IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION

AZ Enterprises, Inc. 2573 Richmond Rd. Suite 240 Lexington, KY 40509 Plaintiff v. Posh Nails 3090 Todds Rd. Suite 120 Lexington, KY 40509 Trini Tran 3090 Todds Rd. Suite 120 Lexington, KY 40509 Tommy Nguyen 3090 Todds Rd. Suite 120 Lexington, KY 40509 Defendants.	:	Electronically Filed Case No. _____

COMPLAINT WITH JURY DEMAND

Plaintiff, by its attorneys, complaining of Defendants, alleges as follows:

NATURE OF ACTION

1. This is a Complaint for: (i) Defendants' unfair competition under the United States

Trademark Act of 1946 ("Lanham Act"), as amended, 15 U.S.C. § 1125(a); (ii) common law unfair competition and infringement; and (iii) service mark infringement under the laws of the Commonwealth of Kentucky.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the subject matter of Plaintiff's claims arising under the Lanham Act pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §1331. Supplemental jurisdiction exists over Plaintiff's state law claims under 28 U.S.C. § 1367.

3. This Court has personal jurisdiction over the Defendants because they are located in and/or conduct business in this District and because they committed acts of unfair competition and service mark infringement in this District.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because, upon information and belief, a substantial part of the acts of infringement or unfair competition complained of occurred and continues to occur within this District.

PARTIES

5. Plaintiff, AZ Enterprises, Inc. is a Kentucky corporation having an address at 2573 Richmond Rd., Suite 240, Lexington, Kentucky 40509.

6. Upon information and belief, Defendant Posh Nails ("Posh Nails"), is an unregistered and unlicensed business having an address at 3090 Todds Rd., Suite 120, Lexington, Kentucky 40509.

7. Upon information and belief, Defendant Trini Tran ("Tran"), is an individual

having an address at 3090 Todds Rd., Suite 120, Lexington, Kentucky 40509. Upon information and belief, Tran is an owner of Posh Nails.

8. Upon information and belief, Defendant Tommy Nguyen ("Nguyen"), is an individual having an address at 3090 Todds Rd., Suite 120, Lexington, Kentucky 40509. Upon information and belief, Nguyen is an owner of Posh Nails.

FACTS

9. Since 2001, Plaintiff has provided and continues to provide high quality hair salon, day spa, and nail care services.

10. Plaintiff has continuously used the marks POSH and POSH & Design (collectively the "Plaintiff's Marks") in commerce to promote its salon, spa, and nail care services since at least as early as 2001.

11. Plaintiff owns Commonwealth of Kentucky Certificate of Service Mark Registration Certificate No. 016770 for the mark POSH & Design to identify "hair salon services, day spa services, and nail care services" (the "'770 Registration," copy attached as ***Exhibit A***).

DEFENDANTS' ILLEGAL ACTS

12. In October 2007, Plaintiff became aware that Defendants were in the process of opening a business to provide hair and nail services using the mark POSH. ***Exhibit B*** shows a photo of a temporary sign being used by the Defendants during this period of time.

13. On October 22, 2007, Plaintiff's counsel forwarded a letter to Defendants

informing them of their infringement of Plaintiff's Marks. Plaintiff further requested that Defendants cease all uses of the mark POSH. A copy of this letter is attached as ***Exhibit C***.

14. Despite the requests in the October 22nd letter, Defendants chose to further infringe Plaintiff's Marks by continuing to use the trade name and mark POSH.

15. On November 5, 2007, Plaintiff's intellectual property counsel sent a certified letter reiterating Plaintiff's rights in Plaintiff's Marks and demanding that Defendants cease use of POSH as a trade name and/or mark. A copy of this letter is attached as ***Exhibit D***.

16. Upon information and belief the November 5th letter was received by Tran, as she contacted Plaintiff's counsel by phone to demand money in exchange for ceasing the infringement.

17. Plaintiff's counsel forwarded another certified letter (sent on November 20, 2007), rejecting Tran's offer and reiterating Plaintiff's rights in Plaintiff's Marks. A copy of this letter is attached as ***Exhibit E.***

18. Upon information and belief, after extensive notice of Plaintiff's Marks and Plaintiff's rights therein, Defendants proceeded to open their business and continue their infringement.

19. Defendants' use of Plaintiff's Marks is likely to confuse consumers into believing Plaintiff is the operator or that Plaintiff sponsors, licenses, approves, is otherwise affiliated with or benefits from the Defendants' services.

20. Defendants' infringement of Plaintiff's Marks has caused, is causing, and will

continue to cause, a likelihood of confusion, deception and mistake on the part of consumers. This confusion has caused, is causing, and will continue to cause irreparable harm to Plaintiff.

21. Defendants are directly, vicariously and/or contributorily liable for the aforementioned actions.

22. Plaintiff has suffered harm and damages as a result of the acts of Defendants in an amount not yet determined. The harm and damages have been directly and proximately caused by the Defendants' wrongful advertising, promotion, marketing, display, sale and offers for sale of their services using the POSH mark.

23. Upon information and belief, Defendants' acts have been willful and with complete disregard of Plaintiff's rights in Plaintiff's Marks.

COUNT I
FEDERAL UNFAIR COMPETITION
(15 U.S.C. §§ 1125(a))

24. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in Paragraphs 1-23 as if stated in full.

25. As described above, Plaintiff has made widespread and continuous use of Plaintiff's Marks in commerce. The marks are inherently distinctive or have acquired secondary meaning in the relevant trade before the introduction of Defendants' infringing POSH mark.

26. Defendants' use of the infringing POSH mark in connection with its hair and nail

services constitutes use in commerce of a false designation of origin, false and misleading description of fact, and false and misleading representation of fact, which is likely to cause confusion, or cause mistake, or to deceive the public as to the affiliation, connection, or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by Plaintiff, in violation of 15 U.S.C. § 1125(a).

27. Defendants' acts also constitute an attempt to trade on the goodwill that Plaintiff has developed in connection with Plaintiff's Marks, to Plaintiff's detriment.

28. Upon information and belief, Defendants' acts of infringement complained of herein are likely to cause confusion and deception of the public, misleading prospective purchasers and others as to the true source, connection, sponsorship, affiliation or approval of Defendants' services or commercial activites, and have been committed in reckless disregard of Plaintiff's rights.

29. Upon information and belief, Defendants used the POSH mark with full knowledge of Plaintiff's prior use of the same or similar mark. Thus, Defendants willfully violated Plaintiff's rights.

30. Plaintiff is without adequate remedy at law, in that damages are extremely difficult to ascertain.

31. As a result of Defendants' acts of infringement as alleged above, Plaintiff has suffered and will continue to suffer irreparable harm in the form of damage and injury to its

business, reputation, and goodwill, and will sustain serious loss of revenues and profits, and will continue to do so unless Defendants are preliminarily and permanently restrained and enjoined by this Court from further violating Plaintiff's rights.

COUNT II
COMMON LAW UNFAIR COMPETITION AND INFRINGEMENT

32. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in Paragraphs 1-31 as if stated in full.

33. As described above, Plaintiff has made widespread and continuous use of Plaintiff's Marks in the Commonwealth of Kentucky. The marks are inherently distinctive or have acquired secondary meaning in the relevant trade before the introduction of Defendants' infringing POSH mark.

34. Upon information and belief, Plaintiff's common law rights in the POSH mark are senior to any rights of Defendants in the infringing POSH mark.

35. On information and belief, such unauthorized use by Defendants of the POSH mark is likely to cause confusion, deception, and mistake with Plaintiff's Marks in the minds of the purchasing public as to the source of the services and/or the affiliation of Defendants and Plaintiff, and to cause consumers to believe Defendants' services originate from, are provided by, or are endorsed or sponsored by Plaintiff, when in fact they are not.

36. By such infringing conduct, Defendants are improperly trading upon Plaintiff's reputation and goodwill and impairing Plaintiff's valuable rights in and to the POSH mark.

37. By reason of Defendants' conduct, Plaintiff has suffered and will continue to suffer irreparable harm in the form of damage and injury to its business, reputation, and goodwill, and will sustain serious loss of revenues and profits, and will continue to do so unless Defendants are preliminarily and permanently restrained and enjoined by this Court from further violating Plaintiff's rights.

COUNT III
VIOLATION OF KENTUCKY REVISED STATUTES § 365.561 ET SEQ.
SERVICE MARK INFRINGEMENT

38. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in Paragraphs 1-37 as if stated in full.

39. As previously mentioned, Plaintiff owns the '770 Registration for the mark POSH & Design to identify "hair salon services, day spa services, and nail care services."

40. Also, as described above, Plaintiff has made widespread and continuous use of the Plaintiff's Marks in the Commonwealth of Kentucky. The marks are inherently distinctive or have acquired secondary meaning in the relevant trade before the introduction of Defendant's infringing POSH mark.

41. Defendants have sold, offered for sale, advertised, marketed, and promoted in commerce in the Commonwealth of Kentucky services under the POSH mark identical to the services identified in the '770 Registration.

42. Defendants activities constitute use, without the consent of registrant, a reproduction, counterfeit, copy, and/or colorable imitation of the mark in the '770

Registration in connection with the sale, distribution, offering for sale, and/or advertising of any services, which is likely to cause confusion or mistake or to deceive as to the source or origin of the services.

43. Defendants' activities represent reproducing, making, copying, or colorably imitating Plaintiff's Marks and applying the same to advertisements used or intended to be used upon or in connection with the sale or other distribution within Kentucky of the Defendants' goods or services in violation of KRS §365.601.

44. As previously mentioned, upon information and belief, Defendants' acts have been committed with the intent to cause confusion or mistake or to deceive.

45. As a result of Defendants' acts of infringement as alleged above, Plaintiff has suffered and will continue to suffer irreparable harm in the form of damage and injury to its business, reputation, and goodwill, and will sustain serious loss of revenues and profits, and will continue to do so unless Defendants are preliminarily and permanently restrained and enjoined by this Court under KRS §365.603(1) from further manufacture, use, display, or sale of such imitations of the mark.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands that this Court:

1. Issue a preliminary injunction and thereafter a permanent injunction restraining and enjoining Defendants and any principals, officers, agents, servants, employees, attorneys, representatives, successors and assigns of Defendants, and all those in privity, concert or

participation with Defendants, from:

a. imitating, copying, duplicating, or otherwise using the mark POSH, or any version thereof, in connection with the description, marketing, promotion, advertising, sale, or offer for sale of any goods or services, as a trade name or otherwise.

b. using any false designation of origin or description that can or is likely to lead the trade or public, or individual members thereof, to believe mistakenly that any product or service advertised, promoted, offered or sold by Defendants is sponsored, endorsed, connected with, approved, or authorized by Plaintiff;

c. causing likelihood of confusion or injury to Plaintiff's business reputation and to the distinctiveness of the mark POSH;

d. engaging in any other activity constituting unfair competition or infringement of the mark POSH;

e. destroying or otherwise disposing of any infringing products or advertisements, or any documents pertaining to them or their acquisition or to any sales or transfer heretofore made; and

f. assisting, aiding, or abetting any person or entity in engaging or performing any activity enumerated in paragraphs (a) through (e) above.

2. Issue an order requiring Defendants and any principals, officers, agents, servants, employees, attorneys, successors, and assigns, and all those in active privity or concert with Defendants who receive actual notice of said order, to deliver to Plaintiff for destruction all

infringing merchandise, advertisements, or otherwise, in their possession or under their control which bears unauthorized simulations, copies or colorable imitations of Plaintiff's Mark POSH.

3. Issue an order requiring Defendants to give written notice of the injunction to all those who previously offered the infringing goods or services and those to whom the infringing goods or services have been sold.

4. Direct Defendants to file with this Court and serve on counsel for Plaintiff, within thirty (30) days after entry of the injunction, a written report under oath setting forth in detail the manner in which Defendants have complied with the foregoing paragraphs.

5. Find Defendants liable and award to Plaintiff monetary relief in an amount to be fixed by the Court in its discretion as just, including all damages of any kind sustained by Plaintiff resulting from Defendants' infringement and unfair competition.

6. Order an accounting and render judgment against Defendants for all profits wrongfully derived by reason of their infringement and unfair competition, including trebling such award of damages.

7. Award attorney's fees and costs to Plaintiff.

8. Order an award of punitive damages in an amount sufficient to punish Defendants.

9. Grant to Plaintiff such other and further relief as the Court may deem just, proper and equitable under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury trial on all issues so triable.

Respectfully submitted,

Date: January 31, 2008

s/Brett G. Corbly
Brett G. Corbly, Esq.
KING & SCHICKLI, PLLC
247 N. Broadway
Lexington, Kentucky 40507
Tel: (859) 252-0889
Facsimile: (859) 252-0779
Email: brett@iplaw1.net
Attorney for Plaintiff

COMMONWEALTH OF KENTUCKY

Certificate of Service Mark Registration

Certificate number 016770

The Secretary of State does hereby certify that the following, whose business address is

AZ Enterprises, Inc.
2573 Richmond Road, Suite 240
Lexington, KY 40509

is the legal registrant in Kentucky of the following service mark of which he claims ownership:

Posh (& design)

and briefly described as follows:

the word "Posh" in stylized script.

The services with which the service mark is used are: **hair salon services, day spa services, nail care services.**

The service mark is registered in the following classes: **44**

The registrant states that the service mark was first used on November 19, 2001 and first used in the Commonwealth of Kentucky on November 19, 2001.

The registrant's state of incorporation is Kentucky.

This service mark is registered in this office as of November 16, 2007, and will expire on November 16, 2012 unless renewed within six months prior to the expiration date.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Commonwealth of Kentucky to be affixed at Frankfort, Kentucky, November 16, 2007.

Trey Grayson
Secretary of State

Exhibit A

Exhibit B

WOMBLES &
WADLINGTON
ATTORNEYS AT LAW

October 22, 2007

OWNERS
Posh Nails
3090 Todds Road, Suite 120
Lexington, Kentucky 40509

Re: Name Infringement

Dear Owners:

I represent AZ Enterprises, Inc. which does business in Lexington, Kentucky under the following registered names: Posh Salon; Posh Salon & Day Spa; Posh Nails. Please find enclosed a printout from the Kentucky Secretary of State which demonstrates my client's existence and registration of the above assumed names.

It has come to the attention of the owners of AZ Enterprises that you are in the process of opening a nail salon at 3090 Todds Road and are advertising this business using the name Posh Nails. I believe an agent of AZ Enterprises, Dina Zughyar, spoke with an owner last week regarding this matter.

I understand that this may have been an oversight on your part, but your use of the name Posh Nails is a direct infringement on my client's registered name. Please let this letter serve as formal notice of said infringement and direction to cease and desist usage of the name Posh Nails.

It is my client's hope that this matter would be resolved voluntarily; however, if you do not discontinue use of the name Posh Nails on or before Friday, October 26th, then my client will have no choice but to seek a restraining order from the Fayette Court.

Contact me if you would like to discuss this matter further.

Very truly yours,

CHAD R. WADLINGTON
WOMBLES & WADLINGTON
CRW/da
Enclosure

200 West Vine Street • PNC Bank Plaza, Suite 620 • Lexington, Kentucky • 40507
Telephone 859/255 9004 • Telefax 859/255 9005
www.wombles-wadlington.com

Exhibit C

Organization Number	0523342
Name	AZ ENTERPRISES, INC.
Profit or Non-Profit	P - Profit
Company Type	KCO - Kentucky Corporation
Status	A - Active
Standing	G - Good
State	KY
File Date	10/2/2001
Organization Date	10/2/2001
Last Annual Report	6/4/2007
Principal Office	2573 Richmond Road Suite 240 LEXINGTON, KY 40509
Registered Agent	DINA ZUGHYAR 2573 RICHMOND ROAD SUITE 240 LEXINGTON, KY 40509
Authorized Shares	2000

Current Officers

President	Dina Shalash Zughyar
CEO	Dina Shalash Zughyar
Secretary	Amael Shalash

Incorporators and Initial Directors

Incorporator	TOKTAM AL-MAHDI

Assumed Names	**Status**
POSH NAILS	Active
POSH SALON	Active
POSH SALON & DAY SPA	Active
POSH SALON & DAY SPA	Inactive

Images Available Online

Documents filed with the Office of the Secretary of State on September 15, 2004 or thereafter are available as scanned images or PDF documents. Documents filed prior to September 15, 2004 will become available as the images are created.

10/17/2007	1 page	tiff	PDF	Certificate of Assumed Name
10/17/2007	1 page	tiff	PDF	Certificate of Assumed Name
10/17/2007	1 page	tiff	PDF	Certificate of Assumed Name
6/4/2007	1 page	PDF		Annual Report
8/23/2006	1 page	PDF		Annual Report
3/22/2006	1 page	tiff	PDF	Statement of Change
2/14/2006	1 page	tiff	PDF	Sixty Day Notice
11/14/2005	1 page	tiff	PDF	Agent Resignation
4/21/2005	1 page	tiff	PDF	Annual Report
9/27/2004	1 page	tiff	PDF	Annual Report
10/30/2003	1 page	tiff	PDF	Annual Report
12/10/2002	1 page	tiff	PDF	Annual Report
7/18/2002	1 page	PDF		Annual Report
10/12/2001	2 pages	tiff	PDF	Certificate of Assumed Name
10/2/2001	5 pages	tiff	PDF	Articles of Incorporation

KING & SCHICKLI, PLLC

WARREN D. SCHICKLI
MICHAEL S. HARGIS
ANDREW D. DORISIO
MICHAEL T. SANDERSON

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PATENT
TRADEMARK
COPYRIGHT
RELATED CAUSES

November 5, 2007

POSH NAILS
3090 Todds Road, Ste 120
Lexington, Kentucky 40509

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Service Mark/Trade Name Infringement
POSH
Our Reference: 1586-002

Dear Sir or Madam:

As intellectual property counsel for AZ Enterprises, Inc., doing business as Posh Salon and Day Spa ("Posh"), I am contacting you regarding your infringement of my client's superior and long-established rights in the service mark/trade name POSH. We recently discovered your unauthorized use of the mark POSH in association with an as yet unopened nail care facility. See attached ***Exhibit A***, showing your temporary sign.

As you are undoubtedly aware, my client has long used the mark POSH to identify their business as the source of upscale salon and day spa services. You are using the ***identical*** mark POSH, and indeed have gone so far as to present the portion"Posh" of the business name "Posh Nails" in a scripted font that is confusingly similar to my client's design mark. See ***Exhibit B***, showing my client's design mark POSH as used in their advertising.

Your business name subsumes my client's entire trade name/service mark, is presented in a font calculated to be confusingly similar to my client's design mark, and is intended for use in advertising services similar in nature to those offered by my client. It is also my understanding that you may have secured a telephone number which includes the mark POSH as part of the numeric sequence. This is no more than a deliberate attempt on your part to trade on my client's reputation, and on the goodwill and recognition associated with my client's service mark, trade name, and brand identity. The mere addition of the generic word "nails" to your business name does nothing to avoid confusion with my client's proprietary mark and trade name, as it is well-established in trademark law that a person cannot take another's entire mark and avoid confusion by adding a descriptive word.[1] Your

[1] *See Hewlett-Packard Co. v. Packard Press Inc.*, 281 F. 3d 1261 (Fed. Cir. 2002).

Exhibit D

unauthorized use of the mark POSH therefore constitutes service mark infringement and unfair competition, and violates also my client's proprietary rights in their trade name under Kentucky law.[2] Even more, your use of the mark POSH in the manner described above is likely to cause deception, confusion, and mistake as to your affiliation, connection or association with my client, and as to my client's sponsorship or approval of your activities.

This matter can still be resolved without legal action. However, as a first step you must immediately cease and desist any further unauthorized use of my client's service mark and trade name, or any confusingly similar mark or trade name, in advertising, on signage, or otherwise. Any advertising material in existence, such as brochures, posters, flyers, signage, domain names, Web pages, telephone numbers, or the like, containing unauthorized use of the mark POSH or any confusingly similar mark, or otherwise creating any deception, confusion, or mistake as to any affiliation between you and my client, must also be immediately discontinued and where appropriate, delivered to me or destroyed, with a notarized document attesting to their destruction.

To avoid further legal action, I must receive your agreement that you will comply with these terms. As evidence of your agreement to these terms, sign the enclosed copy of this letter below where indicated and return it to me by no later than the close of business ***November 12, 2007***. Your failure to contact me within the specified time will leave no alternative but the filing of a lawsuit in a Kentucky Circuit Court or other court of appropriate jurisdiction. This suit will include claims for equitable relief and for recovery of monetary damages to the fullest extent permitted by law.

If you have questions, I am available to answer them.

Very truly yours,

KING & SCHICKLI, PLLC

Patrick M. Torre

PMT/tjm
Enclosures
cc: Ms. Dina S. Zughyer

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[2]Ky. Rev. Stat. §365.611; *See Victor Tool & Machine Corp. v. Sun Control Awnings, Inc.*, 299 F. Supp.868 (E.D. Mich. 1968), *aff'd*, 411 F. 2d. 792 (6th Cir.1969)(rights to trade names are acquired and protected in the same way as the rights to trademarks/service marks.); *Circuit City Stores, Inc. v. Carmax, Inc.*, 165 F. 3d 1047 (6th Cir. 1999).

****

Posh Nails hereby agrees to immediately cease any and all use of the mark POSH or any other confusingly similar trade name or mark, on any advertising, promotional literature, or otherwise. The undersigned warrants and represents that he or she has the full right and authority to sign this document and is duly authorized and empowered to sign this document on behalf of Posh Nails.

FOR Posh Nails:

Signature: _____

Printed Name: _____

Title: _____

EXHIBIT A


Posh NAILS
COMING SOON

EXHIBIT B

Spa Packages

To indulge you

The Ultimate Treatment $379.00

Breakfast • Deluxe European Facial
Full Body Swedish Massage
Eye & Lip Contour Treatment
Parafango Hot Paraffin Body Wrap
Lunch
Deluxe Spa Pedicure • Deluxe Spa Manicure
Shampoo & Blowdry Style • Makeup Application

The Princess Package $229.00

European Facial (60 min) • Full Body Swedish Massage
Manicure • Pedicure
Lunch
Shampoo & Blowdry Style • Makeup Application
Complimentary Cosmetic

1/1

1/1

For Couples Only $339.00

Full Body Swedish Massage • Scalp Massage
Spa Manicure • Spa Pedicure
Lunch
Men's Designer Haircut (For Him)
Shampoo & Blowdry Style (For Her)
Makeup Application (For Her)

Posh Salon & Spa

Spa Packages

To indulge you

His Perfect Day $229.00

Express Facial • Full Body Deep Tissue Massage
Back Medical Treatment • Spa Manicure
Deluxe Spa Pedicure • Men's Designer Haircut
Lunch

The Executive Package $129.00

Spa Manicure • Spa Pedicure
Full Body Swedish Massage

Mother & Daughter Day at the Spa $339.00

European Facial (60 min) • Full Body Swedish Massage
Spa Manicure • Spa Pedicure
Lunch

1/1

Quick Pick Me Up $139.00

Pick 3 of the Following Services:
Express Facial • 30 Minute Massage
Herbal Body Wrap • Spa Manicure • Spa Pedicure
Microdermabrasion

Posh Salon & Spa

Salon Hours for Your Convenience

Monday	**9 a.m. to 8 p.m.**
Tuesday	**9 a.m. to 8 p.m.**
Wednesday	**9 a.m. to 8 p.m.**
Thursday	**9 a.m. to 8 p.m.**
Friday	**9 a.m. to 8 p.m.**
Saturday	**9 a.m. to 6 p.m.**
Sunday	**11 a.m. to 6 p.m.**

French Quarter (859) 269-POSH

Posh Salon & Spa

It's All About You ®

French Quarter Square
2573 Richmond Road, Suite 240
Lexington, Kentucky 40509
(859) 269-POSH

www.poshsalonandspa.com

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RELATED CAUSES

November 20, 2007

Ms. Trini Tran
POSH NAILS
3090 Todds Road, Ste 120
Lexington, Kentucky 40509

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Service Mark/Trade Name Infringement
POSH
Our Reference: 1586-002

Dear Ms. Tran:

I have presented your offer to our client. That offer is rejected. We have no obligation or interest in paying you to cease infringing my client's intellectual property rights.

You repeatedly stated that you believed that your actions were acceptable because of some unspecified communication with or from the Kentucky Secretary of State's office. First, we can find no indication that you have attempted to incorporate or organize any form of business entity, or to register any business entity name or assumed name with the Secretary of State. In that regard, you should be aware of Kentucky Revised Statutes (KRS) 365.015 (2)(a), which states that "[N]o individual, general partnership, limited partnership, business trust, corporation, or limited liability company shall conduct or transact business in this Commonwealth under an assumed name or any style other than his or its real name, as defined in subsection (1) of this section, unless such individual, general partnership, limited partnership, business trust, corporation, or limited liability company has filed a certificate of assumed name."

Second, even if you had registered or attempted to register the name Posh Nails, or conducted a preliminary determination of business entity name availability as is allowed by the Secretary of State's office, the law governing registration of business entity names is quite different from the law governing trademark/trade name rights, and applies a much lower standard.

Regarding business entity names, KRS 271B.4-010(2) states only that "... a corporate name must be distinguishable from any name of record with the Secretary of State." The general rule is that the Secretary of State will register a business entity name only if it is distinguishable from all other business entity names actively on file. This is a much lower

Exhibit E

standard than that applied to the analysis of confusing similarity between trademarks/trade names.

Trademarks/trade names need not be identical to be confusingly similar. In that regard, "confusingly similar" means that use of a mark or trade name in connection with the offering of goods or services is likely to cause confusion or mistake or to deceive as to the source or origin of the goods or services. Your use of the business entity name Posh Nails, on related and indeed competing services, is likely to cause such confusion, mistake, or deceit as to the source of the respective services, and violates our client's superior and long-established rights in the service mark/trade name POSH. Accordingly, the terms of my letter of November 5, 2007 stand.

Again, our client is willing to forgo legal action and any damages already accrued, but only upon receipt of your immediate agreement to cease and desist use of the mark POSH or any confusingly similar mark to identify your business. If we do not receive your written agreement, you leave us no option but to pursue a lawsuit in a court of appropriate jurisdiction to enforce our client's rights.

Very truly yours,

KING & SCHICKLI, PLLC

Patrick M. Torre

PMT/tjm
Enclosures

****

Posh Nails hereby agrees to immediately cease any and all use of the mark POSH or any other confusingly similar trade name or mark, on any advertising, promotional literature, or otherwise. The undersigned warrants and represents that he or she has the full right and authority to sign this document and is duly authorized and empowered to sign this document on behalf of Posh Nails.

FOR Posh Nails:

Signature: _____

Printed Name: _____

Title: _____

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

AZ Enterprises, Inc.

(b) County of Residence of First Listed Plaintiff Fayette
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Brett G. Corbly, King & Schickli, PLLC
247 North Broadway, Lexington, KY 40507 (859) 252-0889

DEFENDANTS
Posh Nails, Trini Tran and Tommy Nguyen

County of Residence of First Listed Defendant Fayette
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☒ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgement

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity):**
15 U.S.C. 1125(a)

Brief description of cause:
Federal unfair competition and state service mark infringement

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
31 January 2008

SIGNATURE OF ATTORNEY OF RECORD
s/Brett G. Corbly

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Civil
Case Assignment

Case number **5:08CV-50**

Assigned : ChiefJudge Jennifer B. Coffman
Judge Code : 4312

Assigned on 01/31/2008

Request New Judge .....

UNITED STATES DISTRICT COURT

Eastern District of Kentucky

AZ Enterprises, Inc.

V.

Posh Nails, Trini Tran and
Tommy Nguyen

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

TO: (Name and address of Defendant)

Posh Nails
3090 Todds Rd.
Suite 120
Lexington, KY 40509

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Brett G. Corbly
King & Schickli, PLLC
247 North Broadway
Lexington, KY 40507
Tel: (859) 252-0889

an answer to the complaint which is served on you with this summons, within _____ days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT

Eastern District of Kentucky

AZ Enterprises, Inc.

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Posh Nails, Trini Tran and
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CLERK

DATE

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