

Mark Borghese, Esq.
Nevada Bar No. 6231
mborghese@weidemiller.com
Ryan Gile, Esq.
Nevada Bar No. 8807
rgile@weidemiller.com
WEIDE & MILLER, LTD.
7251 W. Lake Mead Blvd., Suite 530
Las Vegas, NV 89128
Tel. (702) 382-4804
Fax (702) 382-4805

Attorneys for Gregory Ricks

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GREGORY RICKS, an individual,)	Case No.: 2:09-cv-1379
)	
Plaintiff,)	
)	COMPLAINT
vs.)	
)	
DCAEV, INC., a revoked Nevada corporation,)	
)	JURY DEMAND
Defendant)	
)	
)	
)	
)	

Plaintiff Gregory Ricks ("Plaintiff"), by and through his attorneys, Weide & Miller, Ltd., alleges against Defendant DCAEV, Inc. ("Defendant"), as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), §2201 and §2202. This Court has supplemental jurisdiction over Plaintiff's state and common law claims pursuant to 28 U.S.C. § 1367(a).

2. This Court has personal jurisdiction over Defendant because Defendant is domiciled in the State of Nevada.

3. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and 1391(c).

THE PARTIES

4. Plaintiff Gregory Ricks is an individual residing in the State of Texas.

5. Upon information and belief, Defendant DCAEV, Inc. is a corporation that was organized under the laws of the State of Nevada but whose corporate charter has been revoked by the Nevada Secretary of State. The registered agent of Defendant according to the records of the Nevada Secretary of State is FORM-A-CORP LLC with an address of 2350 S. Jones Blvd., Suite, 101-3C, Las Vegas, NV 89146. The only officer and director of Defendant named in the list last filed with the Nevada Secretary of State before Defendant's charter was revoked is Michael Palacios, whose address is listed as 2350 S. Jones Blvd., Suite, 101-3C, Las Vegas, NV 89146.

ALLEGATIONS COMMON TO ALL CLAIMS

6. Plaintiff was an Internet visionary. As early as January 1996, he realized the immense impact that the Internet would have on the future of business and commerce. He also recognized the importance and the value of the unique domain name addresses that Internet users would use to navigate the Internet, including domain names which combine two very generic words and/or which reflect a common generic expression.

7. Since that time, Plaintiff has spent millions of dollars acquiring domain names. Plaintiff has also spent tens of thousands of dollars in legal fees defending his bona fide, good faith domain name purchases from parties attempting to hijack his domain names (such as goldmine.com and poe.com) through baseless claims of cybersquatting and trademark infringement.

Rick's Registration and Use of the DATECHECK.COM Domain Name

8. On or about September 27, 1999, Plaintiff registered the domain name DATECHECK.COM.

9. Upon information and belief, at the time Plaintiff registered the DATECHECK.COM domain name in September 1999, neither Defendant nor any predecessor-in-interest was using the mark Date Check or the domain name <date-check.com> in connection with any goods or services.

1 10. At the time Plaintiff registered the DATECHECK.COM domain name in
2 September 1999, he registered the DATECHECK.COM domain name because it was a domain
3 name which combined two generic words – “date” and “check” – that had become available for
4 acquisition and not because he was attempting to take advantage of the trademark rights of any
5 trademark owner.

6 11. At the time Plaintiff registered the domain name in September 1999, Plaintiff had
7 reasonable grounds to believe that his registration of the DATECHECK.COM domain name
8 was lawful given that the DATECHECK.COM domain name was merely a combination of the
9 two very generic words “date” and “check.”

10 12. Beginning on or about February 2001 and continuously thereafter to the present,
11 Plaintiff began pointing the DATECHECK.COM domain name to different third party online
12 search engine providers that utilize different marketing tools and branding opportunities which
13 have allowed Plaintiff to promote the goods and services of others by providing hypertext links
14 to the web sites of others as well as offering an Internet search engine portal through which
15 Plaintiff promoted the goods and services of others by providing hypertext links to the web sites
16 of others.

17 13. Since at least as early as February 2001, Plaintiff has continuously used the
18 DATECHECK.COM domain name and the DATECHECK.COM mark in association with
19 Plaintiff’s services of promoting the goods and services of others by providing hypertext links to
20 the web sites of others and has established common law rights to the DATECHECK.COM mark
21 since that time in connection therewith.

22 14. Although the actual design of the web pages changed over the years, all of the
23 web pages used to promote Plaintiff’s services of promoting the goods and services of others by
24 providing hypertext links to the web sites of others were located at the DATECHECK.COM
25 domain name with the DATECHECK.COM prominently displayed on the web pages.

26 15. On or about October 2007, Plaintiff chose to use the WHOIS privacy agent
27 services offered by Gee Whiz Domains, Inc. for many of his domain names, including the
28 DATECHECK.COM domain name.

1 16. On or about October 2007, Plaintiff personally updated the WHOIS database
2 information for the DATECHECK.COM domain name to reflect “Gee Whiz Domains Privacy
3 Service.”

4 17. Gee Whiz Domains, Inc. never had any ownership interest in
5 DATECHECK.COM domain name and, through Gee Whiz Domains Privacy Service, merely
6 served as a WHOIS privacy service agent for the DATECHECK.COM domain name for the
7 benefit of Plaintiff, the true owner of DATECHECK.COM domain name.

8 Defendant’s Business Use of DATE CHECK

9 18. Upon information and belief, Defendant is the current owner of the website
10 <date-check.com>.

11 19. Upon information and belief, Defendant’s website is in the business of promoting
12 prostitution, which is illegal in nearly every state of the United States and illegal in Clark
13 County, Nevada, where Defendant resides.

14 20. Upon information and belief, Defendant’s website provides a directory of
15 “female escorts” promoting their “escort services” as well as offers “screening verification
16 services” for the customers of the “female escorts” promoted through the website.

17 21. Upon information and belief, the business of escort services is a well-recognized
18 guise for illegal prostitution services.

19 22. Upon information and belief, sometime before or during June 2008, Defendant,
20 despite its apparent use for several years of the domain name <date-check.com> (with a dash
21 between the words “date” and “check”) to promote its “escort” directory services and “escort”
22 customer verification services, suddenly decided that it wanted to own the same domain but
23 without the dash (i.e., <datecheck.com>).

24 23. Upon information and belief, when Defendant discovered that the
25 DATECHECK.COM domain name was already owned by Plaintiff, the Defendant, rather than
26 purchase the DATECHECK.COM domain name from Plaintiff, began working with certain
27 third parties who aided the Defendant in devising a plan to hijack the DATECHECK.COM
28 domain name from Plaintiff.

1 24. Upon information and belief, Defendant, with full knowledge of Plaintiff's pre-
2 existing ownership and use of the domain name DATECHECK.COM in connection with
3 promoting the goods and services of others by providing hypertext links to the web sites of
4 others, planned to file a trademark registration application for the mark DATE CHECK in order
5 to obtain a federal registration for said mark and then file an arbitration action under the
6 Uniform Domain Name Resolution Policy or file a legal action in court in order to obtain
7 possession of Plaintiff's DATECHECK.COM domain name on the spurious basis that
8 Plaintiff's use of DATECHECK.COM (use that predates Defendant's claimed use) now
9 infringed Defendant's registered trademark.

10 Defendant's Trademark Application for DATE CHECK

11 25. Upon information and belief, on June 16, 2008, Defendant filed a federal
12 trademark application with the U.S. Patent and Trademark Office ("PTO") (Serial No.
13 77/500,759) to register DATE CHECK as a service mark for the following services "Promoting
14 the goods and services of others by providing hypertext links to the web sites of others;
15 Providing a web site featuring product ratings of the consumer services of others in the field of
16 escorts" on the basis of use in commerce (the "Date Check Trademark Application").

17 26. Upon information and belief, Defendant claimed first use date of May 7, 2002,
18 and first use date in commerce of May 28, 2002.

19 27. Upon information and belief, Michael Palacios signed the Date Check Trademark
20 Application as the "President" of Defendant

21 28. Upon information and belief, as part of the Date Check Trademark Application,
22 Michael Palacios signed a Declaration on behalf of the Defendant that as of the filing date of
23 the Date Check Trademark Application, he "believes applicant to be entitled to use such mark in
24 commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or
25 association has the right to use the mark in commerce, either in the identical form thereof or in
26 such near resemblance thereto as to be likely, when used on or in connection with the
27 goods/services of such other person, to cause confusion, or to cause mistake, or to deceive"

28 29. Upon information and belief, as part of the Date Check Trademark Application,

1 Michael Palacios signed a Declaration on behalf of the Defendant that “all statements made of
2 his/her own knowledge are true.”

3 30. Upon information and belief, as part of the Date Check Trademark Application,
4 Defendant had to disclaim any right to the exclusive use of the word “DATE” apart from the
5 mark as shown.

6 31. Upon information and belief, the Date Check Trademark Application was
7 registered by the PTO on January 27, 2009, as U.S. Trademark Registration No. 3,567,258 (the
8 “DATE CHECK Registration”).

9 32. Upon information and belief, by Defendant’s own admissions set forth in the
10 Date Check Trademark Application, Defendant did not use the mark DATE CHECK in
11 connection with the “Promoting the goods and services of others by providing hypertext links to
12 the web sites of others” until at least May 2002.

13 33. Upon information and belief, Defendant, at the time the Date Check Trademark
14 Application was filed, was fully aware of Plaintiff’s ownership and use of the domain name
15 DATECHECK.COM in connection with promoting the goods and services of others by
16 providing hypertext links to the web sites of others.

17 34. Upon information and belief, by Defendant’s own admissions set forth in the
18 description of services in the Date Check Trademark Application, Plaintiff’s use of the
19 DATECHECK.COM domain name in connection with promoting the goods and services of
20 others by providing hypertext links to the web sites of others is a bona fide offering of services.

21 35. Upon information and belief, Defendant filed the Date Check Trademark
22 Application reciting the services of “promoting the goods and services of others by providing
23 hypertext links to the web sites of others” for the express purpose of obtaining a trademark
24 registration which expressly covered the services that Plaintiff had provided using the
25 DATECHECK.COM domain name since 2001 (at least a year before Defendant’s use) that
26 Defendant could later use in a UDRP or court action to hijack Plaintiff’s DATECHECK.COM
27 domain name.

28 ///

Defendant's Cease and Desist Correspondence

36. On or about July 27, 2009, Plaintiff received correspondence from Defendant's counsel regarding Defendant's trademark registration for DATE CHECK and alleging that Plaintiff's registration and use of DATECHECK.COM infringed Defendant's trademark rights, violated the UDRP, and constitutes cybersquatting, trademark dilution, trademark infringement, and unfair competition.

37. Defendant's counsel demanded that Plaintiff immediately cease and desist from "registering, using, or trafficking in domain names which infringe on" Defendant's trademarks.

38. Defendant's counsel also demanded that Plaintiff transfer the DATECHECK.COM domain name.

39. Defendant's counsel stated that if Plaintiff did not comply by August 3, 2009, he would be forced to recommend that Defendant take further legal action.

FIRST CLAIM FOR RELIEF

(Declaratory Relief of Non-Infringement)

40. Plaintiff hereby realleges and incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

41. An actual claim or controversy has arisen insofar as Defendant has alleged that Plaintiff, through his registration and use of the DATECHECK.COM domain name, has infringed and is infringing Defendant's trademark rights to the DATE CHECK mark and has engaged in unfair competition in respect thereof.

42. Plaintiff's registration of the DATECHECK.COM domain name predates Defendant's use of the DATE CHECK mark in connection with its website <date-check.com>.

43. Plaintiff's use of the DATECHECK.COM domain name in connection with promoting the goods and services of others by providing hypertext links to the web sites of others predates Defendant's use of the DATE CHECK mark in connection with its website <date-check.com> for the same services.

44. Upon information and belief, Defendant's use of the DATE CHECK mark on its website <date-check.com> is in connection with promoting the listings of "female escorts" as

1 well as offering a “screening verification services” for the customers of such “female escorts.”

2 45. Upon information and belief, Defendant’s use of the DATE CHECK mark on its
3 website <date-check.com> has never been in connection with promoting any other goods and
4 services outside the “escort” or adult industry.

5 46. From the time Plaintiff registered the DATECHECK.COM domain name in
6 September 1999, Plaintiff’s use of the DATECHECK.COM domain name has never been used
7 in connection with promoting any adult-oriented goods and services nor has the website ever
8 marketed or promoted the services of “female escorts” or offered any kind of “screening
9 verification services” related to the “escort” industry.

10 47. Upon information and belief, there is no likelihood of confusion between
11 Plaintiff’s use of the DATECHECK.COM domain name and Defendant’s use of the DATE
12 CHECK mark in connection with its website <date-check.com>.

13 48. Upon information and belief, although a consumer might incorrectly guess that
14 Defendant’s “escort” website would be found at Plaintiff’s DATECHECK.COM domain name,
15 such an erroneous guess does not amount to a likelihood of confusion, including initial interest
16 confusion.

17 49. Upon information and belief, visitors to Plaintiff’s DATECHECK.COM domain
18 name would not think that Defendant has licensed, sponsored, or owned the website, but rather
19 would come to the inevitable and correct conclusion that more than one company owns a
20 domain name with the words “date” and “check” and that Defendant operates its website at a
21 different domain name address.

22 50. Plaintiff’s website contained no contact information about Plaintiff or otherwise
23 offered any type of interface between Plaintiff and visitors other than providing hypertext links
24 to the web sites of others which promoted the goods and services of others as well as providing
25 a search engine dialog box to allow visitors to type in their own search terms.

26 51. Upon information and belief, based on the simplistic nature of Plaintiff’s website
27 found at DATECHECK.COM, any person that was looking for the “adult oriented” services
28 offered through Defendant’s website under Defendant’s DATE CHECK mark, who mistakenly

1 guessed that it could be found at <datecheck.com>, would realize quickly that he or she was in
2 the wrong place and either guess again or resort to one of the popular commercial search
3 engines to locate Defendant's own website at <date-check.com>.

4 52. Upon information and belief, Plaintiff's use of the DATECHECK.COM domain
5 is not likely to cause confusion with Defendant's use of the DATE CHECK at its website <date-
6 check.com> in connection with promoting the listings of "female escorts" as well as offering a
7 "screening verification services" for the customers of such "female escorts."

8 53. Plaintiff registered the DATECHECK.COM domain name long before Defendant
9 began promoting any goods and services at the website <date-check.com>, and therefore,
10 Plaintiff registered the DATECHECK.COM domain name long before Defendants' use of the
11 mark DATE CHECK at its website <date-check.com> became distinctive or famous.

12 54. Plaintiff's registration of the DATECHECK.COM domain name long before
13 Plaintiff began promoting any goods and services at the website <date-check.com> shows that
14 Plaintiff had no bad faith intent to profit from any trademark rights of the Defendant.

15 55. Plaintiff's continuing non-confusing use of DATECHECK.COM domain name
16 further shows that Plaintiff has no bad faith intent to profit from Defendant's DATE CHECK
17 mark.

18 56. Plaintiff's use of the DATECHECK.COM domain name has been in connection
19 with a bona fide offering of services, specifically the same type of services recited in
20 Defendant's own trademark registration application -- promoting the goods and services of
21 others by providing hypertext links to the web sites of others.

22 57. Plaintiff is entitled to a judicial determination that there is no likelihood of
23 confusion between Plaintiff's use of the domain name DATECHECK.COM and Defendant's
24 use of DATE CHECK at its website <date-check.com> in connection with promoting the
25 listings of "female escorts" as well as offering a "screening verification services" for the
26 customers of such "female escorts."

27 58. Plaintiff is entitled to a judicial determination that Plaintiff's use of the domain
28 name DATECHECK.COM in connection with promoting the goods and services of others by

1 providing hypertext links to the web sites of others predates Defendant's use of the DATE
2 CHECK mark in connection with similar services, and therefore, Plaintiff use of DATE CHECK
3 has priority over Defendant's use.

4 59. Plaintiff is entitled to a judicial determination that Plaintiff's registration and use
5 of the DATECHECK.COM domain name does not constitute cybersquatting.

6 60. Plaintiff is entitled to a judicial determination that his registration and use of the
7 DATECHECK.COM domain name is lawful and does not infringe any trademark rights owned
8 by Defendant.

9 61. Plaintiff is entitled to a judicial determination of his continued right to use the
10 DATECHECK.COM domain name free and clear of interference or harassment by Defendant
11 and without any obligation or liability to Defendant.

12 62. Plaintiff additionally seeks reimbursement of his attorneys' fees and costs from
13 Defendant associated with bringing this action.

14 **SECOND CLAIM FOR RELIEF**

15 **(False or Fraudulent Registration Under 15 U.S.C. § 1120)**

16 63. Plaintiff hereby realleges and incorporates by reference the allegations in the
17 preceding paragraphs as if fully set forth herein.

18 64. 15 U.S.C. § 1120 provides as follows:

19 "Any person who shall procure registration in the Patent and
20 Trademark Office of a mark by a false or fraudulent declaration or
21 representation, oral or in writing, or by any false means, shall be liable in a
22 civil action by any person injured thereby for any damages sustained in
consequence thereof."

23 65. Upon information and belief, Defendant procured the DATE CHECK
24 Registration as the result of the false or fraudulent representations or declarations to the PTO
25 about Defendant's "knowledge and belief [that] no other person, firm, corporation, or
26 association has the right to use the mark in commerce, either in the identical form thereof or in
27 such near resemblance thereto as to be likely, when used on or in connection with the
28 goods/services of such other person, to cause confusion, or to cause mistake, or to deceive."

1 66. Upon information and belief, Defendant, at the time of filing the Date Check
2 Trademark Application, had full and complete knowledge about Plaintiff's ownership of the
3 DATECHECK.COM domain name and use of the DATECHECK.COM domain name in
4 connection with promoting the goods and services of others by providing hypertext links to the
5 web sites of others.

6 67. Upon information and belief, by submitting such false and fraudulent information
7 to the PTO, Defendant intended to procure a federal trademark registration for the DATE
8 CHECK mark to which Defendant knew that it was not entitled.

9 68. Upon information and belief, but for Defendant's intentional fraudulent
10 representations, the PTO would not have issued the DATE CHECK Registration to Defendant.

11 69. Defendant's false and/or fraudulent procurement of the DATE CHECK
12 Registration has damaged and will continue to damage Plaintiff in violation of 15 U.S.C. § 1120
13 unless enjoined by this Court. Plaintiff has no adequate remedy at law.

14 70. As a result of Defendant's procurement of the DATE CHECK Registration
15 through a false or fraudulent representation to the PTO, Plaintiff has suffered damages for which
16 Defendant is liable in an amount to be determined at trial.

17 71. As a direct and proximate result of Defendant's actions, Plaintiff has been forced
18 to retain counsel to prosecute this claim and is entitled to recover his attorneys' fees and costs
19 incurred herein.

20 **THIRD CLAIM FOR RELIEF**

21 **(Cancellation of Defendant's Trademark Registration pursuant to 15 U.S.C. §1064(3))**

22 72. Plaintiff hereby realleges and incorporates by reference the allegations in the
23 preceding paragraphs as if fully set forth herein.

24 73. Upon information and belief, Defendant's representations to the PTO that no
25 other no other person, firm, corporation, or association has the right to use the mark DATE
26 CHECK in connection with promoting the goods and services of others by providing hypertext
27 links to the web sites of others when Defendant had full knowledge of Plaintiff's ownership and
28 use of the DATECHECK.COM domain name in connection with promoting the goods and

1 services of others by providing hypertext links to the web sites of others was a material
2 representation that was false and which Defendant knew or should have known was false at the
3 time.

4 74. Because the DATE CHECK Registration was issued by the PTO in reliance upon
5 Defendant's false representation of a material fact that Defendant knew or should have known
6 was false at the time, namely, that there was another person with the right to use the mark
7 DATE CHECK in connection with promoting the goods and services of others by providing
8 hypertext links to the web sites of others, namely Plaintiff through the website
9 DATECHECK.COM, the federal trademark registration for the DATE CHECK Registration
10 should not have been issued and should be cancelled in its entirety.

11 75. As a direct and proximate result of Defendant's actions, Plaintiff has been forced
12 to retain counsel to prosecute this claim and is entitled to recover their attorneys' fees and costs
13 incurred herein.

14 **FOURTH CLAIM FOR RELIEF**

15 **(Conspiracy)**

16 76. Plaintiff hereby realleges and incorporates by reference the allegations in the
17 preceding paragraphs as if fully set forth herein.

18 77. Defendant, together and/or with others not named as parties herein, entered into a
19 combination or conspiracy to commit and facilitate the wrongful conduct described herein.

20 78. Defendant, together and/or with its nonparty co-conspirators, reached a meeting
21 of the minds on the foregoing objectives and course of action and, in connection therewith,
22 committed one or more unlawful acts or otherwise lawful acts for unlawful purposes.

23 79. Defendant, together and/or with its nonparty co-conspirators, committed the acts
24 described herein with the knowledge or intent to injure Plaintiff or with reckless or negligent
25 disregard for Plaintiff's rights and well-being.

26 80. The conspiracy described above, and the acts committed in the course of that
27 combination, proximately injured Plaintiff, for which Plaintiff seeks to recover compensatory
28 and consequential damages in an amount to be proven at trial.

81. In addition, because the conspiracy among the Defendant and/or nonparty coconspirators constituted fraud and the wrongful acts in furtherance thereof were committed maliciously, Plaintiff seeks to recover exemplary or punitive damages.

82. Plaintiff has been required to retain the services of a law firm to prosecute this action and is entitled to its reasonable costs and attorneys fees for the necessity of bringing this claim.

FIFTH CLAIM FOR RELIEF

(Punitive Damages)

83. Plaintiff hereby realleges and incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

84. The actions of the Defendant towards Plaintiff were willful, malicious, oppressive, and fraudulent, expressly or impliedly.

85. Plaintiff is entitled to an award of exemplary or punitive damages in an amount to be proven at trial.

86. Plaintiff has been required to retain the services of an attorney to prosecute this action and is entitled to its reasonable costs and attorneys fees for the necessity of bringing this claim.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment against Defendant as follows:

A. That the Court enter judgment in favor of Plaintiff and against the Defendant on all claims for relief alleged herein;

B. That Plaintiff's use of the domain name DATECHECK.COM in connection with promoting the goods and services of others by providing hypertext links to the web sites of others be declared non-infringing of any trademark rights owned by the Defendant;

C. That Defendant be adjudged to have willfully violated the provisions of 15 U.S.C. § 1120 by procuring a trademark registration from the PTO by making a false or fraudulent representation to the PTO;

D. That Plaintiff be awarded damages as the result of Defendant's violation of 15

1 U.S.C. § 1120;

2 E. That Defendant's U.S. Trademark Registration No. 3,567,258 be cancelled;

3 F. That the damages resulting from the actions of the Defendant complained of
4 herein be trebled pursuant to 15 U.S.C. §1117 and awarded to Plaintiff;

5 G. That an award of reasonable costs, expenses and attorneys' fees be awarded to
6 Plaintiff pursuant to 15 U.S.C. §1117;

7 H. That an award of interest, costs, and attorneys' fees incurred by Plaintiff in
8 prosecuting this action be awarded to Plaintiff;

9 I. That an award of punitive and exemplary damages be awarded to Plaintiff;

10 J. That an award of interest at the maximum rate allowed by law be awarded to
11 Plaintiff; and

12 K. That Plaintiff be awarded all other relief to which Plaintiff is entitled and such
13 other and further relief as this Court may deem just and proper.

14
15 **JURY TRIAL DEMANDED**

16 Plaintiff hereby demands a trial by jury on all issues raised in this Complaint which are
17 triable by a jury.

18
19 DATED this 29th day of July, 2009.

20 Respectfully Submitted,

21 **WEIDE & MILLER, LTD.**

22 

23

Mark Borghese, Esq.

24 Ryan Gile, Esq.

25 7251 W. Lake Mead Blvd., Suite 530

26 Las Vegas, NV 89128

27 Attorneys for Plaintiff Gregory Ricks