

FILED

CAUSE NO. CC-10-06869-E

2010 OCT -4 PM 2:45

CAMERON COLLECTION, INC. )

IN THE COUNTY COURT

JOHN F. MARROQUIN  
COUNTY CLERK  
DALLAS COUNTY

Plaintiff )

V. )

AT LAW NO. 5

SCANNED

MARROQUIN CUSTOM UPHOLSTERY )  
& JESUS MARROQUIN )

Defendants )

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION  
AND APPLICATION FOR INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW CAMERON COLLECTION, INC., Plaintiff, and files this Plaintiff's Original Petition and Application for Injunctive Relief complaining of Marroquin Custom Upholstery and Jesus Marroquin, Defendants, and for cause of action would respectfully show the Court as follows:

I.

DISCOVERY CONTROL PLAN LEVEL

Plaintiff intends that discovery be conducted under Discovery Level 2.

II.

PARTIES AND SERVICE

A. Plaintiff, Cameron Collection, Inc., is a Texas corporation with its principal place of business in Dallas County, Texas.

B. Defendant, Marroquin Custom Upholstery, has offices in Dallas County, Texas, and service of process may be effected upon Defendant personally by serving Jesus Marroquin at 4835 Reading Street, Dallas, Texas 75247.

C. Defendant, Jesus Marroquin, is an individual residing and working in Dallas County, Texas and service of process may be effected upon Defendant personally by serving Jesus Marroquin at 4835 Reading Street, Dallas, Texas 75247

III.

JURISDICTION AND VENUE

A. The subject matter in controversy is within the jurisdictional limits of this court.

B. This court has jurisdiction over Defendants, because the events giving rise to this complaint occurred in Dallas County, Texas.

C. Venue in DALLAS County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

IV.

FACTS

A. For many years, Plaintiff has placed various orders with Defendants for Defendants to upholster or otherwise manufacture goods based on Plaintiff's designs. Plaintiff forwarded to Defendants fabrics and its designs in order to upholster and/or manufacture those goods.

B. Plaintiff has now discovered that Defendants, through their website, are using photographs and/or likenesses of Plaintiff's designs without permission. Plaintiff's photographs, designs and depictions are proprietary, and Defendants are unlawfully using such proprietary information of Plaintiff to further Defendants' business, and are profiting from the unlawful use.

C. Plaintiff has also discovered that Defendants have appropriated and are using Plaintiff's mailing list to promote their business. Plaintiff's mailing list is proprietary, earned through years in the design business, and Defendants are unlawfully using such information and profiting from the unlawful use.

D. The mailings Defendants are sending out to promote its products promote Defendants' website which, as set out above, is using Plaintiff's proprietary photographs, design and depictions.

E. Defendants unlawful use of Plaintiff's designs, photographs, depictions and unlawful use of Plaintiff's mailing list has damaged, and continues to damage Plaintiff, its business and its brand.

F. All conditions precedent to bringing this action have been performed.

V.

CAUSE OF ACTION FOR CONVERSION

A. Plaintiff would show the Court that it owns, possessed and has the right to immediate possession of the proprietary property at issue, namely the designs, photographs and depictions provided to Defendants, as well as Plaintiff's proprietary mailing list, that the property is personal property belonging to Plaintiff Cameron Collection, Inc., and the Defendants are wrongfully using Plaintiff's proprietary property, and are exercising dominion and control over the property.

B. Plaintiff will further show the Court that it has suffered injury as a direct and proximate result of Defendants' actions, as more fully set forth below.

VI.

THEFT LIABILITY ACT

A. Plaintiff would show that Plaintiff had a possessory right to the property namely the designs, photographs and depictions provided to Defendants, as well as Plaintiff's proprietary mailing list as all those items were the company's personal, confidential and proprietary property. Plaintiff would further show that Defendants unlawfully appropriated the property by keeping it without the Plaintiff's effective consent, using the property to further Defendants' own business, and appropriated the property with the intent to deprive the Plaintiff of the property.

B. Plaintiff will further show the Court that it has suffered injury as a direct and proximate result of Defendants' actions, as more fully set forth below.

VII.

VIOLATION OF TITLE 17 OF THE US CODES

A. Plaintiff would show the Court that Defendants have profited from the sale of merchandise designed by Plaintiff, and such profits should be disgorged from Defendants to partially compensate Plaintiff for its damages. Furthermore, Defendants' unauthorized use of Plaintiff's photographs constitutes copyright infringement for which Plaintiff should be entitled to damages under Title 17 of the United States Codes.

B. These damages to Plaintiff and profits to Defendants are compounded by Defendants' actions in using Plaintiff's confidential customer mailing list for Defendants' financial gain.

VIII.

FRAUD

A. Plaintiff would show Defendants have made and are making representations to the public regarding Defendants' ownership of the designs, photographs and depictions of Plaintiff, and those representations were and are material. Plaintiff would also show those representations were false as Defendants made them with knowledge of their falsity, with knowledge Defendants did not own the property in questions, the property was not Defendants' photographs, design and depictions, and/or were made recklessly, without knowledge of their truth. Defendants made these fraudulent representations with the intent the public act on them to order from Defendants, and the public did justifiably rely on the representations, allowing Defendants to profit from Plaintiff's hard work.

B. As a direct and proximate result, Plaintiff has been injured and continues to be injured and damaged.

IX.

DAMAGES

A. Plaintiff would show that as a direct and proximate result of the acts of the Defendants, as alleged above, Plaintiff has sustained special damage by the loss of use of the property from the time of the conversion. Plaintiff has lost at least \$100,000.00 in business due to Defendant's actions.

B. Plaintiff will further be damaged in excess of \$250,000 in lost profits and damage to its reputation and brand should Plaintiff's proprietary mailing list, and all copies and

disks, not be returned to Plaintiff and should Defendants continue to display Plaintiff's photographs, designs and depictions on Defendants' website.

C. Plaintiff therefore seeks recovery of its damages from Defendants, jointly and severally.

X.

ATTORNEYS' FEES

A. Due to the conversion and theft by Defendants, as described above, Plaintiff has incurred necessary attorneys' fees to investigate and bring this action. Pursuant to §134.005(b) of the Texas Civil Practice and Remedies code, Plaintiff seeks recovery of all reasonable and necessary attorneys' fees associated with this action from Defendants, jointly and severally.

XI.

EXEMPLARY DAMAGES

A. Defendants' conversion, theft and unlawful use of the property, as alleged above, was aggravated by that kind of willfulness, wantonness, and malice for which the law allows the imposition of exemplary damages. The Defendants acted, and continue to act, with an evil intent to harm Plaintiff and otherwise profit from Defendants' actions. Defendants' conversion and unlawful use of the property was intentional, willful, wanton and without justification or excuse, and was done with gross indifference to the rights of Plaintiff. More specifically, Plaintiff will show that Defendants purposely went about a course of conduct to steal Plaintiff's property, used Plaintiff's property and profit from such use.

B. In this connection, Plaintiff will show that as a result of Defendants' conduct, Plaintiff has suffered losses of time and other expenses, including attorneys' fees, incurred in

the investigation and prosecution of this action. Accordingly, Plaintiff asks that exemplary damages be awarded against the Defendants, jointly and severally.

## XII.

### INJUNCTIVE RELIEF

A. Defendants' continued actions of using Plaintiff's property on Defendants' website, the use of Plaintiff's proprietary designs, photographs and depictions, the use of Plaintiff's proprietary mailing list and failing to return the all copies of that list will result in irreparable injury to Plaintiff for which Plaintiff has no remedy at law. Accordingly, Plaintiff seeks a temporary restraining order, temporary injunction, and permanent injunction enjoining Defendants, their agents, employees and all those acting in concert with Defendants from using Plaintiff's designs, photographs, and depictions on its website and seeking the Court order Defendants and all parties Defendants provided Plaintiff's property, drawings, schematics and blue prints, and including all parties acting in concert with Defendants, to return all versions and copies of Plaintiff's mailing list in its possession and not use that mailing list to promote Defendants' business and website.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer, and upon final trial, Plaintiff recover from Defendants, jointly and severally, actual damages as detailed above, which are within the jurisdictional limits of this Court, exemplary damages, court costs, attorneys' fees, and such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

LAW OFFICES OF DAVID BELL, P.C.  
8350 MEADOW ROAD, SUITE 186  
DALLAS, TEXAS 75231  
(214)368-3191  
(214)987-3169 FAX

BY: 

DAVID BELL  
State Bar No. 02075500

ATTORNEY FOR PLAINTIFF



THE STATE OF TEXAS )  
 )  
COUNTY OF DALLAS )

AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared George

Cameron Nash, who, being by me duly sworn, deposed as follows:

1. "My name is George Cameron Nash. I am over twenty-one (21) years of age, of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated.
2. "I am the President of Plaintiff, Cameron Collection, Inc., and therefore have personal and complete knowledge of the facts stated herein and they are all true and correct.
3. "I have personally viewed the website belonging to Defendants, Marroquin Custom Upholstery and Jesus Marroquin. The website contains photographs and other depictions of designs belonging to Cameron Collection, Inc., used without my permission and without the permission of Plaintiff, to promote Defendants' business. This unlawful use of Cameron Collection's designs not only creates confusion in the market place, but is damaging our brand. Further, I have reason to believe, and do believe, Defendants are profiting from the use of our designs, without permission.
4. "Cameron Collection, Inc. has invested a great amount of time and money to create its brand, designs and products, and has a vested right in them. These items are proprietary, belonging solely to Cameron Collection, Inc. and have been used by Defendants without permission of any kind and without compensation to Cameron Collection, Inc.
5. "I attach true and correct copies of pages on Defendants' public website depicting Cameron Collection, Inc.'s designs as Exhibit A hereto. The designs belonging to Cameron Collection, Inc. are MAXINE, PARK AVENUE SOFA PARKER CHAIR and CAMERON CHAISE.
6. "I have further learned that Defendants, Marroquin Custom Upholstery and Jesus Marroquin, have gone even further. Defendants are using the mailing list belonging to Cameron Collection, Inc., a mailing list built over years of hard work. I know this for a fact because Cameron Collection, Inc.'s mailing list contains a name of a client that does not exist. We have used the name Lorena Tejada on our list and that name completely made up by us. Lorena Tejada has never ordered anything from us or anyone else and the address used is that of one of our employees. Despite these facts, "Lorena Tejada" received a postcard from Defendants promoting their

business and encouraging prospective customers to view Defendants' website, a website containing designs and photographs belonging to Cameron Collection, Inc.

- 7. "I attach hereto a true and correct copy of the front and back of the postcard received by the fictitious "Lorena Tejada" as Exhibit B hereto.
- 8. "Due to these illegal and outrageous acts committed by the Defendants in this case, I have reason to believe, and do believe, the Defendants have caused confusion in the marketplace by using Cameron Collection, Inc.'s proprietary property and using Cameron Collection, Inc.'s mailing list. I have reason to believe, and do believe, Defendants have damaged, and are continuing to damage our brand, have used our proprietary designs to promote Defendants' business, and Defendants have profited from same. I also know for a fact Defendants have appropriated Cameron Collection Inc.'s mailing list and using same to promote their business and their website, a website that contains Cameron Collection, Inc's designs. I have reason to believe and do believe Defendants will continue to do so, even during the pendency of this lawsuit, unless restrained from continuing their unlawful actions.
- 9. "Cameron Collection, Inc. has no other adequate remedy at law to stop Defendants from continuing to use Cameron Collection, Inc.'s stolen proprietary photographs, designs, depictions and mailing list and prevent further damage to its brand and prevent Defendants from profiting from Cameron Collection, Inc.'s hard work.
- 10. "Further, I have read the foregoing Plaintiff's Original Petition and Application for Injunctive relief and all facts and matters contained therein are true, correct and within my personal knowledge.
- 11. "Further, Affiant saith not."

*George Cameron Nash*  
 GEORGE CAMERON NASH, Affiant

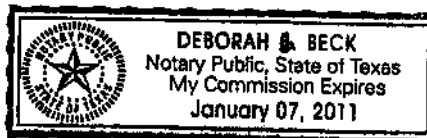
SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this the

29 day of September, 2010.

*Deborah Beck*  
 Notary Public In and For  
 The State of Texas

My Commission Expires:

01/07/2011



**CIVIL CASE INFORMATION SHEET**

CAUSE NUMBER (FOR CLERK USE ONLY): 10-10-00869-E COURT (FOR CLERK USE ONLY): 5

STYLED \_\_\_\_\_

Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson

2010 OCT -1 PM 2:45

This civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or implementation, and it is not admissible at trial.

Name: <u>David Bell</u> Address: <u>8850 Meadow Rd Ste 186 Dallas, TX 75231</u> City/State/Zip: Signature: _____	Email: <u>DBELLO@Davidbell.com</u> Telephone: <u>214-368-3191</u> Fax: <u>214-987-3167</u> State Bar No: <u>02075500</u>	Plaintiff(s)/Petitioner(s): <u>Cameron</u> <u>Collection, Inc</u> Defendant(s)/Respondent(s): <u>Mary Ann Custom Upholstery +</u> <u>Jesus Matagosa</u>	Attorney for Plaintiff/Petitioner Pro Se Plaintiff/Petitioner Title IV-D Agency Other: <u>paralegal</u>
Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____			[Attach additional page as necessary to list all parties]

**Civil** **Family Law**

<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <u>conversion/ theft</u>	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children	<input type="checkbox"/> Enforcement Modification—Custody <input type="checkbox"/> Modification—Other <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order
<input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure Franchise Insurance Landlord/Tenant Non-Competition Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Exjunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____

<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetrate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____
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**Probate & Mental Health**

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____
<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover		