



**II.**  
**NATURE OF ACTION**

3. This is an action for injunctive, monetary, and other appropriate relief for trademark infringement and unfair competition under the Federal Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. §1051 *et seq.*) and related causes of action under the common law of Texas arising from Defendant's unauthorized use of Plaintiff's federally registered service mark "Car Spa" in violation of Plaintiff's rights.

**III.**  
**JURISDICTION**

4. This Court has federal question jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §1121(a) (actions arising under the Trademark Act of 1946, as amended), 28 U.S.C. §1331 (actions arising from laws of the United States), 28 U.S.C. §1338(a) (acts of Congress relating to trademarks), and 28 U.S.C. §1338(b) (actions involving claim of unfair competition joined with related trademark law claim).

5. Defendant is subject to the personal jurisdiction of this Court because Defendant transacts business within this state and within this judicial district.

6. This Court has supplemental jurisdiction over the non-federal claims pursuant to 28 U.S.C. §1367(a) (supplemental jurisdiction over state law claims).

**IV.**  
**VENUE**

7. Venue is appropriate pursuant to 28 U.S.C. §1391(b) and (c) because the Defendant resides in and transacts business within this state and this judicial district.

**V.**  
**BACKGROUND**

**A. Nature of Plaintiff's Business and Use of the Mark**

8. Plaintiff is a national retailer that builds and operates high quality car care supercenters called "Car Spa." The Plaintiff's "Car Spa" supercenters offer car washing, car detailing, oil and lubrication services, windshield repair, emissions/state inspections, and gasoline and convenience store sales ("Services").

9. Plaintiff opened its first "Car Spa" facility in Jacksonville, Florida on May 7, 1999. Plaintiff has grown and developed "Car Spa" and currently has facilities operating in five states: Florida, Georgia, Virginia, California, and Texas.

10. In February 2000, Plaintiff expanded to Texas and opened its first Texas facility in Farmers Branch, Texas. In December 2001, Plaintiff relocated its national business offices to Dallas, Texas. There are presently seven "Car Spa" locations operating in Texas, with four in the immediate Dallas metro area, including one in Plano, Texas.

11. Plaintiff is the owner of the federally registered service mark "Car Spa" consisting of standard characters without claim to any particular font, style, size or color, as well as the service mark "Car Spa" coupled with certain design elements. Plaintiff first registered the service mark "Car Spa" plus a design with United States Patent and Trademark Office ("USPTO") on August 15, 2000.<sup>1</sup>

12. Currently, Plaintiff has registered the following service marks with the USPTO for use in connection with sale of the Services covered by the mark:

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<sup>1</sup> This original registration was inadvertently cancelled on May 19, 2006. However, two other registrations were in place at that time, and the word plus design mark that was the subject of this original registration was re-registered on July 28, 2009 as Reg. No. 3660239.

<u>MARK</u>	<u>REGISTRATION NUMBER</u>	<u>REG. DATE</u>	<u>SERVICES</u>
CAR SPA and Design	2749101	August 12, 2003	Car Washing; Oil Change and Lubrication; Auto body dent removal; Automobile Service Station Featuring Glass and Upholstery Repair
CAR SPA and Design	2867042	July 27, 2004	Car Washing; Oil Change and Lubrication; Auto body dent removal; Retail Store and Gasoline
CAR SPA	3605530	April 14, 2009	Car Washing; Oil Change and Lubrication; Auto body dent removal; Automobile Service Station Featuring Glass and Upholstery Repair
CAR SPA and Design	3660239	July 28, 2009	Car Washing; Oil Change and Lubrication; Auto body dent removal; Automobile Service Station Featuring Glass and Upholstery Repair

13. A true and correct photocopy of each Certificate of Registration from the USPTO for each registration listed above is attached hereto as Plaintiff's Exhibit 1 and incorporated herein by reference. All of the above registrations are valid, subsisting, unrevoked and uncanceled.

14. Plaintiff also owns common law rights in these service marks for use in connection with the sale of its Services. All of the aforementioned registered and common law service marks are collectively referred to as the "Mark".

15. Plaintiff has used the Mark in commerce in connection with the sale of Services for more than a decade. Registration numbers 2749101 and 2867042 have become incontestable because Plaintiff filed, and the USPTO accepted, affidavits in conformity with 15 U.S.C. §§1058 and 1065 for each registration on March 24, 2009 and March 26, 2010, respectively.

Registration number 3605530, or the “standard character” Mark, will become eligible for a combined declaration of use and incontestability status in 2014.

16. True and correct copies of the Notice of Acceptance and Acknowledgement of §§ 8 and 15 Declarations for Registration Numbers 2749101 and 2867042 are attached hereto as Plaintiff’s Exhibit 2 and incorporated herein by reference.

17. The Mark is inherently distinctive or suggestive or, as a result of the long-term and continuous use and the commercial success in the sale of the Services, also enjoys widespread secondary meaning.

18. Plaintiff’s Mark is featured prominently on its building facades, printed advertising materials, and signage, as well as through its website [www.carspa.net](http://www.carspa.net).

19. Plaintiff advertises via solo and shared direct mail flyers, handouts, other printed materials such as menus, and spot radio. Over the past decade, Plaintiff has spent over six million dollars in marketing and promoting its facilities and Services, all of which prominently bear the Mark.

20. Plaintiff maintains strict quality control standards for all Services performed at its facilities.

21. Plaintiff has built, and continues to build, a strong Texas presence in the car washing and lubrication industry under the Mark, as well as a positive national reputation, by cultivating its image through the provision of quality services and making a substantial financial investment in marketing and advertising.

**B. Defendant's Business and Unlawful Acts**

22. In October 2011, Plaintiff became aware that Defendant was operating a competing business using the name "Pro Shine Car Spa" (the "Infringing Mark"), which is the same or substantially similar to Plaintiff's Mark.

23. Upon information and belief, Defendant was incorporated on May 4, 2011.

24. Upon information and belief, on June 14, 2011, Defendant filed an Assumed Name Certificate with the Dallas County Clerk's Office to use the name "Pro Shine Car Spa" for its facility located at 1989 W. Northwest Highway, Irving, Texas. See, Plaintiff's Exhibit 3.

25. Upon information and belief, Defendant filed a second Assumed Name Certificate with the Dallas County Clerk's Office on July 18, 2011 to use the name "Pro Shine Car Spa #2" for its facility located at 6100 Coit Road, Plano, Texas. See, Plaintiff's Exhibit 4.

26. Upon information and belief, Defendant is advertising and selling services that directly compete with Plaintiff's Services under the Infringing Mark. Among other directly competing services, Defendant is selling car washing, detailing, oil and lubrication services, and windshield repair, using the Infringing Mark at both its Irving and Plano facilities.

27. The Plano "Pro Shine Car Spa #2" is located less than 4 miles from Plaintiff's Plano "Car Spa" location.

28. Some, but not all, of the infringements are illustrated in the photographs taken by Plaintiff of Defendant's Plano facility attached hereto as Plaintiff's Exhibit 5. As shown on Exhibit 5, Defendant is prominently displaying Plaintiff's Mark "Car Spa" in large, red capital letters on the side of its car wash facility.

29. Upon information and belief, Defendant owns and operates a website known as “proshinecarspa.com” on which Defendant is marketing and selling car washing, detailing, oil and lubrication services, and windshield repair, under the Infringing Mark.

30. Upon information and belief, Defendant is disseminating printed materials for the purpose of marketing and selling car washing, detailing, oil and lubrication, and windshield repair under the Infringing Mark. A copy of the printed handout as obtained by Plaintiff is attached as Plaintiff’s Exhibit 6.

31. Plaintiff has granted no consent to Defendant to use the Mark in commerce.

32. On October 13, 2011, counsel for Plaintiff served Defendant with a cease and desist letter (“Cease and Desist Letter”) requesting that it stop using the name “Car Spa” in connection with the sale of competing Services. A copy of Plaintiff’s counsel’s letter is attached hereto as Exhibit 7.

33. On October 28, 2011, counsel for Defendant responded to the Cease and Desist Letter by saying that Defendant will take no action to cease using the Infringing Mark. A copy of Defendant’s counsel’s letter is attached hereto as Exhibit 8.

**V1.**

**COUNT 1: FEDERAL TRADEMARK INFRINGEMENT**  
**(Request for Permanent Injunction)**

34. All preceding paragraphs of this Complaint are incorporated herein by reference.

35. This claim for relief arises under Section 32 of the Lanham Act, 15 U.S.C. §1114.

36. Plaintiff owns and uses its federally registered “Car Spa” Mark.

37. The Mark and the goodwill of the business associated with them in Texas and elsewhere are of significant value to Plaintiff.

38. Defendant’s unauthorized use of the “Car Spa” Mark in connection with the sale

and promotion of Defendant's directly competing services is likely to cause confusion, mistake, or deception of the public as to the source, origin, association, sponsorship, or endorsement of Defendant's services. Defendant's use of the Infringing Mark simply ignores Plaintiff's prior use and registration of the Mark with the clear intent to reach the same market: persons seeking car washing, car detailing, oil and lubrication services, and windshield repair. These acts constitute infringement of Plaintiff's federally registered trademarks under Section 32 of the Lanham Act, 15 U.S.C. §1114.

39. Additionally, upon information and belief, the acts of Defendant have been done willfully and with full knowledge of Plaintiff's rights in its "Car Spa" Mark and constructive notice of Plaintiff's federal registration of the Mark. These acts continue to be done willfully and intentionally, notwithstanding Defendant's actual and constructive knowledge of Plaintiff's rights in the Mark. The foregoing acts of Defendant are causing Plaintiff serious and irreparable harm which will continue unless enjoined by this Court.

40. Plaintiff is further entitled to recover from Defendant damages sustained by Plaintiff as a result of Defendant's wrongful acts.

41. Plaintiff is further entitled to recover from Defendant the gains, profits and advantages Defendant has obtained as a result of its wrongful acts.

42. Plaintiff requests that the Court award all damages to which it is entitled under the Lanham Act, 15 U.S.C. § 1117 (subject to the provisions of 15 U.S.C. § 1111 and 1114).

43. Plaintiff is also entitled to attorneys' fees, costs and treble damages as Defendant's conduct was knowing and willful and this case is "exceptional" under § 1117(a).

**VII.**  
**COUNT 2: FEDERAL UNFAIR COMPETITION**  
**(Request for Permanent Injunction)**

44. All preceding paragraphs of this Complaint are incorporated herein by reference.

45. This claim for relief arises under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

46. Defendant's unauthorized use of the "Car Spa" Mark in commerce in connection with the sale and promotion of its services is likely to cause confusion, mistake, or deception of the public as to the source, origin, association, sponsorship, or endorsement of Defendant's services within the meaning of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

47. The foregoing acts of Defendant create the clear and false impression that Plaintiff and Defendant are related, and/or that Plaintiff is associated with Defendant, and/or that Plaintiff has approved or endorsed Defendant, its services, and the quality thereof. This misrepresentation is likely to cause confusion, mistake, or deception as to the relationship, affiliation, connection, or association of Plaintiff and Defendant in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

48. Additionally, upon information and belief, the acts of Defendant have been done willfully and with full knowledge of Plaintiff's rights in its Mark with the intent to deceive and to trade on the goodwill associated with Plaintiff's Mark. The foregoing acts of Defendant are causing Plaintiff serious and irreparable harm which will continue unless enjoined by this Court.

49. Plaintiff is further entitled to recover from Defendant damages sustained by Plaintiff as a result of Defendant's wrongful acts.

50. Plaintiff is further entitled to recover from Defendant the gains, profits and advantages Defendant has obtained as a result of its wrongful acts.

51. Plaintiff is also entitled to attorneys' fees, costs and treble damages as Defendant's conduct was knowing and willful and this case is "exceptional" under § 1117(a).

**VIII.**  
**COUNT 3: COMMON LAW TRADEMARK INFRINGEMENT**  
**(Request for Permanent Injunction)**

52. All preceding paragraphs of this Complaint are incorporated herein by reference.

53. This claim for trademark infringement arises under the common law of Texas. Plaintiff adopted its Mark and sold and offered services in Texas bearing said Mark long prior to Defendant's adoption and use of the Infringing Mark for Defendant's services. Notwithstanding Plaintiff's prior adoption, use, and Federal trademark registration, Defendant has adopted and began the use of the Infringing Mark in the State of Texas and has or is likely to confuse the public into believing that there is a connection between, approval of, or sponsorship of Defendant's services and Plaintiff's services, and as such is likely to cause confusion among the relevant purchasing public in Texas. The foregoing acts of Defendant are likely to cause confusion, mistake, or deception as to the source or origin of Defendant's services and activities. The foregoing acts of Defendant create the clear and false impression that Plaintiff and Defendant are related, and/or that Plaintiff is associated with Defendant, and/or that Plaintiff has approved or endorsed Defendant, its services and the quality thereof. This misrepresentation is likely to cause confusion, mistake, or deception as to the relationship, affiliation, connection, or association of Plaintiff and Defendant.

54. On information and belief, the acts herein alleged have been committed with the intent and purpose of creating a likelihood of confusion and appropriating and trading upon Plaintiff's considerable goodwill and reputation. The foregoing acts of Defendant are causing Plaintiff serious and irreparable harm which will continue unless enjoined by this Court.

55. Plaintiff is further entitled to recover from Defendant damages sustained by Plaintiff as a result of Defendant's wrongful acts.

56. Plaintiff is further entitled to recover from Defendant the gains, profits and advantages Defendant has obtained as a result of its wrongful acts.

**IX.**

**COUNT 4: COMMON LAW UNFAIR COMPETITION**  
**(Request for Permanent Injunction)**

57. All preceding paragraphs of this Complaint are incorporated herein by reference.

58. This claim for unfair competition arises under the common law of Texas. Plaintiff developed the Mark through extensive time, skill, labor and money. Plaintiff adopted its Mark and sold and offered services in Texas bearing said Mark long prior to Defendant's adoption and use of the Infringing Mark for Defendant's services. Notwithstanding Plaintiff's prior adoption, use, and Federal trademark registration, Defendant adopted and began the use of the Infringing Mark in the State of Texas and have or is likely to confuse the public into believing that there is a connection between, approval of, or sponsorship of Defendant's services and Plaintiff's services, and as such is likely to cause confusion among the relevant purchasing public in Texas. The foregoing acts of Defendant are likely to cause confusion, mistake, or deception as to the source or origin of Defendant's services and activities. The foregoing acts of Defendant create the clear and false impression that Plaintiff and Defendant are related, and/or that Plaintiff is associated with Defendant, and/or that Plaintiff has approved or endorsed Defendant, its services, and the quality thereof. This misrepresentation is likely to cause confusion, mistake, or deception as to the relationship, affiliation, connection, or association of Plaintiff and Defendant.

59. On information and belief, the acts herein alleged have been committed with the intent and purpose of creating a likelihood of confusion and appropriating and trading upon

Plaintiffs considerable goodwill and reputation. The foregoing acts of Defendants are causing Plaintiff serious and irreparable harm which will continue unless enjoined by this Court.

60. Defendant gained advantage because it was not burdened with the expense incurred by the Plaintiff in developing the goodwill and reputation of the Mark. By these actions, Defendant gained a financial benefit for itself and caused financial loss to Plaintiff.

61. Plaintiff is further entitled to recover from Defendant damages sustained by Plaintiff as a result of Defendant's wrongful acts.

62. Plaintiff is further entitled to recover from Defendant the gains, profits and advantages Defendant has obtained as a result of its wrongful acts.

**X.**

**COUNT 5: INJURY TO BUSINESS REPUTATION OR TRADEMARK, AND  
DILUTION UNDER TEXAS LAW**  
**(Request for Permanent Injunction)**

63. All preceding paragraphs of this Complaint are incorporated herein by reference.

64. This claim for injury to business reputation or trademark, and dilution arises under TEX. BUS. & COM. CODE § 16.29. The foregoing acts of Defendant are likely to and do dilute the distinctive quality of Plaintiff's Mark and injure Plaintiff's business reputation and the Mark in violation of TEX. BUS. & COM. CODE § 16.29. On information and belief, the acts herein alleged have been committed with the intent and purpose of creating a likelihood of confusion and appropriating and trading upon Plaintiff's considerable goodwill and reputation. The foregoing acts of Defendant are causing Plaintiff serious and irreparable harm which will continue unless enjoined by this Court.

65. By these activities, Defendant gained financial benefit for itself and caused Plaintiff financial loss and damage to the reputation of Plaintiff.

66. Plaintiff is entitled to injunctive relief under Texas Business and Commerce Code § 16.29.

**XI.**

**COUNT 6: APPLICATION FOR INJUNCTIVE RELIEF**

67. All preceding paragraphs of this Complaint are incorporated herein by reference.

68. Defendant has violated 15 U.S.C. §§ 1114, 1125, and TEX. BUS. & COM. CODE § 16.29, and Plaintiff is therefore entitled to injunctive relief under 15 U.S.C. § 1116 and TEX. BUS. & COM. CODE 16.29.

69. Plaintiff requests that the Court issue preliminary and permanent injunctive relief enjoining Defendant and its officers, directors, principals, agents, servants, employees, successors, and assigns, and all those in concert or participation with them, from:

(a) engaging in any acts or activities directly or indirectly calculated to trade upon Plaintiff's service marks, names, logos, reputation or goodwill, including any further use of the Infringing Mark or any other marks that are identical or confusingly similar to the "Car Spa" Mark;

(b) using in any manner, including on any website owned and operated by Defendant, the "Car Spa" Mark, or any other designation that is confusingly similar to "Car Spa" or any of Plaintiff's Marks, in connection with the advertising or offering for sale or selling the Services or any similar services covered by Plaintiff's Mark;

(b) simulating, reproducing, imitating, copying or making unauthorized use of Plaintiff's Mark or any mark confusingly similar to Plaintiff's Mark;

(c) from committing any acts calculated to cause purchasers to believe that Defendant's services are those sold under the control and supervision of Plaintiff, or sponsored or approved by, or connected with, or guaranteed by, or produced under the

control and supervision of Plaintiff;

(d) from further infringing the Plaintiff's Mark, and damaging Plaintiff's goodwill;

(e) from otherwise competing unfairly with Plaintiff in any manner.

70. Plaintiff will suffer immediate and irreparable damage, injury and harm for which there is no adequate remedy at law if Defendant is not immediately and permanently enjoined from the conduct listed above.

71. Public policy favors the protection of trademark rights and the prevention of unfair competition and damage to business reputation, and any injunctive relief granted herein will therefore be in accordance with public policy.

72. The potential damage to Plaintiff if the injunctive relief requested herein is not granted far outweighs any harm that Defendant will suffer as a result of the injunctive relief requested. Immediate and permanent injunctive relief is therefore appropriate.

**XII.**  
**JURY DEMAND**

73. Plaintiff demands a jury trial and tenders the appropriate fee with this Petition.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in its favor and against Defendant on all of the above causes of action, as follows:

1. Permanently enjoining Defendant, its officers, directors, principals, agents, servants, employees, successors, and assigns, and all those in concert or participation with them, from:

(a) engaging in any acts or activities directly or indirectly calculated to trade upon Plaintiff's service marks, names, logos, reputation or goodwill, including any further use of the Infringing Mark or any other marks that are identical or confusingly

similar to the “Car Spa” Mark;

(b) using in any manner, including on any website owned and operated by Defendant, the “Car Spa” Mark, or any other designation that is confusingly similar to “Car Spa” or any of Plaintiff’s Marks, in connection with the advertising or offering for sale or selling the Services or any similar services covered by Plaintiff’s Mark;

(c) from committing any acts calculated to cause purchasers to believe that Defendant’s services are those sold under the control and supervision of Plaintiff, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiff;

(d) from further infringing the Plaintiff’s Mark, and damaging Plaintiff’s goodwill;

(e) from otherwise competing unfairly with Plaintiff in any manner.

2. Finding that Defendant has infringed the “Car Spa” Mark.
3. Finding that Defendant has knowingly and willfully infringed, the “Car Spa” Mark.
4. Finding that Defendant’s use of the Infringing Mark has caused and/or is likely to cause confusion among the general purchasing public as to the source or origin of Defendant’s services.
5. Ordering Defendant to show proof of the removal of the Mark “Car Spa” from all signage, building facades or other structures owned or operated by Defendant, or websites owned or operated by Defendant.
6. Ordering Defendant to deliver up for destruction or show proof of destruction of any and all advertisements, publications, labels and any other materials in their possession, custody, or control that depict or reference the Mark.
7. Ordering Defendants to file with this Court and to serve upon Plaintiff a report, in writing and under oath, setting forth in detail the manner and form in which Defendant has complied with any injunction resulting from this matter within thirty days after service of such injunction.
8. Awarding Plaintiff such damages, compensatory, punitive and otherwise, as the proof may show.
9. Awarding Plaintiff its reasonable attorneys’ fees and costs incurred in connection with this action.

**AND ALL OTHER SUCH RELIEF THAT THIS HONORABLE COURT SHALL DEEM JUST AND REASONABLE.**

Respectfully Submitted,

**SINGER & LEVICK, P.C.**

By:     /s/Todd A. Hoodenpyle      
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