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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA

ALL STAR HEATING & COOLING, INC., )  
 )  
Plaintiff, )  
 )  
 v. )  
 )  
QUALITY HEATING AND AIR INC., )  
d/b/a ALL STAR AIR, and )  
RICHARD CUSICK, )  
 )  
Defendants. )

Case No.: 1:15-cv-1941

COMPLAINT

Plaintiff All Star Heating & Cooling, Inc. (“All Star”) hereby alleges the following against Defendant Quality Heating and Air Inc. (“Quality”) and Richard Cusick (“Cusick”) (collectively, the “Defendants”), which are generally supported by the Affidavit of Richard Bowen attached hereto as **Exhibit A**:

THE PARTIES

1. Plaintiff All Star is an Indiana corporation with its principal place of business located at 9135 Cornus Court, Camby, Indiana, 46113. *See* Indiana Secretary of State business listing for All Star Heating & Cooling, Inc., attached hereto as **Exhibit B**.
2. Plaintiff All Star is in the business of providing heating, venting and air conditioning service, installation and repair. *See* internet page for All Star Heating & Cooling, Inc., located at <http://www.allstarhvacindy.com>, attached hereto as **Exhibit C**.
3. On information and belief, Defendant Quality Heating and Air Inc. is an entity doing business at 4743 W 1110 N, New Palestine, Indiana 46163, and plaintiff believes that

Defendant Quality formerly operated is business at 3350 Olive Street, Indianapolis, Indiana 46227. *See* internet contact information page for “All Star Air” located at <http://www.allstarairindy.com/contact-us/2683166>, attached hereto as **Exhibit D**.

4. On information and belief, Defendant Richard Cusick is operating the business of Quality Heating and Air, Inc. at 4743 W 1110 N, New Palestine, Indiana 46163 under the assumed business name All Star Air, and has been using that name since at least July 9<sup>th</sup>, 2014. *See* Indiana Secretary of State business listing for All Star Air, attached hereto as **Exhibit E**.

5. On information and belief, Defendant Quality Heating and Air Inc. in Indianapolis, is owned and operated by Defendant Richard Cusick. *See* Exhibit E.

6. Defendants are in the business of providing heating, venting and air conditioning service, installation and repair. *See* Exhibit D.

#### **JURISDICTION AND VENUE**

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

8. This Court has subject matter jurisdiction over the claims for state and common law trademark infringement and unfair competition under Indiana law pursuant to the doctrine of supplemental jurisdiction, as codified in 28 U.S.C. § 1367.

9. Venue in the United States District Court for the Southern District of Indiana is proper under 28 U.S.C. § 1391 (b)(2) and (c).

#### **FACTS**

10. Plaintiff All Star is a company that provides heating, ventilation and air conditioning services, installation and repair. *See* Exhibit C.

11. Plaintiff All Star started operating its business in December of 2005 and operates out of a location in Camby, Indiana. *See* Exhibit B.

12. Plaintiff All Star expends significant resources on various forms of advertising. Through its advertising and exceptional customer service, All Star has developed substantial goodwill in the name ALL STAR HEATING & COOLING, INC. *See* for example samples of Plaintiff's advertising expenses, attached hereto as **Exhibit F**.

13. As a result of the extensive use of ALL STAR HEATING & COOLING, INC. trademark since 2005, the mark has become widely and favorably known to the public for offering heating, ventilation and air conditioning service, repair and installation in the Indianapolis and surrounding areas.

14. ALL STAR HEATING & COOLING, INC. is a distinctive and protectable trade name.

15. All Star prominently displays the ALL STAR HEATING & COOLING, INC. name on correspondence, advertising and publicity used in connection with the marketing and sales of its heating, ventilation and air conditioning services. The ALL STAR HEATING & COOLING, INC. trade name is also prominently displayed on its website at <http://www.allstarhvacindy.com>.

16. All Star began its business in 2005 using the trade name ALL STAR HEATING & COOLING, INC. In December of 2005 All Star was registered as a corporation in Indiana. All Star has continually offered heating, ventilation and air conditioning services, installation and repair since it began its business in 2005.

17. All Star has been using the same name since 2005.

18. All Star has been using the same trade dress since 2011.

19. Upon information and belief, Defendant Cusick opened a business of heating, ventilation and air conditioning service, installation and repair in Indianapolis, Indiana in June of 2014. Defendant Cusick named the business “Quality Heating and Air, Inc.” Cusick also filed a certificate of assumed business name on July 9, 2014 and since that date has operated his business under the name “All Star Air.”

20. On information and belief, Defendants previously operated their business at 3350 Olive Street, Indianapolis, Indiana 46227 – a location less than twenty (20) miles from the principal place of business of All Star in Camby, Indiana.

21. Defendants’ business is now located at 4743 W 1110 N, New Palestine, Indiana 46163. This location is less than 30 miles from the Plaintiff’s business in Camby, Indiana.

22. Since Defendants began operating in the Indianapolis area under the assumed name “All Star Air” Plaintiff All Star has obtained evidence of actual confusion in the form of misled customers and confused vendors. Customers of Plaintiff All Star have been confused as to the source of Plaintiff’s and Defendants’ services as a result of Defendants’ use of the “All Star Air” name. Plaintiff’s customers and vendors have wrongly believed that there is an association or connection between the Plaintiff’s business and the Defendants’ business. See generally, Affidavit of Richard Bowen, President of All Star Heating and Cooling, Inc., attached hereto as **Exhibit A**.

23. Defendant Cusick represents himself as the owner and operator of Quality Heating and Air, Inc. As the owner and operator of Quality, Defendant Cusick orchestrated and directed all of the actions of Quality Heating and Air, Inc.’s business operations in the Indianapolis area and acted as its representative. As a consequence of these actions, Defendants Quality and Cusick are liable for trade name infringement and unfair competition.

24. All Star has attempted to notify Quality and Cusick on two separate occasions of the infringement of All Star's trade name, and has received **no response from Quality or Cusick**. Separate demand letters were sent to Quality and Quality's Registered Agent on file with the Indiana Secretary of State – United States Corporation Agents, Inc. The letters sent directly to Cusick and Quality were unclaimed at both of its Indianapolis and New Palestine addresses. The letters to the Registered Agent, however, were claimed. *See* Demand Letters dated May 20<sup>th</sup>, 2015 and September 10<sup>th</sup>, 2015 and certified mail receipts attached hereto as **Exhibit G**.

## COUNT I

### FEDERAL UNFAIR COMPETITION

25. All Star incorporates by reference Paragraphs 1 through 23 of the Complaint as though fully alleged herein.

26. ALL STAR HEATING & COOLING, INC. is a distinctive and protectable trade name.

27. Defendants with full knowledge of All Star's prior use of the ALL STAR HEATING & COOLING, INC. trade name and without its consent, have used and continue to use the "All Star Air" name in connection with the operation, marketing and promotion of Defendants' business.

28. Defendant Richard Cusick copied and appropriated the "All Star Air" trade name for the unlawful purpose of causing confusion or mistake, and to deceive the public into falsely believing that his business services emanate from Plaintiff All Star or are otherwise associated with Plaintiff All Star. Such acts are likely to cause consumer confusion and have caused actual confusion, mistake and deception, all to Plaintiff All Star's irreparable injury.

29. Defendants' acts constitute a violation of 15 U.S.C. § 1125(a) in that they knowingly and willfully have used in connection with their services a false designation of origin and a false description or representation as to their services and have caused such services to enter into interstate commerce.

30. The marks and name utilized by Defendant Richard Cusick are confusingly similar to that of All Star's unique marks and name. The attempt by Defendant Cusick to trade upon Plaintiff's good will and reputation and to unlawfully appropriate the benefits of All Star's years of advertising constitutes unfair competition and has caused and is causing irreparable damage to Plaintiff All Star by misleading the public to believe that the Defendants are affiliated, associated with or sponsored by All Star.

31. All Star has no adequate remedy at law. Defendants' acts have caused irreparable and substantial damage to All Star, its business, trade reputation and goodwill, and will result in Defendant being unjustly enriched and unlawfully deriving profits and gains.

## **COUNT II**

### **STATE AND COMMON LAW TRADEMARK INFRINGEMENT**

32. All Star incorporates by reference Paragraphs 1 through 30 of the Complaint as though fully alleged herein.

33. All Star has exclusive rights to the ALL STAR HEATING & COOLING, INC. trade name in the Indianapolis area.

34. Upon information and belief, Defendants have knowingly advertised, offered for sale and sold services using the confusingly similar trade name of "All Star Air" in commerce. Defendants' actions have been willful and in knowing disregard of the rights of All Star.

35. The acts of Defendants as set forth herein are intended to and are likely to cause confusion, deception or mistake and to deceive the public into erroneously believing that the Defendants' business is sponsored by or otherwise associated with All Star.

36. All Star's business reputation and goodwill has been injured, and the distinctive character and quality of the ALL STAR HEATING & COOLING, INC. trade name has been and is being injured.

37. Furthermore, by appropriating and infringing upon the ALL STAR HEATING & COOLING, INC. trade name and using confusingly similar marks to derive financial benefit, Defendants are unfairly trading upon and misappropriating for their own benefit the valuable goodwill, reputation, publicity and business opportunities of All Star.

38. All Star has suffered substantial and irreparable harm for which there is no adequate remedy at law.

39. Defendants unlawful conduct constitutes trade name infringement and misappropriation under the common law and statutes of the State of Indiana.

### **COUNT III**

#### **COMMON LAW UNFAIR COMPETITION**

40. All Star incorporates by reference Paragraphs 1 through 38 of the Complaint as though fully alleged herein.

41. Defendants' actions described above, including the Defendants' continued use of a trade name deceptively similar to All Star's trade name, are intended to mislead the public and lead to confusion and mistake and constitute deliberate and willful unfair competition in violation of the common law.

42. As a direct and proximate result of Defendants' actions, All Star has been injured and damaged in an amount to be determined at trial.

43. Defendants' actions have caused irreparable damage to All Star and will continue to damage All Star unless restrained by this Court. As a result, All Star is without an adequate remedy at law.

44. In support of this Complaint and the allegations contained therein, Plaintiff has attached the Affidavit of Richard Bowen, President and sole shareholder of All Star Heating & Cooling, Inc. here to as Exhibit A.

#### **PRAYER FOR RELIEF**

THEREFORE, Plaintiff respectfully requests judgment against the Defendants as follows:

A. That Defendants, its owners, officers, directors, agents, employees, successors, assigns, and all those controlled by them, or in active concert or participation with them, be preliminarily and permanently enjoined:

1. From using in any way the All Star Air trade name or a word or phrase substantially similar thereto, as a corporate name, trademark, service mark, assumed name or otherwise;

2. From using in any way the name "All Star Air" or any other mark, designation or name so similar to All Star's business and trade name and ALL STAR HEATING & COOLING, INC. trade name as to be likely to cause confusion or mistake; and

3. From otherwise competing unfairly with All Star.



B. That Defendants be ordered to deliver for destruction all articles of signage, merchandise, displays, advertisements, packaging, brochures, stationery, business cards and any other materials in their possession or control of their agents, which bear the “All Star Air” business name or trademark, or any confusingly similar term or terms including, but not limited to any item bearing or displaying the term “All Star,”;

C. That Defendants be required to account for and pay over to All Star all gains, profits and advantages derived by them from their infringement, unfair competition and other unlawful acts since July 9, 2014;

D. That Defendants be ordered to compensate All Star for the advertising or other expenses necessary to dispel the public confusion caused by Defendants’ infringement, unfair competition and other unlawful acts;

E. That Defendants be ordered to pay to All Star a sum equal to three (3) times the amount of All Star’s damages to be determined at trial;

F. That Defendant be ordered to pay interest, costs and reasonable attorneys’ fees to All Star; and

G. For all other proper relief.

**REQUEST FOR JURY TRIAL**

Plaintiff respectfully requests that all issues so triable be tried before a jury.

s/ Nicholas E. Plopper\_\_\_\_\_

Dated: December 9, 2015

Respectfully Submitted,

PLOPPER & PARTNERS, LLP

s/ Nicholas E. Plopper\_\_\_\_\_

Nicholas E. Plopper

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