

Trademark

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

BBY SOLUTIONS, INC., BEST BUY STORES,
L.P., and BESTBUY.COM, LLC.

Plaintiffs,

v.

MODERNAD LLC

Defendant.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

1,657,622
1,899,212
2,196,852
2,638,360
3,416,626
3,526,666
3,768,579
3,796,621
3,807,735

**COMPLAINT FOR TRADEMARK INFRINGEMENT,
UNFAIR COMPETITION, COUNTERFEITING,
CYBERSQUATTING, FALSE ADVERTISING,
PASSING OFF, TORTIOUS INTERFERENCE AND UNJUST ENRICHMENT**

Plaintiffs BBY Solutions, Inc., Best Buy Stores, L.P., and BestBuy.com, LLC (collectively, "Best Buy"), appearing through undersigned counsel, for their Complaint against ModernAd LLC ("ModernAd"), state and allege as follows:

PARTIES

1. Plaintiff BBY Solutions, Inc. is a Minnesota corporation and owns Best Buy's intellectual property, including its trademarks and trademark registrations. Plaintiff Best Buy Stores, L.P. is a Virginia limited partnership and operates Best Buy's stores. Plaintiff BestBuy.com, LLC is a Delaware limited liability company and operates Best Buy's BestBuy.com website. All three have a principal place of business at 7601 Penn Avenue South, Richfield, Minnesota 55423.

2. On information and belief ModernAd LLC is a limited liability company with a physical business address at 632 NW 38th Circle, Boca Raton, Florida 33413.

NATURE OF THIS ACTION; JURISDICTION OF THE COURT

3. This is an action for trademark infringement, unfair competition, false advertising counterfeiting and cybersquatting under the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.* (“Lanham Act”), and for trademark infringement, unfair competition, passing off, deceptive trade practices, tortious interference and unjust enrichment under the laws of Minnesota and other states where ModernAd is conducting its illegal activities. Best Buy seeks an injunction prohibiting ModernAd from further and continuing unlawful conduct as set forth below. Best Buy also seeks an award of damages caused by ModernAd’s unlawful conduct.

4. This Court has jurisdiction over the subject matter of this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 (a) and (b), and has supplemental jurisdiction under 28 U.S.C. § 1367(a) over Best Buy’s claims under state law.

5. The matter in controversy in this action exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states. Accordingly, this Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.

6. This Court has personal jurisdiction over ModernAd under Minn. Stat. § 543.19. ModernAd knowingly directed its unlawful actions toward this district and other districts throughout the United States. On information and belief, ModernAd purposefully established continuous and systematic contacts with residents throughout the United States, *inter alia*, by causing others to circulate emails and internet communications bearing Best Buy’s trademarks to hundreds of thousands, if not millions, of U.S. residents, including residents in this District, to promote purportedly “free” gift card offers, for which participation was expressly limited to U.S. residents. These communications lead U.S. residents to interactive websites maintained where Best Buy’s trademarks are also displayed.

7. On information and belief, ModernAd knew that its infringing acts and the injury caused by them would be felt throughout the United States, where Best Buy maintains numerous retail outlets, and in Minnesota specifically, where BBY Solutions, Inc., Best Buy Stores, L.P., and BestBuy.com, LLC maintain a principal place of business and where BBY Solutions, Inc. is incorporated. As such, ModernAd should have reasonably anticipated being sued in this District.

8. In the alternative, personal jurisdiction over ModernAd is proper in this District under Federal Rule of Civil Procedure 4(k)(2) based on ModernAd's infringing conduct which is occurring throughout the United States and which ModernAd has targeted at U.S. residents for commercial gain.

9. The exercise of personal jurisdiction over ModernAd by the Court is proper under the Due Process Clause of the U.S. Constitution, and other applicable laws.

BEST BUY AND ITS MARKS

10. Best Buy is the nation's largest specialty retailer of consumer electronics. In fiscal year 2010 alone, Best Buy had over \$49 billion in revenue. Best Buy operates over 1,000 Best Buy stores and over 70 smaller stand alone Best Buy Mobile stores nationwide with more than 40 million square feet of retail space and over 180,000 full time, part time, and seasonal employees worldwide.

11. The company's history dates back to 1966, when Richard Schulze opened an audio specialty store called "The Sound of Music" in St. Paul, Minnesota. The company expanded over the years and, in 1983, changed its name to "Best Buy Co., Inc." The company opened its first "superstore" that same year.

12. Since that time, Best Buy has continuously used the BEST BUY mark in interstate commerce in connection with the advertising, promotion and sale of consumer

electronics and other products.

13. In 1985, Best Buy held an initial public offering and began expanding its superstores outside the Twin Cities area.

14. In 1989, Best Buy introduced the BEST BUY logo, still in use today, featuring the words "BEST BUY" in thick black letters inside a yellow tag design (the "BEST BUY Logo").

15. Since at least 1989, Best Buy has continuously used the BEST BUY Logo in interstate commerce in connection with its retail services. The BEST BUY Logo is frequently presented on a blue background in Best Buy's advertising and signage.

16. By 1993, Best Buy was the nation's second-largest consumer electronics retailer, with over 150 stores and over \$1 billion in annual revenue. In 1995, Best Buy entered the Fortune 500 at number 373 and is now ranked number 45. Best Buy's gross revenues for the past five fiscal years total over \$200 billion.

17. In 1994, Best Buy registered the domain name bestbuy.com, launching a website for advertising its services (the "BestBuy.com website"). Starting in 1998, Best Buy began selling consumer electronics and a variety of other products directly to consumers through this website, using the mark BESTBUY.COM in addition to the BEST BUY mark and the BEST BUY Logo.

18. Through the BestBuy.com website, Best Buy sells a wide variety of consumer electronics, appliances and other products. Alexa.com, a website operated by Amazon.com subsidiary Alexa Internet, Inc. which compiles traffic rankings of websites and other website statistics, currently ranks the BestBuy.com website as no. 1 in the world in the category of consumer electronics, no. 8 in the world for all shopping sites and no. 81 overall (websites of all

categories) in the United States, based on website traffic volume.

19. As part of its retail services, for many years Best Buy has offered gift cards bearing the BEST BUY mark, the BEST BUY Logo and the BESTBUY.COM mark in various denominations for use in connection with purchases at Best Buy stores and on Best Buy's BestBuy.com website.

20. Best Buy promotes the BEST BUY mark, BESTBUY.COM mark and the BEST BUY Logo (collectively the "BEST BUY Marks") in myriad ways, including on exterior and interior signage at its stores, on its websites, and/or in its advertising and promotional materials.

21. Best Buy's advertising expenditures have been in the hundreds of millions of dollars per year for more than a decade, totaling in excess of \$5 billion. This massive volume of advertising, which prominently displays the BEST BUY Marks, reaches the public through a variety of media, including television and radio, Sunday catalogues distributed with newspapers to over 40 million U.S. households each week, magazines, in-theater public service announcements, sponsorship of entertainment and sports events, mobile marketing, electronic mail, and direct mail.

22. Best Buy has also spent millions of dollars advertising the BEST BUY Marks on the Internet. In addition to the operation of BestBuy.com and its other websites, Best Buy also places ads on other high-traffic websites, where clicking on the ad takes the user to the BestBuy.com website.

23. Best Buy purchases "keyword" advertising through Google and other major search engines, where advertisements known as "sponsored links" appear on the screen above or to one side of the search results after a consumer enters certain "keywords" (e.g., "Best Buy" or "LCD TV"). When a consumer clicks on the link embedded in Best Buy's ad, the consumer's

Internet browser is redirected to the BestBuy.com website.

24. Best Buy regularly employs social media marketing and utilizes social media websites, including but not limited to Facebook.com and Twitter.com, to promote products and otherwise communicate with customers. These communications prominently feature the BEST BUY Marks.

25. Best Buy has won many awards for its advertising and marketing initiatives, which are estimated to produce over 19 billion impressions of the BEST BUY Marks each year.

26. Based on recent consumer research commissioned by Best Buy, more than 75% of those surveyed identified Best Buy when asked what retail stores came to mind when thinking about purchasing consumer electronics, technology products and entertainment items ("unaided awareness"). Total brand awareness of Best Buy (calculated as the aggregate number of consumers that identify Best Buy through a first-mention unaided, unaided, or aided basis) was shown to be 95% or higher.

27. Best Buy has also received extensive recognition for its community relations programs. Each year, Best Buy donates 1.5% of its pre-tax earnings to its giving programs, which are administered primarily by the Best Buy Children's Foundation. These programs include college scholarships, technology grants to selected primary and secondary schools, and donations by local stores to youth-oriented non-profit organizations in their areas.

28. As a result of this extensive use, advertising, and publicity, the BEST BUY Marks are now well-known throughout the United States, including in this judicial district, as identifying Best Buy as the source of its services and products.

29. Further, because of this extensive use, advertising, and publicity, the BEST BUY Marks have become famous throughout the United States.

30. Best Buy has obtained a number of registrations for the BEST BUY Marks on the Principal Register of the United States Patent and Trademark Office, including U.S. Registration Nos. 1,657,622, 1,899,212, 2,196,852, 2,638,360, 3,416,626, 3,526,666, 3,768,579, 3,796,621, and 3,807,735. True and correct copies of these registrations are attached hereto as Exhibit A. All of these registrations are valid, subsisting and enforceable and U.S. Registration Nos. 1,657,622, 1,899,212, 2,196,852, and 2,638,360 are incontestable pursuant to 15 U.S.C. § 1065.

MODERNAD AND ITS ACTIVITIES

31. On information and belief, ModernAd participates in and directs the operation of a large network of websites for the purpose of carrying out fraudulent gift card and product offer schemes. Websites operated by Karrie-Lee Karreman, Elise Madline Pitre, Stewart Fotheringham and 2182273 Ontario, Inc. (collectively, "Website Operators") as part of these schemes which have prominently featured the BEST BUY Marks include www.bargaincast.net, www.better-gifts.net, www.claimfreerewards.com, www.bestfreebieoffers.com, and www.gifteenfirm.com, www.brandgiveawaycentre.com and www.platinum-giveaways.com, and www.superb-rewards.net. In particular, the landing pages for these websites (the page displayed when consumers type the website address into their Internet browser) prominently display or displayed the message "GET A FREE \$1,000 BEST BUY GIFT CARD" or similar language. True and correct copies of web pages for these sites as they appeared on the Internet are attached as Exhibit B (with the exception of www.bestfreebieoffers.com which was inactive at the time the web pages were captured).

32. In furtherance of the fraud upon consumers seeking Best Buy's services, the Website Operators have registered or licensed or are otherwise using the domain name bestbuy.cm, a common misspelling of bestbuy.com, so that consumers who were looking for

Best Buy's website at www.bestbuy.com and instead mistakenly typed www.bestbuy.cm (omitting the "o") were immediately redirected to the Website Operators' website www.bargaincast.net where the BEST BUY Marks were prominently displayed. (.cm is the "country code top level domain" assigned to the country of Cameroon and serves the same function as generic top level domains like .com, .net and .org.) The Website Operators have also registered domain names containing the well-known trademarks of other companies, such as free-macbook-offer-net, playstationmovefree.info, and freeipadgift.net.

33. On information and belief, many of the Website Operator's websites (including all of those identified in paragraph 31 above) are hosted on servers based in San Mateo, California operated by UltraDNS, Inc., with the exception of www.giftconfirm.com which is hosted on a server located in Houston, Texas. The registrar for the domain names associated with many of the Website Operator's websites, including those identified in paragraph 31 above, is Dynamic Dolphin, Inc. (with the exception of www.brandgiveawaycentre.com whose former registrar was Dynamic Dolphin, Inc. and current registrar is NAMEKING.COM, Inc.) Dynamic Dolphin is a company based in Broomfield, Colorado and is affiliated with MediaBreakaway, LLC, whose President and CEO Scott Richter a/k/a the "Spam King" and his companies have been sued by the New York Attorney General, Microsoft and MySpace for spam email violations. A true and correct copy of the whois records for the domain names for the websites referenced in paragraph 31 are attached as Exhibit C.

34. "Reverse whois" searches of domain name registration databases identified over 150 domain names registered in the name of the Website Operators. The domain names registered in the names of the Website Operators as revealed by these searches are shown in Exhibits D, E, and F, respectively. On information and belief, most if not all of these domain

names have been used in connection with ModernAd's gift card schemes or similar schemes.

35. On information and belief, ModernAd and the Website Operators are acting in concert to commit the acts described in this Complaint and have conspired together to infringe Best Buy's trademarks and mislead consumers through the activities described herein.

36. Many of the infringing websites, as identified in paragraph 31 above, are substantially similar or identical to one another. These websites have all contained the same gift card offer, namely for a "free" \$1,000 Best Buy gift card, a promotion that is not authorized by Best Buy. Each website contains or contained six links along the bottom of the home screen, for "Terms & Conditions," "Privacy Policy," "Gift Rules," "Unsubscribe," "Contact," and "Gift Status." With the exception of the contact information provided in the Contact tab, each of these links contain or contained the same information.

37. ModernAd has acted as a direct participant in the fraudulent scheme and actively induced the Website Operators to conduct the acts described herein.

38. The Website Operators operate their websites as part of an advertising network managed and directed by ModernAd. According to the representations of the Website Operators, ModernAd supplied the infringing and fraudulent content described above to the Website Operators. Further, the Website Operators were forced to use the infringing content provided by ModernAd. As such, ModernAd intentionally induced the Website Operators to place the infringing and fraudulent content on their websites. ModernAd continued to supply the Website Operators with the infringing and fraudulent content even though it was aware that the Website Operator's placement of the content on their websites infringed Best Buy's Marks.

39. ModernAd also claims ownership and exclusive rights to all such content pursuant to "Media Publication Agreement[s]" between ModernAd and the Website Operators.

40. On information and belief, ModernAd has supplied identical or similar content to other domain name owners throughout the United States.

41. Pursuant to these same "Media Publication Agreement[s]," ModernAd agreed to defend and indemnify the Website Operators for any liability incurred in connection with their infringing and fraudulent scheme described above.

42. In addition to deceiving consumers as to Best Buy's involvement in sponsorship of or affiliation with ModernAd's activities, ModernAd's purported offer of "free" gift cards is misleading and fraudulent.

43. In particular, the "Official Gift Offer Rules" maintained on the Website Operator's websites require a consumer to complete numerous tasks in order to qualify for a gift card. The Gift Rules require the consumer, *inter alia*, to complete thirteen "Sponsor Offers." Sponsor Offers involve third parties and may require the consumer to purchase products, apply for and be approved for a loan, or take on other similar obligations. A true and correct copy of the Official Gift Offer Rules as they appeared on the website associated with www.bestbuy.com are attached as Exhibit G.

44. On information and belief, the Website Operators receive payments from ModernAd or affiliated parties when a consumer participates in a Sponsor Offer.

45. On information and belief, even consumers who satisfy all of the onerous requirements established in the Gift Offer Rules do not receive the promised "Free \$1,000 Best Buy Gift Card."

46. The Website Operators acting in concert with, or at the direction and control of, ModernAd engage in a wide range of activities to lure consumers to their fraudulent websites.

47. ModernAd and the Website Operators have jointly benefitted from the infringement and fraudulent conduct described herein. For example, according to the Website Operators, ModernAd paid them for each time the infringing content was served to and received by a unique visitor to the Website Operator's websites – for example for each time a unique visitor clicked on a link or URL that brought up infringing content. Specifically, ModernAd paid the Website Operators on a cost per action basis, cost per lead basis, cost per click basis, and cost per thousand impressions basis.

48. On information and belief ModernAd in turn received a direct payment from advertisers and content suppliers.

49. On information and belief, the Website Operators acting in concert with, or at the direction and control of, ModernAd also maintain multiple profiles on the social media website Facebook.com designed specifically to promote the "\$1,000 Best Buy Gift Card" offers and drive traffic to the infringing websites. A screen shot of one of the Website Operator's Facebook profiles for a fraudulent gift card offer, as it appeared on Facebook.com, is attached as Exhibit H.

50. On information and belief, the Website Operators acting in concert with, or at the direction and control of, ModernAd, "hijacked" a Facebook account and sent a message to tens of thousands of Facebook users inviting them to participate in the accused gift card offers. A screen shot of one of the Facebook invitations sent by the Website Operators, as it appeared on Facebook.com, is attached as Exhibit I.

51. This unauthorized use of the BEST BUY Marks on Facebook.com confused and misled Facebook users, a number of whom posted questions about the fake gift card offers on the official Best Buy Facebook profile page. A true and correct screen shot of some examples of those comments, as they appeared on the official Best Buy Facebook page, is attached as Exhibit

J.

52. On information and belief, over 60,000 people responded to the various fraudulent profiles created by the Website Operators on Facebook and many Facebook users posted links to the fraudulent gift card offers. At Best Buy's request, Facebook.com removed the infringing and fraudulent profiles. A true and correct copy of screen shot of examples of those postings as they appeared on Facebook.com is attached as Exhibit K.

53. On information and belief, the Website Operators acting in concert with, or at the direction and control of, ModernAd also drive traffic to their infringing websites through the social media site Twitter.com. The Website Operators use services offered by a company called "Revtwt" (<http://revtwt.com/index.php>) to encourage Twitter users to post messages ("tweets") regarding its "free" gift card offers with links to the Website Operator's websites.

54. On information and belief, the Website Operators acting in concert with, or at the direction and control of, ModernAd pay Twitter users through Revtwt each time a user posts a message linking to one of the infringing websites, multiplying the harm to Best Buy.

55. On information and belief, Twitter.com users have issued hundreds of tweets daily with links to the Website Operator's websites. On information and belief, some of these tweets were made by the Website Operators acting in concert with, or at the direction and control of, ModernAd, or their agents, using multiple pseudonyms. A true and correct copy of a screen shot of user messages linking to the Website Operators websites, as it appeared on Twitter.com, is attached as Exhibit L.

56. On information and belief, the Website Operators acting in concert with, or at the direction and control of, ModernAd drive traffic to the websites through use of unsolicited commercial email, also known as "spam." The Website Operators acting in concert with, or at

the direction and control of, ModernAd lure consumers to their websites through fraudulent spam emails that use the BEST BUY Marks without Best Buy's authorization. For example, a spam email received by a consumer on September 2, 2010 advertised the chance to "win a \$1,000 Best Buy gift card." The email was purportedly from a Best Buy employee and used a phony Best Buy email address (noreplystaff@bestbuy.com) and contained a hyperlink taking consumers to the Website Operators website www.bestfreebieoffers.com. A true and correct copy of the unauthorized email linking to this website is attached hereto as Exhibit M.

57. On information and belief, the Website Operators acting in concert with, or at the direction and control of, ModernAd further drive traffic to their websites through advertisements designed to look like official Best Buy ads, with the BEST BUY Logo. In particular, when consumers searched for "Best Buy" in the BoardReader.com search engine, the search engine displayed relevant "Ads by Google" at the top of the page followed by relevant search results. The first link under "Ads by Google" was a fraudulent ad created by ModernAd containing the headline "Best Buy – Official Site." Consumers who clicked on the link for Defendants' fraudulent ad were taken to the Website Operators website at www.brandgivewaycentre.com (described above in paragraph 31). A true and correct copy of a screen shot of an example of the BoardReader.com search results described above is attached as Exhibit N.

58. On information and belief, the Website Operators further drive traffic to their websites through fake press releases designed to look like official press releases from Best Buy. For example, OfficialWire.com (www.officialwire.com) has posted a fake online press release including the hyperlinked phrases "Best Buy Gift Cards" and "FREE Best Buy Gift Cards." Each hyperlink in the press release linked to the Website Operator's website hosted at www.superb-rewards.net (described above in paragraph 31). A true and correct copy of the

press release as it appeared on OfficialWire.com is attached as Exhibit O.

59. ModernAd began these infringing uses of the BEST BUY Marks with full knowledge of Best Buy's use of these marks for retail services, including gift cards, and with knowledge of Best Buy's valuable existing and prospective customer relationships.

60. ModernAd did not ask for or obtain Best Buy's permission to use the BEST BUY Marks on or in connection with the Website Operator's websites or their gift card offers.

61. ModernAd's use of the BEST BUY Marks on their websites is not authorized by Best Buy and such marks constitute spurious counterfeit marks that are identical to or substantially indistinguishable from Best Buy's federally registered BEST BUY Marks.

62. ModernAd's actions have resulted in numerous complaints and other communications to Best Buy by consumers believing Best Buy is affiliated with ModernAd's fraudulent gift card "offers."

**EFFECT OF MODERNAD'S ACTIVITIES ON THE
CONSUMING PUBLIC AND BEST BUY**

63. ModernAd's unauthorized use of the BEST BUY Marks in the manner described above is likely to cause confusion, to cause mistake, and/or to deceive consumers as to some affiliation, connection or association of ModernAd with Best Buy, or as to the origin, sponsorship, or approval of the Website Operator's websites and/or retail services, including gift card offers, by Best Buy.

64. ModernAd's unauthorized use of the BEST BUY Marks in the manner described above falsely indicates to Best Buy's existing and prospective customers that the Website Operator's websites and/or retail services, including gift card offers, originate with Best Buy, or

are affiliated, connected or associated with Best Buy, or are sponsored, endorsed, or approved by Best Buy, or are in some manner related to Best Buy and/or its service or products.

65. ModernAd's unauthorized use of the BEST BUY Marks in the manner described above falsely designates the origin of the Website Operator's websites and/or retail services, including gift card offers, and falsely and misleadingly describes and represents facts with respect to ModernAd and the Website Operator's websites and/or services, including gift card offers.

66. ModernAd's unauthorized use of the BEST BUY Marks in the manner described above enables ModernAd to trade on and receive the benefit of goodwill in those marks, which Best Buy has built up at great labor and expense over many years. ModernAd's unauthorized use also enables it to gain acceptance for their own websites and retail services, including gift card offers, not solely on their own merits, but on the reputation and goodwill of Best Buy and the BEST BUY Marks.

67. ModernAd's misleading actions dilute the BEST BUY Marks by blurring the distinctiveness of these famous marks.

68. ModernAd's fraudulent gift card offers dilute the BEST BUY Marks by tarnishing the goodwill and reputation established by Best Buy and associated with the BEST BUY Marks.

69. ModernAd's use of the BEST BUY Marks in the manner described above unjustly enriches ModernAd at Best Buy's expense.

70. ModernAd's unauthorized use of the BEST BUY Marks in the manner described above removes from Best Buy the ability to control the nature and quality of products provided under those marks and places the valuable reputation and goodwill of Best Buy in the hands of

ModernAd, over whom Best Buy has no control.

71. ModernAd's activities have caused irreparable injury to Best Buy, its goodwill and its customer relationships and, unless restrained by this Court, will continue to cause irreparable injury to Best Buy and to the public. There is no adequate remedy at law for this injury.

72. ModernAd's actions complained of herein have been deliberate, willful, malicious and in bad faith, with the intent to mislead consumers and inflict injury on Best Buy. This is an exceptional case under 15 U.S.C. § 1117(a).

COUNT I

FEDERAL TRADEMARK INFRINGEMENT

73. Best Buy repeats the allegations above as if fully set forth herein.

74. The acts of ModernAd complained of herein constitute direct and/or contributory infringement of Best Buy's federally registered BEST BUY Marks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114(1).

75. ModernAd's infringement has been willful and in bad faith, making this an exceptional case under 15 U.S.C. § 1117(a).

76. As a result of ModernAd's wrongful conduct, Best Buy is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT II

FEDERAL UNFAIR COMPETITION

77. Best Buy repeats the allegations above as if fully set forth herein.

78. The acts of ModernAd complained of herein constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

79. ModernAd's unfair competition has been willful and in bad faith, making this an exceptional case under 15 U.S.C. § 1117(a).

80. As a result of ModernAd's wrongful conduct, Best Buy is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT III

FEDERAL FALSE ADVERTISING

81. Best Buy repeats the allegations above as if fully set forth herein.

82. The acts of ModernAd complained of herein constitute direct and/or contributory false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

83. ModernAd's actions have been willful and in bad faith, making this an exceptional case under 15 U.S.C. § 1117(a).

84. As a result of ModernAd's wrongful conduct, Best Buy is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT IV

FEDERAL TRADEMARK DILUTION

85. Best Buy repeats the allegations above as if fully set forth herein.

86. The BEST BUY Marks are famous trademarks within the meaning of the Anti-Dilution Act, 15 U.S.C. § 1125(c).

87. The acts of ModernAd complained of herein constitute direct and/or contributory dilution by blurring and dilution by tarnishment in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

88. As a result of ModernAd's wrongful conduct, Best Buy is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT V

FEDERAL TRADEMARK COUNTERFEITING

89. Best Buy repeats the allegations above as if fully set forth herein.

90. The acts of ModernAd complained of herein constitute direct and/or contributory trademark counterfeiting in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

91. ModernAd's counterfeiting has been willful and in bad faith, making this an exceptional case under 15 U.S.C. § 1117(a).

92. As a result of ModernAd's wrongful conduct, Best Buy is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an

amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT VI

FEDERAL CYBERSQUATTING

93. Best Buy repeats the allegations above as if fully set forth herein.

94. Upon information and belief, ModernAd has caused the Website Operators to register and/or are using the domain name bestbuy.cm which is confusingly similar to Best Buy's BEST BUY and BESTBUY.COM marks.

95. Best Buy's BEST BUY and BESTBUY.COM marks were distinctive and famous at the time of registration of the bestbuy.cm domain name.

96. Upon information and belief, ModernAd caused the Website Operators to register and/or begin use of the bestbuy.cm domain name with actual knowledge of Best Buy's use of and rights in the BEST BUY and BESTBUY.COM marks.

97. The acts of ModernAd complained of herein evidence ModernAd's bad faith intent to profit from Best Buy's BEST BUY and BESTBUY.COM marks.

98. ModernAd's acts constitute direct and/or contributory violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

99. As a result of ModernAd's wrongful conduct, Best Buy is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, transfer of the domain names, statutory damages in the amount of \$100,000 per domain name and/or damages in an amount to be proven at trial, as well as recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT VII

MINNESOTA DECEPTIVE TRADE PRACTICES

100. Best Buy repeats the allegations above as if fully set forth herein.

101. The acts of ModernAd complained of herein constitute deceptive trade practices in violation of Section 325D.44 of the Minnesota Statutes.

102. As a result of ModernAd's wrongful conduct, Best Buy is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT VIII

COMMON LAW TRADEMARK INFRINGEMENT

103. Best Buy repeats the allegations above as if fully set forth herein.

104. The acts of ModernAd complained of herein constitute direct and/or contributory trademark infringement in violation of the common law of Minnesota and other states where ModernAd is conducting their activities.

COUNT IX

COMMON LAW UNFAIR COMPETITION AND PASSING OFF

105. Best Buy repeats the allegations above as if fully set forth herein.

106. The acts of ModernAd complained of herein constitute unfair competition and passing off in violation of the common law of Minnesota and other states where ModernAd is conducting its activities.

107. As a result of ModernAd's wrongful conduct, Best Buy is entitled to the

preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT X

TORTIOUS INTERFERENCE

108. Best Buy repeats the allegations above as if fully set forth herein.

109. The acts of ModernAd complained of herein constitute tortious interference with Best Buy's existing and prospective contractual relationships in violation of the common law of Minnesota and other states where ModernAd is conducting its activities.

110. Upon information and belief, ModernAd was aware of the existence of Best Buy's reasonable expectancy of future transactions with Best Buy's customers.

111. Absent ModernAd's intentional interference and siphoning off of customers through the acts complained herein, it is reasonably certain that Best Buy would realize additional sales from existing customers and/or new customers.

112. As a result of ModernAd's wrongful conduct, Best Buy is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT XI

UNJUST ENRICHMENT

113. Best Buy repeats the allegations above as if fully set forth herein.

114. The acts of ModernAd complained of herein constitute unjust enrichment of

ModernAd at the expense of Best Buy.

115. As a result of ModernAd's wrongful conduct, Best Buy is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Best Buy prays that:

- (a) ModernAd, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with them, be preliminarily and permanently enjoined and restrained from using in connection with the Website Operator's websites, offers, bulk emails and other commercial activities, the marks BEST BUY and BESTBUY.COM and the BEST BUY Logo, and any other mark, trade name, corporate name, domain name or URL that is confusingly similar to any of the BEST BUY Marks or likely to dilute their distinctive quality;
- (b) ModernAd be required to show proof to the Court that they have caused any and all references to or depictions of the BEST BUY Marks to be removed from the Website Operator's websites and website source codes;
- (c) ModernAd be ordered to file with this Court and to serve upon Best Buy within thirty (30) days after the entry and service on Defendants of an injunction, a report in writing and under oath setting forth in detail the manner and form in which ModernAd has complied with the injunction;
- (d) ModernAd, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with them, be preliminarily and

permanently enjoined and restrained from further and continuing interferences with Best Buy's contractual relations;

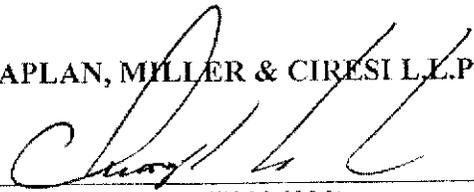
- (e) Best Buy recover all damages it has sustained as a result of ModernAd's activities and that said damages be trebled;
- (f) An accounting be directed to determine ModernAd's profits resulting from their activities complained of herein, and that such profits be paid over to Best Buy, increased as the Court finds to be just under the circumstances of this case;
- (g) In the alternative to actual damages and profits, Best Buy recover statutory damages pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, which provides for awards up to \$2,000,000 for each counterfeiting violation and awards up to \$100,000 per domain name in violation of 15 U.S.C. § 1125(d);
- (h) Best Buy recover exemplary damages under state law;
- (i) Best Buy recover its reasonable attorney fees;
- (j) Best Buy recover its costs of this action and prejudgment and post-judgment interest; and
- (k) Best Buy recover such other relief as the Court may deem appropriate.

DATED: _____

8/14/12

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: _____



Christopher K. Larus (#0226828)

Jamie R. Kurtz (#0391792)

2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
612-349-8500

**ATTORNEYS FOR BBY SOLUTIONS, INC.,
BEST BUY STORES, L.P., AND
BESTBUY.COM, LLC**