

Burnwald, S.

STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/23/07

JOHN HARDY LIMITED,
Plaintiff,
v.

JAY FRIEDMAN
d/b/a REALIMPOSTERS, and
JOHN DOES 1-10,

Defendants.

Case No. 06 Civ. 15371 (NRB)

FINAL ORDER AND JUDGMENT
ON CONSENT FOR PERMANENT
INJUNCTION AND OTHER RELIEF
AGAINST DEFENDANT JAY
FRIEDMAN D/B/A REALIMPOSTERS

_____

This matter, having been commenced by Plaintiff John Hardy Limited ("JHL" or "Plaintiff") by filing a complaint charging Defendant Jay Friedman d/b/a RealImposters ("Defendant") and John Does 1-10 with copyright infringement under the Copyright Act of

(A) All of the facts and information provided by him in his sworn deposition of May 14, 2007 are true and accurate;

(B) He was aware of and was properly served with the summons and complaint in this action, this Court has personal jurisdiction over him, and venue is proper in this jurisdiction;

(C) He knowingly copied JHL's jewelry designs and used the JOHN HARDY name and mark to advertise and promote his replica products; and

(D) He knowingly violated JHL's rights under copyright; and

This Court having made the following findings and determinations:

A. This is an action for copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and trademark infringement, false designation of origin/unfair competition, and false advertising under Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1) and

E. JHL is the copyright owner of certain original, distinctive jewelry works created by the famous designer John Hardy, and, more particularly, owns the following U.S. registrations for the following works:

Batu Checker Top Bamboo Ring (VA 1-043-774)
Batu Seven Continent Brilliant Facet Ring (VA 933-566)
Batu Cocktail Cushion Bufftop with Apex Ring (VA 1-043-768)
Batu Mata Diamond Pave Large Square Drop Pendant (VA 1-380-520)
Batu Mata Diamond Pave Square Stud Earrings (VA 1-380-520)
Batu Mata Diamond Pave Small Square Earrings (VA 1-380-520)
Batu Mata Diamond Pave Square Shrimp Earrings (VA 1-380-520)
Batu Mata Oval Hoop Earrings (VA 1-323-734)
Batu Mata Diamond Pave Large Oval East-West Pendant (VA 1-323-734)
Batu Mata Diamond Pave Small Oval North-South Ring (VA 1-323-735)
Batu Mata Diamond Pave Small Oval Earrings (VA 1-380-521)
Batu Mata Diamond Pave Large Oval Earrings (VA 1-380-521)
Batu Sari Small Round Pendant (VA 1-253-183)
Batu Sari Hi-Way Ring (VA 1-253-183)
Batu Sari Square Pendant (VA 1-253-183)
Batu Sari Small Rectangular Drop Earrings (VA 1-208-874)

Silver Diamond Pavé Big Round Ring (VA 1-381-719)
18K Gold Diamond Pavé Carved Chain Pendant (VA 1-208-878)
18K Gold Diamond Pavé Square Carved Chain Earrings (VA 1-208-878)
18K Gold Diamond Pavé Square Carved Chain Pendant (VA 1-208-878)
18K Gold Diamond Pavé Square Carved Chain Ring (VA 1-208-878)
Silver Diamond Pavé Small Square Carved Chain Earrings (VA 1-208-879)
Silver Diamond Pavé Medium Hoop Earrings (VA 1-208-879)
Silver Diamond Pavé Large Oval North-South Ring (VA 1-296-663)
Silver Diamond Pavé Diamond Heart Pendant (VA 1-286-235)

The registrations identified above are all valid and the jewelry designs shown in and covered by such registrations are protectable under copyright. Further, as a matter of law the certificates for these registrations, made within five years of the first publication of each work, constitute *prima facie* evidence of the validity of these registrations. 17 U.S.C. § 410(c).

F. JHL owns a valid U.S. trademark registration, Reg. No. 1,864,617, for JOHN HARDY JH and Design for goods including jewelry. JHL's federal registration has become

incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and therefore

through the Internet, and continued his infringing conduct even after receiving notice of this action and a copy of the complaint in this action.

H. Defendant knew he was selling copies of JHL's works, knew he had no license or other authorization to do so, and intended to profit from JHL's copyrighted works.

I. Defendant used the term JOHN HARDY, which is identical or nearly identical to JHL's registered and common law marks, on his <imposterjewels.com> website to advertise and promote his infringing products. This use was undertaken without JHL's consent, with the intent to profit from the recognition of the JOHN HARDY name and mark and with the intent to cause confusion, or to cause mistake, or to deceive consumers as to the affiliation, connection, or association of Defendant with JHL, or as to the origin, sponsorship, or approval of Defendant's goods.

J. Defendant's claim on the <imposterjewels.com> website that his low quality

false designation of origin, and unfair competition under Section 32(1) and 43(a) of the Lanham Act. 15 U.S.C. § 1114(1)(a); 15 U.S.C. § 1125(a)(1).

M. Defendant's claim on the <imposterjewels.com> website that his low-quality imitations of JHL's jewelry have "The Feel and Look of" and "the exact look and feel of" JHL's own high-end designer jewelry, and his use of the JOHN HARDY mark in connection with his own jewelry, constitutes false advertising under Section 43(a) of the Lanham Act. 15 U.S.C. § 1125(a)(1)(B).

N. Defendant's copyright infringement, trademark infringement, false designation of origin, and unfair competition, and false advertising all were done deliberately, willfully, with full knowledge of JHL and its rights in its copyrighted works and marks, and in bad faith.

O. Defendant is aware of and has been properly served with the summons and complaint in this proceeding in accordance with Fed. R. Civ. P. 4(c)(1) and 4(x)(1) and N.

whole or in part by Defendant, shall immediately and permanently cease and desist from:

A. Infringing the copyright in any of "Plaintiff's Works" (as that term is defined in the Complaint in this action), including, without limitation, by manufacturing, reproducing, importing, distributing, displaying, advertising, promoting, offering for sale, and/or selling the "Infringing Works" (as that term is defined in the Complaint in this action), or any other materials copied or derived from Plaintiff's Works;

B. Infringing the copyright in any other works created or manufactured by or for JHL, now or in the future, including, without limitation, by manufacturing, reproducing, importing, distributing, displaying, advertising, promoting, offering for sale, and/or selling any works copied or derived from such works;

C. Manufacturing, reproducing, importing, distributing, displaying,

sale, manufacture, production, circulation, or distribution of any product, or ordering any third party to infringe any of Plaintiff's Marks;

G. Using any false designation of origin or false description (including, without limitation, any letters or symbols), or performing any act, which can, or is likely to, lead members of the trade or public to believe that Defendant is associated with JHL or that any product imported, manufactured, distributed, advertised, displayed, promoted, offered for sale, or sold by Defendant is in any manner associated or connected with JHL, is genuine product of JHL, or is authorized, licensed, sponsored or otherwise approved by JHL;

H. Transferring, consigning, selling, shipping, or otherwise moving any Infringing Works, or any goods, packaging or other materials in Defendant's possession,

prohibited by this Judgment, and execute all necessary documents and take all actions necessary to effectuate such cancellation.

C. At his own expense, send a letter to all individuals or other entities on his mailing lists or other customer lists informing them (i) that he has been sued for selling replicas of JHL products, (ii) that his actions constituted a violation of JHL's rights under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and (iii) that he is prohibited from offering for sale any such products in the future. All such letters sent to Defendant's wholesale accounts also must (iv) state that Defendant is recalling all unsold copies of JHL products, and (v) advise that any wholesaler that resells any such products could be liable to JHL for infringement and other causes of action. Defendant shall provide JHL with copies of each letter sent to each individual or other entity noted above, as well as a full

copy of Defendant's mailing lists and any other customer lists

of JHL's trademarks or copyrighted designs, and all plates, molds, matrices and other means of making the same, and permit JHL to destroy all such goods without compensation to Defendant;

F. To the extent he has not already done so, provide JHL with the names, addresses and all other contact information in his possession (e.g., telephone numbers, fax numbers) for the source(s), including all manufacturers, distributors and/or suppliers, of all Infringing Works or other materials (i) copied or derived from Plaintiff's Works, or (ii) bearing or including any of JHL's trademarks or copyrighted designs, or (iii) that otherwise are intended to copy JHL's products.

4) In the event Defendant does not take all actions necessary to cancel any domain names required to be cancelled hereunder, the applicable registrars for such domain names are

by its counsel, is authorized to disable that email address without a subsequent court order, and to require that the provider of that email address disable that email address without a court order.

8) Defendant shall preserve all books, records (including all hard drives on computers used for business purposes, including servers, as well as all computer disks and back up disks) and other documents concerning all transactions relating to his sale of any of the Infringing Works or other materials copied or derived from Plaintiff's Works, or that otherwise infringe on any of JHL's trademarks or copyrights, and shall make all such materials available to JHL for review, inspection and copying on JHL's request.

9) Defendant shall file with the Court and serve upon JHL's counsel within thirty (30) days after entry of judgment a report in writing under oath, setting forth in detail the manner and form in which he has complied with all of the above.

any action against Defendant Jay Friedman dba ReallImposters based on any conduct subsequent to the date of this Judgment or that is not the subject of this Judgment.

12) The parties to this Judgment waive all right to appeal from entry of this Judgment.

13) By their signatures and acknowledgments below, the parties understand and agree to be bound by the terms of this Judgment.

14) Defendant acknowledges that it has obtained, or knowingly and voluntarily has chosen not to obtain, advice of counsel with respect to this Judgment. Defendant further acknowledges that his decision to enter into this Agreement has not influenced by any promises, representations, or statements made by JHL or anyone acting on its behalf other than those set forth in this Judgment.

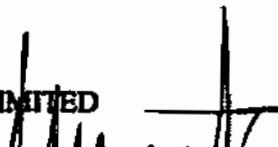
15) Defendant is liable under 17 U.S.C. § 504(c) for the amount of \$1,300,000,

17) This Court shall retain jurisdiction over this matter and the parties to it to enforce the terms of the Judgment and for purposes of making any other orders necessary to implement the terms of this Judgment and to punish or award damages for violation thereof. In connection with any further proceedings concerning the subject matter of this Judgment, including the enforcement of this Judgment, service on Defendant will be deemed effective by mailing a copy of any motion papers or other pleadings to Defendant at (i) his home address: 1617 NE Third Court, Fort Lauderdale, Florida 33301, or another address to be timely provided by Defendant, or (ii) at his email address impostersjewels1@aol.com.

WHEREFORE the Parties, by their duly authorized representatives, have set their hands and seals.

Dated: Hong Kong, China
May 17, 2007

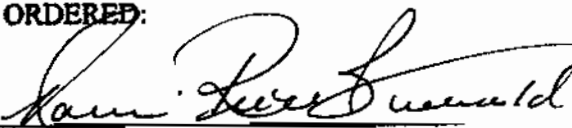
JOHN HARDY LIMITED



The Court hereby directs entry of final judgment for relief against Defendant in accordance with the terms of this Judgment.

Dated: New York, NY
May 2, 2007

SO ORDERED:


United States District Judge

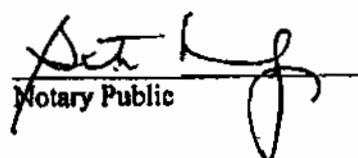
ma

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

ACKNOWLEDGEMENT

On the 14th day of May, 2007, before me personally came Jay Friedman, who being by me duly sworn deposed and stated that he is the individual described in the foregoing Judgment as Jay Friedman dba ReallImposters, that he signed his name thereto as his free act and deed, voluntarily and with knowledge of the obligations contained therein.

Sworn to before me this 14th
day of May, 2007


Notary Public