

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

IN THE HAMILTON CIRCUIT COURT  
CAUSE NO. 29C01-1806-PL-005001

RESIDENTIAL WARRANTY SERVICES, )  
INC. )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DAN CAVANAUGH and DYNAMIC )  
INSPECTIONS & CONSTRUCTION )  
SERVICES, LLC, )  
 )  
Defendants. )  
 )

**TEMPORARY RESTRAINING ORDER**

This cause came before the Court to be heard upon the Application for Temporary Restraining Order and Motion for Preliminary Injunction (the “Application for TRO”) filed by Plaintiff, Residential Warranty Services, Inc. (“RWS”). After reviewing the Amended Verified Complaint for Injunctive Relief and Damages (“Verified Complaint”) and the Application for TRO and receiving additional evidence and arguments, and otherwise being duly advised in all things, the Court now **FINDS** as follows:

1. RWS is an Indiana corporation with its principal office in Carmel, Indiana.
2. Dan Cavanaugh is an individual who currently resides in Clarksville, Tennessee. Dan Cavanaugh is the Chief Executive Officer of Dynamic Inspections & Construction Services, LLC (“Dynamic”). Dynamic is a California limited liability company with its principal office address located at 585 Ebbcreek Drive, Apt. A in Corona, California. (Dan Cavanaugh and Dynamic are collectively referred to herein as “Cavanaugh”).
3. Cavanaugh agreed to the personal jurisdiction of this Court in entering into the RecallChek<sup>®</sup> Agreement, (*see* Ex. A to Verified Complaint), which provides that Indiana courts

will have exclusive jurisdiction over any controversies involving the RecallChek<sup>®</sup> Agreement. This Court also has personal jurisdiction over Cavanaugh pursuant to Indiana Trial Rule 4.4.

4. In addition, a substantial portion of the acts and occurrences that give rise to this Verified Complaint took place in Indiana, and Cavanaugh affirmatively engaged in business with RWS in Indiana. Therefore, the Court is satisfied that it has personal jurisdiction over the parties hereto.

5. Further, as a circuit court, this Court is a court of general jurisdiction and, therefore, has jurisdiction over the subject matter herein. Ind. Code § 33-28-1-2.

6. On or about October 27, 2017, Cavanaugh entered into a RecallChek<sup>®</sup> Agreement with RWS (*See Ex. A to Verified Complaint*) pursuant to which he agreed “not [to] create, nor cause the creation, of any product or service offered by RWS- including RecallChek, RecallTrak, 90-Day Warranties, The Call Centre, or any other product or service offerings of RWS.”

7. The RecallChek<sup>®</sup> Agreement also expressly prohibits “[a]ny slanderous, libelous, or negative campaigning of the property, products, and services of RWS during or after the term of this agreement . . . .”

8. After executing the RecallChek<sup>®</sup> Agreement, Cavanaugh began utilizing RWS’ services as part of Cavanaugh’s inspections and gained access to RWS’ confidential and proprietary information and became familiar with RWS’ product offerings.

9. After utilizing RWS’ services for three months and 36 inspections, Cavanaugh began offering the same or similar services in-house, in violation of the non-compete provision of the RecallChek<sup>®</sup> Agreement.

10. Cavanaugh also began posting negative and inaccurate comments regarding RWS and its products and services in a Facebook group Cavanaugh administers called Home Inspector Network Uncensored (“Facebook Group”).

11. Cavanaugh's Facebook Group has more than 700 members, including primarily, if not exclusively, other home inspectors, many of whom are clients of RWS and all of whom are potential clients.

12. Cavanaugh's social media postings targeted RWS and its owner, Nathan Thornberry ("Thornberry"), through disparaging and otherwise negative statements.

13. RWS made repeated requests for Cavanaugh to remove these posts, to cease violating RecallChek<sup>®</sup> Agreement non-competition and non-disparagement obligations, but Cavanaugh refused to do so. Accordingly, RWS filed this action in June 2018.

14. For months after RWS filed this lawsuit, Cavanaugh evaded service.

15. On or about February 16, 2019, Cavanaugh posted a link to [www.inspectorservicesgroup.com](http://www.inspectorservicesgroup.com) (the "Infringing Domain Name") in his Facebook Group. This website is **one** letter different from RWS' actual website for Inspector Services Group<sup>1</sup> ([www.inspectorservicesgroup.com](http://www.inspectorservicesgroup.com)). The Infringing Domain Name automatically and immediately diverted potential customers and/or consumers who clicked the shared link or who type the Infringing Domain Name into a web browser to Pornhub.<sup>2</sup>

16. Upon investigation, RWS determined that Cavanaugh not only shared the link to the Infringing Domain Name in the Facebook Group, but he also created and registered the Infringing Domain Name on or about February 16, 2019. GoDaddy<sup>3</sup> maintains reports for all registered domains detailing who the domain is registered to and administered by.

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<sup>1</sup> Inspector Services Group<sup>®</sup> is a registered trademark of Thornberry (No. 4680157, Jan. 27, 2015). On November 5, 2018, RWS also filed Certificates of Assumed Business Name with the Indiana Secretary of State for Inspector Services Group and ISG.

<sup>2</sup> Pornhub is a Canadian pornographic video sharing and hardcore pornography website.

<sup>3</sup> GoDaddy is a web domain registrar and web hosting company.

17. The WHOIS report for the Infringing Domain Name provides the following registrant information:

Registrant Name:	Dan Cavanaugh
Registrant Street:	1153 Meachem Dr.
Registrant City:	Clarksville
Registrant State/Province:	Tennessee
Registrant Postal Code:	37042
Registrant Phone:	+1.9312171570
Registrant Email:	dancav0610@gmail.com

18. On March 1, 2019, RWS's owner, Thornberry, sent a cease and desist e-mail to Cavanaugh at the e-mail address associated with the WHOIS report ([dancav0610@gmail.com](mailto:dancav0610@gmail.com)), directing Cavanaugh to immediately: (1) cease and desist operating the Infringing Domain Name and (2) in the interim (and until the registration expired) forward all traffic to [www.InspectionSuccess.net](http://www.InspectionSuccess.net), a web address associated with RWS.

19. Cavanaugh posted a screenshot of the e-mail to the Facebook Group. In response to a comment regarding what the post was regarding, Cavanaugh responded that "I own a similar domain to [RWS]."

20. Instead of ceasing and desisting, Cavanaugh changed the link from Pornhub to American Home Shield, a direct competitor of RWS.

21. Cavanaugh again posted regarding this action, stating in the Facebook Group that "changed [the Infringing Domain Name] temporarily so now it just forwards to American Home Shield." As such, anyone navigating to the Infringing Domain Name looking for RWS now finds themselves at the website of RWS' main competitor.

22. Though RWS has shown a pattern of potential damaging and harmful behavior by Cavanaugh, his creation of the Infringing Domain Name and infringement upon RWS' Inspector Services Group® trademark by automatically and immediately diverting traffic to Pornhub and, now, American Home Shield (RWS' main competitor) necessitates this Temporary Restraining Order.

23. To this end, RWS has a likelihood of success in showing that Cavanaugh violated his contractual obligations to RWS under the RecallChek® Agreement through – among other things – making social media posts in the Facebook Group (particularly since the audience of over 700 members who are primarily, if not exclusively, other home inspectors – *i.e.* RWS' clients or potential clients) targeting RWS and Thornberry through false, misleading, disparaging and otherwise negative statements, as well as through his intentional registration and use of the Infringing Domain Name, which is confusingly similar to RWS' Inspector Services Group® trademark.

24. Cavanaugh's prior postings and postings in the Facebook Group after registering and operating the Infringing Domain Name, as well as communications to Thornberry and RWS' attorneys, demonstrate that Cavanaugh is intent on harming RWS' image and impairing its goodwill.

25. Based on the foregoing findings, RWS has shown more than a reasonable likelihood of success on the merits of its claims for breach of contract – particularly under the non-compete and non-disparagement provisions of the RecallChek® Agreement, as well as its claims under the federal the Lanham Act and the Anticybersquatting Consumer Protection Act, 15 U.S.C. §§ 1125(a) & (d).

26. RWS will suffer immediate and irreparable injury, for which it has no adequate remedy at law, if Cavanaugh is not prohibited from engaging in, causing, or encouraging any

slanderous, libelous, or negative campaigning of the property, products, and services of RWS – including operating the Infringing Domain Name, which is confusingly similar to that of RWS.

27. The irreparable injury that RWS would suffer if injunctive relief is not granted by this Court substantially outweighs any harm that Cavanaugh might suffer if the injunctive relief is granted.

28. The public policy will be served by the granting the injunction, as the public interest is served by preventing Cavanaugh from engaging in the illegal and harmful conduct described in the Verified Complaint and preventing unsuspecting RWS customers of being exposed to web content (e.g. pornography) that was not intended or foreseeable.

29. Accordingly, RWS is entitled to injunctive relief immediately enjoining Cavanaugh from engaging in, causing, or encouraging any slanderous, libelous, or negative campaigning of the property, products, and services of RWS – including an order prohibiting Cavanaugh from operating the Infringing Domain Name or diverting users to any other website.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that:

A. Pursuant to Trial Rule 65, the Court hereby **ENTERS** this temporary restraining order:

(1) requiring Cavanaugh to cease operating, remove and take down the Infringing Domain Name, including disabling the website so that it cannot divert users to other websites including but not limited to, Pornhub and American Home Shield, and;

(2) enjoining Cavanaugh from engaging in, causing, or encouraging any slanderous, libelous, or negative campaigning of the property, products, and services of RWS; and

(3) requiring Cavanaugh not to create, cause the creation of, or offer any product or service offered by or similar to one offered by RWS (including RecallChek®, RecallTrak, 90-Day Warranties, The Call Centre) in violation of his obligations under the RecallCheck® Agreement.

B. The Clerk of the Court shall forthwith serve a copy of this Order upon all parties to this litigation through the Court's electronic notification system, by United States Mail, and by electronic mail to the distribution list below.

C. RWS shall deliver this Order through normal business protocols to Google.com, GoDaddy.com, and any and all other website search engine companies that may be displaying or allowing access to or promoting the Infringing Domain Name, or other website or materials hereby restrained.

D. This Temporary Restraining Order shall expire at 3:00 o'clock p.m. on March 21, 2019, unless at such time it is extended for good cause, or unless Defendant consents to an extension;

E. A hearing is set for the March 21, 2019 at 3:00 o'clock p.m. upon RWS's motion for a preliminary injunction and for Defendant to show cause why a preliminary injunction should not be issued. 1 1/2 hour(s) shall be the allotted time for the hearing;

F. RWS is ordered to post bond pursuant to Trial Rule 65(C) in the amount of \$100.00 (one hundred dollars) to cover any loss, expense or damage that may be caused to Defendant if this Temporary Restraining Order or any preliminary injunction is later found to be improvident and erroneous;

G. This Temporary Restraining Order has been issued at 11:35 o'clock a.m. on March 13, 2019.

RESIDENTIAL WARRANTY SERVICES, INC  
V.  
DAN CAVANAUGH; DYNAMIC INSPECTIONS &  
CONSTRUCTION SERVICES, LLC  
29C01-1806-PL-5001



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Hon. Paul A. Felix      March 13, 2019  
Judge, Hamilton Circuit Court

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