



Court File No. T-1399-09

**FEDERAL COURT**

RED LABEL VACATIONS INC., carrying on business as REDTAG.CA or  
REDTAG.CA VACATIONS or both

Plaintiff

and

411 TRAVEL BUYS LIMITED carrying on business as 411TRAVELBUYS.CA,  
CARLOS MANUEL LOURENCO

Defendants

**STATEMENT OF CLAIM TO THE DEFENDANT**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules* serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Court Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

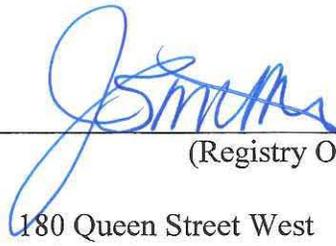
IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

AOUT  
AUG 20 2009

JACQUELINE SMITH  
REGISTRY OFFICER  
AGENT DU GREFFE

Date \_\_\_\_\_

Issued by \_\_\_\_\_



(Registry Officer)

Address of  
local office: 180 Queen Street West  
Suite 200  
Toronto, Ontario  
M5V 3L6

TO 411TRAVELBUYS.LTD  
3300 Bloor Street West  
11th Floor  
Suite 3140  
Toronto, Ontario  
M8X 2X3

AND TO CARLOS MANUEL LOURENCO  
3300 Bloor Street West  
11th Floor  
Suite 3140  
Toronto, Ontario  
M8X 2X3

## CLAIM

1. The Plaintiff, Red Label Vacations Inc., (“Red Label”) claims from the Defendants, 411TRAVELBUYS LTD. (“411Travelbuys”), and CARLOS MANUEL LOURENCO (“Mr. Lourenco”):

- a) A declaration that the Defendants, have:
  - i. directed attention to 411Travelbuys’ services in such a way as to cause or be likely to cause confusion between 411Travelbuys’ services and the services of the Plaintiff contrary to law and s.7(b) of the *Trade-marks Act*;
  - ii. passed off 411Travelbuys’ services as and for those of the Plaintiff contrary to law and s.7(c) of the *Trade-marks Act*;
  - iii. infringed the exclusive rights of Plaintiff’s trade-marks as defined below (hereinafter “Red Label Trade-marks”) contrary to section 20 of the *Trade-marks Act*;
  - iv. used the Red Label Trade-marks in a manner that is likely to have the effect of depreciating the value of the goodwill attached thereto contrary to section 22 of the *Trade-marks Act*; and
  - v. reproduced segments of the Plaintiff’s website (as defined below) and infringed the copyright in the Plaintiff’s website contrary to law and s.27 of the *Copyright Act*.

- b) An interim, interlocutory and permanent injunction restraining the Defendants, their officers, directors, shareholders, agents, servants, employees, successors, assigns and those in privity with or directly or indirectly controlled by the Defendants from:
- i. directing public attention to 411Travelbuys' services in such a way as to cause or be likely to cause, confusion between the services of the Plaintiff and those of the Defendants;
  - ii. passing off 411Travelbuys' services as those of the Plaintiff and/or sanctioned, approved or authorized by the Plaintiff;
  - iii. infringing the Red Label Trade-marks;
  - iv. using the Red Label Trade-marks in a manner that results in the depreciation of the goodwill attaching thereto;
  - v. infringing the copyright in the Plaintiff's website, including the Plaintiff's exclusive right to reproduce same; and
  - vi. authorizing, inducing or assisting others, to do any of the aforesaid acts.
- c) With respect to the cause of action based upon the *Trade-marks Act*, damages or in the alternative, as the Plaintiff may elect an accounting of the profits made by the Defendants as a result of their unlawful activities as aforesaid;
- d) With respect to the cause of action based upon the *Copyright Act*, damages and an accounting of the profits made by the Defendants as a result of their

unlawful activities as aforesaid;

- e) Pre-judgment and post-judgment interest;
- f) Costs of this action on a solicitor and client basis plus GST;
- g) Punitive and exemplary damages; and
- h) Such further and other relief as is considered just and proper by the Honourable Court.

2. Red Label claims from the Defendant Mr. Lourenco:

- a) An equitable tracing and disgorgement of the proceeds attributed to Mr. Lourenco's wrongful activities into his assets, property and interest or others; and
- b) A declaration that the Plaintiff possesses an equitable interest in the real and personal property of Mr. Lourenco, on the basis of a constructive, resulting, implied and/or express trust, the particulars of which will be provided prior to trial.

## **THE PARTIES**

### **The Plaintiff**

3. The Plaintiff, Red Label is a corporation incorporated under the laws of the Province of Ontario since March 22, 2004. Its head office is located in Mississauga, Ontario.

## **The Defendants**

4. The Defendant, 411Travelbuys is a corporation incorporated under the laws of the Province of Ontario. Its registered office is located in Toronto, Ontario.

5. The Defendant, Mr. Lourenco is an individual who resides in the City of Vaughan, Township of Woodbridge, Ontario.

6. Mr. Lourenco is the director, president and directing mind of 411Travelbuys and at all material times had full control over the activities of 411Travelbuys. Mr. Lourenco is directly involved in the day to day activities and operations of 411Travelbuys and is personally responsible for and participated in the direction of all acts and activities of 411Travelbuys.

## **BACKGROUND**

### **Red Label Trade-marks**

7. Red Label registered its trade-name "REDTAG.CA" with the Canadian Intellectual Property Office ("CIPO") on January 27, 2006 (TMA657520). In addition, Red Label registered its design mark "REDTAG.CA VACATIONS" with CIPO on February 1, 2006 (TMA657750). Lastly Red Label registered its trade-mark "Shop. Compare. Payless!! Guaranteed & Design" with CIPO on October 18, 2006 (TMA675219). The aforementioned measures taken by Red Label to protect its marks (collectively referred to as "Red Label Trade-marks") are in addition to any associated common law rights which the Red Label Trade-marks have currently garnered.

8. All of the Red Label Trade-marks are registered in association with the following services:

*Travel agency services and on-line sale of airline tickets.*

9. Further, the corresponding domain names REDTAG.CA and REDTAGVACATIONS.CA were registered by Red Label on April 17, 2002 and February 12, 2004 respectively.

10. Red Label also carries on business as REDTAG.CA and REDTAG.CA VACATIONS.

**Nature of Red Label's Business**

11. Since 2004, Red Label has been using the trade-name and trade-mark REDTAG.CA and REDTAG.CA VACATIONS to market and advertise its online travel agency.

12. Red Label provides its customers with information on travel and destination rates, discount packages, air fares, accommodations, and other travel related services including but not limited to booking vacation packages over the Internet.

13. Since inception, Red Label has grown to over 60 full-time employees, a management team and 42 call-centre agents. To date, REDTAG.CA is one of the largest online travel agencies in Canada.

14. Red Label allocates a significant budget towards marketing and advertising and has spent in excess of \$1,000,000.00 annually on marketing and advertising in addition to improving their online presence for the last five years.

**Red Label's On-line Presence**

15. Red Label also pays for additional advertising through other online sources and media outlets across Canada including but not limited to Google, Yahoo, MSN and radio commercials.

16. A large number of Red Label's customers locate Red Label through Internet search engines such as Google, Yahoo and MSN. For example, an individual seeking travel services may enter a few descriptive words into a search engine that he or she believes may identify the website or type of website they are seeking. These descriptive words are called "key words". The search engine will return a list of websites in a few seconds which may contain such key words and present them, in a ranked order to the inquirer, usually about ten or so websites appear per page. This ranking is very important since consumers do not want to spend a lot of time searching through multiple search pages to find what they want. The exact manner in which Google conducts its searching and ranks the results for presentation is not generally known. However, most computer programmers reasonably believe that Google looks through the first several lines of text on a given website to find words that match the words typed in by the inquirer.

17. One of the reasons for Red Label's growth has been attributed to its high ranking on such search engines as Google. This search engine ranking is determined in part by the HTML source code of REDTAG.CA website which includes but is not limited to titles, keywords and metatag descriptions.

18. Briefly, HTML source code, which stands for Hypertext Mark-up Language, is the predominant markup language for web pages. It is essentially a scripting language that marks up text to indicate to a web browser such as Internet Explorer how the text should be displayed, as well as to enable links, and other features.

19. In addition, it should be noted that metatags are elements that provide information about a given web page, most often to help search engines categorize them correctly. They are inserted

into the HTML document, but are often not directly visible to a user visiting the site and thereby exist behind the scenes.

### **Red Label's Intellectual Property**

20. Pursuant to section 3 of the *Copyright Act*, Red Label has and will have until the date of expiry of the copyright therein, the sole right to produce and reproduce the Red Label website or any substantial party thereof, in any material form whatever and to authorize such acts.

21. Due to its rapid growth and significant market presence, Red Label has developed a substantial degree of goodwill throughout Canada and is recognized as one of the leaders in the travel industry especially the online segment of the industry.

22. Red Label has made its services through its trade-marks and trade-names very well known throughout the Canadian marketplace and has established rights both in statute and in common law.

23. As defined by the *Trade-marks Act*, the aforesaid Red Label Trade-mark registrations give Red Label the exclusive right to use the Red Label Trade-marks throughout Canada in respect of the services for which they are registered, and the right to prevent any use by a person who sells, distributes, or advertises wares/services in association with a confusing trade-mark or trade-name.

### **Defendants Wrongdoing**

24. On or about February 26, 2009, while conducting a Google search over the Internet for vacation packages to Cuba, the Plaintiff discovered a link that closely resembled a link that

directs individuals to Red Label's REDTAG.CA website. When accessing the discovered link, the Plaintiff was directed to "www.411travelbuys.ca/hola-sun.php", a 411Travelbuys' website.

25. Upon further examination, Red Label discovered that not only were there similarities between the parties' respective websites but the Defendant 411Travelbuys had in fact copied and incorporated a significant amount of the Red Label's website into their own website without the consent or authority to do so.

26. 411Travelbuys' website is comprised of a large collection of web pages. These web pages were created using source code that contains titles, descriptions and keywords in their metatags that are identical and in the same word-order as the Plaintiff's web pages including several spelling mistakes that were made by Red Label. Further, these titles, descriptions and keywords included but were not limited to the marks that were confusingly similar to the aforementioned Red Label Trade-marks.

27. On or about March 10, 2009, Red Label informed 411Travelbuys and the Director/President Mr. Lourenco that 411Travelbuys had copied and duplicated the Red Label's website contrary to copyright law.

28. Red Label further informed 411Travelbuys and Mr. Lourenco that Red Label was the sole owner of the Red Label Trade-marks and trade-name and that it had established goodwill in the mark and name through its continued use since 2004.

29. 411Travelbuys and Mr. Lourenco were further informed that they had improperly duplicated and incorporated Red Label's website into 411Travelbuys' website without Red Label's permission, thereby misleading the public and misdirecting them to 411Travelbuys'

website and further compromising the integrity of Red Label's rank as returned by an Internet search (Google search rank).

30. Accordingly, Red Label demanded that 411Travelbuys and Mr. Lourenco immediately cease and desist further use of the infringing trade-names and trade-marks, refrain from passing off Red Label's website as its own and to refrain from further copyright infringement.

31. 411Travelbuys and Mr. Lourenco denied having knowledge of the copied website nor committing any unlawful act.

32. Red Label pleads that Mr. Lourenco personally engaged in the infringing activities complained herein. Further, at all material times, Mr. Lourenco acted as the controlling mind of 411Travelbuys and personally, deliberately, wilfully and knowingly caused, directed and authorized the acts of the corporate 411Travelbuys when he knew or was indifferent to the risk that such activities would or were likely to infringe Red Label's rights.

## **DAMAGES**

33. The Defendants unauthorized use of the Red Label Trade-marks and trade-name as aforesaid has caused and is likely to cause confusion with the Plaintiff's trade-marks/trade-names, in that such use has led and will likely to lead the inference that the Defendants services are offered by, advertised by or under the authority of the Plaintiff contrary to sections 7(b) and 7(c) of the *Trade-marks Act*.

34. By their conduct and actions aforesaid, the Defendants have infringed the exclusive rights of the Plaintiff in the Red Label Trade-marks contrary to section 20 of the *Trade-marks Act*.

35. The Plaintiff has no control over the quality of the services that the Defendants pass off as those of the Plaintiff's services.

36. By their conduct and actions aforesaid, the Defendants have used the Red Label Trade-marks in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto, contrary to section 22 of the *Trade-marks Act*.

37. The Defendants copied large sections of the Plaintiff's website into their own website thereby infringing the Plaintiff's copyright and thereby misleading the public as to the origin of the provided services.

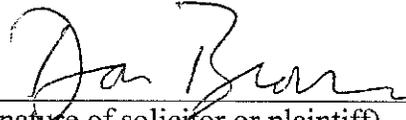
38. Further, through the Defendants' copying of the Plaintiff's website, the Plaintiff's search engine ranking may be unfairly jeopardized as Google and Yahoo have been known to downgrade websites that have engaged in website mirroring.

39. As a result of the activities described herein, the Plaintiff has suffered damage and the Defendants have profited and will continue to profit to the Plaintiff's considerable detriment unless restrained by Order or Judgement of this Honourable Court.

40. The Plaintiff pleads and relies on sections 7, 20 and 22 of the *Trade-marks Act*, sections 3, 27, 34, 35 & 38 of the *Copyright Act*.

41. The Plaintiff proposes that this action be tried in Toronto.

August 20, 2009



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(Signature of solicitor or plaintiff)

**HEYDARY HAMILTON PC**

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Solicitors for the plaintiff

SOR/2004-283, s. 35

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REDTAG.CA or REDTAG.CA VACATIONS or both  
Plaintiff

-and- 411 TRAVEL BUYS LIMITED carrying on business as  
411TRAVELBUYS.CA, CARLOS MANUEL LOURENCO  
Defendants

Court File No.

**ONTARIO  
FEDERAL COURT**

PROCEEDING COMMENCED AT TORONTO

**STATEMENT OF CLAIM TO THE DEFENDANT**

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RCP-E 4C (July 1, 2007)