

Glenn F. Ostrager [GFO 2023]  
Roberto L. Gomez [RLG 6474]  
Andres N. Madrid [ANM 5926]  
Ostrager Chong Flaherty and Broitman P.C.  
570 Lexington Avenue, 17th Floor  
New York, New York 10022  
Tel. No. (212) 681-0600

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

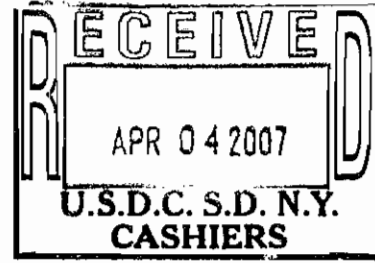
LIFE IS GOOD, INC.,

Plaintiffs,

v.

BENNETT SPANBOCK & CO., INC.,  
RICHARD SPANBOCK, JAREL  
ENTERPRISES, INC., and  
JEFF MAST,

Defendants.



**JUDGE GRIESA**

**07 CV 2738**

Civil Action No. 07 CIV \_\_\_\_\_

*(Jury Trial Demanded)*

**VERIFIED COMPLAINT AND JURY DEMAND**

**INTRODUCTION**

Plaintiff is the owner of the well known and distinctive "Life is good" brand of clothing and accessories. Defendants are actively trafficking in counterfeit "Life is good" T-shirts. Plaintiff seeks to enjoin the defendants from further sales of counterfeit materials, as well as impoundment of existing counterfeit T-shirts and an award of damages for the defendants' willful sales of counterfeit goods.

PARTIES

1. Plaintiff Life is good, Inc. (“Life is good” or “Plaintiff”) is a Massachusetts corporation with a principal place of business in Boston, Massachusetts.

2. Defendant Bennett Spanbock & Co., Inc. (“BS Co.”) is, on information and belief, a New York corporation with principal places of business at 1350 Broadway, New York, New York and 326 West Street #5B, New York, New York. Upon information and belief BS Co. is a joint venturer and/or otherwise affiliated with Jarel Enterprises, Inc. (“Jarel”).

3. Defendant Richard J. Spanbock (“Spanbock”) is, on information and belief, an individual residing at 26 Kennedy Road, Roslyn Heights, New York. On information and belief, Spanbock is a shareholder and an officer or director of BS Co. On information and belief, Spanbock exercises control over the corporate affairs of BS Co. and has participated directly in the acts that form the basis of this action.

4. Defendant Jarel is, on information and belief, a New Jersey corporation with principal places of business at 2 Pine Acres Drive, Medford, New Jersey and 950 Hollydell Ct., Sewell, New Jersey. On information and belief, Jarel conducts business within the State of New York. On further information and belief Jarel is a joint venturer and/or otherwise affiliated with BS Co.

5. Defendant Jeff Mast (“Mast”) is, on information and belief, an individual residing at 2 Pine Acres Drive, Medford, New Jersey. On information and belief Mast is a shareholder and an officer or director of Jarel. On information and belief, Mast exercises control over the corporate affairs of Jarel and has participated directly in the acts that

form the basis of this action. Mast, Jarel, Spanbock and BS Co. will be referred to hereafter collectively as “Defendants.”

#### JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a) and (b) because this matter asserts claims for the Defendants’ violation of the Lanham Act, 15 U.S.C. § 1051, et seq.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c).

#### FACTS

A. The Plaintiff and its “Life is good”, “Jake” and “Do What You Like, Like What You Do” Trademarks.

8. Since at least as early as 1994, and continuously therefrom, Plaintiff and its predecessor (Albert Jacobs and John Jacobs doing business as Jacobs Gallery) have sold various products such as T-Shirts, hats, other clothing, stationery, flying discs, coffee mugs, *inter alia*, under the trademark “Life is good.” The goods have been sold to retail stores and consumers by Life is good or through its web site.

9. For more than ten years, Plaintiff has continuously and pervasively utilized its “Life is good” trademark throughout the United States and within this district on products, hang tags, displays, boxes, its web site (www.lifeisgood.com), packaging and labels, and in catalogs and other places.

10. Since 1994, Life is good has generated revenue in excess of \$250 million from sales of its products in the United States.

11. Since 2002, Life is good has owned and operated a retail store in Newburyport, Massachusetts and then in 2003 it opened another retail store in Portland, Maine. Both stores exclusively sell Life is good products. Further, in 2005, Life is good opened another such store on Newbury Street, Boston, Massachusetts. Life is good also distributes its products through thousands of retail stores across the United States and internationally.

12. In short, Plaintiff has invested substantial resources in promoting its products under the “Life is good” mark, and in developing national recognition of its “Life is good” mark. As a result, the “Life is good” mark is a distinctive indicator of Plaintiff’s goods.

13. On December 24, 1996, the United States Patent and Trademark Office (the “U.S.P.T.O.”) issued a registration for plaintiff’s trademark “Life is good,” registration number 2,025,737 (the “’737 Registration”). The registration was issued to Jacobs Gallery, which was a d/b/a used by Albert Jacobs and John Jacobs – the founders of Life is good. The goods under this registration are “Sportswear, namely T-shirts, sweatshirts, shirts, hats, pants, and shorts.” The trademark was assigned by Jacobs Gallery to Life is good, Inc. on April 16, 1998. On April 6, 2002, the U.S.P.T.O accepted Life is good’s section 8 and 15 affidavit for the ’737 registration, and thus, it has become incontestable.

14. In addition, Life is good has registered the “Life is good” trademark for “printed matter, namely posters, greeting cards, stationery, and bumper stickers” (Reg. No. 2,481,887), “recreational products, namely flying plastic discs” and “ceramic mugs”

(Reg. No. 2,692,561), for “toys, clothing, bed blankets, towels, backpacks, luggage, and animal leashes and collars” (Reg. No. 2,826,245) and for “pet bowls for eating and drinking” (Reg. No. 2,865,595).

15. In addition, plaintiff, through assignment from Jacobs Gallery, has registered the “Jake Symbol,” which appears as follows.



The “Jake Symbol” was registered on April 22, 1997, Reg. Number 2,055,452. The U.S.P.T.O. accepted Life is good’s section 8 and 15 affidavit for the “Jake Symbol” registration, and thus, it has become incontestable.

16. On May 29, 2001, the U.S.P.T.O. issued a registration for plaintiff’s trademark “Do What You Like, Like What You Do,” registration number 2,454,376. The goods under this registration are “Sportswear, namely T-shirts, sweatshirts, shirts, hats, pants, and shorts.”

17. The trademark “Life is good” appears on virtually every product sold by Life is good. Moreover, the “Jake Symbol” appears on the vast majority of Life is good’s T-Shirts, most often on the top of the back of the shirt. Furthermore, the trademark “Do What You Like, Like What You Do” appears on the bulk of Life is good T-shirts on locker patches, which are tags attached to the T-Shirts. (A true copy of the relevant registration certificates for each of these marks is attached hereto as “Exhibit A.”)

18. Life is good's corporate philosophy is based on the concept that through the sale of fun products, positive energy and contagious optimism may be spread.

19. To further that concept, Life is good sponsors various charitable events such as the "Life is good" Pumpkin Festivals held each year from 2003 to 2006 in Portland, Maine and Boston, and the "Life is good" Watermelon Festival held in Boston each June from 2004 to 2006. At the most recent Pumpkin Festival held on the Boston Common in October 2006, over 100,000 participants attended and set a new world record when they amassed 30,128 carved pumpkins to light up the Common. Life is good's various festivals have generated a great deal of publicity for the company, including national network television coverage. More importantly, Life is good has donated one hundred percent (100%) of the proceeds from the most recent pumpkin festival, almost \$700,000, directly to its beneficiary, Camp Sunshine in Casco, Maine. Camp Sunshine is a camp designed to assist the entire family of kids facing life-threatening illnesses.

20. Through its significant sales and marketing in the U.S. and elsewhere, Life is good has developed a reputation for quality products that are fun, and that create positive feelings.

B. The Defendants' Trafficking In Counterfeit "Life is good" Clothing.

21. In October 2006, Spanbock, on behalf of BS Co., sent a mass e-mail soliciting the sale of counterfeit "Life is good" T-shirts and attaching a photograph of the shirts. To even a casual observer, it is clear from the photograph that the shirts advertised in the e-mail were counterfeit copies of Life is good merchandise. A customer of Life is good received a copy of this mass e-mail and forwarded it to a representative of Life is good. (A true copy of this mass e-mail is attached hereto as "Exhibit B.")

22. On October 27, 2006, Rich Cremin (“Cremin”) of Life is good surreptitiously contacted Spanbock by e-mail and telephone under the pretext of being a prospective purchaser of the counterfeit Life is good shirts. During a telephone conversation, Spanbock offered to sell Cremin 954 counterfeit shirts for \$5.50 per unit.

23. On November 6, 2006, an investigator acting on behalf of Life is good, John DiNatale (“DiNatale”), contacted Spanbock by telephone and e-mail under the pretext of being a prospective purchaser of the counterfeit Life is good shirts. During a telephone conversation Spanbock offered to sell 209 shirts to DiNatale. Spanbock refused DiNatale’s request to meet personally, stating that “his partner” didn’t want anyone at his place of business. During this conversation, Spanbock was only interested in discussing shipping and payment details.

24. On November 7, 2006, Spanbock called DiNatale and stated that he would only accept a bank check or business check and would ship the “Life is good” shirts once the check is received and cleared. Spanbock then sent an e-mail to the investigator instructing him to make the check payable to Jarel Enterprises and send it to Jarel Enterprises at 2 Pine Acres Drive, Medford, New Jersey. (*See* series of e-mails exchanged between DiNatale, Spanbock and Mast, true copies of which are attached hereto as “Exhibit C.”)

25. On November 9, 2006, after DiNatale set up the deal, Cremin sent a purchase order under the name “Fleamarket Mania LLC” to Spanbock and Jarel for 209 assorted “Life is good” shirts. Included with the purchase order was a bank check payable to Jarel Enterprises in the amount of \$1,283.10. (*See* purchase order and copy of bank check, true copies of which are attached hereto as “Exhibit D.”)

26. On November 13, 2006, Spanbock called Mr. DiNatale and confirmed receipt of the purchase order and funds. Spanbock then requested confirmation of the address to which the counterfeit shirts were to be sent.

27. On November 14, 2006, Mast called DiNatale and identified himself as the owner of Jarel and acknowledged receipt of the bank check. During that conversation Mast stated that he was out of stock of men's shirts but that he had 70 dozen ladies "Life is good" shirts in a variety of styles. DiNatale agreed to take the ladies' shirts. Mast also told DiNatale that he was getting the counterfeit shirts from Peru.

28. The bulk of Life is good's T-shirts are manufactured in Peru.

29. On November 20, 2006, Cremin received a shipment of counterfeit "Life is good" shirts (the "Counterfeit goods") from Jarel, shipped to Fleamarket Mania LLC the Fairfield, Connecticut address provided to Spanbock and Jarel.

30. It is plain from a cursory inspection that the Counterfeit goods are bogus copies of genuine "Life is good" shirts incorporating counterfeit marks. The following are the salient features of the Defendants' T-shirts bearing on their status as counterfeit goods.

- Each of the Counterfeit goods uses a counterfeit of one or more of the "Life is good," "Jake Symbol" or "Do What You Like, Like What You Do" marks and even has a counterfeit "®" trademark notice;





- Each of the Counterfeit goods features a locker patch and inside label identical or nearly identical to the locker patch and label found on a genuine Life is good T-shirt;



- A genuine shirt featuring the "Life is good" mark incorporates the mark stitched onto the fabric "in relief" whereas the mark is merely printed on the Counterfeit goods featuring a fake "Life is good" mark;

- Similarly, where a shirt features artwork or a design other than “Life is good” the artwork on a genuine shirt is a textured decal whereas the same design is merely printed onto the corresponding Counterfeit goods;
- The Counterfeit goods, in some cases, feature copies of artwork from genuine “Life is good” shirts and designs but are colored in a manner that would never be found in an authentic item;



- The dye work on the Counterfeit goods contains imperfections and is otherwise distinguishable from the quality of the dye work of a genuine “Life is good” shirt;
- Other samples of the Counterfeit goods feature other imperfections that are not found in genuine products.

(True copies of photos depicting genuine “Life is good” shirts in comparison to the corresponding Counterfeit goods are attached hereto as “Exhibit E.”)

31. On March 2, 2007, DiNatale received an e-mail from BS Co. substantially identical to its mass e-mail of October 2006 offering to sell 1774 counterfeit “Life is good” shirts.

32. Upon information and belief the Defendants continue to sell and distribute goods in interstate commerce bearing a counterfeit “Life is good” designation.

33. The Defendants’ sale of the counterfeit “Life is good” shirts is likely to injure Plaintiff’s business reputation, diminish Plaintiff’s sales revenue and diminish Plaintiff’s market share.

34. Additionally, such use by the Defendants is likely to cause confusion with plaintiff’s registered trademarks.

35. Further, the Defendants have caused and are likely to cause mistake, confusion, or deception among the consuming public as to the source or origin of the parties’ respective goods and services, and to introduce a false belief that Plaintiff and the Defendants are affiliated.

36. If the Defendants are not enjoined from further sales of counterfeit “Life is good” products or otherwise using the “Life is good” and “Do What You Like, Like What you Do” marks and the “Jake symbol”, Plaintiff will suffer immediate and irreparable harm.

## COUNT I

### **TRADEMARK INFRINGEMENT IN VIOLATION OF SECTION 32 OF THE LANHAM ACT**

37. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 36 of the complaint as if fully set forth herein.

38. Plaintiff's marks "Life is good," the "Jake Symbol" and "Do What You Like, Like What You Do" are protected by valid and subsisting United States Trademark Registrations.

39. Plaintiff developed, adopted and began using in commerce its federally-registered marks before the Defendants began selling counterfeit goods bearing the "Life is good," "Jake Symbol" and/or "Do What You Like, Like What You Do" marks or otherwise using these marks in commerce.

40. Plaintiff has not authorized the Defendants to make the above-described uses of its marks.

41. Upon information and belief, the Defendants acted knowingly and intentionally in misappropriating Plaintiff's marks, in an effort to trade off the good will developed by Plaintiff.

42. The Defendants' actions constitute infringement of Plaintiff's federally-registered marks under 15 U.S.C. § 1114 by using marks that are likely to cause confusion as to source, sponsorship, or affiliation.

43. As a result of the Defendants' actions, Plaintiff has been damaged and has suffered and will continue to suffer irreparable harm.

44. Defendants' actions have been willful and deliberate, part of a calculated effort to mislead the public and achieve market recognition through misappropriation of Plaintiff's marks. Plaintiff is entitled to Defendants' profits, enhanced damages, statutory damages, attorneys' fees and/or costs under 15 U.S.C. § 1117.

**COUNT II**

**TRADEMARK COUNTERFEITING IN VIOLATION OF SECTION 32 OF THE  
LANHAM ACT**

45. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 44 as if fully set forth herein.

46. Defendants' use of identical copies of Plaintiff's federally registered trademarks without Plaintiff's consent is likely to cause confusion, mistake or deception as to the source, sponsorship, approval, affiliation, or endorsement of Defendants and their products.

47. Defendants' acts constitute counterfeiting of Plaintiff's federally registered trademarks under 15 U.S.C. § 1114.

48. Plaintiff has been and will continue to be damaged by Defendants' unlawful acts, including loss of goodwill and the distinctiveness of Plaintiff's trademarks, and damage to its reputation by having the Plaintiff's trademarks associated with Defendants.

49. Defendants' acts have been willful and deliberate, part of a calculated effort to mislead the public and achieve market entry and recognition through misappropriation of Plaintiff's trademarks. Plaintiff is entitled to Defendants' profits, enhanced damages, statutory damages, attorneys' fees, and/or costs under 15 U.S.C. § 1117.

**COUNT III**

**UNFAIR COMPETITION UNDER SECTION 43(a) OF THE LANHAM ACT  
AND COMMON LAW**

50. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 49 of the complaint as if fully set forth herein.

51. Plaintiff's marks are well-known throughout the United States.

52. The Defendants' sale of goods bearing counterfeit "Life is good", "Jake Symbol" and/or "Do What You Like, Like What You Do" marks and/or other use of identical or confusingly similar marks, and other efforts to associate itself with, or trade off the good will of, Plaintiff in connection with its business, constitutes unfair competition in violation of the Lanham Act and the common law, as well as common law trademark infringement.

53. Plaintiff has been and will continue to be damaged by Defendants' unlawful acts, including loss of goodwill and the distinctiveness of Plaintiff's trademarks, and damage to its reputation by having the Plaintiff's trademarks associated with Defendants.

54. Defendants' acts have been willful and deliberate, part of a calculated effort to mislead the public and achieve market entry and recognition through misappropriation of Plaintiff's trademarks. Plaintiff is entitled to Defendants' profits, enhanced damages, attorneys' fees, statutory damages and/or costs under 15 U.S.C. § 1117.

**COUNT IV**

**FALSE DESIGNATION OF ORIGIN UNDER THE SECTION 43(a) OF THE  
LANHAM ACT**

55. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 54 of the complaint as if fully set forth herein.

56. By their conduct as aforesaid, the Defendants have engaged in false designation of origin and false designation of sponsorship, in violation of the Lanham Act, 15 U.S.C. § 1125(a).

57. As a result of the Defendants' actions, Plaintiff has been damaged and has suffered and will continue to suffer irreparable harm.

58. Unless enjoined, these acts will cause irreparable injury and damage to Plaintiff for which there exists no adequate remedy at law.

59. Plaintiff has been and will continue to be damaged by Defendants' unlawful acts, including loss of goodwill and the distinctiveness of Plaintiff's trademarks, and damage to its reputation by having the Plaintiff's trademarks associated with Defendants.

60. Defendants' acts have been willful and deliberate, part of a calculated effort to mislead the public and achieve market entry and recognition through misappropriation of Plaintiff's trademarks. Plaintiff is entitled to Defendants' profits, enhanced damages, attorneys' fees, statutory damages and/or costs under 15 U.S.C. § 1117.

## COUNT V

### DILUTION UNDER LANHAM ACT SECTION 43(c)

61. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1 through 61 as if fully set forth herein

62. The "Life is good" and "Jake" trademarks, as applied to T-Shirts and other clothing, are famous and distinctive marks.

63. Defendants' use of colorable imitations or copies of the "Life is good" and "Jake" trademarks, as described above, began long after those marks had become famous.

Defendants' actions dilute the distinctive quality of the "Life is good" and "Jake" trademarks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

64. Plaintiff has been and will continue to be damaged by Defendants' unlawful acts, including loss of goodwill and the distinctiveness of "Life is good" and "Jake" trademarks, and damage to their reputation by having the "Life is good" and "Jake" trademarks associated with Defendants.

65. Defendants' acts have been willful and deliberate, part of a calculated effort to mislead the public and achieve market recognition through misappropriation of Plaintiff's trademarks and associated product configurations and numbering system. Plaintiff is entitled to Defendants' profits, enhanced damages, attorneys' fees, statutory damages and/or costs under 15 U.S.C. §1117.

#### **Prayer for Relief**

Plaintiff prays for the following relief:

A. That judgment be entered:

(i) That Defendants have violated Sections 32 and 43(a) & (c) of the Lanham Act (15 U.S.C. §§1114 and 1125(a) & (c)); and

(ii) That Defendants have engaged in trademark infringement and unfair competition under common law.

B. That the Court enter preliminary and permanent injunctions enjoining Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive notice of the order by personal service or otherwise, from:



(i) using the designations "Life is good", the "Jake" trademark, "Do What You Like, Like What You Do", or any colorable imitations, or any other designation used by Plaintiff to identify their products, either alone or in combination with other words or symbols, as a part of any trademark, service mark, trade name, corporate name, assumed name, domain name, or in any other manner in connection with the advertising, promotion, marketing, sale, or distribution of any products or services including, without limitation, clothing productions, sold or offered for sale;

(ii) performing any actions or using any words, names, styles, titles or works which are likely to cause confusion, to cause mistake or to deceive, or to otherwise mislead the public into believing that Plaintiff is a sponsor of Defendants or their products, or that Defendants are in some manner affiliated or associated with or under the supervision or control of Plaintiff, or that the products and services of Defendants originate with Plaintiff or are conducted or offered with the approval, consent or authorization, or under the supervision of Plaintiff, or are likely in any way to lead the public to associate Defendants with Plaintiff;

(iii) using any words, names, styles, titles or marks which are likely to injure the business reputation of Plaintiff or dilute Plaintiff's "Life is good", "Jake", or "Do What You Like, Like What You Do" trademarks and the goodwill associated therewith; and

(iv) using any trade practices whatsoever, including those complained of herein, which tend to unfairly compete with or injure Plaintiff's reputation and its "Life is good", "Jake", or "Do What You Like, Like What You Do" trademarks and the goodwill associated therewith.

C. That the Court enter an order:

(i) directing Defendants to file with the Court and serve on Plaintiff, within thirty days after the entry of an injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;

(ii) directing Defendants to deliver up for destruction all products, literature, signs, labels, tags, prints, packages, wrappers, containers, advertising materials, stationery, and any other items in their possession or control that bear any of the prohibited marks, false representations, or other false designations of origin, or any colorable imitations, as well as all plates, molds, matrices, masters, and other means of producing or applying the prohibited marks, symbols, or designations;

(iii) requiring Defendants to take steps to withdraw all advertising and promotional materials bearing the "Life is good", "Jake", and "Do What You Like, Like What You Do" trademarks, or any colorable imitation thereof, and to ensure that they are not used for any advertising, publicity, distribution, or other media purpose in connection with or in reference to any product manufactured or distributed by Defendants.

(iv) requiring Defendants to place suitable corrective advertisements in all publications and medium used to promote its products, and to issue suitable press releases to all organizations used by Defendants to promote their products, informing those organizations that their use of the "Life is good", "Jake", and "Do What You Like, Like What You Do" trademarks was unauthorized and that Plaintiff owns all commercial rights in and to the "Life is good", "Jake", and "Do What You Like, Like What You Do" trademarks.

D. That Plaintiff be awarded three times its actual damages and Defendants' profits pursuant to the Lanham Act, and exemplary damages as allowed by law.

E. That Plaintiff be awarded statutory damages.

F. That Plaintiff be awarded its costs of suit, expert fees, and reasonable attorneys' fees.

G. That Plaintiff have all other relief to which they are entitled.

\* \* \*

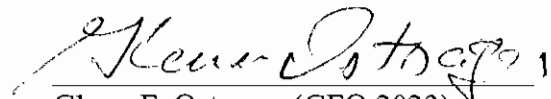
No prior application for the relief requested herein has previously been made to this or any other Court.

**JURY DEMAND**

Plaintiff demands a trial by jury on all counts so triable.

Dated: April 4, 2007

Respectfully Submitted,  
Life is good, Inc.,  
By its attorneys,



Glenn F. Ostrager (GFO 2023)  
Roberto L. Gomez (RLG 6474)  
Andres N. Madrid (ANM 5926)  
OSTRAGER CHONG  
FLAHERTY & BROITMAN P.C.  
570 Lexington Avenue, 17th Floor  
New York, NY 10022  
Tel. No. (212) 681-0600

**VERIFICATION**

I, Roy Heffernan, chief operating officer of Life is good, Inc., have read this *Verified Complaint and Jury Demand* in 18 pages and state under the penalties of perjury that every allegation of which I have first hand knowledge is true and every allegation that is pled on information and belief is true to the best of my information and belief. Signed under the pains and penalties of perjury this 2<sup>nd</sup> day of April, 2007.

  
Roy Heffernan