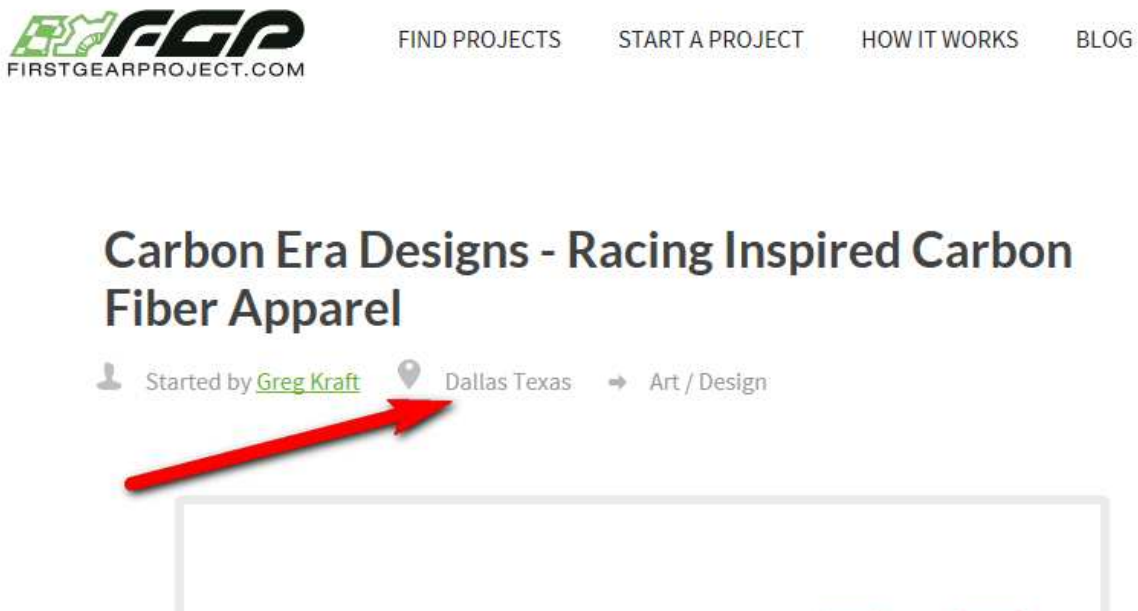


JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §1121 and under 28 U.S.C. §§ 1331 (federal question jurisdiction), 1338 (trademark and unfair competition), and 1367 (supplemental jurisdiction).

5. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant conducts business in this judicial district and division.

6. Below is a screenshot of Defendant's website at <http://www.FirstGearProject.com> taken November 25, 2014 which illustrates Defendant's business activities in this judicial district and division:



7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c).

FACTUAL BACKGROUND



8. Plaintiff, Tucker-Rocky and its affiliated companies comprises one of the world's largest marketers and distributors of parts, accessories and apparel for the power sports industry.

9. Tucker-Rocky is the owner of the well-known and federally protected trademark “FIRST GEAR” as well as other word marks and design marks (hereinafter referred to collectively herein as the “FIRST GEAR Marks”) used in connection with goods/services directed to the power sports industry.

10. Tucker-Rocky’s FIRST GEAR Marks have been so extensively used and advertised by Tucker-Rocky in the United States the marks have come to indicate to the relevant trade and consumers, goods and services having their source of origin in, or connected with, Tucker-Rocky.

11. Consistent with its use of the FIRST GEAR Marks, Tucker-Rocky has obtained numerous federal registrations for its FIRST GEAR Marks. The earliest of Plaintiff’s registrations was obtained in 1992 and has been used in interstate commerce continuously since then. All of Plaintiff’s registrations have also obtained incontestable status.

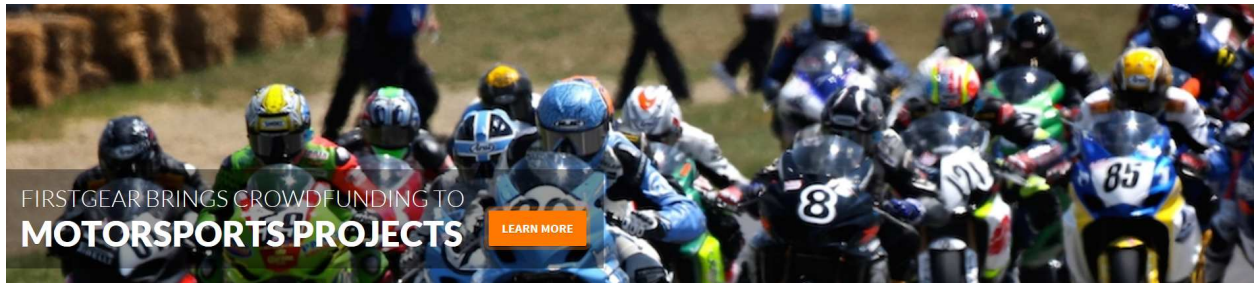
12. Among Plaintiff’s federal registrations for its FIRST GEAR Marks are the following:

Trademark	Registration No.	Registration Date	Goods/Services
FIRSTGEAR	1742329	12/22/1992	Motorcycle wearing apparel; namely, jackets, pants, boots and gloves
	1747824	01/19/1993	Motorcycle wearing apparel; namely, jackets, pants, boots and gloves
	3625083	05/26/2009	Motorcycle wearing apparel, namely, jackets, pants, boots and gloves

13. Tucker-Rocky spends thousands of dollars every year on extensively marketing and advertising the FIRST GEAR Marks. As a result of those efforts, and as a result of Tucker-Rocky’s extensive and continue use of its FIRST GEAR Marks, those marks have

become well-known to consumers as designations of origin that identify and distinguish the quality goods/services offered by Tucker-Rocky.

14. Upon information and belief, Defendant is engaged in the business of providing “crowdfunding” to motorsports projects, as referenced on its website FirstGearProject.com, and as shown below:



15. Defendant states on its website FirstGearProject.com that it provides a “platform where anyone who needs funding to bring a project to life can ask their community (friends, family, fans or like-minded enthusiasts) for support.”

16. Defendant also states on its website FirstGearProject.com that its business enables others “to discover and support new ideas, *invest in new products or technologies, or support [one’s] favorite drivers, teams or brands.*”

17. In an attempt to illegally capitalize on Plaintiff’s FIRST GEAR Marks which are well known in the motorsports marketplace, Defendant has adopted and is using Plaintiff’s mark “FIRST GEAR” and other marks confusingly similar to Plaintiff’s FIRST GEAR Marks in connection with its business, which also targets consumers in the motorsports market.

18. Specifically, Defendant promotes various projects in the motorsports space, including cycling, motorcycle racing, and off/road dirt racing:

Most Popular Projects

Endurance Radio - 25 Hours of Thunderhill
Brendan Kaczmarek
Endurance Radio are the live commentary team for NASA's 25 Hours of Thunderhill. We are in search of partners/advertisers for our expanded 2014 efforts.
4 supporters • 28 days to go • 55% funded

KARTING
Joe Hancock
RUNNING THE HIGHBANKS FOR LOGAN
I am racing to raise money for Logan. He is a 6mo old little boy who has a heart defect and will need surgery when he reaches 20lbs. Help us raise \$2500 or more to help him.
2 supporters • 33 days to go • 3% funded

KARTING QUEST
Gunnar / Peter and Gretchen Bischoff
I am 11 an year old aspiring kart racer. My focus is to become a professional kart racer who can someday translate my talents into a career in Motorsports.
2 supporters • 56 days to go • 2% funded

RACING
AUTO RACING
BICYCLE RACING / CYCLING
BOAT RACING / WATER SPORTS
DRAG RACING
DRIFTING
KART RACING
LAWN MOWER RACING
MOTORCYCLE RACING
OFFROAD / DIRT RACING
OVAL / SPEEDWAY
RALLY / RALLY CROSS
RC / SLOT CAR RACING
SNOWMOBILE / ICE RACING
SOLO / TIME ATTACK

OTHER
ART / DESIGN
BOOK / PUBLICATION
FILM / DOCUMENTARY
OTHER
PRODUCT / SERVICE

19. Defendant's use is without authorization from Tucker-Rocky, and trades directly on the goodwill and reputation associated with Tucker-Rocky and the FIRST GEAR Marks.

20. Defendant's use of the FIRST GEAR Marks, in whole or in part, dilutes the ability of Tucker-Rocky to identify itself as the source of its quality goods/services.

21. Further, Defendant's use of the FIRST GEAR Marks, in whole or in part, is deceptive and misleads consumers into believing falsely that Defendant's website at FirstGearProject.com is sponsored or authorized by and/or are originating from Tucker-Rocky.

22. Defendant's use of the FIRST GEAR Marks, in whole or in part, is a deliberate effort to trade on Tucker-Rocky's trademark rights and such use infringes on Tucker-Rocky's rights in the FIRST GEAR Marks.

23. Defendant has not been authorized to use the FIRST GEAR Marks, in whole or in part, for any purpose, and Tucker-Rocky has notified Defendant in writing of its infringing

activity prior to filing this Complaint and demanded that Defendant cease such activities. Defendant has ignored Tucker-Rocky's demands.

24. Upon information and belief, Defendant has willfully and intentionally engaged in the foregoing actions with knowledge of Tucker-Rocky's use of, and/or trademark rights in, the FIRST GEAR Marks, and that Defendant's use of the FIRST GEAR Marks was unauthorized.

25. Upon information and belief, Defendant's conduct is a deliberate attempt to trade on the valuable trademark rights and substantial goodwill established by Tucker-Rocky.

26. Upon information and belief, Defendant engaged in the foregoing actions with the intent that its use of the FIRST GEAR Marks would cause confusion, mistake, or deception among members of the consuming public.

27. Upon information and belief, Defendant has traded on, and profited from, the goodwill and reputation established by Tucker-Rocky in the FIRST GEAR Marks.

COUNT I – FEDERAL TRADEMARK INFRINGEMENT

28. Paragraphs 1-27 are incorporated herein by reference for the purpose of providing initial factual allegations for this cause of action.

29. The activities of Defendant complained of herein constitute willful and intentional infringement of Plaintiff's federally registered marks in violation of 15 U.S.C. § 1114. Defendant is using, in commerce, a reproduction, counterfeit, copy, or colorable imitation of one or more of Plaintiff's registered marks in connection with the sale, offering for sale, distribution, or advertising of services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

30. This infringement is causing substantial and irreparable injury to Plaintiff's business, reputation and goodwill.

31. Defendant's activities have continued in spite of Defendant's constructive and actual knowledge of Plaintiff's rights.

32. Plaintiff has no adequate remedy at law. Defendant's conduct has caused, and if not enjoined will continue to cause, irreparable damage to Plaintiff, to its registered marks, and to its business reputation and goodwill, for which monetary relief will not be fully compensable. Accordingly, Plaintiff is entitled to injunctive relief against Defendant from engaging in further such unlawful conduct.

33. Plaintiff further is entitled to recover from Defendant all gains, profits, and advantages obtained as a result of the unlawful conduct alleged herein, in an amount to be determined at trial.

COUNT II – 15 U.S.C. § 1125(a) – FALSE DESIGNATION OF ORIGIN

34. Paragraphs 1-33 are incorporated herein by reference for the purpose of providing initial factual allegations for this cause of action.

35. The use of the FIRST GEAR Marks, in whole or in part, by Defendant constitutes a false designation of origin and false representation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and is likely to cause confusion, or to cause mistake, or to deceive the public as to the affiliation, connection, or association of the Defendant with Plaintiff, to the damage of Plaintiff.

36. The unauthorized use by Defendant of the FIRST GEAR Marks has had, and unless restrained will continue to have, the consequent result of causing Plaintiff to lose the value of its very valuable FIRST GEAR Marks, to damage its integrity, and to lose control over its goodwill and reputation, for which Plaintiff has no adequate remedy at law.

37. Defendant's conduct has caused, and if not enjoined will continue to cause, irreparable damage to Plaintiff, to its marks, and to its business reputation and goodwill, for

which monetary relief will not be fully compensable. Accordingly, Plaintiff has no adequate remedy at law and is entitled to injunctive relief against Defendant from engaging in further such unlawful conduct.

38. Plaintiff further is entitled to recover from Defendant all gains, profits, and advantages obtained as a result of the unlawful conduct alleged herein, in an amount to be determined at trial.

**COUNT III – COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR
COMPETITION**

39. Paragraphs 1-38 are incorporated herein by reference for the purpose of providing initial factual allegations for this cause of action.

40. The unauthorized use of the FIRST GEAR Marks by Defendant constitutes common law trademark infringement and unfair competition, in violation of the common and statutory law of Texas.

41. Defendant's conduct has caused, and if not enjoined will continue to cause, irreparable damage to Plaintiff, to its marks, and to its business reputation and goodwill, for which monetary relief will not be fully compensable. Accordingly, Plaintiff has no adequate remedy at law and is entitled to injunctive relief against Defendant from engaging in further such unlawful conduct.

42. Plaintiff further is entitled to recover from Defendant all gains, profits, and advantages obtained as a result of the unlawful conduct alleged herein, in an amount to be determined at trial.

**COUNT IV – INJURY TO BUSINESS REPUTATION AND TRADEMARK
TEX. BUS. & COM. CODE ANN. § 16.29**

43. Paragraphs 1-42 are incorporated herein by reference for the purpose of providing initial factual allegations for this cause of action.

44. The unauthorized use of one or more of the FIRST GEAR Marks by Defendant in Texas, as set out hereinabove, has injured, and, unless enjoined, is likely to continue to injure, Tucker-Rocky's business reputation and good will, and has diluted, and, unless enjoined, is likely to continue to dilute, the distinctive quality of the FIRST GEAR Marks.

45. Pursuant to TEX. BUS. & COM. CODE ANN. § 16.29, Tucker-Rocky is therefore entitled to have Defendant's aforementioned unauthorized uses of the FIRST GEAR Marks enjoined to prevent further injury to Tucker-Rocky's business reputation and goodwill, and to prevent further dilution of the FIRST GEAR Marks.

COUNT IV – REQUEST FOR INJUNCTIVE RELIEF

46. Paragraphs 1-45 are incorporated herein by reference for the purpose of providing initial factual allegations for this cause of action.

47. The nature and magnitude of Defendant's conduct demonstrates the likelihood that Plaintiff will succeed on the merits with respect to the causes of action set forth hereinabove. The potential recovery of monetary damages will not redress the non-economic harm and injury that will be sustained by Plaintiff as a result of the use of the FIRST GEAR Marks. Plaintiff has not adequate remedy at law and will be irreparably harmed in the event Defendant's wrongful conduct is not enjoined. Accordingly, Plaintiff seeks the following injunctive relief:

A. Application for Preliminary Injunction

48. In order to preserve the status quo, and the property and rights of Plaintiff during the pendency of this action, Defendant should be cited to appear and show cause why it should not be preliminarily restrained from engaging in the conduct described hereinabove.

49. Specifically, Plaintiff seeks a preliminary injunction pursuant to 15 U.S.C. § 1116 (a) restraining the Defendant from:

1. Using the FIRST GEAR Marks, in whole or in part, or any confusingly similar designation, as a trademark, service mark, trade name, to market, advertise, promote, or identify any goods or services, to the extent not produced or authorized by Plaintiff;
2. Using the FIRST GEAR Marks, in whole or in part, or any confusingly similar designation, as a trademark, service mark, trade name, to market, advertise, promote, or identify any motorsports or motorsports-related products or services, to the extent not produced or authorized by Plaintiff, including in connection with Defendant's business;
3. Causing a likelihood of confusion or misunderstanding as to the source or sponsorship of Defendant's business or services by using confusingly similar or identical trade indicia and dress to that used by Plaintiff; and
4. Causing a likelihood of confusion or misunderstanding as to Defendant's affiliation, connection, or association with Plaintiff or any of its goods/services.

50. Such limitations will prevent the likelihood of confusion, injury to business reputation/trademark, or dilution of the distinctiveness of Plaintiff's FIRST GEAR Marks, symbols or forms of advertisements.

51. Pursuant to 15 U.S.C. § 1116(a), Plaintiff further requests the Court to command Defendant to file with the Court and serve on the Plaintiff, within thirty (30) days after the service of such injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction.

B. Application for Permanent Injunction

52. Consistent with the relief sought by Plaintiff in connection with its Application for Preliminary Injunction, Plaintiff ultimately requests that upon final trial of this cause a permanent injunction be issued, pursuant to 15 U.S.C. § 1116 (a) restraining Defendant from:

1. Using the FIRST GEAR Marks, in whole or in part, or any confusingly similar designation, as a trademark, service mark, trade name, to market, advertise, promote, or identify any goods or services, to the extent not produced or authorized by Plaintiff;
2. Using the FIRST GEAR Marks, in whole or in part, or any confusingly similar designation, as a trademark, service mark, trade name, to market, advertise, promote, or identify any motorsports or motorsports-related products or services, to

the extent not produced or authorized by Plaintiff, including in connection with Defendant's business;

3. Causing a likelihood of confusion or misunderstanding as to the source or sponsorship of Defendant's business or services by using confusingly similar or identical trade indicia and dress to that used by Plaintiff; and
4. Causing a likelihood of confusion or misunderstanding as to Defendant's affiliation, connection, or association with Plaintiff or any of its goods/services.

53. Such limitations will prevent the likelihood of confusion, injury to business reputation/trademark, or dilution of the distinctiveness of Plaintiff's FIRST GEAR Marks, symbols or forms of advertisements.

54. Pursuant to 15 U.S.C. § 1116(a), Plaintiff further requests the Court to command Defendant to file with the Court and serve on the Plaintiff, within thirty (30) days after the service of such injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction.

PRAYER FOR RELIEF

Plaintiff, Tucker-Rocky prays that this Court:

- (a) Enter judgment in favor of Plaintiff and against Defendant on all of Plaintiff's claims;
- (b) Temporarily and, upon conclusion of trial on the permits, permanently enjoin and refrain Defendant, its affiliates, subsidiaries, officers, directors, agents, servants, employees, attorneys, and all persons acting for, with, by, through and under it, from:
 - 1. Using the FIRST GEAR Marks, in whole or in part, or any confusingly similar designation, as a trademark, service mark, trade name, to market, advertise, promote, or identify any goods or services, to the extent not produced or authorized by Plaintiff;
 - 2. Using the FIRST GEAR Marks, in whole or in part, or any confusingly similar designation, as a trademark, service mark, trade name, to market, advertise, promote, or identify any motorsports or motorsports-related products or services, to the extent not produced or authorized by Plaintiff, including in connection with Defendant's business;
 - 3. Causing a likelihood of confusion or misunderstanding as to the source or sponsorship of Defendant's business or services by using confusingly similar or identical trade indicia and dress to that used by Plaintiff; and
 - 4. Causing a likelihood of confusion or misunderstanding as to Defendant's affiliation, connection, or association with Plaintiff or any of its goods/services.
- (c) Require Defendant to correct the confusion which Defendant has caused;
- (d) Require Defendant to file with this Court and serve upon Plaintiff, within thirty (30) days after the service of such injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;
- (e) Require Defendant to account for and pay over to Plaintiff the Defendant's profits and all damages sustained by Plaintiff;

(f) Enter judgment that the damages sustained by Plaintiff should be trebled, and require Defendant to pay over to Plaintiff such damages because of the willful acts described herein in disregard of Plaintiff's known rights;

(g) Award Plaintiff its attorney's fees, costs, and expenses due to the exceptional nature of this case, pursuant to 15 U.S.C. § 1117; and

(h) Award Plaintiff such other and further relief that this Court deems just, and proper.

Pursuant to Fed. R. Civ. P. R. 38, Plaintiff demands a trial by jury for all issues triable by jury.

Date: 12-12-14

Respectfully submitted,

/s/ Paul V. Storm

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