

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION



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NORTH AMERICAN VAN LINES, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:19-cv-262
	)	
KETTERING MOVING AND	)	
STORAGE, INC.	)	
	)	
Defendant.	)	

**COMPLAINT AND JURY DEMAND**

For its Complaint against Defendant Kettering Moving and Storage, Inc. (“Defendant”), North American Van Lines, Inc. (“NAVL”), through the undersigned, states and alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for trademark infringement and false designation of origin arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, breach of contract, unfair competition, deception, conversion, and theft under the laws of the State of Indiana.

**THE PARTIES**

2. NAVL is a Delaware corporation with its principal place of business in Fort Wayne, Indiana.

3. Defendant is an Ohio corporation with its principal place of business in Dayton, Ohio. Defendant’s registered agent is Kenneth L. Mayberry, 2639 Indian Wells Trail, Xenia, Ohio 45385.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121(a) because NAVL's claims for trademark infringement and false designation of origin arise under the Lanham Act.

5. This Court has supplemental jurisdiction over NAVL's Indiana state law and common law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a) because those claims are joined with substantial and related claims under the Lanham Act, and are so related to the claims under the Lanham Act that they form part of the same case or controversy under Article III of the United States Constitution.

6. The exercise of *in personam* jurisdiction over Defendant comports with the laws of the State of Indiana and the constitutional requirements of due process because Defendant and/or its agents transact business, and/or offer to transact business, within Indiana.

7. This Court also has personal jurisdiction over Defendant because Defendant has committed tortious acts in Indiana causing injury to NAVL in Indiana.

8. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims in this action occurred within the State of Indiana and this District.

**ALLEGATIONS RELEVANT TO ALL COUNTS**





**A. NAVL and Its Trademarks.**


9. NAVL, in coordination and cooperation with its authorized, licensed agents, has been extensively engaged in the business of providing and marketing a variety of transportation services in interstate commerce since 1933 under the marks NORTH AMERICAN and NORTH AMERICAN VAN LINES.

10. NAVL and its agents offer services to households including but not limited to packing, transportation and storage of household goods and other commodities; marketing of transportation services; and relocation services.

11. In order to protect the extensive goodwill it has built up over the years in the marks North American Van Lines, North American and its other service marks and design logos, NAVL has registered many service marks on the principal register of the United States Patent and Trademark Office. NAVL is the owner of all right, title, and interest in and to the below trademarks (the “Marks”) that have been in continuous use since their associated registrations (collectively, the “Registrations”):

<b>Mark</b>	<b>Registration No.</b>	<b>Registration Date</b>	<b>Date of First Use</b>	<b>Applicable Goods and Services</b>
NORTHAMERICAN	5506510	July 3, 2018	October 10, 1969	Packing and storage of goods; Transportation services namely, airline transportation and transportation consultancy; packing and packaging of goods for transportation; household and commercial moving services; transportation of goods by truck, van, rail, [ air ] and ocean carrier; distribution of commercial freight; specialized transport of fragile goods; logistics, namely, storage and delivery of goods for others by air, rail, ship or truck; warehousing and storage of goods; freight forwarding and brokerage services; Transportation of household goods, personal effects, furniture, exhibits and displays, plant and office equipment, and packing, storing and arranging shipment of goods incidental to such transportation; Global transportation of freight for others by all available means; Moving and storage of goods; Moving company services; Moving van services; Transport services, namely, local, national and international moving services
NORTHAMERICAN	0917431	July 27, 1971	October 18, 2018	Transportation services-namely, transportation of household goods, personal effects, new furniture, exhibits and displays, plant and office equipment, and packing,

				storing and arranging shipment of goods incidental to such transportation
	5490206	June 12, 2018	October 10, 1969	Packing and storage of goods; Transportation services namely, airline transportation and transportation consultancy; packing and packaging of goods for transportation; household and commercial moving services; transportation of goods by truck, van, rail, [ air ] and ocean carrier; distribution of commercial freight; specialized transport of fragile goods; logistics, namely, storage and delivery of goods for others by air, rail, ship or truck; warehousing and storage of goods; freight forwarding and brokerage services; Transportation of household goods, personal effects, furniture, exhibits and displays, plant and office equipment, and packing, storing and arranging shipment of goods incidental to such transportation; Global transportation of freight for others by all available means; Moving and storage of goods; Moving company services; Moving van services; Transport services, namely, local, national and international moving services
	0914752	June 8, 1971	October 18, 1971	Transportation services-namely, transportation of household goods, personal effects, new furniture, exhibits and displays, plant and office equipment, and packing, storing and arranging shipment of goods incidental to such transportation
	5258761	August 8, 2017	October 31, 1969	Employee relocation; Moving and relocation services, namely, planning and project oversight of home moving for others; Delivery of goods; Moving company services; Moving van services; Moving and storage of goods; Packing articles for transportation; Storage of goods; Transportation of goods; Transportation of household goods of others; Warehousing.
	5149558	February 28, 2017	October 31, 1969	Employee relocation; Moving and relocation services, namely, planning and project oversight of home moving for others; Delivery of goods; Moving company services; Moving van services; Moving and storage of goods; Packing articles for transportation; Storage of goods; Transportation of goods; Transportation of household goods of others; Warehousing.

	0915264	June 15, 1971	October 18, 1969	Transportation services-namely, transportation of household goods, personal effects, new furniture, exhibits and displays, and plant and office equipment.
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12. Copies of the certificates of registration for the foregoing Marks are attached hereto as **Exhibit A**.

13. NAVL, through its nationwide use and extensive advertisement of the Marks since 1933, has built up very valuable goodwill in said Marks as applied to transportation services. Families and businesses throughout the United States have come to associate the Marks with quality transportation of household goods. The Marks are a guarantee of quality and trustworthiness of NAVL’s motor vehicles and personnel, based upon the long-standing reputation of both the company and its numerous services. As a result, the public and members of the trade have come to know, recognize and identify said transportation services and similar services bearing the Marks as services of Plaintiff, NAVL.

14. NAVL also has licensed certain companies to act as Agents of NAVL (“Agents”) and has permitted the Agents to use NAVL’s official Marks on their vehicles and other products (“Licensees”). NAVL has been careful to limit such licensing activities only pursuant to arrangements by which it maintains complete control over the manner in which the Marks are used. The public has come to identify the Marks as exclusively representing NAVL, and to associate all uses of the Marks with either NAVL or its Licensees, who use the Marks to advertise their affiliation with NAVL.

15. As a result of the publicity, promotion, advertising, and marketing efforts of NAVL and the Licensees, the general public has become familiar with NAVL and its Marks have acquired a secondary meaning.

**B. Defendant and Its Activities.**

16. Defendant offers services similar to those offered by NAVL, and, on its website located at [www.ketteringmoving.com](http://www.ketteringmoving.com), describes itself as a full service moving and storage company helping coordinate moves for businesses, families and corporate employees originating anywhere in the world. It further claims that “[e]ntrusting an interstate move with Kettering Moving & Storage guarantees you a full range of moving services by qualified, professional long distance movers.”

**C. The Agreement and Defendant’s Breach Thereof.**

17. Prior to July 24, 2018, NAVL maintained a limited agency relationship pursuant to an agency contract with Defendant. Upon termination of this agency relationship, Defendant lost all right to make use of NAVL’s Marks.

18. Specifically, by a letter dated July 24, 2018, NAVL terminated the agency relationship with Defendant and informed Defendant that it must cease using NAVL’s Marks. A true and accurate copy of this letter is attached as **Exhibit B**.

19. In or about February 2019, NAVL was informed that Defendant was making use of NAVL’s Marks in the course of Defendant’s regular business operations. Subject to further investigation and discovery, Defendant is holding itself out to the general public as an agent of NAVL, operating motor vehicles and utilizing consumer shipping documentation containing NAVL’s Marks.

20. On February 28, 2019, NAVL informed Defendant to cease and desist these infringement activities.

21. Instead of repainting its motor vehicles, Defendant ignored NAVL’s request and continues to impermissibly display the Marks on its vehicles and signage.

22. Attached as **Exhibit C** is a photograph taken on April 29, 2019 depicting Defendant's unauthorized and continuing display of the Marks on one of its vehicles. Additionally, Defendant continues to use NAVL-branded materials to provide estimates to customers and potential customers, thereby causing considerable confusion. An example of Defendant's unauthorized and continuing use of such materials is attached as **Exhibit D**.

23. Because no agreement is currently in place between NAVL and Defendant regarding Defendant's use of the Marks, NAVL has no control over the quality or value of any services that Defendant provides in connection with the Marks. The invaluable goodwill associated with the Marks is thereby wrongfully at the mercy of Defendant.

24. By using the Marks without authorization, Defendant is and has been willfully and intentionally trading upon the goodwill that NAVL developed at its considerable expense and effort. Defendant has thereby caused and is causing NAVL substantial and irreparable harm and injury.

**COUNT I**  
**(Infringement of Federally Registered Marks – 15 U.S.C. § 1114)**

25. NAVL repeats and realleges the preceding paragraphs as if fully set forth herein.

26. Defendant is not authorized to use the Marks or any mark confusingly similar to or that in any way represents or implies that Defendant's goods and services are in any way associated with NAVL.

27. Nevertheless, Defendant has impermissibly used and continues to impermissibly use in commerce the Marks in connection with its goods and services.

28. Defendant's unauthorized use of the Marks as alleged herein constitutes trademark infringement in violation of 15 U.S.C. § 1114. Defendant's use of the Marks is likely to cause confusion, mistake and/or deception as to the source or origin of Defendant's goods and services,

and has falsely suggested that Defendant and its goods and services are sponsored by, connected to, or associated with NAVL.

29. Defendant's wrongful use of the Marks is knowing, deliberate, and willful.

30. As a direct and proximate result of Defendant's actions described herein, NAVL has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court preliminary and permanently enjoins Defendant's actions. NAVL has no adequate remedy at law.

31. As a direct and proximate result of Defendant's actions described herein, NAVL is entitled to a monetary recovery under 15 U.S.C. § 1117 in an amount to be proven at trial.

37. This is an exceptional case, making NAVL eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

## **COUNT II**

### **(False Designation of Origin and Unfair Competition – 15 U.S.C. § 1125(a))**

38. NAVL repeats and realleges the preceding paragraphs as if fully set forth herein.

39. Defendant's unauthorized use of the Marks as alleged herein constitutes false designation of origin in violation of 15 U.S.C. § 1125(a). Defendant's use of the Marks is likely to cause confusion, mistake and/or deception as to the source or origin of Defendant's goods and services, and to falsely suggest that Defendant and its goods and services are sponsored by, connected to, or associated with NAVL.

40. Defendant's wrongful use of the Marks is knowing, deliberate, and willful.

41. As a direct and proximate result of Defendant's actions described herein, NAVL has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court preliminarily and permanently enjoins Defendant's actions. NAVL has no adequate remedy at law.



42. As a direct and proximate result of Defendant's actions described herein, NAVL is entitled to a monetary recovery under 15 U.S.C. § 1117 in an amount to be proven at trial.

43. This is an exceptional case, making NAVL eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

**COUNT III**  
**(Breach of Contract)**

44. NAVL repeats and realleges the preceding paragraphs as if fully set forth herein.

45. By failing to cease use of the Marks upon the Agreement's termination, and continuing to affiliate itself with NAVL by displaying the Marks on vehicles and signage without authorization, Defendant has breached Section 3.08(c) of the Agreement and is obligated to pay to NAVL a sum of \$100.00 per day from September 5, 2018 (the 31<sup>st</sup> day following the August 4, 2018 termination) through the last day upon which Defendant uses the Marks—a date which has not yet occurred.

**COUNT IV**  
**(Common Law Unfair Competition)**

46. NAVL repeats and realleges the preceding paragraphs as if fully set forth herein.

47. Defendant's unauthorized use of the Marks as alleged herein constitutes common law unfair competition in violation of the law of Indiana. Defendant's use of the Marks as alleged herein is likely to cause confusion, mistake and/or deception as to the source or origin of Defendant's goods and services, and to falsely suggest that Defendant and its goods and services are sponsored by, connected to, or associated with NAVL.

48. NAVL's wrongful use of the Marks as alleged herein is knowing, deliberate, and willful.

49. As a direct and proximate result of Defendant's actions described herein, NAVL has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court preliminarily and permanently enjoins Defendant's actions. NAVL has no adequate remedy at law with respect to those actions of Defendant that are ongoing.

50. As a direct and proximate result of Defendant's actions described herein, NAVL has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

**COUNT V**

**Indiana Crime Victim's Relief Act— Indiana Code § 35-24-3-1  
Deception – Indiana Code §§ 35-43-5-3(a)(6), 35-43-5-3(a)(9)**

51. NAVL repeats and realleges the preceding paragraphs as if fully set forth herein.

52. By engaging in the unlawful, knowing, intentional, deliberate, willful, and malicious actions described above, Defendant has disseminated to the public information that Defendant knows is false, misleading, or deceptive, with the intent to promote Defendant's business and/or commercial interests.

53. Defendant has therefore committed deception under Indiana Code Sections 35-43-5-3(a)(6) and 35-43-5-3(a)(9).

54. As a direct and proximate result of Defendant's actions described herein, NAVL has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court preliminarily and permanently enjoins Defendant's actions. NAVL has no adequate remedy at law with respect to those of Defendant's actions that are ongoing.

55. As a direct and proximate result of Defendant's actions described herein, NAVL has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

56. Under the Indiana Crime Victims' Relief Act, Indiana Code Section 35-24-3-1, a person that suffers pecuniary loss as a result of the violation of Indiana Code Sections 35-43 *et*

*seq.*, may bring a civil action against the person who caused the loss for treble damages, costs of the action, and reasonable attorneys' fees.

57. As set forth herein, Defendant has violated Indiana Code Section 35-43-5-3 through Defendant's knowing, intentional, deliberate, willful, and malicious commission of deception.

58. NAVL is the victim of Defendant's deception and other knowing, intentional, deliberate, willful, and malicious actions set forth herein, and, as a result, has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

59. NAVL is accordingly entitled to an award of those actual damages as well as statutory treble damages, corrective advertising damages, costs, and reasonable attorneys' fees.

**COUNT VI**  
**Indiana Crime Victim's Relief Act – Indiana Code § 35-24-3-1**  
**Conversion – Indiana Code § 35-43-4-3**

60. NAVL repeats and realleges the preceding paragraphs as if fully set forth herein.

61. By engaging in the unlawful, knowing, intentional, deliberate, willful, and malicious actions described above, Defendant has knowingly or intentionally exerted unauthorized control over NAVL's valuable tangible and intangible property—the Marks and the goodwill associated with the same—by making unauthorized use of the in connection with its goods and services. Such unauthorized use was for Defendant's benefit and interfered with NAVL's control over the Marks and the accompanying goodwill.

62. As the owner of the Marks and the accompanying goodwill, NAVL alone has the right to control and authorize the use of the Marks.

63. Under the Indiana Crime Victims' Relief Act, Indiana Code Section 35-24-3-1, a person that suffers pecuniary loss as a result of the violation of Indiana Code Sections 35-43 *et*

*seq.*, may bring a civil action against the person who caused the loss for treble damages, costs of the action, and reasonable attorneys' fees.

64. As set forth herein, Defendant has violated Indiana Code Section 35-43-4-3 through Defendant's exercise of unauthorized control over NAVL's valuable tangible and intangible property—the Marks and the goodwill associated with the same.

65. NAVL is the victim of Defendant's conversion and other knowing, intentional, deliberate, willful, and malicious actions set forth herein, and, as a result, has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

66. NAVL is accordingly entitled to an award of those actual damages as well as statutory treble damages, corrective advertising damages, costs, and reasonable attorneys' fees.

**COUNT VII**  
**Indiana Crime Victim's Relief Act – Indiana Code § 35-24-3-1**  
**Theft – Indiana Code § 35-43-4-2**

67. NAVL repeats and realleges the preceding paragraphs as if fully set forth herein.

68. By engaging in the unlawful, knowing, intentional, deliberate, willful, and malicious actions described above, Defendant has knowingly or intentionally exerted unauthorized control over NAVL's valuable tangible and intangible property—the Marks and the goodwill associated with the same—with the intent to deprive NAVL of a part of their value and by making unauthorized use of the Marks in connection with its goods and services. Such unauthorized use was for Defendant's benefit and interfered with NAVL's control over the Marks and the accompanying goodwill.

69. As the owner of the Marks and the accompanying goodwill, NAVL alone has the right to control and authorize the use of the Marks.

70. Under the Indiana Crime Victims' Relief Act, Indiana Code Section 35-24-3-1, a person that suffers pecuniary loss as a result of the violation of Indiana Code Sections 35-43 *et seq.*, may bring a civil action against the person who caused the loss for treble damages, costs of the action, and reasonable attorneys' fees.

71. As set forth herein, Defendant has violated Indiana Code Section 35-43-4-2 through Defendant's exercise of unauthorized control over NAVL's valuable tangible and intangible property—the Marks and the goodwill associated with the same.

72. NAVL is the victim of Defendant's theft and other knowing, intentional, deliberate, willful, and malicious actions set forth herein, and, as a result, has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

73. NAVL is accordingly entitled to an award of those actual damages as well as statutory treble damages, corrective advertising damages, costs, and reasonable attorneys' fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff NAVL respectfully requests that judgment be entered in its favor and prays:

A. That this Court preliminarily and permanently enjoin Defendant and each of its affiliates, associates, agents, servants and employees, and all others acting in concert with Defendant, from directly, indirectly, contributorily, or vicariously infringing the Marks, from any and all use of Marks, or engaging in other conduct that in any way represents or implies that Defendant's goods and services are in any way associated with NAVL, and from otherwise engaging in unfair competition or deception;

B. That this Court order Defendant to pay to NAVL such damages as NAVL has sustained by reason of Defendant's trademark infringement, false designation of origin, breach of contract, unfair competition, deception, conversion, theft, and other wrongful conduct;

D. That this Court order Defendant to account for and to pay NAVL all profits derived by Defendant by reason of the acts complained of herein;

E. That this Court treble all profits and damages owing to NAVL;

F. That this Court order Defendant to pay NAVL its reasonable attorneys' fees and costs; and

G. That this Court award NAVL such other further relief as this Court deems just.

**DEMAND FOR JURY TRIAL**

NAVL respectfully requests a trial by jury on all issues raised by this Complaint.

Dated: June 14, 2019

Respectfully submitted,

/s/ Louis T. Perry

Louis T. Perry (#25736-49)

[louis.perry@faegrebd.com](mailto:louis.perry@faegrebd.com)

**FAEGRE BAKER DANIELS LLP**

300 North Meridian St., Suite 2700

Indianapolis, IN 46204

Phone: (317) 237-0300

Fax: (317) 237-0000

*Attorneys for Plaintiff,*

*North American Van Lines, Inc.*