

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Gateway Buick GMC, LLC

DEFENDANTS

Ken Behlmann Automotive Services, Inc., d/b/a Gateway Buick GMS

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Stoddard & Welsh, PLLC

Jennifer S. Stoddard & Christopher B. Welsh

8150, N. Central Expressway, Ste. 1150, Dallas, TX 75206

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State

PTF DEF

☒ 1 ☐ 1

Incorporated or Principal Place of Business In This State

PTF DEF

☐ 4 ☐ 4

Citizen of Another State

☐ 2 ☐ 2

Incorporated and Principal Place of Business In Another State

☐ 5 ☒ 5

Citizen or Subject of a Foreign Country

☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6**IV. NATURE OF SUIT**

(Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1391(b) and (c)

Brief description of cause:

Trademark Infringement

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) PENDING OR CLOSED:**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/17/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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

GATEWAY BUICK GMC, LLC

Plaintiff,

v.

**KEN BEHLMANN AUTOMOTIVE
SERVICES, INC. d/b/a GATEWAY
BUICK GMC**

Defendant.

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§

Civil Action No. : _____

GATEWAY BUICK GMC, LLC’S ORIGINAL COMPLAINT

Plaintiff, Gateway Buick GMC, LLC, a Texas limited liability company, seeks injunctive and monetary relief from Defendant Ken Behlmann Automotive Services, Inc. d/b/a Gateway Buick GMC (“Defendant”) for trademark dilution, trademark infringement and unfair competition with regard to Gateway’s trademark right to the service mark “Gateway.”

On April 3, 2012, Gateway registered the service mark “Gateway” with the United States Patent and Trademark Office under Registration No. 4,120,425 (“Gateway Mark”). Gateway owns and operates a Buick GMC dealership in Dallas, Texas. A little over a year after Gateway registered its mark and began using it, Defendant adopted and began using the Gateway Mark to operate a Buick GMC dealership it owns in St. Louis, Missouri. Defendant marketed its dealership online under the Gateway Mark and even coded its online search engine to pick up searches of “Gateway Dallas.” Defendant knew or should have known at the time it began using the Gateway Mark that there already existed a Gateway Buick GMC in Dallas and that it owned and used the Gateway Mark. Defendant’s use of the Gateway Mark to attract customers, dilutes Gateway’s use of the Gateway Mark and creates confusion as to the source or affiliation of Gateway’s business, particularly over the internet. Defendant has thereby committed and

continues to commit trademark dilution and infringement as well as unfair competition in violation of Sections 43(c), 32 and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114, 11254(a) and (c), the Texas Anti-Dilution Statute, TEX. BUS. & COM. CODE ANN. § 16.103, and Texas common law.

I. PARTIES

1. Plaintiff Gateway Buick GMC, LLC (“Gateway”) is a Texas limited liability company with its principal place of business located in Dallas County, Texas and may be served through its attorney of record.

2. Defendant Ken Behlmann Automotive Services, Inc. d/b/a Gateway Buick GMC (“Defendant”) a Missouri corporation with its principal place of business located at 820 McDonnell Blvd., St. Louis, MO 63042. Defendant may be served with process by delivering a copy of this Complaint along with a citation to Defendant’s registered agent Spenserv-St. Louis, Inc., located at 1 North Brentwood Blvd., Suite 1000, Clayton MO 63105.

II. JURISDICTION AND VENUE

3. This Court has original subject matter jurisdiction over Gateway’s claims pursuant to the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*; and 28 U.S.C. §§ 1331 and 1338. The Court has supplemental jurisdiction over the Texas state law claims pursuant to 28 U.S.C. § 1367 because such claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

4. This Court has personal jurisdiction over Defendant because it has established minimum contacts with this forum by regularly and continuously conduction business within this judicial district by, among other things, marketing, advertising, offering to sell and targeting customers in this judicial district, including the sales of automobiles that is the subject of this Complaint.

Additionally, this Court has personal jurisdiction over Defendant because it has committed tortious acts that have caused injury within this State and within the jurisdictional district, and the claims alleged arise out of such tortious acts.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) because the claims alleged in the Complaint arose, in part, in this judicial district and because this Court has personal jurisdiction over Defendant in this district.

III. FACTS

6. Gateway owns and operates an automobile dealership located in Dallas, Texas, that sells and services Buick and GMC vehicles. On April 3, 2012, in connection with its automobile dealership business, Gateway registered the Gateway Mark with the United States Patent and Trademark Office under Registration No. 4,120,425.

7. Defendant owns and operates an automobile dealership located in St. Louis, Missouri, Texas, that sells and services Buick and GMC vehicles. Until April 2013, Defendant's dealership was known as "St. Louis Buick GMC." A little over a year ago, in late April 2013, over a year after Gateway registered the Gateway Mark, Defendant adopted and began using the name Gateway Mark. At that time, Defendant knew or should have known about Gateway in Dallas and that it had registered the Gateway Mark. A simple internet search or inquiry to the automobile manufacturer, Buick GMC, would have revealed the existence of Gateway and its trademark.

8. Defendant uses the Gateway Mark as part of its trademark. It advertises the term "Gateway" online, violating both trademark and copyright laws. Defendant advertises nationally over the internet. It has improperly purchased and used similar domain names, targeting searches to redirect traffic from Gateway to Defendant's dealership, and is actively trying to

profit from Gateway's brand and marketing efforts. Defendant is clearly trying to capitalize on the Gateway Mark.

9. Moreover, Defendant's use of the Gateway Mark causes confusion between the two dealerships. Gateway receives several internet inquiries and calls each week from customers who have confused the two dealerships because of Defendant's use of the Gateway Mark. Defendant's internet advertisements pop up on computers across the Dallas area including the computers of the employees who work at Gateway. Defendant's inappropriate use of Gateway's federally protected mark to market and sale the identical products Gateway markets and sells is likely to cause and has already caused significant confusion.

10. The Gateway Mark is arbitrary and not descriptive. The term, as used in Gateway's business, does not describe anything geographically associated with the goods and services it sells.

11. Defendant's use of the Gateway Mark has been done and is done with the intent to cause confusion as to the course and affiliation of Defendant's products and services.

12. Defendant has misappropriated Gateway's substantial property rights in the Gateway Mark, as well as the substantial goodwill associated therewith. Unless restrained and enjoined by this Court, such conduct will permit Defendant to gain an unfair competitive advantage and permit Defendant to enjoy the interest and marketing of Gateway.

13. If Defendant is permitted to continue using, promoting, marketing, advertising, distributing and selling automobiles and automobile services using the Gateway Mark, its actions will continue to cause irreparable injury to Gateway and its good will and business reputation.

**IV. Count One
Federal Trademark Infringement**

14. Gateway incorporates by reference each and every allegation contained in Paragraphs 1-13 of this Complaint as though fully set forth herein.

15. Defendant's acts set forth herein constitute infringement of Gateway's federally registered mark in violation of 15 U.S.C. § 1114(1).

16. Defendant's acts complained of herein have been deliberate, willful, intentional, or in bad faith, with full knowledge and conscious disregard of Gateway's rights in the Gateway Mark, and with intent to cause confusion and to trade on Gateway's vast goodwill in the Gateway Mark. In light of Defendant's egregious infringement and refusal to discontinue such infringement, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

17. As a direct and proximate result of Defendant's infringing and unlawful acts, Gateway has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

18. Unless enjoined by this Court, the acts of Defendant complained of herein will cause Gateway to suffer irreparable harm for which there is not adequate remedy at law.

**V. Count Two
Trademark Dilution – Lanham Act § 43(c), 15 U.S.C. § 1125(c)**

19. Gateway incorporates by reference each and every allegation contained in Paragraphs 1-18 of this Complaint as though fully set forth herein.

20. The Gateway mark was registered with the United States Patent and Trademark Office on April 3, 2012, entitled it to protection from federal trademark dilution.

21. Gateway's use of the Gateway Mark is widely recognized by the general public and has acquired notoriety.

22. Defendant's use of the Gateway Mark began after the Gateway Mark was registered by Gateway and after the Gateway Mark became widely recognized.

23. Defendant's use of the Gateway Mark is likely to dilute the distinctive quality of the Gateway Mark and decrease the capacity of that mark to identify and distinguish Gateway's products and services, and it is likely to harm Gateway's business reputation.

24. The acts and omission complained of Defendant herein constitute a trademark dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

25. The acts and omissions complained of Defendant herein were committed willingly, with full knowledge of Gateway's rights and with the intention of deceiving and misleading the public and causing harm to Gateway.

26. As a direct and proximate result of Defendant's unlawful acts, Gateway has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

27. Unless enjoined by this Court, the acts of Defendant complained of herein will cause Gateway to suffer irreparable harm for which there is not adequate remedy at law.

VI. Count Three
(Texas Anti-Dilution Statute – TEX. BUS. & COM. CODE § 16.03)

28. Gateway incorporates by reference each and every allegation contained in Paragraphs 1-27 of this Complaint as though fully set forth herein.

29. The Gateway Mark has been used for over a year, has achieved public recognition, and has developed a secondary meaning.

30. Throughout significant, long and continuous use in commerce, including commerce within the State of Texas, the Gateway Mark has become and continues to be famous and distinctive throughout the State of Texas.

31. Defendant's use of the Gateway Mark began after the Gateway Mark was registered with the United States Patent and Trademark Office and after the Gateway Mark had become famous and distinctive.

32. The use of the Gateway Mark, without authorization from Gateway, is likely to dilute the distinctive quality of the Gateway Mark and to decrease the capacity of that mark to identify and distinguish Gateway and its products and services, and is likely to cause harm to Gateway's business reputation.

33. The aforesaid acts of Defendant were committed willfully with full knowledge of Gateway's rights and with the intention of deceiving and misleading the public and causing harm to Gateway.

34. As a direct and proximate result of Defendant's unlawful acts, Gateway has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

35. Unless enjoined by this Court, the acts of Defendant complained of herein will cause Gateway to suffer irreparable harm for which there is not adequate remedy at law.

VII. Count Four
Trademark Infringement and False Designation of Origin
Lanham Act § 43(a), 15 U.S.C. § 1125(a)

36. Gateway incorporates by reference each and every allegation contained in Paragraphs 1-35 of this Complaint as though fully set forth herein.

37. Gateway's use of the Gateway Mark predates any use by Defendant of that mark in the United States.

38. Defendant's unauthorized use of the Gateway Mark is likely to cause confusion, mistake, or deception among consumers or potential customers as to the source and origin of Defendant's

products and services and the sponsorship or endorsement of those products and services by Defendant.

39. Defendant's unauthorized use of the Gateway Mark is likely to cause confusion, mistake, or deception among consumers or potential customers as to the source and origin of Gateway's products and services and the sponsorship or endorsement of those products and services by Gateway.

40. The aforesaid acts of Defendant constitute trademark infringement, false designation or origin, and false and misleading description and representations in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

41. The acts of Defendant set forth herein were committed willingly, with full knowledge of Gateway's rights, and with the intention of deceiving and misleading the public and causing harm to Gateway.

42. As a direct and proximate result of Defendant's unlawful acts, Gateway has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

43. Unless enjoined by this Court, the acts of Defendant complained of herein will cause Gateway to suffer irreparable harm for which there is not adequate remedy at law.

VIII. Count Five
Trademark Infringement – Texas Common Law

44. Gateway incorporates by reference each and every allegation contained in Paragraphs 1-43 of this Complaint as though fully set forth herein.

45. Gateway's use of the Gateway Mark predates any alleged use by Defendant of that mark in the United States.

46. The aforesaid acts constitute trademark infringement in violation of common law.

47. The acts of Defendant set forth herein were committed willingly, with full knowledge of Gateway's rights, and with the intention of deceiving and misleading the public and causing harm to Gateway.

48. As a direct and proximate result of Defendant's unlawful acts, Gateway has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

49. Unless enjoined by this Court, the acts of Defendant complained of herein will cause Gateway to suffer irreparable harm for which there is not adequate remedy at law.

IX. Count Six
Unfair Competition – Texas Common Law

50. Gateway incorporates by reference each and every allegation contained in Paragraphs 1-49 of this Complaint as though fully set forth herein.

51. The aforesaid acts of Defendant constitute unfair competition in violation of the common law.

52. The acts of Defendant set forth herein were committed willingly, with full knowledge of Gateway's rights, and with the intention of deceiving and misleading the public and causing harm to Gateway.

53. As a direct and proximate result of Defendant's unlawful acts, Gateway has suffered and will continue to suffer damages in an amount that is not presently ascertainable, but will be established at trial.

54. Unless enjoined by this Court, the acts of Defendant complained of herein will cause Gateway to suffer irreparable harm for which there is not adequate remedy at law.

X. Prayer for Relief

WHEREFORE, Gateway Buick GMC, LLC, requests that judgment be entered in its favor against Defendant as follows:

1. Defendant's unauthorized use of the Gateway Mark is likely to dilute Gateway's distinctive Gateway Mark;
2. Defendant's unauthorized use of the Gateway Mark infringes Gateway's valid intellectual property rights;
3. Defendant's conduct was knowing, intentional and willing;
4. Preliminarily and permanently enjoining Defendant, its successors, officers, agents and employees, and anyone acting in active concert or participating with or at the behest or direction of any of them, from:
 - a. using (including, but not limited to, in connection with the promotion, marketing, advertising and sales of products or services) the Gateway Mark, any colorable imitation thereof, including but not limited to the word "Gateway", or any otherwise dilutive or confusingly similar word or mark in its store, advertising of an kind and promotions;
 - b. doing any other act or thing likely to confuse, mislead or deceive others into believing that Defendant, or its products and services are connected with, sponsored by or approved by Gateway; and
 - c. engaging in any other activity constituting unfair competition with Gateway or constitution an infringement of Gateway's rights in and to the Gateway Mark.

5. Ordering that all signage, advertisements, labels, prints, packages, accessories or any kind, license plates, and any other tangible items bearing the Gateqay Mark, or any colorable imitation thereof, be destroyed, and that the Gateway Mark and any colorable imitations be removed for all Internet websites, online advertising, marketing, promotions, search engines, or other online materials, pursuant to 15 U.S.C. § 11189;

6. Ordering Defendant, pursuant to 15 U.S.C. § 116(1), to file with the Court and serve on Gateway's counsel within 30 days after service of this injunction, a written report, sworn under oath, setting forth in detail the manner and form in which Defendant has complied with the injunction;

7. Directing an accounting to determine Defendant's profits resulting from its unlawful activities;

8. Awarding Gateway compensation for any and all damages, injury or harm;

9. Ordering full restitution or disgorgement of all profits and benefits that may have been obtained by Defendant as a result of its wrongful conduct pursuant to 15 U.S.C. § 1117;

10. Awarding Gateway treble damages resulting from Defendant's wilful and intentional conduct pursuant to 15 U.S.C. § 1117 and Texas law;

11. Awarding Gateway punitive and exemplary damages as permitted by Texas law;

12. Assessing Gateway's attorneys' fees and costs incurred in this action against Defendant pursuant to 15 U.S.C. § 1117 and Texas law; and

13. Ordering or awarding any other such relief that the Court deems just and proper.

Demand for Jury Trial

Gateway hereby makes a demand pursuant to Federal Rule of Civil Procedure 38(b) for a trial by jury on all issues triable to a jury.

Dated this 17th day of January, 2014.

Respectfully submitted,

By: /s/Jennifer S. Stoddard
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