

TWENTY-FIRST JUDICIAL DISTRICT COURT

PARISH OF LIVINGSTON

STATE OF LOUISIANA

NO: 146598

DIVISION: A

J.A.H. ENTERPRISES, INC.

v.

L.E.D. SALES GROUP, L.L.C., LLOYD L. HENDERSON,
DELMOND R. HENDERSON

FILED: _____

DEPUTY CLERK

VERIFIED PETITION

NOW INTO COURT, through undersigned counsel, comes J.A.H. Enterprises, Inc. ("J.A.H."), who states the following complaint:

1.

J.A.H. is a Louisiana corporation domiciled and having its principal place business in Livingston, Louisiana.

2.

Made Defendant herein is L.E.D. Sales Group, L.L.C., a Louisiana limited liability company domiciled and having its principal place of business in Livingston, Louisiana.

3.

Also made Defendants herein are Lloyd L. Henderson, who is an individual and, on information and belief, domiciled in Livingston Parish, and Delmond R. Henderson, who is an individual and, on information and belief, domiciled in Livingston Parish (the "Individual Defendants").

4.

Venue is proper pursuant to Article 42 and 74 of the Louisiana Code of Civil Procedure since the infringement is occurring in Livingston Parish.

FILED
CLERK OF COURT
PARISH OF LIVINGSTON
2011 OCT 19 PM 2:59
DEPUTY CLERK

5.

This is an action for trade name and service mark infringement, dilution, and unfair trade practices pursuant to Louisiana law, arising from Defendants' unauthorized use of HENDERSON & HENDERSON AUCTIONEERS to identify auction services and for breach of good faith and loyalty.

6.

J.A.H. began operating its auction business in Livingston in 1993. Since that time, J.A.H. has provided auction services pursuant to the HENDERSON AUCTIONS trade name.

7.

J.A.H. has registered HENDERSON AUCTIONS as a trade name with the Louisiana Secretary of State.

8.

J.A.H. uses HENDERSON AUCTIONS as a brand to identify the services it provides, namely, the sale of machinery, real estate and vehicles through auction.

9.

J.A.H. has sold numerous pieces of equipment at its auctions. It holds auctions multiple times per year at its headquarters and other areas in the state. Prior to each auction it sends notice to over 50,000 people who live all around the country. On the day of the auction, customers come to the auction and competitively bid to acquire certain equipment. Upon purchasing the equipment, J.A.H. ships or delivers the equipment to the purchaser.

10.

J.A.H. has developed significant goodwill and brand recognition in the market in connection with its auction services. The HENDERSON AUCTIONS trade name and service mark has acquired secondary meaning in the marketplace through J.A.H.'s substantial use in commerce. Consumers in the auction market have come to associate the name HENDERSON AUCTIONS with J.A.H. as the source of origin for these services.

11.

J.A.H. operates a website having the internet domain name **www.henderson auctions.com** which provides information regarding its services and equipment to be auctioned at upcoming auctions, among other things. The website is in black and orange. Adjacent to the name Henderson Auctions is a stylized logo with letter "H".

12.

The Individual Defendants were previously employed by J.A.H. Lloyd Henderson was employed by J.A.H. from approximately 1995 to January 2014. Delmond Henderson was employed for years by J.A.H. Through their years of employment, they became very familiar with the operations of the business of J.A.H.

13.

In January, 2014, the employment of the Individual Defendants by J.A.H. terminated.

14.

On February 14, 2014, the Individual Defendants formed their own business called L.E.D. Sales Group, L.L.C. Additionally, on the same date the entity was formed, the L.E.D. Sales Group registered the HENDERSON & HENDERSON AUCTIONEERS trade name. The type of business listed in the registration is "General Auction."

15.

Defendants could have selected any number of names under which to do business; however they selected the name HENDERSON & HENDERSON AUCTIONEERS to intentionally trade upon the goodwill of and years of use of HENDERSON AUCTIONS.

16.

On information and belief, Individual Defendants are offering general auction services using the HENDERSON & HENDERSON AUCTIONEERS name and service mark in Livingston, Louisiana.

17.

Defendants use a website www.henderson-henderson.net. In fact, Defendants sought out the same internet hosting service utilized by J.A.H. and, on information and

belief, requested that their website be designed to appear similar to J.A.H.'s site. Just like J.A.H.'s site, (a) the colors on the website are orange and black; and (b) adjacent to the name Henderson & Henderson Auctioneers is a stylized logo with letter "H". This was intentionally done to trade upon the goodwill of Plaintiff and cause consumer confusion. Defendants want consumers to believe that they are affiliated with HENDERSON AUCTIONS, which is not the case.

18.

In preparation to do business, the Individual Defendants showed up at the J.A.H. headquarters during an auction and started handing out business cards to attendees of the J.A.H. auction.

19.

Individual Defendants also chose to locate their competing business a mere 0.7 miles down Florida Boulevard from the location where J.A.H. has been operating for years.

20.

On information and belief, customers of J.A.H. have been given the wrong telephone number when asking for HENDERSON AUCTIONS. Additionally truck drivers delivering equipment have called the phone number for HENDERSON AUCTIONS looking to deliver equipment apparently for HENDERSON & HENDERSON AUCTIONEERS.

21.

A customer called HENDERSON AUCTIONS and said he had spoken to Mr. Henderson about a paver he was interested in purchasing. It became apparent that the customer intended to call HENDERSON & HENDERSON AUCTIONEERS and had spoken to individual defendant Lloyd Henderson. This customer, however, mistakenly called HENDERSON AUCTIONS believing it to be HENDERSON & HENDERSON AUCTIONEERS.

22.

J.A.H. has received several postal and FedEx deliveries that were meant for HENDERSON & HENDERSON AUCTIONEERS.

23.

J.A.H. made amicable demand on Individual Defendants to cease its use of "HENDERSON" as a source identifier for auction services. However, the demand has been ignored.

**LOUISIANA STATE TRADE NAME AND
SERVICE MARK INFRINGEMENT UNDER LA. R.S. 51:222**

24.

Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1 through 23 of the Petition as set forth above.

25.

J.A.H. is the owner of the service mark and trade name HENDERSON AUCTIONS. J.A.H. has used the mark HENDERSON AUCTIONS to identify its auction services. J.A.H. has a customer list of over 50,000 customers. It sells and ships equipment to customers all over the world.

26.

J.A.H. is the owner of a Louisiana State Trade Name Registration for HENDERSON AUCTIONS which is attached hereto as **Exhibit 1**, registered in connection with "sale of machinery, real estate and vehicles through auction."

27.

The use by Defendants of the HENDERSON & HENDERSON AUCTIONEERS is a colorful imitation of J.A.H.'s state registered HENDERSON AUCTIONS trade name and is in violation of the statutory laws of the State of Louisiana, including La. R.S. 51:222.

28.

J.A.H. has no adequate remedy at law inasmuch as money damages would not indemnify J.A.H. for the permanent loss of its proprietary rights, established goodwill

and business reputation. Unless this Court acts to restrain and enjoin the Defendants, their acts herein complained of will cause irreparable harm to J.A.H.'s property rights, goodwill and business reputation, and will cause great and substantial irreparable harm to J.A.H.

29.

As a result of Defendants' violations under La. R.S. 51:222, Plaintiff is also entitled to Defendants' profits.

**LOUISIANA STATE DILUTION AND INJURY
TO BUSINESS REPUTATION UNDER LA. R.S. 51:223.1**

30.

J.A.H. re-alleges and incorporates herein by reference the allegations of paragraphs 1-29 of the Petition as set forth above.

31.

J.A.H.'s HENDERSON AUCTIONS trade name and service mark has acquired distinctiveness such that the public now associates the services offered pursuant to the HENDERSON AUCTIONS trade name and service mark with J.A.H.

32.

The Defendants' acts, as alleged above, have caused and/or will cause injury to the business reputation of J.A.H. and have or will dilute the distinctive quality of the HENDERSON AUCTIONS mark and are in violation of the statutory laws of the State of Louisiana, including La. R.S. 51:223.1.

33.

J.A.H. has no adequate remedy at law inasmuch as money damages would not indemnify J.A.H. for the permanent loss of its proprietary rights, established goodwill and business reputation. Unless this Court acts to restrain and enjoin Individual Defendants, their acts herein complained of will cause irreparable harm to J.A.H.'s property rights, goodwill and business reputation, and will cause great and substantial irreparable harm to Plaintiff.

**LOUISIANA STATE UNFAIR TRADE
PRACTICES UNDER LA. R. S. 51:1405**

34.

J.A.H. re-alleges and incorporates herein by reference the allegations of paragraph 1 through 33 of the Petition as set forth above.

35.

J.A.H. and Defendants are business competitors, as they both auction heavy equipment in Livingston, LA.

36.

The conduct of Defendants as described hereinabove constitutes unfair trade practices under La. R.S. 51:1405 in that such conduct violates established public policy and is immoral, unethical, oppressive, unscrupulous, substantially injurious to consumers, fraudulent, and deceptive.

37.

Defendants have caused damage to J.A.H. and its property, goodwill and business reputation.

38.

J.A.H. respectfully requests a trial by jury as to all issues raised by this Petition, save the issue of injunctive relief. J.A.H. respectfully requests that the issue of injunctive relief be determined by the Court.

**BREACH OF DUTY OF GOOD FAITH AND LOYALTY
AND UNFAIR TRADE PRACTICE ONLY AGAINST LLOYD HENDERSON**

39.

J.A.H. re-alleges and incorporates herein by reference the allegations of paragraph 1 through 38 of the Petition as set forth above.

40.

While employed by J.A.H. in the fall of 2013, Lloyd Henderson was present in Marvin Henderson's office at J.A.H. for a discussion about a package of equipment that was available to be purchased for resale or to be sold on commission at auction (the

“Equipment Package”). When J.A.H. pursued this opportunity a short time later, it was told that the Equipment Package had been sold. A few weeks later, this same Equipment Package was delivered to J.A.H. for sale at its equipment auction in November 2013.

41.

On information and belief based on discussions with some of the parties involved, Lloyd Henderson solicited a long-time client and business partner of J.A.H. (“Client”) to help Lloyd Henderson finance his purchase of the Equipment Package. Lloyd Henderson used the Client’s funds to acquire the Equipment Package for himself, and did not disclose this self-dealing to the Client or to J.A.H. Lloyd Henderson took for himself the business opportunity he learned of through his employment at J.A.H. and personally profited from the sale of this equipment to the detriment or loss of J.A.H.

42.

Lloyd Henderson breached his obligation of good faith and fair dealing owed to J.A.H. as his employer. Additionally, his conduct is an unfair trade practice since seizing this business opportunity for himself and personally profiting therefrom is immoral, unethical, oppressive, and unscrupulous.

PRAYER

WHEREFORE, Plaintiff, J.A.H. Enterprises, Inc., prays that judgment be granted in its favor and against Defendants as follows:

1. That this Court order, adjudge and decree that Defendants have violated J.A.H.’s state trade name and service mark rights, competed unfairly, diluted J.A.H.’s state trade name and service mark rights, committed unfair trade practices, and unfair competition.

2. That this Court issue an injunction prohibiting Defendants and its officers, agents, servants and employees from using the HENDERSON & HENDERSON AUCTIONEERS, or the name Henderson, as a source identifier for auction services.

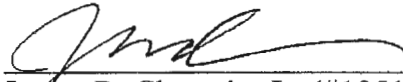
3. That Defendants be required to pay to J.A.H. such damages sustained as a result of Defendants’ actions; that J.A.H.’s costs and disbursements in bringing this action, including reasonable attorney’s fees, be awarded; that Defendants account for and

pay over to J.A.H. all gains, profits and advantages derived by Defendants from such infringement, and that such gains, profits, and advantages be trebled.

4. That the Court award such other and further relief as shall be just under the circumstances.

Dated: ~~September~~ __, 2014
October 7, 2014

Respectfully submitted:



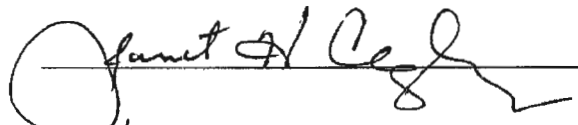
James R. Chastain, Jr. (#19518)
Tara M. Madison (#29354)
J. Eric Lockridge (#30159)
Michael J. deBarros (#32422)
KEAN MILLER LLP
400 Convention Street, Suite 700
P. O. Box 3513 (70821-3513)
Baton Rouge, LA 70802
Telephone: (225) 387-0999

Attorneys for J.A.H. Enterprises, Inc.

VERIFICATION

STATE OF LOUISIANA
PARISH OF LIVINGSTON

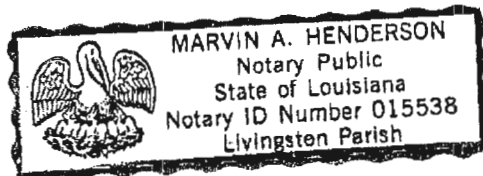
BEFORE ME, the undersigned authority, personally appeared Janet H. Cagley, who declared that she is the Chief Financial Officer for Plaintiff J. A. H. Enterprises, Inc., that she has read the foregoing Verified Petition, and that all factual statements in the foregoing Verified Petition are true and correct based upon her personal knowledge or her best information and belief formed after due investigation.



Livingston, Louisiana, this 7th day of October, 2014.



Notary Public
Louisiana Bar/Notary Number _____

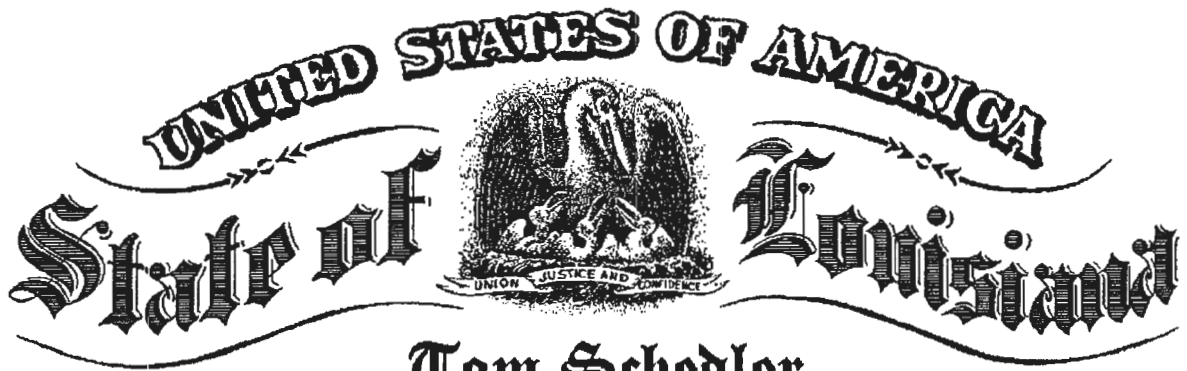


PLEASE SERVE:

L.E.D. SALES GROUP, L.L.C.
c/o Lloyd Henderson
14370 Florida Boulevard
Livingston, Louisiana 70754

Lloyd L. Henderson
14370 Florida Boulevard
Livingston, Louisiana 70754

Delmond R. Henderson
28950 Red Oak Road
Livingston, Louisiana 70754



Tom Schedler
SECRETARY OF STATE

As Secretary of State of the State of Louisiana, I do hereby Certify that

the annexed and following is a True and Correct copy of the Certificate of Registration as shown by comparison with document filed and recorded in this Office on June 4, 2007.

FILED
CLERK OF COURT
PARISH OF LIVINGSTON
2014 OCT -9 PM 2:59
DEPUTY CLERK

In testimony whereof, I have hereunto set my hand and caused the Seal of my Office to be affixed at the City of Baton Rouge on,

October 8, 2014



Secretary of State

WEB 59-6487


Certificate ID: 10534742#BFG62

To validate this certificate, visit the following web site, go to **Commercial Division, Certificate Validation**, then follow the instructions displayed.
www.sos.louisiana.gov



UNITED STATES OF AMERICA

State of Louisiana



Jay Bardenne
 SECRETARY OF STATE

As Secretary of State, of the State of Louisiana, I do hereby Certify that

J.A.H. ENTERPRISES, INC., A LOUISIANA CORPORATION, located at 13340 FLORIDA BOULEVARD, P.O.BOX 336, LIVINGSTON, LA 70754,

Has filed for record in this department an application for the trade name

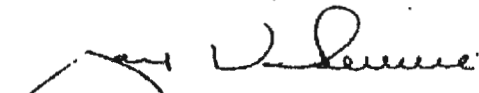
HENDERSON AUCTIONS

Which was first used in the State of Louisiana on September 01, 1998,

Said application was filed and recorded in this Office on June 04, 2007, which recordation is for a term of ten years from the date hereof.

In testimony whereof, I have hereunto set my hand and caused the Seal of my Office to be affixed at the City of Baton Rouge on,

June 4, 2007



WHE 59-6487

Secretary of State

