

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO**
Judge Philip A. Brimmer

Civil Case No. 09-cv-00099-PAB-KLM

BIG O TIRES, LLC, a Nevada limited liability company,
f/k/a BIG O TIRES, INC., a Colorado corporation,

Plaintiff,

v.

GASKIN ENTERPRISES, INC., an Oregon Corporation, and
DAVID R. GASKIN, an individual,

Defendants.

ORDER ENTERING PERMANENT INJUNCTION

THE COURT, being duly advised in the premises, and after reviewing the Stipulation and Joint Motion for Approval of Stipulation Resolving Equitable Issues in Case [Docket No. 65], and pursuant to Fed. R. Civ. P. 65, orders the following:

1. Big O Tires, LLC f/k/a Big O Tires, Inc. ("Big O") and Gaskin Enterprises, Inc. ("GEI") entered into a franchise agreement in November of 1999 (the "Franchise Agreement").
2. David R. Gaskin ("Gaskin") guaranteed each and every covenant in the Franchise Agreement. GEI and Gaskin shall be referred to herein collectively as "Defendants."
3. Big O owns, among others, the following service and trademarks (collectively the "Marks"):
 - a) BIG O, Registration Number 994,466, registered October 1, 1974;

b) BIG O TIRES and design, Registration Number 1,611,160, registered August 28, 1990;

c) BIG O TIRES and design, Registration Number 2,834,058, registered April 20, 2004

d) BIG O TIRES and design, Registration Number 2,821,053, registered March 9, 2004;

e) WWW.BIGOTIRES.COM, Registration Number 2,514,975, registered December 4, 2001;

f) A REPUTATION YOU CAN RIDE ON, Registration Number 1,845,544, registered February 22, 1993; and

g) BIG FOOT 60, Registration Number 1,102,058, registered September 12, 1978.

4. Big O also has a trade dress that consists of the color scheme of the franchised locations including decorative maroon, black and white stripes, a red and white interior, red canopies on the exterior and various point of purchase materials and displays (collectively the "Trade Dress") that its franchisees use.

5. By virtue of the Agreement, Big O licensed GEI to, among other things, use the Marks and Trade Dress.

6. On November 4, 2008, Big O terminated the franchise rights of GEI for claimed uncured monetary defaults and, accordingly, GEI's license to use the Marks. Nevertheless, GEI continued to use the Marks and Trade Dress. Therefore, in order to enforce Big O's service and trademarks, Defendants are permanently enjoined as follows:

a) Pursuant to 15 U.S.C. § 1116, Defendants and their officers, agents, servants, employees and attorneys, and those persons in active concert with GEI who receive actual notice of this order by personal service or otherwise, are permanently enjoined from engaging in the following acts in Oregon and the United States or in foreign commerce:

i. Using the Marks and Trade Dress in the advertising or sale of tires and automotive services;

ii. Using in any manner any service mark, trademark, trade name, trade dress, words, numbers, abbreviations, designs, colors, arrangements, collocations or any combination thereof which would imitate or suggest the Marks or Trade Dress including Big G or Big G Tires. In particular, Defendants shall remove from their exterior and interior the decorative maroon, black and white stripes and shall remove from their interior the red picture frames, red tire signs and red bulletin boards. The Defendants shall also either remove the red awnings from the exterior or modify the red awnings in a manner reasonably satisfactory to Big O. The Defendants shall not be required to replace their red counter top;

iii. Otherwise infringing the Marks or Trade Dress;

iv. Publishing any telephone listings using the Marks and any other name containing words confusingly similar with the Marks.

b. Pursuant to 15 U.S.C. § 1116 and applicable contractual provision in the Agreement, Defendants are required to assign, to the extent possible, to Big O GEI's business telephone number 541-474-7273; and

c. Pursuant to 15 U.S.C. § 1118, Defendants are ordered to deliver to Big O all signs, advertising materials, forms, labels, prints, packages, wrappers, receptacles and all other materials in possession of or under the control of Defendants that use the Marks or Trade Dress;

7. Within a 10 mile radius of either 142 N.E. Terry Lane, Grants Pass, Oregon 97526 or any other Big O location which was operational or under construction on November 4, 2008, Defendants and their officers, agents, servants, employees and attorneys, and those persons in active concert with them who receive actual notice of this order by personal service or otherwise are enjoined for two years beginning July 31, 2009 from directly or indirectly engaging in any business which offers or sells tires, wheels or shock absorbers or performs the following services: 1) tire installations, repairs, balancing and maintenance; 2) wheel installation balancing, and maintenance; and 3) shock absorber and strut installation. This injunction shall not preclude the Defendants from providing any other general automotive services including but not limited to engine repair, body work, transmission work, tune ups, oil changes and fluid replacement.

8. Defendants are required to return to Big O all manuals and proprietary materials of Big O and to provide Big O with GEI's customer list or, at a minimum, access to Big O's customer list if the Defendants are unable to print the customer list.

9. Defendants are required to substantially comply with each and every provision of this Order by July 31, 2009. By July 31, 2009, the Defendants shall also file

with the Court and serve on Big O a report, in writing and under oath, setting forth in detail the manner and form in which they have complied with this order.

DATED May 28, 2009.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge