

TO: <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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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 Middle on the following  Patents or  Trademarks:

DOCKET NO. 108CV736	DATE FILED 10/13/2008	U.S. DISTRICT COURT Middle
PLAINTIFF BAYERISHE MOTOREN WERKE AG, et al		DEFENDANT ROLLZ ROYCE BUSES & LIMO, INC., et al
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 SEE ATTACHED.		
2 325,195		
3 3,148,743		
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		
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3		
4		
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In the above--entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK John S. Brubaker	(BY) DEPUTY CLERK <i>Conrad Lloyd</i>	DATE 10/20/2008
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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

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

BAYERISCHE MOTOREN WERKE AG, )  
ROLLS-ROYCE MOTOR CARS )  
LIMITED and ROLLS-ROYCE MOTOR )  
CARS NA, LLC, )

Plaintiffs, )

v. )

ROLLZ ROYCE BUSES & LIMO, INC. )  
and SKIPPIE GRAHAM, )

Defendants. )

Civil Action No. 08-CV-736

**COMPLAINT**

Plaintiffs Bayerische Motoren Werke AG, Rolls-Royce Motor Cars Limited, Rolls-Royce Motor Cars NA, LLC (collectively "Rolls-Royce") seek injunctive and monetary relief from Defendants Rollz Royce Buses & Limo, Inc. and Skippie Graham (hereinafter "Rollz Royce Buses") for trademark and trade name infringement, cybersquatting, and unfair competition with regard to Plaintiffs' famous ROLLS-ROYCE trade name and trademark. As alleged more fully below, Defendants have violated, and continue to violate, the Trademark Act of 1946 as amended, 15 U.S.C. §§ 1125, *et seq.* (the "Lanham Act"), and North Carolina law through their unauthorized use of Plaintiffs' ROLLS-ROYCE trademark in the trade name "Rollz Royce Buses & Limo, Inc.," in the domain name [www.rollroycebuses.com](http://www.rollroycebuses.com), and in numerous media advertisements for this business.

## **PARTIES**

1. Plaintiff BMW AG is a corporation organized under the laws of the Federal Republic of Germany with its principal place of business at Petuelring 130, 80809 Munich, Germany. BMW AG designs and manufactures motor vehicles, parts, and other products for sale in Europe and for export and sale throughout the world.

2. Plaintiff Rolls-Royce Motor Cars Limited is a company organized under the laws of England having its principal place of business at Ellesfield Avenue, Bracknell, Berkshire, RG12 8TA. Rolls-Royce Motor Cars Limited is a subsidiary of BMW AG and distributes Rolls-Royce vehicles to Rolls-Royce Motor Cars NA, LLC.

3. Plaintiff Rolls-Royce Motor Cars NA, LLC is a Delaware limited liability company having its principle place of business at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07677. Rolls-Royce Motor Cars NA, LLC is responsible for the wholesale distribution of Rolls-Royce vehicles throughout the United States.

4. Defendant Rollz Royce Buses & Limo, Inc. is, upon information and belief, a North Carolina business and provider of transportation services, having its principal place of business at 3020-I Prosperity Church Road Suite 130, Charlotte NC 28269.

5. Skippie Graham is the owner of Rollz Royce Buses & Limo, Inc., resides at 806 Cook Drive, Durham NC 27713, and has personally directed the activities alleged herein.

## **JURISDICTION AND VENUE**

6. This court has personal jurisdiction over Defendants because Defendants reside and conduct business in the State of North Carolina.

7. This court has jurisdiction over the subject matter of this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and 1338(b), and has supplemental

jurisdiction under 28 U.S.C. § 1367(a) over Rolls-Royce's claims under North Carolina law.

8. Venue is proper in this district under 28 U.S.C. §1391(b), as Defendants have their principal place of business in this district and, upon information and belief, a substantial part of the events or omissions giving rise to the claim occurred and are occurring in this district.

**THE FAMOUS ROLLS-ROYCE TRADE NAME AND TRADEMARK**

9. BMW AG is in the business of designing, manufacturing, distributing and servicing motor vehicles and a variety of other products under various trademarks, including the trademark "ROLLS-ROYCE."

10. In 1998, BMW AG, through its subsidiary Hireus Limited, acquired from Rolls-Royce, PLC the rights to the Rolls-Royce trademarks.

11. BMW AG and Rolls-Royce Motor Cars Limited are the owners of the following U.S. Registrations for the Rolls-Royce trademark:

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Class: Services/Goods</u>
ROLLS-ROYCE	325,195	June 11, 1935	Automobiles and chassis
ROLLS-ROYCE	3,148,743	September 26, 2006	Automobiles and structural parts therefor

These registrations were duly and legally issued, and are valid and subsisting. Registration number 325,195 is incontestable pursuant to 15 U.S.C. § 1065.

12. Rolls-Royce Motor Cars NA is licensed to use the Rolls-Royce trademark in the United States by Rolls-Royce Motor Cars Limited, a subsidiary of BMW AG, in connection with the distribution and sale of the aforementioned products.

13. Rolls-Royce and its predecessors have used the ROLLS-ROYCE mark in United States commerce continuously in connection with automobiles since 1905.

14. Since long prior to the acts of the Defendants complained of herein, Rolls-Royce and its predecessors in interest have been using the ROLLS-ROYCE trademark in connection with its business of designing, manufacturing, and distributing motor vehicles and a variety of other products in the State of North Carolina.

15. To create and maintain goodwill among its customers, Rolls-Royce has taken substantial steps to assure that all authorized Rolls-Royce dealers and service providers using the Rolls-Royce trademarks in the United States are of the highest quality.

16. Rolls-Royce has expended millions of dollars in national advertising efforts in connection with the ROLLS-ROYCE trademark. As a result of Rolls-Royce's use and promotion of this mark, the ROLLS-ROYCE mark is a famous and distinctive mark among members of the American public.

#### **DEFENDANTS' WRONGFUL ACTIVITIES**

17. Defendants are using Plaintiff's ROLLS-ROYCE trademark or colorable imitations thereof in their trade name, Rollz Royce Buses & Limo, Inc., without authorization from Rolls-Royce.

18. Defendants are making widespread use of their trade name in commercial advertisements. (See Exhibit A.)

19. Defendants are also making use of Plaintiffs' ROLLS-ROYCE trademark in Defendants' domain name at [www.rollsroycebuses.com](http://www.rollsroycebuses.com).

20. Since September 21, 2007, Rolls-Royce has sent Defendants three letters requesting that they cease and desist from all unauthorized use of Rolls-Royce's trademarks.

21. Defendants have not responded and have not ceased doing business as Rollz Royce Buses & Limo, Inc.

22. Defendants have never provided services for Rolls-Royce or any of its subsidiaries, affiliates or authorized agents.

23. Defendants are not affiliated with or sponsored by Rolls-Royce and have never been authorized by Rolls-Royce or any of its subsidiaries, affiliates or authorized agents to use the ROLLS-ROYCE mark in any form.

24. Defendants' unauthorized use of the ROLLS-ROYCE mark is intended to divert to Defendants persons who are interested in the products and services of Rolls-Royce and to trade off the goodwill of this mark.

25. Defendants' unauthorized use of the ROLLS-ROYCE mark in the manner described above:

- (a) is likely to cause confusion, to cause mistake, and/or to deceive customers and potential customers of the parties, as to the origin, sponsorship, or approval of Defendants' products and services, or as to some affiliation, connection, or association of Defendants with Rolls-Royce;
- (b) enables Defendants to trade on and receive the benefit of goodwill that Rolls-Royce has built up at great labor and expense over many years, and to gain acceptance for Defendants' products and services not solely on their own merits, but on the reputation and goodwill of

Rolls-Royce, its ROLLS-ROYCE mark, and its products and services;

- (c) unjustly enriches Defendants; and
- (d) unlawfully removes from Rolls-Royce the ability to control the nature and quality of products and services provided under the ROLLS-ROYCE mark and places the goodwill and valuable reputation of Rolls-Royce in the hands of Defendants, over whom Rolls-Royce has no control.

26. Rolls-Royce has been damaged and continues to be damaged by Defendants' unauthorized use of the ROLLS-ROYCE mark in the manner described above.

27. Unless these acts of Defendants are restrained by this Court, they will continue to cause irreparable injury to Rolls-Royce and to the public for which there is no adequate remedy at law.

**COUNT I**  
**FEDERAL TRADEMARK INFRINGEMENT**  
**(Lanham Act § 32, 15 U.S.C. § 1114(1))**

28. Rolls-Royce realleges and incorporates the allegations set forth in paragraphs 1 through 27 herein.

29. Defendants' use of the ROLLS-ROYCE mark is likely to cause confusion, to cause mistake or to deceive.

30. The acts of Defendants complained of herein constitute use in commerce of reproductions, copies, confusingly similar or colorable imitations of Rolls-Royce's federally registered ROLLS-ROYCE mark in connection with the sale, offering for sale, distribution and advertising of goods and services in violation of 15 U.S.C. § 1114(1).

31. Defendants' acts complained of herein have been deliberate, willful, intentional, and in bad faith, with full knowledge and in conscious disregard of Rolls-Royce's rights in the ROLLS-ROYCE mark and with intent to trade on Rolls-Royce's vast goodwill in the ROLLS-ROYCE mark.

32. As a result of the foregoing alleged actions of Defendants, Defendants have been unjustly enriched and Rolls-Royce has been injured and damaged. Unless the foregoing alleged actions of Defendants are enjoined, Rolls-Royce will continue to suffer injury and damage.

**COUNT II**  
**FEDERAL UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN AND**  
**TRADE NAME INFRINGEMENT**  
**(Lanham Act §43(a), 15 U.S.C. § 1125(a))**

33. Rolls-Royce realleges and incorporates the allegations set forth in paragraphs 1 through 32 herein.

34. Defendants' unauthorized use of the ROLLS-ROYCE mark falsely indicates that Defendants and their services are connected with, sponsored by, affiliated with, or related to Rolls-Royce.

35. Defendants' unauthorized use of the ROLLS-ROYCE mark has caused, and is likely to continue to cause, confusion, mistake or deception as to the source or sponsorship of Defendants' goods and services.

36. Upon information and belief, Defendants' acts complained of herein have been deliberate, willful, and intentional, with full knowledge and in conscious disregard of Rolls-Royce's rights in its mark and with intent to trade off Rolls-Royce's vast goodwill in its mark.

37. Defendants' unauthorized use of the ROLLS-ROYCE mark in connection with its goods and services allows Defendants to receive the benefit of Rolls-Royce's

goodwill, which Rolls-Royce has established at great labor and expense, and further allows Defendants to expand their business and sales, based not on their own qualities, but on the reputation and goodwill of Rolls-Royce.

38. The acts of Defendants complained of herein constitute unfair competition and trade name infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

39. As a result of the foregoing alleged actions of Defendants, Defendants have been unjustly enriched and Rolls-Royce has been injured and damaged. Unless the foregoing alleged actions of Defendants are enjoined, Rolls-Royce will continue to suffer injury and damage.

**COUNT III**  
**VIOLATION OF THE ANTICYBERSQUATTING CONSUMER PROTECTION**  
**ACT**  
**(Lanham Act § 43(d), 15 U.S.C. § 1125(d))**

40. Rolls-Royce realleges and incorporates the allegations set forth in paragraphs 1 through 39 herein.

41. Defendants registered and are using a domain name that incorporates the ROLLS-ROYCE mark, [www.rollsroycebuses.com](http://www.rollsroycebuses.com). The ROLLS-ROYCE mark was famous at the time of registration of this domain name.

42. Defendants' registration and use of this domain name has been and is in bad faith, in that the registration and use occurred (i) with full knowledge and conscious disregard of Rolls-Royce's rights in the ROLLS-ROYCE mark and (ii) with an intent to

trade on Rolls-Royce's vast goodwill in this mark by creating a likelihood of confusion as to the source, sponsorship or affiliation or endorsement of Defendants' goods and services.

43. The acts of Defendants complained of herein constitute cybersquatting in violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

44. As a result of the foregoing alleged actions, Rolls-Royce has been injured and damaged. Unless the foregoing alleged actions of Defendants are enjoined, Rolls-Royce will continue to suffer injury and damage.

**COUNT IV**  
**TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**  
**(Common Law of North Carolina)**

45. Rolls-Royce realleges and incorporates the allegations set forth in paragraphs 1 through 44 herein.

46. The acts of Defendants complained of herein constitute trademark infringement and unfair competition in violation of the common law of North Carolina.

47. Defendants' use of the infringing mark as described above has caused, is causing and, unless enjoined by this Court, will continue to cause confusion and mistake in the marketplace and deception of the trade and public as to the relationship or affiliation of the parties and the source, origin, or sponsorship of their respective products.

48. Defendants' use of the infringing marks as described above has impaired, is impairing and, unless enjoined by this Court, will continue to impair Rolls-Royce's reputation under its trademarks and has caused, is causing and, unless enjoined by this

Court, will continue to cause injury and damage to Rolls-Royce for which Rolls-Royce is entitled to relief under the common law.

49. As a result of the foregoing alleged actions of Defendants, Defendants have been unjustly enriched and Rolls-Royce has been injured and damaged. Unless the foregoing alleged actions of Defendants are enjoined, Rolls-Royce will continue to suffer injury and damage.

**COUNT V  
DECEPTIVE TRADE PRACTICES  
(N.C. Gen. Stat. § 75-1.1.)**

50. Rolls-Royce realleges and incorporates the allegations set forth in paragraphs 1 through 49 herein.

51. The acts of Defendants complained of herein constitute deceptive trade practices in violation of the North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”), N.C. Gen. Stat. § 75-1.1 *et seq.*, as they are intentional, likely to deceive and mislead the public, and Defendants have refused to resolve the matter with Plaintiffs.

52. As a result of the foregoing alleged actions of Defendants, Defendants have been unjustly enriched and Rolls-Royce has been injured and damaged. Unless the foregoing alleged actions of Defendants are enjoined, Rolls-Royce will continue to suffer injury and damage.

**PRAYER FOR RELIEF**

WHEREFORE, Rolls-Royce prays that:

1. Judgment be entered for Rolls-Royce on its claims.
2. Defendants, their agents, servants, employees, attorneys, and all others in active concert or participation with any of them, be enjoined and restrained, preliminarily during the pendency of this action, and permanently thereafter, from:

- (a) using the ROLLS-ROYCE mark and any other name or mark that is confusingly similar to this mark or any other mark or designation of Rolls-Royce or its affiliates, including, but not limited to, use of this mark in Defendants' trade name, on websites, business signs, advertisements, marketing materials, stationery, and business cards;
- (b) using the www.rollsroycebuses.com domain name;
- (c) doing any other act or thing likely to confuse, mislead, or deceive others into believing that Defendants, or their products or services, are connected with, sponsored by or approved by, Rolls-Royce.

2. An accounting be directed to determine Defendants' profits resulting from its activities and that such profits be paid over to Rolls-Royce and increased as the Court finds to be just under the circumstances of this case;

3. Defendants be required to pay over to Rolls-Royce:

- (a) in accordance with Section 35(a) of the United States Trademark Act, 15 U.S.C. §1117(a), an award of treble Plaintiffs' actual damages and Defendants' profits, together with profits resulting from sales by Defendants relating to its aforesaid trademark infringement and unfair competition;

- (b) Rolls-Royce's reasonable attorneys' fees and costs of this action;

and

- (c) exemplary or punitive damages in a sum sufficient to deter future acts of intentional trademark infringement, as well as unfair competition.

4. Defendants, in accordance with Section 36 of the United States Trademark Act, 15 U.S.C. § 1118, be required to deliver up to Rolls-Royce for destruction all labels,

signs, prints, packages, bottles, receptacles, containers, domain name registrations, advertisements and other promotional materials in Defendants' possession or control bearing the ROLLS-ROYCE mark.

5. Defendants, in accordance with Section 34(a) of the United States Trademark Act, 15 U.S.C. § 1116(a), be required to file with the Court, and serve upon Rolls-Royce, within thirty (30) days after the entry and service on Defendants of an injunction, a report in writing and under oath, setting forth in detail the manner and form in which Defendants have complied with the terms of such injunction.

6. Defendants, in accordance with Section 43(d) of the United States Trademark Act, 15 U.S.C. § 1125(d), be required to forfeit or cancel the domain [www.rollsroycebuses.com](http://www.rollsroycebuses.com).

7. Rolls-Royce recover such other relief as the Court may deem appropriate.

Date: October 13, 2008

Respectfully submitted,

/s/ Jacob S. Wharton

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