



Provided by:
Overhauser Law Offices LLC
www.iniplaw.org
www.overhauser.com

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RIETH-RILEY CONSTRUCTION CO.,)	
INC.,)	
)	
Plaintiff,)	Civil Action No. _____
)	
vs.)	
)	
JEFFREY KRESNAK and SUPERIOR)	
ASPHALT, INC.,)	
)	
Defendants.)	

COMPLAINT

Plaintiff, Rieth-Riley Construction Co., Inc. (“Rieth-Riley”), for its Complaint against defendants Jeffrey Kresnak (“Kresnak”) and Superior Asphalt, Inc. (“Superior”), alleges:

Parties & Jurisdiction

1. Rieth-Riley is an Indiana corporation and has its principal place of business located in Goshen, Indiana.
2. Superior is a Michigan corporation and has its principal place of business located in Grand Rapids, Michigan.
3. Kresnak is an individual residing in Michigan.
4. Kresnak and Superior (jointly, “Defendants”) intentionally targeted and caused injury to Rieth-Riley in Indiana by virtue of their activities alleged below, which occurred both within Indiana and outside Indiana.
5. For these reasons and others, Defendants are subject to personal jurisdiction in Indiana.

6. The Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

Rieth-Riley's Rights

8. Rieth-Riley was founded in 1916.

9. Rieth-Riley has been doing business as “Rieth-Riley” in Indiana and in interstate commerce ever since, and long prior to the Defendants’ acts alleged in this Complaint.

10. Rieth-Riley provides many services under the RIETH-RILEY brand, including but not limited to highway construction, asphalt and concrete paving, site preparation and excavation, bridge construction, underground utilities and drainage construction, asphalt and concrete recycling, curb and sidewalk construction, mining and aggregate processing, and providing sand, gravel and other aggregates for construction projects.

11. Rieth-Riley operates a web site for its business, which is located at the URL www.riethriley.com (the “Rieth-Riley Web Site”).

12. Rieth-Riley owns United States Trademark Registration No. 1,659,123 for the mark RIETH-RILEY, for use in connection with highway and paving construction services (the “123 Registration”).

13. Prior to Defendants’ actions alleged in this Complaint, Rieth-Riley has exclusively and continuously sold and provided the goods and services described above under the mark RIETH-RILEY (the “Mark”).

14. Since at least as early as 1916, Rieth-Riley has promoted its RIETH-RILEY brand by extensively and continuously advertising, marketing, promoting, providing and selling its products and services under the Mark.

15. By virtue of Rieth-Riley's longstanding and continuous use of the Mark, Rieth-Riley owns valuable common law rights in the distinctive Mark, for use in connection with Rieth-Riley's goods and services.

16. As the result of Rieth-Riley's long-standing promotion and sale of its goods and services under the Mark, Rieth-Riley's goods and services have earned commercial success, recognition, and acceptance in the marketplace.

17. For many years long prior to Defendants' acts alleged in this Complaint, Rieth-Riley has used the Mark in interstate commerce to distinguish and identify its goods and services from products and services provided by others.

18. Rieth-Riley's Mark has inestimable value to Rieth-Riley and serves as a symbol of the good will and quality of Rieth-Riley and the authentic RIETH-RILEY brand.

19. Rieth-Riley's 123 Registration is prima facie evidence of the validity of the Mark and of the Mark's registration, of Rieth-Riley's ownership of the Mark, and of Rieth-Riley's exclusive right to use the Mark in commerce in connection with the services specified in the 123 Registration. *See* 15 U.S.C. § 1057(b).

20. By virtue of the 123 Registration, the Mark also is presumed to be distinctive from the time of the 123 Registration.

21. The 123 Registration is incontestable under 15 U.S.C. § 1065.

22. Rieth-Riley owns the entire right, title and interest in and to the Mark.

23. By the acts alleged below, Defendants have willfully infringed the Mark, engaged in unfair and deceptive practices, and deliberately traded on Rieth-Riley's good will and reputation – all to Rieth-Riley's irreparable injury.

24. By the acts alleged below, Defendants intentionally registered and are using the domain name RIETH-RILEY.NET (the “Domain Name”), which is confusingly similar to Rieth-Riley’s Mark, with a bad-faith intent to profit from their use and registration of the Domain Name.

Defendants and their Activities

25. Superior is in the asphalt manufacturing, supplying, paving and maintenance business.

26. Superior provides its services to residential, commercial, manufacturing and municipal customers.

27. Superior competes with Rieth-Riley.

28. Defendants operate a web site located at the URL www.superiorasphalt.com (“Superior’s Web Site”).

29. Defendants’ Domain Name resolves to Superior’s Web Site.

30. Superior’s Web Site is a commercial and interactive web site. Superior promotes its services through the Web Site.

31. Defendants are, by utilizing the Domain Name, obtaining and/or redirecting Internet traffic intended for the Rieth-Riley Web Site to Superior’s Web Site.

32. Defendants are unlawfully using Rieth-Riley’s Mark to attract Internet users to Superior’s Web Site.

33. Defendants are intentionally and illegally, and in direct violation of Rieth-Riley’s trademark rights, using the Domain Name in connection with Superior’s commercial services and the operation and maintenance of the Superior Web Site.

34. Defendants are directly profiting from their illegal use of the Domain Name.

35. By using the Domain Name, and by owning, maintaining and operating the Superior Web Site, Defendants are illegally obtaining and/or diverting to Superior Internet traffic intended for Rieth-Riley and the Rieth-Riley Web Site.

36. By owning, maintaining and operating the Superior Web Site, and by controlling the Domain Name registration, which directs Internet traffic to the Superior Web site by illegally using the Domain Name, Defendants are using the good will associated with the Rieth-Riley Mark for their own commercial gain.

37. Defendants' unauthorized use of the Domain Name is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, association or sponsorship of Superior with Rieth-Riley or the Rieth-Riley Mark, or as to the origin, sponsorship, or approval of Superior's goods, services or activities by Rieth-Riley or the RIETH-RILEY brand.

38. Rieth-Riley has not authorized Defendants' conduct described in this Complaint.

39. Defendants continue to use the Domain Name with notice and actual knowledge of Rieth-Riley's prior rights, despite Rieth-Riley's efforts to obtain an agreement from Defendants to voluntarily comply with the law and cease using the Domain Name, and thus such acts constitute knowing and willful violations of the Lanham Act.

40. In response to Reith-Riley's effort to obtain such an agreement from Defendants, Defendants demanded, in bad faith intent to profit from the Domain Name, that Rieth-Riley pay Defendants Ten Thousand Dollars (\$10,000.00).

41. Rieth-Riley has no adequate remedy at law.

42. Defendants have been unjustly enriched by their infringing and unfair activities, and Rieth-Riley is entitled to an accounting for all of Defendants' profits derived from the infringing activities.

43. Defendants' activities have caused Rieth-Riley actual damages and injury to Rieth-Riley's reputation and good will.

Count I
Federal Trademark Infringement

44. Rieth-Riley incorporates and realleges all preceding allegations in this Complaint.

45. Defendants have used, and are using, a reproduction, counterfeit, copy or imitation of Rieth-Riley's registered Mark in connection with the sale, offer for sale, distribution or advertising of Superior's goods and services, which is likely to cause confusion, or to cause mistake, or to deceive.

46. Defendants' unauthorized conduct is in violation of 15 U.S.C. § 1114.

47. Defendants will continue to use the Domain Name, and continue to violate 15 U.S.C. § 1114, unless restrained and enjoined by this Court.

48. Defendants have and will by such continuing acts of deception, confusion or mistake cause Rieth-Riley irreparable harm for which there is no adequate remedy of law.

49. Defendants have engaged in their unlawful conduct willfully, knowingly, and in complete disregard of or with indifference to Rieth-Riley's rights and interests.

50. Rieth-Riley has and will suffer damage as a result of Defendants' unlawful activities.

51. This is an exceptional case as defined in 15 U.S.C. § 1117.

Count II
Unfair Competition

52. Rieth-Riley incorporates and realleges all preceding allegations in this Complaint.

53. Defendants have used a word, term, name, symbol or device, and/or false designation of origin, false or misleading description of fact, or false or misleading

representation of fact which is likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection or association of Defendants with Rieth-Riley, or as to the origin, sponsorship or approval of Defendants and their goods, services or commercial activities by Rieth-Riley.

54. Defendants' commercial advertising and/or promotion misrepresents the nature, characteristics, qualities and/or geographic origin of the goods, services or commercial activities of Defendants.

55. Defendants' unlawful conduct violates 15 U.S.C. § 1125(a).

56. Defendants will continue to use the Domain Name, and continued to violate 15 U.S.C. § 1125(a), unless restrained and enjoined by this Court.

57. Defendants have and will by such continuing acts of deception, confusion or mistake cause Rieth-Riley irreparable harm for which Rieth-Riley has no adequate remedy of law.

58. Defendants have engaged in their illegal conduct willfully and knowingly, and in complete disregard of or with indifference to Rieth-Riley's rights and interests.

59. Rieth-Riley has and will suffer damage as a result of Defendants' unlawful conduct.

60. This is an exceptional case under 15 U.S.C. § 1117.

Count III
Cyberpiracy

61. Rieth-Riley incorporates and realleges all preceding allegations in this Complaint.

62. Defendants registered, used and continue to use the Domain Name with a bad faith intent to profit from Rieth-Riley's registered Mark.

63. Defendants' bad-faith intent is evidenced, for example, by Defendants' demand that Rieth-Riley pay them \$10,000.00 to stop using the Domain Name.

64. The Domain Name is identical or confusingly similar to the Rieth-Riley Mark.

65. The Rieth-Riley Mark was distinctive at the time Defendants registered the Domain Name, as evidenced by issuance of the 123 Registration to Rieth-Riley for the Rieth-Riley Mark.

66. Defendants' activities constitute Cyberpiracy, in violation of 15 U.S.C. § 1125(d).

67. Defendants have engaged in such conduct willfully and knowingly, and in complete disregard of or with indifference to Rieth-Riley's rights and interests.

68. This is an "exceptional case" under 15 U.S.C. § 1117(a).

THEREFORE, Rieth-Riley requests the Court to award the following relief:

A. Preliminarily and permanently enjoin Defendants, those controlled by Defendants, those controlling the Defendants, and those acting in concert or participation with Defendants from infringing Rieth-Riley's RIETH-RILEY trademark;

B. Preliminarily and permanently enjoin Defendants, those controlled by Defendants, those controlling Defendants, and those acting in concert or participation with Defendants from engaging in acts of false designation of origin and false description, pursuant to 15 U.S.C. § 1125;

C. Preliminary and permanently enjoin Defendants, their associates, agents, servants, employees, officers, directors, representatives, successors, assigns, attorneys and all persons in active concert or participation with them who learn of the injunction through personal service or otherwise (1) from using the term RIETH-RILEY in any manner that violates 15 U.S.C. §§ 1114 or 1125(a), or any mark or name which violates Rieth-Riley's rights under 15 U.S.C. § 1111 *et*

seq., (2) from representing by words or conduct that Defendants or their products or services are authorized, sponsored, endorsed by, or otherwise connected with Rieth-Riley, and (3) any other conduct which causes, or is likely to cause, confusion, mistake, deception, or misunderstanding as to the source, affiliation, connection or association of Defendants' products or services;

D. Preliminary and permanently enjoin Defendants, their associates, agents, servants, employees, officers, directors, representatives, successors, assigns, attorneys and all persons in active concert or participation with them who learn of the injunction through personal service or otherwise, pursuant to 15 U.S.C. § 1116(a), from operating or maintaining any web site utilizing the Domain Name or the RIETH-RILEY trademark;

E. An order, pursuant to 15 U.S.C. § 1116(a), directing Defendants to file with the Court and serve on Rieth-Riley within thirty (30) days after service of the injunction on Defendants, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;

F. An accounting and judgment, pursuant to 15 U.S.C. § 1117(a), against Defendants for (1) all profits attributable to Defendants' unauthorized use of the Domain Name, (2) damages sustained by Rieth-Riley on account of Defendants' unlawful activities, and (3) treble damages;

G. A judgment, pursuant to 15 U.S.C. § 1117(d), against Defendants for statutory damages in the amount of not less than \$1,000 and not more than \$100,000.00;

H. An order, pursuant to 15 U.S.C. § 1125(d)(1)(C), directing that the Domain Name be transferred to Rieth-Riley;

I. An award of Rieth-Riley's costs of this suit and reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(a);

J. Order that Defendants deliver up and destroy all items bearing Rieth-Riley's Mark or the RIETH-RILEY.NET mark, consistent with 15 U.S.C. § 1118; and

K. All other just and proper relief.

Respectfully submitted,

BARNES & THORNBURG LLP

February 12, 2014

/s/ D. Michael Anderson
D. Michael Anderson (IN 20770-53)
BARNES & THORNBURG LLP
600 1st Source Bank Center
100 North Michigan
South Bend, Indiana 46601
Telephone: (574) 233-1171
Facsimile: (574) 237-1125
Email: mike.anderson@btlaw.com

*Attorneys for Plaintiff Rieth-Riley
Construction Co., Inc.*