

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
2007 DEC 19 PM 4:09
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BAIGOS
CLERK

BROWNSTONE PUBLISHING, LLC)
d/b/a ANGIE'S LIST)
Plaintiff)

vs.

1 : 07 -cv- 1 6 3 0 -SEB -JMS
CASE NO.

AT&T, INC. and)
AMERITECH PUBLISHING, INC. d/b/a)
AT&T ADVERTISING & PUBLISHING)
Defendants)

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF,
AND DEMAND FOR A JURY TRIAL**

Plaintiff, Brownstone Publishing, LLC d/b/a ANGIE'S LIST ("Plaintiff"), by counsel, for its complaint against Defendants AT&T, Inc. and Ameritech Publishing, Inc. d/b/a AT&T Advertising and Publishing a/k/a AT&T Yellow Pages – Indiana (collectively "Ameritech") alleges as follows:

Nature of Action

1. This is an action, arising in part under federal, state and common law for trademark infringement, unfair competition, injunctive relief and related causes of action arising out of Ameritech's unauthorized copying, publishing, distributing, advertising and use of Plaintiff's intellectual property, including but not limited to Plaintiff's trademarks and related rights.

Jurisdiction and Venue

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1338 and 1331; this Court has supplemental jurisdiction over Plaintiff's state and common law

claims pursuant to 28 U.S.C. §1367(a) inasmuch as those claims are so related to the federal claims as to form part of the same case or controversy.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and (c).

4. This Court may exercise personal jurisdiction over Ameritech because of Ameritech's contacts with this forum, and because Ameritech has committed acts and crimes in the State of Indiana and in this district.

The Parties

5. Brownstone Publishing, LLC d/b/a ANGIE'S LIST ("Plaintiff") now is, and at all times mentioned in this complaint was, a limited liability company duly organized and existing pursuant to the laws of Indiana with its principal place of business in Marion County, Indiana.

6. Upon information and belief, defendant AT&T, Inc. is one of the largest telecommunications companies publicly traded in the United States with many subsidiaries and related companies, and is the parent corporation of co-defendant Ameritech Publishing, Inc. d/b/a AT&T Advertising and Publishing a/k/a AT&T Yellow Pages – Indiana. AT&T, Inc. f/k/a SBC Communications, Inc. is also the parent of several other Yellow Pages publishers and directory distributors across the country. AT&T, Inc. is a Delaware corporation, licensed to do business in the State of Indiana, with its corporate headquarters and principal place of business located at 175 East Houston Street, San Antonio, TX 78205-2255.

7. Upon information and belief, defendant Ameritech Publishing, Inc. d/b/a AT&T Advertising and Publishing a/k/a AT&T Yellow Pages – Indiana is a wholly-owned

subsidiary of co-defendant AT&T, Inc. Ameritech Publishing, Inc. is a directory advertiser and publisher that publishes telephone directories in Indiana, Michigan, Ohio and Wisconsin. Ameritech Publishing, Inc. is a Delaware corporation, licensed to do business in the State of Indiana, with its principal places of business located at Tax Dept 36 K 06, One SBC Center, St. Louis, MO 63101 and which also operates a local office at 7144 Lakeview Parkway West Drive, Indianapolis, IN 46268.

8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted as an agent and representative of the other Defendants, and that in performing and engaging in the acts alleged in this Complaint, Defendants acted within the authorized scope of their agency. Plaintiff is further informed and believes, and based thereon alleges that all of Defendants' acts and the acts of Defendants' other employees, agents, and representatives were authorized and ratified by Defendants. Defendants AT&T, Inc. and Ameritech Publishing, Inc. d/b/a AT&T Advertising and Publishing a/k/a AT&T Yellow Pages – Indiana and AT&T, Inc. are collectively referred to throughout this Complaint as “Ameritech.”

Background

9. “ANGIE’S LIST” comprises a widely known and popular collection of directories of businesses that can be found on the Internet at www.angieslist.com. Information about the businesses in the ANGIE’S LIST directories includes homeowners' real-life experiences with the businesses, which are provided by “Members” or subscribers to ANGIE’S LIST. Members pay Plaintiff membership fees to join ANGIE’S LIST, which allows them to: (a) review the ANGIE’S LIST business directories; (b) identify which businesses have received certain ANGIE’S LIST awards and see ratings for the listed

businesses; and (c) find trustworthy companies that perform high-quality work, as well as avoid companies that perform low-quality work. ANGIE'S LIST has more than just business listings providing in directories such as Yellow Pages; ANGIE'S LIST includes up-to-date ratings, comments and certifications for listed businesses. The identity of which business are included in ANGIE'S LIST and which businesses have received certifications from Plaintiff is valuable information, which Members pay to access.

Angie's list.

For details about Angie's List in your area, enter your zip code here or select your city below.

ZIP

Locations
(Metro Areas)

- Akron, OH
- Albany, NY
- Albuquerque, NM
- Allentown, PA
- Asheville, NC
- Atlanta, GA
- Auburn, ME
- Augusta, GA
- Austin, TX
- Bakersfield, CA
- Baltimore, MD
- Baton Rouge, LA

Home service companies reviewed and rated by real homeowners like you...

Take a quick tour

Read more

More than 600,000 Homeowners in 124 major cities use Angie's List for ratings and reviews on:

- Plumbers
- Landscapers
- Remodeling
- Handymen
- Roofers
- Decks & Porches
- Painting
- HVAC
- More Services

Browse limited information about companies on the List. Get unlimited access to fast searches, full company ratings & consumer reviews.

36 WAYS TO IMPROVE YOUR LIFE IN 2007

U.S. News

"First, Call Angie's List"




By Thomas K. Oram
Survey: November 17, 2006
Read more about it

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10. Qualified companies that are highly rated on ANGIE'S LIST must focus on customer service and quality workmanship because Members give Plaintiff feedback on their experiences. By aggregating detailed reports submitted by Members, ANGIE'S LIST provides reliable, unbiased ratings on local service providers and contractors.

Because Members submit reports when they hire a service provider, ratings are current and reliable, and reflect the most recent feedback received on a particular company.

11. Plaintiff owns various registered and common law marks relating to ANGIE’S LIST (collectively “Plaintiff’s Marks”), including the following federal registrations:

| MARK | REG. NO. |
|---|---|
| ANGIE'S LIST | 2,083,451, 2,775,167 3,224,630 3,224,639 |
|  | 2,766,650 |
|  | 2,790,803 |
| ANGIE'S LIST SUPER SERVICE AWARDS, 2004, 2005 | 2,769,122 |
|  | 3,255,446 |

12. Plaintiff has invested hundreds of thousands of dollars in promoting Plaintiff’s Marks, and the marks are famous throughout the United States. Directories are maintained and marketed in over one hundred cities and other locations. Plaintiff’s Marks have been heavily promoted in nationally-recognized magazines and on television and radio programs including Morning Edition, All Things Considered, Marketplace and Car Talk.

13. Plaintiff tightly controls the use of its marks. In particular, Plaintiff prohibits use of Plaintiff’s Marks in directories of others.

14. Plaintiff also derives revenues from distributing printed directories of various businesses. Some of the listed businesses purchase advertising space in these directories, in part, so that recipients will know that the business has received various ANGIE'S LIST ratings. These businesses are less likely to purchase advertising from Plaintiff if their competitors are allowed to use Plaintiff's Marks in other business directories, such as those distributed by Ameritech.

A. Ameritech's Infringement - Generally

15. Ameritech is a publisher of telephone print and on-line directories, including the AT&T Yellow Pages multiple metropolitan areas.

16. Ameritech's Yellow Page and on-line directories directly compete with ANGIE'S LIST's directories.

17. Ameritech, without Plaintiff's permission or approval, is and has printed and distributed in the Indianapolis, Indiana and other metropolitan area telephone directories that contained Plaintiff's Marks.

18. Ameritech has profited by selling advertisements that include Plaintiff's Marks.

19. Some of the printing and distribution by Ameritech referred to above occurred **after** Plaintiff expressly told Ameritech to cease and desist from such printing and distribution, and Ameritech agreed to do so.

20. The identities of businesses that are listed on ANGIE'S LIST, and the ratings for these businesses, change continuously. Hence, advertisements in directories like the Yellow Pages that reference ANGIE'S LIST mislead the public in at least the following ways: (a) the public mistakenly believes that ANGIE'S LIST allows businesses, or

Defendants, to use the Plaintiff's Marks in the directories, when it does not; (b) the public mistakenly believes that the business identified in a particular advertisement is included ANGIE'S LIST, if it is not; (c) the public mistakenly believes that a business identified in a particular advertisement currently has an ANGIE'S LIST rating shown in the advertisement, if it does not; (d) the public believes the listings for a particular business category is a complete list of the business included in ANGIE'S LIST for the category, when it is not; and (e) consumers are likely to believe that only those businesses in a category that display an ANGIE'S LIST Mark are included in the ANGIE'S LIST directory, when in fact, there are many additional such businesses in the ANGIE'S LIST directory.

21. Ameritech's inclusion of Plaintiff's Marks in its Yellow Pages discourages consumers from purchasing memberships in ANGIE'S LIST, which damages Plaintiff.

22. In addition to direct infringement, Ameritech contributes to and induces infringement of Plaintiff's Marks by running ads from businesses that include Plaintiff's Marks. This scheme enables infringing companies to gain an unfair advantage over other companies that advertise in the same directory that actually may be highly rated on ANGIE'S LIST but do not improperly use Plaintiff's Marks in that directory (because Plaintiff prohibits all use of Plaintiff's Marks in the Yellow Pages). Significant business is thereby diverted from properly licensed companies to unlicensed companies by unauthorized advertising in Ameritech's directories.

B. Representative Examples of Ameritech's Infringement

1. Plaintiff's Prior Notice to Ameritech to Cease and Desist

23. Ameritech, without Plaintiff's permission, has distributed telephone directories with Plaintiff's Marks after notice that Ameritech's use was prohibited. In early 2006 and 2005, Plaintiff corresponded with Ameritech to stop all use of Plaintiff's Marks in future Ameritech directories in the Indianapolis, Indiana metropolitan area. (Exhibit A, Walsh letter to Tartt 1-27-06) (Exhibit B, Tartt-Walsh email 5-1-05 and 5-2-05). Ameritech acknowledged Plaintiff's notice and assured Plaintiff it would cooperate in preventing Plaintiff's Marks from appearing in future directories. (Ex. B).

24. Ameritech had actual knowledge of the express prohibition and continued to use Plaintiff's Marks. Ameritech's failure demonstrates that it is not an "innocent infringer" or "innocent violator" under 15 U.S.C. §1114(2). Ameritech ignored Plaintiff's prior cease and desist letters and disregarded Plaintiff's rights by manufacturing, distributing, rendering, displaying, advertising, promoting and offering for sale directories that infringe Plaintiff's intellectual property rights.

25. Ameritech is not immune from the operation of the trademark and other laws merely because of its size and power. Ameritech failed to take affirmative steps to avoid confusion and mistake by its customers and directory users. The following are merely a few examples of some, but not all, of Ameritech's infringing uses of Plaintiff's Marks **after** full knowledge of Plaintiff's rights.

2. Amos Guttering, Inc.

26. On June 23, 2005, and at Ameritech's own request after receiving Plaintiff's initial notice (Ex. B), Plaintiff provided Ameritech with a list of advertising companies that previously used Plaintiff's Marks in the Yellow Pages without permission, so that Ameritech would: 1) never use Plaintiff's Marks again; and 2) prevent future infringements by those specific companies. (Exhibit C, Walsh -Tartt email 6-23-05). One company on that list was Amos Guttering, Inc. ("Amos"). (Ex. C). However, an Amos advertisement with Plaintiff's Marks appeared in both the November 2006-2007 Indianapolis and North Suburban AT&T Yellow Pages directories after Plaintiff gave Ameritech the list of violators in June 2005. (Exhibit D, Amos Yellow Pages ad).

27. Ameritech disregarded Plaintiff's list and printed the Amos advertisement anyway with knowledge that it was infringing. This fact is confirmed by Ameritech's admission of fault in its November 4, 2006 letter. (Exhibit E, Amos AT&T Admission).

3. Glass Medic

28. The June 23, 2005 violators list also included a Yellow Pages advertising company named Glass Medic. (Ex. C). However, as with Amos, Ameritech ignored the list and permitted Glass Medic to also use Plaintiff's Marks in Ameritech's Indianapolis AT&T Yellow Pages 2006-2007 directories. (Exhibit F – Glass Medic Yellow Pages ad). This demonstrates not only additional intentional infringement by Ameritech, but also a pattern of conscious disregard for Plaintiff's rights.

4. Bone Dry Roofing

29. There are other examples of Ameritech's intentional infringement, too, in the same Indianapolis directories. In Ameritech's Indianapolis AT&T Yellow Pages 2006-2007 directories, Ameritech's advertisement for Bone Dry Roofing also contained Plaintiff's Marks without permission. (Exhibit G Bone Dry AT&T Yellow Pages ad). Upon notice of the infringing advertisement, Ameritech subsequently admitted fault for publishing the infringing advertisement. (Exhibit H, Bone Dry AT&T Admission).

5. Roby's Plumbing

30. Ameritech's advertisement in the Indianapolis AT&T Yellow Pages 2006-2007 directory edition for Roby's Plumbing similarly contained Plaintiff's Marks without permission. (Exhibit I, Roby AT&T Yellow Pages ad). Ameritech sent yet another apology letter admitting that they used Plaintiff's Marks and that Roby was not responsible for the infringement. (Exhibit J, Roby AT&T Admission).

6. Weilhammer Plumbing

31. In Ameritech's Indianapolis AT&T Yellow Pages November 2006-2007 directories, the Weilhammer Plumbing advertisement also contained an infringing logo. (Exhibit K, Weilhammer AT&T Yellow Pages ad). In yet another similar situation, the logo appeared without Plaintiff's permission, and even after Weilhammer told Ameritech to remove the logo. (Exhibit L, Weilhammer AT&T Admission). Upon notice of the infringing advertisement, Ameritech has admitted being solely at fault. (Ex. L).

7. 2007 – 2008 Directory

32. In the first half of 2007, Plaintiff repeatedly brought to Ameritech's attention the foregoing infringements as well as other infringements, and again demanded that Ameritech cease its infringing activity. Ameritech assured Plaintiff that it would cease. However, those promises were mere lip service; in fact Ameritech continued to infringe. When Ameritech released its 2007-2008 Yellow Pages (Exhibit M) it continued to infringe by including Plaintiff's Marks.

33. In summary, Ameritech has confirmed that they repeatedly used Plaintiff's Marks, without license or permission **after prior notice to cease and desist from their improper use**. Further, Ameritech's infringement occurred after promising to stop such infringements. Moreover, Ameritech's actions have resulted in massive use of Plaintiff's Marks without permission or remuneration. Ameritech still continues to publish and distribute directories with Plaintiff's Marks in Indianapolis and elsewhere. These actions constitute infringement, violate Plaintiff's intellectual property rights and damage Plaintiff and others.

34. Plaintiff has no adequate remedy at law and damage continues.

COUNT I
Trademark Infringement and False Designation Under the Lanham Act

35. Plaintiff incorporates by reference the allegations contained in all previous paragraphs of this Complaint.

36. Plaintiff's Marks are registered trademarks that are otherwise protected intellectual property that may be used only by legitimately licensed parties. Plaintiff has

never given Ameritech permission to use Plaintiff's Marks. Ameritech has on its own and otherwise assisted others to use Plaintiff's Marks without authority.

37. Plaintiff's registered marks are incontestable under 15 USC § 1065.

38. Ameritech's use of Plaintiff Marks is likely to cause confusion, or to cause mistake, or to deceive with knowledge that such use is intended to be used to cause confusion, or to cause mistake, or to deceive.

39. Ameritech's conduct has affected and, unless enjoined, will continue to affect interstate commerce.

40. As a direct and proximate result of Ameritech's actions, Plaintiff has been damaged.

41. Ameritech's acts constitute trademark infringement and a violation of Plaintiff's rights under Federal and Indiana statutes and the common law. Ameritech is neither an "innocent infringer" nor an "innocent violator" because Ameritech had actual knowledge that Ameritech's use of Plaintiff's Marks was expressly prohibited.

42. Ameritech's conduct has created confusion, or to cause mistake or to deceive and is likely to cause further confusion, mistake, or deception among members of the general public in violation of 15 U.S.C. §§1114, 1117 and 1125. Irreparable harm is imminent as a result of Ameritech's conduct. Unless Ameritech is enjoined by this Court, Ameritech's continuing wrongful acts will further damage the ownership rights in Plaintiff's Marks. Plaintiff is entitled to an injunction restraining Ameritech and all persons acting in concert with it from engaging in any further acts in violation of the Lanham Act.

43. Plaintiff is entitled to recover Ameritech's related profits, actual damages, treble damages, costs of suit and attorney's fees, and all other reasonable relief available.

COUNT II
Common Law Unfair Competition

44. Plaintiff incorporates by reference the allegations contained in all previous paragraphs of this Complaint.

45. Ameritech's unlawful and unauthorized use of Plaintiff's Marks constitutes unfair competition with Plaintiff. Ameritech's conduct was and continues to be designed to cause confusion among the public with Plaintiff. Ameritech's conduct was, and continues to be, calculated to cause damage to Plaintiff in its lawful business and with the unlawful purpose of causing such damages without right or justifiable cause.

46. Ameritech's conduct has damaged Plaintiff.

47. Ameritech acted willfully, maliciously, and with full knowledge of the adverse effect of such wrongful conduct upon Plaintiff. Ameritech has acted with full knowledge of the express prohibition against using Plaintiff's Marks, and with conscious disregard for Plaintiff and other's rights.

48. Ameritech's unfair competition has caused Plaintiff damages, including but not limited to, Ameritech's profits from the sales of products, actual damages, costs of suit and attorneys' fees and all other reasonable relief available.

COUNT III
Indiana Crime Victims Act

49. Plaintiff incorporates by reference the allegations contained in all previous paragraphs of this Complaint.

50. Ameritech's acts complained of herein constitute violations of the Indiana Crime Victims Act, Indiana Code Sec. 34-24-3-1.

51. Ameritech has violated and continue to violate I.C. 35-43 in the following particulars:

a. For "Criminal Mischief" as expressed in I.C. 35-43-1-2: Ameritech has knowingly or intentionally damaged Plaintiff's Marks and caused Plaintiff to suffer pecuniary loss by deception or by an expression of intention to injure Plaintiff or to damage Plaintiff's Marks or to impair the rights of Plaintiff. Ameritech knew that Plaintiff's Marks could not be used by Ameritech or its directories. Ameritech deceived Plaintiff by agreeing to cease its infringement, but instead, Ameritech not only continued to infringe, but also contributed to and induced the infringement by others. Plaintiff suffered pecuniary loss by Ameritech's deception and damage to Plaintiff's Marks.

b. For "Conversion" as expressed in I.C. 35-43-4-3: Ameritech knowingly or intentionally exerted unauthorized control over Plaintiff's Marks; to-wit, Ameritech knew that Plaintiff's Marks was not permitted in Ameritech's directories but nevertheless used Plaintiff's Marks anyway and permitted others to so use Plaintiff's Marks; and

c. For "Deception" as expressed in I.C. 35-43-5-3(a)(6) and (9): Ameritech, with intent to defraud, misrepresented to the public the right of Ameritech and businesses in its directories to use Plaintiff's Marks in Ameritech's directories, and Ameritech disseminated to the public advertisements that Ameritech knew were false,

misleading, or deceptive, with intent to promote the purchase or sale of property and services. Specifically, Ameritech knew that Plaintiff's Marks was not permitted in Ameritech's directories, and that any such use was expressly prohibited, false, misleading or deceptive.

52. Ameritech has caused irreparable injury to Plaintiff and Plaintiff's trade, business, reputation and good will. Ameritech's actions also caused Plaintiff to incur fees and expenses. Accordingly, Plaintiff is entitled to three times its actual damages, costs of this action, reasonable attorney's fees, all other recovery authorized by I.C. 34-24-3-1, and all other reasonable relief available.

COUNT IV
Preliminary and Permanent Injunctive Relief

53. Plaintiff incorporates by reference the allegations contained in all previous paragraphs of this Complaint.

54. The aforesaid actions by Ameritech have caused, and unless enjoined, will continue to cause irreparable injury for which there is no adequate remedy at law. Accordingly, Plaintiff is entitled to an injunction prohibiting Ameritech from further infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

1. That judgment be entered in favor of Plaintiff on all causes of action set forth herein finding Ameritech violated and infringed exclusive rights in Plaintiff's Marks;

2. That Defendants, their officers, directors, principals, agents, servants, affiliates, employees, attorneys, representatives, successors and assigns, and all those in privity or acting in concert or participation with Ameritech, and each and all of them, be preliminarily and permanently enjoined and restricted from directly or indirectly selling, offering for sale, promoting, advertising, distributing, publishing or providing or offering to provide any good or service that includes or any of Plaintiff's Marks;

3. That Ameritech be required to deliver to Plaintiff proof of destruction or all Yellow Pages directories possessed, used or distributed by Ameritech, or on their behalf, which refer to or are at all similar to Plaintiff's Marks;

4. That Ameritech be required to account to Plaintiff for any and all profits gained by Ameritech through the conduct complained of herein and to pay all such profits over to Plaintiff;

5. That Ameritech be required to identify all advertisements it has published that contain Plaintiff's Marks since 1995;

6. That Ameritech be required to compensate Plaintiff for any and all damage suffered by Plaintiff as a result of the actions complained of herein;

7. That Plaintiff recover its damages; and that Ameritech be assessed with treble damages;

8. That Plaintiff be awarded its costs, expenses and attorney's fees incurred in the prosecution of its claims against Ameritech including but not limited to such costs, expenses and fees awardable pursuant to 15 U.S.C. §1117 et seq. and I.C. 34-24-3-1; and

9. That Plaintiff obtain such other and further relief as this Court may deem appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,

DATE: 12-19-07



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EXHIBITS:

- Exhibit A – Walsh letter to Tartt 1-27-06
- Exhibit B – Tartt -Walsh email 5-1-05 and 5-2-05
- Exhibit C – Walsh -Tartt email 6-23-05
- Exhibit D – Amos AT&T Yellow Pages ad
- Exhibit E – Amos - AT&T Admission
- Exhibit F – Glass Medic AT&T Yellow Pages ad
- Exhibit G – Bone Dry AT&T Yellow Pages ad
- Exhibit H – Bone Dry - AT&T Admission
- Exhibit I – Roby AT&T Yellow Pages ad
- Exhibit J – Roby - AT&T Admission
- Exhibit K – Weilhammer AT&T Yellow Pages ad
- Exhibit L – Weilhammer - AT&T Admission
- Exhibit M – Representative Infringing Ads from Ameritech 2007-2008 Directory