No. 22-6147

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC LEE PORTERFIELD — PETITIONER
(Your Name)

vs.

U.S. DEPARTMENT OF JUSTICE et. al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ERIC LEE PORTERFIELD
(Your Name)

1150 N. MAIN STREET
(Address)

MANSFIELD OHIO 44901
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

1. What is a contract?
2. Is a Tradename a secondary Trademark?
3. Does a LLC protect the property of its owner from opposing infringement?
4. Can a contract be valid through silence?
5. Does a Cease and desist be considered a valid contract?
6. Does a tradename have the same protections as a trademark?
7. Does a tradename protect the owner from opposing infringement?
8. Does the plaintiff deserve the protection for his mark's this court has provided other's?
9. Is Registered mark's and contract is between the plaintiff and Defendant(s) considered frivalous in nature?
10. Does the plaintiff have a right to be heard?
11. With the debt amount over $25,000.00 Did the circuit court have a duty to except the case?
12. Does the circuit court have to except the plaintiff's allegation(s) to be true?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Department of Rehabilitaon and Corrections/OHIO
2. Mansfield Correctional Institution

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2. Wynhamer v. People, NY 378
3. Hale v. Henkel, 201 U.S. 43
4. Fisher v. Univ. of Tex. 136 S.Ct. 2198
5. Golden Door, Inc. v Odisho, 646 F.2d 347 referencing Southland and Corp. v Bennen, 1968 U.S. Dist. Lexis 12365
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7. John Wiley & sons, Inc. v. Book Dog Books LLC, 327 F.Supp. 3d 606
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11. Keystone Driller Co. v. General Excavator Co., 290 U.S. 240
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STATUTES AND RULES

Title 28 § 2679
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28 USCS § 1391 (b)(2)
28 USCS § 1391 (e)(1)
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15 USC § 1115
15 U.S.C.S. § 1125 (a)(1)
15 U.S.C.S. § 1072

Fed. Regist., Degree of Protection.
U.S.C.S. (15) § 1051.
13.02 Liability for civil damages under 42 U.S.C. § 1983
Fed. Civ. Rights Act of 1871, codified a 42 U.S.C. § 1983
Lanham Trademark Act
15 U.S.C.S. § 1053
15 U.S.C.S. § 1127
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Chapter 1329 O.R.C.
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OTHER

TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix ______ to the petition and is

[✓] reported at NO. 21-3463 ______; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix ______ to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ______ to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ______ court appears at Appendix ______ to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was Sept 7, 2022.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Oct 13, 2022, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ______ (date) on ______ (date) in Application No. __A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was ______. A copy of that decision appears at Appendix ______.

[ ] A timely petition for rehearing was thereafter denied on the following date: ______, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ______ (date) on ______ (date) in Application No. __A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

~~[illegible]~~

Part 33. General Legal Services
Chapter 3. Claims, Suits, ~~[illegible]~~ inspection and Related Matters
Section 1. Federal Tort Claims Act

33.3.1. Federal Tort Claims Act
- 33.3.1.1 General
- 33.3.1.2 Administrative Claims for Damages
- 33.3.1.3 Litigation under the Federal Tort Claims Act

Amendment 1: freedom of speech
Amendment V: Deprived of property without due process of law
Amendment V: Deprived of property for public use without just compensation and due process of law
Amendment VI: Denied right to confront accuser, injured or damaged party

Part 14- (28 CFR ch. 1 (7-1-99 Edition) Administration Claims Under Federal Claims Act - § 14.2

USA Constitution Art. 7

Title 18 USA Codes Sec. 7214 (a)(1)(2)

Title 15 U.S.C.S §1115

Title 15 U.S.C.S. §1125 part 1 and 3.

U.S.C.S. Const. Art. VI Cl. 2.

U.S. Const. Amend. 14 §(1)(a)(5)

Federal Rules of Evidence §402
Fed. R. Evid. 403

Herein, Respondent(ss):

STATEMENT OF THE CASE

Identified herein have and had a mandatory duty via their Oath of Office and pursuant to the expectation(s) that said Respondent(ss) would act and operate in "Good Faith" and with "Clean Hands" in protecting the rights of the Claimant/Petitioner via said Oath in respect to the Bill of Rights and first 10 Amendment(s) to the U.S. Constitution as it/they operate upon the Respondents via said Oath towards Petitioner.

Said mandatory duty of the Respondants via Oath of Office via acts made and done to and upon the petitioners Registered Tradename and Registered LLC with the Secretary of the State of OHIO was breached and such matters were brought to the attention of the Respondant(s) and given opportunity to bring forth "proof of claim" that such duty, breach, and injury was not committed against the marks of the petitioner and said Respondant(s) went silent and or failed or refused to bring forth "proof of claim" to the contrary and therefore stipulated, agreed, and confessed to their breach of infringement which breach caused injury to the petitioner as stated therein the cease and desist and herein states claim for said injuries as supported by stated in affidavit in support of tort claim and invoices provided by petitioner as a matter of right under necessity. The acts of the Respondant(s) infringement committed constitutes the injury/ies to the property of the petitioner and the Respondant(s) breached the contract/Cease and desist presented by petitioner and continues to infringe upon the marks of the petitioner. And under U.S. Const. Amend 14 § 1 provides that no State shall deny to any person within its jurisdiction the equal protection of the law. U.S.C.S. Const. Art. VI, Cl 2, Supreme Law states that this Constitution and the Laws of the United States which shall be made in pursuance thereof and all Treaties made, or which shall be made, under the authority of the United States shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding. And in referencing [A] mark registered on the principal register provided by chapter (Title 15 U.S.C.S. 1115) and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of registrants right to use the registered mark. The Lanham Act provides that any person who shall "use in commerce" a reproduction or a colorable imitation of a registered mark shall be liable to the registrant of the mark in a civil action for infringement. And to prove willfulness under the copyright Act, the plaintiff must show: (1) that the defendant(s) was actually aware of the infringing activity; or (2) that the defendant(s) actions were the result of reckless disregard or willful blindness to the copyright holder's rights. The same standard is used for trademark infringement, and a Cease-and-Desist letter(s) are not hearsay when offered to show bad faith and willful infringement. Because Plaintiff's tradename and LLC infringement claim against the defendant(s) for money damages required proof of bad faith, evidence of certain disputes between defendant(s) (and including cease-and-Desist letter sent to defendant(s)) was presumptively admissible under Fed. R. Evid. 402, and Plaintiff has a valid mark(s) that is entitled to protection under

STATEMENT OF THE CASE

the Lanham Act; and that the defendant(s) used the mark in commerce and is in connection with the sale of advertising of goods or services, without the plaintiff's consent. Registration serves as constructive notice of the registrant's claim of ownership of the mark. A reviewing court must "accept" all of the complaint's factual evidence/allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claim that would entitle him to relief, and the plaintiff was never given an opportunity to provide the court with this set of facts to support his claim. The rights in trademarks, tradenames and service marks are acquired by actual user and not by registration. Such rights belongs to the one who first actually adopts and uses the name or mark in connection with his business. A district court must determine that the claim is not merely incidental and alleges a breach of a condition to or a covenant of, a contract, and if a breach of a condition is alleged, then the district court has subject matter jurisdiction. The district court has original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000.00 and the plaintiff's claim was the sum certain amount at the time of the filing of the claim was $2.3 million dollars, and the plaintiff's claim should have controlled the jurisdiction of the court since plaintiff made the claim in good faith. And under the St. Paul rule, a plaintiff's general allegations of damages (provided by plaintiff to the court by the filing of INVOICE's upon court records) met the amount requirement. No motion to dismiss was ever filed by the defendant(s) in this case. In general, a civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States; may except as otherwise provided by law, be brought in any judicial district in which a defendant in the action resides. And the plaintiff paid the $505.00 filing fee because his in forma pauperis was denied and plaintiff is incarcerated and indigent, and the prima facie (via cease and desist, default notice, default and invoices) showing by facts, would support jurisdiction. And **ALL** who actively and intentionally aid and abet the infringing of Trade-marks / Trade-names are equally infringers or contributing infringers. By the great weight of authority, particularly where the infringement was deliberate and willful, it is held that the wrong doer is required to account for all profits realized by its wrongful acts. The right and remedy of one's property being infringed upon may elect to claim for damages the court may grant an injunction and also decree an account of the profits / damages agreed upon resulting from the defendant(s) acts, agreement and contractual agreement. When evidence of debt or a written instrument is the subject of a criminal act, the amount of money due on the evidence of debt or the written instrument or secured thereby, or the amount of money or the value of property affected thereby, shall be deemed the value of evidence of debt or the written instrument. A District court must liberally construe the allegations in the complaint in favor of the plaintiff and must accept as well-pleaded facts in the complaint and a Tradename is a designation that is adopted and used to Denominate the conduct of a business and, through its association with the business, aquires a special significance in the name, and rights in the Trade-name is required by the user. A plaintiff who holds an incontestible registered mark is generally entitled to a preliminary injunction enjoining all alleged infringing parties. The purpose of the trademark statute(s) is to protect the marks holders quasi-property interest in the mark. The plaintiff in this matter enter into a agreement that binds both parties into a contract that was breached by the defendant(s) and a monetary value was placed upon the defendant(s) continual use of the plaintiff's tradename and LLC. based upon the non-response that constitutes the infringement. The plaintiff sought a claim upon which relief can be granted by 42 U.S.C. § 1983 and was denied by dismissal of the case as being frivolous. Qualified property rights in such names and marks and the right to protection thereof arise as a matter of common law, and not as a matter of statute. The court used cases that was in fact that of inmate's claiming copyright infringement as reason to deny the plaintiff the protection his registered marks demand by the Lanham Act and that of the Trademark Act of 1905. The defendant(s) has never denied the plaintiff's claims, nor contested the registration of the marks. The defendant(s) agreed to pay the sum certain amount of $1,000.00 U.S. Dollars for the usage of the plaintiff's marks per day, from June 5, 2015 until the writting of this petition under the understanding of $1,000.00 per day until a court determine the date of prevention of use. The plaintiff established a claim to which the amount succeeded $75,000.00 and jurisdiction was still denied. Chapter 1329 of the O.R.C. provides the plaintiff protection against such infringement state-wide. The statement of facts is the protection the laws governing the protection of one's mark(s) from the intrusion and infringing of another, upon one's mark(s), guarantee the holder the right to be heard in a court of law that vowed to protect the rights of the one whom is claiming this right has been denied him? The record of this court will establish a contract (cease-and-desist) has been established between both parties. That the defendant(s) was placed into default and given an opportunity to cure default. The record will show that the plaintiff issued an invoice every 30 day's to the defendant(s)

for the amount owed for the willful infringement upon the plaintiff's marks, that the defendant(s) agree to pay through silence of their non-response. And per Ohio Revise Code and laws, and statutes, a tradename has the same protection of a trade-mark and per the Lanham Act of 1905 if (a trade-name) holds a secondary meaning and also provides grounds for an injunction against the infringer(s). Under the Trademark Protection, Civil Infringement Actions, the defendant(s) in bad faith intented to profit in violation of 15 U.S.C.S. §1125 (D)(1)(A) the transfer of and/or sell the domain name for financial gain without having an intent to use the domain name in the bona fide offering of any goods or services, and if granted entry into this honorable court, the plaintiff will provide prima facie evidence that can not be disputed. And regard to trade-mark/trade-name infringement actions asserted under section 43(A) the Courts must apply the traditional and time-tested principals of trademark/tradename law.
Tradename registration is prima facie evidence that a mark has required secondary meaning and should be protected by Courts as a matter of law and not on allegations alone. Section 16, Art. 1 of the Ohio Constitution provides that "all courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay" and the plaintiff in this matter was denied this promise. Personal names and surnames fall within the "merely descriptive" catagory of trademarks and therefore are entitled to trademark protection, and knowledge that one or more is infringing on or reckless disregard of another's intellectual property rights constitutes

willful infringement and warrants increased damages, because notice is persuasive evidence of willful infringement, especially when the infringer(s) is provided oral or written notice of its infringing conduct by the marks holder and yet passes the matter off as a nuisance. The court may find willful infringement. In other words, one who undertakes a course of infringing conduct may neither sneer in the face of the marks holder nor hide its head in the sand to prevent acknowledging its unlawful conduct. The exclusive right to use a trademark/tradename with respect to a vendible commodity is rightly called "property" and the jurisdiction of the court in the protection of trademarks/tradenames rest upon property, and that court should have a duty per the Lanham Act of 1905 and other laws governing the marks, to interfer by injunction because that is the only mode by which property of this description can be effectively protected.

REASONS FOR GRANTING THE PETITION

"The fundamental requisite of due process of law is the opportunity to be heard." The circuit court errored by denying the plaintiff this fundament right. The defendant(s) never requested the circuit court for this dismissal, nor did the defendant(s) deny owing the plaintiff the amount owed for damages. The plaintiff and the defendant(s) entered into a contract by which was violated by the defendant(s) continual use of the plaintiff's property. The plaintiff noticed the defendant(s) to "cease-and-desist" from using the plaintiff's property i.e. "ERIC LEE PORTERFIELD", or by default they would owe the plaintiff the amount he seeks. The contract was breached and the plaintiff saught damages by claim of a 1983. The plaintiff has registered Mark's, 1. TRADENAME DOCUMENT NO.# 202113900230 with the STATE OF OHIO, and 2. DOMESTIC FOR PROFIT LLC DOCUMENT NO.#202108301898 with the STATE OF OHIO. By denying the plaintiff his right to be heard and due process, the court allows the plaintiff's Mark's to be infringed upon by the defendant's. The court by it's dismissal of the plaintiff's claim deny's the plaintiff the protection it and the law's vowed to give. The court deny's that the plaintiff's notice to cease-and-desist is a contract. Williston on Contracts-§1211: states "the surety ship relation exists where one undertakes an obligation and the other is under obligation or duty to the obligee, who is entitled to only one performance, but as between the two ~~who~~ are bound, and one should bear the burden of performing". Everything in commerce is done under contract, whether it be oral, or written, there are a mulitifude of different types of contracts, by which one party makes a promise or undertakes a performance, and for breach of which the law gives a remedy. This court saw in Farrington v. Tenn., 95 U.S. 679, that the ingredients of a contract are parties, consent, consideration, and obligation, by which the plaintiff has accomplished. The defendant(s) has remained silent through this whole ordeal. A reasonable person would construe silence as necessarily indicating assent, and one who keeps silent knowing that his silence will be misinterpreted, should not be allowed to deny the natural interpretation of it's conduct. Reasons for granting this petition follows: 1. To give the plaintiff the protection this court and the laws of the Lanham Act of 1905 and that of the Great STATE OF OHIO, provides the registered Mark's he has ~~acquired~~ acquired by right.

2. To give the plaintiff his right to be heard and the due process it governs.

3. To award the plaintiff the amount owed him by the defendant(s).

4. To give the plaintiff [redacted] the protection within the quasi-property rights he has within his mark's

5. To allow the plaintiff to question the defendant(s)

6. To give the plaintiff the protection this court has vowed to give through it's many case's preventing trademark infringement.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: November 15, 2022