

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FT. WORTH DIVISION**

E-Z MART STORES, INC.)	
)	
<i>Plaintiff</i>)	
)	
V.)	
)	Civil Action No. 13-CV-_____
SHAMSA ENTERPRISES, INC.)	
)	
<i>Defendant</i>)	

COMPLAINT

Plaintiff E-Z Mart Stores, Inc. (“E-Z Mart”), for its Complaint for registered service mark infringement, common law service mark infringement, and unfair competition against Defendant, states:

I. PARTIES

1. E-Z Mart is a Texas corporation with its principal place of business in Texarkana, Texas.
2. Defendant Shamsa Enterprises, Inc. (“Shamsa”) is a Texas corporation with its principal place of business in Everman, Texas. Defendant Shamsa’s registered agent for service is Shamsuddin Jooma at 632 Wichita Street, Everman, TX, 76140.

II. JURISDICTION AND VENUE

3. This is a case for service mark infringement and unfair competition under the Lanham Act, 15 U.S.C. § 1051, *et seq.* The Court has original subject matter jurisdiction pursuant to 15 U.S.C. § 1124 and 28 U.S.C. §§ 1331 and 1338.
4. Venue is proper in this Court under 28 U.S.C. § 1391, in that a substantial part of the events giving rise to the claims asserted herein occurred in this judicial district.

III. FACTS

A. E-Z Mart’s Service Marks.

5. E-Z Mart is one of the leading, privately-owned convenience store chains in the United States.

6. E-Z Mart started doing business in 1970 and now operates over 300 stores in Texas, Oklahoma, Arkansas, and Louisiana.

7. E-Z Mart is the owner of several federal service mark registrations in the U.S. Patent and Trademark Office, including:

Service Mark	Registration No.	Registration Date	Services
E-Z Mart	2199915	10/27/98	Retail convenience store services
E-Z Mart	2199916	10/27/98	Retail store services featuring convenience store items and gasoline; money order and lottery ticket services; and automobile service station services

(hereafter collectively referred to as the “E-Z Mart Marks”). True and correct copies of these federal service mark registrations are attached hereto as Exhibit A.

8. The E-Z Mart Marks have attained incontestable status pursuant to 15 U.S.C. § 1065 and are entitled to the highest level of protection afforded by law.

9. The E-Z Mart Marks are associated with E-Z Mart in the minds of consumers, the public, and the trade.

10. E-Z Mart has used the E-Z Marks for over 40 years in connection with convenience store services and related services.

11. The E-Z Mart Marks identify high quality services originating with E-Z Mart.

12. E-Z Mart has engaged in extensive advertising and achieved significant sales through promotion of the E-Z Mart Marks since 1970.

B. Defendant's Infringing Activities.

13. Defendant operates a convenience store located at 632 Wichita Street, Everman, TX, 76140.

14. Defendant has used the E-Z Mart Marks and variations thereof to promote its convenience store.

15. E-Z Mart notified Defendant of its infringing use and gave Defendant the opportunity to cease its infringing use without recourse to litigation. E-Z Mart sent three letters, all by certified mail with return receipt, to Defendant on August 26, 2011, January 13, 2012, and July 9, 2012. True and correct copies of the letters and receipts are attached as Exhibit B.

16. Defendant did not respond to any of the letters sent by E-Z Mart.

17. Despite receipt of E-Z Mart's letters notifying Defendant of its infringing use, Defendant continues to use the E-Z Marks and variations thereof.

18. Prominent signage at Defendant's store identifies the store as "Everman E-Z Mart." *See* Exhibit C.

19. When purchases are made at Defendant's store, the receipts identify the store as "Everman E-Z Mart." *See* Exhibit D.

20. Defendant's store is located less than five (5) miles from one of Plaintiff's stores located at 4900 Mansfield Highway, Forest Hill, TX, 76119.

**COUNT I
REGISTERED SERVICE MARK INFRINGEMENT**

21. E-Z Mart incorporates the allegations stated in paragraphs 1 - 20.

22. Defendant unlawfully trades on the goodwill associated with the E-Z Mart Marks and infringes E-Z Mart's rights connected therewith by selling, offering for sale, distributing and/or advertising in commerce their convenience store services using a reproduction, copy, or colorable imitation of the E-Z Mart Marks.

23. Defendant's use of a reproduction, copy, or colorable imitation of the E-Z Mart Marks for or in connection with the sale, offering for sale, distribution and/or advertising of its convenience store services is likely to cause confusion, or cause mistake or to deceive in violation of 15 U.S.C. § 1114(1).

24. On information and belief, Defendant will continue to sell, offer for sale, distribute and/or advertise its convenience store services in violation of E-Z Mart's rights under federal law unless and until enjoined by this Court.

25. E-Z Mart has been irreparably damaged and will be further irreparably damaged by Defendant's use of a reproduction, copy, or colorable imitation of the E-Z Mart Marks for or in connection with the sale, offering for sale, distribution and/or advertising of its convenience store services, and E-Z Mart has no adequate remedy at law.

**COUNT II
COMMON LAW SERVICE MARK INFRINGEMENT**

26. E-Z Mart incorporates the allegations stated in paragraphs 1 - 25.

27. Defendant unlawfully trades on the goodwill associated with the E-Z Mart Marks and infringes E-Z Mart's rights connected therewith by selling, offering for sale, distributing and/or advertising in commerce its convenience store services using a reproduction, copy, or colorable imitation of the E-Z Mart Marks.

28. Defendant's use of a reproduction, copy, or colorable imitation of the E-Z Mart Marks for or in connection with the sale, offering for sale, distribution and/or advertising of its

convenience store services is likely to cause confusion, or cause mistake or to deceive in violation of 15 U.S.C. § 1125(a).

29. On information and belief, Defendant will continue to sell, offer for sale, distribute and/or advertise its convenience store services in violation of E-Z Mart's rights under federal law unless and until enjoined by this Court.

30. E-Z Mart has been irreparably damaged and will be further irreparably damaged by Defendant's use of a reproduction, copy, or colorable imitation of the E-Z Mart Marks for or in connection with the sale, offering for sale, distribution and/or advertising of its convenience store services, and E-Z Mart has no adequate remedy at law.

**COUNT III
UNFAIR COMPETITION**

31. E-Z Mart incorporates the allegations stated in paragraphs 1 - 30.

32. Defendant unlawfully trades on the goodwill associated with the E-Z Mart Marks and infringe E-Z Mart's rights connected therewith by selling, offering for sale, distributing and/or advertising in commerce its convenience store services using a reproduction, copy, or colorable imitation of the E-Z Mart Marks.

33. Defendant's use of a reproduction, copy, or colorable imitation of the E-Z Mart Marks for or in connection with the sale, offering for sale, distribution and/or advertising of its convenience store services is likely to cause confusion, or cause mistake or to deceive in violation of 15 U.S.C. § 1125(a).

34. Defendant's use of a reproduction, copy, or colorable imitation of the E-Z Mart Marks for or in connection with the sale, offering for sale, distribution and/or advertising of its convenience store services falsely represents or suggests to consumers and to the trade in general that Defendant's convenience store services are provided with the permission of or authorization

from E-Z Mart, and/or that such convenience store services have been offered in compliance with the quality standards maintained by E-Z Mart, in further violation of 15 U.S.C. § 1125(a).

35. Defendant's use of a reproduction, copy, or colorable imitation of the E-Z Mart Marks for or in connection with the sale, offering for sale, distribution and/or advertising of Defendant's convenience store services constitutes false designation of origin in violation of 15 U.S.C. § 1125(a).

36. Defendant's actions alleged herein have or are likely to engender a false belief in the mind of the public and trade in general that Defendant is affiliated with, sponsored by or associated with E-Z Mart.

37. Defendant has engaged in unfair competition in violation of the common law and on information and belief Defendant will continue to engage in such acts inflicting irreparable harm and damage to E-Z mart unless and until Defendant is enjoined by this Court.

WHEREFORE, E-Z Mart prays the following relief:

(a) A permanent injunction under 15 U.S.C. § 1116 to prevent future violations of 15 U.S.C. § 1114 by Defendant of the E-Z Mart Marks;

(b) A permanent injunction under 15 U.S.C. § 1116 to prevent future violations of 15 U.S.C. § 1125 by Defendant of E-Z Mart's common law service mark rights and prohibiting Defendant from unfairly competing with E-Z Mart through the use of spurious designations essentially identical with or confusingly similar to the E-Z Mart Marks;

(c) E-Z Mart's actual damages pursuant to 15 U.S.C. § 1117(a);

(d) Defendant's profits pursuant to 15 U.S.C. § 1117(a);

(e) An award of treble damages, together with a reasonable attorney's fee and expenses, under 15 U.S.C. §§ 1117(a) and (b) due to the deliberate and willful misuse by

