

Court records show congressional candidate Clyde has history of violating intellectual property rights

Andrew Clyde was Sued for Trademark Infringement, Unfair Competition, and Dilution Under Federal Law and Deceptive Trade Practices and Unjust Enrichment Under Georgia State Law for Stealing Herstal FN's Intellectual Property (Trademarked "SCAR" Rifle) to Sell Weapons:

13. Defendant Clyde has, on information and belief, intentionally and willfully attempted to trade upon the goodwill of Plaintiff in its trademark SCAR with Defendant Clyde continuing to use the trademark SCAR-Stock after Plaintiff's objections and with Defendant Clyde even filing a trademark application for the mark after receiving Plaintiff's objection to Clyde's continued use of the underlying trademark SCAR-Stock.

14. As a result of Defendant's unfair and infringing acts or misappropriations, Plaintiff has been irreparably damaged and, unless Defendant's infringing activities are enjoined, the Plaintiff will continue to suffer irreparable injury and harm to its property and goodwill.

15. Certain products designed or intended for sale under Defendant's use of the mark SCAR-Stock and provided under Plaintiff's trademark SCAR, on information and belief, move through similar channels of trade, or be promoted to the same or similar classes of prospective purchasers or end-users, or to the same or similar prospective purchasers.

(FN Herstal, SA, vs. Clyde Armory Inc, Civil Action No.: 3:12-cv-102(CAR), United States District Court, Athens, Georgia)

COUNT I

(Federal Trademark Infringement)

22. Plaintiff realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 21 hereof as if set forth in full.

COUNT II

(Unfair Competition Under Federal Law)

25. Plaintiff realleges and incorporates herein by this reference the allegations contained in paragraphs 1-21, 23 and 24 of this Complaint as if set forth in full.

The Court Ruled That Clyde Armory Did Steal Herstal FN's Intellectual Property by Ruling Clyde Armory was Guilty of Trademark Infringement, Unfair Competition, and Related State Claims:

I. Trademark Infringement

In order to prevail on a trademark infringement claim, a party must prove that (1) it owns a valid and protectable mark, and (2) the opposing party's use of an identical or similar mark is likely to cause confusion.¹⁰³ In this case, the parties have stipulated that simultaneous use of their respective marks is likely to cause confusion. Therefore, the issue is which party, if either, was the first to own a valid and protectable trademark.

As mentioned above, FN was the first to own a valid and protectable interest in its SCAR mark. FN first used the mark when it sold SCARs to SOCOM in November 2004. Moreover, through extensive sales, advertising, and media promotion, FN's SCAR mark

acquired distinctiveness through secondary meaning in the firearms industry prior to September 2006. Due to Clyde Armory's bad faith in adopting its SCAR-Stock mark, it acquired no rights in that mark. Accordingly, FN is entitled to judgment on its trademark infringement claim.

II. Unfair Competition under Federal Law

FN also asserts a claim for unfair competition under federal law. "[A]n unfair competition claim based only upon alleged trademark infringement is practically identical to an infringement claim."¹⁰⁴ In this case, FN's unfair competition claim is based on Clyde Armory's trademark infringement. Accordingly, FN is entitled to judgment on its unfair competition claim for the same reasons stated above.

III. Related State Law Claims

FN also asserts claims for unfair competition and deceptive trade practices under Georgia law. Like the federal unfair competition claim, FN's state law claims are governed under the same framework as its trademark infringement claim.¹⁰⁵ Since the Court finds in favor of FN on its trademark infringement claim, judgment is entered in its favor on the state law unfair competition and deceptive trade practices claims for the same reasons stated above.

CONCLUSION

For the foregoing reasons, the Court grants judgment **IN FAVOR OF FN HERSTAL, S.A.** on all claims. Accordingly, **IT IS HEREBY ORDERED** that Clyde Armory, its respective directors, officers, agents, and employees:

- (a) cease any use of SCAR or SCAR-Stock, or any colorable imitation thereof, in connection with the advertisement, promotion, offer for sale, and sale of firearms and related goods;
- (b) abandon any trademark applications filed that show SCAR-Stock or include the designations, names, or marks SCAR and any confusingly similar variations thereof, and refrain from filing additional trademark applications for such marks;
- (c) assign any domain names which include SCAR or any variant thereof to FN;
- (d) dismiss with prejudice its Cancellation Petition in Cancellation Proceedings No. 92053562 against FN's Registration No. 3,801,448 for the mark SCAR and Design and its Opposition Petition in Opposition Proceedings No. 91198401 against FN's mark SCAR Application Serial No. 79/053,575;
- (e) deliver up for destruction all labels, signs, prints, packages, wrappers, receptacles, advertisements, or other materials in its possession or custody and

control which are within the United States of America, its territories and possessions, which display the mark SCAR-Stock or related marks which show or include the designation, name or mark SCAR; and

- (f) within sixty (60) after entry of final judgment, file with this Court and serve FN a report, in writing and under oath, setting forth the manner and form of Clyde Armory's compliance with the Court's order.

SO ORDERED, this 20th day of August, 2015.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE