

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>IN RE:</b>	)	<b>CASE NO. 05-85627</b>
	)	
<b>RELIABLE AIR, INC. d/b/a</b>	)	<b>Chapter 11</b>
<b>RELIABLE HEATING AND AIR,</b>	)	
<b>Debtor.</b>	)	<b>JUDGE MASSEY</b>
_____	)	
	)	
<b>RELIABLE AIR, INC. d/b/a</b>	)	
<b>RELIABLE HEATING AND AIR,</b>	)	
	)	<b>Adversary Proceeding</b>
<b>Plaintiff,</b>	)	<b>No. _____</b>
<b>v.</b>	)	
	)	
<b>DANIEL L. JAPE and</b>	)	
<b>KIMBERLY E. RUSE,</b>	)	
	)	
<b>Defendants.</b>	)	

**VERIFIED COMPLAINT FOR ENFORCEMENT OF AUTOMATIC STAY,  
INJUNCTION, DAMAGES AND OTHER RELIEF**

COMES NOW Reliable Air, Inc. d/b/a Reliable Heating and Air (“Debtor” or “Plaintiff”), by and through the undersigned counsel, and files this Complaint against Daniel L. Jape (“Defendant Jape”) and Kimberly E. Ruse (“Defendant Ruse”), and shows this Court as follows:

1.

Debtor initiated this bankruptcy case (the “Bankruptcy Case”) by filing its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on November 22, 2005 (the “Petition Date”).

2.

No trustee or examiner has been appointed in the Chapter 11 case.

PARTIES

3.

Plaintiff/Debtor, RELIABLE AIR, INC. d/b/a RELIABLE HEATING & AIR, is a corporation organized under the laws of Georgia, with its sole office and place of business at 110 Londonderry Court, Woodstock, Cherokee County, Georgia, within this judicial district and division.

4.

Defendant Jape is an individual. Pursuant to Bankruptcy Rule 7004, Defendant Jape may be served by United States mail, addressed as follows: Daniel L. Jape, 110 Wiley Bridge Court, Woodstock, Georgia 30188.

5.

Defendant Ruse is an individual. Pursuant to Bankruptcy Rule 7004, Defendant Ruse may be served by United States mail, addressed as follows: Kimberly E. Ruse, 110 Wiley Bridge Court, Woodstock, Georgia 30188 and/or Kimberly E. Ruse, 8523 N. Atlantic Avenue, Cape Canaveral, Florida 32920.

JURISDICTION AND VENUE

6.

This is a civil proceeding which arises under, arises in and relates to the aforesaid bankruptcy case under the Bankruptcy Code. It is a core proceeding within the meaning of 28 U.S.C. §§ 157 and 1334(b). Venue of this proceeding is proper under 28 U.S.C. § 1409.

FACTS

7.

Reliable Air, Inc. is engaged in the business of installing and servicing heating, air

conditioning and ventilation equipment and systems for both residential and commercial customers in the greater Atlanta, Georgia metropolitan area. Reliable Air, Inc.'s office is located at 110 Londonderry Court in Woodstock, Cherokee County, Georgia.

8.

Since its incorporation in 1999, Reliable Air, Inc. has done business under the trade name of "Reliable Heating & Air."

9.

The shareholders of Reliable Air, Inc. are Barbara Jape and Defendant Jape, each of whom owns one-half (1/2) of the issued and outstanding shares of stock in Reliable Air, Inc.

10.

The members of the Board of Directors of Reliable Air, Inc. are Barbara Jape, Defendant Jape and Dean Edelman.

11.

On or about November 3, 2005, the Board of Directors of the Debtor held a special meeting and removed Defendant Jape from his position as President. Ms. Barbara Jape was appointed to serve as President, Secretary and Treasurer of the Debtor. Prior to that time, she had served as Secretary and Treasurer.

12.

Since its incorporation in 1999, Reliable Air, Inc. has actively promoted its trade name "Reliable Heating & Air" by advertising in telephone directories, magazines, newspapers and through other media. An example of one such advertisement, being a Reliable Air, Inc. Yellow Page advertisement, is attached hereto as Exhibit 1 and by this reference incorporated herein.

13.

Since the year 2000, in print and radio advertising and marketing, Reliable Air, Inc. has spent in excess of Five Hundred Thousand Dollars (\$500,000.00) to promote and develop its business within the community under the trade name "Reliable Heating & Air."

14.

Reliable Air, Inc. has registered its service mark, that service mark being a stylized, capitalized and colored letter "R" accompanied by the words "Reliable Heating & Air," with the Georgia Secretary of State's office, a copy of the certificate of such registration being attached hereto as Exhibit 2 and by this reference incorporated herein.

15.

Reliable Air, Inc. has also promoted its trade name and service mark by prominently displaying its trade name and service mark on its building signage, on the side of its trucks, on its employees' uniforms, and on its stationery and billing materials. Copies of the "Reliable Heating & Air" logo and signs on the company's trucks and office building are attached hereto as Exhibits 3 and 4 and are by this reference incorporated herein.

16.

While he was actively associated with Reliable Air, Inc., Defendant Jape, as an officer of the company, employed attorneys to protect the exclusive right to the use of the name "Reliable Heating & Air" as the trade name of Reliable Air, Inc., as is shown on the letter from attorney Cary Ichter dated September 18, 2001, a copy of which is attached hereto as Exhibit 5 and by this reference incorporated herein.

17.

Since its incorporation in 1999, Reliable Air, Inc. has utilized the telephone number (770) 594-9066 as its primary business telephone number and has promoted that telephone number in advertisements, promotional and marketing materials.

18.

For several years prior to 2005, Reliable Air, Inc. maintained its offices at 15021 Highway 92, Woodstock, Cherokee County, Georgia, with signage on that heavily traveled, multi-lane highway in Woodstock, Georgia.

19.

In 2005, Reliable Air, Inc. relocated its offices to 110 Londonderry Court, Woodstock, Cherokee County, Georgia.

20.

The new office of Reliable Air, Inc. on Londonderry Court in Woodstock, Georgia is in an office park which abuts Highway 92, and is visible from Highway 92, but the office no longer has an address on Highway 92.

21.

In approximately April of 2006, Defendant Jape and Defendant Ruse left the Woodstock, Georgia, area and moved to the State of Florida.

22.

In August of 2006, Defendant Jape and Defendant Ruse returned to Woodstock, Georgia and, acting in concert with one another, opened a heating & air conditioning business under the name of "Reliable Heating & Air" engaged in the business of installing and servicing heating, air conditioning and ventilation equipment and systems for both residential and commercial

customers in the greater Atlanta, Georgia metropolitan area.

23.

On or about August 14, 2006, Defendant Ruse obtained a business license to conduct business in Cherokee County, Georgia under the name “Reliable Air Conditioning & Heating.”

24.

On or about September 6, 2006, Defendant Jape obtained a business license to conduct business in Cherokee County, Georgia under the name “Reliable Heating & Air Conditioning.”

25.

The business being conducted by Defendant Jape and Defendant Ruse (collectively, the “Competing Business”) provides substantially the same services as the Debtor to the same actual and potential customers in the same market area.

26.

Defendants’ business office is on Highway 92 in Woodstock, Georgia, approximately one and one-half (1½) miles from the office of Reliable Air, Inc.

27.

Initially, the Competing Business’s telephone number was (770) 924-3777. A copy of an early promotional flyer distributed by Defendants for their business showing the original logo used by Defendants for their “Reliable Heating & Air” with that telephone number is attached hereto as Exhibit 6.

28.

When Defendants first began doing business as “Reliable Heating & Air,” Defendants erected a road sign on Highway 92, which sign was similar to the registered service mark of Reliable Air, Inc. A photograph of Defendants’ initial road sign on Highway 92 in Woodstock,

Georgia is attached hereto as Exhibit 7.

29.

Within the past ninety (90) days, Defendants have altered their logo, their road sign and their telephone number so as to virtually duplicate the name, the registered service mark and the telephone number of Reliable Air, Inc.

30.

Attached as Exhibit 8 is a copy of a current advertisement being run by Defendants for their business using the name "Reliable Heating & Air."

31.

Attached as Exhibit 9 is an example of a letter dated March 20, 2007, from Defendant Jape doing business as Reliable Heating & Air, to a customer of the Competing Business showing the current service mark and telephone number being used by the Competing Business.

32.

Attached as Exhibit 10 is a copy of the cover of the "Around Town" magazine distributed in Woodstock, Cherokee County, Georgia showing Defendant Jape and Defendant Ruse, posing in front of the Competing Business with their new road sign, including the new telephone number, trucks and employees in shirts with logos all of which are virtually identical to and infringe upon the registered service mark and trade name of Reliable Air, Inc. doing business as Reliable Heating & Air.

33.

As shown by the attached exhibits, the service mark being used by Defendants is virtually identical to the registered service mark of Reliable Air, Inc. and has caused and is causing extensive actual confusion among both the general public, customers of both businesses,

vendors, suppliers, delivery companies and others.

34.

Defendants' actions as set forth above have created great confusion among the public and to existing customers and potential customers of Reliable Air, Inc. as to the identity of the heating and air conditioning company with which they are dealing.

35.

Defendants' actions as set forth above are intended to infringe upon Plaintiff's service mark and trade name, as is shown in documents such as the e-mail from Defendant Jape to his daughter, Elizabeth, dated April 13, 2007 (See Exhibit 11), in which Defendant Jape stated, among other things, that ". . . I am going to decimate your company" and boasted that his company had ". . . taken hundreds of customers" (of Reliable Air, Inc.). Later in the same e-mail Defendant Jape stated, "Now I will stop at nothing less than the total annihilation of my old company."

36.

Similarly, in an April 4, 2007, e-mail to Barbara Jape (See Exhibit 12), Defendant Jape stated that he was ". . . in negotiations with every Reliable employee I want to hire . . ." and went on to state that ". . . we have also planned a legal attack which will be distracting during the busy season."

37.

As of this date, Defendants have hired away at least four (4) employees of Reliable Air, Inc. by falsely telling those employees that Reliable Air, Inc. was about to fail.

38.

The actions of Defendants as set forth above, and the actions of others in concert with

them, have caused great economic harm to Reliable Air, Inc. by taking away customers of the business and interfering with its ability to continue its operations.

39.

The trade name and registered service mark of Reliable Air, Inc. are property of the bankruptcy estate and are being wrongfully converted by Defendant Jape to the detriment of the Debtor.

40.

Reliable Air, Inc. has documented many instances of its customers being confused as to which company is which, placing orders for service with the wrong company, accepting solicitations from Defendants company thinking it was accepting solicitations of business from Reliable Air, Inc. and other instances of confusion as to the source of the services being provided.

41.

The damage to Reliable Air, Inc. by reason of the infringement upon its trade name and registered service mark by Defendants is severe, immediate and irreparable, entitling Plaintiff to an interlocutory injunction and permanent injunction.

COUNT ONE  
ENFORCEMENT OF PROVISIONS OF AUTOMATIC STAY  
PURSUANT TO 11 U.S.C. § 362

42.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 41 of this Complaint.

43.

Upon initiation of the Bankruptcy Case, the provisions of 11 U.S.C. § 362 operate as a

stay, applicable to all entities, including the Defendants, of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.”

44.

The trade name, service mark, trade secrets, customer lists, and other intellectual property rights of the Debtor (collectively, the “IP Rights”) constitute property of its bankruptcy estate under 11 U.S.C. § 541.

45.

By interfering with, utilizing and/or misappropriating the Debtor’s IP Rights, Defendants are exercising control over property of the estate in violation of the provisions of 11 U.S.C. § 362.

COUNT TWO  
INJUNCTIVE RELIEF AND COSTS UNDER THE  
GEORGIA UNIFORM DECEPTIVE TRADE PRACTICES ACT

46.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 45 of this Complaint.

47.

The actions of Defendant Jape and Defendant Ruse as set forth herein constitute willful and knowing violations of the Georgia Uniform Deceptive Trade Practices Act (O.C.G.A. §§ 10-1-370 *et seq.*)

48.

Plaintiff is entitled to an immediate and permanent injunction directed to Defendant Jape, Defendant Ruse, and all persons in active concert or participation with Defendants, directing

Defendants and all such other persons to immediately cease and desist from in any way using the name "Reliable Heating & Air" or any combination of those names or words, in connection with the furnishing of heating, air conditioning or ventilation equipment or services in the Woodstock, Georgia area.

49.

Plaintiff is further entitled to its reasonable costs and expenses incurred in connection with the bringing of this action in an amount to be established upon the trial of this action.

COUNT THREE  
INJUNCTIVE RELIEF AND DAMAGES UNDER GEORGIA SERVICE MARK LAW

50.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 49 of this Complaint.

51.

The actions of Defendant Jape and Defendant Ruse in willfully and maliciously infringing upon the registered service mark of Reliable Air, Inc. are in violation of Georgia law relating to registered service marks, entitling Plaintiff to an immediate and permanent injunction against such further infringement pursuant to O.C.G.A. § 10-1-451.

52.

The actions of Defendant Jape and/or Defendant Ruse entitle Plaintiff to recover from Defendants, at Plaintiff's election, either all Defendants' profits derived from such infringing activity pursuant to O.C.G.A. § 10-1-451(a), or liquidated damages in the amount of Ten Thousand Dollars (\$10,000.00), said election to be made upon the trial of this action.

COUNT FOUR  
UNFAIR COMPETITION

53.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 52 of this Complaint.

54.

The actions of Defendant Jape and/or Defendant Ruse constitute unfair competition under the law of Georgia, entitling Plaintiff to injunctive relief per O.C.G.A. § 23-2-55 and damages in an amount to be proven upon the trial of this action.

COUNT FIVE  
VIOLATION OF THE LANHAM ACT

55.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 54 of this Complaint.

56.

The actions of Defendant Jape and/or Defendant Ruse in using a deceptively similar service mark in conjunction with the trade name “Reliable Heating & Air” in the relevant market in commerce creates confusion as to the identity or source of the entity providing the heating and air conditioning services in the relevant market in violation of the Lanham Act (15 U.S.C. § 1125).

57.

Plaintiff is entitled to both injunctive relief and to recover for such wrongful actions of Defendant Jape and Defendant Ruse, all of Defendants’ profits, all of Plaintiff’s damages, treble damages and Plaintiff’s costs and attorney’s fees pursuant to 15 U.S.C. §§ 1117, 1125.

COUNT SIX  
ATTORNEY'S FEES AND EXPENSES OF LITIGATION

58.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 57 of this Complaint.

59.

Defendants have acted in bad faith in the underlying events of this case and have caused Plaintiff unnecessary trouble and expense, by reason of which Plaintiff is entitled to recover from Defendants in this action, in addition to all damages and costs, its expenses of litigation, including reasonable attorney's fees, in an amount to be proven upon the trial of this action, pursuant to O.C.G.A. § 13-6-11.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiff asks for the following relief in this matter:

**AS TO COUNT ONE:**

- (1) Entry of an order in favor of the Debtor directing the Defendants to comply with the provisions of the automatic stay, and enjoining any further violations; and
- (2) Awarding damages resulting from such violations;

**AS TO COUNT TWO:**

- (1) Pursuant to the Georgia Uniform Deceptive Trade Practices Act [O.C.G.A. § 10-1-370 *et seq.*], Plaintiff demands that this court temporarily and permanently enjoin Defendant Jape, Defendant Ruse and all persons in active concert or participation with Defendants from using the name "Reliable Heating & Air" or any combination of those names or words, in connection with the furnishing of heating, air conditioning or ventilation equipment or services in the greater Atlanta, Georgia area; and

(2) That Defendant Jape and Defendant Ruse be ordered to remove their logo and the name “Reliable Heating & Air” from all signs, vehicles, uniforms, buildings or other places where such words and logos appear on behalf of Defendants; and

(3) That Defendant Jape and Defendant Ruse be ordered to discontinue using the telephone number (770) 594-9096 and to take all actions necessary to change the telephone number (770) 594-9096 so that the number will be automatically routed to Plaintiff’s place of business; and

(4) Plaintiff further demands that it be awarded its reasonable costs and expenses, including reasonable attorney’s fees, in an amount to be established upon the trial of this action as provided in the O.C.G.A. § 10-1-373(b).

**AS TO COUNT THREE:**

(1) Pursuant to the Georgia Trade Name and Service Mark Registration Statute [O.C.G.A. § 10-1-450 *et seq.*], Plaintiff demands that this court temporarily and permanently enjoin Defendant Jape and Defendant Ruse and all persons in active concert or participation with Defendants from using the name “Reliable Heating & Air” or any combination of those names or words, in connection with the furnishing of heating, air conditioning or ventilation equipment or services in the greater Atlanta, Georgia area; and

(2) Plaintiff demands that, at Plaintiff’s election, it be awarded either all Defendants’ profits derived from such infringing activity pursuant to O.C.G.A. § 10-1-451(a), or liquidated damages in the amount of Ten Thousand Dollars (\$10,000.00), said election to be made upon the trial of this action.

**AS TO COUNT FOUR:**

Plaintiff prays that Defendants be temporarily and permanently enjoined (O.C.G.A. § 23-

2-55) from infringing upon Plaintiff's registered service mark and trade name, using false claims to entice Plaintiff's employees and customers to cease doing business with Plaintiff and to do business with Defendants, and otherwise unfairly competing with Plaintiff, and to award Plaintiff its damages for such wrongful actions on the part of Defendants in an amount to be established upon the trial of this action;

**AS TO COUNT FIVE:**

(1) That Defendant Jape and Defendant Ruse be enjoined pursuant to 15 U.S.C. § 1125 for violating the Lanham Act by falsely creating confusion in the relevant market as to the source or origin of the services the Competing Business is providing; and

(2) That Plaintiff be awarded damages pursuant to 15 U.S.C. § 1117 for such wrongful actions by Defendant Jape and/or Defendant Ruse.

**AS TO COUNT SIX:**

Plaintiff prays that it be awarded its expenses of litigation, including reasonable attorney's fees in an amount to be established upon the trial of this action for the bad faith actions of Defendant Jape and Defendant Ruse as alleged herein pursuant to O.C.G.A. § 13-6-11.

This \_\_\_\_ day of July, 2007.

Respectfully submitted,

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-and-

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