

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

**FLORIDA AGRICULTURAL AND
MECHANICAL UNIVERSITY BOARD
OF TRUSTEES,**

Plaintiff,

CASE NO.: _____

v.

**RK NETMEDIA, INC., a Florida
Corporation, and John/Jane Does 1-8,**

Defendants.

_____ /

VERIFIED COMPLAINT
(INJUNCTIVE RELIEF REQUESTED)

Plaintiff FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY BOARD OF TRUSTEES ("FAMU TRUSTEES"), hereby sues RK NETMEDIA, INC. ("RK") and John/Jane Does 1-8 (collectively "Defendants"), and for its causes of action alleges as follows:

NATURE OF ACTION

1. This is an action for false or misleading descriptions and misrepresentations under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), federal trademark dilution under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(c), disparagement and injury to business reputation and trademark dilution

under Florida Statute § 495.151 (2009), and common law trademark infringement under Florida law.

THE PARTIES

2. Florida Agricultural and Mechanical University is a public university of the State of Florida. The FAMU TRUSTEES is a constitutionally created entity that administers the Florida Agricultural and Mechanical University.

3. RK is a Florida corporation with its principal place of business in Miami Beach, Florida. Upon information and belief, RK is the owner and operator of several sexually explicit websites, including a website with the domain name "daredorm.com."

4. The true names and capacities of John/Jane Doe Defendants 1-8 are unknown to FAMU TRUSTEES at this time. Each John/Jane Doe Defendant is known to FAMU TRUSTEES only by their depiction in the internet video that is the subject of this lawsuit. FAMU TRUSTEES believes that information obtained in discovery will lead to the identification of each John/Jane Defendants' true name and citizenship.¹

JURISDICTION AND VENUE

5. Jurisdiction over FAMU TRUSTEES' claims is based on 28 U.S.C. §§ 1331 and 1367.

6. This Court has *in personam* jurisdiction over RK because it operates a commercial, interactive website that is displayed in this District and is

¹ FAMU TRUSTEES will promptly seek leave to amend its Verified Complaint upon obtaining the names and capacities of John/Jane Doe Defendants 1-8.

responsible for tortious conduct directed at Florida Agricultural and Mechanical University in this District.

7. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because RK solicits and engages in business within this District and is responsible for tortious conduct directed at Florida Agricultural and Mechanical University in this District.

STATEMENT OF FACTS

8. Florida Agricultural and Mechanical University was founded in 1887 and has a strong reputation and tradition as one of the nation's oldest and most distinguished public universities.

9. Florida Agricultural and Mechanical University is dedicated to the advancement of knowledge, resolution of complex issues and the empowerment of citizens and communities and embraces persons of all races, ethnic origins and nationalities as life-long members of the university community.

10. Florida Agricultural and Mechanical University's core values are Scholarship, Excellence, Openness, Fiscal Responsibility, Accountability, Collaboration, Diversity, Service, Fairness, Courage, Integrity, Respect, Collegiality, Freedom, Ethics and Shared Governance.

11. Florida Agricultural and Mechanical University extensively uses and promotes the initials of its name, "FAMU," as a trademark and service mark.

12. Florida Agricultural and Mechanical University is the owner of Florida State Trademark Registration No. T05000000054 for the mark "FAMU"

for use in connection with “[a]ll services provided by a college/university.” A true and correct copy of this Registration is attached hereto as Exhibit “A.”

13. Florida Agricultural and Mechanical University developed trademark rights in its “FAMU” mark long before the activities at issue in this lawsuit and the “FAMU” mark serves as a powerful and famous indicator of goods and services provided by or otherwise affiliated with Florida Agricultural and Mechanical University.

14. Florida Agricultural and Mechanical University first used its “FAMU” mark in interstate commerce in connection with its activities as a public university in 1953 and has produced and sold merchandise bearing the “FAMU” mark since 1953.

15. Florida Agricultural and Mechanical University’s “FAMU” mark has achieved significant fame and public recognition.

16. Because of its widespread use in connection with Florida Agricultural and Mechanical University’s activities and licensed merchandise, the “FAMU” mark has tremendous power as a source identifier of Florida Agricultural and Mechanical University, particularly when used in connection with other indicia identifying or suggesting Florida Agricultural and Mechanical University.

17. Florida Agricultural and Mechanical University also extensively uses and promotes its tradename, “Rattlers,” as a trademark and service mark.

18. Florida Agricultural and Mechanical University developed trademark rights in its “Rattlers” mark long before the activities at issue in this lawsuit and

the "Rattlers" mark serves as a powerful and famous indicator of goods and services provided by or otherwise affiliated with Florida Agricultural and Mechanical University.

19. Florida Agricultural and Mechanical University first used its "Rattlers" mark in interstate commerce in connection with its activities as a public university in 1985 and has produced and sold merchandise bearing the "Rattlers" mark since 1985.

20. Florida Agricultural and Mechanical University's "Rattlers" mark has achieved significant fame and public recognition.

21. Because of its widespread use in connection with Florida Agricultural and Mechanical University's activities and licensed merchandise, the "Rattlers" mark has tremendous power as a source identifier of Florida Agricultural and Mechanical University, particularly when used in connection with other indicia identifying or suggesting Florida Agricultural and Mechanical University.

22. Florida Agricultural and Mechanical University also uses an orange and green color scheme in interstate commerce in connection with its educational services and its licensed apparel and other merchandise, including the uniforms for its athletic teams, souvenirs and memorabilia.

23. Florida Agricultural and Mechanical University's school colors were chosen to represent the major industry in the State of Florida (citrus). The

Orange color represents the fruit and the Green color represents the foliage of Florida's magnificent orange groves.

24. The orange and green color scheme is used prominently and repeatedly in connection with Florida Agricultural and Mechanical University's athletic teams and its many other organizations, activities and services, as well as with goods sold by Florida Agricultural and Mechanical University or its licensees.

25. Florida Agricultural and Mechanical University first used the orange and green color scheme in connection with its educational services in 1887 and has produced and sold merchandise bearing the orange and green color scheme since 1887.

26. Florida Agricultural and Mechanical University uses the orange and green color scheme in connection with its "FAMU" and "Rattlers" marks, its name, as an element of its logos and design marks, and in numerous other contexts.

27. Florida Agricultural and Mechanical University used and promoted its orange and green color scheme continuously and extensively well before RK's operation of the daredorm.com website referenced herein.

28. Florida Agricultural and Mechanical University's orange and green color scheme has achieved significant fame and public recognition, especially when appearing in connection with collegiate activities and events.

29. Because of its widespread use in connection with Florida Agricultural and Mechanical University's activities and licensed merchandise, the orange and green color scheme has tremendous power as a source identifier of Florida Agricultural and Mechanical University, particularly when used in connection with other indicia identifying or suggesting Florida Agricultural and Mechanical University.

30. Florida Agricultural and Mechanical University licenses its marks through its licensing agent, The Collegiate Licensing Company ("CLC"), which is the nation's leading collegiate licensing and marketing representative. CLC assists collegiate licensors in protecting and controlling the use of their logos through trademark licensing. CLC represents more than 190 universities, bowl games, and conferences, including Florida Agricultural and Mechanical University.

RK'S INFRINGING ACTIVITIES

31. RK operates the website "daredorm.com," which depicts individuals engaging in sexually explicit activities in what appears to be dorm rooms at various college campuses throughout the United States.

32. RK charges a fee to internet consumers who wish to view the videos depicted on its "daredorm.com" website.

33. On or about March 1, 2010, RK posted a full-length video on its "daredorm.com" website depicting no less than eight (8) individuals engaging in

multiple acts of sexual intercourse in what is intended to appear to be a dorm room on the campus of Florida Agricultural and Mechanical University.

34. The video is titled "BigRattler77" and contains several visual depictions of and oral references to Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks.

35. The "BigRattler77" video also depicts Florida Agricultural and Mechanical University's orange and green color scheme in connection with the "FAMU" and "Rattlers" marks.

36. The caption for the "BigRattler77" video states that it was filmed "at a historically black college in Florida."

37. The "BigRattler77" video also suggests that the individuals depicted therein are Florida Agricultural and Mechanical University students and contains derogatory and highly offensive racial innuendo and visual depictions of gang signs purportedly associated with Florida Agricultural and Mechanical University.

38. RK did not seek or receive permission from Florida Agricultural and Mechanical University to depict and use its "FAMU" and "Rattlers" marks and orange and green color scheme on the "daredorm.com" website or any other medium.

39. John/Jane Doe Defendants 1-8 did not seek or receive permission from Florida Agricultural and Mechanical University to depict and use its "FAMU" and "Rattlers" marks and orange and green color scheme in the "BigRattler77" video.

40. Upon information and belief, none of the individuals depicted in the "BigRattler77" video are students of Florida Agricultural and Mechanical University.

41. Upon information and belief, the "BigRattler77" video was not filmed on the campus of Florida Agricultural and Mechanical University.

42. Upon information and belief, John/Jane Doe Defendants 1-8 received \$10,000.00 from RK in exchange for the "BigRattler77" video.

43. Florida Agricultural and Mechanical University has requested RK to remove the "BigRattler77" video from its "daredorm.com" website and destroy all copies thereof.

44. Upon information and belief, RK has yet to remove the "BigRattler77" video from its "daredorm.com" website.

45. The "BigRattler77" video is a transparent attempt to trade on the good name and identity of Florida Agricultural and Mechanical University and its marks by wrongly insinuating that its students routinely engage in the debasing and degrading behavior depicted therein.

46. The "BigRattler77" video is likely to deceive, confuse and mislead prospective purchasers and viewers of the video into believing that the video was produced, authorized or is in some manner associated with Florida Agricultural and Mechanical University.

47. Persons and consumers viewing the "BigRattler77" video on RK's "daredorm.com" website are likely to associate and attribute the behavior

contained therein to Florida Agricultural and Mechanical University and its students.

48. The strong likelihood of confusion, mistake and deception engendered by the "BigRattler77" video is causing substantial irreparable harm to Florida Agricultural and Mechanical University and its good name and will continue to cause substantial irreparable harm unless such acts are promptly restrained by this Court.

49. RK willfully, intentionally and maliciously adopted, caused to be adopted or contributed to the imitations of and references to Florida Agricultural and Mechanical University's marks and orange and green color scheme in the "BigRattler77" video.

50. Florida Agricultural and Mechanical University has no adequate remedy at law to cure the substantial irreparable harm caused by the "BigRattler77" video depicted on RK's "daredorm.com" website.

51. FAMU TRUSTEES has been forced to retain the undersigned counsel and is obligated to pay reasonable attorneys' fees to protect its rights and interest as well as the taxpayers of the State of Florida.

CAUSES OF ACTION

COUNT I – FEDERAL FALSE DESCRIPTION AND MISREPRESENTATION OF MARKS

52. FAMU TRUSTEES realleges paragraphs 1 through 51, *supra*.

53. RK is using its "daredorm.com" website in interstate commerce in connection with, among other things, the sale of sexually explicit images to internet consumers.

54. RK's "daredorm.com" website and "BigRattler77" video contain false representations of fact which misrepresent the nature, characteristics and qualities of Florida Agricultural and Mechanical University and its marks, and falsely associates Florida Agricultural and Mechanical University with RK and the individuals depicted in the "BigRattler77" video and their miscreant behavior.

55. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website and the "BigRattler77" video depicted therein is likely to cause confusion among the public as to the sponsorship or affiliation of the "daredorm.com" website and "BigRattler77" video.

56. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website constitutes false or misleading descriptions and misrepresentations in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

57. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website has caused and is causing substantial irreparable harm and damage to Florida Agricultural and Mechanical

University, and unless permanently restrained by this Court, such irreparable injury will continue.

58. Florida Agricultural and Mechanical University lacks an adequate remedy at law to cure RK's unlawful use of its marks.

WHEREFORE, FAMU TRUSTEES respectfully requests the Court to enter preliminary and permanent injunctions restraining RK from utilizing Florida Agricultural and Mechanical University's trademarks or any colorable imitation thereof in connection with RK's "daredorm.com" website or any other medium and awarding FAMU TRUSTEES damages in an amount to be determined at trial, including treble damages pursuant to 15 U.S.C. § 1117(a), reasonable attorneys' fees and costs for prosecuting this matter, and any further relief the Court deems just and proper.

COUNT II – FEDERAL TRADEMARK DILUTION

59. FAMU TRUSTEES realleges paragraphs 1 through 51, *supra*.

60. RK utilizes Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in interstate commerce in connection with its "daredorm.com" website and the videos depicted thereon.

61. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website occurred well after these marks became famous.

62. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website was willfully intended to trade on Florida Agricultural and Mechanical University's reputation and good name and to cause dilution of Florida Agricultural and Mechanical University's marks.

63. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website dilutes and tarnishes the distinctive quality of Florida Agricultural and Mechanical University's marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

64. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website has caused and is causing substantial irreparable harm and damage to Florida Agricultural and Mechanical University, and unless permanently restrained by this Court, such irreparable injury will continue.

65. Florida Agricultural and Mechanical University lacks an adequate remedy at law to cure RK's dilution of its trademarks.

WHEREFORE, FAMU TRUSTEES respectfully requests the Court to enter preliminary and permanent injunctions restraining RK from further diluting and tarnishing Florida Agricultural and Mechanical University's trademarks or any colorable imitation thereof and awarding FAMU TRUSTEES damages in an

amount to be determined at trial, including treble damages pursuant to 15 U.S.C. § 1117(a), reasonable attorneys' fees and costs for prosecuting this matter, and any further relief the Court deems just and proper.

**COUNT III – INJURY TO ACADEMIC AND BUSINESS REPUTATION
AND DILUTION OF TRADEMARK UNDER FLORIDA LAW**

66. FAMU TRUSTEES realleges paragraphs 1 through 51, *supra*.

67. Pursuant to Florida Statute § 495.061 (2009), Florida Agricultural and Mechanical University's Certificate of Registration for the "FAMU" mark is *prima facie* evidence regarding the validity of the registration, Florida Agricultural and Mechanical University's ownership of the "FAMU" mark and exclusive right to use the "FAMU" mark in Florida.

68. RK utilizes Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in interstate commerce in connection with its "daredorm.com" website and the videos depicted thereon.

69. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website occurred well after these marks became famous.

70. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website dilutes and tarnishes the distinctive quality of Florida Agricultural and Mechanical University's marks and has caused and will continue to cause substantial injury to Florida Agricultural and

Mechanical University's academic and business reputation and the distinctive quality of its marks.

71. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website has caused and is causing substantial irreparable harm and damage to Florida Agricultural and Mechanical University, and unless permanently restrained by this Court, such irreparable injury will continue.

72. Florida Agricultural and Mechanical University lacks an adequate remedy at law to cure RK's dilution and tarnishment of its trademarks and injury to Florida Agricultural and Mechanical University's business and academic reputation.

73. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website was willfully intended to trade on Florida Agricultural and Mechanical University's reputation and good name and to cause dilution of Florida Agricultural and Mechanical University's marks.

WHEREFORE, FAMU TRUSTEES respectfully requests the Court to enter preliminary and permanent injunctions restraining RK from further diluting and tarnishing Florida Agricultural and Mechanical University's trademarks or any colorable imitation thereof and awarding FAMU TRUSTEES damages in an amount to be determined at trial, including treble damages pursuant to Florida

Statute 495.141 § (2009), reasonable attorneys' fees and costs for prosecuting this matter, and any further relief the Court deems just and proper.

COUNT IV – COMMON LAW TRADEMARK INFRINGEMENT

74. FAMU TRUSTEES realleges paragraphs 1 through 51, *supra*.

75. Florida Agricultural and Mechanical University owns and enjoys common law trademark rights in its "FAMU" and "Rattlers" marks and its orange and green color scheme, which rights are superior to any rights that RK may claim in these marks.

76. RK utilizes Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website in a manner likely to deceive and confuse the consuming public as to the sponsorship or affiliation of the "BigRattler77" video.

77. RK's operation of its daredorm.com website as alleged herein constitutes trademark infringement in violation of the common law of the State of Florida.

78. RK's unauthorized use of Florida Agricultural and Mechanical University's "FAMU" and "Rattlers" marks and orange and green color scheme in connection with its "daredorm.com" website has caused and is causing substantial irreparable harm and damage to Florida Agricultural and Mechanical University, and unless permanently restrained by this Court, such irreparable injury will continue.

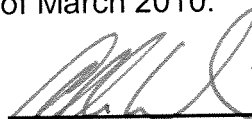
79. Florida Agricultural and Mechanical University lacks an adequate remedy at law to cure RK's trademark infringement.

WHEREFORE, FAMU TRUSTEES respectfully requests the Court to enter preliminary and permanent injunctions restraining RK from utilizing Florida Agricultural and Mechanical University's trademarks or any colorable imitation thereof in connection with RK's daredorm.com website or any other medium and awarding FAMU TRUSTEES damages in an amount to be determined at trial, costs associated with prosecuting this matter, and any further relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, FAMU TRUSTEES demands a trial by jury on all issues so triable.

Respectfully submitted this 16th day of March 2010.



RICHARD E. MITCHELL, ESQ.
Florida Bar No.: 0168092
rmitchell@gray-robinson.com
ALLEN C. WINSOR, ESQ.
Florida Bar No.: 0016295
awinsor@gray-robinson.com
MICHAEL D. PORTER, ESQ.
Florida Bar No.: 0031149
mporter@gray-robinson.com
GRAYROBINSON, P.A.
Post Office Box 3068
Orlando, Florida 32802-3068
(407) 843-8880 Telephone
(407) 244-5690 Facsimile
Lead Trial Counsel for Plaintiff,
Florida Agricultural and Mechanical
University Board of Trustees

-and-

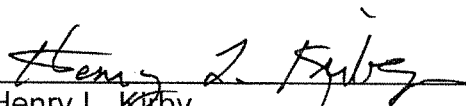
AVERY D. MCKNIGHT, ESQ.
Florida Bar No.: 974633
avery.mcknight@famu.edu
FLORIDA A&M UNIVERSITY
Office of the General Counsel
1601 S. Martin Luther King Blvd., Ste 300
Tallahassee, Florida 32307-3100
(850) 599-3591 Telephone
(850) 561-2862 Facsimile
General Counsel for Plaintiff,
Florida Agricultural and Mechanical
University Board of Trustees

VERIFICATION


STATE OF FLORIDA
COUNTY OF LEON

I HEREBY CERTIFY that, before me, an officer duly authorized in the state and county aforesaid, to take acknowledgments, personally appeared Henry L. Kirby, as Associate Vice President for Student Life and Dean of Students of FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY BOARD OF TRUSTEES, the Plaintiff in this case, who, after being duly sworn, deposes and says that he has personal knowledge of the facts recited in the complaint and the material allegations contained therein and that the facts recited in the complaint are true and correct.

WITNESS my hand and official seal in the County and State aforesaid this 16th day of March, 2010.


Henry L. Kirby

(AFFIX NOTARY STAMP)


Notary Public, State of Florida
Typed Name: Karen Elaine Colston
My Commission No. DD810575
My Commission Expires: 7/31/2012

