

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

D MAGAZINE PARTNERS, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO.
	§	
EDWIN BEDFORD, individually and d/b/a	§	3:10-CV-1778
ASSOCIATED CAPITAL SERVICES, INC.	§	
and D MOVING; BOB JOHNSON,	§	
individually and d/b/a ASSOCIATED	§	
CAPITAL SERVICES, INC. and D	§	
MOVING; and ASSOCIATED CAPITAL	§	
SERVICES, INC. d/b/a D MOVING,	§	
	§	
Defendants.	§	

PLAINTIFF’S ORIGINAL COMPLAINT, JURY DEMAND AND APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

Plaintiff D Magazine Partners, L.P. (“D Magazine”), for its Original Complaint against Defendants Edwin Bedford, individually and d/b/a Associated Capital Services, Inc. and D Moving, Bob Johnson, individually and d/b/a Associated Capital Services, Inc. and D Moving, and Associated Capital Services, Inc. d/b/a D Moving (collectively “Defendants”), alleges the following:

I. PARTIES

1. Plaintiff D Magazine is a limited partnership duly organized and existing under the laws of the State of Texas with its principal office at 750 N. St. Paul Street, Suite 2100, Dallas, Texas 75201.

2. Upon information and belief, Defendant Edwin Bedford is a Texas resident and is doing business as Associated Capital Services, Inc. (“ACS”) and D Moving. Upon information and belief, Mr. Bedford may be served at his last known residence, 801 Sandy Creek, Allen,

Texas 75002. Alternatively, Mr. Bedford may be served at by Certified Mail at P.O. Box 1591, Allen, Texas 75013-0026.

3. Upon information and belief, Defendant Bob Johnson is a Nevada resident and is doing business as D Moving and ACS. Upon information and belief, Mr. Johnson may be served at his last known business address, 101 Convention Center Drive, Suite 700, Las Vegas, Nevada 89109. Alternatively, Mr. Johnson may be served pursuant to Tex. Civ. Prac. & Rem. Code § 17.044(b) by serving duplicate copies of the Complaint and summons upon the Texas Secretary of State in Austin, Texas. The Texas Secretary of State may send a copy of this Complaint to the address listed above and the last known address for Mr. Johnson on file with the Nevada Secretary of State, which is P.O. Box 27740, Las Vegas, Nevada 89126.

4. Upon information and belief, Defendant ACS is a Nevada corporation with its principal place of business at 101 Convention Center Drive, Suite 700, Las Vegas, Nevada 89109 and is doing business as D Moving. Upon information and belief, ACS may be served at its principal place of business. Alternatively, ACS may be served pursuant to Tex. Civ. Prac. & Rem. Code § 17.044(b) by serving duplicate copies of the Complaint and summons upon the Texas Secretary of State in Austin, Texas. The Texas Secretary of State may send a copy of this Complaint to the address listed above and the last known mailing address for ACS on file with the Nevada Secretary of State, which is P.O. Box 27740, Las Vegas, Nevada 89126.

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1338(a) and 15 U.S.C. § 1121, as this action is predicated upon a federal question involving trademarks. This Court also has supplemental jurisdiction over the claims in Counts Five and Six pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

6. Defendants have had continuous and systematic contacts with Texas and this District sufficient for this Court to establish personal jurisdiction over Defendants.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims alleged in this Complaint occurred in this judicial district.


III. FACTUAL BACKGROUND

8. D Magazine is the owner of the publications *D Magazine*, *D Home*, *D Weddings*, and *D CEO* (the “D Publications”), which are distributed throughout Texas and nationally. True and correct copies of recent covers of the D Publications are attached hereto as Exhibit A.

9. D Magazine additionally owns and operates the website located at *www.dmagazine.com* (the “D Website”). True and correct copies of recent screenshots from the D Website are attached hereto as Exhibit B.

10. The D Publications and D Website offer extensive information regarding a wide array of areas of interest relevant to the Dallas/Fort Worth Metroplex and surrounding areas.

11. D Magazine additionally publishes “Best of Big D” lists in which it recognizes the best people and businesses in such areas as real estate, law, medicine, and dining in and around the Dallas/Fort Worth Metroplex. Inclusion on the highly respected “Best of Big D” lists is an excellent marketing tool, and recipients of the accolade often include it in their advertising materials. D Magazine goes to great lengths to ensure that the list reflects people and businesses at the top of their respective fields in the Dallas/Fort Worth Metroplex. True and correct copies of recent screenshots identifying D Magazine’s recent “Best of Big D” lists are attached hereto as Exhibit C.

12. D Magazine, its predecessors, affiliated entities, and/or licensees have used its stylized logo  (the “D Logo”) throughout North Texas since 1976. D Magazine uses the D

Logo is connection with the D Publications and in connection with the D Website to identify, advertise, market, sell, and distribute its products and services. D Magazine has established substantial and significant trademark rights in the D Logo and in the letter D, and both the D Logo and the letter D are uniquely identified with D Magazine, the D Publications, and the D Website.

13. D Magazine owns U.S. Trademark Registration Nos. 2,910,095 and 2,910,096 for the stylized D Logo, which, as shown above, consists of a stylized letter “D” with a colored background--specifically a red background in the case of the former registration. True and correct copies of U.S. Trademark Registration Nos. 2,910,095 and 2,910,096 are attached hereto as Exhibit D.

14. D Magazine additionally owns U.S. Trademark Registration No. 1,089,692 for the mark D MAGAZINE; U.S Trademark Registration No. 3,467,306 for the mark D HOME; U.S. Trademark Registration No. 3,408,681 for the mark D WEDDINGS; U.S. Trademark Registration No. 3,579,570 for the mark D CEO; and U.S. Trademark Registration No. 2,662,553 for the mark BEST OF BIG D. True and correct copies of U.S. Trademark Registration Nos. 1,089,692, 3,467,306, 3,408,681, 3,579,570, and 2,662,553 are attached hereto as Exhibit E.

Defendants’ Unlawful Activities


15. Upon information and belief, Defendants are in the business of providing commercial and residential moving services in and around the Dallas/Fort Worth Metroplex.

16. Upon information and belief, Defendants previously operated under the name Major League Moving, LLC. According to a lawsuit filed on December 19, 2007 in the United States District Court for the Eastern District of Texas styled *Major League Baseball Properties,*

Inc. v. Major League Moving LLC, et al., 4:07-CV-565 (the “MLB Lawsuit”), Defendants Edwin Bedford and ACS unlawfully used trademarks belonging to Major League Baseball Properties, Inc., including the Major League Baseball logo, in connection with moving services, which were marketed through the website located at *www.majorleaguemoving.com*. A true and correct copy of the Original Complaint and Application for Preliminary and Permanent Injunctive Relief in the MLB Lawsuit (excluding Exhibit A due to volume) is attached hereto as Exhibit F.

17. On July 14, 2008, final judgments were entered against Defendants Edwin Bedford and ACS in the MLB Lawsuit permanently enjoining the defendants from using an assortment of marks belonging to Major League Baseball Properties, Inc., including the Major League Baseball logo, and from using the domain name *majorleaguemoving.com*. True and correct copies of the final judgments are attached hereto as Exhibit G.

18. While Defendants appear to have ceased doing business as Major League Moving, they are now targeting the distinctive and well-known marks of D Magazine by doing business as D Moving.

19. In furtherance of their business, Defendants have recently begun using a logo which contains a white letter “D” surrounded by a red, blocked background  (“Defendants’ Infringing Logo”), which is identical or confusingly similar to the D Logo. D Magazine’s use of the D Logo predates Defendants’ use of their confusingly similar logo by more than 30 years.

20. Defendants operate a website located at *www.dmovingservices.com* and display Defendants’ Infringing D Logo, the mark D MOVING, which partially consists Defendants’ Infringing D Logo, and the mark D MOVING DALLAS’ BEST MOVERS “WHEN ONLY THE VERY BEST WILL DO”, which also partially consists of Defendants’ Infringing D Logo. The name D Moving is also displayed with the following slogan in quotations marks: “[w]hen your

peace of mind is worth more than the cost of the move.”

21. Defendants’ website additionally depicts pictures of moving trucks which appear to be painted with the infringing mark D MOVING DALLAS’ BEST MOVERS “WHEN ONLY THE VERY BEST WILL DO”. True and correct copies of printouts from Defendants’ website located at *www.dmovingservices.com* are attached hereto as Exhibit H.

22. The domain name *dmovingservices.com* is registered to Defendant ACS. The address listed for ACS on the WHOIS record, however, is 4553 Glencoe Avenue, Suite 325, Marina Del Ray, California 90292, and the telephone number listed is 213-258-4422. Upon information and belief, the address and telephone number listed are not associated with ACS. A true and correct copy of the WHOIS record for the domain name *dmovingservices.com* is attached hereto as Exhibit I.

23. D Magazine’s use of the federally registered D Logo and the marks D MAGAZINE, D HOME, D WEDDINGS, D CEO, and, BEST OF BIG D predates Defendants’ use of Defendants’ Infringing D Logo, the mark D MOVING, the mark D MOVING DALLAS’ BEST MOVERS “WHEN ONLY THE VERY BEST WILL DO”, and the domain name *dmovingservices.com*.

24. Despite their website claims and slogans, Defendants, both under the name D Moving and under their prior name, Major League Moving, have been the subject of complaints regarding their business practices, their misrepresentations, and the quality of their work. True and correct copies of such complaints are attached hereto as Exhibit J.

25. Defendants have recently obtained U.S. Trademark Registrations for their infringing marks. On June 22, 2010, Defendants improperly obtained U.S. Trademark Registration No. 3,806,386 for the infringing mark D MOVING DALLAS’ BEST MOVERS

“WHEN ONLY THE VERY BEST WILL DO”, which contains Defendants’ Infringing D Logo. On August 31, 2010, Defendants improperly obtained U.S. Trademark Registration No. 3,841,185 for Defendants’ Infringing D Logo. Each of the registrations is held in the name of Defendant ACS d/b/a D Moving. True and correct copies of the improperly obtained trademark registrations are attached hereto as Exhibit K.

26. On or about August 12, 2010, D Magazine’s counsel sent Defendants a cease-and-desist letter informing defendants of their wrongful and willful infringement of D Magazine’s trademark rights and demanding, among other things, that Defendants: (1) take all steps necessary to immediately abandon, surrender, and/or cancel their trademark applications and/registrations in their infringing marks; (2) immediately cease violating D Magazine’s trademark rights; and (3) account to D Magazine for all sales Defendants had generated through their unlawful conduct.

27. Defendants have not complied with D Magazine’s August 12, 2010 cease-and-desist letter and have demonstrated no intention to comply in the future. Defendants have continued to use their infringing marks, as referenced above, both on their website and on the moving trucks depicted on their website.

IV. CAUSES OF ACTION

Count One: Violation of Section 32 of the Lanham Act

28. D Magazine refers to and incorporates by reference the allegations contained in Paragraphs 1 through 27 as though set forth fully herein.

29. D Magazine owns and uses its registered, federal trademarks for the D Magazine Logo and the marks D MAGAZINE, D HOME, D WEDDINGS, D CEO, and BEST OF BIG D, among many others (the “D Magazine Marks”).

30. On information and belief, and as set forth above, Defendants have used and continue to use in commerce reproductions, counterfeits, copies, and/or colorable imitations of the D Magazine Marks in connection with the sale, offering for sale, distribution, or advertisement of goods and/or services, and such use is likely to cause confusion, to cause mistake, and to deceive in violation of 15 U.S.C. § 1114.

31. D Magazine has been damaged, and is likely to continue to be damaged, by Defendants' use of its registered trademarks.

32. D Magazine is entitled to damages under 15 U.S.C. § 1117, including its actual damages, Defendants' profits from the infringement, and the costs of this action pursuant to § 1117(a).

33. D Magazine is also entitled to attorneys' fees, costs and treble damages, as Defendants' conduct was knowing and willful and this case is exceptional under § 1117(a).

Count Two: Violations of Section 43(a) of the Lanham Act

34. D Magazine refers to and incorporates by reference the factual allegations contained in Paragraphs 1 through 33 as though set forth fully herein.

35. On information and belief, Defendants have advertised, marketed, and sold products and services using their infringing marks, including Defendants' Infringing D Logo, the mark D MOVING, and the mark D MOVING DALLAS' BEST MOVERS "WHEN ONLY THE VERY BEST WILL DO", without authorization from D Magazine. Defendants have additionally operated a website accessible at the domain name *dmovingservices.com*, which domain name infringes D Magazine's trademark rights. Defendants' infringing marks and the Infringing Domain Name are identical or confusingly similar to the D Magazine Marks.

36. Defendants have, in connection with their goods and services, used in commerce a

word, term, name, symbol, or device, a combination thereof, and/or a false designation of origin, false or misleading description of fact, and/or false or misleading representation of fact which is likely to cause confusion, and to cause mistake, and to deceive as to the affiliation, connection, and association of Defendants with D Magazine, D Magazine's products and services, D Magazine's "Best of Big D" lists, D Magazine's trademarks, and as to the origin, sponsorship, or approval of Defendants' goods and services by D Magazine in violation of 15 U.S.C. § 1125(a)(1)(A).

37. On information and belief, in connection with their sale of products and services through use of their infringing marks, Defendants have used marks that are identical or confusingly similar to the D Magazine Marks, as well as numerous other D Magazine trademarks, in commercial advertising or promotion, and thus have misrepresented the nature, characteristics, qualities, and/or geographic origin of Defendants' products in violation of 15 U.S.C. § 1125(a)(1)(B).

38. D Magazine has no control over the nature or quality of the products and services sold and offered for sale by Defendants, and Defendants advertise their products and services as though endorsed by D Magazine and selected to be on one of D Magazine's "Best of Big D" lists, even including alleged quotations with the implication that such quotations were taken from D Magazine. Any failure, neglect, or default of Defendants in advertising, marketing, or selling their products and services to consumers will reflect adversely upon D Magazine as the believed source of origin and/or approval of the products and services.

39. Such adverse reflection will severely frustrate efforts by D Magazine to continue to protect its outstanding reputation for high quality with respect to its online and print publications, as well as with respect to its selection of persons and businesses honored on its

“Best of Big D” lists.

40. D Magazine has suffered and will continue to suffer substantial damage to its business, reputation, and goodwill, and will continue to suffer the loss of sales and profits that D Magazine would have made but for Defendants’ acts.

41. Defendants’ conduct constitutes an “exceptional” case under 15 U.S.C. § 1117(a), and D Magazine is entitled to attorneys’ fees and other costs the Court considers just and equitable.

Count Three: Violations of the Anticybersquatting Consumer Protection Act (“ACPA”)

42. D Magazine refers to and incorporates by reference the allegations contained in Paragraphs 1 through 41 as though set forth fully herein.

43. Defendants have registered, trafficked in, and/or used the domain name *dmovingservices.com* with a bad faith intent to profit from D Magazine’s trademark rights in violation of 15 U.S.C. § 1125(d). Defendants’ infringing domain name, *dmovingservices.com* is identical and confusingly similar to the marks D MAGAZINE (which is used in the domain name *dmagazine.com*), D HOME, D WEDDINGS, and D CEO, among others, which are owned by D Magazine and used to market D Magazine’ products and services. Defendants’ bad faith intent to profit from D Magazine’s trademarks is demonstrated by numerous factors, including the following:

- (a) Defendants intend to divert consumers from the online location of D Magazine to a site accessible under the domain name *dmovingservices.com* that could harm the goodwill represented by D Magazine’s marks.
- (b) Defendants intend to divert consumers from D Magazine’s website either

for commercial gain or with the intent to tarnish or disparage D Magazine's trademarks by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website accessible by the domain name *dmovingservices.com*.

- (c) Defendants provided materially false and misleading contact information when applying for the registration of the domain name *dmovingservices.com*.
- (d) Defendants have registered or acquired at least one domain name that the Defendants know is identical or confusingly similar to D Magazine's trademarks. Defendants also acquired and used the domain name *majorleaguemoving.com*, which Defendants were ultimately permanently enjoined from using at the conclusion of a federal trademark infringement lawsuit.
- (e) D Magazine's trademarks were distinctive at the time of Defendants' registration of the domain name *dmovingservices.com*

44. Pursuant to 15 U.S.C. § 1125(d)(1)(C), the Court should order the transfer of the registration of the domain name *dmovingservices.com* to D Magazine. Alternatively, pursuant to 15 U.S.C. § 1125(d)(1)(C), the Court should order the forfeiture or cancellation of the *dmovingservices.com* domain name registration.

45. Pursuant to 15 U.S.C. §§ 1117(a) and 1125(d)(1), D Magazine is entitled to damages and Defendants' profits with respect to the registration and maintenance of the domain name *dmovingservices.com*.

46. As an alternative to its actual damages, D Magazine is entitled to recover statutory

damages in an amount up to \$100,000 and not less than \$1,000 due to Defendants' registration and use of the domain name *dmovingservices.com*.

Count Four: Cancellation of Federal Trademark Registrations—15 U.S.C. § 1119

47. D Magazine refers to and incorporates by reference the allegations contained in paragraphs 1 through 46 as set forth fully herein.

48. Defendant ACS d/b/a D Moving improperly applied for and obtained U.S. Trademark Registration No. 3,841,185 for Defendants' Infringing D Logo and U.S. Trademark Registration No. 3,806,386 for the infringing mark D MOVING DALLAS' BEST MOVERS "WHEN ONLY THE VERY BEST WILL DO" (collectively "ACS's Registered Marks"). Defendant ACS filed its applications to register these marks long after D Magazine began using the D Magazine Marks in North Texas to advertise, markets, sell, and distribute its products in North Texas and throughout the United States.

49. The registrations for ACS's Registered Marks were granted less than five years ago. ACS's registration of the aforementioned marks has caused and, if allowed to continue, will cause damage to D Magazine. Neither ACS nor any of the Defendants named herein were entitled to obtain ACS's Trademark Registrations due to the marks' close resemblance to D Magazine's Marks, which were used previously in the United States. The use of ACS's Registered Marks is likely to cause confusion, mistake, and deception, and to falsely suggest to the consuming public that there is a connection between D Magazine and ACS.

50. Accordingly, D Magazine is entitled to an order from this Court canceling U.S. Trademark Registration No. 3,841,185 and U.S. Trademark Registration No. 3,806,386 and declaring that Defendants are not entitled to obtain state or federal trademark registrations for Defendants' Infringing D Logo, D MOVING DALLAS' BEST MOVERS "WHEN ONLY THE

VERY BEST WILL DO, or any variation thereof which is identical or confusingly similar to the D Magazine Marks or any trademarks owned by D Magazine. With respect to these orders, D Magazine requests that a certification be sent to the Director of the United States Patent and Trademark Office (“USPTO”) instructing the Director to make appropriate entries on the USPTO’s records.

Count Five: Unfair Competition/Misappropriation

51. D Magazine refers to and incorporates by reference the allegations contained in paragraphs 1 through 50 as though set forth fully herein.

52. D Magazine developed the D Magazine Marks through extensive time, skill, labor and money. In connection with the advertisement, marketing, and sale of their products, Defendants have exploited the reputation and goodwill associated with the D Magazine Marks in competition with D Magazine to gain a competitive advantage.

53. Defendants gained a particular advantage because they were not burdened with the expenses incurred by D Magazine in developing the goodwill and reputation of the D Magazine Marks.

54. By these actions, Defendants have gained a financial benefit for themselves and have caused financial loss and damages to D Magazine.

55. Such actions by Defendants have caused and will continue to cause D Magazine irreparable injury for which D Magazine has no adequate remedy at law.

Count Six: Injury to Business Reputation or Trademark/Dilution Under Texas State Law

56. D Magazine refers to and incorporates by reference the allegations contained in Paragraphs 1 through 55 as though set forth fully herein.

57. Defendants’ use of D Magazine’s trademarks (or confusingly similar words or

phrases) is likely to injure D Magazine's business reputation and to dilute the distinctive quality of D Magazine's trademarks and the products and services associated with D Magazine's trademarks in violation of TEX. BUS. & COM. CODE § 16.29.

58. By these actions, Defendants have gained financial benefit for themselves and have caused financial loss and damages to D Magazine.

59. Such actions by Defendants have caused and will continue to cause D Magazine irreparable injury for which D Magazine has no adequate remedy at law.

V. REQUEST FOR INJUNCTIVE RELIEF

60. D Magazine refers to and incorporates by reference the allegations contained in Paragraphs 1 through 59 as though set forth fully herein.

61. Defendants have violated 15 U.S.C. §§ 1114(1)(a), 1125(a), and 1125(d), and TEX. BUS. & COM. CODE § 16.29, and D Magazine is therefore entitled to injunctive relief under 15 U.S.C. § 1116 and TEX. BUS. & COM. CODE § 16.29.

62. D Magazine requests that the Court issue preliminary and permanent injunctive relief enjoining Defendants and their officers, directors, agents, employees, successors, assigns and attorneys, and all other persons or entities in active concert or participation with Defendants who receive notice of the injunction by personal service or otherwise, from doing, aiding, causing or abetting the following:

- (a) registering, trafficking, using, or maintaining the registrations of the domain name *dmovingservices.com* or any other domain name that is identical or confusingly similar to any of D Magazine's trademarks;
- (b) engaging in any acts or activities directly or indirectly calculated to

trade upon D Magazine's trademarks, names, logos, reputation or goodwill, including any further use of Defendants' Infringing D Logo, the mark D MOVING, and the mark D MOVING DALLAS' BEST MOVERS "WHEN ONLY THE VERY BEST WILL DO", and including any business operations through any website connected to the domain name *dmovingservices.com* or any domain names that are identical or confusingly similar to D Magazine's trademarks;

- (c) directly or indirectly using in commerce a reproduction, counterfeit, copy, or colorable imitation of D Magazine's registered marks in connection with the sale, offering for sale, distribution, or advertisement of any goods and/or services without authorization from D Magazine, and including any business operations through any website connected to the domain name *dmovingservices.com* or any domain name that is identical or confusingly similar to D Magazine's trademarks;
- (d) directly or indirectly using any false designation of origin, false or misleading description of fact, or false or misleading representation of fact in connection with the sale of Defendants' products or services, including any representation that Defendants are affiliated with D Magazine or have appeared on a "Best of Big D" list, and including any business operations through any website connected to the domain name *dmovingservices.com* or any

domain name that is identical or confusingly similar to D Magazine's trademarks;

- (e) passing off, inducing or enabling others to sell or pass off, as products or services produced by or for or distributed with authorization of D Magazine, any product or service that is not the product or service of D Magazine, is not produced under the control or supervision of D Magazine, is not approved by D Magazine, or is not distributed with D Magazine's express authorization, including any business operations through any website connected to the domain name *dmovingservices.com* or any domain name that is identical or confusingly similar to D Magazine's trademarks;
- (f) committing further acts that are likely to injure D Magazine's business reputation or to dilute the distinctive quality of D Magazine's trademarks in violation of TEX. BUS. & COM. CODE § 16.29, including any business operations through any website connected to the domain name *dmovingservices.com* or domain names that are identical or confusingly similar to D Magazine's trademarks;
- (g) otherwise engaging in competition unfairly; and
- (h) registering or attempting to register any trademark at the state or federal level which is identical or confusingly similar to any of D Magazine's trademarks, including Defendants' Infringing D Logo, the mark D

MOVING, and the mark D MOVING DALLAS' BEST MOVERS
"WHEN ONLY THE VERY BEST WILL DO".

63. D Magazine will suffer immediate and irreparable damage, injury and harm for which there is no adequate remedy at law if Defendants are not immediately and permanently enjoined from the conduct listed above.

64. Public policy favors the protection of trademark rights and the prevention of unfair competition and damage to business reputation, and any injunctive relief granted herein will therefore be in accordance with public policy.

65. The potential damage to Plaintiff if the injunctive relief requested herein is not granted far outweighs any harm that Defendants will suffer as a result of the injunctive relief requested. Immediate and permanent injunctive relief is therefore appropriate.

VI. JURY DEMAND

66. D Magazine hereby demands trial by jury of all claims alleged in this Complaint.

VII. PRAYER

WHEREFORE, Plaintiff D Magazine Partners, L.P. prays that the Court grant the following relief:

1. Order the transfer of the registration of the domain name *dmovingservices.com* to D Magazine pursuant to 15 U.S.C. § 1125(d)(1)(C). Alternatively, pursuant to 15 U.S.C. § 1125(d)(1)(C), D Magazine requests that the Court order the forfeiture or cancellation of the *dmovingservices.com* domain name registration.

2. Order the cancellation of Defendant ACS's U.S. Trademark Registration No. 3,841,185 for Defendants' Infringing D Logo and U.S. Trademark Registration No. 3,806,386

for the mark D MOVING DALLAS' BEST MOVERS "WHEN ONLY THE VERY BEST WILL DO" and declare that Defendants are not entitled to registration of any colorable imitation of D Magazine's trademarks, including the D Logo and the marks D MAGAZINE, D HOME, D WEDDINGS, D CEO, and BEST OF BIG D. D Magazine additionally requests that certification of all such orders be made to the Director of the USPTO instructing the Director to make the appropriate entries upon the USPTO's records.

3. Order that Defendants and their officers, directors, agents, employees, successors, assigns and attorneys, and all persons and entities in active concert or participation who receive notice of the injunction by personal services or otherwise, be enjoined and restrained preliminarily during the pendency of this action, and then permanently, from doing, aiding, causing, or abetting any of the following:

- (a) registering, trafficking, using, or maintaining the registrations of the domain name *dmovingservices.com* or any other domain name that is identical or confusingly similar to any of D Magazine's trademarks;
- (b) engaging in any acts or activities directly or indirectly calculated to trade upon D Magazine's trademarks, names, logos, reputation or goodwill, including any further use of Defendants' Infringing D Logo, the mark D MOVING, and the mark D MOVING DALLAS' BEST MOVERS "WHEN ONLY THE VERY BEST WILL DO", and including any business operations through any website connected to the domain name *dmovingservices.com* or any domain names that are identical or confusingly similar to D

Magazine's trademarks;

- (c) directly or indirectly using in commerce a reproduction, counterfeit, copy, or colorable imitation of D Magazine's registered marks in connection with the sale, offering for sale, distribution, or advertisement of any goods and/or services without authorization from D Magazine, and including any business operations through any website connected to the domain name *dmovingservices.com* or any domain name that is identical or confusingly similar to D Magazine's trademarks;
- (d) directly or indirectly using any false designation of origin, false or misleading description of fact, or false or misleading representation of fact in connection with the sale of Defendants' products or services, including any representation that Defendants are affiliated with D Magazine or have appeared on a "Best of Big D" list, and including any business operations through any website connected to the domain name *dmovingservices.com* or any domain name that is identical or confusingly similar to D Magazine's trademarks;
- (e) passing off, inducing or enabling others to sell or pass off, as products or services produced by or for or distributed with authorization of D Magazine, any product or service that is not the product or service of D Magazine, is not produced under the control or supervision of D Magazine, is not approved by D

Magazine, or is not distributed with D Magazine's express authorization, including any business operations through any website connected to the domain name *dmovingservices.com* or any domain name that is identical or confusingly similar to D Magazine's trademarks;

- (f) committing further acts that are likely to injure D Magazine's business reputation or to dilute the distinctive quality of D Magazine's trademarks in violation of TEX. BUS. & COM. CODE § 16.29, including any business operations through any website connected to the domain name *dmovingservices.com* or domain names that are identical or confusingly similar to D Magazine's trademarks;
- (g) otherwise engaging in competition unfairly; and
- (h) registering or attempting to register any trademark at the state or federal level which is identical or confusingly similar to any of D Magazine's trademarks, including Defendants' Infringing D Logo, the mark D MOVING, and the mark D MOVING DALLAS' BEST MOVERS "WHEN ONLY THE VERY BEST WILL DO".

4. Order Defendants to file with the Court and serve upon counsel for D Magazine within thirty (30) days after the entry of the permanent injunction prayed for in this Complaint, a written report, sworn to under oath, setting forth in detail the manner and form in which the Defendants have complied with the injunction;

5. Order Defendants to account for and pay to D Magazine all profits derived by

reason of Defendants' acts alleged in this Complaint;

6. Order Defendants to pay D Magazine all actual damages it has sustained as a result of Defendants' actions including, without limitation, damage to its business, reputation and goodwill, and the loss of sales and profits that it would have made but for Defendants' acts, or in the alternative, statutory damages under 15 U.S.C. § 1117(d) of \$100,000 per domain name found to be in violation of 15 U.S.C. § 1125(d);

7. Find that this is an "exceptional" case pursuant to 15 U.S.C. § 1117;

8. Award D Magazine treble damages pursuant to 15 U.S.C. § 1117;

9. Award D Magazine its costs of suit, including reasonable and necessary attorneys' fees and expenses for the prosecution and appeal, if any, of this matter;

10. Award D Magazine pre-judgment and post-judgment interest at the highest legal rate on all sums awarded in the Court's judgment; and

11. Award D Magazine such other and further relief to which it may be entitled at law or in equity.

Respectfully submitted,

/s/ Jason P. Bloom

David H. Harper
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Jeffrey M. Becker
State Bar No. 02015730
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**ATTORNEYS FOR PLAINTIFF
D MAGAZINE PARTNERS, L.P.**