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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

C 07-5127 KLS
Case No.

EVERGREEN MONEYSOURCE
MORTGAGE COMPANY, INC.

Plaintiff,

vs.

**COMPLAINT FOR TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION**

DEMAND FOR JURY TRIAL

JOEL LUNDBERG and BARBARA
LUNDBERG, individuals, d/b/a JB
ASSOCIATES d/b/a EVERGREEN
MORTGAGE d/b/a WAVE LENDING
GROUP, and JB ASSOCIATES, LLC

Defendants.

Plaintiff Evergreen Moneysource Mortgage Company, Inc. ("Evergreen" or
"Plaintiff"), as and for its complaint, alleges as follows:

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I. SUMMARY

1. Evergreen seeks to prevent consumer confusion and to enjoin infringement of its trade name and service marks EVERGREEN MONEYSOURCE MORTGAGE COMPANY, EVERGREEN MONEYSOURCE, and EVERGREEN HOME LOANS (the "EVERGREEN marks"). Evergreen, a mortgage lender, has been in business in the greater Seattle area and beyond for nearly two decades.

2. Defendants have been and are doing business in the greater Seattle area using the name EVERGREEN MORTGAGE and have also registered the domain name EvergreenHomeLoans.com, which name and domain name are confusingly similar to Plaintiff's name and marks. Defendants offer mortgage lending services in competition with those offered by Evergreen. Defendants have used the EVERGREEN MORTGAGE name and the noted domain name in an attempt to trade on Evergreen's business, reputation, and goodwill in its EVERGREEN marks. Defendants have refused to transfer the confusingly similar domain name EvergreenHomeLoans.com to Plaintiff and, instead, are using it to promote their competitive mortgage lending service. They have also threatened to sell the registration for the domain name to another party. Thus, Plaintiff has been required to resort to bringing this action to protect its trademark rights and the consuming public.

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II. THE PARTIES

3. Evergreen is a Washington corporation with its principal place of business in Seattle, Washington. Evergreen is the owner of the service marks EVERGREEN MONEYSOURCE MORTGAGE COMPANY, EVERGREEN MONEYSOURCE, and EVERGREEN HOME LOANS. Evergreen uses its marks in connection with its mortgage lending business. That business is based in the greater Seattle area, and operates throughout the State of Washington and beyond. Evergreen also maintains an on-line presence on the Internet, e.g., www.EvergreenHomeLoans.net.

1 4. On information and belief, Defendants Joel Lundberg and Barbara Lundberg are
2 and have been doing business as JB Associates d/b/a Evergreen Mortgage d/b/a Wave Lending
3 Group and have a principal place of business at 8602 Canyon Rd E Puyallup, WA 98371. On
4 information and belief Defendant JB Associates, LLC is a Washington Limited Liability
5 Corporation owned by Defendants Joel Lundberg and Barbara Lundberg and is related to the
6 Lundbergs' JB Associates business and the other business names under which the Lundbergs are
7 or have done business.

8 **III. JURISDICTION AND VENUE**

9 5. This is a Complaint for unfair competition under § 43 of the Lanham Act, 15
10 U.S.C. § 1125, for false and deceptive trade practices and unfair competition in violation of
11 R.C.W. 19.86 et seq., and for trademark infringement and unfair competition under Washington
12 common law.

13 6. The Court has original subject matter jurisdiction over this action pursuant to 28
14 U.S.C. § 1331 and 28 U.S.C. § 1338(a). The Court has supplemental jurisdiction over the state
15 law claims pursuant to 28 U.S.C. § 1367. Venue is proper under 28 U.S.C. §§ 1391(b) in that the
16 injury caused by Defendants' acts complained of herein that gives rise to the asserted claims
17 occurred and is occurring primarily in this judicial district.

18 **IV. STATEMENT OF FACTS**

19 7. Evergreen has been doing business under the name EVERGREEN
20 MONEYSOURCE MORTGAGE COMPANY since at least about 1988.

21 8. Evergreen has used its service mark EVERGREEN MONEYSOURCE and service
22 mark and trade name EVERGREEN MONEYSOURCE MORTGAGE COMPANY in
23 connection with its mortgage loan services in the greater Seattle area and other parts of
24 Washington State since at least about 1988 and has not abandoned use of these service marks and
25 trade name.

26 9. Evergreen has also adopted the service mark EVERGREEN HOME LOANS.

1 10. Evergreen's customers and others in the mortgage loan industry often refer to
2 Evergreen simply as EVERGREEN.

3 11. The purchasing public in greater Seattle, Washington State, and beyond, has come
4 to know, rely upon, and associate Evergreen's service mark and trade name EVERGREEN
5 MONEYSOURCE MORTGAGE COMPANY its service mark EVERGREEN
6 MONEYSOURCE and its service mark EVERGREEN HOME LOANS, as well as simply the
7 name EVERGREEN, when used in association with mortgage lending services, as designating
8 Evergreen's mortgage lending services. Evergreen has exceedingly valuable goodwill
9 established in its trade name and marks.

10 12. On information and belief, Defendants only began offering mortgage lending
11 services in the greater Seattle area under the name EVERGREEN MORTGAGE sometime after
12 February 2003, the date Defendants alleged as the date of their first use of EVERGREEN
13 MORTGAGE in their application No. 78/546,218 to register EVERGREEN MORTGAGE with
14 the U.S. Patent and Trademark Office.

15 13. On information and belief, the domain name EvergreenHomeLoans.com was
16 created on or about November 14, 2002, and Defendants registered the domain name sometime
17 on or after that date.

18 14. On information and belief, Defendants did not cause the
19 EvergreenHomeLoans.com domain name to resolve to a website with any content until
20 Defendants began using the domain name EvergreenHomeLoans.com to point to a website for
21 their EVERGREEN MORTGAGE mortgage lending business.

22 15. On information and belief, Defendants have not used EVERGREEN HOME
23 LOANS in commerce as a service mark or trade name.

24 16. On information and belief, before beginning to use EVERGREEN MORTGAGE
25 as a service mark, and before registering and using the domain name EvergreenHomeLoans.com
26 to point to a website for their EVERGREEN MORTGAGE mortgage lending business,

1 Defendants were aware of Evergreen's name and marks EVERGREEN MONEYSOURCE
2 MORTGAGE COMPANY and EVERGREEN MONEYSOURCE and Evergreen's use of the
3 same for mortgage loan services, and were additionally aware that consumers and others referred
4 to Evergreen as EVERGREEN.

5 17. Defendants presently cause the domain name EvergreenHomeLoans.com to
6 resolve to a website for their business called "Wave Lending Group/Evergreen Mortgage."

7 18. Defendants admitted through their attorney, by letter dated October 24, 2005,
8 addressed to a representative of Plaintiff that "[t]here is, of course, at least a possibility, if not a
9 likelihood, of confusion among consumers about Evergreen Moneysource and Evergreen
10 Mortgage being one and the same, but we believe that this is more hypothetical than real." In
11 that statement, Defendants' attorney was referring to Evergreen on the one hand, and Defendants
12 on the other.

13 19. The EVERGREEN MORTGAGE name and the EvergreenHomeLoans.com
14 domain name used by Defendants so resemble Evergreen's service mark and trade name
15 EVERGREEN MONEYSOURCE MORTGAGE COMPANY and its service marks
16 EVERGREEN MONEYSOURCE and EVERGREEN HOME LOANS as to cause, or to be
17 likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or
18 association of Defendants' business with Plaintiff's business, or as to the origin, sponsorship, or
19 approval of Defendants' services, or commercial activities by Plaintiff.

20 20. Plaintiff has already successfully petitioned in the U.S. Patent and Trademark
21 Office to cancel a Supplemental Registration obtained by Defendants for EVERGREEN
22 MORTGAGE and successfully opposed Defendants' application to register EVERGREEN
23 MORTGAGE (& design) on the grounds that such marks are likely to cause confusion with
24 Plaintiff's name and mark EVERGREEN MONEYSOURCE MORTGAGE COMPANY and its
25 service mark EVERGREEN MONEYSOURCE. Judgment was entered by the Trademark Trial
26 and Appeal Board in favor of Plaintiff after Defendants cancelled their Supplemental

1 Registration and abandoned their trademark application for EVERGREEN MORTGAGE (&
2 design).

3 21. Plaintiff has requested Defendants to cease use of EVERGREEN MORTGAGE in
4 connection with Defendants mortgage lending business, including after the judgment noted
5 above was entered against Defendants. To date, Defendants have not done so and their
6 confusing use continues.

7 22. Plaintiff has also requested Defendants to transfer the domain name
8 EvergreenHomeLoans.com to Plaintiff in view of its confusing similarity with Plaintiff's
9 EVERGREEN name and marks and Defendants' use of the domain in a manner that has likely
10 mislead consumers as to the association between the domain name and the website to which it
11 directs Internet users, and Plaintiff. However, rather than transfer the domain, Defendants have
12 continued to cause it to point to their mortgage lending business and have also threatened to sell
13 it to third parties.

14 23. On information and belief, Plaintiff has been and is likely to be commercially
15 injured as a result of Defendants' actions concerning their confusing use of EVERGREEN
16 MORTGAGE and EvergreenHomeLoans.com, including but not limited to loss or diversion of
17 sales from Plaintiff to Defendants, or by lessening of the goodwill which the Plaintiffs and their
18 services enjoy with the buying public.

19 24. On information and belief, Defendants' use of the EVERGREEN MORTGAGE
20 name and the EvergreenHomeLoans.com domain name used by Defendants has and is resulting
21 in irreparable damage to Evergreen's business, reputation and good will, since consumers are
22 likely to attribute the source of Defendants' services to Plaintiff.

23 25. Defendants' use of EVERGREEN MORTGAGE and EvergreenHomeLoans.com
24 was not authorized by Evergreen.
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COUNT I

FEDERAL UNFAIR COMPETITION

26. Plaintiff realleges each preceding paragraph of this Complaint as if fully set forth herein.

27. Defendants' use of EVERGREEN MORTGAGE and EvergreenHomeLoans.com is likely to cause confusion, mistake, and deception among consumers. Defendants' use of EVERGREEN MORTGAGE and EvergreenHomeLoans.com to promote, market, or sell services in direct competition with Evergreen constitutes Unfair Competition pursuant to 15 U.S.C. § 1125(a) and Washington common law.

28. On information and belief, Plaintiff has been and is likely to be commercially injured as a result of Defendants' actions concerning their confusing use of EVERGREEN MORTGAGE and EvergreenHomeLoans.com, including but not limited to loss or diversion of sales from Plaintiff to Defendants, or by lessening of the goodwill which the Plaintiffs and their services enjoy with the buying public, in an amount to be proved at trial.

29. On information and belief Defendants actions concerning their confusing use of EVERGREEN MORTGAGE and EvergreenHomeLoans.com have been and are willful.

30. On information and belief, Plaintiffs have suffered and will continue to suffer irreparable damage due to the Defendants' actions unless they are preliminarily and permanently enjoined by this Court from use of EVERGREEN MORTGAGE and ordered to transfer the domain name EvergreenHomeLoans.com to Plaintiff.

COUNT II

COMMON LAW TRADEMARK INFRINGEMENT

31. Plaintiff realleges each preceding paragraph of this Complaint as if fully set forth herein.

1 32. Defendants' use of EVERGREEN MORTGAGE and EvergreenHomeLoans.com
2 is likely to cause confusion with Plaintiff's EVERGREEN marks and constitutes trademark
3 infringement pursuant to Washington common law.

4 33. On information and belief, Plaintiff has been and is likely to be commercially
5 injured as a result of Defendants' actions concerning their confusing use of EVERGREEN
6 MORTGAGE and EvergreenHomeLoans.com, including but not limited to loss or diversion of
7 sales from Plaintiff to Defendants, or by lessening of the goodwill which the Plaintiffs and their
8 services enjoy with the buying public, in an amount to be proved at trial.

9 34. On information and belief Defendants actions concerning their confusing use of
10 EVERGREEN MORTGAGE and EvergreenHomeLoans.com have been and are willful.

11 35. On information and belief, Plaintiffs have suffered and will continue to suffer
12 irreparable damage due to the Defendants' actions unless they are preliminarily and permanently
13 enjoined by this Court from use of EVERGREEN MORTGAGE and ordered to transfer the
14 domain name EvergreenHomeLoans.com to Plaintiff.

15 **COUNT III**
16 **WASHINGTON FALSE AND DECEPTIVE TRADE PRACTICES AND UNFAIR**
17 **COMPETITION**

18 36. Plaintiff realleges each preceding paragraph of this Complaint as if fully set forth
19 herein. Defendant's activities described herein constitute false and deceptive trade practices and
20 unfair competition in violation of R.C.W. 19.86 et seq.

21 37. Defendants' use of EVERGREEN MORTGAGE and EvergreenHomeLoans.com
22 were and continue to be an unfair method of competition and/or unfair or deceptive acts.

23 38. Defendants' use of EVERGREEN MORTGAGE and EvergreenHomeLoans.com
24 were and continue to be made in the conduct of trade or commerce directly or indirectly affecting
25 the people of the State of Washington.

26 39. Defendants' Defendants' use of EVERGREEN MORTGAGE and
EvergreenHomeLoans.com affected and continue to affect the public interest.

1 40. On information and belief, Plaintiff has been and is likely to be commercially
2 injured as a result of Defendants' actions concerning their confusing use of EVERGREEN
3 MORTGAGE and EvergreenHomeLoans.com, including but not limited to loss or diversion of
4 sales from Plaintiff to Defendants, or by lessening of the goodwill which the Plaintiffs and their
5 services enjoy with the buying public, in an amount to be proved at trial.

6 41. On information and belief, Plaintiffs have suffered and will continue to suffer
7 irreparable damage due to the Defendants' actions unless they are preliminarily and permanently
8 enjoined by this Court from use of EVERGREEN MORTGAGE and ordered to transfer the
9 domain name EvergreenHomeLoans.com to Plaintiff.

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11 **PRAYER FOR RELIEF**

12 WHEREFORE, Evergreen respectfully prays that this Court:

13 1. Issue a preliminary and permanent injunction, enjoining and prohibiting
14 Defendants, their agents, servants, employees, officers, attorneys, successors and assigns from
15 using any trade name, trade mark, service mark, and or domain name comprising EVERGREEN
16 or any variation thereof for mortgage lending services;

17 2. Issue an order directing Defendants to transfer the EvergreenHomeLoans.com
18 domain name to Evergreen;

19 3. Award Evergreen its damages, in an amount to be proved at trial;

20 4. Award Evergreen the Defendants' profits, Evergreen's damages, and the costs of
21 this action, in an amount to be proved at trial, under 15 U.S.C. § 1117(a);

22 5. Award Evergreen treble its actual damages under 15 U.S.C. § 1117(a);

23 6. Determine that this case is exceptional and award Evergreen its attorney's fees
24 under 15 U.S.C. § 1117(a);

25 7. Award Evergreen its actual damages and costs of suit and attorney's fees, in an
26 amount to be proved at trial as provided under RCW 19.86.090;

1 8. Award Evergreen treble damages as provided under RCW 19.86.090;

2 9. Award Evergreen pre-judgment interest and post-judgment interest on all
3 damages awarded; and

4 10. Any other or further relief to which Evergreen is entitled and/or that the Court
5 deems appropriate.

6
7 **DEMAND FOR JURY TRIAL**

8 Pursuant to Fed. R. Civ. P. 38 and Local Rule 38.1(b), Plaintiffs demand a jury trial on all
9 issues triable to a jury.

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11 KLARQUIST SPARKMAN, LLP

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13 DATED: March 16, 2007

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