

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22-CVS-14854

KENNETH BRYANT,
BRYANT ENTERPRISES, LLC
Plaintiffs,

v.

BRYAN DONALD FIELDS, and
CARSTEN JASON GALLINI
Defendants.

**PLAINTIFFS' MOTION FOR LEAVE TO
FILE SUPPLEMENTAL PLEADING**

NOW COME Plaintiffs, Kenneth Bryant and Bryant Enterprises, LLC, by and through their counsel, pursuant to N.C. Gen. Stat. § 1A-1, Rule 15(d), and seek leave to file Supplemental Pleading, to amend the Complaint to set forth transactions, occurrences, and events which occurred after the date of the Amended Complaint. In support hereof, the Plaintiffs submit to the Court the following allegations which the Plaintiffs seek to plead as their Supplemental Pleading:

TENTH CAUSE OF ACTION

(Appropriation of Name, Identity and Likeness)

202. The Plaintiffs incorporate by reference the allegations of Paragraphs 1 – 201 of the Complaint as if set forth fully herein.

203. In or about May 2023 the Defendants Fields and Gallini continued their campaign of harassing the Plaintiffs by creating two or more documents which incorporated the Plaintiffs' images, names, websites, and likeness for the purpose of harassing the Plaintiffs and for the purpose of directing persons to the website created and maintained by Defendant Fields, for the purpose of, *inter alia*, providing the Plaintiffs' competitors with an unfair advantage, and

directing persons to Defendant Fields' website which actively solicits persons visiting the site to make payments by cryptocurrency, stating, "I support strong crypto. My gpg key is below, please use it."

204. One of the documents the Defendants Fields and Gallini created is a self adhesive sticker depicting the name, call sign, corporate logo for the Plaintiff business located in, and operated from, North Carolina and photograph of Plaintiff Kenneth Bryant. A true and accurate copy of the sticker is depicted below:



205. Said sticker has a QR code (“quick response” code) which directs the viewed to the website created by Defendant Fields and described in the Amended Complaint in paragraph 47.

206. A person viewing said sticker would infer and understand that the sticker was created and distributed by the Plaintiffs, with their knowledge and consent, that the QR Code on the sticker directs the user to the Plaintiffs’ website, and that the Plaintiffs endorse the messages on said sticker.

207. The use of such a sticker is a hallmark of Defendants Fields and Gallini, who have a history of creating stickers with images of persons whom they are defaming and harassing, which type of malicious conduct the Plaintiffs have already alleged in their Amended Complaint, which was before the Defendants Fields and Gallini began disseminating the sticker referenced in this Supplemental Pleading.

208. Further, the Defendants Fields and Gallini as well as their competitive colleagues had already discussed creating stickers depicting Plaintiff Kenneth Bryant in open public forums, such as Facebook, with a design and intent to further harass and defame Plaintiff Bryant.

209. The other document created by Defendants Fields and Gallini is a document resembling a business card. The front and back of said card are below:



210. On one side of this business card the Defendant Fields has used the name “Ken Bryant,” and the Plaintiffs’ call sign (“K10MR”), as well as the Plaintiffs’ company name and

corporate logo (“North Georgia Communications” a DBA of Plaintiff Bryant Enterprises, a NC LLC, domiciled and operates from NC), as well as the Plaintiffs’ logo, and the aforementioned deceptive website (www.ngacomms.com). The card further states, “A Full Service Two-Way Lawsuit Generating Enterprise.”

211. The back of this business card bears the name and call sign of Plaintiff Kenneth Bryant, and the corporate logo of the Plaintiffs’ business and provides a URL of “www.ngacomms.com,” states “North Georgia Communications,” states “I’m a Motorola Channel Partner! I own a Motorola Dealership!,” states “Scan For Deals,” and includes the same QR code directing persons to Fields’ aforementioned website.

212. The URL described in the preceding paragraph is deceptively similar to the Plaintiffs’ actual website, which is www.ngacomms.com; *i.e.* the Defendant Fields intentionally and deceptively omitted one letter “M” from the URL, in an attempt to confuse the public and to direct the public to a website created by Defendant Fields for the purpose of further harming the Plaintiffs.

213. The URL registrar for this website is one that is little known and not widely used, but has been exclusively used by the Defendants in their past cyber smear campaigns against the Plaintiffs and others.

214. The registration for this URL is attributed to an owner of DMR-MARC (located in Illinois), but the actual registrar is and registrations were conducted from an IP address in the general location where Defendant Fields resides near Tampa, Florida.

215. The aforementioned URL in fact directs the user to Fields’ deceptive website described in Paragraph 47 of the Complaint.

216. From May 19, 2023 – May 21, 2023, a convention of ham radio operators, vendors and enthusiasts, known as “Hamvention,” took place near Dayton, Ohio. First started in 1952, Dayton Hamvention is often referred to as the “mecca” for amateur radio. The Dayton Hamvention is one of the two largest amateur radio conventions (or hamfests) in the world. It is held each May in the Dayton, Ohio area and draws attendees from various parts of the world. Prior to the COVID pandemic, the 2019 Hamvention drew 32,462 paid attendees over its three days.

217. In addition to six buildings full of commercial exhibit space, said convention had thousands of vendor booths of ham radio equipment and was visited by thousands of ham radio customers and enthusiasts in addition to forums, classes, licensing examination sessions and demonstrations covering all aspects of Amateur Radio.

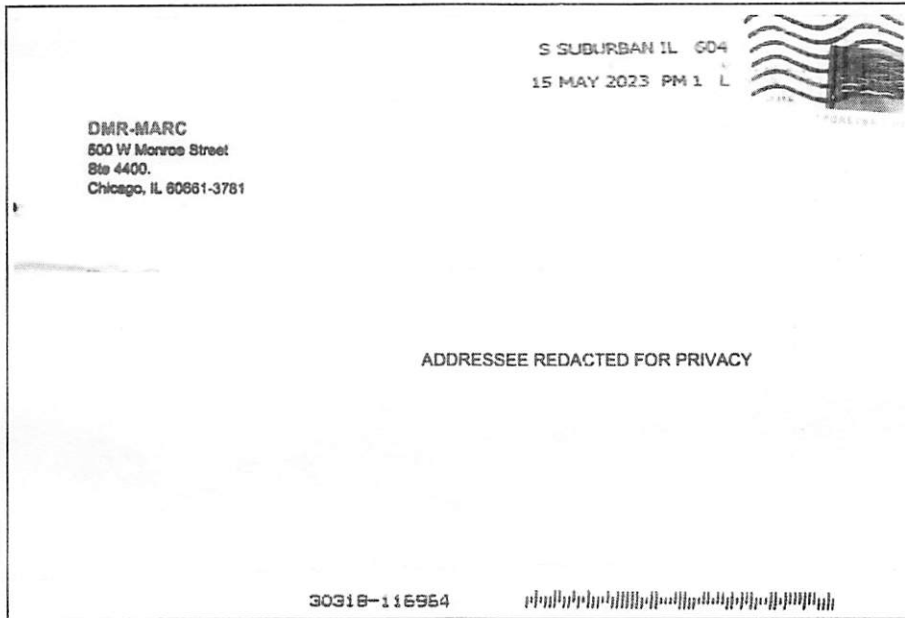
218. The Defendants Fields and Gallini and/or their agents caused their aforementioned stickers and false business cards to be displayed at said convention in places highly visible to those persons attending the “ham” radio convention.

219. Several of these stickers (a much larger version than the stickers posted in the US Mail and mailed to various unknown individuals throughout the US) were in fact placed and adhered within urinals at the convention site.

220. The Defendants Fields and Gallini and/or their agents further distributed and disseminated their aforementioned fraudulent stickers and false business cards by mailing the same to numerous persons, in an envelope bearing a return address for DMR-MARC, which is group of over 500 repeaters in 83 countries with over 144,000 registered users. There are over 6600 registered DMR repeaters world-wide in the DMR-MARC database, all amateur radio operators many of whom are Motorola Solutions employees, Motorola Service Station

employees, dealers, system installers and Motorola equipment aficionados. For point of reference, the Plaintiffs' business is that of a Motorola two-way radio dealer.

221. The image below is a sample of the envelope prepared by the Defendants purporting to be issued by DMR-MARC:



222. DMR-MARC is the Motorola Amateur Radio Club, which is one of the original founding DMR (“digital mobile radio”) networks and is extremely popular among Motorola users and amateur radio operators.

223. DMR-MARC is the oldest and most respected amateur network in the world and arguably the largest in the world.

224. Ham radio operators would readily recognize the name DMR-MARC and would have interest in reading notices from DMR-MARC, and would give credibility to documents sent by DMR-MARC.

225. Defendants Fields and Gallini, by sending the fraudulent stickers and false business cards in envelopes that falsely utilize the name and return address for DMR-MARC, are

creating the false impression that DMR-MARC endorses and supports this campaign of harassment, and is causing recipients of said envelopes to open said envelopes to view the contents.

226. DMR-MARC has stated that they know nothing about these mailings bearing their name, and they do not endorse these mailings nor did they create or disseminate the sticker nor the business card.

227. Defendants Fields and Gallini, in sending fraudulent stickers and business cards in the United States mail system, violated 18 U.S.C. § 1341, pertaining to mail fraud.

228. Said conduct in using the federal mail system to disseminate defamatory and fraudulent material is in violation of public policy.

229. Defendants Fields and Gallini, in creating, using and disseminating the aforementioned business cards and stickers wrongfully appropriated the Plaintiffs' likeness, name and personal and corporate identity, resulting in damages to the Plaintiffs, and did so for the purpose of commercial gain. *See, e.g., Flake v. Greensboro News Co.*, 212 N.C. 780, 792, 195 S.E. 55, 64 (1938) ("the unauthorized use of one's photograph in connection with an advertisement or other commercial enterprise gives rise to a cause of action which would entitle the plaintiff, without the allegation and proof of special damages, to a judgment for nominal damages, and to injunctive relief").

230. As a result of the vandalism perpetrated by Defendants Fields and Gallini at the Dayton Hamfest, or by others acting on their behalf, the Dayton Hamvention had to pay \$1,000 in damages to the convention site and this incident damaged its reputation and that of the larger Amateur Radio community.

231. The allegations of this Tenth Cause of Action are incorporated in to the Plaintiffs' first nine causes of action as if set forth fully therein.

ELEVENTH CAUSE OF ACTION

(VIOLATION OF FEDERAL TRADEMARK LAWS)

232. The Plaintiffs incorporate by reference as if set forth fully herein the allegations of Paragraphs 1- 231 of the Complaint.

233. For years, the Plaintiffs have exclusively and continuously promoted and used the name North Georgia Communications and a logo, consisting of the words "North Georgia Communications" along with an image of triangular mountains adjacent to a lake within an oval, within the United States. Said logo is depicted in the image following Paragraph 209 of this Supplemental pleading.

234. The Plaintiff Bryant Enterprises is currently, and for years has been, one of a limited number of authorized Motorola dealers, is domiciled in North Carolina and solely operates from North Carolina.

235. The DBA name North Georgia Communications and the logo have become a famous and well-known name and symbol of the Plaintiffs and their products, and were famous and well-known before the Defendants began creating and distributing items bearing this name and logo.

236. The Plaintiffs have been using the trade name North Georgia Communications for more than ten years, and the sales from this business are nationwide and worldwide.

237. The name "North Georgia Communications" and the logo have come to signify the quality and reputation of the Plaintiffs' products and services.

238. The Plaintiffs' trademarks have acquired fame and distinctiveness and are associated in the mind of the public exclusively with the Plaintiffs.

239. As alleged herein, the Defendants have generated and distributed stickers and business cards which bear the Plaintiffs' trade name and logo, and which cause recipients of said items to believe that the Plaintiffs generated and distributed said items.

240. Defendants have used in connection with the infringing items spurious designations that are identical with, or substantially indistinguishable from, the Plaintiffs trademarks.

241. These offending items generated and distributed by the Defendants are harmful to the Plaintiffs' reputation and business pursuits.

242. Defendants have used these spurious designations in commerce with a scheme to aid and give an unfair advantage to the Plaintiffs' competitors.

243. The Defendants' use of a confusingly identical name and mark is likely to cause confusion, deception, and mistake by creating the false and misleading impression that the cards and stickers generated and distributed by the Defendants were generated or distributed by the Plaintiffs, or are associated or connected with the Plaintiffs, or have the sponsorship, endorsement, or approval of the Plaintiffs.

244. The Defendants' use of the Plaintiffs' name and logo is confusingly similar or identical to the Plaintiffs' marks in violation of 15 U.S.C. §§ 1114 and 1125.

245. The Defendants' activities are causing and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public, and, additionally, injury to Plaintiffs' goodwill and reputation as symbolized by the Plaintiffs' name and logo, for which Plaintiffs have no adequate remedy at law.

246. Despite being aware of Plaintiffs' exclusive trademark rights, the Defendants nevertheless have repeatedly infringed these rights by distributing stickers and cards bearing counterfeits of the Plaintiffs' trademark.

247. At all relevant times, Defendants had actual and direct knowledge of Plaintiffs' prior use and ownership of the trade name "North Georgia Communications" and of the Plaintiffs' logo, and the name of Kenneth Bryant in connection with North Georgia Communications and in connection with Bryant Enterprises.

248. Defendants' actions demonstrate an intentional, willful, and malicious intent to impair the goodwill associated with Plaintiffs' business name and logo and to cause the Plaintiffs great and irreparable harm.

249. Defendants' acts have caused, and will continue to cause, irreparable injury to Plaintiffs.

250. Plaintiffs have no adequate remedy at law and is thus damaged in an amount not yet determined.

251. The Defendants caused and are likely to continue causing substantial injury to the public and to the Plaintiffs, and Plaintiffs are entitled to injunctive relief and to recover Plaintiffs' profits, actual damages, enhanced profits and damages, and costs under 15 U.S.C. § 1114 *et seq.*

252. Accordingly, Plaintiffs now bring this action against Defendants for trademark counterfeiting, infringement, and trademark dilution.

253. The Defendant is making use in commerce of the Plaintiffs' trade name and logo, for the purpose of assisting and giving an unfair advantage to competitors of the Plaintiffs, which dilutes and is likely to dilute the distinctiveness of the Plaintiffs' trade name and logo, by eroding

the public's exclusive identification of this famous name and logo with the Plaintiffs, tarnishing and degrading the positive associations and prestigious connotations of the name and logo, and otherwise lessening the capacity of the name and logo to identify and distinguish Plaintiffs' products and services.

254. Defendants' actions demonstrate an intentional, willful, and malicious intent to diminish the goodwill associated with the Plaintiffs' names and logo, and thereby aid and give an unfair advantage to the Plaintiffs' competitors, and to cause dilution of the name and logo to the great and irreparable injury of Plaintiffs.

255. Defendants have caused and will continue to cause irreparable injury to Plaintiffs' goodwill and business reputations, and dilution of the distinctiveness and value of Plaintiffs' famous and distinctive trade name and logo, in violation of 15 U.S.C. § 1125(c).

256. Plaintiffs therefore are entitled to injunctive relief and to actual damages and other damages and losses under 15 U.S.C. § 1125.

TWELFTH CAUSE OF ACTION

(VIOLATION OF COMMON LAW TRADEMARK PROTECTION)

257. The Plaintiffs incorporate by reference as if set forth fully herein the allegations of Paragraphs 1- 256 of the Complaint.

258. The Plaintiffs acquired a common law trademark in the name North Georgia Communications and in the aforementioned logo, depicting the name North Georgia Communications and used by Plaintiffs in connection with their business.

259. The Plaintiffs have used these marks in commerce, in connection with the sale of goods and services.

260. The Plaintiffs have valid and protectable marks.

261. Defendants' use of the Plaintiffs mark is likely to cause confusion among consumers.

THIRTEENTH CAUSE OF ACTION

(PRELIMINARY AND PERMANENT INJUNCTION)

262. The Plaintiffs incorporate by reference as if set forth fully herein the allegations of Paragraphs 1- 261 of the Complaint.

263. Pursuant to Rule 65(a) of the North Carolina Rules of Civil Procedure, Plaintiffs respectfully move the Court to enter a Preliminary Injunction for the duration of this action and, thereafter, to enter a Permanent Injunction upon the same terms, prohibiting the Defendants from further disseminating and publishing materials bearing the Plaintiffs' images, call sign, name, and business logos.

264. As elaborated upon in the Seventh Cause of Action, the Plaintiffs have demonstrated a likelihood of success on the merits, and irreparable harm.

PRAYER FOR RELIEF

Wherefore, for the foregoing reasons, the Plaintiffs ask that the Plaintiffs be awarded a judgment against Defendants for the following:

A. For a trial by jury on all issues contained in this Complaint.

B. For compensatory damages in an amount to be determined by the finder of fact, but in any event, to the extent Rule 8(a)(2) of the North Carolina Rules of Civil Procedure is applicable, in an amount more than Twenty-Five Thousand Dollars (\$25,000).

C. For compensation in an amount to be determined by the finder of fact, but in any event, for his economic and non-economic injuries and damages more than Twenty-Five Thousand Dollars (\$25,000), as provided under defamation *per se* law.

D. For compensation in an amount to be determined by the finder of fact, but in any event, for his economic and non-economic injuries and damages more than Twenty-Five Thousand Dollars (\$25,000.00), as provided under defamation law and wrongful interference with contract law.

E. For special damages in an amount to be determined by the finder of fact, but in any event, in an amount more than Twenty-Five Thousand Dollars (\$25,000), for Plaintiffs' pecuniary loss as provided in *Stutts v. Duke Power*, 47 N.C. App. 76, 266 S.E.2d 861 (1980) for all of his special damages under defamation law.

F. For punitive damages for the information warfare and document doxing campaign, including but not limited to, publishing and making defamatory statements of or about Mr. Bryant with knowledge of such defamatory statements' falsity or with reckless disregard for the truth and publishing non-public court records and other private personal information about Mr. Bryant to harm and damage Plaintiff in an amount to be determined by the finder of fact, but in any event, in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), to punish Defendants and deter similar future conduct.

G. For an Order directing the Defendants to remove all libelous postings.

H. For an Order directing the Defendants to cease from publishing documents bearing the Plaintiffs' name, call sign, likeness, and business logos.

I. For an Order enjoined from using the Plaintiffs' trade name and logo in any manner that is likely to cause confusion, mistake, deception, or public misunderstanding that such materials, publications or products are produced or provided by Plaintiffs, or are sponsored or authorized by Plaintiffs, or are in any way connected or related to Plaintiffs.

J. For an Order directing the Defendants to deliver up for impoundment and for destruction, all stickers, business cards, and other items in their possession that adopt, infringe, or dilute any of Plaintiffs' trademarks.

K. That the Defendants transfer ownership to the Plaintiffs of any web URLs associated with the Plaintiffs, including but not limited to those used in the cyber smear campaign against the Plaintiffs.

L. For nominal damages in recognition of the technical damage caused by the wrongful conduct of Defendant as provided under N.C.P.I. – Civ. 800.71. *Flake v. Greensboro News Co.*, 212 N.C. 780, 195 S.E. 55 (1938); *Barr v. S. Bell Tel. & Tel. Co.*, 13 N.C. App. 388, 185 S.E.2d 714 (1972).

M. For reasonable attorneys' fees and other litigation costs reasonably incurred by Mr. Bryant as provided under N.C. Gen. State § 6-21.5 and other applicable statutes.

N. Plaintiffs be awarded all damages caused by the acts forming the basis of this Complaint;

O For such pre- and post-judgment interest as permitted by law; and

P. For such other relief as the Court deems necessary or proper.

Respectfully submitted, this the 21st day of June, 2023.



John M. Kirby
Law Offices of John M. Kirby, PLLC
4801 Glenwood Ave., suite 200
Raleigh, NC 27612-3856
919-861-9050
Counsel for Plaintiffs

VERIFICATION

Kenneth Bryant, first being duly sworn, deposes and says that he is a Plaintiff in this civil action, that he has read the foregoing Complaint, and that the same are true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, he believes them to be true.

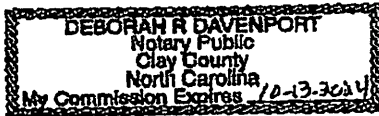
Kenneth Bryant
Kenneth Bryant

Sworn to and subscribed before me

this the 20th day of June, 2023.

Deborah R Davenport
Notary Public

My Commission Expires: October 13, 2024



CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served a copy of the foregoing document upon all parties of record by depositing a copy of the same in the custody of the U.S. Postal Service, first class postage prepaid, and by email, addressed as follows:

Michael J. Tadych
Stevens Martin Vaughn & Tadych, PLLC
6300 Creedmoor Road
Suite 170-370
Raleigh NC 27612
Attorney for Defendants Fields
mike@smvt.com

Grey Powell
911 New Bern Avenue
Raleigh, NC 27601
Counsel for Defendant Gallini
grey.powell@greypowelllaw.com

This the 21st day of June, 2023.

LAW OFFICES OF JOHN M. KIRBY, PLLC



John M. Kirby
Law Offices of John M. Kirby, PLLC
4801 Glenwood Ave., suite 200
Raleigh, NC 27612-3856
919-861-9050
Counsel for Plaintiffs