

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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DIGITAS, INC.,)	
and)	
VIVAKI, INC.,)	Civil Action No.
Plaintiffs,)	
)	<u>COMPLAINT AND DEMAND</u>
v.)	<u>FOR JURY TRIAL</u>
)	
ROCKET FUEL, INC.,)	
Defendant.)	
-----)	

The plaintiffs, Digitas, Inc. (“Digitas”) and VivaKi, Inc. (“VivaKi”) (collectively, “the plaintiffs”), for their Complaint against the defendant, Rocket Fuel, Inc. (“Rocket Fuel”), state, based on information and belief, that:

NATURE OF THE ACTION

1. In this action, the plaintiffs seek to recover damages and to obtain preliminary and permanent injunctions for the defendant's false designation of origin, false or misleading description of fact, and false or misleading representation of fact under the Lanham Act; for infringement of the plaintiffs’ trademarks at common law; and for unfair competition against the plaintiffs.

THE PARTIES

2. The plaintiff Digitas, Inc. is a Delaware corporation with a principal place of business at 33 Arch Street, Boston, Massachusetts 02110 and is a wholly-owned subsidiary of Publicis Groupe, a French corporation.

3. The plaintiff VivaKi, Inc. is an Illinois corporation with a principal place of business at 33 Arch Street, Boston, Massachusetts 02110 and is a wholly-owned subsidiary of Publicis Groupe, a French corporation.

4. The defendant, Rocket Fuel, Inc., is a Delaware corporation with a principal place of business at 350 Marine Parkway, Second Floor, Marina Park Center, Redwood City, California 94065.

JURISDICTION AND VENUE

5. This court has jurisdiction of the subject matter of this action under 28 U.S.C. §§ 1331, 1338, and 1367(a), the Lanham Act, Title 15 of the United States Code, and the principles of supplemental and ancillary jurisdiction.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1391(c).

THE PLAINTIFFS' RIGHTS

7. Digitas is a leading innovator and developer of advertising, marketing, promotion, and consulting products, including digital media marketing and internet-based services.

8. VivaKi, Inc., which is a corporate affiliate of Digitas, is a leading innovator and developer of advertising, marketing, promotion, and consulting products, including digital media marketing and internet-based services.

9. The plaintiffs' products and services include providing audience targeting capabilities for advertising networks and publishers.

10. The plaintiffs own various intellectual property rights including the service mark AUDIENCE ON DEMAND.

11. Digitas adopted the AUDIENCE ON DEMAND mark for use in connection with its business. Digitas authorized its corporate affiliate VivaKi to use the mark.

12. The AUDIENCE ON DEMAND mark has been continuously and extensively used in interstate commerce and in connection with the plaintiffs' business since it was introduced on June 25, 2008.

13. The AUDIENCE ON DEMAND mark has been adopted and used in connection with the advertising, promotion, offering, and sale in interstate commerce of various audience targeting capabilities for advertising networks and publishers. The AUDIENCE ON DEMAND mark has been used continuously and extensively in connection with the plaintiffs' business for more than two and a half years, and, as a result of this long and substantial use, the public, customers and purchasers of advertising products and services have come to associate the AUDIENCE ON DEMAND mark with the high quality products and services of the plaintiffs.

THE DEFENDANT'S ACTIONS

14. The defendant markets and sells audience targeting capabilities for advertising networks and publishers, including digital media marketing and internet-based services, under the service name "Audience on Demand."

15. The defendant is improperly using the phrase "Audience on Demand" in commerce as a mark for its goods and services without the plaintiffs' permission.

16. The defendant uses AUDIENCE ON DEMAND on one of its webpages, which also incorporates the AUDIENCE ON DEMAND mark in the actual webpage address. (Exhibit A). A PDF that appears identical to this URL is also available for download from the webpage, and it also incorporates the AUDIENCE ON DEMAND mark (Exhibit B). According to the defendant's website, "Audience on DemandTM gives you the ability to instantly scale and add audience targeting capabilities to your sales offerings. The defendant's proprietary optimization technology utilizes dozens of online and offline data providers to provide targeted audience modeling and reach extension on certified brand-safe inventory across all the major exchanges and publishers in the Rocket Fuel Network." (Exhibits A and B).

17. The defendant's use of the AUDIENCE ON DEMAND mark is directed to the public, including persons and businesses in Massachusetts that are purchasers or prospective purchasers of audience targeting capabilities for advertising networks and publishers, including digital media marketing and internet-based services.

18. The goods and services provided by the defendant are related to the goods and services provided by the plaintiffs.

19. There is overlap between the prospective purchasers of the products and services of both the plaintiffs and the defendant.

20. The defendant has not been authorized by the plaintiffs to use any intellectual property, including trademarks or service marks, belonging to the plaintiffs. The plaintiffs do not intentionally or voluntarily sponsor or approve the defendant's products or services nor does the defendant have an intentional or voluntary affiliation, connection, or association with the plaintiffs or the plaintiffs' products or services.

21. The defendant's use of the AUDIENCE ON DEMAND mark is likely to cause confusion, mistake, and deception and is likely to continue to cause confusion, mistake, and deception in the marketplace and among the public, particularly as to the mistaken belief as to the origin, sponsorship, approval, affiliation, connection, or association of the defendant's products and services with the plaintiffs and the plaintiffs' products and services.

COUNT I

(False Designation of Origin, False or Misleading Description of Fact, and False or Misleading Representation of Fact under the Lanham Act)

22. The plaintiffs repeat and reallege each and every allegation contained in paragraphs one through 21 of this Complaint as if they were fully set forth.

23. The defendant's actions were and are in violation of 15 U.S.C. §1125(a) (Lanham Act §43(a)), which imposes liability on any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities.

24. The plaintiffs have been and are being damaged by the defendant's violation of 15 U.S.C. §1125(a).

25. The plaintiffs have suffered and will continue to suffer irreparable injury due to the above described activities of the defendant if the defendant is not preliminarily and permanently enjoined.

COUNT II

(Infringement of Common Law Trademarks Rights)

26. The plaintiffs repeat and reallege each and every allegation contained in paragraphs one through 25 of this Complaint as if they were fully set forth.

27. The defendant has infringed and is infringing the plaintiffs' common law trademark rights in the AUDIENCE ON DEMAND mark.

28. The plaintiffs have been damaged and are being damaged by the defendant's infringement of their common law trademark rights.

29. The plaintiffs have suffered and will continue to suffer irreparable injury due to the above described activities of the defendant if the defendant is not preliminarily and permanently enjoined.

COUNT III

(Unfair Competition)

30. The plaintiffs repeat and reallege each and every allegation contained in paragraphs one through 29 of this Complaint as if they were fully set forth.

31. The defendant, by its actions, has engaged and is engaging in unfair competition.

32. The plaintiffs have been and are being damaged by the defendant's unfair competition.

33. The plaintiffs have suffered and will continue to suffer irreparable injury due to the above described activities of the defendant if the defendant is not preliminarily and permanently enjoined.

PRAYER

WHEREFORE, the plaintiffs, Digitas, Inc. and VivaKi, Inc., pray that judgment be entered as follows:

A. Preliminarily and permanently enjoining the defendant from utilizing the AUDIENCE ON DEMAND mark or any confusingly similar term to promote its goods or services;

B. Preliminarily and permanently enjoining the defendant from engaging in false designations of origin, false or misleading descriptions of fact, and false or misleading representations of fact;

C. Preliminarily and permanently enjoining the defendant from engaging in unfair methods of competition with the plaintiffs;

D. Determining and awarding the plaintiffs their damages resulting from the defendant's false designation of origin, false or misleading description of fact, and false or misleading representation of fact under 15 U.S.C. §1125(a), as alleged in Count I of the Complaint, plus interest, costs, and attorneys' fees;

E. Determining and awarding the plaintiffs their damages resulting from the defendant's infringement of its common law trademark rights, as alleged in Count II of the Complaint, plus interest, costs, and attorneys' fees;

F. Determining and awarding the plaintiffs their damages resulting from the defendant's unfair competition with the plaintiffs, as alleged in Count III of the Complaint, plus interest, costs, and attorneys' fees; and

G. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

The plaintiffs request a trial by jury in this action for all issues triable by jury.

DIGITAS, INC. and VIVAKI, INC.
By their attorneys,

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