

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

COLEMAN LAW FIRM

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| <p>BUYING FOR THE HOME, LLC,<br/>Plaintiff,<br/>- vs. -<br/><br/>HUMBLE ABODE, LLC, JAMES<br/>WICKERSHAM and KRIS KITTERMAN,<br/>Defendants.</p>   | <p>CIVIL ACTION NO.<br/>03-CV-2783 (JAP)</p>  |
| <p>-----<br/>HUMBLE ABODE, LLC,<br/>Counterclaim<br/>Plaintiff,<br/>- vs. -<br/><br/>BUYING FOR THE HOME, INC.,<br/>Counterclaim<br/>Defendant.</p>  | <p><b>ANSWER OF DEFENDANTS,<br/>COUNTERCLAIM AND CROSS-<br/>CLAIMS OF HUMBLE ABODE, LLC,<br/>AND JURY DEMANDS</b></p> |
| <p>-----<br/>HUMBLE ABODE, LLC,<br/>Cross-claim<br/>Plaintiff,<br/>- vs. -<br/><br/>ROSS INDUSTRIES, INC., DSC GROUP<br/>LLC, d/b/a DIRECTLY HOME, LLC,<br/>BELLA D. ROSS, DANIEL A. ROSS,<br/>and STEVEN J. ROSS,<br/>Cross-claim<br/>Defendants.</p> |   |

**ANSWER OF ALL DEFENDANTS**

Humble Abode, LLC, James Wickersham and Kris Kitterman, by their undersigned attorneys, for their answer against plaintiff, state as follows:

**The Parties**

1. Defendants admit that plaintiff is a New Jersey corporation but deny the remaining allegations in paragraph 1, and state that the address alleged by plaintiff is a "Mailboxes Etc." facility (the "Mailboxes Etc. address").

2. Admitted.

3. Admitted.

4. Admitted.

**Jurisdiction and Venue**

5. Admitted.

6. Defendants Wickersham and Kitterman deny that they regularly transact business in New Jersey. Defendants deny that plaintiff has been damaged.

**Background**

7. Defendants lack knowledge and information sufficient to admit or deny this allegation.

8. Defendants deny that "total bedroom" is a trademark or protectable trade name of plaintiff.

Defendants admit the remainder of the allegations in this paragraph.

9. Admitted.

10. Admitted.

11. Denied, except admit that as to the allegation that plaintiff has used the phrase "total bedroom" on the Internet "since 2002," defendants state that upon information and belief it has done so since no earlier than November, 2002.

#### **The Defendants' Misconduct**

12. Denied.

13. Denied.

14. Denied.

15. Defendants lack knowledge and information sufficient to admit or deny this allegation.

16. Denied.

17. Admitted.

18. Denied.

19. Denied.

20. Denied.

#### **Count One**

21. Defendants incorporate by reference their respective responses.

22. Defendants incorporate by reference their response to paragraph 11.

23. Admitted.

24. Denied.

25. Denied.

26. Denied.

27. Defendants deny that plaintiff has a trademark or protectable trade name in the term "total bedroom," that they use the term "total bedroom" on the Humble Abode website as a trademark, or that they would need plaintiff's permission to do so. Defendants admit that they did not ask plaintiff for permission for anything.

28. Denied.

**Count Two**

29. Defendants incorporate by reference their respective responses.

30. Defendants incorporate by reference its response to paragraph 11.

31. Admitted.

32. Denied.

33. Denied.

34. Denied.

35. Defendants incorporate by reference their response to paragraph 27.

36. Denied.

**Count Three**

37. Defendants incorporate by reference their respective responses.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Defendants incorporate by reference their response to paragraph 27.

43. Denied.

**Count Four**

44. Defendants incorporate by reference their respective responses.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

**Count Five**

50. Defendants incorporate by reference their respective responses.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

**AFFIRMATIVE DEFENSES  
OF ALL DEFENDANTS**

**STANDING**

Plaintiff was incorporated on May 15, 2003, or approximately three weeks before the Complaint was filed, and consequently did not exist during the time period during which the events alleged took place, could not have been damaged thereby, could not have accrued any secondary meaning in trademarks, could not have been competed with unfairly, could not have been defamed, and could not have been the subject of trade disparagement.

**FAILURE TO STATE A CLAIM**

Plaintiff has failed to state a claim for which relief can be granted.

**UNCLEAN HANDS**

Plaintiff's claims are barred by the doctrine of unclean hands, based on their actions as set forth in the Counterclaim below.

**ALLEGED TRADEMARK IS GENERIC**

The alleged trademark "total bedroom" is generic as used in connection with the sale of bedroom furniture and not amenable to protection as a trademark.

**NO SECONDARY MEANING**

Plaintiff and any predecessor only began using the trademarks or product names it alleges were infringed in November, 2002, and they have no secondary meaning.

**FAIR USE**

Any use by defendants of a trademark owned by plaintiff was fair use and not trademark use.

**TRUTH OF STATEMENTS**

Any statements made by defendants that form the basis of plaintiff's defamation and disparagement claims were true or, if not true, were reasonably believed by defendants to have been true.

**WHEREFORE,** defendants demand that plaintiff's Complaint be dismissed, with prejudice, in its entirety, and that defendants be granted their attorneys fees and costs of suit pursuant to N.J.S.A. 2A:15-59.1.

**JURY DEMAND**

Defendants demand a trial by jury for all issues so triable.

**COUNTERCLAIM AND CROSS-CLAIMS  
OF HUMBLE ABODE, LLC**

Humble Abode, LLC, by its undersigned attorneys, for its counterclaim against plaintiff / counterclaim-defendant Buying for the Home, Inc. and cross-claims against cross-claim defendants Ross Industries, Inc., Directly Home, LLC, Bella D. Ross, Daniel Ross, and Steven J. Ross (collectively, "counterclaim / cross-claim defendants"), states as follows:

**PARTIES**

1. Humble Abode, LLC ("Humble Abode"), is a limited liability corporation founded in San Francisco, California in 1999 by James Wickersham and Kris Kitterman under the laws of the State of Delaware.

2. Counterclaim defendant Buying for the Home, Inc. ("Buying"), identified in the caption of this matter as "Buying for the Home, LLC," is a New Jersey corporation doing business at 1075 Easton Avenue #230, Somerset, New Jersey.

3. Cross-claim defendant Ross Industries, Inc. is a New Jersey corporation doing business at 409 Joyce Kilmer



Avenue, Suite 200, New Brunswick, New Jersey ("Ross Industries").

4. Cross-claim defendant DSC Group, LLC is a New Jersey limited liability company doing business at 409 Joyce Kilmer Avenue, Suite 200, New Brunswick, New Jersey ("Directly Home") under the name "Directly Home, LLC."

5. Cross-claim defendant Steven J. Ross is affiliated with Directly Home and is an individual residing, upon information and belief, at 16 Auburn Street, Waltham, Massachusetts and 333 River Street, Hoboken, New Jersey.

6. Cross-claim defendant Daniel A. Ross is an officer or employee of Ross Industries and is an individual residing, upon information and belief, at 333 River Street, Hoboken, New Jersey.

7. Cross-claim defendant Bella D. Ross is an officer of Ross Industries and is an individual residing, upon information and belief, at 494 Fulton Court, West New York, New Jersey.

#### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1338 and 15 U.S.C. §§ 26 and 1121. The Court

has supplemental jurisdiction over the state law and common law claims under 28 U.S.C. § 1367(a).

9. This Court has personal jurisdiction over all the cross-claim defendants by virtue of their transaction of business, their residences and business addresses in this District, and their affiliation with the plaintiff.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

#### **FACTS COMMON TO ALL COUNTS**

##### **Humble Abode's Enviably Successful**

11. Humble Abode is an online retailer selling high-end furniture to homes and offices through its website, Humbleabode.com.

12. Humble Abode has been profitable since its second month of operation. From 2001 to 2002, Humble Abode's revenue increased by over 3500%. This growth pattern has continued into the first half of 2003. Humble Abode achieved its high degree of initial success by virtue, in part, of its unique marketing strategy and the investment of approximately \$475,000 dollars in developing its website as well as approximately \$325,000 dollars in Internet-based advertising.

13. The purpose of Humble Abode's investment in Internet-based advertising was and is to "drive" qualified Internet prospects to Humble Abode's website.

14. After its remarkable initial success, Humble Abode's revenue and profits continued to grow, and by July 20, 2003 it had generated 849,060 unique Internet visitors and approximately \$987,000 in revenue.

### **The Humble Abode Trademarks**

15. By virtue of Humble Abode's extensive investment and its careful development of its Internet marketing identity, it has achieved a secondary meaning in the service mark HUMBLE ABODE for the sale of furniture, for which a registration was applied on May 19, 2003.

16. Furthermore, as a result of its extensive investment in the development and promotion of its website, Humble Abode also has trademark rights in numerous product names for its bedroom furniture including but not limited to the following trademarks for furniture items:

- ACCOLADE
- ALABASTER
- APEX
- APPALOOSA
- ASHLAND
- ASTAIRE
- ATLANTA
- BACALL
- BEETHOVEN
- BENNETT

- BENSON
- BERKSHIRE
- BRIGHTON
- BROWNSTONE
- CAMBER
- CAMPTOWN
- CAROLYN
- CHALET WHITE
- CHESTERFIELD
- CLUBHOUSE II
- COLORADO
- CONCERTO CANOPY
- DISCOVERY II
- DREAMER II
- EMPIRE
- ENCHANT
- EVENING GARDEN
- FERDINAND
- GOVERNOR
- GRIZZLY
- GWENEVERE
- HANNAH
- HARTINGTON
- HAVEN
- HELENA
- HEARTLAND
- HOMESTYLE
- HONDO
- HUDSON
- IMPERIAL
- IRENE
- JASMINE
- JASMINE CANOPY
- JENNY
- KELLINGTON
- KORINA
- LAKEWOOD
- LAYLA
- LEANNE
- LEONARDO
- LORRIE
- MADRID
- MANSFIELD
- MAPLETON

- MARIGOLD
- MARLEE OPEN TOE
- MARLOW
- MARLOW CANOPY
- MELISSA
- MIRAGE
- MONTANA
- MONTANA LANEY
- MONTEGO
- MONTGOMERY
- MOROCCO
- NORTHROP
- PARK AVENUE BRASS
- PARK AVENUE PLATINUM
- PINECREST
- PINEHAVEN
- POLO SARATOGA
- PROVIDENCE
- REFLEX
- REGAL
- ROSEMARY
- SAMANTHA
- SANDUSKY
- SENTINEL
- SEQUOIA
- SONATA
- STANFORD
- SUMMERHILL
- SUNDAE
- TAMARIND
- TIARA
- TRANQUILITY
- VERANNA
- VICTORIA II
- WESTINGTON
- YUKON

(collectively, the “Humble Abode Furniture Marks”).

17. The HUMBLE ABODE service mark and the Humble Abode Furniture Marks are inherently distinctive to the

public, serve primarily as designators of origin of Humble Abode furniture emanating from or licensed by Humble Abode.

18. As a result of the widespread use and display of the HUMBLE ABODE trademark and the Humble Abode Furniture Marks, the public and the trade use them to identify Humble Abode products.

19. As a result of the widespread use and display of the HUMBLE ABODE service mark and the Humble Abode Furniture Marks, the public and the trade recognize that the HUMBLE ABODE trademark and the Humble Abode Furniture Marks refer to a high quality product emanating from a single source.

20. For the foregoing reasons, the HUMBLE ABODE service mark and the Humble Abode Furniture Marks have built up secondary meaning and extensive good will.

**Enter the Rosses**

21. In early 2002, Leggett & Platt, Inc. ("L&P"), a leading supplier of bedroom furniture, approached Humble Abode in order to establish a relationship with Humble Abode as its primary supplier of furniture products.

22. As a result of L&P's aggressive pursuit of the Humble Abode account, in or around March, 2002 Humble Abode agreed to become an L&P customer.

23. Out of approximately 4,000 L&P western division customers, Humble Abode is L&P's second-fastest growing customer in 2003.

24. After L&P set up an account for Humble Abode, L&P informed Humble Abode that cross-claim defendant Bella D. Ross would act as Humble Abode's account representative at L&P.

25. In or around March 2002, Humble Abode phoned cross-claim defendant Bella D. Ross to obtain L&P product images for use on Humble Abode's website. Humble Abode's call was returned by cross-claim defendant Daniel A. Ross.

26. Bella D. Ross and Daniel A. Ross are or during the time period relevant to this matter were, respectively, President and Vice President, Sales, Specialized Markets of cross-claim defendant Ross Industries.

#### **The San Francisco Dinner**

27. On or about February 17, 2003, Bella D. Ross and Daniel A. Ross visited San Francisco and took James Wickersham out to dinner at Postrio, located at 545 Post Street, San Francisco, CA (the "San Francisco Dinner").

28. At the San Francisco Dinner, the Rosses solicited information from James Wickersham regarding Humble Abode's business practices, marketing techniques, intended

direction of the business, new furniture suppliers, as well as other information (the "Proprietary Information").

29. In response to the questioning by cross-claim defendants Bella D. Ross and Daniel A. Ross at the San Francisco Dinner, Mr. Wickersham revealed the Proprietary Information.

30. Mr. Wickersham revealed the Proprietary Information because he believed cross-claim defendants Bella D. Ross and Daniel A. Ross would keep that information confidential and would not use it in a way that would be inimical to the business interests of Humble Abode.

31. The Proprietary Information was confidential and proprietary to Humble Abode.

### **The Predatory Websites**

32. Shortly after the San Francisco Dinner, Humble Abode learned that a number of apparently new Internet websites, located at Totalbedroom.com, Directlyhome.com, Buyingfurniture.com, and Discountsteve.com as well as a number of other affiliated and related websites (the "Predatory Websites"), were not only competing with Humble Abode, but aggressively targeting Humble Abode's business.

33. The Predatory Websites use the Humble Abode Furniture Marks to sell merchandise on their own site.



34. The Predatory Websites also persistently use the HUMBLE ABODE trademark itself.

35. The use by the Predatory Websites of the HUMBLE ABODE trademark is trademark use.

36. As demonstrated below, the Predatory Websites are affiliated with one or more of the interconnected parties named herein as counterclaim / cross-claim defendants.

37. The Predatory Websites offer products at significantly lower prices than Humble Abode does.

38. Upon information and belief, the Predatory Websites are able to offer lower prices than Humble Abode in part because they purchase their merchandise directly from L&P at a favorable price, by virtue of the familial and business relationships among counterclaim / cross-claim defendants and the status of cross-claim defendant Ross Industries as account representatives of L&P.

**Predatory Websites: Totalbedroom.com**

39. Totalbedroom.com is the subject of the Complaint in this matter.

40. The content of the Totalbedroom.com website can also be accessed via the Yahoo! Shopping Internet service at <http://shop.store.yahoo.com/totalbedroom/index.html>.

41. The apparent purpose of Totalbedroom.com is to lure consumers seeking Humble Abode furniture away from

Humble Abode's website by offering a "Price Comparison" page in which on-line consumers can compare Totalbedroom.com's prices with Humble Abode's prices utilizing the Humble Abode Furniture Marks.

42. Users who go to Totalbedroom.com encounter a "Price Comparison" page which purports at the outset to be directed at the general furniture market, guaranteeing consumers "the lowest prices anywhere[.]" A printout of that page is attached hereto as Exhibit A.

43. On further reading, however, it is obvious that the site is directed specifically at Humble Abode, as the website claimed at one time: "After doing a thorough evaluation of every coupon code and sale ever offered at Humbleabode.com it is clear that the Total Bedroom price was always significantly cheaper. For comparison we have listed the Humble Abode product names[.]" See Exhibit A, a printout of a page from Totalbedroom.com which was downloaded during the spring of 2003.

44. Totalbedroom.com's "Price Comparison" page did not claim to have done a "thorough evaluation of every coupon code and sale ever offered at" any other seller besides Humble Abode, nor, upon information and belief, had it done so.

45. Totalbedroom.com's "Price Comparison" page next invites consumers to "learn more or order, click the product picture below." In fact, the overwhelming majority of products pictured on the "Price Comparison" Web page is sold by Humble Abode and designated by the Humble Abode Furniture Marks.

46. At certain junctures on its website, Totalbedroom.com states, in gray text: "Humble Abode and product names are trademarks of HumbleAbode.com, LLC" (the "Humble Abode Trademark Acknowledgment").

47. HumbleAbode.com, LLC is the original name of Humble Abode and the name it utilized on its credit application with L&P, which was submitted to counterclaim / cross-claim defendants Daniel A. and Bella D. Ross and Ross Industries.

48. While the vast majority of the text on the Totalbedroom.com site is black, The Humble Abode Trademark Acknowledgment is light gray. A color printout of the Totalbedroom.com Price Comparison page including the Humble Abode Trademark Acknowledgment is attached hereto as Exhibit B.

49. As the user scrolls down through the Price Comparison page, however, Totalbedroom.com uses the Humble Abode Furniture Marks without repeating the Humble Abode

Trademark Acknowledgment or otherwise acknowledging Humble Abode's trademark rights in the product names utilized.

50. As a result, users who scroll past the Humble Abode Trademark Acknowledgment at the top of the page quickly encounter screen after screen of product images using the Humble Abode Furniture Marks without any acknowledgment of Humble Abode's trademark rights in the product names utilized to sell merchandise at Totalbedroom.com. See Exhibit B.

51. When printed out utilizing standard settings on a Microsoft Internet Explorer 6.0 Internet browser, the product offerings on Totalbedroom.com's home page extend over nine printed 8½ x 11 pages, of which only the first bears the gray Humble Abode Trademark Acknowledgment. See Exhibit B.

52. When the user selects one of the Humble Abode products pictured at the Totalbedroom.com "Price Comparison" page by clicking on a product image, the initial screen image that appears shows a photograph of the product selected using the Humble Abode Furniture Mark. The Humble Abode Trademark Acknowledgment is found only the bottom of the page, which is seen by the consumer only if he chooses to scroll down to the bottom of the screen. A

printout of a typical screen presentation is attached hereto as Exhibit C.

53. Ultimately, when the user is prepared to make a purchase and proceeds to "check out" on Totalbedroom.com, the Humble Abode Furniture Mark appears without Humble Abode's permission, without repeating the Humble Abode Trademark Acknowledgment at all, or otherwise acknowledging Humble Abode's trademark rights in the product names utilized to sell Totalbedroom.com merchandise. A printout of a typical display is attached hereto as Exhibit D.

54. In addition to accessing Humble Abode's products via the "Price Comparison" page on Totalbedroom.com, users can also search the entire Totalbedroom.com website by using the Humble Abode Furniture Marks as search terms. The search "result" leads the user to any number of the website's other pages, where the bed may be purchased from Totalbedroom.com.

55. For example, a user who uses as a search term the Humble Abode Furniture Mark "Accolade" is led to the page on Totalbedroom.com website where it sells the "The Accolade Iron Bed." A printout of that display, and two other examples of the results of using Humble Abode Furniture Marks as search terms on the Totalbedroom.com website, are attached hereto as Exhibit E.

56. ACCOLADE IRON BED is one of the Humble Abode Furniture Marks.

57. When the user reaches the "checkout" page for the Humble Abode product, the Humble Abode Furniture Marks appear yet again, without the Humble Abode Trademark Acknowledgment. A printout of that display is attached hereto as Exhibit F.

58. Each of these uses of one or more of the Humble Abode Furniture Marks is without any attribution, permission, trademark designation or acknowledgment of Humble Abode's trademark rights.

59. The effect of the foregoing on the consumer is to give the impression that he may purchase a genuine Humble Abode product from Totalbedroom.com, which he may not.

**Predatory Websites: Directlyhome.com**

60. Directlyhome.com is another website whose apparent central purpose is to compete in a predatory fashion with Humble Abode by using the Humble Abode Furniture Marks.

61. Directlyhome.com purports to sell bedroom furniture products using the manufacturer's names or other names unrelated to Humble Abode.

62. In reality, however, a user may input a Humble Abode Furniture Mark and be led to merchandise competing with genuine Humble Abode products on Directlyhome.com.

63. Thus, for example, a user who inputs Humble Abode Furniture Mark "MARIGOLD" as a search term will initially be led to the product "Kaitlyn-Marigold White Metal Bed." If the user then selects the "Kaitlyn-Marigold" product by clicking on the image, he is led to a page with Humble Abode Furniture Mark and the identical image used by Humble Abode along with Humble Abode Furniture Mark "MARIGOLD," without the manufacturer's name (Kaitlyn). The user is thus misled into thinking he is buying a genuine Humble Abode product on Directlyhome.com. A printout of this display is attached hereto as Exhibit G.

64. Notwithstanding the surreptitious use of the Humble Abode Furniture Marks on the Directlyhome.com website, at no point on the website is there any attribution, permission, trademark designation or acknowledgment of Humble Abode's trademark rights in the Humble Abode Furniture Marks by Directlyhome.com.

**Predatory Websites: Buyingfurniture.com**

65. Another website utilizing the Humble Abode Furniture Marks to sell non-Humble Abode merchandise is Buyingfurniture.com.

66. Buyingfurniture.com purports to be "the web's most comprehensive listing of coupons, rebates, freebies and hot deals on furniture."

67. Buyingfurniture.com further purports to host an e-mail service through which consumers may share information about promotions. The listings on Buyingfurniture.com's website thus purport to reflect an actual interplay between consumers who send in e-mails and Buyingfurniture.com's "bargain hunter" who educates them.

68. A user who selects "Retailers" on Buyingfurniture.com's navigation bar is led to a long list of retailers, with Humble Abode appearing second to last with the lowest, one-star rating. If the user clicks on this listing, he is led to a "Specific Information" page, wherein the Humble Abode Furniture Marks for its bedroom furniture are used without attribution, permission, trademark designation or acknowledgment of Humble Abode's trademark rights in the Humble Abode Furniture Marks. A printout of that display is attached as Exhibit H.

69. A section called "Listings" that appears further along on Buyingfurniture.com's "Specific Information" page teaches the user how to buy Humble Abode's furniture at Directlyhome.com. One such listing "divulges": "Here is the trick, look at the URL,



[http://www.humbleabode.com/bed\\_iron\\_secretgarden.htm](http://www.humbleabode.com/bed_iron_secretgarden.htm) - notice the URL identifies it as a Secret Garden. Then go to another site, like Directlyhome and search for Secret Garden. Low [sic] and behold the same bed . . . !”

70. In all instances on the Buyingfurniture.com's website, the Humble Abode Furniture Marks for its bedroom furniture are used without attribution, permission, trademark designation or acknowledgment of Humble Abode's trademark rights in the Humble Abode Furniture Marks.

71. Buyingfurniture.com also causes on-line searches for Humble Abode to divert consumers to its website by placing the terms "Humble Abode" in its website text and webpage titles.

72. Thus, for example, on its "Accessories for the Home" page, Buyingfurniture.com invites: "Accessorize your humble abode today!"

**The Humble Abode Trademarks Used As Sponsored Search Engine Search Terms by the Predatory Websites**

73. "Google" and "Yahoo!" are leading Internet search engines.

74. The Predatory Websites do not limit their attack on Humble Abode, the HUMBLE ABODE trademark and the Humble Abode Furniture Marks to their own pages. For example, Totalbedroom.com has also caused its sponsored

advertisement to appear alongside (at the right-hand margin) Humble Abode's entries when a user performs a Google search for the terms "HUMBLE ABODE FURNITURE." See Exhibit I, attached hereto, featuring printouts of various searches conducted as set forth in the paragraphs below, over the last few months.

75. Totalbedroom.com has also caused its sponsored advertisement to appear when a user performs a Google search for the Humble Abode Furniture Marks. Thus, for example, a search for "SAMANTHA BED" yields a sponsored advertisement for Totalbedroom.com. See Exhibit I.

76. Moreover, by use of the Yahoo! Internet search engine, an Internet user inputting the search term "HUMBLE ABODE COUPON" will get back a list of search results.

77. The number-one result from the "HUMBLE ABODE COUPON" Yahoo! search is a link to Buyingfurniture.com. See Exhibit I.

78. The number-two result from the "HUMBLE ABODE COUPON" Yahoo! search is also Buying-furniture.biz, an Internet website which is identical in content to Buyingfurniture.com. See Exhibit I.

79. By use of the Yahoo! Internet search engine, an Internet user inputting the search term "HUMBLE ABODE SAVINGS" will get back a list of search results.

80. The number-one result from the "HUMBLE ABODE SAVINGS" Yahoo! search is a link to Buying-furniture.biz, an Internet website which is identical in content to Buyingfurniture.com. See Exhibit I.

81. The number-three result from the "HUMBLE ABODE SAVINGS" Yahoo! search is Totalbedroom.com. See Exhibit I.

82. By use of the Yahoo! Internet search engine, an Internet user inputting the search term "HUMBLE ABODE DISCOUNT" will get back a list of search results, of which number six is a link to Buyingfurniture.com. Number seven is the actual website for Humble Abode. See Exhibit I.

**Anonymity and Deception  
On the Predatory Websites**

83. The first of these competing websites, Totalbedroom.com, the subject of the Complaint, avoids revealing the identity of its operators, principals, or any other person affiliated with it.

84. For example, the operators of Totalbedroom.com evade the obvious response to the hypothetical question, located on the "Help" page of the website, of "Who is Total Bedroom?" Instead of answering with information about who owns or operates the website, Totalbedroom.com states only: "Total Bedroom is a group of interior designers that

decided to offer their services online. We started in 2002 and have already gained a loyal following.”

85. Totalbedroom.com evades revealing the identity of its operators in numerous other ways.

86. No mailing address or telephone number is available on the Totalbedroom.com website.

87. Totalbedroom.com does not accept checks or money orders.

88. Totalbedroom.com does not accept telephone orders.

89. For these reasons, there is no way for consumers or other interested persons to contact Totalbedroom.com directly. Rather, in the manner of a purveyor of contraband, it requires consumers to transmit their own phone number, and a convenient time to be contacted “and one of our customer service experts will contact you.”

90. The only way to determine the purported ownership of Totalbedroom.com is under the unlikely heading of “What is Total Bedroom[’s] Copyright Policy?,” where the website states that the site is “owned and operated by Directlyhome, LLC,” and reserves all intellectual property rights in that company.

91. Notwithstanding the foregoing, there is no link at Totalbedroom.com to Directlyhome.com, a website owned

and operated by cross-claim defendant DSC Group, LLC under the name "Directly Home, LLC."

92. The information on the Totalbedroom.com website, which is purportedly owned and operated by Directlyhome, LLC, contradicts the claim in the Complaint that Totalbedroom.com is owned by counterclaim defendant Buying.

93. In fact, the Complaint is correct in this regard.

94. Buyingfurniture.com states that it is "Owned and operated by the employees of Directlyhome, LLC."

95. According to the New Jersey State Business Gateway Service, through which the New Jersey Division of Revenue offers comprehensive business entity data on the Internet, there is neither a Directly Home, LLC nor a Directlyhome, LLC in New Jersey.

96. Upon information and belief, there is no Directly Home, LLC or Directlyhome, LLC in any other state relevant to this matter.

97. Directly Home, LLC is an alias for the DSC Group.

98. The registered agent of the DSC Group is Steven J. Ross, brother of Daniel A. Ross, and son of Bella Ross, of Ross Industries.

99. The DSC Group has an address of 409 Joyce Kilmer Avenue in New Brunswick.

100. 409 Joyce Kilmer Avenue in New Brunswick is also the address of Ross Industries.

101. Ross Industries has, since March of 2002, acted as the account representative for Humble Abode.

### **Threats and Evasion**

102. On March 6, 2003, Humble Abode's James Wickersham called "Directly Home" to ask that the company stop infringing Humble Abode's trademarks. He was told that someone would call back.

103. On March 7, 2003, Mr. Wickersham called again and again spoke with the same person, who told Mr. Wickersham that someone would call him back the following Monday.

104. On Monday, March 10, 2003, cross-claim defendant Steve Ross of Directly Home returned Mr. Wickersham's call.

105. In that March 10<sup>th</sup> call, cross-claim defendant Steven J. Ross threatened Mr. Wickersham, saying that if anyone from Humble Abode called again or if Humble Abode disclosed any information that resulted in harm to Directly Home's business, Directly Home would immediately sue for damages and attorney's fees.

106. On or about May 15, 2003, Buying filed for incorporation, providing the New Jersey Division of Revenue with the Mailboxes, Etc. address and listing Steven J. Ross as registered agent.

107. Approximately three weeks later, on June 9, 2003, the Complaint in this action was filed.

108. All the foregoing activities took place in or had or will have a direct effect on interstate commerce.

**FIRST CAUSE OF ACTION**  
**Restraint of Trade under Section**  
**One of the Sherman Act and State Law**

109. Humble Abode incorporates by reference all the foregoing allegations as if set forth fully herein.

110. The Complaint in this matter admits that plaintiff and Humble Abode compete in the same business category.

111. The relevant market for Humble Abode's products is high-end home furniture sold on the Internet in the United States.

112. The foregoing allegations amount to a contract, combination or conspiracy among the counterclaim / cross-claim defendants.

113. The combination or conspiracy by counterclaim / cross-claim defendants produced or threatens to produce an adverse anticompetitive effect within the relevant product and geographic markets by depriving purchasers of home furniture over the Internet of the benefit of free and open competition.

114. The combination or conspiracy by counterclaim / cross-claim defendants produced or threatens to produce an adverse anticompetitive effect within the relevant product and geographic markets by means of predatory pricing.

115. The combination or conspiracy by counterclaim / cross-claim defendants had or has an illegal purpose and was or is unreasonable.

116. Humble Abode has suffered and upon information and belief will suffer injury as a result of the actions of the counterclaim / cross-claim defendants.

**SECOND CAUSE OF ACTION**  
**Trademark Infringement and**  
**Contributory Trademark Infringement**

117. Humble Abode incorporates by reference all the foregoing allegations as if set forth fully herein.

118. The acts of the counterclaim / cross-claim defendants as alleged constitute direct or contributory trademark infringement, direct or contributory false designation of origin, direct or contributory false representation and direct or contributory false description in violation of the Lanham Act § 43(a), 15 U.S.C. § 1125(a) and state law.

119. As a result of the foregoing, Humble Abode has suffered substantial and irreparable injury to its business reputation and goodwill.



120. Upon information and belief, as a result of their wrongful acts, counterclaim / cross-claim defendants have caused and unless restrained by the Court will continue to cause irreparable injury and damage to Humble Abode and to the goodwill associated with its trademarks, including diversion of customers, lost sales and lost profits.

121. Humble Abode has no adequate remedy at law.

**THIRD CAUSE OF ACTION**  
**Unfair Competition**

122. Humble Abode incorporates by reference all the foregoing allegations as if set forth fully herein.

123. The acts of the counterclaim / cross-claim defendants as alleged constitute unfair competition by way of unlawful, unfair or fraudulent business acts or practices and unfair, deceptive, untrue or misleading advertising and acts in violation of the Lanham Act § 43(a), 15 U.S.C. § 1125(a) and state law.

124. As a result of the foregoing, Humble Abode has suffered damage.

125. Humble Abode has no adequate remedy at law.

**FOURTH CAUSE OF ACTION**  
**False Advertising**

126. Humble Abode incorporates by reference all the foregoing allegations as if set forth fully herein.

127. Counterclaim / cross-claim defendants made or have caused to be made false statements of fact about their merchandise amounting to false advertisements.

128. The false advertisements actually deceived or had the capacity to deceive a substantial segment of the target population.

129. The deception by counterclaim / cross-claim defendants was material.

130. The falsely advertised product was sold in interstate commerce.

131. Humble Abode was injured as a result of the deception.

132. The acts of the counterclaim / cross-claim defendants as alleged constitute false advertising in violation of the Lanham Act § 43(a)(2), 15 U.S.C. § 1125(a)(2) and state law.

**FIFTH CAUSE OF ACTION**  
**Misappropriation of Trade Secrets**

133. Humble Abode incorporates by reference all the foregoing allegations as if set forth fully herein.

134. Cross-claim defendants Bella D. Ross, Daniel A. Ross and Ross Industries entered into a relationship of trust and confidence with Humble Abode as a result of their role as account representatives of L&P.

135. Humble Abode sought at all times to maintain the confidentiality of the Proprietary Information.

136. Cross-claim defendants Bella D. Ross, Daniel A. Ross and Ross Industries used or disclosed the Proprietary Information to others, including the counterclaim defendant and other cross-claim defendants, in violation of that confidence and for purposes other than Humble Abode's benefit.

137. Cross-claim defendants Bella D. Ross, Daniel A. Ross and Ross Industries acted with malice in revealing the Proprietary Information.

138. The Proprietary Information was, upon information and belief, utilized by counterclaim / cross-claim defendants in formulating a strategy to destroy Humble Abode's business by use of, inter alia, the Predatory Websites.

139. Upon information and belief, as a result of their wrongful acts, counterclaim / cross-claim defendants have caused and unless restrained by the Court will continue to cause irreparable injury and damage to Humble Abode and to the goodwill associated with its trademarks, including diversion of customers, lost sales and lost profits.

140. Humble Abode has no adequate remedy at law.

**SIXTH CAUSE OF ACTION**  
**Breach of Duty**

141. Humble Abode incorporates by reference all the foregoing allegations as if set forth fully herein.

142. Cross-claim defendants Bella D. Ross, Daniel A. Ross and Ross Industries had a duty to Humble Abode not to make or permit the disclosure of Humble Abode's proprietary information arising out their role as account representative of L&P.

143. Cross-claim defendants Bella D. Ross, Daniel A. Ross and Ross Industries breached that duty by making or allowing the disclosure of such proprietary information to others, including the counterclaim defendant and other cross-claim defendants.

144. As a result of the foregoing, Humble Abode has suffered damage, which damage was foreseeable by cross-claim defendants Bella D. Ross, Daniel A. Ross and Ross Industries.

**SEVENTH CAUSE OF ACTION**  
**Interference with Prospective**  
**Economic Advantage**

145. Humble Abode incorporates by reference all the foregoing allegations as if set forth fully herein.

146. Humble Abode had and has a reasonable expectation of economic gain from its relationship with L&P.

147. Counterclaim defendant Buying for the Home, LLC and cross-claim defendants DSC Group and Steven J. Ross were not parties to the relationship between Humble Abode and L&P but were aware of Humble Abode reasonable expectation of economic gain from its relationship with L&P.

148. Counterclaim defendant Buying for the Home, Inc. and cross-claim defendants DSC Group and Steven J. Ross, by the acts alleged above, interfered with Humble Abode's pursuit of a prospective economic or contractual business relationship with L&P by causing the loss of Humble Abode's prospective gain therefrom.

149. Counterclaim defendant Buying for the Home, LLC and cross-claim defendants DSC Group and Steven J. Ross had no justification for such actions.

150. The actions of counterclaim defendant Buying for the Home, LLC and cross-claim defendants DSC Group and Steven J. Ross were fraudulent, dishonest or illegal.

151. As a result of the foregoing, Humble Abode has suffered damage.

**EIGHTH CAUSE OF ACTION**  
**Civil Conspiracy / Concert of Action**

152. Humble Abode incorporates by reference all the foregoing allegations as if set forth fully herein.

153. The counterclaim / cross-claim defendants acted in pursuit of a common plan or design to commit the wrongful acts alleged herein against Humble Abode.

154. The counterclaim / cross-claim defendants pursued their common plan or design by active participation, aid or encouragement of each other or by ratification of the acting party's wrongful act.

155. As a result of the foregoing, Humble Abode has suffered damage, for which the counterclaim / cross-claim defendants are jointly and severally liable.

**WHEREFORE,** counterclaim plaintiff / cross-claim plaintiff Humble Abode, LLC demands judgment in its favor and against counterclaim defendant Buying for the Home, Inc. and cross-claim defendants Ross Industries, Inc., DSC Group, LLC, doing business as Directly Home, LLC, Bella D. Ross, Daniel A. Ross, and Steven J. Ross, as follows:

1) Counterclaim / cross-claim defendants, their officers, agents, servants, employees and attorneys, and those in active concert or participation with them or any of them, be permanently enjoined and restrained:

(a) from using in any manner the HUMBLE ABODE service mark or the Humble Abode Furniture Marks, alone or in combination with any other

words or designs, in a manner likely to cause confusion, deception, or mistake on or in connection with advertising, offering for sale or sale of any goods;

- (b) From representing, suggesting in any fashion to any third party, or performing any acts which give rise to the belief that counterclaim / cross-claim defendants, or any of their goods are authorized or sponsored by Humble Abode;
- (c) From passing off, inducing or enabling others to sell or pass off any goods as products produced by Humble Abode which are in fact not in fact genuine Humble Abode goods;
- (d) From otherwise competing unfairly with Humble Abode in any manner;

2) That counterclaim / cross-claim defendants be required to supply Humble Abode with a complete list of entities or individuals to whom they have offered for sale the goods which were or are being advertising, promoted, offered for sale or sold in connection with the HUMBLE ABODE service mark or the Humble Abode Furniture Marks, whether alone or in combination with any word or words or design or designs.

3) That counterclaim / cross-claim defendants be ordered pursuant to file with the Court and serve upon plaintiff, within thirty (30) days of the entry of injunction prayed for herein, a

written report under oath or certified under penalty of perjury, setting forth in detail the form and manner in which it has complied with the permanent injunction.

- 4) That counterclaim / cross-claim defendants be required to account to plaintiff for any and all profits derived by it, and for all damages sustained by plaintiff by reason of counterclaim / cross-claim defendants' actions complained of herein, including an award of treble damages as provided by law.
- 5) That Humble Abode be awarded consequential, punitive and special damages, including treble damages as provided by law.
- 6) That Humble Abode be awarded both pre-judgment and post-judgment interest on each and every damage award.
- 7) That Humble Abode have and recover from counterclaim / cross-claim defendants its reasonable attorneys' fees, costs and disbursements of this action.
- 8) That Humble Abode have such other and further relief as the Court may deem just and proper.



**JURY DEMAND**

Humble Abode demands a trial by jury for all issues so triable.

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(973) 471-4010

Dated: November 26, 2003

**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

I certify that the matter in controversy is not the subject of any other action pending in any court, arbitration or administrative proceedings.

---

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Dated: November 26, 2003