Griot's Garage, Inc. v. Carroll Shelby International, Inc. et al				
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8	UNITED STATES D WESTERN DISTRICT			
9	AT TAC	COMA		
10	GRIOT'S GARAGE, INC, a Washington corporation,	)		
11	Plaintiff,	) ) No.		
12	V.	) ) COMPLAINT FOR TRADEMARK		
13	CARROLL SHELBY INTERNATIONAL,	) INFRINGEMENT, FALSE ) DESIGNATION OF ORIGIN, FALSE		
	INC., a Nevada corporation, and CARROLL	OR MISLEADING		
14	SHELBY LICENSING, INC., a California corporation,	<ul><li>) REPRESENTATIONS OF FACT</li><li>) AND UNFAIR COMPETITION</li></ul>		
15	Defendants.	) ) JURY DEMAND		
16				
17	Plaintiff Griot's, Inc. ("Griot's Garage"), alleges as follows for its Complaint			
18	against Defendants Carroll Shelby Internationa	l, Inc. and Carroll Shelby Licensing, Inc.:		
19	PART	TIES		
20	1. Griot's Garage, Inc. is a Washin	agton corporation with its principal place of		
21	business in Tacoma, Washington.			
22				
23				
		Davis Wright Tremaine LLP		

Doc. 1

- 2. Upon information and belief, Carroll Shelby International, Inc. ("Carroll Shelby International") is a Nevada corporation with its principal place of business in Gardena, California.
- 3. Upon information and belief, Carroll Shelby Licensing, Inc. ("Carroll Shelby Licensing"), is a California corporation with its principal place of business in Gardena, California. Upon information and belief, Carroll Shelby Licensing, Inc., is a wholly owned subsidiary of Carroll Shelby International, Inc.

#### **JURISDICTION AND VENUE**

- 4. This action arises under 15 U.S.C. § 1051 *et seq*. for violations of the Lanham Act, and under the laws of the State of Washington.
- 5. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§ 1121 and 1338(a) because it arises under federal trademark law, 15 U.S.C. § 1117 *et seq.* Plaintiff also asserts claims under Washington law, which are so related to the federal question claims that they are part of the same case and controversy, and therefore fall within the scope of this Court's supplemental jurisdiction under 28 U.S.C. §§ 1338(b) and 1367. Jurisdiction is also proper under 28 U.S.C. §§ 1332 because this action is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.
- 6. Upon information and belief, Carroll Shelby International and Carroll Shelby Licensing do business in this judicial district where they have committed acts of trademark infringement, false designation of origin, false or misleading representations of fact, and unfair competition.
  - 7. Venue is proper in this district under 28 U.S.C. § 1391.

#### PLAINTIFF TRADEMARK RIGHTS

- 8. Griot's Garage is a catalog, online, and retail store seller of high-quality car care products and is recognized throughout the country. Griot's Garage has used SPEED SHINE as a trademark for car care products since at least as early as 1998. Griot's Garage's SPEED SHINE spray and wipe auto cleaner is the company's number-one selling product and is well known to car care experts and enthusiasts throughout the nation. Griot's Garage customers and the public have come to rely upon and look for the trademarks SPEED SHINE to identify products originating from Griot's Garage. As a consequence, Griot's Garage name and SPEED SHINE® have come to symbolize valuable goodwill and reputation.
- 9. Griot's Garage is the owner of two United States trademark registrations for the mark SPEED SHINE: U.S. Trademark Registration No. 2,250,463, issued June 1, 1999, for the mark SPEED SHINE, for liquid polish and protectant for leather or vinyl goods, and U.S. Trademark Registration No. 3,564,216, issued January 20, 2009, for the mark SPEED SHINE, for preparations for cleaning, protecting and preserving vehicle surfaces; all-purpose cleaners (the "SPEED SHINE Trademarks"). These registrations are *prima facie* evidence that the SPEED SHINE Trademarks are distinctive, that Griot's Garage owns those trademarks, and that the registrations are valid and subsisting. In addition, U.S. Trademark Registration No. 2,250,463 is incontestable. True and correct copies of the registrations are attached as Exhibit A.

#### **DEFENDANTS' UNLAWFUL CONDUCT**

10. Carroll Shelby International and Carol Shelby Licensing (collectively, the "Carol Shelby Defendants") have recently introduced a product called Speed Shine, that is

described as "a new spray detailer designed to keep your car looking brilliant between washing and waxing."

- 11. The Carol Shelby Defendants advertise and offer the Speed Shine product for sale on their websites, including http://www.carrollshelbymerchandise.com and http://shelbyautocare.com/home.asp.
- 12. The Carol Shelby Defendants have appropriated Griot's Garage SPEED SHINE Trademarks as the exact product name for a product that is a directly competitive product, as shown below:





- 13. Use by the Carol Shelby Defendants of Griot's Garage's SPEED SHINE trademarks will inevitably cause confusion with the products that Griot's Garage sells under its SPEED SHINE Trademarks.
- 14. Customers and the public are likely, upon seeing advertising by the Carol Shelby Defendants of their Speed Shine product, to believe that Griot's Garage is the source of or affiliated with Carol Shelby or Carol Shelby's Speed Shine product.
- 15. The Carol Shelby Defendants' unlawful use of the Griot's Garage SPEED SHINE Trademarks, and others confusingly similar, substantially injures Griot's Garage and the goodwill associated with the SPEED SHINE Trademarks.

- 16. Upon information and belief, the Carol Shelby Defendants were aware of Griot's Garage SPEED SHINE Trademarks and therefore the Carol Shelby Defendants' infringement of the SPEED SHINE Trademarks has been willful and in bad faith.
- 17. Monetary damages cannot fully compensate Griot's Garage because the SPEED SHINE Trademarks are unique and represent Griot's Garage products and reputation to the public. Unless enjoined by this Court, The Carol Shelby Defendants will continue to cause confusion among customers and the public, thereby causing irreparable damage and injury to Griot's Garage.

#### **COUNT 1: TRADEMARK INFRINGEMENT**

- 18. Griot's Garage incorporates the allegations of Paragraphs 1-17 as if fully set forth herein.
- 19. The actions of the Carol Shelby Defendants described herein constitute infringement of the Griot's Garage Trademarks, in violation of the Lanham Act, 15 U.S.C. §§ 1114 through 1118.

#### **COUNT 2: FALSE DESIGNATION OF ORIGIN**

- 20. Griot's Garage incorporates the allegations of Paragraphs 1-19 as if fully set forth herein.
- 21. The actions of the Carol Shelby Defendants described herein constitute false designation of origin in violation of 15 U.S.C. § 1125(a).

#### **COUNT 3: FALSE OR MISLEADING REPRESENTATION OF FACT**

22. Griot's Garage incorporates the allegations of Paragraphs 1-21 as if fully set forth herein.

23. The actions of the Carol Shelby Defendants described herein constitute false or misleading representations of fact in violation of 15 U.S.C. § 1125(a).

#### COUNT 4: THE WASHINGTON CONSUMER PROTECTION ACT/ UNFAIR COMPETITION

- 24. Griot's Garage incorporates the allegations of Paragraphs 1-23 as if fully set forth herein.
- 25. The actions of the Carol Shelby Defendants described herein affect and will be injurious to the public interest, constitute unfair and deceptive acts or practices and unfair methods of competition in the conduct of trade or commerce in violation of RCW 19.86.020 that have harmed Griot's Garage in its business and property. Griot's Garage is entitled to recover damages, treble damages, and attorneys' fees pursuant to RCW 19.86.090.

#### **COUNT 5: UNFAIR COMPETITION**

- 26. Griot's Garage incorporates the allegations of Paragraphs 1-25 as if fully set forth herein.
- 27. The Carol Shelby Defendants' conduct described herein further constitutes unfair competition in violation of the common law.

#### PRAYER FOR RELIEF

WHEREFORE, Griot's Garage prays for the following relief:

A. Entry of temporary and permanent injunctions against the Carol Shelby Defendants and their servants, agents, employees, successors and assigns, and all persons acting in concert with them, enjoining them from using in any manner SPEED SHINE or any other trademark confusingly similar thereto, including but not limited to as email addresses, domain names, corporate names, trade names, trademarks, or service marks;

	B.	Requiring the Carol Shelby Defendants to deliver to Griot's Garage for
destruct	tion all	goods, signs, advertisements, literature, business forms, cards, labels,
package	es, wraj	ppers, pamphlets, brochures, receptacles, and any other written or printed
materia	l in the	ir possession or under their control which contain any or all of the SPEED
SHINE	Trader	narks;

- C. Requiring the Carol Shelby Defendants to provide timely confirmation to Griot's Garage and the Court concerning its compliance with the injunction and order of destruction;
- D. Awarding compensatory damages sustained by Griot's Garage, together with disgorgement of all profits generated by Defendants as a result of the acts complained of herein pursuant to federal and state law, to be trebled in accordance with 15 U.S.C. § 1117 and RCW 19.86;
- E. Awarding Griot's Garage its attorneys' fees pursuant to 15 U.S.C. § 1117 and other applicable federal and state laws;
- F. Awarding Griot's Garage punitive damages for the Carol Shelby

  Defendants' willful and egregious deception of consumers and infringement of Griot's

  Garage rights in violation of both statutory and common law; and
- G. Awarding Griot's Garage interest, costs, and such other and further relief as the Court may deem just and equitable.

1	JURY DEMAND
2	Griot's Garage demands a trial by jury of all issues so triable.
3	DATED this 21 <sup>st</sup> day of February, 2012.
4	Davis Wright Tremaine LLP
5	Attorneys for Plaintiff Griot's Garage, Inc.
6	
7	By <u>s/Stuart R. Dunwoody</u> Stuart R. Dunwoody, WSBA #13948
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# **EXHIBIT** A

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

Reg. No. 2,250,463

United States Patent and Trademark Office

Registered June 1, 1999

### TRADEMARK PRINCIPAL REGISTER

#### **SPEED SHINE**

GRIOT'S GARAGE, INC. (WASHINGTON CORPORATION)
3500-A 20TH STREET E.
TACOMA, WA 98424

FOR: LIQUID POLISH AND PROTECTANT FOR LEATHER OR VINYL GOODS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 4-1-1998; IN COMMERCE 4-1-1998.

SN 75-361,174, FILED 9-22-1997.

SOPHIA S. KIM, EXAMINING ATTORNEY

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51 and 52

United States Patent and Trademark Office

Reg. No. 3,564,216 Registered Jan. 20, 2009

#### TRADEMARK PRINCIPAL REGISTER

## **SPEED SHINE**

GRIOT'S GARAGE, INC. (WASHINGTON COR-PORATION) 3500-A 20TH STREET E. TACOMA, WA 98424

FOR: PREPARATIONS FOR CLEANING, PROTECTING AND PRESERVING VEHICLE SURFACES; ALL-PURPOSE CLEANERS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 6-0-1998; IN COMMERCE 6-0-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,250,463.

SER. NO. 77-495,093, FILED 6-10-2008.

KAREN BRACEY, EXAMINING ATTORNEY