

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RESCUECOM CORPORATION,

Plaintiff,

-vs-

BBY SOLUTIONS, INC. d/b/a BEST BUY

Defendant.

Civil Case No. 5:09-cv-1149
(FJS/DEP)

COMPLAINT

**PLAINTIFF DEMANDS
TRIAL BY JURY**

Plaintiff, RESCUECOM CORPORATION, as and for its complaint against defendant BBY SOLUTIONS, INC. d/b/a BEST BUY, alleges as follows:

PARTIES

1. Plaintiff Rescuecom Corporation is a corporation incorporated under the laws of the State of New York, with its principal place of business located at 2560 Burnet Ave., Syracuse, New York, 13206.

2. Upon information and belief, Defendant BBY Solutions, Inc. d/b/a Best Buy is a corporation organized under the laws of the State of Minnesota with its corporate offices located at Best Buy Corporate Campus, 7601 Penn Avenue South, Richfield MN, 55423-3645.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter under 15 U.S.C. 1331, 1338 (a) and (b), and 1121(a), involving allegations of violations of the Lanham Act, and jurisdiction over actions for declaratory judgment under 28 U.S.C. 2201 and 2202, and jurisdiction over the State law claims under 15 U.S.C. 1367.

4. Venue is proper under 28 U.S.C. 1391(b) and (c).

5. This Court has personal jurisdiction over Defendant BBY Solutions, Inc. (hereafter “Best Buy”) because Best Buy conducts business in the State of New York and within this District.

6. This action for declaratory judgment is proper and timely. An actual case or controversy exists between the parties. On October 9, 2009 Defendant Best Buy forwarded to Plaintiff Rescuecom a written notice of violation of trademark rights and notice to cease and desist, which provided a deadline of October 16, 2009 for Plaintiff to respond with a confirmation that it would accede to Defendant’s demands.

FACTUAL BACKGROUND

7. Rescuecom Corporation (hereafter “Rescuecom”) is headquartered in Syracuse, New York and is in the business of providing computer repair and maintenance services to individuals and businesses, including computer repair, consulting, sales, networking, and Internet services.

8. Upon information and belief Defendant Best Buy has represented itself as having acquired by merger or other means the business operations of Geek Squad, Inc. As part of that acquisition, Defendant Best Buy represents itself as being the owner of the trademark “Geek Squad”.

9. On October 9, 2009 Defendant Best Buy forwarded to Rescuecom a purported notice of violation of Defendant’s trademark rights in the Geek Squad mark. The notice described two actions which Defendant purported to be violations of its trademark rights.

10. The first purported violation of Defendant’s trademark rights alleged that Rescuecom operated a toll-free number that was the alphanumeric equivalent of a common misspelling of Defendant’s 1-800 GEEK-SQU(AD) number. Defendant’s number is 1-800-433-5778. Plaintiff uses the telephone number 1-800-433-5772.

11. The second purported violation of Defendant's trademark rights alleged that Rescuecom uses the term "geek squad" as a keyword with an Internet search engine to trigger a sponsored link advertisement which leads to Rescuecom's website.

12. The October 9, 2009 notice further alleged that the above mentioned actions constituted "unfair competition, passing off, dilution, tortious interference and unjust enrichment, in violation of state and federal law."

COUNT I

**Declaratory Judgment – Non-Infringement Of Trademark Rights
In Regard To Use Of The Telephone Number
15 U.S.C. §1125**

13. Plaintiff repeats and realleges each and every allegation made above as if more fully set forth at length herein.

14. Defendant Best Buy has served a cease and desist notice upon Plaintiff Rescuecom demanding that Rescuecom cease and desist using a certain telephone number whose alphanumeric equivalent is similar to Defendant's toll-free number 1-800-GEEK-SQU.

15. The cease and desist notice demanded that Plaintiff Rescuecom provide written confirmation no later than October 16, 2009 that it had complied with Defendant's demands and would continue to comply with those demands in the future.

16. An actual, present and justiciable controversy has arisen between the parties concerning Plaintiff's right to continue using its 1-800-433-5772 number (hereafter, "Disputed Telephone Number").

17. Plaintiff Rescuecom has never advertised or displayed the Disputed Telephone Number, either as a number or its alphanumeric equivalent.

18. Plaintiff Rescuecom clearly identifies itself as Rescuecom to consumers calling the Disputed Telephone Number, including through the use of a recorded greeting which specifically disclaims any affiliation with Geek Squad.

19. Plaintiff Rescuecom seeks a declaratory judgment from this Court that its use of the 1-800-433-5772 number does not constitute trademark infringement or dilution under 15 U.S.C. §1125.

COUNT II

Declaratory Judgment – Non-Infringement Of Trademark In Regard To Keywords 15 U.S.C. §1125

20. Plaintiff repeats and realleges each and every allegation made above as if more fully set forth at length herein.

21. Defendant Best Buy has served a cease and desist notice upon Plaintiff Rescuecom demanding that Rescuecom cease and desist using the term “geek squad” as a keyword on an Internet search engine to trigger sponsored link advertisements which lead to Rescuecom’s website.

22. The cease and desist notice demanded that Plaintiff Rescuecom provide written confirmation no later than October 16, 2009 that it had complied with Defendant’s demands and would continue to comply with those demands in the future.

23. An actual, present and justiciable controversy has arisen between the parties concerning Plaintiff’s right to continue using the term “geek squad” as a keyword with Internet search engines.

24. Plaintiff Rescuecom uses the keyword phrase “geek squad” to display a sponsored link containing the following text:

PC issue? 1(877) 376-0169
Choose Rescuecom instead of **geeks**.
1Hour Response Onsite/Remote 24/7
www.rescuecom.com

25. The text of the advertisement clearly indicates that Rescuecom is a separate entity distinct from Geek Squad, and should be considered as an alternative vendor for resolving PC or personal computer issues.

26. Plaintiff Rescuecom's use of the term "geek squad" as a keyword to trigger this advertisement is protected under the Fair Use doctrine in that it clearly identifies Rescuecom as a competitor and encourages consumers to choose Rescuecom over the Defendant's services.

27. Plaintiff Rescuecom's use of the Geek Squad trademark to trigger this advertisement does not give rise to a likelihood of confusion.

28. Plaintiff Rescuecom seeks a declaratory judgment from this Court that its use of the term "geek squad" as a keyword on Internet search engines does not constitute trademark infringement or dilution under 15 U.S.C. §1125.

COUNT III

Declaratory Judgment – Miscellaneous and Ancillary State Law Claims

29. Plaintiff repeats and realleges each and every allegation made above as if more fully set forth at length herein.

30. Defendant Best Buy's October 9, 2009 cease and desist letter included allegations that Plaintiff's use of the Disputed Telephone Number and its use of the phrase "geek squad" as a keyword with an Internet search engine constituted "trademark infringement, unfair competition, passing off, dilution, tortious interference and unjust enrichment, in violation of state and federal law."

31. The cease and desist notice demanded that Plaintiff Rescuecom provide written confirmation no later than October 16, 2009 that it had complied with Defendant's demands and would continue to comply with those demands in the future.

32. An actual, present and justiciable controversy has arisen between the parties concerning Plaintiff's right to continue using the term "geek squad" as a keyword with Internet search engines and Plaintiff's right to continue using the Disputed Telephone Number.

33. Plaintiff Rescuecom seeks a declaratory judgment from this Court that its use of the term "geek squad" as a keyword on Internet search engines, and its use of the Disputed Telephone Number does not constitute "unfair competition, passing off tortious interference and unjust enrichment".

WHEREFORE, plaintiff Rescuecom Corporation respectfully requests that this Court grant declaratory judgment against the Defendant on all claims as follows:

On the First Count, Declaratory Judgment that Plaintiff Rescuecom Corporation's use of the telephone number 1-800-433-5772 does not infringe upon or dilute Defendant's Geek Squad trademark;

On the Second Count, Declaratory Judgment that Plaintiff Rescuecom Corporation's use of the term "Geek Squad" as a keyword on an Internet search engine to trigger sponsored link advertisements leading to Rescuecom Corporation's own website does not infringe upon or dilute Defendant's Geek Squad trademark;

On the Third Count, Declaratory Judgment that Plaintiff Rescuecom Corporation's use of the telephone number 1-800-433-5772 and its use of the term "geek squad" as a keyword on an Internet search engine to trigger sponsored link advertisements does not constitute unfair competition, passing off, tortious interference and unjust enrichment;

Reasonable attorneys fee as determined by the Court upon application;

Costs and disbursements incurred by the Plaintiff;

Together with such other and further relief as this Court deems just and proper.

DATED: October 14, 2009

RESCUECOM CORPORATION

/s/ Edmund J. Gegan

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