns the rights in the website located at www.lincolncrowne.com.

22. Without Plaintiffs’ authorization, Defendants created and are operating the Blog, which has a username and URL that are identical or confusingly similar to the Lincoln Crowne Trademarks. Indeed, the Blog’s username is simply “LINCOLNCROWNE,” and the URL incorporates Plaintiffs’ “lincolncrowne” trademark in its entirety.

23. Defendants’ unauthorized use of the Lincoln Crowne Trademarks on the Blog is causing, and is likely to cause in the future, confusion, mistake, or deception as to the affiliation, connection, or association of Defendants with Plaintiffs, in violation of 15 U.S.C. § 1114. Additionally, Defendants’ use of the Lincoln Crowne Trademarks is likely to cause confusion among users who conduct Internet searches for Plaintiffs, and are instead taken to Defendants’ infringing Blog.

24. Defendants’ intentional use of the Lincoln Crowne Trademarks for the purpose of creating a Blog that defames Plaintiffs renders this an exceptional case under 15 U.S.C. § 1117(a).

25. As a result of Defendants’ acts and conduct, Plaintiffs have sustained, and will continue to sustain, substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Plaintiffs are informed and believe, and on that basis aver, that, unless enjoined and restrained by this Court, Defendants will continue to infringe the Lincoln Crowne Trademarks. Plaintiffs are thus entitled to temporary, preliminary, and permanent injunctive relief.

SECOND CLAIM FOR RELIEF

(DEFAMATION)

26. Plaintiffs reallege each and every allegation set forth in Paragraphs 1 through 19, inclusive, and incorporate them by reference herein.

27. Each of the statements made by Defendants on the Blog (which is attached hereto as Exhibit A) is false. These statements have created false and defamatory impressions and, therefore, have damaged Plaintiffs' reputations and caused economic harm.

28. Defendants had knowledge of the statements' falsity or acted with malice and/or reckless disregard for their falsity when they were made.

29. The defamatory statements were published on the Blog, which is available worldwide, including in this judicial district.

30. By reason of the false and defamatory statements published by Defendants, Plaintiffs have been injured in their good names, reputations and business, have been portrayed in a false light, and have been brought into disgrace and disrepute.

31. As a direct and proximate result of Defendants' above-described defamatory publications, Plaintiffs have sustained damages in an amount to be determined at trial.

32. Defendants' above-described publications were done with fraud and malice and were intended to cause injury to Plaintiffs. Plaintiffs are, therefore, entitled to an award of punitive damages.

33. As a result of Defendants' acts and conduct, Plaintiffs have sustained, and will continue to sustain, substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Plaintiffs are thus entitled to temporary, preliminary, and permanent injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

1. Preliminarily and permanently enjoining Defendants, their agents, representatives, employees, assigns and suppliers, and all persons acting in concert or privity with them, from using the Lincoln Crowne Trademarks or any other name or mark or domain name that is likely to

1 cause confusion, to cause mistake, or to deceive with respect to Plaintiffs' trademarks or service
2 marks;

3 2. Preliminarily and permanently enjoining Defendants, their agents, representatives,
4 employees, assigns and suppliers, and all persons acting in concert or privity with them, from
5 disseminating false, defamatory, or misleading statements concerning Plaintiffs, including but not
6 limited to statements made on the Blog located at www.lincolncrowne.blogspot.com.

7 3. Directing Google to remove the Blog located at www.lincolncrowne.blogspot.com,
8 or, alternatively, to transfer the Blog to Plaintiffs.

9 4. Awarding Plaintiffs their actual damages derived by reason of the unlawful acts
10 complained of herein as provided by law.

11 5. Awarding Plaintiffs punitive damages;

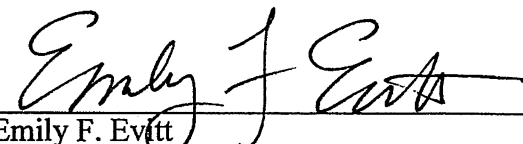
12 6. Awarding Plaintiffs their reasonable attorneys' fees, prejudgment interest, and costs
13 of suit as provided by law;

14 7. Such other relief as the Court may deem just and proper.

15 DATED: April 28, 2015

RESPECTFULLY SUBMITTED,

MARC E. MAYER
EMILY F. EVITT
MITCHELL SILBERBERG & KNUPP LLP

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19 By: 
20 Emily F. Evitt
21 Attorneys for Plaintiffs Nicholas Assef and
Lincoln Crowne & Company Pty Ltd

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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

DATED: April 28, 2015

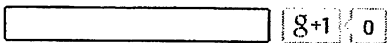
RESPECTFULLY SUBMITTED,

MARC E. MAYER
EMILY F. EVITT
MITCHELL SILBERBERG & KNUPP LLP

By: 
Emily F. Evitt
Attorneys for Plaintiffs Nicholas Assef and
Lincoln Crowne & Company Pty Ltd

EXHIBIT A

EXHIBIT A



More Next Blog»

Create Blog Sign In

BEWARE LINCOLN CROWNE & COMPANY

FRIDAY, MAY 25, 2007

Warning Warning Warning - Nick Assef

If you are considering to hire or do business with Nick Assef from Lincoln Crowne, please beware and conduct your own due diligence on his business and reputation in the Australian investment industry - you will be shocked as I was with finding out about his dealings with clients.

In fact when I spoke with his past clients every single one advised me to run a mile from Lincoln Crowne.

My due diligence on Nick Assef and Lincoln Crowne, was very swift as I stopped after speaking to 5 previous clients and ex-employees , the feedback was a shock to me as each and every person warned me to stay away from Nick Assef .

POSTED BY LINCOLNCROWNE AT 6:41 AM 2 COMMENTS:

[Home](#)

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BLOG ARCHIVE

▼ 2007 (1)

▼ May (1)

[Warning Warning Warning - Nick Assef](#)

ABOUT ME

LINCOLNCROWNE

[VIEW MY COMPLETE PROFILE](#)