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07-CV-01106-CMP

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON (DEPUTY)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

C07-1106 TSE

CASCADE FINANCIAL CORPORATION
and CASCADE BANK,

Case No. _____

Plaintiff,

COMPLAINT FOR TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION

v.

JURY TRIAL DEMANDED

ISSAQUAH COMMUNITY BANK,
CAPITOL BANCORP, LTD., and ROBERT
M. ITTES,

Defendants.

Plaintiffs Cascade Financial Corporation and Cascade Bank ("Plaintiffs"), for their complaint against Issaquah Community Bank, Capitol Bancorp, Ltd., and Robert M. Ittes (hereinafter collectively referred to as "Defendants"), allege as follows:

JURISDICTION AND VENUE

1. This action arises under 15 U.S.C. § 1125(a) of the Lanham Act and the laws of the State of Washington.
2. This Court has jurisdiction over this action in accordance with 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a) because it arises under the Trademarks Laws of the United States, specifically 15 U.S.C. § 1125(a).

COMPLAINT - 1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3010
Seattle, WA 98101
206.622.1711



ORIGINAL

1 3. Plaintiffs also assert common law trademark infringement claims, Washington
2 statutory trademark infringement claims, and claims under the Washington Consumer
3 Protection Act. These claims are so related to the federal trademark claims that they are part
4 of the same case and controversy and consequently fall within the scope of this court's
5 supplemental jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367.

6 4. This Court has personal jurisdiction over the parties.

7 5. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and (c).

8 **THE PARTIES**

9 6. Cascade Financial Corporation is a Washington corporation and holding
10 company of Cascade Bank, a Washington state chartered commercial bank, with a principal
11 place of business in Everett, Washington. Cascade Financial Corporation acquired Issaquah
12 Bancshares, Inc. on June 4, 2004.

13 7. On information and belief, Defendant Issaquah Community Bank is a
14 Washington corporation with a principal place of business in Issaquah, Washington.

15 8. On information and belief, Defendant Capitol Bancorp, Ltd., headquartered in
16 Lansing, Michigan, is a holding company for more than fifty individually chartered banks in
17 fourteen states. On information and belief, Capitol Bancorp, Inc. is a founder of and holder
18 of controlling interest in Issaquah Community Bank, and transactions business within the
19 state of Washington.

20 9. On information and belief, Robert M. Ittes is a resident of Sammamish,
21 Washington. On information and belief, Robert M. Ittes is a founder and will serve as chief
22 executive officer of Issaquah Community Bank. Mr. Ittes is the founder, former president
23 and chief executive officer of Issaquah Bank and the former President of the Issaquah Bank
24 Division of Cascade Bank.

1 headquartered in Snohomish County, Washington. It has been locally managed for more
2 than 90 years.

3 18. Cascade Bank is a community bank offering a full range of financial services
4 to its business and consumer clients through its twenty branches located throughout King and
5 Snohomish Counties. Cascade Bank also offers online banking and other services through its
6 website at www.cascadebank.com.

7 19. On June 4, 2004, Issaquah Bankshares, Inc. and Issaquah Bank were acquired
8 by Plaintiff Cascade Financial Corporation. Issaquah Bankshares, Inc. was merged into
9 Cascade Financial Corporation, and Issaquah Bank was merged into Cascade Bank.

10 20. After the completion of the acquisition and merger, Issaquah Bank operated as
11 the Issaquah Bank Division of Cascade Bank, with Robert Ittes as President of the Division
12 and responsible for its performance, the development and preservation of banking
13 relationships and other business development efforts (including appropriate civic and
14 community activities) in the Issaquah market area.

15 21. Effective April 30, 2005, Robert M. Ittes terminated his employment as
16 President of the Issaquah Bank Division of Cascade Bank. Several other management level
17 staff members also departed.

18 22. In September 2005, Issaquah Bank began transitioning the branch name to
19 Cascade Bank-Issaquah Branch.

20 23. Plaintiffs continue to use the mark ISSAQUAH BANK and to build the
21 goodwill associated the mark in commercial and non-commercial ways, including use of the
22 mark in connection with various financial products and services, and in connection with its
23 sponsorship of community and charitable events.

24 24. Customers continue to use, and Cascade Bank to process, checks and deposit
25 slips bearing the mark ISSAQUAH BANK.
26

1 25. Plaintiffs continue to be identified under its ISSAQUAH BANK mark in the
2 community and by various vendors and services providers.

3 26. Plaintiffs continue to use the domain names www.issaquah-bank.com and
4 www.issaquahbank.com to offer online banking and provide information about Plaintiffs'
5 other banking and financial services.

6 27. On information and belief, Defendants intend to operate a bank under the
7 name "Issaquah Community Bank."

8 28. On information and belief, Defendants began formation activities for
9 operation of a bank in Issaquah under the name "Issaquah Community Bank" and
10 representing themselves as "Issaquah Community Bank (in formation)" at least as early as
11 January 2007.

12 29. On information and belief, Robert M. Ittes and Capitol Bancorp Ltd. have
13 jointly founded Issaquah Community Bank, which was incorporated in Washington on July
14 10, 2007.

15 30. On information and belief, Issaquah Community Bank's Chief Executive
16 Officer is Robert M. Ittes, the same individual who served as the president and chief
17 executive officer of Issaquah Bank and the Issaquah Bank Division of Cascade Bank until
18 April 30, 2005.

19 31. On information and belief, Defendants will offer financial services
20 substantially the same as and competitive with those offered by Plaintiffs.

21 32. On information and belief, Defendants' intended location is 1375 NW Mall
22 Street in Issaquah, Washington, which is approximately one-third of a mile from Plaintiff's
23 Issaquah Branch.

24 33. Operation of a bank and offering banking services under the name "Issaquah
25 Community Bank" is likely to cause consumer confusion, mistake or deception as to the
26 source, sponsorship or approval of Defendants' services in that customers and others are

1 likely to believe that Defendants' services are in some way legitimately connected with,
2 sponsored, or licensed by Plaintiff.

3 34. Although Plaintiffs have requested in writing that Defendants select another
4 name that is not likely to lead to consumer confusion, Defendants have refused to do so.

5 35. Defendants have knowledge of Plaintiffs' use of the mark ISSAQUAH
6 BANK for purposes of a federal trademark infringement claim. In addition, Defendants have
7 constructive knowledge of Plaintiffs' ownership of the ISSAQUAH BANK mark pursuant to
8 RCW 19.77.040.

9 36. Having actual and constructive knowledge of Plaintiff's rights in the mark
10 ISSAQUAH BANK, Defendants' infringing use of the "Issaquah Community Bank" mark is
11 willful and deliberate with the intent to unfairly trade off the goodwill associated with the
12 ISSAQUAH BANK mark.

13 CLAIM I

14 LANIHAM ACT UNFAIR COMPETITION

15 37. Plaintiff realleges and incorporates by reference Paragraphs 1 through 35
16 above, inclusively.

17 38. Defendants' actions described above are likely to cause confusion, cause
18 mistake, and to deceive as to the affiliation, connection or association of Defendants with
19 Plaintiffs, and as to the origin, sponsorship and approval of Defendants' goods and services
20 by Plaintiffs. Defendants' conduct constitutes unfair competition, false designation of origin,
21 false or misleading descriptions or representations of fact, false advertising, and/or unfair or
22 deceptive trade practices in violation of 15 U.S.C. §1125(a).

23 39. As a direct and proximate result of Defendants' foregoing acts, practices and
24 conduct, Plaintiffs will be substantially injured in its business, including its reputation,
25 resulting in lost revenues and profits, and diminished goodwill and reputation.
26

1 46. Unless enjoined by this Court, Defendants will engage in unfair competition
2 and cause confusion and mistake by their unauthorized use and infringement of the
3 ISSAQUAH BANK mark, all to Plaintiffs' irreparable injury. This threat of future injury to
4 Plaintiffs' business identity, goodwill and reputation requires injunctive relief to prevent
5 Defendants' unfair competition and to mitigate Plaintiffs' injury.

6 **CLAIM III**
7 **INFRINGEMENT OF WASHINGTON STATE**
8 **TRADEMARK REGISTRATION**

9 47. Plaintiffs reallege and incorporates by reference Paragraphs 1 through 45
10 above, inclusively.

11 48. Defendants' use of "Issaquah Community Bank" would constitute an
12 infringement of Plaintiff's registered trademark ISSAQUAH BANK under RCW 19.77.040,
13 19.77.140, and 19.77.150.

14 49. Defendants should be enjoined from using the name "Issaquah Community
15 Bank." Defendants use of the name "Issaquah Community Bank" will constitute trademark
16 infringement such that Plaintiffs will be entitled to recover any applicable injunctive relief
17 and damages, including any profits derived from and/or all damages suffered by reason of
18 wrongful use or display of the name "Issaquah Community Bank", destruction or delivery to
19 Plaintiffs or this Court any of Defendants' property or materials bearing the name "Issaquah
20 Community Bank", reasonable attorney fees, and/or an amount not to exceed three times the
21 profits and damages derived from Defendants' wrongful use or display of the name
22 "Issaquah Community Bank."

23 **CLAIM IV**
24 **WASHINGTON CONSUMER PROTECTION ACT**

25 50. Plaintiffs reallege and incorporates by reference Paragraphs 1 through 48,
26 above, inclusively.

1 51. Defendants' use of "Issaquah Community Bank" would constitute an unfair
2 and deceptive act or practice and an unfair method of competition in the conduct of trade or
3 commerce in violation of RCW 19.86.020 that would harm Plaintiff in its business and
4 property. Plaintiffs are entitled to recover damages, including treble damages up to \$10,000,
5 and attorneys' fees pursuant to RCW 19.86.090.

6 **PRAYER**

7 WHEREFORE, Plaintiffs pray that:

8 1. Defendants, their agents, employees, and attorneys, and all other persons in
9 active concert or participation with Defendants, be preliminarily and permanently enjoined
10 and restrained from:

- 11 (a) using the "Issaquah Community Bank" mark or any other name or mark that
12 constitutes a colorable imitation of the ISSAQUAH BANK mark in
13 connection with banking, lending, financing services, and services related
14 thereto;
- 15 (b) otherwise infringing the ISSAQUAH BANK mark or using any similar
16 designation, alone or in combination with any other components;
- 17 (c) causing likelihood of confusion or injury to Plaintiffs' business, reputation, or
18 goodwill, as well as Plaintiffs' reputation and its services;
- 19 (d) causing likelihood of confusion or misunderstanding to the source or
20 sponsorship of Defendants' services; and
- 21 (e) from doing any other act which is likely to dilute the distinctiveness of
22 Plaintiffs' ISSAQUAH BANK mark or injure Plaintiffs' business reputation.

23 2. This Court finds that Defendants had knowledge of Plaintiffs' ownership of
24 the ISSAQUAH BANK mark which constitutes willful unfair competition, trademark
25 infringement and violation of the Washington Consumer Protection Act.

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3. Plaintiffs be awarded all damages sustained by reason of Defendants' wrongful acts, and that such damages be trebled to the extent allowed by law.

4. This Court require Defendants to pay Plaintiffs' reasonable attorneys' fees, expert witness fees, and disbursements incurred herein, including costs.

5. This Court award Plaintiffs such other and further relief as this Court deems just and equitable.

Dated this 16 day of July, 2007.

SCHWABE, WILLIAMSON & WYATT, P.C.


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Attorneys for Plaintiff Cascade Bank

Exhibit A

ISSAQUAH BANK

Image

TRADEMARKSCAN@--U.S. State

Registered In: WASHINGTON

SAEGIS Record Number: WA3000014530

Registration Number: 22069

Status: RENEWED

Date Registered: March 18, 1993

Mark Type: SERVICE MARK

International Class(es):

36 (Insurance and Financial Services)

Goods/Services:

BANKING SERVICES

Date First Use State: July 31, 1992

Date First Use Anywhere: July 31, 1992

Owner Information:

ISSAQUAH BANK

729 N.W. GILMAN BOULEVARD

ISSAQUAH, WASHINGTON 98027

Renewal Owner Information:

ISSAQUAH BANK

WASHINGTON CORPORATION

1055 NW MAPLE STREET

ISSAQUAH, WASHINGTON 98027

Tel. 206-623-1900

Renewed: November 18, 2002

Design: THE WORDS "ISSAQUAH BANK" WITH LINE BELOW IT & TREES TO THE LEFT.

Manner Of Display: USED ON BANK ADS, LETTERHEAD, CHECKS, CREDIT AND DEBIT CARDS AND SIGNAGE



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Viewed: Fri Jan 19 2007, 00:01 GMT

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