

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

STEVO DESIGN, INC., a Florida corporation,

Plaintiff,

v.

BRANDON LINK, an individual, d/b/a
“therealbrandonlang.com”

Defendant.

**PLAINTIFF’S COMPLAINT FOR: (1) FEDERAL TRADEMARK INFRINGEMENT,
15 U.S.C. §1114; (2) FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING,
AND UNFAIR COMPETITION, 15 U.S.C. §§1125(a); (3) DECEPTIVE AND UNFAIR
TRADE PRACTICES, F.S.A. § 501, (4) BREACH OF CONTRACT**

Plaintiff Stevo Design, Inc. (“Stevo Design” or “Plaintiff”), complains and alleges as follows:

I. INTRODUCTION

1.1 This matter concerns the trademark infringement, unfair competition, and breach of contract by Defendant BRANDON LINK (hereafter “Link” or “Defendant”) against the owner of the following registered trademark: “BRANDON LANG” U.S. Trademark Registration No. 3447313 (the “Mark”).

1.2 Stevo Design brings this action to secure relief under Federal and Florida state law. Stevo Design seeks: (a) a temporary, preliminary and permanent injunction prohibiting Defendant from any further infringement of Stevo Design’s Mark; (b) an order requiring the transfer of the domain name “therealbrandonlang.com” and any other domain names owned

or controlled by Defendant incorporating the Mark in whole or part; and (c) money damages, attorneys' fees and costs for Defendant's past and continuing infringement of the Mark and for breach of the parties' contract.

II. THE PARTIES

2.1 **Plaintiff.** Plaintiff Stevo Design is a corporation duly organized and existing under the laws of the State of Florida with its principal place of business in at 1521 Alton Road, #359, Miami Beach, Florida. Stevo Design is in good standing with the Florida Secretary of State's Office and has done all things necessary and proper to bring this lawsuit.

2.2 **Defendant.** Based on information and belief, Brandon Link is an individual resident of Florida doing business via the internet through a website located at the URL "www.therealbrandonlang.com."

III. JURISDICTION AND VENUE

3.1 This Court has original jurisdiction over Count I and II under 15 U.S.C. §1121(a) (action arising under the Lanham Act) and 28 U.S.C. §§1331, 1338(a) (federal question) in that this case arises under the Trademark Laws of the United States, 15 U.S.C. §§1051-1127.

3.2 This Court has jurisdiction over Count III and Count IV under 28 U.S.C. §1338(b) in accordance with the principles of pendant jurisdiction in that said claims are joined with substantial and related claims under the Trademark Laws of the United States, 15 U.S.C. §§1051-1127.

3.3 Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because, among other things, the facts giving rise to the acts or omissions alleged herein took place at least in part in this District and/or because Defendant is subject to personal jurisdiction in this District.

3.4 Personal jurisdiction is proper because all parties are residents of Florida.

IV. FACTUAL BACKGROUND

4.1 Stevo Design provides sports handicapping services. In general, handicapping is the practice of assigning advantage through scoring compensation or other advantage given to different contestants to equalize the chances of winning. The word also applies to the various methods by which the advantage is calculated. In principle, a favored competitor (e.g., a team or individual) is disadvantaged in order to make it possible for the non-favored competitor player to participate on an equal or close-to-equal basis in the game or sport. Handicapping also refers to the various methods by which spectators can predict and quantify the results of a sporting match.

4.2 Sports handicapping services generally involve correctly predicting the outcomes for a wide variety of various sport-related wagers or bets, for the purpose of assisting clients with sports betting. The term “sports handicapping” as specifically used herein describes the act of analyzing a professional sporting event for the purposes of determining which team will prevail against the predicted “point spread” set by a third-party, typically the Las Vegas Point Spread. The term “sports handicapper” is used to describe those in the profession of selling expert advice with relation to the projected outcome of sporting events and how that outcome will compare to the Las Vegas Point Spread. The

sports handicapper's degree of success will depend on several factors (marketing, promotion, management, etc.) in addition to his or her handicapping skills with respect to a wide variety of types of wagers.

4.3 Stevo Design has been in the sports handicapping business for over 6 years. The Company was a leader in the transformation of the sports handicapping industry through the creation of an internet, website-based platform for providing client services. The platform allows for maximum transparency in the sports handicapping process for clients, which in turn translates into increased levels of client trust in the integrity of the sports handicapping services provided by the Company.

4.4 Stevo Design operates over 7 internet-only sports handicapping brands, and services over 10,000 unique clients worldwide. This is accomplished online via pay-per-view sports analysis and selections, or what is commonly known as providing "Sports Picks". Stevo Design employs more than 15 full-time sports handicapping professionals to analyze games and sporting events on a daily basis throughout the year and deliver their opinions and rated selections to clients. These opinions and selections are backed by in-depth analysis that is provided to the base of pay-per-view internet clients.

4.5 Stevo Design provides its services primarily via its websites, brandonlang.com (the "Domain Name"), demarcosports.com, and whowillcover.com, as well as through additional websites affiliated with the aforementioned websites. Stevo Design employs numerous professional sports handicappers that predict the winners of sporting events, including games in Major League Baseball, the National Football League, the National Basketball League, the National Hockey League, as well as college football and college

basketball leagues. Stevo Design's professional handicappers utilize their own contacts, years of experience, analysis of statistics, as well as their own personal judgment to successfully predict game winners.

4.6 Defendant Brandon Link ("Link") began working as a sports handicapper for Stevo Design on or about November of 2004. Thereafter, Link became a highly recognizable character in the sports handicapping industry, because a major motion picture was released in 2005 that was based on a highly-fictionalized account of Link's life story. The film, starring Al Pacino and Matthew McConaughey, was entitled "Two for the Money." Although Defendant's legal name is "Brandon Link," Defendant's character in "Two for the Money" was ultimately and finally re-named "Brandon Lang" by the movie's producers. It was in anticipation of the release of the film and associated public awareness of the character name "Brandon Lang," that Stevo Design determined to use the mark BRANDON LANG in connection with sports handicapping services. Specifically, when BrandonLang.com was launched three days before the release of the movie, Brandon Link became the spokesman and face for the Brandon Lang brand.

4.7 Stevo Design first used the Mark in connection with "handicapping for sporting and other entertainment events" on November 8, 2004. Stevo Design filed a federal trademark application for the Mark on March 12, 2007, for "handicapping for sporting and other entertainment events," and was granted U.S. Registration No. 3447313 on June 17, 2008. *A copy of Stevo Design's federal trademark registration is attached hereto as Exhibit "A".*

4.8 Through Stevo Design's extensive advertising, marketing, and promotion throughout the United States, including but not limited to usage in conjunction with Stevo Design's own websites brandonlang.com and demarcosports.com, the Mark has become distinctive of Stevo Design's services. Since the first use in 2004, the Mark had become well known in the sports handicapping industry as identifying unique and desirable services of the highest quality that originate exclusively with Stevo Design. Specifically, following the launch of BrandonLang.com and Stevo Design's marketing of this brand to the pre-existing database of 1,000,000 targeted customer leads, and to pre-existing customers on all of its existing websites and brands, the overall increase in the client base of Stevo Design was approximately ten-fold. Gross revenues from the BrandonLang.com website alone averaged in excess of \$1.5 Million from 2006 through 2009. In addition, Stevo Design spent considerable resources to secure and sustain significant media relationships that exposed BrandonLang.com on Comcast television to some of the largest football cities in the United States, including Baltimore, Washington, Chicago, Philadelphia, Atlanta and San Francisco. In addition, Stevo Design leveraged the Mark to secure hundreds of radio interviews on a monthly basis utilizing the Mark throughout the entire period of BrandonLang.com operation.

4.9 Consequently, the Mark is a very important and valuable business asset of Stevo Design, and represents significant business goodwill.

4.10 Beginning on or about September 1, 2007 through April 16, 2010, Defendant Link began to exhibit a consistent losing streak in his sports handicapping predictions, which caused a significant loss of clients. In addition, Link employed high-pressure

sales techniques and objectionable business practices, which in the opinion of Stevo Design significantly contributed to his client loss. Link began to receive large volumes of extremely negative correspondence in relation to his lack of success, and his poor performance and objectionable sales techniques became the subject of substantial and frequent discussions by and between clients and in online discussion forums.

4.11 In order to preserve the integrity and value of the Mark, maintain a high level of industry-wide brand recognition for BrandonLang.com, and to overcome Brandon Link's inability to win on any type of consistent basis, Stevo Design engaged in numerous efforts to preserve the economic value and integrity of the Mark. During this period, Stevo Design syndicated its nine best pre-sports handicapping professionals onto the BrandonLang.com website. The effort was successful. These syndicated sports handicapping professionals re-connected the brand with a perception of successful sports handicapping, and ultimately these professionals dominated the overall sales on Brandon Lang.com website. In addition, Stevo Design continually was required to provide new leads from all of its other brands to BrandonLang.com in order to rebuild the database each time Brandon Link's lack of success caused the client base and revenue to decline.

4.12 The problems and client loss identified above were recurrent. Each time Link depleted and diminished the BrandonLang.com client base, it became the responsibility of Stevo Design to replenish it with new customers. It also became apparent that Link was ineffective in efforts to obtain new customers or maintain his client base without Stevo Design's assistance including media contacts; Stevo Design's technical, marketing and advertising assistance; and Stevo Design's handling of day-to-day operations, customer

support, e-mail database management, contribution of syndicated handicappers to the site BrandonLang.com, media and public relations campaigns, and daily marketing and strategic input and advice.

4.13 Because of concerns that Link's lack of success could damage the value of the Mark, Stevo Design decided to end its relationship with Link. On or about April 15, 2010, the parties entered into a business separation agreement (the "Agreement"), *a copy of which is attached hereto as "Exhibit B"*. Under the Agreement, Link agreed to pay Stevo Design the sum of \$200,000 in consideration of Stevo Design's transfer of the Domain Name and the assignment of the Mark to Defendant.

4.14 Instead of complying with the terms of the Agreement, Defendant Link has failed to make payments due to Stevo Design under the Agreement. Due to Link's failure to make payments, Stevo Design has suspended its performance under the Agreement, including the transfer of the Domain Name and the Mark to Link.

Defendant Link's Infringement of the Mark

4.15 Link has now established his own competing website entitled therealbrandonlang.com (the "Infringing Website"), through which he provides sports handicapping services. Link also offers a web series entitled "The Brandon Lang Show" via the Infringing Website, in which Defendant provides competing sports handicapping services. In addition, Link provides similar services utilizing the Mark on multiple websites owned, controlled, or otherwise operated by third-parties, including but not limited to EddieRomanWins.com. Link is also currently utilizing the Mark in his public appearances and advertisements on the internet, radio, television, and newspapers.

4.16 Link continues to advertise, market, and sell its services in the same industry and through the same channels of trade using its Infringing Website. In doing so, Link is attempting to usurp the substantial goodwill developed under the Mark in violation of Stevo Design's trademark rights and in breach of the Agreement. Link's actions have diluted the Brandon Lang brand created by Stevo Design, and severely injured Stevo Design's business reputation.

V. FIRST CAUSE OF ACTION
FEDERAL TRADEMARK INFRINGEMENT
(15 U.S.C. §1114)

5.1 Stevo Design realleges and incorporates herein by reference the allegations contained in all preceding paragraphs of this Complaint as part of this cause of action.

5.2 Stevo Design holds a valid and existing federal registration for the Mark. Stevo Design has continuously used the Mark since as early as 2004.

5.3 Defendant has marketed, advertised and sold, and continues to market, advertise and sell its services using the mark through the Infringing Website throughout the United States, which are confusingly similar to Stevo Design's services.

5.4 Defendant's activities as alleged herein have caused, and are likely to continue to cause confusion, mistake, or deception of purchasers to the detriment of Stevo Design.

5.5 Stevo Design has no control over the current quality of services sold by Defendant, and because of the confusion as to the source of the services engendered by Defendant, Stevo Design's valuable goodwill in respect to its Mark is at the mercy of Defendant.

5.6 The goodwill of Stevo Design's business is of enormous value, and Stevo Design will suffer irreparable harm should infringement be allowed to continue to the detriment of its trade reputation and goodwill.

5.7 Defendant's use of the Mark as alleged herein, and marketing, advertising and sale of services using the Mark throughout the United States was done without the knowledge, consent or permission of Stevo Design and continues without the consent or permission of Stevo Design.

5.8 Defendant has violated the trademark rights of Stevo Design under the Trademark Act, thereby giving rise to a cause of action under 15 U.S.C. § 1114.

5.9 Stevo Design will be irreparably harmed unless Defendant is temporarily, immediately and permanently enjoined from any further use of the Mark and any further marketing, advertising or sale of services using the Mark.

5.10 Stevo Design has no adequate remedy at law and serious damage to its trademark rights will result unless Defendant's wrongful use of the Mark is enjoined by the court.

5.11 Stevo Design also is entitled to an order requiring the transfer of the Infringing Website pending the trial of this matter.

5.12 Defendant has continued to use the Mark notwithstanding that it has actual knowledge of Stevo Design's superior trademark rights as alleged herein. Defendant's infringement of the Mark accordingly constitutes intentional, willful, knowing and deliberate trademark infringement. Plaintiff therefore seeks judgment in the amount of three (3) times its damages, together with reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a).

5.13 Defendants' infringement of the Mark as alleged herein has caused, and will continue to cause Stevo Design to suffer damages in an amount unknown at this time and has caused, and will continue to cause, Defendant to gain revenues and profit in an amount unknown at this time. Pursuant to 15 U.S.C. § 1117(a), Stevo Design is entitled to an award of monetary damages in an amount equal to the losses suffered by Stevo Design or the revenues and/or profits gained by Defendants, which damages should be augmented as provided by 15 U.S.C. §1117(a).

5.14 Pursuant to 15 U.S.C. § 1117(a), any monetary damages awarded to Stevo Design should be trebled.

5.15 Pursuant to 15 U.S.C. § 1117(a), Stevo Design is entitled to an award of attorneys' fees and costs of suit.

VI. SECOND CAUSE OF ACTION
FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING AND UNFAIR
COMPETITION UNDER LANHAM ACT SECTION 43(a)
(15 U.S.C. §1125(a))

6.1 Stevo Design realleges and incorporates herein by reference the allegations contained in all preceding paragraphs of this Complaint as part of this cause of action.

6.2 The actions of Defendant as alleged herein constitute false designation of origin, false advertising and unfair competition pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

6.3 The actions of Defendant have and are likely to continue to deceive customers and prospective customers into believing that Defendant's services are that of Stevo Design, and, as a consequence, are likely to divert customers away from Stevo Design.

6.4 Stevo Design has no control over the nature and quality of the services sold by Defendant. Any failure, neglect, or default by Defendant in providing such products has and will continue to reflect adversely on Stevo Design as the believed source of origin thereof, hampering efforts by Stevo Design to continue to protect its outstanding reputation for high quality services, resulting in loss of clients, all to the irreparable harm of Stevo Design.

6.5 Stevo Design has and will continue to be irreparably harmed unless Defendant is temporarily, immediately and permanently enjoined from any further use of the Mark and any further marketing, advertising or sale of products using the Mark.

6.6 Stevo Design has no adequate remedy at law and serious damage to its trademark rights will result unless Defendant's wrongful use of the Mark is enjoined by the court.

6.7 Stevo Design also is entitled to an order requiring the transfer of the Infringing Website pending the trial of this matter.

6.8 The actions of Defendant as alleged herein constitute intentional, willful, knowing and deliberate unfair competition and false advertising pursuant to Lanham Act Section 43(a).

6.9 Defendant's acts of unfair competition and false advertising in violation of the Lanham Act Section 43(a) as alleged herein have caused, and will continue to cause, Stevo Design to suffer damages in an amount unknown at this time and have caused, and will continue to cause Defendant to gain revenues and profit in an amount unknown at this time. Pursuant to 15 U.S.C. §1117(a), Stevo Design is entitled to an award of monetary damages in an amount equal to the losses suffered by Stevo Design and the revenues and/or profits

gained by Defendant, which damages should be augmented as provided by 15 U.S.C. §1117(a).

6.10 Pursuant to 15 U.S.C. §1117(a), any monetary damages awarded to Stevo Design should be trebled.

6.11 Pursuant to 15 U.S.C. §1117(a), Stevo Design is entitled to an award of attorneys' fees and costs of suit.

VII. THIRD CAUSE OF ACTION
FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT
(F.S.A. § 501)

7.1 Stevo Design re-alleges and incorporates herein by reference the allegations contained in all preceding paragraphs as part of this cause of action.

7.2 Defendant has engaged in unfair and deceptive acts or practices by imitating Stevo Design's Mark in connection with the sale of its services in the state of Florida thereby creating a likelihood of public confusion as to the source of the goods and services.

7.3 Defendant's deceptive acts or practices injured Stevo Design.

7.4 Defendant's actions offend the public, are unethical, oppressive and unscrupulous, affecting trade and commerce now and in the future both within the state of Florida and elsewhere.

7.5 A causal link exists between the deceptive act and the resulting injury.

7.6 Stevo Design has suffered damages relating to violation of the Deceptive and Unfair Trade Practices Act F.S.A. § 501 by Defendant. The quantum of these damages will be proven at trial.

7.7 Stevo Design seeks, and is entitled to recover, its actual damages, together with the costs of suit, including reasonable attorneys' fees.

VIII. FOURTH CAUSE OF ACTION
BREACH OF CONTRACT

8.1 Stevo Design re-alleges and incorporates herein by reference the allegations contained in all preceding paragraphs as part of this cause of action.

8.2 The Agreement is a valid Agreement entered into by and among Stevo Design and the Defendant.

8.3 Pursuant to the Agreement, and for good and valuable consideration, including but not limited to the transfer of the Domain Name and the Website, Defendant promised to pay Stevo Design the sum of \$200,000.

8.4 Defendant's failure to make payments due to Stevo Design is in breach of the Agreement.

8.5 As a result of Defendant's breach, Stevo Design has suffered and continues to suffer substantial damages.

IX. PRAYER FOR RELIEF

WHEREFORE, Stevo Design prays for relief against Defendant as follows:

1. For a temporary, preliminary and permanent injunction restraining and enjoining Defendant, and its agents, servants, employees, and all others in active concert or participation with him, as follows:

- a. From further infringing Stevo Design's trademark rights;
- b. From further using the Mark on Defendant's website or websites, the websites of any third parties, in Internet advertisements, and/or in any

advertising, promoting, distributing, offering for sale, and/or selling any services in any media, using the Mark; and

c. From further acts of false advertising and unfair competition as alleged herein.

2. For an order requiring the transfer of the Infringing Website(s).

3. For an order that Defendant issue a press release stating that it is ceasing all use of the name "Brandon Lang," that "Brandon Lang" is not Defendant's real name, and that the Mark "Brandon Lang" has since 2004 been owned by Stevo Design.

4. For an award of damages suffered by Stevo Design, plus any revenues or profits earned by Defendant as a result of Defendant's trademark infringement, unfair competition and false advertising in an amount to be proven at trial.

5. For an award of augmented damages as alleged herein pursuant to 15 U.S.C. §1117(a).

6. For specific performance of the Agreement;

7. For an award of punitive and exemplary damages in an amount to be proven at trial, but sufficient to punish and deter the Defendant.

8. For an award of attorneys' fees and litigation expenses and costs to the maximum extent allowed by law.

9. For such other and further relief as the court deems just and proper.

DATED this 1st day of December, 2010.

Respectfully submitted,

s/Rachel M. LaMontagne

RACHEL M. LaMONTAGNE

Florida Bar No. 094692

LAW OFFICES OF RACHEL M. LAMONTAGNE, P.A.

Counsel for Plaintiff

175 S.W. 7th Street, Suite 2009

Miami, Florida 33130

Tel: (305) 379-5554

Fax: (305) 379-4548

Email: rlamontagne@rmllawfirm.com