

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

THE AMERICAN AUTOMOBILE
ASSOCIATION, INC.,

Plaintiff,

v.

AAA AUTOMOTIVE PARTS
and
MICHAEL WALLER,

Defendants.



Provided by:
[Overhauser Law Offices LLC](http://www.iniplaw.org)
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Case No. 1:16cv-2890

COMPLAINT

Plaintiff, The American Automobile Association, Inc. (“AAA”), brings this Complaint for injunctive relief, monetary damages, and other relief against Defendants AAA Automotive Parts and Michael Waller (collectively “Defendants”). AAA alleges as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement, false designation of origin, unfair competition, dilution, and cybersquatting in violation of Sections 32, 43(a), 43(c), 43(d) of the Federal Trademark Act (the “Lanham Act”), 15 U.S.C. §§ 1114, 1125(a), 1125(c), and 1125(d); for dilution in violation of Ind. Code § 24-2-1-13.5; and for trademark infringement and unfair competition under Ind. Code § 24-2-1-13(2) and common law. AAA seeks injunctive relief, monetary damages, restitution, and all other appropriate relief, including an order enjoining Defendants from using AAA’s trademarks in Defendants’ business names and websites, and ordering transfer of the domain name TRIPLEAPARTS.COM.

2. This action arises out of Defendants’ knowing and willful violation of AAA’s rights in its famous and distinctive AAA trademarks (collectively, the “AAA Marks”).

Specifically, Defendants have used and continue to use the AAA Marks in connection with a business offering automobile maintenance, parts, and repair services, known variously as AAA Automotive Parts, AAA Automotive & Truck Parts, and Waller Automotive Group d/b/a AAA Automotive Parts (collectively, “AAA Automotive Parts”), without authorization and with full knowledge that they are not authorized to use those marks.

3. Defendants’ unlawful use of the AAA Marks is likely to cause—and in fact already may have caused—consumers to believe, erroneously, that Defendants are affiliated or associated with or have been endorsed by AAA, jeopardizing the goodwill and tarnishing the reputation associated with AAA’s Marks, confusing those consumers seeking the reliable and dependable services of AAA, and unjustly enriching Defendants.

4. Defendants’ unlawful acts have lessened the capacity of AAA’s famous Marks to identify and distinguish the products and services AAA provides under those Marks and thus have diluted the distinctive quality of the Marks.

5. In addition, on information and belief, Defendants have profited from their unauthorized use of the AAA Marks and have made unauthorized commercial use of the Marks in Indiana to their benefit and to the detriment of AAA and of consumers, in violation of the laws set forth above.

PARTIES

6. Plaintiff AAA is a not-for-profit, non-stock corporation organized and existing under the laws of Connecticut, with its principal place of business in Heathrow, Florida. AAA provides its more than 50 million members with products and services throughout the United States and Canada, including in Indiana. AAA’s services include travel and automobile products and services (including automobile repair services at its AAA Car Care Centers and through AAA Approved automobile repair businesses), financial advice, insurance and warranty coverage, and discounts. AAA provides its products and services through local AAA member clubs, including AAA Hoosier Motor Club.

7. On information and belief, AAA Automotive Parts is a business operating under the laws of Indiana, with a principal place of business at 800 West 11th Street, Bloomington, Indiana 47404.

8. On information and belief, Defendant AAA Automotive Parts's registered agent maintains an office at 1004 Elm Street, Griffith, Indiana 46319.

9. On information and belief, Defendant Michael Waller owns AAA Automotive Parts and resides at 291 East Varsity Lane, Bloomington, Indiana 47408-1452.

10. On information and belief, Defendant Michael Waller is the registrant of the TRIPLEAPARTS.COM domain name (the "Infringing Domain Name") and registered the domain name on behalf of AAA Automotive Parts. On information and belief, the Infringing Domain Name is being used to host a website promoting the AAA Automotive Parts business.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 15 U.S.C. §§ 1121 and 1125 and under 28 U.S.C. §§ 1331 and 1338. This Court has jurisdiction over Plaintiff's state law claims under 28 U.S.C. §§ 1338(b) and 1367(a), as well as under general principles of supplemental and pendent jurisdiction.

12. Defendants are subject to personal jurisdiction within the Southern District of Indiana because Defendants hold themselves out as conducting business and residing in this State.

13. Venue is proper under 28 U.S.C. § 1391(b) and (c) because, as Defendants hold themselves out as doing business in the Southern District of Indiana, a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of Indiana.

FACTS ENTITLING AAA TO RELIEF

A. AAA's Widespread and Substantial Use of Its Registered AAA Marks

14. Since its founding over a century ago, AAA has enjoyed a reputation as one of the world's premier client service organizations. That reputation is based largely on the quality and reliability of the products and services it offers through its AAA local clubs.

15. Although its original focus was on combating unfair automobile laws and campaigning for better roads and more reliable vehicles, AAA quickly expanded its charter. It established itself almost immediately as an advocate for travel safety and road improvement. Today, AAA offers a broad range of products and services, including but also going beyond automobiles and travel.

16. AAA has invested resources, including for advertising campaigns and promotional efforts, to develop and foster the reputation, recognition, and goodwill associated with its products and services.

17. AAA has used and continues to use the AAA Marks and logo designs in interstate commerce to identify its products and services.

18. Only those businesses that are part of AAA's network of approved service providers are authorized to use or display the AAA Marks. Consequently, AAA members and the public know that local businesses displaying AAA Marks are selected only if they maintain a reputation for quality, integrity, and reliability.

19. As a result of AAA's provision of quality products and the continuous advertising, promotion, and sale of products and services under the AAA Marks, those trademarks have acquired value and fame in the United States, including in Indiana, and throughout the world. Specifically, the AAA Marks are widely recognized by consumers in this country and abroad and have acquired enormous goodwill as trademarks identifying high-quality and reliable products and services; indeed, the AAA Marks are distinctive such that consumers recognize that goods and services marketed under the AAA Marks originate with, or are approved or endorsed by, AAA and the AAA local clubs.

20. AAA and its local clubs have registered AAA-related domain names and maintain Internet websites through which AAA Members and the general public may obtain information and, in some cases, purchase or use products and services (the "AAA Websites"). The AAA Websites were created and operate to attract members and customers, encourage their interest in AAA and its local clubs, and offer products and services.

21. AAA has registered with the United States Patent and Trademark Office (“USPTO”) more than 100 trademarks, including Marks that AAA has used since at least 1902, in connection with the products and services offered to its members. The federal registrations Defendants are violating include:

- a. Reg. No. 829,265, for the AAA Mark, used in connection with a variety of automobile association services and emergency roadside services;
- b. Reg. No. 2,158,654, for the AAA & Design Mark, used in connection with a variety of automobile association services and emergency roadside services;
- c. Reg. No. 3,316,227, for the AAA & Design Mark, used in connection with “[i]ndicating membership in a(n) automobile membership club”;
- d. Reg. No. 1,168,790, for the TRIPLE A Mark, used in connection with a variety of automobile association services;
- e. Reg. No. 3,046,904, for the AAA Mark, used in connection with repair services;
- f. Reg. No. 3,046,905, for the AAA & Design Mark, used in connection with repair services;
- g. Reg. No. 3,102,319, for the AAA & Design Mark, used in connection with vehicle parts;
- h. Reg. No. 5,036,379, for the AAA Mark & Design, used in connection with a variety of automobile association services and emergency roadside services;
- i. Reg. No. 1,449,079, for the AAA APPROVED AUTO REPAIR & Design Mark, used in connection with automobile repair services; and
- j. Reg. No. 3,604,164, for the AAA TOTAL REPAIR CARE Mark, used in connection with auto diagnosis and repair services.

Copies of the registration certificates for the above marks are available on the USPTO website:
<http://www.uspto.gov>.

22. Pursuant to 15 U.S.C. § 1057(b), the registration certificates for the AAA Marks, including those marks identified above, constitute prima facie evidence of the validity of those registrations, of AAA's ownership of the trademarks set forth therein, and of AAA's exclusive right to use those trademarks in commerce and in connection with the products and services specified in the registration certificates.

B. Defendants' Unlawful Use of Plaintiff's AAA Marks

23. AAA has never authorized Defendants to use its AAA Marks.

24. Nevertheless, on information and belief, Defendants have knowingly and willfully violated AAA's rights in its famous and distinctive AAA Marks by using in commerce the business name AAA Automotive Parts and the TRIPLEAPARTS.COM domain name after Plaintiff's AAA Marks had become famous in Indiana, the United States, and abroad.

25. Defendants have knowingly and willfully violated AAA's rights in its famous and distinctive AAA Marks by using on the website associated with TRIPLEAPARTS.COM domain name the AAA Marks after Plaintiff's Marks had become famous in Indiana, the United States, and abroad.

26. On information and belief, Defendant AAA Automotive Parts was incorporated on or around July 13, 2011.

27. Defendants registered the TRIPLEAPARTS.COM domain name on September 3, 2015.

28. In or around June 2016, AAA learned that Defendants were using the business name AAA Automotive Parts to designate and advertise automobile maintenance, parts, and repair services that compete directly with services offered by AAA. AAA also learned that Defendants owned the Infringing Domain Name and were using it to advertise the AAA Automotive Parts business.

29. On June 22, 2016, AAA sent a letter by certified mail to Defendants' address then listed at the Infringing Domain Name as its principal place of business, requesting that Defendants discontinue all use of the AAA Automotive Parts business name and mark, the AAA Marks, and any other confusingly similar marks and to transfer registration for the Infringing Domain Name to AAA.

30. That same day, AAA successfully delivered an email containing an electronic copy of the letter to the email address listed on the WHOIS record for the TRIPLEAPARTS.COM domain name.

31. After receiving no response to the June 22, 2016 letter, AAA sent a second letter by certified mail on July 11, 2016 to Defendants' then-listed principal place of business and a third letter by certified mail on July 12, 2016 to the address listed on the WHOIS record for the TRIPLEAPARTS.COM domain name, reiterating its request that Defendants discontinue all use of the AAA Automotive Parts business name and mark, the AAA Marks, and any other confusingly similar marks and to transfer registration for the Infringing Domain Name to AAA.

32. On July 11, 2016, AAA successfully delivered an email containing an electronic copy of the July 11, 2016 letter to the email address listed on the WHOIS record for the TRIPLEAPARTS.COM domain name.

33. The United States Postal Service declared each physical letter undeliverable, stating that the address does not exist, the addressee was not known at the address, or that the letter was unclaimed.

34. On August 16, 2016, AAA reported to the World Intellectual Property Organization ("WIPO") that Defendants had supplied false contact information in connection with the TRIPLEAPARTS.COM domain name registration.

35. Based on the August 16, 2016 report, WIPO suspended the TRIPLEAPARTS.COM domain name registration on or around September 1, 2016.

36. On information and belief, during a telephone call on September 26, 2016, Defendant Waller acknowledged being aware of AAA's requests that Defendants discontinue all

use of the AAA Automotive Parts business name and mark and any other confusingly similar marks and to transfer registration for the Infringing Domain Name to AAA.

37. During the September 26, 2016 telephone call, Defendant Waller told AAA that AAA's Marks had expired and encouraged AAA to file a lawsuit against Defendants so that Defendants could countersue and take the case "to the Supreme Court."

38. On or around October 17, 2016, Defendants began again knowingly and willfully using the AAA Marks on the website associated with the TRIPLEAPARTS.COM domain name.

39. On information and belief, at the time Defendants' infringing use of the AAA Marks began and at all times thereafter, Defendants have known, or had reason to know, of AAA's rights in the AAA Mark, and have at all times known, or had reason to know, that those marks are famous and valuable.

40. On information and belief, Defendants knowingly and for profit engaged in the infringing use of the AAA Marks to attract consumers, knowing that consumers would likely believe, incorrectly, that use of the AAA Marks signifies that Defendants' business is sponsored or endorsed by, or associated or affiliated with, AAA.

41. Defendants' infringing use has damaged, and will continue to damage, the reputation, recognition, and goodwill associated with the famous and distinctive AAA Marks.

42. Defendants' infringing use has lessened, and will continue to lessen, the capacity of Plaintiff's AAA Marks to identify and distinguish the products and services provided or endorsed by, or affiliated with, AAA and, thus, dilute the distinctive quality of Plaintiff's AAA Marks.

43. Further, on information and belief, Defendants' infringing use has been and continues to be of commercial value to Defendants.

44. For the foregoing reasons, Defendants' infringing use has caused, and will likely continue to cause, injury to AAA and to the goodwill and value of its AAA Marks.

COUNT I
**(Federal Trademark Infringement in
Violation of Section 32 of the Lanham Act)**

45. AAA incorporates all the preceding paragraphs.

46. Defendants' infringing use violates Section 32 of the Lanham Act, 15 U.S.C. § 1114, because it constitutes willful and deliberate use in commerce of reproductions, copies, and/or colorable imitations of AAA's federally registered AAA Marks in connection with the sale, offering for sale, distribution, and advertising of Defendants' services in a manner likely to cause confusion, mistake, and deception.

47. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willful, deliberate, and in bad faith.

48. These violations have irreparably damaged AAA, and it has no adequate remedy at law. Unless enjoined, Defendants will continue the infringing use, further injuring AAA and confusing the public.

49. On information and belief, Defendants have received revenues and profits as a result of their infringing use, to which Defendants are not entitled, and AAA has also suffered damages as a result of the infringing use, for which Defendants are responsible.

COUNT II
**(Federal False Designation of Origin and Unfair Competition in
Violation of Section 43(a) of the Lanham Act)**

50. AAA incorporates all the preceding paragraphs.

51. Defendants' infringing use violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants have willfully and deliberately used in commerce words, terms, names, and/or false designations of origin that have caused confusion and mistake as to the origin, sponsorship, or approval by AAA of services promoted by Defendants. This conduct constitutes unfair competition and infringement of Plaintiff's AAA Marks.

52. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willful, deliberate, and in bad faith.

53. Defendants' violation of this statute has caused and will continue to cause irreparable harm to AAA, for which AAA has no adequate remedy at law. Unless enjoined, Defendants will continue the infringing use, further injuring AAA and confusing the public.

54. On information and belief, Defendants have received revenues and profits as a result of their infringing use, to which Defendants are not entitled, and AAA has also suffered damages as a result of the infringing use, for which Defendants are responsible.

COUNT III
**(Federal Trademark Dilution in
Violation of Section 43(c) of the Lanham Act)**

55. AAA incorporates all the preceding paragraphs.

56. Defendants' infringing use violates Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), because such use, which commenced after Plaintiff's AAA Marks became famous, has diluted and continues to dilute the AAA Marks by impairing the ability of the AAA Marks to serve as unique identifiers and by tarnishing the good reputation associated with the AAA Marks.

57. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willful, deliberate, and in bad faith.

58. Defendants' violation of this statute has caused and will continue to cause irreparable damage to AAA, for which AAA has no adequate remedy at law. Unless enjoined, Defendants will continue the infringing use, further injuring AAA and confusing the public.

59. On information and belief, Defendants have received revenues and profits as a result of their infringing use, to which Defendants are not entitled, and AAA has also suffered damages as a result of the infringing use, for which Defendants are responsible.

COUNT IV
(Cybersquatting Under Section 43(d) of the Lanham Act)

60. AAA incorporates all the preceding paragraphs.

61. Defendants' infringing use violates Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d), because (i) Plaintiff is the owner of the AAA Marks, which are registered in the

United States Patent and Trademark Office and protected under the Lanham Act, 15 U.S.C. §§ 43(a), (c), and (d); (ii) Defendants have registered, trafficked in, and/or used the Infringing Domain Name with a bad faith intent to profit from AAA's famous and distinctive AAA Marks; (iii) the Infringing Domain Name is confusingly similar to Plaintiff's AAA Marks; and (iv) Plaintiff's AAA Marks were distinctive and famous at the time of registration of the Infringing Domain Name.

62. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willful, deliberate, and in bad faith.

63. Defendants' violation of the statute has caused and will continue to cause irreparable damage to AAA, for which AAA has no adequate remedy at law. Unless enjoined, Defendants will continue to use the AAA Marks and Infringing Domain Names, further injuring AAA and confusing the public.

64. On information and belief, Defendants have received revenues and profits as a result of their unauthorized use of the AAA Marks, to which they are not entitled, and AAA has also suffered damages as a result of Defendants' conduct, for which Defendants are responsible.

COUNT V
(Trademark Dilution Under Ind. Code § 24-2-1-13.5)

65. AAA incorporates all the preceding paragraphs.

66. Defendants' infringing use violates Ind. Code § 24-2-1-13.5 because such use, which commenced after Plaintiff's AAA Marks became famous, has diluted and continues to dilute the AAA Marks by impairing the ability of the AAA Marks to serve as unique identifiers and by tarnishing the good reputation associated with the AAA Marks.

67. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willfully intended to trade on Plaintiff's reputation and cause dilution of the AAA Marks.

68. Defendants' unlawful conduct has and will continue to cause irreparable damage to AAA, for which AAA has no adequate remedy at law. Unless enjoined, Defendants will continue the conduct, further injuring AAA and confusing the public.

69. On information and belief, Defendants have received revenues and profits as a result of its unlawful conduct, to which Defendants are not entitled, and AAA has also suffered damages as a result of such unlawful conduct, for which Defendants are responsible.

COUNT VI
(Trademark Infringement Under Ind. Code § 24-2-1-13)

70. AAA incorporates all the preceding paragraphs.

71. Defendants' infringing use violates Ind. Code § 24-2-1-13. Defendants have willfully and deliberately reproduced, counterfeited, copied, and colorably imitated the AAA Marks and applied the reproductions to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used in connection with the sale or other distribution of Defendants' goods and services in Indiana. This conduct constitutes infringement of Plaintiff's AAA Marks.

72. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be committed with the intent to cause deception, confusion, or mistake.

73. Defendants' violation of this statute has caused and will continue to cause irreparable harm to AAA, for which AAA has no adequate remedy at law. Unless enjoined, Defendants will continue the infringing use, further injuring AAA and confusing the public.

74. On information and belief, Defendants have received revenues and profits as a result of their infringing use, to which Defendants are not entitled, and AAA has also suffered damages as a result of the infringing use, for which Defendants are responsible.

COUNT VII
**(Unfair Competition and Trademark Infringement
Under Common Law)**

75. AAA incorporates all the preceding paragraphs.

76. Defendants' unauthorized use of the AAA Marks constitutes trademark infringement and unfair competition under Indiana common law. AAA is the prior user of the AAA Marks, and Defendants' willful and deliberate use of the AAA Marks in commerce is likely to cause, and may have already caused, confusion, mistake, and deception as to origin, sponsorship, or approval by AAA.

77. On information and belief, Defendants' unlawful conduct as set forth herein has been and continues to be willful, deliberate, and in bad faith.

78. Defendants' unlawful conduct has and will continue to cause irreparable damage to AAA, for which AAA has no adequate remedy at law. Unless enjoined, Defendants will continue the conduct, further injuring AAA and confusing the public.

79. On information and belief, Defendants have received revenues and profits as a result of its unlawful conduct, to which Defendants are not entitled, and AAA has also suffered damages as a result of such unlawful conduct, for which Defendants are responsible.

PRAYER FOR RELIEF

WHEREFORE, AAA respectfully seeks the following relief:

1. Enjoin and restrain Defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from engaging in any of the following acts:

a) Using without the authorization of AAA any of AAA's Marks, logos, and trade names, including, but not limited to, the designation "AAA," the designation "TRIPLE A," or any other name, logo, or Mark that includes the designation "AAA," "TRIPLE A," or that is confusingly or deceptively similar to any of AAA's Marks, logos, and trade names, either alone or in conjunction with other words or symbols, as a part of any trademark, service mark, logo, trade name, corporate name, assumed name, domain name, on or in relation to any goods or services sold or distributed by the Defendants, or in any other manner; and

b) Using any combination of multiple letter “A’s” in any form or manner that would tend to identify or associate Defendants, their business, or their goods or services with AAA, including, without limitation, in the marketing, promotion, advertising, identification, sale or distribution of goods or services, or in any other manner;

2. Require Defendants to transfer to AAA any and all domain names in their or their agents’ possession, custody, or control that include the AAA Marks, including but not limited to the domain name TRIPLEAPARTS.COM;

3. Require Defendants, pursuant to 15 U.S.C. § 1118 and Indiana law, to destroy and/or change all literature, signs, labels, prints, packages, wrappers, containers, advertising materials, Internet content, stationery, software, and any other items in their possession or control which contain the infringing designations “AAA,” or any term confusingly similar to “AAA,” either alone or in combination with other words or symbols and to destroy all plates, molds, matrices, masters, and other means of making any of those infringing items;

4. Require Defendants to cancel or amend any business name, trade name, or corporate registration or application that contains the AAA Marks, or any other confusingly similar name, logo, or mark, including, but not limited to, registrations for AAA Automotive Parts;

5. Require Defendants to file with the Court and to serve on AAA, within thirty (30) days after entry of an injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

6. Require Defendants to pay AAA for all damages sustained as a result of Defendants’ unlawful conduct described above, plus interest thereon, and require, with respect to damages resulting from infringement or dilution of the AAA Marks or from unfair competition under the Lanham Act and Indiana law, that such damages be trebled pursuant to 15 U.S.C. § 1117 and Indiana law;

7. Require Defendants to account for and pay to AAA all profits derived by Defendants resulting from their use of the AAA Marks pursuant to 15 U.S.C. § 1117 and Indiana law;
8. Award AAA the costs of this suit and its reasonable attorneys' fees in accordance with 15 U.S.C. § 1117 and Indiana law;
9. Award AAA statutory damages in the amount of \$100,000 per Infringing Domain Name pursuant to 15 U.S.C. § 1117(d), or some other amount as the Court considers just;
10. Award prejudgment interest on all liquidated sums; and
11. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

Date: October 24, 2016

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