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SAN DIEGO, CALIFORNIA

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6 a Washington corporation

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**

10 THE TRADITIONAL CAT ) Case No. GIC 789066  
ASSOCIATION, INC., and DIANA L. )  
11 FINERAN, ) FIRST AMENDED  
Plaintiffs, ) COMPLAINT FOR UNFAIR  
12 ) COMPETITION, DEFAMATION, AND  
vs. ) CONVERSION  
13 )  
14 LAURA GILBREATH, LEE ZIMMERMAN, )  
RANDI BRIGGS, JOHN HEROLD, )  
15 DIANE DUNAWAY and TRADITIONAL )  
CAT ASSOCIATION, )  
16 a California nonprofit Mutual ) Hon. John S. Meyer  
Benefit corporation, ) Dept. 61  
17 ) Complaint filed May 22, 2002  
18 ) No trial date  
Defendants.)

19 Plaintiffs THE TRADITIONAL CAT ASSOCIATION, INC. and DIANA L.  
20 FINERAN allege as follows:

21 1. Plaintiff DIANA L. FINERAN is an individual who resides  
22 in Battle Ground, Washington.

23 2. Plaintiff THE TRADITIONAL CAT ASSOCIATION, INC. is a  
24 Washington Corporation with its principal place of business in  
25 Battle Ground, Washington.

26 3. Defendant TRADITIONAL CAT ASSOCIATION is a California  
27 Non-Profit Mutual Benefit Corporation with its principal place of  
28 business in Penn Valley, California.

1           4. Defendants LAURA GILBREATH, LEE ZIMMERMAN and DIANE  
2 DUNAWAY are individuals who reside in San Diego, California and are  
3 officers and/or directors of Defendant TRADITIONAL CAT ASSOCIATION.

4           5. Defendant JOHN HEROLD is an individual who resides in  
5 Baltimore, Maryland and is a officer and/or director of Defendant  
6 TRADITIONAL CAT ASSOCIATION.

7           6. Defendant RANDY BRIGGS is an individual who resides in  
8 Penn Valley, California and is an officer and/or director of  
9 Defendant TRADITIONAL CAT ASSOCIATION.

10          7. At all times mentioned herein, each and every Defendant  
11 was an agent and/or employee of each and every other Defendant. In  
12 doing the things alleged in this complaint, each and every  
13 Defendant was acting within the course and scope of this agency or  
14 employment and was acting with the consent, permission and  
15 authorization of each of the remaining Defendants. All actions of  
16 each Defendant as alleged in this complaint were ratified or  
17 approved by every other Defendant or their officers and managing  
18 agents.

19                                   **FIRST CAUSE OF ACTION**

20                   **(Unfair Competition - Violation of B&PC 17200 et seq)**

21          8. Plaintiffs incorporate and reallege paragraphs 1 through  
22 7, inclusive, as though fully set forth herein.

23          9. In 1987, Plaintiff DIANA FINERAN formed THE TRADITIONAL  
24 SIAMESE BREEDERS AND FANCIERS ASSOCIATION to protect, preserve,  
25 perpetuate and promote the traditional Siamese cat. The  
26 association she formed was a non-profit organization which covered  
27 its costs by collecting dues from its membership, selling its  
28

1 documents, registering cats, listing breeders and holding cat  
2 shows.

3 10. In 1993, the organization changed its name to THE  
4 TRADITIONAL CAT ASSOCIATION, INC. The name change reflected the  
5 expansion of its cause to other breeds of cats in addition to the  
6 Siamese Cat. The association continued to collect dues from its  
7 members, provide breed names, breed standards and registration for  
8 the cats. The association published a newsletter and distributed  
9 it to the members of the association. Further, the association  
10 advertised in cat hobbyist magazines. In or about July, 1998,  
11 Defendants JOHN HEROLD, LAURA GILBREATH, LEE ZIMMERMAN and RANDY  
12 BRIGGS were members of the Board of Directors of plaintiff THE  
13 TRADITIONAL CAT ASSOCIATION. A dispute arose between Ms. FINERAN  
14 and these Defendants which led to Defendants leaving Plaintiffs'  
15 organization. These Defendants, along with Defendant DIANE  
16 DUNAWAY, who was a member of plaintiff, created their own  
17 association with the identical name as Plaintiff THE TRADITIONAL  
18 CAT ASSOCIATION. The Defendants' association was incorporated in  
19 the State of California as the TRADITIONAL CAT ASSOCIATION.  
20 Further, these Defendants have used and continue to use the logo,  
21 the motto, the constitution and bylaws, registry, show rules, breed  
22 names, breed standards, domain name, home page, list server and  
23 related documents that were being used, and are being used, by  
24 Plaintiffs.

25 11. Sometime after August, 1998, and repeated on a daily  
26 basis up to and including the present, Defendants unfairly and  
27 deceptively used Plaintiffs' trade name THE TRADITIONAL CAT  
28 ASSOCIATION, its constitution and bylaws, its show rules and

1 registry, breed names, breed standards, domain name, home page,  
2 list server and related documents and claimed that they were in  
3 fact the original TRADITIONAL CAT ASSOCIATION to unfairly deceive  
4 the public, including existing and potential members of the  
5 Traditional Cat Association. Defendants further knowingly and  
6 willingly conspired to defame and damage the reputation of  
7 Plaintiffs.

8 12. Defendants did the acts and things listed herein and  
9 pursuant to and in furtherance of the conspiracy and the above  
10 alleged agreement. Plaintiffs are informed and believe and thereon  
11 allege that the acts of the Defendants pursuant to the conspiracy  
12 and the above alleged agreement are continuing.

13 13. Defendants claim they are the "true" TRADITIONAL CAT  
14 ASSOCIATION and that Plaintiff THE TRADITIONAL CAT ASSOCIATION is  
15 a newer start up organization.

16 14. Plaintiff THE TRADITIONAL CAT ASSOCIATION has  
17 continuously done business under the trade name THE TRADITIONAL CAT  
18 ASSOCIATION since 1993. Plaintiff has built a valuable goodwill in  
19 this trade name which has come to be associated exclusively with  
20 Plaintiff's business by the public throughout the United States as  
21 reflected by the cat shows, newsletters, advertising and promotion  
22 in the cat world. On April 14, 1999, plaintiffs filed an action  
23 alleging unfair competition in Federal Court, Case Number 99 CV  
24 0754K (JAH). In or about January, 2001, that action was dismissed,  
25 without prejudice, prior to trial and thus has never been  
26 adjudicated.

27 15. Plaintiffs are informed and believe that Defendants  
28 recently purported to change their name but continue hold

1 themselves out as the original organization founded in 1987 and  
2 cause confusion with the public. Defendants' claim that they only  
3 changed their name, but are still the original organization,  
4 creates a likelihood that Plaintiff's customers, potential  
5 customers and the public have been, and will continue to be,  
6 confused and misled as to the source of the goods and services.  
7 The public is likely to believe that Defendants' business is  
8 identical to or affiliated with that of Plaintiff.

9 16. Defendants threatened to, and unless restrained will  
10 continue to, use the plaintiffs' logo, its motto, its constitution  
11 and bylaws, its registry, show rules breed names, breed standards,  
12 domain name, home page, list server as a result of which the public  
13 generally will be misled and deceived into believing that  
14 Defendants business is identical to or affiliated to that of  
15 Plaintiff, all to the irreparable injury of the Plaintiff's  
16 business and goodwill and to the unjust enrichment of Defendants.  
17 Plaintiffs have no adequate remedy at law in that it is extremely  
18 difficult to ascertain the amount of damages to Plaintiff's  
19 business and goodwill.

20 **SECOND CAUSE OF ACTION**

21 **(Unfair Competition - Common Law)**

22 17. Plaintiffs hereby incorporate paragraphs 1 through 16, as  
23 though fully set forth herein.

24 18. As a result of the alleged acts of defendants, the public  
25 is likely to be deceived about the source of Plaintiffs' services  
26 and products. These acts consist of a series of continuous,  
27 multiple acts which have occurred since August, 1998 until the time  
28 of the filing of this complaint.

1 19. As a result of defendants' conduct, Plaintiffs have  
2 suffered general damages in an amount to be proven at trial.

3 **THIRD CAUSE OF ACTION**

4 **(Defamation)**

5 20. Plaintiffs hereby incorporate paragraphs 1 through 19, as  
6 though fully set forth herein.

7 21. Since sometime in 1998, Defendants have published and  
8 maintained a web site known as "The Diana Fineran Response Web  
9 Site". The purpose of the web site is to damage the reputation of  
10 plaintiff DIANA FINERAN by making false statements about Ms.  
11 FINERAN. These false statements and others described herein, have  
12 been re-published on a near daily basis on defendants' web site up  
13 to and including the present. Plaintiffs are informed and believe  
14 that within the year before the filing of the complaint, or within  
15 a year of plaintiffs' discovery of such conduct, each of the  
16 defendants have repeated the contents of the website to third  
17 persons, directed third persons to the website and/or sent the  
18 website as an attachment via e-mail. These acts constitute a  
19 republication of the website for which defendants are liable. On  
20 each day which Defendants republished the defamatory remarks,  
21 defendants had the opportunity to eliminate or abate the defamatory  
22 statements, but have elected not to do so.

23 22. The statements on the website are available to the  
24 general public and carry defamatory meaning to those who read them.  
25 For example, a trial was held in this case in January, 2001.  
26 Defendants made a claim of defamation against Plaintiffs. The jury  
27 deadlocked and could not reach a decision. However, on the Diana  
28 Fineran Response Web Site, Defendants published the following

1 statement: "Jury finds DF defamed officers, deadlocks on award,  
2 defamation to be retried". This statement was false in that the  
3 jury did not find that DIANA FINERAN defamed the officers, who are  
4 the Defendants. Defendants further included a statement "Diana  
5 Fineran did not found THE TRADITIONAL CAT ASSOCIATION. Diana  
6 Fineran accepts as fact at trial". This statement was also false.  
7 Ms. FINERAN did found THE TRADITIONAL CAT ASSOCIATION and  
8 Defendants have admitted that this fact. Moreover, Ms. FINERAN  
9 never accepted as fact at trial that she did not found THE  
10 TRADITIONAL CAT ASSOCIATION. The website further states that Ms.  
11 FINERAN uses "intimidation" tactics, is a "dictator", engages in  
12 "misrepresentations", "half truths" and "whole cloth invention".

13 23. These false statements and the overall impression  
14 conveyed by the web site is libel on its face. It clearly exposes  
15 Plaintiff to hatred, contempt, ridicule and obloquy, which caused  
16 and causes Plaintiffs DIANA FINERAN and THE TRADITIONAL CAT  
17 ASSOCIATION to be shunned and avoided. Plaintiffs are informed and  
18 believe and thereon allege that Defendants have made other false  
19 statements orally and via e-mail to various cat breeders, other  
20 members and former members of THE TRADITIONAL CAT ASSOCIATION. The  
21 statements made on "The Diana Fineran Response Web Site" and the  
22 statements made on information and belief, were made with  
23 Defendants' actual knowledge of falsity or reckless disregard of  
24 whether the statements were false or not.

25 24. Defendants' authoring and publishing "The Diana Fineran  
26 Response Web Site" and making false statements about her was to  
27 defame, embarrass and disparage DIANA FINERAN and THE TRADITIONAL  
28 CAT ASSOCIATION. As competitors of Plaintiffs, Defendants further

1 intended that they gained a competitive advantage by disparaging  
2 Plaintiffs.

3 25. As a proximate result of the above described publications  
4 and defamatory conduct, Plaintiffs suffered loss of reputation,  
5 shame, mortification and hurt feelings all to plaintiffs' damage in  
6 an amount to be proved at trial.

7 26. As a proximate result of the above described publications  
8 and the defamatory conduct, Plaintiffs have suffered special  
9 damages in the amount to be proved at trial.

10 27. The above described publications and defamatory conduct  
11 were published by Defendants with malice, oppression and fraud.  
12 Therefore, Plaintiffs are entitled to recover punitive damages.

13 **FOURTH CAUSE OF ACTION**

14 **(Conversion against defendants Laura Gilbreath,  
15 Lee Zimmerman, Randi Briggs, John Herold and  
16 Traditional Cat Association)**

17 28. Plaintiffs and incorporate paragraphs 1 through 27 as  
18 fully set forth herein.

19 29. At all times herein mentioned, Plaintiffs were the owners  
20 and entitled to possession of the funds held in the registry's bank  
21 account in the approximate amount of \$5,600.00, registry records,  
22 copies of the constitution, bylaws and show rules, breed standard  
23 book, blank forms, data bases, stud books and stud order forms,  
24 cattery registration forms, and any other personal property  
25 belonging to Plaintiffs in the possession of Defendants at the time  
26 that Defendants left Plaintiffs' organization.

27 30. When Defendants left Plaintiffs' organization they took  
28 the above described property and converted it to their own use.



1 31. As a result of Defendants' conversion, Plaintiffs have  
2 been damaged in an amount to be proved at trial.

3 32. Defendants' acts were malicious, oppressive and  
4 fraudulent and therefore justify the awarding of exemplary and  
5 punitive damages.

6 WHEREFORE, plaintiffs pray for judgment against defendants as  
7 follows:

8 1. For a permanent injunction enjoining all Defendants from  
9 continuing to use the trade name THE TRADITIONAL CAT ASSOCIATION as  
10 their trade name and holding themselves out as THE TRADITIONAL CAT  
11 ASSOCIATION formed in 1987, to cease and desist use of Plaintiffs'  
12 constitution, bylaws, motto, logo, registry, show rules, breed  
13 names, breed standards, stud book, domain name, home page, list  
14 server; to take down "The Diana Fineran Response Web Site", and  
15 return all personal property belonging to Plaintiffs;

16 2. For general damages in an amount to be shown according to  
17 proof at trial;

18 3. For special damages in an amount to be shown according to  
19 proof at trial;

20 4. For punitive damages in an amount to be shown according  
21 to proof at trial;

22 5. For Plaintiffs' costs incurred herein;

23 6. For any other and further relief as the Court may deem  
24 just and proper.

25 Dated: November 20, 2002

GOODE, HEMME, PETERSON, & SAYLER

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By: 

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Jerry D. Hemme,  
Attorney for Plaintiffs  
DIANA L. FINERAN and  
THE TRADITIONAL CAT  
ASSOCIATION, INC.

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