

FILED

FEB - 2 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

INTERNATIONAL STAR REGISTRY)
OF ILLINOIS, an Illinois Limited)
Liability Corporation,)

Plaintiff,)

v.)

ABC RADIO NETWORK, INC.,)
a Delaware Corporation,)

Defendant.)

Case No. **06C 0625**

JUDGE SHADUR

JUDGE

MAGISTRATE JUDGE

~~MAGISTRATE JUDGE DENLOW~~

COMPLAINT AT LAW

NOW COMES the Plaintiff, INTERNATIONAL STAR REGISTRY, LTD., by and through its attorneys, GREGORY E. KULIS & ASSOCIATES, complaining against the defendants, ABC RADIO NETWORK, INC., and states as follows:

JURISDICTION

- 1) This action is brought pursuant to the common law and the laws of the State of Illinois.
- 2) Subject matter jurisdiction of this Court is based upon diversity of the parties and the amount claimed in the action as delineated in Title 28 U.S.C. § 1332.
- 3) The Plaintiff, INTERNATIONAL STAR REGISTRY OF ILLINOIS, LTD. (hereinafter "International Star"), was at all relevant times an Illinois Corporation doing business within the State of Illinois.
- 4) The Defendant, ABC RADIO NETWORK, INC. (hereinafter "ABC"), was at all relevant times a Delaware Corporation doing business in the State of Illinois with its primary

business locations at ABC, Inc., 500 S. Buena Vista Street, Burbank, California and 77 W. 66th Street, New York, New York.

5) Diversity of citizenship as required by 28 U.S.C. § 1332 is present in this suit because none of the parties is a citizen of the same state as any other party. The Plaintiff, INTERNATIONAL STAR, is a citizen of the State of Illinois, the Defendant, ABC, is a citizen of the States of Delaware, New York, and California.

6) The amount claimed by the Plaintiff in this action is greater than \$75,000 as required by 28 U.S.C. § 1332.

7) This Court may exercise personal jurisdiction over the Defendant based upon the Illinois Long Arm Statute, 735 ILCS 5/2-209, by virtue of the business transaction which occurred between the parties and through the Defendant's business ventures within the State of Illinois.

COUNT I - BREACH OF ORAL CONTRACT

1-7) The Plaintiff hereby restates and incorporates his allegations of paragraphs 1-7 of this Complaint as his respective allegations of paragraphs 1-7 of Count I as though fully set forth herein.

8) The Plaintiff, INTERNATIONAL STAR, is engaged in the creation and sale of personalized certificates which allow the purchaser to "name a star."

9) INTERNATIONAL STAR relies heavily upon radio advertising of its product and is one of the top network radio advertisers in the nation.

10) INTERNATIONAL STAR first entered into an agreement for radio advertising with the Defendant, ABC, in or prior to 1984.

11) Since its first agreement with ABC, INTERNATIONAL STAR has maintained a consistent relationship with ABC one of its primary sources for radio advertising.

12) INTERNATIONAL STAR has run extensive radio advertising campaigns through ABC each year since at least 1984.

13) INTERNATIONAL STAR generally conducts four major radio advertising campaigns each year coinciding with Valentine's Day in February, Mother's Day in May, Father's Day in June, and Christmas in December.

14) The campaigns for each holiday generally last between 14 and 35 days, ending three or four days prior to the date of the holiday.

15) The timing of INTERNATIONAL STAR'S campaigns is important because its personalized product can only be created and shipped within a specific window of time in order to arrive on time for each holiday.

16) In each of its contracts with ABC, INTERNATIONAL STAR contracted for a certain number of its ads to run during certain time periods on a variety of ABC networks nationwide.

17) In 2004, INTERNATIONAL STAR began to suspect that ABC was not running its ads properly according to the parties' agreement.

18) In or around January, 2005, INTERNATIONAL STAR requested information from ABC regarding the number of times its ads had run during its recent campaign.

19) ABC provided information that was both inadequate and intended to mislead INTERNATIONAL STAR.

20) Immediately after receiving ABC's bills for the Christmas 2004 sales season, INTERNATIONAL STAR requested a Radar post, or an independent report detailing each time

INTERNATIONAL STAR'S ad(s) ran during its most recently completed advertising campaign with ABC,

21) ABC was reluctant to provide the posting, but eventually did so.

22) The posting, which detailed the advertising campaign of December, 2004 clearly showed that INTERNATIONAL STAR'S ads were not run properly and were grossly deficient in audience delivery, meaning that fewer listeners than represented by the Defendant heard or had the opportunity to hear these advertisements.

23) INTERNATIONAL STAR also ordered postings for several others of its advertising campaigns with ABC.

24) Each post revealed a similar deficiency in rotation of advertisements and audience delivery during the campaign.

25) Upon information and belief, the deficiencies noted in the postings for Christmas, Mothers' Day and Fathers' Day 2004 indicate that ABC has not delivered the correct quantity of advertising at any time during its relationship with INTERNATIONAL STAR.

26) As an advertising provider, ABC was aware at the time of contracting and is currently aware that its clients purchase advertising from ABC for the express and singular purpose of soliciting business through said advertising.

27) ABC was aware at the time of contracting and at the time of breach and is currently aware that advertising clients expect their ads to run at a certain frequency to guarantee the effectiveness of the ads.

28) As a result of ABC's failure to deliver the advertisements pursuant to its agreement with INTERNATIONAL STAR, INTERNATIONAL STAR has lost a portion of the value of its contracts with ABC as well as significant amounts of profits.

WHEREFORE the Plaintiff, INTERNATIONAL STAR REGISTRY OF ILLINOIS prays this Honorable Court to grant it compensatory damages in an amount in excess of seventy five thousand dollars (\$75,000.00), as required to establish jurisdiction by 28 U.S.C. § 1332.

COUNT II – FRAUD
(AT TIME OF CONTRACTING)

1-27) The Plaintiff hereby restates and incorporates his allegations of paragraphs 1-27 of Count I as his respective allegations of paragraphs 1-27 of Count II as though fully set forth herein.

28) ABC falsely represented to INTERNATIONAL STAR that it would run INTERNATIONAL STAR'S ads at a certain frequency each day during INTERNATIONAL STAR'S advertising campaigns.

29) ABC made these representations in the hopes of inducing INTERNATIONAL STAR to purchase radio advertising services from ABC.

30) ABC knew at the time of contracting that it would not, or could not, run INTERNATIONAL STAR'S advertisements according to the terms of the agreement between the parties.

31) Relying on ABC's representations, INTERNATIONAL STAR purchased advertising services from ABC consistently over a period of approximately twenty years.

32) As a result of ABC's fraudulent representations at the time of contracting, INTERNATIONAL STAR has suffered loss of value of its contracts with ABC as well as significant amounts of lost profits.

WHEREFORE the Plaintiff, INTERNATIONAL STAR REGISTRY OF ILLINOIS prays this Honorable Court to grant it compensatory damages in excess of seventy five thousand

dollars (\$75,000.00), as required to establish jurisdiction by 28 U.S.C. § 1332, and punitive damages in excess of five hundred thousand dollars (\$500,000.00).

COUNT III – FRAUDULENT CONCEALMENT
(OF BREACH OF CONTRACT)

1-27) The Plaintiff hereby restates and incorporates his allegations of paragraphs 1-27 of Count I as his respective allegations of paragraphs 1-27 of Count III as though fully set forth herein.

28) The agreements between the parties required ABC to run INTERNATIONAL STAR'S radio advertisements on over one thousand radio stations which broadcast in hundreds of markets all over the United States.

29) INTERNATIONAL STAR had no way to independently monitor the frequency of its ads and the times at which its ads ran in each market because such monitoring would have required an unreasonable number of personnel, funding, and time.

30) INTERNATIONAL STAR depended upon ABC to run its ads properly and according to the terms of the agreement between the parties because it was impossible for INTERNATIONAL STAR to monitor ABC's activities itself.

31) ABC had a duty to report any underdelivery of INTERNATIONAL STAR'S ads directly to INTERNATIONAL STAR.

32) Upon information and belief, ABC has consistently underdelivered its services to INTERNATIONAL STAR since its first advertising agreement with INTERNATIONAL STAR approximately twenty years ago.

33) At no time did ABC report its failure to deliver services pursuant to its agreement with INTERNATIONAL STAR.

34) When INTERNATIONAL STAR requested information regarding the delivery of services by ABC, ABC resisted turning over information, provided false or misleading information regarding delivery, and otherwise attempted to dissuade INTERNATIONAL STAR from demanding an independent study of ABC's delivery of services.

35) ABC acted, and failed to act, in order to conceal its failure to deliver services pursuant to its agreements with INTERNATIONAL STAR.

36) Said actions and failures to act were intentional, willful and wanton.

37) INTERNATIONAL STAR relied upon ABC's actions and inactions in deciding to continue its business relationship with ABC.

38) Upon information and belief, as a result of ABC's concealment of its continuing underdeliveries over the course of approximately twenty years, INTERNATIONAL STAR has lost a portion of the value of its contracts with ABC as well as significant amounts of profits.

WHEREFORE the Plaintiff, INTERNATIONAL STAR REGISTRY OF ILLINOIS prays this Honorable Court to grant it compensatory damages in an amount in excess of seventy five thousand dollars (\$75,000.00), as required to establish jurisdiction by 28 U.S.C. § 1332 and punitive damages in an amount in excess of five hundred thousand dollars (\$500,000.00).

COUNT IV - DECEPTIVE TRADE PRACTICES

1-38) The Plaintiff hereby restates and incorporates his allegations of paragraphs 1-32 of Count III as his respective allegations of paragraphs 1-32 of Count IV as though fully set forth herein.

39) ABC's actions constitute a violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2.

40) ABC should be enjoined from continuing these acts and procedures.

41) INTERNATIONAL STAR is entitled to injunctive relief.

42) INTERNATIONAL STAR is also entitled to reasonable attorneys' fees and costs in this action.

WHEREFORE the Plaintiff, INTERNATIONAL STAR REGISTRY OF ILLINOIS prays this Honorable Court to permanently enjoin Defendant's deceptive trade practices and award INTERNATIONAL STAR reasonable attorney's fees and costs.

COUNT V – TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

1-27) The Plaintiff hereby restates and incorporates his allegations of paragraphs 1-27 of Count I as his respective allegations of paragraphs 1-27 of Count V as though fully set forth herein.

28) As a result of ABC's underdeliveries, INTERNATIONAL STAR was unable to form business relationships with a number of clients who would have purchased INTERNATIONAL STAR'S products if ABC had run INTERNATIONAL STAR'S ads appropriately.

29) As a result of ABC's knowing and intentional underdeliveries, INTERNATIONAL STAR has suffered significant losses in profits, goodwill, and other monetary damages.

WHEREFORE the Plaintiff, INTERNATIONAL STAR REGISTRY OF ILLINOIS prays this Honorable Court to grant it compensatory damages in an amount in excess of seventy five thousand dollars (\$75,000.00), as required to establish jurisdiction by 28 U.S.C. § 1332 and punitive damages in an amount in excess of five hundred thousand dollars (\$500,000.00).

Respectfully submitted,
INTERNATIONAL STAR REGISTRY OF ILLINOIS

Gregory E. Kulis

GREGORY E. KULIS & ASSOCIATES

Kerry A. Walsh
Gregory E. Kulis
GREGORY E. KULIS & ASSOCIATES
30 N. LaSalle Street, Suite 2140
Chicago, IL 60602
(312) 580-1830