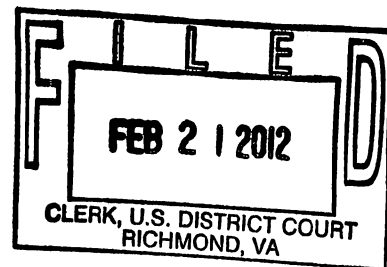


IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division



THE AMERICAN LEGION,)
)
 Plaintiff,)
)
 v.)
)
 VELOCITY SERVICES CORPORATION,)
)
 Defendant.)
)
)
)
)
)

Civil Action No. 3:12CV133

JURY TRIAL DEMANDED

COMPLAINT

Introduction

1. Plaintiff The American Legion files this Complaint against Velocity Services Corporation (“Velocity Services” or “Defendant”) to enforce The American Legion’s exclusive statutory right to use The American Legion’s name and emblem. The American Legion has attempted to resolve this dispute amicably, but the parties have been unable to reach a resolution. The American Legion seeks an injunction prohibiting Defendant from using The American Legion’s name and emblem. The American Legion further seeks damages and its reasonable attorneys’ fees in connection with this litigation, particularly in light of Plaintiff’s unsuccessful efforts to resolve the dispute amicably out of court.

Jurisdiction And Venue

2. This action arises under the Federal Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, and the Federal Charter creating The American Legion, 36 U.S.C. §§ 21701 *et seq.*

3. This Court has jurisdiction over the subject matter pursuant to 15 U.S.C. §§ 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question); and 28 U.S.C. §

1338(a) (any Act of Congress relating to trademarks); and 28 U.S.C. 1338(b) (original jurisdiction over substantial state-law claims of unfair competition related to federal trademark claims); the Court also has supplemental jurisdiction over state-law claims pursuant to 28 U.S.C. § 1367.

4. This Court has personal jurisdiction over Defendant because it resides in this District.

5. Venue is proper in this District under 28 U.S.C. §1391(b) because Defendant resides in this District.

The Parties

6. The American Legion is a federally chartered corporation with perpetual existence, created by an Act of Congress. The American Legion maintains its headquarters at 700 N. Pennsylvania Street, Indianapolis, Indiana 46206. The American Legion is a nationwide wartime veterans' organization dedicated to promoting the interests of patriotism, community service, American veterans, peace and goodwill, justice, freedom, democracy, and mutual helpfulness. It carries out its activities across the nation, including in this judicial district.

7. The American Legion believes, and therefore alleges, that Defendant Velocity Services is a Virginia Corporation with its principal place of business at 13 Myers Drive, Fredericksburg, Virginia 22405. The American Legion believes, and therefore alleges, that Velocity Services uses The American Legion's name and emblem without authorization in the advertising of its goods and services to The American Legion's members and others.

General Allegations

The American Legion


8. The American Legion is an organization of veterans of the United States armed forces who served in wartime. Veterans returning from Europe after World War I founded it. On September 16, 1919, Congress established The American Legion as a corporation.

9. In addition to the common-law intellectual property rights that The American Legion has acquired by virtue of longstanding use, The American Legion enjoys rights flowing

directly from its Congressional charter, from a specific federal statute protecting its name and emblem, and from its federal trademark registrations with the United States Patent & Trademark Office.

10. Pursuant to 36 U.S.C. § 21705 The American Legion “and its State and local subdivisions have the exclusive right to use the name ‘The American Legion’ or ‘American Legion.’ The corporation has the exclusive right to use, manufacture, and control the right to manufacture, emblems and badges the corporation adopts.” 36 U.S.C. § 21705. Besides being subject to civil liability under federal trademark law, violators of this exclusive right are subject to criminal prosecution pursuant to 18 U.S.C. § 705.

11. Complementing this statutory authority, The American Legion owns several incontestable U.S. trademark registrations, including the following registrations for its name and emblem (“The American Legion Marks”):

Mark	Reg. No.	Reg. Date	Goods & Services
THE AMERICAN LEGION	2,340,046	4/11/2000	<p>Association services, namely, promoting the interests of patriotism, community service, American veterans, peace and goodwill, justice, freedom, democracy and mutual helpfulness</p> <p>Indicating membership in an organization of veterans of active duty wartime United States or Allied (if a citizen) military or naval service</p>
<p>A D</p>  <p>S &</p>	1,685,652	5/5/1992	<p>Association services, namely, promoting the interests of patriotism, community service, American veterans, peace and goodwill, justice, freedom, democracy and mutual helpfulness</p> <p>Indicating membership in an organization of veterans of active duty wartime United States or Allied (if a citizen) military or naval service</p>

12. This Complaint refers to the design mark identified by Registration No. 1,685,652 as “The American Legion Emblem.” The American Legion Emblem prominently incorporates the name “American Legion.”

13. The American Legion Marks assure members and the public at large that the programs and services sponsored in conjunction with the marks meet the high standards and values for which The American Legion is known and was established as the marks signify the important principles upon which the organization was founded.

14. As a result of long-standing and consistent use and through extensive media coverage, The American Legion Marks have gained wide and favorable recognition throughout the United States. The goodwill represented by The American Legion Marks is a valuable and important asset of The American Legion because it embodies the organization’s reputation for service—a reputation earned by those who have served under the name and emblem for more than 90 years and by The American Legion’s service to the nation and to those who have served it.

15. Because of The American Legion’s nationwide promotion and provision of services under The American Legion Marks, and the nationwide publicity and media attention related to the services offered under The American Legion Marks, those marks have become widely recognized, distinctive, and famous throughout the United States, and were distinctive and famous before Defendant’s use of The American Legion Emblem at issue in this Complaint

16. Because every use of The American Legion Marks symbolizes the integrity and principles of the organization they represent and helps to identify and distinguish The American Legion’s programs and services from those of other service organizations, The American Legion exerts strict control over the use of The American Legion Marks.

Velocity Services

17. The American Legion believes, and therefore alleges, that Defendant Velocity Services is a for-profit corporation offering veteran-oriented goods and services, including goods and services to The American Legion’s members.

18. The American Legion believes, and therefore alleges, that Defendant maintains a website at <http://vetcards.velocitysc.com/default.aspx> where it describes its corporation and promotes its services.

19. The American Legion believes, and therefore alleges, that the Defendant uses The American Legion Marks in the advertising of its goods and services described in this Complaint.

20. The American Legion believes, and therefore alleges, that such advertising includes unsolicited emails to The American Legion's members, which have caused and continue to cause actual confusion as to the source and sponsorship of Defendant's goods and services.

21. Defendant does not have permission or authorization to use The American Legion Marks in the advertising and promotion of its goods and services. While The American Legion grants limited permission to The American Legion's authorized Posts to obtain and use The American Legion Marks on letterhead and business cards, it has not authorized businesses such as Defendant that print such materials to use The American Legion Marks in their advertising and promotion.

22. Defendant's use of The American Legion Marks in connection with the advertising and promotion of its goods and services is likely to cause confusion, mistake or deception and create the erroneous impression that The American Legion and its services are affiliated, connected, or associated with Velocity Services.

23. Defendant, by use of The American Legion Marks, has commenced use of a mark in commerce that has caused or is likely to cause dilution by blurring or dilution by tarnishment of the famous and distinctive The American Legion Marks. Defendant willfully intended to trade on the recognition of The American Legion Marks. Defendant's actions, which were intentional and without The American Legion's permission, began after The American Legion Marks had become famous and distinctive. Defendant has damaged The American Legion and consumers by its misconduct.

24. Defendant's use of The American Legion Marks deprives The American Legion of the ability to control and maintain the high quality of goods and services under The American Legion Marks. Given The American Legion's extensive involvement in offering veteran-oriented goods and services and promoting the visibility of the veteran and military communities, Defendant's use of The American Legion Marks has and will continue to cause individuals to attribute incorrectly the quality and content of Defendant's offerings to The American Legion. Such confusion damages The American Legion's relationship with its current and prospective members, its approved vendors, and the public at large. Such confusion also places The American Legion's valuable reputation in the hands of an unaffiliated third party.

25. Defendant's use of The American Legion Marks has caused and is continuing to cause irreparable injury to The American Legion and its reputation and goodwill and unless enjoined will cause further irreparable injury from which The American Legion has no adequate remedy at law.

26. Because The American Legion has informed Defendant of Defendant's unauthorized use of The American Legion Marks, Defendant's continued use of The American Legion's Marks is willful and intentional.

27. Because Defendant has failed to comply with The American Legion's demand to cease using The American Legion Marks, The American Legion now seeks damages and injunctive relief preventing Defendant from using The American Legion Marks without authorization.

Claims For Relief

FIRST CLAIM

(Violation of 36 U.S.C. § 21705)

28. The American Legion incorporates all paragraphs above by reference.

29. Defendant has actual knowledge of The American Legion's ownership of and exclusive right to use The American Legion Marks. Despite Plaintiff's demands that it cease and

desist from the unauthorized use, Defendant continues to use The American Legion Emblem, bearing the “American Legion” name, without authorization in violation of 36 U.S.C. § 21705.

SECOND CLAIM

(Trademark Infringement – Federal Law)

30. The American Legion incorporates all paragraphs above by reference.

31. Defendant’s acts constitute trademark infringement of The American Legion Marks in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

32. Defendant has neither sought nor obtained license or permission from The American Legion to use The American Legion Marks.

33. Defendant’s use of The American Legion Marks is likely to cause confusion, mistake or deception and create the erroneous impression that The American Legion and its activities and services are affiliated, connected, or associated with Velocity Services.

34. As a direct and proximate result of Defendant’s wrongful conduct, The American Legion, among other things, has suffered impairment of the value of The American Legion Marks.

35. The American Legion has given Defendant actual notice of its rights, but Defendant has not ceased these acts.

36. Defendant’s actions in violation of The American Legion’s trademark rights have been deliberate, willful, and in disregard of The American Legion’s rights.

37. The American Legion has no adequate remedy at law for Defendant’s continuing violation of The American Legion’s rights.

38. The American Legion has suffered harm and damage by Defendant’s wrongful acts, and that damage will continue unless the Court enjoins Defendant’s actions.

39. As a consequence of Defendant’s violations, The American Legion is entitled to the relief set forth below.

THIRD CLAIM

(Unfair Competition – Federal Law)

40. The American Legion incorporates all paragraphs above by reference.

41. Defendant's acts constitute unfair competition in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

42. Defendant's use of The American Legion Marks is likely to cause confusion, mistake or deception and create the erroneous impression that Velocity Services and its goods and services are affiliated, connected, or associated with The American Legion.

43. The American Legion has suffered harm and damage by Defendant's wrongful acts, and that damage will continue unless the Court enjoins Defendant's actions.

44. As a consequence of Defendant's violations, The American Legion is entitled to the relief set forth below.

FOURTH CLAIM

(Trademark Dilution - Federal Law)

45. The American Legion incorporates all previous paragraphs by reference.

46. Defendant, through the conduct described above, has commenced use of a mark in commerce that has caused or is likely to cause dilution by blurring or dilution by tarnishment of the famous and distinctive American Legion Marks in violation of 15 U.S.C. § 1125(c).

47. As a consequence of Defendant's violations, The American Legion is entitled to relief as set forth below.

FIFTH CLAIM

(Fraudulent Trade Practices – Virginia Law)

48. The American Legion incorporates all previous paragraphs by reference.

49. Defendant, through the conduct described above, has engaged in fraudulent trade practices in violation of Virginia Code Annotated § 59.1-200 *et seq.*

50. Defendant has engaged in a false or misleading written statement, visual description, or other representation which has the capacity, tendency, or effect of deceiving or

misleading consumers. Defendant has also represented that it and its goods and services have a sponsorship, approval, status, affiliation, or connection with The American Legion that they do not have.

51. Defendant has actual knowledge of The American Legion's ownership of and exclusive right to use The American Legion Marks. Defendant's fraudulent trade practices were therefore undertaken willfully and with the intention of causing confusion, mistake or deception.

52. The American Legion has suffered harm and damage by Defendant's wrongful acts, and that damage will continue unless the Court enjoins Defendant's actions.

53. As a consequence of Defendant's violations, The American Legion is entitled to relief as set forth below.

SIXTH CLAIM

(Trademark Infringement – Common Law)

54. The American Legion incorporates all previous paragraphs by reference.

55. Defendant, through the conduct described above, has used a colorable imitation of the American Legion Marks, infringing The American Legion's rights. Defendant's use is likely to cause confusion among consumers within this judicial district as to the affiliation, connection, or association of Velocity Services and its goods and services with The American Legion.

56. The American Legion has suffered harm and damage by Defendant's wrongful acts, and that damage will continue unless the Court enjoins Defendant's actions.

57. As a consequence of Defendant's violations, The American Legion is entitled to relief as set forth below.

Prayer For Relief

WHEREFORE, The American Legion prays for judgment against Defendant and in favor of The American Legion as follows:

(1) An injunction providing that Defendant; all of its officers, agents, servants, employees, and attorneys; its successors and assigns; and all persons acting in active concert or participation with them who receive actual notice of the Order of this Court, and each of them,

be enjoined and restrained, permanently, from using The American Legion Marks on its website at <http://vetcards.velocitysc.com/default.aspx>, in its promotional materials, including emails, or in any other fashion, without the express written permission of The American Legion.

(2) A judgment ordering Defendant, pursuant to 15 U.S.C. § 1118, to deliver up for destruction, or to show proof of said destruction or sufficient modification to eliminate the infringing matter, all articles, packages, wrappers, products, displays, labels, signs, vehicle displays or signs, circulars, kits, packaging, promotional items, clothing, literature, sales aids, receptacles or other matter in the possession, custody, or under the control of Defendant or its agents which infringe, dilute or otherwise violate The American Legion's rights in The American Legion Marks, or any mark that is confusingly similar to or a colorable imitation of The American Legion Marks;

(3) A judgment in the amount of The American Legion's actual damages, Defendant's profits, costs of suit and pre-judgment interest;

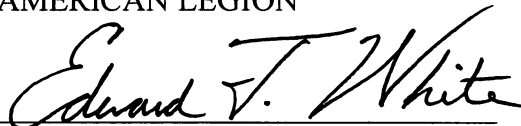
(4) An award of attorneys' fees and costs in this exceptional case, as provided for by law and committed to the discretion of this Court;

(5) Pursuant to Rule 38(d), Plaintiff demands a trial by jury on any issue triable as of right by a jury; and

(6) Such other, further, or different relief as this Court deems just and proper.

Respectfully submitted,

THE AMERICAN LEGION

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