

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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**THOMAS E. PEREZ**, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

**I.Q. MARKETING, INC., JANET FINKEN,<sup>1</sup> and  
I.Q. MARKETING, INC. 401(k) PLAN,**

Defendants.  
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: CIVIL ACTION  
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: FILE NO.: 0:14-cv-03187  
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**COMPLAINT**

Plaintiff **THOMAS E. PEREZ**, Secretary, United States Department of Labor (the "Secretary"), alleges:

**JURISDICTION, PARTIES, AND VENUE**

1. This action arises under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1001, et seq., and is brought by the Secretary under ERISA §502(a)(2) and (5), 29 U.S.C. §1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate equitable relief for breaches of fiduciary duty under ERISA §409, 29 U.S.C. §1109, and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

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1 On February 28, 2013, Defendant Finken filed for Chapter 7 bankruptcy in the United States Bankruptcy Court in the District of Minnesota, case no. 13-40991. The Bankruptcy Court granted her petition for discharge on June 5, 2013. Because the Secretary is prosecuting this civil action pursuant to the Department of Labor's police and regulatory power under Title I of ERISA, the Secretary's action will be "an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power," it is excluded from the operation of the automatic stay provisions of the Bankruptcy Code pursuant to 11 U.S.C. § 362(b)(4). The Secretary's efforts to enforce any monetary portion of any judgment obtained against Defendant Finken will be consistent with the Bankruptcy Code.

2. This court has jurisdiction over this action pursuant to ERISA §502(e)(1), 29 U.S.C. §1132(e)(1).

3. Venue of this action lies in the District of Minnesota, pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the I.Q. Marketing, Inc. 401(k) Plan (the “Plan”) is administered in Minneapolis, Hennepin County, Minnesota, within this district.

### **DEFENDANTS**

4. I.Q. Marketing, Inc. (“I.Q. Marketing”), a former Minnesota corporation, was engaged in the business of providing internet marketing solutions to companies.

5. Since at least January 1, 2008, Janet Finken (“Defendant Finken”) was the Chief Executive Officer and sole owner of I.Q. Marketing.

6. On May 1, 1992, I.Q. Marketing established the Plan for the benefit of its employees. The purpose of the Plan was to provide benefits to its participants and beneficiaries in the event of retirement, death, or disability.

7. Since at least May 1, 1992, I.Q. Marketing was the Plan Sponsor and Administrator of the Plan; and was a fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A).

8. Since at least January 1, 2008, Defendant Finken was the sole Trustee of the Plan; and was a fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A).

9. The Plan is an employee benefit plan within the meaning of ERISA §3(3), 29 U.S.C. §1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA §4(a), 29 U.S.C. §1003(a).

10. The Plan is named as a defendant herein pursuant to Federal Rule of Civil Procedure Rule 19(a) solely to assure that complete relief can be granted.

**ALLEGATIONS**

11. Paragraphs 1 through 10 above are realleged and are hereby incorporated in these allegations.

12. According to Plan documents, Defendant I.Q. Marketing, as the Plan's Administrator, and, Defendant Finken, as the Plan's Trustee, are the only legal persons authorized to direct the disbursement of the Plan's assets.

13. The third party administrator of the Plan is Martin Financial Services, Inc. and the Plan's asset custodian is John Hancock Life Insurance Company.

14. Defendant I.Q. Marketing ceased operations sometime in August 2012 and was involuntarily dissolved by the Minnesota Secretary of State on August 1, 2012.

15. Under the terms of the Plan, all of the current participants of the Plan have become vested in their Plan participant accounts and are therefore entitled to benefits.

16. When Defendant I.Q. Marketing ceased operations, all employees were terminated.

17. Defendants I.Q. Marketing and Finken have not administered the Plan since January 17, 2014.

18. According to the last valuation for the period ending January 31, 2014, the Plan had ten (10) participants and funds totaling \$192,523.17.

19. To date, the Plan has not been terminated.

20. Since Defendants I.Q. Marketing and Finken are designated to act on behalf of the

Plan but failed to administer the Plan, participants and beneficiaries of the Plan have not been able to obtain distributions from the Plan of their individual account balances.

21. By the facts described in paragraphs 12 through 20 above, Defendants I.Q. Marketing and Finken:

a. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA §404(a)(1)(A), 29 U.S.C. §1104(a)(1)(A);

b. failed to discharge their duties with respect to the Plan solely in the interest of participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA §404(a)(1)(B), 29 U.S.C. §1104(a)(1)(B); and

c. failed to discharge their duties with respect to the Plan solely in the interest of participants and beneficiaries and in accordance with the documents and instruments governing the plan, in violation of ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D).

**PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Defendants I.Q. Marketing, Inc. and Janet Finken from violating provisions of Title I of ERISA;

B. Ordering the removal of Defendants I.Q. Marketing, Inc. and Janet Finken from their position as Plan Administrator and Trustee, respectively;

C. Permanently enjoining Defendants I.Q. Marketing, Inc. and Janet Finken from serving as a fiduciary or service provider to any ERISA-covered plan;

D. Appointing an independent fiduciary to terminate the Plan consistent with the Plan's governing documents, the Internal Revenue Code, and ERISA, distribute its assets to the participants and beneficiaries, and conclude any plan-related matters connected with the proper termination of the Plan;

E. Ordering Defendants I.Q. Marketing, Inc. and Janet Finken to pay all reasonable fees and expenses incurred by the independent fiduciary in administering and terminating the Plan;

F. Awarding the costs of this action; and

G. Ordering such further relief as is appropriate and just.

**M. PATRICIA SMITH**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

s/ Mark H. Ishu

**MARK H. ISHU**

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