

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No.: 1:07-611

GOLDEN AGE BRANDS, LLC,

Plaintiff,

v.

STEVE GOLDSMITH,

Defendant.

COMPLAINT

The Plaintiff, Golden Age Brands, LLC (“Golden Age”), by its attorneys, as and for its Complaint herein against the Defendant Steve Goldsmith (“Defendant”), alleges the following:

PARTIES

1. Golden Age is a limited liability company duly organized and existing under the laws of the State of North Carolina, having its principal place of business in Lexington, North Carolina.
2. Defendant is an individual residing in Oceanport, New Jersey.

JURISDICTION AND VENUE

3. This is a civil action for trademark infringement, false designation or origin, and unfair competition arising under the Trademark Act of 1946 (the “Lanham Act”), as amended 15 U.S.C. § 1051 *et seq.* Accordingly, this court has jurisdiction over the subject

matter of this action pursuant to 28 U.S.C. Sections 1331 and 1338(a) and 15 U.S.C. § 1121 in that this action arises in part under 15 U.S.C. § 1125. This Court also has jurisdiction of this matter pursuant to 28 U.S.C. § 1332, in that it is a civil action between citizens of different states in which the amount in controversy exceeds \$75,000. In addition to diversity jurisdiction, this Court also has jurisdiction over Golden Age's state law claims under 28 U.S.C. § 1338(b) because these claims are joined with substantial and related claims under federal trademark law, and pursuant to the doctrine of supplemental jurisdiction.

4. This court has personal jurisdiction over Defendant pursuant to the provisions of N.C. Gen. Stat. § 1-75.4 and the underlying due process principles of the United States Constitution. Defendant is doing business in this state and district, has significant contacts in this state and district, has offered for sale and sold infringing products in this state and district, and has committed acts in this state and district that are subject of the counts set forth herein.

5. Venue is properly established in this Court pursuant to 28 U.S.C. Sections 1391(b) and (c) and 1400 (b), as, the Defendant has engaged in acts of infringement within the jurisdiction of this Court, including this Judicial District, which acts are the subject of this Complaint.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

6. Golden Age is the is the owner of U.S. Trademark Registration No. 2880763 for LORD ISAACS for jeans, slacks, shorts, skirts, jackets, vests, sweaters, blouses, shirts, t-

shirts and fleece tops, in International Class 25. A copy of the registration and an assigned granting Golden Age ownership of the registration are attached hereto collectively as Exhibit A.

7. Golden Age, by itself and through its predecessor in interest, I.C. Isaacs & Co., L.P., first introduced its apparel to the market under the LORD ISAACS trademark in February of 1966 and has enjoyed continuous and substantially exclusive use of the mark since that time.

8. Defendant licensed use of Golden Age's LORD ISAACS trademark pursuant to a Trademark License Agreement (the "License Agreement") between the parties dated December 20, 2001, a copy of which is attached hereto as Exhibit B.

9. The License Agreement expired on December 31, 2004.

10. Pursuant to Section 12(B) of the License Agreement, Defendant was to cease from all use of the LORD ISAACS mark upon expiration of the License Agreement.

11. Defendant continues to distribute, market, sell, and otherwise promote apparel under the marks "LORD ISAACS" and "LORD ISAACS COMFORT & STYLE."

12. Defendant filed U.S. Trademark Application Serial No. 77/224,379 for LORD ISAACS COMFORT & STYLE on July 9, 2007, a copy of which is attached hereto as Exhibit C.

13. Defendant was aware of the existence of Golden Age's LORD ISAACS trademark prior to his adoption and use of trademarks identical to Golden Age's LORD ISAACS trademark.

14. Defendant was aware or should have been aware that the trade and purchasing public recognize and rely upon the LORD ISAACS trademark to identify Golden Age's products and to distinguish Golden Age's products from the products of others.

15. Defendant was aware or should have been aware that his use of the LORD ISAACS and LORD ISAACS COMFORT & STYLE mark in connection with the distribution, marketing and/or sale of his apparel was likely to confuse, mislead and otherwise deceive consumers into believing that Defendant's products either originate from or are licensed, sponsored, approved or authorized by Golden Age.

16. Defendant's acts have caused confusion among the consuming public and purchasers of apparel as to the source, approval, sponsorship or affiliation of Defendant's products with the like products of Golden Age.

17. Defendant has taken advantage of and sought to trade upon the reputation and goodwill developed by Golden Age in connection with its LORD ISAACS trademark and to capitalize on the market created by Golden Age for its LORD ISAACS products.

18. Defendant's acts were committed with the intent to confuse or deceive the consuming public into believing that Defendant's products either originate from or are licensed, sponsored, approved or authorized by Golden Age.

19. Defendant's acts will likely induce consumers to believe that the same company sells both Golden Age's goods and Defendant's goods. Defendant's acts will also likely induce other consumers to purchase Defendant's goods in the mistaken belief that they have actually purchased Golden Age's goods.

20. As a result of Defendant's conduct, Golden Age has suffered and, unless enjoined by this Court, will continue to suffer damage to its business, reputation and goodwill.

21. The infringing activities of Defendant are wanton, willful and deliberate.

FIRST CLAIM FOR RELIEF
(Trademark Infringement in Violation of Lanham Act § 32)

22. Golden Age hereby alleges and incorporates by reference the allegations of Paragraphs 1 through 21 above.

23. As alleged in Paragraphs 6 and 7 above, Golden Age is the owner of the LORD ISAACS trademark for apparel and U.S. Registration No. 2880763 for LORD ISAACS for jeans, slacks, shorts, skirts, jackets, vests, sweaters, blouses, shirts, t-shirts and fleece tops.

24. Using the trade names "LORD ISAACS" and "LORD ISAACS COMFORT & STYLE," Defendant sells, offers for sale, distributes and/or advertises his apparel.

25. Defendant's use of the trade names "LORD ISAACS" and "LORD ISAACS COMFORT & STYLE" is likely to cause confusion, to cause mistake or to deceive.

26. Defendant's acts are without license, consent or permission of Golden Age.

27. Defendant's acts constitute trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

28. Defendant's conduct has caused and continues to cause irreparable injury to Golden Age and to its goodwill and reputation, and unless said conduct is restrained by this Court, will continue to cause irreparable injury to Golden Age for which there is no adequate remedy at law.

SECOND CLAIM FOR RELIEF
(False Designation of Origin and Unfair Competition in Violation of Lanham Act § 43(a))

29. Golden Age repeats and reincorporates each and every allegation contained in Paragraphs 1 through 28 above as if fully set forth herein.

30. Defendant's use of the trade names "LORD ISAACS" and "LORD ISAACS COMFORT & STYLE" in connection with his products falsely designates and misrepresents the origin of said products and is likely to cause confusion, to cause mistake or to deceive as to the affiliation, connection or association of Defendant with Golden Age or as to the sponsorship or approval of Defendant's products by Golden Age.

31. Defendant's acts are without license from or permission of Golden Age.

32. Defendant's acts constitute false designation of origin and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

33. Defendant's conduct has caused and continues to cause irreparable injury to Golden Age and to its goodwill and reputation, and unless said conduct is restrained by this

Court, will continue to cause irreparable injury to Golden Age for which there is no adequate remedy of law.

THIRD CLAIM FOR RELIEF
(Violation of North Carolina Unfair and Deceptive Trade Practices Act §75-1.1)

34. Golden Age repeats and reincorporates each and every allegation contained in Paragraphs 1 through 33 above as if fully set forth herein.

35. Defendant is confusing the public, is competing unfairly and is employing deceptive trade practices.

36. Defendant's acts are without license, consent or permission of Golden Age.

37. Defendant's acts constitute trademark infringement and unfair competition in violation of N.C. Gen Stat. § 75-1.1 and the common law of the State of North Carolina.

38. Defendant has similarly violated the comparable statutory and common law of each and every state in which Defendant uses the trade names "LORD ISAACS" and "LORD ISAACS COMFORT & STYLE" in connection with his apparel.

39. Defendant's conduct has caused and continues to cause irreparable injury to Golden Age and to its goodwill and reputation, and unless said conduct is restrained by this Court, will continue to cause irreparable injury to Golden Age for which there is no adequate remedy of law.

FOURTH CLAIM FOR RELIEF
(Common Law Misappropriation)

40. Golden Age repeats and reincorporates each and every allegation contained in Paragraphs 1 through 39 above as if fully set forth herein.

41. Golden Age has devoted and expended substantial time, energy, effort and resources in order to create and develop the LORD ISAACS trademark as an indicator of source and quality. Golden Age has also devoted and expended substantial time, energy, effort and resources in marketing, advertising, selling and otherwise promoting its LORD ISAACS products. In addition, Golden Age has expended substantial time, energy, effort and resources to develop and maintain its reputation in connection with its LORD ISAACS products.

42. Said efforts have resulted in tremendous commercial value of and interest in Golden Age's LORD ISAACS trademarks.

43. Defendant has used Golden Age's LORD ISAACS trademark as his own.

44. Defendant's acts are without license, consent or permission of Golden Age.

45. Defendant's acts constitute misappropriation of Golden Age's commercial value of and interest in its LORD ISAACS trademark in violation of the common law of the State of North Carolina.

46. Defendant has similarly violated the comparable statutory and common law of each and every state in which Defendant uses the trade names "LORD ISAACS" and "LORD ISAACS COMFORT & STYLE" in connection with his apparel.

47. Defendant's conduct has caused and continues to cause irreparable injury to Golden Age and to its goodwill and reputation, and unless said conduct is restrained by this Court, will continue to cause irreparable injury to Golden Age for which there is no adequate

remedy of law.

PRAYER FOR RELIEF

WHEREFORE, Golden Age prays for judgment as follows:

1. For a trial by jury on all issues so triable.
2. The Defendant, his agents, coconspirators, servants, affiliates, employees, successors, and assigns, and all those in privy or acting in concert with Defendant, be preliminary and permanently enjoined and restrained from directly or indirectly:
 - (a) using the trade names “LORD ISAACS” or “LORD ISAACS COMFORT & STYLE” or any other name, word, symbol, device or mark which colorably simulates Golden Age’s LORD ISAACS mark, which is likely to cause confusion, mistake or to deceive;
 - (b) manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any product bearing the LORD ISAACS or LORD ISAACS COMFORT & STYLE marks, or any simulation, reproduction, copy, or colorable imitation thereof;
 - (c) using any false designation of origin, or performing any act which can, or is likely to lead, members of the trade or public to believe that any product distributed or sold by Defendant is any way associated or connected with Golden Age or is sold, licensed, sponsored, approved or authorized by Golden Age;

- (d) transferring, consigning, selling, shipping, or otherwise moving any products, in Defendant's possession, custody or control bearing the mark substantially similar or identical to Golden Age's LORD ISAACS mark or disposing of in any way Defendant's records relating to the design, appearance, trademarks, sales or orders for the purchase of products bearing any marks confusingly similar to Golden Age's LORD ISAACS mark;
- (e) engaging in any activity constituting unfair competition with Golden Age, or with Golden Age's rights in, or to use, or exploit, the LORD ISAACS mark, or causing injury to Golden Age's name, reputation or goodwill; and
- (f) assisting, aiding or abiding any other person or business entity in engaging or performing any of the activities referred to in subparagraphs (a) through (e) above.

3. Directing that Defendant deliver up for destruction all products, labels, signs, prints, packaging, wrappers, advertisements, promotional materials, catalogues, brochures, information sheets, web site materials, or other printed or graphic materials of any type in his possession or control bearing any of the matter enjoined under Paragraph 1 hereof, as well as all plates, molds and other means of making or reproducing the same.

4. Directing Defendant to account for and pay over to Golden Age all of the profits realized by Defendant as a result of his conduct in such an amount as may be determined at trial.

5. Awarding Golden Age actual damages sustained by reason of said acts of infringement and unfair competition complained of herein in such amount as may be determined at trial, to be trebled in accordance with 15 U.S.C. § 1117.

6. Awarding punitive damages against Defendant and in favor of Golden Age in amount to be determined at trial for the intentional, willful and wanton acts of Defendant.

7. Awarding Golden Age its reasonable attorneys' fees and costs herein.

8. Granting Golden Age such other and further relief as the Court may deem just and proper.

This the 14th day of August, 2007.

/s/ Richard A. Coughlin

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