

NATURE OF THE SUIT

This is an action in which, *inter alia*, Bed Bath & Beyond seeks pecuniary and injunctive relief from the various acts of the Defendants arising under the Trademark Laws of the United States, 15 U.S.C. § 1051 *et seq.*, and related state claims for trademark infringement, unfair competition, and other torts arising under the statutory and common law of New Jersey. Defendants' illegal acts have irreparably harmed the goodwill and reputation of Bed Bath & Beyond and caused Bed Bath & Beyond significant damage.

PARTIES

1. Plaintiff Bed Bath & Beyond Inc. is a New York corporation with offices at 650 Liberty Avenue, Union, New Jersey 07083.
2. Plaintiff Bed Bath & Beyond Procurement Co. Inc. is a New York corporation, with offices at 110 Bi-County Boulevard, Farmingdale, New York 11735. Bed Bath & Beyond Procurement Co. Inc. is a wholly owned subsidiary of Bed Bath & Beyond Inc.
3. Upon information and belief, Defendant Generous Genie has offices at 22647 Ventura Boulevard, Suite 258, Woodland Hills, California 91364.
4. Upon information and belief, Defendant Reward Amazon has offices at 22647 Ventura Boulevard, Suite 258, Woodland Hills, California 91364.
5. Upon information and belief, Defendant VC E-Commerce Solutions Network has offices at 22647 Ventura Boulevard, Suite 258, Woodland Hills, California 91364.
6. Upon information and belief, Defendant NameCheap.com has offices at 8939 S. Sepulveda Boulevard #110-732, Westchester, California 90045.
7. Upon information and belief, Defendant eyeLynx, Inc. has offices at 2710 Thomes Avenue, Suite 333, Cheyenne, Wyoming 82001.

8. Upon information and belief, Defendant WebByte Solutions has offices at 88005 Overseas Highway #641, Islamorada, Florida 33036.

9. Upon information and belief, Defendant Jason Boehle is an individual residing at 2600 Mariposa Circle, Plano, Texas 75075, and the principal of defendant WebByte Solutions.

10. Upon information and belief, Defendant Media Breakaway, LLC has offices at 1490 W. 121st Avenue, Suite 201, Westminster, Colorado 80234.

11. Upon information and belief, Defendant IntegraClick Inc. has offices at 342 S. Tamiami Trail, Suite 201, Nokomis, Florida 34275.

12. Upon information and belief, the Doe Defendants are individuals or entities additionally responsible and liable for the acts complained of herein. The identities of the various Doe Defendants are not currently known to Plaintiffs and cannot be currently known. The Complaint will be amended to include the names of these individuals and/or entities when these are disclosed by Defendants or otherwise discovered by Plaintiffs.

JURISDICTION AND VENUE

13. This Court has original jurisdiction over this dispute pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a), as this action arises under the Trademark Laws of the United States; and also pursuant to 28 U.S.C. § 1332, because all Plaintiffs are citizens of states different from those of all Defendants, and the amount in controversy exceeds \$75,000.

14. This Court has supplemental jurisdiction over the state law claims set forth in this Complaint pursuant to 28 U.S.C. § 1367(a).

15. The claims alleged in this Complaint arise in the State and District of New Jersey and elsewhere.

16. Venue is proper in this judicial district under 28 U.S.C. § 1391.

BACKGROUND

Bed Bath & Beyond's Registered Trademark Rights

17. Bed Bath & Beyond is one of the premier retailers for housewares and home furnishings. Bed Bath & Beyond has over 800 retail locations throughout the United States, including numerous stores in New Jersey. It also offers its retail services online at www.bedbathandbeyond.com.

18. Bed Bath & Beyond prides itself on its quality products and customer service and expends considerable sums in marketing and advertising to cultivate the extensive goodwill that it has developed with its customers.

19. Bed Bath & Beyond uses the trademark BED BATH & BEYOND to refer to its goods and services and prominently displays this trademark in its advertising, on its Web site and in its retail stores.

20. Bed Bath & Beyond owns a number of registered trademarks in the United States and foreign countries for the mark BED BATH & BEYOND as well as design marks and logos using the mark BED BATH & BEYOND (collectively the "BBB Marks"). Bed Bath & Beyond's registered marks include the following:

Reg. No.	Trademark	Registered	First Used	Goods/Services
1,712,392	BED BATH & BEYOND and Design	September 1, 1992	October 1988	Retail store services in the field of linen products, housewares and home furnishings
1,830,725	BED BATH & BEYOND and Design	April 12, 1994	August 1991	Retail store services in the field of linen products, housewares and home furnishings
1,831,709	BED BATH & BEYOND	April 19, 1994	September 1986	Retail store services in the field of linen products, housewares and home furnishings

Reg. No.	Trademark	Registered	First Used	Goods/Services
2,003,965	BEYOND	October 1, 1996	August 1991	Retail store services in the field of linen products, housewares, and home furnishings
2,510,262	BED BATH & BEYOND	November 20, 2001	September 1986	Retail Store, Mail Order and Computer On-Line Retail Services Featuring Linen Products, Home Furnishings, Toys, Books, Furniture, Housewares, House Plants, Kitchen Appliances, Office Supplies, Knapsacks, Luggage, Lamps, Soaps, Lotions, Toothbrushes, Kitchen Accessories, Bathroom Accessories, Novelty Items, Picture Frames, Candles, Aromatherapy Products,, Potpourri, Desktop Electronics, Umbrellas, and Apparel
2,831,985	BED BATH & BEYOND and Design	April 13, 2004	October 1995	Retail store, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desk top electronics, umbrellas and apparel

Reg. No.	Trademark	Registered	First Used	Goods/Services
2,831,986	BED BATH & BEYOND and Design	April 13, 2004	November 1993	Retail store, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desk top electronics, umbrellas and apparel

21. Each of these marks has become famous and collectively, the BBB Marks are exclusively associated with Bed Bath & Beyond's substantial goodwill.

22. The BBB Marks are in full force and effect, and many have become incontestable pursuant to 15 U.S.C. § 1065, establishing Bed Bath & Beyond's sole and exclusive right to use the mark BED BATH & BEYOND in connection with the services for which the marks have been registered.

Defendants' Wrongful Conduct

23. Defendants are engaged in an Internet marketing business of a dubious nature. In order to lure people to Defendants' Web site, Defendants' blast untold numbers of unsolicited SPAM e-mails to people's e-mail accounts. These e-mail messages are sent in a way to make them falsely appear to come directly from Bed Bath & Beyond. For example, the "To:" line of the e-mail will falsely claim the e-mail was sent from "Bed Bath & Beyond."

24. A sample of one of Defendants' infringing e-mails is attached as Exhibit "A".

25. Defendants did not have the permission of Bed Bath & Beyond to use the BED BATH & BEYOND mark in any manner.

26. Defendants have no association, affiliation, sponsorship or any other connection to Bed Bath & Beyond.

27. Defendants acted in the deliberate and ongoing attempt to cause substantial and irreparable damage to Bed Bath & Beyond's business and to confuse consumers as to the source of the emails and offers.

FIRST CLAIM FOR RELIEF

Trademark Infringement In Violation Of 15 U.S.C. § 1114(1)

28. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

29. Defendants' unauthorized use of the BBB Marks, particularly in connection with SPAM e-mails offering free gift cards and on their Web sites is likely to cause confusion, or to cause mistake, or to deceive, in violation of Section 32(1) of the Lanham Act (15 U.S.C. § 1114(1)).

30. The aforesaid acts of Defendants were committed willfully, knowingly, maliciously and in conscious disregard of their legal obligations to Bed Bath & Beyond.

31. The aforesaid conduct of Defendants has caused, and unless restrained by this Court will continue to cause immediate, great and irreparable harm to Bed Bath & Beyond's property and business.

32. Bed Bath & Beyond has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

False Designation Of Origin And Unfair Competition In Violation Of 15 U.S.C. § 1125(a)

33. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

34. Defendants sending of SPAM e-mails purporting to be sent by Bed Bath & Beyond, and making unauthorized use of the BBB Marks, are likely to cause confusion, or to cause mistake, or to deceive as to origin, sponsorship, or approval of Defendants' goods, services or commercial activities, in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

35. The aforesaid acts of Defendants were committed willfully, knowingly, maliciously, and in conscious disregard of Bed Bath & Beyond's rights.

36. The aforesaid conduct of Defendants has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to Bed Bath & Beyond's property and business.

37. The aforesaid conduct of Defendants has caused Bed Bath & Beyond to sustain monetary damage, loss and injury in an amount to be determined at the time of trial.

38. Bed Bath & Beyond has no adequate remedy at law.

THIRD CLAIM FOR RELIEF

Common-Law Unfair Competition

39. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

40. The aforesaid acts of Defendants constitute unfair competition and unfair business practices contrary to the common laws of the United States and the State of New Jersey.

41. The unfair competition and unfair business practices of Defendants have been continuous, deliberate, malicious, willful and done in conscious disregard of Bed Bath & Beyond's rights.

42. The aforesaid acts of Defendants were committed willfully, knowingly, maliciously and in conscious disregard of Bed Bath & Beyond's rights.

43. The aforesaid conduct of Defendants has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to Bed Bath & Beyond's property and business.

44. The aforesaid infringement by Defendants has caused Bed Bath & Beyond to sustain monetary damage, loss and injury in an amount to be determined at the time of trial.

45. Bed Bath & Beyond has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF

Unfair Competition Under N.J.S.A. § 56:4-1

46. Each of the foregoing allegations is incorporated by reference as though fully set forth at length herein.

47. Defendants' unauthorized use of the BBB Marks in SPAM e-mail transmissions and other advertising constitutes acts of unfair competition through Defendants' appropriation for their own use of the reputation and goodwill of Bed Bath & Beyond in violation of N.J.S.A. § 56:4-1.

48. The aforesaid acts of Defendants were committed willfully, knowingly, maliciously and in conscious disregard of Bed Bath & Beyond's rights.

49. The aforesaid conduct of Defendants has caused, and unless restrained by this Court will continue to cause, immediate and irreparable injury to Bed Bath & Beyond's property and business.

50. The aforesaid infringement by Defendants has caused Bed Bath & Beyond to sustain monetary damage, loss and injury in an amount to be determined at the time of trial.

51. Bed Bath & Beyond has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs Bed Bath & Beyond Inc. and Bed Bath & Beyond Procurement Co. Inc. demand judgment against Defendants Generous Genie, Reward Amazon, VC E-Commerce Solutions Network, NameCheap.com, eyeLynx, Inc., WebByte Solutions, Jason Boehle, Media Breakaway, LLC, IntegraClick Inc., and Does 1-10 as follows:

A. A preliminary and permanent injunction enjoining Defendants and their officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them, from:

1. Using, reproducing, advertising or promoting any of the BBB Marks in connection with the offer or sale of any goods, the use of any domain name, the rendering of any service or any commercial activity;

2. Using, reproducing, advertising or promoting any mark or URL that is confusingly similar to, or a colorable imitation of, any of the BBB Marks;

3. Using, reproducing, advertising or promoting any mark or name that may be calculated to represent or that has the effect of representing that the products or services of Defendants or any other person are sponsored by, authorized by or in some way associated with Bed Bath & Beyond;

4. Using, reproducing, advertising or promoting in connection with any product or service the name, mark or URL BED BATH & BEYOND, or any name, mark or URL confusingly similar therewith;

5. Injuring the commercial reputation, renown and goodwill of Bed Bath & Beyond or any of the BBB Marks;

6. Using or reproducing any word, term, name, symbol or device, or any combination thereof, which confuses or falsely represents or misleads, is calculated to confuse, falsely represent or mislead, or which has the effect of confusing, falsely presenting or misleading, that the activities of Defendants or another are in some way connected with Bed Bath & Beyond or are sponsored, approved or licensed by Bed Bath & Beyond; and

7. Otherwise unfairly competing with Bed Bath & Beyond;

B. An order barring Defendants from using any of the BBB Marks or confusingly similar marks as background text, domain names, hidden text or encoded information on or in connection with any Web site or for the purpose of attracting or for identification or cataloging by any search engine;

C. An order directing that ownership of the domain names used by Defendants in their infringing scheme (generousgenie.com, batterypoweredremotedevice.com, rewardamazon.com, namecheap.com, harpoonatthereadyjustincase.com, jackolanterncandlecompany.com, gohgkanrx.com, eyelyn.com, and all others identified in the future) be immediately transferred by the concerned domain registrars to Bed Bath & Beyond Procurement Co. Inc.

D. An accounting to determine Defendants' profits in connection with sales of products or services identified by any of the BBB Marks, or use by Defendants of any mark, badge or designation likely to be confused with the foregoing and an award to Bed Bath & Beyond of such profits.

E. An award of compensatory damages arising out of Defendants' infringement and trebled as provided by 15 U.S.C. § 1117;

F. A monetary award to Bed Bath & Beyond in the amount of the actual damages sustained by it resulting from Defendants' unfairly competing with Bed Bath & Beyond;

G. An award to Bed Bath & Beyond of exemplary and/or punitive damages;

H. An award by the Court to Bed Bath & Beyond of its reasonable attorney fees and the costs of this action;

I. Prejudgment and postjudgment interest on the above monetary awards; and

J. Such other and further relief as this Court deems equitable and just.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Bed Bath & Beyond Inc. and Bed Bath & Beyond Procurement Co. Inc. hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
*Attorneys for Plaintiffs Bed Bath & Beyond Inc. and
Bed Bath & Beyond Procurement Co. Inc.*

Dated: July 19, 2007

By: s/ Gregg A. Paradise
Gregg A. Paradise

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that with respect to the matter in controversy herein, neither plaintiffs nor plaintiffs' attorney is aware of any other action pending in any court, or of any pending arbitration or administrative proceeding, to which this matter is subject.

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
*Attorneys for Plaintiffs Bed Bath & Beyond Inc.
and Bed Bath & Beyond Procurement Co. Inc.*

Dated: July 19, 2007

By: s/ Gregg A. Paradise
Gregg A. Paradise

EXHIBIT A

EXHIBIT A

Bed Bath & Beyond <MemberRewards@harpoonatthereadyjustincase.com>

03/30/07 03:11 PM

To: [REDACTED]

Cc:

Subject: Attention Members: Your Bed Bath & Beyond RewardsCard Has Arrived

Bed Bath & Beyond is happy to bring you the best in:

Trendy Housewares, High-Quality Towels, Comfortable Bedding, Kitchen Supplies, Techy Gadgets, Bath Luxuries -- And so much more, all your needs available to outfit the modern home.

Bed Bath & Beyond appreciates your time and would like to offer you the *MemberRewards* Card! When you signup you get \$1000 in Bed Bath & Beyond exclusive merchandise.

Confirm your Email Address to Pickup Your BB&B Card

<http://harpoonatthereadyjustincase.com/sovsel?e=6l07LflvPRf5fzN8Gv8frLP70h&m=107326&l=0>

Thank You,

Bed Bath & Beyond Member Rewards