

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA



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NEXUS STAFFING, INC.,)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
NEXUS EMPLOYMENT SOLUTIONS)	JURY TRIAL DEMANDED
PLUS OF INDIANA, INC.,)	
Defendant.)	

COMPLAINT

Plaintiff Nexus Staffing, Inc. (“Nexus Staffing”), by and through its attorneys, for its Complaint against Defendant Nexus Employment Solutions Plus of Indiana, Inc. (“Nexus Employment”), alleges, on knowledge as to its own actions, and otherwise upon information and belief, as follows:

NATURE OF THE ACTION

1. This is an action for intentional trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114 of Nexus Staffing’s Federally Trademark Registration No. 4,722,627, registered on April 21, 2015, for NEXUS in connection with Employment agency services, namely, filling the temporary and permanent staffing needs of businesses; Employment hiring, recruiting, placement, staffing and career networking services; Professional staffing and recruiting services (“NEXUS”).
2. This is further an action for false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
3. This is further an action for violation of the anti-cybersquatting consumer protection act, 15 U.S.C. § 1125(d).

PARTIES

4. Nexus Staffing is a New York corporation with a principal place of business at 260 Evelyn Road, Mineola, New York 11501 (“Nexus Staffing” hereinafter).

5. Upon information and belief, Nexus Employment Solutions Plus of Indiana, Inc. is an Indiana corporation with a principal place of business at 8135 Kennedy Avenue, Highland, Indiana 46322 (“Nexus Employment” hereinafter).

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1332 and 1338.

7. Venus is proper in this district under 28 U.S.C. § 1391(b)(1) because Nexus Employment is located within this judicial district.

FACTS

A. Nexus Staffing and its NEXUS mark

8. Nexus Staffing provides employment agency and staffing services under the mark NEXUS. Nexus Staffing has been providing these services under the NEXUS mark since at least 2005.

9. Nexus Staffing is the owner of valid and subsisting United States Service Mark Registration No. 4,722,627 on the Principal Register in the United States Patent and Trademark Office for the trademark NEXUS (the “Nexus Registration”) for “Employment agency services, namely, filling the temporary and permanent staffing needs of businesses; Employment hiring, recruiting, placement, staffing and career networking services; Professional staffing and recruiting services.” Attached as Exhibit A is a true and correct copy of the registration certificate for

Plaintiff's United States Service Mark Registration No. 4,722,627, which has become incontestable within the meaning of Section 15 of the Lanham Act, 15 U.S.C. § 1065.

10. Nexus Staffing has used the NEXUS mark in commerce throughout the United States continuously since at least 2005.

11. Nexus Staffing has expended substantial time, money, and resources marketing, advertising, and promoting the services sold under the NEXUS mark.

B. Nexus Employment's Unlawful Activities

12. Upon information and belief, Nexus Employment provides employment agency and temporary staffing services under the marks NEXUS and NEXUS EMPLOYMENT SOLUTIONS PLUS (the "Infringing Marks").

13. The Infringing Marks adopted and used by Nexus Employment is confusingly similar to Nexus Staffing's NEXUS mark.

14. Upon information and belief, Nexus Employment has been engaged in the advertising, promotion, offering for sale, and sale of services using the Infringing Marks throughout the United States. Attached hereto as Exhibit B are true and correct representative materials showing Nexus Employment's use of the Infringing Marks.

15. Upon information and belief, Nexus Employment's use of the NEXUS mark in any form was later than Nexus Staffing's use of its NEXUS mark.

16. Upon information and belief, Nexus Employment's use of the NEXUS mark in any form was later than the filing date of the application for the Nexus Registration.

17. Any rights that Nexus Employment may claim in the NEXUS mark are junior in right to Nexus Staffing's rights in the NEXUS mark.

18. On or about July 17, 2018, Nexus Staffing notified Nexus Employment by letter of (i) Nexus Staffing's rights in the NEXUS mark; (ii) the validly subsisting Nexus Registration; and (iii) Nexus Staffing's status as senior rights holder in the NEXUS mark (the "July 17 Letter"). The July 17, Letter further notified Nexus Employment of actual consumer confusion arising from Nexus Employment's use of Nexus Staffing's NEXUS mark. Attached hereto as Exhibit C is a true and correct copy of Nexus Staffing's July 17, 2018 cease and desist letter to Nexus Employment.

19. By the July 17 Letter, Nexus Staffing demanded that Nexus Employment cease and desist from all use of the NEXUS mark and confusingly similar variations thereof. Nexus Staffing offered to provide Nexus Employment "a brief, reasonable period to transition to a new mark, provided that [Nexus Employment] agrees to do so in writing."

20. According to United States Postal Service records, the July 17 Letter was received by Nexus Employment on July 20, 2018, signed for by "M. Nally."

21. After receiving the July 17 Letter, Nexus Employment took no action to cease and desist from utilizing Nexus Staffing's NEXUS mark. Nexus Employment instead intentionally and with express knowledge of Nexus Staffing's senior rights in the NEXUS mark continued to advertise and provide its staffing and employment related services under the NEXUS mark.

22. Instances of actual consumer confusion between Nexus Employment and Nexus Staffing arising from Nexus Employment's use of the NEXUS mark have been even more prevalent since the July 17 Letter.

23. Nexus Employment's infringing acts as alleged herein have caused and are likely to cause confusion, mistake, and deception among the relevant consuming public as to the source or origin of Nexus Employment's services and have and are likely to deceive the relevant

consuming public into believing, mistakenly, that Nexus Employment's services originate from, are associate or affiliated with, or otherwise authorized by Nexus Staffing.

24. Nexus Employment's infringing acts as alleged herein have resulted in actual confusion as evidenced by solicitations to Nexus Staffing relating to employment services offered by Nexus Employment.

25. Upon information and belief, Nexus Employment's acts are willful with the deliberate intent to trade on the goodwill of Nexus Staffing's NEXUS mark, cause confusion and deception in the marketplace, and divert potential sales of Nexus Staffing's services to Nexus Employment.

COUNT I
INTENTIONAL TRADEMARK INFRINGEMENT
UNDER SECTION 32 OF THE LANHAM ACT
15 U.S.C. § 1114

26. Nexus Staffing repeats and realleges the foregoing facts and incorporates them herein by reference.

27. Nexus Employment's use of the NEXUS mark for its employment and staffing related services is likely to confuse and has already confused customers as to (i) the source of Nexus Employment's and Nexus Staffing's services; (ii) an affiliation between Nexus Employment and Nexus Staffing; and/or (iii) an endorsement by Nexus Staffing of Nexus Employment or vice versa.

28. Nexus Employment's use of the NEXUS mark is intentional and willful and with full knowledge of Nexus Staffing's senior rights in the mark.

29. Nexus Employment's use of the NEXUS mark constitutes intentional trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

30. Nexus Staffing has been and continues to be harmed by Nexus Employment's infringement.

31. Nexus Staffing is entitled to, among other relief, an award of actual damages, Nexus Employment's profits, enhanced damages and profits, reasonable attorneys' fees, and costs of the action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116, 1117, together with prejudgment and post-judgment interest.

**COUNT II
FALSE ADVERTISING
UNDER SECTION 43(A) OF THE LANHAM ACT
15 U.S.C. § 1125(a)**

32. Nexus Staffing repeats and realleges the foregoing facts and incorporates them herein by reference.

33. Nexus Employment's use of the NEXUS mark for its employment and staffing related services is likely to confuse and has already confused consumers as to (i) the source of Nexus Employment's and Nexus Staffing's services; (ii) an affiliation between Nexus Employment and Nexus Staffing, and/or (iii) an endorsement by Nexus Staffing of Nexus Employment or vice versa.

34. Nexus Employment's use of the NEXUS mark is intentional and willful and with full knowledge of Nexus Staffing's senior rights in the mark.

35. Nexus Employment's use of the NEXUS mark constitutes false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

36. Nexus Staffing has been and continues to be harmed by Nexus Employment's false advertising.

37. Nexus Staffing is entitled to, among other relief, an award of actual damages, Nexus Employment's profits, enhanced damages and profits, reasonable attorneys' fees, and costs of the action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116, 1117, together with prejudgment and post-judgment interest.

**COUNT III
CYBERPIRACY PREVENTION
UNDER SECTION 43(D) OF THE LANHAM ACT
15 U.S.C. § 1125(d)**

38. Nexus Staffing repeats and realleges the foregoing facts and incorporates them herein by reference.

39. Nexus Employment's use of the "nexusemployment.com" domain name ("NEXUS DOMAIN") for its employment and staffing related services is likely to confuse and has already confused consumers as to (i) the source of Nexus Employment's and Nexus Staffing's services; (ii) an affiliation between Nexus Employment and Nexus Staffing, and/or (iii) an endorsement by Nexus Staffing of Nexus Employment or vice versa.

40. Nexus Employment's use of the NEXUS DOMAIN is intentional and willful and with full knowledge of Nexus Staffing's senior rights in the NEXUS mark.

41. Nexus Employment's use of the NEXUS DOMAIN is being done in bad faith under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

42. Nexus Staffing has been and continues to be harmed by Nexus Employment's use of the NEXUS DOMAIN.

43. Nexus Staffing is entitled to, among other relief, an award of the transfer of the NEXUS DOMAIN, Nexus Employment's profits, enhanced damages and profits, reasonable attorneys' fees, and costs of the action under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116, 1117, together with prejudgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Nexus Staffing requests judgment against Nexus Employment as follows:

- a. That Nexus Employment has violated Section 32 of the Lanham Act, 15 U.S.C. § 1114; and Sections 43(a) and 43(d) of the Lanham Act, 15 U.S.C. § 1125(a) & (d);
- b. An award of damages in an amount to be determined by in no case less than \$250,000 for Nexus Employment's infringement and false advertisement;
- c. An award of enhanced damages in the amount of three times the award of damages, pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117;
- d. An award of attorneys' fees and costs for Nexus Employment's intentional trademark infringement and false advertising;
- e. An order for the transfer of the NEXUS DOMAIN to Nexus Staffing; and
- f. Such other and further relief as the Court deems just and proper.

Dated: April 23, 2020

Respectfully submitted,

/Kevin Erdman/

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