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

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|------------------------|--|
| Proceeding | 91250693 |
| Party | Defendant Event Solutions International Inc. |
| Correspondence Address | GEORGE T SCHOOFF BUTZEL LONG 2410 WOODLAKE DRIVE , SUITE 420 OKEMOS, MI 48864 UNITED STATES trademark@butzel.com, Schooff@butzel.com, evanina@butzel.com, taylort@butzel.com, schooff@butzel.com 313-225-5310 |
| Submission | Motion to Suspend for Civil Action |
| Filer's Name | George Schooff |
| Filer's email | schooff@butzel.com |
| Signature | /George Schooff/ |
| Date | 09/06/2019 |
| Attachments | Michigan Complaint in Civil Proceeding.pdf(364310 bytes) Massachusetts Complaint in a Civil Proceeding.pdf(225273 bytes) |

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EVENT SOLUTIONS
INTERNATIONAL, INC., a Nevada
corporation, DBA MOTUS ONE,

Plaintiff,

v.

MOTUS, LLC, a Delaware limited
liability company,

Defendant.

Case No.

Hon.

BUTZEL LONG PC

By: George Schooff (P45596)

150 West Jefferson, Suite 100

Detroit, Michigan 48226

schooff@butzel.com

Telephone: (313) 225-7000

Fax: (313) 225-7080

Attorneys for Plaintiff

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Event Solutions International, Inc. DBA Motus One, by its attorneys, states its Complaint against Defendant Motus, LLC as follows:

NATURE OF THE ACTION

1. This is an action under the Declaratory Judgment Act, 28 U.S.C. § 2201(a) by Event Solutions International, Inc. DBA Motus One against Motus, LLC for a declaratory judgment of non-infringement of Defendant's MOTUS mark. Plaintiff seeks a declaration that its use of MOTUS ONE and M1 MOTUS ONE do not infringe Defendant's rights in the MOTUS mark.

2. This action arises out of Motus, LLC's repeated demands that Event Solutions International, Inc. DBA Motus One cease and desist using MOTUS ONE and M1 MOTUS ONE in association with its automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands.

THE PARTIES

3. Plaintiff Event Solutions International, Inc. DBA Motus One is a Nevada corporation having a principal place of business in Troy, Michigan.

4. Defendant Motus, LLC is a Delaware limited liability company having a principal place of business in Boston, Massachusetts.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331, 1332 and 1338. The claims asserted in this Complaint

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arise under the Declaratory Judgment Act, 18 U.S.C. § 2201(a), and the Lanham Act, 15 U.S.C. § 1121.

6. The Court has personal jurisdiction over Defendant because on information and belief, Defendant has established minimum contacts with this forum relating to this dispute, and Defendant has substantial, continuous and systematic contacts with the State of Michigan.

7. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2) and (d).

8. An actual case or controversy exists between the parties. Defendant has repeatedly threatened to take action against Plaintiff, has asserted that Plaintiff is engaging in acts of trademark infringement and unfair competition, and has demanded that Plaintiff immediately cease and desist using MOTUS ONE and M1 MOTUS ONE.

RELEVANT FACTS

9. On August 17, 2018, Plaintiff applied to U.S. Patent and Trademark Office to federally register its MOTUS ONE and M1 MOTUS ONE marks for automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands.

10. On September 28, 2018, Defendant sent Plaintiff a cease and desist letter to Plaintiff's Troy, Michigan office, alleging Plaintiff's use of

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MOTUS ONE and M1 MOTUS ONE is confusingly similar to Defendant's MOTUS mark. Ex. 1.

11. Defendant demanded Plaintiff cease and desist using MOTUS ONE and M1 MOTUS ONE no later than October 8, 2018. Ex. 1 at 2.

12. Plaintiff did not respond to the letter.

13. Plaintiff continued to use MOTUS ONE and M1 MOTUS ONE after Defendant's October 8, 2018 deadline passed.

14. Defendant took no action on its threats.

15. Then, on December 21, 2018, Defendant sent an email to Plaintiff's counsel in Detroit, Michigan, renewing its demand that Plaintiff cease and desist using MOTUS ONE and M1 MOTUS ONE. Ex. 2.

16. On December 27, 2018, Plaintiff responded:

As discussed, [Event Solutions'] use of Motus One couldn't possibly infringe your client's supposed rights, even assuming Motus, LLC has any. Among other things, Motus, LLC is one of hundreds that seemingly claim rights in names that include the word Motus – the Latin for moving – and many predate your client's alleged first-use date by several years. As we also discussed, relevant consumers could and would readily distinguish my client's proposed use of Motus One from Motus, and the channels-of-trade in which my client was considering using Motus One has nothing at all to do with an application for tracking car expenses. In short, your client's assertion is frivolous and anti-competitive.

Ex. 3.

17. Plaintiff nevertheless indicated that, at that point, it saw “no reason to spend money in litigation ... [and] elected to transition away from its plans to use Motus One.” *Id.*

18. Two weeks later, on January 14, 2019, Plaintiff contacted Defendant to advise that it would indeed continue using MOTUS ONE, and proposed the parties enter a coexistence agreement:

To that end, according to the U.S. Trademark Office, in 2014, your client began using MOTUS with vehicle mileage reimbursement software (IC 9), and ‘administering vehicle reimbursement and expense management programs; business management of expense management and vehicle reimbursement programs for purposes of reimbursing employees for business use of personal assets or the personal use of business assets; and business expense management services’ (IC 35). In contrast, my client is proposing to use MOTUS ONE in a different channel of trade.

Specifically, my client will agree to limit using MOTUS ONE with fleet-management services and mobility services for automotive brands. My client will use MOTUS ONE only in the business-to-business context, and will not advertise or market MOTUS ONE.

Ex. 4.

19. Plaintiff concluded by reiterating its hope “to resolve this short of litigation. Can we at least try?” *Id.*

20. Defendant did not respond, and took no action on its threats.

21. On February 1, 2019, Plaintiff followed up with Defendant’s counsel: “I’ve not heard back from you on [the coexistence agreement].”

Have you had an opportunity to raise this with your client? Please advise.”

Ex. 5.

22. Defendant did not respond, and took no action on its threats.

23. Almost two months later, on March 29, 2019, Defendant finally responded.

24. According to Defendant, Plaintiff “already agreed to stop using the ‘Motus.’” Ex. 6 at 2.

25. Plaintiff assured Defendant it had not, and referred Defendant back to the January 14, 2019 email (Ex. 4) to which Defendant never responded. Ex. 6 at 1.

26. Following another two month delay, on June 5, 2019, Defendant sent Plaintiff a letter over a copy of a complaint. Ex. 7.

27. The letter requested Plaintiff contact Defendant by June 26, 2018. Ex. 7 at 2.

28. On June 12, 2019, the U.S. Patent and Trademark Office informed Plaintiff that its MOTUS ONE and M1 MOTUS ONE marks are entitled to registration notwithstanding Defendant’s MOTUS registration. Exs. 8 and 9.

29. On June 21, 2018, Plaintiff and Defendant exchanged phone calls and emails. Ex. 10.

30. Plaintiff would not capitulate to Defendant's demand that it stop using MOTUS ONE, however, but indicated it would enter a coexistence agreement. Ex. 10 at 1-2.

31. Defendant refused, indicating if Plaintiff would not stop using MOTUS ONE before June 28, 2019, Defendant would file the complaint attached to Ex. 7. Ex. 10 at 1.

32. In view of Defendant's threats and allegations, Plaintiff is in need of, and is entitled to, a judicial declaration that: (a) there is no likelihood of confusion between Plaintiff's MOTUS ONE and M1 MOTUS ONE marks on the one hand, and Defendant's MOTUS mark on the other; and therefore (b) Plaintiff's MOTUS ONE and M1 MOTUS ONE marks do not infringe any federal or state trademark rights owned by Defendant, do not dilute Defendant's MOTUS mark, and do not constitute unfair competition under federal or state law.

COUNT I – DECLARATORY JUDGMENT

**No Federal or State Trademark Infringement
No Federal or State Unfair Competition
No Federal or State Trademark Dilution**

33. Plaintiff repeats and incorporates by reference the allegations in the preceding paragraphs.

34. An actual, present and justiciable controversy exists between Plaintiff and Defendant concerning Plaintiff's use of MOTUS ONE and M1 MOTUS ONE.

35. Plaintiff's use of MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands is not likely to cause confusion with Defendant's use of MOTUS.

36. Plaintiff's use of M1 MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands is not likely to cause confusion with Defendant's use of MOTUS.

37. Defendant's MOTUS mark is not famous.

38. Defendant's MOTUS mark is not distinctive.

39. Plaintiff's use of MOTUS ONE does not and will not dilute Defendant's MOTUS mark.

40. Plaintiff's use of M1 MOTUS ONE does not and will not dilute Defendant's MOTUS mark.

41. Plaintiff is entitled to a declaratory judgment from this Court that its use of MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands is not likely to cause confusion with Defendant's use of MOTUS as to the source, sponsorship or affiliation of Plaintiff's services with those of Defendant.

42. Plaintiff is entitled to a declaratory judgment from this Court that its use of M1 MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands is not likely to cause confusion with Defendant's use of MOTUS as to the source, sponsorship or affiliation of Plaintiff's services with those of Defendant.

43. Plaintiff is entitled to a declaratory judgment from this Court that its use of MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands does not violate federal or state trademark law.

44. Plaintiff is entitled to a declaratory judgment from this Court that its use of M1 MOTUS ONE with automotive fleet management

services for automotive original equipment manufacturers and emerging automotive brands does not violate federal or state trademark law.

45. Plaintiff is entitled to a declaratory judgment from this Court that its use of MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands does not violate federal or state unfair competition law.

46. Plaintiff is entitled to a declaratory judgment from this Court that its use of M1 MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands does not violate federal or state unfair competition law.

47. Plaintiff is entitled to a declaratory judgment from this Court that its use of MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands does not dilute Defendant's MOTUS mark under federal or state law.

48. Plaintiff is entitled to a declaratory judgment from this Court that its use of M1 MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands does not dilute Defendant's MOTUS mark under federal or state law.

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PRAYER FOR RELIEF

WHEREFORE, Event Solutions International, Inc. DBA Motus One prays that:

1. The Court enter judgment for Plaintiff and against Defendant declaring that Plaintiff's use of MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands does not constitute trademark infringement, unfair competition or dilution under the Lanham Act or state law;

2. The Court enter judgment for Plaintiff and against Defendant declaring that Plaintiff's use of M1 MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands does not constitute trademark infringement, unfair competition or dilution under the Lanham Act or state law;

3. The Court declare that Defendant is not entitled to injunctive relief with respect to Plaintiff's use of MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands;

4. The Court declare that Defendant is not entitled to injunctive relief with respect to Plaintiff's use of M1 MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands;

5. The Court declare that Defendant has not suffered and will not suffer any damages or harm as a result of Plaintiff's use of MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands, and thus is not entitled to any relief under the Lanham Act or state law;

6. The Court declare that Defendant has not suffered and will not suffer any damages or harm as a result of Plaintiff's use of M1 MOTUS ONE with automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands, and thus is not entitled to any relief under the Lanham Act or state law;

7. Defendant be required to pay Plaintiff its costs and reasonable attorney fees incurred in this action pursuant to 15 U.S.C. § 1117(a), and applicable; and

8. Plaintiff be awarded such other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Event Solutions International, Inc. DBA Motus One respectfully demands a trial by jury on all claims and issues so triable.

DATED: July 1, 2019

BUTZEL LONG PC

By: /s/George Schooff
George T. Schooff (P45596)
150 West Jefferson, Suite 100
Detroit, Michigan 48226
schooff@butzel.com
Telephone: (313) 225-7000
Fax: (313) 225-7080
Attorneys for Plaintiff

BUTZEL LONG, A PROFESSIONAL CORPORATION, ATTORNEYS AND COUNSELORS

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MOTUS, LLC, a Delaware limited liability company,

Plaintiff,

v.

EVENT SOLUTIONS INTERNATIONAL, INC.,
d/b/a Motus One, a Nevada corporation

Defendant.

Case No.:

JURY TRIAL DEMANDED

Plaintiff Motus, LLC, a Delaware limited liability company, complains against Defendant Event Solutions International, Inc., d/b/a Motus One, and alleges as follows:

INTRODUCTION

1. This action arises as a result of Event Solutions International, Inc.’s (“Defendant”) wrongful actions in breaching its contract with Motus LLC’s (“Plaintiff” or “Motus”), infringing Motus’s trademarks, engaging in unfair competition, diluting Motus’s trademarks and engaging in unfair and deceptive practices.

PARTIES

2. Plaintiff Motus is a Delaware limited liability company with its principal place of business in Boston, Massachusetts.

3. Defendant Event Solutions International, Inc. d/b/a Motus One (hereafter “Motus One”) is a Nevada corporation with its principal place of business in Troy, Michigan.

SUBJECT MATTER JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under section 39 of the Lanham Act, 15

U.S.C. § 1121, and under 28 U.S.C. §§ 1331, 1332 and 1338.

5. Subject matter jurisdiction over Motus's related state and common law claims is proper pursuant to 28 U.S.C. §§ 1338 and 1367.

6. The District of Massachusetts is a proper venue pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the acts or omissions giving rise to Motus's claims occurred in this District.

BACKGROUND FACTS

7. Motus. Motus is one of the country's most successful and well-known workforce management companies. Motus develops and distributes mobile workforce management solutions, offering vehicle reimbursement, fleet, and mobile and global positioning system (GPS) solutions. Motus was established in 2004 and, since then, has developed strong rights in its marks, including MOTUS, and is the owner of the USPTO Trademark Registration No. 4,819,183 for the mark MOTUS ("Mark").

8. Motus has invested considerable time, effort, and expense developing its trademark and has developed an excellent reputation and extensive goodwill in that trademark.

9. Defendant Uses the Same Trademark "Motus" In the Same Industry (Automotive and Fleet Management Services). Event Solutions International, Inc. recently rebranded itself as Motus One, and is providing services under the name "Motus One" (sometimes "Infringing Mark").

10. Motus One holds itself out as "the premier mobility services provider for established and emerging automotive brands." See <http://www.motus1.com/>.

11. Motus One represents that it has "partnered with ... Tourmaline Labs ... to measurably reduce the complexities of managing ... transportation workforce, vehicles and fleet networks," *see id.*; its "M1 app dramatically improves [safety and profitability] through GPS location tracking," *see id.*; and "once you install the app on your smartphone, and create a fleet account you can begin tracking every single driver and vehicle in your fleet," *see id.*

12. Motus One has represented its services as: “Automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands, in the nature of tracking vehicles for commercial purposes.”; “Automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands, in the nature of maintenance of vehicles, namely, vehicle detailing, minor cosmetic and performance repairs, and installation of accessories.”; “Automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands, in the nature of storing vehicles”; “Automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands, in the nature of vehicle roadworthiness testing.”; and “Automotive fleet management services for automotive original equipment manufacturers and emerging automotive brands, in the nature of stolen vehicle tracking.”

13. The name “Motus One” is confusingly similar to “Motus,” and there is a likelihood of consumer confusion because both marks are used for automotive and fleet management services.

14. As such, Defendant’s use of the trademark “Motus” constitutes trademark infringement, trademark dilution, unfair competition, and other categories of wrongful behavior that are actionable under both Federal and state law.

15. On September 17, 2018, Event Solutions International, Inc. announced that it had rebranded as “Motus One.”

16. On September 28, 2018, counsel for Motus sent a cease and desist letter to Defendant explaining that Defendant infringed Motus’s rights and such infringing activity should stop by October 8, 2018.

17. After subsequent communications with Defendant’s counsel, Mr. George Schoof, the parties reached an agreement on December 27, 2018 whereby Defendant would transition away from its plans to use Motus One. Defendant promised and agreed to be fully divested within six months.

18. Notwithstanding the parties’ agreement, Defendant has failed to transition away

from Motus One within the six-month period and has notified Motus that it will continue to use the Infringing Mark.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

19. Motus repeats and incorporates by reference the allegations in the preceding paragraphs.

20. Motus demanded that Defendant stop using the Infringing Mark and notified Defendant that if Defendant did not do so, Motus would initiate litigation asking the court to order Defendant to enjoin Defendant from using the Infringing Mark.

21. On December 27, 2018, Defendant agreed to stop using the Infringing Mark and promised to be fully divested within six months.

22. As a result of and in reasonable reliance on this agreement, Motus did not initiate litigation against Defendant.

23. Defendant has failed to transition away from using the Infringing Mark, continues to use the Infringing Mark beyond the six-month grace period, and has notified Motus that it will continue to use the Infringing Mark.

24. Motus has been damaged by Defendant's breach of its agreement to stop using the Infringing Mark.

SECOND CLAIM FOR RELIEF
(Federal Trademark Infringement)

25. Motus repeats and incorporates by reference the allegations in the preceding paragraphs.

26. Defendant's use of a confusingly similar mark as Motus is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant's goods and services are associated or connected with Motus, or have the sponsorship, endorsement, or approval of Motus.

27. Defendant's name is confusingly similar to Motus's federally registered mark in violation of 15 U.S.C. § 1114. Defendant's activities are causing and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception to members of the trade and public, and, additionally, injury to Motus's goodwill and reputation for which Motus has no adequate remedy at law.

28. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Motus's Mark to Motus's great and irreparable harm.

29. Defendant caused and is likely to continue causing substantial injury to the public and to Motus, and Motus is entitled to injunctive relief and to recover Defendant's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116, and 1117.

THIRD CLAIM FOR RELIEF
(Federal Unfair Competition)

30. Motus repeats and incorporates by reference the allegations in the preceding paragraphs.

31. Defendant's use of a confusingly similar imitation of Motus's Mark has caused and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant's goods are affiliated, connected, or associated with Motus, or have the sponsorship, endorsement, or approval of Motus.

32. Defendant has made false representations, false descriptions, and false designations of, on, or in connection with its goods and services in violation of 15 U.S.C. § 1125(a). Defendant's activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception to members of the trade and public, and, additionally, injury to Motus's goodwill and reputation as symbolized by Motus's Mark, for which Motus has no adequate remedy at law.

33. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Motus's Mark to the great and irreparable injury of Motus.

34. Defendant's conduct has caused, and is likely to continue causing, substantial injury to the public and to Motus. Motus is entitled to injunctive relief and to recover Defendant's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1125(a), 1116, and 1117.

FOURTH CLAIM FOR RELIEF
(Federal Trademark Dilution)

35. Motus repeats and incorporates by reference the allegations in the preceding paragraphs.

36. Motus has exclusively and continuously promoted and used its Mark in the relevant industry. The Mark became a famous and well-known symbol of Motus and Motus's services well before Defendant began using its Infringing Mark.

37. Defendant is making use in commerce of the Infringing Mark, which dilutes and is likely to dilute the distinctiveness of Motus's Mark by eroding the public's exclusive identification of this famous mark with Motus, tarnishing and degrading the positive associations and prestigious connotations of the Mark, and otherwise lessening the capacity of the mark to identify and distinguish Motus's services.

38. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Motus's Mark or to cause dilution of the Mark to the great and irreparable injury of Motus.

39. Defendant has caused and will continue to cause irreparable injury to Motus's goodwill and business reputation, and dilution of the distinctiveness and value of Motus's Mark in violation of 15 U.S.C. § 1125(c). Motus therefore is entitled to injunctive relief and to Defendant's profits, actual damages, enhanced profits and damages, and reasonable attorneys' fees under 15 U.S.C. §§ 1125(c), 1116, and 1117.

FIFTH CLAIM FOR RELIEF
(Trademark Infringement – Massachusetts Common Law)

40. Motus repeats and incorporates by reference the allegations in the preceding paragraphs.

41. Defendant is engaged in trade and commerce in the Commonwealth of Massachusetts.

42. Motus has invested considerable time, effort, and expense developing its trademark and has developed an excellent reputation and extensive goodwill in that trademark.

43. Defendant's actions as described above regarding the Infringing Mark constitute trademark infringement in violation of Massachusetts common law.

44. Defendant's use of the Infringing Mark has caused and is causing irreparable injury to Motus for which Motus has no adequate remedy at law, and will continue to do so unless Defendant is enjoined by this Court.

45. Defendant's use of the Infringing Mark has been knowing, willful, wanton, reckless, and in disregard of Motus's rights.

46. Motus has suffered and will continue to suffer monetary damages and loss of goodwill.

SIXTH CLAIM FOR RELIEF
(Unfair and Deceptive Trade Acts/Practices Under M.G.L. c. 93A)

47. Motus repeats and incorporates by reference the allegations in the preceding paragraphs.

48. Motus and Defendant are engaged in trade or commerce within the meaning of M.G.L. c. 93A, §11.

49. Defendant's use of the Infringing Mark that is confusingly similar to the Mark constitutes unfair competition in violation of G.L. c. 93A.

50. Defendant's unlawful conduct took place primarily and substantially in Massachusetts.

51. Motus has been and will continue to be damaged by Defendant's conduct.

SEVENTH CLAIM FOR RELIEF
(Dilution – M.G.L. c. 110H, §13)

52. Motus repeats and incorporates by reference the allegations in the preceding paragraphs.

53. Defendant is engaged in trade and commerce in the Commonwealth of Massachusetts.

54. Defendant's actions described above are likely to cause injury to Motus's business reputation or to dilute the distinctive quality of the famous Mark.

55. Defendant's acts began long after the Mark became distinctive and famous.

56. Defendant's actions constitute trademark dilution in violation of M.G.L. c. 110H, §13.

57. Defendant's use of the Infringing Mark has caused and is causing irreparable injury to Motus, for which Motus has no adequate remedy at law, and will continue to do so unless Defendant's use of the marks is enjoined.

58. Defendant's conduct has been knowing, willful, wanton, reckless, and in disregard of Motus's rights.

59. Motus has suffered and will continue to suffer money damages and loss of goodwill.

EIGHTH CLAIM FOR RELIEF
(Unfair and Deceptive Trade Practices)

60. Motus repeats and incorporates by reference the allegations in the preceding paragraphs.

61. Defendant has been and is passing off its goods and services as those of Motus, causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval of Defendant's goods, causing a likelihood of confusion as to Defendant's affiliation, connection, or association with Motus, and otherwise damaging the public.

62. Defendant's conduct constitutes unfair and deceptive acts or practices in the

course of a business, trade, or commerce in violation of the unfair and deceptive trade practices statutes of several states, including California CAL. BUS. & PROF. CODE § 17200, et seq. (West); Colorado, COLO. REV. STAT. ANN. §§ 6-1-101 to 6-1-115 (West); Delaware, DEL. CODE ANN. tit. 6, §§ 2531 to 2536; Georgia, GA. CODE ANN. §§ 10-1-370 to 10-1-375; Hawaii, HAW. REV. STAT. §§ 481A-1 to 481A-5; Illinois, ILL. COMP. STAT. ANN. ch. 815, 510/1 to 510/7; Maine, ME. REV. STAT. ANN. tit. 10, §§ 1211 to 1216; Minnesota, MINN. STAT. ANN. § 325D.43 to .48 (West); Nebraska, NEB. REV. STAT. §§ 87-301 to 87-306; New Mexico, N.M. STAT. ANN. §§ 57-12-1 to 57-12-22 (Michie); New York, N.Y. GEN. BUS. Law § 349 (McKinney); Ohio, OHIO REV. CODE ANN. §§ 4165.01 to 4165.04 (Baldwin); and Oklahoma, OKLA. STAT. ANN. tit. 78, §§ 51 to 55 (West).

63. Defendant's unauthorized use of a confusingly similar imitation of Motus's Mark has caused and is likely to cause substantial injury to the public and to Motus. Motus, therefore, is entitled to injunctive relief and to recover damages and, if appropriate, punitive damages, costs, and reasonable attorneys' fees.

NINTH CLAIM FOR RELIEF
(Common Law Trademark Infringement and Unfair Competition)

64. Motus repeats and incorporates by reference the allegations in the preceding paragraphs.

65. Defendant's acts constitute common law trademark infringement and unfair competition, and have created and will continue to create, unless restrained by this Court, a likelihood of confusion to the irreparable injury of Motus. Motus has no adequate remedy at law for this injury.

66. Defendant acted with full knowledge of Motus's use of, and statutory and common law rights to, Motus's Mark and without regard to the likelihood of confusion of the public created by Defendant's activities.

67. Defendant's actions demonstrate an intentional, willful, and malicious intent to

trade on the goodwill associated with Motus's Mark to the great and irreparable injury of Motus.

68. As a result of Defendant's acts, Motus has been damaged in an amount not yet determined or ascertainable. At a minimum, however, Motus is entitled to injunctive relief, to an accounting of Defendant's profits, damages, and costs. Further, in light of the deliberate and malicious use of a confusingly similar imitation of Motus's Mark, and the need to deter Defendant from engaging in similar conduct in the future, Motus additionally is entitled to punitive damages.

TENTH CLAIM FOR RELIEF
(State Trademark Dilution and Injury to Business Reputation)

69. Motus repeats and incorporates by reference the allegations in the preceding paragraphs.

70. Motus has extensively and continuously promoted and used the Mark throughout the United States, and the Mark became a distinctive, famous, and well-known symbol of Motus's goods well before Defendant began using the Infringing Mark.

71. Defendant's conduct dilutes and is likely to dilute the distinctiveness of Motus's Mark by eroding the public's exclusive identification of this Mark with Motus, and tarnishing and degrading the positive associations and prestigious connotations of the mark, and otherwise lessening the capacity of the mark to identify and distinguish Motus's services.

72. Defendant is causing and will continue to cause irreparable injury to Motus's goodwill and business reputation and dilution of the distinctiveness and value of Motus's famous and distinctive mark in violation of federal law and Massachusetts law, as well as the anti-dilution laws of several other states, including Alabama, ALA. CODE § 8-12-17; Alaska, ALASKA STAT. § 45.50.180 (Michie); Arizona, ARIZ. REV. STAT. ANN. § 44-1448.01 (West); Arkansas, ARK. CODE ANN. § 4-71-213; California, CAL. BUS. & PROF. CODE § 14247 (West); Connecticut, CONN. GEN. STAT. ANN § 35-11i(c) (West); Delaware, DEL. CODE ANN. tit. 6, § 3313; Florida, FLA. STAT. ANN. § 495.151 (West); Georgia, GA. CODE

ANN. § 10-1-451; Hawaii, HAW. REV. STAT. ANN. § 482-32 (Michie); Idaho, IDAHO CODE § 48-513 (Michie); Illinois, 765 ILL. COMP. STAT. ANN. 1036/65; Iowa, IOWA CODE ANN. § 548.113 (West); Indiana, IN. CODE 24-2-13.5 (West); Kansas, KAN. STAT. ANN. § 81-214; Louisiana, LA. REV. STAT. ANN. § 51:223.1 (West); Maine, ME. REV. STAT. ANN. tit. 10, § 1530 (West); Minnesota, MINN. STAT. ANN. § 333.285 (West); Mississippi, MISS. CODE ANN. § 75-25-25; Missouri, MO. ANN. STAT. § 417.061(1) (West); Montana, MONT. CODE ANN. § 30-13-334; Nebraska, NEB. REV. STAT. ANN. § 87-140 (Michie); Nevada, NEV. REV. STAT. 600.435; New Hampshire, N.H. REV. STAT. ANN. § 350-A:12; New Jersey, N.J. STAT. ANN. 56:3-13.20 (West); New Mexico, N.M. STAT. ANN. § 57-3B-15 (Michie); New York, N.Y. GEN. BUS. Law § 360-1; Oregon, O.R.S. § 647.107; Pennsylvania, 54 PA. CONS. STAT. ANN. § 1124 (West); Rhode Island, R.I. GEN. LAWS § 6-2-12; South Carolina, S. C. CODE ANN. § 39-15-1165; Tennessee, TENN. CODE ANN. § 47-25-513; Texas, TEX. BUS. & COM. CODE ANN. § 16.29 (Vernon); Utah, UT. CODE ANN. § 70-3a-403; Washington, WASH. REV. CODE ANN. § 19.77.160 (West); West Virginia, W.V. STAT. ANN. 47-2-13 (Michie); and Wyoming, WYO. STAT. ANN. § 40-1-115 (Michie).

73. Motus, therefore, is entitled to injunctive relief, damages, and costs, as well as, if appropriate, enhanced damages, punitive damages, and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Motus prays that:

1. Defendant and all of its agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by, through or under authority from Defendant, or in concert or participation with Defendant, and each of them, be preliminarily and permanently enjoined from:
 - a. advertising, marketing, promoting, offering for sale, distributing, or selling any goods or services using the name Motus One;
 - b. using the Motus One name on or in connection with any of Defendant's

goods or services;

c. using any trademark, name, logo, design, or source designation of any kind on or in connection with Defendant's goods or services that is a copy, reproduction, colorable imitation, or simulation of, or confusingly similar to any of Motus's trademarks, names, or logos;

d. using any trademark, name, logo, design, or source designation of any kind on or in connection with Defendant's goods and services that is likely to cause confusion, mistake, deception, or public misunderstanding that such goods or services are provided by Motus, or are sponsored or authorized by Motus, or are in any way connected or related to Motus;

e. using any trademark, name, logo, design, or source designation of any kind on or in connection with Defendant's goods or services that dilutes or is likely to dilute the distinctiveness of Motus's trademarks, names, or logos;

f. passing off, palming off, or assisting in passing off or palming off Defendant's goods and services as those of Motus, or otherwise continuing any and all acts of unfair competition; and

g. advertising, promoting, offering for sale, or selling any infringing good or service.

2. Defendant be ordered to cease offering for sale, marketing, promoting, and selling and all goods and services bearing the name Motus One or any other confusingly similar imitation of Motus One and also to deliver to each customer a copy of this Court's order as it relates to said injunctive relief against Defendant;

3. Defendant be ordered to deliver up for impoundment and for destruction, all advertising or other materials in the possession, custody or under the control of Defendant that are found to adopt, infringe, or dilute any of Motus's trademarks or that otherwise unfairly compete with Motus and its services;

4. Defendant be compelled to account to Motus for any and all profits derived by

Defendant from the sale or distribution of its goods and services that used the name Motus One;

5. Motus be awarded all damages, including treble damages and attorneys' fees, caused by the acts forming the basis of this Complaint;

6. Based on Defendant's knowing and intentional use of a confusingly similar imitation of the Motus's Mark, the damages awarded be trebled and the award of Defendant's profits be enhanced as provided for by 15 U.S.C. § 1117(a);

7. Defendant be required to pay to Motus the costs and reasonable attorneys' fees incurred by Motus in this action pursuant to 15 U.S.C. § 1117(a) and state law;

8. Based on Defendant's willful and deliberate infringement and/or dilution of the Motus Mark, and to deter such conduct in the future, Motus be awarded punitive damages;

9. Motus be awarded prejudgment and post-judgment interest on all monetary awards; and

10. Motus be granted such other and further relief as the Court may deem just.

JURY TRIAL DEMAND

Motus respectfully demands a trial by jury on all claims and issues so triable.

Dated: July 2, 2019

Respectfully submitted,
MOTUS, LLC
By its attorneys

/s/ David S. Godkin

David S. Godkin (BBO #196530)

James E. Kruzer (BBO #670827)

BIRNBAUM & GODKIN, LLP

280 Summer Street

Boston, MA 02210

Tel: (617) 307-6100

Fax: (617) 307-6101

godkin@birnbaumgodkin.com

kruzer@birnbaumgodkin.com

OF COUNSEL:

Jeffrey K. Riffer (*Pro Hac Vice* forthcoming)

ELKINS KALT WEINTRAUB

REUBEN GARTSIDE LLP 10345 W.

Olympic Blvd. Los Angeles, California

90064-2524

Telephone: 310.746.4400

Facsimile: 310.746.4499