

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA



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AWGI, LLC and ATLAS VAN LINES, INC.,

Plaintiffs,

v.

AMERICAN WIDE RELOCATION INC.

d/b/a

ATLAS MOVING AND STORAGE,

Defendant.

Case No.: 3:19-cv-173

VERIFIED COMPLAINT

INJUNCTIVE RELIEF SOUGHT

AWGI, LLC (hereinafter referred to as “AWGI,” and/or “Plaintiff”) and Atlas Van Lines, Inc. (hereinafter referred to as “Atlas” and/or “Plaintiff”) for their Complaint against the Defendant, American Wide Relocation Inc. d/b/a Atlas Moving and Storage (hereinafter referred to as “AMS” and/or “Defendant”), allege and state:

I. Nature of the action

1. In 1948, a group of 33 entrepreneurs in the moving and storage industry formed an alliance. They would help one another build their businesses by better serving customers. They envisioned a cooperative from coast to coast, owned by themselves, doing business according to the golden rule. They began transporting goods under the name “Atlas”.

2. Over the past seventy (70) years, “Atlas” has become an international brand, providing comprehensive global goods and services to people and businesses who seek assistance in moving and storage. The Atlas family of companies includes more than 430 independent Atlas agencies across the U.S. and Canada, plus authorized partners in 140 countries, which work in concert to bring reliable, worry-free service to customers every day.

3. In 2009, Atlas became among the first in the industry to receive the ProMover[®] designation, a quality credential of the American Moving and Storage Association. Atlas enjoys an A+ rating from the Better Business Bureau and encourages outstanding efforts by its many agents by conferring awards to Atlas agencies who exceed Atlas standards for service excellence.

4. Atlas strives to help make the world a better place by offering its Sustainable Agent Certification to agencies who reduce waste, recycle, and invest in “green” facilities. Atlas strives to help make the world a better place by offering its Sustainable Agent Certification to agents who reduce waste, recycle, and invest in “green” facilities. In the past, Atlas has partnered with Move For Hunger, a non-profit organization that fights nationwide hunger. Currently, Atlas supports the Wounded Warriors Project to provide programs and services that give warriors access to mental and physical health support, employment and education assistance, and the many other services that the Wounded Warriors Project provides to its warriors, free of charge, local Junior Achievement events, raises funds and provides donations and mentoring to Cedar Hall Elementary School, a local school serving underprivileged children, and many other community and national organizations. The company has been recognized by the Southwest Indiana Chamber, the Tri-State Better Business Bureau, United Way of Southwestern Indiana, Move for Hunger, Cartus and more for its community support and engagement.

5. As a result of Plaintiffs’ efforts, Plaintiffs have achieved substantial goodwill in its trademarks and service marks, as well as commercial success, recognition and acceptance.

6. AWGI’s catalog of trademarks and service marks, some of which have become incontestable and famous, are of a value to Atlas and AWGI which cannot be estimated.

7. AMS holds itself out to the public as offering moving and storage services across the United States.

8. The Defendant, recognizing the significant goodwill and impeccable reputation associated with Atlas and its licensed agents, decided to offer its services to the public under the fictitious business name “Atlas Moving and Storage” instead of its corporate name, American Wide Relocation Inc. The Defendant has incorporated the “Atlas” mark into its advertising and marketing materials in hopes of associating their business activities with Plaintiffs’ goodwill and reputation.

II. Parties and Jurisdiction

9. Plaintiff AWGI is a limited liability company organized under the laws of the state of Delaware, with its principal place of business in Evansville, Indiana.

10. Plaintiff Atlas is a Delaware corporation, with its principal place of business in Evansville, Indiana.

11. Defendant American Wide Relocation Inc. is a corporation organized under the laws of the State of Florida, with its principal place of business in North Palm Beach, Florida, doing business as “Atlas Moving and Storage”. (See, Exhibit A).

12. This action arises under the trademark laws of the United States and the laws of unfair competition. It is brought pursuant to the Lanham Act, 15 U.S.C. §1501, *et seq.*, and the common law.

13. This Court has jurisdiction over the subject matter of this case pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338(a) and 1367.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) as a substantial part of the events and injury giving rise to the claims have occurred in this district.

III. Plaintiffs’ Marks

15. Since at least 1948, Plaintiff Atlas has offered services to the public involving the transportation and storage of goods.

16. On November 9, 2009, Plaintiff Atlas and Atlas Investment Company, Inc. assigned all their right, title and interest in their trademark and service mark registrations to Plaintiff AWGI via instrument numbers 900148744A, 900148730A, 900148741A, 900148739A, and 900148743A.

17. Relevant to the Defendant’s infringement, AWGI is the owner of the following registered trademark and service marks (the “Atlas Marks”):

Mark	Registration No.	Services
ATLAS	3,718,117	IC 039: Freight forwarding services; Transportation of household goods of others
ATLAS--THE AGENTS’ VAN LINE	1,591,344	IC 039: Transportation of household goods by motor van

18. The Atlas Marks are incontestable and considered famous.

19. Plaintiff Atlas continues to enjoy a license to the Atlas Marks.

20. The connection between the Atlas Marks and Plaintiff Atlas has been strengthened in the public mind because of decades of extensive use, promotion, advertising and community involvement by Atlas.

21. As a result of the high quality of the goods and services provided by Atlas and as a result of the extensive promotion of that business, substantial goodwill has been developed in the Atlas Marks.

22. Atlas has used the Atlas Marks in interstate commerce throughout the United States prior to the Defendant’s acts complained of in this Complaint.

23. As a result of the longstanding offering of goods and services in the transportation industry, as well as the use of the Atlas Marks in connection with the offering of such goods and

services, Atlas' brand of goods and services has earned commercial success, recognition and acceptance.

24. The Atlas Marks and the goodwill of the business associated therewith are of a value to AWGI and Atlas which cannot be estimated.

IV. Defendant's Infringement

25. Defendant AMS advertises its services by, among other things, publishing a website located at www.atlasmovingandstorage.co (the "AMS Website"). The website displays several uses of the term "Atlas Moving," as well as a stylized logo which uses the "Atlas" word mark, as seen below (the "Infringing Logo"):



26. Upon initially discovering the infringement, AWGI sent AMS a cease and desist letter on May 13, 2019. (See, Exhibit B).

27. On May 15, 2019, Mr. Richard Falcone called Plaintiffs' Attorney Mr. Mark Warzecha. In that call, Mr. Falcone contended he had every right to use the term "Atlas" because, "it can be found in the dictionary". Upon information and belief, Mr. Falcone is the owner of American Wide Relocation, Inc. (See, Exhibit C).

28. The AMS Website states ". . . We will handle your move with diligence and the same applied care throughout the relocation process. . . Our team of experts will schedule and organize the move to guarantee the best prices and the most efficient moving crew to accompany you."

29. Upon information and belief, Defendant's services offered under the Atlas Marks are inferior to those offered by Plaintiffs and continue to damage and dilute the goodwill Plaintiffs have developed in connection with offering legitimate services under the Atlas Marks.

30. AMS' deceptive practices are evidenced by using nearly identical "Testimonials" on the AMS Website that are also used on various other sites advertising moving services, with only the name of the company being different. (See, Exhibits D-F).

31. By using the infringing marks, and offering services identical to those offered by Plaintiffs thereunder, Defendant has caused and continues to cause mistake, or to deceive the consuming public as to the affiliation, connection, or association of Defendant with Plaintiffs, or as to the origin, sponsorship, or approval of Defendant's services, or commercial activities by the ultimate purchaser as to both the source and sponsorship of Defendant's services.

32. Defendant, upon information and belief and with full knowledge of the notoriety of the Atlas Marks, intended to, and did, trade on the goodwill associated with Plaintiffs, and have misled and will continue to confuse, deceive, and mislead the public in this regard. Plaintiffs have been contacted by multiple consumers that were deceived into believing the Defendant was associated with Plaintiffs. (See, Exhibits G-J).

COUNT I

Trademark Infringement of the '117 Mark Under 15 U.S.C. §1125(a)(1)

33. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-32.

34. The Defendant's use of the mark "Atlas" and the Infringing Logo in connection with the sale, offering for sale, distribution, and advertising of their services is likely to cause confusion, to cause mistake, or to deceive consumers in relation to the "Atlas" service mark, Reg. No. 3,718,117.

35. The Defendant's use of the mark "Atlas" implies an affiliation with the Plaintiffs which does not exist and is likely to cause confusion as to the source, sponsorship, origin, or approval of the Defendant's services.

36. The Defendant's use of the mark "Atlas" violates Section 43(a) of the Lanham Act, 15 U.S.C §1125(a)(1). Plaintiffs are entitled to, among other relief, Defendant's profits, treble and statutory damages under 15 U.S.C. §§1117(a)-(c). Furthermore, Plaintiffs are entitled to an award of reasonable attorneys' fees as this case is exceptional.

COUNT II
Trademark Infringement of the '344 Mark Under 15 U.S.C. §1125(a)(1)

37. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-32.

38. The Defendant's use of the mark "Atlas" and the Infringing Logo in connection with the sale, offering for sale, distribution, and advertising of their services is likely to cause confusion, to cause mistake, or to deceive consumers in relation to the "Atlas--The Agents' Van Line" service mark, Reg. No. 1,591,344.

39. The Defendant's use of the mark "Atlas" implies an affiliation with the Plaintiffs which does not exist and is likely to cause confusion as to the source, sponsorship, origin, or approval of the Defendant's services.

40. The Defendant's use of the mark "Atlas" violates Section 43(a) of the Lanham Act, 15 U.S.C §1125(a)(1). Plaintiffs are entitled to, among other relief, Defendant's profits, treble and statutory damages under 15 U.S.C. §§1117(a)-(c). Furthermore, Plaintiffs are entitled to an award of reasonable attorneys' fees as this case is exceptional.

COUNT III
Common Law Unfair Competition

41. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-32.

42. The Defendant's use of the word mark "Atlas" and the Infringing Logo in connection with the sale, offering for sale, distribution, and advertising of their services is likely to cause confusion, to cause mistake, or to deceive consumers as to the source, sponsorship, origin, or approval of the Defendant's services.

43. The Defendant's use of the word mark "Atlas" and the Infringing Logo constitutes common law unfair competition. As a result of such violation, the Defendants have caused damage to the Plaintiffs, and Plaintiffs are entitled to all proper relief.

IV. Prayer For Relief

WHEREFORE, AWGI, LLC and Atlas Van Lines, Inc. pray that this Court enter judgment in their favor on each and every claim for relief set forth above and award them relief including, but not limited to, the following:

A. A preliminary and permanent injunction enjoining and restraining Defendant and its officers, directors, agents, servants, employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith who received actual notice of this Court's orders:

- a. from causing likelihood of confusion, or causing mistake, or to deceive as to affiliation, connection, or association of Defendant with Plaintiffs of the Atlas Marks, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities, or causing injury to business reputation, or dilution of the distinctiveness of the Atlas Marks, or Plaintiffs' forms of advertisement;

- b. from directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from, Plaintiffs;
- c. from directly or indirectly using the “Atlas” mark and the Infringing Logo or any confusingly similar variants, iterations, or forms thereof, which is likely to cause confusion or further irreparable harm to Plaintiffs’ business reputation or goodwill;
- d. from utilizing the “Atlas” mark and the Infringing Logo or any confusingly similar variant in any shape or manner;
- e. from publishing, assembling, marketing, distributing, or otherwise utilizing any literature, business forms, advertisements, signs, or any other representations, regardless of the medium, which bear the “Atlas” mark and the Infringing Logo or any confusingly similar variant, and from otherwise unfairly competing in any way with Plaintiffs;
- f. to destroy or cause to be destroyed all literature, advertisements, business forms, signs, and any other representations, regardless of form, which are in, or come to be in, Defendant’s possession, custody, or control and which bear the “Atlas” mark and the Infringing Logo or any confusingly similar variant;
- g. to notify their direct customers, agents, and representatives that the “Atlas” mark and the Infringing Logo or any confusingly similar variant are not connected with Plaintiffs;
- h. to immediately institute full compliance with any order entered by this Court, and, within thirty days following the date of entry of any preliminary or permanent injunctive relief issued by this Court, propound and file a statement,

under oath and penalty of perjury, that each and every injunctive provision has been fully and completely complied with;

and for:

- B. Restitution and disgorgement;
- C. Damages, including but not limited to statutory and treble damages, in an amount to be determined at trial;
- D. The Defendant's profits from sales derived during all periods of wrongful use of the Atlas Marks;
- E. Punitive damages;
- F. Attorneys' fees pursuant to statute;
- G. The transfer to Plaintiffs' of any and all internet domains and social media accounts incorporating Plaintiffs' marks; and
- H. Such other interlocutory and permanent relief as this court may deem appropriate.

Dated: August 16, 2019

/s/ Mark F. Warzecha

Mark F. Warzecha, Esq.

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Attorneys for Plaintiff

VERIFICATION

I, Tania Herke, certify:

1. I am the Assistant Secretary and Assistant Treasurer of the Plaintiff, AWGI, LLC.
2. I have read the Verified Complaint and any attachments hereto, and to the best of my knowledge, information and belief, the allegations contained in the Verified Complaint are true and accurate.

for AWGI, LLC

Dated: _____

VERIFICATION

I, Donald J. Breivogel, Jr., certify:

1. I am the Sr. Vice President and Chief Financial Officer of the Plaintiff, Atlas Van Lines, Inc.

2. I have read the Verified Complaint and any attachments hereto, and to the best of my knowledge, information and belief, the allegations contained in the Verified Complaint are true and accurate.

for Atlas Van Lines, Inc.

Dated: _____