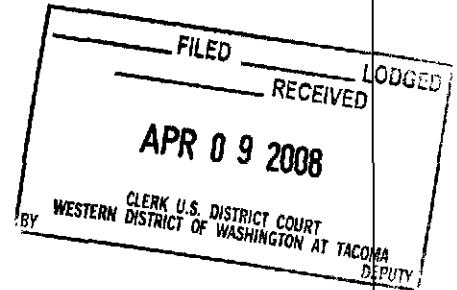




08-CV-05219-CMP



IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHARTER CONSTRUCTION, INC.,

Plaintiff,

v.

CHARTER MECHANICAL CONTRACTORS,
INC.

Defendant.

CASE NO.

COMPLAINT

008 5219 BHS

Plaintiff Charter Construction, Inc. ("Charter Construction"), by and through its attorneys, Stanislaw Ashbaugh, alleges as follows:

I. PARTIES

1. Plaintiff Charter Construction is and at all relevant times has been a Washington corporation with its principal place of business located in King County, Washington. Charter Construction also has an office in Portland, Oregon.

2. Based upon information and belief, defendant Charter Mechanical Contractors, Inc. ("Charter Mechanical") is and at all relevant times has been an Oregon corporation which has done business in Clark County, Washington under the names Charter Mechanical Contractors Inc., Charter Mech Contractors Inc. and/or Charter Mechanical.

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1 10. Charter Construction has won a variety of awards for its work, including
2 among others, multiple Associated General Contractors Grand Awards for Construction
3 Excellence, and more than 10 American Institute of Architects Awards.

4 11. Charter Construction was also recently featured in the *Seattle Daily Journal of*
5 *Commerce* for its participation in the construction of Olson Sundberg Kundig Allen's first
6 condominium project, 1111 East Pike.

7 12. Charter Construction is a famous company in the Pacific Northwest
8 Construction community.

9 13. Charter Construction is informed and believes that Charter Mechanical was
10 formed in 2006, and provides subcontracting services in the areas of process piping, HVAC
11 and plumbing.

12 14. Charter Mechanical is not a famous company in the Pacific Northwest
13 Construction community.

14 15. Charter Mechanical has a distinctive logo (the "Charter Logo"). Charter
15 Mechanical owns all rights, title and interests in the Charter Logo, and has filed a federal
16 trademark registration for its name and the Charter Logo.

17 16. Charter Construction has for many years continuously been using the Charter
18 Logo to identify and distinguish the source of its goods and services in its business materials.
19 Examples of the Charter Logo can be found on Charter Construction's website,
20 <http://www.chartercon.com/>.

21 17. A logo that is a copy of the Charter Log and/or is substantially similar to the
22 Charter Logo appears on Charter Mechanical's website, <http://www.chartermechanical.com/>.

1 Charter Mechanical is and has been using that logo to identify its goods and services in
2 commerce without Charter Construction's permission.

3 18. Charter Mechanical's use of that logo in commerce is likely to cause
4 confusion as to the affiliation, connection or association of Charter Construction with Charter
5 Mechanical and/or likely to cause confusion as to the origin, sponsorship or approval of
6 Charter Construction's goods and services with those of Charter Mechanical's.

7 19. After becoming aware of Charter Mechanical's infringing use of the Charter
8 Logo, Charter Construction notified Charter Mechanical that it was infringing the Charter
9 Logo.

10 IV. CLAIMS FOR RELIEF

11 A. First Cause of Action: Trademark Infringement Under Section 32 of the 12 Lanham Act

13 20. Charter Construction repeats and realleges each and every preceding
14 paragraph as though fully set forth herein.

15 21. Charter Construction has been continuously using its Charter Logo since at
16 least April 1, 2003 to identify its goods and services.

17 22. Charter Mechanical's use of a logo that is substantially similar to the Charter
18 Logo in connection with the advertising and sale of its services causes and is likely to cause
19 confusion, cause mistake, and to deceive.

20 23. Charter Mechanical's use of a logo that is substantially similar to the Charter
21 Logo in connection with the advertising and sale of its services deceives and is likely to
22 deceive others as to the affiliation, connection or association between Charter Construction
23 and Charter Mechanical and/or is likely to cause confusion as to the origin, sponsorship or
24 approval of Charter Construction's goods with those of Charter Mechanical.

1 24. Charter Mechanical's use of a logo that is a copy of and/or is substantially
2 similar to the Charter Logo in connection with the advertising and sale of its services
3 infringes the trademark rights of Charter Construction and is a violation of Section 32 of the
4 Lanham Act, 15 U.S.C. § 1114.

5 25. Charter Construction has been, and continues to be, damaged by the infringing
6 actions of Charter Mechanical in an amount to be proven at trial, and also in a manner that
7 cannot be fully measured or compensated in economic terms. The infringement by Charter
8 Mechanical has damaged, and will continue to damage, the market share, reputation, and
9 goodwill of Charter Construction, and discourages current and potential customers from
10 dealing with Charter Construction.

11 26. The irreparable harm caused by Charter Mechanical's infringement will
12 continue unless and until such use is enjoined during the pendency of this action and
13 thereafter.

14 27. Charter Construction is entitled to an award of its attorneys' fees and costs
15 pursuant to the provisions of the Lanham Act.

16 **B. Second Cause of Action: Unfair Competition Under Section 43 of the Lanham**
17 **Act**

18 28. Charter Construction repeats and realleges each and every preceding
19 paragraph as though fully set forth herein.

20 29. Charter Construction has been continuously using its Charter Logo since at
21 least April 1, 2003 to identify its goods and services.

22 30. Use of the Charter Logo by Charter Mechanical in connection with the
23 advertising and sales of its services constitutes unfair competition in violation of Section
24 43(a) of the Lanham Act, 15 U.S.C. § 1125.

1 31. Use of the Charter Logo in connection with the operation of
2 <http://www.chartermechanical.com/> and the resulting sales of goods and services by Charter
3 Mechanical is likely to cause confusion, cause mistake and deceive as to the origin,
4 sponsorship or approval of services under the Charter Logo by Charter Construction.

5 32. Charter Mechanical knew of the exclusive rights of Charter Construction in
6 the Charter Logo. Charter Mechanical's use of a logo that is a copy of and/or is substantially
7 similar to the Charter Logo has therefore been knowing, willful, and deliberate.

8 33. Charter Construction has been, and continues to be, irreparably damaged by
9 such unfair competition in an amount to be proven at trial and in a manner and amount that
10 cannot be fully measured or compensated in economic terms. The actions of Charter
11 Mechanical have damaged, and will continue to damage, the market, reputation and goodwill
12 of Charter Construction, and discourages current and potential customers from dealing with
13 Charter Construction.

14 34. The irreparable harm caused by the use of a logo that is a copy of and/or is
15 substantially similar to the Charter Logo will continue unless and until such use is enjoined
16 during the pendency of this action and thereafter.

17 35. Charter Construction is entitled to an award of its attorneys' fees and costs
18 pursuant to the provisions of the Lanham Act.

19 **C. Third Cause of Action: Unfair Competition Under Washington State Law**

20 36. Charter Construction repeats and realleges each and every preceding
21 paragraph as though fully set forth herein.

22 37. Use of a logo substantially similar to the Charter Logo by Charter Mechanical
23 in connection with the operation of <http://www.chartermechanical.com/> and the resulting
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1 sales of goods and services by Charter Mechanical is an unlawful use by Charter Mechanical
2 which is likely to cause confusion in the minds of the public.

3 38. Use of a logo substantially similar to the Charter Logo by Charter Mechanical
4 in connection with the operation of <http://www.chartermechanical.com/> and the resulting
5 sales of goods and services by Charter Mechanical constitutes unfair competition in violation
6 of the common law of the State of Washington.

7 39. Charter Construction has been, and continues to be, irreparably damaged by
8 such unfair competition in an amount to be proven at trial and in a manner and amount that
9 cannot be fully measured or compensated in economic terms. The actions of Charter
10 Mechanical have damaged, and will continue to damage, the market, reputation and goodwill
11 of Charter Construction, and discourages current and potential customers from dealing with
12 Charter Construction.

13 40. The irreparable harm caused by the use of a logo that is a copy of and/or is
14 substantially similar to the Charter Logo will continue unless and until such use is enjoined
15 during the pendency of this action and thereafter.

16 VII. PRAYER FOR RELIEF

17 WHEREFORE, plaintiff Charter Construction prays for relief against defendant
18 Charter Mechanical as follows:

19 1. That Charter Mechanical and all persons in active concert or participation
20 with Charter Mechanical be enjoined and restrained during the pendency of this action from
21 infringing Charter Construction's trademark rights in the Charter Logo, including but not
22 limited to ordering Charter Mechanical to remove the substantially similar logo from Charter
23 Mechanical's websites and corporate materials;

2. That all items created by Charter Mechanical bearing the Charter Logo be impounded and destroyed;

3. For judgment against Charter Mechanical in such sum as will fully and fairly compensate Charter Construction, in an amount to be proven at trial;

4. For an accounting of all gains and profits derived by Charter Mechanical through unfair competition and unfair trade practices;


5. For a permanent injunction ordering the removal of the substantially similar logo used by Charter Mechanical from Charter Mechanical's (and all persons in active concert or participation with Charter Mechanical) websites and any corporate materials, and requiring all such parties to immediately destroy all materials, products, documents and any other tangible item in its care, custody, and control containing the substantially similar logo;

6. For an award of attorneys' fees and costs incurred herein; and

7. For such other and further relief that the Court deems just and equitable.

DATED this 8th day of April, 2008.

STANISLAW ASHBAUGH

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