

ORIGINAL

18

1 **COMP**
2 JOSEPH Y. HONG, ESQ.
3 State Bar No. 005995
4 **MORRIS POLICH & PURDY LLP**
5 3883 Howard Hughes Pkwy., Suite 560
6 Las Vegas, Nevada 89169
7 Telephone: (702) 862-8300
8 Facsimile: (702) 862-8400
9 E-Mail Address: jhong@mpplaw.com
10 Attorney for Plaintiff
11 **APPLIANCE DOCTOR LLC**

FILED
OCT 07 2009

Alan J. Blum
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

A-09-601050-C
443625



10 APPLIANCE DOCTOR LLC, a Nevada)
11 limited liability company,)
12)
13 Plaintiff,)
14)
15 vs.)
16)
17 KENNETH JAGMIN, individually, dba)
18 THE APPLIANCE DOCTOR OF LAS VEGAS;)
19 MELISSA JAGMIN, individually, dba)
20 THE APPLIANCE DOCTOR OF LAS VEGAS;)
21 ATCHER SERVICE, LLC., a Nevada limited)
22 liability company, dba THE APPLIANCE)
23 DOCTOR OF LAS VEGAS; THE APPLIANCE)
24 DOCTOR OF LAS VEGAS, form of entity)
25 unknown; YELLOW BOOK SALES AND)
26 DISTRIBUTION COMPANY, INC., a Nevada)
27 corporation; DOES I through X and ROE)
28 BUSINESS ENTITIES I through X,)
29 Defendants.)

CASE NO. :
DEPT. NO. :

A-09-601050-C
II

ARBITRATION EXEMPTION
CLAIMED AS EXTRAORDINARY
RELIEF REQUESTED
(INJUNCTIVE RELIEF)

VERIFIED COMPLAINT

COMES NOW Plaintiff, Appliance Doctor LLC (hereinafter "Plaintiff"), by and through its attorney, JOSEPH Y. HONG, ESQ., and complains and alleges against Defendants as follows:

GENERAL ALLEGATIONS

1. Plaintiff is a limited liability company and at all times relevant to this action, was duly qualified to do business in the State of Nevada and doing business in Clark County, Nevada using the trade name Appliance Doctor.

RECEIVED
OCT 07 2009
CLERK OF THE COURT

2. Plaintiff is informed and believes and thereupon alleges that Defendants Kenneth Jagmin and Melissa Jagmin are and were residents of Clark County, Nevada and the owners of Defendant Atcher Service, LLC., a Nevada limited liability company, dba The Appliance Doctor of Las Vegas and Defendant The Appliance Doctor of Las Vegas, form and type of entity unknown.

3. Plaintiff is informed and believes and thereupon alleges that Defendant Yellow Book Sales and Distribution Company, Inc. is a Nevada corporation engaged in the business of publishing a widely circulated advertisement book in Clark County, Nevada.

4. At all times relevant hereto, each of the Defendants was the agent, servant, employee and/or joint venturer of each of the other remaining Defendants, and was at all times acting within the scope and purpose of said agency, employment or joint venture, and acting with the expressed and implied knowledge, commission or consent of the remaining Defendants and each of them. The acts of each Defendant were qualified and are ratified by each other Defendant and together constitute a single course of conduct.

5. The true names and characters of DOES I through X and ROE BUSINESS ENTITIES I through X, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefor sues defendants by said fictitious names; Plaintiff is informed and believes and therefore alleges that each of the defendants designated as DOES I through X and ROE BUSINESS ENTITIES I through X is responsible in some manner for the events and happenings referred to herein, and Plaintiff will ask leave of this Court to amend this document to insert the true names and characters of DOES I through X and ROE BUSINESS ENTITIES I through X when the same have been ascertained, and to join such defendants in this action.

6. Plaintiff, through its owners, Samuel and Mary Gravino, has been operating an appliance repair service business in Las Vegas, Nevada for approximately 26 years under the trade name of the "Appliance Doctor." Said trade name was formally registered with the Nevada Secretary of State approximately 20 years ago on October 2, 1989.

7. Through their hard work and dedication over the approximate 26 years of conducting business in Las Vegas, Nevada, Samuel and Mary Gravino have established an outstanding and impeccable reputation and goodwill associated with the trade name of the "Appliance Doctor."

1 8. Beginning on or about August of 2009, Defendants Kenneth and Melissa Jagmin,
2 individually and through their business entities of Defendants Atcher Service, LLC. and The
3 Appliance Doctor of Las Vegas (hereinafter collectively "Defendants"), took steps to establish and
4 operate an appliance repair service business called the "Appliance Doctor of Las Vegas" wherein
5 Defendants, without the knowledge, consent or authorization of Plaintiff, have actively advertised
6 said business through the internet and advertisement publications.

7 9. Thus, Defendants' use and continued use of Plaintiff's trade name and trademark is
8 causing confusion amongst customers and diluting the goodwill of Plaintiff's "Appliance Doctor"
9 business.

10 10. Since on or about August of 2009, Plaintiff has received numerous telephone calls
11 and written correspondence from angry and disgruntled customers of Defendants wherein these
12 customers mistakenly believed that Plaintiff, as the "Appliance Doctor," had provided the appliance
13 service when in fact it was provided by the "Appliance Doctor of Las Vegas."

14 11. Plaintiff has been required to retain the services of an attorney to prosecute this
15 matter. Plaintiff, therefore, is entitled to reasonable attorney's fees and costs.

16 **FIRST CAUSE OF ACTION**
17 **(Unjust Enrichment)**

18 12. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 11 as
19 though fully set forth herein.

20 13. Defendants knew or should have known that Plaintiff expected to have exclusive use,
21 enjoyment and exploitation of the trade name "Appliance Doctor."

22 14. Plaintiff demanded that Defendants immediately cease and desist from the continued
23 use of the name "Appliance Doctor of Las Vegas." To date, Defendants have failed, neglected and
24 refused to stop their use of the trade name, all to Plaintiff's detriment.

25 15. As such, Defendants have been unjustly enriched to Plaintiff's detriment.

26 16. Plaintiff has been damaged by Defendants' unjust enrichment in an amount in excess
27 of \$10,000.00.
28

**SECOND CAUSE OF ACTION
(Common Law Trademark Infringement)**

17. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 16 as though fully set forth herein.

18. Defendants' use of Plaintiff's trademark and/or deceptively similar use is likely to cause confusion, mistake or deception in the marketplace in that it is likely to lead the public to believe that the appliance services provided by Defendants are associated with, sponsored by, approved of, or in some other way connected with Plaintiff. Defendants' use of this mark may cause confusion or mistake or deceive consumers as to the origin of the services being provided by Defendants.

19. Such confusion will impair Plaintiff's attempt to maintain and expand its customer base, will prevent Plaintiff from ensuring the high level of quality that consumers have come to associate with Plaintiff's "Appliance Doctor" business acquired over approximately 26 years, and will diminish the value of Plaintiff's mark and goodwill associated therewith.

20. Defendants have used and continue to use, the infringing mark on or in connection with their appliance repair business without Plaintiff's permission. This unauthorized use is likely to cause confusion, mistake, or deception with Plaintiff's "Appliance Doctor" business, will dilute the value of Plaintiff's name and mark, constitute a violation of Plaintiff's common law trademark and trade name rights, and has caused and will continue to cause irreparable harm and injury to Plaintiff. Plaintiff has no adequate remedy at law.

21. As a direct and proximate cause of Defendants' trademark infringement, Plaintiff has been damaged in an amount in excess of \$10,000.00.

22. Defendants' actions were oppressive, willful, and intentional, or done with reckless disregard of the consequences thereof and, as such, punitive damages in an amount in excess of \$10,000.00 should be awarded to punish Defendants and to deter such conduct in the future.

**THIRD CAUSE OF ACTION
(Misappropriation)**

23. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 22 as

though fully set forth herein.

24. Plaintiff has expended great efforts and money advertising and publicizing its trademark throughout Clark County, Nevada. Plaintiff's mark, which has been within the channels of commerce for approximately 26 years, is becoming more widely recognized among the consuming public and within the channels of commerce in which Plaintiff uses the mark.

25. Defendants have used, and continue to use, Plaintiff's trademark in direct competition with Plaintiff.

26. As a result of Defendants' use of Plaintiff's trademark, Plaintiff has suffered commercial damage in an amount to be proven at the time of trial.

27. By the acts complained of herein, Defendants are attempting to and have misappropriated the value of Plaintiff's mark, reputation, and goodwill built up over approximately 26 years and at the expense of great time, effort and money. In doing so, Defendants are trading on the great brand loyalty of Plaintiff's customers, reaping where they have not sown. Defendants' actions constitute misappropriation in violation of the common law of Nevada.

28. As a direct and proximate cause of Defendants' misappropriation, Plaintiff has been damaged in an amount in excess of \$10,000.00.

29. Defendants' actions were oppressive, willful, and intentional, or done with reckless disregard of the consequences thereof and, as such, punitive damages in an amount in excess of \$10,000.00 should be awarded to punish Defendants and to deter such conduct in the future.

FOURTH CAUSE OF ACTION
(Injunctive Relief as alleged against Defendants and Defendant Yellow Book Sales and Distribution Company, Inc.)

30. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 29 as though fully set forth herein.

31. Defendants have directly, or through agents, engaged in the following illicit conduct:

a. Defendants continue to use Plaintiff's mark in commerce and in direct competition with Plaintiff; and

b. Defendants continue to advertise and promote their appliance service business using

the name "Appliance Doctor of Las Vegas" in the same geographic region as Plaintiff.

32. Defendants' illicit conduct has caused and will continue to cause irreparable harm to the goodwill, reputation and character of Plaintiff's business.

33. Plaintiff enjoys a likelihood of success on the merits of its claims against Defendants.

34. The balance of any hardships on the parties favors Plaintiff.

35. An Injunction against Defendants and Defendant Yellow Book Sales and Distribution Company, Inc. (hereinafter "Yellow Book") is legally warranted and necessary to enjoin them from:

a. Using the name "Appliance Doctor of Las Vegas" in connection with any appliance repair business anywhere in Nevada;

b. Assigning, transferring, selling, or gifting the name "Appliance Doctor of Las Vegas" to any third party; and

c. Advertising or promoting any entity engaged in the appliance repair business with the name "Appliance Doctor of Las Vegas" anywhere in Nevada regardless of the form of advertising, including, but not limited to, signs, posters, billboards, marquees, electronic billboards, moving vehicles, stationary vehicles, business cards, Yellow Page advertisements, Red-Yellow Page advertisements, electronic advertisement, television or radio commercials, pamphlets, flyers or events.

36. Plaintiff is suffering and will continue to suffer irreparable harm and injury from Defendants and Defendant Yellow Book's actions for which there is no adequate remedy at law unless and until they are enjoined from using Plaintiff's mark.

FIFTH CAUSE OF ACTION (Equitable Estoppel)

37. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 36 as though fully set forth herein.

38. By their above illicit and wrongful actions, Defendants are estopped from attempting to benefit from such illicit and wrongful conduct.

39. Defendants, therefore, are equitably estopped from continuing to use Plaintiff's mark.

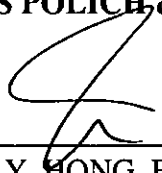
///

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages in excess of \$10,000.00;
2. For punitive damages in excess of \$10,000.00;
3. For injunctive relief as set forth in the Fifth Cause of Action;
4. For attorney's fees and costs; and
5. For such other additional relief as the Court deems proper.

DATED this 6th day of October, 2009.

MORRIS POLICH & PURDY LLP




JOSEPH Y. HONG, ESQ.
State Bar No. 005995
3883 Howard Hughes Pkwy., Suite 560
Las Vegas, Nevada 89169
Attorney for Plaintiff
APPLIANCE DOCTOR LLC


VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

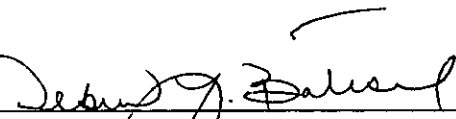
SAMUEL GRAVINO and MARY GRAVINO, being first duly sworn, depose and state as follows:

That they are the Plaintiffs in the above-entitled action; that they have read the above and foregoing VERIFIED COMPLAINT and know the contents thereof; that the same is true of their own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters they believe them to be true.


SAMUEL GRAVINO


MARY GRAVINO

SUBSCRIBED AND SWORN to before me
this 4th day of October, 2009.


NOTARY PUBLIC, In and for the
County of Clark, State of Nevada

