

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AMERICAN TAXI DISPATCH, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 11 CV 6796
)	
AMERICAN CAB SERVICE, INC., an Illinois)	
Corporation, AHMAD LABABIDI, individually,)	
and SUBURBAN TAXI, INC., an Illinois)	<u>JURY DEMAND</u>
Corporation,)	
)	
Defendants.)	
)	

COMPLAINT

NOW COMES, Plaintiff, American Taxi Dispatch, Inc., an Illinois corporation, (“American Taxi”), by and through its attorneys, Law Offices of Adam J. Zayed, P.C., and for its Complaint against American Cab Service, Inc., Ahmad Lababidi, and Suburban Taxi, Inc., (“Defendants”) states as follows:

PARTIES

1. Plaintiff, American Taxi, is an Illinois corporation, with its principal place of business located in Mount Prospect, County of Cook, State of Illinois. American Taxi is engaged in business as a taxi service servicing O’Hare International Airport, Midway Airport, Chicago and over 200 Chicagoland communities, including but not limited to Oak Brook, Glen Ellyn, Des Plaines, Naperville, Aurora, Schaumburg, and Evanston.

2. Defendants, upon information and belief, are engaged in the operation of a taxi business using a trade name strikingly similar to, and otherwise substantially identical to, American Taxi’s trade name, likeness, appearance, and registered trademark “American Taxi.”

3. Defendants operate a taxi business that services areas and communities similar to those areas and communities being serviced by American Taxi.

JURISDICTION

4. The court has jurisdiction over the parties and this controversy, as this is a civil action under the United States Trademark Act (15 U.S.C. § 1051 et seq.), jurisdiction being conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b). Jurisdiction for the Illinois state statutory claims is conferred in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. §1367(a) in that state law claims form part of the same controversy as the claims arise under the trademark laws of the United States.

5. Venue is proper pursuant to 28 U.S.C. §1391.

6. Defendants are and have been conducting continuous and systematic business by operating a taxicab company within the State of Illinois and within the Northern District of Illinois.

7. Defendants are transacting business and have committed illegal acts hereinafter complained of in the Northern District of Illinois.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

8. American Taxi was formed in 1975 and was incorporated March 1, 1977. American Taxi has utilized the service mark “American Taxi” since December 1975. A true and correct copy of American Taxi’s Articles of Incorporation and Articles of Amendment are attached and incorporated herein as Exhibit “A.”

9. American Taxi currently uses the service mark “American Taxi” on its vehicles, its letterhead, website (www.americantaxi.com), business cards, rate sheets, and other

promotional materials. Attached hereto and incorporated by reference are true and correct copies of the following examples of American Taxi's use of its service mark:

- (a) American Taxi's letterhead (Exhibit B);
- (b) An American Taxi business card (Exhibit C);
- (c) An American Taxi rate sheet (Exhibit D); and
- (d) An American Taxi coupon (Exhibit E).

10. Since December 1975, American Taxi has operated continuously in and about the Chicagoland area. In this regard, American Taxi has established considerable name recognition and goodwill among taxi service customers in the Chicago area, including those areas serviced by Defendant.

11. In addition to the use of American Taxi's mark, "American Taxi," American Taxi has adopted, implemented and used certain colors (white on a vehicle with a blue strip down each side of car, red lettering), shapes, designs, presentation and overall appearance which are distinctive to American Taxi and constitute trade dress.

12. American Taxi has built its name recognition and good will through the expenditure, since its inception, of millions of dollars in advertising, customer service and quality assurance. More specifically over the course of the last two (2) years American Taxi has expended \$353,898.00 in advertising. American Taxi is widely recognized as one of the premier taxi services in the Chicagoland area.

13. American Taxi currently has approximately 750 taxis in its fleet.

14. American Taxi has also built its name recognition and good will in the Chicagoland area by participating in community programs such as the Taste of Wilmette &

Business Showcase, the Lincolnwood Chamber of Commerce Business Expo, and the Northwest Suburban Council of the Boy Scouts of America Food Drive.

15. American Taxi owns a valid and subsisting federal trademark registration issued for “American Taxi” by the United States Patent and Trademark Office, as identified by registration number 3,058,900. A true and correct copy of American Taxi’s Certificate of Registration is attached hereto and incorporated herein as Exhibit “F.”

16. American Taxi owns a valid and subsisting federal trademark registration issued for the logo, design, scheme, colors and presentation of the American Taxi logo “American Taxi Dispatch, Inc.” by the United States Patent and Trademark Office, as identified by registration number 3,116,379. A true and correct copy of American Taxi’s Certificate of Registration is attached hereto and incorporated herein as Exhibit “G.”

17. Trademark Registration Numbers 3,058,900 and 3,116,379 remain in full force and effect.

18. American Taxi’s right to use the mark “American Taxi” and its logo are exclusive to American Taxi and the certificate of registrations thereof constitute “conclusive evidence” of “the validity of the registered mark, of the registrant’s ownership of the marks and of the registrant’s exclusive right to use the marks in connection with the goods or services specified in the registration.” 15 U.S.C. §1115.

19. American Taxi’s certificate of registration for Reg. No. 3,058,900 and 3,116,379 are “prima facie evidence of the validity of the registered marks and of the registration of the marks, of the registrant’s ownership of the marks, and of the registrant’s exclusive right to use of the marks in connection with the goods or services specified in the registration.” 15 U.S.C. §1115.

20. As a result of American Taxi's investment of its efforts, money, skill and other sources, American Taxi's marks are widely recognized as indicating American Taxi's goods and services, and have become well recognized in the United States.

DEFENDANTS' INFRINGING ACTS

21. Defendants operate a taxicab business under the name "American Cab" The use of this name infringes upon American Taxi's registered marks. The use of the term "American Cab" is strikingly similar and virtually identical to American Taxi's mark with similar fonts, colors and presentation, which obscures any distinguishing features between American Taxi's mark "American Taxi" and the names being used by Defendants. Moreover, Defendants are using and displaying colors, shape, design, markings, presentation, and lettering virtually identical to the features of American Taxi's mark. Attached hereto and incorporated by reference as Exhibit "H" is a true and correct copy Defendants' advertisements on kiosks at O'Hare international airport and website advertisements.

22. Defendants are not affiliated with or otherwise associated with American Taxi.

23. Defendants are not authorized to use, in any facet, American Taxi's name and trade dress.

24. Defendants' use of American Taxi name and trade dress is deceptive, misleading, and identical to American Taxi's corporate name, registered service marks and trade dress.

25. Defendants' use of the name "American Flat Rate" and overall appearance of American Taxi's trade dress will in all likelihood dilute American Taxi's respected and prominent trade name in the Chicagoland area that American Taxi has created and developed by expending a substantial amount of money and effort in advertising, customer service, and quality assurance.

COUNT I
(Federal Trademark Infringement (15 U.S.C.§ 1114))

1-25. American Taxi repeats and realleges paragraphs 1 through 25, inclusive above, as paragraphs 1 through 25, inclusive, of Count I.

26. Defendants' use of the name "American Cab" is confusingly similar to the registered mark "American Taxi" and logo "American Taxi Dispatch, Inc."

27. Defendants' aforesaid acts are likely to cause confusion, mistake or deception as to the source of the parties' services. Specifically, Defendants' use of American Taxi's mark is causing and will continue to cause the consuming public to mistakenly believe that Defendants' services are legitimately connected with, sponsored by or approved by American Taxi.

28. Defendants' aforesaid acts constitute trademark infringement in violation of Section 32 of the Lanham Act, 15, U.S.C. §1114, and the common law of Illinois.

29. Defendants have willfully and deliberately infringed and sought to appropriate the goodwill associated with the registered "American Taxi" mark and logo of American Taxi by advertising and transacting business in interstate commerce taxicab services which compete with American Taxi's services.

30. Defendants' acts and actions are likely to cause confusion, mistake and deception as to the source, origin or sponsorship of Defendants' taxi services.

31. Defendants' aforesaid acts are greatly and irreparably damaging to American Taxi and will continue to damage American Taxi until enjoined by this Court, wherefore American Taxi is without adequate remedy at law.

32. American Taxi requests a trial by jury.

WHEREFORE, Plaintiff, American Taxi Dispatch, Inc., prays that the Court enter judgment in its favor and against Defendants as follows:

- A. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from operating under or using, in any facet, the name “American Taxi” or any similar name;
- B. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from using, adopting, and displaying American Taxi’s colors, designs, shapes, patterns, and lettering similar to the trade dress of American Taxi;
- C. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from maintaining or listing their business telephone number under the name “American Taxi,” or any similar name;
- D. Awarding American Taxi all profits derived from and all damages suffered by American Taxi by reason of Defendants’ wrongful acts, or in the alternative, such statutory damages as may be allowed under the Federal Trademark Act;
- E. Awarding American Taxi an increase in the award of damages up to three times the amount found for deliberate and willful trademark infringement and unfair competition by Defendants pursuant to 15 U.S.C. §117(a);
- F. Awarding American Taxi its costs and reasonable attorneys’ fees incurred as a result of Defendants’ actions; and
- G. Granting such further relief as this Court deems just and proper.

COUNT II

(Federal Trademark Act of 1946, 15 U.S.C. 1051, et seq.)

1-25. American Taxi repeats and realleges paragraphs 1 through 25, inclusive, of Count I as paragraphs 1 through 25, inclusive, of Count II, as if fully set forth.

26. At all times herein there was in full force and effect in the federal statute known as the Federal Trademark Act of 1946, 15 U.S.C. 1051, et seq. (the “Lanham Act”).

27. The Defendants violated the Lanham Act in one or more of the following ways:
- a. falsely advertised by using a business name strikingly similar to American Taxi so as to cause confusion as to the source of the services being provided;
 - b. falsely advertised by using a business name strikingly similar to American Taxi so as to cause confusion, misunderstanding or to deceive the public as to the source or sponsorship of Defendants’ services;

- c. passed off Defendants' services as those of American Taxi;
- d. falsely stated and inferred that the designations of the services advertised were those of American Taxi or that American Taxi was affiliated with Defendants;
- e. falsely stated and inferred that the designation of the services advertised were approved, sponsored or affiliated with American Taxi's operation;
- f. caused likelihood of confusion or of misunderstanding as to source, sponsorship, or approval of Defendants' service;
- g. caused likelihood of confusion or of misunderstanding as to Defendants' affiliation, connection, or association with American Taxi; and
- h. using, adopting, displaying colors, designs, shapes, patterns, presentation and overall appearance of American Taxi trade dress.

28. Defendants' acts did deceive or had the tendency to deceive consumers seeking American Taxi and American Taxi's services.

29. Defendants' deception was material in that it was likely to influence, and did influence those seeking American Taxi's services to use Defendants' taxi service under the guise or belief that the services were those of American Taxi or affiliated with American Taxi.

30. Defendants' acts and actions did cause false statements to enter interstate commerce.

31. Plaintiff has been harmed and injured as a result of the acts and actions of Defendants.

32. The actions of the Defendants in violating the Lanham Act were willful and wanton warranting the award of exemplary damages and attorney's fees.

33. American Taxi requests a trial by jury.

WHEREFORE, Plaintiff, American Taxi Dispatch, Inc., prays that the Court enter judgment in its favor and against Defendants as follows:

- A. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from operating under or using, in any facet, the name “American Taxi” or any similar name;
- B. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from using, adopting, and displaying American Taxi’s colors, designs, shapes, patterns, and lettering similar to the trade dress of American Taxi;
- C. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from maintaining or listing its business telephone number under the name “American Taxi,” or any similar name;
- D. Awarding American Taxi all profits derived from and all damages suffered by American Taxi by reason of Defendants’ wrongful acts, or in the alternative, such statutory damages as may be allowed under the Federal Trademark Act;
- E. Awarding American Taxi an increase in the award of damages up to three times the amount found for deliberate and willful trademark infringement and unfair competition by Defendants pursuant to 15 U.S.C. §117(a);
- F. Awarding American Taxi its costs and reasonable attorneys’ fees incurred as a result of Defendants’ actions; and
- G. Granting such further relief as this Court deems just and proper.

COUNT III

(Uniform Deceptive Trade Practices Act, 815 ILCS 510/1, et seq.)

1-25. American Taxi repeats and realleges paragraphs 1 through 25, inclusive above, as paragraphs 1 through 25, inclusive, of Count I.

26. At all times herein there was in full force and effect a statute in the State of Illinois known as the Uniform Deceptive Trade Practices Act, 815 ILCS 510/1, et seq. (the “Deceptive Trade Practices Act”).

27. Defendants have violated the Deceptive Trade Practices Act in one or more of the following ways:

- a. using and operating under a business name strikingly similar to American Taxi’s name;

- b. using, adopting, displaying colors, designs, shapes, patterns, presentation and overall appearance of American Taxi trade dress.

28. In doing so, Defendants have: (1) passed off their services as American Taxi's; (2) caused likelihood of confusion or of misunderstanding as to source, sponsorship, approval or certification of Defendants' services; and (3) caused likelihood of confusion or of misunderstanding as to Defendants' affiliation, connection or association with or certification by American Taxi.

29. American Taxi has been and will continue to be irreparably harmed by Defendants' continued and ongoing violations of the Deceptive Trade Practices Act, in that the Defendants are misappropriating and continue to misappropriate American Taxi's name and the good will associated with its name, and more specifically its misappropriation of American Taxi's name and trade dress while Defendants operate in the exact territory in which American Taxi operates its business.

30. Further, American Taxi has been and will continue to be irreparably harmed by Defendants' continuing and ongoing violations of the Deceptive Trade Practices Act, in that the distinctive quality of American Taxi's mark is being diluted and American Taxi's reputation is being harmed by the confusion caused by Defendants' use of the name "American Taxi" or any similar name because Defendants are a significantly smaller operation. Customers who hire Defendants' taxis, believing them to be American Taxi's taxis, will be led to believe that American Taxi, rather than Defendants, have provided service below the level that customers have come to expect from American Taxi.

31. American Taxi has no adequate legal remedy for the loss of business, confusion and misunderstanding on the part of its customers, and harm to its reputation, that will continue

to result from Defendants' continuing and ongoing violations of the Deceptive Trade Practices Act.

32. The actions of Defendants in violation of the Deceptive Business Practices Act were willful and wanton. Accordingly, under Section 3 of the Deceptive Business Practices Act, American Taxi is entitled to recover its costs and reasonable attorney's fees.

WHEREFORE, Plaintiff, American Taxi Dispatch, Inc., prays that the Court enter judgment in its favor and against Defendants as follows.

- A. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from operating under or using, in any facet, the name "American Taxi" or any similar name;
- B. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from using, adopting, and displaying American Taxi's colors, designs, shapes, patterns, and lettering similar to the trade dress of American Taxi;
- C. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from maintaining or listing its business telephone number under the name "American Taxi," or any similar name;
- D. Awarding American Taxi all profits derived from and all damages suffered by American Taxi by reason of Defendants' wrongful acts;
- E. Awarding American Taxi its costs and reasonable attorneys' as a result of Defendants' violation of Illinois law; and
- F. Granting such further relief as this Court deems just and proper.

COUNT IV

(Consumer Fraud and Deceptive Business Practices Act)

1-25. American Taxi repeats and realleges paragraphs 1 through 25, inclusive, of Count I as paragraphs 1 through 25, inclusive, of Count V, as if fully set forth.

26. At all times herein there was in full force and effect in the State of Illinois a statute known as the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, et seq. (the "Consumer Fraud Act").

27. The actions of Defendants, by way of their violation of the Deceptive Trade Practices Act, constitute continuing and ongoing violations of the Consumer Fraud Act.

28. Sections 10a(a) and (c) of the Consumer Fraud Act provide that any party injured by virtue of any violation of the Consumer Fraud Act may maintain an action for damages and/or injunctive relief.

29. American Taxi has been and will continue to be irreparably harmed by Defendants' continued and ongoing violations of the Consumer Fraud Act, in that Defendants are misappropriating and continue to misappropriate American Taxi's name and the good will associated with its name, and more specifically, its misappropriation of American Taxi's name, and Defendants operate in the exact territory in which American Taxi operates its business.

30. Further, American Taxi has been and will continue to be irreparably harmed by Defendants' continuing and ongoing violations of the Consumer Fraud Act, in that the distinctive quality of American Taxi's mark is being diluted and American Taxi's reputation is being harmed by the confusion caused by Defendants' use of the name "American Taxi" or any similar name because Defendants are a significantly smaller operation. Customers who hire Defendants' taxis, believing them to be American Taxi's taxis, will be led to believe that American Taxi, rather than Defendants, have provided service below the level that customers have come to expect from American Taxi.

31. American Taxi has no adequate legal remedy for the loss of business, confusion and misunderstanding on the part of its customers, and harm to its reputation, that will continue to result from Defendants' continuing and ongoing violations of the Consumer Fraud Act.

32. Defendants' violations of the Consumer Fraud Act were willful and wanton, warranting the imposition of exemplary damages.

33. Under Section 10a(c) of the Consumer Fraud Act, American Taxi is entitled to recover its costs and reasonable attorneys' fees.

34. American Taxi requests a trial by jury.

WHEREFORE, Plaintiff, American Taxi Dispatch, Inc., prays that the Court enter judgment in its favor and against Defendants as follows:

- A. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from operating under or using, in any facet, the name "American Taxi" or any similar name;
- B. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from using, adopting, and displaying American Taxi's colors, designs, shapes, patterns, and lettering similar to the trade dress of American Taxi;
- C. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants' from maintaining or listing its business telephone number under the name "American Taxi," or any similar name;
- D. Awarding American Taxi all profits derived from and all damages suffered by American Taxi by reason of Defendants' wrongful acts;
- E. Awarding American Taxi exemplary damages to punish Defendants and deter future conduct;
- F. Awarding American Taxi its costs and reasonable attorneys' as a result of Defendants' violation of Illinois law; and
- G. Granting such further relief as this Court deems just and proper.

COUNT V
(Common Law Unfair Competition)

1-25. American Taxi repeats and realleges paragraphs 1 through 25, inclusive, of Count I, as paragraphs 1 through 25, inclusive, of Count VI, as if fully set forth.

26. Defendants are unfairly competing by using, displaying and operating under a name substantially similar to American Taxi's name, and using American Taxi's trade dress.

27. American Taxi has been and will continue to be irreparably harmed by Defendants' continued use of "American Taxi" or any similar name and trade dress, in that Defendants are misappropriating and continue to misappropriate American Taxi's name and the good will associated with its name, and more specifically its misappropriation of American Taxi's name and Defendants' operation in the exact territory in which American Taxi operates its business.

29. American Taxi has no adequate legal remedy for the dilution, loss of business, confusion, and misunderstanding on the part of its customers, and harm to its reputation that will continue to result from Defendants' continued use of "American Taxi" or similar name.

30. The actions of Defendants as described above constitute actionable unfair competition under the common law of the State of Illinois.

31. American Taxi requests a trial by jury.

WHEREFORE, Plaintiff, American Taxi Dispatch, Inc., prays that the Court enter judgment in its favor and against Defendants as follows:

- A. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from operating under or using, in any facet, the name "American Taxi" or any similar name;
- B. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from using, adopting, and displaying American Taxi's colors, designs, shapes, patterns, and lettering similar to the trade dress of American Taxi;
- C. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendants from maintaining or listing its business telephone number under the name "American Taxi," or any similar name;
- D. Awarding American Taxi all profits derived from and all damages suffered by American Taxi by reason of Defendants' wrongful acts;
- E. Awarding American Taxi its costs and reasonable attorneys' as a result of Defendants' violation of Illinois law;

- F. Awarding American Taxi exemplary damages to punish Defendant' and deter future conduct; and
- G. Granting such further relief as this Court deems just and proper.

COUNT VI
(Unjust Enrichment)

1-25. American Taxi repeats and realleges paragraphs 1-25, inclusive, of Count I as paragraphs 1-25, inclusive, of Count VI, as if fully set forth herein.

26. As a consequence of Defendants' actions as described above, Defendants have been unjustly enriched, in that they have received revenues as a consequence of the deception, confusion and misunderstanding caused by the use of the names "American Taxi" and similar names, and by deceiving customers into believing their taxi service is associated with American Taxi.

27. It would violate the fundamental principles of justice, equity and good conscience to permit Defendants to retain the financial benefits of their actions.

28. American Taxi does not know and cannot determine the extent of the revenues wrongfully obtained by Defendants through their actions.

WHEREFORE, Plaintiff, American Taxi Dispatch, Inc., prays that the Court enter judgment in its favor and against Defendants as follows:

- A. Ordering and directing Defendants to provide a detailed accounting of all revenues received as a consequence of operating, using and otherwise profiting from the use of name "American Taxi" or any similar names;
- B. Ordering and directing Defendants to provide a detailed accounting of all revenues received as a consequence of operating, using and otherwise profiting from the use of American Taxi's trade dress;
- C. Imposing a constructive trust for the benefit of American Taxi on all revenues received by Defendants as a consequence of operating, using and otherwise profiting from the use of the name "American Taxi" or any similar names;

- D. Imposing a constructive trust for the benefit of American Taxi on all revenues received by Defendants as a consequence of operating, using and otherwise profiting from the use of American Taxi's trade dress;
- E. Ordering and directing Defendants to pay over to American Taxi all revenues received as a consequence of Defendants' unlawful activities;
- F. Awarding American Taxi its costs in this action; and
- G. Granting such further relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ Adam J. Zayed
Attorney for Plaintiff

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