

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JENNY AND JEFF DESIGNS, INC. :
 :
 Plaintiff :
 :
 v. :
 :
 MICHELLE9270 :
 :
 Defendant :

CA 08 004 S
C.A. No.
Jury Trial Demanded

COMPLAINT

Parties

1. Plaintiff Jenny and Jeff Designs, Inc. ("Jenny & Jeff") is a Rhode Island corporation with a principal place of business located at 215 Doyle Ave, Providence, RI 02906. Jenny & Jeff is a citizen only of the State of Rhode Island.

2. Jenny & Jeff is informed and believes that Defendant Michelle9270 ("Michelle") is the fictitious business name of an individual selling on eBay Inc.'s ("eBay") auction site. The true name of Michelle is unknown to Jenny & Jeff at this time.

Jurisdiction And Venue

3. This Honorable Court has original and exclusive subject matter jurisdiction of this action under 28 U.S.C. § 1338(a) because this action arises under the Copyright Act, 17 U.S.C. §101 et seq., and original jurisdiction under 28 U.S.C. § 1338(a) because this action arises under the Trademark Act, 15 U.S.C. § 1051 et seq. Jurisdiction is conferred by 28 U.S.C. § 1338(b) for the substantial and related claim for unfair competition, and by 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States. The Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. §1367.

4. Plaintiff is informed and believes that this Court may properly exercise its in personam jurisdiction over the Defendant because Defendant has offered infringing products for sale in the State of Rhode Island, has sold infringing product into Rhode Island, has shipped infringing products into the State of Rhode Island, and has sufficient minimum contacts with Rhode Island.

5. Venue is proper in Rhode Island pursuant to 28 U.S.C. §1391(b).

6. Applicant advised eBay in December, 2006 via facsimile transmitted letter (“Letter”) that Defendant was infringing Plaintiff’s copyrights.

7. Shortly after the Letter was sent to eBay, sales by Defendant on eBay were reduced or eliminated.

8. Sometime in 2007, sales of infringing product on eBay by Defendant resumed.

COUNT I

(Copyright Infringement; Cats & Dogs Work)

9. Jenny & Jeff incorporates herein by reference the allegations of Paragraphs 1 through 8 inclusive of this Complaint.

10. Jenny & Jeff had created the design of cats and dogs shown in Exhibit A hereto (“Cats & Dogs Work”). The Cats & Dogs Work contains material wholly original to Jenny & Jeff, and constitutes copyrightable subject matter under United States laws.

11. Jenny & Jeff has complied in all respects with all applicable Copyright Acts and all other laws governing copyright and has secured the exclusive rights to the copyright of the Cats & Dogs Work, and has received from the Register of Copyrights a certificate of registration for the work entitled “Cats & Dogs Collection”, U.S. Copyright Reg. VA 1-078-795.

12. Jenny & Jeff is the owner of all right, title and interest to the copyrights in the Cats & Dogs Work, including the exclusive right to sue and obtain remedies, including damages, for infringement of the Cats & Dogs Work.

13. Defendant or its agent had access to the Cats & Dogs Work and has infringed the copyright in the Cats & Dogs Work by manufacturing, selling, publishing and/or placing upon the market in this district and elsewhere the Michelle's Cat & Dog Work shown in Exhibit B, which work is derivative from the Cats & Dogs Work, is substantially similar to it and infringes Jenny & Jeff's copyright.

14. By reason of the foregoing, Jenny & Jeff has been injured in an amount not yet ascertained.

WHEREFORE, Jenny & Jeff prays that Judgment be entered against Defendant as follows:

- (1) For Judgment that Defendant has infringed the copyright for the original work as stated above.
- (2) For an Order preliminary and permanently enjoining and restraining Defendant and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them and each of them from directly or indirectly making, using, selling, vending, marketing, displaying, or distributing any goods, wares, or merchandise or using for trade, advertising, or any other purpose:
 - a. Any products infringing the copyright identified above;

- b. Any documents or other printed matter showing, depicting, or displaying such infringing works;
- (3) Ordering Defendant to deliver up to Jenny & Jeff, all unlawfully created copies of works, molds, models and derivative works used to manufacture said infringing copies, as well as any infringing product literature, and all other works or copies that infringe Jenny & Jeff's works which are in the possession, custody or control of Defendant;
- (4) Ordering an accounting of Defendant's profits attributable to the copyright infringement and an accounting of all profits sustained by Defendant, occasioned as a result of Defendant's infringement of the copyright registrations in issue and all profits of Defendant resulting from the infringement of the copyright registrations and/or from Defendant's unjust enrichment, herein and awarding Jenny & Jeff compensatory damages, in an amount to be set by the Court;
- (5) Awarding Jenny & Jeff statutory damages; and
- (6) Awarding Jenny & Jeff the costs of suit, including reasonable attorney's fees and investigative costs, incurred herein.

COUNT II

(Copyright Infringement; Jungle Safari Work)

15. Jenny & Jeff incorporates herein by reference the allegations of Paragraphs 1 through 14 inclusive of this Complaint.

16. Jenny & Jeff had created the work titled “Jungle Safari” (“Jungle Safari Work”). The Jungle Safari Work contains material wholly original to Jenny & Jeff, and constitutes copyrightable subject matter under United States laws.

17. Jenny & Jeff has complied in all respects with all applicable Copyright Acts and all other laws governing copyright and has secured the exclusive rights to the copyright of the Jungle Safari Work, and has received from the Register of Copyrights a certificate of registration for the work entitled “Jungle Safari”, U.S. Copyright Reg. VA 1-348-333.

18. Jenny & Jeff is the owner of all right, title and interest to the copyrights in the Jungle Safari Work, including the exclusive right to sue and obtain remedies, including damages, for infringement of the Jungle Safari Work.

19. Defendant or its agent had access to the Jungle Safari Work and has infringed the copyright in the Jungle Safari Work by manufacturing, selling, publishing and/or placing upon the market in this district and elsewhere works sold by Michelle9270 on eBay, which work is derivative from the Jungle Safari Work, is substantially similar to it and infringes Jenny & Jeff’s copyright.

20. By reason of the foregoing, Jenny & Jeff has been injured in an amount not yet ascertained.

WHEREFORE, Jenny & Jeff prays that Judgment be entered against Defendant as follows:

- (1) For Judgment that Defendant has infringed the copyright for the original work as stated above.

- (2) For an Order preliminary and permanently enjoining and restraining Defendant and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them and each of them from directly or indirectly making, using, selling, vending, marketing, displaying, or distributing any goods, wares, or merchandise or using for trade, advertising, or any other purpose:
 - a. Any products infringing the copyright identified above;
 - b. Any documents or other printed matter showing, depicting, or displaying such infringing works;
- (3) Ordering Defendant to deliver up to Jenny & Jeff, all unlawfully created copies of works, molds, models and derivative works used to manufacture said infringing copies, as well as any infringing product literature, and all other works or copies that infringe Jenny & Jeff's works which are in the possession, custody or control of Defendant;
- (4) Ordering an accounting of Defendant's profits attributable to the copyright infringement and an accounting of all profits sustained by Defendant, occasioned as a result of Defendant's infringement of the copyright registrations in issue and all profits of Defendant resulting from the infringement of the copyright registrations and/or from Defendant's unjust enrichment, herein and awarding Jenny & Jeff compensatory damages, in an amount to be set by the Court;
- (5) Awarding Jenny & Jeff statutory damages; and
- (6) Awarding Jenny & Jeff the costs of suit, including reasonable attorney's fees and investigative costs, incurred herein.

COUNT III

(Copyright Infringement; Miscellaneous Works)

21. Jenny & Jeff incorporates herein by reference the allegations of Paragraphs 1 through 20 inclusive of this Complaint.

22. Jenny & Jeff had several works known as the Spring 2004 Collection (Butterflies, Lucky Duck and Funky Frogs), Dog Parade, Bow Wow Meow, and Best Friends works (“Miscellaneous Works”). The Miscellaneous Works each contains material wholly original to Jenny & Jeff, and each constitutes copyrightable subject matter under United States laws.

23. Jenny & Jeff has complied in all respects with all applicable Copyright Acts and all other laws governing copyright and has secured the exclusive rights to the copyright of each of the Miscellaneous Works, and has received from the Register of Copyrights a certificate of registration for each of the Miscellaneous Works.

24. Jenny & Jeff is the owner of all right, title and interest to the copyrights in each of the Miscellaneous Works, including the exclusive right to sue and obtain remedies, including damages, for infringement of each of the Miscellaneous Works.

25. Defendant or its agent had access to the Miscellaneous Works and has infringed the copyright in each of the Miscellaneous Works by manufacturing, selling, publishing and/or placing upon the market in this district and elsewhere works sold by Michelle on eBay, which works are derivative from the Miscellaneous Works, infringe the Miscellaneous Works and are substantially similar to them.

26. By reason of the foregoing, Jenny & Jeff has been injured in an amount not yet ascertained.

WHEREFORE, Jenny & Jeff prays that Judgment be entered against Defendant as follows:

- (1) For Judgment that Defendant has infringed the copyright for the original work as stated above.
- (2) For an Order preliminary and permanently enjoining and restraining Defendant and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them and each of them from directly or indirectly making, using, selling, vending, marketing, displaying, or distributing any goods, wares, or merchandise or using for trade, advertising, or any other purpose:
 - a. Any products infringing the copyright identified above;
 - b. Any documents or other printed matter showing, depicting, or displaying such infringing works;
- (3) Ordering Defendant to deliver up to Jenny & Jeff, all unlawfully created copies of works, molds, models and derivative works used to manufacture said infringing copies, as well as any infringing product literature, and all other works or copies that infringe Jenny & Jeff's works which are in the possession, custody or control of Defendant;
- (4) Ordering an accounting of Defendant's profits attributable to the copyright infringement and an accounting of all profits sustained by Defendant, occasioned as a result of Defendant's infringement of the copyright registrations in issue and all profits of Defendant resulting from the infringement of the copyright

registrations and/or from Defendant's unjust enrichment, herein and awarding Jenny & Jeff compensatory damages, in an amount to be set by the Court;

- (5) Awarding Jenny & Jeff statutory damages; and
- (6) Awarding Jenny & Jeff the costs of suit, including reasonable attorney's fees and investigative costs, incurred herein.

COUNT IV

(Violation of Trademark (Lanham) Act)

27. Jenny & Jeff incorporates herein by this reference the allegations of Paragraphs 1 through 26 inclusive of this Complaint.

28. Defendant has infringed Plaintiff's common law trademark, "Jenny & Jeff", which act constitutes trademark infringement, false designation of origin and a false description of the goods effecting interstate commerce, in violation of the Trademark (Lanham) Act, 15 U.S.C. §1051 et seq., including 15 U.S.C. §§ 1114 & 1125.

WHEREFORE, Plaintiff prays for judgment in its favor and against the Defendant:

- (1) for all remedies available under the Trademark Act, including under Section 43(a) of the Lanham Act, 15 U.S.C. §1125 (a).
- (2) for a preliminary and a permanent injunction prohibiting Defendant from infringing or improperly using Plaintiff's trademark;
- (3) for a preliminary and a permanent injunction prohibiting Defendant from making, offering for sale, or selling its infringing goods;
- (4) for a preliminary and a permanent injunction ordering Defendant to recall and remove from places of sale the infringing goods;
- (5) for an order impounding the infringing goods;

- (6) for a preliminary, and a permanent injunction ordering Defendant to deliver upon oath the infringing goods;
- (7) for an accounting for all profits derived by the Defendant on the manufacture and sale of the infringing goods;
- (8) for an award of compensatory damages;
- (9) for an award of punitive damages;
- (10) for an award of costs and attorney's fees; and
- (11) for such other relief as the Court deems just.

COUNT V

(Unfair Competition)

29. Jenny & Jeff incorporates herein by this reference the allegations of Paragraphs 1 through 28 inclusive of this Complaint.


30. Defendant's actions constitute unfair competition.

31. Defendant's actions have directly and proximately caused Jenny & Jeff damages.

WHEREFORE, Plaintiff Jenny & Jeff demands that judgment be entered in its favor against Defendant on the Complaint in an amount equal to Jenny & Jeff's damages, plus interest, costs, punitive damages and attorney's fees, all in an amount to be determined at trial, preliminary and permanent injunctive relief, and such other relief as this Honorable Court deems just under the circumstances.

Attorneys For Plaintiff,

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