

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

AMERICA CAN!, §
Plaintiff §
v. § CIVIL ACTION NO. ____
§
§ JURY TRIAL DEMANDED
CAR DONATION FOUNDATION, METRO §
METALS CORPORATION and NATIONAL §
FUNDRAISING MANAGEMENT, INC. §
Defendants. §

ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

Plaintiff America CAN! (“America CAN!”) files this Original Complaint against Car Donation Foundation (d/b/a Wheels for Wishes, and d/b/a Vehicles for Veterans, and d/b/a Vehicles for Vets MN), Metro Metals Corporation (d/b/a Metro Metals Recycling) and National Fundraising Management, Inc. (“Defendants”) for trademark infringement, unfair competition, trademark dilution, and injunctive relief and would respectfully show:

NATURE OF ACTION

1. This is an action at law and in equity for trademark infringement, trademark dilution, and unfair competition arising from Defendants’ unauthorized use of America CAN!’s Intellectual Property. America CAN! is the exclusive owner of all trademark rights in and to the America CAN! Brand and Trademarks (as referenced and outlined below and shown in Exhibit A) for various charitable fundraising services.

2. The Defendants are not connected or affiliated with America CAN! in any way, nor do Defendants have permission from America CAN! to use any of its Trademarks or any other intellectual property belonging to America CAN!. Rather, Defendants are blatantly

exploiting the Trademarks for their own commercial gain bigly, intending to confuse and deceive the public by drawing on America CAN!'s goodwill in the marketplace. By advertising a nearly identical service under the infringing phrase/infringing marks, Defendants intend to, are likely to, and do cause confusion and deceive consumers and the public regarding the source of the advertised charitable fundraising service, all to the detriment of America CAN!.

3. America CAN!'s claims in the present action arise from Defendants' unauthorized use of the Trademarks in connection with charitable fundraising services by means of collecting and reselling used automobiles.

THE PARTIES

4. America CAN! is a 501(c)(3) (non-for-profit) corporation organized and existing under the laws of the State of Texas, having its principal place of business at 325 W. 12th Street, Suite 250, Dallas, Texas 75208. America CAN! promotes its services and collects donations of used vehicles (automobiles, watercraft, and motorcycles) throughout the United States, including in this District.

5. America CAN! collects and resells used vehicles as part of their charitable fundraising service. Since the late 1980's, America CAN! has expended considerable time and resources promoting and advertising its fundraising services by using (registered and common law) trademarks including the phrase "Cars for Kids"TM, Dallas CAN! "Cars for Kids"TM and "Write off the car, not the Kid"[®] (hereinafter referred to the "Trademarks"). In its 30+ year history, the Trademarks have become uniquely associated with America CAN!, symbolizing the exceptional quality of America CAN!'s charitable fundraising services. Accordingly, America CAN! enjoys strong donor loyalty, recognition, and goodwill in its related marketplace.

6. Car Donation Foundation (“CDF”) is a corporation organized under the laws of the State of Minnesota, having its principal place of business at 5775 Wayzata Boulevard, Suite 700., St. Louis Park, MN 55416. CDF does business under the assumed names: Wheels for Wishes, Vehicles for Veterans, and Vehicles for Vets MN. CDF solicits and receives donations from individuals throughout the United States, including in Texas and in this District. CDF operates and/or represents itself to the public as Make-A-Wish Foundation of North Texas, whose address is 5566 Deseo, Irving, Texas 75039.

7. Metro Metals Corporation (“Metro Metals”) is a corporation organized under the laws of the State of Minnesota, having its principal place of business at 2576 Doswell Ave., St. Paul, MN 55108. Metro Metals does business under the assumed name Metro Metals Recycling. Metro Metals individually or in conjunction with CDF (and efforts coordinated therewith), solicits and receives donations from individuals throughout the United States, including in Texas and in this District.

8. National Fundraising Management, Inc. (“NFM”) is a corporation organized under the laws of the State of Minnesota, having its principal place of business at 10159 Wayzata Blvd. #125, Hopkins, MN 55305. NFM individually or in conjunction with CDF (and efforts coordinated therewith), solicits and receives donations from individuals throughout the United States, including in Texas and in this District.

9. CDF, Metro Metals, and NFM are alter egos of one another. NFM is the alter ego of CDF; Metro Metals is the alter ego of CDF; CDF is the alter ego of NFM; and CDF is the alter ego of Metro Metals. NFM is the alter ego of Metro Metals Corporation. Through efforts coordinated amongst and between CDF, Metro Metals, and NFM, the Defendants solicit and receive donations from individuals throughout the U.S., including in Texas and in this District.

JURISDICTION AND VENUE

10. This action arises under the Trademark Laws of the United States, 15 U.S.C. § 1051, *et seq.* Accordingly, original jurisdiction over this case is conferred pursuant to 15 U.S.C. §§ 1121, 1125 and 28 U.S.C. §§ 1331, 1332(a) and 1338(a) and (b) insofar as this action involves citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of attorney's fees, interest, and costs.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) insofar as America CAN! resides in this district and a substantial part of the events giving rise to the claim occurred in this district.

12. This Court has personal jurisdiction over Defendants because Defendants conduct business in this District and in the State of Texas.

13. Defendants are subject to personal jurisdiction in this Court because on information and belief, Defendants are soliciting donations in this district through infringing use of the Trademarks and have directed their wrongful conduct towards residents of Texas and in this district.

14. Defendants maintain websites, which are accessible to everyone in Texas who owns a personal computer or otherwise has access to the internet. Defendants' websites specifically target Texas citizens and residents as demonstrated by the following image:



15. Through its website and the infringing use of the Trademarks, Defendants promote a charitable fundraising service in connection with the Trademarks through national advertising, including national radio advertisements, which are heard throughout the United States, including in Texas on said website.

16. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this Judicial District and because the property at issue, which includes America CAN!'s valuable intellectual property rights, is situated in this district.

FACTS

A. America CAN!'s Charitable Activities and "Write Off the Car Not the Kid" Mark

17. Since 1985, America CAN!, a charitable organization, has helped improve children's lives.

18. In the late 1980s, America CAN! started to devote significant efforts toward creating a program aimed at aiding underprivileged youth with educational programs through funds raised by collecting and reselling used automobiles and watercraft at auction.

19. Since 1989, America CAN! continuously and consistently used its Trademarks in interstate commerce and in connection with its charitable fund-raising services.

20. America CAN! has expended significant resources toward extensive marketing and advertising efforts to promote its Trademarks and the underlying automobile and watercraft donation program including, but not limited to, print and broadcast advertising, billboards, door hangings, and other publicity methods.

21. As a result, the Trademarks have received widespread recognition and value in the United States.

22. Further, America CAN! has acquired common law rights in the Trademarks in connection with its charitable activities and has developed exceedingly valuable goodwill with respect to the Trademarks.

23. Although America CAN!'s activities were initially concentrated in Texas, where the charity was founded, since its founding, America CAN! has solicited and received donations in aid of its activities in all fifty states.

24. America CAN! uses the funds it receives through donations and through its auction of automobiles and watercraft to create and support educational programs for at risk youth at the high school level in order to help them obtain a high school diploma and to give them the tools to achieve economic independence.

25. To date, America CAN!'s programs have served over 50,000 students. As a result, America CAN!' s programs have been the subject national press coverage and recognized by Independent Charities of America as a "Best in America" charity and greatnonprofits.org as a top-rated nonprofit for 2014.

26. As a result of America CAN!'s early adoption and long-established use, the Trademarks are widely recognized and relied upon by the public in Texas and throughout the United States to identify America CAN!'s services, and to distinguish America CAN!'s products and services from the products and services of others. Moreover, America CAN! has an extensive media campaign, and America CAN! uses the America CAN! Marks in various media formats, including on the Internet, to promote its products, its services. As a result of the continuous usage and promotion of the America CAN! Marks, America CAN! has acquired, in addition to the rights established through registration, recognized common-law rights in the

Trademarks. America CAN! has also developed valuable goodwill in the Trademarks and the quality of the products sold and services rendered using its trademarks.

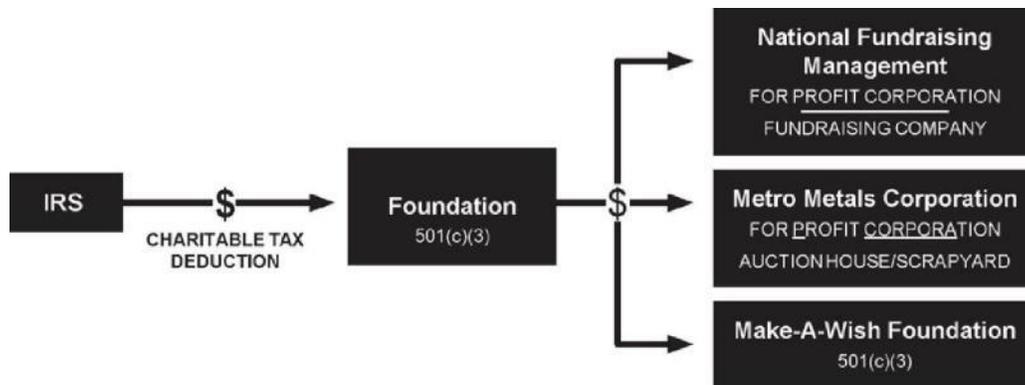
B. Defendants' History and Predicate Disdain for Laws and Legal Authority

27. CDF is a Minnesota 501(c)(3) charitable organization formed and run by William Bigley and Randy Heiligman. It solicits donors in Texas and throughout the United States to donate vehicles to benefit local chapters of a third party charity. CDF then sells or scraps these vehicles and pays a percentage of the proceeds to local chapters of the third party charity.

28. Between 2011 and 2014, CDF spent 78-82% of the gross proceeds from the sale and scrapping of donated vehicles on fundraising, advertising, and overhead (hereinafter collectively "fundraising costs"), with only 18 to 22% of the proceeds benefitting a charitable purpose. CDF was placed on the "Scrooge List" of the South Carolina Secretary of State and the "Worst Charity List" of the Oregon Attorney General in 2014 for its high fundraising costs.

29. CDF uses a *for-profit company*, National Fundraising Management, Inc. ("NFM") as a professional fundraising company to solicit donations of motor vehicles from the public and to manage its vehicle donation program. Messrs. Bigley and Heiligman, CDF's founders, manage, control or own 100% of NFM. CDF uses another *for-profit company*, Metro Metals Corporation ("Metro Metals") to auction and scrap vehicles donated to CDF. Messrs. Bigley and Heiligman also manage, control or own 100% of Metro Metals. Between 2011 and 2014, CDF paid NFM and Metro Metals approximately \$36 million. As controlling managers, or owners, Messrs. Bigley and Heiligman ostensibly pocketed amongst themselves approximately \$36 million.

30. The relationship between CDF, NFM, Metro Metals, and Make-A-Wish-North Texas is depicted in the following chart:



31. In 2013, the Internal Revenue Service (“IRS”) raised concerns about Messrs. Bigley’s and Heiligman’s simultaneous governance of the “charity” (CDF) and ownership of the for-profit fundraising company (NFM) and the for-profit auction/scrap dealer (Metro Metals). Messrs. Bigley and Heiligman *thereafter resigned* from CDF’s board of directors. Since their resignations from the board of CDF, however, Messrs. Bigley and Heiligman have continued to manage the day-to-day operations of the charity and provide the management services typically provided by officers of a charity. As of June, 2015, CDF had no employees and no permanent office.

32. Metro Metals is located at 2576 Doswell Avenue in St. Paul, Minnesota. It was formed as a for-profit Minnesota corporation by Messrs. Bigley and Heiligman in 2003. Messrs. Bigley and Heiligman own, manage or control 100% of the company. Mr. Heiligman is Metro Metal’s chief executive officer, president, and director. Mr. Bigley is an officer and director. Mr. Heiligman’s wife, Roberta Heiligman, is the company’s executive vice president.

33. In 2003, Make-A-Wish Foundation of Minnesota (“Make-A-Wish-MN”) retained Metro Metals to administer its vehicle donation program. The relationship was memorialized in an agreement dated February 19, 2008. Under the agreement, Metro Metals and Make-A-Wish-MN would essentially split the proceeds from the auctioning of vehicles donated to Make-A-Wish-MN’s charitable donation program. Metro Metals and Make-A-Wish-MN would each

receive 50% of the proceeds. From Make-A-Wish-MN's 50% share, it would pay Metro Metals on a per vehicle basis for towing and reimburse Metro Metals' advertising and call center expenses. For scrapped vehicles, Metro Metals would pay Make-A-Wish-MN \$500 for each donated vehicle. This relationship between the two organizations lasted until December, 2010.

34. In 2007, Messrs. Bigley and Heiligman formed CDF as a Minnesota non-profit organization. CDF was granted 501(c)(3) tax-exempt status by the IRS in 2009. In October, 2010 CDF registered with the Minnesota Attorney General's Office ("Minnesota AGO") as a charitable organization under chapter 309 of the Minnesota Statutes. CDF's initial board of directors was comprised of Mrs. Heiligman and Messrs. Bigley and Heiligman.

35. The organization appears to have been largely dormant until 2010. In 2010, CDF approached Make-A-Wish-MN and suggested that its vehicle donation program be managed by CDF, instead of Metro Metals. Mr. Craig Greenberg, Esq.—whose law firm has acted as an attorney for Metro Metals, CDF, and NFM, and who is a former CDF board member—has acknowledged that such a structure was designed to make the fundraising and overhead costs of running a vehicle donation program for the recipient charity (here, Make-A-Wish-MN) appear lower to the donating public because the recipient charity did not need to report the fundraising expenses in its public filings.

36. On December 31, 2010, Make-A-Wish-MN and CDF entered into a Charitable Promotion and Licensing Agreement. Make-A-Wish-MN granted CDF the right to use its name and logo to advertise CDF's vehicle donation program. In exchange, CDF agreed to pay Make-A-Wish-MN the amount remaining after CDF paid its expenses, including CDF's payments to NFM and Metro Metals for services they performed for it and for advertising costs. CDF has entered into similar relationships with numerous other local Make-A-Wish chapters around the

country including Make-A-Wish North Texas. Defendants' web page indicating *it is* Make-A-Wish North Texas is imaged below:



37. CDF calls its vehicle solicitation program “Wheels for Wishes.” CDF organizes and manages a newspaper, Internet, and radio advertising program to solicit vehicle donations whose proceeds will benefit the various local Make-A-Wish chapters.

38. From January 1, 2010 to May 30, 2011, CDF retained Metro Metals to take calls from prospective donors who responded to these ads, including callers and donors from Texas. Metro Metals was not registered with the Minnesota AGO as a professional fundraiser for CDF.

39. In May, 2011, Messrs. Bigley and Heiligman formed National Fundraising Management, Inc. (“NFM”) as a for-profit Minnesota corporation. NFM lists its executive office address with the Minnesota Secretary of State as 2576 Doswell Avenue in St. Paul—which is the address for Metro Metals. NFM registered with the Minnesota AGO as a professional fundraiser in February 2012.

40. Messrs. Bigley and Heiligman own all of the stock of NFM. Mr. Heiligman is its president, chief executive officer and director, and Mr. Bigley is its vice president and director. NFM's only client is CDF. In 2012, Mr. Bigley signed the solicitation notice for *both* NFM and CDF.

41. On June 1, 2011, less than one month after NFM was formed, CDF retained NFM to manage its "Wheels for Wishes" fundraising program. The contract between CDF and NFM was signed by Mr. Bigley for CDF and Mr. Heiligman for NFM. Under the contract, CDF paid NFM a commission of 50% of the "net proceeds" of each donated vehicle. "Net proceeds" is defined in the contract to mean the gross sales price of a vehicle less NFM's out-of-pocket expenses, auction fees, advertising, and call center expenses. The net effect of this contract essentially was that NFM, a for-profit corporation, and Make-A-Wish, a charity, split the proceeds (after all expenses were paid) of the sale of vehicles intended for charity.

42. In January, 2015—after the Minnesota AGO began to investigate CDF—CDF and NFM changed their contract to require CDF to pay NFM a fee equal to 30% of the gross sales price of donated vehicles. While the change from 50% of net proceeds to 30% of gross sales may sound more equitable, it does not appear to have made a substantial reduction to the profit of the for-profit corporations. In an email from December 4, 2014, Mr. Bigley told Mr. Heiligman that NFM was already charging the Make-A-Wish chapters a nationwide average of an equivalent percents of the gross sales price of donated vehicles as before. One change that is potentially significant under the new agreement is that NFM has less of an incentive to keep costs, such as advertising expenses, low, because the amount of expenses NFM incurs on behalf of CDF no longer affects NFM's bottom line.

43. In exchange for this compensation, NFM manages the operations of CDF. NFM solicits vehicle donations for CDF from prospective donors who call in response to advertisements. NFM prepares all advertisements and solicitation materials—the key ingredient in getting prospective donors to call. NFM develops the content of advertising, handles social media advertising, speaks with potential donors, and issues tax receipts to donors.

44. A similar ad from May, 2015 from a Minnesota newspaper soliciting donors to “Share the Power of a Wish”; this ad does not mention CDF or NFM. Indeed, prior to June, 2015, the organization’s ads did not provide the name and location by city and state of CDF (as required by Minnesota Statutes section 309.556), did not mention CDF, and prominently displayed the logo for Make-A-Wish. In the midst of the MN AGO investigation, CDF altered some of its newspaper ads in June, 2015, to include a small footnote reference to CDF. As of October 13, 2015, however, CDF was still running newspaper ads that did not contain even this small footnote.

45. Make-A-Wish-MN and Make-A-Wish-National have raised concerns with CDF and Mr. Bigley about “the fact that [Wheels for Wishes] sometimes looked as if it were a program of Make-A-Wish rather than an independent charity.” These concerns include the use of Make-A-Wish’s logo, the use of stories in an inaccurate manner or without permission, and that the “voice” (e.g., “call us today,” “we help children,” etc.) used on the website made it seem like it was coming from Make-A-Wish, not an independent charity.

46. Excerpts from the Wheels for Wishes website, www.wheelsforwishes.org, as downloaded on September 20, 2013, prominently stated that “Your Tax Deductible Car Donation Helps Make Children’s Wishes Come True!” It stated that when a person donates a vehicle, “*we turn your burden into wishes.*” (italics added). On the front page, it stated that, “Proceeds from

the sale of your vehicle donation benefit your local Make-A-Wish and help grant wishes of children diagnosed with life-threatening medical condition.” A drop-down for “About Wheels for Wishes” extensively described Make-A-Wish and asks donors to “call *us* today.” Tellingly, after the Minnesota AGO commenced its investigation the website has since been changed.

47. Similarly, the heading of the Wheels for Wishes Twitter feed (saved on September 23, 2015) predominately features the Make-A-Wish logo alongside a photo of a child. The Make-A-Wish-MN website has compounded the confusion. Under the heading “donate a vehicle,” Make-A-Wish-MN says: “Donate your car, truck, motorcycle, SUV, RV or boat today to *our* charity car donation program called ‘Wheels for Wishes.’”

48. Numerous donors who donated vehicles to CDF told the Minnesota AGO that they believed they were donating directly to one entity, not CDF, as they were not familiar with CDF. For example, a donor herein identified as M.C., who had a friend whose daughter had cancer and was granted a wish by Make-A-Wish, searched for car donation programs online and found what she thought was the entity granting the wish for the child. It was M.C.’s belief that she was donating directly to the granting charity and that charity would receive the value of the car. In reality, she was on the “Wheels for Wishes” website and was donating to CDF.

49. A donor herein identified as J.W. wanted to donate her vehicle to help families whose kids have specific needs. J.W. wanted to and it was her understanding that she was donating her vehicle directly to a specific child-oriented entity. In fact, J.W. unknowingly donated her vehicle to CDF, with the result that 50% of the net proceeds from the sale of her vehicle was paid to a for-profit company owned by Messrs. Bigley and Heiligman.

50. A donor herein identified as T.N. wanted to donate her vehicle to help children through what she thought was a specific charity’s website. She discovered the Wheels for

Wishes website by searching for car donation organizations on the Internet. T.N. noted that the Wheels for Wishes website referenced her desired charity throughout. T.N., however, was on CDF's website.

51. A donor herein identified as R.W. saw what looked like a specific charity's advertisement in the newspaper and called what he believed to that specific charity's phone number in the advertisement. It was his intention to donate his vehicle directly to his intended charity to support its mission of helping children. These confusing advertisements led R.W. to actually donate his car to CDF.

52. A donor herein identified as D.R. wanted to donate his car to a charity to help it provide for kids. D.R. generally researches charities before donating, found what he believed was his intended charity's car donation website, and thought he was donating his car to a specific child-directed entity. The website was actually CDF's, to which he donated his car by mistake.

53. Other donors similarly reported that they saw and heard the name of one charity in newspaper, radio, and internet advertisements and that it was their understanding that Wheels for Wishes was a branch or division of the advertised charity.

54. NFM's customer service representatives have contributed to donor confusion. For example, in a November, 2014 phone recording, a NFM representative answered the phone by stating, "Thank you for calling [advertised charity], uh Wheels for Wishes". Another call was answered "[advertised charity] Foundation – or sorry, Wheels for Wishes". When the donor asked if Wheels for Wishes was the same organization as Car Donation Foundation, the NFM representative stated "[N]o, we are not the same. Car Donation Foundation is separate. We take donations specifically for the [advertised charity] Foundation." As noted above, "Wheels for Wishes" is an assumed name of CDF.

55. Compounding the donor confusion resulting from CDF's marketing campaigns, CDF phone recordings reveal that donors have been told conflicting or confusing information regarding what percentage of their donation will benefit grant recipients.

56. In April 2015, when a donor inquired about what percentage of her donation would go to the charity, an NFM representative stated "it's about 50 percent to 70 percent. It depends on how much we get for the car."

57. During a phone recording from November 2014, when a donor asked a NFM representative "And then all the money, all the monies sold go to charity? The children's charity?", the NFM representative responded "Correct, sir."

58. As discussed in IV above, on average over the above-referenced four year period, approximately 80% of CDF's gross revenue was spent on fundraising and advertising expenses and only approximately 20% went to charity.

59. CDF's auditors have admonished it for providing incorrect information to donors about the tax deductibility of their donations.

60. If a donated vehicle has a claimed value of \$500 or less, a donor may deduct on his or her tax return the *lesser* of \$500 or the fair market value of the vehicle. In an April 29, 2011 letter to CDF management, the charity's auditing firm wrote: "During the time we spent at Car Donation Foundation's office we heard donors being told, by Car Donation Foundation staff, that they would receive at least a \$500 donation even if the vehicle sold for less at auction. Donors are entitled to the lesser of \$500 or the fair market value of the vehicle sold at auction. This should be communicated to donors when they call."

61. Numerous donors were told by CDF or its professional fundraiser, NFM, that they could deduct at least \$500 for any donated vehicle. As noted above, under IRS regulations,

donors are not entitled to an automatic \$500 deduction for vehicles with a claimed value of \$500 or less. NFM staff continued to give donors incorrect tax information. For example, a donor was told in November, 2014 that she would get a “automatic \$500 tax deduction for donating[.]” Another donor was told in November, 2014 that he would receive “an acknowledgment letter that acts as a tax receipt for [a] preliminary deduction of \$500.” In February 2015, a donor was told she would be mailed a “preliminary receipt that tells you have a minimum of \$500 to deduct from your taxes for charity.”

62. Metro Metals gave similar incorrect information to two analysts from the AGO.

63. The IRS requires charities to provide Form 1098-C to donors who donate vehicles with a claimed value of more than \$500. If the charity improves or uses a vehicle or gives it to a needy individual, the donor may deduct the fair market value of the vehicle. If a charity sells a donated vehicle without substantial improvement, the donor may deduct the lesser of the sales price of the vehicle or fair market value. Boxes 5a and 5b on Form 1098-C allow for the charity to certify that the vehicle is being used in a program, improved, or given to a needy individual, in which case the donor’s deduction is not capped at the sales price.

64. In 2011, CDF’s auditing firm noted a “significant deficiency” in the manner in which CDF prepared tax receipts. It pointed out that CDF was incorrectly marking boxes 5a and 5b on Form 1098-C. The firm pointed out that the IRS instructs that box 5a should not be marked for organizations that do not use the donated vehicle for significant charitable purposes for at least six months, and box 5b should not be marked for organizations that sell vehicles to the public at auction. The auditor pointed out that CDF was marking the boxes even though they did not apply and it re-sold the vehicles at auction. The auditor pointed out that IRS penalties for incorrectly marking the boxes are 39.6% of the claimed value of the vehicle.

65. As noted below, CDF recently began to solicit vehicle donations with the ostensible purpose of benefitting disabled veterans. As of August, 2015, however, CDF has donated no money to disabled veterans.

66. Federal and State registration and disclosure requirements for charities and professional fundraisers are intended to provide transparency to donors. “[W]here a charitable organization is to receive but a small share of the total funds solicited in the name of a charity or a non-profit organization, the public solicited has a right to know these facts so that people may knowingly decide on that basis whether or not they wish to make their donations.” *State v. Francis*, 95 Misc.2d 381, 385 (N.Y. Sup. Ct. 1978); *see also Vill. of Schaumburg v. Citizens for a Better Env’t et al.*, 444 U.S. 620, 638 (1980). Moreover, “[t]he fact that [charitable organizations] agree to the terms of the contracts should not preclude the Attorney General from protecting the public’s right. The contracts with the non-profit organizations are not merely bilateral, but rather establish a triangular relationship with the public as the third party whose interest should be protected.” *Francis*, 95 Misc.2d at 385. Disclosure of charitable organizations’ finances may assist in preventing fraud as such measures may help make “contribution decisions more informed, while leaving to individual choice the decision whether to contribute to organizations that spend large amounts on salaries and administrative expenses.”

67. Metro Metals is licensed as a scrap metal processor, used vehicle parts dealer, and used motor vehicle dealer. Metro Metals sometimes does business under the assumed name Metro Auto Auctions. In its dealer application filed with the Minnesota Department of Public Safety (“DPS”), Metro Metals stated that it used the assumed names Car Donation Foundation, Wheels for Wishes, and Charity Car Auctions in its used car dealer business.

68. From 2009 until July, 2015, Metro Metals managed Disabled American Veterans, Department of Minnesota, Inc.'s ("DAV-MN") vehicle donation program. On behalf of DAV-MN, Metro Metals ran frequent newspaper ads in Minnesota soliciting people to donate motor vehicles. Defendants ran an ad in June, 2015 in the St. Paul, Minnesota newspaper bearing the image of a soldier holding a child with a flag, the ad has the caption "Donate Your Vehicle" and prominently contains the logo for DAV-MN. The ad, which was prepared by Metro Metals, stated that proceeds helped local veterans in Minnesota and asked donors to call (651) 255-3382, a phone number registered to Metro Metals. A call to (651) 255-3382 is answered by a recording that stated, "Thank you for calling Vehicles for Veterans." The recording did not disclose that the call center was staffed by employees of a for-profit fundraising company. The ad also asked donors to visit the website [www.vehiclesfor veteransmn.com](http://www.vehiclesforveteransmn.com), a website taken out by Mr. Bigley and Metro Metals in 2009. This website automatically re-routed visitors to another website, www.vehiclesforveterans.org, taken out by Mr. Bigley and Metro Metals in 2007. This website is owned exclusively by Metro Metals, and Metro Metals was solely responsible for its design and text.

69. The website "Vehicles for Veterans" did not disclose Metro Metal's role or involvement. To the contrary, in the website, under "About Us," the website prominently stated: "When you make a car donation to Vehicles for Veterans, the proceeds from the sale of your vehicle benefit Disabled American Veterans (DAV)." The website went on to state: "Since its inception in 2009, the Car Donation Foundation, the parent charity of Vehicles for Veterans, has donated over \$25 million dollars to charities such as the Disabled American Veterans to help them do the great work that is needed." In fact, Car Donation Foundation has no contract with DAV-MN and is not the "parent charity" of "Vehicles for Veterans." Rather, "Vehicles for

Veterans” appears to be a name used by Metro Metals in connection with its solicitation of vehicles for DAV-MN. The website did not disclose the involvement of Metro Metals, though the website belongs to and was exclusively managed by Metro Metals. The listed address under “contact us” was DAV-MN’s address in a government office building.

70. DAV-MN entered into its most recent agreement with Metro Metals in January, 2014. Under the terms of that agreement, Metro Metals fields phone calls from prospective donors, accepts vehicles from donors, and sells the vehicles on behalf of DAV-MN. For this work, Metro Metals receives a significant percent of the gross revenue generated from the monthly sale or salvage of vehicles donated to DAV-MN. Although not provided for in the terms of DAV-MN’s January, 2014 agreement with Metro Metals, DAV-MN paid the for-profit Metro Metals for the company’s expenses in administering the vehicle donation program, including reimbursing Metro Metals for towing and a significant percent of all advertising costs and auction fees from outside vendors.

71. In a photo of Metro Metals building, located at 2576 Doswell Avenue in St. Paul, Minnesota, the directional signage at the Metro Metals premises states that Metro Metals conducts public auto auctions, the proceeds from which benefit Wheels for Wishes and Disabled American Vets. This tells members of the public that their purchase of a vehicle at Metro Metals will benefit a charity.

72. The outside of the premises also includes an insignia for “Charity Car Auctions.” As discussed previously, Charity Car Auctions is an assumed name of Metro Metals. Metro Metal’s website, charitycarauctions.com, states that it sells cars on behalf of charities, including Make-A-Wish and Disabled American Veterans. Under the header “Donate a Car to a Local Charity,” the website states: “Do you have a vehicle you would like to donate? Donate your car

to Wheels for Wishes or Vehicles for Veterans and help a [local] charity today! Proceeds from vehicles donated to Wheels for Wishes benefit [a local charity] and proceeds from cars donated to Vehicles for Veterans benefit [a local charity].” Elsewhere, the website states: “Charity Car Auctions is a division of Metro Auto Auctions. We are selling cars on behalf of charities, including ... and other local charities.” Another Metro Metal’s website, www.metroauto.auctions.com, had similar language as of February 2015. The website’s home page stated: “Specializing in the sale of donated vehicles on behalf of local charities.” Under a section “Donate a Vehicle,” it stated: “Need a Tax Break? Make-A-Wish is the Answer. Donate your car, motorcycle, boat, camper.”

73. In June, 2015, DAV-MN ended its relationship with Metro Metals and directed Metro Metals to stop using the DAV-MN name and logo in its solicitations, including on Metro Metals’ Vehicles for Veterans website. Until July 16, 2015, Metro Metals continued to run advertisements using DAV-MN’s name and logo to solicit vehicles. As of September 24, 2015, Metro Metals’ Charity Car Auction website continued to state Metro Metals sells cars on behalf of “Disabled American Veterans.”

74. Like NFM, Metro Metals also appears to have provided donors questionable information about the tax deductibility of their donations. In January 2015, two analysts from the Minnesota AGO made an inquiry at Metro Metals’ office in St. Paul about how charitable car donations work. The Metro Metals employee told them that “we represent three charities, Disabled Veterans, Make-A-Wish Foundation, Breast Cancer Research.” The employee stated that: “We then take the car, put it through an auction, whatever we might get for it in the auction that’s what goes to the charity.” In fact, Metro Metals is not registered with the Minnesota AGO to represent these charities, and it is not accurate that all the auction proceeds benefit a charity.

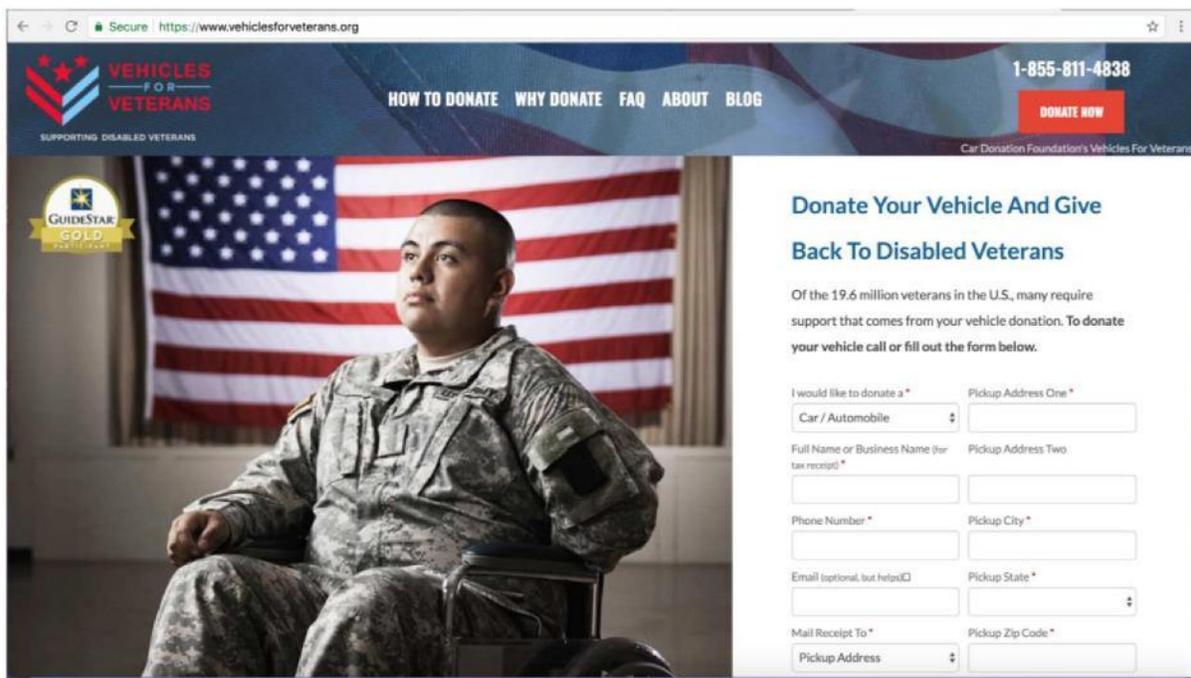
75. The Metro Metals employee also told the analysts: “your minimum donation for tax purposes is five hundred dollars” and that “if the car goes for four hundred dollars, you still get five hundred dollars.” This is not correct. Under federal law for vehicles with a claimed value of \$500 or less, a donor may only deduct the lesser of \$500 or the fair market value of the vehicle. As noted above, CDF was also previously admonished by its auditing firm for providing similarly inaccurate information to donors about the tax deductibility of their donations. At the time of Defendant’s audit, CDF did not have any employees, and the call center was staffed by either NFM or Metro Metals employees.

76. The “why donate your vehicle” section of the website Metro Metals ran for DAV-MN further stated that: “You’ll be eligible for an itemized deduction on your federal tax return.” In fact, only about 30% of donors itemize deductions on their federal income tax returns such that they are eligible to deduct a vehicle donation.

77. NFM also appears to have given donors of DAV-MN similarly incorrect tax information. For example, a NFM representative told one donor that he would be entitled to a “\$500 tax deduction” and he would receive a “preliminary receipt [entitling him]...to the first \$500 tax deduction.”

78. Starting on July 18, 2015, CDF began running daily newspaper advertisements soliciting vehicles for disabled veterans under the name “Vehicles for Vets MN”. CDF registered the assumed name “Vehicles for Vets MN” with the Minnesota Secretary of State’s Office on July 21, 2015. The newspaper advertisement for “Vehicles for Vets MN” features a uniformed soldier in a wheelchair and states “Proceeds benefit local disabled veterans.” The ad does not mention CDF or NFM. It directs donors to visit the website “vehiclesforvetismn.org.”

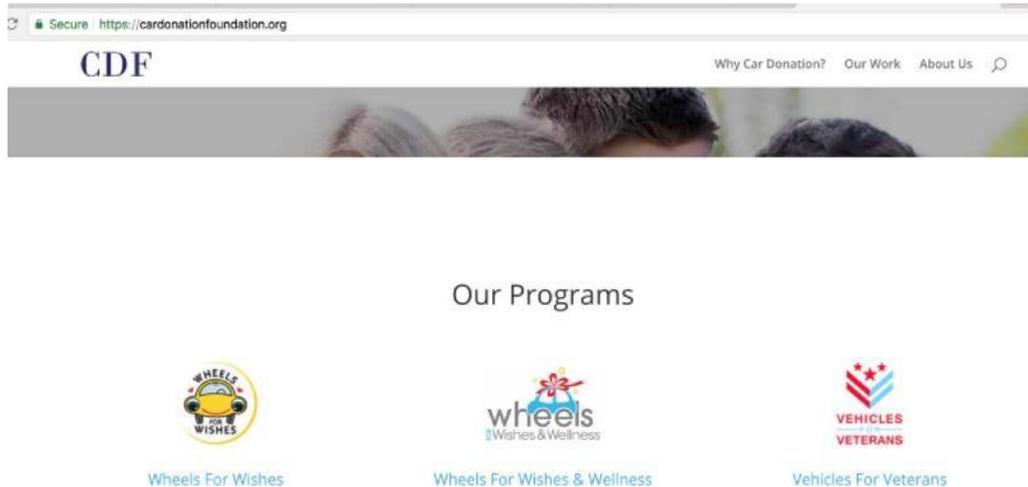
79. As of July 20, 2015, persons who visit “vehiclesforvetismn.org” are automatically routed to “www.vehiclesforveterans.org,” a website originally taken out by Metro Metals in 2007 for its “Vehicles for Veterans” campaign for DAV-MN, as discussed above. In a printout of excerpts of the website from July 20, 2015, on its homepage, CDF states “Your car donation helps benefit disabled veterans” and “Since 2004, car donations have provided over 2.6 million dollars to charities.” CDF has no agreements or affiliations with any veterans groups in Minnesota. As of August 13, 2015, CDF had not made *any* grants or contributions to DAV-MN or any other veterans charity.



80. Transparency is a bedrock principle for charitable solicitations. CDF has obfuscated this transparency by running a solicitation campaign that misleadingly blurs its identity with that of America Can!. Donors who donated vehicles to CDF have stated that they believed they were donating their vehicles directly to the charity of their choice and intent. These donors did not appear to appreciate that approximately 80% of their donations were not used in furtherance of charitable activity, nor were donors aware that a significant portion of

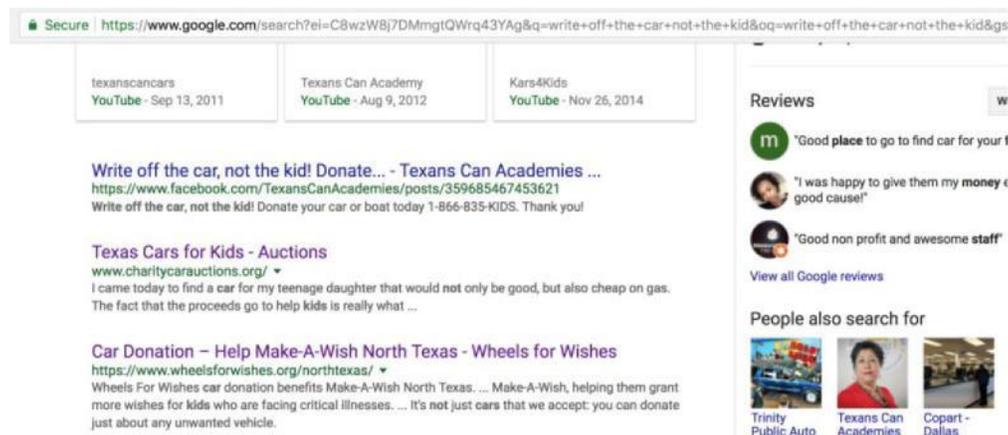
their donations benefited two private for-profit corporations owned by the two individuals who founded and manage CDF. CDF's latest solicitations promising help to disabled veterans are also misleading.

81. As discussed above, Defendants are alter egos of one another, while CDF does business under assumed or fictitious names as shown on the CDF site:

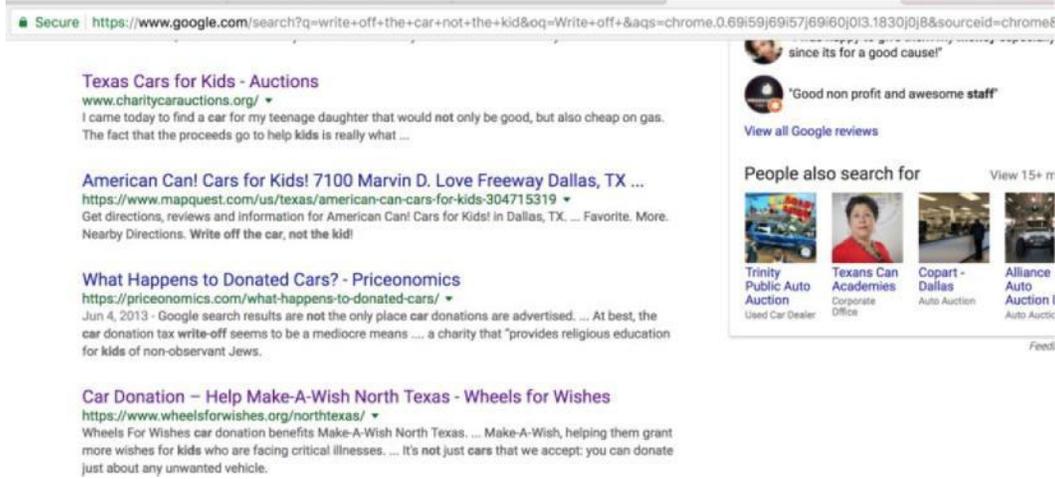


C. Defendants' Misconduct and Infringing Activities

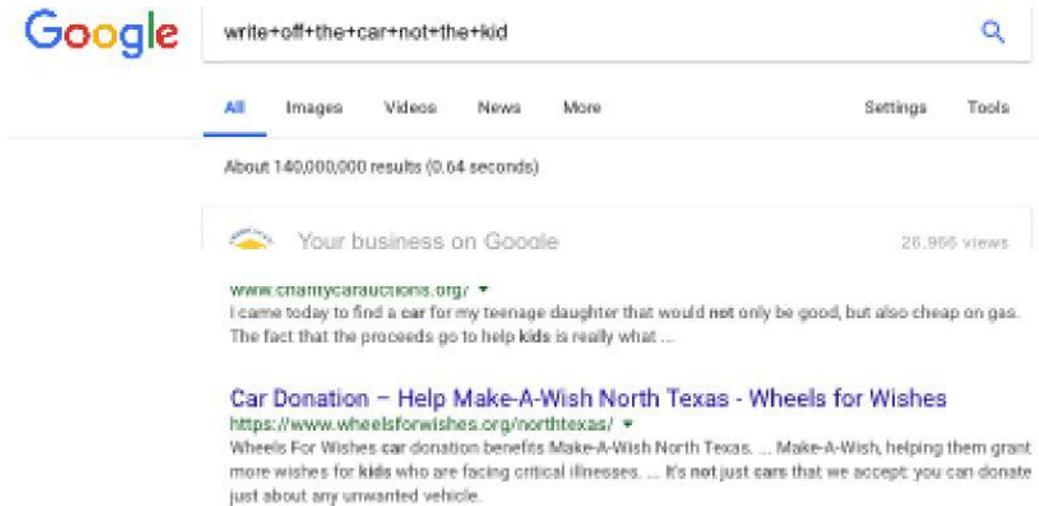
82. When "Write off the car not the kid" (America Can!'s trademark) is typed into a Google search engine, a website link to Defendants appears, with Car Donation as the main attention grabber. This diverts attention to Defendants and away from America Can! as shown on the image below:



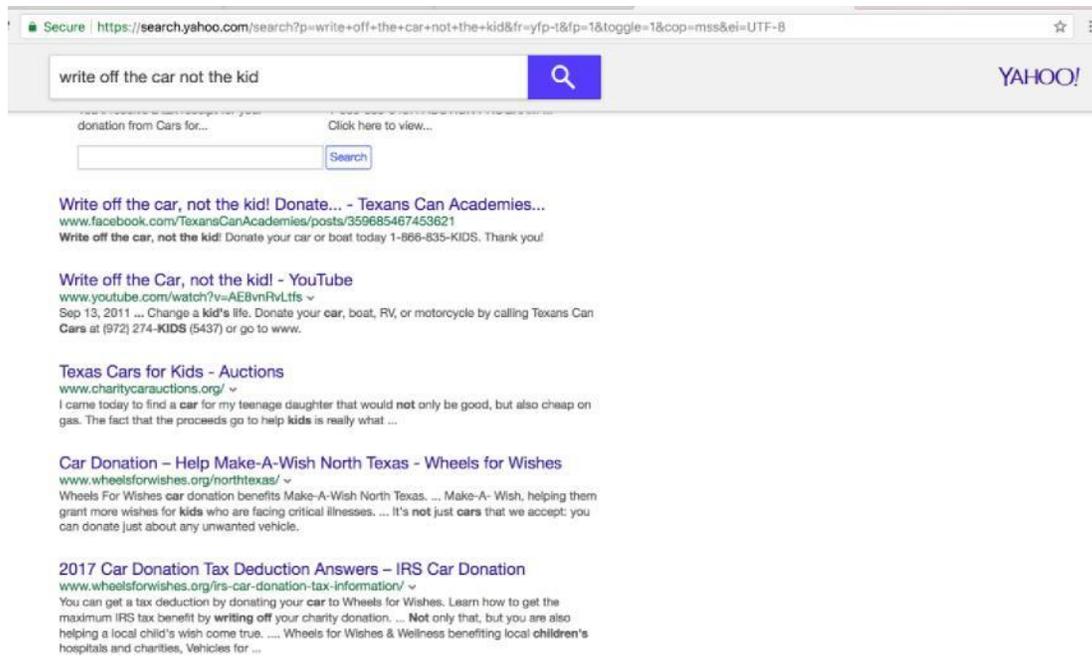
The image below demonstrates another example; this search was performed more recently:



83. Another example of Defendants’ link appearing in a search for “Write off the car not the kid” (on a different date) using write+off+the+car+not+the+kid resulted in this:



The results are the same on a Yahoo search for “write off the car not the kid”:



84. America CAN! informed Defendants' counsel Mr. Greenberg—who is a former CDF board member—that the unauthorized use of the Trademarks in connection with the listing of these incorrect, misleading, and infringing blogs, articles and content was unacceptable to America CAN! and must cease.

85. The cease and desist letters, plural, were sent to Metro Metals; the response came from Mr. Greenberg. Mr. Greenberg acknowledged receipt of the letters but took the position that the letters were intended for a different company.

86. Since the correspondence exchange, Defendants have altered and edited their web-pages, including the meta-data/meta-tags and search engine optimization triggers, though not in compliance with the cease and desist letters. In one case, Defendants have removed and deleted entire web-pages after the dates of the cease and desist letters, though not in compliance with the cease and desist letters, but rather to destroy evidence.

87. In sum, Defendants' unauthorized activities and use of the Trademarks has confused or is likely to confuse consumers regarding its affiliation, connection, or association of

Defendants with America CAN!, as well as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities by America CAN!. Defendants' unauthorized activities and use of America CAN! trademarks also implies that America CAN! has endorsed or approved its activities, which it has not, and further suggests there is a partnership between America CAN! and Defendants, all to the detriment of America CAN!. As a result of the confusion that has been or is likely to be engendered by Defendants' activities, the America CAN! marks and associated goodwill are therefore being irreparably harmed.

88. America CAN! has no adequate remedy at law.

89. America CAN! suffers irreparable injury and has suffered substantial damages as a result of Defendants' infringing activities.

90. The injuries and damages sustained by America CAN! have been directly and proximate caused by the Defendants' wrongful reproduction, use, distribution, advertisement, and promotion of the infringing mark.

91. Defendants worked together to accomplish an unlawful purpose through the tortious acts discussed above. Defendants worked together to accomplish a lawful act by unlawful means through the tortious acts discussed above.

92. Individually, CDF committed the foregoing tort(s) that caused an injury to America CAN!. Metro Metals knew of CDF's conduct in violation of a duty or duties owed to disclose or not engage in the continued conduct. NFM knew of CDF's conduct in violation of a duty or duties owed to disclose or not engage in the continued conduct.

93. Metro Metals substantially assisted CDF in the achievement of the foregoing tort(s).

94. NFM substantially assisted CDF in the achievement of the foregoing tort(s).

95. Individually, Metro Metals committed the foregoing tort(s) that caused an injury to America CAN!. CDF knew of Metro Metals' conduct in violation of a duty or duties owed to disclose or not engage in the continued conduct. NFM knew of Metro Metals' conduct in violation of a duty or duties owed to disclose or not engage in the continued conduct

96. CDF substantially assisted Metro Metals in the achievement of the foregoing tort(s).

97. NFM substantially assisted Metro Metals in the achievement of the foregoing tort(s).

98. Individually, NFM committed the foregoing tort(s) that caused an injury to America CAN!. CDF knew of NFM's conduct in violation of a duty or duties owed to disclose or not engage in the continued conduct. Metro Metals knew of NFM's conduct in violation of a duty or duties owed to disclose or not engage in the continued conduct

99. CDF substantially assisted NFM in the achievement of the foregoing tort(s).

100. Metro Metals substantially assisted NFM in the achievement of the foregoing tort(s).

FIRST CLAIM FOR RELIEF

TRADEMARK INFRINGEMENT — 15 U.S.C. § 1114

101. America CAN! incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

102. The America CAN! Brand and Trademarks are nationally recognized, as being affixed to services of the highest quality originating with America CAN!

103. The registration embodying the America CAN! Brand and Trademarks is in full force and effect and entitled to protection under both federal law and common law.

104. Defendants' unauthorized use of the America CAN! Brand and Trademarks in interstate commerce and advertising of the same constitutes false designation of origin and a false representation that the services are offered, sponsored, authorized, licensed by, or otherwise connected with America CAN! or come from the same source as America CAN! and are of the same quality as services bearing the America CAN! Brand and Trademarks.

105. Defendants' use of the America CAN! Brand and Trademarks is without America CAN!'s permission or authority and is in total and willful disregard of America CAN!'s rights to control its trademarks.

106. Defendants' activities are likely to lead to and result in confusion, mistake, or deception and are likely to cause the public to believe that America CAN! has sponsored, authorized, licensed, or is otherwise connected or affiliated with Defendants' commercial business activities, all to the detriment of America CAN!

107. Upon information and belief, Defendants' acts are deliberate and intended to confuse the public as to the source of Defendants' services and to injure America Can! and reap the benefit of America Can!'s goodwill associated with the America Can! Brand and Trademarks.

108. As a direct and proximate result of Defendants' willful and unlawful conduct, America Can! has been damaged and will continue to suffer damage to its business and reputation unless Defendants are restrained by this Court from infringing the America Can! Mark.

109. Defendants' acts have damaged and will continue to damage America Can!, and America Can! has no adequate remedy at law.

110. In light of the foregoing, America Can! is entitled to injunctive relief to prohibit defendants from using the America Can! Mark or any marks identical or confusingly similar thereto for any purpose, and to recover from Defendants all damages, including attorney's fees, that America Can! has sustained and will continue to sustain as a result of such infringing acts, and all gains, profits, and advantages obtained by Defendants as a result thereof, in an amount not yet known, as well as the costs of this action pursuant to 15 U.S.C. § 1117(a), attorneys' fees and treble damages pursuant to 15 U.S.C. § 1117(b), and/or statutory damages pursuant to 15 U.S.C. § 1117(c).

SECOND CLAIM FOR RELIEF

UNFAIR COMPETITION UNDER FEDERAL LAW (15 U.S.C. § 1125(a))

111. America CAN! incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

112. Defendants' conduct constitutes unfair competition and false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants' use of the marks is likely to cause confusion, or mistake, or to deceive as to the affiliation, connection, association, origin, sponsorship, or approval of Goodwill's services.

113. Defendants' conduct is, and has been, willful and deliberate.

114. Defendants' conduct has caused, and is causing, immediate and irreparable harm to America Can!. America Can! has no adequate remedy at law sufficient to fully remedy Defendants' conduct and unless the Defendants are permanently enjoined, the Defendants' conduct will continue to cause America Can! irreparable harm.

115. America Can! has been and will continue to be damaged by Defendants' conduct in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

TRADEMARK DILUTION UNDER FEDERAL LAW (15 U.S.C. § 1125(c))

116. America Can! incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

117. America Can!'s Mark is inherently distinctive. By virtue of America Can!'s extensive nationwide advertising and promotion of the Mark for more than two decades, the Mark has acquired distinctiveness in the marketplace and has become famous as a designation of source of America Can!' s services such that the Mark is uniquely associated with America Can! and widely recognized by the general consuming public.

118. Defendants' use of Plaintiff's mark to direct consumers and the general public to their website in order to advertise the services of a direct competitor of the Plaintiff, which began after America Can!'s Mark became famous, has diluted, or is likely to dilute, and unless restrained will continue to dilute, the distinctive quality of the Mark by destroying the exclusive association between the Mark and America Can!'s services, or otherwise lessening the capacity of the Mark to exclusively identify America Can! and its services.

119. Defendants' conduct constitutes trademark dilution under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

120. Defendants' conduct is, and has been, willful and deliberate.

121. Defendants' conduct has caused, and is causing, immediate and irreparable harm to America Can!. America Can! has no adequate remedy at law sufficient to fully remedy Defendants' conduct and unless the Defendants are permanently enjoined, Defendants' conduct will continue to cause America Can! irreparable harm.

122. America Can! has been, and will continue to be, damaged by Defendants' conduct in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF

INJURY TO BUSINESS REPUTATION AND DILUTION

123. America Can! Incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

124. America Can!'s Mark is famous and distinctive. By virtue of America Can!'s extensive advertising and promotion of the Mark for more than two decades, the Mark has acquired distinctiveness in the marketplace and has become famous as a designation of source of America Can!'s services such that the Mark is uniquely associated with America Can! and widely recognized by the general consuming public nationally and in Texas.

125. Defendants' use of Plaintiff's mark to direct consumers and the general public to their website in order to advertise the services of a direct competitor of the Plaintiff, which began after America Can!'s Mark became famous has diluted, or is likely to dilute, and unless restrained will continue to dilute, the distinctive quality of the Mark by destroying the exclusive association between the Mark and America Can!'s services, or otherwise lessening the capacity of the Mark to exclusively identify America Can! and its services.

126. Defendants' conduct constitutes trademark dilution under Texas Business and Commerce Code Section 16.103.

127. Defendants' conduct is, and has been, willful and deliberate

128. Defendants' conduct has cause, and is causing, immediate and irreparable harm to America Can!. America Can! has no adequate remedy at law sufficient to fully remedy

Defendants' conduct, and unless Defendants are permanently enjoined, Defendants' conduct will continue to cause America Can! irreparable harm.

129. By their actions, Defendants have gained financial benefit for themselves and has caused financial loss and damages to America Can!

130. America Can! has been and will continue to be damaged by Defendants' conduct in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF

COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

131. America Can! incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

132. America Can! is the exclusive owner of the valid Mark in connection with arranging of automobile and watercraft auction sales and carrying out automobile and watercraft auction sales; organizing and conducting charity auctions for charitable fundraising purposes, and charitable fundraising by means of collecting and reselling used automobile and watercraft.

133. Defendants' use of "Write Off the Car Not the Kid" as a trademark, in connection with its charitable fundraising services, without the authorization or consent of America Can!, is likely to cause confusion and mistake and to deceive consumers as to the source, origin, sponsorship, or affiliation of Defendants' services and constitutes trademark infringement, unfair competition, dilution, and misappropriation of "Write Off the Car Not the Kid" goodwill and reputation.

134. Defendants' Conduct is, and has been, willful and deliberate.

135. Defendants' conduct causes immediate and irreparable harm to America Can!. America Can! has no adequate remedy at law sufficient to fully remedy Defendants' conduct

and, unless Defendants are enjoined, Defendants' conduct will continue to cause America Can! irreparable harm.

136. America Can! has been, and will continue to be, harmed by Defendants' infringement of the Mark in an amount subject to proof.

SIXTH CLAIM FOR RELIEF

INFRINGEMENT, UNFAIR COMPETITION and FALSE ADVERTISING

137. America Can! incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

138. America Can! is the exclusive owner of the valid Mark in connection with arranging of automobile and watercraft auction sales and carrying out automobile and watercraft auction sales; organizing and conducting charity auctions for charitable fundraising purposes, and charitable fundraising by means of collecting and reselling used automobile and watercraft.

139. Defendants' use of "Write off the Car not the Kid" as a trademark, in connection with its advertisement of Goodwill's charitable fundraising service (as evidenced above), without the authorization or consent of America Can!, is likely to cause confusion and mistake, and to deceive consumers as to the source, origin, sponsorship, or affiliation of the service Defendants' are advertising and constitutes trademark infringement, unfair competition, dilution and misappropriation of "Write off the Car not the Kid" goodwill and reputation.

140. Defendants' conduct is, and has been, willful and deliberate.

141. Defendants' conduct constitutes unfair competition under America Can! has been and is likely to be damaged by Defendants' deceptive trade practice(s).

142. Defendants' conduct constitutes false advertising. Defendants' advertisements contain material assertions, representations, or statement of fact which are untrue, deceptive, or misleading.

143. Defendants' conduct causes immediate irreparable harm to America Can!. America Can! has no adequate remedy at law sufficient to fully remedy Defendants' conduct and, unless Defendants are enjoined, Defendants' conduct will continue to cause America Can! irreparable harm.

144. America Can! has been, and will continue to be, harmed by Defendants' infringement of the Mark in an amount subject to proof.

SEVENTH CLAIM FOR RELIEF

ALTER EGO / VEIL PIERCING

145. America Can! incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

146. The foregoing underlying tort claims were committed by Defendants both individually and as alter egos of each other. The foregoing underlying tort claims were committed by Messrs. Bigley and Heiligman both individually and as alter egos of the entity Defendants.

147. Defendants' conduct should not be shielded by their respective jural separateness and therefore the Court should find that they are mere alter egos of each other and individually liable as well as joint and severally liable.

EIGHTH CLAIM FOR RELIEF

PASSING OFF

148. America Can! incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

149. America Can! is the exclusive owner of the valid Mark in connection with arranging of automobile and watercraft auction sales and carrying out automobile and watercraft auction sales; organizing and conducting charity auctions for charitable fundraising purposes, and charitable fundraising by means of collecting and reselling used automobile and watercraft.

150. Defendants' use of "Write off the Car not the Kid" as a trademark, in connection with its advertisement of Goodwill's charitable fundraising service (as evidenced above), without the authorization or consent of America Can!, is likely to cause confusion and mistake, and to deceive consumers as to the source, origin, sponsorship, or affiliation of the service Defendants' are advertising and constitutes trademark infringement, unfair competition, dilution and misappropriation of "Write off the Car not the Kid" goodwill and reputation.

151. Defendants' conduct is, and has been, willful and deliberate.

152. Defendants' conduct constitutes passing off. America Can! has been and is likely to be damaged by Defendants' deceptive trade practice(s). Defendants are passing off goods or services as those of America Can! and/or are engaging in "reverse passing off." Defendants are causing the likelihood of confusion or of misunderstanding as to the source of their or America Can!'s goods or services. Defendants are engaging in conduct which similarly creates a likelihood of confusion or of misunderstanding.

153. Defendants' conduct causes immediate irreparable harm to America Can!. America Can! has no adequate remedy at law sufficient to fully remedy Defendants' conduct and, unless Defendants are enjoined, Defendants' conduct will continue to cause America Can! irreparable harm.

154. America Can! has been, and will continue to be, harmed by Defendants' infringement of the Mark in an amount subject to proof.

PRAYER FOR RELIEF

WHEREFORE, America CAN! respectfully prays that this Court enter judgment in its favor against Defendants as follows:

1. Defendants, their agents, servants, employees, officers, associates, attorneys, and all persons acting by, through, or in concert with any of them, are hereby temporarily, preliminarily, and permanently enjoined from using the "Write Off the Kid, Not the Car" designation or any term, mark, logo, trade name, internet domain name, or any other source identifier or symbol of origin that is confusingly similar to the America CAN! marks or likely to dilute their distinctive quality;
2. Engaging in any other act or practice that deceives consumers, the public, and/or trade, including without limitation, the use of designations and design elements associated with America CAN!;
3. Ordering an accounting by Defendants of all gains, profits, and advantages derived from their wrongful acts;
4. Awarding America CAN! all of Defendants' profits and all damages sustained by America CAN! as a result of Defendants' wrongful acts, and such other compensatory damages as the Court determines to be fair and appropriate pursuant to 15 U.S.C. § 1117(a) and 17 U.S.C. § 504(b).
5. Awarding treble damages in the amount of Defendants' profits or America CAN!'s damages, whichever is greater, for willful infringement pursuant to 15 U.S.C. § 1117(b);

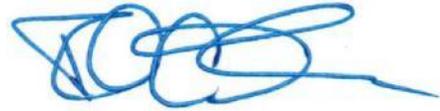
6. Awarding applicable interest, costs, disbursements, and attorneys' fees, pursuant to 15 U.S.C. § 1117(b) and 17 U.S.C. § 505;
7. Awarding America CAN! punitive damages in connection with its state law claims on account of Defendants' willful misconduct and fraud and deceit upon the public; and
8. Such other relief as may be just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, America CAN! hereby demands a trial by jury of all claims in this litigation.

Dated: June 21, 2018

Respectfully Submitted,



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