

COURT OF COMMON PLEAS  
BELMONT COUNTY, OHIO

AMERICAN ENERGY  
CORPORATION,  
46226 National Road  
St. Clairsville, OH 43950

Plaintiff,

v.

AMERICAN ENERGY PARTNERS, LP,  
301 N.W. 63rd, Suite 600  
Oklahoma City, OK 73116

and

AUBREY McCLENDON  
301 N.W. 63rd, Suite 600  
Oklahoma City, OK 73116

Defendants.

:  
: CASE NO. 13-CV-317  
:  
: JUDGE JOHN M SOLOVAN, II  
:  
: COMPLAINT FOR TEMPORARY,  
: PRELIMINARY AND PERMANENT  
: INJUNCTIVE RELIEF  
:  
: JURY DEMAND ENDORSED HEREON  
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COMPLAINT

Plaintiff American Energy Corporation hereby files this Complaint against Defendant American Energy Partners, LP ("American Energy Partners") and Defendant Aubrey McClendon (collectively "Defendants") for violation of the Ohio Deceptive Trade Practices Act; the Ohio common law of unfair competition; and the Ohio common law of trademark and trade name infringement, and states as follows:

INTRODUCTION

1. This action is brought by Plaintiff, American Energy Corporation, an Ohio corporation, with offices and operations in Belmont County, Ohio, against Defendants, American Energy Partners and Aubrey McClendon, under the Ohio Deceptive Trade Practices Act, O.R.C. § 4165.01, et. seq.; the Ohio common law of unfair competition; and the Ohio common law of trademark and trade name infringement, seeking temporary, preliminary and permanent injunctive

relief in connection with the recent adoption and use of Defendants' corporate name, "American Energy Partners, LP" because use of the name will cause a likelihood of confusion as to source, sponsorship, approval or certification of Plaintiff's goodwill and services and cause a likelihood of confusion as to affiliation, connection or association with or certification of Plaintiff, American Energy Corporation.

2. American Energy Corporation is both a common law trade name and trademark (collectively "Mark") and is registered with the Ohio Secretary of State and has been used as such since Plaintiff American Energy Corporation was incorporated in Ohio on April 12, 1993. (*See* Ex. 1).

3. Plaintiff has been engaged in the sale of Ohio coal to customers who produce electricity since at least 2001.

4. For over a decade American Energy Corporation has developed significant goodwill in the Ohio fossil fuel based power generation industry through marketing, sales and promotion. American Energy Corporation is frequently reported on and discussed in industry trade publications and other news articles.

5. Defendant American Energy Partners is an Oklahoma corporation. In 2013, over a decade after American Energy Corporation had been in existence and had been using its American Energy Corporation Mark in connection with the marketing of its products and services to power generation customers in Ohio and elsewhere, Defendant American Energy Partners was incorporated and founded by Defendant Aubrey McClendon.

6. By selling oil and gas developed from Utica Shale, Defendants will compete in the same marketplaces and for the same power generation customers to whom Plaintiff has been marketing its services and coal products. Upon information and belief, Defendants have already

acquired approximately 22,500 acres of oil and gas leases in southeastern Ohio. (*See* Ex. 2).

7. Defendants will be direct competitors with Plaintiff American Energy Corporation and will likely attempt to sell to the same customers and go through the same marketing channels.

8. In the past, Defendant Aubrey McClendon sought to disparage the use of coal. For example, he contributed substantial sums to the Sierra Club for its “Beyond Coal” campaign, which aimed to “shut down as many coal-fired powered plants as it could.” (*See* Ex. 3).

9. Defendant Aubrey McClendon’s decision to select “American Energy Partners, LP” as his new company’s name, when it intends to compete against American Energy Corporation’s Ohio-produced coal in the same marketplace will lead to substantial confusion.

10. In fact, a recent Google News search for “American Energy Corporation Ohio” has as its top result “Wildcatter McClendon Bets Big on Ohio Shale.” (*See* Ex. 4).

11. On August 23, 2013, American Energy Corporation sent a cease and desist letter to American Energy Partners, addressed to Aubrey McClendon’s attention. (*See* Ex. 5).

12. The cease and desist letter requested that American Energy Partners immediately cease and desist use of the “American Energy Corporation” Mark and requested a response by 12:00 P.M. EST on August 28, 2013.

13. To date, American Energy Partners has not indicated an intention to cease and desist use of the “American Energy Corporation” Mark.

#### **THE PARTIES**

14. Plaintiff, American Energy Corporation, is an Ohio corporation. Its principal place of business is at 46226 National Road, St. Clairsville, OH 43950, in Belmont County, Ohio.

15. Since 1999, Plaintiff has developed, marketed, promoted and sold coal to customers in Ohio under the American Energy Corporation name.

16. Last year, American Energy Corporation produced 8.4 million tons of coal and employed over 752 people from various counties in Eastern Ohio.

17. Defendant American Energy Partners, LP is a limited partnership registered with the Oklahoma Secretary of State with its principal place of business at 301 N.W. 63rd, Suite 600, Oklahoma City, OK 73116. Defendant American Energy Partners has recently acquired substantial portions of land in Ohio for its involvement in Utica shale.

18. McClendon Operating Energy Inc. is the general partner of American Energy Partners. Upon information and belief, McClendon Operating Energy Inc. exercises complete control over American Energy Partners, LP with respect to the conduct that is the subject of the instant Complaint.

19. Defendant Aubrey McClendon is the individual who started American Energy Partners, LP. Upon information and belief, his business address is 301 N.W. 63rd, Suite 600, Oklahoma City, OK 73116.

20. Upon information and belief, Defendant Aubrey McClendon exercises complete control over McClendon Operating Energy Inc. and American Energy Partners, LP with respect to the conduct that is the subject of the instant Complaint.

#### **JURISDICTION AND VENUE**

21. This Court has original jurisdiction over this civil matter pursuant to Ohio Revised Code § 2305.01.

22. Venue is appropriate in this Court pursuant to Ohio Civil Rule 3, because Defendants have conducted activity in this judicial district that gives rise to the facts for relief and part of the claim for relief arises in this judicial district in that Plaintiff's business in this judicial district has suffered and is suffering damage as a result of Defendants' conduct.

#### **FACTS**

23. Plaintiff began its business development, marketing, promoting and selling Ohio-produced coal and conducting coal sales-related activities in Ohio in 1999. Plaintiff's customers include energy utility and steel producers who purchase coal for use in their business operations and to generate electricity. As part of its business operations, Plaintiff is a party to coal sales contracts and in addition, solicits and negotiates contracts for the sale of coal on behalf of coal-producing companies affiliated with Plaintiff.

24. Plaintiff uses and has used its "American Energy Corporation" Mark on its sales contracts, invoices, manifests, letterhead, marketing presentations and similar business-related documents for over a decade. (*See, e.g.*, Ex. 6).

25. American Energy Corporation has substantial common law rights in its "American Energy Corporation" Mark arising from its substantial, continuous and exclusive use of the Mark over the years.

26. The substantial use of the American Energy Corporation Mark throughout both Ohio and the United States has caused customers in the relevant markets for Ohio-produced fossil fuels to associate "American Energy" solely and exclusively with American Energy Corporation's products and services.

27. In February 2013, American Energy Partners was established. The purpose of American Energy Partners is to pursue opportunities in the oil and gas industry.

28. Upon information and belief, Defendants acquired approximately 22,500 acres of oil and gas leases in southeastern Ohio. (*See* Ex. 2).

29. The oil and gas industry directly competes with coal companies in the electricity generation fuels marketplace and in the same marketing channels for the same customers and business.

30. Defendants' "American Energy Partners" Mark is confusingly similar to the well-known American Energy Corporation Mark.

31. Defendants' use of the "American Energy Partners" Mark comes well after American Energy Corporation first used its own "American Energy Corporation" Mark and well after the "American Energy Corporation" Mark became exclusively associated with American Energy Corporation.

32. Upon information and belief, Defendants adopted and began using the "American Energy Partner" Mark with constructive and/or actual knowledge of American Energy Corporation's substantial use of and exclusive rights in its "American Energy Corporation" Mark.

33. Defendants' use of the "American Energy Partners" Mark on goods and related services competing with and/or related to American Energy Corporation's goods and related services is likely to cause confusion among consumers.

34. In fact, a current Google News search for "American Energy Corporation Ohio" has as its top result "Wildcatter McClendon Bets Big on Ohio Shale." (*See Ex. 4*).

35. Upon information and belief, Defendant Aubrey McClendon created American Energy Partners, has near-exclusive control over American Energy Partners, and is the party who individually was responsible for the selection of the "American Energy Partners, LP" name.

36. In the past, Defendant Aubrey McClendon has attempted to compete with coal producers by several means, including efforts to disparage the use of coal. For example, he contributed substantial sums to the Sierra Club for its "Beyond Coal" campaign, which aimed to "shut down as many coal-fired powered plants as it could." (*See Ex. 3*).

37. Defendant Aubrey McClendon also funded an anti-coal ad campaign sponsored by the American Lung Association. (*See Ex. 7*).

38. In fact, Defendant Aubrey McClendon was questioned about whether his “attack on coal” was self-interested or principled and stated, “I think most people act in their self-interest.” (See Ex. 8).

39. Defendant Aubrey McClendon’s decision to select “American Energy Partners, LP” as his new company’s name, when it intends to compete against Ohio-produced coal in the marketplace for power generation fuel will lead to substantial confusion and is another attempt to compete with, disparage, and harm the business of coal producers, particularly American Energy Corporation.

**COUNT I**  
**Violation of Ohio’s Deceptive Trade Practices Act**

40. Plaintiff repeats and re-alleges Paragraphs 1 through 39 of this Complaint as if fully set forth herein.

41. Defendants’ use of “American Energy” has resulted in unfair competition in violation of Ohio’s Deceptive Trade Practices Act, Chapter 4165 of the Ohio Revised Code.

42. Defendants have used “American Energy” in a manner that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants or Defendants’ goods, services or commercial activities with Plaintiff’s services or commercial activities, or as to the origin, sponsorship, or approval of Defendants’ services, or commercial activities by Plaintiff, all in violation of Ohio’s Deceptive Trade Practices Act, Chapter 4165 of the Ohio Revised Code.

43. Defendants have competed unfairly and continue to compete unfairly with Plaintiff in violation of Ohio’s Deceptive Trade Practices Act, Chapter 4165 of the Ohio Revised Code.

44. Upon information and belief, Defendants’ conduct as described herein has been knowing, deliberate, and willful.



45. As a direct and proximate result of Defendants' conduct as described herein, Plaintiff has suffered and continues to suffer irreparable harm. Unless restrained by the Court, Defendants' acts will further impair the value of Plaintiff's "American Energy" Marks, Plaintiff's reputation, and the goodwill established in and accruing to the "American Energy" Marks. Plaintiff has no adequate remedy at law to address or correct its irreparable harm.

**COUNT II**  
**Common Law Unfair Competition**

46. Plaintiff repeats and re-alleges Paragraphs 1 through 45 of this Complaint as if fully set forth herein.

47. Defendants' use of "American Energy" has resulted in unfair competition in violation of Ohio's common law.

48. Defendants have used "American Energy" in a manner that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants or Defendants' goods, services or commercial activities with Plaintiff's goods, services or commercial activities, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities by Plaintiff, all in violation of Ohio's common law.

49. Defendants have competed unfairly and continue to compete unfairly with Plaintiff in violation of Ohio's common law.

50. Upon information and belief, Defendants' conduct as described herein has been knowing, deliberate, and willful.

51. As a direct and proximate result of Defendants' conduct as described herein, Plaintiff has suffered and continues to suffer irreparable harm. Unless restrained by the Court, Defendants' acts will further impair the value of Plaintiff's "American Energy" Marks, Plaintiff's reputation, and the goodwill established in and accruing to the "American Energy" Marks. Plaintiff has no



adequate remedy at law to address or correct its irreparable harm.

**COUNT III**  
**Common Law Trade Name Infringement**

52. Plaintiff repeats and re-alleges Paragraphs 1 through 51 of this Complaint as if fully set forth herein

53. Defendants' use of the name "American Energy Partners, LP" in connection with the marketing and sale of oil and gas as described above causes a likelihood of confusion or misunderstanding as to the source of the product and service offered because Defendants will be associated with American Energy Corporation in violation of Ohio common law.

54. Defendants' use of American Energy in the marketing and sale of oil and gas as described above causes a likelihood of confusion or misunderstanding as to affiliation, connection or association between Plaintiff American Energy Corporation and Defendant American Energy Partners in violation of Ohio common law.

55. Upon information and belief, Defendants' conduct as described herein has been knowing, deliberate, and willful.

56. By reason of Defendants' use of the name "American Energy Partners, LP" for the marketing and sale of oil and gas as described above, Defendants have caused damage and injury to Plaintiff, American Energy Corporation, for which there is no adequate remedy at law and unless temporarily, preliminary and permanently enjoined by this Court, Defendants will continue to cause irreparable damage and detriment to the goodwill and reputation of Plaintiff.

**COUNT IV**  
**Common Law Trademark Infringement**

57. Plaintiff repeats and re-alleges Paragraphs 1 through 56 of this Complaint as if fully set forth herein

58. Defendants' use of the name "American Energy Partners, LP" in connection with the marketing and sale of oil and gas as described above causes a likelihood of confusion or misunderstanding as to the source of the product and service offered because Defendants will be associated with American Energy Corporation in violation of Ohio common law.

59. Defendants' use of American Energy in the marketing and sale of oil and gas as described above causes a likelihood of confusion or misunderstanding as to affiliation, connection or association between Plaintiff American Energy Corporation and Defendant American Energy Partners in violation of Ohio Common Law.

60. Upon information and belief, Defendants' conduct as described herein has been knowing, deliberate and willful.

61. By reason of Defendants' use of the name "American Energy Partners, LP" for the marketing and sale of oil and gas as described above, Defendants have caused damage and injury to Plaintiff, American Energy Corporation, for which there is no adequate remedy at law and unless temporarily, preliminary and permanently enjoined by this Court, Defendants will continue to cause irreparable damage and detriment to the goodwill and reputation of Plaintiff.

#### **PRAYER FOR RELIEF**

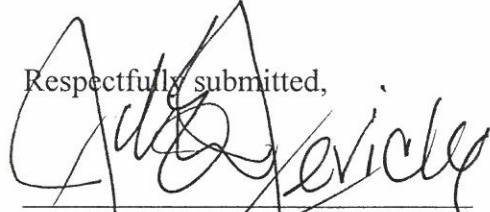
WHEREFORE, Plaintiff, American Energy Corporation, prays this Court enter judgment against Defendants as follows:

1. Order that Defendants be adjudged to have committed an act of unfair competition in violation of Ohio's common law and Ohio's Deceptive Trade Practices Act, Chapter 4165 of the Ohio Revised Code;
2. Order that Defendants be adjudged to have committed an act of trademark and trade name infringement in violation of Ohio common law;
3. Grant Plaintiff temporary, preliminary and permanent relief by enjoining Defendants,

their parent corporation, affiliates, subsidiaries, officers, directors, agents, employees, servants, attorneys, successors, assigns and any others controlling them, or controlled by or affiliated with them and all those in privity or in active concert and participation with any of the foregoing from using the term “American Energy” or a substantially similar term which is confusingly similar to Plaintiff’s trade name and trademark;

4. Order the Defendants to serve upon Plaintiff within 10 days after service of Defendants of an injunction by this Court or such extended period as the Court may direct, a report in writing, under oath, setting forth in detail the manner in which they have complied with the injunction;
5. Order Defendants to destroy items in its possession, custody or control which, if used, would violate the injunction herein granted;
6. Award Plaintiff the costs of this action, including reasonable attorney’s fees and interest; and
7. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



John E. Jevicky, Esq. (Ohio 0012702)  
John W. McCauley, Esq. (Ohio 0086101)  
Thomas M. Connor, Esq. (Ohio 082462)  
Allison G. Davis, Esq. (Ohio 0088235)

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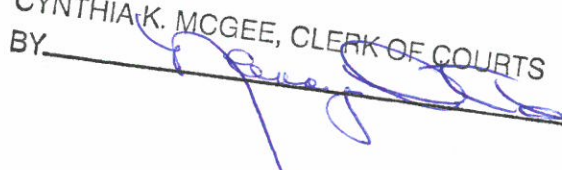
Email: [john.jevicky@dinsmore.com](mailto:john.jevicky@dinsmore.com)  
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*Attorneys for Plaintiff American Energy  
Corporation*

STATE OF OHIO  
BELMONT COUNTY  
CYNTHIA K. MCGEE, CLERK OF COURTS, DO  
HEREBY CERTIFY THAT THE ABOVE IS A TRUE  
AND CORRECT COPY OF THE ORIGINAL ON FILE  
IN THIS OFFICE.

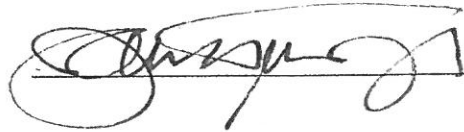
CYNTHIA K. MCGEE, CLERK OF COURTS  
BY 

DEPUTY

VERIFICATION

STATE OF OHIO                    )  
  ) SS  
COUNTY OF BELMONT        )

James R. Turner, Jr., being first duly sworn, deposes and says that he is Treasurer for American Energy Corporation and while he does not have personal knowledge of all the facts recited in American Energy Corporation's Complaint ("Complaint"), the information contained in the Complaint has been collected and made available to him by others and this information is true to the best of his knowledge and belief based upon the information made available to him; and that, therefore the Complaint is verified in this litigation.



Sworn to me and subscribed in my presence this 28<sup>th</sup> day of August, 2013.

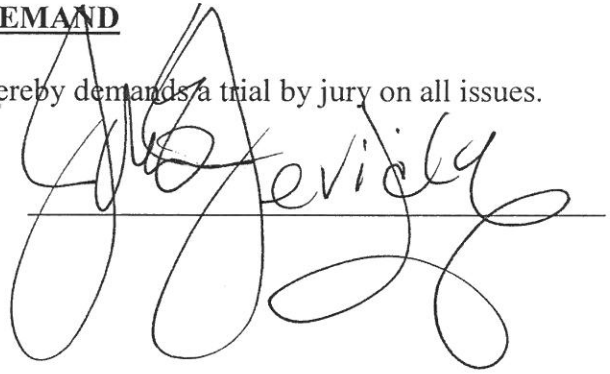
Denise R. Jackson



DENISE R. JACKSON  
Notary Public, State of Ohio  
My Commission Expires 09/26/2015

**JURY DEMAND**

Plaintiff, American Energy Corporation, hereby demands a trial by jury on all issues.



A handwritten signature, likely "M. J. Devick", is written over a horizontal line. The signature is in cursive and includes a large, stylized initial "M".