

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION



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FLOAT-ON CORPORATION,
A Florida Corporation,

Plaintiff,

v.

PAUL’S MARINE, INC. DBA
PMI MARINE DISTRIBUTORS,
An Indiana Corporation, and

PAUL E. MYERS, JR.,
An Individual,

Defendants.

Case No. 3:20-cv-00562

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Float-On Corporation, by and through its undersigned attorneys, for its Complaint against Defendants, Paul’s Marine, Inc. DBA PMI Marine Distributors, and Paul E. Myers, Jr., alleges as follows:

I. THE PARTIES

1. Plaintiff Float-On Corporation (“Plaintiff” or “Float-On”) is a citizen of Florida. It is a Florida corporation with its principal place of business at 1925 98th Avenue, Vero Beach, Florida, 32966.

2. Paul’s Marine Inc. DBA PMI Marine Distributors is a citizen of Indiana. It is an Indiana corporation, with its principal place of business at 21315 Buckingham Road, Elkhart, Indiana, 46516, and at all times relevant hereto was and is doing business in the State of Indiana sufficient to give rise to personal jurisdiction and venue in this forum.

3. On information and belief, Defendant Paul E. Myers, Jr., is an Indiana citizen, is an owner of Defendant Paul's Marine, Inc., and at all times relevant hereto, directed, controlled, supervised and participated in all of the wrongful, illegal, willful, infringing, unfairly competing and counterfeiting acts alleged in this Complaint, including the willful adoption and use of the confusingly similar, identical and/or substantially indistinguishable designation, FLOTE-ON, with full knowledge of Plaintiff's registered and incontestable FLOAT-ON® mark, and the promotion, distribution and sale of boat trailers bearing the confusingly similar, identical and/or substantially indistinguishable designation FLOTE-ON for sale in Indiana, in this judicial district, and elsewhere.

4. Defendant Paul's Marine, Inc. and Defendant Myers shall collectively be referred to as "Defendants."

5. On information and belief, Defendants advertise, distribute and sell boat trailers in this judicial district.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1338(a) and (b) because this action arises under the Lanham Act (15 U.S.C. §§ 1051 - 1127); and 28 U.S.C. § 1367 (supplemental jurisdiction).

7. On information and belief, this Court has personal jurisdiction over Defendants because Defendants conduct business within the State of Indiana and have committed the acts of federal and state trademark infringement, unfair competition, common law trademark infringement, and federal counterfeiting in Indiana and in this judicial district by committing infringement, unfair competition, counterfeiting, trade name infringement, and false designation of origin in the advertising, promotion and sale of boat trailers using the infringing and counterfeit

FLOTE-ON designation which is confusingly similar, identical to and/or substantially indistinguishable from Float-On's registered and incontestable FLOAT-ON[®] trademark in this district to sell identical and closely related boat trailers to consumers in this district. On further information and belief, this Court has personal jurisdiction over Defendants because they transact business within the State of Indiana and in this judicial district; they contract to supply the infringing and counterfeit boat trailers in Indiana; they have committed tortious acts within Indiana; and they reside and/or are domiciled in this judicial district. Defendants have established minimum contacts with the forum such that the exercise of personal jurisdiction over them would not offend traditional notions of fair play and substantial justice.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

III. FACTS COMMON TO ALL CLAIMS FOR RELIEF

9. For fifty-two years, Float-On and its predecessor entities have been engaged in the business of manufacturing and selling immersible boat trailers. Today, Float-On is a premier seller of boat trailers throughout the U.S. with dealers spread throughout the U.S. and in several other countries. Float-On sells unique, high quality immersible boat trailers, some of which can be viewed on the Float-On website at the following URL: <http://floaton.com>. Float-On always has been a pioneer in the development of immersible boat trailers. It was the first company to use an all-aluminum trailer; the first company to use torsion axles, with stainless steel nuts and bolts, because they hold-up longer in all kinds of water, whether fresh, salt or brackish; the first to use disc brakes on its trailers; and the first to use a guide rail system on its trailers. Float-On always has been the innovator, not the imitator.

10. Float-On, through a predecessor in interest, built and sold its first boat trailer in approximately 1968. Since then, Float-On has become a premier designer and builder of efficient,

stable, high quality aluminum, immersible, boat trailers. Float-On designs and builds handcrafted aluminum boat trailers that won't rust and are proudly made in the U.S.A.

11. For over fifty years, Float-On has continuously and exclusively used the registered and incontestable mark FLOAT-ON[®] as the primary brand for its high quality immersible boat trailers ("the FLOAT-ON[®] mark") to identify its boat trailers and to distinguish them from boat trailers made and sold by others. Float-On's registered, incontestable and inherently distinctive FLOAT-ON[®] mark is covered by U.S. Reg. 885,333 and is valid, registered, and incontestable pursuant to 15 U.S.C. § 1065, and the registration has been renewed. A true and correct copy of the U.S. Patent and Trademark Office TSDR record for U.S. Registration 885,333 and a copy of the Certificate of Registration for U.S. Reg. 885,333 are attached hereto as composite Exhibit A. U.S. Registration 885,333 covers "Boat Trailers" in International Class 12 and states dates of first use and first use in commerce of September 1, 1968 and April 16, 1969, respectively. *See* Exhibit A.

12. As expressly provided in 15 U.S.C. § 1115(b): "An incontestable registration is conclusive evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce." *See id.*

13. Plaintiff's FLOAT-ON[®] brand boat trailers have a strong reputation in the industry for high quality. Plaintiff's FLOAT-ON[®] mark is inherently distinctive and/or has acquired secondary meaning, and Plaintiff's mark is recognized extensively as being associated with Plaintiff and its boat trailers in the minds of relevant consumers.

14. To create further public awareness of Plaintiff's FLOAT-ON[®] mark, Float-On has expended substantial time, effort and money advertising and promoting the FLOAT-ON[®] mark in

conjunction with its boat trailers, all of which bear the FLOAT-ON[®] mark, throughout the United States and in several other countries. Plaintiff advertises and promotes its products bearing the FLOAT-ON[®] mark on Plaintiff's web site, in print advertising, at various trade shows throughout the United States and in other media.

15. As a result of Plaintiff's promotional and marketing efforts, the FLOAT-ON[®] mark has become widely known and developed extremely valuable goodwill. Plaintiff's boat trailers bearing the distinctive FLOAT-ON[®] mark quickly gained success in the market selling millions of dollars of product over the years. By virtue of this promotion and marketing, and the substantial sales of the boat trailers and other products bearing the FLOAT-ON[®] mark, Plaintiff's FLOAT-ON[®] mark has become distinctive of Plaintiff's boat trailers and has generated substantial goodwill and reputation.

16. Float-On has expended substantial sums in advertising products bearing its FLOAT-ON[®] mark and has achieved significant sales success in selling millions of dollars of boat trailers bearing the FLOAT-ON[®] mark over the last fifty-two years. Through Plaintiff's extensive advertising, promotion and sale of boat trailers bearing Plaintiff's registered and incontestable FLOAT-ON[®] mark, the mark has become strong, both conceptually and commercially, through over five decades of continuous and substantially exclusive use in commerce in connection with Plaintiff's high quality immersible boat trailers bearing the FLOAT-ON[®] mark.

17. Float-On recently learned that Defendants have intentionally, willfully and maliciously copied Float-On's registered and incontestable FLOAT-ON[®] mark, by adopting and using the confusingly similar, identical and/or substantially indistinguishable designation FLOTE-ON for boat trailers, specifically to trade on the success and reputation that Float-On has built up

in its FLOAT-ON[®] mark through success in the market for fifty-two years, through Float-On's continuous and substantially exclusive use of the FLOAT-ON[®] mark in commerce for boat trailers.

18. On information and belief, Float-On alleges that Defendants recently began manufacturing and selling boat trailers bearing the infringing and counterfeit designation FLOTE-ON in interstate commerce in the United States. Defendants are using the infringing and counterfeit FLOTE-ON designation on the boat trailers themselves, on Defendants' websites, on third party websites, including without limitation www.pmimarine.com, www.paulsmarine.net, www.paulsmarine.com, <http://trailersforpontoons.com>, <http://floteonpontontrailer.com>, and on Facebook @TrailersforPontoons and @PontoonTrailer, in printed advertising and promotional materials promoting the infringing and counterfeit boat trailers, in trade publications and in other media.

19. Defendants have manufactured, introduced and are selling in interstate commerce boat trailers bearing the infringing and counterfeit designation FLOTE-ON ("Accused Trailers") throughout the United States that are intended to and do compete with Plaintiff's high quality, FLOAT-ON[®] brand boat trailers and other products bearing Plaintiff's registered and incontestable FLOAT-ON[®] mark.

20. Defendants are selling their Accused Trailers using the confusingly similar, identical and/or substantially indistinguishable infringing and counterfeit designation, FLOTE-ON. Defendants' boat trailers are identical goods or very closely related goods to the boat trailers Plaintiff sells bearing its registered and incontestable FLOAT-ON[®] mark. Defendants are using the illegal FLOTE-ON designation on boat trailers in areas where Float-On distributes and sells FLOAT-ON[®] brand boat trailers, and actual consumer confusion has arisen in the market place.

Defendants intentionally and willfully have sought to pass-off their infringing and counterfeit FLOTE-ON designated boat trailers as those of Plaintiff, Float-On.

21. Plaintiff has informed Defendants of Plaintiff's registered and incontestable FLOAT-ON[®] mark used in connection with high quality boat trailers and has urged Defendants to cease their infringing and counterfeit use of the identical or substantially indistinguishable designation FLOTE-ON on Defendants' Accused Trailers. Plaintiff has informed Defendants of Plaintiff's FLOAT-ON[®] brand boat trailers having a strong reputation in the industry for high quality. Notwithstanding Plaintiff's efforts to get Defendants to cease use of the infringing and counterfeit designation FLOTE-ON, Defendants intentionally, willfully and maliciously have chosen to continue to use an infringing and counterfeit designation for Defendants' Accused Trailers in a deliberate attempt to trade on Plaintiff's goodwill and reputation by confusing, deceiving and defrauding the marketplace and relevant consumers into believing that Defendants' Accused Trailers are manufactured by, affiliated with, or sponsored by Plaintiff, Float-On. Defendants are fully aware and knowledgeable about Plaintiff's FLOAT-ON[®] mark yet continue to infringe Plaintiff's mark and sell counterfeit boat trailers bearing the infringing and counterfeit designation FLOTE-ON.

22. Defendants promote, market, distribute and sell their Accused Trailers bearing the infringing, confusingly similar and counterfeit FLOTE-ON designation in the same marketing channels as Float-On. Indeed, Defendants advertise and promote their infringing and counterfeit boat trailers through the same trade channels and the same media in which Float-On advertises and promotes its FLOAT-ON[®] brand boat trailers.

23. Defendants' willful and intentional promotion, importation, distribution and sale of the Accused Trailers, which copy and counterfeit Plaintiff's FLOAT-ON[®] mark, has caused actual

confusion in the marketplace, and is likely to continue to cause confusion, deception and mistake on the part of the relevant consuming public regarding Plaintiff's FLOAT-ON® brand boat trailers and Defendants' counterfeit Accused Trailers bearing the infringing and counterfeit FLOTE-ON designation.

24. Defendants have willfully infringed and counterfeited Plaintiff's FLOAT-ON® mark because Defendants have intentionally sought to misappropriate and trade on the valuable goodwill and reputation Plaintiff has developed and established in its registered and incontestable FLOAT-ON® mark as used on Plaintiff's high quality FLOAT-ON® brand boat trailers.

25. Defendants' intentional, willful, malicious and wanton promotion, importation, marketing and sale of the Accused Trailers bearing a confusingly similar, identical and/or substantially indistinguishable designation, FLOTE-ON, is causing and will continue causing irreparable harm to Plaintiff's reputation and goodwill and to the value of Plaintiff's FLOAT-ON® mark unless Defendants' illegal and unauthorized conduct is enjoined.

26. On information and belief, Defendants have made and will continue to make substantial profits and/or gains to which they are not entitled in law or equity.

27. On information and belief, Defendants intend to continue their infringing, wrongful, malicious, reckless, counterfeiting and unfair acts unless restrained by this Court.

28. Defendants' acts have damaged and will continue to damage Plaintiff, and Plaintiff has no adequate remedy at law.

COUNT I - Federal Trademark Infringement

Lanham Act (15 U.S.C. § 1114)

29. Float-On realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint.

30. Defendants make, import, distribute, use, offer to sell and/or sell in the United States, including this district, the Accused Trailers that directly infringe Plaintiff's FLOAT-ON[®] trademark in violation of § 32 of the Lanham Act, 15 U.S.C. § 1114.

31. Float-On has actively marketed, promoted, and continuously sold boat trailers bearing the registered and incontestable FLOAT-ON[®] mark for fifty-two years such that the mark is inherently distinctive, has become distinctive and is strong for Float-On's boat trailers. The registered and incontestable FLOAT-ON[®] mark is a suggestive term and mark.

32. Defendants have used the identical and/or substantially indistinguishable, and confusingly similar, FLOTE-ON designation without Float-On's authorization and continue to trade off the goodwill and reputation created and maintained by Float-On in the FLOAT-ON[®] mark. The contemporaneous use by Defendants of a FLOTE-ON designation for its directly competing Accused Trailers, which is confusingly similar to Float-On's incontestable, registered FLOAT-ON[®] mark, has caused actual confusion and is likely to continue to cause confusion and mistake in the trade, deception and fraud of purchasers, and confusion as to the origin, sponsorship or affiliation of Defendants' goods bearing the infringing and counterfeit FLOTE-ON designation. Float-On's customers may erroneously conclude that Float-On sponsors or is responsible for Defendants' infringing and counterfeit goods, and those customers may have occasion to purchase Defendants' goods erroneously, believing that Float-On's standards of quality and service apply to those goods, thereby doing great and irreparable harm to Float-On's reputation. In addition, post-sale confusion also has occurred and will continue to occur where consumers seeing Defendants' infringing and counterfeit boat trailers in the market post-sale believe or conclude that the infringing and counterfeit boat trailers are Plaintiff's FLOAT-ON[®] brand boat trailers or are endorsed by, sponsored by or affiliated with Plaintiff.

33. Plaintiff's FLOAT-ON[®] mark applied to its boat trailers has acquired distinctiveness, and/or is inherently distinctive, strong and well known throughout the United States and has generated millions of dollars in sales over the years. Defendants willfully and intentionally copied Float-On's distinctive FLOAT-ON[®] mark and are using an identical or substantially indistinguishable counterfeit designation, FLOTE-ON, for Defendants' Accused Trailers. Plaintiff's boat trailers and Defendants' Accused Trailers are identical and/or very closely related products and are used by the same customers for the same purposes in the same markets. Both Float-On and Defendants use similar facilities to conduct their respective businesses. Both Float-On and Defendants use similar advertising in promoting and selling their directly competing products. Defendants acted willfully with malicious and reckless intent in their wholesale copying of Float-On's incontestable FLOAT-ON[®] mark and in incorporating the infringing and substantially indistinguishable FLOTE-ON designation into Defendants' Accused Trailers and using it as the primary brand for Defendants' Accused Trailers. Defendants' unauthorized, illegal, malicious, reckless, and wanton acts in using a confusingly similar, identical and/or substantially indistinguishable designation for their Accused Trailers has resulted in actual confusion among relevant consumers and is likely to continue to cause confusion among relevant consumers regarding the source, sponsorship or affiliation of Defendants' Accused Trailers with Plaintiff and Plaintiff's registered, incontestable FLOAT-ON[®] mark.

34. The intentional and willful acts of Defendants set out above constitute intentional and willful trademark infringement committed with an intent to deceive and defraud relevant consumers into falsely believing that Defendants' Accused Trailers are the same as Plaintiff's boat trailers or that Float-On has sponsored or endorsed or otherwise is affiliated with Defendants' infringing Accused Trailers bearing the identical or substantially indistinguishable designation,

FLOTE-ON. Defendants have acted willfully, wantonly, maliciously, recklessly and with complete disregard for Float-On's rights with the intent to capitalize on Float-On's FLOAT-ON[®] mark and thereby deceive and defraud relevant consumers.

35. By reason of the acts alleged herein, Float-On has suffered and will continue to suffer damage to its business, reputation and goodwill and monetary damages in an amount not yet determined. Defendants' actions have caused, and unless Defendants are enjoined by this Court, their actions will continue to cause irreparable harm and injury to Float-On. Accordingly, Float-On lacks an adequate remedy at law and is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

36. On information and belief, Defendants' conduct described herein is willful, wanton, malicious, reckless, oppressive and in conscious disregard of Float-On's rights in its FLOAT-ON[®] mark, and Float-On is entitled to damages pursuant to 15 U.S.C. § 1117, including disgorgement of Defendants' profits, an award of Float-On's actual damages and costs of this action, enhanced damages, treble damages, and because this is an exceptional case, reasonable attorneys' fees.

COUNT II - Federal Trademark Unfair Competition

Lanham Act (15 U.S.C. § 1125(a))

37. Float-On realleges and incorporates herein by reference paragraphs 1 through 36 of this Complaint.

38. Defendants make, import, distribute, use, offer to sell and/or sell in the United States, including in this district, the Accused Trailers that directly infringe Float-On's FLOAT-

ON[®] trademark in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and Federal Unfair Competition laws.

39. Float-On has actively marketed, promoted, advertised and continuously sold its high quality boat trailers bearing the inherently distinctive and incontestable FLOAT-ON[®] mark for fifty-two years such that the relevant purchasing public has come to identify Float-On as the source and origin of high-quality boat trailers offered under the registered and incontestable FLOAT-ON[®] mark.

40. Defendants have intentionally and maliciously used an infringing, identical and/or substantially indistinguishable designation FLOTE-ON without authorization and continue to trade off the goodwill and reputation created and maintained by Float-On in its incontestable FLOAT-ON[®] mark. The contemporaneous use by Defendants of a designation confusingly similar to, identical to and/or substantially indistinguishable from Plaintiff's FLOAT-ON[®] mark for Defendants' Accused Trailers, has caused actual confusion, and is likely to cause confusion and mistake in the trade, deception and defrauding of purchasers, and confusion as to the origin, sponsorship or affiliation of Defendants' goods with those of Float-On. Float-On's customers are likely to be confused that Float-On sponsors or is responsible for Defendants' goods, and customers may have occasion to purchase Defendants' goods erroneously, believing that Float-On's standards of quality and service apply to Defendants' infringing and counterfeit goods, thereby doing great and irreparable harm to Float-On's reputation. Defendants' acts deceive and mislead the public into believing that Defendants' products are actually Float-On's products or are otherwise sponsored, authorized, endorsed, supervised and/or guaranteed by Float-On.

41. Plaintiff's FLOAT-ON[®] mark is inherently distinctive, strong and well known throughout the United States and has generated millions of dollars in sales over the years.

Defendants willfully and intentionally copied Float-On's distinctive FLOAT-ON[®] mark so as to enter into the U.S. boat trailer market by trading on the goodwill and reputation of Float-On's FLOAT-ON[®] mark. Plaintiff's boat trailers and Defendants' Accused Trailers are identical and/or very closely related and are used by the same customers for the same purposes in the same market. Both Float-On and Defendants use similar facilities to conduct their respective businesses. Both Float-On and Defendants use similar advertising in promoting and selling their directly competing products. Defendants acted willfully with malicious intent intending to harm Float-On and to defraud consumers in its wholesale copying of Float-On's FLOAT-ON[®] mark and in incorporating the confusingly similar, identical and/or substantially indistinguishable designation, FLOTE-ON, on or in connection with Defendants' Accused Trailers.

42. In violation of 15 U.S.C. § 1125 (a), Defendants, in connection with their infringing and counterfeit FLOTE-ON designation, intentionally used in commerce a word, term, name or device, or combination thereof, or a false designation of origin, false or misleading description of fact or false or misleading representation of fact, which was and/or is likely to cause confusion or to cause mistake, or to deceive as to an affiliation, connection, or association with Float-On.

43. Defendants' conduct alleged herein constitutes unfair competition, false designation, description or representation; false advertising; and/or unfair or deceptive trade practices that are likely to cause confusion or mistake by the public in violation of 15 U.S.C. § 1125(a).

44. As a direct and proximate result of the acts alleged herein, Float-On has suffered and will continue to suffer damage to its business, reputation and goodwill and monetary damages and lost profits in an amount not yet determined. Defendants' actions have caused, and unless Defendants are enjoined by this Court, will continue to cause irreparable harm and injury to Float-

On. The damages caused by Defendants' actions are not susceptible to any ready or precise calculation because such damages involve lost profits, lost business opportunities, loss of goodwill, and the impairment of the integrity of Float-On's products and its FLOAT-ON® mark. Accordingly, monetary damages alone cannot fully compensate Float-On for Defendants' misconduct, and Float-On lacks an adequate remedy at law and is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

45. Unless enjoined by this Court, Defendants will continue to make false descriptions or representations and to pass off Defendants' trailers as provided by, sponsored by, or associated with Float-On, all to Float-On's irreparable injury. This threat of ongoing and future injury to Float-On's business identity, goodwill and reputation requires injunctive relief to prevent Defendants' continued false descriptions, representations and passing off, and to ameliorate and mitigate Float-On's injuries.

46. Defendants' conduct has caused irreparable harm in the form of lost business and reputation, and other irreparable harm, entitling Float-On to recover damages, Defendants' profits and injunctive relief.

47. Defendants' conduct described herein is willful, wanton, malicious, reckless, oppressive and in conscious disregard of Float-On's rights in its FLOAT-ON® mark, and Float-On is entitled to damages pursuant to 15 U.S.C. § 1117, including Defendants' profits, Float-On's actual damages and costs of this action, punitive and exemplary damages, and because this is an exceptional case, reasonable attorneys' fees.

COUNT III - Federal Trademark Counterfeiting

Lanham Act (15 U.S.C. § 1114)

48. Float-On realleges and incorporates herein by reference paragraphs 1 through 47 of this Complaint.

49. Defendants are using the spurious and counterfeit designation FLOTE-ON which is a spurious mark that is identical to, or substantially indistinguishable from, Float-On's registered and incontestable FLOAT-ON[®] mark in U.S. commerce in connection with the sale, offering for sale, advertising and distribution of the Accused Trailers that are identical goods and/or closely related to the boat trailers sold by Plaintiff under its registered and incontestable FLOAT-ON[®] mark.

50. Defendants' unauthorized use of its counterfeit designation, FLOTE-ON, has intentionally caused actual consumer confusion and is likely to continue to cause confusion, mistake and/or deception of relevant consumers in the boat trailer market in which Plaintiff and Defendants directly compete.

51. The intentional, willful, malicious and wanton acts of Defendants in copying Plaintiff's FLOAT-ON[®] mark and using the identical or substantially indistinguishable designation, FLOTE-ON, on identical and/or closely related goods set out above constitutes trademark counterfeiting in violation of 15 U.S.C. § 1114.

52. By reason of the acts alleged herein, Float-On has suffered and will continue to suffer damage to its business, reputation and goodwill and monetary damages in an amount not yet determined. Defendants' actions have caused, and unless Defendants are enjoined by this Court, their actions will continue to cause irreparable harm and injury to Float-On. Accordingly, Float-On lacks an adequate remedy at law and is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

53. On information and belief, Defendants' conduct described herein is willful, wanton, malicious, reckless, oppressive and in conscious disregard of Float-On' rights in its registered and incontestable FLOAT-ON® mark, and Float-On is entitled to damages pursuant to 15 U.S.C. § 1117, including Defendants' profits, Float-On' actual damages, statutory damages for use of a counterfeit mark, treble damages for use of a counterfeit mark, costs of this action, enhanced damages, and because this is an exceptional case, reasonable attorneys' fees.

COUNT IV – False Designation of Origin

Lanham Act (15 U.S.C. § 1125(a)(1)(b))

54. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 53 of this Complaint.

55. Float-On owns rights to the registered and incontestable trade name and trademark FLOAT-ON® in connection with boat trailers sold in interstate commerce throughout the United States.

56. Defendants' use of the FLOTE-ON designation as a designation in connection with the marketing, distribution and sale of boat trailers in interstate commerce is likely to cause, and has caused, public confusion and mistake as to the source of Defendants' products, as to the affiliation, connection, and/or association of Defendants with Float-On, and/or as to the sponsorship or approval of Defendants' boat trailers and the commercial activities of Float-On.

57. Because Defendants' products are not the products of Float-on and are not otherwise authorized to use Float-On's FLOAT-ON® mark or trade name, such willful and deliberate conduct by Defendants in promoting, advertising, and providing boat trailers under the confusingly similar FLOTE-ON designation and name constitutes a false designation of origin, a false or misleading description of fact, and/or a false or misleading representation of fact, all of

which misrepresent the source, nature and characteristics, qualities and/or origin of Defendants' products, in violation of Section 43(a)(1)(B) of the Lanham Act, as amended, 15 U.S.C. § 1125(a)(1)(B).

58. As a direct and proximate result of the acts alleged herein, Float-On has suffered and will continue to suffer damage to its business, reputation and goodwill and monetary damages and lost profits in an amount not yet determined. Defendants' actions have caused, and unless Defendants are enjoined by this Court, their actions will continue to cause irreparable harm and injury to Float-On. The damages caused by Defendants' actions are not susceptible to any ready or precise calculation because such damages involve lost profits, lost business opportunities, loss of goodwill, and the impairment of the integrity of Float-On's products and its FLOAT-ON® mark. Accordingly, monetary damages alone cannot fully compensate Float-On for Defendants' misconduct, Float-On has been irreparably harmed, and Float-On lacks an adequate remedy at law and is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

59. As a direct and proximate result of Defendants' wrongful and illegal acts alleged herein, Float-On has suffered actual damages, lost profits, and is entitled to its actual damages, disgorgement of Defendants' ill-gotten profits, enhanced damages, and because this is an exceptional case, treble damages, costs of the action and its reasonable attorney's fees.

COUNT V - Trade Name Infringement under Indiana Common Law

60. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 59 of this Complaint.

61. Float-On's registered and incontestable FLOAT-ON® Mark is distinctive as to boat trailers and distinguishes Float-On's products sold under the FLOAT-ON® Mark from other boat trailer companies and their products.

62. Defendants' use of the FLOTE-ON designation is likely to cause confusion and has caused confusion as to the source of Defendants' boat trailers.

63. Defendants willfully intended and intend to deceive and confuse the public and members of the boating industry and community, including boaters and boat and boat trailer consumers, regarding the source of the boat trailers.

64. Defendants' actions have caused damage and loss to Float-On and to the reputation and goodwill of Float-On and the registered and incontestable FLOAT-ON® Mark.

65. Float-On is entitled to injunctive relief under the common law of unfair competition via trade name infringement.

66. Float-On is entitled to compensatory damages, disgorgement of Defendants' ill-gotten profits, and punitive damages under the common law of unfair competition via trade name infringement.

COUNT V - Common Law Unfair Competition

67. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 66 of this Complaint.

68. In violation of the common law of the State of Indiana and elsewhere, Defendants have unfairly competed with Float-On by selling infringing and counterfeit boat trailers in U.S. commerce bearing the confusingly similar, identical, and/or substantially indistinguishable FLOTE-ON Designation which infringes and unfairly competes with Plaintiff and Plaintiff's registered and incontestable FLOAT-ON® mark.

69. Defendants' use of the counterfeit FLOTE-ON designation constitutes a false designation of origin and a false description or representation that Defendants' products originate

from, or are offered, sponsored, authorized, licensed by, or otherwise somehow connected with Plaintiff, and is thereby likely to confuse consumers.

70. Defendants' conduct constitutes common law unfair competition, which has damaged and will continue to damage Plaintiff unless enjoined by this Court. Plaintiff has no adequate remedy at law.

71. Defendants' conduct described herein is willful, wanton, malicious, reckless, oppressive and in conscious disregard of Float-On's rights in its FLOAT-ON[®] mark, and has directly and proximately injured Float-On, such that Float-On is entitled to actual damages, disgorgement of Defendants' profits, costs of this action, and punitive and exemplary damages.

COUNT VI - Common Law Unjust Enrichment

72. Float-On realleges and incorporates herein by reference paragraphs 1 through 71 of this Complaint.

73. At the expense of and detriment to Float-On, and without Plaintiff Float-On's express or implied authorization, Defendants have profited from their knowing, intentional, willful, malicious and reckless actions of using the infringing, confusingly similar and counterfeit designation FLOTE-ON in connection with the distribution, advertising, promotion and sale of Defendants' boat trailers.

74. By selling the infringing and counterfeit products which infringe Float-On's valuable, registered and incontestable FLOAT-ON[®] trademark, Defendants have been unjustly enriched at Plaintiff's expense in violation of the common law of Indiana and elsewhere.

75. Defendants' ill-gotten profits are based in whole or in part on the unauthorized use of the confusingly similar, illegal, and counterfeit FLOTE-ON designation in violation of Indiana law.

76. As a direct and proximate result of Defendants' wrongful conduct, Defendants have been and continue to be unjustly enriched through their unauthorized use of a colorable imitation of Plaintiff's FLOAT-ON® mark.

77. Defendants' enrichment has been to the detriment of Plaintiff's business, goodwill and reputation, and Defendants' ill-gotten gains should be accounted for, disgorged and paid over to Plaintiff, Float-On.

PRAYER FOR RELIEF

WHEREFORE, Float-On respectfully requests that this Court enter judgment against Defendants as follows:

1. For injunctive relief, as provided for in 15 U.S.C. § 1116, Fed. R. Civ. P. 65, and state law, namely for temporary, preliminary and permanent injunctive relief preventing Defendants and their officers, agents, affiliates, servants, employees, and attorneys, and all those persons acting or attempting to act in concert or participation with them, (including their distributors) from directly or indirectly:

a) manufacturing, advertising, promoting, marketing, importing or selling the Accused Trailers or any other boat trailers bearing Plaintiff's registered and incontestable FLOAT-ON® mark or any confusingly similar mark, including the infringing and counterfeit FLOTE-ON designation;

b) using any false designation of origin or false description for the Accused Trailers or any other boats bearing Plaintiff's registered and incontestable FLOAT-ON® mark or any confusingly similar mark, including the infringing FLOTE-ON designation, that can, or is likely to, lead the consuming public, or individual members thereof, to believe that any goods produced, advertised, promoted, marketed, provided, imported or sold by Defendants are in any

manner associated or connected with Plaintiff, or are advertised, promoted, imported, marketed, sold, licensed, sponsored, approved or authorized by Plaintiff, Float-On;

c) using any counterfeit or spurious mark in connection with Defendants' Accused Trailers that is identical to or substantially indistinguishable from Plaintiff's FLOAT-ON® mark, including the FLOTE-ON designation;

d) unfairly competing with Plaintiff in any manner whatsoever in the offering, advertising, promotion, importation or sale of any boat trailers; and

e) engaging in any activities that will impair the goodwill and reputation of Plaintiff's FLOAT-ON® mark.

2. For an order, as provided for in 15 U.S.C. § 1118, requiring that all materials bearing and used to produce the infringing and counterfeit FLOTE-ON designation be delivered up and destroyed, and requiring Defendants to withdraw from the market all infringing and counterfeit products and advertising and promotional materials displaying the infringing and counterfeit products and FLOTE-ON designation, including from Defendants' and third party websites.

3. Requiring Defendants to recall from any distributors and retailers, and to deliver to Plaintiff for destruction or other disposition, all remaining inventory of all infringing and counterfeit products bearing the FLOTE-ON designation, including all advertisements, promotional and marketing materials therefore, as well as all means of making same.

4. For an order directing Defendants to file with the Court and serve upon Plaintiff's counsel within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which Defendants have complied with the injunction, including the provision relating to destruction and recall of infringing and counterfeit products and materials.

5. Directing such other relief as the Court may deem appropriate to prevent consumers, the public, and/or the trade from deriving any erroneous impression that any product at issue in this action that has been manufactured, imported, advertised, marketed, promoted, supplied, distributed, offered for sale, or sold by Defendants, has been authorized by Plaintiff or is related in any way with Plaintiff and/or its FLOAT-ON® brand boat trailers.

6. For an order requiring Defendants to account for and pay to Plaintiff any and all direct or indirect profits wrongfully derived by Defendants from the marketing and sale of infringing and counterfeit products bearing the infringing designation, FLOTE-ON, or Plaintiff's FLOAT-ON® mark.

7. For judgment for actual compensatory damages to be proven at the time of trial as provided for in 15 U.S.C. §1117 and applicable state law, including Defendants' profits or gains of any kind resulting from their acts of infringement, counterfeiting and unfair competition.

8. For judgment of enhanced damages for Defendants' willful infringement, counterfeiting and unfair competition, as provided for in 15 U.S.C. § 1117, including an award of treble damages, for an award of treble damages under state law, and for punitive and exemplary damages as appropriate under applicable federal and state laws.

9. For judgment for statutory damages of \$2,000,000 on Plaintiff's claim for willful trademark counterfeiting under the Lanham Act, 15 U.S.C. §1117.

10. For Plaintiff's attorneys' fees, investigatory fees, expenses and costs of this action as provided for in 15 U.S.C. § 1117 and under Indiana law.

11. For Plaintiff's prejudgment and post-judgment interest on any monetary award made part of the judgment against Defendants; and

12. For such further and additional relief as the Court may deem just and proper.

REQUEST FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Float-On hereby requests a trial by jury of all causes of action and issues triable by jury.

Dated: July 1, 2020

Respectfully Submitted,

/s/ Erin Linder Hanig

Timothy M. Curran (24463-71)

Erin Linder Hanig (29113-71)

Daniel J. VeNard (32443-71)

SouthBank Legal: LaDue | Curran | Kuehn

100 East Wayne Street, Suite 300

South Bend, Indiana 46601

Tel: (574) 968-0760

Fax: (574) 968-0761

tcurran@southbank.legal

dvenard@southbank.legal

ehanig@southbank.legal

Brian B. Darville (*pro hac vice* to be submitted)

OBLON, McCLELLAND

MAIER & NEUSTADT, LLP

1940 Duke Street

Alexandria, VA 22314

Tel: 703-413-3000

Fax: 703-413-2220

bdarville@oblon.com

Attorneys for Plaintiff

Float-On Corporation