

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) LIL DUDES AND DIVAS, L.L.C.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. _____
)	
(1) MASEY WALLER d/b/a)	
DUDES N DIVAS,)	
)	
Defendant.)	

COMPLAINT

COMES NOW Plaintiff, Lil Dudes and Divas, L.L.C., and alleges and states as follows:

GENERAL ALLEGATIONS

A. PARTIES

1. Lil Dudes and Divas, L.L.C., is an Oklahoma limited liability company with its principal place of business in Oklahoma County, Oklahoma.
2. Defendant, Masey Waller d/b/a Dudes N Divas is, on information and belief, a resident of Custer County, Oklahoma.

B. JURISDICTION AND VENUE

3. Defendant Waller resides in and is a citizen of the state of Oklahoma. Therefore, this Court has personal jurisdiction over Defendant Waller.
4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this is an action arising under the laws of the United States. Supplemental jurisdiction is proper pursuant to 28 U.S.C. § 1367, as the state law claims are so related to the federal question presented

in this case so as to form the same case or controversy under Article III of the United States Constitution.

5. Defendant Waller resides in Custer County, an Oklahoma county encompassed by the Western District of Oklahoma. Therefore, venue is proper pursuant to 28 U.S.C. § 1391(b).

C. FACTS

6. Plaintiff Lil Dudes and Divas, L.L.C. was organized by filing its Articles of Organization with the Oklahoma Secretary of State on September 27, 2006.

7. Since its organization, Plaintiff has been continuously engaged in the retail sale of children's clothing and related items in Edmond, Oklahoma, under the name "Lil Dudes and Divas."

8. Upon information and belief, at some point in time after July, 2007, Defendant opened a children's clothing store in Clinton, Oklahoma, under the name "Dudes N Divas." This name is virtually identical to the "Lil Dudes and Divas" trade name in known, existing use by the Plaintiff.

9. Upon information and belief, Defendant was aware at the time of opening the Dudes N Divas store that Plaintiff was operating under the "Lil Dudes and Divas" trade name in connection with the retail sale of children's clothing and related items.

10. In late October, 2007, Plaintiff, while attending market in Dallas, Texas, attempted to place orders with several vendors. These vendors informed the Plaintiff that Lil Dudes and Divas had already placed orders with them. Upon inquiry, the Plaintiff discovered that these orders had, in fact, been placed by Defendant Waller d/b/a Dudes N Divas, whom the vendors assumed was one and the same as the Plaintiff, Lil Dudes and Divas, L.L.C. The vendors approved Defendant's orders

based on this assumption, using the established credit history of Plaintiff, Lil Dudes and Divas, L.L.C.

11. Plaintiff has since formally requested that the Defendant cease and desist from the use of the “Dudes N Divas” name, or any other name deceptively similar to Plaintiff’s trade name. Defendant has wholly failed, refused, and neglected to comply with Plaintiff’s request.

12. Plaintiff registered the trade name Lil Dudes and Divas in relation to the retail sale of children’s goods and related items with the Oklahoma Secretary of State on or about December 19, 2007. (*See Ex. 1, Certificate of Trademark Registration*).

FIRST CAUSE OF ACTION

**TRADE NAME INFRINGEMENT IN VIOLATION
OF THE LANHAM ACT-- 15 U.S.C. § 1125(a)**

Plaintiff adopts and incorporates herein by reference the allegations of paragraphs 1 through 12 above, and, in addition, alleges and states as follows:

13. Federal registration of a trademark is not a requirement for claims brought under 15 U.S.C. § 1125(a). Therefore, Local Civ. R. 3.6, requiring complaints filed in trademark cases to cite the trademark number, is not implicated in this action.

14. Defendant uses the name “Dudes N Divas” in commerce in connection with the retail sale of children’s clothing and related items.

15. Defendant’s use of the name “Dudes N Divas” in connection with the retail sale of children’s clothing and related items is deceptively similar to the “Lil Dudes and Divas” trade name already in use by the Plaintiff in the same geographic trade region for the same purpose.

16. By adopting a name that is virtually identical in form and language as the trade name already in use by the Plaintiff, Defendant has deprived the Plaintiff of its right to the exclusive use of its trade name.

17. Defendant's continued use of the trade name "Dudes N Divas" has created actual confusion in the public, and it is likely to continue to cause confusion, or to cause mistake, in the future, in violation of the Lanham Act, 15 U.S.C. § 1125(a).

18. As a result of Defendant's violation of 15 U.S.C. § 1125(a), Plaintiff has been damaged in an amount to be determined at trial. Under 15 U.S.C. § 1117(a), Plaintiff is entitled to bring this action and to recover herein (1) Defendant's profits, (2) Plaintiff's actual damages, and (3) the costs of this action.

19. The trial court in its discretion may award attorney's fees for violations of 15 U.S.C. § 1125(a) in exceptional cases pursuant to 15 U.S.C. § 1117(a). As Defendant adopted a trade name that is deceptively similar to that already in known use by the Plaintiff, and Defendant willfully continues with such use despite Plaintiff's formal request to cease and desist from doing so, Plaintiff is entitled to recover its attorney's fees for prosecuting this matter.

20. Pursuant to 15 U.S.C. § 1116, this Court has the power to grant Plaintiff injunctive relief so as to prevent a violation of 15 U.S.C. § 1125(a).

21. Defendant's use of a trade name that is deceptively similar to that already in use by the Plaintiff threatens Plaintiff with irreparable harm for which there is no adequate remedy at law.

22. Plaintiff is therefore entitled to preliminary and permanent injunctive relief prohibiting the Defendant from continuing business under the name Dudes N Divas, or any other name that is deceptively similar to the existing trade name of the Plaintiff.

WHEREFORE, Plaintiff prays that this Court enter a preliminary and permanent injunction preventing the Defendant from continuing business under the trade name Dudes N Divas, or any other trade name that is deceptively similar; that this Court enter a judgment against the Defendant and in favor of Plaintiff for Defendant's profits, Plaintiff's actual damages in an amount to be established at trial, and the costs of this action; for reasonable attorney's fees incurred in prosecuting this action; and for such other and further relief to which the Court finds the Plaintiff entitled in the premises.

SECOND CAUSE OF ACTION

UNFAIR COMPETITION

Plaintiff adopts and incorporates herein by reference the allegations of paragraphs 1 through 22 above, and, in addition, alleges and states as follows:

23. Plaintiff and Defendant are in competition as they are both engaged in the retail sale of children's clothing and related items, conduct business in the same geographic region, and solicit business from the same general class of consumers.

24. Defendant's adoption of a deceptively similar trade name has created confusion in the public, resulting in the unjust appropriation of Plaintiff's goodwill and business reputation. This confusion is likely to persist in the future so long as Defendant continues to use a deceptively similar trade name.

25. As a result of Defendant's unfair competition, Plaintiff has been damaged in an amount to be determined at trial.

26. Defendant's use of a trade name that is deceptively similar to that already in use by the Plaintiff threatens Plaintiff with irreparable harm for which there is no adequate remedy at law.

27. Plaintiff is therefore entitled to preliminary and permanent injunctive relief prohibiting the Defendant from continuing business under the trade name Dudes N Divas, or any other trade name that is deceptively similar to the existing trade name of the Plaintiff.

WHEREFORE, Plaintiff prays that this Court enter a preliminary and permanent injunction preventing the Defendant from continuing business under the trade name Dudes N Divas, or any other trade name that is deceptively similar; that this Court enter a judgment against the Defendant and in favor of Plaintiff for actual damages in an amount to be established at trial; and for such other and further relief to which the Court finds the Plaintiff entitled in the premises.

THIRD CAUSE OF ACTION

**VIOLATION OF THE OKLAHOMA
DECEPTIVE TRADE PRACTICES ACT,
OKLA. STAT. TIT. 78, §§ 51-55**

Plaintiff adopts and incorporates herein by reference the allegations of paragraphs 1 through 27 above, and, in addition, alleges and states as follows:

28. By adopting a deceptively similar trade name as that already in known, existing use by the Plaintiff, Defendant is effectively passing off its goods and services as those of the Plaintiff in violation of the Oklahoma Deceptive Trade Practices Act.

29. As a result of Defendant's deceptive trade practice, Plaintiff has been damaged in an amount to be determined at trial.

30. Pursuant to § 54 of the Oklahoma Deceptive Trade Practices Act, a person damaged or likely to be damaged by a deceptive trade practice is entitled to injunctive relief to prevent, restrain or enjoin such deceptive trade practice, and is also entitled to recover the actual damages resulting from such deceptive trade practice, including a reasonable attorney's fee for prosecuting such action.

31. Plaintiff is therefore entitled to preliminary and permanent injunctive relief prohibiting the Defendant from continuing business under the trade name Dudes N Divas, or any other trade name that is deceptively similar to the existing trade name of the Plaintiff, and passing off its goods and services as those of the Plaintiff.

WHEREFORE, Plaintiff prays that this Court enter a preliminary and permanent injunction preventing the Defendant from continuing business under the trade name Dudes N Divas, or any other trade name that is deceptively similar; that this Court enter a judgment against the Defendant and in favor of Plaintiff for actual damages in an amount to be established at trial; for reasonable attorney's fees incurred in prosecuting this action; and for such other and further relief to which the Court finds the Plaintiff entitled in the premises.

s/James K. Larimore

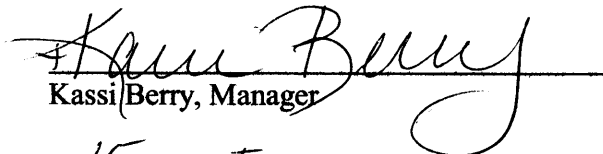
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VERIFICATION

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) ss:

I, Kassi Berry, of lawful age, being first duly sworn upon oath, depose and state: that I am the Manager of the Plaintiff in the above-entitled cause; that I am familiar with the contents of the above and foregoing Complaint; and that the matters and things therein contained are true and correct to the best of my knowledge and belief.


Kassi Berry, Manager

Subscribed and sworn to before me this 15 day of Jan., 2008.


Notary Public #2671



My Commission Expires:

2-11-08

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OFFICE OF THE SECRETARY OF STATE



CERTIFICATE OF TRADEMARK REGISTRATION

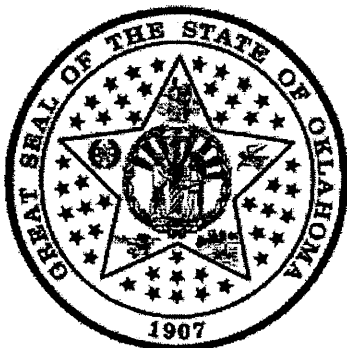
LIL DUDES AND DIVAS

REGISTRATION NO. 12165242 EXPIRES: December 19, 2017

WHEREAS, by virtue of its Application for Registration, such trademark has been filed in Class No. 39 and the good or services upon which the trademark is used are
RETAIL SALE OF CHILDREN'S CLOTHING AND RELATED ITEMS

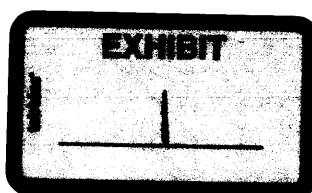
NOW THEREFORE, I, the undersigned Secretary of State of the State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this Certificate to evidence such registration.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.



*Filed in the City of Oklahoma this
19th day of December, 2007.*

Secretary Of State



FILED - Oklahoma Secretary of State #12165242 12/19/2007 16:28

12/19/2007 01:25 PM
OKLAHOMA SECRETARY OF STATE



SOS



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TRADEMARK REGISTRATION

TO: Oklahoma Secretary of State
2300 N. Lincoln Blvd., State Capitol Building, Room 101
Oklahoma City, OK 73105-4897
(405) 521-3912

The undersigned, in order to register a trademark in the state of Oklahoma pursuant to the provisions of 78 O.S., Section 23, here submits the following:

1. The trademark name and/or design: LIL DUDES AND DIVAS

AND one specimen or facsimile of such trademark, which shall be in a form compatible with electronic scanning is ATTACHED HERETO.

2. A description of goods or services used in connection with the trademark: RETAIL SALE OF CHILDREN'S CLOTHING AND RELATED ITEMS

3. The mode or manner in which the mark is used in connection with the goods or services:
THE MARK IS THE BUSINESS NAME CURRENTLY IN USE BY THE APPLICANT IN ITS RETAIL SALE OF CHILDREN'S CLOTHING AND RELATED GOODS.

4. The statutory classification(s) of such goods or services:
(See the procedure sheet for a list of general classes of goods and services.)
Class Number(s): 39.
Class Name(s): CLOTHING

5. The date of first use of the trademark by the applicant or his/her predecessor in business:
(a.) Anywhere: 9/27/06; and (b.) in Oklahoma: 9/27/06

6. Applicant's full & exact name: LIL DUDES AND DIVAS, L.L.C.

7. Applicant's business address: 1448 S. BRYANT AVE., EDMOND, OK 73034

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8. Applicant is:

() an individual doing business as: _____

(X) incorporated in the state of: OKLAHOMA

() other legal entity: _____

The undersigned applicant is the owner of the trademark and no other person has the right to use such trademark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

Signed this 13 day of December, 2007.

Kami B. King
Signature

manager. member
Title, if applicable