



### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1338(a) and 15 U.S.C. § 1121(a) because Plaintiffs' claims arise under the Lanham Act.

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

7. 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 committed tortious acts in the State of Indiana that caused injury to Plaintiffs.


8. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiffs' claims occurred within the State of Indiana and this District. Alternatively, venue is proper in this District under 28 U.S.C. § 1391(b)(3) because Defendant is subject to the Court's personal jurisdiction.

### **ALLEGATIONS RELEVANT TO ALL COUNTS**

#### **A. ADESA's Trademarks and Run Lists**

9. ADESA offers a full range of auction, reconditioning, logistic and other vehicle-related services to meet the remarketing needs of institutional and dealer customers. Remarketing services include a variety of activities designed to transfer used vehicles between professional sellers and buyers. ADESA offers its remarketing solutions to auto manufacturers, captive finance companies, lease and daily rental companies, financial institutions, and wholesale auto actions under the trademark ADESA and other ADESA-formative trademarks.

10. In order to protect the extensive goodwill it has accrued over the years in these marks, ADESA has registered these marks on the principal register of the United States Patent and Trademark Office (the “USPTO”). ADESA is the owner of all right, title, and interest in and to the below incontestable trademark registrations (collectively, the “ADESA Marks”) and has been continuously using the ADESA Marks to distinguish its products and services from those of its competitors since their respective dates of first use indicated below:

<b>Mark</b>	<b>Registration No.</b>	<b>Registration Date</b>	<b>Date of First Use</b>	<b>Applicable Goods and Services</b>
ADESA  (the “ADESA Word Mark”)	1783137	July 20, 1993	Apr. 22, 1992	Automobile auction services Automobile cleaning services, automobile body repair and painting services, and automobile mechanical repair and maintenance Transportation of automobiles of others by trucks
  (the “Eagle Logo”)	2504410	Nov. 6, 2001	January 4, 1994	Automobile auction services
ADESA RUN LIST  (the “RUN LIST Mark”)	2930226	Mar. 8, 2005	June 2003	Providing on-line automobile auction information to others

11. ADESA has expended resources in advertising and promoting its products and services under the ADESA Marks and has amassed significant goodwill in the ADESA Marks as a result.

12. Copies of the certificates of registration for the foregoing marks are attached hereto as **Exhibit A**.

13. In connection with its remarketing services, ADESA provides third party vendors with car run lists containing information regarding automobile auctions (the “Run Lists”). The Run Lists allow ADESA’s customers to view information regarding vehicles being auctioned (including photographs created by ADESA), locate auction sites and types of auctions, and retrieve auction dates and sale times.

14. The Run Lists contain proprietary information (including photographic material owned by ADESA). As such, ADESA’s customers agree not to share or re-sell ADESA’s Run Lists.

**B. Autoniq Trademarks**

15. Autoniq – via a software solution branded AUTONIQ – is a wholly owned subsidiary of ADESA and offers dealers an easy and convenient way to find, research, purchase, and price vehicles, both online and at auction. Autoniq receives the Run Lists from ADESA and utilizes the Run Lists within the AUTONIQ software solution.

16. For over a decade, Autoniq has continuously used the trademark AUTONIQ (the “AUTONIQ Mark”) in order to distinguish its products and services from those of its competitors. Autoniq has expended significant resources in advertising and promoting its products and services under the AUTONIQ Mark and has amassed significant goodwill in the AUTONIQ mark as a result.

17. In order to protect the extensive goodwill it has built up over the years in the AUTONIQ Mark, Autoniq has registered the AUTONIQ Mark on the principal register of the

USPTO. Autoniq is the owner of all right, title, and interest in the below incontestable trademark registration:

Mark	Reg. No.	Reg. Date	Date of First Use	Applicable Goods and Services
AUTONIQ	4502642	Mar. 24, 2014	Mar. 2008	<p>Computer application software for mobile phones or other mobile devices, namely, software for use in scanning vehicle identification numbers to access accident and repair history, pricing, auction run lists and other auction information and market supply and demand information in the field of automobile wholesaling and retail sales; software for use by consumers to anonymously provide vehicle accident and repair history, pricing and other vehicle sales information to dealers in the field of automobile purchasing; software for use to provide automobile pricing and consumer information to dealers in the field of automobile purchasing; software for use to provide consumer and automobile availability information to dealers in the field of automobile purchasing; software for use to provide vehicle information and pricing in the field of automobile retail and wholesaling sales; and software for use to provide vehicle pricing and market information to dealers in the field of automobile retail and wholesaling sales</p> <p>Software as a service (SAAS) services, namely, hosting software for use by others for use in accessing accident and repair history, pricing, auction run lists and other auction information and market and supply and demand information in the field of automobile wholesaling and retail sales; hosting software for use by consumers to anonymously provide vehicle accident and repair history, pricing and other vehicle sales information to dealers in the field of automobile purchasing; hosting software for use by others to provide automobile pricing and consumer information to dealers in the field of automobile purchasing; hosting software for use by others to provide consumer and automobile availability information to dealers in the field</p>

				of automobile purchasing; hosting software for use by others to provide vehicle information and pricing in the field of automobile retail and wholesaling sales; and hosting software for use by others to provide vehicle pricing and market information to dealers in the field of automobile retail and wholesaling sales
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18. A copy of the certificate of registration for the foregoing mark is attached hereto as **Exhibit B**.

19. In addition, Autoniq has continuously used the below logo(the “AUTONIQ Logo”) to distinguish its products and services from those of its competitors.



20. Autoniq has expended resources in advertising and promoting its products and services under the AUTONIQ Logo and has amassed significant goodwill in the AUTONIQ Logo as a result. Autoniq owns common law trademark rights in its AUTONIQ logo.

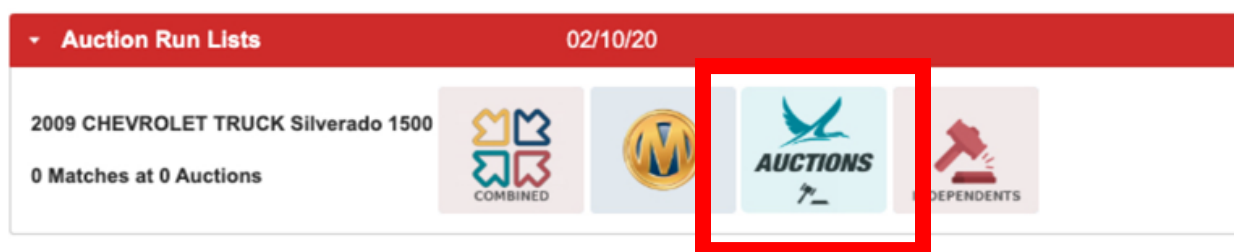
**C. Defendant’s Unlawful Activities With Respect to ADESA**

21. Defendant provides used car dealership management software to independent car dealerships and wholesalers via a mobile and desktop application.

22. Defendant previously licensed use of the Run Lists and certain marks and logos from ADESA. Pursuant to the terms of the License Agreement by and between ADESA and

Defendant, dated September 9, 2013, ADESA provided to Defendant certain data about previously-owned vehicles available for purchase through various ADESA websites for inclusion in Defendant's "recommended buy" lists, describing for Defendant's used car dealership and wholesale customers available inventory and where such inventory could be purchased. ADESA terminated the license and ceased providing Defendant with the ADESA Run Lists on or about December 31, 2018.

23. Although ADESA ceased providing Defendant with the Run Lists, Defendant continued displaying current Run Lists it illegitimately procured from third parties or somehow misappropriated from ADESA and linking the Run Lists to a bastardized version of the Eagle Logo. An example appears below:

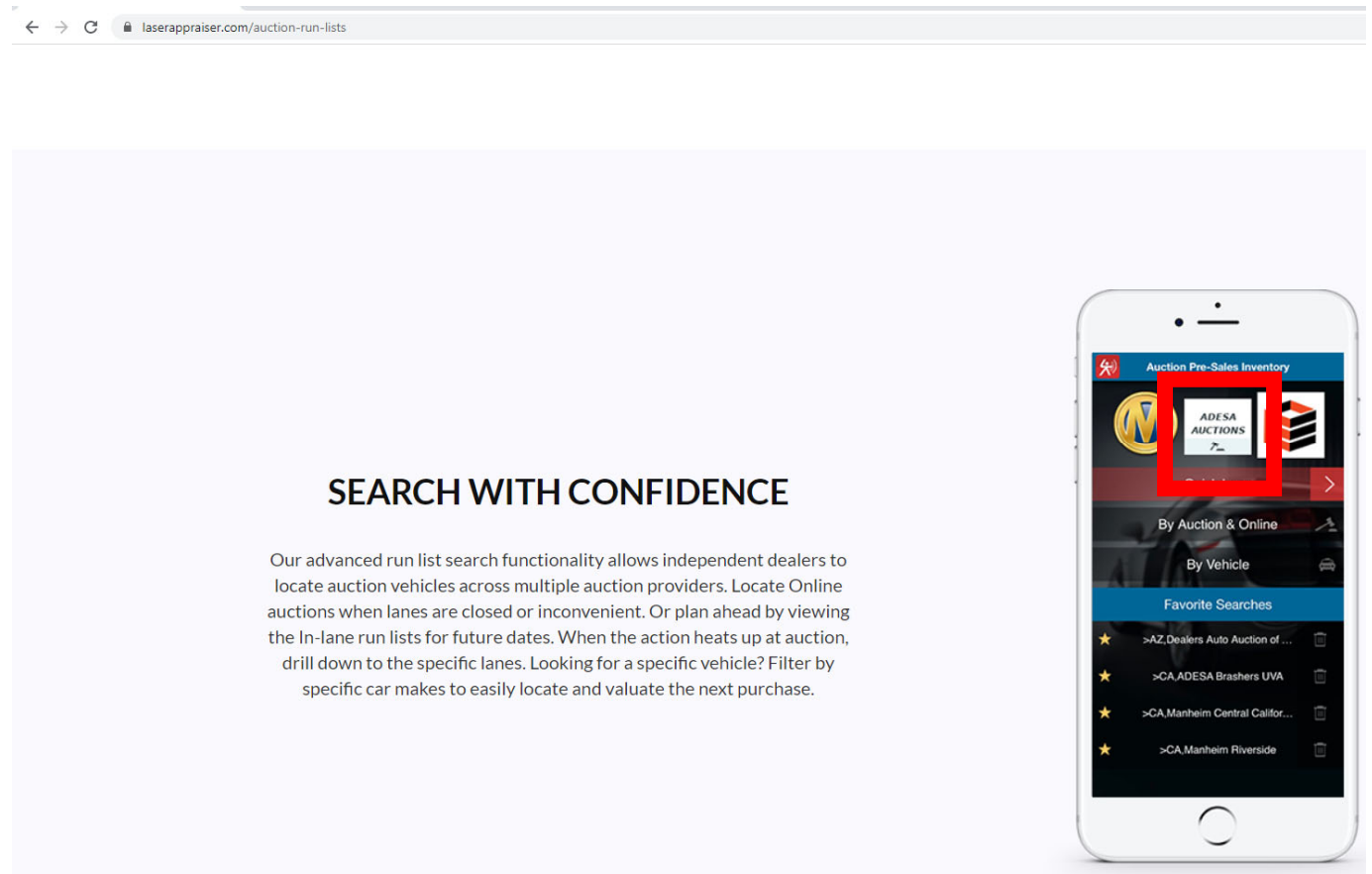


24. When ADESA discovered this in early 2020, it requested that Defendant remove the Eagle Logo, cease using the Run Lists, cease claiming affiliation with ADESA, and explain how it secured access to the Run Lists when its license had been terminated.

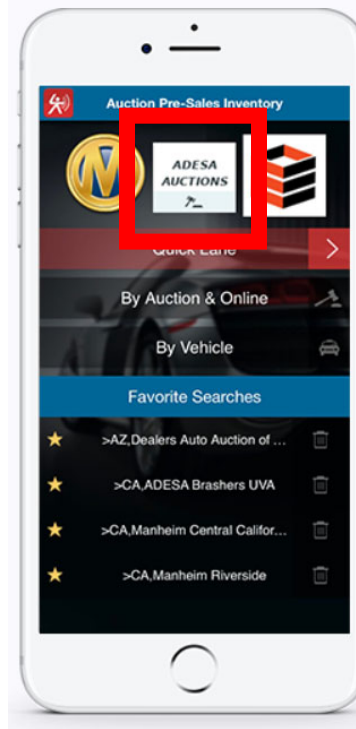
25. Defendant removed the Eagle Logo but initially refused to remove the Run Lists. Defendant eventually appeared to relent and posted the below banner on the desktop version (but not the mobile version) of its website <www.laserappraiser.com>:

Adesa® auctions will no longer sell run lists to Laser Appraiser. We apologize for the inconvenience. If your favorite Adesa auction is missing, please contact Adesa with your concerns and tell them you wish to purchase your inventory using Laser Appraiser!

26. Regardless of this action, Defendant continues to indicate to consumers that it receives the Run Lists from ADESA. As shown below, Defendant's website continues to feature the ADESA Word Mark to advertise Defendant's "advanced run list search functionality."







## AT THE LOT OR ON YOUR DESKTOP

Laser Appraiser auction run lists and valuation data can be used on a mobile device or desktop computer. The Laser Appraiser [Dealer Studio](#) or Laser Appraiser [Mobile](#) app for [Android](#) and [iOS](#) smartphones and tablets delivers the most accurate and frequently updated run lane vehicle lists.



State	Auction	Date	Channel	Run	Lane	Mileage	Condition
AL	America's Auto Auction - Birmingham	2020-04-22	SIMULCAST	0156	5	47089	Clean
AZ	Manheim Phoenix	2020-04-23	SIMULCAST	150	2	39386	Average
AZ	Manheim Phoenix	2020-04-23	SIMULCAST	151	2	27668	Average
AZ	Manheim Phoenix	2020-04-23	SIMULCAST	205	13	40280	Clean
AZ	Manheim Phoenix	2020-04-27	SIMULCAST	905	80	14837	Clean
AZ	Manheim Phoenix	2020-05-04	SIMULCAST	945	80	12464	Clean
AZ	Manheim Phoenix	2020-04-27	SIMULCAST	952	80	34616	Average
AZ	Manheim Phoenix	2020-04-27	SIMULCAST	1085	80	48701	Average
CA	South Bay Auto Auction - Gardena	2020-04-27	SIMULCAST	0116	3-03	75107	-
FL	Manheim Daytona Beach	2020-04-22	SIMULCAST	134	6	22037	Clean
GA	Manheim Georgia	2020-04-28	SIMULCAST	1001	12	24517	Clean
IL	ADESA Chicago	2020-04-24	IN-LANE	208	E	68176	-
MS	Manheim Mississippi	2020-04-23	SIMULCAST	44	7	28999	Clean
MO	Manheim Kansas City	2020-04-22	SIMULCAST	160	5	28983	Clean
NE	Manheim Omaha	2020-04-23	SIMULCAST	141	6	63704	Average
NV	Manheim Nevada	2020-04-24	SIMULCAST	230	6	64011	Average
OH	Manheim Cincinnati	2020-04-23	SIMULCAST	234	1	44779	Clean
OH	Manheim Cincinnati	2020-04-23	SIMULCAST	248	1	39152	Average
PA	Manheim Pittsburgh	2020-04-22	SIMULCAST	2	13	15619	Clean
PA	Manheim Pennsylvania	2020-04-24	SIMULCAST	163	14	18802	Clean
PA	Manheim Pennsylvania	2020-04-24	SIMULCAST	157	15	24815	Extra Clean
PA	Manheim Pennsylvania	2020-04-24	SIMULCAST	161	29	37006	Average
PA	Manheim Pennsylvania	2020-04-24	SIMULCAST	181	29	41560	Clean
PA	Manheim Pennsylvania	2020-04-24	SIMULCAST	193	29	39750	Average
PA	Manheim Pennsylvania	2020-04-24	SIMULCAST	270	29	40342	Average
TX	Manheim Dallas	2020-04-22	SIMULCAST	242	1	51108	Average
TX	Manheim Dallas	2020-04-22	SIMULCAST	5	6	51209	Clean
TX	Manheim Texas Hobby	2020-04-23	SIMULCAST	221	6	46084	Average
TX	Manheim Dallas-Fort Worth	2020-04-23	SIMULCAST	80	8	38437	Average
TX	Manheim Texas Hobby	2020-04-23	SIMULCAST	56	11	25758	Clean

START FREE TRIAL!

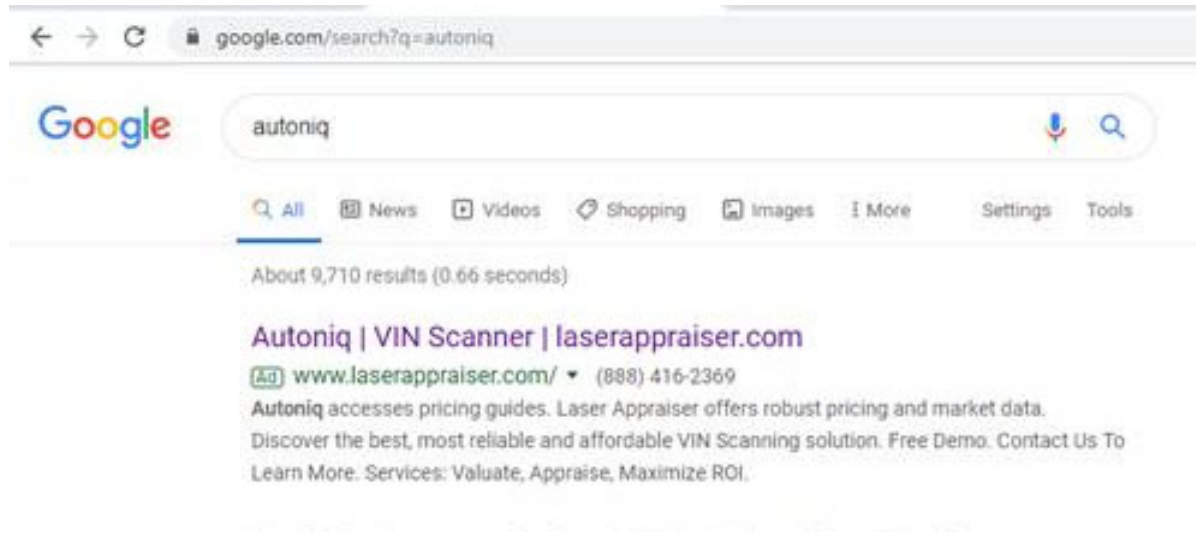


27. Defendant's repeated and brazen actions as described above are designed to deceive and sow confusion in the marketplace as to the origin, sponsorship, or approval of Defendant's products. Consumers are likely to mistakenly believe that ADESA products are offered through Defendant when they are not. This confusion damages the goodwill ADESA has built in the ADESA Marks.

### D. Defendant's Unlawful Activities With Respect to AUTONIQ

28. In or about November 2019, Autoniq discovered that Defendant had purchased online keyword search advertisements, including but not limited to Google advertisements, that

resulted in sponsored ads that impermissibly used the AUTONIQ Mark. These advertisements were generated when a user searched for the term “autoniq,” and prominently displayed the AUTONIQ Mark as the first word in the heading of the sponsored advertisement. Clicking through the advertisement then took the user to Defendant’s website featuring Defendant’s competing product. An image of Defendant’s online keyword search advertisement is depicted below.

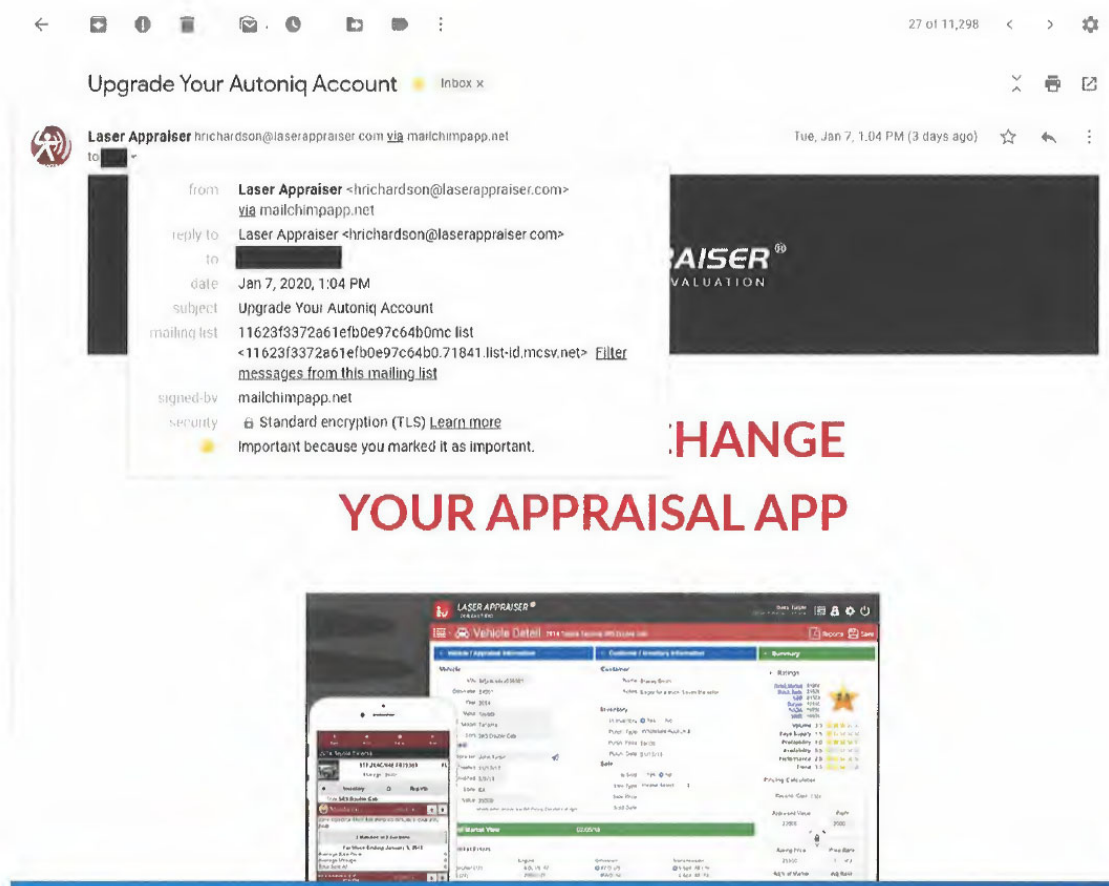


29. In addition, Defendant used the AUTONIQ Logo without authorization on its website in connection with a marketing piece entitled “Laser Appraiser vs. Autoniq.” The marketing piece falsely indicated to consumers that both Defendant and Autoniq received Run Lists from ADESA when, in fact, only Autoniq received such lists. A copy of this marketing piece is attached hereto as **Exhibit C**.

30. On November 20, 2019, Autoniq, through its counsel, sent a cease and desist letter to Defendant regarding Defendant’s unauthorized use of the AUTONIQ Mark and the AUTONIQ Logo and Defendant’s false statements regarding the Run Lists.

31. Though Defendant agreed to comply with Autoniq’s demands, it shortly thereafter launched an email marketing campaign wherein consumers receive an email entitled “Upgrade Your Autoniq Account” (the “Email Campaign”). When a user opened the email to learn more

about the upgrade, the user was prompted to download Laser Appraiser's product. One such email is pictured below.



32. As a result of the Email Campaign, Autoniq received inquiries from confused customers regarding Laser Appraiser's affiliation with Autoniq.

33. In addition to the above activities, Defendant recently announced its intention to redesign its mobile application. Upon information and belief, the proposed redesign is a purposeful attempt to copy the look and feel of Autoniq's mobile application and further confuse consumers. Defendant's proposed redesigns are pictured below alongside the current version of Autoniq's mobile application.

**CURRENT**  
Laser Appraiser – Price Evaluator

2015 Honda Civic

19XFB2F5XFE114834 NC

Mileage: 64008

+ Inventory Reports

Trim: LX 4D Sedan

Return to Run List

Lane 7 / Run 1  
Manheim Fort Lauderdale, FL 04/24/20  
Color: Black Notes: N/A

19 Matches at 13 Auctions

**Auto Auctions** 04/23/20

2015 HONDA CIVIC SEDAN 4D LX 1.8L 14 AUTO			
Adjusted Wholesale			8175
Adjusted Retail			11370
	Above	Average	Below
Auction	10050	7775	5500
Est Retail	13975	10810	7650
Past	All	0-4 Wk	5-8 Wk
Ave Price	7775	6665	7800
Mileage	74298	86384	74026
Sold Count	272	6	266
Penetration	1 Month		

**PROPOSED**

Laser Appraiser – Price Evaluator  
Vehicle Evaluation Not in Auction

2013 Cadillac XTS Premium 4D Sedan

WBAB83C53GN762910 FL

Trim: Please Select

PRICE: 28,900

COLOR: Black

LAKE: 3

SIZE: 35

NOTES: Needs detail before pictures

Save Reports Inventory

35 Found / 3 Auctions

**CURRENT**

Autoniq® - Price Evaluator  
Vehicle Evaluation Not in Auction

2019 Jeep Compass Limited 4D SUV 4WD

SC4ALC000K762080

11,711

Interior Condition

Add Notes

0/1024

33 Similar Vehicles at 13 Auctions

**CURRENT**

Laser Appraiser – Price Evaluator

2015 Honda Civic

19XFB2F5XFE114834 NC

Mileage: 64008

+ Inventory Reports

Trim: LX 4D Sedan

Return to Run List

Lane 7 / Run 1  
Manheim Fort Lauderdale, FL 04/24/20  
Color: Black Notes: N/A

19 Matches at 13 Auctions

**Auto Auctions** 04/23/20

2015 HONDA CIVIC SEDAN 4D LX 1.8L 14 AUTO			
Adjusted Wholesale			8175
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	Above	Average	Below
Auction	10050	7775	5500
Est Retail	13975	10810	7650
Past	All	0-4 Wk	5-8 Wk
Ave Price	7775	6665	7800
Mileage	74298	86384	74026
Sold Count	272	6	266
Penetration	1 Month		

**PROPOSED**

Laser Appraiser – Price Evaluator  
Vehicle Evaluation in Auction

2013 Cadillac XTS Premium 4D Sedan

WBAB83C53GN762910 FL

Trim: Please Select

PRICE: 28,900

COLOR: Black

LAKE: 3

SIZE: 35

NOTES: Needs detail before pictures

Manheim Central Florida

Thu, May 21 at 9:00 AM EDT

Grade: 3.4, 6 Digit 000, Red Light, AS

Coupons Reports Inventory

**CURRENT**

Autoniq® - Price Evaluator  
Vehicle Evaluation in Auction

2019 Dodge Journey GT 4D SUV AWD

SC4P000G8K7791875

29,528

Black

Interior Condition

Add Notes

0/1024

87 Similar Vehicles at 32 Auctions

## CURRENT

Laser Appraiser – CarFax / Autocheck

Back Home History Scan

Auction High Average Low  
Adjusted 29053 26103 23153

**Kelley Blue Book** 09/21/18

2015 Lexus RX RX 350 Sport Utility 4D  
CPO FPP: 30420 FMR: 27764 - 33075

Auction Exclnt VGood Good Fair  
Adjusted 27089 26410 25708 24622

**CARFAX**

ok Vehicle qualifies for the CARFAX Buyback Guarantee!

**AutoCheck**

ok Assured! Ownership: 1) 15-15 CA

**Manheim** 09/23/18

2015 LEXUS RX 350 2WD 4D UTIL

	Above	Average	Below
Adjusted MMR		27200	
Adjusted Retail		31300	
Auction	26300	24000	21700
Est Retail	31100	28100	25100

Seasonal Adjustment: OFF

Past	30 Days	6 Months	1 Year
Sale Price	24100	24800	28200
Mileage	36542	31953	29224

Next 1 Month

Est Retail 24000

## PROPOSED

Laser Appraiser – CarFax / Autocheck

**CARFAX**

Qualifies for Buyback Guarantee

No accidents or damage reported to CARFAX

4 Service history records

Corporate fleet vehicle

Last owned in Michigan

Last reported odometer reading 11,711

Full Report

**AutoCheck**

Reported Accidents

No Damage Reported

This vehicle qualifies for Buyback Protection

Major State Title Brand Check

Odometer Check

No Open Recall(s) Reported

Calculated Owners 1

Last Reported Mileage 5,765

Full Report

## CURRENT

Autoniq® – CarFax / Autocheck

**CARFAX** Auto Purchase

Qualifies for Buyback Guarantee

No accidents or damage reported to CARFAX

CARFAX 1-Owner vehicle

4 Service history records

Corporate fleet vehicle

Last owned in Michigan

Last reported odometer reading 11,711

This is an excerpt from CARFAX® Vehicle History Report. See full CARFAX® Report for additional information.

Full Report

**AutoCheck** Auto Purchase

Reported Accidents

No Damage Reported

This vehicle qualifies for Buyback Protection

Major State Title Brand Check

Odometer Check

No Open Recall(s) Reported

Calculated Owners 1

Last Reported Mileage 5,765

This is an excerpt from AutoCheck® Vehicle History Report. See full AutoCheck® Report for additional information.

Full Report

## CURRENT

Laser Appraiser – Black Book

Back Home History Scan

**Black Book** 01/04/18

2014 Toyota Tacoma SR5 Double Cab

Whole	XClean	Clean	Ave	Rough
Stock	20725	19625	18025	16025
Mileage	1300	1700	2125	2125
Add/Ded	1125	1125	1125	1125
Adjusted	23150	22450	21275	19275

Condition Clean

Black Book Adjustments

Convenience Package +500

Leather +1125

w/o SR5 -800

Reset Adjustments

## PROPOSED

Laser Appraiser – Black Book

**BLACK BOOK**

2017 NISSAN Altima | Sedan 4D i4

Refresh using Standard Vin Decode

Click if you aren't seeing proper TMV for your vehicle

Whole	XClean	Clean	Ave	Rough
Stock	\$34,900	\$33,655	\$31,475	\$29,295
Adj	\$34,900	\$33,655	\$31,475	\$29,295

SHOW OPTIONS

## CURRENT

Autoniq® – Black Book

**BLACK BOOK** Price Evaluator

2019 Jeep Compass Limited 4D SUV 4WD

Whole	XClean	Clean	Ave	Rough
Base	\$25,625	\$24,475	\$22,125	\$20,400
Options	\$0	\$0	\$0	\$0
Adjusted	\$25,625	\$24,475	\$22,125	\$20,400
History	N/A	N/A	N/A	N/A
History Adjusted	N/A	N/A	N/A	N/A

Includes AC, 4CY

Finance Advance/Loan Value \$25,000

MSRP \$26,295

Equip. Retail \$21,585

Show Options

34. Defendants' repeated and brazen actions as described above are designed to deceive and sow confusion in the marketplace as to the origin, sponsorship, or approval of Defendant's

products. Consumers are likely to mistakenly believe that Autoniq products are offered through Defendant—or, at the very least, mistakenly navigate to Defendant’s website when they mean to navigate to Autoniq’s website. This confusion damages the goodwill Autoniq has built in the AUTONIQ Mark and the AUTONIQ Logo.

**COUNT I**

**Federal Trademark Infringement Under Section 32(1) of the Lanham Act**

35. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

36. Defendant is not authorized to use the ADESA Marks or the AUTONIQ Mark and Logo (collectively, “Plaintiffs’ Marks”) or any mark confusing similar to or that in any way represents or implies that Defendant’s goods and services are in any way associated with ADESA and Autoniq.

37. Nevertheless, Defendant has impermissibly used and continues to use in commerce some or all Plaintiffs’ Marks in connection with its goods and services.

38. Defendant’s unauthorized use of Plaintiffs’ Marks as alleged herein constitutes trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1114(1). Defendant’s unauthorized use of Plaintiffs’ Marks is likely to cause (and in fact has caused) confusion, mistake, or deception as to the source 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 ADESA and Autoniq.

39. Defendant’s wrongful use of Plaintiffs’ Marks is knowing, deliberate, and willful.

40. Defendant’s actions violate the Lanham Act, 15 U.S.C. § 1114(1). Defendant has caused, and will continue to cause, immediate and irreparable injury to Plaintiffs, including injury to Plaintiffs’ business, reputation, and goodwill, for which there is no adequate remedy at law. Plaintiffs are therefore entitled to an injunction under 15 U.S.C. § 1116 restraining Defendant, its



agents, employees, representatives and all persons acting in concert with Defendant from engaging in future acts of infringement.

41. Pursuant to 15 U.S.C. § 1117, Plaintiffs are further entitled to recover from Defendant the damages sustained by Plaintiffs as a result of Defendant's acts in violation of the Lanham Act, 15 U.S.C. § 1114(1). Plaintiffs are at present unable to ascertain the full extent of the monetary damages it has sustained by reason of Defendant's acts.

42. Pursuant 15 U.S.C. § 1117, Plaintiffs are further entitled to recover from Defendant the gains, profits and advantages that Defendant has obtained as a result of its acts in violation of the Lanham Act, 15 U.S.C. § 1114(1). Plaintiffs are at present unable to ascertain the full extent of the gains, profits and advantages Defendant has obtained by reason of its acts.

43. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover the costs of this action. Moreover, Plaintiffs are informed and believe, and on that basis allege, that Defendant's conduct was undertaken willfully and with the intention of causing confusion, mistake or deception, making this an exceptional case entitling Plaintiff to recover additional damages and reasonable attorneys' fees.

## **COUNT II**

### **Unfair Competition and False Designation of Origin Under Section 43(a) of the Lanham Act**

44. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

45. Defendant's unauthorized use of Plaintiffs' Marks and the Autoniq Logo, as alleged herein, constitutes false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125(a). Defendant's unauthorized use of Plaintiffs' Marks and the Autoniq Logo is likely to cause (and in fact has caused) mistake and/or deception as to the source or origin of Defendant's products, and falsely suggests that Defendant and its products are sponsored by, connected to, or associated with Autoniq and ADESA.



46. Defendant's wrongful use of Plaintiffs' Marks and the Autoniq Logo is knowing, deliberate, and willful.

47. Defendant's actions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendant has caused, and will continue to cause, immediate and irreparable injury to Plaintiffs, including injury to Plaintiffs' business, reputation, and goodwill, for which there is no adequate remedy at law. Plaintiffs are therefore entitled to an injunction under 15 U.S.C. § 1116 restraining Defendant, its agents, employees, representatives and all persons acting in concert with Defendant from engaging in future acts of infringement.

48. Pursuant to 15 U.S.C. § 1117, Plaintiffs are further entitled to recover from Defendant the damages sustained by Plaintiffs as a result of Defendant's acts in violation of 15 U.S.C. § 1125(a). Plaintiffs are at present unable to ascertain the full extent of the monetary damages it has sustained by reason of Defendant's acts.

49. Pursuant 15 U.S.C. § 1117, Plaintiffs are further entitled to recover from Defendant the gains, profits and advantages that Defendant has obtained as a result of its acts in violation of 15 U.S.C. § 1125(a). Plaintiffs are at present unable to ascertain the full extent of the gains, profits and advantages Defendant has obtained by reason of its acts.

50. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover the costs of this action. Moreover, Plaintiffs are informed and believe, and on that basis allege, that Defendant's conduct was undertaken willfully and with the intention of causing confusion, mistake or deception, making this an exceptional case entitling Plaintiff to recover additional damages and reasonable attorneys' fees.

### **COUNT III**

#### **False Advertising Under Section 43(a) of the Lanham Act**

51. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

52. Defendant has made and distributed in interstate commerce and in this judicial district advertisements that contain false and misleading representations and statements of fact. These advertisements contain actual misrepresentations, misstatements and/or misleading statements or failures to disclose. Specifically, Defendant has repeatedly represented (and apparently still represents) that it can provide its users with Run Lists from ADESA when it cannot.

53. This claim actually deceives, or has the tendency to deceive, a substantial segment of Plaintiffs' customers and potential customers. This deception is material as it concerns an inherent quality, characteristic, and performance of a product that competes directly with Plaintiffs' products and is likely to influence the purchasing decisions of customers and potential customers.

54. Defendant's false and misleading advertising statements and omissions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendant has caused, and will continue to cause, immediate and irreparable injury to Plaintiffs, including injury to Plaintiffs' business, reputation, and goodwill, for which there is no adequate remedy at law. Plaintiffs are therefore entitled to an injunction under 15 U.S.C. § 1116 restraining Defendant, its agents, employees, representatives and all persons acting in concert with Defendant from engaging in future acts of false advertising and ordering removal of Defendant's false and misleading advertisements.

55. Pursuant to 15 U.S.C. § 1117, Plaintiffs are further entitled to recover from Defendant the damages sustained by Plaintiffs as a result of Defendant's acts in violation of 15 U.S.C. § 1125(a). Plaintiffs are at present unable to ascertain the full extent of the monetary damages it has sustained by reason of Defendant's acts.

56. Pursuant 15 U.S.C. § 1117, Plaintiffs are further entitled to recover from Defendant the gains, profits and advantages that Defendant has obtained as a result of its acts in violation of

15 U.S.C. § 1125(a). Plaintiffs are at present unable to ascertain the full extent of the gains, profits and advantages Defendant has obtained by reason of its acts.

57. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover the costs of this action. Moreover, Plaintiffs are informed and believe, and on that basis allege, that Defendant's conduct was undertaken willfully and with the intention of causing confusion, mistake or deception, making this an exceptional case entitling Plaintiff to recover additional damages and reasonable attorneys' fees.

**COUNT IV**  
**Common Law Unfair Competition**

58. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

59. Defendant's unauthorized use of Plaintiffs' Marks and the Autoniq Logo, as alleged herein, constitutes common law unfair competition in violation of the law of Indiana. Defendant's unauthorized use of Plaintiffs' Marks and the Autoniq Logo is likely to cause (and in fact has caused) mistake and/or deception as to the source or origin of Defendant's products, and falsely suggests that Defendant and its products are sponsored by, connected to, or associated with Autoniq and ADESA.

60. Defendant's wrongful use of Plaintiffs' Marks and Autoniq Logo is knowing, deliberate, and willful.

61. As a direct and proximate result of Defendant's actions described herein, Autoniq and ADESA have suffered, and will continue to suffer, irreparable injury to their business, reputation, and goodwill, unless and until the Court permanently enjoins Defendant's actions. Autoniq and ADESA have no adequate remedy at law for those of Defendant's actions that are ongoing.

62. As a direct and proximate result of Defendant's actions described herein, Autoniq and ADESA are entitled to monetary recovery in an amount to be proven at trial.

**COUNT V**

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

63. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

64. By engaging in the unlawful, knowing, intentional, deliberate, willful, and malicious actions described above, Defendant has knowingly or intentionally exerted unauthorized control over Plaintiffs' valuable tangible and intangible property—including the Run Lists, Plaintiffs' Marks, and the Autoniq Logo—by making unauthorized use of same without authorization. Such unauthorized use was for Defendant's benefit and interfered with Plaintiffs' control of their properties.

65. As the owner of the Run Lists (including the proprietary photographs included therein), ADESA has the right to control and authorize the use of the same.

66. As the owner of the ADESA Marks and the accompanying goodwill, ADESA has the right to control and authorize the use of the same.

67. As the owner of the Autoniq Mark and the Autoniq Logo and the accompanying goodwill, Autoniq has the right to control and authorize the use of the same.

68. 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.

69. As set forth herein, Defendant has violated Indiana Code Section 35-43-4-2 through Defendant's exercise of unauthorized control over Plaintiffs' valuable tangible and intangible

property—including the Run Lists, Plaintiffs’ Marks, and the Autoniq Logo—by making unauthorized use of same without authorization.

70. Plaintiffs are 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.

71. Plaintiffs are 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**  
**Theft – Indiana Code § 35-43-4-2**

72. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

73. By engaging in the unlawful, knowing, intentional, deliberate, willful, and malicious actions described above, Defendant has knowingly or intentionally exerted unauthorized control over Plaintiffs’ valuable tangible and intangible property—including the Run Lists, Plaintiffs’ Marks, and the Autoniq Logo—by making unauthorized use of same without authorization. Such unauthorized use was for Defendant’s benefit and interfered with Plaintiffs’ control of their properties.

74. As the owner of the Run Lists (including the proprietary photographs included therein), ADESA has the right to control and authorize the use of the same.

75. As the owner of the ADESA Marks, ADESA has the right to control and authorize the use of the same.

76. As the owner of the Autoniq Mark and the Autoniq Logo, Autoniq has the right to control and authorize the use of the same.

77. 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.

78. As set forth herein, Defendant has violated Indiana Code Section 35-43-4-3 through Defendant's exercise of unauthorized control over Plaintiffs' valuable tangible and intangible property—including the Run Lists, Plaintiffs' Marks, and the Autoniq Logo—by making unauthorized use of same without authorization.

79. Plaintiffs are 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.

80. Plaintiffs are 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 Deception– Indiana Code §§ 35-43-5-3(a)(6), 35-43-5-3(a)(9)**

81. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

82. By engaging in the unlawful, knowing, intentional, deliberate, willful, and malicious actions described above, Defendant has knowingly or intentionally disseminated to the public information regarding the Run Lists, its affiliation with ADESA, and its affiliation with Autoniq that Defendant knows is false, misleading, or deceptive, with the intent to promote Defendant's business and/or commercial interests.

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

84. 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.

85. As set forth herein, Defendant has violated Indiana Code Section 35-43-5-3(a)(6) and 35-43-5-3(a)(9) through Defendant's knowing or intentional dissemination to the public information regarding the Run Lists, its affiliation with ADESA, and its affiliation with Autoniq that Defendant knows is false, misleading, or deceptive, with the intent to promote Defendant's business and/or commercial interests

86. Plaintiffs are 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.

87. Plaintiffs are 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, Plaintiffs ADESA and Autoniq respectfully request that judgment be entered in their favor and pray:

A. That this Court 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 ADESA Marks, the AUTONIQ Mark and Autoniq Logo, from any and all use of the terms AUTONIQ and ADESA and the AUTONIQ Logo by Defendant, or engaging in other conduct that in any way represents or implies that Defendant's products are in any way associated with Autoniq or ADESA, and from otherwise engaging in unfair competition or deception;

B. That this Court order Defendant to pay to Plaintiffs such damages as Plaintiffs have sustained by reason of Defendant's trademark infringement, false designation of origin, false advertising, unfair competition, conversion, and other wrongful conduct;

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

D. That this Court treble all profits and damages owing to Plaintiffs due to (i) Defendant's trademark infringement pursuant to 15 U.S.C. 1114, (ii) Defendant's false designation of origin pursuant to 15 U.S.C. § 1125(a), and (iii) Defendant's conversion, theft, and deception;

E. That this Court order Defendant to pay Plaintiffs their reasonable attorneys' fees and costs pursuant to the Lanham Act and Indiana Code § 35-24-3-1; and

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

**DEMAND FOR JURY TRIAL**

Plaintiffs respectfully request a trial by jury on all issues raised by this Complaint.

Dated: September 21, 2020

Respectfully submitted,

/s/ Louis T. Perry

Louis T. Perry (#25736-49)

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