

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court SDTX Houston on the following Patents or Trademarks:

DOCKET NO. 4:08cv2799	DATE FILED 9/19/2008	U.S. DISTRICT COURT SDTX Houston
PLAINTIFF Toyota Jidosha Kabushiki Kaisha et al		DEFENDANT Toyota Plus et al
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 0,843,138	1/30/1968	Toyota Motor Corporation (see attached)
2 1,574,718	1/2/1990	Toyota Motor Corporation (see attached)
3 1,797,716	10/12/1993	Toyota Motor Corporation (see attached)
4 1,619,755	10/30/1990	Toyota Motor Corporation (see attached)
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK MICHAEL R. WILBY, CLERK	(BY) DEPUTY CLERK <i>[Signature]</i>	DATE 9/23/2008
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TOYOTA JIDOSHA KABUSHIKI KAISHA
also doing business as TOYOTA MOTOR
CORPORATION (a Japanese Corporation)

and

TOYOTA MOTOR SALES, U.S.A., INC.
(a California corporation)

Plaintiffs

vs.

Civil Action No. _____

TOYOTA PLUS a/k/a TOYOCA PLUS
a/k/a TOYO PLUS a/k/a TOYO A PLUS,
an entity of unknown origin, and PATRICK
LANDER, an individual,

Defendants

ORIGINAL COMPLAINT FOR TRADEMARK AND SERVICE MARK
INFRINGEMENT, TRADEMARK AND SERVICE MARK
INFRINGEMENT, AND FALSE DESIGNATION OF ORIGIN

TOYOTA JIDOSHA KABUSHIKI KAISHA, also doing business as TOYOTA MOTOR CORPORATION, and TOYOTA MOTOR SALES U.S.A., INC. (collectively "Toyota") file this Original Complaint against Defendants TOYOTA PLUS and PATRICK LANDER (collectively "Defendants"), and allege as follows:

NATURE AND SUBSTANCE OF ACTION

1. Toyota files this action against Defendants for trademark infringement, trademark dilution, and false designation of origin under the Lanham Act (15 U.S.C. § 1051 *et seq.*) based upon Defendants' unauthorized use of Toyota's registered trademarks. Defendants conduct an automobile service and repair business under the name "Toyota Plus," in direct competition with Toyota and its dealers. Defendants'

business name is a confusingly similar variation of Toyota's TOYOTA trademark, and Defendants prominently feature exact counterfeits of Toyota's design trademarks on their business signage and advertising. In bringing this lawsuit, Toyota seeks a preliminary and permanent injunction, and recovery of its costs and attorneys' fees.

JURISDICTION AND VENUE

2. This Court has jurisdiction of the subject matter and the parties under § 39 of the Federal Trademark Act, 15 U.S.C. § 1121, and the Judicial Code, 28 U.S.C. §§ 1331, 1338(b) and 1367.

3. Venue in this Judicial District is proper under 28 U.S.C. § 1391.

THE PARTIES

4. Plaintiff, Toyota Jidosha Kabushiki Kaisha, also doing business as Toyota Motor Corporation, is a Japanese corporation having its principal offices at 1 Toyota-Cho, Toyota, Aichi 471, Japan.

5. Plaintiff, Toyota Motor Sales, U.S.A., Inc., is a California corporation having its principal offices at 19001 South Western Avenue, Torrance, California 90509. Plaintiff Toyota Motor Sales, U.S.A., Inc. is a wholly-owned subsidiary of Plaintiff Toyota Motor Corporation and is the exclusive importer and distributor of TOYOTA and LEXUS brand automobiles throughout the United States except the State of Hawaii.

6. Defendant Toyota Plus is an entity of unknown origin operating from premises located at 5331 Prudence Drive, Houston, Texas, 77045. Toyota Plus has also used the alternate names of "Toyoca Plus," "Toyo A Plus," and "Toyo Plus."

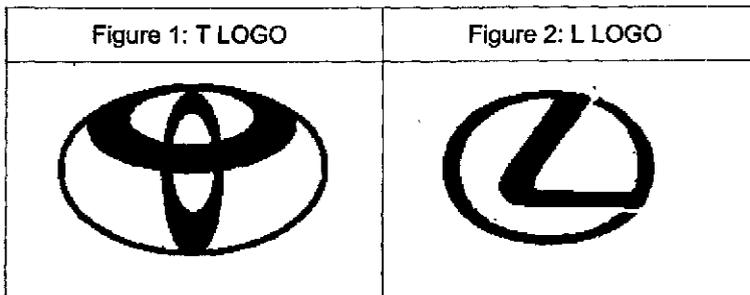
7. Defendant Patrick Lander, an individual, is the owner of Toyota Plus, and, on information and belief, resides in Houston, Texas.

FACTUAL BACKGROUND

Toyota's Trademark Rights

8. Toyota has been continuously engaged for many years in the importation, distribution, and sale of automobiles, utility vehicles, motor trucks, and related parts and accessories, which it markets throughout the United States.

9. TOYOTA (U.S. Reg. No. 0,843,138) and LEXUS (U.S. Reg. No. 1,574,718) are world-famous trademarks belonging to Plaintiff Toyota Motor Corporation. Toyota Motor Corporation has obtained numerous trademark registrations in the United States for TOYOTA and LEXUS, as well as the design trademarks that correspond to such marks, including the T LOGO (U.S. Reg. No. 1,797,716), the L LOGO (U.S. Reg. No. 1,619,755), and many other related trademarks. Copies of the registration certificates for the above-named registrations are attached as Exhibit A. The T LOGO and the L LOGO are depicted in Figures 1 and 2, below. Such trademarks are among the most famous and well known trademarks in the world. Toyota also holds common law rights in these trademarks. Such registered and common law trademarks are herein referred to collectively as the "Toyota Trademarks."



10. The trademark TOYOTA, the T LOGO, LEXUS, and the L LOGO are hereinafter collectively referred to as the "Toyota Trademarks."

11. Toyota has continuously used the Toyota Trademarks in connection with the promotion, advertising, sale, and service of new and used automobiles, parts, warranties, accessories, and related products and services since well before the acts of Defendants complained herein.

12. The Toyota Trademarks are prominently featured in the advertising of Toyota and its authorized dealers and licensees.

13. Toyota has invested significant effort and millions of dollars in advertising and publicizing the Toyota Trademarks. The Toyota Trademarks are inherently distinctive, and have acquired distinctiveness as a result of Toyota's advertising and investment. The Toyota Trademarks are immediately identifiable and associated by the general public with Toyota and are thus inherently distinctive and have acquired secondary meaning. The Toyota Trademarks have become widely known and recognized as symbols of unique and high quality vehicles and services. The Toyota Trademarks, and the goodwill associated with the Toyota Trademarks, are invaluable assets of substantial and inestimable worth to Toyota.

14. Toyota and its dealers and licensees are the only parties authorized to use the Toyota Trademarks in connection with the sale, distribution, or advertising of any products and services in the United States.

15. Toyota exercises great care in the selection of its authorized dealers and licensees and exerts substantial effort to control the nature and quality of the goods and services provided by such dealers and licensees under the Toyota Trademarks.

16. Defendants are not authorized or licensed by Toyota to use the Toyota Trademarks.

Defendants' Violations of the Toyota Trademarks

17. Defendants operate an automobile service and repair shop in direct competition with Toyota and its authorized dealers and licensees. Defendants operate their business using the name "Toyota Plus," which incorporates Toyota's TOYOTA mark entirely. As detailed below, Defendants have also used the alternative business names "Toyoca Plus," "Toyo a Plus," and "Toyo Plus," each of which is a confusingly similar variation of TOYOTA.

18. Defendants prominently display exact counterfeits of the Toyota Trademarks, including the T LOGO and the L LOGO on their signs and advertising in connection with Defendants' offered goods and services.

19. The products and services advertised, promoted, and sold by Defendants are of the same type and are intended for the same purpose and the same class of purchasers as Toyota's products and services.

20. On February 1, 2006, after learning of Defendants' use of the business name "Toyota Plus" and their infringing display of the Toyota Trademarks on their signage and advertising, Toyota sent an investigator to the premises of Toyota Plus to document the infringement. A copy of photographs taken by investigator is attached as Exhibit B.

21. On March 7, 2006, Toyota sent a letter to Defendants notifying them of its objections to their use of the Toyota Trademarks and demanding that Defendants cease

and desist from doing business under the name "Toyota Plus." A copy of that letter is attached as Exhibit C.

22. On March 14, 2006, Toyota received a telephone call from a representative of Defendant Toyota Plus who identified himself as simply "Ian." Ian communicated Defendant Toyota Plus' intention to change their business name and remove the Toyota Trademarks from their advertising.

23. On March 20, 2006, Toyota sent a letter to Defendants confirming its March 14, 2006 telephone conversation with Ian and requesting photographs of Defendants' new signs and other evidence of the completed name change. A copy of that letter is attached as Exhibit D.

24. On or before March 9, 2006, Defendants proposed to change their business name to "Toyoca Plus." A copy of the Harris County Clerk record documenting the proposed name change is attached as Exhibit E.

25. On May 8, 2006, Toyota sent a letter to Defendants notifying them that the proposed business name "Toyoca Plus" is not an acceptable alternative to "Toyota Plus" and reiterating Toyota's demands that Defendants select a business name which is not confusingly similar to Toyota's TOYOTA mark. A copy of that letter is attached as Exhibit F.

26. On September 5, 2006, Toyota sent an investigator to the premises of Toyota Plus to investigate what changes, if any, had been made to Defendants' signage and advertising. Photographs taken on that date show that Defendants were at that time using the business name "Toyo a Plus" and continuing to display the Toyota

Trademarks on their signage, stationery, and other advertising. True and correct copies of the photographs are attached as Exhibit G.

27. On October 12, 2006, and again on February 15, 2007, Toyota sent letters to Defendants notifying them of Toyota's objections to their continued infringement of the Toyota Trademarks and demanding that such infringement cease immediately. Copies of those letters are attached for Exhibit H.

28. On July 11, 2007, counsel for Toyota sent Defendants a letter objecting to Defendants' use of the Toyota Trademarks and demanding that Defendants cease and desist from their unauthorized use of the Toyota Trademarks. Toyota demanded that Defendants memorialize their agreement to cease and desist from their unauthorized use of the Toyota Trademarks by executing an agreement attached to Toyota's letter. A copy of that letter is attached hereto as Exhibit I. In its letter, Toyota communicated that the law is well settled that Defendants may not use a trademark such as TOYOTA, or any colorable variations thereof, in Defendants' business name, and that Defendants may not use the Toyota Trademarks in the promotion of Defendants' products and services.

29. On or before July 30, 2007, Defendants began using the business name "Toyo Plus."

30. On July 30, 2007, and again on February 19, 2008, counsel for Toyota sent follow-up letters to Defendants regarding their continued infringement of the Toyota Trademarks and their failure to respond to earlier correspondence. Copies of those follow-up letters are attached as Exhibit J.

31. On May 4, 2008, counsel for Toyota had a follow-up letter and draft complaint hand-delivered upon Defendants regarding their continued infringement of the Toyota Trademarks and their failure to respond to earlier correspondence. Copies of the follow-up letter and draft complaint are attached as Exhibit K.

32. Defendants have failed and refused to accede to Toyota's lawful demand that Defendants cease and desist from use of Toyota's trademarks. Defendants' infringement of the Toyota Trademarks continues in spite of actual knowledge of Toyota's rights. Accordingly, Defendants' actions constitute willful infringement of Toyota's rights in the Toyota Trademarks.

FIRST CLAIM FOR RELIEF
(TRADEMARK AND SERVICE MARK INFRINGEMENT)

33. The allegations set forth above are incorporated herein by this reference.

34. The Toyota Trademarks are inherently distinctive and have acquired secondary meaning. The public associates the Toyota Trademarks exclusively with Toyota's products. This is a result of the marks' inherent distinctiveness and of distinctiveness acquired through extensive advertising, sales, and use in commerce in connection with Toyota's products and related services bearing or using the Toyota Trademarks.

35. By Defendants' unauthorized use of the Toyota Trademarks, Defendants have, without Toyota's consent, used and/or are continuing to use in commerce reproductions, counterfeits, copies, and colorable imitations of Toyota's trademarks. Defendants' actions are likely to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. § 1114(1).

36. By committing the acts alleged herein, Defendants have intentionally, knowingly, and willfully infringed Toyota's trademarks.

37. Because of Defendants' infringement, Toyota has been irreparably harmed in its business. Moreover, Toyota will continue to suffer irreparable harm unless Defendants are restrained from infringing Toyota's trademarks.

38. Toyota is entitled to an injunction preventing unauthorized use of Toyota's trademarks.

39. In addition, Toyota is entitled to recovery of its costs and attorneys' fees in bringing this action.

SECOND CLAIM FOR RELIEF
(TRADEMARK AND SERVICE MARK DILUTION)

40. The allegations set forth above are incorporated herein by this reference.

41. The Toyota Trademarks are famous trademarks. These marks are inherently distinctive and have acquired distinctiveness.

42. Toyota has extensively and exclusively used these marks in commerce throughout the United States in connection with Toyota's automobiles and related products, parts, and services.

43. Defendants' unauthorized use of the Toyota Trademarks dilutes the distinctive quality of the famous Toyota Trademarks in violation of 15 U.S.C. § 1125(c)(1).

44. Because of Defendants' dilution, Toyota has been irreparably harmed in its business. Moreover, Toyota will continue to suffer irreparable harm unless Defendants are restrained from diluting the Toyota Trademarks.

45. In addition, Toyota is entitled to recovery of its costs and attorneys' fees in bringing this action.

THIRD CLAIM FOR RELIEF
(FALSE DESIGNATION OF ORIGIN OR SPONSORSHIP, AND FALSE
ADVERTISING UNDER 15 U.S.C. § 1125(a))

46. The allegations set forth above are incorporated herein by this reference.

47. Defendants have knowingly used the Toyota Trademarks, or counterfeits, reproductions, copies, or colorable imitations thereof, in connection with Defendants' products and services. Defendants have used the Toyota Trademarks with the intent of trading on the good will and reputation of Toyota.

48. Defendants' use of the Toyota Trademarks as alleged above is likely to confuse, mislead or deceive customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of Defendants' products and services, and is likely to cause such people to believe in error that Defendants' products and services have been authorized, sponsored, approved, endorsed, or licensed by Toyota or that Defendants are in some way affiliated with Toyota.

49. Defendants' acts constitute false or misleading descriptions, false advertising, and false designations of origin and/or sponsorship in violation of Section 43(a) of the Lanham Act, as amended, 15 U.S.C. § 1125(a).

50. By reason of Defendants' actions, Toyota has suffered irreparable harm to the Toyota Trademarks. Unless Defendants are restrained from their actions, Toyota will continue to be irreparably harmed.

51. Toyota has no remedy at law that will compensate for the continued and irreparable harm Toyota will suffer if Defendants' acts are allowed to continue.

52. Toyota is entitled to an injunction preventing unauthorized use of Toyota's Toyota Trademarks.

53. In addition, Toyota is entitled to recovery of its costs and attorneys' fees in bringing this action.

WHEREFORE, Toyota prays for judgment against Defendants as follows:

- A. That Defendants, and all of their agents, servants, employees, and attorneys, and all other persons in active concert or participation with Defendants who receive actual notice of the injunction, be temporarily, preliminarily, and permanently enjoined from, without permission from Toyota:
- (1) using the Toyota Trademarks, any colorable imitations thereof, including the logos depicted in Figures 1 and 2, or any other marks confusingly similar thereto;
 - (2) using any simulation, reproduction, counterfeit, copy, or colorable imitation of the Toyota Trademarks, including the names "Toyota Plus," "Toyoca Plus," "Toyo a Plus," "Toyo Plus," or any confusingly similar name, in connection with the trade name or the corporate name of their business or similar establishment; and
 - (3) otherwise deceptively or unfairly competing with Toyota;
- B. That Defendants be ordered to deliver to Toyota for destruction all business cards, stationery, labels, signs, prints, packages, wrappers, receptacles, advertising materials, or products, that bear marks confusingly similar to Toyota's trademarks, or that result in any unfair competition by Defendants against Toyota;
- C. That Defendants be ordered to make a written report within a reasonable period, to be filed with the Court, detailing the manner of their compliance with the requested injunctive and mandatory relief above;
- D. That Toyota be awarded its reasonable attorney fees and costs of suit under 15 U.S.C. § 1117(a) and 35 U.S.C. § 285; Toyota does not seek any monetary relief under § 35 of the Federal Trademark Act, 15 U.S.C. § 1117, other than recovery of its costs and an award of its reasonable attorneys' fees; and
- E. That Toyota be awarded such other relief, not including monetary relief, as the Court may deem just and proper.

Date: September 19, 2008

Respectfully submitted,

WINSTEAD PC

By: /s/ Tom Van Arsdel

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