

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

_____)
BRAVADO INTERNATIONAL GROUP)
MERCHANDISING SERVICES, INC.,)
a California Corporation,)

Plaintiff,)

vs.)

JOHN DOES 1-100, individuals,)
JANE DOES 1-100, individuals,)
and XYZ COMPANY, business)
entity form unknown, inclusive,)

Defendants.)
_____)

CIVIL ACTION NO.

**PLAINTIFF'S COMPLAINT FOR TRADEMARK INFRINGEMENT
AND VIOLATIONS OF THE LANHAM ACT**

Plaintiff Bravado International Group Merchandising Services, Inc., by its attorneys, files this complaint against defendants, alleging as follows:

JURISDICTION AND VENUE

1. This action arises under the Lanham Trademark Act 15 U.S.C. §§ 1051 et seq. (the "Lanham Act"). Accordingly, this Court has federal question jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1221 and 28 U.S.C. §§ 1338(a), (b). Venue in this district is proper under 28 U.S.C. § 1391(b).

PARTIES

2. Bravado International Group Merchandising Services, Inc. ("Plaintiff") is a California Corporation with its place of business in Los Angeles, California.

3. Defendants John Does 1-100, Jane Does 1-100 and XYZ Company who are sued herein under fictitious names because their true names and capacities are unknown at this time. This complaint will be amended when their true names and capacities are ascertained.

4. Upon information and belief, the individual defendants will be present in and about the District of Massachusetts, in connection with the claims asserted below and are or will be subject to the jurisdiction of this Court.

5. On information and belief, defendant XYZ Company through its agents, servants and employees, is or will be present in and about the District of Massachusetts and is or will be subject to the jurisdiction of this Court.

6. Defendants, and each of them, are individuals and business entities who, upon information and belief, are acting in concert and active participation with each other in committing the wrongful acts alleged herein.

7. Defendants John Does 1-100, Jane Does 1-100, and XYZ Company are hereinafter referred to collectively as "Defendants."

THE BACKGROUND OF THE ACTION

8. Plaintiff is engaged in the manufacture, distribution and sale of various types of merchandise sold and distributed at concerts and at retail stores of musical performing groups, including, but not limited to tour and program books, T-shirts, jerseys, sweatshirts, hats, visors, buttons and posters (collectively "Merchandise") which embody the names, likenesses and trademarks of various musical performers and groups.

9. The group known as "**KORN**" and the name of its tour the "**FAMILY VALUES TOUR**" (collectively, the "Artists"), are the tradenames used by the group and

its tour in connection with their performing, recording, merchandising and other related goods in all aspects of the entertainment industry and to distinguish their services from all other such artists. The Artists have used their marks in connection with their recording and performing services over 10 years.

10. **“KORN”** is a registered trademark: Federal Registration No. 2109302 (stylized mark), International Class (“IC”) 25 for use in connection with clothing, namely, T-shirts, hats, knitted caps, sweatshirts, hooded sweatshirts (incontestable mark); Federal Registration No. 2134323 (stylized mark), IC 41 for use in connection with entertainment services, namely, live performances by a musical group (incontestable mark); Federal Registration No. 2714354 (stylized mark), IC 14 for use in connection with jewelry, body jewelry, and watches; Federal Registration No. 2130524 (stylized mark) IC 9 for use in connection with musical sound recordings, prerecorded audio and video cassettes, tapes and discs featuring dramatic and non-dramatic performances of musical works (incontestable mark); and Federal Registration No. 2912756, IC 25 for use in connection with clothing, namely, t-shirts, shirts, hats, baseball caps, knitted caps, sweatshirts, hooded sweatshirts, baseball jerseys, basketball jerseys, hockey jerseys, jackets, boxer briefs, boxer shorts, belts; headwear, IC 6 for use in connection with metal key chains, IC 9 for use in connection with musical sound recordings; video recordings featuring music and dramatic and non-dramatic performances; downloadable musical sound recordings; downloadable video recordings featuring music and music-based entertainment; pre-paid telephone calling cards, magnetically encoded; CD cases, IC 14 for use in connection with jewelry, body jewelry, and watches, IC 16 for use in connection with printed matter, namely, posters, decals, postcards, and stickers;

temporary tattoos, IC 18 for use in connection with backpacks, messenger bags, wallets, IC 20 for use in connection with rubber and acrylic key chains, IC 21 for use in connection with bottle openers, IC 26 for use in connection with cloth patches for clothing, IC 28 for use in connection with sporting goods namely, skateboards and snowboards; finger boards; plush dolls, IC 34 for use in connection with cigarette lighters not of precious metal, IC 35 for use in connection with electronic commerce, IC 38 for use in connection with streaming of audio and visual recordings featuring music; providing online chatrooms for the transmission of messages among computer users concerning music, musical sound recordings, musical video recordings, musical performers, and musical performances; providing an online electronic bulletin board for the transmission of messages among computer users concerning music, and IC 41 for use in connection with entertainment services, namely, live performances by a musical group.

11. In addition, the mark **"FAMILY VALUES TOUR"** is a federally registered trademark, Federal Registration No. 2894377, IC 16 for use in connection with posters, postcards and stickers and IC 25 for use in connection with T-shirts, jackets and hats; Federal Registration No. 2895046, IC 9 for use in connection with musical sound recordings, namely prerecorded compact discs and audio tape cassettes featuring music; video recordings, namely prerecorded video tape cassettes and digital video discs featuring musical performances and entertainment; and Federal Registration No. 2300918, IC 41 for use in connection with entertainment services, namely organizing touring festivals (incontestable mark).

12. Pursuant to an agreement between the Artists and the Plaintiff (the "Agreement"), Plaintiff possesses the exclusive right to utilize all trademarks, service

marks, trade names, likenesses and logos of the Artists (collectively, the "Artists' Trademarks") on and in connection with Merchandise ("Tour Merchandise") sold and offered for sale in the vicinity of the Artists' concerts on their present North American concert tour (the "Tour").

13. The Artists have achieved wide renown during their career in the music industry. The Artists have used their trademarks to identify officially authorized goods and services and to distinguish the Artists from others by, among other things, prominently displaying the Artists' Trademarks in advertising, on promotional material, on recording covers and on Tour Merchandise.

14. The Artists have a decidedly strong and loyal followings among those who attend popular music concerts and record buyers. The Artists have appeared in concerts at major arenas and stadiums in the United States, Canada, and throughout the world and has been seen and heard in concerts by millions of popular music enthusiasts. The Artists has sold over 10 million units of recordings.

15. Previous tours by the Artists were attended by hundreds of thousands of people. Many of the Tour's performances are sold out or nearly sold out.

16. As a result of the foregoing, each of the Artists' Trademarks has developed and now possesses secondary and distinctive meaning to purchasers of the Tour Merchandise bearing any or all of the Artists' Trademarks.

17. Plaintiff and the Artists annually realize substantial income from the sale of the Tour Merchandise bearing the Artists' Trademarks, and hundreds of thousands of such items have been sold throughout the United States.

18. On July 27, 2007 at the Tweeter Center in Mansfield, Massachusetts, the Artists will perform (the "Concert").

18. Pursuant to the Agreement, the Artists have granted to Plaintiff the exclusive right to market articles of clothing and other Tour Merchandise bearing any or all of the Artists' Trademarks at or near the site of the Concert and at all other arenas and stadiums in which the Tour will perform. The authorized Tour Merchandise bearing any or all of the Artists' Trademarks will be distributed throughout the United States in connection with the Tour.

DEFENDANTS' UNLAWFUL CONDUCT

19. On information and belief, Defendants will sell and distribute unauthorized T-shirts, jerseys, caps and/or other merchandise bearing any or all of the Artists' Trademarks (the "Unauthorized Merchandise") in the vicinity of the Concert before, during and after their performance, and at subsequent concerts during the Tour. The tour has recently started and defendants have begun selling their Unauthorized Merchandise.

20. The Unauthorized Merchandise is of the same general appearance as Plaintiff's Merchandise and is likely to cause confusion among prospective purchasers. Defendants' Unauthorized Merchandise is not authorized by the Artists or Plaintiff.

21. The Unauthorized Merchandise sold by Defendants is generally of inferior quality. The sale of such merchandise has injured and is likely to injure the reputation of the Artists which has developed by virtue of their public performances and the reputation for high quality associated with Plaintiff and the Tour Merchandise.

22. The aforesaid acts by Defendants and others are likely to cause the purchasing public to believe that the sale of such Unauthorized Merchandise is authorized, sponsored or approved by the Artists and/or Plaintiff and that such Unauthorized Merchandise is subject to the same quality control and regulation required by the Artists and/or Plaintiff, despite the fact that this is not true. It also injures the Artists and Plaintiff in that Defendants do not have to pay any royalty for these unlawful sales.

23. The aforesaid manufacture, distribution and sale of Unauthorized Merchandise bearing the names, trademarks and/or likenesses of the Artists constitutes a false designation of the source of origin of such goods and falsely describes and represents such merchandise. The use by Defendants and others of the Artists' Trademarks also constitutes an attempt to palm off and appropriate to themselves the Artists' and Plaintiff's exclusive rights therein.

24. Upon information and belief, Defendants and others have and will continue to engage in such unauthorized activities in this state and elsewhere in interstate commerce and are likely to continue such activities throughout the Tour, to the great injury of Plaintiff and the Artists.

25. Plaintiff has no adequate remedy at law and will suffer irreparable harm and damage as a result of the aforesaid acts, in an amount presently incalculable.

FIRST CLAIM FOR RELIEF
(Violation of the Lanham Act)

26. Plaintiff realleges each allegation set forth the paragraphs above.

27. By reason of the foregoing, Plaintiff hereby asserts a claim against Defendants for injunctive and monetary relief pursuant to Section 43(a) of the Lanham

Act, 15 U.S.C. § 1125(a), with regards to the false designation of origin and false descriptions and representations in commerce of Defendants' Unauthorized Merchandise.

SECOND CLAIM FOR RELIEF
(Infringement of Registered Trademarks)

28. Plaintiff realleges each allegation set forth in the paragraphs above.

29. By reason of the foregoing, Plaintiff hereby asserts a claim against Defendants for injunctive and monetary relief pursuant to 15 U.S.C. § 1114(b) with respect to Defendants' infringement of the registered mark.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, seeks relief against Defendants as follows:

A. As to All Claims For Relief, that Defendants, their agents, servants, employees, officers, attorneys, successors and assigns, and all persons acting in concert with them, be enjoined in this and all other judicial districts in the United States, preliminarily during the course of this litigation and permanently from: 1) manufacturing, distributing, selling, offering for sale, holding for sale or advertising any products, merchandise or goods bearing the names, trademarks, or likenesses of the Artists (or any of them) or any colorable variation or imitation thereof; and 2) representing that any products, merchandise or goods manufactured, distributed, sold, held for sale or advertised by them is sponsored or authorized by Plaintiff in this district or in any other district in which Plaintiff seeks to enforce this Court's injunction order.

B. As to All Claims For Relief, that this Court order the United States Marshal, the local and state police or sheriff, off duty officers of the same, authorized agents of Plaintiff, and/or any persons acting under their supervision to seize and impound any and all Unauthorized Merchandise which the Defendants attempt to sell,

distribute or hold for sale at, within or in the vicinity of the arenas at which the Tour and the Artists are performing, whether this occurs before, during or after the concerts on the Tour.

C. That Defendants deliver up for destruction any and all Unauthorized Merchandise.

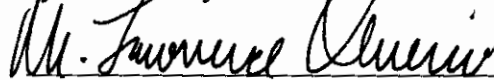
D. As to All Claims For Relief, that Defendants pay to Plaintiff damages in an amount to be determined.

E. As to All Claims For Relief, that Plaintiff be awarded its costs, attorneys fees and such other and further relief as the Court deems to be just and proper.

Dated: July 16, 2007

Respectfully Submitted
BRAVADO INTERNATIONAL GROUP
MERCHANDISING SERVICES, INC.

By Its Attorneys



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