

THIRD EDUCATION GROUP, INC.
A Wisconsin Nonstock Corporation
2837 North Marietta Avenue
Milwaukee, WI 53211

Plaintiff,

Case No. _____

v.

Case Code: 30701
Declaratory Judgment

RICHARD PHELPS
201 N. 1st Ave., Apt 443
(also given as 401 N. 1st Ave., Apt. 443)
Iowa City, IA 52245

COMPLAINT

Plaintiff, Third Education Group, Inc., by its attorney, Joseph E. Dannecker, respectfully comes before this court and, as its complaint against defendant, alleges as follows:

BACKGROUND

This lawsuit predominately concerns ownership rights in and to a corporate name, trademark, and certain internet domain names acquired and used in conjunction with the corporate name and trademark. However, the dispute is not about the law of intellectual property, but about Defendant’s obligations to Plaintiff, and Plaintiff’s rights arising out of Defendant’s actions, under Wisconsin law.

Defendant, on behalf of Plaintiff, acquired the trademark and domain names, but registered them in his own name. Plaintiff contends that Defendant committed, and was obligated, to register them for the benefit of Plaintiff.

Plaintiff also claims ownership of its own name, “Third Education Group, Inc.,” and asserts that Defendant has no right, title or interest in and to any use of this name, though Defendant’s actions demonstrate continued misappropriation of this corporate identity.

All issues in dispute require determination and application of Wisconsin law in the first instance. While claims to domain names, under some circumstances, may be resolved using a commercial process, the Uniform Domain Name Dispute Resolution

Policy (UDRP), the UDRP relies on determining and applying underlying law. Similarly, while state and federal courts have concurrent jurisdiction under the federal Lanham Act, trademark registration under the act is no more than prima facie evidence of an exclusive right to use the mark: any determination of rights will turn on Wisconsin law as it determines the significance of Defendant's actions and the circumstances in which they were taken.

PARTIES

1. Plaintiff, Third Education Group, Inc., is a nonstock Wisconsin domestic corporation with its principal office located at 2837 North Marietta Avenue, Milwaukee, Wisconsin, 53211
2. Defendant, Richard Phelps, is natural person who, on information and belief, is domiciled at 201 N. 1st Avenue, Apartment 443, Iowa City, Iowa 52245, but who has variously given his address as 401 N. 1st Avenue, Apartment 443, Iowa City, Iowa 52245 (hereinafter "Phelps").

FACTS

3. During the years 2001 through 2004, Bruce Thompson ("Thompson") and defendant Phelps engaged in extensive communications, largely by electronic mail, discussing and planning a joint effort to: (a) create and operate an online journal (to be published on the internet) devoted to policy issues in education; and (b) organize and operate an entity to conduct related activities, including promoting, managing and developing support for the online journal.
4. In 2003, Thompson and Phelps started the aforementioned organization, though without a formal name or form of entity.
5. In 2003, Phelps requested foundation funding for the organization, without using a specific organization name but using the names of Phelps and Thompson and referring to the organization as a "third way" of disseminating education research.
6. In 2004, Phelps and Thompson agreed to name the organization "Third Education Group."
7. When Third Education Group first started and operated, it was not incorporated.
8. Third Education Group clearly existed as a distinct, unincorporated entity during the second half of 2003 and the first half of 2004.
9. In conjunction with obtaining 501(c)(3) recognition Phelps acknowledged and represented that TEG started as an organization before the trademark and domain name registrations were initiated.

10. At all relevant times, Bruce Thompson acted on behalf of the collaborative effort, joint venture, association or partnership that was to become Third Education Group, and/or behalf of Third Education Group and/or Third Education Group, Inc., successive successors in interest. (Hereinafter, TEG refers to Third Education Group, Third Education Group, Inc., or both, as the context allows.)
11. On behalf of Third Education Group, Phelps volunteered to: register internet domain names and secure ownership of a suitable internet web site address for Third Education Group.
12. On behalf of Third Education Group, Phelps volunteered to: set up the organization's web site, including hiring someone to design or assist in designing the site.
13. On behalf of Third Education Group, Phelps volunteered to submit a trademark registration application for the name "Third Education Group."
14. Phelps and Thompson agreed that the online journal, to be published on the web site, would be called *Third Education Group Review* ("*TEG Review*").
15. Phelps and Thompson agreed that, in developing the web site, Thompson would be responsible for the *TEG Review* portion of the site and serve as editor of the *TEG Review*, and Phelps would take responsibility for other sections relating to TEG as an organization.
16. Phelps recognized, acknowledged and represented that the web site belonged to TEG.
17. In correspondence with Thompson during 2004 and 2005, Phelps recognized, acknowledged and represented that all aspects of Third Education Group, including the journal and the web site, were collaborative efforts of Phelps and Thompson, with the two allocating between themselves the various tasks necessary to their joint effort.
18. In correspondence with persons other than Thompson during 2004 and 2005, Phelps recognized, acknowledged and represented that all aspects of Third Education Group, including the journal and the web site, were collaborative efforts of Phelps and Thompson, with the two allocating between themselves the various tasks necessary to their joint effort.
19. No later than August 2004, Kathleen Miller, spouse of Bruce Thompson, became a member of Third Education Group.
20. On July 2004, Phelps reported to Thompson that he had registered an internet domain name, and that "thirdeducationgroup.org" was TEG's domain name.

21. Phelps also represented that he had filed a registration for “thirdeducationgroup.net” and further represented that he would register other, similar domain names with various suffixes, in order to protect the name and internet identity of Third Education Group.
22. When he registered one or more domain names, Phelps was acting on behalf of Third Education Group, for the benefit of Third Education Group.
23. Phelps did not, at any time before asserting sole ownership of the domain names in 2007, disclose to Thompson or Third Education Group or Third Education Group, Inc. that he had registered the domain names in his own name rather than the name of Third Education Group.
24. Phelps did not, at any time before asserting sole ownership of the domain names in 2007, disclose to Thompson or Third Education Group or Third Education Group, Inc. that he might have acted solely in his own personal interest, and not the interest of TEG, in registering domain names.
25. In June 2004, Phelps applied for registration of the trademark “THIRD EDUCATION GROUP” (the “trademark”).
26. At the time he applied for this trademark registration, Phelps was acting on behalf of TEG, for the exclusive benefit of TEG.
27. Phelps used his own name as the name of the trademark applicant, rather than indicate the applicant to be either Third Education Group or Phelps and Thompson acting jointly.
28. At no time did Phelps disclose to Thompson or TEG that he had applied for the trademark registration in his own name, or that he had applied on behalf of himself and not on behalf of Third Education Group.
29. Thompson and Third Education Group completely trusted Phelps to obtain trademark and domain name registrations for TEG.
30. Phelps consistently discussed and represented the trademark and trademark application as shared property, or as Third Education Group property.
31. At least as late as August 2005, Phelps referred to the trademark as TEG property.
32. Based on the statements and disclosures by Phelps, Thompson believed that TEG had acquired registered rights to the trademark.
33. In filing a Statement of Use for the trademark, in September 2005, Phelps identified his position as “co-founder and director, Third Education Group.”

34. At no time did Phelps disclose to Thompson or TEG that, in January 2006, the U.S. Patent and Trademark Office (“PTO”) declared his submittal to be an “unacceptable specimen” because it failed to show actual use of the mark.
35. Phelps further failed to disclose that on June 8, 2006, he responded to the PTO letter of January 2006.
36. Phelps further failed to disclose that, in responding to the PTO letter, he submitted materials advertising his personal business to support the application for registration and demonstrate use of the trademark.
37. On July 7, 2006 the PTO issued a Notice of Acceptance and Statement of Use; and on August 15, 2006 it issued a registration certificate for the trademark.
38. It was mutually understood by Thompson and Phelps that Phelps was responsible for all action required for securing TEG trademark rights.
39. Phelps represented and acknowledged that he was responsible for obtaining the trademark on behalf of TEG.
40. Federal trademark office records indicate that the trademark “THIRD EDUCATION GROUP” was published for opposition on January 28, 2005, and registered on August 15, 2006; first use is identified as December 30, 2004, and first use in commerce is identified as January 1, 2005.
41. Phelps proposed that the organization be incorporated in Wisconsin, and Thompson agreed.
42. After agreeing on the state of incorporation, Thompson filed the Articles of Incorporation of Third Education Group, Inc., a domestic Wisconsin nonstock corporation. The registered effective date is January 18, 2005, according to the Wisconsin Department of Financial Institutions. The initial named directors are Bruce R. Thompson, Richard Phelps, and Kathleen O. Miller.
43. Prior to filing the Articles of Incorporation, Thompson and Phelps discussed and agreed to apply for Internal Revenue Service (IRS) recognition as a 501(c)(3) organization.
44. On or after January 17, 2005 Phelps was provided draft bylaws to review and modify.
45. The bylaws, as approved by Phelps, were officially adopted on February 13, 2005.
46. Phelps was also provided a draft IRS Form 1023 for review.
47. Phelps approved the Form 1023 in the form in which it was submitted to the IRS.

48. On February 14, 2005, on behalf of Third Education Group, Inc., Thompson submitted Form 1023 to the IRS, as approved by Phelps, requesting recognition of tax exempt status under Internal Revenue Code section 501(c)(3).
49. On the Form 1023, as approved by Phelps and submitted to the IRS, the following persons are listed as officers and directors: Phelps, Thompson and Kathleen O. Miller.
50. By letter dated September 7, 2005, the IRS recognized the 501(c)(3) status of Third Education Group, Inc., effective January 25, 2005.
51. During 2005, Thompson and Phelps obtained information on applying for an International Standard Serial Number (ISSN) to be assigned to the *Third Education Group Review*.
52. Phelps represented and acknowledged that the ISSN was to be acquired on behalf of, and belong to, TEG.
53. Phelps offered to fill out the ISSN application, and Thompson agreed that Phelps could do it.
54. On or about May 2, 2005, Phelps submitted an application for an ISSN to NDSP, the entity responsible for assigning ISSN designations. This application lists the publication as *Third Education Group Review*, Phelps as contact person, and the publisher as Third Education Group, Milwaukee, Wisconsin.
55. In August, 2005, Phelps reported that the *TEG Review* was assigned ISSN 1557-2870.
56. In 2006, after Phelps blocked access to the web site, effectively preventing TEG, Inc. from further publication of *TEG Review*, Thompson submitted a new application for an ISSN. The application submitted by Thompson lists the publication as *Third Education Group Review: the Journal on Education Policy*; and the publisher as "Third Education Group, Inc." in Milwaukee, Wisconsin.
57. In response to the application by Thompson, the NDSP assigned TEG the same ISSN as before: 1557-2870.
58. On information and belief, Phelps continues to publish an online journal using ISSN number 1557-2870, identifying "Third Education Group, Inc." as owner and publisher.
59. Phelps has no authority to use the name "Third Education Group, Inc."
60. Phelps has no legal authority to use the ISSN 1557-2870.

61. Phelps has affirmatively acknowledged and represented that ISSN 1557-2870 is the property of Third Education Group, Inc.
62. During 2005 and 2006, Thompson and Phelps had ongoing disagreements over content and editing of the TEG review.
63. On or about March 8, 2006, Phelps objected to publishing in the *TEG Review* a particular paper submitted by Dr. John J. Cannell (the “Cannell paper”).
64. On information and belief, after resigning from the TEG review and taking control of the domain names and web site for his exclusive personal use, Phelps published the Cannell paper in Phelps’ own on-line journal.
65. On or about March 8 and March 9, 2006, Phelps resigned from the *TEG Review*.
66. At the time he resigned from *TEG Review*, Phelps indicated he might continue working on the TEG website.
67. Phelps sent Thompson a message contending that Thompson had violated an agreement between the two by posting on the web site one or more items not approved by Phelps.
68. On or about March 13, 2006, Phelps changed the password for the thirducationgroup.org web site, preventing access by anyone other than Phelps, making it impossible for Thompson, as editor of the *TEG Review*, to edit, publish or operate the *TEG Review*.
69. Upon discovering that access to the website was blocked, Thompson moved the *TEG Review* to another site registered by Phelps on behalf of the organization, “thirducationgroup.net,” and informed Phelps that he had done so, asking Phelps to post links to the review on the site restricted by Phelps.
70. Thompson also pointed out to Phelps that he had searched their correspondence, but could not find support for Phelps’ claim that Thompson had violated any agreement he and Phelps had made.
71. Phelps responded by stating: “then I will move the domains and cancel the Pair contract.”
72. “Pair” refers to Pair Networks, Inc., the internet service provider that hosted the website addresses belonging to Third Education Group, Inc.
73. In the same correspondence, Phelps set a number of conditions for continued operation of Third Education Group, Inc.

74. The conditions set by Phelps included requirements that his conditions be written into TEG's bylaws, and that only Phelps, or someone designated by Phelps, would have access to the website.
75. On May 6, 2006, the board of directors of Third Education Group, Inc., in accordance with the bylaws, and upon due notice, acted to remove Phelps as officer and director of the corporation and demand return of company property.
76. By letter dated May 12, 2006, the board notified Phelps of his removal from the board and demanded that he cease using the name "Third Education Group" and "Third Education Group, Inc.," and that he return to the company control of the domain names registered on behalf of Third Education Group, and that he not use the ISSN 1557-2870, assigned to a publication of Third Education Group, Inc., for any publication by Phelps.
77. By letter dated August 6, 2007, attorneys for Phelps informed Thompson that Phelps claimed ownership of the trademark "Third Education Group," the ISSN 1557-2870, and all works authored by Phelps for *TEG Review*.
78. By letter dated September 24, 2007, to Pair Networks, Inc., attorneys for Phelps claimed ownership of materials being hosted by Pair on the Internet for Third Education Group, Inc. at the "tegr.org" web site, and specifically claiming that Phelps is exclusive owner of copyrights in and to an article by Phelps entitled "The Source of Lake Wobegon" as well as a website previously appearing at thirdducationgroup.org.
79. Under threat of litigation for copyright infringement, in order to preserve a liability exemption available to internet service providers under 17 U.S.C. section 512, Pair Networks, Inc. terminated the tegr.org website operated by Third Education Group, Inc.
80. Phelps, in submitting the specific article referenced, "the Source of Lake Wobegon," designated Third Education Group, Inc. as owner of the article's copyright.
81. The website content referenced, which Phelps claims to own, was developed solely on behalf of, at the direction of, and for the benefit of, TEG.
82. The website content referenced, which Phelps claims to own, remains the rightful property of Third Education Group, Inc.
83. In 2006, Phelps identified as donations to TEG several expenses incurred on behalf of TEG, including expenses for web site development, internet website hosting services, and trademark registration costs.
84. Phelps identified these expenses, and they were acknowledged in writing by TEG,

for the purpose of enabling Phelps to deduct the expenses as charitable contributions on his income tax returns.

85. On information and belief, Phelps has deducted expenses incurred in connection with obtaining the trademark and domain names, and developing the website and obtaining website hosting services, as charitable contributions to TEG.

FIRST CLAIM: CONVERSION
(AS TO DOMAIN NAMES, TRADEMARK, CORPORATE NAME,
AND ISSN, COLLECTIVELY AND SEPARATELY)

86. Re-allege and incorporate by reference, paragraphs 1 through 85 of this Complaint.
87. Richard Phelps was acting on behalf of Third Education Group and Third Education Group, Inc. (together, “TEG”) in undertaking to obtain trademark registration for the name “Third Education Group.”
88. The trademark “THIRD EDUCATION GROUP” (the “trademark”) is rightfully the property of Third Education Group, Inc.
89. Phelps has asserted sole ownership of the trademark and domain names, and has asserted sole control of them for his own personal use, without the consent of Third Education Group, Inc., and without lawful authority.
90. By failing to disclose, at the time of his resignation and termination, that the PTO had requested evidence of trademark use; and by subsequently responding to the PTO request on his own behalf, Phelps effectively further usurped the rights of TEG and further converted trademark rights and benefits rightfully belonging to TEG.
91. Phelps’ actions with respect to the trademark seriously interfere with the rights of Third Education Group, Inc. (“TEG”) to possess this property, causing irreparable and continuing damage to Plaintiff by preventing Plaintiff from using its own trademark, which is both Plaintiff’s corporate name and the name by which Plaintiff is publicly known, thereby confusing the public and denying Plaintiff the benefit of the good will, market identity and audience connections it has worked to develop in and through the domain names.
92. Richard Phelps was acting on behalf of Third Education Group and Third Education Group, Inc. (together, “TEG”) in undertaking to obtain and to obtain registration of the domain names “thirdeducationgroup.org,” “thirdeducationgroup.net,” “thirdeducationgroup.com” and/or any and all domain names containing the words “third,” “education” and “group.”
93. The internet domain names thirdeducationgroup.net, thirdeducationgroup.org, and

any internet domain names containing any iteration of the phrase “third education group,” and registered by or in the name of Richard Phelps or any entity owned or controlled or designated by Phelps (the “domain names”), are rightfully the property of Third Education Group, Inc.

94. Phelps’ actions with respect to the domain names seriously interfere with the rights of Third Education Group, Inc. (“TEG”) to possess this property, causing irreparable and continuing damage to plaintiff by preventing Plaintiff from using its own name in a domain name, confusing the public and denying Plaintiff the benefit of the good will, market identity and audience connections it has worked to develop in and through the domain names.
95. Richard Phelps was acting on behalf of Third Education Group, Inc. in undertaking to obtain an ISSN number for the journal published by Third Education Group, Inc.
96. The ISSN 1557-2870 is assigned to the online journal published by Third Education Group, Inc.
97. Use of ISSN 1557-2870 is the sole and exclusive right of Third Education group, Inc.
98. On information and belief, Phelps continues to use ISSN 1557-2870 as his sole personal property, without consent of Third Education Group, Inc., and without lawful authority.
99. Phelps continues to assert ownership of ISSN 1557-2870 as his sole personal property, without consent of Third Education Group, Inc., and without lawful authority.
100. Phelps’ actions with respect to ISSN 1557-2870 seriously interfered and interfere with the rights of Third Education Group, Inc. to possess and use this property, causing irreparable and continuing damage to Plaintiff.
101. Phelps has used, and, on information and belief, continues to use and assert ownership of the name of the corporation, “Third Education Group, Inc.” without the consent of Third Education Group, Inc., and without lawful authority.
102. Phelps’ actions with respect to the name “Third Education Group, Inc.” seriously interfered and interfere with the rights of Third Education Group, Inc. to possess and use this property, causing irreparable and continuing damage to Plaintiff..
103. Phelps’ actions with respect to: the name “Third Education Group, Inc.,” the trademark “THIRD EDUCATION GROUP,” the ISSN 1557-2870, and the domain names, and with respect to these properties collectively, seriously interfered and continues to interfere with the rights of Plaintiff to possess and use

these properties individually and collectively, causing irreparable and continuing damage to Plaintiff.

SECOND CLAIM: BREACH OF FIDUCIARY DUTY

104. Re-allege and incorporate by reference, paragraphs 1 through 85 of this Complaint.
105. In undertaking to obtain trademark and domain name registration, Phelps did so on behalf of “Third Education Group, “ and Third Education Group, Inc. (“TEG”).
106. In undertaking to obtain trademark and domain name registration, Phelps was obligated to act for the benefit of TEG, and assumed an absolute duty of loyalty to TEG with regard to all related matters.
107. Phelps registered TEG trademark and domain names in his own name, though he was obligated to act on behalf of TEG, for the benefit of TEG, when he obtained these same trademark and domain names.
108. At the time he obtained these registrations, Phelps did not disclose that he was obtaining them in his own name.
109. TEG and Thompson, as principal incorporator and Phelps’ co-principal in creating TEG, trusted Phelps to perform the tasks of obtaining trademark and domain name registration for the sole and exclusive benefit of TEG, and to make any necessary and appropriate communication or disclosure regarding his actions.
110. Because he was entrusted with absolute responsibility to obtain trademark and domain name registration, Phelps held knowledge of the subject matter that made TEG and Thompson dependent on Phelps due to their inferior knowledge of relevant facts and lack of business intelligence as to Phelps' actions.
111. By subsequently failing to disclose that the PTO required evidence of trademark use, and by demonstrating use of the trademark using materials prepared for his personal benefit, Phelps also usurped TEG’s opportunity to correctly complete the trademark registration process for its own benefit.
112. By asserting personal ownership and control of the trademark and domain names obtained for the benefit of TEG, Phelps has breached his fiduciary duty to TEG, usurping all right and benefit of Plaintiff in the trademark and domain names, thereby damaging TEG, which has no effective control or use of the trademark or domain names in which it has invested its identity and resources.
113. This breach of fiduciary duty does continuing and irreparable damage to TEG.

THIRD CLAIM: ESTOPPEL

114. Re-allege and incorporate by reference, paragraphs 1 through 85 of this Complaint.
115. Phelps promised to obtain trademark and domain name registrations on behalf of TEG.
116. Phelps undertook the obligation to obtain trademark and domain name registrations on behalf of TEG.
117. Phelps communicated that he was obtaining trademark and domain name registrations on behalf of TEG.
118. Phelps communicated that he had obtained trademark and domain name registrations on behalf of TEG.
119. Phelps' promises and related actions each, separately and collectively, induced TEG and Thompson to forbear from taking action to obtain TEG trademark and domain names, and to take action to invest time and money in organizing and developing TEG and the *TEG Review* and associated business goodwill in the trademark and domain names.
120. Injustice can only be avoided by enforcing Phelps' promises, stopping him from using the trademark or domain names, and by requiring him to execute appropriate and lawful assignments of all relevant trademark and domain name rights to Third Education Group, Inc.

FOURTH CLAIM: MISREPRESENTATION (1ST ALTERNATIVE THEORY): NEGLIGENT MISREPRESENTATION

121. Re-allege and incorporate by reference, paragraphs 1 through 85 of this Complaint.
122. By undertaking to obtain trademark and domain name registration on behalf of TEG, Phelps had a duty to disclose any information to TEG and Thompson that was reasonably necessary to protect TEG's interest in the trademark registration and domain names.
123. Phelps failed to exercise ordinary care by failing to inform Thompson and TEG that he had registered the trademark and domain names in his own name, rather than in the name of TEG.
124. Further, by representing and affirming that he had applied for such trademark and domain names on behalf of TEG, Phelps made untrue representations.

125. Phelps' failure to disclose that he registered the trademark and domain names in his own name, and his representation that he had performed such acts on behalf of TEG, could reasonably be foreseen to subject the interests of TEG to an unreasonable risk of damage.
126. TEG and Thompson, who at all times acted on behalf of TEG as Phelps co-principal, relied on Phelps' representations, and were actually misled by his representations and failure to disclose facts.
127. Because Phelps failed to provide necessary, accurate information to Thompson and TEG, TEG has committed substantial time and money to developing value in the trademark and domain names, and TEG is damaged by its lack of clear title and right to use the domain names and trademark.
128. Phelps' misrepresentations have done incalculable and irreparable damage to Plaintiff, continue to damage Plaintiff, and will continue to damage Plaintiff unless this court intervenes.

FIFTH CLAIM
MISREPRESENTATION (2ND ALTERNATIVE THEORY):
INTENTIONAL DECEIT

129. Re-allege and incorporate by reference, paragraphs 1 through 85 of this Complaint.
129. TEG and Thompson placed trust and confidence in Phelps by entrusting Phelps with responsibility to obtain domain names and trademark registration on behalf of, and for the benefit of, TEG.
129. Phelps repeatedly affirmed and represented that he was obtaining domain name and trademark registration on behalf of TEG, or on behalf of Phelps and Thompson jointly, and had a duty to disclose that he was performing solely for his own benefit any tasks that he was entrusted to perform for TEG.
130. Phelps failed to properly represent facts which he had a duty to disclose.
131. By failing to disclose that he obtained the trademark and domain names for his own benefit and by repeatedly asserting that he had obtained them for TEG, Phelps made untrue representations.
132. Phelps made such untrue representations knowing that the representations were untrue.
128. Phelps made such representations with intent to deceive and induce TEG and Thompson to act upon them to TEG's pecuniary damage.

129. TEG, and Thompson believed Phelps' representations that he obtained trademark and domain name registration on behalf of TEG, to be true, and relied upon them by acting in the belief that the trademark and domain names were registered in the name, and for the benefit, of TEG.
130. As a result of relying on Phelps' misrepresentations, TEG has expended substantial time and resources developing goodwill and business value in the trademark and domain names, and is damaged by its inability to effectively use and benefit from trademark and domain names in which it has invested its identity and resources.

SIXTH CLAIM
MISREPRESENTATION (3RD ALTERNATIVE THEORY):
STRICT RESPONSIBILITY

131. Re-allege and incorporate by reference, paragraphs 1 through 85 of this Complaint.
132. Phelps made representations of fact; specifically including representations that he would, and did, obtain trademark and domain name registrations on behalf of TEG.
133. Phelps' representations were untrue, because he obtained the trademark and domain names in his own name, and has since exerted exclusive control over their use, for his exclusive, personal benefit and to the detriment of TEG.
134. Phelps made such representations based upon his personal knowledge; and Phelps' was so situated that he had particular means of ascertaining pertinent facts, his position made possible complete knowledge, and his statements fairly implied that he had complete knowledge.
135. Phelps stood to gain if TEG acted on Phelps' representations, as he demonstrated in asserting total control over the value TEG built in the trademark and domain names, and in terminating TEG's access to and use of the trademark and domain names that TEG rightfully owns, and in appropriating the trademark and domain names for his sole personal use.
136. TEG and Thompson believed Phelps representations to be true and relied on them, committing substantial time and resources to developing substantive and goodwill value associated with the TEG trademark and domain names.

DAMAGES TO PLAINTIFF ON ALL CLAIMS

137. As a result of Defendant Phelps's actions as set forth herein, Plaintiff has suffered loss and damages in excess of \$10,000.00 in direct costs and cost of time and resources invested, and will suffer still greater loss and irreparable damage due to its inability to publish and otherwise conduct operations in its own name using its corporate name, trademark, domain names and other assets rightfully belonging to Plaintiff and acquired on Plaintiff's behalf, due to Defendant's actions including threat of litigation to internet service providers which effectively prevents Plaintiff's access to publication through its intended medium.
138. Plaintiff will continue to suffer still greater loss and irreparable damage due to confusion among prospective financial supporters, prospective contributing writers, reviewers and other participants or members, and prospective readers, due to public confusion regarding corporate identity; as well as damage Plaintiff's academic reputation and reputation for integrity, as well as the reputation of Plaintiff's officers and directors, and the reputation of Plaintiff's work product and publications, unless Defendant be restrained and Plaintiff's rights upheld and restored by the judgment of this court.

RELIEF REQUESTED

139. Plaintiff has no adequate remedy at law for the reason that Plaintiff's damages cannot be fully ascertained or measured, and, if Defendant's conduct is not restrained, damages to Plaintiff will be permanent and financially incalculable and manifest injustice by Defendant will be perpetuated. Therefore, Plaintiff demands judgment against Defendant:
 1. That Defendant, Defendant's agents and employees, be perpetually restrained from using the domain names, trademark and corporate name rightfully belonging to Plaintiff;
 2. that Defendant be required to affirmatively execute appropriate, proper and lawful assignments to Plaintiff of the domain names and trademark, in a form recognized, by all registering authorities and courts having jurisdiction, as adequate for transfer of all rights therein;
 3. that Defendant be required to rescind and withdraw statements made to Pair Networks, Inc., which statements compelled Pair Networks to remove materials rightfully belonging to TEG from the internet, under threat of litigation;
 4. for other or further relief agreeable to equity;
 5. for appropriate and just damages to compensate Plaintiff;

5. for punitive damages as determined by this court; and
6. for costs and disbursements of this action, including attorneys' fees.

Dated: November _____, 2007.

PLAINTIFF:
Third Education Group, Inc.
By its Attorney:

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State Bar No. 1012196

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