

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COLEMAN LAW FIRM

Ronald D. Coleman (RC 3875)
410 Park Avenue - 15th Floor
New York, New York 10022
212-752-9500
Attorneys for Plaintiff
Webster Lock & Hardware, Inc.

<p>WEBSTER LOCK & HARDWARE, CO., INC., a New York corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- vs. -</p> <p>WEBSTER LOCKSMITH EXPRESS, INC. a/k/a LOCKSMITH & SECURITY a/k/a ADVANCED SECURITY SYSTEMS, INC. a/k/a A SECURITY SYSTEMS, and JACOB HALPERT,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">CIVIL ACTION NO. _____</p> <p style="text-align: center;">VERIFIED COMPLAINT</p>
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INTRODUCTION

Plaintiff Webster Lock & Hardware Co., Inc. ("Webster Lock"), by its undersigned attorneys, by and for its complaint against defendants Webster Locksmith Express, Inc. ("Webster Locksmith Express") also known as Webster Locksmith & Security, also known as Advanced Security Systems, Inc., also known as A Security Systems, Inc. and defendant Jacob Halpert, states as follows:

NATURE OF ACTION

This is an action for trademark infringement and false designation of origin under Section 43(a) of the Lanham Act, 15 U.S. §1125(a), and unfair competition under the common law and New York General Business Law §349. As set forth below, Plaintiff is a leading supplier of locksmith products and services in New York. Defendant, a competitor, has established a business under the name Webster Locksmith Express, Inc. which operates as a shell organization of Advanced Security Systems, Inc. Upon information and belief, defendant is promoting, marketing, offering for sale, and selling locksmith services and products in an effort to mislead and confuse prospective purchasers. Upon information and belief, defendant's actions are part of a deliberate attempt to divert sales away from Plaintiff, a market leader in the sale of locksmith products and provider of locksmith services. These actions will continue unless enjoined by this Court.

THE PARTIES

1. Plaintiff is a corporation organized under the existing laws of New York State, with an office and principal place of business at 2471 Webster Avenue, Bronx, New York.

2. Plaintiff operates under the registered doing-

business-as name of Webster Locksmiths, which is also located at 2471 Webster Avenue, Bronx, New York.

3. Plaintiff organization is owned and operated by Allan Miller and David Miller.

4. Upon information and belief, Defendant Webster Locksmith Express is a corporation organized under the laws of New York State, with offices located at 36-60 Oxford Avenue, Suite 10B, Bronx, New York 10463.

5. Upon information and belief, Webster Locksmith Express is a shell corporation of Advanced Security Systems, Inc.

6. Upon information and belief, Webster Locksmith Express is owned and operated by defendant Jacob Halpert, a resident of the State of New York.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and 1338. The Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

FACTS

8. Since 1949, Plaintiff Webster Lock has sold locks under its fictitious name "Webster Locksmith," which name was registered with the State of New York Department of

State pursuant to section 130 of the New York General Business Law.

9. From its inception, and through four generations of family ownership, Webster Locksmiths has always operated from its present location on Webster Avenue, in the borough of the Bronx in the City of New York.

10. Plaintiff's business has grown substantially over the decades, and it currently has 44 employees, operates seventeen (17) mobile locksmith trucks, and does over \$5 million per year in annual sales. As a result of its success, as well as an annual expenditure of approximately \$30-\$40,000 in advertising and marketing, plaintiff's trademark WEBSTER LOCKSMITHS is inherently distinctive to the public, and serves primarily as a designator of origin of locksmith products and services emanating from or sponsored by plaintiff.

11. As a result of the widespread use and display of the "Webster Locksmiths" trademark, (a) the public and the trade use them to identify and refer to Webster Lock's locksmith services, (b) the public and the trade recognize that such designations refer to a high quality of locksmith services emanating from a single source, and (c) said trademark and has built up secondary meaning and extensive goodwill.

12. Upon information and belief, in or about March 2003, defendants commenced a locksmith service utilizing the mark "Webster Locksmith and Security."

13. Defendants' operations are not on or near Webster Avenue in the Bronx.

14. Webster Locksmiths' locksmith services and Webster Locksmith Express's locksmith services are sold in the same channels of trade.

15. On or about March 18, 2003 plaintiff received an anonymous telephone call from an employee of Verizon Communications, who identified himself as a 30-year resident of the Bronx familiar with Plaintiff's business, stating that defendants were in the process of advertising his services in the Verizon commercial telephone directory ("the Yellow Pages") using plaintiff's name.

16. Immediately thereafter, on March 20, 2003, plaintiff, acting through counsel, sent a cease and desist letter to Webster Locksmith Express, Inc. a/k/a Locksmith & Security a/k/a Advanced Security Systems, Inc. a/k/a A Security Systems, demanding that defendants cease utilizing plaintiff's business and trade names. A copy of this letter is attached hereto as Exhibit A.

17. On March 20, 2003, plaintiff, acting through counsel, sent a letter to Verizon Communications,

requesting that Verizon not permit Jacob Halpert to advertise in Verizon's Yellow Pages its locksmith services using the name "Webster Locksmith & Security." A copy of this letter is attached hereto as Exhibit B.

18. Verizon responded by letter to plaintiff, stating that it could not prevent defendants from advertising in its Yellow pages without a Court order. A copy of this letter is attached hereto as Exhibit C.

19. Upon information and belief, since March 2003, defendants have advertised their locksmith services bearing the name "Webster Locksmith Express." In the Yellow Pages, the name "Webster Locksmith Express" is displayed directly below that of plaintiff's name, "Webster Locksmiths." The name "Webster Locksmith Express" is thus displayed in a way that is confusingly similar to plaintiff's WEBSTER LOCKSMITHS trademark, which the public identifies with plaintiff's services. A copy of the business listings from the Yellow Pages is attached hereto as Exhibit D.

20. On several occasions in 2003, David Miller called the Verizon general information number, 411, and requested the number for "Webster Locksmiths." Mr. Miller was provided with two telephone numbers, that of Webster Locksmiths and the telephone number for defendant's business "Webster Locksmith Express".

21. Further, in conducting its own investigation, plaintiff asked two of its customers to contact defendants to inquire about their services.

22. One customer was provided with a proposal from defendants that contained the letterhead "Webster Locksmith & Security." The proposal listed defendants' actual business address underneath the letterhead. A copy of this proposal is attached hereto as Exhibit E.

23. Further, the person who spoke with plaintiff's customer told the second customer that it was affiliated with "Webster Locksmiths" but was going through the process of establishing a separate business independent of "Webster Locksmiths."

24. In March of 2003, David Miller himself called defendants, requesting their services without identifying himself. During the conversation, the person on the phone represented that he was connected with "Webster Locksmiths", but stated that the "showroom" was closed for the day due the large volume of mobile service calls. At one point, Mr. Miller asked, "You mean you closed that 18,000 square foot store on Webster Avenue?," referring to his own store. Defendant replied, "Yes."

25. Mr. Miller has not closed his store and defendants' statement was false and misleading.

26. On July 16, 2003, plaintiff, acting through counsel, sent a cease and desist letter to four known addresses associated with defendants, reiterating Webster Locksmiths' demand that defendants cease utilizing Plaintiff's business and trade names and specifically warning defendants of their potential liability, including liability for attorneys' fees, if they do not respond. Only one was returned as undeliverable. A copy of this letter is attached hereto as Exhibit F.

27. Defendants have never responded to Plaintiff's counsels' cease and desist letters.

28. As a result of defendants' business listing's proximity to Webster Locksmiths' business listing in the Yellow Pages, defendants have caused customers calling to request services from Webster Locksmiths to inadvertently call Webster Locksmith Express.

29. Defendants have been diverting sales away from Webster Locksmiths through its misleading advertising and utilization of the WEBSTER LOCKSMITHS trademark.

30. Defendants' actions as alleged in connection with its utilization of Webster Locksmiths' trademark is intended to, and has caused confusion, mistake or deception as to the source of origin of their locksmith services in that the public, trade and others are likely to believe

that Webster Locksmith Express are the same as plaintiff's Webster Locksmiths, or are authorized, sponsored or approved by plaintiff, or are otherwise affiliated or connected with plaintiff or their valuable trademark.

31. Defendants' actions as alleged have caused, and will continue to cause irreparable harm to the plaintiff and its trademark, and to the business and substantial goodwill represented thereby, and said acts and damages will continue unless restrained by this Court.

COUNT ONE
(Trademark Infringement and False Designation of Origin)

32. Plaintiff repeats and realleges each and every allegation of the foregoing as though fully set forth herein.

33. Defendants' acts as alleged constitute trademark infringement and false designation of origin in violation of the Lanham Act, Section 43(a), 15 U.S.C. § 1125(a), all to the substantial and irreparable injury of the public and of plaintiff's business reputation and goodwill.

34. Plaintiff has no adequate remedy at law.

COUNT TWO
(Common Law Unfair Competition)

35. Plaintiff repeats and realleges each and every allegation of the foregoing as though fully set forth herein.

36. Defendants' aforementioned acts constitute unfair competition in violation of the common law of New York State.

37. Plaintiff has been damaged by defendant's aforementioned acts.

COUNT THREE
(Unfair Competition)

38. Plaintiff repeats and realleges each and every allegation of the foregoing as though fully set forth herein.

39. Defendants' aforementioned acts constitute unfair competition and unfair deceptive acts or practices in violation of New York General Business Law § 349.

40. Plaintiff has been damaged by defendant's aforementioned acts.

WHEREFORE, Plaintiff prays for an order of the Court:

A. Granting a preliminary and permanent injunction restraining defendants, their officers, directors, principals, agents, servants, employees, successors and assigns, and all individuals acting in concert or participation with them, from:

1. infringing plaintiff's trademark rights; and
2. unfairly competing with Plaintiff.

- B. Directing defendants to immediately cease use of the Webster Locksmith Express name or any other name confusingly similar to plaintiff's trademark WEBSTER LOCKSMITHS and to authorize the transfer of any telephone numbers used in connection with its infringing activities.
- C. Directing defendants to immediately cease use of the Webster Locksmith Express name or any other name confusingly similar to plaintiff's trademark WEBSTER LOCKSMITHS in the Yellow Pages.
- D. Directing defendants to use their best efforts to recall from the trade and other third parties any and all marketing, advertising and promotional material used in connection with its locksmith products and services, including removal of the Webster Locksmith Express, Inc. name and telephone number from the Yellow Pages and general information number in New York.
- E. Directing defendants to file with the Court and Serve on counsel for plaintiff, within thirty days, after entry of any injunction issued by the court in this action, a sworn statement as provided in 15 U.S.C. §1116 setting forth in detail the manner and form in which they have complied with the injunction.

- F. Directing defendants to deliver up to Plaintiff for destruction or other disposition, within thirty days of the entry of final judgment herein, any and all infringing articles and any promotion, marketing, advertising and promotional materials used in connection therewith, now or hereafter in its possession, custody or control.
- G. Directing defendants to account to plaintiff for any and all profits derived by them from the sale of goods or services bearing the infringing trademark.
- H. Directing defendant to cooperate in any way necessary with plaintiff in the administration of the terms of such an injunction, including by executing any documentation required by any telephone or marketing provider in connection therewith.
- I. Awarding plaintiff a monetary judgment against defendants for plaintiff's damages and Webster Locksmith Express, Inc.'s profits pursuant to 15 U.S.C. § 1117.
- J. Trebling the amount of such award on account of defendants' willful, intentional, and bad faith conduct pursuant to 15 U.S.C. § 1117.
- K. Awarding plaintiff its reasonable attorneys' fees, costs and disbursements incurred herein in view of

defendants' intentional and willful infringement,
pursuant to 15 U.S.C. § 1117; and;

- L. Awarding plaintiff such other and further relief as
the Court may deem just and proper.

_____/S/_____
Ronald D. Coleman (RC-3875)

COLEMAN LAW FIRM
410 Park Avenue - 15th Floor
New York, New York 10022
212-752-9500
Attorneys for Plaintiff
Webster Lock & Hardware, Inc.

Dated: August 20, 2003

VERIFICATION

STATE OF NEW YORK)
)
BRONX COUNTY)

Allan Miller, duly affirming, deposes and says:

1. Deponent is the plaintiff in the within action.
2. Deponent has read the foregoing Verified Complaint and knows the contents thereof; and the same is true to Deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief,

and as to those matters Deponent believes it to be true
based on Deponent's investigation.

ALLAN MILLER

Affirmed to before me this
____ th day of _____, 2003

Notary Public