

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION



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

ASW, LLC,)	
Plaintiff,)	
)	
VS.)	CASE NO. 1:18-cv-86
)	
FREDERICK BISSON,)	
)	
Defendant.)	

COMPLAINT AND JURY DEMAND

Plaintiff, ASW, LLC (“ASW”), for its Complaint against Defendant, Frederick Bisson (“Defendant”), states and alleges as follows:

NATURE OF ACTION

1. This is an action for, *inter alia*, trademark infringement, trademark dilution, false designation of origin, and unfair competition to recover damages and costs including, but not limited to, reasonable attorney fees, from the Defendant for the injuries ASW suffered and will continue to suffer as a consequence of Defendant’s actions. This action seeks also a preliminary and permanent injunction and all other equitable relief as ASW has suffered and will continue to suffer irreparable harm as a consequence of Defendant’s actions.

PARTIES

2. ASW, LLC is an Indiana limited liability company having its principal place of business at 2499 S 600 E, Suite 102, Columbia City, Indiana 46725.

3. Frederick Bisson, upon information and belief, is the owner of the website americansportworksparts.com and is a resident of 1837967 Alberta Ltd., P.O. Box 51118, Edmonton Alberta T5W5G5 Canada.

4. Frederick Bisson, upon information and belief, has control of the website americansportworksparts.com and is a resident of 1837967 Alberta Ltd., P.O. Box 51118, Edmonton Alberta T5W5G5 Canada.

JURISDICTION AND VENUE

5. This action arises and is brought under the trademark laws of the United States, 15 U.S.C. § 1111, *et seq.* This action also arises and is brought under Indiana law.

6. This Court has jurisdiction by virtue of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

7. This Court also has supplemental jurisdiction over the state and common law claims pursuant to 28 U.S.C. § 1367 in that the state and common law claims form part of the same controversy as the claims arising under the trademark laws of the United States.

8. The Court also has original jurisdiction over the common law unfair competition claims pursuant to 28 U.S.C. § 1338(b) in that the claims are joined with substantial and related claims arising under the trademark laws of the United States.

9. Venue is appropriate in this district in accordance with 28 U.S.C. § 1391.

10. On information and belief, Defendant has been conducting continuous and systematic business by marketing and selling sports vehicle parts and related materials within the State of Indiana and within the Northern District of Indiana.

11. Defendant is transacting business and has committed illegal acts hereinafter complained of in the Northern District of Indiana.

BACKGROUND

12. Since 1959, ASW and its predecessors have built and distributed more than one million American-made vehicles and related parts. ASW designs, builds, tests and sells Go-Karts,

ATVs, UTVs, parts for Go-Karts, ATVs and UTVs, other power sport vehicles and power sport vehicle parts throughout the country.

13. ASW is the owner of United States Trademark Registration No. 3556429 issued by the United States Patent and Trademark Office on the Principal Register on January 6, 2009, for “American SportWorks.” A copy of this registration is attached hereto as **Exhibit A**.

14. ASW is the owner of United States Trademark Registration No. 5138550 issued by the United States Patent and Trademark Office on the Principal Register on February 7, 2017, for “American LandMaster.” A copy of this registration is attached hereto as **Exhibit B**.

15. Trademark Registration No. 3556429 and No. 5138550 (collectively the “ASW Trademarks”) remain in full force and effect.

16. ASW and Defendant are competitors for the same customers for parts in connection with UTV, Go Kart and power sport vehicles parts.

17. Defendant has been and is currently controlling and/or operating a website, americansportworksparts.com (“Defendant’s Website”), that advertises and sells products the same or similar as and competitive with products sold by ASW.

18. Defendant’s Website advertises and sells products using the names “AMERICAN SPORTWORKS” and “LANDMASTER.” For example, the Defendant’s Website lists the following as “New Products”: AMERICAN SPORTWORKS 150 DUST SEAL 47 X 5-7; AMERICAN SPORTWORKS 150 STARTER MOTOR; AMERICAN SPORTWORKS 150 STARTER RELAY SOLENOID; AMERICAN SPORTWORKS 150 CARBURETOR 24MM; and AMERICAN SPORTWORKS 150 VARIATOR. *See* **Exhibit C**.

19. Defendant’s Website also advertises LANDMASTER LM200 PARTS. *See* **Exhibit D**.

20. Defendant sells its vehicle parts in the same channels of trade that ASW sells its vehicles and related parts and in competition with ASW.

21. Defendant is using and/or has used trade names and/or marks in connection with its sale of vehicle parts that use names identical to the ASW Trademarks.

22. ASW notified Defendant of its infringing conduct on March 8, 2018, with a cease and desist letter, but Defendant continues to use the ASW Trademarks in violation of the laws cited herein.

COUNT I

FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. §§ 1114, 116, 117) **(U.S. TRADEMARK REGISTRATION NO. 3556429 AND NO. 5138550)**

23. ASW repeats and realleges the allegations contained in paragraphs 1 through 22 of this Complaint.

24. ASW, through its business, uses the ASW Trademarks to designate the source of ASW's goods and services. ASW's use of the ASW Trademarks has been substantial and continuous for many years.

25. As a result of substantial sales and advertising by ASW of its trademarks, the ASW Trademarks have been favorably known to the public and the trade, and the ASW Trademarks identify and distinguish the source of origin of ASW's sport vehicles and related parts. The ASW Trademarks represent a valuable and irreplaceable asset of ASW's business.

26. The Defendant uses or has used marks identical to the ASW Trademarks or confusingly similar marks in connection with the sale of his vehicle parts. Defendant has used the marks in connection with the sale of sports vehicle parts as shown in Defendant's marketing materials, attached hereto as **Exhibits C** and **D**, that do not originate from ASW.

27. Defendant has willfully and deliberately infringed and sought to appropriate to himself the goodwill associated with the ASW Trademarks by advertising, offering for sale and selling in interstate commerce sports vehicle parts using the ASW Trademarks in the sale and advertising of parts as shown in **Exhibits C and D**.

28. Defendant has willfully and deliberately infringed and sought to appropriate unto himself the ASW Trademarks by advertising, offering for sale and selling in interstate commerce sports vehicle parts through the use of ASW Trademarks and/or confusingly similar marks.

29. ASW has no control over the nature and quality of Defendant's customer service or the nature and quality of the parts being sold by Defendant.

30. Defendant has diverted sales and/or customers from ASW.

31. The aforesaid acts and conduct of Defendant have caused confusion, mistake and deception as to the source, origin or sponsorship of their sports vehicle parts.

32. Defendant is trading and has traded on ASW's goodwill and reputation to further his business.

33. By reason of the aforesaid acts of infringement by Defendant, ASW has been damaged, and it will need a full and complete accounting and relevant information in order to determine the extent of its damages.

34. ASW will suffer irreparable harm if the Defendant continues to infringe the ASW Trademarks.

COUNT II

FEDERAL UNFAIR COMPETITION/FALSE DESIGNATION OF ORIGIN AND/OR TRADEMARK DILUTION (15 U.S.C. §§ 1125, 1116, 1117)

35. ASW repeats and realleges the allegations of paragraphs 1 through 34 of this Complaint.

36. ASW and its predecessors have used the ASW Trademarks in commerce since at least as early as 2009, and is presently using ASW Trademarks in connection with the marketing and sale of ASW sports vehicles and related sports vehicle parts to designate ASW as the source of origin of the vehicles and parts.

37. As a result of substantial sales and advertising, and use over a substantial period of time, ASW Trademarks have become favorably known to the public and the trade and identify and distinguish the source of ASW sports vehicles and related parts.

38. The ASW Trademarks are famous as that term is defined in 15 U.S.C. § 1125.

39. Defendant uses and/or has used the ASW Trademarks and/or confusingly similar marks in connection with the sale of sports vehicle parts, as shown in Exhibits C and D, that do not originate from ASW.

40. Defendant has willfully and deliberately infringed and sought to appropriate ASW Trademarks by using marks identical to, or confusingly similar to, the ASW Trademarks in connection with the advertising, offering for sale and sale of sports vehicle parts in interstate commerce that do not originate from ASW.

41. Defendant's activities constitute use of a false designation of origin in interstate commerce, which wrongfully and falsely designates, describes or represents the origin of his products, services, and information as originating from or being connected with ASW, and is likely to cause confusion as to Defendant's affiliation, connection, or association with ASW or as to the origin, sponsorship, or approval of Defendant's products by ASW.

42. Defendant's acts are a violation of 15 U.S.C. § 1125 in that he has used a false designation of origin, or a false description or representation, and has caused such wrongfully and falsely designated products to enter into commerce.

43. Defendant has infringed ASW's Trademarks as alleged herein with the intent to deceive the public into incorrectly believing that the sports vehicle parts sold by Defendant are made, approved, and/or sponsored by ASW or affiliated with ASW. Defendant's acts as alleged herein were committed with the intent to deceive and defraud the public.

44. The aforesaid acts and conduct of Defendant are in violation of 15 U.S.C. § 1125 and are likely to cause confusion, mistake and deception as to the source, origin, or sponsorship of Defendant's sports vehicle parts.

45. In the event the aforesaid acts and conduct of Defendant have not served to cause confusion, Defendant's conduct still amounts to trademark dilution. Defendant's use of the famous ASW Trademarks tarnishes the ASW Trademarks by causing a junior mark, the Defendant's mark, to be mistakenly associated with the famous marks, ASW's Trademarks.

46. Defendant's use of the ASW Trademarks by marketing the same on Defendant's Website is eroding the distinctiveness and prestige of the ASW Trademarks.

47. Defendant has unfairly competed with ASW by the acts complained of, has done so intentionally, and has caused damage to ASW.

48. ASW will suffer irreparable harm if the Defendant continues to infringe the ASW Trademarks.

COUNT III

COMMON LAW TRADEMARK INFRINGEMENT/FALSE DESIGNATION OF ORIGIN

49. ASW repeats and realleges the allegations contained in paragraphs 1 through 48 of this Complaint.

50. ASW and its predecessors have used the ASW Trademarks for approximately (9) years in interstate commerce and have used the American SportWorks tradename since 1959.

ASW Trademarks used in conjunction with the marketing, sale and distribution of sports vehicles and related parts have come to have a secondary meaning indicative of origin, relationship, sponsorship, and/or association with ASW. ASW's use of the trademark designations in connection with its sports vehicle and related vehicle parts has entitled ASW to trademark rights in the common law, in Indiana and nationwide.

51. Defendant has sold and marketed sports vehicle parts under the designation "AMERICAN SPORTWORKS" and "LANDMASTER" in direct competition to the goods of ASW marketed under the same trade names. As a result, the purchasing public is likely to attribute to Defendant's use of the ASW Trademarks that are confusingly similar to Defendant's designations in connection with sports vehicle parts as a source, authorization and/or sponsorship of Defendant's goods and services, and therefore, to utilize Defendant's goods and services in that erroneous belief.

52. Upon information and belief, Defendant has intentionally appropriated ASW Trademarks by use of confusingly similar designations with the intent of unfairly competing and causing confusion, mistake, and deception as to the source, relationship, sponsorship, and/or association of Defendant's goods, and, as such, Defendant has committed trademark infringement under the common law.

53. The aforesaid acts and conduct of Defendant are in violation of 15 U.S.C. § 1125 and are likely to cause confusion, mistake and deception as to the source, origin, or sponsorship of Defendant's sports vehicle parts.

54. Defendant's use of the ASW Trademarks has caused, is causing and will continue to cause damage to ASW.

55. ASW will suffer irreparable harm if the Defendant continues to infringe the ASW Trademarks.

COUNT IV

COMMON LAW UNFAIR COMPETITION

56. ASW repeats and realleges the allegations contained in paragraphs 1 through 55 of this Complaint.

57. Defendant has used ASW Trademarks to confuse actual and potential customers of ASW as to the source of Defendant's products.

58. Defendant's deceptive business practices, infringement, and unfair competition have been committed with the intent to cause confusion, to cause mistake, and to deceive.

59. Defendant has unfairly competed with ASW by the acts complained of, has done so intentionally, and has caused and will continue to cause damage to ASW.

60. ASW will suffer irreparable harm if the Defendant continues to infringe the ASW Trademarks.

COUNT V

COMMON LAW PASSING OFF

61. ASW repeats and realleges the allegations contained in paragraphs 1 through 60 of this Complaint.

62. Defendant has sold and is currently selling his sports vehicle parts as the sports vehicle parts of ASW.

63. Defendant is selling the sports vehicle parts through the same channels of trade through which ASW sells its sports vehicle parts.

64. Defendant has used the ASW Trademarks to confuse actual and potential customers of ASW as to the source of Defendant's sports vehicle parts.

65. Defendant is representing that the sports vehicle parts sold by Defendant are the sports vehicle parts sold by ASW.

66. Defendant's conduct has caused or will cause customers of ASW to associate Defendant's sports vehicle parts with ASW's sports vehicle parts.

67. Because of the goodwill established by ASW through its products, ASW Trademarks, and trade names, customers have purchased or will purchase sports vehicle parts from the Defendant thinking they are ASW sports vehicle parts.

68. Defendant's deceptive business practice of passing its products off as those sold by ASW have been committed with the intent to cause confusion, to cause mistake, and to deceive.

69. ASW will suffer irreparable harm if the Defendant continues to pass off its products for those of ASW.

PRAYER FOR RELIEF

WHEREFORE, ASW requests that this Court:

- A. Enjoin the Defendant from continuing to own, control and/or operate the Defendant's Website using the ASW Trademarks;
- B. Require Defendant to pay the damages ASW has sustained as a consequence of Defendant's trademark infringement, unfair competition, false designation of origin, and passing off;
- C. Require Defendant to disgorge all profits sustained in consequence of his unlawful actions;
- D. Award to ASW an increase in the award of damages up to three (3) times the amount found for deliberate and willful trademark infringement, and unfair competition by Defendant pursuant to 15 U.S.C. § 1117(a);
- E. Award to ASW its damages in such sum as the Court shall find to be just as the result of Defendant's acts complained of herein;

- F. Require Defendant to pay the costs of this action, together with ASW's attorney fees, costs and disbursements incurred herein;
- G. Award to ASW prejudgment and post-judgment interest; and
- H. Award to ASW all other and further relief as this Court deems just and equitable.

JURY DEMAND

ASW demands a trial by jury on all matters decidable by a jury.

HALLER & COLVIN, P.C.
ATTORNEYS FOR PLAINTIFF
444 EAST MAIN STREET
FORT WAYNE, INDIANA 46802
TELEPHONE: (260) 426-0444
FAX: (260) 422-0274
EMAIL: cheiny@hallercolvin.com
EMAIL: lpolley@hallercolvin.com

BY: /s/ Linda A. Polley
CHARLES J. HEINY
I.D. #15191-02
LINDA A. POLLEY
I.D. #10897-02