

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

BOARD OF REGENTS,	§	
THE UNIVERSITY OF TEXAS SYSTEM,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 1:11-cv-00125
	§	
TOWER CAR WASH, INC., D/B/A	§	<b>JURY DEMANDED</b>
TOWER EXPRESS CAR WASH,	§	
	§	
Defendant.	§	

**COMPLAINT FOR TRADEMARK INFRINGEMENT AND DILUTION,  
UNFAIR COMPETITION, AND UNJUST ENRICHMENT**

Plaintiff Board of Regents, The University of Texas System (“Plaintiff”), appearing through its undersigned counsel, alleges as follows:

**NATURE OF ACTION AND JURISDICTION**

1. This is an action for trademark infringement and unfair competition under the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.* (“Lanham Act”); trademark infringement and dilution under the Texas Business and Commerce Code; and trademark infringement, unfair competition, and unjust enrichment under Texas common law.

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 39 of the Lanham Act, 15 U.S.C. § 1121 and Chapter 85 of the Judiciary and Judicial Procedure Code, 28 U.S.C. §§ 1331 and 1338, and has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

## **PARTIES**

3. Plaintiff, Board of Regents, The University of Texas System, is a state board established for the purpose of governing The University of Texas System. The powers and duties of Plaintiff are set forth generally at Chapter 65 of the Texas Education Code. Plaintiff maintains its principal office at 201 West 7th Street, Austin, Texas 78701.

4. Defendant Tower Car Wash, Inc., d/b/a Tower Express Car Wash (“Defendant”), is a Texas corporation with a principal place of business at 1350 East Whitestone Boulevard, Cedar Park, Texas 78613.

## **FACTS**

### **A. THE UNIVERSITY AND ITS TRADEMARKS**

5. Plaintiff operates a system of world class universities and related institutions throughout the state of Texas. Plaintiff’s flagship institution is The University of Texas at Austin (“UT” or “the University”).

6. UT was founded in 1883, and is world-renowned for providing outstanding educational services at the college and graduate levels. The University provides educational programs in a broad spectrum of disciplines such as architecture, business, communication, education, engineering, fine arts, law, liberal arts, nursing, pharmacy, sciences, and social work. Many of UT’s educational programs consistently rank among the top schools in the United States in their respective fields.

7. In addition to providing high-quality educational services, the University actively participates in many collegiate sports, including football, baseball, basketball, cross-country, golf, rowing, soccer, softball, swimming and diving, tennis, track and field, and volleyball.

8. UT also operates an extensive trademark licensing program, in which it licenses its trademarks and service marks under controlled conditions for use in connection with a wide range of products and services sold to the consuming public. The University's licensed products are extremely popular, and its licensing program has grown to be one of the most successful collegiate licensing programs in the world. UT's school colors are orange and white, and thus its marks and licensed products are often presented in or on the color orange.

9. The University's most distinguishing landmark is its iconic, 307-foot tower (the "UT Tower"). Completed in 1937, the famous UT Tower, shown below, has served a commanding position in Austin and throughout the state of Texas as a symbol of academic excellence and personal opportunity. The University is widely-known to bathe the UT Tower in orange lighting for celebration of sports victories and other campus-wide events, as well as other colors on different occasions.



10. For many years, the University has used various marks depicting the UT Tower, including those shown below (the "Tower Marks"), in connection with its high-quality educational services and athletics programs, as well as on various products and services.



11. UT's Tower Marks have been featured in connection with various licensed products over the years, including most recently water in bottles replicating the UT Tower.

12. UT's Tower Marks are inherently distinctive and serve to identify and indicate the source of the University's products and services to the consuming public.

13. As a result of UT's long use and promotion of the Tower Marks, the marks have become distinctive to designate the University, to distinguish the University and its products and services from those of others, and to distinguish the source or origin of UT's products and services. As a result of these efforts by UT, the consuming public in Texas and throughout the United States widely recognizes and associates the Tower Marks with the University.

14. As a result of UT's long use and promotion of the Tower Marks in Texas and elsewhere, UT has acquired valuable common law rights in the Tower Marks.

15. In accordance with the provisions of federal and state law, UT has registered the Tower Marks on the Principal Register of the United States Patent and Trademark Office and with the Texas Office of the Secretary of State. *See* U.S. Reg. Nos. 1,230,438, 3,148,092, and 3,653,888; Tex. Reg. No. 38988. These registrations are valid and subsisting, and the first is incontestable pursuant to 15 U.S.C. § 1065. True and correct copies of these registrations are attached hereto as Exhibit A.

**B. DEFENDANT’S INFRINGING ACTIVITIES**

17. Defendant operates a car wash business in Cedar Park, Texas (within the Austin metropolitan area), offering exterior washes, interior cleaning and conditioning, hand waxing, and other products and services.

18. Defendant promotes its car wash products and services under the mark “Tower Express Car Wash,” the trade name “Tower Car Wash, Inc.,” and the website [www.towerexpresscarwash.com](http://www.towerexpresscarwash.com).

19. In promoting its car wash business, Defendant erected a 60-foot replica of the iconic UT Tower (the “UT Tower Replica”), shown below, that Defendant claims “serve[s] as a homing beacon to all unwashed vehicles.”



Not only is Defendant’s replica virtually identical in appearance to the real UT Tower, but Defendant has also equipped its UT Tower Replica with a lighting system so that it can bathe both the upper and lower portions of the structure with colored lights, including orange. Representative printouts from Defendant’s website showing Defendant’s construction of the UT Tower Replica are attached hereto as Exhibit B.

20. Defendant also prominently features the UT Tower in the color orange as the “T” in its Tower Express Car Wash logo (Defendant’s “Logo”), shown below, which is displayed on Defendant’s website and in promotional materials.



Representative printouts of Defendant’s Logo are attached hereto as Exhibit C.

21. Defendant is using the UT Tower Replica and Logo in commerce.

22. Defendant is not affiliated with or sponsored by UT and has not been authorized by the University to use the Tower Marks or any confusingly similar marks.

23. UT has notified Defendant of UT’s rights in the Tower Marks, and made numerous attempts to resolve this dispute with Defendant prior to filing this lawsuit. Despite the University’s attempts to resolve this matter with Defendant amicably, Defendant has not ceased using its UT Tower Replica and Logo.

**C. EFFECT OF DEFENDANT’S ACTIVITIES**

24. Defendant’s unauthorized use of the UT Tower Replica and Logo is likely to cause confusion, to cause mistake, and/or to deceive customers and potential customers of the parties, at least as to some affiliation, connection or association of Defendant with UT, or as to the origin, sponsorship, or approval of Defendant’s products and services by the University.

25. Defendant’s unauthorized use of the UT Tower Replica and Logo falsely designates the origin of its products and services, and falsely and misleadingly describes and represents facts with respect to Defendant and its products and services.

26. Defendant's unauthorized use of the UT Tower Replica and Logo enables Defendant to trade on and receive the benefit of goodwill built up at great labor and expense by the University over many years, and to gain acceptance for its products and services not solely on its own merits, but on the reputation and goodwill of UT, its Tower Marks, and its products and services.

27. Defendant's unauthorized use of the UT Tower Replica and Logo is likely to dilute the distinctive quality of the Tower Marks.

28. Defendant's unauthorized use of the UT Tower Replica and Logo unjustly enriches Defendant at UT's expense. Defendant has been and continues to be unjustly enriched by obtaining a benefit from the University by taking undue advantage of UT and its goodwill. Specifically, Defendant has taken undue advantage of UT by trading on and profiting from the goodwill in the Tower Marks developed and owned by the University, resulting in Defendant wrongfully obtaining a monetary and reputational benefit for its own business and services.

29. Defendant's unauthorized use of the UT Tower Replica and Logo removes from UT the ability to control the nature and quality of products and services provided under the Tower Marks, and places the valuable reputation and goodwill of the University in the hands of Defendant, over whom UT has no control.

30. Unless these acts of Defendant are restrained by this Court, they will continue, and they will continue to cause irreparable injury to UT and to the public for which there is no adequate remedy at law.

**COUNT I: FEDERAL TRADEMARK INFRINGEMENT**

31. Plaintiff repeats the allegations above as if fully set forth herein.

32. The acts of Defendant complained of herein constitute infringement of UT's federally registered Tower Marks in violation of 15 U.S.C. § 1114(1).

33. Defendant's acts complained of herein have been deliberate, willful, intentional, or in bad faith, with full knowledge and conscious disregard of UT's rights in the Tower Marks, and with intent to cause confusion and to trade on UT's vast goodwill in the Tower Marks. In view of the egregious nature of Defendant's infringement, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

**COUNT II: FEDERAL UNFAIR COMPETITION**

34. Plaintiff repeats the allegations above as if fully set forth herein.

35. The acts of Defendant complained of herein constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

**COUNT III: INFRINGEMENT UNDER TEXAS LAW**

36. Plaintiff repeats the allegations above as if fully set forth herein.

37. The acts of Defendant complained of herein constitute trademark infringement of UT's state registered Tower Mark in violation of Texas Business and Commerce Code §16.26.

**COUNT IV: COMMON LAW TRADEMARK INFRINGEMENT**

38. Plaintiff repeats the allegations above as if fully set forth herein.

39. The acts of Defendant complained of herein constitute trademark infringement in violation of the common law of the State of Texas.



**COUNT V: COMMON LAW UNFAIR COMPETITION**

40. Plaintiff repeats the allegations above as if fully set forth herein.

41. The acts of Defendant complained of herein constitute unfair competition in violation of the common law of the State of Texas.

**COUNT VI: DILUTION UNDER TEXAS LAW**

42. Plaintiff repeats the allegations above as if fully set forth herein.

43. The acts of Defendant complained of herein constitute dilution of UT's Tower Marks in violation of Texas Business and Commerce Code § 16.29.

**COUNT VII: UNJUST ENRICHMENT**

44. Plaintiff repeats the allegations above as if fully set forth herein.

45. The acts of Defendant complained of herein constitute unjust enrichment of Defendant at the expense of UT.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that:

(a) Defendant, its officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with any of them, be permanently enjoined and restrained from using the UT Tower Replica, Defendant's Logo, and any other mark that is confusingly similar to or likely to cause dilution of UT's Tower Marks, and from any attempt to retain any part of the goodwill misappropriated from UT;

(b) Defendant be ordered to take all steps necessary to destroy its UT Tower Replica;

(c) Defendant be ordered to file with this Court and to serve upon Plaintiff, within thirty (30) days after the entry and service on Defendant of an injunction, a report in writing and

under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

(d) Plaintiff recover all damages it has sustained as a result of Defendant's activities, and that said damages be trebled;

(e) An accounting be directed to determine Defendant's profits resulting from its activities and that such profits be paid over to Plaintiff, increased as the Court finds to be just under the circumstances of this case;

(f) Plaintiff recover its reasonable attorney fees;

(g) Plaintiff recover its costs of this action and prejudgment and post-judgment interest; and

(h) Plaintiff recover such other relief as the Court may deem appropriate.

**JURY DEMAND**

Plaintiff demands a jury trial in accordance with Federal Rule of Civil Procedure 38(b).

DATED: February 16, 2011

Respectfully submitted,

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