

United States District Court
Northern District of Illinois
Eastern Division

JOHN F. TAMBURRO,
D/B/A MAN'S BEST FRIEND SOFTWARE
Plaintiff

-against-

STEVEN DWORKIN;
KRISTEN HENRY;
ROXANNE HAYES;
KAREN MILLS;
WILD SYSTEMS, PTY. LTD.,
AN AUSTRALIAN CORPORATION
Defendants

Case Number

04 C 3317

Judge:

The Honorable Joan B. Gottschall

Magistrate Judge:

The Honorable Nan R. Nolan

NOTICE OF MOTION

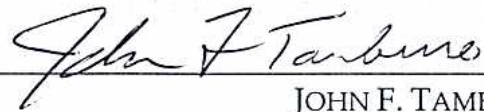
To: Mr. Charles L. Mudd, Jr., Esq
Attorney for Defendants
Law Offices of Charles Lee Mudd Jr.
3344 North Albany
Chicago, Illinois 60618

Take Notice That I shall appear before The Honorable Joan B. Gottschall, U.S.D.J., or any judge sitting in her stead, in courtroom 1919, of the Everett McKinley Dirksen Federal Courthouse, 219 S. Dearborn Street, Chicago, IL 60604, at 9:30 AM CDT on **Thursday, June 17, 2004**. At that time and place I shall present the attached motion to the court for hearing.


John F. Tamburo, Plaintiff

PROOF OF SERVICE

I, John F. Tamburo, Plaintiff in the instant case, do hereby affirm the following on penalty of perjury pursuant to 28 USC § 1746: I served a copy of the notice and attached motion upon defendants' attorney as listed above via Postal Priority Mail on or before 3:00PM CDT on June 14, 2004.



JOHN F. TAMBURO

PLAINTIFF

D/B/A MAN'S BEST FRIEND SOFTWARE

655 NORTH LA GRANGE RD., SUITE 100

FRANKFORT, ILLINOIS 60423

815-806-2130

United States District Court
Northern District of Illinois
Eastern Division

JOHN F. TAMBURO,
D/B/A MAN'S BEST FRIEND SOFTWARE
Plaintiff

-against-

STEVEN DWORKIN;
KRISTEN HENRY;
ROXANNE HAYES;
KAREN MILLS;
WILD SYSTEMS, PTY. LTD.,
AN AUSTRALIAN CORPORATION
Defendants

Case Number

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**PLAINTIFF'S MOTION FOR LEAVE TO FILE HIS THIRD AMENDED
COMPLAINT**


Now Comes before this honorable court your Plaintiff, John F. Tamburo, D/B/A Man's Best Friend Software ("John"), moving this court pursuant to FRCP 26(d) for leave to file his third amended complaint. In support of his motion, John states:

1. This case was commenced on May 11, 2004.
2. All Defendants have received copy of complaint, plus requests to waive service of summons as provided in Rule 4 of the *Federal Rules of Civil Procedure*.
3. On May 27, 2004, Mr. Charles L. Mudd, Jr., Esq. appeared in open court as counsel for all defendants.

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4. On June 10, 2004, Mr. Mudd stated in open court that all defendants would waive service, and he expected those waivers to be completed by June 17, 2004.
 5. *Fed R. Civ. P. 15(a)* allows only one amended pleading as a matter of course, but all subsequent amendments only by leave of court or by written consent of the adverse party. The rule also states that leave to amend complaints shall be "freely given when justice so requires."
 6. This amendment withdraws two counts, adds one, and clarifies the facts that support this court's *in personam* jurisdiction over the defendants.
 7. John has attempted to contact Mr. Mudd for his consent, but Mr. Mudd was at the time of the writing, unable to respond to John.
 8. Defendants will not be prejudiced since the 21-day period of time to respond to the complaint granted by the court on June 10, 2004 will not commence until the hearing date of this motion.

THEREFORE, John prays that this court issue an order granting John leave to file the attached Third Amended Complaint.

Dated Frankfort, Illinois, June 14, 2004:



JOHN F. TAMBURO
PLAINTIFF
D/B/A MAN'S BEST FRIEND SOFTWARE
655 NORTH LAGRANGE RD., SUITE 100
FRANKFORT, ILLINOIS 60423
815-806-2130

United States District Court
Northern District of Illinois
Eastern Division

JOHN F. TAMBURRO
D/B/ A MAN'S BEST FRIEND SOFTWARE,
Plaintiff

VS.

STEVEN DWORKIN;
KRISTEN HENRY;
ROXANNE HAYES;
KAREN MILLS;
WILD SYSTEMS, PTY. LTD.,
AN AUSTRALIAN CORPORATION
Defendants

THIRD AMENDED SWORN
COMPLAINT

Plaintiff demands trial by jury.

Case No.: 04 C 3317

Judge:
The Honorable Joan B. Gottschall

Magistrate Judge:
The Honorable Nan R. Nolan

Before this Honorable Court comes JOHN F. TAMBURRO, D/B/ A Man's Best Friend Software, your Plaintiff. This instrument is his Third amended complaint, complaining *Pro Se* as follows against the defendants listed hereinabove:

THE PARTIES

1. Your Plaintiff, John F. Tamburo ("John"), owns and d/b/a Man's Best Friend Software. John is a resident of Will County, Illinois. Plaintiff does business from 655 N. LaGrange Rd., Suite 100, Frankfort, Illinois 60423.
2. Defendant Steven Dworkin ("Dworkin") is a resident of Ottawa, Ontario, Canada, at 1081 Barwell Ave., Ottawa, ON K2B 8H4 Canada.
3. Defendant Kristen Henry ("Henry") is a resident of the United States, at 704 E Huntington Dr., Highlands Ranch, CO 80126.
4. Defendant Roxanne Hayes ("Hayes") is a resident of the United States, at 52988 Burlington Rd, Marcellus, MI 49067.
5. Defendant Karen Mills ("Mills") is a resident of the United States, at 81 Linwood Avenue, Columbus, OH 43205-1525.

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6. Defendant Wild Systems Pty Ltd., an Australian corporation is located at 27 Wycombe St, Epping, NSW 2121, Australia.

JURISDICTION AND VENUE

7. This is an action for damages in excess of the jurisdictional limits for diversity set forth in 28 USC § 1332, arising out of the past, ongoing and threatened future, unlawful and tortious acts of Defendants.
8. This action requests a declaratory judgment on a Federal question, and as such jurisdiction is proper in the U.S. District Court.
9. This action alleges Federal antitrust violations and this court has jurisdiction under 15 USC § 4.
10. This court has jurisdiction over the subject matter of this complaint under diversity-of-citizenship jurisdiction pursuant to 28 USC § 1332(a)(1).
11. Defendant Wild maintains its "Breedmate User Group" Internet email list at Yahoo Groups (hereinafter the "Breedmate Group"), and transacts business with its customers there. The computers that host the Breedmate Group are all operated by Yahoo, Inc., an American company, and are located within the United States of America. See Exhibit 21.
12. Venue lies in this district under 28 USC § 1391(a)(2) and (a)(3).
13. Venue also lies in this district under 28 USC § 1391(b)(2) and (b)(3).
14. In further support of this honorable court's jurisdiction and this district as venue, Plaintiffs state the following:
- a- This complaint alleges violations under the Illinois Antitrust Act, and Illinois' jurisdiction is mandated by statute, 740 ILCS 10/7.1.
 - b- 735 ILCS 5/2-209(a)(2) and the law interpreting that statute holds that a tortious act that injures an Illinois citizen subjects a party to Illinois jurisdiction. All defendants stand accused of such tortious acts.
 - c- All of these defendants coordinated their acts together against an Illinois citizen, with the intent to cause loss to the Plaintiff.

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- d- All of these defendants knew at the time that they orchestrated these acts that John was a citizen of Illinois, and they intended that their acts would affect Illinois interests by injuring John, a citizen of Illinois. See Exhibit 5 including Plaintiff's Address; Exhibit 24 p. 2, Dworkin mentions Illinois' jurisdiction.
 - e- Defendant Wild regularly conducts business within Illinois by marketing Breedmate into Illinois and selling the program to Illinois citizens. 735 ILCS 5/2-209(a)(1).
 - f- 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. See Exhibit 36, containing a printout of the web site address locations of all defendants.
 - g- 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. See Exhibit 1.

BACKGROUND

- 15. John 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.
- 16. On January 9, 2004, John launched The Breeder's Standard™ .NET (hereinafter ".NET"), a web based dog breeding and pedigree software program.
- 17. This program offers, *inter alia*, a pedigree database that John's customers can use for research and genetic calculations.
- 18. 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. See Plaintiff's Exhibits 2 through 6.
- 19. None of these sites had any HTML Robot Exclusion Header, a commonly used method to tell automatic browsing programs to go away

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20. 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.
 21. John 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.
 22. John 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.
 23. 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).
 24. .NET, as of May 10, 2004, has 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.
 25. In no case were any HTML robot exclusion headers disobeyed.
 26. John owns another pedigree software product named "CompuPed."
 27. John owns and offers breed libraries, for the exclusive use of his customers at no additional charge.
 28. Three of these breed libraries are Poodle, Keeshond and Cavalier King Charles Spaniels.
 29. These breed libraries contain a "no copy" flag in the data, which prevents CompuPed from exporting these records to others.
 30. 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.

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31. Other defendants, including Mills and Henry, advertise Breedmate on their websites.
 32. 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. Plaintiff's Exhibit 7.
 33. 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. Plaintiff's Exhibits 6 and 29.
 34. On April 26, 2004, Defendant Dworkin sent an electronic mail to Kathi Charpie, John's support manager. See Plaintiff's Exhibit 7. She forwarded it to John.
 35. In said letter, Dworkin threatened John with the following: "If you [sic] blatent [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. [sic]"
 36. An exchange of electronic email messages followed, where John refused to remove the data on the grounds that it is in the public domain, and Dworkin denied that this honorable court could ever exercise jurisdiction over him, and that American law does not apply to him.
 37. Dworkin later sent John the email attached as Exhibit 8, in which Dworkin states that if John were to remove the Keeshonden from .NET, Dworkin would be silent and tell nobody else; he would "vanish into the backround [sic]."
 38. On April 29, 2004, John posted a statement on .NET for public reading, informing all customers and potential customers of his product of all of his sources for the dog facts in .NET. See Plaintiff's Exhibit 9.
 39. On or about April 29, 2004, a discussion started on the Breedmate Group . See the attached digest, plaintiff's Exhibit 11.

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40. Wild's owner, Ronald DeJong ("DeJong"), made comments on that list, but did not ask that the discussion be stopped or relocated elsewhere.
 41. In fact, 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. See Plaintiff's Exhibit 21.
 42. DeJong personally approved all of these postings and circulated them to the over 480 members of the Breedmate Group.
 43. DeJong posted to the Breedmate Group, and stated that he "would be taking measures to prevent" John 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. See Exhibit 28.
 44. Shortly thereafter, Dworkin sent out a message to all persons who had a free online database of dog pedigrees on the Internet. Plaintiff's Exhibit 12. pp. 2-4.
 45. Thereafter, on May 5, 2004, Hayes posted a message on her web site accusing John of "purposefully and willfully" stealing the data on that site.
 46. 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 John "purposefully and intentionally stole" these data items. Plaintiff's Exhibit 4.
 47. Hayes is a member of several email lists where dog enthusiasts gather.
 48. Hayes sent all of these lists the email shown in Plaintiff's Exhibit 11.
 49. Hayes actively encouraged "cross posting" to other lists, in order to spread the false accusations contained therein to as large an audience as possible.
 50. Upon information and belief, this email has been spread to over 150 mailing lists.
 51. In this email she encourages people to send email denying John permission to list dogs they own in his breed database.
 52. On May 4 or May 5 2004, Henry posted a message on the face of her web site. See Plaintiff's Exhibit 5.

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53. Henry is a member of several email lists where dog enthusiasts gather.
 54. Henry sent all of these lists the email shown in Plaintiff's Exhibit 12, entitled "My Schipperke Database has been Stolen and The Breeder's Standard is the Thief."
 55. On May 4 or May 5, 2004, Mills posted a message on the front page of her web site. See Plaintiff's Exhibit 6.
 56. After John refused to accede to his threats as set forth hereinabove, Dworkin, on May 7, 2004 sent out the email message shown in Plaintiff's Exhibit 12, pages 2 through 4.
 57. Dworkin's message recruits others to "band together" in a campaign to stop the "theft" and "commercial use of our data." Exhibit 12, pp. 2-4.
 58. Dworkin sent the message shown in Exhibit 12, pp. 2-4, to everyone in the world who he could locate who had a free online pedigree database.
 59. Henry and others reposted this message verbatim to many dog lists.
 60. Since then this message has spread worldwide, and has, upon information and belief, been read by over 100,000 dog breeders and fanciers.
 61. From May 1 to May 4, 2003, John sold over \$3,300 of product.
 62. Since the time Dworkin's letter was sent, John has sold less than \$230 in product May 5 through May 8, 2004.
 63. These losses continue and mount daily.
 64. John estimates that he lost \$25,000 in sales in May of 2004, due solely to the acts of the defendants.
 65. After they conducted their smear campaign, Dworkin again emailed John on May 10, 2004. See Exhibit 34.
 66. In that email, Dworkin crow's 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..." [ellipsis in original]

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67. The rest of the email continues to say that 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...” See Exhibit 34.
 68. On the Breedmate Group, operated by defendant Wild, these people, including defendants Dworkin, Henry, Mills and Hayes, discussed, *inter alia*, how to make John go “bankrupt.” See Plaintiff’s Exhibit 13.
 69. Defendant Hayes has actively used the Breedmate Group to recruit others to “band together and cause [John] a lot of grief.” See Plaintiff’s Exhibit 14.
 70. De Jong has done nothing to stop the use of the Breedmate Group as a place to plan ways to harm John; rather he facilitated the plans of those who planned the smear campaign against John, by personally approving all of the messages posted to the list.
 71. Moreover, Defendant Henry has been in close communication with defendant Wild, and has sent DeJong copies of many of her emails falsely alleging that her data was “stolen.”
 72. Defendant Henry also advertises Wild’s Breedmate product in her email labeled “Stolen Pedigree Databases.” See Exhibit 15.
 73. Defendant Dworkin is also listed as a recipient on emails, sent by Henry to email lists where Schipperke breeders gather. Dworkin does not breed Schipperkes. See Exhibit 15.
 74. Dworkin is a member of the Breedmate User group email list operated by Wild.
 75. Subsequent to the filing of the original complaint in this matter, defendants have continued their campaign to smear John, adding a new twist: They are now recruiting other dog breeders to send John bills asking for \$100 per dog per month for listing the facts about dogs they own. See Exhibit 22.

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76. 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>. See Exhibit 29.
77. This text appears to contain the legal conclusions of an unnamed aide to United States Senator Olympia Snowe of Maine, even though defendant Mills resides on Ohio.
78. These statements appear to be an "expert opinion" 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), the copyright of web pages protects the facts contained therein from being copied by any automated process, persons whose dogs appear in John's database have the right to file a class action lawsuit, John's actions somehow violate "international law" and international law will trump United States law.
79. Nothing in the statement identifies this aide, whether or not this aide was an attorney versed in intellectual property or privacy law or why a resident of Ohio sought legal advice from the office of a United States Senator from Maine.
80. Upon information and belief, where the sole control over such information rests with the defendants, Mills obtained this senator's aide's purported legal opinion via the Breedmate Group, where it was posted by a Mr. Mark Hagelin.

COUNT ONE: DECLARATORY JUDGMENT

81. Animal names and vital statistics are facts and are not subject to copyright under 17 USC § 102(a).
82. Settled law in this matter holds that "...raw facts may be copied at will." *Feist Publications v. Rural Telephone Service, Co.*, 499 U.S. 340 (1991).
83. John copied nothing but raw facts, and as mentioned *supra*, many of those facts originated in databases that came from John.
84. Nothing in the selection or arrangement of these facts is a work original to any of the defendants.
85. Notwithstanding, defendants Dworkin, Hayes, Mills and Henry use words such as "stolen" and "theft" to describe the copies of data John made for his customers.
86. Wild, who through DeJong has exclusive control over that which is published to its 480+ members of the Breedmate Group, (see Exhibit 21), published these and other allegations of theft and piracy against John.
87. Hayes has erroneously led people to believe that they can prohibit John from storing the raw facts of their dogs on .NET.
88. The Individual Defendants are recruiting dog owners to send John bills for including their dogs in the .NET database. See Exhibit 22.
89. Defendant Mills has on the home page of her web site offered what is designed to look like "expert opinion" that the inclusion of any dog in .NET without the written permission of the dog's owner violates the "Privacy Act." See Exhibit 29.
90. No Privacy Act presently enacted under United States law covers the names or vital statistics of dogs owned by any person.
91. No privacy act presently enacted under United States law covers private corporations not engaged in the health care profession.
92. No privacy or publicity act in any home jurisdiction of any defendant, or in Illinois, treats the names and vital statistics of dogs owned by that person as

subject to that law, inasmuch as this information is not an identifying attribute of an individual.” See for example 765 ILCS 1075/1 et. seq.

93. Therefore there is no violation of any privacy law in the copying of dog information from a web site, the usage of which is offered free to the public.
94. There is no statute or other law requiring that companies that generate the pedigrees of dogs must obtain written permission of the owners of the dogs in order to allow them to be placed into any database.
95. In point of fact, Dworkin, Hayes and Mills have obtained tens of thousands of dogs from John’s Compuped Breed Files and have not sought John’s permission, nor have they sought the permission of the dogs’ owners prior to using them.
96. Moreover, Animal registries, including but not limited to, the American Kennel Club, the United Kennel Club, the Canadian Kennel Club and many others sell printed and/or downloadable pedigrees, and none of them obtain any sort of written permission from the owners of the ancestor dogs in the pedigrees prior to producing these pedigrees.
97. Removing these dogs from .NET would place it at a severe disadvantage to Dworkin, Hayes, Mills and Henry, who operating competing web sites.
98. Removing these dogs from .NET would make its genetic calculations useless, which the intent of the defendants’ smear campaign.
99. A declaratory judgment is necessary to properly clear up the issue.
100. WHEREFORE, John prays a declaratory judgment be issued that finds the following:
 - a- John’s copying of data from these free sites is compliance with copyright law;
 - b- The vital statistics of dogs are uncopyrightable facts;
 - c- Copying bare facts about dogs violates no privacy law; and
 - d- The usage of animal names and vital statistics in pedigrees and genetic calculations is lawful and proper.

COUNT TWO: EXTORTION (1)

101. In Exhibits 7 and 8, Dworkin threatened John with exposure to contempt and ridicule lest he removed the Keeshond data that Dworkin claims to own.
102. In Exhibit 8, Dworkin makes it clear that compliance with his demands will keep him from notifying anyone else about he claims was theft.
103. The copied data are uncopyrightable facts, and are owned by nobody. They are part of the public domain. *Feist Publications v. Rural Telephone Service, Co.*, 499 U.S. 340 (1991).
104. Dworkin was without lawful authority to threaten John, and knew or should have known this at the time he made his threats.
105. Dworkin has therefore committed extortion at the common law and in violation of 720 ILCS 5/12-6.
106. John's business has been effectively destroyed by the smear campaign organized by Dworkin.
107. The value of John's business before Dworkin's acts was in excess of one million dollars.
108. WHEREFORE, John is entitled to damages in excess of \$1 million, as shall be shown at trial, plus a substantial punitive damage award to deter such conduct in the future.

COUNT THREE: LIBEL (1)

109. Prompted by and in concert with Dworkin, Henry, Mills and Hayes published statements on their web sites and electronic mail accusing John of theft. See Exhibits 4 through 15. "Database Theft," "Stolen Data," "purposefully and willfully stole..." "My Schipperke database has been stolen and The Breeder's Standard is the Thief," "Stolen Pedigree Databases."
110. It is not possible to steal a fact since it is in the public domain, and all of the defendants knew this, and were put on notice of this fact by Dworkin himself. See Plaintiff's Exhibit 12, pages 2 through 4.
111. None of the defendants were deprived of the data that they claim that they own. Therefore, even if facts could be owned, there was no "theft."
112. The accusation of theft is patently false.
113. This accusation falsely imputes that John committed a crime when none was committed, and thus these accusations are libel per se.
114. John has been damaged; his business has effectively been destroyed by these defendants.
115. WHEREFORE, John prays damages in excess of \$1 million, as will be shown at trial, and a substantial punitive damage award against Dworkin, Henry, Mills and Hayes (hereinafter the "Individual Defendants"), jointly and severally.

COUNT FOUR: TORTIOUS INTERFERENCE WITH BUSINESS

116. The Individual Defendants targeted John's potential customers with their email smear campaign, in which they falsely accused John of "theft" of the facts in their databases.
117. John had a reasonable expectancy to do business with these customers.
118. The Individual Defendants interfered with that expectancy.
119. John's sales have fallen by more than ninety percent since the beginning of defendants' smear campaign.
120. The Individual Defendants have tortiously interfered with John's prospective economic advantage, and in doing so have effectively destroyed John's company.
121. WHEREFORE, John prays damages in excess of \$1 million, as will be shown at trial, and a substantial punitive damage award against The Individual Defendants, jointly and severally.

COUNT FIVE: UNFAIR COMPETITION

122. John operates .NET, a database of pedigrees of all dog breeds available on the Internet.
123. The Individual Defendants operate databases of dog pedigrees, available on the Internet, for Keeshond (Dworkin), Cavalier King Charles Spaniels (Hayes), Schipperke (Henry) and Poodles (Mills).
124. Dworkin himself admitted to John in electronic mail that he was advised by an attorney the individual defendants are John's competitors. See Exhibit 24 p. 3.
125. The defendants therefore compete with John.
126. The Individual Defendants, working in concert, have organized a smear campaign, complete with false accusations of criminal activity, in an effort to drive John out of business.
127. These statements were designed to mislead, and did mislead, John's potential and actual customers. See Exhibit 35, referring to John as a "criminal."
128. Defendants Dworkin, Hayes, Henry and Mills, working in concert, have caused numerous people to bombard John's telephone and emails with complaints and demands to remove the facts about dogs they own from .NET.
129. Defendants Dworkin, Hayes, Henry and Mills intended these demands to deceive customers into believing that they could force John to remove the uncopyrightable facts about dogs they owned from .NET.
130. These acts were designed to drive John out of business, or in the alternative, to damage .NET to the point where it was unable to compete with these defendants or any other person or company.
131. Defendants have achieved the desired effect. John's business has effectively been destroyed.
132. WHEREFORE, John prays damages in excess of \$1 million, as will be shown at trial, and a substantial punitive damage award against Dworkin, Henry, Mills and Hayes, jointly and severally.

COUNT SIX: ANTI-TRUST (1)

133. The Individual Defendants, working in concert with Wild, who provided the Breedmate Group as a meeting place, conspired together to eliminate competition from the marketplace by destroying John's business.
134. In addition, upon information and belief, where the sole control of the proof thereof rests in the hands of defendants and/or their email providers, Wild provided advice, support and guidance to this group, to aid and abet their smear campaign.
135. In fact Henry was sure to send copies of her smear email postings to Wild and Dworkin. See Exhibit 15.
136. Moreover, even after the original complaint in this case was filed, Wild has been encouraging others to continue to act against as John as its proxy. See the threats contained in Exhibit 23, including a boycott, action by an unnamed United States Senator, and a class action lawsuit (the gravamen of which was unspecified) where the Breedmate Group was a carbon-copy recipient of the threat.
137. These acts by defendants, all competitors to John, constitute a conspiracy in restraint of interstate commerce in violation of the Sherman Anti-Trust Act, 15 USC § 1.
138. Defendants have achieved the desired effect. John's business has effectively been destroyed.
139. WHEREFORE, John prays damages in excess of \$1 million, as will be shown at trial, , and then tripled as provided in 15 USC § 15.
140. John further prays the statutory fine of \$350,000 prescribed in 15 USC § 1 be assessed against each of the individual defendants.
141. John further prays that the statutory fine of \$10,000,000 prescribed in 15 USC § 1 be assessed against Wild.

COUNT SEVEN: ANTI-TRUST (2)

142. The Individual Defendants each had the only or primary source of dog pedigree information for their respective breeds on the Internet.
143. .NET represented their only competition at this time.
144. Nonetheless, they conspired to regain their monopolies by driving John out of business with an organized smear campaign, violating 15 USC § 2.
145. Defendants have achieved the desired effect. John's business has effectively been destroyed.
146. WHEREFORE, John prays damages in excess of \$1 million, as will be shown at trial, and then tripled as provided in 15 USC § 15.
147. John further prays the statutory fine of \$350,000 prescribed in 15 USC § 1 be assessed against each of the individual defendants.

COUNT EIGHT: LIBEL (2)

148. In a public posting directed to over 750 Schipperke breeders and owners, Henry accused John of breaching her web site security and copying her data base master file. See Exhibit 17.
149. Specifically, Henry said: "MBFS has written an agent robot to go to these individual sites and steal certain files (Alfirin pedigree database files) that were not offered to them except through a query user interface for page by page query of a single dog's pedigree at a time."
150. Henry also said: "John is focusing on the dog information. He did not have and still does not have my permission to take or use the set of Schipperke data that I compiled for a specific type of manipulation and distribution on my web site. MBFS has targeted and stolen my personal data files from non public areas of my website domain."
151. John responded to the same recipients that this was a false statement.
152. Notwithstanding her having been told, and having the independent means to verify for herself, she repeated this false accusation in a public posting directed to several hundred breeders of Keeshonden. See Exhibit 18.
153. Henry knew her accusations were false both times she made the accusation, for she looked in her web site usage logs to see John's browser program accessing each animal in "a page by page query", which Henry, as stated in the quote hereinabove, permits.
154. These accusations falsely accuse John of computer tampering, a crime punishable by imprisonment under both Illinois and United States Law.
155. Henry's false accusations are a libel per se.
156. Henry's actions had the desired effect; John's business has effectively been destroyed. See Exhibits 38 and 39, an example message from John's now-ruined potential customers. Exhibit 38 was authored by a Schipperke breeder who is a former officer of the Schipperke Club of America.

157. Wherefore, John is entitled to damages in excess of \$1 million, plus a substantial punitive damage award, against Henry.

COUNT NINE: INJUNCTIVE RELIEF

This count is withdrawn.

COUNT TEN: DENIAL OF AN ESSENTIAL FACILITY

This count is withdrawn.

COUNT ELEVEN: LIBEL (3)

This count is withdrawn.

COUNT TWELVE: INTERFERENCE WITH BUSINESS (2)

This count is withdrawn.

COUNT THIRTEEN: TRADE LIBEL

158. Henry is not now and has never been a user of .NET.
159. However, she has toured the .NET features list and knows that is a full-featured program.
160. Nonetheless, Henry, posting to over 750 Schipperke breeders and owners, and fully cognizant of the falsehood of her statement, stated: "You keep saying that you aren't charging for the data on your site that you took from mine. Your perspective is such a Joke because without the data on your site you would not have any value that people would want to charge for." See Exhibit 26.
161. After John replied, in defense of .NET, Henry issued another post and said: "Without my hard work and that of the others you stole from, your software would have very little value... that is your driving force." See Exhibit 27.
162. Henry was working in concert with Dworkin and Wild. See CC: lines on Exhibits 26-27.
163. Henry's intent was to further damage John by falsely imputing that TBS.NET is inferior software, with no value except that offered by its databases. These accusations falsely accuse John of computer tampering, a crime in all fifty states and under United States Law. This is a libel per se.
164. Henry's actions had the desired effect; John's business has effectively been destroyed.
165. Wherefore, John is entitled to damages in excess of \$1 million, plus a substantial punitive damage award, against Henry, Dworkin and Wild, jointly and severally.

COUNT FOURTEEN: TORTIOUS INTERFERENCE WITH BUSINESS (3)

166. John repleads and realleges all of count thirteen.
167. John had a valid expectancy to do business with the people to whom Henry misrepresented .NET as a valueless product.
168. Henry's actions were designed to interfere with that expectancy.
169. Henry planned these actions with Dworkin and Wild.
170. These accusations falsely accuse John of computer tampering, a crime in all fifty states and under United States Law. This is a libel per se.
171. Henry's actions had the desired effect; John's business has effectively been destroyed.
172. Wherefore, John is entitled to damages in excess of \$1 million, plus a substantial punitive damage award, against Henry, Dworkin and Wild, jointly and severally.

COUNT FIFTEEN: ILLINOIS ANTI-TRUST ACT (1)

173. John repleads and realleges the facts and allegations of Count Six.
174. The Conduct of the defendants violates the Illinois Antitrust Act, 740 ILCS 10/3(a)(1)(b).
175. Wherefore, John is entitled to injunctive relief and damages as provided in 740 ILCS 10/7(2).
176. John pleads for injunctive relief to prohibit the collusion of the defendants to in any way interfere with John's business, and to prohibit these competitors from recruiting proxies to do their bidding for them.
177. John also pleads for damages as shall be shown at trial.

COUNT SIXTEEN: ILLINOIS ANTI-TRUST ACT (2)

178. John repleads and realleges the facts and allegations of Count Seven.
179. The Conduct of the defendants violates the Illinois Antitrust Act, 740 ILCS 10/3(a)(1)(b).
180. Wherefore, John is entitled to injunctive relief and damages as provided in 740 ILCS 10/7(2).
181. John pleads for injunctive relief to prohibit the collusion of the defendants to in any way interfere with John's business, and to prohibit these competitors from recruiting proxies to do their bidding for them.
182. John also pleads for damages as shall be shown at trial.

COUNT SEVENTEEN: LIBEL (4)

183. Defendant Henry, responding to John's self-defense in his public postings, posted the following comment to over 750 Schipperke breeders: "You are trying to SELL them stolen goods!!!" See Exhibit 30.
184. This accusation is false.
185. This accusation falsely accuses John of trafficking in stolen merchandise, a felony.
186. Henry continues in a subsequent email to state: "Also, now that you all have seen the ethics and behavior of MBFS/TBS and Versity Corporation (the main Corporation Name), please consider supporting the good, and take your business elsewhere."
187. This accusation falsely imputes that John lacks ethics in his business.
188. This also is an exhortation to boycott, made by a competitor.
189. Henry planned these actions with Dworkin and Wild. See Exhibit 31, use of "we."
190. Henry's actions had the desired effect; John's business has effectively been destroyed.
191. Wherefore, John is entitled to damages in excess of \$1 million, plus a substantial punitive damage award, against Henry, Dworkin and Wild, jointly and severally.

COUNT EIGHTEEN: INTERFERENCE WITH BUSINESS (5)

192. John repleads and realleges all of count sixteen.
193. John had a valid expectancy to do business with the people to whom Henry misrepresented John as a trafficker in "stolen goods."
194. Henry, with the intent of harming John, also exhorted these 750+ people to refuse to do business with John.
195. Henry's actions were designed to interfere with John's valid expectancy.
196. Henry planned these actions with Dworkin and Wild.
197. Henry's actions had the desired effect; John's business has effectively been destroyed.
198. Wherefore, John is entitled to damages in excess of \$1 million, plus a substantial punitive damage award, against Henry, Dworkin and Wild, jointly and severally.

COUNT NINETEEN: CIVIL CONSPIRACY

199. Wild, Henry, Hayes, Mills and Dworkin have acted in concert against John. See Plaintiff's Exhibit 14, published by Hayes on the Breedmate list and personally approved for publication by DeJong ("The only thing that will stop [John] is if enough of us band together and cause him a lot of grief."); Plaintiff's Exhibit 12, p. 4 ("There must be some way we can all 'band together' to stop this 'theft' and commercial use of our data..." [ellipsis in original]), written by Dworkin and published by Henry; Plaintiff's Exhibit 31, written by Henry to over 750 Schipperke breeders ("At this point it is time to settle things down and stay tuned for future news. There may or may not be some things *we* can do, but *we* certainly have some options long term." [emphases added]); Plaintiff's Exhibit 16 (see steve@thedworkins.com [Dworkin] and support@breedmate.com [Wild] in recipient lists); Plaintiff's Exhibit 29, Mills publishing phony and fantastic legal conclusions obtained through Wild's Breedmate list from Mr. Mark Hagelin on front page of www.patriotgold.com; see also Mark Hagelin's postings to Breedmate list, Exhibits 23, 32 and 33; Exhibit 37, Henry telling Schipperke breeders "Well *we* have a few ideas; the court of public opinion is a powerful thing." [emphasis added].
200. Moreover, all defendants received the Exhibit 12 pp. 2-4 email from defendant Dworkin, and acted, based on his exhortation to "band together."
201. The purpose of defendants' concerted action was to force John to remove all of the dog-related facts they claim to own from .NET.
202. The methodology of Defendants' concerted action was to publicly accuse John of theft, and to encourage others to cancel and/or stop using .NET or any of his products. See, Exhibits 4, 5, 6, 14, 29, 31, 33.
203. Knowingly, and with a maliciously-formed intent to do so, defendants have acted in concert to cause damage to John's business. In fact, Dworkin, emailing John over the matter, gloated over it. See Exhibit 34.

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204. Defendants Henry, Dworkin, Mills and Hayes, assisted by Wild, have all committed libel per se and tortious interference with business, overtly tortious acts, in furtherance of their plan.
205. These facts demonstrate that the defendants are guilty of a civil conspiracy.
206. John has been injured by the conspiracy of these defendants.
207. Wherefore, John is entitled to damages in excess of \$1 million, plus a substantial punitive damage award, against all of the defendants, jointly and severally.

RELIEF

Wherefore, your plaintiff prays for judgment in the aggregate amount of all prayers contained in the individual counts herein, as well as all costs, fees and expenses associated with the instigation and prosecution of this case.

In Addition, John prays any and all additional or other relief that this court deems just and proper.

SIGNED ON June 14, 2004:

I, JOHN F. TAMBURRO, under penalty of perjury pursuant to 28 USC § 1746 and 735 ILCS 5/1-109, do hereby affirm and state that all statements of fact contained herein are, to the best of my knowledge true, complete, and within my personal knowledge. If called to testify, I would competently testify to the facts above.



JOHN F. TAMBURRO

Plaintiff

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