

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

VAPOR LIFE, LLC, a Florida limited liability company,

Plaintiff,

v.

VAPOR 4 LIFE, INC., an Illinois corporation,

Defendant.

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT AND PETITION FOR
CANCELLATION OF DEFENDANT'S TRADEMARKS "VAPOR4LIFE" AND "V4L"**

1. Plaintiff, Vapor Life, LLC ("Vapor Life" or "Plaintiff"), by and through its undersigned attorney, brings this action for declaratory judgment and petition for cancellation of trademark against Defendant, Vapor 4 Life, Inc. ("V4L" or "Defendant"), and alleges:

NATURE OF THE ACTION

2. This is an action for declaratory judgment that Plaintiff's use, marketing, sale and/or offering for sale of vapor products and services under its name VAPOR LIFE through its retail website and brick and mortar stores a) does not infringe, dilute, or tarnish any trademark rights of Defendant with respect to Defendant's registered standard character marks VAPOR4LIFE and V4L, b) does not unfairly compete with Defendant, and c) is not cybersquatting upon the Uniform Resource Locators ("URLs" aka "Domain Names") of Defendant. Additionally, Plaintiff petitions this Court to cancel Defendant's VAPOR4LIFE and V4L registered U.S. Trademarks.

JURISDICTION

3. This Court has federal question jurisdiction over the claims in this action, which relate to federal trademark rights pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367(a).

4. This Court has subject matter jurisdiction over this Complaint pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202, as well as under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, and pursuant to 28 U.S.C. §§ 1331, 1332, 1338, and 1367 and 15 U.S.C. § 1121.

5. This Court has personal jurisdiction over the Defendant because it does business in Florida, and, by its actions in this District against Vapor Life, a Florida limited liability company, as detailed below, Defendant has expressly aimed its activities at this District, availing itself of this forum.

VENUE

6. Venue is proper in this District because a substantial part of the events giving rise to Vapor Life's claims occurred in this Judicial District.

THE PARTIES

7. Plaintiff Vapor Life is a Florida limited liability company ("LLC") with its principal address at 100 Nighthawk Ave., Plantation, FL 33324.

8. Upon information and belief, Defendant V4L is a corporation with its principal place of business at 4100 Commercial Ave., Northbrook IL 60062. The registered agent of record is David A. Bronner, 70 W Madison St., Ste. 3500, Chicago, IL 60602.

FACTS

9. Plaintiff is an online and brick and mortar retailer and reseller of several different brands of vapor products and services. At all material times hereto, all of Plaintiff's 14 brick and

mortar stores were and still are located in South Florida.

10. Plaintiff uses the following stylized logo and variations of same in connection with its organization and goods, services and merchandise related thereto:



11. Plaintiff registered Vapor Life, LLC with the Florida Secretary of State on or about April 5, 2013, and began doing business at that time.

12. Plaintiff registered the URL www.vaporlifeusa.com on or about April 3, 2013.

13. Plaintiff views its website as an advertisement for its brick and mortar stores, and not principally as a portal from which to sell vapor products and services via an internet transaction. Approximately 95% of Plaintiff's gross sales are from its brick and mortar stores, while less than approximately 5% of its gross sales are from its aforementioned website.

14. Plaintiff applied for a U.S. Trademark for VAPOR LIFE as a standard character mark (Serial Number 86099690) in International Class No. 001, U.S. Class Nos. 001, 005, 006, 010, 026, and 046, on or about October 23, 2013, with the filing basis of "1A" (actual use in interstate commerce). On or about February 13, 2014, the United States Patent and Trademark Office ("USPTO") by Office Action (Official Letter) initially refused registration and required Plaintiff to respond 1) to the examiner's concerns regarding Defendant's mark VAPOR4LIFE, U.S. Registration No. 4163538, and 2) to the examiner's demand that Plaintiff disclaim the term "vapor" apart from the mark because it was too descriptive and/or generic. Plaintiff abandoned its application on or about August 14, 2014.

15. Defendant is an online retailer and reseller of predominantly its own vapor

products, and, upon information and belief, operates but a single implant office for local sales in its sole warehouse located in Northbrook, IL together with Vapor4Life Chicago Vape Shop, 2307-B W Lawrence Ave., Chicago, IL 60625.

16. Defendant is the registered owner of the following two (2) standard character U.S. Trademarks (as opposed to U.S. Service Marks):

- a. **Word Mark:** VAPOR4LIFE
Goods and Services: IC 034. US 002 008 009 017. G & S: Electronic cigarettes; electronic cigarette starter kits; components and accessories for electronic cigarettes, namely, atomizers, cartomisers, cartridges and refill cartridges for electronic cigarettes; refill liquid for electronic cigarettes; empty refill cartridges, and carrying cases. FIRST USE: 20090303. FIRST USE IN COMMERCE: 20090303
Standard Characters Claimed
Mark Drawing Code: (4) STANDARD CHARACTER MARK
Serial Number: 85349243
Filing Date: June 17, 2011
Current Basis: 1A
Original Filing Basis: 1A
Published for Opposition: November 8, 2011
Registration Number: 4163538
Registration Date: June 26, 2012
Owner (REGISTRANT): Vapor 4 Life, Inc., CORPORATION, ILLINOIS, 4100 Commercial Avenue, Northbrook, ILLINOIS 60062
Attorney of Record: Roger H. Stein
Type of Mark: TRADEMARK
Register: PRINCIPAL
Live/Dead Indicator: LIVE
- b. **Word Mark:** V4L
Goods and Services: IC 034. US 002 008 009 017. G & S: Electronic cigarettes; electronic cigarette starter kits; components and accessories for electronic cigarettes, namely, atomizers, cartomisers, cartridges and refill cartridges for electronic cigarettes; refill liquid for electronic cigarettes; empty refill cartridges, and carrying cases. FIRST USE: 20090408. FIRST USE IN COMMERCE: 20090408
Standard Characters Claimed
Mark Drawing Code: (4) STANDARD CHARACTER MARK
Serial Number: 85349178
Filing Date: June 17, 2011
Current Basis: 1A
Original Filing Basis: 1A
Published for Opposition: November 8, 2011

Registration Number: 4090738
Registration Date: January 24, 2012
Owner (REGISTRANT): Vapor 4 Life, Inc. CORPORATION ILLINOIS
4100 Commercial Avenue Northbrook ILLINOIS 60062
Attorney of Record: Roger H. Stein
Type of Mark: TRADEMARK
Register: PRINCIPAL
Live/Dead Indicator: LIVE

17. Defendant has not applied for U.S. Service Marks for the terms VAPOR4LIFE or VFL, and is not entitled to a presumption of validity with respect to the use of same in connection with Plaintiff Vapor Life's **services**, namely, advertising and selling third party vapor products and services, including without limitation, over the internet and in other media, etc. On the one hand, Defendant predominantly sells its own products at its website and stores, and has obtained U.S. Trademarks which apply to its vapor products. On the other hand, Plaintiff, who advertises and sells predominantly others' products through its website and brick and mortar stores under its mark VAPOR LIFE, is in a different class, namely a service class, and as such, is unlikely to infringe upon any intellectual property rights alleged by Defendant.

18. Additionally, upon information and belief, Defendant does not use either of its standard character marks as registered ("VAPOR4LIFE" and "V4L" are registered in text or standard character form), but, instead, merges its marks into the following single highly stylized logo and variations of same in connection with its organization and goods, services and merchandise related to same. Note, there is only one number four (4) in the logo and the terms "vapor life" at the bottom of same are merely descriptive, generic, and/or simply define the capital "V" and "L" surrounding the number "4."



The above stylized logo is not a registered U.S. Trademark, and Plaintiff contends the circle R above is false, misleading, and deceptive.



WOW VAPOR is also a registered U.S. Trademark of Defendant, Serial Number 85349137.

19. Upon information and belief, at all material times hereto, neither Plaintiff nor Defendant owned or controlled the URL www.vaporforlife.com. The said URL does not point to Defendant's or Plaintiff's websites, but instead leads to a page indicating that same may be for sale. Plaintiff's search for the registrant at whois.com indicates that the URL creation date is 01/17/2013 and further reveals that the registrant for the URL is an agent for an undisclosed principal as follows:

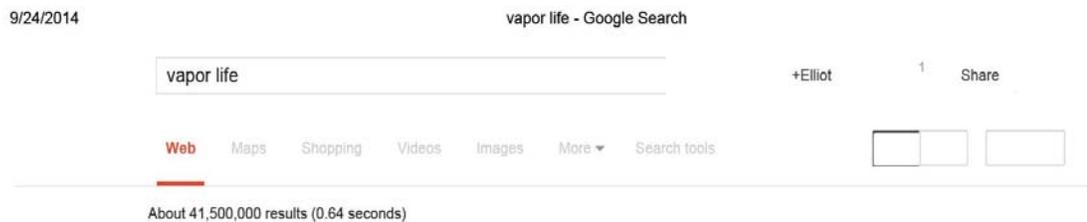
Registrant Name: Whois Agent

Registrant Organization: Your Jungle Privacy Protection Service
Registrant Street: 6140 Tutt Blvd, #160
Registrant City: Colorado Springs
Registrant State/Province: CO
Registrant Postal Code: 80923
Registrant Country: US
Registrant Phone: 1.720.921.8850

20. Likewise, upon information and belief and at all material times hereto, neither Plaintiff nor Defendant owned or controlled the URL www.vaporlife.com, which also does not point to Defendant's or Plaintiff's websites, but instead leads to a page indicating that same may be for sale. Plaintiff's search for the registrant at whois.com indicates that said URL creation date is 01/07/2009 and further reveals that the registrant for the URL is as follows:

Registrant Name: Bradley Carroll
Registrant Organization: Vapornation
Registrant Street: 290 Parnassus Ave.
Registrant City: San Francisco
Registrant State/Province: California
Registrant Postal Code: 94117
Registrant Country: United States
Registrant Phone: (415) 377-2225
Registrant Email: bradley@catapultcreations.com

21. A Google Search performed on or about September 24, 2014 produced 41,500,000 results for the term "vapor life" as follows:



22. The above Google Search Results revealed several other merchants either named VAPOR LIFE, or using the terms "vapor life" in connection with their goods, services and related merchandise, which are not owned or controlled by Plaintiff, including but not limited to:

- a. Goodlifevapor.com
- b. Vaporlifes.com
- c. VaporXlife.com (and store)
- d. Avaporlife.com (and store)
- e. Vaporlife.net
- f. Vaporlifenas.com (3 stores in FL)
- g. Vaporlifeco.com (2 stores in IL in the same area as Defendant)
- h. Vapor Life Lounge, LLC (store in Atlanta, GA)
- i. Vaporlifeonline.com (store and lounge)
- j. Pinterest (vaporlife app sells products)
- k. Vaporlife.brogspot.com
- l. Vaporlifeneeds.com
- m. VAPOR LIFE, 1670 Baratavia Blvd., Marrero, LA 70072-4354
- n. Vaporlifestyle.com
- o. VaporlifeLounge.net
- p. New Vapor Life (eBay shop)
- q. Vaporlife Co., 12 W. Streamwood Blvd., Streamwood, IL 60107
- r. Lifestylevapors.com
- s. Thevapelyfe.com
- t. Vapelyfeonline.com
- u. Vapelife.com
- v. Thevapelifestore.com
- w. Vape Life, 13721 Newport Ave., Ste. 6, Tustin, CA 92780
- x. Vape Life, 6085 Raeford Road, Suite 8, Fayetteville North Carolina

- y. A Vape Life, 8202 Hwy 107, Sherwood, AR 72120
- z. Mrvapelife.com
- aa. Vapor Life Company
- bb. Vaporlifeco.com, 12 W Streamwood Blvd., Streamwood, IL 60107, FREE WIFI
- cc. Vaprlife.com
- dd. Vapedlife.com
- ee. Life Style Vapor, 149 N Gibson Rd, Henderson, NV 89014

23. Plaintiff contends that the terms “vapor life” have become so descriptive that genericide has occurred. The said generic terms are not worthy of U.S. Trademark or Service Mark protection.

24. In fact, the examiner in Plaintiff’s U.S. Trademark Application for VAPOR LIFE, referred to in paragraph 14 *supra.*, required Plaintiff to disclaim the term “vapor” because it was too descriptive.

25. In any event, upon information and belief, Defendant knew, or should have known about Plaintiff’s LLC, URLs, and U.S. Trademark Application as early as April 3, 2013, but, to date, has not filed suit to stop Plaintiff’s alleged infringing use of its marks, or initiated a Uniform Dispute Resolution Procedure (“UDRP”) to force Plaintiff to transfer its URLs to Defendant. Plaintiff contends that at this time, including without limitation, laches, waiver, estoppel, and/or unclean hands bar Defendant from asserting any and all purported intellectual property rights. Simply put, Defendant should not be permitted to sit on its laurels watching Plaintiff spend exorbitant sums building up its business then jump in and reap any benefits, especially when it knew or should have known of Plaintiff’s use for a time period of well over sixteen (16) months since Plaintiff publicly formed its LLC (*see paragraph 11 supra.*) and registered its Domain Name (*see paragraph 12 supra.*), and for a time period of approximately

one (1) year since Plaintiff filed its application for a U.S. Trademark (*see paragraph 14 supra.*). *See, generally, Precision Instrument Mfg. Co. v. Automotive Maintenance Mack Co., 324 U.S. 806, 814 (1945), reh'g denied, 325 U.S. 894 (1945). Also, see 15 U.S.C. §1115(b)(1) and (5); and, Ubeda v. Zialcita, 226 U.S. 452 (1913).*

**DEFENDANT'S INITIAL CEASE AND DESIST LETTER TO PLAINTIFF DATED
07/14/2014**

26. a. On July 14, 2014, Defendant's attorneys sent a cease and desist email with a confirmation copy by certified mail to Plaintiff citing its federally registered trademark VAPOR4LIFE U.S. Reg. No. 4,163,538, for electronic cigarettes, electronic cigarette starter kits, components and accessories for electronic cigarettes, namely atomizers, cartomisers, cartridges and refill cartridges for electronic cigarettes, refill liquid for electronic cigarettes, empty refill cartridges, and carrying cases.

b. The said cease and desist letter further stated that Defendant owns vapor4life.com and other similar websites, and, in addition, has regular stores selling its goods. The cease and desist letter demanded, inter alia, i) that Plaintiff "immediately cease and desist all sales, promotion, marketing, and linking under the marks and names VAPOR LIFE, VAPOR LIFE LLC, and VAPORLIFEUSA and domain vapolifeusa.com," ii) that Plaintiff transfer all Plaintiff's allegedly infringing domain names to Defendant, and iii) that Plaintiff advise Defendant in writing of the total sales made by Plaintiff through its websites.

c. The cease and desist letter threatened Plaintiff with suit for, including without limitation, i) removal of its domain name registrations, ii) disgorgement of profits, iii) lost profits, iv) attorneys' fees, and v) statutory damages of \$100,000 per domain.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S CEASE AND DESIST DATED
08/25/2014**

27. a. On or about August 25, 2014, Plaintiff's attorneys responded to

Defendant's attorneys' initial cease and desist letter aforementioned and stated that the appearance, sound, and connotation of Plaintiff's VAPOR LIFE mark is different than Defendant's VAPOR4LIFE mark such that any confusion is unlikely. In particular, Plaintiff's mark consists of two words without the number "4" and looks substantially different than Defendant's single word mark, which includes a prominently visible number "4".

b. Moreover, in the aforementioned response, Plaintiff's attorneys advised Defendant's attorneys that Plaintiff's mark has three syllables, compared to Defendant's mark which has four. Also, Defendant's attorneys were told that Plaintiff's mark would be pronounced and heard differently than Defendant's mark such that if the product is ordered orally the differences would be clear.

c. Additionally, Plaintiff's attorneys reasoned in said response that Plaintiff's mark has a different connotation than Defendant's mark. In particular, the phrase "vapor for life" has a different meaning to consumers than "vapor life." Specifically, the phrase "vapor for life" connotes a duration of time, i.e. a lifetime of vaping, whereas the phrase "vapor life," connotes a lifestyle.

d. Furthermore, Plaintiff's attorneys informed Defendant's attorneys in said response that the VAPOR4LIFE mark is a weak trademark and will not be given a wide degree of legal protection. Use of the word "vapor" to identify goods and/or services in the electronic cigarette industry is commonplace, and is now descriptive. For example, the word "vape" was recently added to the dictionary at http://www.oxforddictionaries.com/us/definition/american_english/vape.

e. Finally, Plaintiff's attorneys shared that a cursory search of the USPTO database reveals over a thousand hits in the electronic cigarette industry for registered marks and applications that use the word "vapor." Thus, the scope of protection afforded to Defendant's mark is limited, and small changes in marks containing the word "vapor" appear sufficient to

differentiate one mark from the registered U.S. Trademark of VAPOR4LIFE.

DEFENDANT'S FINAL REPLY TO PLAINTIFF'S RESPONSE DATED 09/02/2014

28. Defendant's attorneys replied to Plaintiff's response abovementioned by letter dated 09/02/2014 and reiterated their earlier stated positions.

29. All letters referred to in paragraphs 26-28 *supra*. are not attached as exhibits to this Complaint because a) Defendant is already in possession of copies of same, and 2) some portions of same contained inadmissible settlement possibilities.

DEFENDANT'S FRAUDULENT TRADEMARK APPLICATIONS

30. Upon further investigation, Plaintiff alleges that Defendant's U.S. Trademarks VAPOR4LIFE (the "Asserted Mark") and VFL were fraudulently obtained.

31. Defendant filed two (2) previous separate U.S. Trademark Applications on or about September 16, 2010 for the marks "VAPOR4LIFE" (Serial Number 85131181) and "VFL" (Serial Number 85131227) with a filing basis of 1B, commonly known as an Intent to Use ("ITU") Application.

32. Defendant never filed a statement of use with respect to these two (2) previous ITU Applications and abandoned both on or about June 17, 2011.

33. These previous ITU Applications are wholly inconsistent the Applications Defendant filed to obtain its U.S. Trademarks for "VAPOR4LIFE" and "VFL" as listed in paragraph 16 *supra*. On the one hand, the ITU Applications indicate that Defendant certified it never used the said marks from the filing date of September 16, 2010 to the date of abandonment of June 17, 2011. Yet, on the other hand, as to the Applications filed on June 17, 2011 ("The New Applications") that evolved into the registrations listed above in paragraph 16 *supra*., Defendant certified that it first used VAPOR4LIFE in interstate commerce as early as

03/03/2009, and that it first used V4L in interstate commerce as early as 04/08/2009.

34. a. Plaintiff alleges that Defendant's statements on The New Applications representing that it used VAPOR4LIFE in interstate commerce as early as 03/03/2009 and V4L in interstate commerce as early as 04/08/2009 are material facts and false.

b. Plaintiff alleges that Defendant knew at the time it made the said statements that the representations were false.

c. Plaintiff alleges that Defendant intended that the United States Patent and Trademark Office be induced to act on said representations and issue Defendant's U.S. Trademark Registrations set forth in paragraph sixteen (16) *supra*.

d. The U.S. Trademark Office relied on said false representations and issued said Registrations to the detriment of Plaintiff, which was injured by same.

35. Defendant's significant demands are unwarranted in light of Defendant's baseless and bad faith claims against Plaintiff.

36. In light of the above, a case or controversy exists between Plaintiff and Defendant that is definite and concrete, touching the legal relations having adverse legal interests. The case or controversy between Plaintiff and Defendant is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Defendant's allegations that Plaintiff's conduct constitutes trademark infringement, trademark dilution, trademark tarnishment, unfair competition and cybersquatting have created an actual, substantial and justiciable controversy between Plaintiff and Defendant concerning the right of Plaintiff to continue to market, sell and/or offer for sale vapor services and products in its brick and mortar stores and on its website. Moreover, the Plaintiff has a real and reasonable apprehension of litigation based upon Defendant's statements and conduct. Under all the circumstances, a real and substantial dispute

exists between the parties.

COUNT I
(Declaratory Judgment of Non-Infringement)

37. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 – 36 as if fully set forth herein.

38. An actual and justiciable controversy has arisen and now exists between Plaintiff and Defendant concerning Defendant's rights in and to the Asserted Mark and Plaintiff's alleged infringement of the same based upon its marketing, sale and/or offering for sale primarily third party vapor products, services, and other related merchandise.

39. Defendant has not engaged in substantially exclusive use of the Asserted Mark and/or the Asserted Mark is not distinctive.

40. Defendant does not use either of its standard character marks as registered, and thus has abandoned its use of same.

41. Defendant's Asserted Mark is merely descriptive, or deceptively misdescriptive, or primarily geographically descriptive or deceptively misdescriptive, or primarily a surname.

42. Defendant's Asserted Mark is not distinctive of Defendant's goods or services in commerce.

43. Registration of Defendant's Asserted Mark was obtained fraudulently.

44. Defendant's Asserted Mark has become a common descriptive name of an article or substance.

45. The sale and/or offering or sale of primarily third party vapor products, services and related merchandise by Plaintiff is not likely to cause confusion, to cause mistake, or to deceive the consuming public as to the source of origin, sponsorship and/or affiliation with Defendant or of the goods and services offered by Plaintiff and Defendant.

46. Plaintiff seeks a declaratory judgment from this Court that Plaintiff's use, marketing, sale, and/or offering for sale of said vapor products, services, and related merchandise has not and does not infringe Defendant's Asserted Mark under state or federal law.

COUNT II
(Declaratory Judgment of No Trademark Dilution or Tarnishment)

47. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 – 36 as if fully set forth herein.

48. An actual and justiciable controversy has arisen and now exists between Plaintiff and Defendant concerning Defendant's rights in and to the Asserted Mark and whether Plaintiff's marketing, sale, and/or offering for sale of primarily third party vapor products, services and related merchandise constitutes trademark dilution.

49. Defendant has not engaged in substantially exclusive use of the Asserted Mark and/or the Asserted Mark is not distinctive.

50. Defendant does not use either of its standard character marks as registered, and thus has abandoned its use of same.

51. The Asserted Mark is not famous.

52. Defendant's Asserted Mark is merely descriptive, or deceptively misdescriptive, or primarily geographically descriptive or deceptively misdescriptive, or primarily a surname.

53. Defendant's Asserted Mark is not distinctive of Defendant's goods or services in commerce.

54. Registration of Defendant's Asserted Mark was obtained fraudulently.

55. Defendant's Asserted Mark has become a common descriptive name of an article or substance.

56. The use, marketing, sale and or offering for sale of primarily third party vapor

products, services and related merchandise is not likely to dilute or tarnish the alleged distinctive quality or harm the reputation of Defendant's claimed Asserted Mark.

57. Plaintiff seeks a declaratory judgment from this Court that Plaintiff's use, marketing, sale, and/or offering for sale of primarily third party vapor products, services and related merchandise has not and does not dilute or tarnish Defendant's Asserted Mark.

COUNT III
(Declaratory Judgment of No Unfair Competition)

58. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 – 36 as if fully set forth herein.

59. An actual and justiciable controversy has arisen and now exists between Plaintiff and Defendant concerning Defendant's rights in and to the Asserted Mark and whether Plaintiff's marketing, sale, and/or offering for sale of primarily third party vapor products, services and related merchandise constitutes unfair competition.

60. Defendant has not engaged in substantially exclusive use of the Asserted Mark and/or the Asserted Mark is not distinctive.

61. Defendant does not use either of its standard character marks as registered, and thus has abandoned its use of same.

62. Defendant's Asserted Mark is merely descriptive, or deceptively misdescriptive, or primarily geographically descriptive or deceptively misdescriptive, or primarily a surname.

63. Defendant's Asserted Mark is not distinctive of Defendant's goods or services in commerce.

64. Registration of Defendant's Asserted Mark was obtained fraudulently.

65. Defendant's Asserted Mark has become a common descriptive name of an article or substance.

66. Use of the term “vapor life” on Plaintiff’s website, brick and mortar stores, URLs, various and sundry media, and/or on primarily third party vapor products, services and related merchandise, is not likely to cause confusion as to the source, affiliation or sponsorship of the Defendant or of the goods and services offered by Plaintiff and Defendant. Therefore, Plaintiff’s use, marketing, sale and/or offering for sale of primarily third party vapor products, services and related merchandise does not constitute unfair competition with Defendant.

67. Plaintiff seeks a declaratory judgment from this Court that the use, marketing, sale and/or offering for sale of primarily third party vapor products, services and related merchandise by Plaintiff does not constitute unfair competition.

COUNT IV

(Petition for Cancellation of Defendant’s Trademarks “VAPOR4LIFE” and “V4L”)

68. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 – 36 as if fully set forth herein. More specifically, Plaintiff repeats and realleges paragraphs 30-34 as if fully set forth hereat with respect to Defendant’s Fraudulent Trademark Applications.

69. Defendant has not engaged in substantially exclusive use of the Asserted Mark and/or the Asserted Mark is not distinctive.

70. Defendant does not use either of its standard character marks as registered, and thus has abandoned its use of same.

71. Defendant’s Asserted Mark is merely descriptive, or deceptively misdescriptive, or primarily geographically descriptive or deceptively misdescriptive, or primarily a surname.

72. Defendant’s Asserted Mark is not distinctive of Defendant’s goods or services in commerce.

73. Registration of Defendant’s Asserted Mark and its V4L mark was obtained

fraudulently.

74. Defendant's Asserted Mark has become a common descriptive name of an article or substance.

75. Accordingly, Plaintiff petitions this Court to cancel Defendant's U.S. Trademark Registrations for "VAPOR4LIFE" and "V4L."

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief:

A. For a declaratory judgment that:

- a. Plaintiff has not and does not infringe, dilute and/or tarnish any of Defendant's rights in the Asserted Mark or any purported rights of Defendant under state or federal law;
- b. Plaintiff has not and does not unfairly compete with Defendant under state or federal law;
- c. Plaintiff has not and is not cybersquatting upon the Uniform Resource Locators ("URLs" aka "Domain Names") of Defendant.

B. For cancellation of Defendant's U.S. Trademark Registrations VAPOR4LIFE and VFL.

C. That the Court find this is an exceptional case under 15 U.S.C. § 1117(a) and award Plaintiff its attorneys' fees and costs incurred in this action.

D. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted,

ELLIOT ZIMMERMAN, BCS, P.A.

By: /s/ Elliot M. Zimmerman

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