

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MINNESOTA**

Cedar Valley Exteriors, Inc.	)	
	)	
Plaintiff,	)	Civil Action No. _____
	)	
v.	)	<b><u>COMPLAINT</u></b>
	)	
JNS Builders, LLC	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
Defendant.	)	
	)	

Plaintiff Cedar Valley Exteriors, Inc. for its complaint against JNS Builders, LLC states and alleges as follows:

**NATURE OF ACTION**

1. This is an action for trademark infringement, deceptive trade practices and unfair competition, and other relief arising under the trademark laws of the United States of America, specifically 15 U.S.C. § *et seq.* (the “**Lanham Act**”).

2. Plaintiff Cedar Valley Exteriors, Inc. (hereinafter “**Plaintiff**” or “**Cedar Valley**”), brings this action to protect itself from Defendant JNS Builders, LLC’s (hereinafter “**Defendant**”) infringement of Cedar Valley’s Federally registered trademarks for the color orange used in the field of general contracting services in the area of roofing, siding, rain gutter and window repair to home owners. Upon information and belief, Defendant has and continues to engage in using the color orange in a promotional manner to promote similar, if

not substantially identical, services. This practice infringes upon Cedar Valley's trademarks and constitutes trademark infringement.

3. This action seeks permanent injunction relief and damages against Defendant's willful infringement of Cedar Valley's Federally registered trademarks, in violation of the Lanham Act.

### **THE PARTIES**

4. Plaintiff Cedar Valley is a Minnesota corporation with its principal place of business located at 3369 Coon Rapids Blvd, Coon Rapids, Minnesota, 55433. Cedar Valley is generally engaged in providing, *inter alia*, catastrophe restoration services, namely services in the area of roofing, siding and windows, to home owners and businesses throughout a majority of the United States.

5. Upon information and belief, Defendant is a Minnesota Limited Liability Company with its registered office located at 2325 Endicott Street, St. Paul, Minnesota, and is also engaged in providing, *inter alia*, catastrophe restoration services in the area of roofing, siding, rain gutter and window repair to home owners.

### **JURISDICTION AND VENUE**

6. This civil action arises under the Acts of Congress relating to

trademarks, namely, the Lanham Act, 15 U.S.C. § 1051 *ET. SEQ.*, and particularly 15 U.S.C. §§ 1114 and 1125(a).

7. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338 and 15 U.S.C. § 1121.

8. Upon information and belief, this court has personal jurisdiction over Defendant because Defendant is a Minnesota Limited Liability Company that conducts business within the District of Minnesota.

9. Venue is proper in the District of Minnesota because Plaintiff's claims arise in this jurisdiction, each party does business in this judicial district, witnesses and evidence are located within this judicial district, a substantial portion of the acts complained here have taken place in this judicial district, and under 28 U.S.C. § 1391 as Defendant is a Minnesota Limited Liability Company and conducts business within the District of Minnesota.

**COUNT I: FEDERAL TRADEMARK INFRINGEMENT**

10. Plaintiff incorporates by reference the allegations in the preceding paragraphs as if set forth in full herein.

11. Count I arises under 15 U.S.C. § 1114.

12. Plaintiff Cedar Valley has used the color orange as a mark as applied to clothing worn during the performance of its services, as well as having used the color orange as a mark as applied to yard signs and other advertising

materials, in commerce since at least 1999 in association with providing its exterior restoration services, namely: building construction and repair; building inspection; construction and renovation of buildings; construction and repair of buildings; general construction contracting; installing siding; and roofing services including roofing contracting, roofing installation and roofing repair (hereinafter “**Cedar Valley’s services**”).

13. Cedar Valley is the owner of U.S. Trademark Registration No. 3,429,642 for the color orange as applied to yard signs and other advertising materials in international class 037 for: building construction and repair; building inspection; construction and renovation of buildings; construction and repair of buildings; general construction contracting; installing siding; roofing contracting; roofing installation; roofing repair; roofing services. A copy of the registration, which has been duly and legally issued by the United States Patent & Trademark Office, is attached hereto as Exhibit A.

14. Cedar Valley is the owner of U.S. Trademark Registration No. 3,429,643 for color orange as applied to clothing worn during the performance of the Cedar Valley’s services in international class 037 for: roofing services; roofing installation; roofing repair; building construction and repair; building inspection; construction and renovation of buildings; construction and repair of buildings; general construction contracting; installing siding; roofing contracting. A copy of the registration, which has been duly and legally issued by the United

States Patent & Trademark Office, is attached hereto as Exhibit B.

15. Through assignment of the aforementioned registrations, including all the benefits inured and the goodwill associated therewith, Cedar Valley is the owner of the aforementioned registrations.

16. Since the date of issuance of the aforementioned registrations, Cedar Valley, through itself and its predecessors, has continually used the aforementioned trademarks in interstate commerce.

17. Upon information and belief, Defendant has imitated, adopted and used the color orange as a mark that confuses the Defendant with the Plaintiff.

18. Plaintiff Cedar Valley's use of its aforementioned orange marks preceded by many years the Defendant's adoption of their imitation marks.

19. Defendant has infringed U.S. Trademark Registration Nos. 3,429,642 and 3,429,643 by using the color orange as a mark in commerce by various acts including advertising goods and services utilizing the color orange as a mark. Defendant's use of the color orange as a mark is without permission or authority of Plaintiff Cedar Valley and Defendant's use is likely to cause confusion, to cause mistake, and/or to deceive.

20. Plaintiff Cedar Valley therefore alleges that the acts of trademark infringement have been committed with the intent to cause confusion, mistake and to deceive.

21. The use by Defendant of the color orange as a mark is an

infringement of Cedar Valley's registered trademarks, and unless restrained by this Court, Defendant will continue to infringe Cedar Valley's registered marks and cause Cedar Valley irreparable injury.

22. By reason of Defendant's acts alleged herein, Cedar Valley has or will suffer damage to its business, reputation and goodwill and the loss of sales and profits Cedar Valley would have made but for Defendant's acts.

23. Defendant continues to do the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Cedar Valley's irreparable damage. It would be difficult to ascertain the amount of compensation that could afford Cedar Valley adequate relief for such continuing acts. Cedar Valley's remedy at law is not adequate to compensate for the damages that Cedar Valley has and will incur.

**COUNT II: VIOLATION OF §43(a) OF THE LANHAM ACT**

24. Plaintiff Cedar Valley incorporates by reference the allegations in the preceding paragraphs as if set forth in full herein.

25. Count II arises under Section 43(a) of the Federal Trademark Act of 1946 as amended (15 U.S.C. §1125(a)).

26. For many years, Cedar Valley has used the color orange as a mark in association with Cedar Valley's services provided by Cedar Valley and marketed in interstate commerce throughout the United States.

27. Cedar Valley has used its marks to distinguish Cedar Valley's services from all other services of the same classes, and Cedar Valley has acquired substantial goodwill through the use of the aforementioned marks.

28. Cedar Valley's aforementioned marks have acquired secondary meaning to the public indicating Cedar Valley as the source of its services.

29. Cedar Valley's use of its aforementioned marks preceded by many years Defendant's adoption of its imitation marks.

30. Defendant's use of the color orange as a mark constitute acts in violation of 15 U.S.C. §1125(a) in that such use is likely to cause confusion, cause mistake or deceive as to affiliation, connection or association of Defendant with Cedar Valley.

31. Defendant's use of the color orange as a mark falsely attributes Cedar Valley as the origin, sponsorship or approval of the Defendant's products, and falsely represents that the Defendant's services are provided by, marketed by, sponsored by, approved of or licensed by Cedar Valley.

32. As a proximate result of the Defendant's acts, Cedar Valley has suffered detriment to its business, goodwill, reputation and profits, all to its damage in an amount as yet not fully ascertained.

33. Defendant's conduct constitutes trademark infringement and unfair competition in violation of Section 43(a) of the Trademark Act (15 U.S.C. §

1125(a)).

34. As Defendant has flagrantly disregarded the rights of Cedar Valley, this is an exceptional case and Cedar Valley is entitled to recover three times its damages plus reasonable attorney's fees pursuant to 15 U.S.C. §1117.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Cedar Valley prays for the following relief:

- (a) that this Court grant an injunction pursuant to 15 U.S.C. § 1116, enjoining Defendant and his/her agents, managers, officers, directors, servants and employees from directly or indirectly using the color orange as a mark, or any confusingly similar mark, in association with Cedar Valley's services;
- (b) that this Court order pursuant to 15 U.S.C. § 1118, that all signs, labels, printouts, packages, samples, inventories, products, catalogs, price lists, wrappers, receptacles, and advertisements in the possession of Defendant which are the same or confusingly similar to Plaintiff Cedar Valley's marks be delivered up to Cedar Valley for destruction;
- (c) that this Court pursuant to 15 U.S.C. § 1117 order Defendant to account to Plaintiff Cedar Valley for any and all profits derived from the sale of goods or services, and for all damages sustained by

Plaintiff Cedar Valley by reason of trademark infringement complained of herein;

- (d) that this Court pursuant to 15 U.S.C. § 1117 award Plaintiff Cedar Valley the amount of actual damages suffered by Plaintiff Cedar Valley and that the amount be trebled;
- (e) that the costs of this action be awarded to Plaintiff Cedar Valley in that this is an exceptional case and that Plaintiff Cedar Valley be awarded its reasonable attorneys' fees; and
- (f) that this Court award such other and further relief as shall be deemed just.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Cedar Valley hereby demands a jury trial on all issues so triable.

Respectfully submitted,

**Cedar Valley Exteriors, Inc.**

Dated: 21 June 2012

By: s/Dustin R. DuFault/  
Dustin R. DuFault (No. 302,776)  
**DuFault Law Firm, P.C.**  
PO Box 1219  
Minnetonka, Minnesota 55345  
Tel: (952) 935-4392  
Fax: (866) 936-4542  
[DDuFault@DuFault-Law.com](mailto:DDuFault@DuFault-Law.com)

**ATTORNEY FOR PLAINTIFF  
Cedar Valley Exteriors, Inc.**

**Int. Cl.: 37**

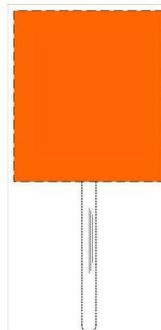
**Prior U.S. Cls.: 100, 103 and 106**

**Reg. No. 3,429,642**

**United States Patent and Trademark Office**

**Registered May 20, 2008**

**SERVICE MARK  
PRINCIPAL REGISTER**



CEDAR VALLEY EXTERIORS, INCORPORATED  
(MINNESOTA CORPORATION)  
1700 - 93RD LANE N.E.  
BLAINE, MN 55449

FOR: BUILDING CONSTRUCTION AND REPAIR; BUILDING INSPECTION; CONSTRUCTION AND RENOVATION OF BUILDINGS; CONSTRUCTION AND REPAIR OF BUILDINGS; GENERAL CONSTRUCTION CONTRACTING; INSTALLING SIDING; ROOFING CONTRACTING; ROOFING INSTALLATION; ROOFING REPAIR; ROOFING SERVICES, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 5-0-1999; IN COMMERCE 5-0-1999.

THE COLOR(S) ORANGE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE COLOR ORANGE AS APPLIED TO YARD SIGNS AND OTHER ADVERTISING MATERIALS USED IN ADVERTISING THE SERVICES. THE MATTER SHOWN IN BROKEN LINES REPRESENTS A YARD SIGN AND SERVES TO SHOW POSITIONING OF THE MARK AND IS NOT A FEATURE OF THE MARK.

SEC. 2(F).

SER. NO. 77-142,831, FILED 3-28-2007.

TERESA M. RUPP, EXAMINING ATTORNEY

**Int. Cl.: 37**

**Prior U.S. Cls.: 100, 103 and 106**

**Reg. No. 3,429,643**

**United States Patent and Trademark Office**

Registered May 20, 2008

**SERVICE MARK  
PRINCIPAL REGISTER**



CEDAR VALLEY EXTERIORS, INCORPORATED  
(MINNESOTA CORPORATION)

1700 - 93RD LANE N.E.

BLAINE, MN 55449

FOR: ROOFING SERVICES; ROOFING INSTALLATION; ROOFING REPAIR; BUILDING CONSTRUCTION AND REPAIR; BUILDING INSPECTION; CONSTRUCTION AND RENOVATION OF BUILDINGS; CONSTRUCTION AND REPAIR OF BUILDINGS; GENERAL CONSTRUCTION CONTRACTING; INSTALLING SIDING; ROOFING CONTRACTING, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 5-0-1999; IN COMMERCE 5-0-1999.

THE COLOR(S) ORANGE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE COLOR ORANGE AS APPLIED TO CLOTHING WORN DURING THE PERFORMANCE OF THE SERVICES. THE MATTER SHOWN IN BROKEN LINES REPRESENTS CLOTHING OF VARIOUS CONFIGURATIONS AND NO CLAIM IS MADE TO THE CONFIGURATION OF THE CLOTHING.

SEC. 2(F).

SER. NO. 77-143,590, FILED 3-29-2007.

TERESA M. RUPP, EXAMINING ATTORNEY

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
U.S. Government Plaintiff, Federal Question (U.S. Government Not a Party), U.S. Government Defendant, Diversity (Indicate Citizenship of Parties in Item III)
Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.