



STATE OF INDIANA ) IN THE MARION COUNTY SUPERIOR COURT  
                          ) SS:  
COUNTY OF MARION ) CAUSE NO. 49D14 14 08 PL 026906

PROPERTY DAMAGE APPRAISERS, INC., )  
  ) )  
  ) Plaintiff, ) )  
  ) )  
  ) )  
  ) v. ) )  
  ) )  
JOHN MOSLEY and CLINTON BODY )  
SHOP, INC. ) )  
  ) Defendants. ) )

**FILED**  
238 AUG 12 2014  
*Charith A. White*  
CLERK OF THE MARION COUNTY COURT

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

Plaintiff Property Damage Appraisers, Inc. ("Plaintiff" or "PDA") hereby files its Complaint for Damages and Injunctive Relief against Defendants John Mosley ("Mr. Mosley") and Clinton Body Shop, Inc. ("Clinton Body Shop") (collectively, "Defendants") and in support thereof states as follows:

**I. FACTUAL BACKGROUND**

**A. The Parties**

1. PDA is a national franchisor with a network of approximately 185 independent franchisees who are in the business of performing auto, property, heavy equipment, motorcycle, marine, and recreational vehicle appraisals, as well as lease turn-in inspections. PDA has independent franchisees in all 50 states, with 256 offices nationwide. PDA is the only national network of appraisers, and it has been in business for over 50 years cultivating its long-standing reputation as a network of independent appraisers. John Larry Gentry ("Mr. Gentry") is one of PDA's independent franchisees. He currently operates a PDA franchise in Jackson, Mississippi. There are also Indiana PDA franchises in Evansville, Fort Wayne, Indianapolis, and South Bend.

2. Mr. Mosley is the owner of the Clinton Body Shop in Clinton, Mississippi. The Clinton Body Shop advertises itself as a one stop full service shop for automobiles, offering frame straightening, unibody alignment, and minor to major refinish work, including all-over paint jobs and custom paint.

3. This Court has personal jurisdiction over Mr. Mosley and Clinton Body Shop because they have done business in the State and have purposefully directed their unlawful acts to the State of Indiana.

**B. Mr. Mosley Obtains a Repair Estimate from PDA's Franchisee Under False Pretenses.**

4. On June 11, 2014, Mr. Mosley, on behalf of himself and on behalf of the Clinton Body Shop, approached Mr. Gentry and asked that Mr. Gentry write an estimate for repair work on a 2014 Dodge Charger. Mr. Mosley represented to Mr. Gentry that the Dodge Charger was owned by the Mississippi Attorney General's office. Mr. Mosley told Mr. Gentry that the Clinton Body Shop had already written an estimate for the vehicle, and that he needed Mr. Gentry to present an additional estimate to the Attorney General to make sure that the estimate previously prepared by the Clinton Body Shop was in line with costs.

5. Specifically, Mr. Mosley told Mr. Gentry that he needed the estimate to make sure the previous estimate was in line as far as repair time and replacement parts costs. Mr. Mosley represented to Mr. Gentry that the estimate was only for comparison to the previously written estimate at the request of the Attorney General's office and led Mr. Gentry to believe that it would not be used for any other purpose or shared with anyone else.

6. Mr. Gentry wrote the estimate for the 2014 Dodge Charger as a courtesy to Mr. Mosley. In deciding to write the estimate, Mr. Gentry specifically relied on Mr. Mosley's representations that the estimate would only be shared with the Attorney General's office, was

only being created for the purpose of comparison to the previously written estimate by the Attorney General, and would not be used for any other purpose or shared with anyone else.

7. In writing the estimate, Mr. Mosley did not use PDA's general estimate procedures or the industry standard labor rates. Instead, he used labor rates specifically requested by Mr. Mosley. Mr. Mosley specifically requested that Mr. Gentry use the Clinton Body Shop's labor rates. Mr. Gentry would not have used those labor rates if not for Mr. Mosley's representation that the estimate was only for comparison to the previously written estimate for the Attorney General and would not be used for any other purpose or shared with anyone else.

8. No insurance companies were involved whatsoever in the process of writing the estimate, and no insurance company procedures were used to write the estimate. In addition, no fee was charged or accepted by PDA for the estimate. Mr. Gentry was not acting on behalf of any insurance company when he provided the courtesy estimate to Mr. Mosley.

9. Mr. Gentry later learned that a third-party insurance company had also in fact written an estimate for the vehicle. Mr. Mosley also misrepresented that fact. Mr. Gentry was not aware of the third estimate until after he wrote his estimate.

**C. Defendants Publish False Representations Regarding the Estimate and PDA Throughout Indiana.**

10. Despite his representations to the contrary, Mr. Mosley, on behalf of himself and the Clinton Body Shop, subsequently delivered an email to the Indiana Auto Body Association ("IABA") in which he attached the estimate prepared by Mr. Gentry on PDA's letterhead. Specifically, Mr. Mosley emailed the estimate to Tony Passwater, the director of the IABA, who is located in Indianapolis, Indiana, for the purpose of circulating the estimate to all members of the IABA throughout Indiana.

11. Apparently in an effort to bolster his adversarial position against insurance companies, Mr. Mosley blatantly misrepresented the estimate as being something it was not, impugning PDA's independence and integrity. Specifically, Mr. Mosley mischaracterized the estimate as having been prepared by "an insurance company representative" when in fact the estimate was prepared for comparison purposes only and no insurance companies were involved whatsoever in writing the estimate. Mr. Mosley further mischaracterized the nature of the labor rates in the estimate as the market rates for the local area of Clinton, Mississippi. In actuality, the rates were specifically requested by Mr. Mosley.

12. Upon information and belief, Mr. Mosley has, on behalf of himself and the Clinton Body Shop, delivered the estimate to other body shops around the country, making the same misrepresentations.

13. By their conduct, Defendants made false representations about PDA, disparaged PDA's business, and engaged in false and deceptive advertising and trade practices. Defendants' conduct—including its misrepresentation that PDA was acting as "an insurance company representative"—has damaged PDA, including by injuring its reputation among insurance companies with which it has done and expects to do business. Some insurance companies have expressed concern over PDA's long-standing reputation as an independent appraiser, which PDA has worked for over 50 years to cultivate. The damage to PDA's reputation may never be restored as a result of Defendants' conduct.

**II. CAUSES OF ACTION**

**COUNT 1—FEDERAL UNFAIR COMPETITION  
(15 U.S.C. § 1125(a))**

14. PDA re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint for Damages and Injunctive Relief as if fully set forth herein.

15. The activities of Defendants, as described above, constitute false descriptions and representations and false advertising in commerce in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), because Mr. Mosley, acting individually and on behalf of the Clinton Body Shop, misrepresented the nature, characteristics, and qualities of PDA's commercial activities in connection with the commercial advertising and promotion of Defendants' products.

16. Defendants' acts of false representation and false advertising have caused PDA to sustain monetary damage, loss, or injury, in an amount to be determined at trial.

17. Defendants engaged in these activities knowingly, willfully, maliciously, and deliberately, so as to justify the assessment of exemplary damages in an amount to be determined at trial.

**COUNT 2—STATE UNFAIR COMPETITION**

18. PDA re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint for Damages and Injunctive Relief as if fully set forth herein.

19. Defendants' acquisition of the estimate under false pretenses, their misleading conveyance of the estimate to third parties, their mischaracterization of the process for preparing the estimate, and their misrepresentation that PDA was acting as a representative of insurance companies constituted unfair competition.

20. The natural and probable consequence of Defendants' conduct was to deceive the recipients of their email as to the nature of the estimate PDA prepared and the capacity in which PDA was acting when it prepared the estimate.

21. Defendants' conduct has unfairly interfered with the goodwill between PDA and third parties who were existing PDA customers or who had communicated their interest in establishing prospective relationships with PDA.

22. Defendants' conduct as complained of herein was knowing, willful, malicious, and deliberate.

23. PDA has been damaged by Defendants' conduct as complained herein in an amount to be determined at trial.

### COUNT 3—DEFAMATION

24. PDA re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint for Damages and Injunctive Relief as if fully set forth herein.

25. Mr. Mosley, acting individually and on behalf of the Clinton Body Shop, published or caused to be published false statements harmful to the interests of PDA in the way of its trade and with the intent that the publication of the statement would cause undue harm to the interests of PDA.

26. At the time Defendants published the false statements, they knew that the statements were false or acted with reckless disregard of their truth or falsity.

27. PDA has been damaged by Defendants' conduct as complained herein in an amount to be determined at trial.

**COUNT 4—TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS**

28. PDA re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint for Damages and Injunctive Relief as if fully set forth herein.

29. PDA has entered into and/or had a reasonable expectation that it would maintain or enter into contracts or business relationships with certain third parties who were existing PDA customers or who had communicated their interest in establishing prospective relationships with PDA, including insurance companies on whose behalf Mr. Mosley falsely claimed PDA was acting when PDA prepared the estimate. Some of those third parties have expressed concern for PDA's reputation as a result of Mr. Mosley's misrepresentations.

30. Upon information and belief, Defendants were aware of these contracts and/or prospective business relations of PDA, and of the fact that prospective customers in the industry would become aware of Defendants' false and misleading statements regarding PDA.

31. Upon information and belief, Defendants knowingly and willfully interfered with PDA business relationships and/or business expectancies through their disparagement of PDA, deceptive trade practices, and other unlawful conduct.

32. Defendants' conduct as complained of herein was knowing, willful, malicious, and deliberate.

33. PDA has been damaged by Defendants' conduct as complained herein, in an amount to be determined at trial.

**ATTORNEYS' FEES**

34. PDA re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint for Damages and Injunctive Relief as if fully set forth herein.

35. As a result of Defendants' conduct, PDA has been required to retain the services of an attorney and has agreed to pay the attorney reasonable fees.

36. PDA specifically pleads that it is entitled to and seeks recovery of its costs and reasonable and necessary attorneys' fees pursuant to the Lanham Act and other applicable authorities.

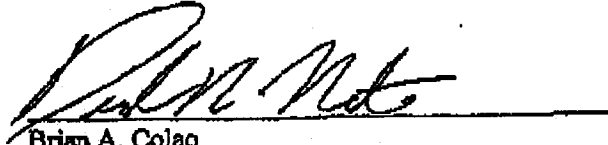
### III. PRAYER FOR RELIEF

WHEREFORE, PDA respectfully requests that the Court award judgment against Defendants John Mosley and Clinton Body Shop, Inc. and grant PDA the following:

- A. Actual, direct, and consequential damages, and lost profits;
- B. Exemplary damages;
- C. Pre-judgment interest and interest on the judgment;
- D. Attorneys' fees, expenses, and costs;
- E. A permanent injunction compelling Defendants to do the following:
  1. provide PDA with a list of all individuals or entities that received a copy of the estimate from Defendants;
  2. notify all recipients of the estimate, including the IABA, that the estimate was obtained under false pretenses, distributed without the permission of PDA, is not a valid estimate, and has been rescinded by Defendants;
  3. return the original estimate to PDA and certify under oath by affidavit that Defendants have not retained any copies;
  4. cease and desist from any further publication of the above-referenced misrepresentations and from ever mentioning the estimate or PDA in any context to any individual.
- F. Such other and further relief to which it may show itself to be justly entitled, at law or in equity.



Respectfully submitted,



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DAMAGE APPRAISERS, INC.

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

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CAUSE NO.: 49D14-1408-PL-026906

PROPERTY DAMAGE APPRAISERS )  
INC., )

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JOHN MOSLEY and CLINTON BODY )  
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Defendant. )

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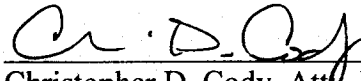
SEP 10 2014

*Elizabeth J. White*  
CLERK OF THE MARION CIRCUIT COURT

**DEFENDANTS' MOTION FOR ENLARGEMENT**

Defendants John Mosley and Clinton Body Shop, Inc.'s, by counsel, respectfully request an enlargement of time in which to respond to Plaintiff's complaint for damages. Counsel for Defendants have just been retained to represent the Defendants and require additional time to investigate the case and prepare a response to the complaint. Defendants request thirty days from the date of this filing to and including October 10, 2014 to respond to Plaintiff's complaint for damages. This is the Defendants' first request for an enlargement of time.

Respectfully submitted,



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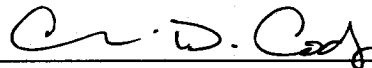
*Attorney for Defendant John Mosley and Clinton  
Body Shop, Inc.'s*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was forwarded by U.S. Mail, postage prepaid, to the following attorney on the 10<sup>th</sup> day of October, 2014.

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