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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CUMMINS INC.,

Plaintiff,

v.

T'SHIRT FACTORY,

FREEDOM CUSTOM Z,

SHAMIR HARUTYUNYAN,
an individual,

and DOES 1-10,

Defendants.

Case No. 1:13-cv-1972

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Cummins Inc. ("Cummins"), by and through its undersigned counsel, for its Complaint against Defendants T'SHIRT FACTORY, SHAMIR HARUTYUNYAN, FREEDOM CUSTOM Z and DOES 1-10 (collectively, "Defendants"), allege as follows:

1. This is an action for a temporary restraining order, injunction, and money damages arising from Defendants' trademark infringement, trademark dilution, and sales of counterfeit goods bearing Cummins trademarks. Defendants' acts have caused, and continue to cause, irreparable harm to Cummins.

THE PARTIES

2. Plaintiff Cummins Inc. is a corporation organized and existing under the laws of the State of Indiana with a principal place of business at 500 Jackson Street, Columbus, Indiana 47201.

3. On information and belief, Defendant T'Shirt Factory is a business with several operating locations in or around Indianapolis, Indiana, including kiosks at Greenwood Park Mall (1251 U.S. Highway 31, Greenwood, IN 46142) and at Castleton Mall (6020 E. 82nd St, Indianapolis, IN 46250). Defendant T'Shirt Factory's business includes the sale of t-shirts, sweatshirts, and other apparel with logos affixed or printed thereon.

4. On information and belief, Defendant Shamir Harutyunyan, an individual, is a resident of the State of Florida with an address of 136 Seagrass Way, Panama City Beach, Florida 32407. Defendant Shamir Harutyunyan is an owner, agent, and/or officer of Defendant T'Shirt Factory and has recently reserved the business entity name "T-Shirt Factory" with the Indiana Secretary of State. On information and belief, Harutyunyan was personally aware of, and authorized, approved, ratified, participated in, and instigated the wrongful conduct alleged in this Complaint.

5. On information and belief, Defendant Freedom Custom Z is a business with at least one operating location in Bloomington, Indiana—a kiosk at the College Mall (2894 E. 3rd St, Bloomington, IN 47401). Defendant Freedom Custom Z's business includes the sale of t-shirts, sweatshirts, and other apparel with logos affixed or printed thereon.

6. Cummins is ignorant of the true names of defendant Does 1 through 10 ("Doe Defendants"), inclusive, and therefore sues those defendants by such fictitious names. On information and belief, Doe Defendants are responsible for the acts alleged in this Complaint.

When the true names of the Doe Defendants are ascertained, Cummins will seek leave of this Court to amend this Complaint to name those individuals or entities.

JURISDICTION AND VENUE

7. This is an action for counterfeiting, trademark infringement, and trademark dilution. This action arises under the Trademark Act of 1946, 15 U.S.C. § 1051, et. seq., (“Lanham Act”).

8. This Court has subject matter jurisdiction over this action pursuant to at least 15 U.S.C. § 1121 (actions arising under the Lanham Act) and 28 U.S.C. §§ 1331, 1338(a).

9. This Court may exercise personal jurisdiction over Defendants based upon their contacts with this forum, including at least regularly and intentionally doing business here and committing acts giving rise to this lawsuit here. Defendants transact or have transacted business in the United States and within this judicial district for their gain and profit, and are subject to the jurisdiction of this Court at least by having directly infringed the subject U.S. Trademark Registrations owned by the Plaintiff, and such infringement has taken place within the United States and the Southern District of Indiana. Defendants purposefully availed themselves of the benefits and protections of the forum, and the alleged harm caused by Defendants has and will be suffered in this forum State and in this judicial district.

10. Venue is proper in this judicial district pursuant to at least 28 U.S.C. §§ 1391(b) and (c).

CUMMINS’ TRADEMARKS AND PRODUCTS

11. Cummins was founded nearly a century ago and is a global power leader with complementary business units that design, manufacture, distribute and service engines and related technologies, including fuel systems, controls, air handling, filtration, emission solutions

and electrical power generation systems. Cummins employs approximately 46,000 people worldwide and serves customers in approximately 190 countries.

12. Throughout its history, Cummins has taken steps to maintain and protect its intellectual property rights and to ensure customers associate the CUMMINS trademarks with genuine Cummins products and services. Cummins owns and maintains hundreds of trademark registrations worldwide covering a broad spectrum of goods and services marketed and sold under the CUMMINS Marks.

13. For example, and of relevance to this dispute, Cummins owns Registration No. 4,126,680 for the standard character mark CUMMINS. Registration No. 4,126,680 covers the following goods: “Men’s and women’s clothing, namely, sweatshirts, hooded sweatshirts, aprons, shirts, sport shirts, jackets, t-shirts, polo shirts, baseball caps and hats, ski caps, fleece caps, headbands, scarves, quilted vests, coveralls, leather jackets, t-shirts for toddlers and children” in International Class 25. This registration is valid and subsisting. A copy of the registration is attached hereto as Exhibit A.

14. Cummins owns Registration No. 4,103,161 for the CUMMINS logo trademark as depicted below in Figure 1. Registration No. 4,103,161 covers the following goods: “Men’s and women's clothing, namely, sweatshirts, hooded sweatshirts, aprons, shirts, sport shirts, jackets, t-shirts, polo shirts, baseball caps and hats, ski caps, fleece caps, headbands, scarves, quilted vests, coveralls, leather jackets, t-shirts for toddlers and children” in International Class 25. This registration is valid and subsisting. A copy of the registration is attached hereto as Exhibit B.



Figure 1

15. Cummins owns Registration No. 4,305,797 for the CUMMINS trademark as depicted below in Figure 2. Among the goods covered by Registration No. 4,305,797 are the following: “Men’s and women’s clothing, namely, sweatshirts, hooded sweatshirts, aprons, shirts, sport shirts, jackets, t-shirts, polo shirts, baseball caps and hats, ski caps, fleece caps, headbands, scarves, quilted vests, coveralls, leather jackets, t-shirts for toddlers and children” in International Class 25. A copy of the registration is attached hereto as Exhibit C.



Figure 2

16. Cummins also owns Registration No. 579,346 for CUMMINS (registered since 1953), which is attached hereto as Exhibit D; Registration No. 1,090,272 for the C CUMMINS Logo (registered since 1978), which is attached hereto as Exhibit E; and Registration No. 1,124,765 for the C CUMMINS Logo (registered since 1979), which is attached hereto as Exhibit F. Each of these registrations has achieved incontestable status under the Lanham Act, 15 U.S.C. § 1065. These registrations are valid and subsisting.

17. Collectively, the above-listed marks are referred to herein as “the CUMMINS Marks.”

18. Cummins expends substantial resources marketing its goods and services under the CUMMINS Marks. The CUMMINS Marks are distinctive and, over the years, have become famous to consumers.

19. Cummins licenses the CUMMINS Marks to only one licensee for use on apparel. None of the above-named Defendants are licensed to use the CUMMINS Marks or sell goods bearing the CUMMINS Marks.

20. Authorized apparel products bearing the CUMMINS Marks are only available through the Cummins' official website or through a single brick-and-mortar store located in Columbus, Indiana. Such authorized products are not available for sale in any shopping malls.

DEFENDANT'S UNAUTHORIZED SALE OF GOODS
BEARING THE CUMMINS MARKS

21. On or about December 10, 2013, Cummins employees observed apparel bearing the CUMMINS Marks offered for sale at kiosks located in the College Mall in Bloomington, Indiana; in the Greenwood Park Mall in Greenwood, Indiana; and in the Castleton Mall in Indianapolis, Indiana (collectively, "the Malls").

22. A Cummins contractor, Mr. Michael Runnels, who works for Apollo International and whose title is Account Manager for Cummins Southern Indiana Guard Force, conducted an investigation into the sale of the goods bearing CUMMINS Marks at the Malls.

23. During his investigation, Mr. Runnels observed the sale or offer for sale of apparel items bearing the CUMMINS Marks at kiosks in each of the Malls.

24. Provided below as Figure 3 is a photograph showing apparel bearing the CUMMINS Marks on sale at a kiosk in Greenwood Park Mall in Greenwood, Indiana.

25. Provided below as Figure 4 is a photograph showing apparel bearing the CUMMINS Marks on sale at a kiosk in Castleton Mall in Indianapolis, Indiana.

26. Provided below as Figures 5 and 6 are photographs showing apparel bearing the CUMMINS Marks on sale at a kiosk in College Mall in Bloomington, Indiana.



Figure 3



Figure 4



Figure 5



Figure 6

27. Mr. Runnels purchased the black sweatshirt with a pink Cummins logo shown in Figure 7 below from the kiosk located at the Greenwood Park Mall in Greenwood, Indiana.



Figure 7

28. Following the purchase of the sweatshirt shown above, Mr. Runnels received an email receipt for the transaction from “T’Shirt Factory” located at 1251 U.S. Highway 31, Greenwood, IN 46142. A copy of the receipt is attached hereto as Exhibit G.

29. Mr. Runnels purchased the black t-shirt with a white Cummins logo shown in Figure 8 below from the kiosk located at the Castleton Mall in Indianapolis, Indiana.



Figure 8

30. Following the purchase of the t-shirt shown above, Mr. Runnels received an email receipt for the transaction from “Shamir Harutyunyan.” A copy of the receipt is attached hereto as Exhibit H.

31. Defendant Shamir Harutyunyan recently reserved the business entity name “T-Shirt Factory” with the Indiana Secretary of State and is listed as the owner of “T-Shirt Factory.” A copy of the Mr. Harutyunyan’s request is attached hereto as Exhibit I.

32. Mr. Runnels purchased the red sweatshirt with a white and black Cummins logo shown in Figure 9 below from the kiosk located at the College Mall in Bloomington, Indiana.



Figure 9

33. Following the purchase of the sweatshirt shown above, Mr. Runnels received a receipt for the transaction from “FREEDOM CUSTOM Z.” A copy of the receipt is attached hereto as Exhibit J.

34. In conversations with Mr. Runnels, Defendants’ employees or agents working at the kiosks in the Malls explained that Defendants maintain some inventory of apparel with Cummins trademarked logos affixed thereto, and also possess iron-on transfers that can be placed on an apparel item of a customer’s choosing using a machine located within the kiosk. Thus, Defendants make infringing and counterfeit articles on demand.

35. On information and belief, the heat transfers with the CUMMINS Marks used by each of the Defendants are provided by a common supplier.

36. None of the sales of apparel items bearing the CUMMINS Marks at the kiosks in the Malls were authorized by Cummins.

**COUNT I: TRADEMARK INFRINGEMENT UNDER SECTION 43(a) OF THE
LANHAM ACT, 15 U.S.C. § 1125(a)**

37. Cummins repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 36 of this Verified Complaint.

38. Defendants' offer to sell, sale, distribution, or advertisement of apparel or other merchandise bearing the CUMMINS Marks violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

39. The CUMMINS Marks are federally registered and are entitled to protection under both federal law and common law. The CUMMINS Marks have a distinctive appearance with a unique and a unique non-functional design. Cummins has extensively and continuously promoted and used the CUMMINS Marks for decades in the United States and worldwide. Through that extensive and continuous use, the CUMMINS Marks have become a famous and well-known indicator of the origin and quality of Cummins' goods and services.

40. The registrations for the CUMMINS Marks cover a wide range of goods and services including, but not limited to, the infringing apparel products sold by Defendants.

41. Defendants' unauthorized use and sale of products bearing the CUMMINS Marks constitutes a false designation of origin that is likely to cause consumer confusion, mistake, or deception as to the origin, sponsorship, or approval of the infringing items by creating the false and misleading impression that the infringing items are manufactured by, authorized by, or otherwise associated with Cummins.

42. On information and belief, Defendants' infringing uses of the CUMMINS Marks or confusingly similar imitations thereof have been intentional, willful, and malicious. Defendants' bad faith is evidenced at least by the use of logos on the infringing apparel items that are identical or substantially identical to the registered and famous CUMMINS Marks.

43. As a result of Defendants' infringing acts, Cummins is entitled to an order, under 15 U.S.C. § 1116(d), providing for the seizure of: (1) all articles in Defendants' possession or control bearing the CUMMINS Marks or confusingly similar trademarks; and (2) all iron-on transfers, heat transfers, screenprinted logos, patches, tags, or other items bearing the CUMMINS Marks that may be affixed to apparel or other products, and which are likely to cause confusion as to source, sponsorship, or affiliation (collectively, the "Infringing Goods").

44. Cummins is entitled to an injunction barring Defendants from making, using, selling, or offering for sale the Infringing Goods under 15 U.S.C. § 1116(a).

45. Cummins is further entitled to an order providing for the destruction of the Infringing Goods under 15 U.S.C. § 1118.

46. Cummins is also entitled to Defendants' profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. § 1117.

**COUNT II: TRADEMARK DILUTION UNDER
SECTION 43(c) OF THE LANHAM ACT, 15 U.S.C. § 1125(c)**

47. Cummins repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 46 of this Verified Complaint.

48. Defendants' offer to sell, sale, distribution, or advertisement of apparel or other merchandise bearing the CUMMINS Marks violates Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

49. The CUMMINS Marks are federally registered and are entitled to protection under both federal law and common law. The CUMMINS Marks have a distinctive appearance with a unique and a unique non-functional design. Cummins has extensively and continuously promoted and used the CUMMINS Marks for decades in the United States and worldwide.

50. Through Cummins' extensive and continuous use, the CUMMINS Marks have become a famous and well-known indicator of the origin and quality of Cummins' goods and services. The CUMMINS Marks are inherently distinctive and have also acquired secondary meaning in the marketplace.

51. Defendants' unauthorized use and sale of products bearing the CUMMINS Marks are likely to cause, and have caused, dilution of the famous CUMMINS Marks by eroding the public's exclusive association of the famous CUMMINS Marks with Cummins and by lessening the capacity of the famous CUMMINS Marks to identify and distinguish Cummins goods and services.

52. Defendants' unauthorized use and sale of products bearing the CUMMINS Marks are also likely to cause, and have caused, dilution of the famous CUMMINS Marks by tarnishment. Defendants' use of the CUMMINS Marks on the infringing goods is harmful to the reputation of the famous CUMMINS Marks.

53. On information and belief, Defendants' infringing and diluting uses of the CUMMINS Marks have been intentional, willful, and malicious. Defendants' bad faith is evidenced at least by the use of logos on the infringing apparel items that are identical or substantially identical to the registered and famous CUMMINS Marks.

54. As a result of Defendants' acts of trademark dilution and infringement, Cummins is entitled to an order providing for the seizure of the Infringing Goods under 15 U.S.C. § 1116(d).

55. Cummins is entitled to an injunction barring Defendants from making, using, selling, or offering for sale the Infringing Goods under 15 U.S.C. § 1116(a).

56. Cummins is further entitled to an order providing for the destruction of the Infringing Goods under 15 U.S.C. § 1118.

57. Cummins is also entitled to Defendants' profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. § 1117.

COUNT III: TRADEMARK COUNTERFEITING
UNDER SECTION 32(1) OF THE LANHAM ACT, 15 U.S.C. § 1114(1)

58. Cummins repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 57 of this Verified Complaint.

59. Defendants' use, offer to sell, sale, distribution, or advertisement of apparel or other merchandise bearing the CUMMINS Marks violates Section 32(1)(a) and 32(1)(b) of the Lanham Act, 15 U.S.C. § 1114(1)(a) and (1)(b) and constitutes trademark counterfeiting.

60. The CUMMINS Marks are federally registered and are entitled to protection under both federal law and common law. The CUMMINS Marks have a distinctive appearance with a unique and a unique non-functional design. Cummins has extensively and continuously promoted and used the CUMMINS Marks for decades in the United States and worldwide. Through Cummins' extensive and continuous use, the CUMMINS Marks have become a famous and well-known indicator of the origin and quality of Cummins' goods and services.

61. Defendants' Infringing Goods incorporate or constitute reproductions, counterfeits, copies, and/or colorable imitations of Cummins' registered trademarks that are sold in commerce and are likely to cause confusion.

62. On information and belief, Defendants' possesses, uses, and sells iron-on transfers, heat transfers, screenprinted logos, and/or labels that incorporate or constitute the CUMMINS Marks, and that are affixed to apparel items, with knowledge that imitation of the CUMMINS Marks is intended to cause confusion, or to cause mistake, or to deceive.

63. On information and belief, Defendants' infringing uses of the CUMMINS Marks and sale of counterfeit goods bearing the CUMMINS Marks have been intentional, willful, and malicious. Defendants' bad faith is evidenced at least by the use of logos on the infringing apparel items that are identical or substantially identical to the registered and famous CUMMINS Marks.

64. As a result of Defendants' infringement and sale of counterfeit goods, Cummins is entitled to an order providing for the seizure of the Infringing Goods under 15 U.S.C. § 1116(d).

65. Cummins is entitled to an injunction barring Defendants from making, using, selling, or offering for sale the Infringing Goods under 15 U.S.C. § 1116(a).

66. Cummins is further entitled to an order providing for the destruction of the Infringing Goods under 15 U.S.C. § 1118.

67. Cummins is also entitled to Defendants' profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. § 1117.

PRAYER FOR RELIEF

WHEREFORE, as a result of the unlawful acts of Defendants set forth in each of the counts above, plaintiff Cummins prays that the Court enter a judgment against Defendants:

- a. Entering a Temporary Restraining Order providing:
 - i. That one or more attorneys of Plaintiff Cummins (who may also be accompanied by licensed private investigators), if accompanied by the United States Marshal for this District, or one or more deputies or members of an appropriate law enforcement agency having jurisdiction, be permitted to seize

and sequester and allowed to inspect, inventory, and make copies of the following in the possession, custody or control of defendants:

- i. All merchandise bearing any copy or counterfeit of any CUMMINS Marks including, but not limited to, CUMMINS and the CUMMINS logo, or any markings confusingly similar thereto;
 - ii. All iron-on transfers, heat transfers, screenprinted designs, labels, tags, logos, emblems, signs, and other forms of markings; all packaging, wrappers, containers and receptacles; and all advertisements, catalogs, price lists, promotional materials and the like bearing any copy or counterfeit of CUMMINS Marks including, but not limited to, CUMMINS and the CUMMINS logo, or any markings confusingly similar thereto;
- ii. Enjoining Defendants from manufacturing, distributing, advertising, promoting, holding for sale or selling any goods, iron-on transfers, heat transfers, screenprinted designs, labels, tags, logos, emblems, signs, and other forms of markings; packaging, wrappers, containers and receptacles; or advertisements, catalogs, price lists, promotional materials and the like bearing any copy, counterfeit, or colorable imitation of CUMMINS Marks.
- b. Preliminarily and permanently enjoining Defendants, their agents, servants, employees, officers, and all persons in active concern and participation with them:
 - i. From using the CUMMINS Marks or any marks similar thereto in connection with the sale of any unauthorized apparel or other goods or the rendering of unauthorized services;

- ii. From manufacturing, distributing, advertising, promoting, holding for sale or selling any goods, iron-on transfers, heat transfers, screenprinted designs, labels, tags, logos, emblems, signs, and other forms of markings; packaging, wrappers, containers and receptacles; or advertisements, catalogs, price lists, promotional materials and the like bearing any copy, counterfeit, or colorable imitation of CUMMINS Marks;
 - iii. From using any logo, trade name, or trademark which may be calculated to falsely represent or which has the effect of falsely representing that the services or products of Defendants are sponsored by, authorized by, or in any way associated with the Plaintiff Cummins;
 - iv. From infringing Plaintiff Cummins' registered trademarks; or
 - v. From falsely representing themselves as being connected with, sponsored by or associated with Plaintiff Cummins.
- c. Ordering the destruction of all unauthorized goods, iron-on transfers, heat transfers, screenprinted designs, labels, tags, logos, emblems, signs, and other forms of markings; packaging, wrappers, containers and receptacles; or advertisements, catalogs, price lists, promotional materials and the like bearing any copy, counterfeit, or colorable imitation of CUMMINS Marks.
- d. Pursuant to 15 U.S.C. § 1116(a), ordering Defendants to file with the Court and serve upon Cummins' counsel, within thirty (30) days after service of the order of injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction.

- e. Finding that, by the acts complained of above, Defendants have infringed Cummins' federally registered trademarks in violation of 15 U.S.C. § 1114.
- f. Finding that, by the acts complained of above, Defendants have created a false designation of origin and false representation of association in violation of 15 U.S.C. § 1125(a).
- g. Finding that, by the acts complained of above, Defendants have diluted Cummins' famous trademarks in violation of 15 U.S.C. § 1125(c).
- h. Finding that the acts complained of above constitute willful infringement.
- i. Ordering Defendants to pay Cummins
 - i. Defendants' profits for sale of the infringing and counterfeit goods bearing the CUMMINS Marks;
 - ii. Treble actual damages, costs, and reasonable attorneys' fees.
- j. Awarding Cummins pre-judgment and post-judgment interest against Defendants.
- k. Awarding Cummins such other and further relief as the Court may deem just and proper.

JURY DEMAND

Cummins hereby demands a trial by jury.

Dated: December 13, 2013

PLAINTIFF, CUMMINS INC.

/s/ T. Joseph Wendt

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