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18 Greg Ricks

19 **UNITED STATES DISTRICT COURT**  
20 **DISTRICT OF NEVADA**

21 Gregory Ricks  
22 4702 Johnson Creek Loop  
23 College Station, TX 77845

24 Plaintiff,

25 v.

26 Bmezine.com, LLC  
27 1802 N. Carson Street  
28 Carson City, Nevada 89701

Defendant.

CASE NO.

**COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE  
RELIEF**

- (1) Reverse Domain Name Hijacking under 15 U.S.C. § 1114(2)(D)(v)
- (2) Service Mark Infringement under 15 U.S.C. § 1125(a)
- (3) Common Law Trademark Infringement

**JURY TRIAL DEMANDED**

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**COMPLAINT**

Plaintiff, Gregory Ricks (hereinafter “Ricks”), by his undersigned counsel, Clarke Douglas Walton of Walton Law Firm, P.C. and Stevan H. Lieberman of Greenberg & Lieberman, LLC, for its complaint against Bmezine.com, LLC. (hereinafter “Bmezine”) allege as follows:

**SUMMARY OF ACTION**

1. In this action, Ricks seeks injunctive and declaratory relief concerning the non-infringement and non-dilution of Bmezine’s asserted common law trademark rights to the mark BME arising out of a dispute over the control of the contract that controls the domain name BME.COM. Defendant Bmezine filed a World Intellectual Property Organization (WIPO) complaint pursuant to ICANN’s Uniform Domain Name Dispute Resolution Policy (UDRP). The WIPO panel ordered the transfer of the BME.COM domain to Bmezine. Plaintiff disputes the results of the arbitration and seeks in this action to permanently enjoin Bmezine from gaining control of the BME.COM domain pursuant to 15 U.S.C. §1114(2)(D)(v); requests that this Court declare that Ricks has legitimate interests in and to the rights to use the mark BME.COM and the domain name BME.COM pursuant to 28 U.S.C. §2201 and §2202; and to recover compensatory damages that have resulted from Bmezine’s actions.

2. This is also an action for federal and common law service mark infringement, common law tarnishment, bad faith interference with intellectual property rights and unfair competition arising out of Defendant’s infringement of Ricks’ common law rights to the mark BME.COM and Defendant’s bad faith attempts to interfere in Ricks intellectual property rights. This Complaint asserts claims for service mark infringement

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1 in violation of Section 43 of the Lanham Act, 15 U.S.C. §1125(a) and Nevada state  
2 common law for good faith and fair dealing and for unfair competition.

3  
4 **THE PARTIES**

5 3. Plaintiff, Gregory Ricks is an individual domiciled in College Station, Texas with  
6 a primary mailing address 4702 Johnson Creek Loop, College Station, TX 77845.

7 4. Defendant, Bmezine.com, LLC is a Nevada limited liability company with a  
8 primary business address of 1802 N. Carson Street, Carson City, Nevada 89701.

9 **JURISDICTION OVER THE SUBJECT MATTER OF THIS ACTION**

10 5. Subject matter jurisdiction of this Court is proper under 28 U.S.C. §1331 (Federal  
11 Question), 15 U.S.C. §1121 and 28 U.S.C. §1338 (Trademark Disputes), 15 U.S.C.  
12 §1114 (2)(D)(v) (Remedy for UDRP Suspended Domain), 15 U.S.C. §1114 (2)(D)(v)(ii)  
13 (Reverse Domain Hijacking & Injunctive Relief), 15 U.S.C. §1125(a) (Trademark  
14 Infringement), 15 U.S.C. §1116 (Injunctive Relief) and the Declaratory Judgment Act, 28  
15 U.S.C. §2201 and §2202.

16  
17  
18 6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 by virtue  
19 of the diversity of the parties. The amount in controversy exceeds \$75,000.

20 7. This Court has personal jurisdiction over Defendant and venue is proper in this  
21 Court as Nevada is Defendant's domicile.

22 **STATEMENT OF FACTS**

23  
24 8. Ricks, the original registrant of the domain BME.COM, registered the domain in  
25 the name of Motherboards.com on March 6, 2000 because it was a valuable "three-letter  
26 .COM" domain name. Motherboards.com and other companies owned by Gregory Ricks  
27 are unregistered, sole proprietorships.  
28

1 9. Ricks was not aware of the company Bmezine or its use of the mark BME at the  
2 time he registered the domain name BME.COM.

3 10. Since the acquisition of the domain name BME.COM, Ricks initially used the  
4 domain to promote his computer company Motherboards.com, which sold computer  
5 parts.  
6

7 11. Since as early as 2001, Ricks has used the BME.COM mark in association with  
8 Ricks' Internet search engine services and has established common law rights to the  
9 BME.COM mark since that time. Ricks has a valid common law service mark with  
10 protectable rights since as early as 2000.  
11

12 12. Although the actual design of the web pages changed over the years, all of the  
13 web pages used to promote the Internet search engine services were located at  
14 BME.COM with the BME.COM mark boldly displayed on the web pages.  
15

16 13. Over a period of time Ricks used different marketing tools, which utilized  
17 different branding opportunities, in order to promote the Internet search engine services  
18 to the public. The current search results are derived from Yahoo®.

19 14. On or about March 21, 2004 Ricks was contacted by Shannon Larratt, the  
20 previous owner of Bmezine, inquiring as to whether Ricks was interested in selling the  
21 domain BME.COM to Mr. Larratt personally. At that time, Ricks explained that he was  
22 not interested in selling the domain BME.COM as he was using it for his Internet search  
23 engine services. This was the first contact Ricks had with Mr. Larratt until July 2008. In  
24 the subsequent correspondence, Mr. Larratt related to Ricks that when he owned the  
25 Bmezine company, he made a decision many years earlier that the company's brand  
26  
27  
28

1 identity would be based on the domain BMEZINE.COM as the company was known by  
2 its brand BM EZINE not BME.

3 15. Upon information and belief, the assets of the Bmezine company were part of a  
4 divorce settlement and the new owner took over in 2008.

5  
6 16. On March 27, 2008, Bmezine filed a federal trademark application, Application  
7 Serial No. 77432832, to register the mark BME for the following: “Providing an online  
8 interactive database of photos and videos in the field of body art, namely piercing,  
9 tattoos, scarification, subincision, castration” in IC 041 and “Providing news about body  
10 art, namely, piercing, tattoos, scarification, subincision, castration through photos and  
11 video” in IC 044. At this time, the application is still pending registration. Apparently  
12 Bmezine is using BME for commercial Internet related services, including, but not  
13 limited to, free email services.

14  
15 17. The term BME, although originally an acronym for “Body Modification Ezine,”  
16 has become generic and unprotectable because the term BME is commonly used to refer  
17 to persons who go beyond body modifications and are considered “body mutilation  
18 extremists.”

19  
20 18. A review of Bmezine’s web pages located at BMEZINE.COM reveals that  
21 Defendant provides and distributes pornographic images of individuals with piercings,  
22 tattoos, scarification, subincisions and castrations of various sorts.

23  
24 19. Upon information and belief, and according to its previous owner Mr. Larratt,  
25 Bmezine was originally a credit card processing and hosting company and in 2004 the  
26 company ownership changed and it began providing, among other things, the online  
27 database of pornographic photos and videos.  
28

1 20. On or about June 9, 2008, Bmezine filed a WIPO dispute resolution complaint in  
2 accordance with the ICANN UDRP. On or about August 21, 2008 the arbitration panel  
3 ruled that the domain BME.COM should be transferred to Defendant.

4 21. On August 25, 2008 the Official Notification of the Decision was sent to all  
5 parties and the registrar Moniker Online Services, LLC. Pursuant to the ICANN UDRP  
6 and the August 25, 2008 Official Notification, if as a result of an unfavorable UDRP  
7 decision a the disputed domain is ordered transferred, the registrant has ten (10) business  
8 days after receiving the Official Notification to submit official documentation (such as a  
9 copy of a complaint, file-stamped by the clerk of a court) to the Registrar demonstrating  
10 that it has commenced a legal proceeding against the Complainant to prevent the transfer  
11 of the disputed domain name.  
12

13 22. Bmezine's commencing a UDRP proceeding in bad faith is an effort by Bmezine  
14 to interfere with Ricks intellectual property rights associated with the BME.COM mark  
15 and BME.COM domain name.  
16

17 23. Bmezine's use of the mark BME for pornographic images is offensive and likely  
18 to cause consumer confusion with Ricks' use of the mark BME.COM for Internet search  
19 engine services.  
20

21 24. Bmezine's use of the mark BME for pornographic images is offensive and  
22 disparages, as well as tarnishes, Ricks common law rights to the mark BME.COM for  
23 Internet search engine services.  
24

25 **DECLARATORY JUDGMENT**

26 25. Ricks repeats and realleges Paragraph Nos. 1- 24 of this Complaint as if fully set  
27 forth herein.  
28

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1 26. A justiciable issue exists between the parties as the domain BME.COM would be  
2 transferred to Bmezine if registrant did not file this action within ten (10) business days  
3 of the Official Notification of the WIPO arbitration panel’s decision.

4 27. Ricks asserts that the registration and use of the domain BME.COM is not  
5 unlawful because the domain was obtained under a reasonable belief that the use of  
6 BME.COM, a random three letter domain, was fair and otherwise lawful, and without a  
7 bad faith intent to profit from Defendant’s use of BME for an online interactive database  
8 of pornographic photos and videos in the field of body modification.

9 28. Additionally, Ricks asserts that the registration and use of the domain BME.COM  
10 is not unlawful because currently, as well as on the date the domain name was registered,  
11 Defendant’s asserted BME mark is generic, not protectable, not distinctive, and not  
12 famous.

13 29. A judicial determination regarding Ricks rights is necessary and appropriate, thus  
14 Ricks requests this Court to declare that Ricks did not register the BME.COM domain in  
15 bad faith and that Mr. Ricks may use the domain BME.COM without restriction and to  
16 quash the ICANN order transferring the domain BME.COM to Defendant.

17  
18  
19  
20 **COUNT I - Reverse Domain Name Hijacking Under**  
21 **The Anticybersquatting Consumer Protection Act (ACPA),**  
22 **15 U.S.C. § 1114(2)(D)(v)**

23 30. As a cause of action and ground for relief, Ricks asserts his rights pursuant to 15  
24 U.S.C. § 1114 which allows a domain name registrant to sue an overarching trademark  
25 owner who misuses or abuses its rights in bringing a cybersquatting action and realleges  
26 Paragraph Nos. 1-29 of this Complaint as if fully set forth herein.

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1 31. On June 9, 2008, more than eight years after Ricks registration of the domain  
2 BME.COM, Bmezine filed a WIPO complaint in accordance with ICANN UDRP  
3 alleging that Ricks had no rights nor any legitimate interest in BME.COM, falsely  
4 accusing Ricks of capitalizing on the alleged goodwill associated with the Bmezine's  
5 pornography business by driving traffic to its BME.COM site, and demanding that the  
6 domain BME.COM be transferred to Bmezine.  
7

8 32. The arbitration panel ruled that the domain BME.COM should be transferred to  
9 Defendant.  
10

11 33. Ricks' registration and use of the domain name BME.COM is not unlawful. Ricks  
12 was the original registrant of the domain BME.COM and at the time of registration, was  
13 not aware of Defendant's use of the term BME.  
14

15 34. Ricks has a legitimate interest in the disputed domain name BME.COM because  
16 he uses the BME.COM mark for Internet search engine services. The web pages located  
17 at BME.COM have never created the impression that the BME.COM domain nor the  
18 BME.COM mark is or was affiliated or associated with Defendant.  
19

20 35. Ricks asserts that his registration and use of the domain BME.COM is not  
21 unlawful because Defendant's alleged mark is generic, not distinctive, and was not  
22 famous at the time the domain name was registered.  
23

24 36. Ricks requests that the Court declare that Defendants have acted in bad faith have  
25 engaged in reverse domain name hijackers.  
26

**COUNT II - Service Mark Infringement**

27 37. As a cause of action and ground for relief, Ricks alleges service mark  
28 infringement under Section § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a),



1 and at common law and incorporated by reference Paragraph Nos. 1- 36 of this  
2 Complaint as if fully set forth herein.

3 38. For many years prior to the acts complained of herein, Ricks has been  
4 continuously engaged in the development of the BME.COM domain for Internet search  
5 engine services through the use of various marketing opportunities.  
6

7 39. As a result of the extensive efforts by Ricks, the mark BME.COM has become  
8 well known to the public as a distinctive indication of the origin of Ricks Internet search  
9 engine services and is entitled to service mark protection and protection against  
10 infringing uses. Attached hereto as Exhibit A to Ricks Declaration (attached hereto as  
11 Appendix 1) are examples of Ricks' use of the mark BME.COM for Internet search  
12 engine services.  
13

14 40. Bmezine is engaged in not only providing an online interactive database of  
15 pornographic photos and videos in the field of piercing, tattoos, scarification, subincision,  
16 and castration but also for commercial Internet related services, including, but not limited  
17 to, free email services. Attached hereto as Exhibit B is an example of Bmezine's use of  
18 BME.  
19

20 41. The use of the mark BME by Bmezine in a manner illustrated in Appendix 2 is  
21 likely to cause the public to believe, contrary to fact, that the services offered by Bmezine  
22 emanate from, or are otherwise sponsored or approved by Ricks. The use of BME  
23 infringes Ricks exclusive right in the mark BME.COM within the meaning of Section §  
24 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a) and at common law.  
25  
26  
27  
28

1 42. Unless enjoined by this Court, Bmezine will continue to infringe the mark  
2 BME.COM thereby deceiving the public and causing Ricks immediate and irreparable  
3 injury for which is has not adequate remedy at law.  
4

5 **WHEREFORE**, Plaintiff Ricks, demands judgment against Defendant, Bmezine as  
6 follows:  
7

8  
9 1. Declaring that Gregory Ricks did not register the BME.COM domain in bad faith,  
10 that his actions do not constitute trademark infringement or dilution under United  
11 States law, and that Ricks may use the domain BME.COM without restriction;  
12

13 2. Quashing the ICANN arbitration's award and transfer order of the BME.COM  
14 domain to Defendant;  
15

16  
17 3. Enjoin Bmezine.com LLC and any other entity, pursuant to 15 U.S.C. §1116, from  
18 using the BME.COM domain now and in the future;  
19

20  
21 4. Declare Bmezine.com LLC has infringed Ricks' exclusive right in the mark  
22 BME.COM under 15 U.S.C. 1125(a) and at common law;  
23

24 5. Award Plaintiff damages, both past and future, for interference with its contractual  
25 rights and contract expectancies relating to the domain name BME.COM;  
26  
27  
28

1 6. Awarding attorney's fees, pursuant to 15 U.S.C. §1117, and costs and interest to  
2 Gregory Ricks; and,

3  
4  
5 7. Granting such other and further relief to Plaintiff Gregory Ricks as this Court  
6 deems just and proper.

7  
8 Date: September 5, 2008

9  
10 Respectfully submitted,  
11 Greg Ricks  
12 By Counsel

13 

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Greg Ricks

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# **APPENDIX 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Gregory Ricks )  
4702 Johnson Creek Loop )  
College Station, TX 77845 )

CASE NUMBER: CV \_\_\_\_\_

Plaintiff, )

v. )

Bmezine.com, LLC. )  
1802 N. Carson Street )  
Carson City, Nevada )

Defendant. )

DECLARATION OF GREGORY RICKS

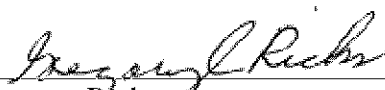
Gregory Ricks, declares under the penalty of perjury as follows:

1. My name is Gregory Ricks, I am over the age of 18 and competent to make this declaration. The facts stated herein are within my personal knowledge and are true and correct, and where stated upon information and belief, are believed to be true and correct.
2. I live and have a primary mailing address at 4702 Johnson Creek Loop, College Station, TX 77845.
3. I acquired the domain name BME.COM on March 6, 2000, as it is a valuable three-letter .com domain name.
4. At the time I was not aware of Bmezine.com LLC in any way.
5. When I first obtained the domain name BME.COM I directed it to my primary business site MOTHERBOARDS.COM.

6. Over the years I have provided Internet search services using the BME.COM mark. Although the site has had different logos and formats, such services have been provided continuously since 2000. The results provided have always been derived from Google® or Yahoo®, which are controlled exclusively by the latter companies. (see Exhibit A)
7. On or about March 21, 2004 I was contacted by Shannon Larratt, the previous owner of Bmezine, inquiring as to whether I was interested in selling the domain BME.COM to Mr. Larratt personally.
8. At that time, I explained that BME.com was not for sale.
9. Later, in 2008 Mr. Larratt related to me that his Bmezine company used BMEZINE as its brand identity mark and that was why he wanted to buy the domain for himself and not his company.
10. The 2004 contact was the first and only contact Ricks had with Bmezine until April 2008.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: September 5, 2008

  
\_\_\_\_\_  
Gregory Ricks

# **EXHIBIT A**

The logo for motherboards.com, featuring the word "motherBOARDS" in a stylized font with "COM" in smaller letters to the right, all within a blue curved banner.

*Welcome to  
**Motherboards.com** your  
best  
source for Name Brand  
Motherboards  
and High Quality PC Upgrade  
Parts.*

For your protection we use the most trusted secure server key authority. Verify that your credit card transactions are secure by clicking the VeriSign logo.

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Please read our [Terms and Conditions](#) before placing an order.

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- Check out our [Compare Motherboard](#) feature to help in your Motherboard selection.
- Repeat Customers use [Gator Software](#) to fill out our order form. This fantastic utility automatically fills out forms and remembers your login names and passwords and comes with over \$100 of premium coupons to popular shopping sites!
- Many of our long term customers already know this but if you are new to our site you should know if you purchase a motherboard and CPU together we configure and test motherboard prior to shipment.
- Shipping charges are \$12/UPS Ground, \$12/UPS 3 Day and \$26/UPS Next Business Day. Case shipping extra.
- Most orders ship within 1 to 3 days business days.

**Order:**

Online 24 /7 or you can call

**800-364-7232** M-F

9:00AM - 5:00PM

CST to place your order with a live operator.

**Technical Support:**

Customers can reach a Technician by email

[technical@mssi.com](mailto:technical@mssi.com)

or by calling

**337-625-9592**

please have your invoice available.

**Sales:**

You can send any sales related

questions to  
[sales@mssi.com](mailto:sales@mssi.com)



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## Jewelry Categories

### For the one you love

- [Engagement](#)
- [Promise Rings](#)

- [Anniversary Rings](#)

- 

## **Types of Jewelry**

- [Rings](#)
- [Bracelets](#)
- [Necklaces](#)
- [Earrings](#)

## **Gems and Stones**

- [Diamonds](#)
- [Sapphires](#)
- [Pearls](#)
- [Rubies](#)

## **Precious Metals**

- [Platinum](#)
- [White Gold](#)
- [Yellow Gold](#)
- [Silver](#)

## Related Links

- [Body Piercing](#)
- [Navel Body Jewelry](#)
- [Belly Ring Jewelry](#)
- [Eyebrow Body Jewelry](#)
- [Tongue Jewelry](#)
  
- [Nose Jewelry](#)
- [Cheap Body Jewelry](#)
- [Gold Body Jewelry](#)
- [Sexy Body Jewelry](#)
- [Piercing Jewelry](#)
  
- [Glow Jewelry](#)
- [Celtic Body Jewelry](#)
- [Tribal Body Jewelry](#)
- [Belly Button Jewellery](#)
- [Custom Made Body Jewelry](#)

## Favorite Categories

## Tattoos

- [Tattoo](#)
- [Tattoo Flash](#)
- [Kid Tattoo](#)
- [Tattooing](#)
- [Tattoo Sleeve](#)

## Massage

- [Massage Class](#)
- [Massage Therapy Course](#)
- [Massage College](#)
- [Tantric Massage](#)
- [Massage Therapist College](#)

## Spas

- [Sauna](#)
- [Spa Resort](#)
- [Spa](#)
- [Day Spa](#)
- [New York Spa](#)

## Spa

- [London Health Spa](#)
- [Champneys](#)
- [Health Spa Yorkshire](#)
- [Health Spa In the Uk](#)
- [Spa Weekend Break](#)

## Beauty Services

- [Beauty Salon](#)
- [Esthetician](#)
- [Salon](#)
- [Treatment](#)
- [Regis](#)

## Vacation

- [Cruise](#)
- [Hotel](#)
- [Cheap Flight](#)
- [Travel Agent](#)
- [Golf Vacations](#)



**Search the  
Web:**

# **APPENDIX 2**



# BME/World

Free homepages and anonymous email for the  
online body modification community.

[Apply for a free homepage and anonymous email account](#)

[Read the rules of membership](#)

[View the HTML template](#)

[View the online help](#)

[About BME/World...](#)

**SOME OF THE PAGES ON THIS SERVER:** ([Email me](#) to be added or remove)

- [Bert's Perforinktions](#) *Tattoos and Piercings*
- [Bonita/Christine](#) *What bodyart/body modification means to me*
- [Brad Giles' Psyko Art](#) *The Zany Crazy Mass Mindf\*\*k World*
- [Brad's Piercing Photographs at BME](#) *Lots of nipples, and even some genitals*
- [Braveone and Baby's Home Page](#) *Hardcore adult -- members only!*
- [buster](#) *current and future mods*
- [buttrfly's bodyart pages](#) *art, wheel, and sludge the slug*
- [buttrfly's bodyart pages](#) *art, wheel, and sludge the slug*
- [Catgirl](#) *Meat, Sex, and Me*
- [ceridwen: the lady is in the building!](#) *I am an online entitiy.*
- [Claire's bodmods](#) *Massage My Ego!*
- [Cloglover's Piercing Gallery](#) *Genital Piercings and Female Nipple Piercings*
- [Creeper's Piercing Playground](#) *Piercings, Pictures, and Aftercare*
- [dogslut's homepage](#) *Cock torture and Self-Castration*
- [Dragonfly Designs](#) *From Void and Formless Infinite: Tattoo studio specializing in tattoos*
- [Dutchman](#) *Scrotal/Testicular Injection, scarification, piercing, and other body modications*
- [ESMAN](#) *Cock & Ball Torture Scenes*
- [Female Pumping... A woman`s home](#) *Breast pumping, nipple pumping, genital pumping*
- [femsubmissionsex](#) *IRC channel homepage*
- [Frank's Body Art Page](#) *"Just another Body Art Page"*
- [Get My Balls!](#) *A site for gay men fond of castration*
- [Golgotha](#) *A place of torment or torture, A hill outside ancient Jerusalem where Jesus was crucified, and Me.*
- [Gothic Tokyo](#) *Modificatio Do-It-Yourself Page*
- [Heidi Anderson's](#) *Munches I Have Known*
- [Inky's Spot](#) *Kevin's Tattoos*
- [It's my page.. and jeffs.. Deal With it!!!](#) *Tattoos, Piercing, and Implants*
- [JoeSuper's Home Page](#) *A tribute to septum pierced girls*
- [Josh Burdette](#) *A Freak Loose on the Web: Here there be Dragons and RABbits*
- [Let me hurt you](#) *\*Girls\*Kick\*Ass\**
- [LoBalls!](#) *Split-ring Ball Weights and Princes Wands*
- [Markus](#) *welcome to my world*
- [Mischa's Piercing Site](#) *Piercing in Sydney, Australia*
- [Modified: Thy body is thy temple, thou shalt adorn it.](#) *Reasons and Thoughts*