

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KHC Enterprises LLC,
(d/b/a KC Hemp Co.)
Plaintiff,

v.

KC Hemp Company, LLC
Defendant.

Case No.

NOTICE OF REMOVAL BY DEFENDANT KC HEMP COMPANY, LLC

Defendant KC Hemp Company, LLC (“KC Hemp”), by and through its undersigned counsel, and pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, hereby files its Notice of Removal of the above-captioned matter from the District Court of Johnson County, Kansas Case No. 19CV08596, to the United States District Court for the District of Kansas. KC Hemp Company, LLC asserts the following grounds supporting removal:

I. Nature of the Action

1. On or about October 31, 2019 Plaintiff KHC Enterprises, LLC (d/b/a KC Hemp Co.) filed their Petition (“Petition”) in the District Court of Johnson County, Kansas, Case Number 19CV08596. KC Hemp Company, LLC was served on or about November 6, 2019. A copy of the Petition and Summons served upon KC Hemp Company, LLC is attached hereto as **Exhibit A**.

2. In the Petition, Plaintiff alleges Defendant KC Hemp Company, LLC violated Plaintiff’s common law trademark rights. Defendant KC Hemp Company, LLC argues that it

has the right of use and protection under the Federal Trademark Act of 1946 15 U.S.C.

§ 1051, U.S.C. 39 (15 U.S.C. § 112.) In addition, Defendant KC Hemp Company, LLC argues that it has common law rights to operate as “KC Hemp Company.”

3. In the Petition, Plaintiff brings specific allegations against KC Hemp Company, LLC that its filings under the Federal Trademark Act of 1946 do not take priority over Plaintiff’s filings under the Federal Trademark Act of 1946, and as such the use of Defendant’s tradename and service mark pursuant to such federal filings do not provide Defendant the protections it seeks. Defendant believes it is protected under Federal Trademark Act of 1946 15 U.S.C. § 1051, U.S.C. 39 (15 U.S.C. § 112) as well as pursuant to common law. Defendant argues that the Federal Trademark Act of 1946 completely and fully preempts Plaintiff’s claims under any state law.

II. Removal is Proper Under U.S.C. § 1446

4. This court has jurisdiction over this matter pursuant to 15 U.S.C. § 1331 as the application of a federal law is the primary issue in this case. Specifically, the Federal Trademark Act of 1946, 15 U.S.C. § 1051, U.S.C. 39 (15 U.S.C. § 112) is at issue, and it completely and fully preempts any claims of Plaintiff in this case that may arise under state law. Plaintiff’s Petition specifically alleges that Plaintiff’s filings under the Federal Trademark Act of 1946 take priority over Defendant’s filings under Federal Trademark Act of 1946. As such, this issue in this case is whether KC Hemp Company, LLC has the right of use and protection under the Federal Trademark Act of 1946.

III. **KC Hemp Company, LLC Has Complied with All Prerequisites for Removal**

5. KC Hemp Company, LLC was served on November 6, 2019. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446.

6. Pursuant to 28 U.S.C. § 1446(d), promptly upon filing of this Notice of Removal, copies thereof will be sent to Plaintiff's counsel and filed with the Clerk of the Court in the state court action in the District Court of Johnson County, Kansas.

7. KC Hemp Company, LLC reserves the right to amend or supplement this Notice of Removal, and reserves all rights and defenses, including those available under Federal Rule of Civil Procedure 12.

WHEREFORE, KC Hemp Company, LLC gives notice of removal of the above-captioned matter filed in the District Court of Johnson County, Kansas to the United States District Court for the District of Kansas.

Submitted by,

Renkemeyer Law Firm, LP

/s/ Troy D. Renkemeyer

Troy D. Renkemeyer, # 17913

Corporate Lakes

6842 W. 121st Court

Overland Park, KS 66209

Telephone: (913) 906-9800

Facsimile: (913) 906-9840

trנקemeyer@renkemeyerlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Notice of Removal was filed electronically and a copied sent to counsel of record through the Districts Courts e-filing and by USPS postage prepaid mail system this 22th day of November, 2019, to:

Kincaid Business & Entrepreneurial Law, LLC
Matthew T. Kincaid
5251 West 116th Place, Suite 200
Leawood, Kansas 66211

/s/ Troy D. Renkemeyer
Troy D. Renkemeyer

EXHIBITA19CV05896
Div7**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT**KHC Enterprises LLC,
(d/b/a KC Hemp Co.)

Plaintiff,

v.

KC Hemp Company, LLC

Serve: Jay Sanko

Resident Agent

15301 W 109th Street

Lenexa, Kansas 66219

Defendant.

Case No.: _____

Court No.: _____

K.S.A. Chapter: 60

PETITION FOR DAMAGES AND INJUNCTION

COMES NOW Plaintiff, KHC Enterprises LLC, doing business as KC Hemp Co. ("Plaintiff") by and through undersigned counsel of record, and for its Petition For Damages and Injunction ("Petition") against Defendant KC Hemp Company, LLC ("Defendant") states and alleges as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. The brand "KC Hemp Co." ("Plaintiff's Brand" or merely "Brand") was and is a creation of the Plaintiff, having bought the rights to the domain "<https://kchempco.com/>" on May 8, 2018 and begun use of the Brand shortly thereafter.
2. Plaintiff was subsequently organized to do business within the state of Kansas on May 21, 2018 as a limited liability company.
3. Plaintiff is currently an entity active and in good standing within the state of Kansas.

4. Plaintiff uses its Brand in all aspects of its business, including within or on its website, social media accounts, products, marketing and promotional materials, and its physical store in Overland Park, Kansas.
5. Plaintiff's Brand serves as an important and distinctive representation of its products and services as well as the goodwill of its company.
6. Plaintiff is registered as a foreign limited liability company under "KC Hemp Co. LLC" in the state of Missouri, in conformity with its Brand.
7. Defendant purchased a confusingly similar domain name, <http://kchempcompany.com/>, on March 20, 2019.
8. Defendant was subsequently organized to do business within the state of Kansas on April 4, 2019 as a limited liability company.
9. Upon information and belief, Defendant was and is not registered as a foreign or domestic entity in the state of Missouri.
10. Upon information and belief, Defendant was and is not registered as a foreign or domestic entity in any other state.
11. Plaintiff discovered Defendant's existence by way of its organization filing within the Kansas Secretary of State's Office and promptly engaged counsel of record to send a cease and desist letter. This letter, attached hereto as "Exhibit A" and incorporated herein by reference ("Original Cease & Desist Letter"), was mailed to the resident agent at the registered office of Defendant on July 10, 2019.
12. Despite the state requirement that the registered office of an entity be a physical address in Kansas where the agent can be located for service of legal process, Defendant was not able to be served with the Original Cease & Desist Letter.

13. The Original Cease & Desist Letter was returned to counsel of record for Plaintiff with the labels "RETURN TO SENDER", "VACANT", and "UNABLE TO FORWARD", attached hereto as "Exhibit B" and incorporated herein by reference.
14. As a result of Defendant not properly maintaining a registered office and resident agent, Plaintiff was forced to send a second cease and desist letter ("Second Cease & Desist Letter"), attached hereto as "Exhibit C" and incorporated herein by reference, on September 18, 2019.
15. The Second Cease & Desist Letter was mailed to the attention of the resident agent of Defendant, Jay Sanko, as well as emailed to Mr. Sanko at his publicly listed email address.
16. To unequivocally ensure Defendant's receipt of the Second Cease & Desist Letter, a copy of the same was emailed to a second email account listed on Defendant's website.
17. Despite the Original Cease & Desist Letter and Second Cease & Desist Letter (collectively, the "Letters") being properly mailed, Defendant failed to respond whatsoever. Defendant neither contacted counsel for the Plaintiff nor Plaintiff itself.
18. The Letters provided Defendant with clear information, warnings, and demands pertaining to Plaintiff's ownership and control of the Brand.
19. In addition to not responding to the Letters, Defendant did not comply with Plaintiff's demands therein, including but not limited to the demand that Defendant file a name change amendment with the Kansas Secretary of State's Office and close down its website within thirty days.
20. Defendant has performed or caused to be performed the following actions:
 - a. registered and/or purchased a domain name;

- b. organized a business in Kansas;
- c. constructed a company website;
- d. constructed a LinkedIn page;
- e. constructed a Facebook page; and
- f. designed a logo with surrounding text,

all of which have been done, set up, or labeled under the name “KC Hemp Company” or, in the case of the logo similar to Plaintiff’s with surrounding text, “KC Hemp Co” (hereinafter collectively the Defendant’s “Imitation Brand”).

21. With greater than thirty days having elapsed since the Second Cease & Desist Letter and Defendant having neither responded nor taken any action incumbent upon it, and Plaintiff’s and the public’s damages increasing and intensifying, the filing of this current action was necessitated.
22. By way of using Interstate 35 (c/k/a I-35), Plaintiff and Defendant are located less than eight (8) miles apart.
23. Defendant had every opportunity to develop a unique trade name or brand and not appropriate the Plaintiff’s Brand.
24. Within the Letters, Plaintiff stated to Defendant as follows: “This letter shall serve as notice of KC Hemp Co.’s intention to obtain federal rights to its brand by way of application to the United States Patent and Trademark Office.”
25. Plaintiff followed through with that assertion, filing an application with the USPTO to register its Brand on Thursday, September 19, 2019 at 4:07 PM EDT.
26. After Plaintiff completed its application with the USPTO, Defendant responded with applications of its own in short order.

27. Defendant filed an application with the USPTO to register the Imitation Brand on Thursday, September 19, 2019 at 4:55 PM EDT.
28. Defendant filed a second application with the USPTO to register the Imitation Brand on Thursday, September 19, 2019 at 5:45 PM EDT.
29. Within both of Defendant's federal applications, the first use anywhere date and first use in commerce date were listed as "At least as early as 06/01/2019".
30. Within Plaintiff's federal application, the first use anywhere date was listed as "At least as early as 05/21/2018" and the first use in commerce date was listed as "At least as early as 08/24/2018".
31. The factual history shows that Plaintiff's use of its Brand predates Defendant's use of the Imitation Brand.
32. Not only did Defendant file its federal applications after Plaintiff but also Defendant's own statements within its federal applications unequivocally show that Defendant's first use dates are subsequent to those of Plaintiff.
33. Plaintiff's Brand had been publicly visible and widely accessible before Defendant adopted the Imitation Brand.
34. Given that Plaintiff's Brand had been publicly visible and widely accessible before Defendant adopted the Imitation Brand, Defendant has shown a callous disregard for the rights of Plaintiff.
35. As of the date of this Petition's filing, the Google search results for a search query of "KC Hemp Co." return Plaintiff's domain as the first search result and Defendant's domain as a search result appearing on the first page (as high as the third search result).

36. Upon information and belief, Defendant, or its ownership or operations group, is closely connected with a Kansas entity called "KC Extraction Services, LLC".
37. With Defendant apparently being in the business of hemp/CBD extraction, it is unclear to Plaintiff why Defendant has chosen to operate under the Imitation Brand instead of "KC Extraction Services", if it is a legally permissible name.

Count I: Common Law Unfair Competition

38. Plaintiff hereby incorporates by reference the above and foregoing as though fully set forth herein.
39. This Court must protect Plaintiff in the business which fairly belongs to it; punish Defendant, which is taking away Plaintiff's business by unfair means; and protect the public from Defendant's deception.
40. Plaintiff, as an honest business, wishing to sell its goods or services upon their merits, selected its Brand from the entire material universe which by no possibility could cause confusion between its goods or services and those of competitors.
41. This Court should look with suspicion upon Defendant which, in dressing its goods or services for the market, approaches so near to its successful rival, Plaintiff, that the public may fail to distinguish between them.
42. This Court should protect the public, who, in making purchases, may not stop to analyze, being governed by appearances and general impressions, and could mistake the Defendant for the Plaintiff.
43. The Defendant has dressed its goods or services such that they may be mistaken for the goods or services of the Plaintiff.

44. Given the strong presence of the Plaintiff throughout our greater community and on the Internet, the history with the Letters, and Defendant's failure to voluntarily stop use of the Plaintiff's Brand, Defendant's dressing of its goods or services so that they may be mistaken for the goods or services of the Plaintiff is dishonest; given this dishonesty, Defendant should be compelled to stop.
45. Plaintiff and Defendant operate in extremely close proximity, merely 7.7 miles away as stated hereinabove.
46. This closeness in proximity heightens the difficulties and damages of Plaintiff caused by the Defendant.
47. Defendant has violated its legal duty to Plaintiff and to the public by dressing up its goods or services and marketing them in a way as to cause confusion between its goods or services or business and those of the prior trader, Plaintiff.
48. Plaintiff's Brand, if it is not capable of exclusive appropriation as a technical trademark, may nevertheless be protected against simulation when it has acquired a secondary meaning, differing from its primary meaning, that is, when it has become associated in the mind of the public as identifying the source or origin of the goods or services, rather than the goods or services themselves.
49. Plaintiff's Brand has acquired secondary significance or a secondary meaning over a period of time.
50. People in the trade or purchasing public have come to think of Plaintiff's Brand as standing for the business of a particular owner, the Plaintiff, owned by its members, Kyle Steppe and Heather Steppe, husband and wife.

51. Plaintiff's Brand has become associated in the mind of the public as identifying the source or origin of the goods and services, the Plaintiff and its constituent owners, rather than the goods or services themselves.
52. Plaintiff has spent a great deal of time and money building a good reputation for its business in the Kansas City metropolitan area and beyond.
53. Plaintiff has put forth substantial efforts and spent significant funds promoting and advertising its Brand; as a result, it has earned substantial publicity, such as being named downtown Overland Park's best new business of 2018 and cited favorably in numerous local publications.
54. The Imitation Brand is likely to cause confusion in the trade area, deceive the public, and substantially prejudice the rights of Plaintiff, a party who is dealing in similar products and services in the same trade area.
55. The Imitation Brand has already caused actual confusion or deception, including misdirected telephone calls, voicemails, social media messages, investment proposals, emails, and in-person visits. Additionally, Google flagged Plaintiff's business listing due to conflicting pages between Plaintiff and Defendant.
56. There was no confusion or deception by customers, suppliers, or investors, actual or potential, before the Defendant adopted the Imitation Brand.
57. Since Defendant adopted and began marketing under the Imitation Brand, Plaintiff has experienced a significant decrease in Internet traffic as well as sales volume and sales revenue.

58. Defendant has misled the public and, upon information and belief, diverted a presently unascertainable amount of the legitimate patronage or Internet traffic which the Plaintiff has built up through satisfactory service to its customers in connection with its Brand.
59. Injunctive relief is a proper remedy in this case as, even if Plaintiff's Brand is composed of merely descriptive words, these words have acquired a secondary significance over a period of time, bestowing the Plaintiff with a proprietary interest subject to protection. An injunction would stop the unfairness of allowing the Defendant to capitalize upon the use of a similar name and, through confusion, entice the public to do business with an entity it believes to be the Plaintiff.
60. There would not be a full, complete, and adequate remedy at law through recovery of money damages as, among other reasons, the violation to be addressed is continuous or ongoing and damages cannot provide adequate compensation for Plaintiff's injuries.
61. In conformity with a statutory requirement, this Petition has been verified by the Plaintiff, enabling this Court to grant an order to restrain Defendant's use of the Imitation Brand.
62. Due to Defendant's appropriation of Plaintiff's Brand, if this Court does not issue an injunction, a substantial amount of the business built up by the Plaintiff will be unfairly diverted to Defendant.
63. It is of prime and central importance to the Plaintiff and to the community that Plaintiff's identity not be lost or confused with any other business.
64. Plaintiff does not know nor can it influence the quality of Defendant or its business. Using the Imitation Brand, Defendant can harm the market reputation of the Plaintiff and its Brand by way of producing or rendering poor quality goods or services that customers may mistakenly believe originated from Plaintiff.

65. Plaintiff's Brand is entitled to protection under the common-law theory of unfair competition.
66. This protection comes in the form of monetary damages as well as an injunction.
67. The two kinds of relief asked are not inconsistent, nor cumulative, nor double: one being for compensation for past injuries, and the other for a prevention of future injuries.
68. The issuance of an injunction restraining and enjoining Defendant from using the Plaintiff's Brand, Imitation Brand, or any confusingly similar brand will not be adverse to the public interest. In fact, it will protect the public from deception and confusion.
69. Should the Court wish to balance the equities of the parties in deciding as to whether to issue such an injunction, Plaintiff in good faith hereby asserts its belief that such an injunction would pose a minimal burden on the Defendant—essentially requiring Defendant to innovate a new brand (as it should have done originally) and not parrot Plaintiff's Brand or simply utilize "KC Extraction Services", if it is a legally permissible name; affording, Defendant, therefore, with the opportunity to maintain its operations in the usual and ordinary course of business, less the use of the Imitation Brand.
70. This cause of action is so tightly bound to the trademark infringement claim brought below that this Court could characterize the hours expended on each as pivotal to infringement issues; this Court has the authority to reimburse Plaintiff's attorney for fees and expenses incurred in the prosecution of this cause of action to the limited extent that hours consumed on this cause of action cross-fertilize the trademark infringement claim (below).

WHEREFORE, Plaintiff respectfully requests that this Court (1) award Plaintiff monetary damages against Defendant for (a) Defendant's use of the Imitation Brand and Plaintiff's

resulting loss of Internet traffic, sales volume, and sales revenue, (b) harm to the market reputation of Plaintiff's goods, services, business, or Brand, and (c) its reasonable attorney's fees and expenses beginning with the Original Cease & Desist Letter and continuing through the resolution of this action, (2) restrain and enjoin Defendant from using the Plaintiff's Brand, Imitation Brand, or any confusingly similar brand, and (3) grant such other and further relief as this Court deems just and proper.

Count II: Common Law Trademark Infringement

71. Plaintiff hereby incorporates by reference the above and foregoing as though fully set forth herein.
72. Plaintiff's Brand is a name or symbol or combination thereof used by Plaintiff to identify and distinguish its goods and services, including unique products and services, from those manufactured or sold by others, and to indicate the source of the goods or services.
73. Plaintiff's Brand is a mark: a trademark or service mark entitled to registration under the revised Kansas trademark act even though it is not presently registered.
74. Plaintiff has common law rights to its Brand, and nothing in said act adversely affects its rights or the enforcement of rights in the Brand.
75. Plaintiff is the owner of the Brand in, at the minimum, the geographic areas of Kansas, Missouri, and the Kansas City metropolitan area.
76. Defendant's use of the Imitation Brand causes a likelihood of confusion.
77. The Imitation Brand has already caused actual confusion or deception, including misdirected telephone calls, voicemails, social media messages, investment proposals, emails, and in-person visits; additionally, the search engine Google has been confused as to the connection between Plaintiff and Defendant.

78. As the Plaintiff and the Defendant are competing under the same mark in the same market, the rights of the Plaintiff, the first and senior user, trump those of the Defendant.
79. Even if Plaintiff's Brand is merely descriptive, it is capable of being protected under the trademark laws as it has acquired distinctiveness through secondary meaning.
80. Plaintiff's Brand has become, to the purchasing public, associated with Plaintiff.
81. The consuming public has the understanding that the Brand refers not to what the descriptive word or phrase ordinarily describes but to Plaintiff's particular business that the Brand identifies.
82. Wrongful intent of the Defendant can be inferred given that the Defendant knew or should have known of the Plaintiff's Brand, had freedom to choose any mark, and just happened to choose a mark confusingly similar to the Plaintiff's mark.
83. Given the unlimited number of possible names and symbols that Defendant could have adopted, and the functional identity of the Plaintiff's Brand and the Imitation Brand, this Court should presume that Defendant intended and intends to confuse the public.
84. The inference of wrongful intent of the Defendant makes the instant case an appropriate one to award Plaintiff the recovery of its attorney's fees and expenses against the Defendant.

WHEREFORE, Plaintiff respectfully requests that this Court (1) award Plaintiff monetary damages against Defendant for (a) Defendant's use of the Imitation Brand and Plaintiff's resulting loss of Internet traffic, sales volume, and sales revenue, (b) harm to the market reputation of Plaintiff's goods, services, business, or Brand, and (c) its reasonable attorney's fees and expenses beginning with the Original Cease & Desist Letter and continuing through the resolution of this action, (2) restrain and enjoin Defendant from using the Plaintiff's Brand,

Imitation Brand, or any confusingly similar brand, and (3) grant such other and further relief as this Court deems just and proper.

Respectfully submitted:

KINCAID BUSINESS & ENTREPRENEURIAL
LAW, LLC

/s/ Matthew T. Kincaid

Matthew T. Kincaid, KS # 25542

5251 West 116th Place, Suite 200

Leawood, Kansas 66211

(O) 913-998-6100

(D) 913-735-7707

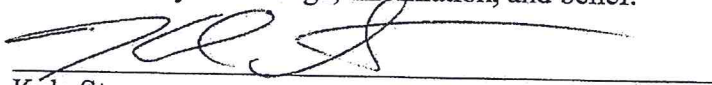
(E) mkincaid@kincaidlawkc.com

Attorney for Plaintiff

VERIFICATION

THE STATE OF Kansas)
) ss.
COUNTY OF Johnson)

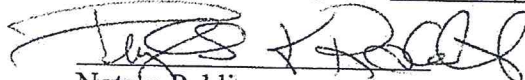
I, Kyle Steppe, member of KHC Enterprises LLC (d/b/a KC Hemp Co.), of lawful age, being first duly sworn on my oath, state as follows: I am a member of KHC Enterprises LLC (d/b/a KC Hemp Co.), the plaintiff named above; I have read the above and foregoing Petition for Damages and Injunction; and the facts stated in the Petition for Damages and Injunction are true and accurate to the best of my knowledge, information, and belief.



Kyle Steppe,
Member of KHC Enterprises LLC (d/b/a KC Hemp Co.),
Plaintiff

Subscribed and sworn to before me this 30th day of October, 2019

My commission expires: 10/5/21



Notary Public

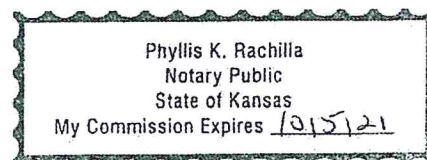


EXHIBIT A



July 10, 2019

**Via U.S.P.S. Certified Mail
Return Receipt Requested**

Jay Sanko
Resident Agent
KC Hemp Company, LLC
15301 W. 109th Street
Lenexa, Kansas 66219

RE: KC Hemp Co.

Dear Mr. Sanko:

Please be advised that this law firm is trademark counsel to KHC Enterprises LLC, doing business as KC Hemp Co. The trade name KC Hemp Co., as well as its top-level domain counterpart, <https://kchempco.com/>, is owned by KHC Enterprises LLC and is used as a trademark by my client to identify the source of its goods and services and distinguish them from the goods and services of other parties.

As you may or may not be aware, my client, and its respective members, has poured tremendous resources into building its unique brand, goodwill, and reputation. It has earned substantial publicity within the last year, being named downtown Overland Park's best new business of 2018 and favorably cited in numerous local publications. In addition, KC Hemp Co. has promoted its brand through numerous industry and community events pertaining to hemp and CBD. In short, KC Hemp Co. has made its name synonymous in Kansas City with quality hemp and CBD products and services, and the general public has come to recognize KC Hemp Co. as an established and successful leader within those areas.

The domain <https://kchempco.com/> was bought by my client on May 8, 2018. KC Hemp Co. was subsequently organized in the state of Kansas on May 21, 2018, as the record reflects, as "KC Hemp Co. LLC". It converted said name into a trade name the following day and has used it continuously in that manner since. Rights to trade names and trademarks stem from use. My client's rights to KC Hemp Co. began, therefore, as early as May 8, 2018 but no later than May 21, 2018.

It appears that KC Hemp Company, LLC ("Your Company") was organized in the state of Kansas on April 4, 2019. The state of Kansas does not conduct a search to see whether the name of a to-be-formed LLC infringes on the rights of another business within said state, especially with respect to "d/b/a" or trade name as these are not capable of formal registration in the state of Kansas. Thus, Kansas did not approve the use of the name of Your Company or grant Your Company rights to that name. The onus is on the newcomer to ensure the business name filed will provide its user with rights. See *Christian Dior, S.A.R.L. v. Miss Dior of Flatbush, Inc.*, 173 U.S.P.Q. (BNA) 416, 418 (E.D.N.Y. 1972) ("The fact that the New York Secretary of State permitted the use of the words Miss Dior in a corporate name has no bearing on the question of trademark infringement or unfair competition.").

The trademark and unfair competition laws of the United States provide that a newcomer's mark infringes the mark of a prior user whenever the concurrent uses are likely to cause the public to be confused into believing that both marks originate with, or are sponsored by, or are endorsed by the same source.

The relevant inquiry is whether the name of Your Company so resembles KC Hemp Co. that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of Your Company and my client. In other words, is the name of Your Company likely to give rise to the mistaken belief that the goods



and/or services of Your Company and my client emanate from the same source or that the two respective companies are somehow linked, associated, or affiliated?

Common law as well as state law provide KC Hemp Co. with certain proprietary rights. My client is entitled to restrict the use of its brand, or a confusingly similar brand, in association with similar products or services. Its brand serves as an important and distinctive representation of its products as well as the goodwill of its company. KC Hemp Co. therefore must protect itself against any misrepresentation that may cause harm to its business by facilitating the loss of its brand's effectiveness.

This letter shall serve as notice of KC Hemp Co.'s intention to obtain federal rights to its brand by way of application to the United States Patent and Trademark Office.

Although we may not have yet witnessed any actual confusion through Your Company's Kansas business registration of my client's mark, we are writing to prevent any such confusion and to address this matter before it could turn into a more significant problem. We understand that it is possible that you were unaware of this conflict and that Your Company may be new enough that it has not begun using its currently registered name in association with the marketing, sale, distribution, or identification of its products and/or services. We therefore respectfully request that you respond to this letter assuring us that Your Company, and its affiliated members, employees, consultants, and agents (1) has not and will not use "KC Hemp Company", "KC Hemp Co." or any confusingly similar name in association with the marketing, sale, distribution, or identification of hemp or CBD products and/or services or, if use has already begun, (2) will cease and desist the use of "KC Hemp Company", "KC Hemp Co." or any confusingly similar name in association with the marketing, sale, distribution, or identification of hemp or CBD products and/or services within ten calendar days of the date of this letter.

Regardless of the alternative effectuated above, given the geographic proximity of the parties and the near identity of their names in sight, sound, meaning, and commercial impression, we request that Your Company file a name change amendment with the Kansas Secretary of State's Office within thirty days of the date of this letter. You may wish to seek counsel as to what replacement name might be available for Your Company's use.

We hope that this issue may be resolved amicably so that KC Hemp Co. can avoid any further legal remedies by way of common, state, and/or federal law.

Please be advised that nothing herein is intended by us, nor should it be construed by you, as a waiver or relinquishment of any legal or equitable rights or remedies which KC Hemp Co. or KHC Enterprises LLC may have in this matter, and all such rights and remedies are hereby expressly reserved. The above and foregoing is not intended to be a comprehensive statement of our client's rights or positions.

Thank you for your attention and cooperation.

Very Truly Yours,

KINCAID BUSINESS & ENTREPRENEURIAL LAW, LLC

/s/Matthew T. Kincaid

Matthew T. Kincaid

MTK

EXHIBIT B

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Document Mailer

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RETURN TO SENDER

UNABLE TO FORWARD

RCN 662211782099

*2066-02720-12-17

To: Jay Senko, Resident Agent
KC Hemp Company, LLC
15301 W. 109th Street

From: Kincaid Business & Entrepreneurial Law
5251 W. 116th Place, Suite
Leawood, KS 66211

7019 0700 0001 6743 2607



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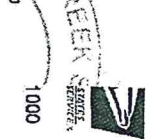
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\$4.05

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JUL 10, 19
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EXHIBIT C



September 18, 2019

Via Electronic & Regular Mail

Jay Sanko
Resident Agent
KC Hemp Company, LLC
15301 W. 109th Street
Lenexa, Kansas 66219
Jay@KCHempCompany.com

RE: KC Hemp Co.

Dear Mr. Sanko:

This letter follows mine of July 10, 2019, which was returned to my office as undeliverable mail. You are being provided with electronic copies and a paper copy of this current letter to ensure your receipt.

Please be advised that this law firm is trademark counsel to KHC Enterprises LLC, doing business as KC Hemp Co. The trade name KC Hemp Co., as well as its top-level domain counterpart, <https://kchempco.com/>, is owned by KHC Enterprises LLC and is used as a trademark by my client to identify the source of its goods and services and distinguish them from the goods and services of other parties.

As you may or may not be aware, my client, and its respective members, has poured tremendous resources into building its unique brand, goodwill, and reputation. It has earned substantial publicity within the last year, being named downtown Overland Park's best new business of 2018 and favorably cited in numerous local publications. In addition, KC Hemp Co. has promoted its brand through numerous industry and community events pertaining to hemp and CBD. In short, KC Hemp Co. has made its name synonymous in Kansas City with quality hemp and CBD products and services, and the general public has come to recognize KC Hemp Co. as an established and successful leader within those areas.

The domain <https://kchempco.com/> was bought by my client on May 8, 2018. KC Hemp Co. was subsequently organized in the state of Kansas on May 21, 2018, as the record reflects, as "KC Hemp Co. LLC". It converted said name into a trade name the following day and has used it continuously in that manner since. Rights to trade names and trademarks stem from use. My client's rights to KC Hemp Co. began, therefore, as early as May 8, 2018 but no later than May 21, 2018.



It appears that KC Hemp Company, LLC (“Your Company”) was organized in the state of Kansas on April 4, 2019. The state of Kansas does not conduct a search to see whether the name of a to-be-formed LLC infringes on the rights of another business within said state, especially with respect to “d/b/a” or trade name as these are not capable of formal registration in the state of Kansas. Thus, Kansas did not approve the use of the name of Your Company or grant Your Company rights to that name. The onus is on the newcomer to ensure the business name filed will provide its user with rights. *See Christian Dior, S.A.R.L. v. Miss Dior of Flatbush, Inc.*, 173 U.S.P.Q. (BNA) 416, 418 (E.D.N.Y. 1972) (“The fact that the New York Secretary of State permitted the use of the words Miss Dior in a corporate name has no bearing on the question of trademark infringement or unfair competition.”).

The trademark and unfair competition laws of the United States provide that a newcomer’s mark infringes the mark of a prior user whenever the concurrent uses are likely to cause the public to be confused into believing that both marks originate with, or are sponsored by, or are endorsed by the same source.

The relevant inquiry is whether the name of Your Company so resembles KC Hemp Co. that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of Your Company and my client. In other words, is the name of Your Company likely to give rise to the mistaken belief that the goods and/or services of Your Company and my client emanate from the same source or that the two respective companies are somehow linked, associated, or affiliated?

Common law as well as state law provide KC Hemp Co. with certain proprietary rights. My client is entitled to restrict the use of its brand, or a confusingly similar brand, in association with similar products or services. Its brand serves as an important and distinctive representation of its products as well as the goodwill of its company. KC Hemp Co. therefore must protect itself against any misrepresentation that may cause harm to its business by facilitating the loss of its brand’s effectiveness.

This letter shall serve as notice of KC Hemp Co.’s intention to obtain federal rights to its brand by way of application to the United States Patent and Trademark Office.

Although we may not have yet witnessed any actual confusion through Your Company’s Kansas business registration of my client’s mark, we are writing to prevent any such confusion and to address this matter before it could turn into a more significant problem. We understand that it is possible that you were unaware of this conflict and that Your Company may be new enough that it has not begun using its currently registered name in association with the marketing, sale, distribution, or identification of its products and/or services. We therefore respectfully request that you respond to this letter assuring us that Your Company, and its affiliated members, employees, consultants, and agents (1) has not and will not use “KC Hemp Company”, “KC Hemp Co.” or any confusingly similar name in association with the marketing, sale, distribution,



or identification of hemp or CBD products and/or services or, if use has already begun, (2) will cease and desist the use of “KC Hemp Company”, “KC Hemp Co.” or any confusingly similar name in association with the marketing, sale, distribution, or identification of hemp or CBD products and/or services within ten calendar days of the date of this letter.

Regardless of the alternative effectuated above, given the geographic proximity of the parties and the near identicality of their names in sight, sound, meaning, and commercial impression, we request that Your Company file a name change amendment with the Kansas Secretary of State’s Office and close down its website, currently <http://kchempcompany.com/>, within thirty days of the date of this letter. You may wish to seek counsel as to what replacement business name and domain name might be available for Your Company’s use.

We hope that this issue may be resolved amicably so that KC Hemp Co. can avoid any further legal remedies by way of common, state, and/or federal law.

My client expressly reserves all rights, remedies, and claims with respect to this matter. Please be advised that nothing herein is intended by us, nor should it be construed by you, as a waiver or relinquishment of any legal or equitable rights or remedies which KC Hemp Co. or KHC Enterprises LLC may have in this matter, and all such rights and remedies are hereby expressly reserved. The above and foregoing is not intended to be a comprehensive statement of my client’s rights or positions.

Thank you for your attention and cooperation and for respecting the economic, intellectual, and creative investments made by KHC Enterprises LLC and KC Hemp Co.

Very Truly Yours,

KINCAID BUSINESS & ENTREPRENEURIAL LAW, LLC

/s/Matthew T. Kincaid

Matthew T. Kincaid

MTK

cc: Scot@KCHempCompany.com

19EF258171

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

DBA KHC ENTERPRISES LLC (D/B/A KC HEMP CO.)

Plaintiff

vs

KC HEMP COMPANY, LLC

Defendant

Case No: 19CV05896

Division: 7

K.S.A. Chapter 60

REQUEST AND SERVICE INSTRUCTION FORM

To: Clerk of the District Court:

Please issue a SUMMONS and PETITION in this action for KC HEMP COMPANY, LLC whose address for service is:

15301 W 109TH STREET
LENEXA, KS 66219

Service through the Sheriff of JOHNSON County, State of Kansas, other than by certified mail.

SERVE JAY SANKO, RESIDENT AGENT. IF MR. SANKO CANNOT BE FOUND, SERVE AN OFFICER OR MANAGER OF KC HEMP COMPANY, LLC OR LEAVE A COPY OF THE SUMMONS AND PETITION AT THE BUSINESS OFFICE WITH THE PERSON HAVING CHARGE THEREOF.

By: /s/ MATTHEW T KINCAID
MATTHEW T KINCAID, #25542
5251 W 116TH PL STE 200
LEAWOOD, KS 66211
913-735-7707

Clerk of the District Court, Johnson County Kansas
10/31/19 04:47pm MM

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

DBA KHC ENTERPRISES LLC (D/B/A KC HEMP CO.)

Plaintiff

vs

KC HEMP COMPANY, LLC

Defendant

Case No: 19CV05896

Division: 7

K.S.A. Chapter 60

SUMMONS

To the above-named defendant:

YOU ARE HEREBY NOTIFIED that an action has been commenced against you in this court. You are required to file your answer to the petition with the court and to serve a copy upon the plaintiff's attorney, as follows:

Name: MATTHEW T KINCAID
Address: 5251 W 116TH PL STE 200
LEAWOOD, KS 66211
Phone: (913) 735-7707

Within 21 days after service of summons upon you.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the attached petition, which is incorporated herein by reference. Any related claim which you may have against the plaintiff must be stated as a counterclaim in your answer, or you will thereafter be barred from making such claim in any other action.



/s/ Jennie Leach
Clerk of the District Court

Dated: October 31, 2019

Johnson County Court House, 100 N. Kansas Ave. Olathe, KS 66061

Clerk of the District Court, Johnson County Kansas
10/31/2019 17:01:56 MM

JOHNSON COUNTY KANSAS SHERIFF'S RETURN OF CIVIL PROCESS

CASE NO. 19CV05896
CHAPTER 60

KHC ENTERPRISES LLC (D/B/A KC HEMP CO.)
(PLAINTIFF)

KC HEMP COMPANY, LLC
15301 W 109TH STREET
LENEXA, KS 66219

(PARTY OF RECORD)

SHERIFF'S RETURN OF SERVICE

I have served the following, SUMMONS, PETITION AND EXHIBITS by delivering a copy of each to KC HEMP COMPANY, LLC, personally, at 15301 W 109TH STREET, on NOVEMBER 06 2019, at 0927 hours.

All done in Johnson County, Kansas

I hereby certify under penalty of perjury that the foregoing is true and correct.

Executed: November 6, 2019

Attorney for Plaintiff
MATTHEW T KINCAID

Calvin Hayden-Sheriff
Johnson County, Kansas

By /s/ CUTSHAW, JAKE, 1565

Electronically Signed

Additional Notes:
SERVED JAY SANKO, RESIDENT AGENT.

Clerk of the District Court, Johnson County Kansas
11/06/2019 09:27:24 JL