

IN THE CIRCUIT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

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

**VERIFIED PETITION FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Jim Butler Chevrolet, Inc., by and through its counsel of record, and for its Verified Petition Injunctive Relief states as follows:

**INTRODUCTION**

1. In this action, Plaintiff Jim Butler Chevrolet ("JBC") seeks a temporary restraining order and a preliminary and permanent injunction, as well as other relief, in connection with Defendant Dwayne Cooney's ("Defendant") defamatory YouTube video ("the Video"). Defendant was a customer of JBC and recorded portions of work performed by JBC on his vehicle through the use of a dashboard camera. Defendant then posted the Video on YouTube and represented that the Video captured all of the work performed by JBC. The Video claims that JBC lied about the amount of work performed and defrauded Defendant by charging him too much. All of the claims in Defendant's Video are false and defamatory.

2. By this action, JBC seeks a temporary restraining order and further injunctive relief compelling Defendant to remove the Video from YouTube and any other site where it may be posted and enjoining Defendant from posting the Video elsewhere on the internet. JBC also seeks actual and punitive damages.

### THE PARTIES AND JURISDICTION

3. Plaintiff Jim Butler Chevrolet, Inc. is a corporation organized under the laws of the state of Missouri with its principal place of business located at 759 Gravois Bluffs Blvd., Fenton, Missouri, 63026. JBC engages in the business of selling new and used cars and also provides car repair services.

4. Upon information and belief, Defendant Dwayne Conney is a resident of Fenton Missouri and lives at [REDACTED]

5. This Court has personal jurisdiction over Defendant because Defendant is a resident of St. Louis County, Missouri.

6. This Court also has personal jurisdiction over Defendant because Defendant engaged in tortious acts that have yielded significant consequences within the State of Missouri.

7. Venue is proper in St. Louis County, Missouri under R.S.Mo. 508.010 because JBC's principal place of business is in St. Louis County and it was injured in St. Louis County.

### EVENTS GIVING RISE TO THE CAUSE OF ACTION

8. Defendant brought his vehicle to JBC on the evening of Friday, January 31, 2014 for repairs and left the vehicle in JBC's "After Hours Service" drop-off area.

9. On Saturday, February 1, 2014, JBC employee, Dorothy Bailey ("Bailey") spoke to Defendant on the phone regarding three repairs: tire sensors; key fob; and air bag light. Bailey asked Defendant to approve 2.0 hours of work at \$129.95 an hour and Defendant agreed.

10. That same day, Bailey called Defendant and advised him that JBC would not be able to diagnose his vehicle that day. Bailey apologized for the inconvenience and offered Defendant a rental car, free of charge, which Defendant accepted. Bailey also informed Defendant that she would call him on Monday with a status update.

11. On Monday, February 3, 2014, Journeyman Technician Gary Strubberg (“Strubberg”) began diagnosis. The task was complex because no diagnostic codes were revealed by the GM tech equipment. In total, Strubberg labored for more than 3.0 hours.

12. At approximately 3:30pm that same day, Strubberg called Bailey and said that he had already worked more than 2.0 hours on the diagnosis and would need more time approved.

13. Bailey called Defendant and explained that the diagnosis and repairs were complex and that they would need another 2.0 hours of work approved. Defendant agreed and approved an additional 2.0 hours of work.

14. On Tuesday, February 4, 2014, JBC technicians worked on Defendant’s car for more than 1.5 hours and made the necessary repairs.

15. Bailey called Defendant and informed him that the charge would be \$603.32 to which Defendant objected. Bailey then offered to give Defendant a 20% discount off of the labor charges which Defendant accepted.

16. In total, Defendant was only charged for 4.5 hours of work at a reduced rate of \$107.00 per hour. JBC invested more than 5.0 hours of work and provided Defendant with a free rental car for 3 days.

17. On or about February 17, 2014, Defendant posted a video to his “Gateway Dash Cam” channel on YouTube.com which purports to show the work performed by JBC on Defendant’s vehicle (“the Video”). The Video was created by Defendant’s dashboard camera which was located in Defendant’s vehicle and is approximately 17 minutes long.

18. The Video posted on YouTube is heavily edited and only shows the work performed on Tuesday, February 3 and does not show any of the work performed the day before.

19. The Video only represents 1.5 hours of work done on Defendant’s vehicle and states that JBC “lied” about the time required to repair Defendant’s vehicle (at 11:12). The Video claims that JBC defrauded Defendant by charging him 4.5 hours for 1.5 hours of work (15:21).

20. JBC attempted to resolve the issue with Defendant but did not receive a response.

**COUNT I--DEFAMATION**

21. JBC restates its allegations in Paragraphs 1 through 18 of this Petition as if fully stated herein.

22. JBC Defendant has made and published false statements regarding JBC's business integrity and practices in the Video.

23. These statements are defamatory because they accuse JBC of committing fraud and lacking integrity in their business practices by lying to their customers.

24. The Video clearly identifies JBC as the subject of the Video.

25. The accusations contained in the Video are false.

26. Defendant was fully aware that JBC had performed more than the 1.5 hours of work depicted in the Video based on his communications with Bailey, which occurred prior to the posting date of the Video. As such, Defendant had actual knowledge that the accusations contained in the Video were false at the time that he posted it.

27. On February 20, 2014, the Video had approximately 1,500 views. On February 21, 2014, the Video has had more than 4,000 views. The negative impact on JBC's business and business reputation is severe and will only increase.

**COUNT II—Claim for Injunctive Relief**

28. JBC re-alleges the allegations contained in paragraphs 1-27 and incorporates them as if fully set forth herein.

29. Pursuant to Missouri Rule of Civil Procedure 92.02(b), Plaintiff requests 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.

30. Plaintiff requests that the temporary restraining order be issued because the defamatory accusations contained in Defendant's Video have caused and continue to cause irreparable damage to JBC's business reputation.

31. The temporary restraining order will not cause Defendant any harm in that he is not entitled to make defamatory accusations.

32. Further, as the evidence will show, Plaintiff is more likely than not to prevail on the merits.

33. Finally, a temporary restraining order is in the public interest.

34. In addition to seeking a temporary restraining order, and for the same reasons as stated above, JBC requests, pursuant to Missouri Rule of Civil Procedure 92.02(c), that, after notice to Defendant and an evidentiary hearing, the Court issue a preliminary injunction 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.

35. Plaintiff is prepared to post a bond as may be required by statute.

**WHEREFORE**, Plaintiff prays that:

(a) The Court to enter judgment for JBC and award JBC compensatory and punitive damages in such amount as is fair and reasonable in excess of \$25,000.00;

(b) A temporary restraining order be issued compelling Defendant, and all others in active concert with him, to:

- (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 depicted in or otherwise relating to the subject matter underlying the Video.

(c) A preliminary injunction order be issued, after notice to Defendant and an evidentiary hearing, compelling Defendant, and all others in active concert with him, to:

- (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.

(d) Plaintiff be awarded its attorneys' fees, pre- and post-judgment interest at the maximum rate allowed by law, taxable costs and all other relief, whether in law or equity, to which Plaintiff may be justly entitled and as this Court deems just and proper under the circumstances.

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 Coonev

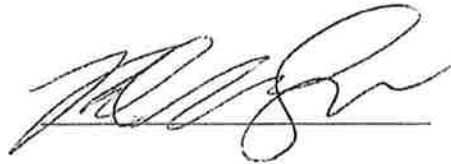


VERIFICATION

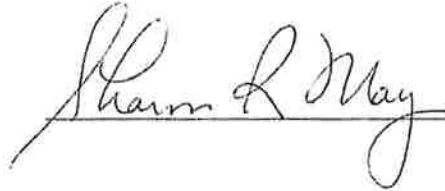
STATE OF MISSOURI            )  
                                          ) SS.  
COUNTY OF ST. LOUIS        )

I, Brad Sowers, being of lawful age and duly sworn upon my oath, state as follows:

1. I am the owner of Jim Butler Chevrolet, Inc.
  
2. The facts alleged in the Verified Petition are based upon matters known personally to me and/or on information provided to me by others, and are true and correct to the best of my knowledge, information and belief.



Subscribed and sworn to before me, a Notary Public, on this 21 day of February 21, 2014.



My Commission Expires:

