

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

**THE TEXAS A&M UNIVERSITY §
SYSTEM AND TEXAS A&M §
ENGINEERING EXPERIMENT §
STATION §**

Plaintiffs, §

Civil Action No. _____

v. §

**DR. MINGSHENG LIU AND §
BUILDING ENERGY SOLUTIONS & §
TECHNOLOGY, INC. §**

Defendants. §

PLAINTIFFS’ ORIGINAL COMPLAINT

The Texas A&M University System and the Texas A&M Engineering Experiment Station (“TEES”), including the Energy Systems Laboratory (“ESL”), collectively referred to herein as “Plaintiffs” or “TAMUS,” file this Original Complaint against Dr. Mingsheng Liu (“Liu”) and Building Energy Solutions & Technology, Inc. (“Bes-Tech,” collectively “Defendants”) and would respectfully show the Court as follows:

I. NATURE OF ACTION

1. This is an action by TAMUS to enjoin the taking and misuse of TAMUS’s registered trademarks and to recover damages for the unlawful conduct in which Defendants have engaged. Specifically, this is an action for trademark infringement, false designation of origin and unfair competition under the Lanham Act; injury to business reputation and trademark dilution under TEX. BUS. & COM. CODE ANN. § 16.29; and trademark infringement, unfair competition, and breach of contract under Texas state common law.

II. JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because TAMUS's claims arise under 15 U.S.C. §§ 1114, 1116, 1117, and 1125. This Court has supplemental jurisdiction over the related contract and state-law claims asserted herein pursuant to 28 U.S.C. § 1367.

3. This Court has personal jurisdiction over Bes-Tech and Liu by virtue of their contacts with the State of Texas. Defendants conduct business in Texas and their acts within or directed toward Texas have caused TAMUS's injuries. Defendants actively promote their products and services in Texas through Bes-Tech's website, www.bes-tech.net, have advertised in Texas, and have used the marks described herein in electronic forms, and have caused to be delivered marketing materials bearing the infringing marks to persons located in Texas.

4. Personal jurisdiction over Bes-Tech exists for the independent reason that Bes-Tech is a Texas corporation and entered into the Agreement at issue in this lawsuit in Texas.

5. Additionally, the Court has personal jurisdiction over Liu because Liu has purposefully availed himself of the privileges and benefits of the state of Texas by founding Bes-Tech as a Texas corporation, doing business in Texas, and receiving income from TAMUS in the form of quarterly royalty payments. Finally, Liu made certain of the misrepresentations that are at issue in this case in Texas.

6. Venue is proper under 28 U.S.C. § 1391(b) because the claim arose in this district and because Defendants do business in this district. Venue is also proper because Bes-Tech was a resident of this district at the time the alleged acts and/or omissions occurred.

III. THE PARTIES

7. TAMUS is one of the largest systems of higher education in the United States. It is a state agency, organized under the laws of the state of Texas, and conducts business at various locations throughout Texas. Among other things, TAMUS contains 11 universities, including Texas A&M University, and seven state agencies all of which are governed by a single board of regents.

8. TEES is the engineering research agency of the State of Texas. Its mission is to perform engineering and technology-oriented research and development for the enhancement of the educational systems and the economic development of the State of Texas and the nation. While TEES is under the TAMUS umbrella and is governed by the TAMUS board of regents, it is a separate legal entity. ESL, a sub-division of TEES, focuses on energy-related research, energy efficiency, and emissions reduction. One of ESL's specialized areas includes its CONTINUOUS COMMISSIONING[®] process.

9. Liu is a mechanical engineer who received his Ph.D. in mechanical engineering from Texas A&M University. Following receipt of his doctoral degree, Liu performed post-doctoral work at the direction of David E. Claridge, Ph.D., P.E., the Director of ESL, and Leland Jordan Professor, Department of Mechanical Engineering, Texas A&M University. Liu worked as the CONTINUOUS COMMISSIONING[®] group leader at the direction and under the supervision of Dr. Claridge. Liu worked for Dr. Claridge for approximately 6-7 years and left TAMUS and ESL in approximately 1999 to work for the University of Nebraska.

10. Liu is the founder, CEO, and CTO of Bes-Tech and formerly served as Bes-Tech's President.

11. Liu, as the owner and/or operator of or in concert with Bes-Tech, is individually liable for the infringing activities described herein. Upon information and belief, at all relevant times, Liu personally participated in and/or had the ability and right to supervise, direct, and control the infringing activities alleged in this Complaint related to Bes-Tech. Upon information and belief, Defendant Liu derived direct financial benefits from the infringing activities alleged in this Complaint.

12. Defendant Bes-Tech is a for-profit corporation organized under the laws of the State of Texas. Based on information and belief, Bes-Tech currently has offices in Omaha, Nebraska; San Jose, California; Philadelphia, Pennsylvania; and Beijing, China. According to information currently available from the Texas Secretary of State, Bes-Tech may be served via its registered agent, Xiao Yong Li, at 8140 Walnut Hill Lane, Suite 501, Dallas, Texas 75231.

13. Defendant Liu is an individual who may be served at 17569 Y Street, Omaha, NE 68106 or wherever he may be found.

IV. FACTS APPLICABLE TO ALL COUNTS

A. TAMUS Pioneers CONTINUOUS COMMISSIONING[®] Technology

14. In approximately 1990, ESL received a significant contract from the Texas State Energy Conservation Office (“SECO”) for measurement and verification of energy retrofit projects in a state-run revolving loan program called LoanSTAR. This data-gathering project was the largest of its kind at the time. As part of this massive effort, ESL gathered, stored, analyzed, and reported on the results of the energy efficiency program, which showed that the subject buildings were not energy efficient. Subsequently, SECO hired ESL to make changes in the way these buildings operated to make them more energy efficient.

15. As ESL and TEES personnel began to inspect the buildings in the early 1990s, they developed new and innovative ways to change the buildings' operation. Prior efforts at making such buildings and plants energy efficient concentrated on simply replacing aging equipment with newer (and expensive) equipment. This approach was extremely expensive and, for some projects, cost prohibitive. Through their development of new and innovative techniques, software, and data analysis, the ESL and TEES personnel created a new, ongoing process that in most cases worked with commercial or industrial buildings' or central plant facilities' existing equipment and commissioning practices to resolve operating problems, improve comfort, and optimize energy use. By 1994, TEES commenced using the term CONTINUOUS COMMISSIONING[®] or CC[®] to describe this process.

16. TAMUS would either implement the CONTINUOUS COMMISSIONING[®] process or the CC[®] process in a subject building or supervise its implementation and then train the in-building staff on how to maintain the process on a going-forward basis. This continuous, holistic approach was a revolutionary way of approaching the problem of energy inefficient buildings and the results of the new processes were dramatic both in terms of energy cost savings and the comfort of the people who worked in the buildings.

17. In 1995, based upon the success ESL/TEES had had in the LoanSTAR program, Texas A&M University committed over one million dollars of its own money to implement the CONTINUOUS COMMISSIONING[®] technology in seventy (70) of its largest buildings, its power plant, and its satellite thermal plants. Within the first year that the CONTINUOUS COMMISSIONING[®] process was implemented, Texas A&M saved hundreds of thousands of dollars in energy costs.

B. TAMUS Registers CONTINUOUS COMMISSIONING[®] and CC[®] as Trademarks

18. TAMUS and TEES decided to seek trademark protection for the marks CONTINUOUS COMMISSIONING[®] and CC[®] (among others), in part, so that the CONTINUOUS COMMISSIONING[®] process could be commercialized. Accordingly, TAMUS and TEES registered, among others, the marks CONTINUOUS COMMISSIONING[®] and CC[®].

19. TEES is the owner of incontestable U.S. Registration No. 2,673,913 for the mark CONTINUOUS COMMISSIONING[®] for use in connection with “maintenance and repair of environmental control systems, namely, heating ventilation, air conditioning, and electrical equipment,” “training in the use, operation, and optimization of environmental control systems, namely, heating, ventilation, air conditioning, and electrical equipment,” and “optimization of environmental control systems in the nature of analyzing and redesigning the systems of others to improve the response to changing environmental conditions or indoor occupant activities, to minimize the energy use and exhaust rates of the systems, monitoring environmental control systems, namely, heating, ventilation, air conditioning, and electrical equipment.” A true and correct copy of U.S. Trademark Registration No. 2,673,913 is attached as Exhibit A.

20. TEES is the owner of incontestable U.S. Trademark Registration No. 2,840,676 for the mark CC[®] for use in connection with “maintenance, repair, and optimization of environmental control systems, namely, heating, ventilation, air conditioning, and electrical equipment,” “training in the use, operation, and optimization of environmental control systems, namely, heating, ventilation, air conditioning, and electrical equipment,” and “optimization of environmental control systems in the nature of analyzing and re-designing the systems of others to improve the response to changing environmental conditions or indoor occupant activities, to minimize the energy use and exhaust rates of the systems, monitoring environmental control

systems, namely, heating, ventilation, air conditioning, and electrical equipment.” A true and correct copy of U.S. Trademark Registration No. 2,840,676 is attached as Exhibit B.

21. The Continuous Commissioning[®] and CC[®] registrations are valid, subsisting, in full force and effect on the Principal Register, and have become incontestable pursuant to 15 U.S.C. § 1065.

22. The registration of the marks constitutes *prima facie* evidence of their validity and conclusive evidence of Plaintiffs’ exclusive rights to use the marks in connection with identified services therein and other commercial goods and services.

23. TEES, by itself and through its relationship with TAMUS and various licensees, has continuously used the CONTINUOUS COMMISSIONING[®] and CC[®] marks since at least as early as 1996, and the marks have never been abandoned.

24. Among other reasons, TAMUS sought trademark and other protections so that it could enter into licensing programs with businesses that could implement the CONTINUOUS COMMISSIONING[®] process. By doing so, TAMUS could continue to research even more innovative ways to conserve energy and generate cost savings and have that research funded through the royalty revenue the trademarks and patents would generate.

C. TAMUS Licenses Liu’s Company, Bes-Tech

25. Liu received his Ph.D. from Texas A&M University in mechanical engineering and under Dr. Claridge’s direction and supervision, assisted in developing the CONTINUOUS COMMISSIONING[®] process. In 2003, Liu formed his own company, Bes-Tech.

26. Bes-Tech and Liu offer environmental control systems and related services.

27. TAMUS entered into a January 11, 2006, Licensing Agreement (the “Agreement”) with Bes-Tech. *See* Exhibit C.

28. In the Agreement, TAMUS agreed to provide to Bes-Tech a non-exclusive license in certain of TAMUS's innovations, patent rights, proprietary software, copyrights, and trademarks related to the CONTINUOUS COMMISSIONING[®] process, including the right to use the federally protected trademarks CONTINUOUS COMMISSIONING[®] and CC[®].

29. In exchange for these non-exclusive licenses, Bes-Tech agreed to pay TAMUS royalties on its net sales of licensed services and licensed products under the licensed brands and to pay certain other fees. Bes-Tech also promised to comply with certain other enumerated performance requirements, including, among other things, maintaining the integrity of TAMUS's intellectual property and maintaining the appropriate notices of Registration[®] for TAMUS's registered service marks.

30. Specifically, TAMUS agreed to grant to Bes-Tech: (1) a non-exclusive license in certain defined patent rights; (2) a non-exclusive license in certain executable software; and (3) a non-exclusive license in certain copyrights and licensed trademarks. *See id.*, Article II, §§ 2.01-2.03.

31. In exchange, Bes-Tech agreed to pay TAMUS (1) a royalty rate of six percent (6%) of CONTINUOUS COMMISSIONING[®] or CC[®] net sales; (2) a Technology Development and Support Fee of ten percent (10%) of CONTINUOUS COMMISSIONING[®] or CC[®] net sales; and (3) Minimal Annual Consideration to maintain its non-exclusive license as warranted under the terms of the Agreement. *See id.*, Article III, §§ 3.01-3.03.

32. The Minimal Annual Consideration Bes-Tech agreed to pay to TAMUS ranged from zero for the calendar year 2005 to \$100,000 per year for Calendar Year 2007 and every year thereafter through the expiration of the Agreement. *Id.* § 3.03.

33. The licensed trademarks to which the Agreement applies include, among other things, U.S. Trademark Registration Serial No. 2,673,913 entitled “**Continuous Commissioning**” and U.S. Trademark Registration Serial No. 2,840,676 entitled “**CC**”. *Id.* § 1.05 and Appendix A.

34. Under the Agreement, Bes-Tech is required to adhere and fulfill certain performance obligations in order to maintain its non-exclusive license. Among the listed requirements are Bes-Tech’s obligation to “[m]aintain integrity of LICENSED TECHNOLOGY, PATENT RIGHTS, COPYRIGHTS, and LICENSED TRADEMARKS in accordance with paragraph 7.03” and to “[m]aintain notices of © and ® in accordance with paragraph 7.02.” *Id.* §§ 4.01(e)-(f).

35. Specifically, Bes-Tech agreed to mark and identify all of the licensed products and licensed services with TAMUS’s registered service marks CONTINUOUS COMMISSIONING[®] and CC[®]. *Id.* § 7.01.

36. Additionally, Bes-Tech agreed to include the legend “‘CONTINUOUS COMMISSIONING[®]’, ‘CC[®]’, and ‘PCC[®]’ are Trademarks of the Texas Engineering Experiment Station, a component of The Texas A&M University System, used under license, all rights reserved” on all “literature, marketing materials, manuals, reports, and packaging that refers to LICENSED PRODUCTS or LICENSED SERVICES”. *Id.* § 7.02.

37. Finally, Bes-Tech also agreed not to “alter, modify, dilute, misuse, or otherwise bring into disrepute” the trademarks it licensed from TAMUS. *Id.* § 7.03.

38. The Agreement requires Bes-Tech to make its required payments to TAMUS quarterly, not later than sixty (60) days after the last day of the calendar quarter in which the payments accrue. *Id.* § 8.01. Should Bes-Tech fail to pay timely, Section 8.05 of the Agreement

provides that at TAMUS's discretion, "[o]verdue payments may [...] be subject to a daily charge commencing on the 31st day after such payment is due, compounded monthly, at the rate of either one and one-half percent (1.5%) per month or the maximum nonusurious interest rate under applicable law, whichever is lower."

39. The Agreement makes clear that these interest payments do not prevent TAMUS from exercising any other rights it may have as a result of Bes-Tech's failure to pay timely its financial obligations under the Agreement. *Id.*

40. Under the Agreement, Bes-Tech was also obligated to prepare quarterly sales reports sufficient to permit TAMUS to calculate the amounts due TAMUS according to the form attached to the Agreement. *Id.* § 8.02.

41. Article IX of the Agreement sets forth the term of the Agreement and the procedures for terminating the Agreement. Section 9.03 provides that if Bes-Tech materially breaches the Agreement, TAMUS may provide Bes-Tech written notice of the breach and that Bes-Tech would have sixty (60) days from receipt of TAMUS's notice to cure the identified breach. Should Bes-Tech fail to cure the breach, the Agreement provides TAMUS may terminate the Agreement without further notice, and Bes-Tech is required to abstain from marketing, selling, delivering, or installing Continuous Commissioning[®] or Professional in Continuous Commissioning[®] services, products, or technologies. *Id.* § 9.03.

42. The Agreement contains a merger clause, which provides that the Agreement "contains the entire understanding of the Parties with respect to PATENT RIGHTS, COPYRIGHTS, and LICENSED TRADEMARKS, and supersedes all other written and oral agreements between the Parties with respect to PATENT RIGHTS, COPYRIGHTS, and LICENSED TRADEMARKS" and that the Agreement "may be modified only by a written

agreement signed by the Parties.” *Id.* § 12.07. To date, the Agreement between TAMUS and Bes-Tech has not been modified.

43. TAMUS performed its obligations under the Agreement, and all conditions precedent to recovery have occurred.

D. Bes-Tech Benefits From the Agreement but Fails To Honor Its Obligation to TAMUS

44. During the term of the Agreement, TAMUS referred at least six contracts for CONTINUOUS COMMISSIONING[®] projects to Bes-Tech. The projects had start dates ranging from April 1, 2005 through October 1, 2007. The total value of these contracts was at least \$2,675,072.

45. During the term of the Agreement and due to its existence, ESL subcontracted some of its own work under the CONTINUOUS COMMISSIONING[®] brand to Bes-Tech. The value of this work was at least \$2,455,427.

46. Bes-Tech breached its Agreement with TAMUS by, among other things: (i) failing to protect TAMUS’s service marks as set forth in Article IV and VII of the Agreement; (ii) failing to pay royalties due and owing to TAMUS; (iii) failing to pay the TDS fees due and owing to TAMUS; (iv) failing to pay TAMUS the nominal minimal annual consideration necessary to maintain its non-exclusive license, as applicable; and (v) using TAMUS’s name and the names of certain of its employees in marketing materials without TAMUS’s permission and in violation of the Agreement.

E. Liu Admits Bes-Tech Breached Its Agreement With TAMUS

47. On or about July 16, 2008, TAMUS representatives met with Liu to discuss Bes-Tech’s failure to pay the royalties it owed to TAMUS as well as a strategy for Bes-Tech to pay what it owed. At that meeting, Liu admitted that Bes-Tech had not fully paid the royalties it

owed to TAMUS under the Agreement. Liu told the TAMUS representatives that Bes-Tech was going to pay what it owed and told TAMUS that “the check is in the mail.”

48. After this meeting, and based upon Liu’s representation that Bes-Tech would pay TAMUS the royalties due under the Agreement, TAMUS patiently waited another six (6) months to receive Bes-Tech’s royalty payment (and royalty reporting forms) to arrive. But, contrary to Liu’s representation, Bes-Tech did not pay TAMUS the royalties it owed.

49. Accordingly, in January 2009, TAMUS engaged Invotex Group (“Invotex”) to audit Bes-Tech’s compliance with the Agreement for the period January 1, 2006 through December 31, 2008.

50. In May 2009, Invotex issued its report that concluded that Bes-Tech had failed to comply fully with the terms of the Agreement by, among other things, failing to pay TAMUS up to \$1,327,561 for royalties and fees due under the Agreement.

51. TAMUS sent the audit results to Liu at Bes-Tech on June 8, 2009.

52. On November 19, 2009, TAMUS sent Dr. Liu its notice of Bes-Tech’s breach of the Agreement in accordance with Section 9.03 of the Agreement. In that letter, TAMUS explained to Dr. Liu that Bes-Tech had materially breached the Agreement by failing to pay TAMUS \$1,327,561 in royalties and TDS fees, which had been previously disclosed by the Invotex audit. TAMUS’s letter made clear that the \$1,327,561 did not include the interest it was due under the Agreement or the charges it had incurred in connection with the Invotex audit. TAMUS provided Bes-Tech the opportunity to cure its breach, warning that if the breach were not cured within sixty (60) days, then the Agreement would terminate as of January 18, 2010. Neither Bes-Tech nor Dr. Liu cured the breach of the Agreement.

53. In February 2010, and in response to TAMUS's November 19, 2009, letter, counsel for Bes-Tech conceded that Bes-Tech had breached the Agreement by failing to pay the minimum annual consideration owed under Section 3.03 of the Agreement for 2009.

54. In their February 1, 2010, letter, Bes-Tech's lawyers wrote: "[w]ith respect to the 2009 year, Bes-Tech believes that the minimum royalty of \$100,000 is owed to TAMUS under the License Agreement."

55. To date, Bes-Tech has not paid the \$1,327,561 that the audit concluded was due to TAMUS for royalties and other fees, which are due and owing, or the \$48,216.58 that TAMUS paid for the audit.

56. Bes-Tech's failure to pay these owed monies has harmed TAMUS.

F. Liu and Bes-Tech Infringe TAMUS's Trademarks

57. Despite the fact that the Agreement was effectively terminated as of January 18, 2010, on information and belief, Liu and Bes-Tech continued to use the CONTINUOUS COMMISSIONING[®] and CC[®] trademarks without TAMUS's consent to describe Bes-Tech's services in the field of environmental control systems and related services in violation of TEES's federally registered trademarks.

58. After the termination of the Agreement, Defendants had no license, authority, or permission from TAMUS to use any of TEES's trademarks.

59. In Bes-Tech marketing material, which on information and belief Bes-Tech distributed to its potential and actual clients after the termination of the Agreement, Bes-Tech states that it offers CONTINUOUS COMMISSIONING[®] services (including the ® mark), that its TPOR[®] services include "Continuous Commissioning processes" and that as part of its TPOR[®] services, Bes-Tech develops CC plans (both trademarks used without the ®).

60. Additionally, Bes-Tech uses the CONTINUOUS COMMISSIONING[®] mark referring to numerous “case studies” that were allegedly completed in 2003—over three years before it entered into the Agreement with Plaintiffs.

61. Current licensees of the CONTINUOUS COMMISSIONING[®] and CC[®] marks have informed TAMUS that they have been unable to enter into contracts with potential customers because such customers have explained that Bes-Tech already was providing them services under the CONTINUOUS COMMISSIONING[®] and CC[®] brand names.

62. Defendants have knowingly engaged in unfair competition by seeking to pass off TAMUS’s CONTINUOUS COMMISSIONING[®] technologies as its own.

63. At the time Defendants decided to use the CONTINUOUS COMMISSIONING[®] and CC[®] brands, they were aware of TAMUS’s trademarks, the federal registrations of such trademarks, and willfully intended to trade on TAMUS’s reputation.

64. Defendants’ activities have caused and are likely to cause confusion, mistake, or deception among the public and are likely to lead and have led the public to conclude erroneously that the goods and services offered by Defendants originate with, and/or are sponsored by, and/or are authorized by TAMUS, to the damage and harm of TAMUS, its other licensees, and the public.

65. Defendants’ activities are likely to and have caused irreparable injury to TAMUS’s reputation and goodwill.

66. On information and belief, Defendants’ use of TAMUS’s registered marks has enabled Defendants to obtain clients that they would not have otherwise been able to obtain.

V. CAUSES OF ACTION

COUNT ONE: Trademark Infringement under 15 U.S.C. § 1114

67. TAMUS repeats and realleges the allegations above as if fully set forth herein.

68. Plaintiffs own the incontestable, valid and enforceable federally registered marks CONTINUOUS COMMISSIONING[®], as represented in U.S. Registration No. 2,673,913 and CC[®], as represented in U.S. Registration No. 2,840,676.

69. The services for which Defendants uses Plaintiffs' registered marks are identical and/or substantially similar to the services offered by Plaintiffs and their licensees.

70. The foregoing acts of Defendants have caused and are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with Plaintiffs, or as to the origin, sponsorship or approval of Defendants' goods and services by Plaintiffs.

71. The foregoing acts of Defendants constitute infringement of the CONTINUOUS COMMISSIONING[®] trademark, as represented in U.S. Registration No. 2,673,913 and CC[®], as represented in U.S. Registration No. 2,840,676 in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

72. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of such infringement of their marks.

73. Plaintiffs are entitled to monetary damages for Defendants' infringement.

74. Defendants have willfully infringed the CONTINUOUS COMMISSIONING[®] and CC[®] marks and the intentional nature of Defendants' actions makes this case exceptional under 15 U.S.C. § 1117(a).

75. Plaintiffs have been, are now, and will be irreparably harmed by Defendants' infringement and, unless enjoined by the Court pursuant to 15 U.S.C. § 1116, Defendants will continue to infringe the CONTINUOUS COMMISSIONING[®] and CC[®] marks.

COUNT TWO: False Designation of Origin and Unfair Competition under 15 U.S.C. § 1125

76. TAMUS repeats and realleges the allegations above as if fully set forth herein.

77. As a result of Plaintiffs' and its licensees' extensive use and promotion of the CONTINUOUS COMMISSIONING[®] and CC[®] marks, such marks enjoy considerable goodwill, widespread recognition, and secondary meaning in commerce and have become associated with a single source of origin—namely the world-famous Texas A&M University System, TEES and related entities.

78. The foregoing acts of Defendants have and are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with Plaintiffs, or as to the origin, sponsorship or approval of Defendants' goods and services by Plaintiffs.

79. The foregoing acts of Defendants constitute a false designation of origin which is likely to cause confusion in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

80. The intentional nature of Defendants' actions entitles Plaintiffs to recover profits, damages and costs and attorney's fees under 15 U.S.C. § 1117(a).

81. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of such false designation of origin by Defendants and, unless enjoined by the Court pursuant to 15 U.S.C. § 1116, Defendants will continue to suggest that its services are in some manner connected with, sponsored by, affiliated with, related to, or approved by Texas A&M University System and the Texas A&M Engineering Experiment Station.

COUNT THREE: Common Law Trademark Infringement and Unfair Competition

82. TAMUS repeats and realleges the allegations above as if fully set forth herein.

83. As a result of Plaintiffs' and its licensees' extensive use and promotion of the CONTINUOUS COMMISSIONING[®] and CC[®] marks, such marks enjoy considerable goodwill, widespread recognition, and secondary meaning in commerce and have become associated with a single source of origin—namely the world-famous Texas A&M University System, TEES, and related entities.

84. The foregoing acts of Defendants have and are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with Plaintiffs, or as to the origin, sponsorship or approval of Defendants' goods and services by Plaintiffs.

85. Defendants have been unjustly enriched by virtue of their unauthorized use of Plaintiffs' marks.

86. Plaintiffs are entitled to monetary damages for such infringement in an amount to be proved at trial.

87. The foregoing acts of Defendants constitute trademark infringement and unfair competition in violation of the common law of Texas.

88. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of such trademark infringement and unfair competition.

COUNT FOUR: Common Law Misappropriation

89. TAMUS repeats and realleges the allegations above as if fully set forth herein.

90. TAMUS expended a significant amount of time, labor, skill, and money to design and develop the services offered under the CONTINUOUS COMMISSIONING[®] and CC[®] brands.

91. Defendants are free-riding on the efforts of TAMUS by offering competing services under TAMUS's brands.

92. Defendants compete with TAMUS and its authorized licensees who pay to use Plaintiffs' technology and the related brands. That competition doubly impacts Plaintiffs by eliminating clients from using Plaintiffs' services and further reducing the value of the TAMUS licensing program and intellectual property rights.

93. TAMUS, as owner and licensor of the misappropriated intellectual property, has been damaged by Defendants' misappropriation.

94. TAMUS is entitled to monetary damages for Defendants' misappropriation in an amount to be determined at trial.

95. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of such misappropriation by Defendants and, unless enjoined by the Court, Defendants will continue to misappropriate the efforts and ownership rights of TAMUS.

COUNT FIVE: Injury to Business Reputation & Trademark

96. TAMUS repeats and realleges the allegations above as if fully set forth herein.

97. This cause of action arises under TEX. BUS. & COM. CODE ANN. § 16.29.

98. Defendants' use of the CONTINUOUS COMMISSIONING[®] and CC[®] marks on competing services over which TAMUS has no control or direction is likely to injure the business reputation of TAMUS.

99. Defendants have deprived TAMUS of the ability to maintain its business reputation and it will continue to do so unless enjoined by this Court pursuant to its statutory authority. Accordingly, TAMUS seeks a permanent injunction.

COUNT SIX: Breach of Contract

100. TAMUS repeats and realleges the allegations above as if set forth fully herein.

101. On January 11, 2006, TAMUS and Bes-Tech entered into the Agreement at issue in this case.

102. The Agreement is valid and enforceable.

103. TAMUS performed all of the conditions precedent that it was required to perform under the Agreement.

104. Bes-Tech breached the Agreement when it, among other things, (i) failed to protect TAMUS's service marks as set forth in Articles IV and VII of the Agreement; (ii) failed to pay royalties due and owing to TAMUS; (iii) failed to pay the TDS fees due and owing to TAMUS; (iv) failed to pay TAMUS the nominal minimal annual consideration necessary to maintain its non-exclusive license, as applicable, in 2009 and 2010; and (v) used TAMUS's name and the names of certain of its employees in marketing materials without TAMUS's permission and in violation of the Agreement.

105. As a result of Bes-Tech's breach of the Agreement, TAMUS has suffered actual damages of at least \$1,375,778 plus pre-and post-judgment interest for which TAMUS seeks recovery.

VI. APPLICATION FOR INJUNCTIVE RELIEF

106. As set forth above, Defendants' actions in violation of the Lanham Act and Texas law have caused, and are continuing to cause, substantial and irreparable damage to TAMUS for

which there is no adequate remedy at law. TAMUS is, therefore, entitled to an injunction preventing Defendants' continuing infringement, including an injunction against Defendants' continued use of TAMUS's federally registered and incontestable trademarks. Defendants have improperly used and will continue to improperly use TAMUS's marks and protected intellectual property, and trade secrets unless this Court prevents them from doing so. While Defendants illegally use TAMUS's protected marks and technology, TAMUS will continue to lose control over their own reputation and goodwill and the public and consumers likely will continue to be confused, misled, and deceived by the fact that Defendants offer competing services under TAMUS's trademarks.

107. TAMUS requests that Defendants, their employees, representatives, agents, members, and others acting in concert with them be permanently enjoined from: (1) advertising, marketing, selling, or rendering any product or service or otherwise using or continuing to use the name or term "Continuous Commissioning," "CC," or any other mark that is confusingly similar to TAMUS's marks; (2) representing to any other person or entity that is has authority to use "Continuous Commissioning," "CC," or any other mark which is confusingly similar to TAMUS's mark; (3) representing to any other person or entity that Defendants or their products and services are in any manner associated with, connected to, related to, sponsored by, affiliated with, endorsed by, approved by or recommended by Plaintiffs, and (4) using Bes-Tech's website to advertise or sell products or services similar to TAMUS's registered marks.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs The Texas A&M University System and Texas A&M Engineering Experiment Station respectfully request a judgment:

A. That the Defendants, their officers, members, managers, affiliates, agents, employees, servants, representatives, and all persons acting under or in concert with them, be preliminarily enjoined throughout the pendency of this lawsuit, and permanently enjoined thereafter, from using, in conjunction with any goods or services, the marks CONTINUOUS COMMISSIONING[®], CC[®], or any other mark, word or name confusingly similar to or including those marks;

B. That the Defendants, their officers, members, managers, affiliates, agents, employees, servants, representatives, and all persons acting under or in concert with them, be required to deliver up for destruction all advertisements, brochures, reports, catalogs, labels and other business and promotional materials that bear the mark or marks CONTINUOUS COMMISSIONING[®], CC[®], or any other mark, word or name confusingly similar to or including the marks;

C. That the Defendants be enjoined from using the mark CONTINUOUS COMMISSIONING[®] or CC[®] anywhere on the Internet and in the ordinary course of business;

D. That the Defendants be required to account and pay to Plaintiffs all profits and benefits they derived as a result of the activities complained of herein;

E. That the Defendants be required to pay to Plaintiffs' actual, consequential and compensatory damages sustained as a result of the activities complained of herein;

F. That the Defendants be required to pay increased damages due to their willful infringement;

- G. That the Defendants be required to pay all pre-judgment and post-judgment interest at the highest rates allowed by law or as provided by the Agreement;
- H. The Defendants be required to pay costs and attorneys' fees; and
- I. For such other and further relief as this Court deems just and proper.

Dated: January 7, 2013

Respectfully submitted,

/s/ Jamil N. Alibhai

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