

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ACCURA SYSTEMS, INC., AND	§	
FRANK FINAN,	§	
	§	CIVIL ACTION NO. 3:11-cv-3552
Plaintiffs,	§	
	§	
v.	§	
	§	
ACCURA SYSTEMS INTERNATIONAL, LLC,	§	
ACCURA SYSTEMS CHILE S.A.,	§	
JOSE VALDES, AND	§	
PABLO VALDES,	§	
	§	
Defendants.	§	

PLAINTIFFS’ ORIGINAL COMPLAINT, JURY DEMAND, DEMAND FOR DAMAGES, AND APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME Now, Plaintiffs Accura System, Inc., a Texas corporation, and Frank Finan, individually, and file this Original Complaint, Jury Demand, and Application for Preliminary and Permanent Injunctive Relief, complaining against Defendants, Accura Systems International, LLC, a Texas limited liability company, Jose Valdes, individually, Pablo Valdes, individually, and Accura Systems Chile S.A., a company organized under the laws of Chile, and would respectfully show the Court as follows:

PARTIES AND PROCESS

1. Plaintiff, Accura Systems, Inc. (“ASI”), is a corporation, organized and incorporated in the State Texas in March 1989, by Plaintiff, Frank Finan (“Finan”) and Defendant, Jose Valdes, each owning an initial 50 % interest in the corporation. Collectively, hereinafter, ASI and Finan are referred to as (“Plaintiffs”).

2. ASI's principal and sole place of business is 326 Clay Road, Sunnyvale, Texas.

3. ASI is a manufacturer, distributor, and producer of architectural building products, specializing in the construction of aluminum and steel framing systems used for the exterior cladding of commercial buildings.

4. Finan is an individual, a resident of Terrell, Texas, and the present owner of ASI.

5. Defendant, Jose Valdes, is an individual and resident of Heath, Texas.

6. Defendant, Accura Systems International, LLC ("ASILLC"), is a Texas limited liability company, organized in July 2005, by Jose Valdes under the Texas Limited Liability Company Act.

7. Defendant, Pablo Valdes, is an individual, a resident of Heath, Texas, and Manager of ASILLC's office in Texas.

8. ASILLC's principal place of business in the State of Texas is located at 14 Meadowlake Drive, Heath, Texas, which is approximately six miles from ASI's sole and principal office in Sunnyvale, Texas.

9. Accura, Systems Chile S.A. ("ASCSA") is a company organized under the laws of Chile, and upon information and belief Jose Valdes maintains majority ownership rights in ASCSA.

10. ASILLC and ASCSA like ASI, are manufacturers, distributors, and producers of architectural building products, specializing in the construction of aluminum and steel framing systems used for the exterior cladding of commercial buildings.

11. ASILLC and ASI are direct competitors, competing in the same line of business, for the same customers, and in the same geographic areas.

NATURE OF ACTION

12. This is an action for injunctive, monetary, and other appropriate relief for Trademark Infringement 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 Texas law arising from Defendants' unauthorized use of Plaintiffs' Trade Names "Accura Systems," "Accura" and Plaintiffs' logo (quadrillized circle with Accura name), (collectively hereinafter referred to as "Accura Systems Trademarks"), in violation of Plaintiff's rights, in breach of contract, and in violation of the common law of Texas. Plaintiffs also assert an action for civil penalties pursuant to the Texas Business Organizations Code, Title 1, General Provisions, Chapter 4, Filings, Sec. 4.007, Liability for Filing a False Instrument.

JURISDICTION

13. 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), U.S.C. §1331 (actions arising from the laws of the United States), 28 U.S.C. § 1338(a) (acts of Congress relating to trademarks).

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

15. Defendants, ASILLC, Jose Valdes, and Pablo Valdes are subject to personal jurisdiction of this Court because the Defendants transact business within this state and within this judicial district.

16. Defendant, ASCSA, is subject to personal jurisdiction to this Court.¹

¹ Personal jurisdiction over nonresident defendants is constitutional only when: (1) the defendant has established minimum contacts with the forum state and (2) the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

VENUE

17. Venue is appropriate pursuant to 28 U.S.C. §1391(b) and (c) because Defendants, Jose Valdes, Pablo Valdes, ASILLC reside in and transact business within this state and this judicial district.

FACTS

A. DEFENDANTS' BUSINESS AND UNLAWFUL ACTS

18. ASI is a corporation, which was organized and incorporated in the state of Texas in March 1989, by Finan and Defendant Jose Valdes, each owning an initial 50 % interest in the corporation.

19. ASI is a manufacturer, distributor, and producer of architectural building products, specializing in the construction of aluminum and steel framing systems used for the exterior cladding of commercial buildings.

20. Shortly after the incorporation of ASI in Texas, Finan and Jose Valdes formed ASCSA, a company organized under the laws of Chile, each owning a 40 % interest in the company.

21. ASCSA was and is currently engaged in the same business as ASI, in Chile.

22. Finan and Jose Valdes remained the sole owners of ASI and principal owners of ASCSA until 2004.

Additionally, For a United States court of law to establish jurisdiction over a foreign corporation, due process requires; (1) the nonresident, ASCSA, has minimum contacts with the forum states, such that there was "fair warning" that the nonresident may be haled into court; in the present cause of action ASCSA, does transacts business in the United States, a true and correct copy of a webpage from ASCSA's website showing financial (tax) information regarding, ASCSA's imports and exports to and from the United States for the years 2000-2010, attached hereto and incorporated herein and marked as Exhibit "J." The majority owner of ASCSA, Jose Valdes, is a resident of the State of Texas, in fact according to Exhibit C, *Agreement For Purchase and Sale of Stock*, the parties of said agreement agreed Texas Law was to apply, more specifically Dallas County (paragraph twenty (20)), therefore, ASCSA has "fair warning that it may be haled into the United District Court for the Northern District of Texas, Dallas Division; (2) this action arose out of or is related to ASCSA's contacts with the United States, more specifically Texas; and (3) it is reasonable to require ASCSA to litigate in the present forum, for the reasons above.

23. In 2004, Finan and Jose Valdes decided to end their business relationship and, among other things, to “exchange ownership” in the two companies they jointly owned. At the time of the prospective sale, ASI and ASCSA jointly owned and used the Accura Systems Trademarks.

24. After discussing and negotiating the various terms of the exchange, including the continued sharing of the Accura Systems Trademarks, Finan and Jose Valdes developed and drafted a document dated August 9, 2004 and titled “Ownership Exchange Accura Systems, Inc., ASI Systems Chile, S.A., Proposal/Letter of Understanding.” See true and correct copy of “Letter of Understanding” attached hereto, incorporated herein, and marked as Exhibit “A.”

25. In the August 9, 2004 Letter of Understanding, the parties expressed concern for a quick resolution of the matter, stating:

Assuming the details of the exchange and an agreement of understanding can be executed on or before August 10, 2004. The exchange of ownership and business separation would be finalized on or before September 1, 2004.

(Letter of Understanding, paragraph II.)

See: Exhibit A.

26. The Letter of Understanding states the essentials of the ownership exchange-- Finan purchasing from Jose Valdes the stock interest of Jose Valdes in ASI and Jose Valdes purchasing from Finan the stock interest of Finan in ASCSA. In addition, the Letter of Understanding states the agreement of the two owners as to the post-sale use of the Accura Systems Trademarks by ASI and ASCSA. *See* Exhibit A.

27. As agreed and memorialized in the Letter of Understanding, ASI and ASCSA would each have the right to use the Accura Systems Trademarks as they had before, but would be prohibited from selling the trade name or licensing it for use by third-parties, without specific

written agreement between the owners of ASI and ASCSA. Paragraph X of the Letter of Understanding provides as follows:

X. Accura Name and Logo

It is understood that there is good will value and client recognition in the Accura name. It is agreed that both companies will share the use of the Accura name, in the context of the companies as established. The name or right to use the name will not be sold or licensed for use by others or used in the establishment of other companies without specific written agreement between the ownership of Accura Systems, Inc. and Accura Systems Chile, S.A.

The Accura Logo (quadrillized circle with Accura name) will remain jointly owned by Accura Systems, Inc. and Accura Systems Chile, S.A. for their sole and exclusive use.

See Exhibit A.

28. In the same document, the parties recognized that each company had operated and intended to continue operating in different geographic markets, a factor that would reduce the possibility of confusion or conflict arising from the joint use of the same trade name. Paragraph XI of the Letter of Understanding provides, in pertinent part, as follows:

XI. Non-Compete Clause

Accura Systems, Inc. is a U.S. company with its principle market in the United States. Accura Systems Chile, S.A. is a Chilean company with its principle market in the Republic of Chile. It is the intent of this agreement that the companies will not open businesses or conduct business in each other's principle market, i.e. the United States or Chile.

See Exhibit A.

29. By letter dated August 9, 2004 titled: "Ownership Exchange/Accura Systems, Inc. & Accura Systems Chile S.A.," Finan sent the Letter of Understanding to the attorney representing both Finan and Jose Valdes, with a copy to Jose Valdes (and others), requesting their attorney to prepare a formal legal document based on the understandings and intent of the parties as stated in the Letter of Understanding. See true and correct copy of Letter Dated August

9, 2004 titled: "Ownership Exchange/Accura Systems, Inc. & Accura Systems Chile S.A." Attached hereto, incorporated herein, and marked as Exhibit "B."

30. Finan's August 9, 2004 letter to the attorney for Finan and Jose Valdes states in full text as follows:

[Counsel]

REF: Ownership Exchange/Accura Systems, Inc & Accura Systems Chile

Dear [Counsel]:

Attached herewith please find a copy of "LETTER OF UNDERSTANDING" dated August 9, 2004, for the OWNERSHIP EXCHANGE OF ACCURA SYSTEMS, INC. and ACCURA SYSTEMS CHILE, S.A.

This document has been drafted, developed and reviewed by Jose and myself. This reflects the numerous aspects of this exchange that we believe needs to be covered. If there are other matters we have neglected consider, please advise and incorporate accordingly in the final document. In the event you have questions relating to any of the items, please let me know.

Please proceed with drafting up a formal separation agreement. We have set August 31, 2004 as the effective date of the separation and the time we would like to close the agreement.

Under separate cover, I will prepare a draft of a closing statement to assist in the resolution of the financial aspects of the separation. I will forward a copy of these documents to Mr. John Ford for his review and consideration of the tax and other monetary considerations. If you have any questions, please feel free to contact Jose or myself.

Sincerely

s/

Frank Finan

cc: Jose Valdes, John Ford, Rodney Wright

See Exhibit B.

31. In response to Finan's August 9, 2004 letter (Exhibit B), the attorney prepared and returned three (3) documents, each dated September 13, 2004, to Finan and Jose Valdes, an "Agreement for Purchase and Sale of Stock" (A true and correct copy of "Stock Agreement" is attached hereto, incorporated herein, and marked as Exhibit "C"), and two (2) "Noncompetition Agreements," one (1) "for the benefit of ASI" (A true and corrected copy of Noncompetition Agreement "for benefit of ASI", is attached hereto, incorporated herein, and marked as Exhibit "D"), and the other "for the benefit of ASCSA. (A true and correct copy of Noncompetition Agreement "for the benefit of ASCSA" is attached hereto, incorporated herein, and marked as Exhibit "E").

32. The Stock Agreement and Two (2) Noncompetition Agreements were duly signed by Finan, ASI, Jose Valdes, and ASCSA. *See* Exhibits C, D, and E respectfully.

33. Paragraph 11 of the Stock Agreement pertains to the joint use of the Accura Systems Trademarks by ASI and ASCSA, which provides as follows:

ASI and ASCSA acknowledge and agree that each of them shall have the unrestricted right to use the Accura Systems trade name and logo in the operation of its business activities; provided, however, neither ASI or ASCSA shall permit the use of the Accura Systems trade name and logo by any third party, nor shall they have the right to market, sell, or transfer the name to a third party.

See Exhibit C.

34. Immediately after the parties signed the Stock Agreement, Jose Valdes caused to be filed with the Texas Secretary of State, Articles of Organization for ASILLC, making representations as to paragraph 11 of an attached redacted copy of the Stock Agreement as a "license agreement to use name in lieu of letter of consent," which is in violation of the Stock Agreement. (A true and correct copy of the Articles of Organization for ASILLC is attached hereto, incorporated herein, and marked as Exhibit "F").

35. The Texas Secretary of State accepted the filing of the Articles of Organization and registered ASILLC as a company authorized to do business in Texas, which was in clear violation The Stock Agreement. *See* Exhibit F.

36. Upon information and/or belief Jose Valdes recognized the violation and had cause to re-file with the Texas Secretary of State, a name change; immediately changing the newly registered company in the name of ASILLC back to the existing Chilean company ASCSA.

37. The Texas Secretary of State accepted the re-filing of the Articles of Organization and registered ASCSA as a company authorized to do business in Texas.

38. In July 2005, less than a year after the parties signed the Stock Agreement, Jose Valdes again caused to be filed with the Texas Secretary of State, Articles of Organization for ASILLC, making representations as to paragraph 11 of an attached redacted copy of the Stock Agreement as a “license agreement to use name in lieu of letter of consent.” Jose Valdes knew or should have known said acts were in violation of the Stock Agreement. *See* Exhibit F.

39. The form the Texas Secretary of State utilizes to change business/enterprise names is very specific and requires the filing party to assure the state that the new name does not infringe on the name used by existing enterprises. Upon information and /or belief, Defendants knew the new name infringed on the name used by the existing enterprise (ASI), and Defendants proceeded in spite of the violation.

40. Upon information and/or belief, the office of the Texas Secretary of State would not have accepted the Articles of Organization of ASILLC for filing and registration without the assertion that ASILLC was licensed by contract to use the Accura Systems Trade Marks,

specifically by paragraph 11 of the Stock Agreement, captioned “License to use of Trade Name and Logo.”

41. The assertion that paragraph 11 of the Stock Agreement licensed ASILLC to use the Accura Systems Trademark is a false statement; Jose Valdes and ASCSA knew it was a false statement at the time he caused the Articles containing that assertion to be filed with the Texas Secretary of State.

42. Paragraph 11 of the Stock Agreement does not grant ASILLC a license to use the Accura Systems Trademarks. Instead, it specifically bars the use of the Accura Systems Trademarks by any business other than the parties to the Stock Agreement, namely ASI and ASCSA. *See Exhibit C.*

43. Texas State records show that Jose Valdes was at various times, the President, Registered Agent, and Manager of the Texas office of ASILLC, from its inception until May 11, 2010, when his son, Pablo Valdes, became the Registered Agent and Manager of the Texas office of ASILLC. A true and correct copy of Statement of Change of Registered Office/Agent, is attached hereto, incorporated herein, and marked as Exhibit “G.” A true and correct copy of Texas Franchise Tax Public Information Report, is attached hereto, incorporated herein, and marked as Exhibit “H.”

44. On information and/or belief, ASILLC was organized and operated by Jose Valdes and ASCSA to wrongfully expand his Chilean business into the United States with the full intention of using the Accura Systems Trademarks to promote his business in direct competition with ASI, in violation of and in an attempt to circumvent the restrictions and obligations of his previous agreements and statements.

45. By letter dated February 14, 2011, titled, “Cease and Desist Demand concerning Accura Systems, Inc. and Frank Finan.” ASILLC’s counsel admits that both ASILLC and ASCSA relate back to Jose Valdes and that the use of the name, Accura Systems International LLC, in the USA may cause a degree of confusion. A true and correct copy of the Letter dated February 14, 2011 titled; “Cease and Desist Demand concerning Accura Systems, Inc. and Frank Finan,” is attached hereto, incorporated herein, and marked as Exhibit “I.”

46. Jose Valdes and ASCSA’s organization and operation of ASILLC, after selling Finan his interest in ASI, constitutes a fraud on Finan and a breach of the contract between Finan and Jose Valdes.

47. All conditions precedent alleged herein, or necessary to the filing of this action, to the extent there are any, have been performed or have occurred.

B. NATURE OF PLAINTIFFS’ BUSINESS AND USE OF THE TRADEMARK

48. Plaintiff, ASI, has been active in the curtainwall business for twenty-two (22) years and has an established presence in this relatively small industry. ASI has a very strong credit rating. The Accura Systems Trademarks have been established in the architectural community and have a long history and reputation. There have been in excess of 400 projects completed by ASI, throughout the country. ASI is well known and well respected in the curtainwall industry due to years of effort by ASI.

49. ASI owns an established common-law, statutory, and contractual right to use the Accura Systems Trademarks. ASI shares this ownership with a Chilean company, ASCSA, for use outside of the United States only, under two (2) agreements, the Letter of Understanding and the Stock Agreement. *See* Exhibits A and B.

50. The name Accura Systems has specific meaning in the industry to designers. Designers are familiar with the Accura Systems Trademarks because ASI has put in decades of effort to establish a good business reputation, to develop business contacts, and to develop general goodwill in the industry. Designers often include a sole-source specification of “Accura Systems” products. This sole-source specification, “Accura Systems” is for ASI and not ASILLC, based on ASI’s common-law, statutory, and contractual right to use the Accura Systems Trademarks.

51. The use of the Accura Systems Trademarks is linked to the particular products and services ASI provides to the public and therefore, is unique and distinctive and entitled to all the rights and protection under Texas and federal common-law, statutory, and contract law².

52. ASILLC uses and has used the Accura Systems Trademarks in the course of its trade and business in the United States without the consent, license, or permission of ASI or Finan, to the confusion and deception of ASI’s customers and clients and to ASI’s detriment.

53. ASI and Finan have never consented to ASILLC’s use and have never licensed to ASILLC the use of the Accura Systems Trademarks.

54. At the current time ASILLC is selling and marketing to the same clients as ASI. ASILLC has deliberately taken advantage of the specification for “Accura Systems” and on several recent occasions, ASILLC has quoted and sold on such projects that were specified “Accura Systems.”

55. ASILLC is taking action to deliberately cause the confusion.

56. Upon information and/or belief, ASILLC uses a “shop drawing” format EXACTLY the same as that which ASI uses for its engineering drawings. ASI has used and

² *Two Pesos, Inc., v. Taco Cabana, Inc.* 505 U.S. at 768

continues to use the aforementioned “shop drawing” format for twenty-two (22) years. The title block on ASILLC’s “shop drawings” identifies the company as “ACCURA SYSTEMS.” The company address is not included. There is nothing to indicate that the “shop drawings” belong to ASILLC rather than ASI.

57. ASILLC has also contributed to the confusion of the public by selling products with the same name as ASI’s. In its twenty-two (22) years of operation, ASI has developed a series of systems and products that have been named and promoted in the market, including but not limited to the ACCQWALL. The industry is well aware of said product names and identifies them with ASI.

58. Upon information and/or belief, in October 2010, ASILLC developed and tested a product that ASILLC named “Accura Systems Series ACCQWALL Curtain wall system.” ASILLC’s system was tested at a local laboratory facility. The lab submitted the test reports to ASI, rather than to ASILLC. The system tested was not the ACCQWALL product of ASI, but a new design for ASILLC. The testing agency was confused and believed that ASI and not ASICLLC was the client.

59. This similar product name raises concern regarding product liability related to a system that is to be sold with the same name as an ASI product, which has been on the market for over twenty (20) years. In addition, this poses a fraud on the consumer as the potential client base purchasing the system will be deceived into believing they are purchasing ASI’s long-term, proven product.

60. There have been many instances of actual confusion regarding the distinction between the names of the two entities. On numerous occasions in addition to the above example

of actual confusion caused by ASILLC, ASI has received communications, drawings, samples, packages, etc. that were intended for ASILLC.

61. The confusion benefits ASILLC, while harming ASI. The use by ASILLC of the Accura Systems Trademarks jeopardizes ASI's credit with its suppliers and other vendors.

62. Upon information and/or belief, ASILLC and ASI purchase supplies from the same vendors in the industry. As inquiries go to vendors from ASILLC, vendors have been confused and continue to be confused as to whether the inquiry is from ASI or ASILLC. If vendors believe that ASI has made the inquiry, they rely on ASI's credit to allow for the purchase and intend to hold ASI responsible for payment, on the basis of ASI's strong credit history.

63. Upon information and/or belief, a credit manager from ASI's gasket vendor recently contacted ASI to inquire about a credit request that was received to confirm the credit worthiness of ASILLC, from another company. The credit manager was not aware of the existence of ASILLC, and was consequently confused by the request.

64. Upon information and/or belief, ASI has received demand calls from attorneys for unpaid invoices related to ASILLC's work.

65. ASILLC is receiving the benefit of ASI's reputation and good credit as the past and current credit history of ASILLC appears to be poor or non-existent.

66. ASI is a manufacturer and supplier of products to glazing contractors. It does not provide services to general contractors, nor does ASI perform work on project sites for general contractors.

67. Upon information and/or belief, ASILLC works as a glazing subcontractor in addition to being a manufacturer. The glazing subcontractors are ASI's clients. Confusion over

whether ASI is acting as a glazing subcontractor on a project harms ASI's goodwill and reputation because it creates the appearance that ASI is in competition with its own clients. For instance, in Austin, Texas, ASILLC operated as a direct competitor to ASI's clients, selling directly to a general contractor. ASILLC worked with a glass manufacturer, Cristacurva, which generated a sales brochure identifying ASI as the installer, when in fact ASI was not the installer, ASILLC was. This type of confusion as to ASI's role as a supplier and not an installer that harms ASI.

68. ASILLC is also harming ASI and tarnishing the Accura Sytems Trademarks by its negative performance on projects. On the Austin, Texas project referenced above, upon information and belief, ASILLC's imported Chinese materials, which were delivered, fabricated, assembled, and glazed in the parking lot of the project site. This was extremely unprofessional and results in an installation of questionable quality.

69. ASILLC and its owners, principals, authorized representatives, agents and managers, including Pablo Valdes and Jose Valdes, knowingly, willfully, deliberately, and intentionally infringed and continue to infringe ASI's rights in the Accura Systems Trademarks in the course of the business of ASILLC.

70. In addition to conventional marketing media, ASILLC used and uses the Internet to infringe upon ASI's rights in the Accura Systems Trademarks.

71. ASI uses the Internet domain name "accurasystems.com." for its Internet website. Subsequent to the purchase and use of the Internet domain name "accurasystems.com" by ASI, ASILLC purchased the Internet domain name "accurasystems.net" and began using that name as the address for its Internet website, a use that it continues to this date. A true and correct copy of ASI's webpage, showing ASI's address of its website, is attached hereto, incorporated herein,

and marked as Exhibit “J.” A true and correct copy of ASILLC’s webpage, showing ASILLC’s address of its website is attached hereto, incorporated herein, and marked as Exhibit “K.”

72. ASILLC’s use of the Internet domain name “accurasystems.net” as the address of its website infringes ASI’s common-law and statutory trademark rights, *i.e.* the Accura Systems Trademarks, and confuses and deceives the customers of ASI, to the detriment of ASI.

73. ASI registered and uses its Internet domain name as the basis for the Internet e-mail address of its employees and representatives, using the format (without spaces) “initial of first name [followed by] full last name@accurasystems.com.” For example, Frank Finan’s Internet e-mail address is ffinan@accurasystems.com.

74. Upon information and/or belief, subsequent to the registration and prior use by ASI of the Internet domain name “accurasystems.com” as the basis for the Internet e-mail addresses for its employees and representatives, ASILLC registered and began using its confusingly similar Domain name as the basis for the Internet e-mail addresses for its employees and representatives in the same format as ASI. For example, the Internet e-mail address of Pablo Valdes, Manager of the Texas office of ASILLC, is pvaldes@accurasystems.net.

75. ASILLC’s use of the Internet domain name “accurasystems.net.” in its registered Internet e-mail addresses for its employees and representatives infringes ASI’s common-law and statutory trademark rights in the Accura Systems Trademarks and confuses and deceives the customers of ASI, to the detriment of ASI.

76. ASILLC and its owners, principals, authorized representatives, agents and managers, including Jose Valdes and Pablo Valdes, actively and aggressively contact and solicit the business of customers and clients of ASI, using the Internet and other means, for the benefit

of ASILLC and to the detriment and injury of ASI--by wrongfully using and infringing ASI's protected Accura Systems Trademarks.

77. Jose Valdes and Pablo Valdes knowingly, willfully, and deliberately are taking advantage of the reputation and sole-source specifications of ASI as described above and are taking action to prolong the confusion.

COUNT I
FALSE DESIGNATIONS OF ORIGIN UNDER SECTION 43 OF THE LANHAM ACT,
15 U.S.C. §1125(A)
(DEFENDANTS: ASILLC, JOSE VALDES, AND PABLO VALDES)
(REQUEST FOR INJUNCTIVE RELIEF)

78. All proceeding Paragraphs of this Complaint are incorporated herein by reference.

79. This claim for relief arises under Section 43(a) The Lanham Act 15 U.S.C. §1125(a), and is directed to ASILLC, Jose Valdes, and Pablo Valdes, collectively referred to as ("Defendants") as to Count I.

80. Plaintiffs own and use the Accura Systems Trademarks.

81. The use of the Accura Systems Trademarks is linked to the particular products and services ASI provides to the public, therefore the Accura Systems Trademarks are unique and distinctive and entitled to all the rights and protection under Texas and federal common-law, statutory, and contract law³.

82. The Accura Systems Trademarks and the goodwill of the business associated with them in Texas and elsewhere are of significant value to Plaintiffs.

83. Defendants' unauthorized use of the Accura Systems Trademarks in commerce in connection with the sale and promotion of Defendants' directly competing services is likely to cause confusion, mistake, and/or deception of the public as to the source, origin, association,

³ *Two Pesos, Inc., v. Taco Cabana, Inc.* 505 U.S. at 768

sponsorship, or endorsement of Defendants' services within the meaning of Section 43(a) of The Lanham Act 15 U.S.C. §1125(a).

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

85. Additionally, upon information and/or belief, the acts of Defendants have been done willfully and with full knowledge of Plaintiffs' protected Trademark rights. These acts continue to be done willfully, knowingly, and deliberately, notwithstanding Defendants' actual and constructive knowledge of Plaintiffs' rights in the Accura Systems Trademarks. The foregoing acts of Defendants are causing Plaintiffs serious and irreparable harm, which will continue unless enjoined by this Court.

86. Plaintiffs are further entitled to recover from Defendants damages sustained by Plaintiffs as a result of Defendants' wrongful acts.

87. Plaintiffs are further entitled to recover from Defendants gains, profits and advantages Defendants have obtained as a result of their wrongful acts.

88. Plaintiffs request that the Court award all damages to which it is entitled under the Lanham Act, 15 U.S.C. §1117.

89. Plaintiffs are also entitled to attorneys' fees and costs and treble damages as Defendants' conduct was knowing and willful and this case is "exceptional" under 15 U.S.C. §1117(a).

COUNT II
DILUTION UNDER SECTION 43 OF THE LANHAM ACT 15 U.S.C. § 1125(C)
(DEFENDANTS: ASILLC, JOSE VALDES, AND PABLO VALDES)
(REQUEST FOR INJUNCTIVE RELIEF)

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

91. This claim for relief arises under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(c), and is directed to ASILLC, Jose Valdes, and Pablo Valdes, collectively referred to as (“Defendants”) as to Count II.

92. The Accura Systems Trademarks are now and at all relevant times have been famous within the meaning of 15 U.S.C. 15 U.S.C. §1125(c).

93. Defendants’ use in commerce of the Accura Systems Trademarks is likely to create associations that will impair the distinctiveness of Plaintiffs’ Accura Systems Trademarks.

94. Defendants’ conduct of the aforesaid has caused great and irreparable injury to Plaintiffs, and unless such conduct is enjoined, Plaintiffs will continue to suffer great and irreparable injury.

95. Additionally, upon information and belief, the acts of Defendants have been done willfully and with full knowledge of Plaintiffs’ protected Accura System Trademarks. These acts continue to be done knowingly, willfully, and deliberately, notwithstanding Defendants’ actual and constructive knowledge of Plaintiffs’ rights in the Accura Systems Trademarks. The foregoing acts of Defendants are causing Plaintiffs serious and irreparable harm, which will continue unless enjoined by this Court.

96. Plaintiffs are further entitled to recover from Defendants damages sustained by Plaintiffs as a result of Defendants’ wrongful acts.

97. Plaintiffs are further entitled to recover from Defendants gains, profits, and advantages Defendants have obtained as a result of their wrongful acts.

98. Plaintiffs request that the Court award all damages to which they are entitled under the Lanham Act, 15 U.S.C. §1117.

99. Plaintiffs are also entitled to attorneys' fees and costs and treble damages as Defendants' conduct was knowing and willful and this case is "exceptional" under §1117(a).

COUNT III
CYBERSQUATTING UNDER SECTION 43 OF THE LANHAM ACT 15 U.S.C. § 1125(D)
(DEFENDANTS: ASILLC, JOSE VALDES, AND PABLO VALDES)
(REQUEST FOR INJUNCTIVE RELIEF)

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

101. This claim for relief arises under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(d), and is directed to ASILLC, Jose Valdes, and Pablo Valdes, collectively referred to as ("Defendants") as to Count III.

102. Plaintiffs use the "accusystems.com" domain name as part of their day-today business operations and as a part of their protected rights in the Accura Systems Trademarks.

103. Defendants' registration and use and continued use of the "accurasystems.net" domain name constitutes cybersquatting in violation of 15 U.S.C. §1125(d). *See* Exhibit K.

104. Defendants' registration and use and continued use of the "Accurasystems.net" domain name has caused confusion among the public.

105. The Plaintiffs' "accusystems.com" domain name is linked to the particular products and services ASI provides to the public and therefore, is unique and distinctive and entitled to all the rights and protection under Texas and federal common-law, statutory, and contract law⁴.

⁴ *Two Pesos, Inc., v. Taco Cabana, Inc.* 505 U.S. at 768

106. The Accura Systems Trademarks, more specifically, the “accusystems.com” domain name and the goodwill of the business associated with them in Texas and elsewhere are of significant value to Plaintiffs.

107. Additionally, upon information and/or belief, the acts of Defendants have been done willfully and with full knowledge of Plaintiffs’ protected Trademark rights, more specifically the Plaintiffs’ “accurasystems.com” domain name. These acts continue to be done knowingly, willfully, and deliberately, notwithstanding Defendants’ actual and constructive knowledge of Plaintiffs’ domain name. The foregoing acts of Defendants are causing Plaintiffs serious and irreparable harm, which will continue unless enjoined by this Court.

108. Plaintiffs are further entitled to recover from Defendants damages sustained by Plaintiffs as a result of Defendants’ wrongful acts.

109. Plaintiffs are further entitled to recover from Defendants gains, profits, and advantages Defendants have obtained as a result of their wrongful acts.

110. Plaintiffs request that the Court award all damages to which they are entitled under the Lanham Act, 15 U.S.C. §1117.

111. Plaintiffs are also entitled to attorneys’ fees and costs and treble damages as Defendants’ conduct was knowing and willful and this case is “exceptional” under §1117(a).

COUNT IV
COMMON LAW TRADEMARK INFRINGEMENT
(DEFENDANTS: ASILLC, JOSE VALDES, AND PABLO VALDES)
(REQUEST FOR INJUNCTIVE RELIEF)

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

113. This claim for trademark infringement arises under the common law of Texas and is directed to ASILLC, Jose Valdes, and Pablo Valdes, collectively referred to as (“Defendants”) as to Count IV. Plaintiffs adopted the Accura Systems Trademarks and sold and offered services

in Texas bearing said trademarks long prior to Defendants' adoption and use of the infringing "Accura Systems" marks for Defendants' services.

114. Notwithstanding Plaintiffs' prior adoption and use, Defendants adopted and began the use of the infringing trademark in the State of Texas and have or are likely to confuse the public into believing that there is a connection between, approval of, or sponsorship of Defendants' services and Plaintiffs' services and, as such, the Defendants' actions are likely to cause confusion among the relevant purchasing public in Texas.

115. The foregoing acts of Defendants' are likely to cause confusion, mistake, or deception as to the source or origin of Defendants' services and activities.

116. The foregoing acts of Defendants create the clear and false impression that Plaintiffs and Defendants are related, and/or that Plaintiffs are associated with Defendants, and/or that Plaintiffs have approved or endorsed Defendants, their services, and the qualities thereof.

117. This misrepresentation is likely to cause confusion, mistake, or deception as to the relationship, affiliation, connection, or association of Plaintiffs and Defendants.

118. 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 Plaintiffs serious irreparable harm, which will continue unless enjoined by this Court.

119. Plaintiffs are further entitled to recover from Defendants the damages sustained by Plaintiffs as a result of Defendants' wrongful acts.

120. Plaintiffs are further entitled to recover from Defendants the gains, profits, and advantages Defendants have obtained as a result of its wrongful acts.

COUNT V
COMMON LAW UNFAIR COMPETITION
(DEFENDANTS: ASILLC, JOSE VALDES, AND PABLO VALDES)
(REQUEST FOR INJUNCTIVE RELIEF)

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

122. This claim for unfair competition arises under the common law of Texas, and is directed to ASILLC, Jose Valdes, and Pablo Valdes, collectively referred to as (“Defendants”) as to Count V.

123. Plaintiffs developed the Accura Systems Trademarks through extensive time, skill, labor and money. Plaintiffs adopted its Accura Systems Trademarks and sold or offered services in Texas bearing said trademark long prior to Defendants’ adoption and use of the infringing trademark for Defendants’ services.

124. Notwithstanding Plaintiffs’ prior adoption and use, Defendants adopted and began the use of the infringing “Accura Systems” trademark in the State of Texas and have confused or are likely to confuse the public into believing that there is a connection between, approval of, or sponsorship of Defendants’ services and Plaintiffs’ services.

125. The foregoing acts of Defendants are likely to cause confusion, mistake, or deception as to the source or origin of Defendants’ services and activities.

126. The foregoing acts of Defendants create the clear false impression that Plaintiffs and Defendants are related, and/or that Plaintiffs are associated with Defendants, and/or that Plaintiffs have approved or endorsed Defendants, their services and quality thereof.

127. This misrepresentation is likely to cause confusion, mistake, or deception as to the relationship, affiliation, connection, or association of Plaintiffs and Defendants.

128. 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 Plaintiffs serious irreparable harm, which will continue unless enjoined by this Court.

129. Additionally, upon information and/or belief, the acts of Defendants have been done willfully and with full knowledge of Plaintiffs' protected trademark rights. These acts continue to be done willfully, knowingly and deliberately, notwithstanding Defendants' actual and constructive knowledge of Plaintiffs' rights in the Accura Systems Trademarks. The foregoing acts of Defendants are causing Plaintiffs serious and irreparable harm, which will continue unless enjoined by this Court.

130. Defendants gained advantage because they were not burdened with the expense incurred by the Plaintiffs in developing the goodwill and reputation of the Accura Systems Trademarks. By these actions, Defendants gained a financial benefit for themselves and caused financial loss to Plaintiffs.

131. Plaintiffs are further entitled to recover from Defendants damages sustained by Plaintiffs as a result of Defendants' wrongful acts.

132. Plaintiffs are further entitled to recover from Defendants the gains, profits, and advantages Defendants have obtained as a result of its wrongful acts.

COUNT VI

INJURY TO BUSINESS REPUTATION OR TRADEMARK AND DILUTION UNDER TEXAS LAW

(DEFENDANTS: ASILLC, JOSE VALDES, AND PABLO VALDES)

(REQUEST FOR INJUNCTIVE RELIEF)

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

134. This claim for injury to business reputation or trademark, and dilution arises under TEX. BUS. & COM. CODE §16.29 and is directed to ASILLC, Jose Valdes, and Pablo Valdes, collectively referred to as ("Defendants") as to Count VI.

135. The foregoing acts of Defendants dilute the distinctive quality of Plaintiffs' trademarks and injure Plaintiffs' business reputation and the Accura Systems Trademarks in violation of TEX. BUS. & COM. CODE §16.29.

136. 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.

137. Additionally, upon information and/or belief, the acts of Defendants have been done willfully and with full knowledge of Plaintiffs' protected Trademark rights. These acts continue to be done willfully, knowingly, and deliberately, notwithstanding Defendants' actual and constructive knowledge of Plaintiffs' rights in the Accura Systems Trademarks. The foregoing acts of Defendants are causing Plaintiffs serious and irreparable harm, which will continue unless enjoined by this Court.

138. By these activities, Defendants gained financial benefit for themselves and caused plaintiffs financial loss and damage to the reputation of Plaintiffs.

139. Plaintiffs are entitled to injunctive relief under Texas Business and Commerce Code §16.29.

COUNT VII

INTERFERENCE WITH ADVANTAGEOUS BUSINESS RELATIONSHIP **(DEFENDANTS: ASILLC, JOSE VALDES, AND PABLO VALDES)**

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

141. This claim for Interference with an Advantageous Business Relationship arises under the common law of Texas and is directed to ASILLC, Jose Valdes, and Pablo Valdes, collectively referred to as ("Defendants") as to Count VII.

142. ASI owns an established common-law, statutory, and contractual right to use the Accura Systems Trademarks. ASI shares this ownership of these trade names with ASCSA, under two agreements, the Letter of Understanding and the Stock Agreement. *See* Exhibits A and C.

143. ASILLC is not a party to the agreements between ASI and ASCSA pertaining to the ownership or use of the Accura Systems Trademarks, derives no rights from those agreements, and has no legitimate claim or right to the ownership or use of aforementioned trademarks, pursuant to those agreements or otherwise.

144. ASILLC and ASI compete in the same geographic market for the same customers in the same industry. They both manufacture, distribute, and produce architectural building products; they both specialize in the construction of aluminum and steel framing systems used for the exterior cladding of commercial buildings; and they both market their products and services to project owners, developers, general contractors, and sub-contractors in the North American market.

145. ASILLC and its owners, principals, authorized representatives, agents and managers, including Pablo Valdes and Jose Valdes, have interfered and are knowingly, willfully intentionally, and deliberately interfering with the prospective business opportunities and contracts of ASI by wrongfully using the Accura Systems Trademarks in the trade and business of ASILLC, without right, ownership, or the permission of the rightful owner of said trademark, ASI, for the purpose of deceiving and confusing the business clients and trade of ASI.

BREACH OF CONTRACT
(DEFENDANTS: ASCSA AND JOSE VALDES)

146. All proceeding paragraphs of this Compliant are incorporated herein by reference.

147. This claim for Breach of Contract arises under the Common law of Texas, and is directed to ASCSA and Jose Valdes, collectively referred to as (“Defendants”) as to Count VIII.

148. Prior to September 2004, Finan and Jose Valdes held controlling interest in two companies that each used the name Accura Systems.

149. In September 2004, Finan and Jose Valdes exchanged their interests in the two companies, resulting in Finan owning ASI and Valdes owning a controlling interest in ACSSA. *See Exhibit C.*

150. In the Stock Agreement, the parties agreed that each company could continue using the Accura Systems Trademarks in its respective “business activities... provided, however, neither ASI or ASCSA shall permit the use of the Accura Systems Trademark by any third party, nor shall they have the right to market, sell, or transfer the name to a third party.” *See Stock Agreement, paragraph 11; Exhibit C.*

151. Immediately after the parties signed the Stock Agreement, Jose Valdes caused to be filed with the Texas Secretary of State, Articles of Organization for ASILLC, making representations as to paragraph 11 of an attached redacted copy of the Stock Agreement as a “license agreement to use name in lieu of letter of consent,” which was in violation of the Stock Agreement. (A true and correct copy of the Articles of Organization for ASILLC is attached hereto, incorporated herein, and marked as Exhibit “F”).

152. The Texas Secretary of State accepted the filing of the Articles of Organization and registered ASILLC as a company authorized to do business in Texas, which was in clear violation The Stock Agreement. *See Exhibit F.*

153. Upon information and/or belief Jose Valdes recognized the violation and had cause to re-file with the Texas Secretary of State a name change, immediately changing the

newly registered company in the name of ASILLC back to the existing Chilean company ASCSA.

154. The Texas Secretary of State accepted the re-filing of the Articles of Organization and registered ASCSA as a company authorized to do business in Texas.

155. In July 2005, less than a year after the parties signed the Stock Agreement, Jose Valdes again caused to be filed with the Texas Secretary of State, Articles of Organization for ASILLC, making representations as to paragraph 11 of an attached redacted copy of the Stock Agreement as a “license agreement to use name in lieu of letter of consent.” Jose Valdes knew or should have known said acts were in violation of attached Stock Agreement. *See* Exhibit F.

156. The form the Texas Secretary of State utilizes to change business/enterprise names is very specific and requires the filing party to assure the state that the new name does not infringe on the name used by existing enterprises. Upon information and /or belief, Defendants knew the new name infringed on the name used by the existing enterprise (ASI), and Defendants proceeded in spite of the violation.

157. Upon information and/or belief, the office of the Texas Secretary of State would not have accepted the Articles of Organization of ASILLC for filing and registration without the assertion that ASILLC was licensed by contract to use the Accura Systems Trade Marks, specifically by paragraph 11 of the Stock Agreement, captioned “License to use of Trade Name and Logo.”

158. Upon information and/or belief, the ASILLC application represented the applicant had a license to use the words “Accura Systems” in its name by express reference to paragraph 11 of the Stock Agreement, a redacted copy of which was included in the application with the application.

159. The Texas Secretary of State accepted the filing of the Articles of Organization and registered ASILLC as a company authorized to do business in Texas.

160. Upon information and/or belief, the office of the Texas Secretary of State would not have accepted the Articles of Organization of ASILLC for filing without the representation the applicant had been licensed use the words “Accura Systems” in its name.

161. The representation in the application to the Secretary of State of Texas that paragraph 11 of the Stock Agreement or any other document or agreement licensed the use of the name “Accura Systems” to ASILLC is false, material to the application, and, on information and belief, relied upon by the Secretary of State in accepting the Articles of Organization of ASILLC for registration as a Texas limited liability company; the representation was also known by Jose Valdes to be false at the at the time of the filing of the application by or at the direction of Jose Valdes.

162. The July 2005 filing of the application for registration of the company ASILLC as a Texas limited liability company was a fraud on the Secretary of State of Texas and on Frank Finan and ASI.

163. Jose Valdes knew at the time the application was filed in July 2005 that paragraph 11 of the September 2004 Stock Agreement not only did not license ASILLC to use the name “Accura Systems” but, to the contrary, expressly prohibited the parties to the Stock Agreement from licensing “any third party” to use that name. The organization and operation of ASILLC by Jose Valdes is a continuing breach of the Stock Agreement by Jose Valdes.

164. The prohibition in the Stock Agreement on the use of the Accura Systems Trademark was material to the transaction and assured Frank Finan that the name of the company he bought and paid for would not be sold out from under him. The registration and

operation of ASILLC by Jose Valdes is a breach of the Stock Agreement to the detriment and injury of ASI, by whatever device or artifice the deed was accomplished, that it was accomplished by fraud only exacerbates the breach and demands the award of punitive damages.

165. Defendants' continued use and infringement of Plaintiffs' Accura Systems Trademarks constitutes a continuing and ongoing breach of contract.

COUNT IX
VIOLATION OF TEXAS BUSINESS ORGANIZATIONS CODE, TITLE 1. GENERAL PROVISIONS
CHAPTER 4. FILINGS SEC. 4.007. LIABILITY FOR FILING A FALSE STATEMENT
(DEFENDANTS: JOSE VALDES AND PABLO VALDES)

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

167. Defendants have violated Texas Business Organizations Code, Title 1. General Provisions Chapter 4. Filings Sec. 4.007. Liability for Filing a False Instrument.

168. Immediately after the parties signed the Stock Agreement, Jose Valdes caused to be filed with the Texas Secretary of State, Articles of Organization for ASILLC, making representations as to paragraph 11 of an attached redacted copy of the Stock Agreement as a "license agreement to use name in lieu of letter of consent," which is in violation of the Stock Agreement. (A true and correct copy of the Articles of Organization for ASILLC is attached hereto, incorporated herein, and marked as Exhibit "F").

169. The Texas Secretary of State accepted the filing of the Articles of Organization and registered ASILLC as a company authorized to do business in Texas, which was in clear violation The Stock Agreement. *See* Exhibit F.

170. Upon information and/or belief Jose Valdes recognized the violation and had cause to re-file with the Texas Secretary of State a name change, immediately changing the

newly registered company in the name of ASILLC back to the existing Chilean company ASCSA.

171. The Texas Secretary of State accepted the re-filing of the Articles of Organization and registered ASCSA as a company authorized to do business in Texas.

172. In July 2005, less than a year after the parties signed the Stock Agreement, Jose Valdes again caused to be filed with the Texas Secretary of State, Articles of Organization for ASILLC, making representations as to paragraph 11 of an attached redacted copy of the Stock Agreement as a “license agreement to use name in lieu of letter of consent.” Jose Valdes knew or should have known said acts were in violation of the Stock Agreement. *See* Exhibit F.

173. The form the Texas Secretary of State utilizes to change business/enterpris names is very specific and requires the filing party to assure the state that the new name does not infringe on the name used by existing enterprises. Upon information and/or belief, Defendants knew the new name infringed on the name used by the existing enterprise (ASI), and Defendants proceeded in spite of the violation of Texas Business Organizations Code, Title 1. General Provisions Chapter 4. Filings Sec. 4.007. Liability for Filing a False Instrument.

174. Upon information and/or belief, the office of the Texas Secretary of State would not have accepted the Articles of Organization of ASILLC for filing and registration without the assertion that ASILLC was licensed by contract to use the names Accura Systems Trade Mark, specifically by paragraph 11 of the Stock Agreement, captioned “License to use of Trade Name and Logo.”

175. Upon information and/or belief, the ASILLC application represented the applicant had a license to use the words “Accura Systems” in its name by express reference to paragraph

11 of the Stock Agreement, a redacted copy of which was included in the application with the application.

176. The Texas Secretary of State accepted the filing of the Articles of Organization and registered ASILLC as a company authorized to do business in Texas.

177. Upon information and/or belief, the office of the Texas Secretary of State would not have accepted the Articles of Organization of ASILLC for filing without the representation the applicant had been licensed use the words “Accura Systems” in its name.

178. The representation in the application to the Secretary of State of Texas that paragraph 11 of the Stock Agreement or any other document or agreement licensed the use of the name “Accura Systems” to ASILLC is false, material to the application, and, on information and belief, relied upon by the Secretary of State in accepting the Articles of Organization of ASILLC for registration as a Texas limited liability company; the representation was also known by Jose Valdes to be false at the at the time of the filing of the application by or at the direction of Jose Valdes.

179. The July 2005 filing of the application for registration of the company ASILLC as a Texas limited liability company was a fraud on the Secretary of State of Texas and on Frank Finan and ASI.

180. Defendants knew at the time the application was filed in July 2005 that paragraph 11 of the September 2004 Stock Agreement not only did not license ASILLC to use the name “Accura Systems” but, to the contrary, expressly prohibited the parties to the Stock Agreement from licensing “any third party” to use that name. The organization and operation of ASILLC by Jose Valdes is a continuing breach of the Stock Agreement by Jose Valdes.

181. Upon information and/or belief, Defendants knowingly, deliberately, and willfully filed a filing instrument(s) with the Texas Secretary of State that contained omission(s) of a false statement(s) of material fact(s); or the omission(s) in a filed filing instrument(s) of a material fact(s) required by this code to be included in the instrument(s) in violation of the Texas Code of Business Title 1. General Provisions Chapter 4. Filings Sec. 4.007. Liability for Filing a False Instrument.

182. Under the Texas Code of Business Title 1. General Provisions Chapter 4. Filings Sec. 4.007. Liability for Filing a False Instrument an injured person may recover from: 1) each person who forged or knowingly signed a false instrument; 2) any managerial official who directed the signing and filing of the filing instrument who knew or should have known of the false statement or omission; or 3) the entity that authorized the filing of the instrument.

COUNT X
APPLICATION FOR INJUNCTIVE RELIEF
(DEFENDANTS: ASILLC, JOSE VALDES, AND PABLO VALDES)
(REQUEST FOR INJUNCTIVE RELIEF)

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

184. Defendants have violated 15 U.S.C. §1125 and Texas Business and Commerce Code §16.29 and Plaintiffs are therefore entitled to injunctive relief under 15 U.S.C. §1116 and Texas Business and Commerce Code §16.29. ASILLC, Jose Valdes, and Pablo Valdes, are collectively referred to as (“Defendants”) as to Count IX.

185. Plaintiffs request that the Court issue a Preliminary and Permanent Injunction against Defendants their agents, representatives, employees, assigns and suppliers, and all persons acting in concert or in privity with them, from:

- (a) Engaging in any acts or activities directly or indirectly calculated to trade upon Plaintiffs’ service marks, names logos, reputation or goodwill, including

- any further use of the infringing trademark or any other marks that are identical or confusingly similar to Accura Systems Trademarks;
- (b) Using in any manner, including any website owned and operated by Defendants, the Accura Systems Trademarks or any designation that is confusingly similar to “Accura Systems” or any of the Accura Systems Trademarks, in connection with the advertising or offering for sale or selling the Services or any similar services covered by Plaintiffs’ Accura Systems Trademarks;
 - (c) Simulating, reproducing, imitating, copying or marking unauthorized use of Plaintiffs’ Accura Systems Trademarks or any other marks that are confusingly similar to Plaintiffs’ Accura Systems Trademarks;
 - (d) From committing any acts calculated to cause purchasers to believe that Defendants’ services are those sold under the control and supervision of Plaintiffs, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiffs;
 - (e) From further infringing the Plaintiffs’ Accura Systems Trademarks and damaging Plaintiffs’ goodwill;
 - (f) From otherwise competing unfairly with Plaintiffs in any manner.

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

187. 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.

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

COUNT XI
JURY DEMAND

189. Plaintiffs demand a Jury Trial and tender the appropriate fee with this application.

PRAYER FOR RELIEF

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

1. Permanently enjoining Defendants, their 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 Plaintiffs' 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 Accura Systems Trademark;
 - (b) Using in any matter, including on any website owner and operated by Defendants the Accura Systems Trademarks, or any other designation that is confusingly similar to Accura Systems Trademarks or any of Plaintiffs' Trademarks, in connection with the advertising or offering for or selling the Services or any similar services covered by Plaintiffs' trademarks;
 - (c) From committing any acts calculate to cause purchasers to believe that Defendants' services are those sold under the control and supervision of Plaintiffs, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiffs;
 - (d) From further infringing the Plaintiffs trademark and damaging Plaintiffs' goodwill;
 - (e) From otherwise competing unfairly with Plaintiffs in any manner.
2. Finding that Defendants, ASILLC, Jose Valdes, and Pablo Valdes, have infringed the Accura Systems Trademarks.
3. Finding that Defendants, ASILLC, Jose Valdes, and Pablo Valdes, have knowingly and willfully infringed the Accura Systems Trademarks.

4. Finding that Defendants', ASILLC, Jose Valdes, and Pablo Valdes, use of the infringing trademark has caused and/or is likely to cause confusion among the general purchasing public as to the source or origin of Defendants services.
5. Ordering Defendants, ASILLC, Jose Valdes, and Pablo Valdes, to show proof of removal of the Accura Systems Trademarks from all signage, building facades, letterhead or any other articles or other structures owned and operated by Defendants, or websites owned or operated by Defendants.
6. Ordering Defendants, ASILLC, Jose Valdes, and Pablo Valdes, 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 Accura Systems Trademarks.
7. Ordering Defendants, ASILLC, Jose Valdes, and Pablo Valdes, to file with this Court and to serve upon Plaintiffs a report, in which and under Oath, setting forth in detail the manner and form in which Defendants has complied with any injunction resulting from this manner within thirty (30) days after service of such injunction.
8. Awarding Plaintiffs such Civil Penalties; damages, court costs, and reasonable attorney's fees; in connection with the omission of a false statement of material fact in a filed filing instrument; or the omission in a filed filing instrument of a material fact required by this code to be included in the instrument, pursuant to Texas Business Code Title 1. General Provisions Chapter 4. Filings Sec. 4.007. Liability for Filing a False Instrument.

9. Awarding Plaintiffs such damages, compensatory, punitive and otherwise, as the proof may show.
10. Awarding Plaintiffs its reasonable attorneys' fees and costs incurred in connection with this action.
11. AND ALL OTHER SUCH RELIEF THAT THIS HONORABLE COURT SHALL DEEM JUST AND REASONABLE.

DATED this 23rd day of December, 2011.

Respectfully Submitted,

By: /s/ Darin M. Klemchuk

Darin M. Klemchuk
State Bar No. 24002418
James E. Davis
State Bar No. 05504200
Kelsey M. Weir
State Bar No. 24051504
KLEMCHUK KUBASTA LLP
8150 North Central Expressway
10th Floor
Dallas, Texas 75206
Tel. 214-367-6000
Fax. 214-550-2671
darin.klemchuk@kk-llp.com
jim.davis@kk-llp.com
kelsey.weir@kk-llp.com
docketing_kkllp@me.com

AND

Shona Garber Bell
State Bar No. 24064876
MCMANUS & DARDEN, LLP
1155 Fifteenth Street, N.W.
Suite 810
Washington D.C. 2005
Tel. 202-296-9260

**ATTORNEYS FOR PLAINTIFFS
ACCURA SYSTEMS, INC. AND FRANK
FINAN**