

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

**GORDON J. MCKERNAN and  
GORDON MCKERNAN INJURY  
ATTORNEYS, LIMITED LIABILITY  
COMPANY**

Plaintiffs

**VERSUS**

**E. ERIC GUIRARD and E ERIC  
GUIRARD AND ASSOCIATES, LLC**

Defendant

**CIVIL ACTION NO.:**

**JUDGE:**

**MAGISTRATE JUDGE:**

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**COMPLAINT**

Plaintiffs, Gordon J. McKernan (“McKernan”) and Gordon McKernan Injury Attorneys, Limited Liability Company (individually “Gordon McKernan Injury Attorneys” and collectively with McKernan, “Plaintiffs”), submit this complaint against the Defendants, E. Eric Guirard (“Guirard”) and E Eric Guirard and Associates, LLC (individually, “Guirard and Associates, LLC” and collectively with Guirard, “Defendants”).

**Nature of Action**

1.

This is an action alleging claims for infringement of a federally registered trademark under 15 U.S.C. § 1125(a) and misappropriation of identity/right of publicity under Louisiana state law, including Article 1, § 5 of the Louisiana Constitution and Louisiana Civil Code Article 2315, and requesting injunctive relief and damages.

**Parties**

2.

Gordon J. McKernan is an adult resident of Baton Rouge, Louisiana.

3.

Gordon McKernan Injury Attorneys is a Louisiana limited liability company with its principal place of business at 5656 Hilton Avenue, Baton Rouge, Louisiana 70808.

4.

E. Eric Guirard is an adult resident of Baton Rouge, Louisiana, who may be served with process at 3527 Millbrook Drive, Baton Rouge, Louisiana 70816.

5.

E Eric Guirard and Associates, LLC is a Louisiana limited liability company with its principal place of business at 8254 One Calais Avenue, Baton Rouge, LA 70809.

**Jurisdiction and Venue**

6.

This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1121 because Plaintiffs’ trademark infringement claim arises under the Lanham Act. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs’ state law claims.

7.

This Court has personal jurisdiction over Guirard and Guirard and Associates, LLC because both are Louisiana residents.

8.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391. Guirard and Guirard and Associates, LLC are subject to personal jurisdiction in the Middle District of Louisiana and therefore are deemed to reside in this judicial district. Moreover, a substantial part of the events giving rise to Plaintiffs' claims have occurred and are occurring in this district.

**Factual Background**

9.

Gordon McKernan, owner of Gordon McKernan Injury Attorneys, is a well-known personal injury attorney based in Louisiana. Gordon McKernan Injury Attorneys has represented thousands of clients throughout the state of Louisiana in cities such as Baton Rouge, Lake Charles, Shreveport, Monroe, and New Orleans. The firm handles personal injury matters ranging from vehicle accident lawsuits to offshore and maritime cases. Over time, the firm has expanded to 40 attorneys and approximately 150 total employees across the firm's 6 satellite locations.

10.

Like many law firms which focus on personal injury cases, Gordon McKernan Injury Attorneys has invested significant resources into advertising over the years. Gordon McKernan Injury Attorneys advertises through a variety of mediums, including billboards, internet marketing, TV commercials, and traditional print advertising.

11.

In conjunction with its marketing efforts, Gordon McKernan Injury Attorneys has been active in legally protecting its brands. Gordon McKernan Injury Attorneys' trademark portfolio includes: *Get G*® (2009); *Get Gordon*® (2010); *Get Gordon! Get Your Lawyer!*® (2010); *Get Big G*® (2010); *Who's Your Lawyer?*® (2010); *Anytime Lawyer*® (2012); *Stand Up to Big Trucks*®

(2012); *Anytime Attorney*® (2013); *Get The G Guarantee*® (2014); *The Lawyer on the Truck*® (2016); *The One on the Truck*® (2016); *Get Clicking*® (2017); and several “Lawyer on the Truck” logos depicting an attorney standing on either the hood of an 18-wheeler truck or standing on the trailer of an 18-wheeler truck.

**McKernan’s “Lawyer on the Truck” Advertising Campaign**

12.

Beginning in 2010, Gordon McKernan Injury Attorneys began running television commercials focusing on 18-wheeler accidents. These commercials depicted Gordon McKernan standing on the trailer of an 18-wheeler truck. The first “Lawyer on the Truck” (LOTT) commercial aired in 2010.

13.

To further strengthen Mr. McKernan’s branding as the “lawyer on the truck,” Gordon McKernan Injury Attorneys developed a billboard advertising campaign in 2011 using the Lamar Advertising Agency. The campaign is constructed around a billboard that shows Mr. McKernan standing on the hood of an 18-wheeler truck with his arms crossed.

14.

As a result of the ubiquity of the LOTT TV commercials the LOTT billboards in the Louisiana and Mississippi markets, Mr. McKernan has become known by the consuming public as the “lawyer on the truck.”

15.

In 2013, Gordon McKernan Injury Attorneys applied for federal registration of the billboard imagery, namely an attorney standing on the hood of an 18-wheeler truck (the “LOTT Billboard Mark”):



The mark registered on May 6, 2014 and was assigned Registration No. 4525497. A subsequent registration (Registration No. 5209848) was obtained by Gordon McKernan Injury Attorneys on May 23, 2017 for a line-drawing of the LOTT Billboard Mark.

16.

In 2014, Gordon McKernan Injury Attorneys applied for registration of his TV commercial imagery, namely an attorney standing on the trailer of an 18-wheeler truck (the “LOTT TV Mark”):



The mark registered on February 3, 2015 and was assigned Registration No. 4681608. A subsequent registration (Registration No. 5209849) was obtained by Gordon McKernan Injury Attorneys on May 23, 2017 for a line-drawing of the LOTT TV Mark.

17.

Examples of McKernan’s LOTT advertisements are attached as Exhibit A.

**McKernan’s “Get the G Guarantee” Slogan**

18.

Beginning at least as early as 2009, Gordon McKernan Injury Attorneys began adopting and using a variety of “GET” trademarks, such as *Get G*® (2009), *Get Gordon*® (2010), *Get Gordon! Get Your Lawyer!*® (2010), and *Get Big G*® (2010).

19.

In 2014, Gordon McKernan Injury Attorneys adopted and began using another “GET” trademark: *Get The G Guarantee*® (the “G Guarantee Trademark”). The “G Guarantee” reflects the firm’s promise to its clients that attorney fees are not owed unless the case is won or settled.

20.

At the time of adoption of the G Guarantee Trademark in 2014, no other attorneys or law firms in Louisiana were utilizing a single letter with the phrase “Get the [ ] Guarantee”

21.

Gordon McKernan Injury Attorneys filed a federal trademark application for the G Guarantee Trademark for legal services on January 15, 2014, with a federal registration issuing on December 9, 2014. See, Exhibit B, United States Patent and Trademark Office (USPTO) Certificate for U.S. Reg. No. 4654273.

22.

Since 2014, Gordon McKernan Injury Attorneys has continuously used its G Guarantee Trademark in various advertising mediums throughout the Louisiana market.

23.

Examples of McKernan’s G Guarantee advertisements are attached as Exhibit C.

## **Guirard's Infringing Activity**

24.

In the mid-1990's, E. Eric Guirard and Tommy Pittenger formed E Eric Guirard and Associates, APLC—a Baton Rouge-based personal injury law firm.

25.

From 1995 until May 2009, E Eric Guirard and Associates, APLC utilized the slogan “GET THE “E” GUARANTEE” (the “E Guarantee Trademark”) in attorney advertisements distributed through a variety of advertising mediums, including billboards and television commercials. E Eric Guirard and Associates, APLC owned a federal trademark registration— U.S. Reg. No. 2995035— for the E Guarantee Trademark. See, Exhibit D, USPTO Certificate for U.S. Reg. No. 2995035.

26.

On May 5, 2009, Mr. Guirard and Mr. Pittenger were disbarred based upon their failure to supervise nonlawyer staff, impermissible fee sharing with nonlawyers, and facilitation of the unauthorized practice of law. See, *In re: E. Eric Guirard & Thomas R. Pittenger*, 2008-B-2621, 11 So.3d 1017 (LASC 2009), attached hereto as Exhibit E.

27.

Following Guirard's and Pittenger's disbarment, E Eric Guirard and Associates, APLC ceased usage of the E Guarantee Trademark.

28.

Mr. Guirard and Mr. Pittenger sold their interests in the law firm E Eric Guirard and Associates, APLC to their former partners: Chad Dudley, Steven DeBosier, and James Peltier. The firm's name was changed to Dudley DeBosier, APLC on May 21, 2009.

29.

On October 12, 2012, the law firm's U.S. Reg. No. 2995035 for the E Guarantee Trademark officially went abandoned. See Exhibit F, USPTO Status for U.S. Reg. No. 2995035.

30.

On September 4, 2014, Mr. Guirard filed an application for readmission to the Louisiana state bar.

31.

On September 26, 2014, while still disbarred and therefore unauthorized to practice law, Mr. Guirard filed in his personal capacity an intent-to-use trademark application with the USPTO for the trademark "E GUARANTEE" to be used for "legal services." The application was assigned U.S. Serial No. 86406802 (the "2014 E Guarantee Trademark Application")(see Exhibit G).

32.

Despite being statutorily prohibited from practicing law, Mr. Guirard signed a declaration required by 15 U.S.C. §1051(b) for new trademark applications when filing the 2014 E Guarantee Trademark Application, declaring that he "is entitled to use the mark in commerce" and that he "has a bona fide intention to use ... the mark in commerce on or in connection with the goods/services in the application" as of the application filing date. (Emphasis added). The Declaration further stated that Mr. Guirard "believes that to the best of [his] knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive." Mr. Guirard further declared that "all statements made of his/her own knowledge are true." A copy of Mr. Guirard's declaration is attached as Exhibit H.



33.

Upon information and belief, Mr. Guirard had knowledge of Gordon McKernan Injury Attorneys' adoption, use and application for registration of the G Guarantee Trademark at the time Mr. Guirard submitted his 2014 E Guarantee Trademark Application.

34.

On October 22, 2015, a hearing on Mr. Guirard's readmission request was held by a Hearing Committee of the Louisiana Attorney Disciplinary Board.

35.

On March 4, 2016, the LADB issued a recommendation to the Louisiana Supreme Court to deny Guirard's request for readmission. *In re: E. Eric Guirard*, LADB Docket No. 14-DB-038.

36.

On April 22, 2016, a divided Louisiana Supreme Court granted Guirard's request for readmission. See, *In re: E. Eric Guirard*, 2016-OB-0387, 192 So.3d 723 (LASC), attached hereto as Exhibit I.

37.

Beginning in early 2017, Mr. Guirard and his newly formed law firm, Guirard and Associates, LLC, began commercially using the "E GUARANTEE" and "GET THE E GUARANTEE" slogans (collectively the "2017 E Guarantee Trademarks").

38.

When compared in their entirety as to appearance, sound, connotation and commercial impression, The G Guarantee Trademark and the 2017 E Guarantee Trademarks are confusingly similar.

39.

Gordon McKernan Injury Attorneys and Guirard and Associates, LLC offer similar services under the G Guarantee Trademark and the 2017 E Guarantee Trademarks, respectively.

40.

Contemporaneous use of the G Guarantee Trademark and the 2017 E Guarantee Trademarks is likely to cause confusion in the marketplace as to the source of the services being marketed thereunder or as to a potential affiliation between the two law firms.

41.

Gordon McKernan Injury Attorneys adopted and began using the G Guarantee Trademark prior to Guirard and Associates, LLC's adoption and use of the 2017 E Guarantee Trademarks, thereby making Gordon McKernan Injury Attorneys the senior trademark user.

42.

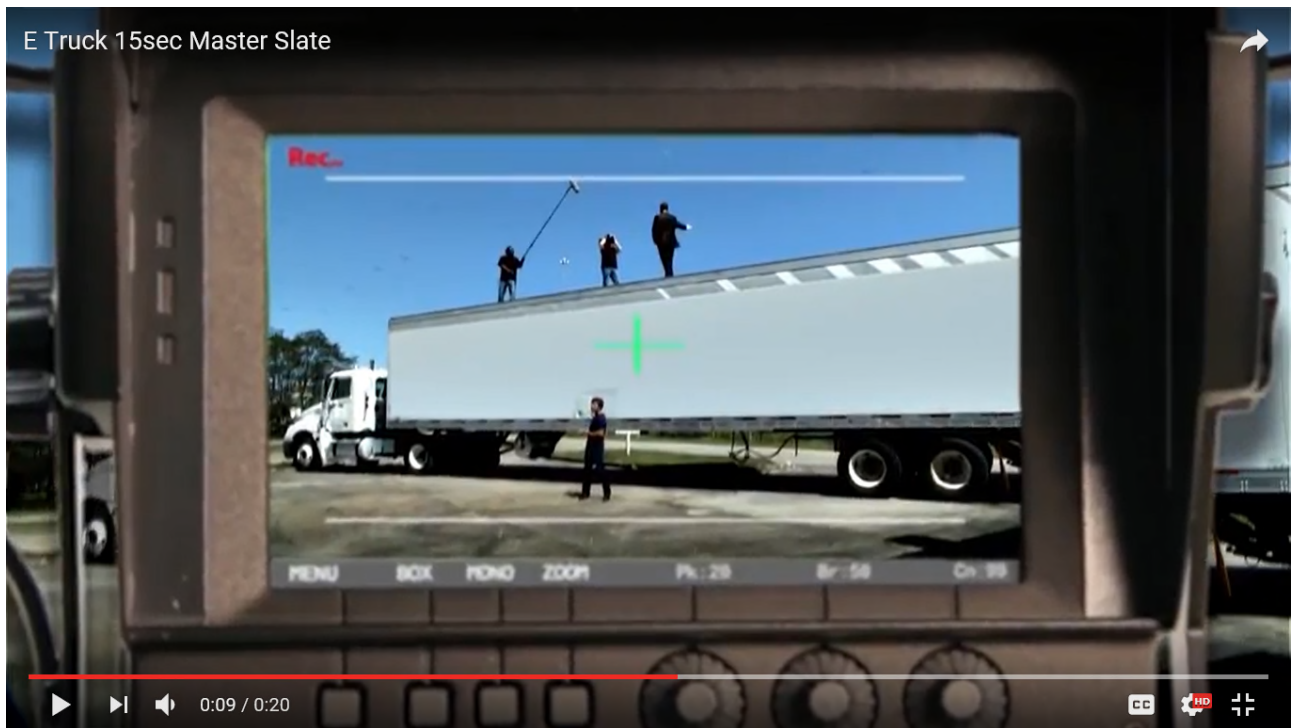
Mr. Guirard and Guirard and Associates, LLC had actual knowledge of Gordon McKernan Injury Attorneys' senior rights in the G Guarantee Trademark prior to its adoption and use of the 2017 E Guarantee Trademarks.

43.

Also beginning in early 2017, Mr. Guirard and Guirard and Associates, LLC began utilizing Mr. McKernan's image and likeness in a TV commercial labeled as the "E Truck" commercial.

44.

The E Truck commercial depicts an attorney-actor sharing Mr. McKernan's likeness standing on the trailer of an 18-wheeler truck while filming an attorney TV advertisement. Select screenshots of the E Truck commercial are provided below:



45.

The E Truck commercial's dialogue also makes a specific reference to an attorney falling of an 18-wheeler truck while shooting a TV commercial, with Mr. Guirard disparagingly stating "don't fall for a copycat" and that "no real lawyers were hurt filming this commercial." The commercial's dialogue is reproduced below:

I'm injury lawyer E Eric Guirard. If you've been in an accident, I don't know - Car wreck, big slip, falling off an 18 wheeler while shooting a TV commercial, I can h... G whiz. Are you ok? So, don't fall for a copycat. Get an original - E Eric Guirard. E Guarantee.com. Get the E Guarantee. I'm injury lawyer E Eric Guirard. No real lawyers were hurt filming this commercial.

46.

By using Gordon McKernan's image and likeness in a commercial advertisement, Defendants' E Truck commercial has intentionally and willfully misappropriated Mr. McKernan's identity and violates his right of publicity, in violation of Article 1, § 5 of the Louisiana Constitution and Louisiana Civil Code Article 2315.

**Count I**  
**Trademark Infringement**

47.

The Plaintiffs incorporate by reference and re-allege the allegations and averments in paragraphs 1-46 above.

48.

The Defendants' use of the 2017 E Guarantee Trademarks in connection with legal services is likely to cause confusion or mistake, or to deceive, as to the affiliation, connection, or association of Defendants with Gordon McKernan Injury Attorneys and its G Guarantee Trademark in violation of 15 U.S.C. § 1125.

49.

Due to the Defendants' infringing conduct, Gordon McKernan Injury Attorneys is entitled to recover Defendants' profits, damages sustained by Plaintiffs, and costs of this action under 15 U.S.C. § 1117(a).

50.

Due to Defendants' intentional and willful violation of Plaintiff's rights in the G Guarantee Trademark, Gordon McKernan Injury Attorneys is entitled to treble damages and attorney fees under 15 U.S.C. § 1117(a).

51.

Defendants' conduct has caused and is causing immediate and irreparable injury to Plaintiffs, who are entitled to injunctive relief under 15 U.S.C. § 1116 to restrain Defendants' conduct and prevent further injury to the goodwill in the G Guarantee Trademark, which cannot be adequately compensated with monetary damages.

**Count II**  
**Misappropriation of Identity/Right of Publicity**

52.

The Plaintiffs incorporate by reference and re-allege the allegations and averments in paragraphs 1-51 above.

53.

Defendants' intentionally and willfully misappropriated Gordon McKernan's identity and violated his right of publicity, in violation of Article 1, § 5 of the Louisiana Constitution and Louisiana Civil Code Article 2315, by using Mr. McKernan's image and likeness in a commercial advertisement showing a Caucasian male, with brown hair and dressed in a gray suit, standing on

an 18-wheeler truck in a context clearly mimicking Mr. McKernan's well-known LOTT commercials.

54.

Under Article 1, § 5 of the Louisiana Constitution and Louisiana Civil Code Article 2315, Defendants' flagrant use of Mr. McKernan's image and likeness to promote its competing services has damaged McKernan, and McKernan is entitled to damages for the reasonable market value of Defendants' use of McKernan's identity as well as compensation for damages caused by Defendants' conduct.

55.

Gordon McKernan's is further entitled to an injunction prohibiting Defendants' unauthorized use of his identity.

**Count III**  
**Unfair Competition and Trade Practices**

56.

The Plaintiffs incorporate by reference and re-allege the allegations and averments in paragraphs 1-55 above.

57.

Defendants' acts as described above constitute an unfair method of competition and unfair and deceptive trade practices in violation of La. R.S. 51:1401 *et seq.*, for which Plaintiffs are entitled to damages as provided by law, attorneys' fees, and injunctive relief as set forth in the Prayer for Relief below.

**Jury Demand**

58.

Plaintiffs demand a trial by jury on all issues so triable in this Complaint.

**Prayer for Relief**

**WHEREFORE**, Plaintiffs Gordon J. McKernan and Gordon McKernan Injury Attorneys, Limited Liability Company prays that this Court:

**Injunctive Relief**

1. Issue an injunction, while this action is pending, and permanently thereafter, prohibiting Defendants, and all persons and entities acting in concert or participation with Defendants, from using the phrases “E GUARANTEE” or “GET THE E GUARANTEE”, or any other term that is a colorable imitation of, or similar to, the G Guarantee Trademark pursuant to 15 U.S.C. § 1116.
2. Issue an injunction, while this action is pending, and permanently thereafter, prohibiting Defendants, and all persons or entities acting in concert or participation with Defendants, from using Gordon J. McKernan’s image and likeness without authorization in association with commercial advertisements for legal services.

**Other Relief**

3. Render a judgment in favor of Plaintiffs and against E. Eric Guirard and E Eric Guirard And Associates, LLC on all of Plaintiffs’ claims, as follows:
  - a. Awarding Defendants’ profits, actual damages sustained by Plaintiffs, and costs of this action arising from Defendants’ infringement of the G Guarantee Trademark pursuant to 15 U.S.C. § 1117(a);

- b. Awarding Gordon McKernan Injury Attorneys treble damages and attorney fees pursuant to 15 U.S.C. § 1117(a);
- c. Awarding McKernan damages, costs, and reasonable attorneys' fees for the willful misappropriation of Gordon McKernan's identity in violation of Article 1, § 5 of the Louisiana Constitution and Louisiana Civil Code Article 2315;
- d. Awarding the Plaintiffs damages and attorneys' fees pursuant to La. R.S. 51:1401 *et seq.*;
- e. Awarding the Plaintiffs pre-judgment and post-judgment interest running from the date of judicial demand; and
- f. Order all other legal, equitable, general, and other relief to which Plaintiffs may be entitled.

Respectfully Submitted,

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