

DOCKET NO. : SUPERIOR COURT
STRATTON FAXON : J.D. of NEW HAVEN
VS. : AT NEW HAVEN
GOOGLE, INC. :
May 27, 2009

APPLICATION FOR PREJUDGMENT REMEDY
AS TO GOOGLE, INC.

TO THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF NEW HAVEN

The undersigned represents that:

1. The plaintiff will commence an action against Google, Inc. (“Google”), in connection with Google’s deceptive advertising practices that serve to confuse consumers of legal services in Connecticut and across the country.
2. There is probable cause that judgment in the amount of the prejudgment remedy sought, taking into account any known defenses, counterclaims or set-offs, will be rendered in the matter in favor of the applicant and that to secure the judgment the applicant seeks an Order from this court directing that the following prejudgment remedy be granted to secure the sum of **\$50,000.00**; and to attach sufficient property of the defendant, Google, Inc., to secure such sum. The property to be attached is to be determined through the attached Motion for Prejudgment Disclosure of Property and Assets. In addition, the plaintiff seeks equitable relief requiring immediate removal of deceptive copycat ads placed by the Silver, Golub and Teitell, P.C. firm and to halt SGT from purchasing the Stratton Faxon name from Google.

WHEREFORE, the plaintiff requests that a Prejudgment Remedy issue forthwith.

THE PLAINTIFF,

By: _____
Michael A. Stratton
Stratton Faxon
59 Elm Street
New Haven, CT 06510
(203) 624-9500
(203) 624-9100 Fax
Juris No. 421593

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ORDER FOR PREJUDGMENT REMEDY

WHEREAS, the plaintiff in the above entitled action has made application for a prejudgment remedy to attach certain personal and real property of the defendant, Google, Inc., pursuant to defendant’s Disclosure of Property and Assets; and to obtain equitable relief requiring immediate removal of the deceptive copycat ads placed by the Silver, Golub and Teitell, P.C. (SGT) firm and to prohibit SGT from purchasing the Stratton Faxon name.

WHEREAS, after consideration, whereupon the court immediately scheduled a hearing to permit the defendant to dispute the propriety of any such attachment, in accordance with General Statutes § 52-278d, and permitting the defendant to appear and have an opportunity to be fully heard, it is found that there is probable cause to sustain the validity of the plaintiff’s claims and that the application should be granted.

NOW THEREFORE, it is hereby ordered that the plaintiff attach up to the value of \$ _____ of the personal and real property of the defendant described in defendant’s Disclosure of Property and Assets, and equitable relief is

granted requiring the immediate removal of the offending ads purchased and placed by the Silver, Golub and Teitell, P.C. firm and to prohibit SGT from purchasing the Stratton Faxon name.

BY THE COURT,

_____, J.

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ORDER FOR HEARING AND NOTICE

The above having been presented to the court, it is hereby ordered that a hearing be held thereon on _____, 2009 at _____ .M. in Courtroom ____ of the Superior Court for the Judicial District of New Haven, 235 Church Street, New Haven, Connecticut, and that the plaintiff give notice to the defendant, Google, Inc., of the pendency of the Order, the application and of the time when a hearing will be held by causing a true copy of the order, the application, the affidavit and other documents to be sent, first-class mail, postage prepaid, to the defendant and any counsel of record who have appeared in this case, at least seven (7) days before the above-scheduled hearing.

Dated at New Haven, Connecticut, this ____ day of _____, 2009.

BY THE COURT

J.

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ORDER

The Motion for Prejudgment Disclosure of Property and Assets having been presented to the court, and probable cause sufficient for the issuance of a prejudgment remedy in the amount of \$_____ having been established, it is

ORDERED

that the defendant submit on or before _____, 2009, to the court and to the attorney for the plaintiff a sworn statement setting forth any and all property, real or personal, in which the defendant, Google, Inc., has an interest in, and any and all debts owing to the defendant.

By Order of the Court:

J.

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WRIT OF ATTACHMENT

TO ANY PROPER OFFICER :

G R E E T I N G:

BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to attach for the benefit of Stratton Faxon, trustee for the plaintiff, to the value of \$ _____, the following property of Google, Inc.: _____ and to leave a true and attested copy of this Writ in the hands of the agent for service of Google, Inc.

Of this Writ, with your doings thereon, due service and return make

Dated at New Haven, Connecticut this _____ day of _____, 2009.

Michael A. Stratton
Commissioner of the Superior Court

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**MOTION FOR PREJUDGMENT
DISCLOSURE OF PROPERTY AND ASSETS**

WHEREAS, a legal action will be commenced by the plaintiff against the defendant, Google, Inc., and the plaintiff will demonstrate, pursuant to the attached application for a prejudgment remedy, probable cause sufficient for a prejudgment remedy in the amount of **\$ 50,000.00**.

NOW THEREFORE, the plaintiff moves that the defendant, Google, Inc., be ordered to disclose any and all property, real and personal, in which the defendant has an interest.

THE PLAINTIFF,

By: _____
Michael A. Stratton
Stratton Faxon
59 Elm Street
New Haven, CT 06510
(203) 624-9500
(203) 624-9100 Fax
Juris No. 421593

ORDER

The foregoing motion, having been heard, is hereby ordered:

GRANTED _____, DENIED _____.

BY THE COURT,

J.

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AFFIDAVIT

I, MICHAEL A. STRATTON, being duly sworn, do depose and say :

1. I am a lawyer licensed in the state of Connecticut. I am a name partner in the law firm of Stratton Faxon.
2. Stratton Faxon is a general partnership and there is no other firm in the country with the same name. The firm focuses on civil trial practice representing only plaintiffs who suffer catastrophic or life-altering physical or financial injury. This includes medical malpractice, insurance bad faith, transportation injuries, product liability and industrial/workplace accidents.
3. The firm does no direct advertisement to consumers as doing so would conflict with the interests of other lawyers who refer us their clients. Referred clients make up more than 95% of our clientele. As such, the firm does no yellow page or internet marketing to the consumer.

4. The firm originated in 2003 when the two principals left Koskoff Koskoff & Bieder, P.C. to form Stratton Faxon. The firm's main competitors in the medical malpractice/ serious personal injury market include its former firm, Koskoff Koskoff & Bieder (KKB) in Bridgeport, CT, and the law firm of Silver Golub & Teitell (SGT) in Stamford. These two firms do engage in direct consumer marketing while also relying on referring attorneys for their business success.
5. While not engaging in direct consumer marketing, Stratton Faxon focuses on sponsorships of events, and donations to charities that appeal to professionals including lawyers. The firm puts aside more than 10% of its fees for such efforts (usually amounting to more than \$400,000 per annum). It is a major sponsor of the three Connecticut legal aid organizations; WSHU and WNPR; four city road races (Fairfield, New Haven, Branford, and Danbury); Mothers Against Drunk Driving; the New Haven Independent; several local bar associations; the Connecticut Trial Lawyers Association; The Center for Justice and Democracy; and dozens of other causes.
6. Stratton Faxon's practice growth has led to copycat marketing efforts by SGT in conjunction with a few other firms. For instance in 2007, Stratton Faxon initiated a \$250,000 matching gift campaign for legal aid organizations statewide. In order to create visibility for the campaign, Stratton Faxon purchased ads in the *Connecticut Law Tribune* and captioned it the "Fresh Faces" campaign. A little girl with blond hair and bright blue eyes was used as the model in the ad. One year after the introduction of Fresh Faces, SGT, KKB, and the Emmet & Glander (EG) firm jointly initiated a campaign for a legal aid group as well. They

represented that they would be donating \$25,000 combined and encouraged people to join their effort. An ad was placed in the *Connecticut Law Tribune* by the three firms with very similar ad copy, coloring, and a strikingly similar-looking blond little girl with bright blue eyes as the poster child.

7. Stratton Faxon believed that the copycat legal aid appeal by KKB, SGT, and Emmett Glander was an effort to mislead and blur the efforts and brand of Stratton Faxon. Of particular concern was that three firms in major leadership positions in the trial lawyers seemed aligned in this campaign, and there was no effort made to contact Stratton Faxon before the campaign. Nonetheless, the causes being assisted were worthwhile and the copycat effort was ignored.
8. Then, on or about May 16, 2009, after publication of a suit brought by Firepond against Google, undersigned learned that some companies were using “Google Ad Words” campaigns to shadow their competition. In particular, Firepond alleged that a direct competitor was purchasing their company name as their own ad word search term.
9. As such, a competitor of Firepond was purchasing the keyword “Firepond” and associating it with its own sponsored link. When a customer entered Firepond in the search field, the competitor’s ad would appear as a sponsored site above all other organic search results. The competitor was being given top billing over all other organic search results. Firepond sued Google asserting that it should not allow consumers to game the system by purchasing ad words of competing companies’ names.

10. After reading this article, undersigned performed a web search of the Stratton Faxon name on the Google search engine. When “Stratton Faxon” was entered, the search would render all organic listings regarding Stratton Faxon, including a link to Stratton Faxon’s home page in position #1. However, it would also display right above that organic listing paid links to both SGT’s main website.
11. After contacting Google, it became clear that SGT was purchasing the Stratton Faxon name from Google to have their ads appear whenever a customer entered “Stratton Faxon”. See examples attached as Exhibit A.
12. The ads that appear are generally vague and do not clearly identify that the sponsored link displayed is not a link to Stratton Faxon. Moreover, when Stratton Faxon is searched in the “news” section, there is no link to Stratton Faxon, but paid links to SGT. In the context of legal representation of badly injured clients, the method of marketing now being employed by SGT through Google is unseemly, unprofessional and should not be permitted. It goes beyond blurring of the Stratton Faxon name, it is the theft of that name for pecuniary gain by SGT and Google.
13. Allowing competitors like SGT to purchase firm names such as “Stratton Faxon” endangers our reputation, causes confusion, and allows this firm to shadow monitor the number of Stratton Faxon searches that occur as Google’s daily reports to SGT show the number of people who used the undersigned’s business name as a search term. It also allows Google to make money through the sale of our firm name by purchasers like SGT.

14. It is unknown as to the number of times the SGT ads have been clicked when a search of "Stratton Faxon" has been performed, and to date the SGT campaign is still ongoing. It is also unknown how much SGT has paid Google to purchase the Stratton Faxon firm name in their deceptive shadow marketing campaign.
15. The plaintiff requests that the court enter an immediate injunction forcing Google to halt the purchase of the name "Stratton Faxon" by SGT, and issue a prejudgment remedy in the amount of \$50,000.

Michael A. Stratton

Subscribed and sworn to before me this _____ day of May, 2009.

Notary Public

My Commission Expires:

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COMPLAINT

Count One: Tortious Interference With Business Relations

1. Google, Incorporated does business throughout Connecticut and the world as an internet search engine. Their revenues are primarily based on advertising revenues.
2. Stratton Faxon is a general partnership engaged in the practice of law in Connecticut, New York, Vermont, and certain other states.
3. Stratton Faxon is a plaintiff's personal injury and medical malpractice firm with a focus on catastrophic injury. The client base is primarily referred from other lawyers.
4. The Stratton Faxon firm has a website at www.strattonfaxon.com.
5. When "Stratton Faxon" or "Stratton Faxon law firm" are searched through Google, the Stratton Faxon firm comes up as number one organically.
6. Unbeknownst to the plaintiff, and without plaintiff's consent, Google sold the Stratton Faxon firm name to its competitor, Silver, Golub and Teitell (SGT).

SGT willingly purchased the unique names “Stratton Faxon” and “Stratton Faxon law firm” and specifically requested the purchase of the Stratton Faxon name.

7. As a result, when the search term set forth above are inputted by someone looking for Stratton Faxon, SGT pays Google to have Google place links to the SGT website above and to the side of the Stratton Faxon link. See Affidavit of Michael A. Stratton.
8. The SGT link is oftentimes vague and difficult to differentiate from the Stratton Faxon link.
9. Google provides reports to SGT every time someone does a search for Stratton Faxon, and charges SGT each time its link is clicked rather than the Stratton Faxon link. Google makes no money when the organic Stratton Faxon link is clicked.
10. Upon information and belief, Google does no due diligence to ensure that firms like SGT does not purchase names of competitors in Google ad words.
11. The result of Google’s sale of the Stratton Faxon name to SGT is to mislead and confuse consumers of legal services, and to aid and abet deceptive copycat marketing campaigns.
12. The acts and/or omissions of the defendant Google represent a tortuous interference with the plaintiff’s business relations with its clients and referring lawyers.

Count Two: CUTPA Violation

1.-12. Paragraphs 1-12 of Count One are hereby made paragraphs 1.-12. of this

Count Two.

13. The aforementioned act and omissions represent unfair business practices prohibited by General Statutes § 42-110a, et seq. and have caused the plaintiff ascertainable economic losses.

Count Three: Unjust Enrichment

- 1.-11. Paragraphs 1-11. of Count One are hereby made paragraphs 1-11. of this Count Three.
12. The defendant has and is currently selling the plaintiff's firm name without paying any compensation to the plaintiff.
13. The defendant has been unjustly enriched and should disgorge any revenue derived from the sale of the Stratton Faxon name.

WHEREFORE, the plaintiff requests money damages and equitable relief halting Silver Golub and Teitell from purchasing the Stratton Faxon name from Google.

THE PLAINTIFF,

By: _____
Michael A. Stratton
Stratton Faxon
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(203) 624-9500

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