

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOHN F. TAMBURO D/B/A MAN'S
BEST FRIEND SOFTWARE and
VERSITY CORPORATION,

Plaintiffs,

v.

STEVEN DWORKIN, KRISTEN HENRY,
ROXANNE HAYES, KAREN MILLS,
WILD SYSTEMS PTY, LTD.,
an Australian corporation,

Defendants.

Case No. 04 C 3317

Judge Joan B. Gottschall

Mag. Judge Nan Nolan

NOTICE OF FILING

To: Charles L. Mudd, Jr.
Attorney at Law
3344 N. Albany Ave.
Chicago, IL 60618-5720

PLEASE TAKE NOTICE that, on September 7, 2005, the undersigned filed the attached **Appearance** and **Fifth Amended Complaint** with the Clerk of the United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois, copies of which are hereby served upon you.

Dated: September 7, 2005

**JOHN F. TAMBURO D/B/A MAN'S
BEST FRIEND SOFTWARE and
VERSITY CORPORATION**

By: 
One of Their Attorneys

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**


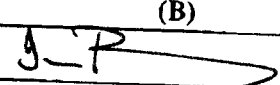
In the Matter of

EASTERN DIVISION

**JOHN F. TAMBURO D/B/A MAN'S BEST FRIEND
SOFTWARE, et al. v. STEVEN DWORKIN, et al.**

Case Number: **04 C 3317**

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:
VERSITY CORPORATION, Plaintiff

(A)		(B)	
SIGNATURE 		SIGNATURE 	
NAME John Raymond Benn		NAME Ian Brenson	
FIRM Attorney at Law		FIRM Attorney at Law	
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IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) N/A		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 06200937	
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TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
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SIGNATURE		SIGNATURE	
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FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
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DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

VENUE

5. Venue lies in this district under 28 USC § 1391(a)(2) and (a)(3).
6. Venue also lies in this district under 28 USC § 1391(b)(2) and (b)(3).

THE PARTIES

7. Plaintiff, John F. Tamburo, owns and d/b/a Man's Best Friend Software. Plaintiff Tamburo is a resident of Will County, Illinois. Plaintiff does business from 655 N. LaGrange Rd., Suite 100, Frankfort, Illinois 60423.
8. Plaintiff Versity Corporation is an Illinois corporate entity that was organized in March 1999.
9. Defendant Dworkin is a resident of Ottawa, Ontario, Canada, at 1081 Barwell Ave., Ottawa, ON K2B 8H4 Canada.
10. Defendant Henry is a resident of the United States, at 704 E Huntington Dr., Highlands Ranch, CO 80126.
11. Defendant Hayes is a resident of the United States, at 52988 Burlington Rd, Marcellus, MI 49067.
12. Defendant Mills is a resident of the United States, at 81 Linwood Avenue, Columbus, OH 43205-1525.
13. Defendant Wild Systems Pty. Ltd., an Australian corporation, is located at 27 Wycombe St, Epping, NSW 2121, Australia.

FACTUAL ALLEGATIONS

14. Plaintiff Versity Corporation, by agreement dated May 10, 2004, assigned all of its rights and assets to Plaintiff Tamburo.
15. That subsequent to said transfer, by virtue of 805 ILCS 5/12-80, Plaintiff Versity Corporation continues to be able to pursue its civil claims against Defendants.
16. That prior to said transfer Plaintiff Versity Corporation operated "The Breeder's Standard .NET as a web-based dog breeding and pedigree software program.

17. That after said transfer Plaintiff Tamburo continued to operate "The Breeder's Standard .NET as a web-based dog breeding and pedigree software program.
18. Defendant Wild regularly conducts business within Illinois by marketing Breedmate into Illinois and selling the program to Illinois citizens.
19. Defendant Dworkin owns and operates the www.keesdog.com web site. As of June 8, 2004, and continuing back to all times relevant to the instant case, www.keesdog.com has been operated from a computer located in the United States of America.
20. Wild's www.breedmate.com site, while hosted in Canada, has at one time, been hosted in the United States, and the technical responsibility for the www.breedmate.com domain has at all times relevant to the instant case been with CI Host, located in Texas.
21. Plaintiff Tamburo owns and operates a business that makes software products for the use of dog breeders, cat breeders, horse breeders and pet groomers, and has done so continuously since December 8, 1991.
22. On January 9, 2004, Plaintiff Versity Corporation launched The Breeder's Standard™ .NET (hereinafter ".NET"), a web based dog breeding and pedigree software program.
23. This program offers, *inter alia*, a pedigree database that Plaintiffs' customers can use for research and genetic calculations.
24. Defendants Dworkin, Henry, Mills and Hayes each operate sites that allow the public, free of charge, to search for and view pedigrees of certain breeds of dogs.
25. None of these sites had any HTML Robot Exclusion Headers, a commonly used method to tell automatic browsing programs to go away
26. None of these sites had a "robots.txt" file in their root directory, an older but still valid method of excluding automatic browsing programs from part or all of a web site.
27. Plaintiff Tamburo developed a computer program that retrieved individual dog pedigree web pages one by one, stripped out the HTML code, and saved a copy of the bare facts appearing on each web page to a text file, which was in turn imported into .NET for the use of his customers.

28. Plaintiff Tamburo deployed this computer program to make copies of all of the bare facts offered freely to the public on all of the individual defendants' web sites.
29. The term "bare facts" used in this complaint means a given animal's name, date of birth, gender, parents' names (if known), showing titles (if known), color (if known) and registration number (if known).
30. Plaintiffs, as of May 10, 2004, had 2,194,487 dogs in its database. About 250,000 of these were obtained from the free public databases of defendants and others who publish databases for other breeds.
31. In no case were any HTML robot exclusion headers disobeyed.
32. Plaintiff Tamburo owns another pedigree software product named "CompuPed."
33. Plaintiff Tamburo owns and offers breed libraries, for the exclusive use of his customers at no additional charge.
34. Three of these breed libraries are Poodle, Keeshond and Cavalier King Charles Spaniels.
35. These breed libraries contain a "no copy" flag in the data, which prevents CompuPed from exporting these records to others.
36. Defendant Wild has created an import routine that reads all CompuPed data records in a CompuPed file, disregards the "no copy" flag, and imports these records into his "Breedmate" product (hereinafter "Breedmate"), which directly competes with CompuPed.
37. Other defendants, including Defendants Mills and Henry, advertise Breedmate on their websites.
38. Defendant Dworkin has copied substantially all of the CompuPed Keeshond breed library into his online database, and he now accuses John of the "blatent [sic] theft" of these data items.
39. Defendant Mills has copied substantially all of the CompuPed Poodle breed library into her online database, and she now states on the front of her web site that people ought to "boycott" John's product because his poodle data was "stolen" from her.
40. On April 26, 2004, Defendant Dworkin sent an electronic mail to Kathi Charpie, Plaintiff Tamburo's support manager.

41. In said letter, Defendant Dworkin threatened Plaintiff Tamburo with the following: "If you [sic] blatant [sic] theft of data is not removed [sic] from your site within 5 days, I will publish to each and every dog based list the sleazy methods of your companies operation."
42. An exchange of electronic email messages followed, wherein Plaintiff Tamburo refused to remove the data on the grounds that it is in the public domain, and Defendant Dworkin denied that this honorable court could ever exercise jurisdiction over him, and that American law does not apply to him.
43. Defendant Dworkin later sent Plaintiff Tamburo an email, in which Defendant Dworkin states that if Plaintiff Tamburo were to remove the Keeshonden from .NET, Defendant Dworkin would be silent and tell nobody else; he would "vanish into the background "
44. On April 29, 2004, Plaintiff Tamburo posted a statement on .NET for public reading, informing all customers and potential customers of this product of all of his sources for the dog facts in .NET.
45. On or about April 29, 2004, a discussion started on the Breedmate Group.
46. Defendant Wild's owner DeJong made comments on that list, but did not ask that the discussion be stopped or relocated elsewhere.
47. In fact, Defendant DeJong has exclusive control over who may be a member of the Breedmate Group, and has configured it so that he must personally approve each and every posting made to that email list.
48. Defendant DeJong personally approved all of these postings and circulated them to the over 480 members of the Breedmate Group.
49. Defendant DeJong posted to the Breedmate Group, and stated that he "would be taking measures to prevent" Plaintiff Tamburo from obtaining any pedigree data from his "Worldpedigrees.com" web site, even though it states on its face that it exists to freely share data.
50. Shortly thereafter, Defendant Dworkin sent out a message to all persons who had a free online database of dog pedigrees on the Internet.
51. Thereafter, on May 5, 2004, Defendant Hayes posted a message on her web site accusing Plaintiff Tamburo of "purposefully and willfully" stealing the data on that site.

52. Defendant Hayes has copied substantially all of the CompuPed Cavalier King Charles Spaniel breed library into her online database, and yet she states on the front of her web site that Plaintiff Tamburo "purposefully and intentionally stole" these data items.
53. Defendant Hayes is a member of several email lists where dog enthusiasts gather.
54. Defendant Hayes actively encouraged "cross posting" to other lists, in order to spread the false accusations contained therein to as large an audience as possible.
55. Upon information and belief, this email has been spread to over 150 mailing lists.
56. In this email she encourages people to send email denying Plaintiff Tamburo permission to list dogs they own in his breed database.
57. On May 4 or May 5 2004, Defendant Henry posted a message on the face of her web site.
58. Defendant Henry is a member of several email lists where dog enthusiasts gather.
59. Defendant Henry sent all of these lists the email entitled "My Schipperke Database has been Stolen and The Breeder's Standard is the Thief."
60. On May 4 or May 5, 2004, Defendant Mills posted a message on the front page of her web site.
61. After Plaintiff Tamburo refused to accede to his threats as set forth hereinabove, Defendant Dworkin, on May 7, 2004 sent out the email message.
62. Defendant Dworkin's message recruits others to "band together" in a campaign to stop the "theft" and "commercial use of our data."
63. Defendant Dworkin sent the message shown to everyone in the world who he could locate who had a free online pedigree database.
64. Defendant Henry and others reposted this message verbatim to many dog lists.
65. Since then, this message has spread worldwide, and has, upon information and belief, been read by over 100,000 dog breeders and fanciers.
66. From May 1 to May 4, 2003, Plaintiffs sold over \$3,300 of product.
67. Since the time Defendant Dworkin's letter was sent, Plaintiff Versity Corporation and have sold less than \$230 in product May 5 through May 8, 2004.
68. Plaintiff Versity Corporation estimates that he lost \$25,000 in sales in May of 2004, due solely to the acts of the Defendants

69. After they conducted their smear campaign, Defendant Dworkin again emailed Plaintiff Tamburo on May 10, 2004.
70. In that email, Defendant Dworkin crows about the damage that defendants had inflicted to date: "As well, I'm sure that with the many e-mails and cancellations that you have received, you and your company have not been pleased with the adverse public reaction..."
71. The rest of the email continues to say that Defendant Dworkin and "many others on the various breed group lists" would, if all of the copied data was to be removed from .NET, make a statement that "your MBFS program is a fair and valid commercial venture..."
72. On the Breedmate Group, operated by Defendant Wild these people, including Defendants Dworkin, Henry, Mills and Hayes, discussed, *inter alia*, how to make Plaintiff Tamburo go "bankrupt."
73. Defendant Hayes has actively used the Breedmate Group to recruit others to "band together and cause Plaintiff Tamburo a lot of grief."
74. Defendant De Jong has done nothing to stop the use of the Breedmate Group as a place to plan ways to harm Plaintiffs Versity Corporation and Tamburo; rather he facilitated the plans of those who planned the smear campaign against Plaintiff Tamburo, by personally approving all of the messages posted to the list.
75. Defendant Henry has been in close communication with Defendant Wild, and has sent Defendant DeJong copies of many of her emails falsely alleging that her data was "stolen."
76. Defendant Henry also advertises Wild's Breedmate product in her email labeled "Stolen Pedigree Databases."
77. Defendant Dworkin is also listed as a recipient on emails, sent by Defendant Henry to email lists where Schipperke breeders gather. Defendant Dworkin does not breed Schipperkes.
78. Defendant Dworkin is a member of the Breedmate User group email list operated by Wild.
79. Subsequent to the filing of the original complaint in this matter, Defendants have continued their campaign to smear Plaintiffs Versity Corporation and Tamburo,

- adding a new twist: They are now recruiting other dog breeders to send Plaintiffs bills asking for \$100 per dog per month for listing the facts about dogs they own.
80. Subsequent to the service of the First Amended Complaint in this matter, Defendant Mills added text to the home page of her personal web site, <http://www.patriotgold.com>.
 81. These statements appear to be an "expert opinion" stating that John's copying of data, *inter alia*, somehow violates the "Privacy Act" by placing the names and vital statistics of dogs on a web site without the prior written consent of the owner(s) of the dog(s), that the copyright of web pages protects the facts contained therein from being copied by any automated process, that persons whose dogs appear in Plaintiffs Tamburo's database have the right to file a class action lawsuit, and that Plaintiff Tamburo's actions somehow violate "international law" which will trump United States law.
 82. That the actions of Defendants involved the possession of monopoly power in the relevant market of dog breeding data.
 83. That the actions of Defendants involved the willful acquisition or maintenance of monopoly power by means of anticompetitive and/or predatory conduct.
 84. The actions of Defendants demonstrated an intent to monopolize this business.
 85. That the actions of Defendants resulted in the dangerous probability of Defendants achieving monopoly power.
 86. That Defendants knew their statements to be false or made them with reckless disregard of whether the statements were true or false.
 87. Plaintiffs had existing agreements with customers to use their software and/or services.
 88. Defendants were aware that Plaintiffs had customers to use the software and/or services.
 89. Defendants' actions intentionally and unjustifiably induced customers to cancel purchases of software and/or services.
 90. That the cancellation by customers resulted from wrongful actions of Defendants.
 91. Defendants were aware of Plaintiff's efforts to market its software and/or services.

92. Defendants' actions intentionally and unjustifiably induced potential customers not to purchase Plaintiffs' software and/or services.
93. That the actions of Defendants were done with actual malice.
94. That the actions of Defendants were knowingly and voluntarily done in participation with each other in a common scheme to commit an unlawful or wrongful act or a lawful act in an unlawful manner.
95. That the actions of Defendants, separately and independently, were committed tortiously, and with the intent to cause damage to Plaintiffs as residents of Illinois and that damages claimed were suffered by Plaintiffs in Illinois.

Count 1
Declaratory Judgment

96. Plaintiff seeks a declaratory judgment that the extraction of "facts" from various web sites as to dog breeding information is not an act which violates any Federal or State law and that any claims by Defendants as to "copyright" to such information are void as a matter of law.

Count 2
Plaintiff Versity Corporation
Tortious Interference with Contractual Relationship

97. That the actions of Defendants constitute the wrongful act of tortious interference with contractual relationship between Plaintiff Versity Corporation and its customers.
98. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiff Versity Corporation has been damaged.
99. Plaintiff Versity Corporation prays for the relief set forth at the conclusion of this Amended Complaint.

Count 3
Plaintiff John Tamburo
Tortious Interference with Contractual Relationship

100. That the actions of Defendants constitute the wrongful act of tortious interference with the contractual relationship between Plaintiff Tamburo and his customers.
101. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiff Tamburo has been damaged.
102. Plaintiff Tamburo prays for the relief set forth at the conclusion of this Amended Complaint.

Count 4
Plaintiff Versity Corporation
Tortious Interference with Prospective Economic Advantage

103. That the actions of Defendants constitute the wrongful act of tortious interference with prospective economic advantage between Plaintiff Versity Corporation and its potential business customers.
104. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiff Versity Corporation has been damaged.
105. Plaintiff Versity Corporation prays for the relief set forth at the conclusion of this Amended Complaint.

Count 5
Plaintiff John Tamburo
Tortious Interference with Prospective Economic Advantage

106. That the actions of Defendants constitute the wrongful act of tortious interference with prospective economic advantage between Plaintiff Tamburo and his potential business customers.
107. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiff Tamburo has been damaged.
108. Plaintiff Tamburo prays for the relief set forth at the conclusion of this Amended Complaint.

Count 6
Plaintiff Tamburo
Negligent Interference with Contract

109. That the actions of Defendants constitute the wrongful act of negligent interference with contract between Plaintiff Tamburo and his customers for which Plaintiff Tamburo suffered emotional and mental damages.

110. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiff Tamburo has been damaged.

111. Plaintiff Tamburo prays for the relief set forth at the conclusion of this Amended Complaint.

Court 7
Plaintiff Versity Corporation
Trade Libel

112. That the actions of Defendants constitute the wrongful act of trade libel.

113. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiff Versity Corporation has been damaged.

114. Plaintiff Versity Corporation prays for the relief set forth at the conclusion of this Amended Complaint.

Count 8
Plaintiff John Tamburo
Trade Libel

115. That the actions of Defendants constitute the wrongful act of trade libel.

116. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiff Tamburo has been damaged.

117. Plaintiff Tamburo prays for the relief set forth at the conclusion of this Amended Complaint.

Count 9
Plaintiff John Tamburo
Defamation *per se*

118. That the actions of Defendants constitute the wrongful act of defamation *per se*.

119. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiff Tamburo has been damaged.

120. Plaintiff Tamburo prays for the relief set forth at the conclusion of this Amended Complaint.

Count 10
Plaintiff John Tamburo
Defamation *per quod*

121. That the actions of Defendants constitute the wrongful act of defamation *per quod*.

122. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiff Tamburo has been damaged.

123. Plaintiff Tamburo prays for the relief set forth at the conclusion of this Amended Complaint.

Count 11
Plaintiffs Versity Corporation and John Tamburo
State Law - Civil Conspiracy

124. That the actions of Defendants constitute the wrongful act of civil conspiracy to injure Plaintiffs Versity Corporation and Tamburo.

125. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiffs Versity Corporation and Tamburo has been damaged.

126. Plaintiff Versity Corporation and Tamburo pray for the relief set forth at the conclusion of this Amended Complaint.

Count 12
Plaintiffs Versity Corporation and John Tamburo
Federal Antitrust

127. That the actions of Defendants violate provisions of Federal Antitrust statutes including 15 U.S.C. 1, *et seq.*
128. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiffs Versity Corporation and Tamburo has been damaged.
129. Plaintiffs Versity Corporation and Tamburo pray for the relief set forth at the conclusion of this Amended Complaint.

Count 13
Plaintiffs Versity Corporation and John Tamburo
State Court Antitrust - 740 ILCS 10

130. That the actions of Defendants violate provisions of Illinois state statutes applicable to antitrust including 740 ILCS 10, *et seq.*
131. As a proximate result and consequence of the wrongful acts of Defendants, Plaintiff Versity Corporation and Tamburo has been damaged.
132. Plaintiff Versity Corporation and Tamburo pray for the relief set forth at the conclusion of this Amended Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court enter judgment in their favor and against Defendants and enter an Order at that time:

- A. Declaring that that the extraction of "facts" from various web sites as to dog breeding information is not an act which violates any Federal or State law and that any claims by Defendants as to "copyright" to such information are void as a matter of law;
- B. Awarding Plaintiffs compensatory damages in an amount to be determined by the jury in excess of One Hundred Thousand Dollars and

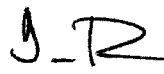
No/100 (\$100,000.00) to compensate each Plaintiff for injuries sustained;

- C. Awarding Plaintiffs punitive damages in an amount to be determined by the jury;
- D. Awarding Plaintiffs their reasonable attorney fees and costs of the prosecution of this lawsuit; and
- E. Awarding such other and further relief as this Court deems just and appropriate.

Plaintiff demands trial by jury on all counts so triable.

Dated: September 7, 2005

**JOHN F. TAMBURO D/B/A MAN'S BEST
FRIEND SOFTWARE and VERSITY
CORPORATION**

By: 
One of their Attorneys

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CERTIFICATE OF SERVICE

I, Ian Brenson, an attorney, certify that I served a copy of the foregoing **Notice of Filing, Appearance and Fifth Amended Complaint** upon

Charles L. Mudd, Jr.
Attorney at Law
3344 N. Albany Ave.
Chicago, IL 60618-5720

by depositing a copy of the same, plainly addressed and proper first class postage prepaid, in the United States Mail at 701 W. Burlington Avenue, La Grange, Illinois 60525, before 4:30 p.m. on September 7, 2005.



Ian Brenson