

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
Johnston Division

True Value Company,

Civil Action No. _____

Plaintiff,

vs.

Case 3:08-cv-00217-KRG Document 1 Filed 09/04/2008

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COMPLAINT

A. Lloyd Steele, Inc. d/b/a
Steele True Value HomeCenter,

Defendant.

TM Reg. 977,017 2,669,362
2,669,361

I. NATURE OF THE CASE

This is a case involving breach of a contract, federal trademark infringement and unfair competition, arising from the unauthorized and continued use of Plaintiff True Value Company's marks, including the TRUE VALUE name. Defendant's use not only constitutes a breach of contract, but also a violation of the Lanham Act's provisions on infringement. Defendant has acted with willful and negligent disregard for Plaintiff's trademark rights.

In this action, Plaintiff seeks an Order enjoining Defendant from use of the TRUE VALUE mark and enjoining Defendant from use of any Company-owned trademark, along with relief in the form of money damages.

II. JURISDICTION AND VENUE

1. Jurisdiction is proper under 28 U.S.C. §§ 1331, 1338 and 15 U.S.C. § 1121.
2. Venue is proper in this Court under 28 U.S.C. § 1391(b).
3. The True Value Company, formerly known as the TruServ Corporation, is a cooperative corporation organized under the laws of Delaware, with a principal place of

business at 8600 W. Bryn Mawr Avenue, Chicago, Illinois 60631-3505. The True Value Company is engaged in interstate commerce with the wholesale purchase and distribution of goods on behalf of its approximately 6,000 member-shareholders, each of whom operate a retail store or stores in various locations throughout the United States under a variety of retail identities, including the TRUE VALUE mark. The True Value Company, formerly known as the TruServ Corporation, is the name of the corporate entity which resulted from the merger between Servistar Coast to Coast Corporation and Cotter & Company. Cotter & Company was a Delaware corporation, and Servistar Coast to Coast Corporation was a Pennsylvania corporation which entered into an Agreement and Plan of Merger under Delaware laws. The name of the surviving corporation was Cotter & Company which was at the time changed to TruServ Corporation. The Certificate of Merger was effective July 1, 1997. The name TruServ Corporation was changed effective December 31, 2004 to the True Value Company.

4. A. Lloyd Steele, Inc. d/b/a Steele True Value HomeCenter is located at 518 South Market Street, Martinsburg, Pennsylvania 16662.

V. FACTUAL ALLEGATIONS

5. This Complaint is based on Plaintiff's trademark rights in its TRUE VALUE mark, which is the subject of protection by virtue of at least three U.S. registrations, bearing United States Trademark Registration Nos. 977,017 and 2,669,361 and 2,669,362 and is used, among other things, in connection with retail hardware store goods and services offered at Plaintiff's member stores.

6. The TRUE VALUE mark is incontestable.

7. Plaintiff's predecessor first adopted the TRUE VALUE mark in 1954 and the mark has been in continuous use, without interruption, since that date.

8. With many retail operations in many states, the TRUE VALUE trademark has been used nationwide and is widely known.

9. The True Value Company entered into a Membership Agreement with the
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defendant which provided that Plaintiff's trademarks could be used and displayed during the term of membership but that the defendant would not obtain any proprietary rights in Plaintiff's trademarks, and that the defendant would discontinue the use of Plaintiff's trademarks and remove them at his expense within thirty-days of membership termination. The Membership Agreement is attached as Exhibit A.

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10. As of August 16, 2007, the defendant's membership was terminated.

11. The storefront, notwithstanding termination of the Membership Agreement and expiration of the 30-day grace period for sign removal, continues to display signage bearing the TRUE VALUE trademark. Attached as Exhibit B is a depiction of the storefront.

V. CLAIMS

Breach of Contract - Membership Agreement

12. Plaintiff realleges and incorporates by reference each and every allegation in Paragraphs 1-11 as set forth fully herein.

13. The Membership Agreement provides that the member will not obtain any proprietary right in Company trademarks, and that at the termination of the Agreement, use of all trademarks shall be ceased at member expense. See Exhibit A.

14. Since termination, the defendant-store has continued unauthorized use of Plaintiff's trademarks, which constitutes breach of the Membership Agreement.

15. Plaintiff has been, and continues to be, damaged by this continuing and unlawful use of the TRUE VALUE mark in breach of the Membership Agreement.

Violation of 15 U.S.C. § 1125(a) - Lanham Act § 43(a) Federal Unfair Competition
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16. Plaintiff realleges and incorporates by reference each and every allegation in Paragraphs 1-15 as though fully set forth herein.

17. The defendant is using the TRUE VALUE mark in commerce.

18. The defendant is using the TRUE VALUE mark in connection with goods and services.

19. The defendant's use of the TRUE VALUE mark is likely to cause confusion or to cause mistake, or to deceive as to its affiliation, connection, or association with the True Value hardware brand of stores and the True Value Company in violation of 15 U.S.C. § 1125(a).

20. Plaintiff has already suffered, and will continue to suffer, immediate and irreparable harm, as a result of Defendant's use and willful infringement of the mark TRUE VALUE.

Violation of 15 U.S.C. § 1114 - Federal Trademark Infringement

21. Plaintiff realleges and incorporates by reference each and every allegation in Paragraphs 1-20 as though fully set forth herein.

22. Plaintiff owns the federal registration for the mark TRUE VALUE.

23. Since termination of the Membership Agreement, the defendant has been using the TRUE VALUE mark in commerce without consent.

24. The defendant's unauthorized and willful infringement of the mark is likely to cause confusion, or to cause a mistake, or to deceive in violation of 15 U.S.C. § 1114.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. Permanently enjoining the defendant from use and display of any Plaintiff-owned trademark, trade name or brand name, or any name or mark likely to cause confusion with Plaintiff, including, but not limited to, the TRUE VALUE mark;
2. Making an award of all damages and items recoverable under 15 U.S.C. § 1117, including (i) Defendant's profits from use of the TRUE VALUE mark and diverted sales, (ii) Plaintiff's damages, (iii) the cost of this action, and (iv) treble damages;
3. Any other such equitable relief as this Court may see just to order.

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Respectfully Submitted,

Dated: September 4, 2008

By: /s/Michael J. Parrish, Jr.

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil cover sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS True Value Company DEFENDANTS A. Lloyd Steele, Inc. d/b/a True Value Home Center

(b) County of Residence of First Listed Cook County of Residence of First Listed Defendant Blair
(EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys Michael J. Parrish, Jr., Esquire Attorneys Spence, Custer, Saylor, Wolfe & Rose LLC
P.O. Box 280, Johnstown, PA 15907
(814) 538-0735 Address, and Telephone Number Case 3:08-cv-00217-KRG Document 1-2 Filed 09/04/2008 Page 1 of 2
Attorneys (If Known)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

U.S. Government Plaintiff Federal Question (U.S. Government Not a Party)

U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input checked="" type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120-54 Lease <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Mechanics Act <input type="checkbox"/> 152 Recovery of Delinquent Student Loans (Fed. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suit <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 311 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employer's Liability <input type="checkbox"/> 340 Maritime <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Torts in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 618 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 623 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other <input type="checkbox"/> LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Willfulness <input type="checkbox"/> 28 USC 157 <input type="checkbox"/> PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <input type="checkbox"/> SOCIAL SECURITY <input type="checkbox"/> 891 IEA (1205)(f) <input type="checkbox"/> 862 Black Lung (913) <input type="checkbox"/> 863 DNH C/DW/M (405)(g) <input type="checkbox"/> 7 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405)(g) <input type="checkbox"/> FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party <input type="checkbox"/> 26 USC 7609	<input type="checkbox"/> 400 State Reorganization <input type="checkbox"/> 410 Bankrupt <input type="checkbox"/> 420 Banks and Banking <input type="checkbox"/> 430 Commerce <input type="checkbox"/> 450 Deposition <input type="checkbox"/> 470 Backlisters Indemnified and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3470 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

Original Proceeding Removed from State Court Remanded from Appellate Court Reinstated or Reopened Transferred from another district (specify) Multidistrict Litigation Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC Section 1125 (a) Section 1114

Brief description of cause: Breach of a contract, federal trademark infringement and unfair competition.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 9/4/08 SIGNATURE OF ATTORNEY OF RECORD /s/Michael J. Parrish, Jr., Esquire

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING EFF	JUDGE	MAJ. JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the Erie Johnstown Pittsburgh) calendar.

1. ERIE CALENDAR - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang

or Warren, OR any plaintiff or defendant resides in one of said counties. Case No. 09-00247-KFG Document 1-2 Filed 09/04/2008 Page 2 of 2

2. JOHNSTOWN CALENDAR - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.

3. Complete if on ERIE CALENDAR: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

4. Complete if on JOHNSTOWN CALENDAR: I certify that the cause of action arose in Blair County and that the Defendant resides in Blair County.

PART B (You are to check ONE of the following)

- 1. This case is related to Number _____ Judge _____
- 2. This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

1. CIVIL CATEGORY (Place x in only applicable category).

- 1. Antitrust and Securities Act Cases
- 2. Labor-Management Relations
- 3. Habeas Corpus
- 4. Civil Rights
- 5. Patent, Copyright, and Trademark
- 6. Eminent Domain
- 7. All other federal question cases
- 8. All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
- 9. Insurance indemnity, contract and other diversity cases.
- 10. Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enrollment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

DATE 9/4/08 ATTORNEY AT LAW /s/Michael J. Parrish, Jr., Esquire

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.