

IN THE CIRCUIT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

JIM BUTLER CHEVROLET, Inc.	)	
	)	
Plaintiff,	)	
	)	Cause No.:
v.	)	
	)	Division No.
DWAYNE COONEY	)	
	)	
Defendant.	)	

**MOTION FOR A TEMPORARY RESTRAINING ORDER**

Plaintiff Jim Butler Chevrolet, Inc., (“JBC”) moves this Court, pursuant to Rule 92.02 of the Missouri Supreme Court Rules, for an Order temporarily enjoining Defendant Dwayne Cooney (“Defendant”) in connection with a video of JBC employees Defendant created and posted to YouTube on or about February 17, 2014 (“the Video”).

Specifically, JBC moves this Court for a temporary restraining order which compels Defendant Dwayn Cooney to:

- a) remove the Video from YouTube and any and all other Internet sites upon which the Video has been published or from which the Video may be viewed or accessed;
- b) remove the Video from any and all other publication media;
- c) refrain from posting, publishing, disseminating, distributing or otherwise providing access to the Video in any form; and
- d) refrain from publishing or causing to be published, or otherwise disseminating, distributing or communicating any of the false statements depicted in or otherwise relating to the subject matter underlying the Video.


In support of its Motion, JBC relies upon and incorporates by reference herein the allegations and arguments set forth in (a) JBC's Verified Petition and (b) the Memorandum in Support of JBC's Motion for a Temporary Restraining Order.

**WHEREFORE**, for the reasons set forth in this Motion, the related Memorandum in Support, and Verified Petition, JBC respectfully requests that this Court grant its Motion for a Temporary Restraining Order and enter JBC's proposed Order, which is attached hereto as Exhibit A.

Respectfully submitted,

HUSCH BLACKWELL LLP

By

  
Dutro E. Campbell, II, #47942  
Sandra Oh, #65433  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105-3441  
(314) 480-1500 – Telephone  
(314) 480-1505 – Facsimile

Attorneys for Plaintiff Jim Butler Chevrolet, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing will be served via hand delivery service upon the following at the same time service of process is accomplished.

Dwayne Cooney





IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

JIM BUTLER CHEVROLET, Inc. )  
 )  
 Plaintiff, )  
 ) Cause No.:  
 v. )  
 ) Division No.  
 DWAYNE COONEY )  
 )  
 Defendant. )

1431-0000556

**TEMPORARY RESTRAINING ORDER**

This matter comes before the Court on the motion for temporary restraining order of Plaintiff Jim Butler Chevrolet, Inc. against Defendant Dwayne Cooney. Based upon the argument of counsel and the evidence adduced, the Court is of the opinion that such injunction should be granted.

It is therefore ORDERED, ADJUDGED and DECREED that Defendant, and all others in active concert with him, are hereby compelled to directly or indirectly:

- (1) remove the Video from YouTube and any and all other Internet sites upon which the Video has been published or from which the Video may be viewed or accessed;
- (2) remove the Video from any and all other publication media;
- (3) refrain from posting, publishing, disseminating, distributing or otherwise providing access to the Video in any form; and
- (4) refrain from publishing or causing to be published, or otherwise disseminating, distributing or communicating any of the false statements either incorporated in the Video or otherwise relating to the subject matter underlying the Video.

IT IS FURTHER ORDERED that any violation of this Order will subject Defendant to sanctions.

IT IS FURTHER ORDERED that bond is set at \$\_\_\_\_\_.

IT IS FURTHER ORDERED that this Order shall expire in fifteen (15) days of its entry, unless further extended by the Court.

IT IS FURTHER ORDERED that the Court shall hold a hearing on Plaintiffs' motion for preliminary injunction on February \_\_\_\_, 2014, at \_\_ o'clock \_\_.m.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_

IN THE CIRCUIT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

JIM BUTLER CHEVROLET, Inc.            )  
  )  
    Plaintiff,                            )  
  )  
v.    )  
  )  
DWAYNE COONEY                        )  
  )  
    Defendant.                         )

Cause No.:

Division No.

1451-10000556

**MEMORANDUM IN SUPPORT OF  
MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiff Jim Butler Chevrolet, Inc. (“JBC”) engages in the business of selling new and used cars and also provides car repair services. Until the acts of Defendant Dwayne Cooney (“Defendant”) at issue, JBC enjoyed a positive reputation in the car dealership community and within the St. Louis community at large.

Defendant procured JBC’s services in relation to his vehicle but was dissatisfied with the cost, even after JBC worked with him to give him deep discounts and accommodate him with a rental car free of charge. Instead of communicating with JBC further to resolve the situation, Defendant created a heavily edited, misleading and defamatory video which was recorded by a dashboard camera located in Defendant’s vehicle (“the Video”). Defendant posted the Video to YouTube on his YouTube channel, named “Gateway Dash Cam,” which was created in August 2013. The Video has been viewed more than 4,500 times and is damaging JBC hard-earned and well-deserved reputation for integrity and customer service.

JBC needs immediate injunctive relief requiring Defendant to remove the Video from YouTube and any other media in which the Video has been published or is accessible. Immediate injunctive relief is further necessary to enjoin Defendant from otherwise publishing the Video or otherwise communicating the false statements contained in the Video.

## BACKGROUND

A detailed account of the facts underlying JBC's claims against Defendant and requested injunctive relief are fully set forth in JBC's Verified Petition for Injunctive and Other Relief ("Verified Petition"), incorporated herein by reference.

## ARGUMENT

Temporary Restraining Orders are authorized by Rule 92.02 of the Missouri Rules of Civil Procedure. The standards for granting TRO's are similar to the standards for granting a preliminary injunction. The Court should consider: (1) the threat of irreparable harm to the movant absent the injunction; (2) the balance between this harm and the injury that the injunction's issuance would inflict on other interested parties; (3) the movant's probability of success on the merits; and (4) the public interest. *State ex rel. Director of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. 1996)(internal citations omitted). In the present case, each of these factors supports the issuance of a TRO.

### **A. JBC Is Suffering And Will Continue To Suffer Irreparable Harm From Defendant's Conduct.**

Defendant's conduct has caused and continues to cause severe and irreparable injury to JBC's revenue, customer relationships, and competitive position in the market place. As a result of the defamatory nature of the Video, JBC has lost customer goodwill in the form of potential customers who likely have been dissuaded from patronizing JBC. Furthermore, JBC's customer goodwill has also been damaged and compromised with respect to its existing customers as well. *Mills v. Murray*, 472 S.W.2d 6, 12 (Mo. Ct. App. 1971)(noting that "it is universally recognized" that loss of customer goodwill cannot be compensated solely through money damages). These losses directly result from the defamatory accusations Defendant makes in the Video. *MB Town Center, LP v. Clayton Forsyth Foods, Inc.*, 364 S.W.3d 595 (Mo. App. E.D. 2012)(affirming injunctive relief in case where defendants defamed plaintiff). Money damages alone cannot compensate JBC for the

harm it has suffered and will continue to suffer if the Video is allowed to remain on the internet or to be published otherwise.

### **B. Balance Of Harms Favors Issuance Of An Injunction**

In the absence of injunctive relief, JBC will continue to suffer irreparable harm. In the business of car dealerships and auto repair, a reputation for integrity is crucial to survival, let alone success. If Defendant is allowed to continue to damage JBC's reputation, he is being allowed, effectively, to damage JBC's business; the latter is wholly dependent on the former.

On the other hand, Defendant will not suffer any legitimate harm in that one is not entitled to make defamatory statements. *Topper v. Midwest Div., Inc.*, 306 S.W.3d 117, 129 (Mo. App. W.D. 2010)(holding defamatory statement of fact was not an opinion protected by the First Amendment).

### **C. JBC Is Likely To Succeed On The Merits Of Its Claim**

The facts set forth above, and in the Verified Petition filed contemporaneously herewith, establish that JBC is likely to succeed on its claim against Defendant.

Under Missouri law, the elements of defamation or libel are: (1) publication, (2) of a defamatory statement, (3) that identifies the plaintiff, (4) that is false, (5) that is published with the requisite degree of fault, and (6) damages to plaintiff's reputation. *Overcast v. Billings Mutual Ins. Co.*, 11 S.W.3d 62 (Mo. banc 2000). A plaintiff in a defamation action may recover both actual and punitive damages. *Anton v. St. Louis Suburban Newspapers, Inc.*, 598 S.W.2d 493 (Mo. Ct. App. 1980) (holding that even if plaintiff in a libel suit is a public figure, he can recover punitive damages in an appropriate case).

All of the elements for defamation are met in this case.

- Posting a video to YouTube is a publication. *Rice v. Hodapp*, 919 S.W.2d 240, 243 (Mo. 1996)(holding "publication is simply the communication of defamatory matter to a third person")(internal citations omitted).

- Accusing JBC of lying and defrauding is defamatory. *Kennedy v. Microsurgery and Brain Research Institute*, 18 S.W.3d 39, 44-45 (Mo. App. E.D. 2000) (words that impute fraud, want of integrity or misconduct in the line of one's calling are per se defamatory).
- JBC was clearly identified by name in the Video.
- The accusations are false. Contrary to what is communicated in the Video, JBC performed more than 1.5 hours of work on Defendant's vehicle. JBC did not lie to Defendant.
- Defendant knew that the claims made in the Video were false. Based on Defendants conversations with JBC employees, Defendant had actual knowledge that JBC worked on his vehicle for more than the 1.5 hours depicted in the Video. Defendant had actual knowledge that he was not being charged 4.5 hours for 1.5 hours of work. This knowledge shows that Defendant acted with actual malice. *Bauer v. 7-Eleven*, 391 S.W.3d 25, 28 (Mo. App. E.D. 2012) ("Actual malice exists where a defendant had actual knowledge that the alleged defamatory statement was false or acted with reckless disregard as to its truth or falsity at a time when the defendant had serious doubts as to its truth").
- JBC's reputation has been damaged. The car dealership community in St. Louis has seen the Video as well as customers and potential customers in the general community. In addition to the loss of customer goodwill, JBC has reason to believe its competitors are using the Video in furtherance of tarnishing JBC's reputation in the community.

For the reasons stated above, JBC is likely to succeed on the merits of its claim.



#### **D. The Public Interest Is Served By Issuance Of An Injunction**

Removing defamatory material from the internet is in the public interest. This is clear from Missouri's long history of recognizing the tort of defamation. The public is served by the removal of false accusations of dishonesty that are leveled against a local business that fulfills an important role in the community. Furthermore, the public is well-served when the protections which guard an individual's and a business' reputation are enforced.

#### **CONCLUSION**

For the reasons set forth above, Plaintiff Jim Butler Chevrolet, Inc., respectfully requests this that the Court issue a temporary restraining order compelling Defendant to:

- a) remove the Video from YouTube and any and all other Internet sites upon which the Video has been published or from which the Video may be viewed or accessed;
- b) remove the Video from any and all other publication media;
- c) refrain from posting, publishing, disseminating, distributing or otherwise providing access to the Video in any form; and
- d) refrain from publishing or causing to be published, or otherwise disseminating, distributing or communicating any of the false statements depicted in or otherwise relating to the subject matter underlying the Video; and
- e) such other and further relief as the Court deems just.

Respectfully submitted,

HUSCH BLACKWELL LLP

By



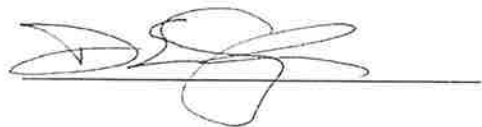
Dutro E. Campbell, II, #47942  
Sandra Oh, #65433  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105-3441  
(314) 480-1500 – Telephone  
(314) 480-1505 – Facsimile

Attorneys for Plaintiff Jim Butler Chevrolet, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing will be served via hand delivery service upon the following at the same time service of process is accomplished.

Dwayne Cooney



IN THE CIRCUIT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

JIM BUTLER CHEVROLET, Inc. )  
)  
Plaintiff, )  
)  
v. )  
)  
DWAYNE COONEY )  
)  
Defendant. )

Cause No.:

Division No.


14SL-0000566

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on February 24, 2014, at 9:00 A.m., Plaintiff's Motion for a Temporary Restraining Order, will be heard before the Honorable Colleen Dolan at the St. Louis County Circuit Courthouse, St. , Missouri.

Respectfully submitted,

HUSCH BLACKWELL LLP

By   
Duro E. Campbell, II, #47942  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105-3441  
(314) 480-1500 – Telephone  
(314) 480-1505 – Facsimile

Attorney for Plaintiff Jim Butler Chevrolet, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing will be served via hand delivery service upon the following at the same time service of process is accomplished.

Dwayne Cooney

