

**Jaburg & Wilk, P.C.**  
3200 N. Central Avenue, 20th Floor  
Phoenix, AZ 85012  
602.248.1000

Maria Crimi Speth (012574)  
mcs@jaburgwilk.com  
Laura Rogal (025159)  
lar@jaburgwilk.com

Attorneys for Plaintiff

**United States District Court  
For The District Of Arizona**

Heidi Powell, an Arizona resident,  
Plaintiff,

v.

Kent Powell and Heidi Powell, husband  
and wife,  
Defendants.

Case No.

**Complaint**

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

1. Plaintiff Heidi Powell is an Arizona resident.
2. Upon information and belief, Defendants Kent Powell and Heidi Powell are husband and wife and, at all relevant times hereto, residents of the State of Washington.
3. This Court has jurisdiction under 15 U.S.C §1114 (cybersquatting) and 28 U.S.C. § 1331 (federal question).

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

## General Allegations

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

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

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

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

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

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

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

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

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

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

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

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

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

24. Upon information and belief, during the time that Kent Powell had parked the Domain Name, it would occasionally redirect to a website located at clicktocallmobile.com, which is a website offering website design. *See* Screenshot of [www.clicktocallmobile.com/contact](http://www.clicktocallmobile.com/contact), attached hereto as **Exhibit "A"**.

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

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

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

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

29. Upon information and belief, Kent Powell is currently the true registrant 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.

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

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

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

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

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

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

### **Count One**

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

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

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

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

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

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

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

## Count Two

**(Violation of 15 U.S.C. § 8131)**

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

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

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

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

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

55. Defendants' violations of 15 U.S.C. § 8131 have caused Heidi Powell to 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;



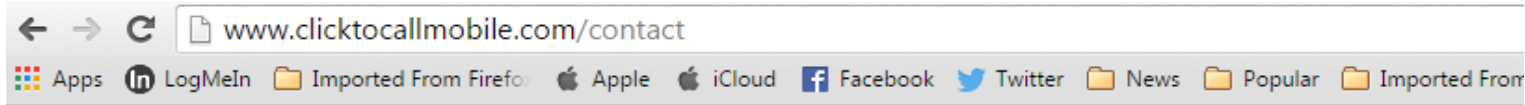
- 1           B.     For an Order declaring that Defendants have used and registered the  
2                 Domain Name in bad faith and for the sole purpose of benefitting from the  
3                 goodwill associated with the HEIDI POWELL mark; and  
4           C.     For such other and further relief as the Court may deem proper and just.  
5

6           DATED this 18<sup>th</sup> day of July, 2016.  
7

8                                 **Jaburg & Wilk, P.C.**

9  
10                                /s/Maria Crimi Speth  
11                                Maria Crimi Speth  
12                                Laura Rogal  
13                                3200 N. Central Avenue, 20th Floor  
14                                Phoenix, AZ 85012  
15                                Attorneys for Plaintiff  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

# EXHIBIT A



Home

Responsive Design

**ClickToCall** **mobile** **website** **design**  
**Heidi Powell** Marketing Consultant

W  
Helping small business  
Helping small business  
We

Give us

We look forward to

36

Safari ★ Bookmarks Imported

Devices

Portfolio

About

Contact

Schedule



**Schedule Meeting**

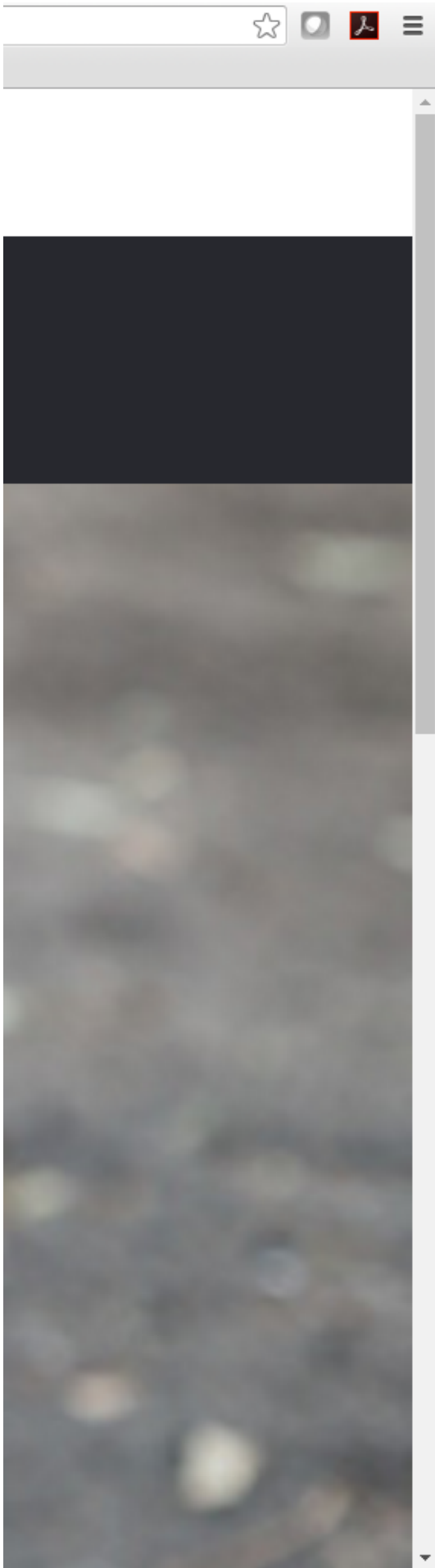
*We love what we do...*

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

*Just a call or send a message!*

to hearing about your business needs.

**60-610-7006**



← → ↻ [www.clicktocallmobile.com/contact](http://www.clicktocallmobile.com/contact)

Apps LogMeIn Imported From Firefox Apple iCloud Facebook Twitter News Popular Imported From

**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

in Safari ★ Bookmarks 📁 Imported

Devices

Portfolio

About

Contact

Schedule

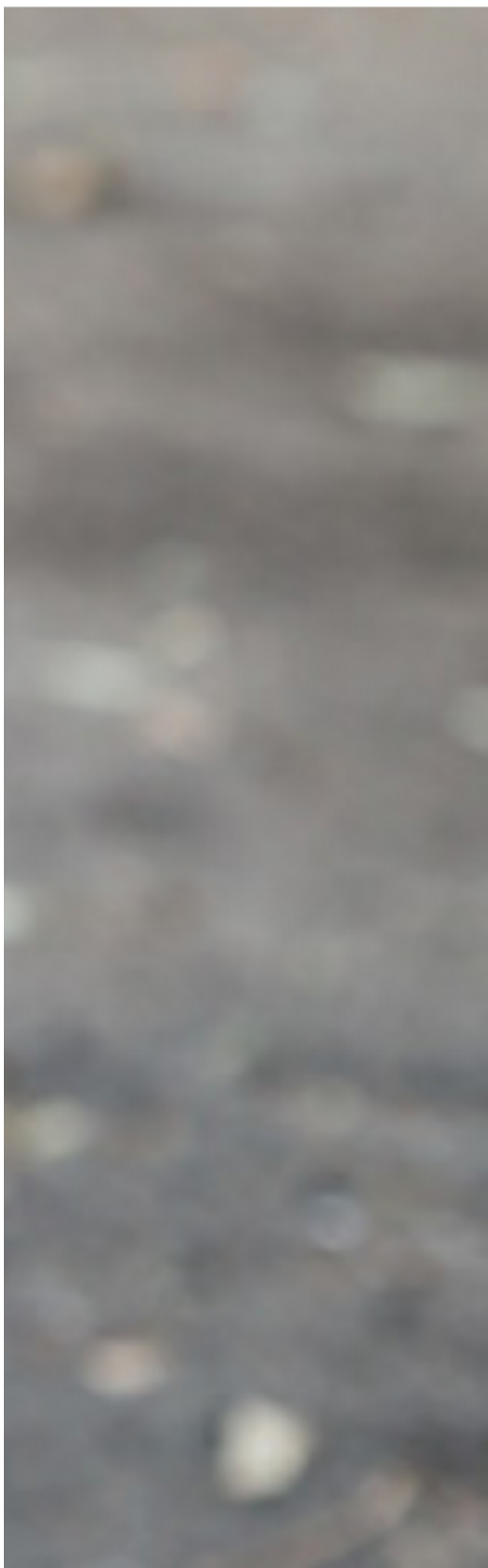
*Marketing Consultant - Website Designer - Owner*

Best Email Address

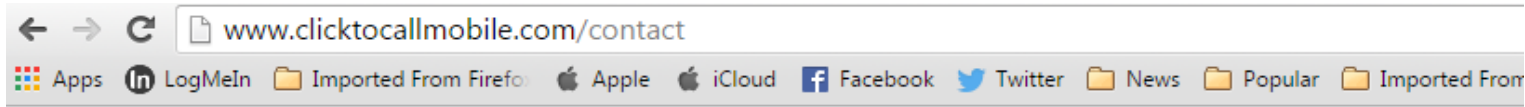
Area Code +Phone

How Did You Find Us?

Send Message







Home

Responsive Design



Message

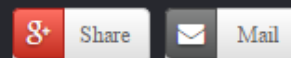
Best Time Of Day To Reach You



I'm not a robot



reCAPTCHA  
Privacy - Terms



Safari ★ Bookmarks Imported

Devices

Portfolio

About

Contact

Schedule

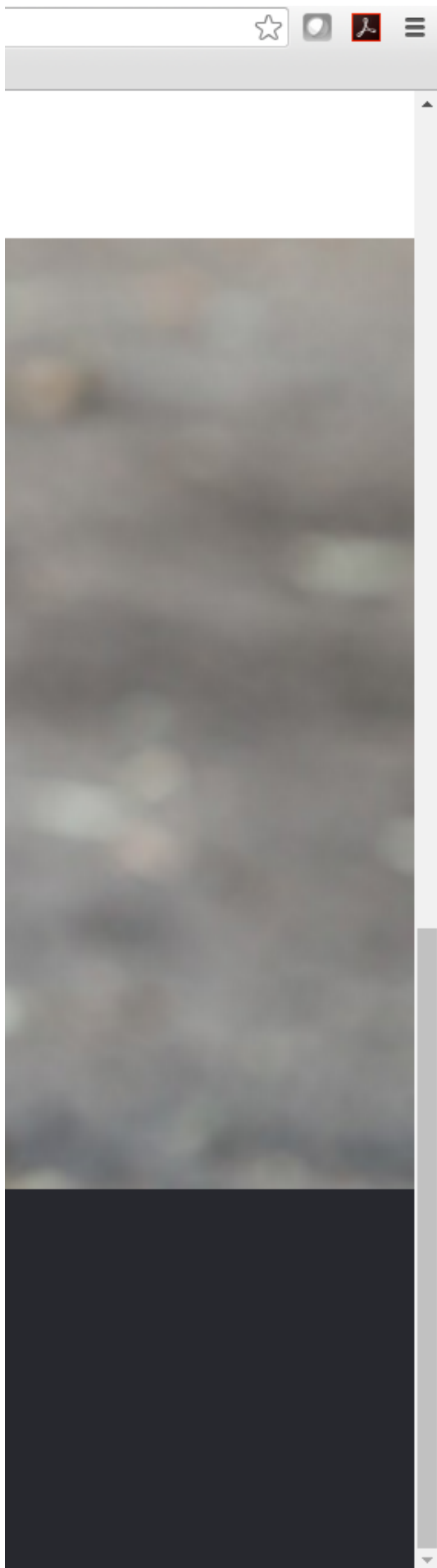
How Did You Find Us?

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](http://GoDaddy.com).



Share a \$9.99\* .COM  
with friends!

Search for domains similar to  
**heidipowell.com**

[Get Started](#)

Is this your domain?  
Let's turn it into a website!

[Get Started](#)

OR

Would you like to buy this  
domain?

[Learn More](#)

#### Sponsored Listings

##### [Breast Augmentation \\$4999](#)

[www.stutmanplasticsurgery.com](http://www.stutmanplasticsurgery.com) Stutman Plastic Surgery Silicone Gel Implants

##### [Shemesh Summer Camp](#)

[www.shemeshatthej.org/Summer-Camp](http://www.shemeshatthej.org/Summer-Camp) Traditional, Sports & Specialty. Sign Up For 5 Weeks & Save!

##### [How To Patent Your Idea](#)

[www.inventionhome.com](http://www.inventionhome.com) 3 Easy Steps To Patent & Make Money Get A Free Patent & Invention Kit

##### [3 Worst Foods for Thyroid](#)

[medixselect.com](http://medixselect.com) The One Thing You Should Be Eating For Your Thyroid Every Morning.

##### [BodyCandy - Official Site](#)

[www.bodycandy.com](http://www.bodycandy.com) Shop All Kinds of Stylish Jewelry. Use Code "BC15" For 15% Off Now!

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

[superfatburningfats.com](http://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](http://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](http://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](http://collegegrants.comparetopschoools.com) See If You Qualify for a \$5,775 Grant to Help Pay for College.

##### [Summer Camps](#)

[www.idtech.com/SummerCamps](http://www.idtech.com/SummerCamps) iD Tech Camps @ 150 Campuses. Age 7-18. Learn Design, Code, Film.

# \$0.99\* .COM

## THE domain at THE price.

[GET YOURS](#)

Visit [GoDaddy.com](http://GoDaddy.com) for the best values on

[Domain names](#) ▪ [Web hosting](#) ▪ [Website builders](#) ▪ [Email accounts](#) ▪ [SSL Certificates](#) ▪ [eCommerce tools](#) ▪ [See product catalog](#)

\*Restrictions apply. See website for details.

Copyright © 1999-2016 GoDaddy, LLC. All rights reserved. [Privacy Policy](#)

# EXHIBIT C





Website  
Design

**Heidi Powell** Website  
Designer  
Marketing Consultant

HeidiPowell.com  
Since 2005

## 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!



Website Design

*"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



Bellingham Bay  
Heidi Powell ©



Baker Lake  
Heidi Powell ©



Bellingham Bay  
Heidi Powell ©



Silver Lake  
Heidi Powell ©



Heidi & Kent  
Heidi Powell ©



Taylor Dock  
Heidi Powell ©



Squalicum Harbor  
Heidi Powell ©



Roche Harbor - Heidi Powell ©



Heidi Powell ©

Kent Fishing Lake Sammish With The Dog

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



Contact Form

**Heidi Powell** Website  
Designer  
Marketing Consultant



Schedule Meeting

360-610-7006

HeidiPowell.com  
Since 2005

