

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN CONSUMER CREDIT COUNSELING, INC.)	
)	
Plaintiff,)	Civil Action No. 16-12170
)	
v.)	Jury Trial Requested
)	
AMERICAN CONSUMER CREDIT, LLC.)	
)	
Defendant.)	
)	

COMPLAINT

This is an action for trademark infringement, false designation of origin and unfair competition, and trademark dilution. Defendant American Consumer Credit, LLC has acted intentionally to misappropriate, trade on, and wrongfully profit from the goodwill and reputation of Plaintiff American Consumer Credit Counseling, Inc.’s valuable incontestable federally registered trademarks AMERICAN CONSUMER CREDIT COUNSELING and ACCC (the Marks), and has made false and misleading statements.

Plaintiff American Consumer Credit Counseling, Inc. seeks injunctive relief and damages for trademark infringement, false designation of origin and unfair competition, and trademark dilution by Defendant American Consumer Credit, LLC in violation of the laws of the United States and the Commonwealth of Massachusetts. Plaintiff American Consumer Credit Counseling, Inc., for its Complaint against Defendant American Consumer Credit, LLC hereby states and alleges the following:

PARTIES

1. Plaintiff American Consumer Credit Counseling, Inc. (ACCC) is a Massachusetts non-profit corporation organized under the laws of the Commonwealth of Massachusetts, with a principal place of business located at 130 Rumford Ave., Suite 202 Auburndale, Massachusetts.

2. Defendant American Consumer Credit, LLC, (ACC Florida) is a Florida corporation organized under the laws of Florida, with its principal place of business at 18 Bovard Ave, Ormond Beach, Florida.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question) and 1338 (patent, trademark and unfair competition claims). The federal claims include trademark infringement, and false designation of origin and unfair competition, under the Lanham Act.

4. The Court has also subject matter jurisdiction under 28 U.S.C. §§ 1332 because the suit is between citizens of different states and the amount in controversy exceeds seventy-five thousand dollars (\$75,000), exclusive of interest and costs.

5. This Court has jurisdiction over the state law and common law claims under the doctrine of supplemental jurisdiction under 28 U.S.C. § 1367. The state and common law claims arise from or are substantially related to the same acts giving rise to the federal claims.

6. This Court has personal jurisdiction over Defendant ACC Florida under Mass. Gen. Laws Ch. 223A, § 3, because, *inter alia*, ACC Florida has conducted and upon information and belief continues to transact business in the Commonwealth of Massachusetts. ACC Florida commits acts of trademark infringement and unfair competition in while using trademarks

confusingly similar to ACCC's mark to conduct or solicit business through advertising, offering for sale, and selling of confusingly similar services.

7. ACC Florida has at least one customer in Massachusetts, and that customer has confused ACC Florida with ACCC, and misdirected her correspondence intended for ACC Florida to ACCC, including correspondence enclosing her confidential credit reports. Upon information and belief, ACC Florida provides legal services to this customer in Massachusetts.

8. Upon information and belief, ACC Florida has additional customers in Massachusetts, and solicits customers in Massachusetts.

9. ACC Florida's website, found at aconsumercredit.com, is continuously available to Massachusetts residents, and has interactive features available to Massachusetts residents, including (a) an instant chat feature, which allows a website visitor to have an interactive real-time chat with a representative of ACC Florida, (b) a "Free Consultation" form that can be filled out by a prospective customer with, among other items, name, phone number, email address and state, and the promise "Complete this form and one of our counselors will contact you to discuss how we can help you", and (c) a "Send us a message" feature that invites website visitors to leave a message for ACC Florida.

10. ACC Florida's website features numerous blog posts, at least two of which explicitly mention Massachusetts, including one that concerns laws for timeshare rescission periods and gives two only two examples, Massachusetts and Florida, and another that lists state rescission periods, including Massachusetts, and provides a link to information about filing a consumer complaint with the Massachusetts Attorney General. These features are tailored to Massachusetts residents and encourage Massachusetts residents to use ACC Florida's services.

11. ACC Florida's uses social media to reach potential customers nationwide, including Facebook, Yelp, Twitter, Google+ and Pinterest, and upon information and belief, uses such social media platforms to reach Massachusetts customers.

12. ACC Florida engages in widespread telephone solicitation and upon information and belief, does so to reach Massachusetts residents.

13. ACC Florida's website does not prohibit access or use of the website or any feature of the website by Massachusetts residents.

14. Between August 2015 and August 2016, ACCC's counsel sent 4 letters and emails to American Consumer Credit, LLC (ACC Florida) and made two telephone calls to ACC Florida's attorney, Mr. Michael Saracco. These communications made ACC Florida aware of ACCC's incontestable federal registrations identified in paragraph 22 below.

15. ACC Florida responded to one of the emails on August 15, 2016 stating "we are currently working on a solution," and then went silent. ACC Florida has not responded to ACCC's latest cease and desist letter of August 19, 2016, and has not ceased its infringing activity.

16. ACCC, a Massachusetts-based company, is injured by ACC Florida's wrongful conduct as alleged in the paragraphs below, and that harm is felt in Massachusetts, where ACCC resides.

17. These actions give rise to personal jurisdiction over ACC Florida in this Court.

18. Venue in this district is proper under 28 U.S.C. § 1391 because (a) a substantial portion of the events giving rise to ACCC's claims occurred in the Massachusetts, namely the infringing use of trademarks in Massachusetts in connection with soliciting and providing services to Massachusetts residents in connection with the infringing marks, (b) a substantial part

of the property that is the subject of the action, namely ACCC trademark rights in the marks AMERICAN CONSUMER CREDIT COUNSELING and ACCC (the Marks), are situated in Massachusetts, and (c) Defendant ACC Florida is subject to personal jurisdiction in this Court.

FACTS COMMON TO ALL COUNTS

19. Plaintiff ACCC's non-profit community service mission is to provide financial and debt counseling and education to needy individuals and families nationwide. ACCC describes its mission on its website, at consumercredit.com, a website address it has used since 1996 in connection with the Marks:

Nonprofit Consumer Credit Counseling, Debt Management, and Debt Consolidation American Consumer Credit Counseling (ACCC) provides nonprofit credit counseling, debt management plans, debt consolidation and financial education services to consumers nationwide. Our certified and professionally trained credit counseling team assists consumers by providing workable solutions for their financial problems. We offer debt relief to individuals and families that are suffering from stress related to credit card debt by providing effective credit counseling, helping to consolidate debt, and advising on debt management.

ACCC strives to develop a greater community of financially responsible individuals and families that will thrive for generations to come. Through collaboration with community partners and financial institutions, ACCC is dedicated to providing unsurpassed financial education and services to those who need it most.

20. ACCC has become one of the nation's leading providers of financial education and counseling services, providing a non-profit community service oriented alternative to for-profit debt-reorganization companies. It has clients in every state, is authorized to do business in all 50 states, and is specifically licensed to provide debt management services in every state that requires such a license. Since its founding, ACCC has helped over 560,000 clients in its 20-plus years of providing services. Just last year, ACCC served over 55,000 clients, and over 40,000

clients year-to-date. ACCC typically provides its services via the telephone and the Internet, as well as providing educational seminars at its offices.

21. ACCC is also approved by the U.S. Department of Justice Executive Office of the United States Trustee and several federal bankruptcy courts to provide pre-bankruptcy and post-bankruptcy debtor education in 49 states, and by the U.S. Department of Housing and Urban Development (HUD) to perform pre-purchase housing counseling, post-purchase counseling, money debt management, mortgage delinquency and default resolution, and homebuyer education programs, as well as home equity conversion mortgage counseling, and also provides.

22. Since its founding, all ACCC's services have always been provided in connection with its marks AMERICAN CONSUMER CREDIT COUNSELING and ACCC. ACCC also owns incontestable Federal Registration Nos. 3,253,648 for AMERICAN CONSUMER CREDIT COUNSELING, and 2,366,063 for ACCC ("the Registrations"). Both incontestable Registrations are for "credit and debt inquiry and consultation services, debt and credit counseling; debt repayment planning and scheduling; debt consolidation services; educational services, namely conducting seminars, workshops, and individual instruction in the field of credit, debt, and money management." ACCC has continuously used the Marks in connection with these services since at least 1992.

23. Defendant ACC Florida, based in the Daytona Beach greater metropolitan area, was incorporated in 2013 by Dana Micallef. ACC Florida prominently uses the marks AMERICAN CONSUMER CREDIT and ACC, on its website at aconsumercredit.com, which upon information and belief went live in January 2013:



24. Defendant ACC Florida sometimes shortens its name to “American” in its advertising.

25. Upon information and belief, Defendant ACC Florida has customers throughout the country.

26. Defendant ACC Florida has customers in Massachusetts, Arizona, California, Florida, Illinois, Indiana, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, Utah, and Canada.

27. Although Defendant ACC Florida claims to have been in business “since 2004,” ACC Florida was in fact not formed until 2013, and its website address URL aconsumercredit.com was not created until January 7, 2013.

28. Upon information and belief, Defendant ACC Florida began using the marks AMERICAN CONSUMER CREDIT in 2013.

29. Upon information and belief, Defendant ACC Florida began using the mark ACC in 2013.

30. Upon information and belief, Defendant ACC’s statements that it was founded or established in 2004, and that it has been providing services since 2004, are false statements.

31. From at least September 22, 2012 until at least April 8, 2016, Defendant ACC Florida used the web address consumeraide.org, on which it prominently used the AMERICAN CONSUMER CREDIT mark in connection with offering “consumer education and fraud alerts” and “contract disputes and restitution from Fraud,” and described itself as “A Consumer Advocacy Group.” Defendant ACC Florida’s statement that it is a “A Consumer Advocacy Group,” falsely suggests it is something other than a for-profit enterprise that charges people for its services, and thus this statement is false.

32. On its current Facebook and Yelp pages, Defendant ACC Florida falsely states: “Our 12 Year Established BBB Rated A+ team of counselors will help you ...”. At least one customer actually relied on this false statement, noting in her BBB complaint: “I am looking for this company to have a decreased rating on bbb. It now has A+ which is beyond me as this is evidently a scam/fraud.” The false A+ rating was also found on the website at aconsumercredit.com as late as 2014, and as late as 2013 on the website at consumeraide.org, at the top of the home page along with the AMERICAN CONSUMER CREDIT mark.

33. Defendant ACC Florida also repeatedly claims to have “staff” of attorneys. However, ACC Florida’s website indicates it merely uses a single outside attorney, not a “staff” of in-house attorneys. Upon information and belief, ACC Florida does not in fact have a staff of attorneys, and thus ACC’s statement is false.

34. Upon information and belief, Defendant ACC Florida is advertising, soliciting and providing legal services throughout the country without proper licensing. ACC Florida has solicited at least one client through a cold call, and has national advertising that includes its website and social media sites, including Facebook, Pinterest, Google+, and Yelp. ACC Florida’s Twitter feed from May 17 to October 10, 2016, shows over 20 instances of ACC Florida offering “legal services” and touting its “legal team.” This national advertising and solicitation, along with actual evidence of clients throughout the country, indicates that ACC Florida is advertising, soliciting and providing legal advice throughout the country, despite the fact that ACC Florida’s only self-described “staff attorney,” Michael Saracco, is licensed to practice only in Florida.

35. Defendant ACC Florida is willfully and purposefully using the marks AMERICAN CONSUMER CREDIT, AMERICAN, and ACC in connection with its services in

such a way as to create a false impression that ACC Florida and its services are affiliated or related to ACCC and its services.

36. Upon information and belief, Defendant ACC Florida chose the domain name `aconsumercredit.com` because of its similarity with Plaintiff ACCC's `consumercredit.com` domain name, and used the domain name `aconsumercredit.com` in conjunction with the marks AMERICAN CONSUMER CREDIT, AMERICAN and ACCC, and in conjunction with the false statements made as alleged in paragraphs 30, 31, 32, and 33 above, in an effort to cause confusion and divert potential customers from Plaintiff ACCC to Defendant ACC Florida, and/or to create a false impression that ACC Florida and its services are affiliated or related to ACCC and its services, is likely to cause consumer confusion and harm to ACCC's reputation in the marketplace. and is likely to cause such consumer confusion.

37. Defendant ACC Florida's use of the marks AMERICAN CONSUMER CREDIT, AMERICAN, and ACC in connection with its services is likely to cause consumer confusion and harm to ACCC's reputation in the marketplace.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Trademark Infringement in Violation of the Lanham Act (15 U.S.C. §1114)

38. ACCC repeats and realleges the facts set forth in each of the preceding paragraphs.

39. Defendant ACC Florida is using the marks AMERICAN CONSUMER CREDIT, AMERICAN and ACC in connection with the sale, offer for sale, and advertising and marketing of its services in commerce, without authorization from ACCC, and these marks are colorable imitations of Plaintiff ACCC's Marks.

40. Defendant ACC Florida's unlawful use of these marks is likely to cause confusion, mistake, or deception as to affiliation, connection, or association, of Defendant ACC Florida and its services with Plaintiff ACCC and its services, and is likely to cause confusion, mistake, or deception regarding the origin of Defendant ACC Florida's services, and sponsorship or approval by Plaintiff ACCC.

41. Defendant ACC Florida's use of the marks AMERICAN CONSUMER CREDIT and AMERICAN constitute infringement of ACCC's incontestable Federal Registration No. 3,253,648 for AMERICAN CONSUMER CREDIT COUNSELING, pursuant to 15 U.S.C. §1114.

42. Defendant ACC Florida's use of the mark ACC constitutes infringement of ACCC's incontestable Federal Registration No. 2,366,063 for ACCC, pursuant to 15 U.S.C. §1114.

43. Defendant ACC Florida's unlawful acts will result in harm to Plaintiff ACCC's reputation and its goodwill in the Marks in the marketplace.

44. Defendant ACC Florida's conduct described above has been willful, reckless, and in total disregard for ACCC's valuable trademark rights.

45. By reason of the foregoing, ACCC has suffered monetary damages and loss of goodwill. Defendant ACC Florida's acts are causing irreparable injury to ACCC, for which there is no adequate remedy at law, and will continue to do so unless Defendant ACC Florida's use of the marks AMERICAN CONSUMER CREDIT, AMERICAN and ACC is immediately enjoined by this Court.

46. As a result of Defendant ACC Florida's acts described herein, Plaintiff ACCC is entitled to damages in an amount to be proven at trial. By reason of the foregoing, ACCC has

been damaged and is suffering, and will continue to suffer irreparable harm, and is entitled to immediate injunctive relief and damages.

SECOND CAUSE OF ACTION
False Designation of Origin and Federal Unfair Competition
in Violation of the Lanham Act
(15 U.S.C. §1125)

47. ACCC repeats and realleges the facts set forth in each of the preceding paragraphs.

48. Defendant ACC Florida is using the marks AMERICAN CONSUMER CREDIT, AMERICAN and ACC in connection with the sale, offer for sale, and advertising and marketing of its services in commerce, without authorization from ACCC.

49. Defendant ACC Florida's unlawful use of these marks is likely to cause confusion, mistake, or deception as to affiliation, connection, or association, of Defendant ACC Florida and ACCC, and is likely to cause confusion, mistake, or deception regarding the origin, sponsorship or approval of ACC Florida's services and commercial activities by Plaintiff ACCC.

50. ACC Florida's false statements alleged in paragraphs 30, 31, 32, and 33 above are made in commercial advertising and promotion, and are false and misleading descriptions of facts and false and misleading representations of facts that are likely to cause confusion, mistake or to deceive as to ACC Florida's services and commercial activities.

51. ACC Florida's use of the domain name aconsumercredit.com in conjunction with the marks AMERICAN CONSUMER CREDIT, AMERICAN and ACCC, and in conjunction with the false statements made as alleged in paragraphs 30, 31, 32, and 33 above, is likely to cause confusion, mistake, or deception as to affiliation, connection, or association, of Defendant ACC Florida and ACCC, and is likely to cause confusion, mistake, or deception regarding the

origin, sponsorship or approval of ACC Florida's services and commercial activities by Plaintiff ACCC.

52. Defendant ACC Florida has engaged in unlawful acts that constitute unfair competition and false designation of origin in violation of §43(a) of the Lanham Act, codified at 15 U.S.C. 1125(a).

53. Defendant ACC Florida's unlawful acts will result in harm to Plaintiff ACCC's reputation and its goodwill in the Marks in the marketplace.

54. Defendant ACC Florida's conduct described above has been willful, reckless, and in total disregard for ACCC's valuable rights.

55. By reason of the foregoing, ACCC has suffered monetary damages and loss of goodwill. Defendant ACC Florida's acts are causing irreparable injury to ACCC, for which there is no adequate remedy at law, and will continue to do so unless Defendant ACC Florida's unlawful acts, including ACC Florida's use of the marks AMERICAN CONSUMER CREDIT, AMERICAN and ACC, and its false statements, are immediately enjoined by this Court.

56. As a result of Defendant ACC Florida's acts described herein, Plaintiff ACCC is entitled to damages in an amount to be proven at trial. By reason of the foregoing, ACCC has been damaged and is suffering, and will continue to suffer irreparable harm, and is entitled to immediate injunctive relief and damages.

THIRD CAUSE OF ACTION
Unfair Competition and Trademark Infringement
in Violation of Massachusetts Common Law

57. ACCC repeats and realleges the facts set forth in each of the preceding paragraphs.

58. Plaintiff ACCC owns and enjoys common law rights in its trademarks AMERICAN CONSUMER CREDIT COUNSELING and ACC.

59. Defendant ACC Florida is using the marks AMERICAN CONSUMER CREDIT, AMERICAN and ACC in Massachusetts in connection with the sale, offer for sale, and advertising and marketing of its services in commerce, without authorization from ACCC.

60. Defendant ACC Florida's unlawful use of these marks is likely to cause confusion, mistake, or deception as to affiliation, connection, or association, of Defendant ACC Florida and ACCC, and is likely to cause confusion, mistake, or deception regarding the origin, sponsorship or approval of ACC Florida's services and commercial activities by Plaintiff ACCC.

61. ACC Florida's false statements alleged in paragraphs 30, 31, 32, and 33 above are made in commercial advertising and promotion, and are false and misleading descriptions of facts and false and misleading representations of facts that are likely to cause confusion, mistake or to deceive as to ACC Florida's services and commercial activities.

62. ACC Florida's use of the domain name aconsumercredit.com in conjunction with the marks AMERICAN CONSUMER CREDIT, AMERICAN and ACCC, and in conjunction with the false statements made as alleged in paragraphs 30, 31, 32, and 33 above, is likely to cause confusion, mistake, or deception as to affiliation, connection, or association, of Defendant ACC Florida and ACCC, and is likely to cause confusion, mistake, or deception regarding the origin, sponsorship or approval of ACC Florida's services and commercial activities by Plaintiff ACCC.

63. Defendant ACC Florida's wrongful acts and conduct as set forth herein constitute trademark infringement, unfair competition, and willful, unfair and deceptive acts or practices within the Commonwealth of Massachusetts and in violation of Massachusetts common law.

64. Defendant ACC Florida's unlawful acts will result in harm to Plaintiff ACCC's reputation and its goodwill in the Marks in the marketplace.

65. Defendant ACC Florida's conduct described herein has been willful, reckless, and in violation of the Plaintiff's rights.

66. Defendant ACC Florida's wrongful and infringing activities have intended to cause, have caused, and unless enjoined by the Court, will continue to cause, irreparable injury and other harm to Plaintiff ACCC's business, reputation and goodwill.

67. Defendant ACC Florida's conduct described herein has been willful, reckless, and in violation of the Plaintiff's rights.

68. As a result of Defendant ACC Florida's acts described herein, Plaintiff ACCC is entitled to damages in an amount to be proven at trial. By reason of the foregoing, ACCC has been damaged and is suffering, and will continue to suffer irreparable harm, and is entitled to immediate injunctive relief and damages.

FOURTH CAUSE OF ACTION
Trademark Dilution in Violation of Massachusetts Law
(Massachusetts General Law 110H §13)

69. ACCC repeats and realleges the facts set forth in each of the preceding paragraphs.

70. Defendant ACC Florida's unauthorized use of the trademarks AMERICAN CONSUMER CREDIT, AMERICAN and ACC will and does dilute the distinctive quality of ACCC's valuable common law trademark rights in the Marks in violation of M.G.L c.110H, § 13.

71. Unless Defendant's ACC Florida is enjoined from its wrongful conduct, ACCC will continue to suffer irreparable harm to its business reputation and the distinctive quality of its trademark, for which ACCC has no adequate remedy at law.

72. Defendant ACC Florida's conduct described above has been willful, reckless, and in violation of Plaintiff's rights.

73. By reason of the acts of Defendant ACC Florida alleged herein, ACCC has suffered, is suffering, and will continue to suffer irreparable harm and is entitled to immediate injunctive relief and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ACCC respectfully asks this Court to enter judgment for on all counts against Defendant ACC Florida, and to grant ACCC, the following relief:

1. A preliminary injunction preventing Defendant ACC Florida and its officers, directors, employees, agents, affiliates, successors, assigns, and all those in privity or acting in concert with it, from using the trademarks AMERICAN CONSUMER CREDIT, AMERICAN, ACC or any mark similar thereto in connection with credit and debt inquiry and consultation services, debt and credit counseling, debt repayment planning and scheduling, debt consolidation services, pre-bankruptcy and post-bankruptcy counseling, housing counseling, student loan counseling, reverse mortgage counseling, educational services, namely conducting seminars, workshops, and individual instruction in the field of credit, debt, budgeting and money management, and timeshare cancelation services, including but not limited to any mark containing the words AMERICAN, AMERICAN CONSUMER, AMERICAN CONSUMER CREDIT, or ACC, and unfairly competing with ACCC.

2. A permanent injunction restraining Defendant ACC Florida and its officers, directors, employees, agents, affiliates, successors, assigns, and all those in privity or acting in concert with it, from using the trademarks AMERICAN CONSUMER CREDIT, AMERICAN, ACC, and the domain name aconsumercredit.com or any mark similar thereto in connection with credit and debt inquiry and consultation services, debt and credit counseling, debt repayment planning and scheduling, debt consolidation services, pre-bankruptcy and post-bankruptcy counseling, housing counseling, student loan counseling, reverse mortgage counseling, educational services, namely conducting seminars, workshops, and individual instruction in the field of credit, debt, budgeting and money management, and timeshare cancelation services, including but not limited to any mark containing the words AMERICAN, AMERICAN CONSUMER, AMERICAN CONSUMER CREDIT, or ACC, and unfairly competing with ACCC.

3. A permanent injunction restraining Defendant ACC Florida and its officers, directors, employees, agents, affiliates, successors, assigns, and all those in privity or acting in concert with it, from falsely stating that Defendant ACC Florida was founded or established in, or has provided services since, 2004, falsely stating that it has a BBB A+ rating, falsely stating that it is a consumer advocacy organization, or falsely stating that it has a “staff of attorneys”.

4. Order Defendant to account and pay over to Plaintiff all gains, profits, and advantages derived from its unlawful conduct pursuant, the damages which Plaintiff has sustained by reason of the conduct alleged herein, the costs of this action, or such other sum as the court shall find to be just, pursuant to 15 U.S.C. §1117, Massachusetts law, and other applicable law;

6. Order Defendant to pay a sum totaling three times the compensatory damages for its willful and intentional misconduct as provided for in 15 U.S.C. §1117, and other applicable law;
7. Allow Plaintiff permission to elect, prior to final judgment, statutory damages as its recovery rather than actual damages and profits as provided in 15 U.S.C. §1117;
8. Order Defendant to pay pre-judgment interest on Plaintiff's damages as provided in 15 U.S.C. §1117 and other applicable law;
10. Order Defendant to pay Plaintiff's attorneys' fees as provided by 15 U.S.C. §1117, and other applicable law; and
11. Grant such other and further relief as is just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a jury trial of any issues in this action so triable.

Dated: October 27, 2016

Respectfully submitted,

By its Attorneys,

/s/ Kerry L. Timbers
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document will be served upon the registered agent of ACC Florida by hand delivery.

/s/ Kerry L. Timbers

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