

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

SOURCE, INC.,

Plaintiff,

v.

OFFICE FURNITURE SOURCE, LLC,

Defendants.

§
§
§
§
§
§
§
§
§

Civil Case No. _____

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, Source, Inc. files its Original Complaint, by and through its attorneys, against Office Furniture Source, LLC, and alleges that:

I.
PARTIES

1. Plaintiff, Source, Inc. is a corporation organized under the laws of the State of Texas, having its principal place of business at 14060 Proton Road, Dallas, Texas 75244, and is sometimes hereinafter referred to as "Source."

2. Upon information and belief, Defendant Office Furniture Source, LLC is a limited liability company organized under the laws of the State of Texas, having offices at 4545 Spring Valley Road, Dallas, Texas 75244. Summons may be delivered to its Registered Agent, B. Bruce Johnson, 12720 Hillcrest Road, Suite 280, Dallas, Texas 75230. Defendant Office Furniture Source, LLC is sometimes hereinafter referred to as "OFS."

II.
JURISDICTION AND VENUE

3. This is an action for Federal Unfair Competition and Federal Dilution arising under the Trademark Act of 1946, as amended ("the Lanham Act"), 15 U.S.C. § 1051, *et seq.*

4. This Court has jurisdiction pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a). This Court further or alternatively has jurisdiction over the unfair competition claims pursuant to 28 U.S.C. § 1338(b). This Court has jurisdiction over the State law claims pursuant to its supplemental jurisdiction under 28 U.S.C. § 1367(a).

5. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391.

III. PLAINTIFF SOURCE'S RIGHTS

6. Since at least as early as 1971, Plaintiff Source was originally engaged, *inter alia*, in the business of selling secondary market (used/reconditioned) and new telecommunications equipment such as telephone sets, telephone parts, switching equipment and private branch exchanges as well as providing telecommunications related services, most notably, including the installation, repair, reconditioning, refurbishment and maintenance of telephone parts and equipment, the resale and rental of telephone parts, equipment and systems, and consultation services in the evaluation, purchase and rental of primary and secondary market telephone equipment and systems. Over the 40 plus years, Plaintiff Source's business has morphed from the telecommunication interconnect business to that of voice, data and related IP interconnect products, which includes the maintenance, consulting, implementation and project management of new hardware and software sales, and related asset management and maintenance services (collectively, "Source's goods and services"), all of which have long been associated with Plaintiff Source's mark "SOURCE."

7. On or about February 18, 1971, Plaintiff Source was incorporated in the State of Texas and is known by its trade name "SOURCE."

8. Since its inception in 1971, Plaintiff Source has grown and developed Plaintiff Source's goods and services into a nationwide market and has become known and recognized in

the industry, having gained national prominence with its “SOURCE” trade name and mark due to its high visibility, top quality goods and services that it provides to the consuming public.

9. Plaintiff Source has received much notoriety in the telecommunications industry for the high quality “SOURCE” telecommunications equipment and services provided by Plaintiff Source. Source has developed a fine reputation within the industry for its equipment and services. Plaintiff Source has advertised extensively in nationally distributed magazines, attended trade shows, has been a featured participant at many industry meetings, been the subject of extensive commentary in industry journals and has an active website at www.source.com since prior to 1997. Selected pages of Plaintiff Source’s current website are shown in the attached Pleading Exhibit “A”. During the 5 year period of 2007 - 2011, Plaintiff Source has expended greater than \$750,000 in its various trade show, advertising and marketing activities. Source has enjoyed much marketplace success in providing its goods and services under Source’s “SOURCE” mark.

10. Plaintiff Source is the owner of all right, title and interest in and to U.S. Service Mark Registration No. 1,539,500 (hereinafter “the ‘500 Registration”) for “SOURCE,” registered May 16, 1989, a true and accurate copy of which is attached hereto as Pleading Exhibit “B.” The ‘500 Registration is owned by Plaintiff Source and such registration is valid, subsisting and incontestable.

11. Plaintiff Source is the owner of all right, title and interest in and to U.S. Trademark Registration No. 1,582,363 (hereinafter “the ‘363 Registration”) for “SOURCE,” as registered February 13, 1990, a true and accurate copy of which is attached hereto as Pleading Exhibit “C.” The ‘363 Registration is owned by Plaintiff Source and such registration is valid, subsisting and incontestable.

12. On or about March 1989, Plaintiff Source first occupied, and has continuously to date occupied its main headquarters premises located at the corner of Spring Valley Road and Proton in North Dallas, Texas. This multistory building has approximately 90,000 square feet and has an imposing exterior presence and prominent exterior “SOURCE” signage, as shown in the pictures of Pleading Exhibit “D”.

13. On or about July 2000, Plaintiff Source expanded to, and has continuously occupied its warehouse/maintenance facility located at the southwest corner of Spring Valley Road and Welch. Plaintiff Source currently occupies approximately 116,000 square feet at this location. Plaintiff Source’s “SOURCE” signage is prominently displayed as shown in Pleading Exhibit “E”.

14. The location of its main headquarters and its warehouse/manufacturing facility are detailed on the map attached hereto as Pleading Exhibit “F”.

IV. DEFENDANT OFS’S ACTIVITIES

15. Upon information and belief, Defendant OFS’s predecessor was a company named Office Furniture Source, Inc., a Texas corporation that was formed on August 31, 1989.

16. Upon information and belief, Office Furniture Source, Inc. was dissolved on or about September 20, 2004. Upon information and belief, the principals involved with Office Furniture Source, Inc. were Paul Ribble, President and Terri Ribble, as Secretary/Treasurer.

17. Upon information and belief, Defendant OFS was formed on or about March 3, 2009 with Paul Ribble listed as its Manager.

18. Upon information and belief, Defendant OFS was originally located and officed at 5009 Steinbeck, Carrollton, Texas 75010.

19. On or about November 9, 2012, Defendant OFS moved its business operations from 5009 Steinbeck, Carrollton, Texas to 4545 Spring Valley, Dallas, Texas 75244, which is at the northwest corner of Spring Valley and Welch. See Pleading Exhibit “F”.

20. The move of Defendant OFS is chronicled on its website, www.officefurnituresource.biz, as shown on the attached selected pages attached hereto as Pleading Exhibit “G”.

21. Exterior signage of Defendant OFS’s location at 4545 Spring Valley, Dallas, Texas is reflected in the photographs attached hereto as Pleading Exhibit “H”.

22. As reflected on its website, the interior signage mimics the signage on the exterior of Defendant OFS’s building; that is, the signage shows “Office Furniture” in one weight and font lettering followed by a slash with the word “SOURCE” in a different weight, font, lettering and coloring as reflected in Pleading Exhibits “G” and “H”, and shown here below:

Office Furniture | Source

23. The location of Defendant OFS’s business enterprise is immediately across the street from Plaintiff Source’s warehousing facility, which has Plaintiff Source’s signage prominently displayed at the corner of Welch and Spring Valley as reflected in Pleading Exhibit “I”. Furthermore, the 4545 Spring Valley address of Defendant OFS is only two blocks away from Plaintiff Source’s main facility at Spring Valley and Proton.

24. Upon information and belief, as reflected in its website of Pleading Exhibit “G”, Defendant OFS is in the business of promoting, marketing and selling used and new office furnishings.

25. Upon information and belief, as a result of Defendant OFS’s marketing and sales efforts in Dallas County, in the Northern District of Texas, and elsewhere in association with the

“Office Furniture/SOURCE” mark, Defendant OFS has misappropriated Plaintiff Source’s inherently distinctive, arbitrary mark “SOURCE” by adopting a confusingly similar designation for its goods and services.

26. Upon information and belief, Defendant OFS has deliberately chosen its new location in direct proximity to Plaintiff Source having adopted its “Office Furniture/SOURCE” mark in such a fashion so as to cause mistake and deceive the public in that Defendant OFS’s goods and services are likely to be mistaken for and confused with Plaintiff Source’s goods and services as associated with Plaintiff Source’s mark. Furthermore, Defendant OFS’s use of “SOURCE” is likely to create the mistaken impression in the public that Defendant OFS and/or its products or services are endorsed by Plaintiff Source or that Defendant OFS is sponsored by, affiliated with, or in some manner associated with Plaintiff Source. The acts of Defendant OFS, as alleged herein, are without the license, permission or consent of Plaintiff Source. The acts of Defendant OFS as alleged herein have caused, and unless restrained by the Court will continue to cause serious and irreparable harm to Plaintiff Source and to the good will associated with Plaintiff Source’s distinctive “SOURCE” mark and Plaintiff Source’s related trade name.

27. Defendant OFS’s utilization of the “SOURCE” mark in a fashion that so closely resembles Plaintiff Source’s “SOURCE” mark which Plaintiff Source continues to currently and actively expand its operation, if allowed to continue, may destroy and/or irreparably injure Plaintiff Source’s markets for its goods and services provided in association with its “SOURCE” mark in this district, in Texas, and elsewhere.

28. Plaintiff Source’s remedy at law is not adequate to compensate it for the injury threatened since it is entitled to be in control of the use of its “SOURCE” mark to advertise, market, promote and sell its products and services and to identify such as the source and origin of

its well-known, high quality products and services, and all goodwill appertaining thereto.

V.
COUNT 1
FEDERAL FALSE DESIGNATIONS OF ORIGIN
AND FEDERAL UNFAIR COMPETITION UNDER THE LANHAM ACT

29. Plaintiff Source repeats and realleges paragraphs 6 through 28 of this Complaint and the acts of Defendant OFS set forth therein are incorporated herein by reference as a pleading to this Count.

30. The unauthorized use by Defendant OFS of “SOURCE” in association with Defendant OFS’s offering for sale, selling and advertising its goods and services in commerce at a location immediately proximal to Plaintiff Source’s location constitutes an adoption of a mark that is in part identical to the “SOURCE” mark of Plaintiff Source, which constitutes a false designation of origin—a known false or misleading description or representation—regarding the goods and services offered or sold by Defendant OFS in commerce which is likely to cause Plaintiff Source injury and damage, in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

31. The unauthorized use by Defendant OFS of “SOURCE” in association with Defendant OFS’s offering for sale, selling and advertising its goods and services in commerce at a location immediately proximal to Plaintiff Source’s location is likely to cause confusion, mistake and deceive the public in that Defendant OFS’s products and services are likely to be mistaken for and confused with Plaintiff Source’s goods and services as associated with Plaintiff Source’s “SOURCE” mark, in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

32. Defendant OFS’s use of “SOURCE” at a location immediately proximal to Plaintiff Source’s location is likely to create the mistaken impression in the public that Defendant OFS and/or its products or services are endorsed by Plaintiff Source or that Defendant OFS is

sponsored by, affiliated with or some manner associated with Plaintiff Source, in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

VI.
COUNT 2
RELATED COMMON LAW VIOLATIONS AND UNFAIR COMPETITION

33. Plaintiff Source repeats and realleges paragraphs 6 through 32 of this Complaint and the acts of Defendant OFS set forth therein are incorporated herein by reference as a pleading to this Count.

34. Upon information and belief, Defendant OFS has misappropriated Plaintiff Source's common law trademarks and trade name rights by adopting and using a colorable imitation of Plaintiff Source's distinctive "SOURCE" mark in connection with Defendant OFS's advertising, marketing and offering for sale its goods and services at a location immediately proximal to Plaintiff Source's location, knowing full well of Plaintiff Source's prior rights in and to its common law "SOURCE" trademark and trade name.

35. Upon information and belief, Defendant OFS has intentionally selected the "SOURCE" mark and its location immediately proximal to Plaintiff Source to trade upon the goodwill and reputation of Plaintiff Source that Plaintiff Source has developed in association with its "SOURCE" marks utilized by Plaintiff Source in the advertising, marketing and sale of Plaintiff Source's goods and services for the past 40 plus years. The use of "SOURCE" by Defendant OFS when used in connection with its goods and services located in an immediate proximity to Plaintiff Source is confusingly similar to Plaintiff Source's usage of "SOURCE."

36. Upon information and belief, Defendant OFS's adoption and use of the "SOURCE" mark, coupled with its calculated location immediately proximal to that of Plaintiff Source, has enabled it to deliberately pass off and palm off its goods and services as those of

Plaintiff Source with the intent to deceive and defraud the public.

37. Upon information and belief, such actions of Defendant OFS not only deceived the purchasing public, but caused irreparable injury to Plaintiff Source's business good will and further damage to Plaintiff Source and Defendant OFS's use of the "SOURCE" mark at its location immediately proximal to Plaintiff Source misleads and deceives the public by causing the public to believe erroneously that Defendant OFS's goods and services have the sponsorship or approval of Plaintiff Source.

38. Upon information and belief, Defendant OFS has engaged in unfair competition and continues to engage in unfair competition with Plaintiff Source in that Defendant OFS has knowingly, willfully and fraudulently appropriated Plaintiff Source's "SOURCE" mark and related trade name by adopting and using the "SOURCE" mark in association with Defendant OFS's goods and services while located immediately proximal adjacent to Plaintiff Source. This attempt by Defendant OFS to trade upon Plaintiff Source's good will and reputation and to unlawfully appropriate the benefit of Plaintiff Source's 40 plus years of marketing exposure constitutes unfair competition by Defendant OFS.

39. The purposefully deceptive use of the "SOURCE" mark by Defendant OFS at a location immediately proximal to Plaintiff Source has caused irreparable damage to Plaintiff Source's reputation and good will as symbolized by its "SOURCE" mark and related trade name and will continue to cause damage unless Defendant OFS is enjoined from such actions.

VII.
COUNT 3
DILUTION

40. Plaintiff Source repeats and realleges paragraphs 6 through 39 of this Complaint and the acts of Defendant OFS set forth therein are incorporated herein by reference as a

pleading to this Count.

41. Upon information and belief, the willful actions of Defendant OFS are likely to injure the business reputation or dilute by blurring the distinctive quality of Plaintiff Source's famous "SOURCE" mark in violation of the provisions of §43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

42. Further or alternatively, Plaintiff Source's "SOURCE" mark is famous and distinctive, inherently or through acquired distinctiveness, in this State. On information and belief, Defendant OFS's commercial use of "Office Furniture/SOURCE", which began after Plaintiff Source's "SOURCE" mark or trade name became famous, is likely to cause dilution of Plaintiff Source's famous mark. Plaintiff Source's "SOURCE" mark is widely recognized by the public throughout this State or in a geographical area in this State, including but not limited to Dallas, Texas, as a designation of source of the goods or services of Plaintiff Source, the mark's owner. Plaintiff Source's SOURCE mark is registered with the United States Patent and Trademark Office. Tex. Bus. & Comm. Code § 16.103 (2012).

VIII. **DAMAGES**

43. The amount of actual damages and lost sales sustained by Plaintiff Source and/or profits of Defendant OFS under Count 1, Count 2, and Count 3 hereinabove is not ascertainable at the time of filing of this Complaint but will be ascertained more clearly during pretrial discovery and will be pled with more specificity after discovery.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Source prays for the following relief:

A. That Defendant OFS, its officers, agents, servants, affiliates, employees, attorneys and representatives and all of those in privity or acting in concert with Defendant OFS and each

and all of them be permanently enjoined from directly or indirectly:

(1) using the mark “SOURCE” and any other words confusingly similar thereto in association with Defendant OFS’s goods and services;

(2) performing any act or using any word, name, style, title or mark which is likely to cause confusion, to cause mistake, to deceive or otherwise mislead or betray the public into believing that Plaintiff Source and Defendant OFS are one-and-the-same or in some way connected or that Plaintiff Source is a sponsor of Defendant OFS or its goods and services, or that Defendant OFS is in some manner affiliated, associated with, or under the supervision or control of Plaintiff Source, or that the products or services of Defendant OFS originated or are approved by Plaintiff Source, or are likely in any way to lead the trade or the public to associate Defendant OFS with Plaintiff Source;

(3) using the internet domain name “www.officefurnituresource.biz” or any other internet domain name including the word “Source;”

(4) using any words, names, styles, titles or marks which create a likelihood of dilution of Plaintiff Source’s famous mark and all goodwill associated therewith; and,

(5) using any trade practices whatsoever including those complained of herein, which tend to unfairly compete with or injure Plaintiff Source’s business or good will;

B. That Defendant OFS be required to account for and pay over to Plaintiff Source all gains, profits and advantages derived from it by the activities herein complained of;

C. That all labels, signs, prints, packages, wrappers, receptacles and advertisements in the possession of Defendant OFS bearing the mark “SOURCE” and all plates, molds, matrices and other means of making same, shall delivered up for destruction pursuant to 15 U.S.C. § 1118;

D. That Plaintiff Source recover from Defendant OFS treble the amount of actual damages suffered by Plaintiff Source pursuant to 15 U.S.C. § 1117;

E. That the Court award punitive and exemplary damages against Defendant OFS in favor of Plaintiff Source in the sum of \$100,000 by reason of Defendant OFS's fraud and palming off;

F. That this case be deemed exceptional and that Plaintiff Source be awarded its reasonable attorney's fees pursuant to 15 U.S.C. § 1117 and other applicable laws;

G. That Plaintiff Source be awarded its costs of this litigation; and

H. That Plaintiff Source receive all other, further or different relief as this Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rules of Civil Procedure, Rule 38(b), Plaintiff Source hereby demands a trial by jury on all issues triable as such.

Dated: January 7, 2013.

Respectfully submitted,

/s/ Richard L. Schwartz
Richard L. Schwartz
Texas Bar No. 17869500
rschwartz@whitakerchalk.com

Thomas F. Harkins
Texas Bar No. 09000990
tharkins@whitakerchalk.com

**WHITAKER CHALK SWINDLE
& SCHWARTZ PLLC**
301 Commerce Street, Suite 3500
Fort Worth, Texas 76102
Phone: (817) 878-0500
Fax: (817) 878-0501
**ATTORNEYS FOR PLAINTIFF
SOURCE, INC.**