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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213760
Party	Plaintiff Eric Olson XPI LLC (d/b/a Midwest Cord)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Eric Olson)	
XPI LLC (d/b/a Midwest Cord))	
Opposers,)	
)	
v.)	Opposition No. <u>91213760</u>
)	
International Marketing Systems, Ltd.)	
Applicant.)	
_____)	

MOTION TO SUSPEND FOR CIVIL ACTION

Opposers Eric Olson and XPI LLC hereby request suspension of this proceeding pending the disposition of the civil action between Opposer XPI LLC and Applicant International Marketing Systems, Ltd. Opposers request such suspension because the final determination of the civil action could have a bearing on the issues before the Board. Opposers have attached a copy of the Complaint, which was originally filed in North Dakota state court but was removed by Applicant to the United States District Court for the District of North Dakota.

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

<p>XPI LLC d/b/a Midwest Cord,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>International Marketing Systems, Ltd. d/b/a IMS, Inc.,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">Civil No.:</p> <p style="text-align: center;">COMPLAINT</p>
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COMES NOW, the Plaintiff, XPI LLC d/b/a Midwest Cord, for its cause of action against the Defendant, International Marketing Systems, Ltd. d/b/a IMS, Inc., states and alleges as follows:

1. Plaintiff XPI LLC is a limited liability company duly organized under the laws of the State of North Dakota with its principal business in Fargo, North Dakota.
2. Defendant International Marketing Systems, Ltd. is a business corporation duly organized under the laws of the State of North Dakota with its principal office at 1320 5th Avenue North, Fargo, North Dakota.
3. This Court has jurisdiction over the parties to and subject matter of this Complaint.
4. Plaintiff XPI LLC does business under the name "Midwest Cord" through a contract with Amazon Services, LLC d/b/a Amazon Marketplace.
5. Under its contract with Amazon Services, LLC d/b/a Amazon Marketplace, Plaintiff sells paracord to members of the public through the Amazon.com website.
6. Defendant International Marketing Systems, Ltd. d/b/a also does business through a contract with Amazon Services, LLC d/b/a Amazon Marketplace and sells paracord to members of the public through the Amazon.com website.

7. Plaintiff XPI LLC and Defendant International Marketing Systems, Ltd. are direct business competitors.

8. Both Plaintiff XPI LLC and Defendant International Marketing Systems, Ltd. have marketed paracord under a branded listings page entitled "Paracord Planet."

9. Defendant International Marketing Systems, Ltd. has falsely advertised that it owns a registered trademark to the name "Paracord Planet" on the Amazon.com website.

10. Despite both parties having marketed paracord under the "Paracord Planet" branded listings page, Defendant International Market Systems, Ltd. has also filed multiple false reports of intellectual property infringement with Amazon Services, LLC d/b/a Amazon Marketplace.

11. Defendant's false reports include, but are not limited to, claims that Plaintiff has violated Defendant's trademarks by marketing paracord under the branded listings page entitled "Paracord Planet."

12. As a direct and proximate result of Defendant's false reports, Amazon Services, LLC d/b/a Amazon Marketplace has suspended Plaintiff's account, thereby preventing Plaintiff from making further sales of paracord under the assumed name Midwest Cord.

13. As a further direct and proximate result of Defendant's false reports, Plaintiff's supply of paracord is inaccessible in warehouses under the control of Amazon Services, LLC d/b/a Amazon Marketplace, and Plaintiff is therefore unable to sell its product through other vendor sites.

14. As an additional direct and proximate result of Defendant's false reports, Plaintiff is unable to access moneys held in its Amazon account, thereby requiring Plaintiff to liquidate other assets to cover ongoing operating expenses.

COUNT ONE – INTENTIONAL INTERFERENCE WITH CONTRACT

15. Plaintiff incorporates paragraphs 1-14 herein.

16. Plaintiff XPI LLC and Amazon Services, LLC d/b/a Amazon Marketplace had a valid contract under which Plaintiff would list products for sale through the Amazon.com website and use Amazon Services, LLC's warehouse and shipping facilities.

17. Amazon Services, LLC d/b/a Amazon Marketplace breached the contract when it suspended Plaintiff's ability to sell paracord under the assumed name of Midwest Cord.

18. Defendant International Marketing Systems, Ltd. intentionally instigated the breach by filing multiple false reports against Plaintiff XPI LLC.

19. Defendant International Marketing Systems, Ltd. instigated the breach through improper means and with no legitimate business purpose.

20. Plaintiff XPI LLC suffered damages exceeding \$10,000 as a direct and proximate result of Defendant's intentional interference with contract, because it has been unable to complete paracord sales to the public or access moneys held in its Amazon account.

COUNT TWO – UNLAWFUL INTERFERENCE WITH BUSINESS

21. Plaintiff incorporates paragraphs 1-20 herein.

22. Plaintiff XPI LLC had a valid business relationship with Amazon Services, LLC d/b/a Amazon Marketplace.

23. Defendant International Marketing Systems, Ltd. knew of the business relationship between Plaintiff and Amazon Services, LLC d/b/a Amazon Marketplace.

24. Defendant International Marketing Systems, Ltd. committed an independently tortious or unlawful act by filing multiple false reports against Plaintiff XPI LLC.

25. Defendant International Marketing Systems, Ltd.'s multiple false reports caused Amazon Services, LLC d/b/a Amazon Marketplace to suspend Plaintiff's account, thereby preventing Plaintiff from making further sales of paracord under the assumed name Midwest Cord or access moneys held in its Amazon account.

26. Plaintiff XPI LLC suffered damages exceeding \$10,000 as a direct and proximate cause of Defendant's unlawful interference with business, because it has been unable to complete paracord sales to the public.

COUNT THREE – FALSE ADVERTISEMENT IN VIOLATION OF STATE LAW

27. Plaintiff incorporates paragraphs 1-26 herein.

28. Defendant International Marketing Systems, Ltd. has violated N.D.C.C. ch. 51-12 by falsely advertising on its Amazon.com listings page and products that "Paracord Planet" was a registered trademark.

29. Plaintiff XPI LLC has suffered damages as a direct and proximate result of this false advertising, as Defendant International Marketing Systems, Ltd. has gained an unfair competitive advantage in sales of paracord.

COUNT FOUR – FALSE ADVERTISEMENT IN VIOLATION OF LATHAM ACT

30. Plaintiff incorporates paragraphs 1-29 herein.

31. Defendant International Marketing Systems, Ltd. has violated 11 U.S.C. § 1125 by falsely advertising on its Amazon.com listing page and products that "Paracord Planet" was a registered trademark.

32. Plaintiff XPI LLC has suffered damages as a direct and proximate result of this false advertising, as Defendant International Marketing Systems, LLC has gained an unfair competitive advantage in sales of paracord.

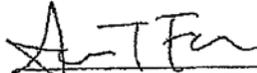
WHEREFORE, the Plaintiff, XPI LLC, prays for judgment against the Defendant, International Marketing Systems, Ltd., as follows:

1. Judgment in an amount exceeding \$10,000.00 for all damages proximately resulting from Defendant's intentional interference with contract, unlawful interference with business, false advertisement in violation of N.D.C.C. ch. 51-12, and 11 U.S.C. § 1125;
2. Plaintiffs' costs, disbursements, and attorney fees, as permitted by applicable law; and
3. Such other and further relief as this Court deems just and equitable.

Plaintiffs demand a trial by jury on all issues so triable.

Dated this 5 day of August, 2013.

KENNELLY & O'KEEFFE, LTD.



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