

namely a remote data collection system for monitoring vehicle data, including fuel, oil, coolant, torque, transmission fluid, and mileage. Defendants began using the FLEETWATCH mark in the Defendants' company name "Fleet Watch Online LLC" and in the Defendants' domain name <www.fleetwatchonline.com> in association with advertising and selling products for remotely monitoring vehicle data that, for all intents and purposes, are identical to those offered by S&A. By advertising and selling identical, competing products using S&A's federally registered FLEETWATCH mark, Defendants are engaged in activities that infringe S&A's trademark rights and constitute false advertising. S&A seeks injunctive relief against Defendants and further relief as described below.

THE PARTIES

2. S&A is, and at all relevant times was, a corporation duly organized and existing under the laws of the State of Texas, with its principal place of business located at 992 Sids Rd., Rockwall, TX 76032.

3. Upon information and belief, Defendant Fleet Watch is a Missouri limited liability corporation, with its principal place of business at 4867 S. Crescent, Springfield, Missouri 65804. The registered agent for service of process is Jacqueline E. Johnson at the following address: 4867 S. Crescent, Springfield, Missouri 65804.

4. Upon information and belief, Defendant Jacqueline E. Johnson is the organizer, member, and owner of Fleet Watch Online LLC. At all times, Johnson was a citizen of Missouri residing at 4867 S. Crescent Avenue, Springfield, MO 65804, where Johnson may be served.

5. S&A is further informed and believes, and based thereon alleges, that Johnson has been or was the agent, servant, employee and/or owner of Fleet Watch, and in doing the acts

hereinafter alleged, is, has been or was acting in the course and scope of such agency, servitude, employment or ownership.

6. Defendants may be served in accordance with Rules 4(e) and (h) of the Federal Rules of Civil Procedure at the above listed addresses.

JURISDICTION AND VENUE

7. S&A's Lanham Act claims for trademark infringement and false advertising arise under federal law, specifically, 15 U.S.C. §§ 1114 and 1125, and this Court has subject matter jurisdiction pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§ 1331 and 1338, and because there is diversity of citizenship between the parties under 28 U.S.C. § 1332(a).

8. Venue is proper in the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. §1391(b), because a substantial part of Defendant's unlawful acts of trademark infringement and the associated damage suffered by and the harm to S&A have occurred, and will continue to occur, in this judicial district.

FACTS

9. Since at least as early as November 20, 1980, S&A has been selling remote data collection systems for monitoring vehicle data using the federally registered trademark FLEETWATCH. The remote data collection system for monitoring vehicle data sold by S&A consists of electronic hardware for automatic recording of fuel and oil and automatic monitoring of coolant, torque, transmission fluid or mileage for vehicles. As advertised on S&A's website, data collected by the S&A system may be used to track vehicle mileage, monitor fuel and fluid usage, schedule preventative maintenance, and reconcile fluids. The S&A system can use this

data to generate reports and/or automatically pass information on to another system in real-time or at specified times of the day.

10. S&A owns a federal trademark registration for the mark FLEETWATCH (Registration No 2,112,052). (See Exhibit A.) The following summarizes S&A's federal trademark registration:

a. Registration No. 2,112,052; International Class 9: remote data collection system consisting of electronic hardware for automatic recording of fuel and oil and automatic monitoring of coolant, torque, transmission fluid or mileage for vehicles; first use in commerce at least as early as November 20, 1980; registered on the Principal Register on November 11, 1997; Section 8 and Section 15 Affidavits filed November 12, 2003; Section 8 Affidavit accepted and Section 15 Affidavit acknowledged January 22, 2004.

11. The FLEETWATCH mark has become incontestable pursuant to 15 U.S.C. § 1065. The registration of the FLEETWATCH mark constitutes *prima facie* evidence of validity and conclusive evidence of S&A's exclusive right to use the Mark in connection with the products identified by the respective trademark registration. The registration of the FLEETWATCH mark also provides notice to Defendant of S&A's ownership and exclusive rights in the Mark.

12. The FLEETWATCH mark has been the subject of substantial and widespread promotion for over thirty-three (33) years and is widely identified as distinguishing the high quality remote vehicle data monitoring system that S&A currently offers to the public through its establishment located at 992 Sids Rd., Rockwall, TX 76032, and through its website

<www.fleetwatch.com>. On January 24, 1996, S&A registered the domain name <www.fleetwatch.com> for use in connection with S&A's sale of products for remotely monitoring vehicle data under the FLEETWATCH mark.

13. Defendants Fleet Watch Online LLC and Johnson advertise and sell goods – GPS and remote diagnostic equipment for monitoring vehicles – using the deceptive trade name and mark FLEET WATCH ONLINE and through the Defendants' website <www.fleetwatchonline.com>, a screenshot of which is attached as Exhibit B. The Defendants' remote data collection system for monitoring vehicle data, for all intents and purposes, is identical to the goods offered and sold by S&A, namely a remote data collection system for monitoring vehicle data such as fuel, oil, coolant, torque, transmission fluid, and mileage.

14. Upon information and belief, and based on the information available on the Defendants' website, Defendants' products, the "GPS & Remote Diagnostic Equipment 5500 Model" and the "5000 Series product line," ... "lets fleet managers locate vehicles in near and real time and view specific vehicle data such as current location, mileage, speed, fuel consumption, and diagnostic trouble codes..." Defendants' website, under "FEATURES AND BENEFITS," states, "Vehicle Diagnostics (5500 model): Remote capabilities enable monitoring of diagnostic trouble codes, ignition status, speed, odometer readings, fuel efficiency, and more."

15. S&A has not endorsed or otherwise approved of Fleet Watch's and Johnson's use of the FLEETWATCH mark.

16. Defendants' use of the trademark and trade name "FLEET WATCH ONLINE," which is either identical or substantially similar to the FLEETWATCH mark owned by S&A, creates an impression in the consumer's mind that Defendant Fleet Watch is affiliated with S&A.

17. Consumers are likely to be confused regarding whether the products advertised and sold by Fleet Watch and Johnson for remotely monitoring vehicle data are endorsed, sponsored, or approved by S&A, or affiliated with S&A or products for remotely monitoring vehicle data provided by S&A.

18. Due to S&A's legitimate concerns that Defendants' advertisement and use of the FLEETWATCH mark in advertisements, including on the Defendants' website <www.fleetwatchonline.com>, would cause confusion among and deceive the consuming public, S&A, through its counsel, sent correspondence to Defendants on or about February 13, 2014, expressing its concerns and demanding that Defendants cease and desist use of the name "FLEET WATCH ONLINE," "FLEETWATCH," or any other name that is confusingly similar to S&A's trademark. A copy of that correspondence is attached hereto as Exhibit C.

19. Defendants are attempting to trade on the business success and goodwill of S&A and its federally registered FLEETWATCH mark by using the trade name FLEET WATCH ONLINE and the website <www.fleetwatchonline.com> to advertise and market its identical and competing products for remotely monitoring vehicle data.

20. By marketing identical products using the trade name and mark "FLEET WATCH ONLINE," which is identical or substantially similar to the federally registered FLEETWATCH mark that is used by S&A for its products, Defendants are attempting to create an association or affiliation between their products and those of S&A.

21. Upon information and belief, Defendants commenced using the mark "FLEET WATCH ONLINE" and are still willfully and deliberately using this mark with the bad faith

intent to profit from S&A's FLEETWATCH mark and to create an association between the products of S&A and the products of Defendants in the minds of consumers.

22. As a result of Defendants' use of the identical trademark and trade name as S&A's federally registered trademark FLEETWATCH, S&A has suffered great and irreparable injury.

23. S&A is informed and believes, and based thereon alleges, that Defendants will continue to use the identical mark FLEETWATCH in Defendants' trade name and domain name, and in connection with directly competing and identical products, and, as a result, S&A will continue to suffer great and irreparable injury, unless Defendants are enjoined from doing so.

Count One

Lanham Act §32 Trademark Infringement

24. S&A repeats and re-alleges the allegations set forth in paragraph 1 through 23 above as if fully set forth herein.

25. S&A is informed and believes, and based thereon, alleges that Defendants have willfully infringed S&A's federally registered mark FLEETWATCH by using in interstate commerce the confusingly similar and deceptive trade name, "FLEET WATCH ONLINE," which is a copy or colorable imitation of S&A's trademark FLEETWATCH, for directly competing products.

26. S&A is informed and believes, that Defendant's use of a copy or colorable imitation of S&A's trademark FLEETWATCH in connection with the sale of Defendants' identical and competing products was done with Defendants' actual knowledge of S&A's prior, extensive, and continuous use of its trademark FLEETWATCH, but without the consent of S&A,

which is likely to cause confusion or to cause mistake in the consuming public, or deceive the consuming public.

27. Moreover, S&A has expended great effort and significant amounts of money in protecting, advertising, promoting, and developing the recognition of the mark FLEETWATCH, with the result being that, long before the acts of Defendants complained of herein, the public had come to recognize such trademark as a reference to the superior products offered by S&A for remotely monitoring vehicle data. Such public recognition constitutes goodwill of immense value which belongs exclusively to S&A.

28. S&A's trademark FLEETWATCH, besides being inherently enforceable and distinctive, has acquired recognition within the United States as signifying remote data collection systems for monitoring vehicle data offered by a specific source, such recognition having been acquired long prior to the conduct of Defendants' complained of herein.

29. Defendants have willfully and intentionally infringed S&A's trademark rights in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114(1)(a), by various acts, including advertising and displaying the confusingly similar and deceptive trade name, "FLEET WATCH ONLINE." Defendants' actions are without the permission or authority of S&A, and are likely to cause confusion, cause mistake, and deceive as to an affiliation, connection or association between S&A and Defendants.

30. Defendants' above alleged infringement is malicious and oppressive, and Defendants have willfully and deliberately committed such malicious and oppressive conduct. As a result, S&A has suffered great and irreparable harm and is therefore entitled to receive the maximum damages allowable under the Lanham Act from and against the Defendants.

31. Defendants will continue to conduct the willful acts of trademark infringement, and as a result, S&A will continue to suffer great and irreparable harm, unless Defendants are enjoined from committing such acts.

Count Two

Lanham Act §32 False Advertising

32. S&A repeats and re-alleges the allegations set forth in the preceding paragraphs as though fully set forth herein.

33. Through the actions alleged herein, S&A is informed and believes, and based thereon, alleges that Defendants have willfully and intentionally violated §32(1)(b) of the Lanham Act, 15 U.S.C. §1114(1)(b), by copying or colorably imitating the federally registered mark FLEETWATCH through the use, in commercial advertising or promotions, of the same or confusingly similar trade name “FLEET WATCH ONLINE” and domain name <www.fleetwatchonline.com>. Defendants’ actions are without the permission or authority of S&A, and are likely to cause confusion, to cause mistake, and to deceive.

34. Defendants are and have been falsely and misleadingly representing to the relevant consuming public, including S&A’s customers and potential customers, by way of commercial advertising and otherwise, that the Defendants’ business is associated with the federally registered trademark FLEETWATCH when, in fact, it is not.

35. Defendants’ false and misleading descriptions and representations of facts regarding the use of the confusingly similar and deceptive trade name “FLEET WATCH ONLINE” and domain name <www.fleetwatchonline.com> is likely to influence, confuse, or deceive the consuming public with regard to remote data collection systems for monitoring

vehicle data.

36. Defendants' above alleged conduct of false advertising is malicious and oppressive, and Defendants have willfully and deliberately committed such malicious and oppressive conduct. As a result, S&A has suffered great and irreparable harm and is therefore entitled to receive the maximum damages allowable under the Lanham Act from and against the Defendants.

37. Defendants will continue to commit the above alleged willful acts of false advertising, and as a result, S&A will continue to suffer great and irreparable harm, unless Defendants are enjoined from committing such acts.

Count Three

Lanham Act §43 False Designation of Origin

38. S&A repeats and re-alleges the allegations set forth in the preceding paragraphs as though fully set forth herein.

39. S&A is informed and believes, and based thereon, alleges that Defendants have willfully infringed S&A's federally registered trademark FLEETWATCH by using in interstate commerce the confusingly similar and deceptively misleading trade name "FLEET WATCH ONLINE" (and domain name <www.fleetwatchonline.com>) for directly competing products, with Defendants' actual knowledge of S&A's prior, extensive, and continuous use of its federally registered trademark FLEETWATCH, but without the consent of S&A, which is likely to cause confusion in the consuming public as to the affiliation, connection or association of Defendants with S&A.

40. Moreover, S&A has expended great effort and significant amounts of money in protecting, advertising, promoting, and developing the recognition of the mark FLEETWATCH, with the result being that, long before the acts of Defendants complained of herein, the public had come to recognize such trademark as a reference to the superior products offered by S&A. Such public recognition constitutes goodwill of immense value which belongs exclusively to S&A.

41. S&A's mark FLEETWATCH, besides being inherently enforceable and distinctive, has acquired recognition within the United States as signifying quality remote data collection systems for monitoring vehicle data, offered by a specific source, such recognition having been acquired long prior to the conduct of Defendants' complained of herein.

42. Defendants have willfully and intentionally infringed S&A's trademark rights in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A), by various acts, including advertising and displaying its confusingly similar and deceptively misleading trade name "FLEET WATCH ONLINE" and registering and using the confusingly similar and deceptively misleading domain name <www.fleetwatchonline.com> for advertising and selling identical, competing products. S&A has been damaged by Defendants' actions. Defendants' actions are without the permission or authority of S&A, and are likely to cause confusion or mistake as to the origin of Defendants' products and to deceive as to an affiliation, connection or association between S&A and Defendants.

43. Defendants' actions have created a likelihood of confusion among consumers who will falsely believe that Defendants' products are approved, sponsored and/or endorsed by S&A, when, in fact, they are not.

44. Defendants' above alleged infringement is malicious and oppressive, and Defendants have willfully and deliberately committed such malicious and oppressive conduct. As a result, S&A has suffered great and irreparable harm and are therefore entitled to receive the maximum damages allowable under the Lanham Act from and against the Defendants.

45. Defendants will continue to conduct the alleged willful acts of trademark infringement and false designation of origin and, as a result, S&A will continue to suffer great and irreparable harm, unless Defendants are enjoined from committing such acts.

46. In accordance with Section 34 of the Lanham Act, 15 U.S.C. § 1116, Defendants should be preliminarily and, upon hearing, permanently enjoined from using S&A's mark FLEETWATCH or any confusingly similar variations thereof, alone or in combination with other words, as a trademark, trade name, website or otherwise, to market, advertise, or identify Defendants' products.

47. Under Section 35 of the Lanham Act, 15 U.S.C. § 1117(a), S&A is entitled to recover from Defendants: (i) Defendants' profits, (ii) the damages sustained by S&A, and (iii) the costs of this action. Due to the knowing, intentional, and purposeful nature of Defendants' conduct, S&A seeks treble the amount of its actual damages. Due to the exceptional nature of this case, S&A seeks its reasonable attorneys' fees.

Count Four

Lanham Act §43 False Description in Advertising

48. S&A repeats and re-alleges the allegations set forth in the preceding paragraphs as though fully set forth herein.

49. Through the actions alleged herein, S&A is informed and believes, and based

thereon, alleges that Defendants have willfully and intentionally violated §43(a)(1)(B) of the Lanham Act, 15 U.S.C. §1125(a)(1)(B), by using in commercial advertising or promotions the confusingly similar and deceptively misleading trade name, “FLEET WATCH ONLINE,” and by registering and using the confusingly similar and deceptively misleading domain name <www.fleetwatchonline.com> to misrepresent the nature, characteristics, and qualities of its products or commercial activities.

50. Defendants are and have been falsely and misleadingly representing to the relevant consuming public, including S&A’s customers and potential customers, by way of commercial advertising and otherwise, that the Defendants’ business and products are associated with the federally registered mark FLEETWATCH when, in fact, they are not.

51. Defendants’ false and misleading descriptions and representations of facts regarding the use of the confusingly similar and deceptive trade name, “FLEET WATCH ONLINE,” and the confusingly similar and deceptively misleading domain name <www.fleetwatchonline.com> is likely to influence the consuming public with regard to the use and source of remote data collection systems for monitoring vehicle data.

52. Defendants will continue to commit the above alleged willful acts of false advertising, and as a result, S&A will continue to suffer great and irreparable harm, unless Defendants are enjoined from committing such acts.

Application for Preliminary and Permanent Injunction

53. S&A incorporates the allegations in the preceding paragraphs as though set forth fully herein.

54. On information and belief, Defendants, unless enjoined, will continue to (a) misrepresent to or mislead the public into believing that its products are sponsored by, approved by, affiliated with, associated with, or originated by S&A and (b) infringe S&A's federally registered trademark FLEETWATCH by using the same mark or confusingly similar variations thereof as Defendants' trade name and domain name, and to identify Defendants' competing products. All of these acts violate the Lanham Act.

55. These actions entitle S&A to a preliminary and, upon hearing, permanent injunction enjoining Defendant Fleet Watch and its officers, agents, servants, employees, and attorneys, Defendant Johnson, and all those persons in active concert or participation with the Defendants from:

- a. Representing that Defendants' products are in any way sponsored by, approved by, affiliated with, associated with, or originated by S&A;
- b. Using variants confusingly similar and/or identical to S&A's mark FLEETWATCH, including without limitation the trade name or mark "FLEET WATCH ONLINE," or any confusingly similar variation thereof, alone or in combination with other words, as a trademark, trade name, domain name, or otherwise, to market, advertise, or identify Defendants' products or for any other purpose;
- c. Representing themselves, or any of their officers, agents, servants, employees, and/or all other persons acting in concert with them, as representatives of S&A;

d. Representing to third parties that their activities, or the activities of their officers, agents, servants, employees, and/or all other persons acting in concert with them, are affiliated with, or endorsed by S&A; and

e. Otherwise competing unfairly with S&A or injuring its business reputation in any manner.

56. For these actions, there is no adequate remedy at law. Further, S&A is substantially likely to prevail on the merits of these claims. The injury to S&A greatly outweighs any injury to Defendants that the requested injunction may cause. The balance of hardships tips strongly in favor of S&A. Finally, the injunction will not disserve the public interest. Therefore, S&A is entitled to the above preliminary and permanent injunctive relief against Defendants.

Jury Demand

57. Plaintiff S&A hereby demands a jury trial.

Prayer

WHEREFORE, S&A, Inc. (S&A) respectfully requests the following:

1. That this Court, pursuant to its authority under 15 U.S.C. §1116, issue a preliminary and permanent injunction enjoining Defendant Fleet Watch and its officers, agents, servants, employees, and attorneys, Defendant Johnson, and all those persons in active concert or participation with Defendants from the acts described in paragraph 55 of this Complaint;

2. That this Court order Defendants to provide an accounting of all sales, revenues, and profits related to Defendants' products that infringe S&A's marks and that were falsely designated as being sponsored by, approved by, affiliated with, or associated with S&A;

3. That this Court order Defendants to assign and transfer to S&A the domain name <www.fleetwatchonline.com> and all rights therein;

4. That this Court, in accordance with 15 U.S.C. § 1118, order that all labels, signs, prints, packages, wrappers, receptacles, advertisements, and all other materials (a) in the Defendants' possession or control and (b) bearing the FLEETWATCH mark or any confusingly similar mark be delivered up and destroyed;

5. That this Court, in accordance with the Lanham Act, award S&A all of Defendants' profits from the aforesaid acts of unjust enrichment, trademark infringement, and false advertising;

6. That this Court award to S&A the maximum damages allowable under the Lanham Act, 15 U.S.C. §1051 et seq., including but not limited to treble damages;

7. That this Court, in accordance with the Lanham Act, find this case to be exceptional in S&A's favor and award S&A its reasonable attorney's fees, costs, and expenses of this action;

8. That this Court, award S&A pre-judgment and post-judgment interest at the maximum allowable interest rate; and

9. That this Court award S&A, as an equitable remedy, the costs and expenses reasonably necessary for S&A to undertake a corrective advertising campaign to market and promote its remote data collection system for monitoring vehicle data and to re-establish to the

public, particularly consumers of remote vehicle monitoring systems, that the trademark FLEETWATCH is exclusively associated with S&A and not the Defendants.

10. That this Court award S&A such other and further relief, both general and special, at law or in equity, to which S&A shows itself to be justly entitled and which this Court deems just, equitable and proper.

Dated: June 9, 2014.

Respectfully submitted,

/s/ David W. Carstens

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