

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE TRUSTEES OF THE UNIVERSITY
OF PENNSYLVANIA

Plaintiff,

-against-

WHARTON ADVISORS CORP,

Defendant.

CIVIL ACTION No.

JURY DEMANDED

COMPLAINT FOR TRADEMARK INFRINGEMENT,
TRADEMARK DILUTION, UNFAIR COMPETITION,
AND CYBERSQUATTING

Plaintiff, The Trustees of the University of Pennsylvania, avers as follows:

Parties

1. Plaintiff, The Trustees of the University of Pennsylvania, (“The University”) is a non-profit corporation of Pennsylvania with its principal place of business at 3451 Walnut Street, Philadelphia, Pennsylvania.

2. Defendant, Wharton Advisors Corp, (“WAC”) is a Delaware corporation with a place of business at 88 Main St., Suite H228, Mendham, NJ 07945.

3. The University is a world-renowned provider of higher education services through its undergraduate and graduate level programs. In particular, The University provides leading business education and customized executive programs through The Wharton School.

4. The Wharton School was founded in 1881 as the first collegiate business school and is recognized globally for intellectual leadership and ongoing innovation across every major discipline of business education. The school currently has more 5000 students, more than 9,000 annual participants in executive education programs, and an alumni network of 91,000 graduates.

5. Defendant WAC, without authorization or any other connection with the University, has offered to sell financial consulting services using the names “WHARTON”, “WHARTON ADVISORS CORP”, and “WHARTON ADVISORS” and other identifiers, including domain names, including “WHARTON”. Defendant WAC continues to offer to financial consulting services using the names “WHARTON ADVISORS CORP” and “WHARTON ADVISORS.”

6. Further, WAC, acting through its President, Mr. Robert Gatti, has sought a federal trademark registration for the mark WHARTON ADVISORS CORP before the United States Patent and Trademark Office. In that application, WAC and Gatti have disclaimed any exclusive right to “ADVISORS CORP” leaving the University’s mark WHARTON as the sole distinctive element of WAC’s mark.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction over plaintiff's claims under 28 U.S.C. §§ 1331 (federal question), 1338(a) (trademark infringement), and 1338(b) (unfair competition joined with a claim for trademark infringement).

8. This Court has supplemental jurisdiction over all other claims asserted in this action pursuant to 28 U.S.C. § 1367.

9. Plaintiff's claim against WAC for trademark infringement arises from WAC's misuse of the University's WHARTON® registered trademark in commerce to sell its services such that consumers would be confused as to the source, origin, or sponsorship of WAC's services.

10. This Court has personal jurisdiction over WAC based on WAC's contacts with this Commonwealth and District, causing, by its infringing and dilutive acts, harm to the University and its WHARTON marks within this Commonwealth and District, and on information and belief by using "WHARTON ADVISORS" and "WHARTON ADVISORS CORP" in marketing and rendering services in this Commonwealth and District.

11. Because this Court has personal jurisdiction over WAC, under 28 U.S.C. §1391(c)(2), WAC is deemed to reside in this district for purposes of venue.

12. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(b)(1) because WAC, the sole defendant, is deemed to reside in this district.

COUNT I: Federal Trademark Infringement (§ 32 of the Lanham Act)

13. The University is the owner of the following United States Trademark Registrations:

Registration No.:	Mark:	Relevant Goods/Services:
1892916	WHARTON	<p>Developing customized executive programs for companies and organizations; and/or business research surveys; and/or business consultation (Class 35);</p> <p>Arranging and conducting educational conferences; and/or educational services, namely providing courses of instruction and degree programs at the undergraduate and graduate level; and/or educational services, namely conducting seminars in the field of executive education and distribution of course materials in connection therewith (Class 41).</p>
1789592	WHARTON THE WHARTON SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA	<p>Developing customized executive programs for companies and organizations, business research, studies, and surveys, and business consultation (Class 35);</p> <p>Arranging and conducting educational conferences and symposia; educational services; namely, providing courses of instruction at the undergraduate, graduate and professional levels; educational services; namely, conducting seminars in the field of executive education and distribution of course materials in connection therewith; providing executive education training video tapes; publication of newsletters,</p>

Registration No.:	Mark:	Relevant Goods/Services:
		monographs, journals and books; providing information about the publications of others and subscribing thereto (Class 41).
3449956	WHARTON MARKETING METRICS	Educational services, namely offering undergraduate and post graduate degree programs of instruction in the fields of marketing and business; arranging and conducting educational conferences and seminars; educational services, namely, providing non degree instructional programs for business executives in the fields of marketing and business; providing online information on education in the fields of marketing and business (Class 41).
3165806	WHARTON SCHOOL PUBLISHING	Books in the field of business, management, leadership, personal finance, small business, sales and marketing, economics, accounting, finance, geopolitics, real estate finance, and pensions and retirement planning (Class 16).
3091404	KNOWLEDGE@WHARTON	Book publishing (Class 41).
3081856	KNOWLEDGE@WHARTON	Providing online, non-downloadable publications, namely, newsletters featuring business insights, information and research; providing publications, namely, newsletters featuring business insights, information and research via e-mail (Class 41).
2845089	WHARTON DIRECT	Providing information on the topic of business management (Class 35);

Registration No.:	Mark:	Relevant Goods/Services:
		Education services, namely, arranging and conducting educational conferences and symposia and seminars and providing courses of instruction at the graduate and professional level, all in the field of business management education and executive education, and distributing course materials in connection therewith, and providing information in the field of education via a global computer network (Class 41).
4064558	WHARTON DIGITAL PRESS	Downloadable electronic publications in the nature of books, articles, monographs, publication papers, newsletters and pamphlets in the fields of business and finance (Class 9); Books, articles, monographs, publication papers, newsletters and pamphlets in the fields of business and finance (Class 16).

True and correct copies of the Trademark Registration Certificates for the above registered trademarks are attached as Exhibit A.

14. The University has been using the WHARTON® registered mark for business education services since at least as early as 1881, and has been using the WHARTON® registered mark for business consultation services since 1953.

15. The University has provided its business education and business consultation services under its WHARTON® registered mark to students and business executives throughout the United States, including but not limited to Pennsylvania.

16. The University has not licensed the WHARTON® registered mark to WAC for business education or business consultation services, or otherwise granted any permission to WAC.

17. Defendant WAC controls and, on information and belief, owns and operates the website found at the URL, www.whartonadvisorscorp.com as a means of advertising and promoting its financial consulting services. Throughout its website, WAC has used “WHARTON” and continues to use “WHARTON ADVISORS” and “WHARTON ADVISORS CORP” to promote itself and its goods and services.

18. WAC’s unauthorized use of WHARTON, WHARTON ADVISORS and WHARTON ADVISORS CORP in connection with financial consulting services is likely to cause confusion, or mistake, or to deceive, as to the source or origin of the WAC’s services and constitutes infringement of The University’s rights in its WHARTON® registered mark in violation of 15 U.S.C. § 1114.

19. As a result of WAC’s acts of infringement, The University has suffered and continues to suffer irreparable harm.

COUNT II: False Designation of Origin (§ 43(a) of the Lanham Act)

20. Plaintiff incorporates by reference the allegations of all preceding paragraphs of this complaint.

21. WAC's use of WHARTON ADVISORS and WHARTON ADVISORS CORP creates a likelihood of confusion in the marketplace as to the origin of WAC's and The University's respective financial consulting and business consultation services.

22. WAC's use of WHARTON ADVISORS and WHARTON ADVISORS CORP in connection with WAC's financial consulting services is likely to cause confusion or mistake, or to deceive, as to the source or origin of the goods and/or services.

Count III: Unfair Competition (§ 43(a) of the Lanham Act)

23. Plaintiff incorporates by reference the allegations of all preceding paragraphs of this complaint.

24. WAC's use of WHARTON, WHARTON ADVISORS, and WHARTON ADVISORS CORP in connection with financial consulting, is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of the services of WAC with The University, or as to the origin, sponsorship, or approval of WAC's services by The University.

25. WAC's use of WHARTON, WHARTON ADVISORS and WHARTON ADVISORS CORP is likely to create a false impression in the minds of consumers that WAC is affiliated with, endorsed or sponsored by The University, particularly with The Wharton School.

26. WAC's use of WHARTON, WHARTON ADVISORS and WHARTON ADVISORS CORP constitutes unfair competition in violation of 15 U.S.C. § 1125(a).

27. The University has been and likely will continue to be damaged by these acts of unfair competition by WAC.

28. As a result of WAC's acts of unfair competition alleged herein, The University has suffered and will continue to suffer irreparable harm.

29. WAC's acts of unfair competition have been knowing and intentional.

Count IV: Dilution (§ 43(c) of the Lanham Act)

30. Plaintiff incorporates by reference the allegations of all preceding paragraphs of this complaint.

31. The University's "WHARTON" registered mark is a mark that is widely recognized by the United States consuming public as a source of excellent business education and business consultation services, and is famous within the meaning of the Federal Trademark Dilution Act, 15 U.S.C. §1125(c).

32. Upon information and belief, WAC intended to create an association with The University's famous "WHARTON" registered mark and deliberately chose to use WHARTON, WHARTON ADVISORS, and WHARTON ADVISORS CORP to promote and sell its financial consulting services.

33. Upon information and belief, WAC began using WHARTON, WHARTON ADVISORS, and WHARTON ADVISORS CORP in or after April 22, 2009, long after The University's "WHARTON" mark became famous.

34. WAC's use of WHARTON, WHARTON ADVISORS, and WHARTON ADVISORS CORP to promote or sell financial consulting services is diluting and impairing the distinctive quality, uniqueness and singularity of The University's famous "WHARTON" registered mark by blurring, constituting dilution by blurring.

35. WAC has willfully intended to trade on the good will associated with The University's "WHARTON" mark.

36. WAC's use of WHARTON, WHARTON ADVISORS, and WHARTON ADVISORS CORP to promote or sell financial consulting services that are inferior to The University's services sold under its famous "WHARTON" registered mark is diluting the distinctive quality of The University's famous mark by tarnishing it with negative associations and harming the reputation of the University's famous mark, constituting dilution by tarnishment.

37. WAC's use of WHARTON, WHARTON ADVISORS, and WHARTON ADVISORS CORP have been and are commercial in nature, do not constitute fair use, and do not constitute use in news reporting and commentary.

38. WAC's use of WHARTON, WHARTON ADVISORS, and WHARTON ADVISORS CORP has diluted and/or will continue to dilute the distinctive quality of the University's "WHARTON" registered mark.

39. As a result of WAC's continued use alleged herein, The University has suffered and will continue to suffer irreparable harm.

Count V: Violation of the Anticyberquatting Consumer Protection Act (§ 43(d) of the Lanham Act)

40. Plaintiff incorporates by reference the allegations of all preceding paragraphs of this complaint.

41. On information and belief, WAC is the registrant or licensee of the Internet domain name whartonadvisorscorp.com.

42. At the time of registration of the Internet domain name whartonadvisorscorp.com, The University's "WHARTON" registered mark was famous.

43. The Internet domain name whartonadvisorscorp.com is confusingly similar to and/or dilutive of The University's "WHARTON" registered mark.

44. WAC's Internet domain name whartonadvisorscorp.com is legally identical to The University's "WHARTON" registered mark because the words "advisors corp" in whartonadvisorscorp.com are merely descriptive of services and do not add to or change the commercial impression created by "Wharton" in the minds of the consuming public. Whartonadvisorscorp.com is confusingly similar for the additional reason that the name "Wharton" is recognized as a source identifier by consumers in the market for business consultation services.

45. Because of the wide public recognition of The University's "WHARTON" registered mark, it is likely that the consuming public who encounter WAC's use of the url www.whartonadvisorscorp.com will be confused, mistaken or deceived into believing that WAC's goods and services originated from, or are sponsored, endorsed or approved by The University.

46. WAC's use of Internet domain name whartonadvisorscorp.com to promote or sell financial consulting services is diluting the distinctive quality of The University's famous "WHARTON" registered mark by blurring its uniqueness and singularity.

47. WAC's use of Internet domain name whartonadvisorscorp.com to promote or sell financial consulting services that are inferior to The University's services sold under its famous "WHARTON" registered mark is diluting the distinctive quality of The University's famous mark by tarnishing it with negative associations.

48. Upon information and belief, WAC intentionally chose the url www.whartonadvisorscorp.com to capitalize on the goodwill associated with The University's "WHARTON" registered mark with no legitimate ties to the University or any other justification;

49. WAC acted with a bad-faith intent to profit from The University's "WHARTON" registered mark.

50. The University did not consent to WAC's registration or use of the Internet domain name www.whartonadvisorscorp.com.

51. WAC has violated, and is in violation of, the Anticybersquatting Consumer Protection Act ("ACPA"), Pub. L. No. 106-113, 113 Stat. 1501 (1999), codified at Section 43(d) of the Federal Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1125(d).

Count VI: Unfair Competition Under Pennsylvania Law

52. Plaintiff incorporates by reference the allegations of all preceding paragraphs of this complaint.

53. This cause of action arises under state statutory and common law of unfair competition, including the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. § 201-1 et seq.

54. By the acts and activities complained of herein, defendant WAC has passed off its goods and services, and continues to pass off its goods and services as being produced by, under license from, or with the approval of plaintiff The University.

55. The University has no control over the infringing goods and services sold or offered for sale by WAC.

56. The University's good will and reputation have been and will continue to be irreparably harmed by WAC's deceptive and unauthorized use of The University's WHARTON mark.

Count VIII: Unjust Enrichment

57. Plaintiff incorporates by reference the allegations of all preceding paragraphs of this complaint.

58. Defendant WAC has intentionally used WHARTON, WHARTON ADVISORS and WHARTON ADVISORS CORP, which are likely to create confusion with The University's WHARTON® registered mark, all without authorization or justification in connection with its sale or offers to sell business education and consultation goods and services.

59. Defendant WAC would be unjustly enriched if it were permitted to retain any of the profits it has made as a result of such unauthorized use.

Prayer for Relief

WHEREFORE, plaintiff prays that this Court enter judgment against WAC as follows:

- A. a permanent injunction enjoining and restraining WAC and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with them, from using The University's WHARTON marks, WHARTON ADVISORS, and WHARTON ADVISORS CORP, or any other name, mark, or design confusingly similar thereto or dilutive thereof, including but not limited to its use of the url www.whartonadvisorscorp.com;

- B. an order requiring all products, labels, brochures, signs, advertisements, web pages, or other materials in WAC's possession or control bearing The University's WHARTON marks, WHARTON ADVISORS, and WHARTON ADVISORS CORP, or any other name, mark, or design confusingly similar thereto or dilutive thereof to be delivered up and destroyed;
- C. an award of all damages and other monetary relief for trademark infringement pursuant to 15 U.S.C. § 1117;
- D. an award of all damages and other monetary relief for trademark dilution pursuant to 15 U.S.C. §§ 1117 and 1118;
- E. an award of The University's attorneys' fees due to the exceptional nature of WAC's conduct pursuant to 15 U.S.C. § 1117 and applicable state law;
- F. a declaration that WAC's copying, adoption, and use of The University's WHARTON marks constitutes one or more of the following: trademark infringement, trademark dilution, false designation of origin, and unfair competition under both federal and state law;
- G. a declaration that WAC's retention of its profits from use of The University's WHARTON marks would constitute unjust enrichment;
- H. an order that WAC terminate immediately any contracts or agreements related to distribution of services branded with The University's WHARTON marks;
- I. an award of compensatory and punitive damages, including disgorgement of defendant's profits related to sale of unauthorized services under The University's WHARTON marks;

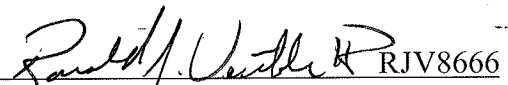
- J. an accounting of WAC's income, assets and expenditures relating to its use of confusingly similar WHARTON marks, an award of WAC's profits generated by unauthorized sale of services branded with The University's WHARTON marks;
- K. an order for an accounting of all income, assets and expenditures of WAC related to the unauthorized sale of services branded with The University's WHARTON marks;
- L. an award of pre-judgment and post-judgment interest on the damages caused to plaintiff by reason of WAC's infringement;
- M. an award of all costs of this suit; and
- N. an award of further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: Philadelphia, Pennsylvania

August 13, 2013


James R. Meyer (PA ID No. 2227)
Ronald Ventola II (PA ID No. 204332)
Stephenie W. Yeung (PA ID No. 84415)
Schnader Harrison Segal & Lewis LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103
Telephone: (215) 751-2000