

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

SmartEtailng, Inc.

Civil Action No: 20-cv-2650-PJS-DTS

Plaintiff,

COMPLAINT

vs.

JURY DEMANDED

CrimsonBikes, LLC

Defendant.

Comes now Plaintiff SmartEtailng, Inc., by and for its cause of action against Defendant CrimsonBikes, LLC, states and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a Minnesota corporation with a registered office address of 6400 W. 105th Street, Bloomington, Minnesota 55438.
2. On information and belief, Defendant is a Massachusetts company with a principal address of 28 Dewolf Street #L2, Cambridge, Massachusetts, 02138.
3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332. The parties are citizens of different states and the amount in controversy exceeds \$75,000.00.
4. Jurisdiction and venue are further proper in this Court pursuant to the End User Licensing Agreement (the “Agreement”) that forms the basis of this Complaint. In the Agreement Defendant consented “to the jurisdiction of the courts of the State of Minnesota.” The Agreement additionally contained a governing law provision indicating the laws of the State of Minnesota governed the Agreement.

FACTS

5. Plaintiff provides website, marketing, and data solutions to bike retailers. See <https://www.smartetailing.com/about>.

6. Defendant is a bicycle and bicycle accessories retailer with a brick and mortar store in Cambridge, Massachusetts.

7. Customers can also purchase bicycles and accessories from Defendant over its website, crimsonbikes.com.

8. On December 20, 2018, Plaintiff and Defendant entered into the Agreement.

9. The purpose of the Agreement was for Plaintiff to provide Defendant a website and related online sales services.

10. Related to the Agreement, on March 21, 2019, Defendant entered into a separate agreement with Stripe, Inc. (Stripe).

11. Stripe is a San Francisco based company offering payment processing software and services to customers.

12. As part of its services to Defendant, Plaintiff sponsored Defendant regarding Defendant's agreement with Stripe.

13. In its contract with Stripe Defendant agreed to be "immediately responsible to [Stripe] for all Disputes, Refunds, Reversals, Returns, or Fines, regardless of the reason or timing."

14. In Section 10.6 of the Agreement Defendant agreed to "indemnify and hold [Plaintiff]...harmless from any claim or demand, including reasonable attorney's fees,

arising out of your use of a Third-Party Service or your relationship with a Third-Party Provider.”

15. In Section 13.0 of the Agreement, Defendant agreed to “indemnify, defend and hold harmless” Plaintiff from all claims by third-parties related to Plaintiff’s services.

16. On information and belief, Defendant “pre-sold” bicycles and other products to retail customers, and accepted payment for those sales through the payment service provided by Stripe.

17. On information and belief, the bicycles and products pre-sold by Defendant were delayed, or otherwise unsatisfactory, causing many customers to cancel their orders or return products to Defendant, requiring those customers to receive refunds of the amount they were charged (the “Chargebacks”).

18. In fact, while Plaintiff initially believed Defendant’s difficulties with fulfilling orders was related to the COVID-19 pandemic Plaintiff now believes a Defendant is, in fact, committing fraud.

19. For example, on December 16, 2020, Defendant received a review on Yelp.com from a user in Cambridge, Massachusetts stating in part “I just received an email from CrimsonBikes asking me to call my credit card to ask them to reverse the charges for the money they owe me!!! I am not an attorney, but this certainly seems like fraud to me. This was clearly an email they have sent to others as well, so I wonder how many bikes they are expecting to offload this responsibility to credit card companies to pay out for.” A copy of this review is attached as **Exhibit A**.

20. This was not the only reviewer suggesting Defendant was engaging in fraudulent practices.

21. Multiple reviewers claimed they ordered bicycles that were listed as being in stock only to later be told Defendant did not actually have those bikes. See Exhibit A.

22. Such practices were intended to defraud both Plaintiff and Stripe. Defendant received payment for orders it could not, or did not plan to, fulfill. When customers demanded a refund Defendant foisted responsibility for those Chargebacks onto Plaintiff and Stripe with no intention of repaying either entity.

23. While these Chargebacks were initially paid for through a balance in an account Defendant maintained with Stripe, that balance was eventually depleted.

24. After the balance was depleted Defendant stopped paying for the Chargebacks and did not replenish its account with Stripe, requiring Stripe to pay the Chargebacks and in turn reserve money owed Plaintiff on its own Stripe account, as Defendant's sponsor to Stripe, to cover the cost of those payments. As of November 13, 2020, Defendant's Stripe account had a negative balance of \$394,490. Stripe has reserved the sum of \$405,000 against Plaintiff's account to cover Defendant's unpaid Chargebacks and negative account balance. Stripe has notified Plaintiff that it will access the reserved funds if Defendant does not pay the balance owed.

25. Per the Agreement, Defendant is liable to Plaintiff for the outstanding negative balance on Defendant's Stripe account, for all amounts that have been reserved on Plaintiff's Stripe account and for any amounts that Plaintiff has been and may become

obligated to pay on Defendant's behalf as a result of Defendant's failure to make payments on the Chargebacks.

26. Plaintiff is further entitled to indemnification and defense against any claim brought against Plaintiff by Stripe, or any other third-party, as a result of Defendant's failure to make payments on the Chargebacks.

27. Section 16.11 of the Agreement states: "[i]n the event legal action is brought by either party to interpret or enforce any provision of this Agreement or resolve any other dispute between the parties involving or arising from this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees from the other party."

COUNT I – BREACH OF CONTRACT

28. Plaintiff incorporates its allegations in Paragraphs 1 through 27 above as if restated here.

29. The Agreement constitutes a valid and enforceable contract between Plaintiff and Defendant.

30. Plaintiff is not in breach of the Agreement and has performed any and all conditions precedent to its right to demand performance by Defendant.

31. Defendant is in breach of the Agreement as set out above. Specifically, Defendant has breached its agreement to indemnify Plaintiff for those amounts Plaintiff has been obligated to pay as a direct result of Defendant's failure to repay the Chargebacks.

32. Plaintiff has been damaged by Defendant's breach in an amount in excess of \$75,000, plus attorney's fees, and in a specific amount to be determined at trial.

COUNT II – DECLARATORY JUDGMENT
Minn. Stat. § 555.01, et seq.

33. Plaintiff incorporates its allegations in Paragraphs 1 through 32 above as if restated here.

34. The Agreement requires Defendant to defend and indemnify Plaintiff for all claims by third-parties related to Plaintiff’s services.

35. This indemnification and defense provision applies to those amounts reserved on Plaintiff’s Stripe account, those amounts that Plaintiff has been required to pay, and and amounts Plaintiff may be required to pay in the future, as a direct result of Defendant’s failure to repay the Chargebacks.

36. Pursuant to the Minnesota Declaratory Judgment Act Plaintiff is entitled to a judicial determination Defendant is required to indemnify and defend Plaintiff for all amounts Plaintiff has been, and will be, required to pay as a direct result of Defendant’s failure to repay the Chargebacks.

COUNT III - FRAUD

37. Plaintiff incorporates its allegations in Paragraphs 1 through 36 above as if restated here.

38. Defendant accepted payment for orders it had no ability or intention of fulfilling.

39. Defendant’s website listed bicycles as being in stock when Defendant did not, in fact, have those bicycles.

40. After accepting payments for these orders it could not fulfill Defendant refused to grant customers refunds. Instead of refunding those payments Defendant instructed those customers to contact their credit card company to reverse those charges.

41. After Defendant's Stripe account was depleted those chargebacks became the responsibility of Plaintiff and Stripe. Defendant retained the customers' payments with no intention of repaying Plaintiff for those amounts. Plaintiff is now obligated to pay on Defendant's behalf.

42. Defendant is knowingly perpetrating a fraud on Plaintiff, requiring Plaintiff to repay these customers for orders Defendant had no intention of fulfilling.

43. As a result of Defendant's fraud Plaintiff has been harmed in an amount in excess of \$75,000, plus attorney's fees, and in a specific amount to be determined at trial.

COUNT IV – UNJUST ENRICHMENT

44. Plaintiff incorporates its allegations in Paragraphs 1 through 43 above as if restated here.

45. Defendant knowingly benefitted from its agreements with Plaintiff and Stripe.

46. Allowing Defendant to maintain funds received from customers for orders that were later canceled, while requiring Plaintiff to repay those amounts owed by Defendant, would be inequitable.

47. To rectify that inequity Plaintiff is entitled to a judgment against Defendant in an amount in excess of \$75,000, plus attorney's fees, and in a specific amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

1. Enter judgment in its favor against Defendant, in an amount in excess of \$75,000.00; and
2. Declare Plaintiff is entitled to indemnification and defense from Defendant on any future claims made by Stripe related to Defendant's breach of contract; and
3. Award Plaintiff its costs, including attorney's fees as allowed by statute and the Agreement, and grant whatever further relief the Court deems equitable and just.

Dated: 12/23/2020

**THOMPSON, COE, COUSINS &
IRONS, L.L.P.**

/s/ Kevin M. Mosher

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