

DAVIS & GILBERT LLP

Marc J. Rachman
mrachman@dglaw.com
Daniel A. Dingerson
ddingerson@dglaw.com
1740 Broadway
New York, NY 10019
(212) 468-4800

Attorneys for Plaintiff Knockaway, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KNOCKAWAY, INC., d/b/a KNOCK,

Plaintiff,

-against-

EASYKNOCK, INC.,

Defendant.

20-cv-

COMPLAINT
(ECF CASE)

Plaintiff Demands A Trial By Jury

Plaintiff Knockaway, Inc. d/b/a Knock (“Knock” or “Plaintiff”), by and through its attorneys, Davis & Gilbert LLP, for its Complaint against Defendant EasyKnock, Inc. (“EasyKnock” or “Defendant”), alleges as follows:

NATURE OF THE ACTION

1. Knock brings this action against EasyKnock as a result of EasyKnock’s deliberate and willful use of Knock’s trademark as part of a confusingly similar name and mark, without Knock’s authority, which constitutes: (a) trademark infringement, unfair competition and false designation of origin under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and, (b) common law trademark infringement and unfair competition.

2. Knock seeks to recover actual and treble damages, along with EasyKnock's profits, as well as costs and attorneys' fees, arising from EasyKnock's conduct, permanent injunctive relief and any other relief the Court deems proper.

PARTIES

3. Plaintiff Knock is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 335 Madison Avenue, 16th Floor, New York, NY 10017. Knock provides real estate services to consumers.

4. Defendant EasyKnock, upon information and belief, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 215 Park Avenue S, Suite 1713, New York, NY 10003. EasyKnock provides real estate services to consumers.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332(a)(1), 1338 and 1367 because this action involves claims arising under the Lanham Act, 15 U.S.C. §1051, *et seq.*, and related state-law claims.

6. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant's principal place of business is in this District. Additionally, the Court has personal jurisdiction over Defendant pursuant to N.Y. CPLR § 302(a)(1) and (2) because Defendant transacts business within the state of New York and within this District, and has committed tortious acts within the state of New York.

7. In addition, upon information and belief, EasyKnock has solicited and/or transacted business in New York using Knock's trademark, and Knock's injury arises out of EasyKnock's conduct.

8. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and (c) because, upon information and belief, Defendant's principal place of business is in this District and a substantial part of the events or omissions giving rise to Knock's claims occurred in this District.

FACTS COMMON TO ALL CAUSES OF ACTION

9. Knock provides real estate services, including services designed to assist with the concurrent or overlapping real estate sale and purchase transactions. Knock's services provide increased liquidity to home owners to facilitate more seamless transitions between homes. Knock's offices are located in New York and San Francisco, and Knock operates in markets around the United States.

10. Knock has been using the name and mark "KNOCK" (the "Knock Mark") as its corporate name and as a trademark in connection with real estate services since 2016. Since at least September 2016, the Knock Mark has been—and continues to be—used in interstate commerce.

11. Knock has been consistently recognized as a market leader for its expertise and services in various media outlets, including *The Wall Street Journal* and *Bloomberg*, among others.

12. As a result of Knock's longstanding use of the Knock Mark and the high quality of its services, the Knock Mark has become widely known throughout the United States, is closely identified with Knock, and represents substantial and valuable goodwill.

13. Since its inception, Knock has assisted home owners in the sale of their home as well as the purchase of a new home with a focus on eliminating the uncertainty previously endemic to overlapping sale/purchase home transactions and relieving homeowners of the illiquidity of equity in their existing home. Knock has consistently provided consumers peace of

mind by assessing the market value of a consumer's current home and facilitating and guaranteeing the sale of that property.

14. Past Knock service offerings have included the Knock Seller Guarantee and the Knock Home Trade-In, both of which facilitated consumers' ability to purchase and move into a new home prior to sale of their prior home.

15. Knock's latest consumer offering, Knock Home Swap, continues to provide these benefits to consumers and is a natural evolution of Knock's previous services that have been offered since 2016. Through the Home Swap program, Knock provides the primary mortgage the consumer uses to purchase a new home, loans for continued mortgage payments as well as for repairs and other preparations for selling, and access to Knock's proprietary home valuation technology and Knock's approved contractor network.

16. Knock's Home Swap service makes it easier for home owners to purchase their next home by assisting with the sale of their current home, providing increased liquidity, and removing much of the uncertainty in the process.

17. Knock markets Home Swap to consumers by partnering with real estate brokerages and agents.

18. Knock also markets to consumers through the website <https://www.knock.com> (previously [knock.re](https://www.knock.re) and [knock.co](https://www.knock.co)), which started in or around July 2016.

19. On or about September 23, 2020, Knock filed a federal trademark application with the United States Patent and Trademark Office (the "USPTO") for the Knock Mark (serial number 90204063) in International Class 36.

20. The service identification in the Knock application is for "[p]roviding information in the field of real estate; Real estate consulting services; Financial appraisal and valuation of

homes; Real estate financing services; Real estate lending services; Real estate acquisition services”.

21. EasyKnock, upon information and belief, provides real estate services, including services designed to provide consumers with an alternative to a reverse mortgage through a sale and leaseback program called “Sell & Stay.” As it’s name suggests, the purpose of the Sell & Stay program is to have home owners stay in their existing homes, but to be able to get some of their equity out of their home while they still are living in it.

22. EasyKnock markets itself and its products using its corporate name “EasyKnock” (the “EasyKnock Mark”).

23. Up until only recently, EasyKnock’s services were focused on its Sell & Stay program, as well as its initial offering of an online listing service for homeowners and buyers that was an alternative to the traditional real estate brokerage service.

24. It was only recently that Knock learned, upon information and belief, that EasyKnock has launched a new service that is extremely similar to the Knock Home Swap program and Knock’s historic Home Trade-In program, which EasyKnock markets as “EasyKnock MoveAbility”.

25. The EasyKnock MoveAbility program is described on the EasyKnock website (<https://www.easyknock.com/programs/moveability>) as making it “easier [for home owners] to purchase their next home” by assisting with the sale of their current home and is a new service, not merely an extension of any previous EasyKnock services. This service, similar to Knock’s services, attempts to provide increased liquidity to home owners to facilitate a more seamless transitions between homes.

26. In addition to being a service that seeks to provide the same benefits to consumers as Knock's Home Swap, upon information and belief, EasyKnock expressly markets MoveAbility as an alternative to a bridge loan, a key product that Knock offers as part of its Home Swap service. Upon information and belief, EasyKnock's Sell & Stay service had no such bridge loan component.

27. EasyKnock uses the domain name [easyknock.com](https://www.easyknock.com) for a website (<https://www.easyknock.com>) promoting its real estate services and to offer the MoveAbility service. Included on the website is use of the infringing EasyKnock Mark.

28. In direct competition with Knock, EasyKnock is, upon information and belief, also partnering with brokerage platforms to offer the MoveAbility service.

29. Upon information and belief, EasyKnock is also partnering with established iBuyers, including Opendoor and Offerpad, which will cause further confusion in the marketplace with respect to Knock's services.

30. Upon information and belief, EasyKnock is promoting or is planning to promote its EasyKnock MoveAbility service on several real estate services platforms, including Realtor.com, Zavvie.com, and others, meaning that Knock's services and EasyKnock's services are available or will be available to consumers via the same, or similar, trade channels.

31. EasyKnock's new program and recent shift into services designed to assist home owners in the transition from one home to the next puts EasyKnock in direct competition with Knock and its Knock Home Swap service and Knock's previous Home Trade-In service.

32. EasyKnock's use of the EasyKnock Mark in connection with services which are nearly identical to those provided by Knock, combined with EasyKnock's use of the Knock Mark in its entirety as part of the EasyKnock Mark, furthered by EasyKnock's current and

planned marketing channels, is likely to cause confusion, mistake, and deception of consumers as to the sponsorship, source, and origin of EasyKnock's services.

33. One potential form such confusion may take, among others, is that the EasyKnock Mark may be mistaken as a version of Knock's service that is designed to be "easier" than its other services, not a service that originates from a different company than Knock.

34. Upon information and belief, EasyKnock has filed two applications with the USPTO for marks that are confusingly similar to the Knock Mark under serial numbers 87507734 and 87507740, in Classes 9 and 36, respectively (together, the "EasyKnock Applications"). In both EasyKnock Applications, the dominant portion of the applied-for mark is "Knock", which is the Knock Mark.

35. On or about September 25, 2020, after learning of EasyKnock's use of the Knock Mark in conjunction with MoveAbility, a service that is very similar to Knock's services and likely to be confusing to consumers, Knock sent a letter to EasyKnock informing it that Knock has prior rights in the Knock Mark and requesting that EasyKnock cease and desist from any use of marks incorporating the Knock Mark because they are likely to cause consumer confusion and harm to the Knock Mark.

36. Although it acknowledged receiving Knock's September 25, 2020, letter, EasyKnock has not ceased its use of the Knock Mark in its name, domain name, and in marketing its services.

37. EasyKnock's continued use of the Knock Mark after receiving Knock's September 25, 2020, letter is therefore willful and has caused and/or is likely to cause consumer confusion and harm to Knock's goodwill.

FIRST CAUSE OF ACTION
**(Direct and Contributory Trademark Infringement
pursuant to Section 43(a) of the Lanham Act)**

38. Knock repeats and realleges the allegations stated in the preceding paragraphs of the Complaint as if set forth fully herein.

39. The Knock Mark is a valid and subsisting trademark under the Lanham Act.

40. Knock's use in U.S. commerce of the Knock Mark is senior to EasyKnock's use of the EasyKnock Mark.

41. Consumers associate the Knock Mark with Knock.

42. EasyKnock's use of the Knock Mark in its name is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of EasyKnock with Knock, or as to the origin, sponsorship, or approval of EasyKnock's goods, services, or commercial activities by Knock, all to the damage and detriment of Knock's reputation and goodwill.

43. EasyKnock's continued use of the Knock Mark without Knock's consent and without causing, inducing or materially contributing to such use, constitutes direct and contributory trademark infringement under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

44. Irreparable harm to Knock is imminent as a result of EasyKnock's conduct, and Knock is without an adequate remedy at law. Knock is thus entitled to an injunction restraining EasyKnock, its officers, directors, agents, employees, representatives, and all other persons acting in concert with them, from engaging in further such infringing acts.

45. On information and belief, and as evidenced in part by EasyKnock's refusal to cease unauthorized use of the EasyKnock mark after receiving a cease and desist letter from

Knock's counsel, EasyKnock's acts were done intentionally and with knowledge of Knock's rights.

46. As a result of this trademark infringement, Knock has sustained and continues to sustain damages in an amount to be determined at trial, plus interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION
(False Designation of Origin and Unfair Competition
pursuant to Section 43(a) of the Lanham Act)

47. Knock repeats and realleges the allegations stated in the preceding paragraphs of the Complaint as if set forth fully herein.

48. Consumers associate the Knock Mark with Knock.

49. EasyKnock's continued use of the Knock Mark in its name without Knock's consent and/or causing, inducing or materially contributing to such use, constitutes false designation of origin and unfair competition under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

50. Irreparable harm to Knock is imminent as a result of EasyKnock's conduct, and Knock is without an adequate remedy at law. Knock is thus entitled to an injunction restraining EasyKnock, its officers, directors, agents, employees, representatives, and all other persons acting in concert with them, from engaging in further such infringing acts.

51. On information and belief, and as evidenced in part by EasyKnock's refusal to cease unauthorized use of the EasyKnock mark after receiving a cease and desist letter from Knock's counsel, EasyKnock's acts were done intentionally and with knowledge of Knock's rights.

52. As a result of EasyKnock's false designation of origin and unfair competition, Knock has sustained and continues to sustain damages in an amount to be determined at trial, plus interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION
(Common Law Trademark Infringement)

53. Knock repeats and realleges the allegations stated in the preceding paragraphs of the Complaint as if set forth fully herein.

54. The Knock Mark is a valid and subsisting trademark under common law.

55. Knock's use of the Knock Mark is senior to EasyKnock's use of the Knock Mark in its name and as part of the EasyKnock Mark.

56. Consumers associate the Knock Mark with Knock.

57. EasyKnock's continued use of the Knock Mark without Knock's consent and without causing, inducing or materially contributing to such use, constitutes trademark infringement under New York common law.

58. Irreparable harm to Knock is imminent as a result of EasyKnock's conduct, and Knock is without an adequate remedy at law. Knock is thus entitled to an injunction restraining EasyKnock, its officers, directors, agents, employees, representatives, and all other persons acting in concert with them, from engaging in further such infringing acts.

59. On information and belief, and as evidenced in part by EasyKnock's refusal to cease unauthorized use of the EasyKnock mark after receiving a cease and desist letter from Knock's counsel, EasyKnock's acts were done intentionally and with knowledge of Knock's rights.

60. As a result of this trademark infringement, Knock has sustained and continues to sustain damages in an amount to be determined at trial, plus interest, costs, and attorneys' fees.

FOURTH CAUSE OF ACTION
(Common Law Unfair Competition)

61. Knock repeats and realleges the allegations stated in the preceding paragraphs of the Complaint as if set forth fully herein.

62. Consumers associate the Knock Mark with Knock.

63. EasyKnock's continued use of the Knock Mark in its name and as part of the EasyKnock Mark without Knock's consent constitutes unfair competition under New York common law.

64. Irreparable harm to Knock is imminent as a result of EasyKnock's conduct, and Knock is without an adequate remedy at law. Knock is thus entitled to an injunction restraining EasyKnock, its officers, directors, agents, employees, representatives, and all other persons acting in concert with them, from engaging in further such infringing acts.

65. On information and belief, and as evidenced in part by EasyKnock's refusal to cease unauthorized use of the EasyKnock mark after receiving a cease and desist letter from Knock's counsel, EasyKnock's acts were done intentionally and with knowledge of Knock's rights.

66. As a result of EasyKnock's unfair competition, Knock has sustained and continues to sustain damages in an amount to be determined at trial, plus interest, costs, and attorneys' fees.

WHEREFORE, Knock prays for judgment to be entered in its favor against EasyKnock providing as follows:

A. A permanent injunction enjoining EasyKnock, its officers, agents, employees, representatives, servants, successors, assigns and all persons, firms, corporations, or entities

either acting directly or indirectly in concert with them or under their direction, control or authority from further use of the Knock Mark in any form;

B. An award of damages that Knock has sustained and profits EasyKnock has derived as a result of its trademark infringement, false designation of origin, unfair competition, and other misconduct specified herein, in an amount to be determined at trial.

C. An award of treble damages in accordance with section 35 of the Lanham Act, 15 U.S.C. § 1117, and an award of exemplary or punitive damages as is deemed appropriate because of the willful and intentional nature of EasyKnock's conduct.

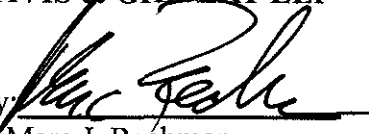
D. An award of interest and costs of this action together with statutory attorneys' fees pursuant to section 35 of the Lanham Act, 15 U.S.C. § 1117;

E. An order that EasyKnock make restitution to Knock for any unjust enrichment caused by virtue of its unlawful conduct as complained of herein; and

F. Such other and further relief as the Court deems just and proper.

Dated: October 12, 2020
New York, New York

DAVIS & GILBERT LLP

By: 

Marc J. Rachman
Daniel A. Dingerson
1740 Broadway
New York, New York 10019
Telephone: (212) 468-4800
Email: mrachman@dglaw.com

Attorneys for Plaintiff Knockaway, Inc.