

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

Alpson, Inc d/b/a Porto Funeral Home	:	Civil Action No:
	:	
v.	:	
	:	
East Haven Memorial Funeral Home, Inc. and James Brennan	:	December 8, 2007

COMPLAINT

I. PRELIMINARY STATEMENT

1. This is an action brought pursuant to Title 15 U.S.C. § 1125, et seq. to redress the registration of certain internet domain names by the Defendant, Mr. James Brennan (hereafter “Brennan”), as the agent of the Defendant. East Haven Memorial Funeral Home, Inc. (hereafter “East Haven Memorial”) due to the fact that the said domain names improperly appropriate an unregistered trademark of the Plaintiff.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1125 et seq. as well as 28 U.S.C. § 1131.
3. Pursuant to 28 U.S.C. § 1391, venue is properly in the United States District Court for the District of Connecticut, as each defendant named in this Complaint resides, domiciles,

transacts business, maintains an office, otherwise conducts business or otherwise has substantial contacts in the State of Connecticut.

III. PARTIES

4. The Plaintiff, Alpson, Inc., d/b/a Porto Funeral Home (hereafter “the Plaintiff”), is a business incorporated under the laws of the State of Connecticut, and has a principal place of business at 830 Jones Hill Road, West Haven, Connecticut.
5. The Defendant East Haven Memorial is a business incorporated under the laws of the State of Connecticut, and has a principal place of business at 425 Main Street, East Haven, Connecticut.
6. The Defendant Brennan is the Vice President of the Defendant, East Haven Memorial. On information and belief, resides at 21 Pardee Place, East Haven, Connecticut.
7. At all times relative hereto, the Brennan was acting in his capacity as an agent of the Defendant, East Haven Memorial.

IV. FACTUAL ALLEGATIONS

8. Since 1931 (prior to its current incorporation), the Plaintiff has actively and continuously operated, advertised and held itself out under its registered trade name: “Porto Funeral Home”.
9. Since 1931 (prior to its current incorporation), the Plaintiff has provided funeral services at multiple locations in the County of New Haven, State of Connecticut (hereafter “Greater New Haven”) and has developed a reputation in the region for quality and service.
10. As a result of the Plaintiff’s continuous use of the trade name “Porto Funeral Home”, as well as its advertising, and marketing; the name “Porto Funeral Home” is known throughout Greater New Haven as identifying the Plaintiff as a source of quality funeral services.
11. Based on its extensive and continual commercial use of the name “Porto Funeral Home”, the Plaintiff has acquired a unregistered trade mark in the said name pursuant to 15 U.S.C. § 1127, et seq.
12. The name “Porto Funeral Home” is highly distinctive and of great and incalculable value to the Plaintiff. The Plaintiff closely controls the use and reproduction of the name

“Porto Funeral Home” so that current and potential customers can rely upon the mark as a long standing symbol of high quality funeral services.

13. On or about January 23, 2007, the Defendant, East Haven Memorial Funeral Home, through its agent James Brennan, registered the internet domain names “www.portofuneralhome.com” and “www.portofuneralhomes.com” (hereafter “the Domain Names”) through the internet domain name Registrar, GoDaddy.com.
14. “WHOIS” is an international protocol system, whereby the owners and registers of internet domain names are identified and cataloged.
15. On information and belief, the Defendants or thier agents, hired, commissioned, or otherwise employed a company named “Domains by Proxy, Inc.” (having a business address is 1511 N. Hayden Rd, Ste 160, PMB 353, Scottsdale, Arizona), to conceal the identify of the person or entity who registered the above-referenced domain names from the internet “WHOIS” system.
16. On information and belief, the Defendant, James Brennan, is the current registrant of the Domain Names “www.portofuneralhome.com” and “www.portofuneralhomes.com”.
17. The Defendant, East Haven Memorial through its agent has employed the Domain Names in such a fashion, that, when typed into an internet web browser, the Domain Names

redirected the web browser to the website: “www.easthavenmemorial.com”; the same being the website of the Defendant, East Haven Memorial.

18. On information and belief, the Defendant, East Haven Memorial, is not commonly known as “Porto Funeral Home” or “Porto Funeral Homes”.
19. The Defendant, East Haven Memorial, is not, and has never been, a licensee, agent, or affiliate of the Plaintiff.
20. On information and belief, the Defendant, East Haven Memorial, has no trademark or intellectual property rights in the mark “Porto Funeral Home” or the mark “Porto Funeral Homes”.
21. At the time the Defendant, East Haven Memorial, through its agent, registered the Domain Names; the Porto Funeral Home mark was sufficiently distinctive or famous to give constructive notice to East Haven Memorial that the registration of the Domain Names at issue would violate the Plaintiff’s rights.
22. At the time that the Defendant, through its agent, registered the Domain Names, it had actual knowledge that such use could violate the Plaintiff’s valuable rights to the mark “Porto Funeral Home”.
23. The disputed Domain Names are not composed solely of common words in the English dictionary.

24. The Defendant, East Haven Memorial Funeral, did not and is not, using the above-referenced Domain Names in connection with a bona fide, good faith, offering of goods and services.
25. The Defendant's use of the Domain Names is inconsistent with the image and goodwill that have been built in the Plaintiff's "Porto Funeral Home" mark and is thereby likely to tarnish the Plaintiff's mark.
26. The Defendant's use of the Domain Names is likely to confuse or mislead consumers.
27. The Defendant is not making any legitimate noncommercial or fair use of the Domain Names. Specifically, the Defendant's use of the Domain Names to direct users to its own website, where similar and competing funeral services are offered, does not establish rights or legitimate interests.
28. The Defendant, through its agent, registered the disputed domain names with the intent to disrupt the Plaintiff's business or to confuse consumers seeking to find the Plaintiff's website and to direct funeral business to itself at the expense and loss of the Plaintiff.
29. On information and belief the Defendant registered the Domain Names to prevent the Plaintiff from owning a domain name incorporating its trademark.
30. The Defendant has generated commercial gain by intentionally and misleadingly diverting users away from the Plaintiff to East Haven Memorial.

V. STATEMENT OF CLAIMS

COUNT ONE (TRADEMARK INFRINGEMENT)

31. All of the preceding allegations of this Complaint are incorporated herein by reference made a part hereof.
32. The Plaintiff has a valid mark in the name “Porto Funeral Home” which is entitled to protection under 15 U.S.C. § 1125(a).
33. The Defendants, acting individually or in concert, used the Plaintiff’s mark in commerce by using the above-referenced Domain Names to redirect consumers to the website of East Haven Memorial, where they advertised or offered the services of East Haven Memorial.
34. Neither of the Defendants were licensees of the Plaintiff, nor did they otherwise have the permission from the Plaintiff to use its mark.
35. The East Haven Memorial’s use of the Plaintiff’s mark is likely to cause confusion as to the affiliation, connection or association of the East Haven Memorial with the Plaintiff; or as to the origin, sponsorship or approval of East Haven Memorial’s goods, services, or commercial activities by the Plaintiff.
36. The Plaintiff has been harmed by the Defendants’ infringement and actions.

COUNT TWO (COMMON LAW TRADEMARK INFRINGEMENT)

37. All of the preceding allegations of this Complaint are incorporated herein by reference made a part hereof.
38. The Defendants, acting individually or in concert, have improperly used the Plaintiff's mark in the above-referenced Domain Names, thereby encroaching and infringing on the Plaintiff's rights to the said mark.
39. The Plaintiff has been harmed by the Defendants' infringement, actions and unlawful use of the Plaintiff's name and mark.

COUNT THREE (DILUTION OF TRADEMARK)

40. All of the preceding allegations of this Complaint are incorporated herein by reference made a part hereof.
41. The mark "Porto Funeral Home" is known and/or famous in the State of Connecticut, and more specifically in New Haven County.
42. The Defendants, either individually or in concert, unlawfully made use of the mark in commerce.
43. The Defendants' use of the mark began after the mark was made famous due to the efforts and goodwill of the Plaintiff.

44. The Defendants' use of the mark dilutes the quality of the mark by diminishing the capacity of the mark to identify and distinguish goods and services of the Plaintiff.
45. The Plaintiff has been harmed by the Defendants' dilution of mark "Porto Funeral Home".

COUNT THREE (ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT)

46. All of the preceding allegations of this Complaint are incorporated herein by reference made a part hereof.
47. The name "Porto Funeral Home" is a distinctive and/or famous mark.
48. The Defendants, either individually or in concert, intend to profit in bad faith from the registration, traffic or use of the above-referenced Domain Names which use the Plaintiff's mark.
49. The above-referenced Domain Names as registered by the Defendant(s) were, at the time of registration, identical, confusingly similar, or dilutive of the Plaintiff's mark.
50. The Defendants' conduct violates 15 U.S.C. § 1125(d) and has harmed the Plaintiff.

COUNT FOUR (CONNECTICUT UNFAIR TRADE PRACTICES ACT)

51. All of the preceding allegations of this Complaint are incorporated herein by reference made a part hereof.
52. The Defendant, East Haven Memorial, is engaged in trade and commerce as defined by Connecticut General Statutes § 42-110a(4).
53. The Defendant, East Haven Memorial, through its agent, has engaged in methods of unfair competition and/or deceptive acts or practices in the conduct of trade or commerce.
54. The above-referenced actions of the Defendant, East Haven Memorial, constitute a violation of the Connecticut Unfair Trade Practices Act (Connecticut General Statutes § 42-110 et seq.) in that:
 - a) Said actions are unlawful and offend public policy;
 - b) Said actions are immoral, unethical, and/or unscrupulous;
 - c) Said actions sought to deceive consumers; and
 - c) Said actions caused a substantial injury to the Plaintiff (a competitor).

VI. CLAIM FOR TRIAL BY JURY

55. The Plaintiff is entitled to, and hereby demands, trial by jury of all issues in this proceeding.

VII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Alpson, Inc., d/b/a Porto Funeral Home, prays that each of the Defendants named herein be duly served with a copy of a citation and this Complaint and a Summons to answer it and that, after all due proceedings, and due proceedings had there be judgment herein in favor of the Plaintiff as follows:

- 1) Monetary Damages;
- 2) Possession of the domain name www.portofuneralhome.com;
- 3) Possession of the domain name www.portofuneralhomes.com;
- 4) Attorney's Fees;
- 5) Punitive Damages;
- 6) Costs; and
- 7) Such other relief as the Court may deem appropriate.

RESPECTFULLY SUBMITTED
THE PLAINTIFF,

By: _____
CHRIS R. NELSON (ct26783)
Parrett, Porto, Parese & Colwell, P.C.
2319 Whitney Ave, Ste 1-D
Hamden, CT 06518
Phone: 203.281.2700
Fax: 203.281.0700
cnelson@pppclaw.com