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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

SILVER STREAK INDUSTRIES, LLC

Plaintiff

vs.

CASE NO: 4:13-CV-173-_____

SQUIRE BOONE CAVERNS, INC.

Defendant

Serve:
Registered Agent
William Frederick Conway, Jr.
406 Mt. Tabor Rd.
New Albany, IN 47150

COMPLAINT

Plaintiff, Silver Streak Industries, LLC, (hereafter “Silver Streak”), for its Complaint against Defendant, Squire Boone Caverns, Inc. (hereafter “Squire Boone” or “Defendant”), alleges as follows:

STATEMENT OF CASE

1. Silver Streak brings this action against Squire Boone for copyright infringement in violation of 17 U.S.C. §501, et seq.

PARTIES

2. Silver Streak is a limited liability company organized and existing under the laws of the State of Arizona, having its principal office and place of business located in Tempe, Arizona.

3. Defendant, Squire Boone is a corporation organized and existing under the laws of the State of Indiana, having its principal office and place of business located in Floyd County,

Indiana. The physical location of Squire Boone is Harrison County, Indiana, within the territorial jurisdiction of the Court.

JURISDICTION

4. Jurisdiction of this action is conferred on this Court by 28 U.S.C. §1338. Venue is proper in this cause under 28 U.S.C. §1391 because Defendant resides and regularly conducts business in Indiana.

ALLEGATIONS

5. On or about November of 1994, Silver Streak created the Ore Car display and game card (hereafter the “Work”), an original work of authorship fixed in a tangible medium of expression.

6. Silver Streak complied in all respects with the copyright laws of the United States and received from the Registrar of Copyright, the Certificate of Registration, dated and identified as follows:

VA 699-938 February 24, 1995.

A copy of which is attached as **Exhibit “A”**.

The Work is a whimsical representation of a mining ore car used to display polished stone and an accompanying brochure that lists the type of stones displayed. The consumer can select from the displayed stones and put the stones in a small keepsake bag. The consumer then purchases the bag of stones. The brochure allows the consumer to keep track of each type of stone collected. A photograph of Silver Streak’s Ore Car display is attached hereto as **Exhibit “B”**.

7. Silver Streak generates revenue through the sales of copies of the Work and through re-supply of the polished stones displayed with the Work.

8. On or about November of 1994, Silver Streak displayed the Work at an industry trade show. The Work was an instant success and generated a large volume of orders.

9. As a result of its marketing of the Work, and the success of its products, Silver Streak has come to be, and now is, well and favorably known to the Industry as a reliable supplier of high quality products. Silver Streak has thereby built up and now owns valuable good will.

10. Within the nine month period prior to the filing of this civil action, Defendant did infringe Silver Streak's copyright in the Work by producing copies of the Ore Car display. A photograph of Defendant's Ore Car, for example, in use at the Las Vegas Souvenir & Resort Gift Show on September 18, 2013 is attached hereto as **Exhibit "C"**.

11. The infringement by Squire Boone has been deliberate and willful.

COUNT I: COPYRIGHT INFRINGEMENT

12. Silver Streak incorporates by reference all of the allegations contained in paragraphs 1 through 11 above as if fully set forth herein.

13. By virtue of the acts alleged herein, the Defendant has been and is engaging in copyright infringement in violation of 17 U.S.C. §501 by reproducing Plaintiff's copyrighted Work.

COUNT II: TORTIOUS INTERFERENCE WITH CONTRACT

14. Silver Streak incorporates by reference all of the allegations contained in paragraphs 1 through 13 above as if fully set forth herein.

15. Based on information and reasonable belief, Defendant has made at least one sale of the Ore Car to Six Flags, a potential customer of Plaintiff's, in violation of Plaintiff's copyright.

16. Based on information and reasonable belief, Defendant offered the Ore Car and Tumbled Stone to Bowlin Travel Centers, one of Plaintiff's large existing customers, at the ASD Show in Las Vegas March 17-20, 2013 at a deeply discounted price, in violation of Plaintiff's copyright.

17. The acts of Defendant as alleged above constitute an intentional and unreasonable interference by the Defendant with Silver Streak's beneficial contractual relationships with Silver Streak's customers. The Defendant is, and was during all relevant times aware of the existence of these relationships. The Defendant's acts are without justification, were improper, were done willfully and/or knowingly and have caused damage and injury to Silver Streak's business and property, by reason of which violation, Silver Streak is entitled to recover such actual damages as a factfinder may find Silver Streak to have sustained and costs of the suit herein.

18. The action of the Defendant described above was done by the Defendant with intent to cause injury to Silver Streak and/or to serve Defendant's own interests, despite Defendant having reason to know and consciously disregard a substantial risk that this misconduct would injure Silver Streak. Such conduct entitles Silver Streak to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Silver Streak respectfully requests that this Court:

1. Impound and destroy all copies of the Work from Defendant's place of business or elsewhere and any copies in use;
2. Enter an Order prohibiting Defendant from further infringing any of Silver Streak's copyrights in any manner;

3. Enter an Order prohibiting Defendant from unlawfully interfering with existing or prospective contracts between Silver Streak and its customers;

4. Order an accounting of profits and other damages derived from the Defendant in its acts of copyright infringement and interference with contract and prospective advantage;

5. Enter a Judgment in favor of Silver Streak and against the Defendant in an amount to be set forth when determined as actual damages and any profits of Defendant pursuant to 17 U.S.C. § 504(a)(1) and § 504(b), or in the alternative, statutory damages for copyright infringement pursuant to 17 U.S.C. § 504 (a)(2) and § 504(c), compensatory damages, and a proper amount of punitive damages as may be allowed by law; and

6. Award Silver Streak its costs and expenses, including reasonable attorney's fees, incurred by Silver Streak in the pursuit of this action.

JURY DEMAND

Plaintiff requests a trial by jury on all issues herein so triable.

Respectfully submitted,

KIGHTLINGER & GRAY, LLP

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