

1 Gregory B. Collins (*pro hac vice application to be filed*)
Eric B. Hull (# 291167)
2 KERCSMAR & FELTUS PLLC
3 7150 East Camelback Road, Suite 285
Scottsdale, Arizona 85251
4 Telephone: (480) 421-1001
5 Facsimile: (480) 421-1002
gbc@kflawaz.com
6 ebh@kflawaz.com

7 Attorney for Plaintiffs
8 ThermoLife International LLC

9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11
12 ThermoLife International LLC, an
Arizona limited liability company,

Case No.

IN REM COMPLAINT

13 Plaintiffs,

14 v.

15 [https://ronkramermusclebeach.wordpress](https://ronkramermusclebeach.wordpress.com/)
16 [.com/](https://ronkramermusclebeach.wordpress.com/), an Internet domain name;
17 [https://ronkramermusclebeach.wordpress](https://ronkramermusclebeach.wordpress.com/author/musclebeachkramer/)
18 [.com/author/musclebeachkramer/](https://ronkramermusclebeach.wordpress.com/author/musclebeachkramer/), an
Internet domain name.

19 Defendants.

20 For its *In Rem* Complaint ThermoLife International LLC (“ThermoLife”) alleges as
21 follows:

22 **NATURE OF CASE**

23 1. This is an *in rem* action against the domain names:

24 <https://ronkramermusclebeach.wordpress.com/>

25 <https://ronkramermusclebeach.wordpress.com/author/musclebeachkramer/>

26 (together, the “Muscle Beach Domains”).
27
28

In Rem Complaint

Kercsmar & Feltus PLLC
7150 East Camelback Road, Suite 285
Scottsdale, Arizona 85251
(480) 421-1001

2. This action is brought under the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d). Plaintiff seeks preliminary and permanent injunctive relief transferring to Plaintiff the registration of the Muscle Beach Domains.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. The Court has *in rem* jurisdiction over the Muscle Beach Domains pursuant to 15 U.S.C. § 1125(d) and 28 U.S.C. § 1655. 15 U.S.C. § 1125(d) provides that the “owner of a mark may file an *in rem* civil action against a domain name in the judicial district in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located if: (i) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office, or protected under subsection (a) or (c) of this section; and (ii) the court finds that the owner through due diligence was not able to find a person who would have been a defendant in a civil action”

5. Plaintiff owns the following federally registered marks and trademark applications:

Mark	For Use With	Status
MUSCLE BEACH	Athletic clothing Business Consultation Services Health Club Services	Reg. # 0949098 (October 12, 2010)
MUSCLE BEACH	Dietary Supplements	Serial # 86230164 (Published for Opposition July 29, 2014)
MUSCLE BEACH NUTRITION	Dietary Supplements	Serial # 86230288 (Published for Opposition July 29, 2014)
MUSCLE BEACH	Entertainment Services	Serial # 86491329 (Application filed December 29, 2014)

Kercsmar & Feltus PLLC
 7150 East Camelback Road, Suite 285
 Scottsdale, Arizona 85251
 (480) 421-1001

1 These marks are collectively referred to as the MUSCLE BEACH Marks. This family of
2 marks has not been abandoned canceled, or revoked. ThermoLife also has common law
3 rights in the MUSCLE BEACH Marks, which it uses in connection with the sale and
4 advertisement of dietary supplements and generally in the fitness industry.

5 6. As required by 15 U.S.C. § 1125(d) to maintain an *in rem* action, Plaintiff has
6 diligently sought to identify the proper defendant to a civil action for damages under 15
7 U.S.C. § 1125(d). As part of its search, Plaintiff filed a civil action in Arizona state
8 court, Case No. 2014-011404 pending in Maricopa County Superior Court, against a
9 fictional John Doe defendant. In that proceeding, Plaintiff served domain name registrant
10 Automatic, Inc. (“Automatic”) with a subpoena seeking documents that identify the
11 user/author/licensee of the Muscle Beach Domains. Responding to the subpoena,
12 Automatic indicated that it had no documents that identified the user/author/licensee of
13 the Muscle Beach Domains. The only information that Automatic had in its possession
14 was the email address used by the user/author/licensee:
15 becausescience@anonymousspeech.com. From this email address, Plaintiff was unable
16 to identify the user/author/licensee of the Muscle Beach Domains.

17 7. As required by 15 U.S.C. § 1125(d), before filing this action Plaintiff served
18 the registrant of the Muscle Beach Domains with notice of its intent to file this In Rem
19 Complaint. On March 10, 2015, notice was provided via email and mail to Automatic’s
20 counsel who responded to the subpoena discussed in the preceding paragraph.

21 8. In response to that letter, Automatic’s counsel argued that the Muscle Beach
22 Domains are not domain names at all and therefore this *in rem* action is not appropriate.

23 9. Essentially, Automatic contends that because the misappropriated mark in the
24 domain name <https://ronkramermusclebeach.wordpress.com/> appears to the left of the
25 first dot (period) instead of the right, it is immune from cybersquatting litigation.

26 10. But in assigning its own sub-domains (or “third level domains”) to third
27 parties, Automatic acts as “a domain name authority that . . . assigned the domain name
28

1 [at issue]” pursuant to 15 U.S.C. § 1125(d) and this action is appropriately brought *in rem*
2 against the Muscle Beach Domains.

3 11. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), 1391(c), and 15
4 U.S.C. § 1125(d), because the registrar of the Muscle Beach Domains is located in San
5 Francisco, California.

6 **FACTUAL ALLEGATIONS**

7
8 12. ThermoLife is a limited liability company organized and existing under the
9 laws of the State of Arizona, with its principal place of business located in Phoenix,
10 Arizona.

11 13. ThermoLife does business under the federally registered MUSCLE BEACH
12 Marks, described above.

13 14. ThermoLife’s President and Chief Executive Officer is Ron Kramer.

14 15. Prior to founding ThermoLife, Mr. Kramer was a gym owner who had
15 competed in bodybuilding and later promoted professional bodybuilding competitions for
16 the International Federation of Bodybuilders.

17 16. Between 1994 and 1997, Mr. Kramer operated a Gold’s Gym in Santa Cruz,
18 California.

19 17. During his time as a bodybuilder, promoter, and gym owner, Mr. Kramer
20 discovered that many supplements failed to meet any quality control standards. Often
21 supplements are spiked with hidden ingredients and/or labeled incorrectly.

22 18. At the time ThermoLife was established, few supplements were clinically
23 researched or field tested. Even today, relatively few supplements have been proven to
24 work as advertised.

25 19. In 1998, Mr. Kramer founded ThermoLife in order to provide the public with
26 quality proven supplements. ThermoLife is committed to selling only the purest, most
27 powerful and innovative products.
28

Kercsmar & Feltus PLLC
7150 East Camelback Road, Suite 285
Scottsdale, Arizona 85251
(480) 421-1001

Kercsmar & Feltus PLLC
7150 East Camelback Road, Suite 285
Scottsdale, Arizona 85251
(480) 421-1001

1 20. Consistent with ThermoLife’s commitment to selling the purest, most powerful
2 and innovative products, Mr. Kramer is the named inventor on 17 patents related to the
3 dietary supplement industry. These patents protect ThermoLife’s innovative and proven
4 products from being copied by ThermoLife’s competitors.

5 21. Mr. Kramer is widely known in the dietary supplement industry and those in
6 the industry recognize that Mr. Kramer is affiliated with ThermoLife and the names that
7 ThermoLife does business under, like Muscle Beach.

8 22. Ron Kramer has common law trademark rights in his name, RON KRAMER,
9 which has been used in connection with the sale and advertising of dietary supplements
10 for over sixteen years and is widely known and identified in the industry.

11 23. The Muscle Beach Domains are WordPress.com internet blogs.
12 WordPress.com is owned and operated by Automattic Inc. WordPress.com advertises
13 that “[WordPress will] set up and configure your custom domain so that you can start
14 using it in seconds.”

15 24. Unless users pay for WordPress’ premium service, the custom domain that
16 WordPress allows users to configure is assigned a domain that is a unique user-chosen
17 phrase followed by “.wordpress.com”.

18 25. A user obtains a domain through WordPress by registering for a user account
19 and setting up a domain using what WordPress describes as “tools to create the site you
20 want.”

21 26. In registering with WordPress.com, WordPress only requires an email address.
22 No other personal information is required.

23 27. Automattic recognizes that its services may affect third parties. The WordPress
24 Terms of Service require that a user’s “blog is not presented in a manner that misleads
25 your readers into thinking that you are another person or company.” WordPress has
26 promised that it “take[s its] terms of service very seriously *and will suspend any sites*
27
28

1 *that are found to be in violation.*” WordPress.com’s Dispute Resolution & Reporting
2 (<http://en.support.wordpress.com/disputes/>).

3 28. In early 2014, ThermoLife discovered the Muscle Beach Domains when a
4 customer alerted ThermoLife’s President Ron Kramer to these domains.

5 29. The Muscle Beach Domains violate the rights of the rightful owner of the
6 federally registered MUSCLE BEACH Marks. The names incorporate the registered
7 MUSCLE BEACH name and they use it in connection with the name of ThermoLife’s
8 President, Ron Kramer. The use of the MUSCLE BEACH name in connection with the
9 name of ThermoLife’s President, Ron Kramer, serves to further the perceived connection
10 between the Muscle Beach Domains and the Muscle Beach brand.

11 30. Although not necessary to obtain an *in rem* order requiring the transfer of the
12 Muscle Beach Domains to ThermoLife, the Muscle Beach Domains infringe on the
13 Muscle Beach Marks. Upon information and belief, the Muscle Beach Domains are
14 authored by, used by, licensed to, and registered by an individual that is paid by dietary
15 supplement companies to promote dietary supplement products and/or disparage Muscle
16 Beach’s name and products.

17 31. The Muscle Beach Domains include content aggregated from websites that
18 contain false information regarding Ron Kramer. Much of the information published on
19 the Muscle Beach Domains has already been adjudicated false and defamatory by the
20 New Jersey Federal District Court.

21 32. Other information found on the Muscle Beach Domain is taken from public
22 records searches. The government agencies that authored the public records at issue have
23 repeatedly acknowledged that the records published on the Muscle Beach Domains
24 contain false information.

25 33. Although not necessary to obtain an *in rem* order requiring the transfer of the
26 Muscle Beach Domains to ThermoLife, upon information and belief, the Muscle Beach
27
28

Kercsmar & Feltus PLLC
7150 East Camelback Road, Suite 285
Scottsdale, Arizona 85251
(480) 421-1001

1 Domains are authored, used, licensed, and registered with a bad faith intent to profit from
2 the MUSCLE BEACH marks, possibly by harming the MUSCLE BEACH name.

3 34. The Muscle Beach Domains were authored, used, licensed and registered
4 without the consent of ThermoLife.

5 35. Upon information and belief, the author, user, licensee, registrant of the
6 Muscle Beach Domains has no prior use of the MUSCLE BEACH mark.

7 36. Upon information and belief, the author, user, licensee and registrant of the
8 Muscle Beach Domains has made no bona fide non-commercial or fair use of the Muscle
9 Beach Domains.

10 **COUNT I**

11 **(Cybersquatting Under 15 U.S.C. 1125(d))**

12 37. ThermoLife incorporates by reference the allegations contained in the
13 proceeding paragraphs as if fully set forth herein.

14 38. The author, user, licensee and registrant of the Muscle Beach Domains has
15 trafficked in, and/or used domain names that are confusingly similar to ThermoLife’s
16 MUSCLE BEACH Marks.

17 39. As a direct and proximate result of such conduct, ThermoLife has suffered, and
18 will continue to suffer, monetary loss and irreparable injury to business, reputation and
19 goodwill.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully prays that the Court grant the following
22 relief:

23 A. A preliminary and permanent injunction requiring the domain name
24 registrar to transfer the registration of the following domains to ThermoLife
25 International, LLC:

26 <https://ronkramermusclebeach.wordpress.com/>

27 <https://ronkramermusclebeach.wordpress.com/author/musclebeachkramer/>

1 B. All other relief to which ThermoLife is entitled.
2

3 RESPECTFULLY SUBMITTED this 8th day of April, 2015.
4

5 KERCSMAR & FELTUS PLLC
6

7 By: /s/Eric Hull

8 Gregory B. Collins

9 Eric B. Hull

10 7150 East Camelback Road, Suite 285

11 Scottsdale, Arizona 85251

12 *Attorneys for ThermoLife International LLC*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Kercsmar & Feltus PLLC
7150 East Camelback Road, Suite 285
Scottsdale, Arizona 85251
(480) 421-1001