

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-027605

06/28/2011

HONORABLE J. KENNETH MANGUM

CLERK OF THE COURT
A. Melchert
Deputy

CHARLES EASTWOOD

DAVID W DOW

v.

ATLAS LOCKSMITH SOLUTIONS L L C, et al. DAVID MARHOFFER

SUPERMEDIA SALES - WEST INC
C/O CT CORPORATION SYSTEM
2394 E CAMELBACK RD
PHOENIX AZ 85016
NIR AVITAN
1706 N VENTURA LN
TEMPE AZ 85281
CHRISTOPHER J BERRY
JOAN S BURKE
THOMAS P BURKE II
KOBI BURSHTEN
4400 N SCOTTSDALE RD #9706
SCOTTSDALE AZ 85251
AURITAI COHEN
1706 N VENTURA LN
TEMPE AZ 85281
THERESA DWYER
ORON GARABIAN
2902 N 81ST PL
SCOTTSDALE AZ 85251
ROBERT A HENRY
DEPENDABLE LOCKS INC
C/O EDWARD W WILLIAMS ESQ
205 W WACKER DR STE 1220
CHICAGO IL 60606
RUSSELL KUTSENKO

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650 SE 12TH ST
DANIA FL 33004
SUPERMEDIA L L C
C/O CT CORPORATION SYSTEM
2394 E CAMELBACK RD
PHOENIX AZ 85016
YIGAL LAMPERT
1634 W ENFIELD WAY
CHANDLER AZ 85248
JACOB A MASKOVICH
ROTEM NAHMARA
1706 N VENTURA LN
TEMPE AZ 85281
DAVID PEER
C/O EDWARD W WILLIAMS ESQ
205 W WACKER DR STE 1220
CHICAGO IL 60606
AMIR RON
4400 N SCOTTSDALE RD #9706
SCOTTSDALE AZ 85251
REBECCA C SALISBURY
DAVID SASSON
C/O EDWARD W WILLIAMS ESQ
205 W WACKER DR STE 1220
CHICAGO IL 60606
ODED TAMIR
7745 E REDFIELD RD #600
SCOTTSDALE AZ 85260

RULING

This matter having been under advisement, the following constitutes the FINDINGS OF FACT and CONCLUSIONS OF LAW with respect to the Preliminary Injunction hearing on April 18 and May 5, 2011, to the court. If any FINDING OF FACT should be a CONCLUSION OF LAW or vice versa, it shall be so considered. The testimony of the witnesses is listed under their names.

FINDINGS OF FACT

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1. The issue at this Preliminary Injunction hearing was whether there was fraud in advertising by defendants based on ARS §44-1221,¹ and the Consumer Fraud Act ARS §44-1521 et seq.² that affects plaintiff.
2. The parties stipulated that if other principals in the three other parties were to testify, their testimony would be substantially the same as that of Kobi Burshtein.

Charles Herbert Eastwood

3. Charles Herbert Eastwood is a general locksmith handling residences, commercial offices, automobiles and safes.
4. I have 20 years experience and have owned my own business for 10-15 years.
5. On December 8, 2008, I read a posting in Clearstar that someone in Baltimore complained that someone had eliminated his phone number from a web page and substituted an 800 number and a new street address. So I checked my own web page and saw that my number was replaced by someone. I also searched and saw that Atlas had a listing for every community with different phone numbers and addresses. All the addresses were false in that there was no locksmith located there. This practice has continued through two days ago.

¹ 44-1221. Deceptive use of name; classification; attorney general.

- A. It is unlawful for a person to deceive another person by misrepresenting the geographical origin or location of the person's business in the conduct of the person's business.
- B. A person who intentionally or knowingly violates subsection A of this section is guilty of a class 2 misdemeanor.
- C. An act or practice in violation of this section is an unlawful practice under section 44-1522 and subject to enforcement through private action and prosecution by the attorney general. The attorney general may investigate and take appropriate action as prescribed by chapter 10, article 7 of this title.

² 44-1522. Unlawful practices; intended interpretation of provisions.

- A. The act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.
- B. The violation of chapter 9, article 16 or chapter 19, article 1 of this title is declared to be an unlawful practice and subject to enforcement under this article.
- C. It is the intent of the legislature, in construing subsection A, that the courts may use as a guide interpretations given by the federal trade commission and the federal courts to 15 United States Code sections 45, 52 and 55(a)(1).

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6. Exhibit 1 shows addresses of defendant companies with a notation of addresses that are false. Of course, some of the addresses existed but there was no locksmith there as promised. For example, Arizona Locksmith in Tempe is actually a Subway store.
7. I've gone to every link for every city and run phone numbers on Google and only one is not associated with an actual address. But all other phones (but one) link to addresses that don't exist.
8. Atlas Locksmith has 250 to 300 telephone numbers with different addresses. Their legitimate shop is at 1402 North Miller Road.
9. These frauds affect me because when you Google a locksmith in Phoenix, they saturate the 411 directory assistance and a general consumer can't find me. Before defendants started this, I was always on the first Google page. My goodwill had gone down, along with my market share.
10. I've spent 100's of hours creating exhibits 5 and 8.
11. For example, exhibit 6 shows that Metro Lock and Locksmith is supposedly at 9140 E. Indian Bend but it's actually located at 35th Avenue. I called the number and got a different locksmith: Trust Locksmith.
12. This is deceptive to the public because if a person wants a close locksmith for quick service, they won't get it.
13. Also, sometimes I need some key blanks and I drive all over looking for a real shop to buy blanks, or people will drive to an address for assistance and will find nothing.
14. Defendants' practices violate the false origin statute as it's a false designation. It also violated the Consumer Fraud Act. All these practices have continued up through Saturday.
15. I've sued companies and individuals who run them. The defendants are interrelated. For example, Atlas and Millennium are different companies but they share the same office. Then I discovered that Millennium and Atlas have the same two owners: Kobi Burshtein and either Amir Ran or Oded Tamir.
16. Ownership has changed with some businesses.

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17. Exhibit 2 lists all of the names associated with Atlas.
18. There's irreparable injury as the reputation of locksmiths generally is diminished by this illegal activity and confusion. We can't get that trust back.
19. This action would have no effect on the real location of defendants in Scottsdale, just the false addresses.
20. The bond should be low as there lawsuit is intending to stop illegal action. Also, by reason of a hardship, I can't afford much of a bond. Thus, I asked for a receiver and for the profits to be put into trust.
21. No law in Arizona restricts locksmiths. Therefore, the position of ALOA (Associated Locksmiths of America) is only binding on its members including its position on multiple listings. But Arizona law also prohibits multiple listings. ARS §44-1221 prohibits intentional deception. ALOA membership costs \$150.00/year.
22. Atlas and Miller are local business; Complete is listed as an Arizona LLC; and Millennium is being operated in Tel Aviv, Israel. The statute allows a company to list multiple locations if they have them. A PO Box listing is not illegal.
23. I have a website and I've had ads in phone books for a year or two, but I can't afford phone book ads now. Ten dollars/month is my advertising budget. Since 2008, the economy has gone down and many businesses have closed. Most of my customers are repeat customers. In 2009, I spent \$1100 to \$1200 per month on Yellow Pages advertising. I also advertised on Yellow Pages in 2010.
24. For my first 5 years, I was on the first page on the search pages for Google and Yahoo, but with the false addresses, I've been bumped and the phony addresses get most of the calls. I didn't pay to get the early listings. I've lost business because of defendants but I don't know about good will or market share. I understand that I could pay professionals to raise my ranking, but I can't afford to do this.
25. A company with more money can advertise more, but I don't know if this is an unfair advantage. Advertising can involve use of different sized fonts and colors to get noticed.
26. I've not yet served all of the potential, listed defendants.
27. I imagine that defendants serve the communities that they say they do.

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28. I looked for blanks at a phony address, actually multiple locations, before 2008 which is when I learned of the phony marketing. I lost time and quite a bit of gasoline. I didn't think to call ahead. The injury was inconvenience. Other consumers would suffer similarly. I didn't rely on misrepresentations as a consumer in December 2008. I don't know if the false locations in 2008 involved Trust Locksmith.
29. I've focused on 11 companies operated by Israeli and Jewish companies. I don't know who owned Atlas and other companies. I have no idea if these defendants are connected to terrorism. I didn't threaten to drive my truck through defendants' businesses. Defendants asked me if I was singling out Israeli and Jewish locksmiths, but I replied that I'd be happy to include other defendants. However, all the TV news stories around the USA involve Israeli companies. I'm not suing because the defendants are Jewish. I'm doing so because they are acting illegally.
30. I don't recognize the voice you've recorded where the speaker uses gross profanities and "Go back to Israel," and "You're not a real locksmith," and "You don't speak English."
31. I don't know about other industries that may market the same way: towing, garage door, and carpet cleaning companies.
32. I filed the lawsuit on September 21, 2010, and I discovered on December 8, 2008 that the website for Atlas was wrong. I filed 21 months after I discovered the multiple listings. I'm not aware of a one year statute of limitations per ARS §12-541(5). I don't believe I missed a statute of limitations deadline.
33. My physical address for my locksmith business is 4024 N. 84th Lane, Phoenix. Dex shows my address as 2308 E. Indian School Rd., Phoenix, which is not my physical address.
34. I've tried to get city, state, sheriff, and the FBI to prosecute defendants but no one would. I say that private parties can prosecute as a private attorney general. I'm suing for myself, all local legitimate locksmiths and for consumers in Arizona.
35. SB 1052 which prohibits multiple listings was promoted to stop florists from out of state showing Arizona addresses.
36. Atlas, Miller and Complete are Arizona businesses. Millennium requires more investigation.
37. I charge for service calls sometimes but usually I quote a firm price on the phone. My

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rate for safe cracking is higher than for regular home or business service. I don't charge more for night and weekend work. I will refer out jobs to others if I have conflicting schedules.

38. I see Acme Locksmith because a friend works for them. We don't share business. They have a strip mall location but I see two Google views with locations in a residential neighborhood but without street addresses. Google seems to show a Walgreens store at the map location shown for Acme.
39. I acknowledge that Google maps show many businesses that don't appear to be located where the map shows them.
40. Mr. Cansanko high jacked my listing and changed to phone number to a call center in Florida. It took several months for me to get the listing corrected once I discovered it.
41. At our last hearing, I said that Trust and Adam and Victor changed their corporate identity as manager and member [but Ms Fleming is still defending the lawsuit for Trust].
42. Hundreds of web pages or phone numbers are OK for a business as long as they are not false. I don't know if Trust uses independent contractors in localities where they have phone numbers.
43. Most of my exhibit 18 shows streets or locations without specific street numbers.
44. I looked up the name of Cherrye Chesbrough and found out that it was her mother's address; I spoke to her yesterday. I reviewed documents she sent me and it shows that Kobi Burshtein provided these false addresses, so Kobi's testimony is wrong on that point.

Kobi Burshtein

45. Kobi Burshtein is a locksmith and owns Miller Lock and Save and the mobile business of Atlas Solution LLC.
46. Miller and Atlas show their address as 1402 N. Miller Rd, Scottsdale. My store has one phone and a fax and I have a cell.
47. I've never advertised with a false address. I don't have addresses listed on exhibit 3 such as 7828 N. 19th Ave., 610 W. Dunlap, or 7002 N. 23rd Lane. So if someone said I had a business at these addresses that would be wrong. Even 1400 is wrong because my

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business is at 1402 N. Miller. However, I serve the whole valley 24/7.

48. My gross revenue in 2010-11 is \$300,000, more or less. My net income was \$30,000. Exhibit 3 was done by a company that went bankrupt. I don't know the phone numbers on the left of exhibit 3.
49. Amir Ron is my partner. I started as a locksmith in Arizona in 2006 or 2007.
50. Locksmith business involves locks and safes including selling locks and safes.
51. I don't know who listed my company at addresses on 51st Avenue. I don't know if some of these false addresses bring me business.
52. Veritel company created this address system. Veritel is now defunct. Its principal was Clay Van Doren. I didn't change anything since Veritel put this system together. Van Doren didn't ever say using false addresses was illegal. If I'd known that this structure was illegal, I'd not have used it. I understand that using multiple addresses is not illegal. I didn't have a part of creating false addresses.
53. When Veritel and Van Doren approached me, they promised me more web traffic and more jobs, all of which wasn't true. It didn't work and I didn't get many jobs and this is why they're defunct. I don't use these multiple addresses anyway and I wouldn't be harmed if it stopped. But I don't know if I'd make the same money if these phone numbers and addresses disappeared. It would hurt my business if all of the numbers disappeared. When I call Cox with a 602 prefix, someone in the Phillipines answers.
54. If I get precluded from doing what others do, I'll be hurt.
55. Clay Van Doren laid out a plan 5 years ago and I approved his plan and I paid him for telephone device that he brought me—that's all. I paid a few hundred dollars but not a monthly fee. I still pay for these phone numbers. We never said on our web site that we use these addresses.
56. The same service was offered by Qwest, Bell South, Cox, etc.
57. We use virtual addresses, not false addresses. We use VOIP (Voice over Internet Protocol). The phone numbers on exhibit 3 ring at my Miller address. The other numbers may or may not ring at my store.
58. All the names we use are dba's.

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59. When Qwest tries to sell me the same service, we must give them an address, but it doesn't have to be an exact address. I pay Cox and Qwest for my phones and I don't pay Veritel or Clay Van Doren.
60. Listyourself.com lets you list all the VOIP numbers but it was forbidden for locksmiths to use it so Qwest lists it.
61. I know most locksmith companies in America use this false-address system.
62. We use Vonnage for the VOIP phone numbers because of the price.
63. Some information on Google is not correct. I don't think that Cox, Qwest or Google want to deceive, but some of the information is no true.
64. Exhibit 14 is a Google Business Document and its quality guideline say to use a precise, accurate address and not to use false addresses.

CONCLUSIONS OF LAW

65. In requesting a preliminary injunction, plaintiff's burden is generally described as follows:

“[Plaintiff] must show that

- (1) there is a real threat of irreparable injury not remediable by damages;
- (2) the threatened harm to the plaintiffs weighs more heavily in the balance than the actual injury to the defendants;
- (3) the plaintiffs are likely to succeed in the trial on the merits and
- (4) public policy favors the injunction.

See Brennan Petroleum Products Co., Inc. v. Pasco Petroleum Co., Inc., 373 F. Supp. 1312 (D. Ariz. 1974).”

Burton v. Celentano 134 Ariz. 594, 658 P.2d 247 (1982)

66. The level of proof needed for the issuance of a preliminary injunction is less than that required for the granting of a motion for summary judgment. *Powell-Cerkoney v. TCR-Montana Ranch Joint Venture, II*, 176 Ariz. 275, 860 P.2d 1328 (Ariz. App. 1993).
67. The principal statutes involved in this litigation are the Deceptive Name statute and the Consumer Fraud statute. The Deceptive Name statute is as follows:

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44-1221. Deceptive use of name; classification; attorney general.

A. It is unlawful for a person to deceive another person by misrepresenting the geographical origin or location of the person's business in the conduct of the person's business.

B. A person who intentionally or knowingly violates subsection A of this section is guilty of a class 2 misdemeanor.

C. An act or practice in violation of this section is an unlawful practice under section 44-1522 and subject to enforcement through private action and prosecution by the attorney general. The attorney general may investigate and take appropriate action as prescribed by chapter 10, article 7 of this title.

Last Legislative Year: 1999

68. The Consumer Fraud statute is as follows:

44-1522. Unlawful practices; intended interpretation of provisions.

A. The act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

B. The violation of chapter 9, article 16 or chapter 19, article 1 of this title is declared to be an unlawful practice and subject to enforcement under this article.

C. It is the intent of the legislature, in construing subsection A, that the courts may use as a guide interpretations given by the federal trade commission and the federal courts to 15 United States Code sections 45, 52 and 55(a)(1).

Last Legislative Year: 2003

69. The court concludes that the appearing defendants have used false addresses, that is, they have shown in the Internet and perhaps other places, purported addresses and phone numbers where they have no physical presence, *i.e.*, they have no office or shop at that location. This is contrary to the Deceptive Name statute and further misleads the public

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under the Consumer Fraud Act.

70. The court heard no evidence that defendants were not professional, fully trained and experienced locksmiths, nor was there any evidence that there was any misrepresentation other than locations where the businesses were based. In other words, there was no hint that consumers were overcharged or received less than they desired with respect to the quality of work performed. The only misrepresentation is the location of the business. Not only is this a statutory violation, but it misleads consumers who desire to patronize local businesses and who hope to have a neighborhood or nearby business who can be visited in person if desired for service or handling complaints or for follow up work.
71. With respect to each of these statutes, the court concludes that plaintiff has met his burden under the preliminary injunction hearing to show a probable violation of the two statutes. The court had previously believed that plaintiff had met his burden to avoid dismissal of his basic claims.³ The preliminary injunction hearing strengthened the court's conclusions derived from the December 2010 briefs and arguments.
72. Thus the court finds that there is a real threat of irreparable injury in that there is multiple injuries possible that are not easily discoverable or measurable. The harm to plaintiff and

³ In its minute entry dated December 8, 2010, the court stated:

A.R.S. Sec. 44-1221 creates a misdemeanor for one who "deceive(s) another person by misrepresenting the geographical origin or location of the person's business." Plaintiff has shown evidence of multiple false addresses, both nonexistent locations as well as locations used by other unrelated businesses. To the argument that Plaintiff is not a consumer of these businesses, Plaintiff alleges that he has attempted to utilize some services of nonexistent businesses. Also, Plaintiff points to the status of private attorneys general in the article on "What a Private Attorney General is--and Why It Matters". See *Vanderbilt L R* Vol. 57:6:2129, 2004.

This Court is uncertain at this point, but the concept of a private attorney general may make up for any deficiency in sufficient personal injury as required by *Nataros v. Fine Arts Gallery of Scottsdale, Inc.*, 126 Ariz. 44, 612 P.2d 500 (Ariz. 1960).

What is certainly clear is the scope of what was intended by A.R.S. Sec. 44-1221. The improper use of fictional addresses by some locksmiths seems to constitute a violation of the statute, although the nature of the injury is uncertain. At the very least, the use of false addresses may assist computer listings, but may mislead consumers into misunderstanding the important representations of the type of or substance of the business he is dealing with.

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the public weighs more heavily in balance than the actual injury to the defendants and that plaintiff is likely to succeed on the merits. Lastly public policy favors the injunction.

73. The issue of a bond is difficult. Changes to the Arizona Rules of Civil Procedure explain that an injunction is enforceable even without a bond being posted. *See* Comment to Rule 65, noting that 65(f) was deleted, which subparagraph had required a bond for the injunction to be effective.⁴ The financial straits of the plaintiff is an appropriate consideration. This seems to be especially true where the actions of the defendants appear to have an impact on plaintiff's income. Accordingly

IT IS ORDERED granting a preliminary injunction against the appearing defendants prohibiting them from using false addresses, that is to say, an address where they do not have a physical presence.

IT IS FURTHER ORDERED that plaintiff shall post a bond in the amount of \$500.00.

IT IS FURTHER ORDERED reserving the issue of attorneys fees until the end of this litigation.

ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.

⁴ *See In re Wilcox v. Ebarb*, 192 Ariz. 337, 965 P.2d 71, (Ariz. App. 1998):

The State Bar Committee Note, commenting on the deletion of Rule 65(f), states that, although security is still needed prior to the issuance of an injunction, the elimination of Rule 65(f) obviated the *Bayham* court's rationale for holding that a preliminary injunction had no effect if a security bond was not required. We agree.