

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JONETTE HOLDINGS, LLC,
Plaintiff,

v.

J.C. PENNEY CORPORATION, INC.,
Defendant.

CA 08 0215

C.A. No. 2008-

JURY TRIAL CLAIMED

COMPLAINT

PARTIES

1. Plaintiff, JONETTE HOLDINGS, LLC ("JONETTE HOLDINGS"), is a Rhode Island limited liability company with its headquarters in East Providence, Rhode Island.

2. Defendant, J.C. PENNEY CORPORATION, INC. ("J.C. PENNEY"), is a Delaware corporation with its headquarters in Plano, Texas. J.C. PENNEY has sufficient contacts with this forum to subject it to this court's in personam jurisdiction.

JURISDICTION

3. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, in that this matter arises under federal law. In particular, this is an action for copyright infringement under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*; and for false designation of origin, in violation of Section 43 of the Lanham Act, 15 U.S.C. §1125. This court also has supplemental jurisdiction over the related state law claims, pursuant to 28 U.S.C. § 1367.

FACTS

4. For more than 60 years, Jonette Jewelry Company ("Jonette Jewelry") of East Providence, Rhode Island designed, manufactured, and sold original styles of jewelry.

5. Jonette Jewelry created thousands of original styles, and registered those original designs with the U.S. Copyright Office (the "Jonette Copyrights").

6. By virtue of a written assignment from Jonette Jewelry Company to Jonette Holdings, Jonette Holdings owns all right, title, ownership, and interest in and to the copyrights owned by Jonette Jewelry Company.

7. One such Jonette design is "Santa Hugging Reindeer Pin, Item #8808", U.S. Copyright Registration No. VAU-511-218 ("Jonette's Santa Hugging Reindeer"). The Certificate of Registration from the U.S. Copyright Office is annexed hereto as Exhibit "1".

8. Without plaintiff's permission, and in violation of plaintiff's rights, defendant is selling and offering for sale jewelry that imitates, copies, and infringes upon plaintiff's copyrighted design. In particular, defendant is selling and offering for sale a "Santa Hugging Reindeer" pin, SKU 016812573094, that infringes "Jonette's Santa Hugging Reindeer". A picture of the infringing pin is annexed hereto as Exhibit "2".

COUNT I

(Copyright Infringement --
Jonette "Santa Hugging Reindeer" --
U.S. Copyright Registration No. VAU-511-218)

9. Paragraphs 1 through 8 are incorporated herein.

10. Defendant has infringed upon and is continuing to infringe upon "Jonette's Santa Hugging Reindeer" design, U.S. Copyright Registration No. VAU-511-218.

11. As a direct and proximate result of defendant's acts of infringement, plaintiff has suffered money damages.

12. As a direct and proximate result of defendant's acts of infringement, plaintiff has suffered and continues to suffer irreparable harm for which there is no adequate remedy at law.

13. Defendant's acts of infringement have been and continue to be willful.

WHEREFORE, plaintiff prays for judgment in its favor and against defendant:

- for a preliminary and a permanent injunction prohibiting defendant from infringing the Jonette Copyrights;
- for a preliminary and a permanent injunction prohibiting defendant from making, offering for sale, or selling its infringing goods;
- for an order impounding the infringing goods;
- for a preliminary and a permanent injunction ordering defendant to deliver upon oath the infringing goods for destruction by plaintiff;
- for an accounting for all profits earned by defendant on the sale of the infringing goods;
- for an award of actual damages plus the defendant's profits pursuant to 17 U.S.C. §504(b);
- for an award of statutory damages against the defendant pursuant to 17 U.S.C. §504(c);
- for an award of enhanced statutory damages against the defendant in the amount of One Hundred Fifty Thousand Dollars (\$150,000), pursuant to 17 U.S.C. §504(c)(2), in view of the willful and deliberate nature of the infringement;
- for an award of costs and attorneys' fees pursuant to 17 U.S.C. §505;
- for such other relief as the court deems just.

COUNT II

(Violation of Section 43 (a) of the Lanham Act)

14. Paragraphs 1 through 13 are incorporated herein.

15. Defendant's activities as above-described constitute a false designation of origin and a false description of the goods effecting interstate commerce in violation of Section 43 (a) of the Lanham Act, 15 U.S.C. §1125 (a).

WHEREFORE, plaintiff prays for judgment in its favor and against defendant:

- for all remedies available under Section 43(a) of the Lanham Act;
- for a preliminary and a permanent injunction prohibiting defendant from making, offering for sale, or selling the infringing goods;
- for an order impounding the infringing goods;
- for preliminary and a permanent injunction ordering defendant to deliver upon oath the infringing goods;
- for an accounting for all profits earned by defendant on the sale of the infringing goods;
- for an award of actual damages plus the defendant's profits;
- for an award of costs and attorneys' fees;
- for such other relief as the court deems just.

COUNT III

(Injury to Business Reputation and Dilution)

16. Paragraphs 1 through 15 are incorporated herein.

17. Defendant's infringement upon "Jonette's Santa Hugging Reindeer" design, as described herein, causes a likelihood of injury to plaintiff's business reputation and a likelihood of dilution of the distinctive quality of the Jonette Copyrights, in violation of plaintiff's common law rights and in violation of R.I.G.L. § 6-2-12.

WHEREFORE, plaintiff prays for judgment in its favor and against the defendant:

- for all remedies available under R.I.G.L. § 6-2-12;
- for all remedies available at common law;
- for an award of compensatory damages;
- for an award of punitive damages;
- for an award of costs and attorneys' fees;
- for such other relief as the court deems just.

Plaintiff,
JONETTE HOLDINGS, LLC,
By Its Attorney,



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Plaintiff claims a trial by jury on all issues so triable.


