UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DUCT DOCTOR USA, INC. and IAQ, INC.,	Civil Action No.:
Plaintiffs,	
v.	**JURY DEMANDED**
DONALD S. PEARSALL; STEVEN BOBBY; MAGGIE & MOLLY, IAQ, LLC; and SM BOBBY ENTERPRISES, INC.,	
Defendants.	

COMPLAINT

COME NOW the Plaintiffs, Duct Doctor USA, Inc. ("DDUSA") and IAQ, Inc. ("IAQ"), and for their Complaint against Defendants, Donald S. Pearsall ("Pearsall"); Steven Bobby ("Bobby"); Maggie & Molly, IAQ, LLC ("M&M"); and SM Bobby Enterprises, Inc. ("SMB"), allege as follows:

Parties, Jurisdiction, and Venue

1. DDUSA and IAQ are Georgia corporations with their principal places of business located in Gwinnett County, Georgia.

2. Pearsall is a resident of the State of Florida who may be served at 8471 S.E. Bristol Way, Jupiter, Florida.

3. Pearsall is subject to the jurisdiction and venue of the Court. Pearsall has consented to the jurisdiction and venue of the Court by contractually agreeing

to this dispute to be brought in the United States District Court for the Northern District of Georgia, Atlanta Division.

4. In addition, Pearsall is subject to the jurisdiction of the Court as he has transacted business in Georgia, has committed a tortious act or omission within Georgia, has committed a tortious injury in Georgia, and he regularly engages in persistent course of conduct in Georgia.

5. Bobby is a resident of the State of Georgia who may be served at 580 Long Oak Drive, Gainesville, Georgia.

6. Bobby is subject to the jurisdiction and venue of the Court.

7. M&M is a Georgia limited liability company and may be served through its registered agent, Bobby.

8. M&M is subject to the jurisdiction and venue of the Court.

9. SMB is a Georgia corporation that may be served through its registered agent, Bobby.

10. SMB is subject to the jurisdiction and venue of the Court.

11. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338; 15 U.S.C. § 1121;

12. This action arises, in part, under the Lanham Act, 15 U.S.C. § 1051, *et. seq.*, as well as the Patent Laws of the United States, Title 35 of the United States Code.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and § 1400.

Background and Agreement

14. DDUSA and its affiliate, IAQ, are pioneers and leaders in the business of duct cleaning. DDUSA is the franchisor of the "Duct Doctor" franchise system involving duct cleaning services.

15. DDUSA and IAQ have invested tens, if not hundreds, of thousands of dollars in the development of their products and system and the related intellectual property.

16. IAQ is the holder of United States Patent No. 6,430,772, entitled "DUCT CLEANING APPARATUS" (hereinafter the "Patent, a copy of which is attached hereto as **Exhibit "A"**).

17. IAQ is the holder of United States Trademark Reg. No. 1720661 covering the "Duct Doctor" trademark and logo (the "Trademark," a copy of which is attached hereto as **Exhibit "B"**).

18. The Duct Doctor name and mark have been used since 1990. Since first being used, the Duct Doctor name and mark have become famous well-recognized by the consuming public as being connected with DDUSA and its franchise system.

19. IAQ has granted DDUSA and exclusive fifty (50) year license in the Patent and the Trademark which permits DDUSA to enter into franchise agreements which grant certain limited rights to the Duct Doctor Intellectual Property to DDUSA's franchisees.

20. DDUSA have used the Trademark to identify its products and services and to distinguish its products and services from those offered by others;

21. For more than twenty years, the Trademark has acquired a special significant with the public as representing DDUSA's goods and services;

22. The Trademark has established valuable distinctiveness and goodwill during its existence.

23. On or about November 10, 2005, DDUSA entered into a Franchise Agreement (the "Agreement") whereby Pearsall was given the right to operate a Duct Doctor franchise in accordance with the terms of the Agreement. A copy of the Agreement is attached hereto as **Exhibit "C."** Pearsall was in Gwinnett County, Georgia, when he executed the Agreement.

24. Under the Agreement, Pearsall was given certain rights to the Trademark within Palm Beach County, Florida (the "Territory").

25. Section 10 of the Agreement contains several requirements that Pearsall was required to perform upon termination of the Agreement, including: (i) paying all sums due DDUSA; (ii) ceasing to use the Trademark; (iii) ceasing to use

any devices and other materials used in the franchise; (iv) notifying the telephone company of the termination of the Agreement and requesting that the telephone number used by Pearsall's franchise be transferred to DDUSA; and (v) offering to sell to DDUSA all of the duct cleaning trucks, including related equipment, tools, and supplies.

26. Section 14 of the Agreement provides that in the event of any default of the Agreement, in addition to any other remedies available to that party, the party in default shall pay to the aggrieved party all amounts due, including reasonable attorneys' fees and auditors' fees incurred as a result of the default.

27. Section 15 of the Agreement provides in relevant part:

> (A) So long as [the Agreement] is in effect, and for two (2) years thereafter, Franchisee and franchise owner(s) shall maintain the absolute confidentiality of such information and shall not divulge to, or use for the benefit of, any other person, partnership, association, trust, corporation or entity outside the Franchisor's organization, any confidential or proprietary information of Franchisor nor any information concerning customers, the methods of doing business (including without limitation, promotion, pricing of services, marketing concepts and other technical information and know-how employed by Franchisor or its franchisees in the area of air duct cleaning or related businesses) which Franchisee or the franchise owner(s) may acquire by virtue of their operation under the terms of this Agreement. . . . Individuals engaged in management by the Franchisee shall execute like non-disclosure and confidentiality undertakings in writing as a condition precedent to their engagement by Franchisee.

(B) So long as [the Agreement] is in effect, and for two (2) years thereafter, except for the franchised business licensed hereunder, Franchisee and franchise owner(s) expressly covenant that Franchisee and the franchise owner(s) will not engage, directly or indirectly, within a fifty (50) mile radius of Franchisee's office, whether as an owner, stockholder, partner, officer, director, or managerial employee in the business of providing air duct cleaning or related services, or in a business similar to that licensed hereunder. In addition, Franchisee and franchise owner(s) will not so engage anywhere in the United States during the terms of this Franchise Agreement or any renewals. If Franchisee and/or the franchise owners do so compete (whether by reason of the unenforceability of such covenant not to so compete or otherwise), Franchisee and/or the franchise owners shall pay to Franchisor, in lump sum, as liquidated damages, and not as a penalty, an amount equal to the average Royalty due during each of the last twelve months times the number of months remaining under the terms of this agreement but not less than 36 months, or, if the agreement has expired or been terminated, a minimum of 36 months. The parties expressly acknowledge and agree that such payments shall not affect any rights or remedies the Franchisor may have, at law or in equity, including without limitation the right to seek injunctive relief, against Franchisee and/or the franchise owners by reason of such competition by them.

(C) The Covenant is entered into by and between the parties hereto with full knowledge of its nature and extent. They hereby acknowledge that the Franchise Agreement would not be entered into by the Franchisor except upon the condition that such restrictive covenant be embodied herein and that, as such, they be enforceable, in the event of a breach by Franchisee and/or the franchise owners, by injunctive relief, and/or any other remedies available at law or equity to Franchisor, which remedies shall be cumulative. . . .

Other Facts

28. Subsequent to the execution of the Agreement, DDUSA provided Pearsall with confidential materials, including DDUSA's operations manual, and

provided Pearsall and his employees with substantial training in the field of duct cleaning.

29. During the course of the Agreement, DDUSA and/or IAQ provided Pearsall with two mobile duct cleaning units (each a "Proprietary Air Duct Cleaning Trucks") each of which contain an apparatus identified in the Patent.

30. At the time that Pearsall obtained each Proprietary Air Duct Cleaning Trucks, he knew that his use of the Proprietary Air Duct Cleaning Trucks was subject to the terms and restrictions contained in the Agreement. In fact, the invoices for each Proprietary Air Duct Cleaning Trucks specifically reference that it is protected by the Patent, and the Proprietary Air Duct Cleaning Trucks themselves are painted with a sign referencing that they are protected by a patent.

31. At some point in time, Pearsall hired Bobby to act as the general manager of Pearsall's Duct Doctor franchise.

32. Although the Agreement required Pearsall to have Bobby, as a manager of Pearsall's Duct Doctor franchise, execute a non-disclosure and non-compete agreement, Pearsall chose to not require Pearsall to have Bobby execute such an agreement.

33. During the Spring of 2010, Alton Powell, the Duct Doctor franchisee in Mobile, Alabama, had some of his possessions, including two Proprietary Air Duct Cleaning Trucks, repossessed by Vision Bank. One of those two trucks was

purchased by the new Duct Doctor franchisee for Mobile. DDUSA notified the all of the other Duct Doctor franchisees of the availability of the other truck (the "Powell Truck").

34. At the time that the Powell Truck became available, Pearsall and Bobby had indicated that they, along with Pearsall's son, were interested in purchasing a Duct Doctor franchise to be located in Pensacola, Florida.

35. Bobby told DDUSA that Pearsall wanted to purchase the Powell Truck either for Pearsall's franchise in Palm Beach County franchise or the future Pensacola franchise. At the time, DDUSA reminded Bobby that only Duct Doctor franchisees may own or use Proprietary Air Duct Cleaning Trucks.

36. Bobby and Pearsall had SMB purchase the Powell Truck from Vision Bank, knowing that SMB was not allowed to own or use the Powell Truck since SMB was not a Duct Doctor franchisee.

37. In order to disguise the fact that SMB had purchased the Powell Truck, Bobby and Pearsall agreed to have the Powell Truck to be located at Pearsall's franchise office for several months.

38. At the time of the transfer of the Powell Truck to SMB, Pearsall was an officer of SMB.

39. Also during 2011, DDUSA learned that Pearsall's franchise was operating outside of his territory in Broward County, Florida, in violation of the Agreement.

40. After DDUSA confronted Pearsall about his wrongful conduct, Pearsall and Bobby admitted that they were operating in the protected territories of other Duct Doctor franchises, in both the Atlanta area and in Broward County, Florida.

41. Bobby and Pearsall promised DDUSA that they would stop operating inside the protected territories of other Duct Doctor franchisees.

42. Despite these promises, Defendants continued to operate duct cleaning businesses in the protected territories of other Duct Doctor franchises.

43. The Powell Truck has continued to be used in Georgia to compete against DDUSA as part of a business called "Affordable Duct Cleaning."

44. Affordable Duct Cleaning is owned and operated by one or more of the Defendants.

45. The Powell Truck is owned by SMB.

46. The website for Affordable Duct Cleaning is registered to M&M.

47. As of October 2011, Pearsall was in violation of the Agreement by, inter alia, encroaching into unauthorized geographic areas, failing to properly protect Plaintiffs' intellectual property and trade secrets, failing to have his general

manager devote full time towards the franchise, failing to submit proper financial and insurance documents, failing to properly submit to an audit of relevant documents, misrepresenting its earnings, and failing to report and pay royalties

48. On or about October 19, 2011, because of the Pearsall's breaches of the Agreement, DDUSA sent a letter, a copy of which is attached hereto as **Exhibit "D,"** formally notifying Pearsall that he was in default of the Agreement and demanding an immediate audit of Pearsall's books and records.

49. Over the next couple of months, Pearsall purported to be working with DDUSA to resolve DDUSA's complaints against Pearsall.

50. An audit of Pearsall's franchise was scheduled for January 9, 2012.

51. DDUSA's President travelled to Pearsall's offices on January 9, 2012, for the audit. However, Pearsall did not make many of the requested documents available to DDUSA; instead, Pearsall claimed that some of his records had been stolen and that others were in Bobby's possession.

52. Of the few documents that were made available to DDUSA during the audit, these confirmed that Pearsall had been operating in Broward County, Florida.

53. On January 17, 2012, because Pearsall did not cure his defaults of the Agreement and because Defendants were continuing their wrongful conduct, DDUSA terminated the Agreement by sending formal notice of the same to Pearsall.

54. Since that time, DDUSA has continued their wrongful conduct.

55. Defendants continue to use the Powell Truck, containing an apparatus covered by the Patent, to compete against DDUSA.

56. Pearsall continues to compete against DDUSA, in violation of the Agreement, and uses Proprietary Air Duct Cleaning Trucks to compete against DDUSA.

57. Bobby has represented to customers and/or potential customers that the Affordable Duct Cleaning business is affiliated with DDUSA.

58. Even though the Agreement has been terminated, Pearsall continues to use the Trademark in competing against DDUSA.

59. According to at least two websites maintained by Pearsall's business, Bobby is still Pearsall's general manager.

60. At all times in connection herewith, Defendants have acted in bad faith, been stubbornly litigious, and has caused Plaintiffs unnecessary cost and expense. Plaintiffs are entitled to recover its expenses of litigation, including reasonable attorneys' fees pursuant to O.C.G.A. § 13-6-11.

Count One—Trademark Infringement and Unfair Competition

61. Plaintiffs repeat and reallege each and every one of the above allegations as is set forth fully herein.

62. Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)), provides monetary and injunctive relief to one who is injured as the result of "any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.

63. Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c)), provides monetary and injunctive relief to one harmed by trademark dilution.

64. The Lanham Act also prohibits (15 U.S.C. § 1114) one, who without permission of the trademark holder, uses a mark in commerce such as is likely to cause confusion, or to cause mistake, or to deceive.

65. Defendants' actions constitute violations of the Lanham Act.

66. Defendants know that they are not entitled to use the Trademark but continue to do so, and they know that there actions are likely to cause confusion, mistake, or deceit.

67. Defendants have acted in concert in an effort which is likely to cause, and which has caused, confusion regarding the services that Defendants are offering to provide and regarding Defendants' affiliation with DDUSA.

68. Defendants' actions have affected interests in commerce in violation of the Lanham Act.

69. By reason of Defendants' actions, Plaintiffs have been seriously and irreparably damaged, and unless Defendants are restrained therefrom, Plaintiffs will continue to be so damaged by Defendants' actions and misrepresentations.

70. Pursuant to 15 U.S.C. § 1116 and 1125(c)(1), Plaintiffs are entitled to preliminary and permanent injunctive relief to prevent Defendants' wrongful conduct.

71. Defendants are also entitled to recover their compensatory damages.

72. Defendants should be required to disgorge and pay to Plaintiffs any profits derived from Defendants' unlawful acts.

73. Defendants' actions make this an exceptional case entitling Plaintiffs to recover exemplary damages and reasonable attorney fees pursuant to 15 U.S.C. § 1117.

Count Two—Violation of the Georgia Uniform Deceptive Trade Practices Act

74. Plaintiffs repeat and reallege each of the above allegations as if set forth fully herein.

75. Defendants actions constitute "deceptive trade practices" within the purview of O.C.G.A. § 10-1-372.

76. The Court should enjoin Defendants' wrongful conduct.

77. Plaintiffs are entitled to injunctive relief, costs, and attorneys' fees.

Count Three—Patent Infringement

78. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

79. The Patent was duly and legally issued by the United States Patent and Trademark Office on August 13, 2002.

80. The Patent Laws give the holder of a patent the exclusive right to exclude others from making, using, and selling the content of a patent.

81. Without lawful authority, Defendants have been actively using (and/or contributing to the other Defendants' use of) the Patent by using Proprietary Air Duct Cleaning Vehicles which contain the apparatus covered by the Patent.

82. Plaintiffs have suffered and will continue to suffer serious irreparable injury unless Defendants are enjoined from infringement of the Patent.

83. The Court should enjoin Defendants, pursuant to 35 U.S.C. 283, from violating the rights secured by the Patent.

84. In addition, as a result of Defendants' wrongful conduct, Plaintiffs have been damaged, and Plaintiffs are entitled to those damages in accordance with 35 U.S.C. §§ 281 and 284.

85. In addition, because Defendants have knowingly infringed on the Patent, Defendants are also liable for all statutory (including treble damages under 35 U.S.C. § 284 and attorneys' fees under 35 U.S.C. § 285) and exemplary damages associated with their actions.

Count Four—Breach of Contract

86. Plaintiffs reallege and incorporate the allegations above as if fully set forth herein.

87. Pearsall has breached and is breaching the Agreement.

88. Pearsall's conduct is ongoing and continues to cause DDUSA irreparable harm for which the Court should issue an injunction.

89. In addition, DDUSA has suffered damages as a result of Pearsall's conduct, and DDUSA is entitled to those damages, as well as attorneys' fees and interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand a trial by jury and hereby respectfully requests:

A. Preliminary and permanent injunctive relief preventing Defendants' wrongful conduct;

B. An award of compensatory, statutory, exemplary, and punitive damages, as well as interest and attorneys' fees and costs; and

C. Such further relief as the Court may deem just and proper.

This 16th day of May, 2012.

Wagner, Johnston & Rosenthal, P.C.

By: _____

S. Bradley Shipe
Georgia Bar No. 643015
Attorneys for Plaintiff

Suite 300
5855 Sandy Springs Circle
Atlanta, Georgia 30328
(404) 261-0500