

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

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FLAGSTAR BANK, FSB,
5151 Corporate Drive
Troy, Michigan 48098

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Plaintiff,

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v.

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Civil Action No. PJM 08 CV 0206

FUNDSTAR FINANCIAL, LLC,
20400 Observation Drive, Suite #102
Germantown, Maryland 20876
Montgomery County

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JURY TRIAL DEMANDED

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SERVE:

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THEODORE A. BOONE
Registered Agent
24055 Woodfield School Road
Laytonsville, MD 20882

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Defendant.

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COMPLAINT AND JURY DEMAND

Plaintiff, Flagstar Bank, FSB, does hereby allege for its Complaint against defendant, Fundstar Financial, LLC, as follows:

I. PARTIES AND JURISDICTION

1. Plaintiff, Flagstar Bank, FSB, (hereinafter "Flagstar"), is a Federally Chartered Savings Bank, with a principal place of business at 5151 Corporate Drive, Troy, Michigan 48098.

2. On information and belief, defendant, Fundstar Financial, LLC (hereinafter "Fundstar"), a limited liability company, with a principal place of business at 20400 Observation Drive, Suite #102, Germantown, Maryland 20876, offers mortgage banking services in this district bearing a confusingly similar name to Flagstar's federally registered trademarks.

3. The federal claims pleaded herein arise under the Lanham Act, 15 U.S.C. § 1501 *et seq.*, and subject matter jurisdiction for the federal claims is conferred on the Court by 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).

4. The state law claim pleaded herein is a substantial and related claim to the federal claim, in the sense of 28 U.S.C. § 1338(b). The state law claim also arises out of the same transactions or occurrences, in the sense of 28 U.S.C. § 1367.

5. This Court has general personal jurisdiction over the defendant because the defendant transacts business in the State of Maryland and in this District as alleged above, and has specific personal jurisdiction over the defendant because the defendant's acts leading to the present dispute were purposefully directed towards the State of Maryland and this District, and the services identified by the infringing trademark were provided in this District.

6. To the extent not already established on the record and herein, the factual contentions herein are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

II. FACTUAL BACKGROUND

7. Flagstar is a Federally Chartered Savings Bank that offers mortgage lending and banking services, among other financial services, under its federally registered trademarks "FLAGSTAR,"

"FLAGSTAR BANK and Design," and "FLAGSTAR BANK and Design."

8. Flagstar is the owner of U.S. Trademark Registration No. 2,123,471 for the mark "FLAGSTAR BANK and Design," U.S. Trademark Registration No. 2,015,294 for the mark "FLAGSTAR," and U.S. Trademark Registration No. 3,188,184 for the mark "FLAGSTAR BANK and Design," all for savings and loan services, (collectively, "Flagstar's U.S. Registrations" and/or "Flagstar's Marks").

9. Flagstar's U.S. Registrations are valid and subsisting, and constitute *prime facie* evidence of the validity of Flagstar's Marks, of Flagstar's ownership of an exclusive right to use Flagstar's Marks in commerce, and provide constructive notice of Flagstar's federal trademark rights.

10. U.S. Trademark Registration Nos. 2,123,471 and 2,015,294 are incontestible.

11. Flagstar has used the trademark "FLAGSTAR" and variations thereof, in the United States in connection with savings and loan services since at least as early 1996. In addition to savings and loan services, Flagstar offers traditional banking services (checking and savings accounts, CDs, etc.), mortgage lending services, commercial lending, and a variety of other banking services.

12. The Flagstar Marks are strong and well-known in connection with banking, savings and loan, and related financial services. Flagstar is one of the leading mortgage lenders in the country and a national leader in the wholesale mortgage business. It is listed on the New York Stock Exchange under the ticker symbol "FBC." Flagstar is also very active in community and sponsorship activities, including title sponsor of The Detroit Free Press, Flagstar Bank International Marathon, which receives national and international press.

13. Upon information and belief, subsequent to Flagstar's use of the Flagstar Marks, and with

actual knowledge of Flagstar's use of the Flagstar Marks, and with the intent to misrepresent the source of defendant's services, defendant adopted and has since used the infringing marks "FUNDSTAR," "FUNDSTAR FINANCIAL," "FUNDSTAR FINANCIAL and Design" and/or variations thereof in connection with mortgage banking services in this district.

14. Defendant has no consent, license, approval or other authorization to use any marks that are confusingly similar to the Flagstar Marks in connection with its services, including without limitation, its use of "FUNDSTAR," "FUNDSTAR FINANCIAL," "FUNDSTAR FINANCIAL and Design" and/or any variations thereof (the "Fundstar Marks").

15. Defendant's use of the Fundstar Marks as alleged in the foregoing paragraphs clearly shows willful intent of defendant to misrepresent the source of defendant's services so as to cause confusion, mistake or to deceive as to defendant's connection or association with Flagstar.

III. CLAIMS

COUNT ONE

FEDERAL TRADEMARK INFRINGEMENT UNDER 35 U.S.C § 1114

16. The allegations of paragraphs 1-15 are incorporated herein by reference.

17. Plaintiff has demanded that defendant refrain from use of the Fundstar Marks. Despite Flagstar's well known prior rights in the Flagstar Marks, defendant has, without the consent of Flagstar, used and continues to use in interstate commerce the Fundstar Marks in connection with offering mortgage banking services.

18. Defendant's actions constitute willful infringement of Flagstar's exclusive rights in the Flagstar Marks in violation of 15 U.S.C. § 1114.

19. As a direct and proximate cause of defendant's conduct, Flagstar has suffered irreparable

harm to the valuable Flagstar Marks. Unless defendant is restrained from further infringement of the Flagstar Marks, Flagstar will continue to be irreparably harmed.

20. Flagstar has no adequate remedy at law that will compensate for the continued and irreparable harm it will suffer if defendant's acts are allowed to continue.

21. As a direct and proximate cause of defendant's conduct, Flagstar has suffered damages to its valuable Flagstar Marks and other damages in an amount to be proved at trial.

**COUNT TWO
FALSE DESIGNATION OF ORIGIN OR SPONSORSHIP,
FALSE ADVERTISING, AND TRADE DRESS**

22. The allegations of paragraphs 1-21 are incorporated herein by reference.

23. Defendant has knowingly used and continues to use in commerce the Fundstar Marks which are a colorable imitation of the Flagstar Marks in connection with the mortgage banking services provided by defendant. Defendant's actions under this case are exceptional within the meaning of 15 U.S.C. § 1117(a).

24. Defendant's use of the Fundstar Marks alleged above is likely to confuse, mislead, or deceive customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of defendant's products and services, and is likely to cause such people to believe in error that defendant's products and services have been authorized, sponsored, approved, endorsed, or licensed by Flagstar or that the defendant is in some way affiliated with Flagstar.

25. Defendant's acts constitute false and misleading descriptions, false advertising, and false designations of origin and/or sponsorship of defendant's goods, and constitute trade dress infringement in violation of 15 U.S.C. § 1125(a).

26. By reason of defendant's actions, Flagstar has suffered irreparable harm to its valuable Flagstar Marks. Unless defendant is restrained from its actions, Flagstar will continue to be irreparably harmed.

27. Flagstar has no remedy at law that will compensate for the continued and irreparable harm that will be caused if defendant's acts are allowed to continue.

28. As a direct and proximate cause of defendant's conduct, Flagstar has suffered damages to its valuable Flagstar Marks, and other damages in an amount to be proved at trial.

COUNT THREE
COMMON LAW TRADEMARK INFRINGEMENT

29. The allegations of paragraphs 1-28 are incorporated herein by reference.

30. Flagstar was the first to use the Flagstar Marks or any marks similar thereto in association with banking services, including mortgage banking services. As a result of the continued use of the Flagstar Marks by Flagstar, Flagstar has become widely known and Flagstar has become identified in the public mind as the provider of the services to which the Flagstar Marks are applied. Similarly, as a result of the continued use by Flagstar of its Flagstar Marks in connection with banking services, the Flagstar Marks have become widely known and Flagstar has become identified in the public mind as the source of the banking services to which the Flagstar Marks are applied.

31. As a result of the experience, care, and service of Flagstar in providing banking services, the Flagstar Marks have become widely known and have acquired a reputation for quality in banking services. Moreover, the Flagstar Marks have become associated with Flagstar, and have come to symbolize the reputation for quality and excellence of the services provided by plaintiff in connection with the Flagstar Marks. As such, the Flagstar Marks have become distinctive.

32. Defendant, with the knowledge of and with intentional disregard of Flagstar's rights, continues to advertise, promote, and offer services using the Fundstar Marks, which are a confusing imitation of the Flagstar Marks. Such acts by defendant caused and continue to cause confusion as to the source and/or sponsorship of defendant's mortgage banking services.

33. Defendant's acts constitute willful infringement of Flagstar's exclusive rights in the Flagstar Marks, in violation of the common law. By reason of defendant's actions, Flagstar has suffered irreparable harm to its valuable Flagstar Marks. Unless defendant is restrained from further infringement of the Flagstar Marks, Flagstar will continue to suffer irreparable harm.

34. Flagstar has no remedy at law that will adequately compensate it for the irreparable harm that it will suffer if defendant's conduct is allowed to continue.

35. As a direct and proximate result of defendant's conduct, Flagstar has suffered damages to its valuable Flagstar Marks, and other damages in an amount to be proved at trial.

IV. DEMAND FOR RELIEF

WHEREFORE, Flagstar demands entry of a judgment granting relief against the defendant as follows:

A. A determination that the defendant has willfully and deliberately infringed Flagstar's U.S. Registrations, in the sense of 15 U.S.C. § 1114, that Flagstar has been damaged by such infringements, and that the defendant is liable to Flagstar for such infringements;

B. A determination that the defendant has violated 15 U.S.C. § 1125(a), that Flagstar has been damaged by such violations, and that defendant is liable to Flagstar for such violations;

C. A determination that defendant has committed common law trademark

infringement, that Flagstar has been damaged by such infringement, and that defendant is liable to Flagstar for common law trademark infringement;

D. A determination that defendant's actionable conduct is "exceptional," within the meaning of 15 U.S.C. § 1117(a);

E. Under all claims for relief, that an injunction be temporarily, preliminarily and permanently issued enjoining defendant, their employees, agents, successors and assigns, and all those in active concert and participation with them, and each of them who receives notice directly or otherwise of such injunctions, from:

(1) any unauthorized use of any of the Fundstar Marks in connection with any type of banking services, including without limitation, use as a business name, on signage, the Internet, business cards, and in connection with any advertising or promotional materials;

(2) imitating, copying, or making any unauthorized use of any of the Flagstar Marks;

(3) providing, advertising, promoting or displaying any service using any simulation, reproduction, counterfeit, copy, or comparable imitation of any of the Flagstar Marks;

(4) using any simulation, reproduction, counterfeit, copy or colorable imitation of any of the Flagstar Marks in connection with the providing promotion, advertisement of banking services;

(5) using any false designation of origin or false description (including,

without limitation, any letters, symbols, or designs constituting any of the Flagstar Marks) or performing any act, which can, or is likely to, lead members of the trade or public to believe that any service provided by the defendant is in any manner associated with or connected with Flagstar, the Flagstar Marks or that such services are sponsored, approved or otherwise authorized by Flagstar.

F. For an order directing that defendant deliver for destruction of all signs, brochures, or advertisements in their possession or under their control, bearing or using any of the Fundstar Marks or any simulation, reproduction, counterfeit, copy or colorable imitation of any of the Flagstar Marks, and all plates, molds, matrices and other means of making the same, pursuant to 15 U.S.C. § 1118;

G. For an order directing such other relief as the Court may deem appropriate to prevent the trade and public from deriving the erroneous impression that any service provided or promoted by defendant is authorized by Flagstar or related in any way to the Flagstar Marks;

H. For an award of Flagstar's costs and disbursements incurred in this action, including Flagstar's reasonable attorney's fees;

I. For an award of Flagstar's damages trebled or, alternatively, an award of defendant's wrongful profits trebled, whichever is greater, plus Flagstar's costs and attorney's fees, pursuant to 15 U.S.C. § 1117;

J. For an award of Flagstar's damages arising out of defendant's acts;

K. For an order requiring defendant to file with the Court and provide to Flagstar an accounting of all sales and profits realized by defendant through the use of the "FLAGSTAR" marks,

and any counterfeits thereof;

L. For an award of interest, including pre-judgment interest on the foregoing sums;

and

M. For such other and further relief as the Court may deem just and appropriate.

VII. JURY DEMAND

Plaintiff, Flagstar, demands a trial by jury for all issues so triable.

Respectfully submitted,

By: 

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Of Counsel for Plaintiff Flagstar Bank FSB

Dated: January 24, 2008