

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
NOV 9 2007
By: JAMES W. McCORMACK, CLERK
DEP. CLERK

COULSON OIL COMPANY, INC.

PLAINTIFF

v.

CASE NO. 4.07-CV00001102

WRW

DEWEESE ENTERPRISES, INC.

DEFENDANT

COMPLAINT
(Declaratory Judgment)

This case assigned to District Judge Wilson
and to Magistrate Judge Forster

1. This is an action pursuant to 28 U.S.C. § 2201, for a declaratory judgment confirming plaintiff's exclusive right to use the trademark "SuperStop" in connection with convenience store operations in the State of Arkansas, and specifically to protect plaintiff's mark from encroachment by defendant's similar, federally registered mark in use outside of Arkansas.

2. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1338 and 15 U.S.C. § 1121. Venue is appropriate under 28 U.S.C. § 1391(b)(2).

3. Plaintiff Coulson Oil Company, Inc., is an Arkansas corporation with its headquarters in Pulaski County, Arkansas.

4. Defendant Deweese Enterprises, Inc., is a Mississippi corporation headquartered in Meridian, Mississippi. Defendant does business as Junior Food Stores, Inc.

5. Through ownership or franchise, plaintiff since March of 1980 has been continuously using the brand name "SuperStop" to identify its convenience stores in various locations in Arkansas. Plaintiff's use of "SuperStop" features a distinctive logo and colors.

6. On January 19, 1982, defendant, acting through Junior Food Stores, Inc., obtained federal registration of the trademark "Super Stop" for convenience store services with the United States Patent and Trademark Office. At that time, plaintiff was operating "SuperStop" convenience stores in Central, Eastern and Northwest Arkansas. Prior to that date, plaintiff was not aware of defendant's use of the "Super Stop" mark.

7. Defendant does not use the mark "SuperStop" at any location in Arkansas. On information and belief, defendant advertises "Super Stop" stores in media that reach parts of Eastern Arkansas.

8. Plaintiff first learned of defendant's use of "Super Stop" through a cease-and-desist letter from counsel for defendant in May of 1987, claiming exclusive rights to the mark under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, due to its federal registration. The letter stated that failure to meet defendant's demand could result in legal action. Subsequent correspondence in June of 1987 threatened "appropriate legal action."

9. The parties exchanged correspondence about the matter in 1987, but no resolution was reached. Therefore, plaintiff continued to use its mark "SuperStop" in Arkansas, expanding to additional locations, without further contact from defendant for almost seventeen years.

10. In July of 2004, defendant again demanded through counsel that plaintiff cease using "SuperStop." Plaintiff did not acquiesce and continued using its mark.

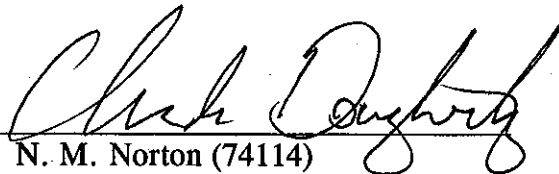
11. Defendant's next communication came in September of 2006, demanding again that plaintiff cease using "SuperStop" and threatening to institute legal action. An ongoing controversy exists between the parties. The existence of that controversy, and defendant's

threats of litigation, have hampered plaintiff's business planning and decision-making regarding its Arkansas convenience store operations, to the detriment of plaintiff's business in Arkansas.

12. Defendant's long period of inaction in enforcement of its mark has resulted in its abandonment thereof and also imposes the bar of laches to any action against plaintiff's use of its mark.

WHEREFORE, plaintiff prays for the declaratory judgment of this Court under the Lanham Act and the common law that, notwithstanding defendant's federal registration of "Super Stop," plaintiff has the exclusive right to use the mark "SuperStop" in Arkansas, and for its costs and attorney fees, and all other relief to which it may be entitled.

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