

**John D. Maida Associates Attorneys at Law**

1000 Germantown Pike B-8  
Plymouth Meeting, Pennsylvania 19462  
**(610) 277 6300 (215) 646 2990**

**Facsimile: (610) 277 6418**

October 3, 2003

The Glistening Web Communication Corporation  
7 Lindenwold Terrace  
Ambler, PA 19002

Re: M.C.M. Real Estate, Inc. t/a Eichler & Moffly Realtors  
vs. The Glistening Web Communication Corporation  
C/A No 03-19318

To whom it may concern:

Be advised that a hearing has been scheduled before the Honorable Joseph Symthe, Judge of the Court of Common Pleas of Montgomery County, PA, on Monday, October 6, 2003, at 1:30 P.M., to consider the Petition for Special Relief, filed by M.C.M. Real Estate, Inc. t/a Eichler & Moffly Realtors, against you in the above referenced matter.

Enclosed (Attached and to follow by e mail) are true and correct copies of the Petition for Special Relief, a Memorandum of Law in support thereof, my entry of appearance and a COURT ORDER regarding the aforesaid hearing in this action.

Very truly yours,

  
John D. Maida

JDM:jmm  
Encl - Attach.  
via overnight - Sat. delivery  
and e mail to [help@membrane.com](mailto:help@membrane.com)

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

M.C.M. REAL ESTATE, INC., et al

VS.

No. 03-19318

THE GLISTENING WEB  
COMMUNICATION CORPORATION

ORDER

AND NOW, this 3<sup>rd</sup> day of OCTOBER, 2003 the  
Petition for Special Injunction scheduled for a **HEARING** before the **Honorable Joseph  
Smyth** on **Monday, October 6, 2003 at 1:30 p.m.** in Courtroom **B** of the Montgomery  
County Courthouse, Norristown, Pennsylvania.



Court Administrator

cc: John D. Maida, Esq.

**YOU ARE RESPONSIBLE TO  
NOTIFY YOUR OPPONENT(S)  
OF THE ABOVE DATE.**

Copies Sent: 3<sup>rd</sup> Day of October, 2003.

JOHN D. MAIDA, ESQUIRE  
ATTORNEY ID # 17182  
1000 GERMANTOWN PIKE B-8  
PLYMOUTH MEETING, PA 19462  
(610) 277 6418

OFFICE OF THE  
PROTHONOTARY  
MONTGOMERY COUNTY, PA

03 OCT -3 PM 2:24

M.C.M. Real Estate, Inc.	:	IN THE COURT OF COMMON
t/a Eichler & Moffly Realtors	:	PLEAS OF
97 Bethlehem Pike	:	MONTGOMERY COUNTY, PA
Philadelphia, PA 19118	:	
:	:	
	:	IN EQUITY
vs.	:	
	:	No.
The Glistening Web Communication Corporation	:	
7 Lindenwold Terrace	:	
Ambler, PA 19002	:	

**ENTRY OF APPEARANCE**

Please enter the appearance of John D. Maida, Esquire, for the Plaintiff in the above-captioned matter.



John D. Maida, Esquire  
Attorney for Plaintiff

JOHN D. MAIDA, ESQUIRE  
ATTORNEY ID # 17182  
1000 GERMANTOWN PIKE B-8  
PLYMOUTH MEETING, PA 19462  
(610) 277 6418

M.C.M. Real Estate, Inc.  
t/a Eichler & Moffly Realtors  
97 Bethlehem Pike  
Philadelphia, PA 19118  
:

: IN THE COURT OF COMMON  
: PLEAS OF  
: MONTGOMERY COUNTY, PA  
:

vs.

: IN EQUITY  
:

The Glistening Web Communication Corporation  
7 Lindenwold Terrace  
Ambler, PA 19002  
:

: No. 03-19318  
:

**TEMPORARY SPECIAL ORDER  
AND  
ORDER FOR HEARING**

And now, this      day of October, 2003, upon consideration of the Plaintiff's  
Complaint and Petition for Special Relief under Pa. R.C.P. 1531, filed in the above  
captioned matter, it appearing to the satisfaction of this Court that immediate and  
irreparable injury will be sustained by the Plaintiff before notice can be given or a  
hearing held in the above captioned matter,

IT IS HEREBY ORDERED that

1. An injunction is hereby issued, preliminarily until hearing, enjoining and  
restraining the Defendant, The Glistening Web Communication Corporation, its  
servants and agents from using the trademarks and trade name of the Plaintiff in  
any manner on the world wide web to access any web page other than a blank

page or in the alternative to redirect such sites to the current official web site of the Plaintiff, identified as [www.eichlermoffly.com](http://www.eichlermoffly.com).

2. An injunction is hereby issues, preliminarily until hearing, enjoining the Defendant from maintaining or managing any web site which contains or sets forth the Plaintiff's trademark or trade name, unless such sites do nothing more than directly link the viewer to the Plaintiff's official site as aforesaid
3. An injunction is issued, preliminarily until hearing, enjoining the Defendant from maintaining or managing any web site which contains or sets forth the Plaintiff's trademark or trade name which is confusing or misleading to the public and/or which contains reference to non existing criminal investigations.

IT IS HEREBY FURTHER ORDERED that a Hearing on the Petition for Special relief is hereby scheduled for the \_\_\_\_\_ day of October, 2003, at \_\_\_\_\_ o'clock \_\_\_\_\_.M. in Court Room "\_\_\_\_\_" of the Montgomery County Courthouse, Norristown, PA 19404.

BY THE COURT:

\_\_\_\_\_  
J.



Defendant from maintaining or managing any web site which contains or sets forth the Plaintiff's trademark or trade name, unless such sites do nothing more than directly link the viewer to the Plaintiff's official site as aforesaid

3. An injunction is issued, permanently, enjoining the Defendant from maintaining or managing any web site which contains or sets forth the Plaintiff's trademark or trade name which is confusing or misleading to the public and/or which contains reference to non existing criminal investigations.

BY THE COURT:

---

J.

JOHN D. MAIDA, ESQUIRE  
ATTORNEY ID # 17182  
1000 GERMANTOWN PIKE B-8  
PLYMOUTH MEETING, PA 19462  
(610) 277 6418

OFFICE OF THE  
PROTHONOTARY  
MONTGOMERY COUNTY, PA  
03 OCT -3 PM 2:25

M.C.M. Real Estate, Inc. : IN THE COURT OF COMMON  
t/a Eichler & Moffly Realtors : PLEAS OF  
97 Bethlehem Pike : MONTGOMERY COUNTY, PA  
Philadelphia, PA 19118 :  
: :  
: IN EQUITY  
vs. :  
: No. 03-19318  
The Glistening Web Communication Corporation :  
7 Lindenwold Terrace :  
Ambler, PA 19002 :

**PETITION FOR SPECIAL RELIEF UNDER PA. R.C.P. 1531**

AND NOW, Petitioner, M.C.M. Real Estate, Inc. t/a Eichler & Moffly Realtors (hereinafter "E & M"), by and through its attorney, hereby files this Petition in Equity for Special Relief seeking preliminary and permanent injunctions against The Glistening Web Communication Corporation (hereinafter "Glistening") as follows:

1. This Petition is filed pursuant to PA. R.C.P. 1531.
2. Petitioner, E & M, respectfully request this Honorable Court to issue and injunction against the Respondent, Glistening as follows:
  - a. That an injunction be issued, preliminarily until hearing, and perpetually thereafter, enjoining and restraining the Respondent, The Glistening Web Communication Corporation, its servants and agents from using the trademarks and trade name of the Petitioner in any manner on the world wide web to access any web page other than a blank page or in the alternative to



redirect such sites to the current official web site of the Petitioner, identified as [www.eichlermoffly.com](http://www.eichlermoffly.com).

- b. That an injunction be issued, preliminarily until hearing and then permanently thereafter, enjoining the Respondent from maintaining or managing any web site which contains or sets forth the Petitioner's trademark or trade name, unless such sites do nothing more than directly link the viewer to the Petitioner's official site as aforesaid
- c. That an injunction be issued, preliminarily until hearing and then permanently thereafter, enjoining the Respondent from maintaining or managing any web site which contains or sets forth the Petitioner's trademark or trade name which is confusing or misleading to the public and/or which contains reference to non existing criminal investigations.
- d. Such other and further relief as the equities of the case may require and the Court may seem appropriate and proper.

3. In support of this Petition, Petitioner relies upon and incorporates by reference the averments of the Complaint in Equity filed in the above captioned action, a true and correct copy of which is attached hereto and incorporated herein by reference.

4. In further support thereof, Petitioner believes and therefore avers that the false representations being made by the Respondent that the Petitioner is the subject of an criminal investigation will be used by its business competitors to take an unfair and unjust advantage over its competitive marketing with that of the Petitioner.

5. In further support thereof, Petitioner believes and therefore avers that the false representations being made by the Respondent that the Petitioner is the subject of a

criminal investigation may cause customers who otherwise would use the services of the Petitioner to seek services elsewhere.


6. In further support thereof, Petitioner believes and therefore avers that the directing of leads looking for E & M via the web sites maintained by the Respondent to competitors of E & M, have and will cause E & M to loss business E & M would otherwise have secured.

7. That granting of the Petition will not harm the business of the Respondent, but merely prevent the confusion created by the actions of the Respondent and terminate the malicious and libelous statements made by the Respondent concerning the Petitioner on the world wide web.

8. Petitioner believes and therefore avers that the actions of the Respondent in directing the web sites to pages other than that of E & M were intentional, and with full knowledge and understanding that such actions would cause the Petitioner irreparable and immediate harm, the magnitude and nature of which is impossible to determine.

9. Petitioner, for the reasons aforesaid, has no adequate remedy at law.

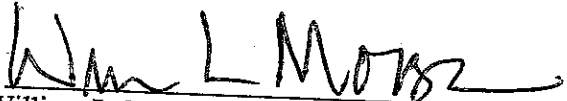
WHEREFORE, Petitioner respectfully request that this Petition be granted and the special relief be so Ordered.

  
\_\_\_\_\_  
John D. Maida, Esquire  
Attorney for the Petitioner

VERIFICATION

I verify that the statements made in the foregoing instrument are true and correct based on my knowledge, information and belief. I understand that false statements herein are made subject to penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Date: 10.2.83

  
William L. Morse, authorized officer on behalf  
of M.C.M. Real Estate, Inc.

JOHN D. MAIDA, ESQUIRE  
ATTORNEY ID # 17182  
1000 GERMANTOWN PIKE B-8  
PLYMOUTH MEETING, PA 19462  
(610) 277 6418

M.C.M. Real Estate, Inc.  
t/a Eichler & Moffly Realtors  
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The Glistening Web Communication Corporation  
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Ambler, PA 19002  
:

: IN THE COURT OF COMMON  
: PLEAS OF  
: MONTGOMERY COUNTY, PA

:  
:  
: IN EQUITY

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: No.

**NOTICE**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

**LAWYER REFERRAL SERVICE  
100 WEST AIRY STREET  
NORRISTOWN, PENNSYLVANIA  
19401  
(610) 279-9660**

JOHN D. MAIDA ASSOCIATES

BY: \_\_\_\_\_  
John D. Maida, Esq.

JOHN D. MAIDA, ESQUIRE  
ATTORNEY ID # 17182  
1000 GERMANTOWN PIKE B-8  
PLYMOUTH MEETING, PA 19462  
(610) 277 6418

M.C.M. Real Estate, Inc.	:	IN THE COURT OF COMMON
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**COMPLAINT IN EQUITY**

Plaintiff, M.C.M. Real Estate, Inc. t/a Eichler & Moffly Realtors by and through its attorney, file this Complaint in Equity against The Glistening Web Communication Corporation as follows:

**The Parties**

1. Plaintiff, M.C.M. Real Estate, Inc. t/a Eichler & Moffly Realtors (hereinafter "E & M"), is a Pennsylvania Corporation with its registered office and doing business at 97 Bethlehem Pike, Philadelphia, PA 19118.
2. Defendant, The Glistening Web Communication Corporation (hereinafter "Glistening"), is a Pennsylvania Corporation with its registered office and doing business at 7 Lindenwold Terrace, Ambler, PA 19002.

### **Factual Background**

3. In or about 1995, E & M entered into an oral agreement with Glistening, by which agreement Glistening was to provide internet web page services for E & M.

4. Pursuant to an oral agreement between E & M and Glistening, Glistening was employed by E & M to create on its behalf web pages for E & M (hereinafter "web pages") in order that such web pages could be employed as advertising media by E & M in the promotion of its real estate brokerage business on the world wide web.

5. Pursuant to the oral agreement between E & M and Glistening, Glistening was further contractually engaged to place the web pages on the internet via web sites set up for the sole use and benefit of E & M (herein "web sites"), for and on behalf of E & M, and to thereafter maintain the web pages on the web sites on the world wide web system commonly known as the internet, for and on behalf of E & M, so as to make the web pages readily accessible to the public searching for businesses offering real estate brokerage service.

6. Pursuant to the oral agreement between E & M and Glistening, Glistening was further contractually engaged to place the web pages on the web sites of the internet for and on behalf of E & M, and to maintain the web pages and web sites on the world wide web system for and on behalf of E & M, in order that the web pages would be readily accessible to the public searching for the E & M's web page, as created by Glistening for E & M.

7. From 1995 to on or about June 1, 2003, Glistening performed the services referenced in paragraphs 4, 5 and 6 hereof for E & M.

8. At the end of June 2003, E & M terminated its agreement with Glistening and employed a new internet service provider to thereafter create and maintain its web pages and web sites on the internet.

9. At all times relevant hereto, E & M paid Glistening in full for services it rendered.

10. At all time relevant hereto, E & M understood that it was the owner of the web pages and web sites created and instituted by Glistening for and on its behalf and that searches made by the public seeking the E & M web pages would always be directed to E & M, even though such web pages and we sites would not after June, 2003, be maintained by Glistening for and on behalf of E & M following the termination of their business relationship.

11. For more than 50 years, and at all times relevant hereto, the name and style, "Eichler & Moffly Realtors" and "Eichler & Moffly" (herein "trademarks"), which are the unique property of as the trademarks and the trade name of E & M, have been and continue to be valued common law trademarks and trade name of the Plaintiff, and are highly recognizable to the public in the Philadelphia metropolitan area, as only representative of the brokerage business services rendered to the public by E & M.

12. In the development of the web pages and web site by Glistening for and on behalf of E & M, the trademarks and trade name were to be the centerpieces of the site, as they represented the unique characterization of E & M in its marketing of its business identity to the public.

13. Plaintiff believes and therefore avers, that many of its prospective customers for its services, search the world wide web in order to view E & M's web pages, using

only the trademarks and/or trade name as the key words in the search engines provided by the many and varied world wide web search engine available to the public.

14. Because of the many years of valued professional services rendered by E & M to its customers (and services heretofore rendered by its predecessors) under the trademarks, the trademarks and trade name became and continue to be exceedingly valuable to E & M, the value having arising solely from the conduct of the business by E & M (and that of its predecessors).

15. That by reason of the extensive advertising of the trademarks and trade name and the brokerage business done by E & M, a large number of people have come to rely on the trademarks and trade name when seen in advertising or otherwise as representing only the business of E & M and as such the trademarks and trade name have acquired a well established secondary meaning as the marks and name under which E & M have done and are now doing business in the Philadelphia metropolitan area and elsewhere.

16. That in the course of their business, E & M, has caused the trademarks and trade name to be listed in numerous telephone directories, on numerous "for sale" signs and in many directories and trade journals, each before and after the creation of the web pages

17. The Plaintiff has not be dissolved or in any way terminated and is at the present time engaged in the same business as before, that is the brokerage of real estate, and is at present using the trademarks and trade name in its business.

18. That since on or about July 1, 2003, and at all times thereafter, following the termination of the aforesaid relationship between the parties, Glistening, in violation of the common law trademark rights of the Plaintiff, caused the search engines on the world



wide web, to direct prospective customers of the Plaintiff to sites of Plaintiff's competitors, including but not limited to Archer Real Estate Inc., whenever said individual looked for the Plaintiff's web pages by designating the key words "Eichler & Moffly" in the search engine, knowing that such action would create confusion for the public and give the impression that the Plaintiff was no longer in business. Attached hereto, marked Exhibit "A" and made a part hereof, is an one sample of the confusion as set forth on the internet search engines known as Google, in which numerous web sites controlled by the Defendant (each of which it is believed and therefore averred the Plaintiff paid Defendant to create) use the trademarks and trade name but upon selection lead to the Defendant's site and not the Plaintiff's.

19. Upon learning of the actions by the Defendant, Plaintiff by its chief executive officer and President, William L. Morse, called and advised the Defendant of the confusion their actions had created on the internet and was informed by Glistening that the Defendant would only address the issue if the Plaintiff provided to the Defendant an open ended credit card account in order that Glistening could to review the new Plaintiff's new web page and determine if it was up to Glistening's standards and thereafter pay to Glistening \$500.00 per month in order for Glistening to direct leads to from the web site to Plaintiff's new web page.

20. In consideration of the Defendant's refusal to deter the confusion created on the world wide web relating to Plaintiff's trademarks and trade name, Plaintiff by its counsel, forwarded a cease and desist letter to the Defendant on July 28, 2003, demanding that they cease and desist from further violations of Plaintiff's common law

trademark rights in that such actions were confusing the public. A true and correct copy of such letter is attached hereto, marked Exhibit "B" and hereby made a part hereof.

21. Following its receipt of the aforesaid letter (Exhibit "B"), Defendant terminated the direct link to Archer Real Estate, Inc.'s web site but continued to cause the search engines, which clearly identified the named sites as that of Eichler & Moffly, to direct viewers to Defendant's site and the business which pay them a fee for referrals, including other businesses in direct competition with the Plaintiff.

22. As a result of Defendant's failure following their receipt of the letter marked Exhibit "B" to terminate the confusion they created with respect to Plaintiff's trademarks and trade name, Plaintiff, through their attorney sent a second letter to the Defendant demanding that they cease and desist their use of the trademarks, and provided to them a detailed procedure by which such action could be achieved, thereby eliminating the confusion they had created. A true and correct copy of such letter is attached hereto, marked Exhibit "B" and hereby made a part hereof.

23. Following the Defendant's receipt of the letter marked Exhibit "C", Defendant Glistening, changed the web page to which the search engines took viewers by adding a false, libelous and misleading statement thereto as follows:

Note: If you are looking for Eichler & Moffly, the website here has been archived and is no longer updated. Due to the activities of Eichler & Moffly, we have been forced to pursue a criminal investigation. Please refer all inquiries to the Attorney General of the Commonwealth of Pennsylvania.

Attached hereto and marked Exhibit "D" is a true and correct print out of one of the many similar web pages created by the Defendant setting forth the above referenced

legend, as found from viewing the following web maintained and controlled by the Defendant:

**Eichler and Moffly**

Welcome to Chestnut Hill, Philadelphia Featured Listings National Relocation Service Marketing Your Property Consumer Notice Services For Listings Home  
membrane.com/philanet/realestate/index2.html - 2k - Cached - Similar pages  
[ More results from membrane.com ]

24. At no time has the Plaintiff been subject to any criminal investigation, nor has it been the subject of any investigation whatsoever by the office for the Attorney General in and for the Commonwealth of Pennsylvania.

**Count 1 – In Equity**

25. Plaintiff incorporates herein by reference each of the averments set forth in paragraphs 1 through 24 hereof, as if fully set forth herein at length.

26. Plaintiff, E & M, avers that the actions of the Defendant constitutes unfair trade competition, violation of its common law trade marks and are such that have and will continue to cause confusion to the public with respect to the Plaintiff's business.

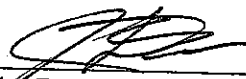
27. The actions of the Defendant, Glistening, are contrary to law and such that has and will result in manifest and irreparable damages to the Plaintiff's business, for which there is no available or adequate remedy at law.

WHEREFORE, the Plaintiff is in immediate need of equitable relief and prays:

- (a) That an injunction may issue, preliminarily until hearing, and perpetually thereafter, enjoining and restraining the Defendant, The Glistening Web

Communication Corporation, its servants and agents from using the trademarks and trade name of the Plaintiff in any manner on the world wide web to access any web page other than a blank page or in the alternative to redirect such sites to the current official web site of the Plaintiff, identified as [www.eichlermoffly.com](http://www.eichlermoffly.com).

- (b) That an injunction may issue, preliminarily and then permanently thereafter, enjoining the Defendant from maintaining or managing any web site which contains or sets forth the Plaintiff's trademark or trade name, unless such sites do nothing more than directly link the viewer to the Plaintiff's official site as aforesaid
- (c) That an injunction may issue, preliminarily and then permanently thereafter, enjoining the Defendant from maintaining or managing any web site which contains or sets forth the Plaintiff's trademark or trade name which is confusing or misleading to the public and/or which is misleading and or contain reference to non existing criminal investigations.
- (d) Such other and further relief as the equities of the case may require and the Court may seem appropriate and proper.

  
\_\_\_\_\_  
John D. Maida, Esquire  
Attorney for the Plaintiff

VERIFICATION

I verify that the statements made in the foregoing instrument are true and correct based on my knowledge, information and belief. I understand that false statements herein are made subject to penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Date: 10.2.07

William L. Morse  
William L. Morse, authorized officer on behalf  
of M.C.M. Real Estate, Inc.



Advanced Search Preferences Language Tools Search Tips  
site:philanet.com Eichler Moffly Google Search

Web - Images - Groups - Directory - News  
Searched pages from philanet.com for Eichler Moffly. Results 1 - 38 of about 62. Search took 0.15 seconds.

**Eichler and Moffly**

Welcome to Chestnut Hill, Philadelphia Featured Listings National Relocation Service Marketing Your Property Consumer Notice Services For Listings Home  
philanet.com/reaalestate/index2.html - 2k - [Cached](#) - [Similar pages](#)

**AllRealEstate.com**

... Note: If you are looking for **Eichler & Moffly**, the website here has been archived and is no longer updated. For information on advertising ...  
philanet.com/reaalestate/ - 2k - [Cached](#) - [Similar pages](#)

**EICHLER & MOFFLY REALTORS - Chestnut Hill Real Estate, Real ...**

... West Mt. Airy Townhome. Blue Bell Hill Duplex - SALE PENDING! **EICHLER & MOFFLY REALTORS** 97 Bethlehem Pike, Chestnut Hill, Philadelphia, PA.  
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**Real Estate For Sale - Real Estate Marketing and Selling Your ...**

... estate information. REAL ESTATE MARKETING IN THE DELAWARE VALLEY Contact **Eichler & Moffly** Realtors for help with selling your home. ...  
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**Real Estate in Wyndmoor, Montgomery County, Real Estate for Sale ...**

Featured Listing You have reached the **Eichler and Moffly** archive. ... Thank you. **EICHLER & MOFFLY REALTORS** 97 Bethlehem Pike, Chestnut Hill, Philadelphia, PA.  
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**East Mt. Airy Real Estate for Sale, Real Estate For Sale in ...**

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**West Mt. Airy, Philadelphia Real Estate for Sale, Real Estate For ...**

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**Chestnut Hill Real Estate for Sale, Real Estate For Sale in ...**

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**Real Estate in Flourtown, Montgomery County, Real Estate for Sale ...**

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**Philadelphia Real Estate, Duplex for Sale, Real Estate For Sale ...**

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philanet.com/realestate/4069283.html - 6k - [Cached](#) - [Similar pages](#)

Montgomery County Real Estate for Sale, Real Estate For Sale in ...  
Featured Listing You have reached the **Eichler** and **Moffly** archive. ... Thank you. **EICHLER** & **MOFFLY REALTORS** 97 Bethlehem Pike, Chestnut Hill, Philadelphia, PA.

philanet.com/realestate/4078854.html - 7k - [Cached](#) - [Similar pages](#)

Wyndmoor, Montgomery County Real Estate for Sale, Real Estate For ...  
Featured Listing You have reached the **Eichler** and **Moffly** archive. ... Thank you. **EICHLER** & **MOFFLY REALTORS** 97 Bethlehem Pike, Chestnut Hill, Philadelphia, PA.

philanet.com/realestate/4088505.html - 6k - [Cached](#) - [Similar pages](#)

Condominiums in Philadelphia, Real Estate for Sale, Real Estate ...  
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Montgomery County Commercial Real Estate, Real Estate for Sale, ...  
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Real Estate in Blue Bell, Montgomery County, Real Estate for Sale ...  
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philanet.com/realestate/4076146.html - 6k - [Cached](#) - [Similar pages](#)

Mt. Airy, Philadelphia, Real Estate for Sale, Real Estate For ...  
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Real Estate in West Mt. Airy, Philadelphia, Real Estate for Sale ...  
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[philanet.com/realestate/4091272.html](http://philanet.com/realestate/4091272.html) - 6k - [Cached](#) - [Similar pages](#)

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[philanet.com/realestate/4073741.html](http://philanet.com/realestate/4073741.html) - 6k - [Cached](#) - [Similar pages](#)

[Chestnut Hill Real Estate, homes, relocation, properties for sale ...](#)  
... estate intentions and needs. Please click the submit button. Thank you. Please click here to return to **Eichler & Moffly's** homepage.

[philanet.com/realestate/orinfo2.html](http://philanet.com/realestate/orinfo2.html) - 3k - [Cached](#) - [Similar pages](#)

[Springfield, Montgomery County Real Estate for Sale, Real Estate ...](#)  
You have reached the **Eichler and Moffly** archive. ... Thank you. **EICHLER & MOFFLY REALTORS** 97 Bethlehem Pike, Chestnut Hill, Philadelphia, PA tel: 215-248-4050.

[philanet.com/realestate/4079744.html](http://philanet.com/realestate/4079744.html) - 6k - [Cached](#) - [Similar pages](#)

[West Mt. Airy, Philadelphia Real Estate for Sale, Real Estate For ...](#)  
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[philanet.com/realestate/4091738.html](http://philanet.com/realestate/4091738.html) - 6k - [Cached](#) - [Similar pages](#)

[Montgomery County Real Estate for Sale, Real Estate For Sale in ...](#)  
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philanet.com/realestate/4074446.html - 6k - [Cached](#) - [Similar pages](#)

**Flourtown, Montgomery County Real Estate for Sale, Real Estate ...**  
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philanet.com/realestate/4091108.html - 6k - [Cached](#) - [Similar pages](#)

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philanet.com/realestate/4088126.html - 6k - [Cached](#) - [Similar pages](#)

**Wyndmoor, historic Montgomery County Real Estate for Sale, Real ...**  
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philanet.com/realestate/4077220.html - 6k - [Cached](#) - [Similar pages](#)

**Montgomery County Real Estate for Sale, Real Estate For Sale in ...**  
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philanet.com/realestate/4070705.html - 6k - [Cached](#) - [Similar pages](#)

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philanet.com/realestate/4088400.html - 6k - [Cached](#) - [Similar pages](#)

**Glenside, Montgomery County Real Estate for Sale, Real Estate For ...**  
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site:membrane.com Eichler Moffly

Google Search

Web - Images - Groups - Directory - News

Searched pages from membrane.com for Eichler Moffly. Results 1 - 8 of about 9. Search took 0.14 seconds.

**EICHLER & MOFFLY, Chestnut Hill, Philadelphia, Montgomery County ...**

**EICHLER & MOFFLY REALTORS** A background of the company and its policies:  
**Eichler & Moffly, Inc.** was founded in 1960 by David K. **Eichler** ...

membrane.com/philanet/realestate/about.html - 3k - [Cached](#) - [Similar pages](#)

**Eichler and Moffly**

Welcome to Chestnut Hill, Philadelphia Featured Listings National Relocation  
Service Marketing Your Property Consumer Notice Services For Listings Home

membrane.com/philanet/realestate/index2.html - 2k - [Cached](#) - [Similar pages](#)

**EICHLER & MOFFLY REALTORS - Chestnut Hill Real Estate, Real ...**

... West Mt. Airy Townhome, Blue Bell Hill Duplex - SALE PENDING! **EICHLER**  
& **MOFFLY REALTORS** 97 Bethlehem Pike, Chestnut Hill, Philadelphia, PA.

membrane.com/philanet/realestate/listings.html - 6k - [Cached](#) - [Similar pages](#)

**Chestnut Hill Real Estate, Philadelphia, Pennsylvania Real Estate ...**

Real estate in Pennsylvania, real estate in Chestnut  
Philadelphia, **Eichler and Moffly** real estate. ...

membrane.com/philanet/realestate/services.html - 6k - [Cached](#) - [Similar pages](#)

**Real estate in Philadelphia, homes for sale, relocation services ...**

Real estate for sale and homes houses for sale in historic Chestnut Hill, and Montgomery County, Pennsylvania

membrane.com/philanet/realestate/list.html - 2k - [Cached](#) - [Similar pages](#)

**Montgomery County Real Estate for Sale, Real Estate For Sale in ...**

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& **MOFFLY REALTORS** 97 Bethlehem Pike, Chestnut Hill, Philadelphia, PA.

membrane.com/philanet/realestate/4074446.html - 6k - [Cached](#) - [Similar pages](#)

**Where do I start when thinking about buying a home or relocating ...**

... CONTACT US. EichlerMoffly.com. **EICHLER & MOFFLY REALTORS** 97 Bethlehem Pike  
Chestnut Hill, Philadelphia, PA tel: 215-248-4050 homes@eichlermoffly.com. ...

membrane.com/philanet/relo/buying.html - 6k - [Cached](#) - [Similar pages](#)

**Corporate relocation services, real estate listings, properties ...**

... CONTACT US. EichlerMoffly.com. **EICHLER & MOFFLY REALTORS** 97 Bethlehem Pike  
Chestnut Hill, Philadelphia, PA tel: 215-248-4050 homes@eichlermoffly.com. ...

membrane.com/philanet/relo/corp.html - 4k - [Cached](#) - [Similar pages](#)

site:membrane.com Eichler Moffly

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\* of counsel

(610) 277 6300  
(215) 646 2990  
Facsimile: (610) 277 6418  
E-mail: JDM100@aol.com

July 28, 2003

The Glistening Web Communication Corporation  
7 Lindenwold Terrace  
Ambler, PA 19002

Archer Real Estate, Inc.  
275 Commerce Drive  
Suite 326  
Fort Washington, PA 19034

Re: Eichler & Moffly Realtors

Dear Sir/Madam:

Please be advised that I represent Eichler & Moffly Realtors. I am writing to you with respect to the web sites entitled "Eichler & Moffly Realtors - Chestnut Hill Real Estate" found at [philanet.com/realestate](http://philanet.com/realestate) and the site entitled "Eichler and Moffly" found at [philanet.com/realestate/index2.html](http://philanet.com/realestate/index2.html).

I am told that both David and Daniel Brouse are fully aware that Eichler and Moffly Realtors is a long existing real estate business in the Philadelphia metropolitan area, whose name has great recognition, especially in the Chestnut Hill and Eastern Montgomery County region.

In fact, I am advised their awareness of this fact arises from services they performed for my client, in the initial set up of the web page for which they had been well paid.

The purpose of this letter is to advise you on behalf of my client that your present use of the above noted websites to access business to your benefit, including Archer Real Estate, Inc.'s benefit, constitutes a violation of my client's common law trademark, and constitute both an unfair trade practice and unfair competition, each of which entitle my client to damages and injunctive relief.

Your conduct in using and maintaining the sites, and that of Archer Real Estate, Inc. in benefiting from the sites, per my client, have caused consumer confusion, and have damaged my client and will continue to damage my client's business and operation.

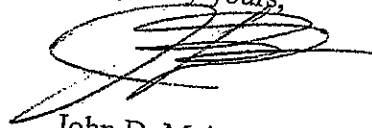
I am further advised that you have informed my client that you will not cease and desist unless they pay to you significant sums on a monthly ongoing basis, in order to

page 2  
July 23, 2003

restrict your use of the site in question. This is in my opinion both unfair and unreasonable in light of my client's ownership rights of the site, which rights they understood were delivered to them when the site was created, and is actionable in a court of law and equity.

You are hereby notified on behalf of my client that your unfair competition and trade practices, coupled with your violation of my client's common law trademark is causing my client significant damages for which they will seek relief. You are informed that they will extend to you no more than ten (10) days from the date hereof in which to cease and desist causing the sites in question to send consumers to sites which are not that of Eichler & Moffly, Inc. Should you fail to fulfill this request within 10 days from the date of this letter, my client will be left no alternative but to seek immediate injunctive relief as a result of your actions.

Very truly yours,



John D. Maida

JDM/mhl

Cc: Eichler & Moffly Realtors, W. Lee Morse, President

John D. Maida Associates  
Attorneys at Law

Plymouth Greene Office Campus  
1000 Germantown Pike B-8  
Plymouth Meeting, Pennsylvania 19462

John D. Maida  
Nicholas J. Masington, III \*  
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(610) 277 6300

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Facsimile: (610) 277 6418

E-mail: JDM100@aol.com

August 18, 2003

✓ The Glistening Web Communication Corporation  
7 Lindenwold Terrace  
Ambler, PA 19002

Re: Eichler & Moffly Realtors

To whom it may concern:

As you already know, I represent Eichler and Moffly Realtors, located in Chestnut Hill. Following my letter of July 28, 2003, you sent me an e mail, rejecting my client's demand to cease and desist violating their trademark rights. Even so you did make changes to the sites at issue, which demonstrated the ease with which you can eliminate the confusion created by you.

In an effort to resolve this dispute amicably, my client retained independent expert assistance to analysis the situation and recommend a fix to the problem. Enclosed you will find a report from Chronos Incorporated for your review and direction. Please note that from that report, B. Jay Bagdis, Esquire, was directed to suggest a solution that would avoid litigation as opposed to generate it. But be advised that unless you agree to implement these suggestions forthwith, litigation will be my client's only remaining course of action.

Kindly advise me no later than August 31, 2003, if you will comply with Mr. Bagdis' suggestions. My client has incurred significant cost to generate this report – but recognizes that it is incurring much greater damages (as eluded to by Mr. Bagdis) until the confusion caused by your use of my client's mark is addressed. I truly hope you will accept this proposal and not take any action which could be further damaging to my client. You were well and fully paid by my client to assist it in the past – but their now using the services of others now is not a license for you to harm. They paid for the sites in question to be created, and those sites should now lead the consumer to their intended target.

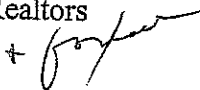
Very truly yours,

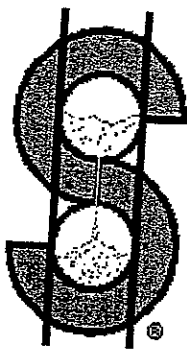
John D. Maida

JDM:jmm

Encl.

✓ Cc: Eichler & Moffly Realtors

+ 



# CHRONOS Incorporated

1200 DeKalb Pike  
Center Square, PA 19422  
(610) 272-7000  
FAX (610) 278-1982

John D. Maida, Esq.  
1000 Germantown Pike B-8  
Plymouth Meeting, PA 19462

Ref: Eichler & Moffly/Philanet

Dear John:

At your request, we have reviewed the situation with respect to the internet presence of Eichler & Moffly, Realtors. The attached report contains a detailed analysis as well as hard copy print-out of a representative sampling of web pages related to the report. Obviously, there are many more pages located throughout the World Wide Web, ("www" or "web"), but we feel that these pages, along with the summary, form an accurate representation of the issues involved.

It appears that Eichler & Moffly, ("E&M"), as a customer, and Glistening Web Communications Corporation, ("GW" or "host"), as hosting company entered into a business relationship whereby GW would establish an internet presence for E&M, publish a series of web pages, and promote the location of the website through the various internet search engines. This presence was implemented in the classic www.myname.com/yourname format, wherein the hosting company establishes its top-level domain record throughout the internet, and as traffic arrives at its servers, directs the inquiries to the appropriate files for delivery of the information. This arrangement was typical in the early years of the web because resources were scarce and therefore relatively expensive. Hosting companies used a single or small group of internet addresses or domains to provide a variety of customers with an internet presence.

As the cost of resources began to fall, it became practical, or even a necessity, for a business to register its own domain name ("myownname.com") instead of relying on the /yourname or embedded directory format from a hosting service. There are a number of interesting cases related to the commercial appropriation of a "famous" domain name, such as "mcdonalds.com", by so-called cybersquatters, and the courts have fashioned remedies for most of these egregious circumstances.

In the instant circumstances, E&M has now established its own domain, "eichlermoffly.com" and now faces the classic problem of what happens to all the traffic that used to go to the GW-hosted sites. It is little more complicated in this instance because instead of expressly using the E&M name in the www.myname.com/yourname format, GW chose to use www.myname.com/realestate as the placeholder. As the report illustrates, there are many references throughout the web still pointing to the GW site, even though they originate as E&M

inquiries. In addition, the way GW has chosen to resolve the ambiguity actually makes the matter worse.

The number of internal references, within the GW site, usually ultimately resolve themselves to the website of AllRealEstate.com, which is a competitor of E&M. This is clearly an unacceptable situation, and is compensable to E&M.

We have prepared a "simple fix" for the situation, which can resolve the issue to the satisfaction of all parties, with minimum cost and inconvenience. The last exhibit contains a recommended "forwarding" page and message which should be implemented by GM as soon as possible. Please note that it is NOT sufficient to just use the proposed redirection page. The entire directory /realestate should be redirected to this page, which will inform potential customers of the change and redirect them to the "real" Eichler & Moffly site. If this fix is not carried out in this fashion, unresolved references to non-existent pages will return an error implying that E&M may no longer be in business.

We further note that the circumstances are such that is impossible to measure the damages being suffered by E&M, as a single commission on a \$500,000 sale approaches \$30,000. Therefore each inquiry that is siphoned off from E&M to All RealEstate.com has the potential for enormous harm to E&M.

The likelihood of damage to E&M is great considering the current pace of the real estate market.

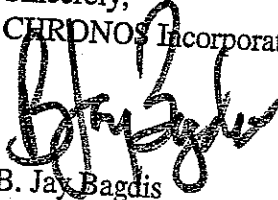
E&M is extremely likely to prevail in a prosecution for damages, as there is a fairly well-established body of law developing on these specific issues. Parenthetically, the Third Circuit, which is based in Philadelphia, is often the lead jurisdiction in issues of this type, as a review of current case law will indicate.

Therefore it is our considered opinion and recommendation that E&M request that GW implement our proposed solution. This is a very low cost accommodation by GW, and avoids the necessity of costly litigation, while resolving the situation - essentially immediately.

Should you need additional information, clarification, exhibits, or testimony, we are available at your request. If GW needs technical assistance to implement the proposed "fix", our staff is available either in person or by telephone to respond.

I sincerely hope that a peaceful solution can be implemented.

Sincerely,  
CHRONOS Incorporated



B. Jay Bagdis  
Managing Director

Internet: <http://www.CHRONOS.com>



# Summary

After an analysis of [www.philanet.com](http://www.philanet.com) and [www.membrane.com](http://www.membrane.com) the following facts have become apparent:

- [philanet.com](http://philanet.com) and [membrane.com](http://membrane.com) are both controlled by the same organization and are located on the same IP subnet. Due to the similarity of the content of both [www.philanet.com](http://www.philanet.com) and [www.membrane.com/philanet](http://www.membrane.com/philanet), both sites are most likely hosted on the same physical server, or on two different servers with shared storage.
- The virtual directories [www.philanet.com/realestate](http://www.philanet.com/realestate) and [www.membrane.com/philanet/realestate](http://www.membrane.com/philanet/realestate) contain an outdated version of the website of Eichler & Moffly. It appears that these directories formerly comprised the official Eichler & Moffly website, in a [www.myname.com/yourname](http://www.myname.com/yourname) arrangement. These virtual directories do not appear to contain any web pages for any entity other than Eichler & Moffly.
- The home page of [www.philanet.com/realestate](http://www.philanet.com/realestate) and [www.membrane.com/philanet/realestate \(index.html\)](http://www.membrane.com/philanet/realestate/index.html) is now a redirection to the website of a competitor to Eichler & Moffly, [www.AllRealEstate.com](http://www.AllRealEstate.com).
- The original Eichler & Moffly homepage ([index.html](http://index.html)) at [www.philanet.com/realestate](http://www.philanet.com/realestate) and [www.membrane.com/philanet/realestate](http://www.membrane.com/philanet/realestate) appears to have been renamed to [index2.html](http://index2.html) so that previously existing hyperlinks to the Eichler & Moffly homepage ([index.html](http://index.html)) now point to the aforementioned redirection to [www.AllRealEstate.com](http://www.AllRealEstate.com).
- Although the former homepage of the Eichler & Moffly website ([www.philanet.com/realestate/index.html](http://www.philanet.com/realestate/index.html)) and [www.membrane.com/philanet/realestate/index.html](http://www.membrane.com/philanet/realestate/index.html)) has been changed to bear the mark of [www.AllRealEstate.com](http://www.AllRealEstate.com) and bears no mention of Eichler & Moffly, there still exist numerous other pages below the [/realestate](http://realestate) directory which bear the mark of Eichler & Moffly and purport to direct users to the Eichler & Moffly homepage. However, these sub-pages **do not** direct users to the actual Eichler & Moffly homepage, but instead direct users to [www.philanet.com/realestate/index.html](http://www.philanet.com/realestate/index.html) or to [www.membrane.com/philanet/realestate/index.html](http://www.membrane.com/philanet/realestate/index.html), a redirection to [www.AllRealEstate.com](http://www.AllRealEstate.com).
- In addition to the numerous sub-pages under the [/realestate](http://realestate) directory which bear the mark of Eichler & Moffly, numerous Internet Search Engines (such as

www.google.com) retain cached references to pages under the www.philanet.com/realestate and the www.membrane.com/philanet/realestate directories. These cached references contain the mark of Eichler & Moffly and ultimately direct users to the former Eichler & Moffly home page (www.philanet.com/realestate/index.html and www.membrane.com/philanet/realestate/index.html) which are now redirections to www.AllRealEstate.com. These cached referrals (containing the mark of Eichler & Moffly) will remain in the databases of these Internet Search Engines, for an indefinite period of time, even if all reference to Eichler & Moffly is removed from all web pages in the www.philanet.com/realestate and www.membrane.com/philanet/realestate directories.

- Additionally, an unknown number of users may have bookmarked references to pages within the www.philanet.com/realestate and www.membrane.com/philanet/realestate directories, believing them to be official Eichler & Moffly web pages; and an unknown number of websites may contain deep-links, bearing the mark of Eichler & Moffly, to pages within the www.philanet.com/realestate and www.membrane.com/philanet/realestate directories.

In summary, www.philanet.com and www.membrane.com are using the service mark of Eichler & Moffly to generate user traffic that is directed to the website of www.AllRealEstate.com, a competitor to Eichler & Moffly.

Consideration of these facts yields the following conclusion:

- The mark of Eichler & Moffly is inextricably linked to the virtual directories of www.philanet.com/realestate and www.membrane.com/philanet/realestate for an indefinite period of time (until all Internet Search Engines have updated their caches, all users have updated their bookmarks, and all websites have updated their hyperlinks, etc.).
- Any web page placed within these directories will have users directed to it through the mark of Eichler & Moffly.
- If the directory is simply removed, references to it will still remain cached on Internet Search Engines, stored in users bookmarks, and on other websites with links to Eichler & Moffly. Users following any of these links will receive a "404 Page Not Found" error, with no further explanation to indicate to where the new Eichler & Moffly website can be found. The only logical conclusion a user can draw from this error message is that Eichler & Moffly may have gone out of business. This condition will result in significant financial loss to Eichler & Moffly and will persist for an indefinite period of time.
- Therefore, the simplest and most expeditious solution to this problem is to place a blanket redirection of all URLs under the directories of

www.philinet.com/realestate and www.membrane.com/philinet/realestate to the real Eichler & Moffly web site (www.eichlermoffly.com).

- This redirection should display a message to users informing them that the Eichler & Moffly website has moved and should then instruct them to update their bookmarks. Finally, and automatically, (after a delay of several seconds), the placeholder page should redirect them to the current homepage of www.eichlermoffly.com.

## Exhibits/Documentation

Internet Service Provider Ownership Report

Philinet.com

Membrane.com

Whois record showing SAME name Server and common ownership

Google Site Reports

Philinet.com Eichler Moffly

Membrane.com Eichler Moffly

Index.html page at

www.philinet.com/realestate/

www.membrane.com/philinet/realestate/

*indicates Eichler & Moffly no longer has current website*

source listing showing index.html page

[OLD] index2.html formerly at

www.philinet.com/realestate/

www.membrane.com/philinet/realestate

*source code shows links to internal philinet or membrane pages*

Sample page from /realestate/ directory

Current "live" pages have links to internal philanet pages ultimately  
leading to [www.AllRealEstate.com](http://www.AllRealEstate.com)  
Currently published as index.html

Other Search Engine inquiries

LYCOS

YAHOO

RELO Brokers Page

Current page without Eichler Moffly reference

Cached page WITH Eichler Moffly reference

Meta tags showing Eichler Moffly

Proposed FIX

**This page is no longer updated. It is archived as of 9/04/03. Please [click here](#) for current real estate information.**

*Welcome to Chestnut Hill, Philadelphia*

*Featured Listings*

*National Relocation Service*

*Marketing Your Property*

*Consumer Notice*

*Services For Listings*

*Home*



## Welcome to the Greater Philadelphia Region.

This URL is currently dedicated to consumer education and real estate.

- [The History of Real Estate in the Region](#)
- [Important Things To Know](#)
- [Energy Efficiency](#)
- [Financial Workshop](#)

Note: If you are looking for Eichler & Moffly, the website here has been archived and is no longer updated. Due to the activities of Eichler & Moffly, we have been forced to pursue a criminal investigation. Please refer all inquiries to the Attorney General of the Commonwealth of Pennsylvania.


**[AllRealEstate.com](#)**

# AllRealEstate.Com

## REAL ESTATE INDEX

- [Search For A Property](#)
- [Residential Property Directory](#)
  
- [Commercial, Investment, Construction, and Land](#)
- [New Home Construction, Adult 55-Plus Housing, Custom Home Builders, Land & Building Lots](#)
- [Vintage and Historic Properties and Farms](#)
- [Rental Properties/Vacation Rentals/Property Management](#)
- [Find A Realtor](#)
  
- [The Map Room](#)
- [Mortgage Financing](#)
- [Mortgage Loan Refinancing - Conventional, FHA, VA, Jumbo](#)
- [Buyer Representation Information](#)
- [Home and Environmental Inspections](#)
- [Contractors and Specialists](#)
- [Home Center](#)
- [Title Insurance](#)
- [Homeowner's Insurance](#)
- [The Real Estate Library](#)
  
- [Services for Real Estate Professionals](#)

*please click here to visit:*

	<p><b>SECURE YOUR HOME OR BUSINESS</b></p> <p>Alarm Systems - Camera Systems - Security Monitoring @ AllRealEstate.com</p>
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List your property or services here.  
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[Back to the Greater Philadelphia Region](#)





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- [Michael Anthony Real Estate](#)
- [Prudential Fox and Roach Exton - Anne Matyjasik](#)
- [Anthony Builders, Inc.](#)
- [The McKee Group](#)
- [Prudential Fox and Roach - The Fox Team](#)
- [Amy and Patricia Loesch - Lisa James Otto Country Properties](#)
- [W.B. Homes, Inc.](#)
- [Weichert, Realtors - McCarthy Associates](#)
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- [Re/Max Executive Realty - Andrea Robbins](#)
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- [Re/Max 440 - J. Justin Frost](#)
- [Re/Max Professional - Teri Freed](#)
- [Prudential Fox and Roach - Society Hill - John J. Brown](#)

## Maps

**To list your services here, please contact us.**



*Created by: [brouse@membrane.com](mailto:brouse@membrane.com) and [sidd@membrane.com](mailto:sidd@membrane.com) [1 January 95]*

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2003-19318-0003  
Memorandum of Law  
Montgomery County Prothonotary  
William E Donnelly  
Friday, October 03, 2003 02:23:00 PM

*MD*

M.C.M. Real Estate, Inc. : IN THE COURT OF COMMON  
t/a Eichler & Moffly Realtors : PLEAS OF  
97 Bethlehem Pike : MONTGOMERY COUNTY, PA  
Philadelphia, PA 19118 :  
: :  
: IN EQUITY  
vs. :  
: *No 03-19318*  
The Glistening Web Communication Corporation :  
7 Lindenwold Terrace :  
Ambler, PA 19002 :

**MEMORANDUM OF LAW IN SUPPORT OF M.C.M. REAL ESTATE, INC'S. ,  
TRADING AS EICHLER & MOFFLY, REALTORS.  
PETITION FOR SPECIAL RELIEF**

**1. Introduction**

The instant Petitioner arises from an action in equity and is in the nature of a request by Petitioner, M.C.M. Real Estate, Inc., trading as Eichler & Moffly, Realtors (hereinafter "E&M") for a preliminary injunction pending trial and thereafter a permanent injunction against The Glistening Web Communication Corporation (hereinafter "Glistening").

**2. Statement of Facts**

As alleged in the Complaint, a number of years ago E&M entered into an oral agreement with Glistening, whereby Glistening agreed to prepare for E&M various web pages to be viewed from web sites, also to be set up for E&M by Glistening, on the

*1/3C*

internet, also known as the world wide web. At the end of June, 2003, E&M terminated its relationship with Glistening, and has or had paid any and all sums due Glistening, in full, for services theretofore rendered.

Following termination of the relationship between the parties, Glistening has caused or permitted the web sites theretofore created to the benefit of E&M, which sites reference the trademarks and trade name of E&M, to direct those individuals searching the web for E&M to view the web pages of other customers of Glistening, many of whom are in direct competition with the Petitioner. Furthermore, upon demand to cease and desist, Glistening then added a legend to the web page found when searching the web sites for E&M, stating that E&M is the subject of a criminal investigation, which statement is untrue and unfounded.

In light of Glistening's refusal to cease and desist directing those looking for E&M's official site to sites of competitors, consumers when searching the world wide web for E&M are undoubtedly confused; especially when they are directed to sites of competitors and not the official site of E&M.

Due to the foregoing, E&M believes and therefore has averred, that it is losing business via the internet because potential customers are being confused by the actions of Glistening, and it has or will also suffer further imminent and irreparable harm as a result of the malicious and false representation now on the web pages managed and created by Glistening, stating that E&M is subject to a criminal investigation.

As such, this Petition has been timely filed and special relief has been sought.

### 3. Argument:

Under Pennsylvania Law, there are two classes of cases of Judicial Interference with the respect to the use of trade names and trademarks. The first is when the intent is to gain an unfair and fraudulent share of another's business, and the second is where the effect, irrespective of intent, is to produce confusion in the public's mind and consequent losses to the parties whose name has been infringed. In each of these cases, equity will administer relief without regard to the existence of a technical trademark. *The Suburban Press v. the Suburban Publishing Company*, 18 PA.D.997 (1909).

In the Instant Action, the conduct of the Defendant, Glistening, Plaintiff believes and has averred, were intentional, being done with the direction and intent to create an unfair and fraudulent share of Plaintiff's business being directed to E&M's competitors, they being current customers of the Defendant. However, even if this were not the case, and such effect was not intended, there can be no doubt that the Defendant's acts have and will produce confusion in the public mind and irreparably harm the Plaintiff, E&M.

In order for a Preliminary Injunction to be issued, the moving party must show that the relief is necessary to halt an immediate and irreparable harm, which harm could not be remedied by monetary damages; and that the greater injury will result by refusing the injunction. Also, that by granting the injunction, the parties' relationship will be restored to the status as it existing prior to the alleged wrongful conduct; and that the injunction is reasonably suited to abate such activity. *WPNT, Inc. v. Secret Communications, Inc.* 661 A.2d 409 (1995); *Schaeffer v. Fry* 589 A.2d 752 (1991). In the instant action, the Plaintiff's claim satisfies each of these elements.

The need for an injunction is unquestionably immediate. E&M has reason to believe potential clients have been confused by web sites on the internet which direct them to competitor's web pages. The damages arising from this confusion was then magnified by the intentional insertion of a legend on the web pages of the Defendant, Glistening, to which those searching for E&M's official site are directed, falsely stating that E&M is the subject of a criminal investigation. Therefore, absent intervention by this Court, the irreparable harm to E &M that this action seeks to address, will not be corrected.

From the relief requested, there will be no cognizable injury to the Defendant, Glistening. Should this Court grant the injunction, the requested relief would merely preclude viewers on the internet from sourcing sites which they had not intended to find when searching under E&M's trademarks and trade name. Glistening on the other hand, would simply be restrained from permitting such web sites causing confusion for the public through directing the searcher to competitive companies of E&M, whose sites they did not originally intend to view. There is unquestionably greater harm in permitting Glistening to proceed with their inappropriate action and there would be no inconvenience to Glistening by preventing them from precipitously confusing the public henceforth and also unlawfully defaming the Petitioner.

By granting the relief requested, the Court will insure that the status quo as it existed at the end of June, 2003, is preserved, in as much as any individual surfing the web will be directed either to a blank page, or to E&M's present official page, as they intended. Such was the case at the end of June, 2003, and should be the case hereafter, since E&M fully paid for the web sites from which viewers are now improperly directed.

Finally, the injunction requested is reasonably suited to address E&M's needs, and to prevent Glistening's improper use of the internet for purposes of unfair competition and creating confusion to the consumers. Referencing the Action of *In re Pratt's Appeal*, 117 PA 401 (1888), the Court in the case of *Suburban Press v. Suburban Publishing Company*, 1909 WL 4755 (1909) highlighted the following statement by Justice Paxxon:

"If the defendant's print is an imitation of that of the plaintiffs, if it is calculated to deceive and mislead, the motive of the defendant in adopting it is not material, so far as the law of the case is concerned, however much it might affect it in a moral point of view. The protection which equity extends to such cases is for the benefit of the manufacturer, and to secure to him the fruits of his reputation, skill and industry."

In the instant action, notwithstanding any motive or intent of the Defendant to harm the Plaintiff, its conduct has harmed the Plaintiff and equity is the only form of relief that can prevent such irreparable injury from continuing. As stated by Justice Stewart in the matter of *Juan F. Prtuondo, Cigar Manufacturing Company v. Vincente Prtuondo Cigar Manufacturing Company*, 222 PA 116 (1908):

"The general rules that anything done by a rival in the same business, by imitation or otherwise, designed or calculated to mislead the public in the belief that in buying the product offered by him for sale, they are buying the product of another manufacturer, would be a fraud on the other's rights, and would afford just ground for equitable interference. ... With respect to the measure of relief afforded the plaintiff by the restraining decree of the court, the defendants in the bill have no grounds for complaint. It deprives them of nothing that they are entitled to; it simply protects the plaintiff company in the exclusive enjoyment of what it has shown itself to lawfully own".

In the instant action, the Plaintiff has a common law right to its trademarks, Eichler & Moffly and Eichler & Moffly Realtors, which such marks are now being inappropriately used and violated by the Defendant. The Court's entry of an order

enjoining such action by the Defendant will in no way harm or in any other way deprive the Defendant of any benefit to which they are rightfully entitled. There can be little doubt from the facts in this case, that the Defendant's actions are solely intended to harm the Plaintiff, but even if that were not true, the relief requested would still be appropriate.

As such, it is furthermore evident in this case, that there is no other adequate remedy of law and immediate and irreparable harm will be suffered by the Plaintiff absent the entry of the special relief requested.

**4. Conclusion:**

Based on the foregoing, E&M has demonstrated procedural and substantive entitlement to the relief requested, and respectfully requests this Honorable Court to enter a Preliminary Injunction pending a hearing, and following a hearing a Permanent Injunction, for the relief prayed for in the Complaint.

Respectfully submitted,



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John D. Maida, Esquire