

Optimal Health Science®

Optimal Health Science, LLC

www.optimalhealthscience.com

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dazzlesmile™

dazzlesmile, llc

www.dazzlesmile.com

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October 19, 2009

Azoogole.com, Inc.
DBA Epic Advertising
512 Seventh Avenue, 12th Floor
New York, NY 10018

Farend Services Limited
PO Box 10276
Des Moines, IA 50381

Azoogole.com, Inc.
DBA Epic Advertising
C/O CT Corporation System
111 Eighth Avenue
New York, NY 10011

In Re: (1) Infringement of dazzlesmile™ and Optimal Health Science® Trademarks; (2) Copyright Infringement of dazzlesmile™© Websites and Landing Pages; (3) Unauthorized Use of dazzlesmile™ as a Keyword and in “Keyword Stuffing” via the Internet; (4) Deceptive and Fraudulent Business Practices Promulgated; (5) 15 U.S.C. Lanham Act Violations for Trademark Infringement, Trademark Dilution and False Advertising; (6) Conspiracy; and (7) 18 U.S.C. § 1964(c) Racketeer Influenced and Corrupt Organizations [RICO] Act Violations.

To: Azoogole.com, Inc., DBA Epic Advertising and Farend Services Limited:

It has come to our attention that Azoogole.com, Inc., DBA Epic Advertising (Epic) and Farend Services Limited (Farend) have, since May 2009, and are currently, in concert and conspiracy, infringing the trademark and copyrights of dazzlesmile™ including the practices of blatantly advertising the dazzlesmile™ name and trademark in a deceptive manner that creates consumer confusion, and embedding the dazzlesmile™ name and trademark in various website landing page metatags (hereinafter “Keyword Stuffing”). It is likewise engaging in the practice of sponsoring and affiliating keywords containing the dazzlesmile™ name and trademark with search engine organizations such as Google, MSN/Bing and Yahoo! in order to create name impressions and advertisements that appear as a “sponsored result” when the term “dazzlesmile” is searched (hereinafter “Keying”). Epic’s conduct violates both the Terms and Conditions of that certain Agreement between Epic and Optimal Health Science, LLC (Optimal Health Science®) dated April 8, 2009, as well as your fiduciary duty owed to Optimal Health Science®. Furthermore, the collective and conspiratorial conduct of Epic and Farend violates both the Lanham Act [15 U.S.C.] and the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C. 1964(c)].

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dazzlesmile, llc and Optimal Health Science® demand that you immediately cease and desist from the infringing conduct and advertising, as it is creating consumer confusion, including “initial interest confusion”, and violates *inter alia* the false advertising provisions of the Lanham Act, 15 USC § 1125(a), *et seq.* Moreover, the practices of fraudulent advertising blogs, and the deceptive business practice of deflecting customer service to a non-related entity, i.e. dazzlesmile™ and Optimal Health Science®, including the use of website page redirects and cybersquatting violate the Anticybersquatting Consumer Protection Act [15 U.S.C. § 1125(d)]. Violations of the Lanham Act and Racketeer Influenced and Corrupt Organizations [RICO] Act are enforceable both civilly and criminally, and criminal infringement is investigated by the Federal Trade Commission (FTC) and Federal Bureau of Investigation (FBI), respectively. Furthermore, our dazzlesmile™ products are registered with the Food and Drug Administration (FDA) and must be manufactured in an FDA approved manufacturing facility. To the extent that you and/or your affiliates or partners are not manufacturing products in a manner prescribed by the FDA, you are also violating FDA regulations, including the manufacture, packaging and labeling of dazzlesmile™ named products.

Optimal Health Science® and dazzlesmile™ are federally registered and common law trademarks, respectively. They are well known names and products in commerce, as Optimal Health Science® has been advertising, marketing, and selling dietary supplements under the named marks since 2004. Indeed, over the past five years, dazzlesmile™ and Optimal Health Science® have expended millions of dollars on radio, print and Internet advertising. That advertising has generated substantial goodwill and consumer recognition and confidence in the products and their branded marks – which has correspondingly resulted in millions of dollars in sales of dazzlesmile™ and Optimal Health Science® products.

It is unlawful for your organization to directly or indirectly trade upon the goodwill of dazzlesmile™ and Optimal Health Science® – particularly because dazzlesmile™ and Optimal Health Science® have been your advertising client, and you owe both a contractual and fiduciary duty as a result. Moreover, we have learned that you are effectively operating a straw [conduit] operation between Epic, its publishers and/or affiliates and end advertisers, as in this case, with dazzlesmile™. The evidence that we have collected to date, and that has been presented to the Utah Division of Consumer Protection by consumers, is that you are suborning false advertising, encouraging bait and switch tactics, aiding and abetting in the advertising of dual “free trial offers” simultaneously via fictitious Blog pages, and an assortment of other deceptive and fraudulent practices. Your conduct has lead to Better Business Bureau and consumer protection complaints against dazzlesmile™ [dazzlesmile, llc] in Utah and other states, including Delaware, Vermont and Oklahoma. Those complaints have in-turn lead to regulatory legal action.

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Returns of our dazzlesmile™ products as a proximate cause of your actions now exceed Forty Percent (40%) and merchant bank charge-backs are now approaching Ten Percent (10%) of sales, respectively, specifically as a result of your advertising tactics, methods, misuse of dazzlesmile™ goodwill, i.e. infringement, Keyword Stuffing and Keying, and breach of your fiduciary duty. dazzlesmile™ and Optimal Health Science® have been damaged in the amount of not less than \$25 Million Dollars as of the date of this letter. dazzlesmile and Optimal Health Science® hereby assert an equitable right-of-offset against any legitimate sales that have resulted from any advertising conducted by your organization, and for disgorgement of any other revenue you have received as a result of your wrongful and illegal infringement. Additionally, dazzlesmile™ and Optimal Health Science® will be seeking statutorily allowed treble damages provided for under 18 U.S.C. 1864(c), as well as punitive damages on our other causes of action.

From a recent civil litigation perspective, numerous courts have recently held that your practices create a likelihood of consumer confusion, including, but not limited to what has been described above and by the courts call “initial interest confusion.” See *Playboy Enterprises, Inc. v. Netscape Communications Corp.*, 354 F.3rd 1020 (9th Cir.2004), which held that “Initial interest confusion is customer confusion that creates initial interest in a competitor’s product. Although dispelled before an actual sale occurs, initial interest confusion impermissibly capitalizes on the goodwill associated with a mark and is therefore actionable trademark infringement.” See *Finance Express, LLC v. Nowcom Corp.*, 564 F.Supp.2n 1160 (C.D. 2008), which held that “keyword stuffing and keying creates a likelihood of confusion” when the factors of (1) similarity of the marks, (2) relatedness of the goods or services; and (3) the simultaneous use of the Web as a marketing channel are satisfied. See *Soilworks, LLC v. Midwest Industrial Supply*, 2008 WL 3286975, which held that “Once the consumer’s attention is captured, the consumer might well realize that he or she has arrived at the defendant’s (and not the plaintiff’s) website, and yet might stay there and purchase the defendant’s similar products. Although a sale procured in this manner does not ultimately result from the consumer’s confusion as to the source of the products, it is procured nonetheless through the defendant’s unfair use of the plaintiff’s trademark and associated goodwill. Thus, “the wrongful act is the defendant’s unfair use of the plaintiff’s mark to ‘divert’ consumers to a website that ‘consumers know’ is not [the plaintiff’s] website.” Thus, by Keyword Stuffing or purchasing and using the keyword search term “dazzlesmile” and having your owned or controlled websites appear as a “sponsored result” – you are actively creating initial interest confusion to the financial detriment of dazzlesmile™ and Optimal Health Science®.

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Based upon information we have recently obtained, we further believe that Epic and Farend have or intend on infringing on other Optimal Health Science® products and trademarks, including CetylMax®, Flexadren®, and 2-Step Cleanse and Detox®. All of those products and trademarks are covered by this cease and desist demand.

We further demand the repayment of all funds, totaling \$89,741, remitted by dazzlesmile™ and Optimal Health Science®, to Epic Advertising through American Express, on the basis that those funds were fraudulently obtained; and, occasioned by refunds and charge-backs that have had to be granted or accepted without qualification, attendant to the Epic's CPA sales underlying those transactions.

All infringing advertising must be withdrawn immediately, including all "Sponsored Links" creating dazzlesmile™ name and trademark and image impressions, as well as advertising links to Epic and Farend controlled websites and landing pages, from Google, MSN/Bing, and Yahoo! search engines, and any other search engine advertising providers or networks. Be advised that dazzlesmile, llc and Optimal Health Science, LLC intend to commence legal proceedings against Epic and Farend. Rest assured that we will prosecute this matter by every means and to the fullest extent possible.

Govern yourselves accordingly,

OPTIMAL HEALTH SCIENCE, LLC
dazzlesmile, llc

Sarah J Beck

Sarah J. Beck
Corporate Counsel

DELIVERED VIA:

Azoogle.com, Inc. USPS Priority Mail 9101 8052 1390 7689 3002 51
Farend Services Limited USPS Priority Mail 9101 8052 1390 7794 2449 45
USPS First Class Mail (All Respondent Parties)
Azoogle.com, Inc. Facsimile (888) 666-3120

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Attention: Advertising Legal Support Team
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Facsimile (650) 649-1774

Yahoo! Search Marketing
Attention: Trademark Department
3333 Empire Avenue
Burbank, California 91504
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Microsoft Advertising/MSN/Bing
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