



November 4, 2015

Via email: compliance@dotster-inc.com

Subject: desertmountiangolfscam.com – defamation and other tortious activity

Dotster
Legal Department
10 Corporate Dr.
Suite 300
Burlington, MA 01803

Re: desertmountiangolfscam.com (the “abusive website”)

To Whom It May Concern:

I am General Manager of Desert Mountain Club, Inc. (the “Club”). I am writing regarding an abusive website under your Acceptable Use Policy. As indicated by the domain name (desertmountiangolfscam.com) the abusive website refers to an asserted “scam”, disparages the management of the Club, publishes confidential Club documents and interferes with both contracts between the Club and its Members and the Club’s business expectancies with prospective Members (tortious activity) in violation of the following paragraphs of Dotster’s Acceptable Use Policy. The abusive website encourages Club members to quit and stop paying dues. The Maricopa County Superior Court in Arizona (where the Club is located) recently ruled the Club can enforce its Bylaws which “preclude a member from resigning and ceasing payment of dues.” (Order at page 5, copy enclosed)

Dotster’s Acceptable Use Policy

“When Users or others place information on the Internet, they have the same liability as other authors for copyright infringement, defamation, and other harmful speech.” Paragraph 1.

4. Prohibited Uses. Users may not: . . .

- c. Utilize the Services in connection with any illegal activity or activity otherwise prohibited by this AUP. Without limiting the general application of this rule, Users may not:

Utilize the Services for or in connection with any activities or content determined by Dotster, in its sole discretion, to be related to . . . harassment, defamation, libel and hate speech or other offensive speech or content, or for any unlawful purpose, including without limitation, . . . infringement on rights of others, . . .

Utilize the Services to copy material from third parties (including text, graphics, music, videos or other copyrightable material) without proper authorization;

Utilize the Services to misappropriate or infringe the patents, copyrights, trademarks or other intellectual property rights of any third party;

Desert Mountain Club, Inc.

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www.desertmountain.com

- d. Utilize the Services in connection with any tortious or actionable activity. Without limiting the general application of this rule, Users and Users (sic) may not:

Utilize the Services to publish or disseminate information that (A) constitutes slander, libel or defamation, . . .

The User has violated the Acceptable Use Policy by defamation, unauthorized copying and tortious interference with contract rights between the Club and its members.

I. The User Content Relates to Defamation.

The abusive website content states:

"If the agreement you signed with the Desert Mountain Club allows you to quit at any time and says nothing about a fee due on resignation, you can quit and owe nothing. To claim otherwise is *fraud under Arizona law*. To comply with Arizona law, the Desert Mountain Club has to use a revised surrender form which discloses that members have the option to resign without further obligation.

What should I do when I get a call from Desert Mountain's debt collector? Members who resign have no further obligation to the Club. Any claim that members who have quit are locked in until their membership is sold or that dues continue to accrue after resignation would be a *misrepresentation (a scam)* prohibited by Arizona's Consumer Fraud law. Heavy penalties apply." (italics added)

<https://www.desertmountaingolfscam.com/Home.html>

"1. Is the title of this site (DesertMountainGolfScam.com) defamatory? Answer: McCabe v. Rattiner, 814 F. 2d 839 (1987) stands for the proposition that the word scam has no precise meaning and falls within the definition of constitutionally protected opinion."

<https://www.desertmountaingolfscam.com/page1.html>

While scam was not defined in the case cited, the holding of that case is inapposite here because the term "scam" is defined on the abusive website as "a misrepresentation (a scam)". Moreover it is equated with "fraud under Arizona law". These statements (including all references to a "scam") are defamatory and must be removed from the abusive website and the domain name.

II. The Abusive Website Is Used to Publish Unauthorized Copies of Club Documents

The "Resources to Resolve This Dispute" page (<https://www.desertmountaingolfscam.com/page3.html>) Deferred Equity Membership page (<https://www.desertmountaingolfscam.com/page2.html>) and Desert Mountain Club, Inc. v. Thomas Clark and Barbara Clark page (<https://www.desertmountaingolfscam.com/page8.html>) contain numerous documents that are proprietary to the members of Desert Mountain Golf Club and confidential. They do not pertain to any matter of public interest.

The Club has an intellectual property right (copyright or proprietary right) in confidential documents authored by the Club and intended to be disseminated only to members. All of the

documents not filed in the Desert Mountain Club, Inc. v. Thomas Clark and Barbara Clark case should be removed from the abusive website.

A. Confidential Document Copied Without Authorization:

The 2010 Agreement for Purchase and Sale was not to be recorded, referenced or described in any public records without consent. See No Recording provision Article 20.21. This proprietary document was copied and published on the abusive website in its entirety without authorization and should be removed:

http://desertmountaingolfscam.com/attachments/File/Signed_PSA.pdf

B. Counterfeit Form Using the Desert Mountain Golf Club Name.

The following document is an unauthorized form derived from a Club document using the Club name to create the impression it is legitimate:

<http://desertmountaingolfscam.com/attachments/File/RevisedSurrenderForm.pdf>

The right to create a derivative work is owned by the Club. 17 USC §106. Moreover the DESERT MOUNTAIN trademark is also owned by the Club. This unauthorized document published on the abusive website and should be removed.

III. The Abusive Website Is Used for Tortious Interference with Contracts and Prospective Business Expectancies.

The abusive website (including the unauthorized counterfeit form) is used to induce Club members to resign and “walk away” from their membership by providing assurances the former members will have no further obligations to the Club. The pertinent Club documents, the Membership Agreement and the Club Bylaws, provide that, notwithstanding resignation, a resigned member is allowed continued use of Club facilities and is required to pay dues until the membership is reissued by the Club. The abusive website intentionally and improperly interferes with the Club’s member contracts.

Moreover, the abusive website is available and may be accessed by individuals who are considering becoming Club Members. It has discouraged a number of individuals from becoming Members.

For this additional reason the materials identified in sections I and II above must be removed from the abusive website.

You can contact me at the following address, telephone number, and e-mail address:



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