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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WHEATON VAN LINES, INC. and BEKINS VAN LINES, INC.,	)	
Plaintiffs,	)	
v.	)	CASE NO.: 1:15-cv-556
FAULK-COLLIER MOVING & STORAGE, LLC, and DAVID VAUGHN,	)	
Defendants.	)	

VERIFIED COMPLAINT FOR TRADEMARK INFRINGEMENT, DAMAGES, AND INJUNCTIVE RELIEF

Plaintiffs, Wheaton Van Lines, Inc. ("Wheaton") and Bekins Van Lines, Inc. ("Bekins") (collectively "Plaintiffs"), by counsel, for their Complaint for Trademark Infringement, Damages, and Injunctive Relief against Defendants, Faulk-Collier Moving & Storage, LLC ("Faulk-Collier") and David Vaughn ("Vaughn") (collectively "Defendants"), states as follows:

PARTIES

1. Wheaton is an Indiana corporation with its principal place of business at 8010 Castleton Road, Indianapolis, Indiana 46250.

2. Bekins is a wholly-owned subsidiary of Wheaton and is an Indiana corporation with its principal place of business at 8010 Castleton Road, Indianapolis, Indiana 46250.

3. Faulk-Collier is a Louisiana corporation with its principal place of business at 505 North 18th, Suite A2, Monroe, Louisiana 71201.

4. Vaughn is an individual resident of the state of Louisiana.

JURISDICTION AND VENUE

5. This Court has original subject matter jurisdiction in this action pursuant to 15 U.S.C. §1121(a) and §1125(a) and 28 U.S.C. §1331 and §1338(a), as it arises under the Federal Trademark Act and Lanham Act, as amended.

6. This Court has subject matter jurisdiction over the claims for breach of contract, account stated, unfair competition and passing off under Indiana law pursuant to the doctrine of supplemental jurisdiction, as codified in 28 U.S.C. §1367.

7. The Court has personal jurisdiction over Defendants by virtue of Fed.R.Civ.P. 4 and Indiana Trial Rule 4.4(A)(1). In particular, Defendants have advertised and continue to advertise moving services under the name "Bekins" on their internet and Facebook pages, and other social media without any rights or license to use the various trademarks owned by Bekins. Defendants have also violated Bekins' trademark rights in this State by operating numerous pieces of equipment in interstate commerce which impermissibly bear trademark(s) owned by Bekins. Finally, Defendants consented to jurisdiction by this Court under the Agency Agreement entered into with Plaintiffs. See attached Exhibit A. The exercise of personal jurisdiction by this Court over the Defendant comports with the Due Process Clause of the Fifth Amendment.

8. Venue in the United States District Court for the Southern District of Indiana is proper under 28 U.S.C. §1391(b) and (c). Defendants have also consented to venue in this Court under the Agency Agreement. See Exhibit A.

BACKGROUND FACTS

A. BEKINS TRADEMARKS

9. On or about February 6, 2001, the United States Patent and Trademark Office ("PTO") granted The Bekins Company (which became Bekins Holding Corp.) the registration of BEKINS® (in stylized form) under No. 2427605 on the Principal Register noting June 15, 1999 as the date said stylized mark was first used in commerce in connection with Class 39 ("Transportation Services").

10. On August 19, 2007, Bekins' renewal of the BEKINS® (stylized) mark was accepted and said mark's incontestable status was acknowledged by the USPTO.

11. On September 24, 2011, Bekins' BEKINS® (stylized) mark was again renewed with and through the USPTO.

12. Bekins' BEKINS® (stylized) registration is valid and subsisting, unrevoked and uncancelled, in full force and effect, incontestable, and with the statutory presumptions of validity, ownership and exclusive right to use vested in the trademark owner. Bekins has the right to prosecute actions for infringement of said registered mark.

13. Bekins has made extensive sales of its high quality moving services under the registered BEKINS® (stylized) trademark and has used the mark extensively in advertising and promotion of such services. Bekins has developed tremendous goodwill through its intellectual property rights attendant to the trademark BEKINS® (stylized), which has been used in all of Bekins' advertising materials, as well as embolden on the side of all of the trucks, vans and trailers operating under Bekins' authority (or the authority of Bekins Holding Corp.) for over ten (10) years.

14. The BEKINS® (stylized) trademark has further acquired strong secondary meaning among the industry and the consumers as a symbol of origin signifying high quality moving services coming exclusively from Bekins, and said mark has come to be an asset of inestimable goodwill and value to Bekins, and said mark fully qualifies as a famous trademark. Only Bekins authorized agents have been granted a limited license by Bekins to use the BEKINS® (stylized) trademark in connection with the sales and offering of Bekins' moving services.

15. Bekins does not allow the use of its BEKINS® (stylized) trademark by any unauthorized third parties, because use by such indiscriminant third parties would likely damage the quality, integrity, and value of the BEKINS® (stylized) trademark, the Bekins network of agents, and the value of the services provided by Bekins as perceived by the consumers.

16. The use of the BEKINS® (stylized) trademark or any impermissible imitation thereof has the further negative impact of allowing "free riders" to capitalize on the substantial investment and efforts expended by Bekins in promotion of the BEKINS® (stylized) trademark.

17. Bekins has enforced and protected its BEKINS® (modified stylized) trademark when unauthorized or infringing uses have come to its attention, including, but not limited to, by the immediate contact of such unauthorized and/or infringing users and the filing of suit when necessary and prudent.

18. The Bekins mark was acquired by Plaintiffs in connection with an Asset Purchase Agreement dated April 2, 2012. In connection with said purchase of assets by Plaintiffs, Plaintiffs were assigned all rights, title and interest in the Bekins mark. On April 16, 2012, the USPTO recorded the assignment of said mark to Bekins Van Lines, Inc. in connection with an asset purchase agreement with Bekins Holding Corp.

B. BEKINS AND FAULK-COLLIER

19. On or about February 27, 2014, Bekins and Faulk-Collier entered into an Agency Agreement, where in Faulk-Collier would serve as an interstate household agent for Bekins, with an effective date of March 1, 2014. See Exhibit A.

20. Vaughn personally guaranteed the performance under the Agency Agreement and that payment of any money owed to Plaintiffs thereunder. See Exhibit A.

21. Due to Defendants' repeated and uncured breaches of the Agency Agreement, Plaintiffs terminated the Agency Agreement with Defendants on October 21, 2014.

22. On May 14, 2014, Faulk-Collier executed a Promissory Note and Security Agreement in favor of Wheaton in the amount of $32,077.69 ("Note"). See attached Exhibit B. As with the Agency Agreement, Vaughn personally guaranteed this debt as well. See Exhibit B.

23. Pursuant to the express terms of the Note, Wheaton is entitled to take possession of certain collateral and recover any attorneys' fees expended in connection with any collection efforts in connection with the enforcement of the Note. See Exhibit B.

24. On October 21, 2014, Wheaton and Bekins wrote to Faulk-Collier (and Vaughn specifically) and notified the Defendants that the Agency Agreement was cancelled effective immediately.

25. On November 14, 2014, Wheaton and Bekins again wrote to Defendants and notified Defendants of the debt due and owing to Wheaton and Bekins in the amount of $73,080.64. See Exhibit C. Plaintiffs also notified Defendants of the continuing infringement of Bekins Marks.

26. On December 16, 2014, Wheaton and Bekins again wrote to Defendants and noted that the amount of $73,080.64 remained due and owing to Wheaton and Bekins and that

Defendants continued infringement of Bekins' trademarks would not be tolerated. See Exhibit D.

COUNT I – BREACH OF CONTRACT

27. Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint as if fully rewritten herein.

28. On September 16, 2014, Plaintiffs' representatives met with Defendants to discuss a number of issues regarding Defendant Faulk-Collier's status as a Bekins agent. It was agreed that Defendants would complete the tasks necessary to achieve the equipment qualifications on various pieces of equipment and to return its drivers to active status with Bekins.

29. On October 9, 2014, Plaintiffs sent Defendants correspondence regarding continuing deficiencies under the Agency Agreement. In addition, Plaintiffs noted extensive expenses that Bekins paid for the conversion process related Defendants' agreements with Plaintiffs. Due to Defendants' lack of required action, conversion was not completed, drivers were not returned to active status, and balances owed to the Plaintiffs were not paid.

30. In addition, the October 9 letter noted that due to Defendants' failure to comply with the Agency Agreement and the fact that certain household good shipments had been completed by Defendants yet monies that were due and owing to Plaintiffs had been improperly retained by Defendants. The Agency Agreement would be terminated absent immediate compliance by Defendants. Defendants were given until October 17, 2014, to remedy this non-compliance or the Agency Agreement would be terminated.

31. On October 21, 2014, Plaintiffs sent Defendants a letter indicating that the Agency Agreement was terminated, that monies were due and owing to Plaintiffs, and that

Defendants were to cease all use of logos, and marks, propriety to Bekins, including the removal of the Bekins Marks from all advertising, trucks, equipment, websites, etc.

32. On November 14, 2014, Plaintiff was notified that Defendants continued to use and/or advertise as agents for Plaintiff, including on a website maintained by Defendants at www.faulkcollier.com. On this same date, Plaintiff notified Defendants regarding this breach of the Agency Agreement and infringement of Plaintiff's trademark rights.

33. On December 16, 2014, Plaintiffs again notified Defendants of their breaches of contract, that monies remained due and owing Plaintiffs, and that further trademark infringement would not be tolerated. The letter also indicated suit would commence if Defendants did not respond and/or remove all trademarks from advertising, websites, etc. immediately.

34. On or about December 29, 2014, Plaintiff notified GoDaddy, the Registrar of the website faulkcollier.com, maintained by Defendants, of Defendants' trademark infringement and attempts to pass themselves off as agents for Bekins and requested that GoDaddy take down the website.

35. The website has been taken down and/or suspended despite efforts by Defendants to have it reinstated.

36. To date, Defendants have not complied with the terms the Agency Agreement, nor have the Defendants paid the monies due and owing to Wheaton under the Note or Agency Agreement.

COUNT II – ACCOUNT STATED

37. Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint for Damages as if fully rewritten herein.

38. On November 14, and December 16, 2014, Plaintiffs notified Defendants and demanded payment of monies due and owing to Plaintiffs in the amount of $73,080.64.

39. Despite these demands for payment, Defendant has not offered any objection or basis for non-payment of, or reduction in, the amount invoiced and demanded.

40. Ample time has elapsed in which Defendants could have noted any material objection to the invoiced amount. As a result, the invoiced amounts now constitute an account stated.

41. Defendants are indebted to Plaintiffs on an account stated in the amount of $73,080.64, plus costs.

COUNT III – FEDERAL TRADEMARK INFRINGEMENT

42. Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint for Damages as if fully rewritten herein.

43. Defendants currently advertise and/or promote the infringing Bekins mark on their equipment, website, Facebook page, and its customer documentation.

44. Upon information and belief, Defendants advertise to and, directly or indirectly, consummates transactions with consumers of moving services nationally, including consumers within the State of Indiana.

45. Defendants have been made aware of their ongoing infringements of the Bekins mark, and correspondence was sent to Defendants identifying the infringing activity on their website, Facebook page, equipment, and customer documentation.

46. Defendants' actions are willful and malicious. Furthermore, Defendants are acting with the purpose of making an unauthorized profit by trading upon the substantial investment and efforts by Bekins to build consumer goodwill and demand for Bekins' services as

branded under the Bekins mark.

47. Defendants have infringed upon the Bekins mark by continuing to display "Bekins" (in stylized and non-stylized form), and continuing to attempt to pass off their services as those of Bekins.

48. By the aforementioned acts complained of, Defendants have infringed and continues to infringe the Bekins mark, in violation of Bekins' rights under The Lanham Act.

49. Defendants' aforementioned usage of the Bekins mark has been and continues to be without the license, authority, or consent of Bekins.

50. Defendants' unlawful acts have caused mistake and confusion with the public.

51. Defendants' acts constitute a violation of 15 U.S.C. §1114 and/or §1125.

52. Bekins has suffered and will suffer irreparable harm as a result of Defendants' actions.

53. Bekins has been damaged by Defendants' actions.

54. Bekins has no adequate remedy at law, specifically with respect to Defendants' continuing use of the Bekins mark without permission or license.

COUNT IV – FEDERAL AND STATE UNFAIR COMPETITION/TRADEMARK DILUTION

55. Plaintiffs incorporate herein by reference all preceding paragraphs of this Complaint for Damages as if fully rewritten herein.

56. Defendants have competed and continue to compete unfairly with Bekins by passing off their services as those of Bekins and/or those branded under the Bekins mark.

57. Defendants have traded and continue to trade unfairly upon Bekins' well-established goodwill and reputation tied to the famous Bekins mark.

58. Defendants' acts of unfair competition have caused Bekins to suffer irreparable

harm and damage.

59. Bekins has no adequate remedy at law.

PRAYER FOR RELIEF

Bekins respectfully requests that this Court: 1) enter preliminary and permanent injunctions; 2) award Bekins monetary damages, statutory and otherwise, and punitive damages, to the extent Bekins' historical injuries are compensable in such manner; 3) order Defendants to pay Bekins' attorneys' fees and costs of this action; and 4) all other proper relief.

VERIFICATION

I affirm under the penalties for perjury that the foregoing representations are true and correct to the best of my knowledge and ability.

BEKINS VAN LINES, INC.

John Weissert, Vice President

Respectfully submitted,

COX, SARGEANT & BURNS, P.C.

By: /s/ *S. Andrew Burns*
S. Andrew Burns, #18552-49

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