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7
8 **United States District Court**
9 **For The District Of Arizona**

10 Heidi Powell, an Arizona resident,

11 Plaintiff,

12 v.

13 Kent Powell and Heidi Powell, husband
14 and wife,

15 Defendants.

Case No.

Complaint

16
17 For her Complaint against Defendants Kent Powell and Heidi Powell (“The
18 Powells”), husband and wife, Plaintiff Heidi Powell alleges as follows:

19 1. Plaintiff Heidi Powell is an Arizona resident.

20 2. Upon information and belief, Defendants Kent Powell and Heidi Powell
21 are husband and wife and, at all relevant times hereto, residents of the State of
22 Washington.

23 3. This Court has jurisdiction under 15 U.S.C §1114 (cybersquatting) and 28
24 U.S.C. § 1331 (federal question).

1 4. Venue in this District is proper under 28 U.S.C. § 1391(b). A substantial
2 part of the acts complained of occurred in this District, and Defendants are subject to
3 personal jurisdiction in this District.

4 **General Allegations**

5 5. Heidi Powell has used her name in the public eye since 2010 when she
6 launched her health and fitness blog.

7 6. In 2011, Heidi Power first starred in a reality television show.

8 7. In 2014, after many appearances on ABC’s *Extreme Weight Loss*, Heidi
9 Powell officially became the co-host of ABC’s *Extreme Weight Loss*.

10 8. Heidi Powell is also a best-selling author, having coauthored two New
11 York Times Best Seller books with her husband, Chris Powell, who is also a
12 transformation specialist on *Extreme Weight Loss*.

13 9. As a result of her extensive public exposure, Heidi Powell is a celebrity.

14 10. As a result of her public presence, the name Heidi Powell has become
15 synonymous with positive and empowering life transformations.

16 11. Heidi Powell has continuously and exclusively used the name HEIDI
17 POWELL in connection with physical fitness consultation and instruction since 2010.

18 12. Heidi Powell has continuously and exclusively used the name HEIDI
19 POWELL in connection with providing information in the field of exercise and fitness
20 training and weight loss since 2010.

21 13. Heidi Powell has continuously and exclusively used the name HEIDI
22 POWELL in connection with providing a website featuring information on exercise,
23 fitness and nutrition since 2010.

24 14. Heidi Powell has continuously and exclusively used the name HEIDI
25 POWELL in connection with promoting the goods and services of others by providing a
26

1 website featuring product reviews, links to the retail websites of others, and discount
2 information since 2010.

3 15. Through Heidi Powell’s continuous and exclusive use of the name HEIDI
4 POWELL in connection with the above-listed services, HEIDI POWELL has acquired
5 distinctiveness as identifying a single source of the services.

6 16. On April 19, 2016, Heidi Powell applied to register the trademark HEIDI
7 POWELL in connection with physical fitness consultation and instruction; providing
8 information in the field of exercise and fitness training and weight loss; providing a
9 website featuring information on exercise, fitness, nutrition, weight loss, parenting,
10 children's clothing, how to dress, how to love yourself and embrace your flaws, mental
11 health; and promoting the goods and services of others by providing a website featuring
12 product reviews, links to the retail websites of others, and discount information with the
13 United States Patent & Trademark Office, Serial Number 87006291.

14 17. In 2012, well after Heidi Powell had become a public figure, and as part
15 of the logical zone of expansion of her media empire, Heidi Powell attempted to register
16 the domain name www.heidipowell.com (the “Domain Name”) to bring together all of
17 Heidi Powell’s digital media in one central platform.

18 18. When Heidi Powell attempted to register the domain name she learned
19 that it was already taken by Defendant Kent Powell.

20 19. Upon information and belief, Kent Powell registered the Domain Name
21 with GoDaddy on or around November 26, 2005.

22 20. Heidi Powell sought to purchase the Domain Name from Kent Powell
23 because the website was simply a parked site without any content, and because the
24 Domain Name is identical to the HEIDI POWELL trademark.

25 21. Kent Powell refused to sell the Domain Name to Heidi Powell.
26

1 22. Unable to procure the Domain Name, Heidi Powell instead obtained
2 heidipowell.net, which currently contains Heidi Powell’s blog, an online shopping
3 portal, and easy access to all of Heidi Powell’s social media channels, including
4 Facebook, Twitter, Instagram, Pinterest, and YouTube.

5 23. The Domain Name remained in parked status, meaning the domain was
6 registered but not associated with any services such as email or a website containing
7 content, up until approximately May 21, 2016.

8 24. Upon information and belief, during the time that Kent Powell had parked
9 the Domain Name, it would occasionally redirect to a website located at
10 clicktocallmobile.com, which is a website offering website design. *See* Screenshot of
11 www.clicktocallmobile.com/contact, attached hereto as **Exhibit “A”**.

12 25. Sometime after March 12, 2016, Kent Powell changed the forwarding for
13 the Domain Name and caused the Domain Name to be free parked with GoDaddy,
14 meaning that the Domain Name then showed advertisements of third-party websites of
15 GoDaddy’s choosing. *See, e.g.,* Screenshot of the Domain Name taken May 2, 2016,
16 attached hereto as **Exhibit “B”**.

17 26. On or around May 21, 2016, Kent Powell transferred the domain name to
18 Domains By Proxy, LLC.

19 27. Domains By Proxy is a private registration service that allows consumers
20 to mask the true registrant of a domain name.

21 28. Although Domains By Proxy appears on any report as the registrant of the
22 website, the true registrant of the domain name still maintains full control over the
23 domain name, and is responsible for selling and renewing the domain name, as well as
24 controlling any and all content on the website.

25 29. Upon information and belief, Kent Powell is currently the true registrant
26 of the Domain Name and, as such, maintains full control over whether he sells or

1 transfers the Domain Name and what content appears on the website that the Domain
2 Name redirects to.

3 30. In late May 2016, counsel for Heidi Powell left a voice message for Kent
4 Powell, who was still listed as the registrant for the Domain Name as of May 20, 2016.

5 31. Kent Powell's wife, Heidi, returned the telephone call on May 20, 2016
6 and told counsel that she had no interest in selling the Domain Name.

7 32. Sometime after May 20, 2016, The Powells changed the content of
8 information located at the Domain Name from a parked website to a landing page for
9 Defendant Heidi Powell. *See* Screenshot of the Domain Name as of June 20, 2016,
10 attached hereto as **Exhibit "C"**.

11 33. Upon information and belief, once Defendant Heidi Powell was advised
12 that Heidi Powell was interested in purchasing the Domain Name, Defendants
13 deliberately altered the content located at the Domain Name to make it appear as though
14 they were using the Domain Name for a legitimate purpose.

15 34. Upon information and belief, prior to May 21, 2016, Defendants were not
16 using the Domain Name for any legitimate purpose.

17 35. Upon information and belief, The Powells have used the Domain Name
18 for the purpose of personally and financially benefitting from the goodwill associated
19 with the HEIDI POWELL trademark.

20 36. 15 U.S.C. §1125(d) prohibits cyber piracy, which is where a domain name
21 is identical or nearly identical to an existing trademark, including a personal name, and
22 is used to divert consumers searching for the trademark to the similar domain name.

23 37. Consumers attempting to find Heidi Powell have been redirected to the
24 parked pages and landing pages controlled by The Powells and It is highly likely that
25 consumers attempting to find Heidi Powell in the future could and will be directed to
26 the Domain Name instead.

1 38. Congress passed the Anticybersquatting Consumer Protection Act, 15
2 U.S.C. § 1125(d) (hereinafter “ACPA”) in 1999 as an amendment to the Lanham Act.
3 Congress enacted the ACPA because cybersquatting “threatened ‘the continued growth
4 and vitality of the Internet as a platform’ for ‘communication, electronic commerce,
5 education, entertainment, and countless yet-to-be-determined uses.’” *Virtual Works, Inc.*
6 *v. Volkswagen of America Inc.*, 238 F.3d 264, 267 (4th Cir.2001).

7 39. The statute is designed to reach activities that might otherwise fall outside
8 the scope of the Lanham Act, i.e., the bad faith registration of domain names with intent
9 to profit from the goodwill associated with the trademarks of another, or
10 “cybersquatting.” *See* S.Rep. No. 106-140, at 4 (1999).

11 40. “Cybersquatting occurs when a person other than the trademark holder
12 registers the domain name of a well-known trademark and then attempts to profit from
13 this by either ransoming the domain name back to the trademark holder or by using the
14 domain name to divert business from the trademark holder to the domain name holder.

15 41. The bad faith required to support a cybersquatting claim is not general bad
16 faith, but “a bad faith intent to profit from the mark,” 15 U.S.C. § 1125(d)(1)(A)(i).

17 42. Defendants’ actions indicate an intention to profit specifically from the
18 goodwill associated with the HEIDI POWELL mark.

19 43. Defendants are not engaging in a bona fide offering of goods or services
20 or a legitimate noncommercial or fair use of the Domain Name; but rather are
21 misleadingly diverting consumers who have become familiar with the HEIDI POWELL
22 mark through extensive media exposure.

23 **Count One**

24 **(Violation of 15 U.S.C. §1125(d))**

25 44. Plaintiff realleges each of the allegations in this Complaint as though set
26 forth fully herein.

1 45. The HEIDI POWELL mark is a personal name which is a protected mark
2 under 15 U.S.C. §1125.

3 46. Defendant Kent Powell is the true and correct owner of the Domain
4 Name.

5 47. Upon information and belief, Defendants have a bad faith intent to profit
6 from their use of the HEIDI POWELL mark.

7 48. Defendants have used, and continue to use, the Domain Name despite
8 request from Heidi Powell to cease doing so.

9 49. As owner and exclusive licensee of the Trademark contained in the
10 Domain Name, Plaintiff seeks the transfer of the Domain Name and/or the forfeiture or
11 cancellation of the Domain Name as provided for in the ACPA. 15 U.S.C. §
12 1125(d)(2)(D)(i).

13 **Count Two**

14 **(Violation of 15 U.S.C. § 8131)**

15 50. Plaintiff realleges each of the allegations in this Complaint as though set
16 forth fully herein.

17 51. Plaintiffs incorporate each of the allegations herein as if fully restated.

18 52. This cause of action arises under 15 U.S.C. § 8131, “Cyberpiracy
19 protections for individuals.”

20 53. The Domain Name consists of the name of another living person,
21 specifically Heidi Powell.

22 54. Defendants registered the Domain Name without Heidi Powell’s consent
23 and maintains the Domain Name with the specific intent to divert users who are
24 searching for Heidi Powell.

25 55. Defendants’ violations of 15 U.S.C. § 8131 have caused Heidi Powell to
26 sustain monetary damages, loss, and injury in an amount that is unknown and cannot be

1 calculated by Heidi Powell at present and, therefore, must be determined at the trial of
2 this action.

3 56. Defendants' violations of 15 U.S.C. § 8131 have also caused irreparable
4 injury to Heidi Powell, and unless these violations are enjoined by this Court, they will
5 continue, and Heidi Powell will continue to suffer irreparable injury.

6 57. Defendants actions in violation of 15 U.S.C. § 8131 were knowing,
7 deliberate, and willful.

8 58. Pursuant to 15 U.S.C. § 8131(2), Heidi Powell requests injunctive relief
9 specifically, transfer of the Domain Name to Heidi Powell.

10
11 **Count Three**

12 **(Declaratory Judgment)**

13 59. Plaintiff realleges each of the allegations in this Complaint as though set
14 forth fully herein.

15 60. A controversy has arisen between Heidi Powell and Defendants with
16 regard to their respective rights and other legal relations regarding legal right to the
17 Domain Name.

18 61. Pursuant to 28 U.S.C. §2201, Heidi Powell has standing to seek and is
19 entitled to obtain a declaratory judgment to publically state and declare that the Domain
20 Name has been used by Defendants for an improper purpose to benefit from the
21 goodwill associated with the HEIDI POWELL mark.

22 WHEREFORE, Plaintiff Heidi Powell requests that Judgment be entered in its
23 favor and against Defendants Kent Powell and Heidi Powell as follows:

24 A. For an Order directing that the Registrar of the Domain Name
25 immediately transfer registration of the Domain Name from Defendants to
26 Plaintiff;

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- B. For an Order declaring that Defendants have used and registered the Domain Name in bad faith and for the sole purpose of benefitting from the goodwill associated with the HEIDI POWELL mark; and
- C. For such other and further relief as the Court may deem proper and just.

DATED this 18th day of July, 2016.

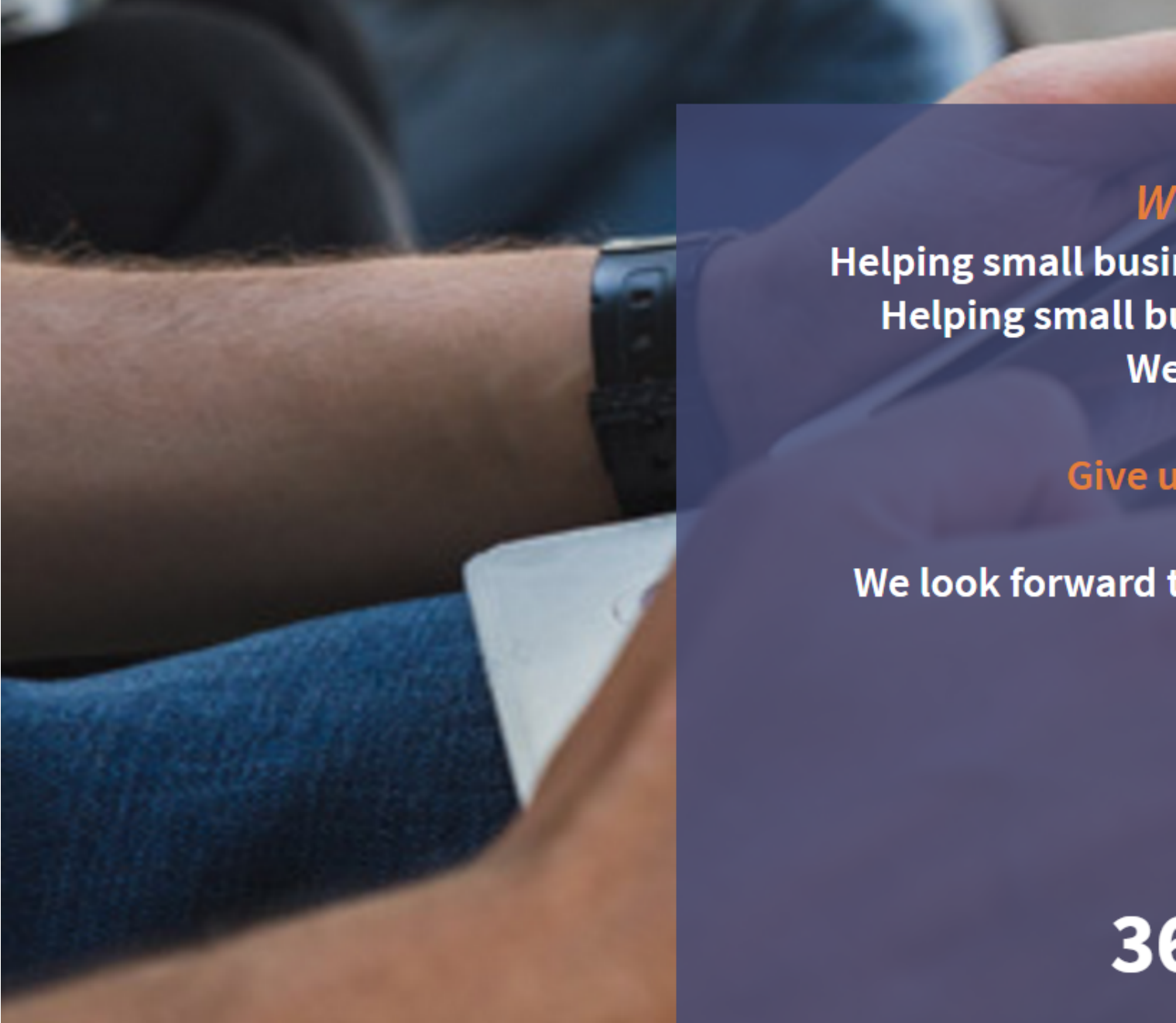
Jaburg & Wilk, P.C.

/s/Maria Crimi Speth
Maria Crimi Speth
Laura Rogal
3200 N. Central Avenue, 20th Floor
Phoenix, AZ 85012
Attorneys for Plaintiff

EXHIBIT A

ClickToCall mobile website design

Heidi Powell Marketing Consultant



W
Helping small busi
Helping small bu
We

Give u

We look forward t

36

Devices

Portfolio

About

Contact

Schedule



Schedule Meeting

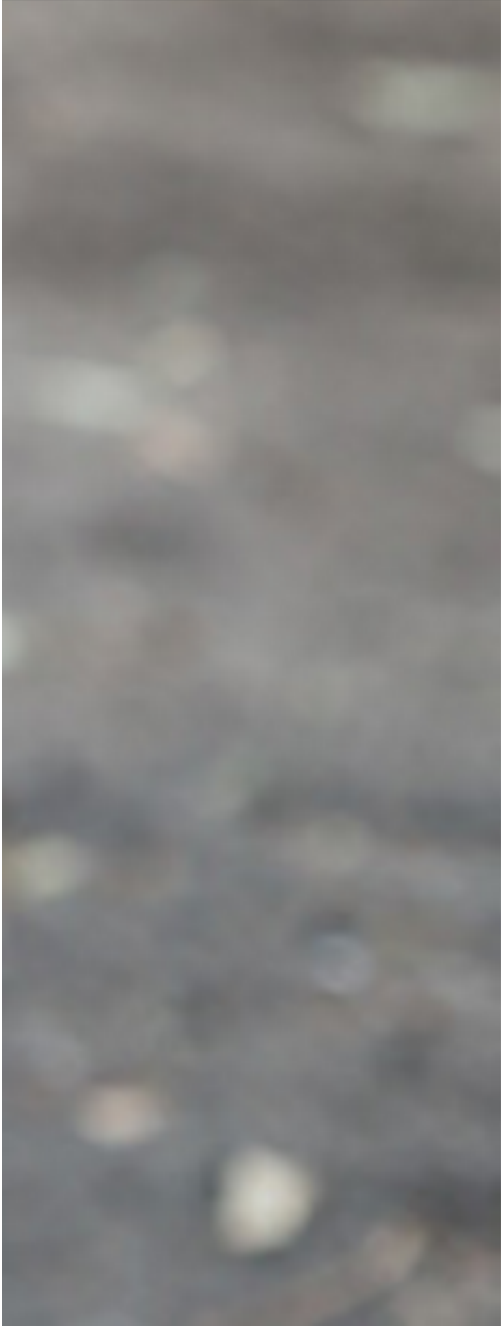
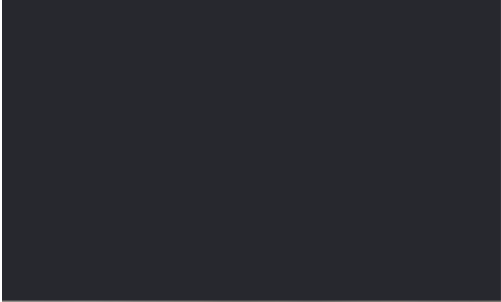
We love what we do...

Businesses "Go Mobile" with their websites.
Businesses get customers in the door.
We'd love to help you too!

Give us a call or send a message!

We're excited to hearing about your business needs.

60-610-7006



Home

Responsive Design

Heidi Powell - Ma

MESSAGE US....

Full Name

Message

Best Time Of Day To Reach You

I'm not a robot



reCAPTCHA
Privacy - Terms

Devices

Portfolio

About

Contact

Schedule

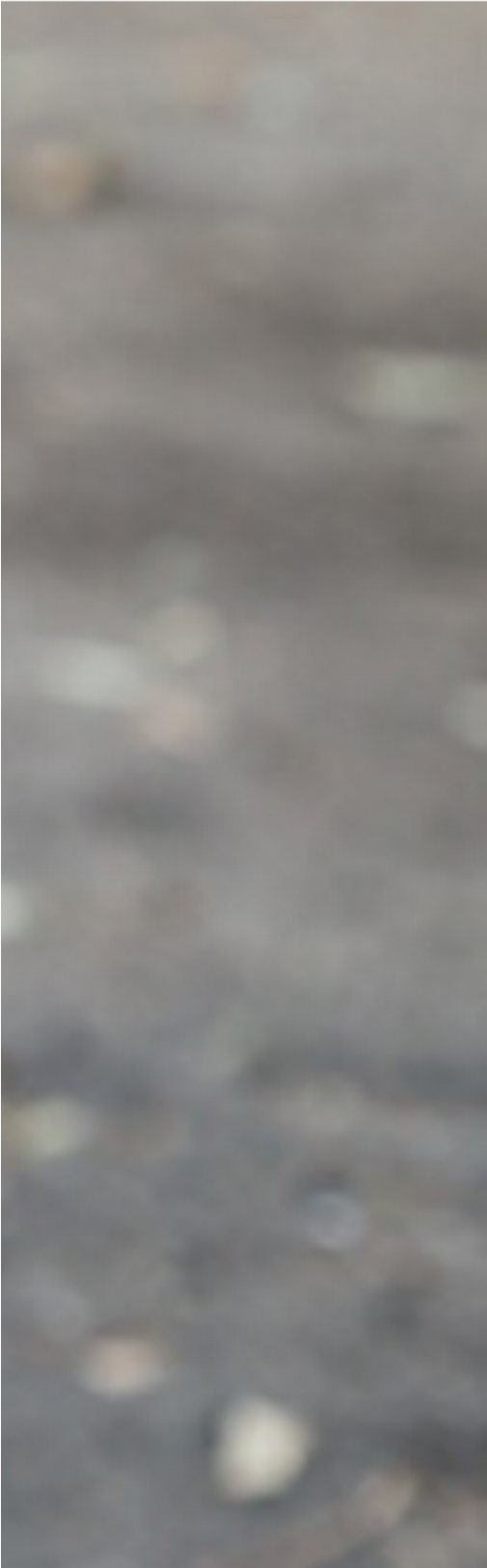
Marketing Consultant - Website Designer - Owner

Best Email Address

Area Code +Phone

How Did You Find Us?

Send Message




Home






Responsive Design



Message

Best Time Of Day To Reach You

I'm not a robot 
reCAPTCHA
Privacy - Terms

 Share  Tweet  Share
 Share  Mail

Devices

Portfolio

About

Contact

Schedule

How Did You Find Us?

Send Message

360-610-7006



Heidi Powell Website Designer
Marketing Consultant

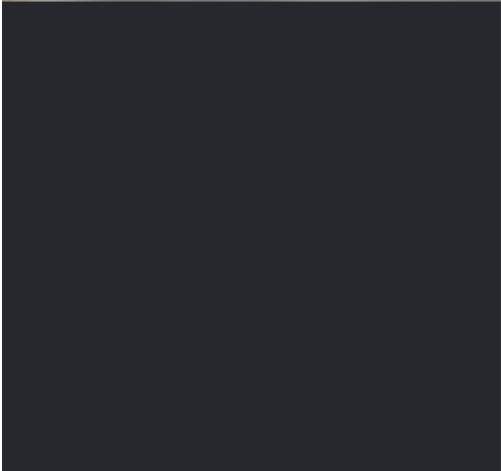
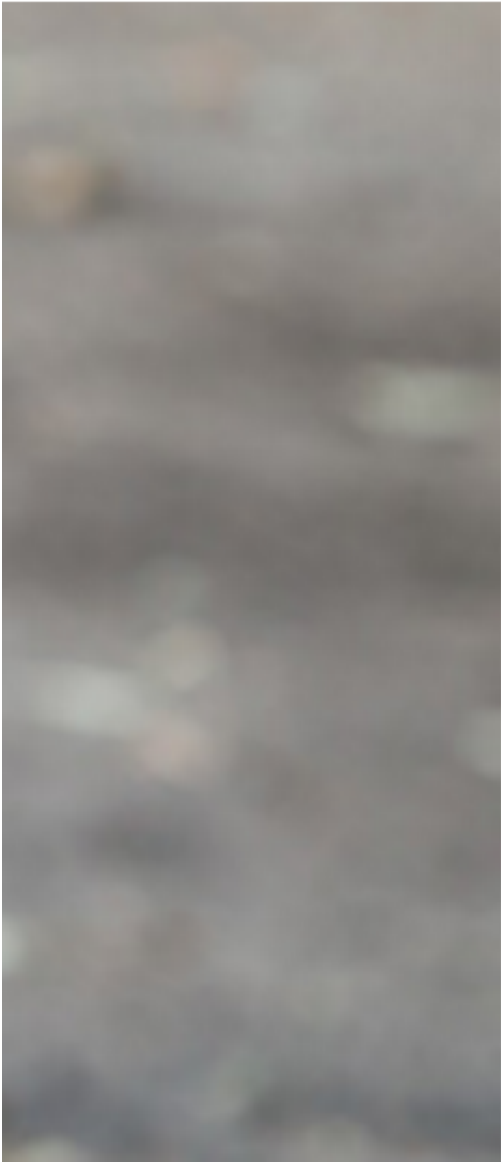


EXHIBIT B



Welcome to: **heidipowell.com**
This Web page is parked for FREE, courtesy of GoDaddy.com.



Share a \$9.99* .COM
with friends!

Search for domains similar to
heidipowell.com

[Get Started](#)

Sponsored Listings

[Breast Augmentation \\$4999](#)

www.stutmanplasticsurgery.com Stutman Plastic Surgery Silicone Gel Implants

[Shemesh Summer Camp](#)

www.shemeshatthej.org/Summer-Camp Traditional, Sports & Specialty. Sign Up For 5 Weeks & Save!

[How To Patent Your Idea](#)

www.inventionhome.com 3 Easy Steps To Patent & Make Money Get A Free Patent & Invention Kit

[3 Worst Foods for Thyroid](#)

medixselect.com The One Thing You Should Be Eating For Your Thyroid Every Morning.

[BodyCandy - Official Site](#)

www.bodycandy.com Shop All Kinds of Stylish Jewelry. Use Code "BC15" For 15% Off Now!

[1 Tip of a flat belly :](#)

superfatburningfats.com Cut down a bit of your belly every day by using this 1 weird old tip.

[4 Foods to never eat :](#)

biotrust.com Cut down a bit of your belly every day by never eating these 4 foods.

[Can't Lose Weight?](#)

thyroid-weight-loss.com "It's Your Hormones!" Says MD A Simple Thyroid Fix Is the Answer.

[\\$5,775 Grants for Women](#)

collegegrants.comparetopschoools.com See If You Qualify for a \$5,775 Grant to Help Pay for College.

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[Get Started](#)

OR

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domain?

[Learn More](#)

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THE domain at THE price.

[GET YOURS](#)

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*Restrictions apply. See website for details.

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EXHIBIT C

About Heidi Powell



Heidi lives in the Great Pacific Northwest, between Seattle Washington and Vancouver BC, with her dear husband Kent, of 37 years. Together they have two beautiful daughters and two equally beautiful grandchildren, the joys of their lives.

Heidi and Kent have worked in the marketing and advertising world for over 25 years, helping hundreds of small business owners get customers through their doors. When it comes to advertising your business they are experts in the field. Both Heidi and Kent hold knowledge of what is currently working for local businesses and the unique markets they serve.

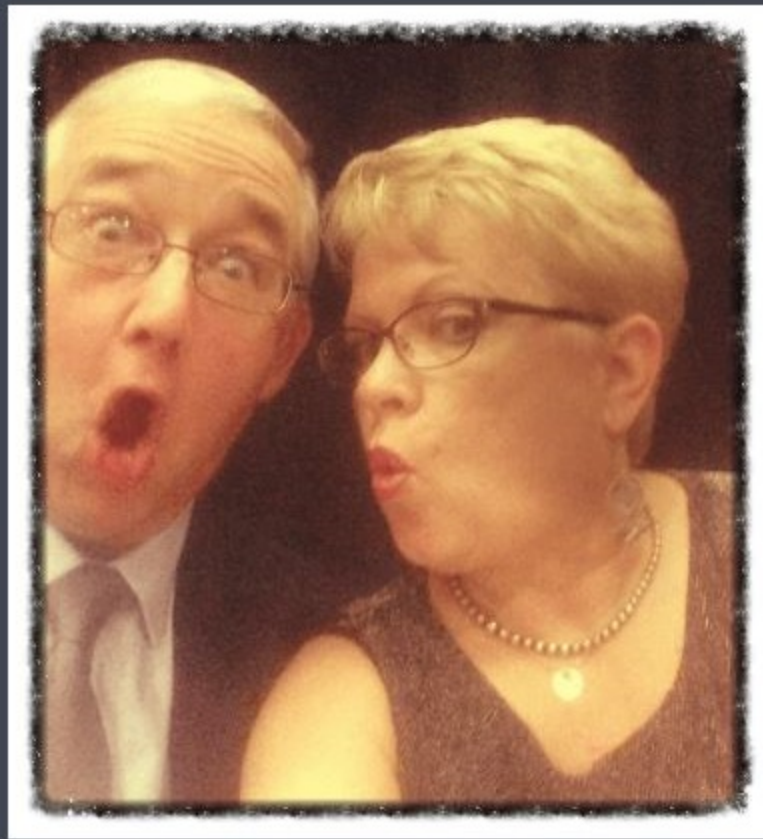
Heidi offers free advice to local businesses needing facts on various forms of ad investments and web presence. Online & offline she assists with Google PPC, Facebook Ads, Google My Business Profiles, Facebook Fan Page set up, listing your business in the top search engines and data aggregators, directory print advertising, yellow page audits of your ad program with YP or other directory companies (to determine if you're losing or gaining from the program), recommendations of what directories to be in (yes you read that, correctly, directory advertising is still paying off in 2016, regardless of what you've heard), building mobile optimized websites, SEO, as well as citations & mentions of your business across the internet. Heidi's goal is to help small businesses succeed at being found, while promoting a company's vision in an affordable and meaningful way.

In addition to her marketing expertise Heidi has strong organizational skills and is multi-artistically talented. She has been interested in art since the age of 5, became a dancer at age 8 and continued with formal training through High School. In the mid 70's Heidi tried out for and was voted into membership of Spokane Washington's elite, all city, talent club "Dasidrian" which was formed in 1922. Heidi danced for local civic and philanthropic groups, in repertory theater and on television. She majored in Commercial Art in college and draws her energy from the creative process. Some of her pen & ink art has been featured in national magazines. One of her designs, created for a local community, won an award. She's done window display and window painting, owned a graphic business which designed logos, print products and created a local direct mail publication featuring offers from businesses throughout Whatcom County. The book was published every six weeks for over four years.

She's creative! Heidi loves creating from all mediums. While holding the "Cultural Arts & Crafts Director" position at The Boy's & Girl's Club of Whatcom County she designed and built elaborate props for the first ever, public haunted houses in Bellingham WA. Heidi did set design for haunted house TV commercials for KVOS and set design for a Vancouver BC attorney's commercials. She designed and built elaborate props for the Whatcom County Humane Society Gala Auction (a giant dog house for the auctioneer to stand in, plus other elaborate, animal related props). She built two award winning "Ski to Sea" parade floats, one most difficult, adorned with a giant 7 foot animated whale that spouted water from it's blow hole, as it traveled down the street. Kent is her greatest champion and says "there's nothing that she can't create or build".

If you're a small business in need of marketing advice or in search of a website design that represents your business in the way you envision it, give her a call. If you are looking for someone to brainstorm or think tank creative ideas, give her a call. She'd love to listen and talk to you, exploring the possibilities of helping your business be seen!

Kent & Heidi Powell



Here we are at the "Domestic Violence & Sexual Assault Services - Hands For Hope Auction". We were caught by surprise when our daughter won the bid on the Caribbean Cruise! So excited for them!

"Where we live, work, and play, comes our inspiration" - Heidi Powell
Mount Baker - Heidi Powell ©



A beautiful place to live, work and play!

"We spend our time rejuvenating, combing the local beaches, strolling the waterfront boardwalk and fishing in the small lakes around the area.

Loving the water and islands we take short trips to the San Juan Islands several times a year. The islands are a stones throw away and visible from our shore and hilltops. Our marina provides sight seeing boat trips out to see the Orca whales pods and a joyful experience when they appear.

If all that wasn't enough, Mount Baker to the east in all her glory can be seen from various locations around town.

We are truly fortunate to live and love in this place we call home." ~ Heidi



Orca Whale - Spotted On Our Latest Whale Watch Adventure - San Juan Islands
Heidi Powell ©