

**APPLICATION FOR REGISTRATION
OF TRADEMARK OR SERVICE MARK**

Wyoming Secretary of State
Corporations Division
The State Capitol Building
Cheyenne, WY 82002-0020

Phone (307) 777-7311/7312
Fax (307) 777-5339
E-mail: corporations@state.wy.us

1. Name of applicant: SEBUX, INC.
2. Business address of applicant: 345 West Broadway, Jackson, WY
3. Mailing address of applicant: P.O. Box 10817, Jackson, WY 83002
4. Applicant is: ☐ individual; ☒ corporation; ☐ limited partnership; ☐ general partnership; ☐ limited liability company; ☐ statutory trust; ☐ other.

If a corporation, limited partnership, limited liability company or statutory trust, show when and where incorporated or organized:

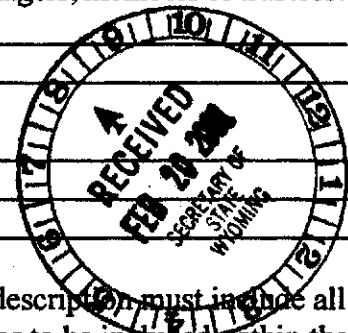
State: Idaho Date: August, 1998

If a limited partnership or general partnership, list the names of the general partners or partners:

If a limited liability company or statutory trust, list the names of the managers, members or trustees:

If other, explain: _____

5. Provide a written description of the trademark or service mark. Your description must include all words, names, symbols, devices and designs which the applicant wishes to be included within the mark. You may attach a separate sheet if needed; however, you must describe the trademark completely. Aspen leaf (gold when in color) overlaying a backdrop (deep green when in color). Backdrop is rectangular in shape with top corners rounded. A solid rim lines the inner edge of the backdrop. Trade name "Aspen Rent-a-Car" appears adjacent to Aspen leaf.
6. Provide the class number and title of the goods or services (see attachment). Use only one class code per registration: 105 Transportation



7. Provide a brief description of the goods or services within the class (i.e., what your product is, or what service you provide): for rental to general public

8. List the mode or manner in which the mark is used to identify the goods or services (e.g.: goods - labels on cans, bags, wrappers, etc.; tags, nameplates affixed directly to product; services - labels on laundry bags, advertising, window signs, etc.): Advertising and rental contracts.

9. An application to register the mark or portions or a composite has been filed by the applicant or a predecessor in interest in the U.S. Patent and Trademark office: ☐ Yes ☐ No

If yes, provide filing date, serial number of each application, the status and, if any application was finally refused registration or has not otherwise resulted in registration, the reasons therefore:

10. Date of first use by applicant or predecessor (the mark must be in use before it can be registered):

a. Anywhere _____

b. In this state June, 1998

11. **Three** specimens or facsimiles of the mark **as it is actually used** must accompany this application.

12. The applicant is the owner of the mark. The mark is in use and to the knowledge of the person verifying this application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form thereof or in such near resemblance as to be likely, when applied to the goods or services of such other person, to cause confusion or to cause mistake or to deceive.

Date: Feb 15 2001

Signed: _____

Signature available on original document

Title: _____

President SEBUX

State of WYOMING
County of TETON



Subscribed and sworn to before me this 15th day of February by JAYDELL BUXTON



My commission expires: April 28, 2001

Susan M. Baratta
Notary Public

Filing Fee: ~~\$100.00~~ (Filing instructions are on the following page)

Revised: 5/2000

MOORE & MYERS

ATTORNEYS AT LAW

P. O. Box 8498

JACKSON HOLE, WYOMING 83002

(307) 733-8668

FAX: (307) 733-3220

Moore&Myers@JHLAW.com

JOSEPH F. MOORE, JR. *

GLENN W. MYERS **

R. SCOTT GARLAND

JEANNE JACKSON, CLAS

February 15, 2001

Attn: Corporation's Division
Secretary of State's Office
State of Wyoming
Cheyenne, WY 82002-0020

RE: Trade Name and Trademark Registration

Dear Sirs:

We recently obtained a copy of a document entitled "Assignment of Trademark Registration" purporting to transfer the trade name "Aspen Rent-a-Car", and a related trademark from "Southwest Unlimited" to "Sonja B. Sewell". A copy of that document is enclosed. For your information, Southwest Unlimited, LLC does not now, nor has it ever owned the rights to the name "Aspen Rent-a-Car", or the related trademark that Southwest Unlimited registered with the State of Wyoming several years ago.

This law firm represents Sebux, Inc., an Idaho corporation, and its' shareholders, Mike and Kimberly Sewell and Judy and J.L. Buxton. Our clients purchased the rights to "Aspen Rent-a-Car" and the related trademark in May, 1998. Thereafter, Southwest Unlimited undertook actions purporting to claim ownership to the trade name and trademark. On behalf of our clients, we instituted litigation against Southwest Unlimited, and its two individual members, Peter Estay and Monica Eaton, in the 7th Judicial District Court, Teton County, Idaho, Civil No. CV-99-119, on August 5, 1999. A copy of the Complaint is enclosed. We obtained a Default Judgment against Southwest Unlimited in CV-99-119 on August 29, 2000. A copy of the exemplified Default Judgment is enclosed for your records. As you will see on page 6, paragraph 8 of the Judgment orders that our clients, Sebux, Inc., and the Sewells and the Buxtons, are the true owners of the trade name and the trademark.

Secretary of State
February 15, 2001
Page 2 of 2

Pursuant to Wyoming Statute §40-1-108(a) (iv) (B) and §40-2-107 (a) (iii) (B), we hereby request that your office immediately cancel from the register, in its entirety, any registration of the above trademark and trade name made by Southwest Unlimited, LLC, and register the trade name "Aspen Rent-a-Car", and the trademark set forth in the attachment to the enclosed trade name and trademark registration forms, in the name of our client, Sebux, Inc. A check in the amount of \$200.00 is enclosed for the filing fees.

If you have any questions or feel the need to discuss this, please call me at 307-733-8668.

Sincerely,


Signature available on original document

R. Scott Garland

RSG/smb

Enclosures: *As noted*

Cc: Sebux, Inc. c/o Mike Sewell

RECEIVED
SECRETARY OF STATE
FEB 16 2001
10:00 AM

ASSIGNMENT OF TRADEMARK REGISTRATION

Wyoming Secretary of State
Corporations Division
The State Capitol Building
Cheyenne, WY 82002-0020

Phone (307) 777-7311/7312
Fax (307) 777-5339
E-mail: corporations@state.wy.us

State of Wyoming
County of Teton

WHEREAS Peter J. Estay (name of assignor)
of Southwest Unlimited (address) has adopted, used and
is using the mark which is registered with the Secretary of State, Registration Number 99-341882 vehicles
dated 1/25/99; and

WHEREAS Sonja B. Sewell (assignee) of
Jackson, Wyoming (address) is desirous of acquiring said mark
and registration thereof;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowl-
edged said Peter J. Estay (assignor) does
hereby assign unto said Sonja B. Sewell (assignee) all right, title and
interest in and to said mark, together with the good will of the business in which the trademark is used (or
that part of the good will of the business connected with the use of and symbolized by the trademark) and
the Registration Number 99-341882 thereof.

SOUTHWEST UNLIMITED

Assignor

By: Signature available on original document

Subscribed and sworn to before me this 17 day of January, 2001.

Sally Moredich
Notary Public

My Commissions Expires: 03-06-03

Filing Fee: \$25.00

Instructions:

* Enclose a facsimile of the mark as it is actually used.

***** SALLY MOREDICH *****
Notary Public, State of Nevada
Appointment No. 99-35738-1, Clark County
My Appointment Expires March 6, 2003

FILED

JUL 2 2000

1999

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF TETON, STATE OF IDAHO**

SEBUX, INC., an Idaho corporation,
d/b/a Aspen Rent-A-Car, MIKE SEWELL,
KIMBERLY SEWELL, JUDY BUXTON,
and JAYDELL BUXTON,

Plaintiffs,

vs.

SOUTHWEST UNLIMITED, L.L.C.,
PETER ESTAY, and MONICA EATON,

Defendants.

Civil Action No. CV - 99-119

**ORDER SEVERING CLAIMS, ENTRY OF DEFAULT & DEFAULT JUDGMENT
AND AWARD OF MONEY DAMAGES, COSTS AND ATTORNEYS FEES**

Plaintiffs filed a motion requesting the Court to enter default and default judgment against each Defendant for failure of each Defendant to file a written appearance within twenty (20) days from the date of the service of the Court's June 27, 2000 Order allowing the Defendants' previous counsel Thomsen & Stephens, PA to withdraw as counsel of record for Defendants.

At a hearing held August 29, 2000 on Plaintiffs' motion, Plaintiffs notified the Court that Defendant Peter Estay filed a petition for Chapter 11 bankruptcy dated August 15, 2000. Plaintiffs informed the Court that they did not receive notice of the bankruptcy filing until August 23, 2000.

NOV 6 2000

Upon oral motion at the August 29th hearing, Plaintiffs requested that the Court sever Plaintiffs' claims against Peter Estay from this proceeding, and allow Plaintiffs to proceed against the remaining defendants herein.

The Court has considered the Plaintiffs' written and oral motions, the pleadings and other documents on file herein and being fully apprised in the premises, finds as follows:

1. Defendants filed their Complaint herein on or around August 5, 1999. In the Complaint, Plaintiffs allege that Defendants;

a. Undertook certain actions and activities which were intended to unfairly interfere with the Plaintiffs' business interests in the Teton County, Wyoming and Teton County, Idaho area.

b. Undertook certain activities and actions, which violated Idaho Code § 48-104;

c. Infringed the Plaintiffs' trade name and trademark;

d. Breached a contract between Plaintiffs and Defendants, whereby Defendants sold to Plaintiffs their entire interest in and to the trade name Aspen Rent-A-Car and the trademark depicted in Exhibit 1 to Plaintiffs' Complaint.

Plaintiffs prayed for money damages and an injunction prohibiting Defendants from conducting business under the trade name Aspen Rent-A-Car or utilizing the trademark set forth in Exhibit "1" to Plaintiffs' Complaint.

**ORDER SEVERING CLAIMS, ENTRY OF DEFAULT, DEFAULT JUDGMENT AND AWARD OF
MONEY DAMAGES, COSTS AND ATTORNEYS' FEES**

Sebux, Inc., et al., v. Southwest Limited, LLC, et al.

2. The parties entered into discovery processes and discussions about settlement.

3. The parties entered into a voluntary mediation, which occurred in February, 2000. The mediation effort was unsuccessful.

4. On June 27, 2000, the Court entered an Order allowing the law firm of Thomsen & Stephens, PA to withdraw from representation of the Defendants. In that Order, the Court gave the Defendants twenty (20) days from the date the Order was served upon the Defendants to either file an appearance pro se, or through newly appointed counsel. The Court's Order contained a notice to the Defendants, which reads in pertinent part;

"Failure on your part to file a written appearance within the twenty days specified will be sufficient ground for the entry of a default judgment against you or dismissal of your case with prejudice WITHOUT FURTHER NOTICE"

5. A copy of the Court's Order was served on Defendant Monica Eaton, individually and as registered agent for Defendant Southwest Unlimited, LLC, by Certified Mail on July 5, 2000.

6. A copy of the Court's Order was served on Defendant Peter Estay on June 29, 2000.

7. No Defendant filed an appearance within the 20 days of being served with the Court's June 27, 2000 Order.

8 Defendant Peter Estay filed a Chapter 11 Bankruptcy Petition on August 15, 2000 in the U.S. bankruptcy Court, District of Idaho. The Petition acts as an automatic stay of this litigation with respect to Mr. Estay.

9. This Court may sever Plaintiffs claims against Mr. Estay and allow the litigation to continue with respect to the remaining defendants, Southwest Unlimited, LLC and Monica Eaton.

10. As a result of Southwest Unlimited, LLC's and Monica Eaton's failure to respond to the Court's June 27th Order, Plaintiffs are entitled to entry of default and award of default judgment against Defendants Southwest Unlimited, LLC and Monica Eaton.

11. Pursuant to Idaho Code § 48-113 (2) the Court may award to Plaintiffs an amount not in excess of three (3) times the monetary damages sustained by the Plaintiffs.

12. Pursuant to Idaho Codes § 48-113(1) and 20-120(3), the Court may award to Plaintiffs attorneys fees incurred in bringing this action.

13. Plaintiffs provided testimony by affidavit regarding the amount of damages they suffered as a result of Defendants' conduct, such damages being in the amount of \$18,750.00.

14. Plaintiffs' counsel provided testimony by affidavit regarding the amount of attorneys fees and costs incurred in bringing and maintaining this litigation, such fees and costs being in the amount of \$13,273.92, which the Court finds to be reasonable.

**ORDER SEVERING CLAIMS, ENTRY OF DEFAULT, DEFAULT JUDGMENT AND AWARD OF
MONEY DAMAGES, COSTS AND ATTORNEYS' FEES**

Sebux, Inc., et al., v. Southwest Limited, LLC, et al.

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NOW THEREFORE IT HEREBY ORDERED:

1. All of Plaintiffs' claims against Defendant Peter Estay are hereby severed and stayed, pending relief from the automatic stay in the bankruptcy court, or pending disposition of the bankruptcy proceeding. Plaintiffs shall be allowed to proceed HEREIN against the remaining defendants, Defendants Southwest Unlimited, LLC. and Monica Eaton.

2. Default is hereby entered against Defendants Southwest Unlimited, LLC and Monica Eaton for said Defendants' failure to file an appearance within twenty (20) days of service of the Court's June 27, 2000 Order on them.

3. Plaintiffs' factual allegations in the Complaint are hereby deemed true and accurate with respect to Defendants Southwest Unlimited, LLC and Monica Eaton.

4. Defendants Southwest Unlimited, LLC's and Monica Eaton's defenses and claims in this litigation are dismissed with prejudice.

5. Default judgement is entered against Defendants Southwest Unlimited, LLC and Monica Eaton and in favor of Plaintiff's Sebux, Inc., Mike Sewell, Kimberly Sewell, Judy Buxton and JayDell Buxton for:

a. Breach of the parties' contract by which Defendants Southwest Unlimited, LLC and Monica Eaton sold their entire interest to Plaintiffs in and to the trade name "Aspen Rent-A-Car", and their entire interest in and to the trademark depicted in Exhibit "1" to the Plaintiffs' Complaint.

b. Common law competition;

**ORDER SEVERING CLAIMS, ENTRY OF DEFAULT, DEFAULT JUDGMENT AND AWARD OF
MONEY DAMAGES, COSTS AND ATTORNEYS' FEES**

Sebux, Inc., et al., v. Southwest Limited, LLC, et al.

- c. Violation of Idaho Code § 48-104; and
- d. Trade name and trademark infringement.

6. Plaintiffs are awarded money damages against Defendants Southwest Unlimited, LLC and Monica Eaton, jointly and severally, in the amount of Fifty-Six Thousand Two Hundred and Fifty Dollars (\$56,250.00), representing treble damages as allowed by Idaho Court Code § 48-113.

7. Plaintiffs are further awarded their costs and attorneys fees in the amount of \$13,273.92.

8. Plaintiffs are the sole owners of the trade name "Aspen Rent-A-Car" and of the trademark depicted in Exhibit "1" to Plaintiffs' Complaint.

9. Defendants Southwest Unlimited, LLC and Monica Eaton are hereafter permanently enjoined from conducting business under the name Aspen Rent-A-Car, and permanently enjoined from utilizing the logo depicted in Exhibit "1" to Plaintiffs' Complaint

DATED this 29 day of August, 2000.

SIXTH OF IDAHO }
County of Teton }

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of the original thereof, on file in my office.

Dated 5 September 2000

Brent J. Moss

Penelope A. Hansen
Deputy Clerk

BY THE COURT:

Brent J. Moss
Honorable Brent J. Moss
District Court Judge

ORDER SEVERING CLAIMS, ENTRY OF DEFAULT, DEFAULT JUDGMENT AND AWARD OF MONEY DAMAGES, COSTS AND ATTORNEYS' FEES

Sebux, Inc., et al., v. Southwest Limited, LLC, et al.

COURT ATTESTATION

STATE OF IDAHO)
) ss.
COUNTY OF TETON)

I, Nolan G. Boyle Clerk of the Court of Teton County, Idaho, certify that by law, I have custody of the seal of the court and all records, books, documents, and papers of and pertaining to the Seventh Judicial District Court, Teton County, Idaho. The attached judgement is a true and correct copy of the original judgment filed in this court on August 29, 2000. The original judgment is filed and of record in the office of the clerk of this court.

I have compared the attached copy of the judgment with the original judgment. The attached copy contains a full, true and correct transcript of the whole judgment.

Signed and sealed this 31st day of October, 2000.

Nolan G. Boyle
Clerk of the Court
(SEAL)

I, Brent J. Mass, chief judge or presiding magistrate of the Seventh Judicial District Court of the State of Idaho, certify the court is a court of record, having a clerk and a seal, that Nolan G. Boyle (clerk's name) who signed the above attestation, is the clerk of the court of Teton County, Idaho, and is the proper certifying officer of the court and has by law the custody of all records, books, documents, and papers of or appertaining to this court, and such attestation is in due and proper form. All official acts of the clerk of the court are entitled to full faith and credit.

Signed and sealed this 31st day of October, 2000.

Judge Brent J. Mass
(SEAL)

I, Nolan G. Boyle, clerk of the court of Teton County, Idaho, certify that the Honorable Brent J. Mass whose name is subscribed to the preceding certificate, is one of the judges of this court and that the signature of the judge thereon is genuine.

Signed and sealed this 31st day of October, 2000.

Nolan G. Boyle
Clerk of the Court

Stephen Porter Zollinger
12 North Center
P. O. Box 280
Rexburg, ID 83440
(208) 359-3020 – Telephone
(208) 359-3022 – Facsimile

Joseph F. Moore, Jr.
Glenn W. Myers
R. Scott Garland
MOORE & MYERS
P. O. Box 8498
Jackson, WY 83002
(307) 733-8668 - Telephone
(307) 733-3220 – Facsimile

Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF TETON, STATE OF IDAHO**

SEBUX, INC., an Idaho corporation,
d/b/a Aspen Rent-A-Car, MIKE SEWELL,
KIMBERLY SEWELL, JUDY BUXTON,
and JAYDELL BUXTON

Plaintiffs,

vs.

SOUTHWEST UNLIMITED, L.L.C.,
PETER ESTAY, and MONICA EATON,

Defendants.

FILED
AUG 05 1999
TETON CO.
DISTRICT COURT

DOCKETED

Civil Action No.: CV99-119

COMPLAINT

COMPLAINT

Plaintiffs, by and through counsel, Stephen Porter Zollinger, and Moore & Myers, complain and allege as follows:

1. Plaintiff, Sebux, Inc. (hereafter "Sebux") is an Idaho corporation, doing business under the name Aspen Rent-A-Car, with its principal location of business in Teton County, Wyoming.
2. Plaintiff, Mike Sewell is, and was at all times relevant hereto, a resident of Teton County, Idaho, and was a founding shareholder of Plaintiff Sebux.
3. Plaintiff Kimberly Sewell is, and was at all times relevant hereto, a resident of Teton County, Idaho, and was a founding shareholder of Plaintiff Sebux.
4. Plaintiff Judy Buxton is, and was at all times relevant hereto, a resident of Teton County, Idaho, and was a founding shareholder of Plaintiff Sebux.
5. Plaintiff Jaydell Buxton is, and was at all times relevant hereto, a resident of Teton County, Idaho, and was a founding shareholder of Plaintiff Sebux.
6. Defendant Southwest Unlimited, L.L.C. (hereafter "Southwest") is, upon information and belief, a limited liability company formed pursuant to the laws of the State of Idaho, and doing business as Aspen Rent-A-Car in the states of Idaho and Wyoming.

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COMPLAINT

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7. Defendant Peter Estay (hereafter "Estay") is, and was at all times relevant hereto, a resident of Teton County, Idaho and a founding member of Defendant Southwest.

8. Defendant Monica Eaton (hereafter "Eaton") is, and was at all times relevant hereto, a resident of Teton County, Idaho and a founding member of Defendant Southwest.

9. This Court has jurisdiction over the parties herein, because the Defendants are either residents of the State of Idaho, or are business entities formed pursuant to the laws of the State of Idaho. This Court also has jurisdiction pursuant to I.C. § 48-112 and I.C. § 48-114.

10. This Court has subject matter jurisdiction herein because many of the events and transactions complained of occurred in the State of Idaho, and the amount in controversy exceeds this Court's jurisdictional minimum. This Court also has jurisdiction pursuant to I.C. § 48-112 and I.C. § 48-114.

FACTS COMMON TO ALL CAUSES OF ACTION

11. Paragraphs 1 through 10 are incorporated by reference as though fully set forth here.

12. On or around February, 1998, Defendant Estay approached Plaintiffs Mike and Kimberly Sewell ("the Sewells"), and proposed a business venture to be undertaken

by the three (3) parties. Specifically, Estay proposed that the Sewells form a general partnership with Estay for the purpose of operating a car rental business in the town of Jackson, Wyoming.

13. Pursuant to an oral agreement the Sewells and Estay, the three (3) agreed to join together to operate a rental car business.

14. Pursuant to the parties' oral agreement, Estay obtained a lease on a physical space for the business in the town of Jackson, Wyoming.

15. In March and early April, 1998, Estay and the Sewells jointly developed a distinctive name and logo for the car rental business being operated by the general partnership. The logo contained the name of the car rental business, "Aspen Rent-A-Car", with a gold aspen leaf imprinted and a green background. The name and logo of the business is depicted in Exhibit 1, attached hereto and incorporated herein by reference.

16. Later in April, 1998, Estay informed the Sewells that Estay did not have time to continue the Aspen Rent-A-Car venture, and that the Sewells must buy his interest in the business or else he would "unwind it". Estay also informed the Sewells that the business was "ready to go".

17. As a result of Estay's stated intention to unwind the business if the Sewells did not buy him out, the Sewells approached Plaintiffs Judy and Jaydell Buxton ("the Buxtons"), and asked if the Buxtons would form a general partnership with the Sewells to continue to operate "Aspen Rent-A-Car. The Buxtons agreed, and the Sewells so informed Estay.

18. During the month of May, 1998, Estay and the Sewells and Buxtons negotiated the sale of Estay's partnership interest to the Sewells and Buxtons.

19. In May, 1998, in anticipation of purchasing Estay's partnership interest, the Sewells and Buxtons undertook certain measures to establish the legality and legitimacy of Aspen Rent-A-Car as a viable business entity in the Town of Jackson, Wyoming, and in the State of Wyoming. These measures included, but were not limited to creation of a bank account in the name "Aspen Rent-A-Car", acquisition of State of Wyoming certification of the car rental business as "Aspen Rent-A Car", acquisition of a Wyoming tax license in the name of "Aspen Rent-A Car", acquisition of a federal tax identification number in the name of "Aspen Rent-A Car", purchase of sign permits from the Town of Jackson under the name "Aspen Rent-A Car", purchase of a sign identifying the business as "Aspen Rent-A Car," and production of business cards with the name and logo depicted in Exhibit 1. In all instances, the name of the business was listed as "Aspen Rent-A-Car". In all instances, the Sewells and Buxtons expended their own monetary resources to accomplish the above tasks.

20. After further negotiations, the Sewells and Buxtons agreed to purchase Estay's interest in "Aspen Rent-A-Car" for the sum of Thirteen Thousand Six Hundred Sixty-Four and 73/100 Dollars (\$13,674.73). The aforesaid sum was intended to be consideration for the sale of Estay's entire interest in the general partnership doing

business as "Aspen Rent-A-Car", including the exclusive rights to use the trade name and logo set forth in Exhibit 1 hereto.

21. In order to obtain financing for their purchase of Estay's interest in "Aspen Rent-A-Car", the Sewells and Buxtons obtained a Twenty-Five Thousand Dollar (\$25,000.00) loan from the Bank of Commerce in Driggs, Idaho.

22. From the aforesaid amount, on or around June 1, 1998, and pursuant to the direction of Estay, the individual Plaintiffs paid the amount of Thirteen Thousand Six Hundred Sixty-Four and 73/100 Dollars (\$13,664.73) to Defendant Southwest, Estay's assignee, as and for Defendant Estay's interest in the general partnership doing business as "Aspen Rent-A-Car".

23. In August, 1998, the Sewells and Buxtons formed Plaintiff Sebux, Inc., in Idaho for the purpose of continuing to operate the "Aspen Rent-A-Car" business. Thereafter, the general partnership comprised of the Sewells and Buxtons transferred all of the partnership assets to Sebux, Inc.

24. Upon information and belief, in September, 1998, Defendant Eaton obtained one of Plaintiff Mike Sewell's Aspen Rent-A-Car business cards, and without Sewell's knowledge or consent reproduced the business card without Sewell's name, and with a Las Vegas, Nevada address, and had an undetermined amount of these business cards printed, and distributed.

25. In September, 1998, Defendant Estay informed the Sewells that he was going to "franchise" Aspen Rent-A-Car, and that he would not charge the Plaintiffs a

Sebux, Inc., et al. vs. Southwest Unlimited, L.L.C., et al.

COMPLAINT

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franchise fee for the "Aspen Rent-A-Car" business which the Plaintiffs and/or Sebux, Inc. had been operating in Jackson, Wyoming since June, 1998. Plaintiffs informed Estay that he had no right to "franchise" Aspen Rent-A-Car.

26. Shortly thereafter, Plaintiffs became aware that a sign using the trade name and logo set forth in Exhibit 1 hereto was erected at Grand Teton Motors in Driggs, Idaho, which is Defendants Estay and Eaton's place of employment. The sign continues to be present to this date. Upon information and belief, Defendants Estay, Eaton and Southwest have continually engaged in rental car activities out of Grand Teton Motors in Driggs, Idaho, since September, 1998, using the trade name and logo set forth in Exhibit 1 hereto.

27. In December, 1998, Defendant Estay caused six motor vehicles either owned by Estay or an unknown third party to be added to Plaintiff's rental car insurance policy. Upon information and belief, either Estay, or Eaton with Estay's knowledge and consent, fraudulently represented himself or herself to the insurance carrier as an agent of the Plaintiffs in order to accomplish the foregoing. Plaintiffs did not discover these actions until January, and as a result paid insurance premiums which were the legal obligation of Estay, Eaton or an unknown third party. Despite demands by Plaintiffs, Estay and Eaton have refused to reimburse Plaintiffs for the cost of the premiums.

28. In December, 1998, Defendant Estay informed Plaintiffs that he was going to open a new business venture at Teton Village, Wyoming called "Downhill Shuttle", the

purpose of which was to provide taxi and shuttle bus services to the general public. Estay proposed that the Plaintiffs enter into a business venture with Estay and Eaton whereby the parties would jointly open and operate a rental car office at Teton Village, Wyoming, doing business under the name "Aspen Rent-A-Car". The Plaintiffs expressly declined to open an Aspen Rent-A-Car office at Teton Village, Wyoming with Estay and Eaton.

29. In December, 1998, Defendant Eaton asked the Plaintiffs for the right to use Sebux's toll free number, "877-22-ASPEN", which the Plaintiffs had purchased and had been utilizing in conjunction with their Aspen Rent-A-Car business since June, 1998. The Plaintiffs informed Defendants that they could not use Aspen Rent-A-Car's toll free number.

30. Shortly thereafter, upon information and belief, Defendants Estay and Eaton, as principals of Defendant Southwest, opened a rental car business office at Teton Village, Wyoming, using the trade name and logo set forth in **Exhibit 1** hereto.

31. Subsequently, and without Plaintiffs' knowledge or consent, Defendants Estay, Eaton and Southwest produced and distributed brochures in the Teton Counties, Wyoming and Idaho area using the trade name and logo set forth in **Exhibit 1** hereto, and using Plaintiffs' "877-22-ASPEN" toll free number.

32. Upon discovering Defendants' actions, Plaintiffs demanded that Defendants cease using the name, logo and toll free number, whereafter Defendants Estay, Eaton and

Southwest Unlimited changed the toll free number on the brochures, but continued to use the trade name and logo set forth in **Exhibit 1** hereto.

33. From that time forward, Defendants Estay, Eaton, and Southwest Unlimited have continually operated a rental car business at Teton Village, Wyoming using the trade name and logo set forth in **Exhibit 1** hereto, directly competing with Plaintiffs for customers in the Teton County, Wyoming area.

34. Without Plaintiffs' knowledge or consent, Defendants Estay, Eaton and Southwest used Plaintiffs' certificate of approval to operate at the Jackson Hole, Wyoming airport, and conducted business under that certificate until discovered to be doing so by airport officials.

35. In January, 1999, Defendants wrongfully attempted to obtain and utilize Plaintiffs' federal tax identification number used continually by Plaintiffs since June, 1998 in conjunction with Plaintiffs' operation of Aspen Rent-A-Car.

36. On January 22, 1999, Defendants obtained a Certificate of Authority for Southwest Unlimited, LLC to conduct business in the State of Wyoming.

37. On January 25, 1999, Defendants wrongfully registered the words "Aspen Rent-A-Car" as a trade name in Wyoming, despite Defendants' knowledge that Plaintiffs had purchased the rights to this name in June, 1998, and had continually used the name since June, 1998.

38. On January 29, 1999, Plaintiffs registered the trade name and logo set forth in Exhibit 1 hereto as a trademark/service mark in the State of Idaho.

39. On January 29, 1999, Defendants wrongfully filed a "Certificate of Assumed Business Name" with the Idaho Secretary of State's Office, setting forth the words "Aspen Rent-A-Car" as the name under which Southwest Unlimited was conducting business in Idaho, despite Defendants' knowledge that Plaintiffs had purchased the rights to this name in June, 1998, and had continually used the name since June, 1998.

40. Since June 1, 1998, Plaintiffs have continuously and notoriously used the trade name and logo set forth in Exhibit 1 hereto in the course of conduct of their rental car business. Specifically, during that time, the Plaintiffs have conducted extensive advertising in various media using the trade name and logo set forth in Exhibit 1, and entered into numerous contracts with third parties under the trade name and logo.

41. As a result of the Plaintiffs' hard work and extensive advertising utilizing the trade name and logo depicted in Exhibit 1, Plaintiffs' have developed a broad market for their rental car business, a broad customer base, a solid reputation for good service, and valuable good will attached to their business, both in Teton County, Idaho and Teton County, Wyoming.

42. As a result of the Defendants' operation of a rental car business in Teton Counties Idaho and Wyoming using the trade name and logo set forth in Exhibit 1, and as

a result of Defendants' actions described herein, there has been much confusion among Plaintiffs' actual and potential customers, suppliers, and the general public.

43. As a result of the Defendants' operation of a rental car business in Teton Counties Idaho and Wyoming using the trade name and logo set forth in **Exhibit 1**, and as a result of Defendants' actions described herein, the Plaintiffs have incurred additional business and legal expenses, and have suffered reduced income and profits in operation of Aspen Rent-A-Car, and have suffered an impaired ability to naturally expand their business.

**First Cause of Action Against All Defendants
Unfair Competition – Common Law**

44. Plaintiffs incorporate paragraphs 1 through 43 as though set forth fully here.

45. Through the prior, notorious, and continuous use of the trade name and logo depicted in **Exhibit 1**, Plaintiffs obtained a proprietary interest in and to the trade name and logo, and intangible business assets, including reputation and good will, which have become attached to the trade name and logo by association over the course of such time.

46. Defendants, by the actions described herein, have intentionally and unfairly interfered with Plaintiffs' ability to conduct their business in the Teton Counties, Idaho and Wyoming areas.

47. As a result of the Defendants' unfair competition practices, the Plaintiffs' business image, reputation, goodwill, and ability to naturally expand have been impaired and injured.

WHEREFORE, Plaintiffs' pray for judgment against the Defendants as and for acts of unfair competition as determined by Wyoming and Idaho common law, and for money damages in an amount to be proved at trial. Plaintiffs also pray that this Court enter a an order, permanently enjoining the Defendants from utilizing the trade name and logo depicted in Exhibit 1, and permanently enjoining the Defendants from continuing to conduct unfair trade practices against these Plaintiffs.

**Second Cause of Action Against Defendants
Violation of I.C. § 48-104**

48. Plaintiffs incorporate paragraphs 1 through 49 as though set forth fully here.

49. By their actions, the Defendants, both individually and in conspiracy with each other, have entered into contracts, combined and conspired, and have given direction or authority to others to act for the purpose of driving Plaintiffs out of business in the Teton County, Idaho and Wyoming areas.

50. Pursuant to I.C. § 48-¹¹³~~109~~, the individual Defendants are personally liable for the wrongful actions of Defendant Southwest.

51. Pursuant to I.C. § 48-114, Plaintiffs are entitled to recover treble damages from each or all of the Defendants, including reasonable attorneys' fees.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, as and for violation of I.C. § 48-104, and for treble damages pursuant to I.C. § 48-114, including reasonable attorneys' fees in an amount to be proved at trial.

**Third Cause of Action Against Defendants
Trade Name and Trade Mark Infringement**

52. Plaintiffs incorporate paragraphs 1 through 51 as though set forth fully here.

53. Over the course of time, and through a process of association by the general public that the trade name and logo depicted in **Exhibit 1** stand for providing good service and a high quality product, the trade name "Aspen Rent-A-Car," as utilized by the Plaintiffs, has obtained a secondary meaning, and as such has become distinctive and distinguishing of the Plaintiffs' business, and the high quality of service and goods provided by the Plaintiffs.

54. The actions of the Defendants complained of herein have caused actual confusion and are likely to continue to cause confusion amongst Plaintiffs actual and potential customers, suppliers, and other third parties with whom Plaintiffs either have existing contractual relations, or with whom Plaintiffs may contract in the future.

55. As a result of the actions of the Defendants complained of herein, Plaintiffs have suffered damages in the form of customer dissatisfaction resulting from misunderstanding of who owns the rights to the trade name and logo depicted in Exhibit 1, reduction in actual and potential customer base, and impaired reputation and good will.

56. Certain of Plaintiffs' damages are reducible to a monetary equivalent; however, Plaintiffs have no adequate remedy of law for future, potential damages to the reputation and good will of the business.

WHEREFORE, Plaintiffs pray for judgment against Defendants for trade name and trade mark infringement, and request that this Court award Plaintiff monetary damages in an amount to be proved at trial, and further request this Court to enter an order permanently enjoining the Defendants from further use of the trade name and logo depicted in Exhibit 1.

**Fourth Cause of Action Against Defendant Estay
Breach of Contract**

57. Plaintiffs incorporate paragraphs 1 through 56 as though set forth fully here.

58. Each of Estay's actions described herein, constitute separate material breaches of the Contract entered into between Estay and the Plaintiffs in May, 1998, whereby Estay represented that he intended to convey all of his interest, including, any

proprietary interest he may have had in the trade name and logo depicted in Exhibit 1, and all his interest in the business assets of "Aspen Rent-A-Car", to the Plaintiffs.

59. As a result of Estay's material breaches, Plaintiffs have been injured in a manner and an amount to be proved at trial.

WHEREFORE, Plaintiffs pray that this Court enter judgment for Plaintiffs and against Defendant Estay as and for breach of contract, and further pray that the Court award Plaintiffs monetary damages in an amount to be proved at trial.

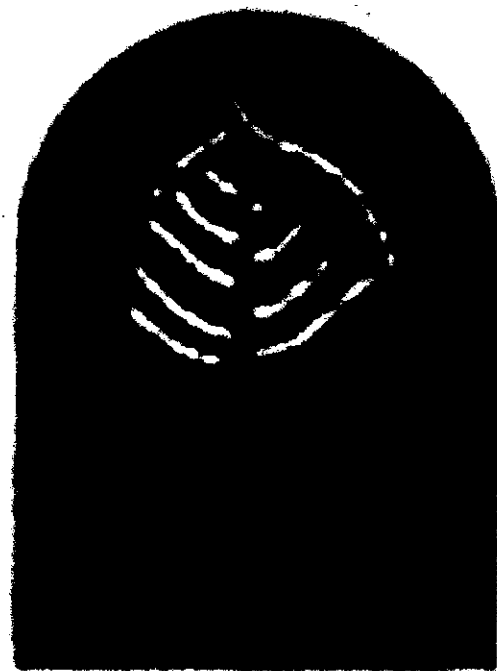
Dated this 26th day of July, 1999.

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Aspen
Rent-A-Car

PC-20-2-1

EXHIBIT
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