

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

BABY TREND, INC.,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:15-CV-1353
)	
PHIL AND TEDS MOST EXCELLENT)	
BUGGY COMPANY LIMITED)	
)	
Defendant.)	

COMPLAINT

Plaintiff Baby Trend, Inc. (“Baby Trend”), for its complaint against Defendant Phil and Teds Most Excellent Buggy Company Limited (“Phil & Teds”), states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Baby Trend is a California corporation with its principal place of business in California.
2. On information and belief, Defendant Phil & Teds is a New Zealand limited company with its principal place of business in New Zealand.
3. This is an action for federal trademark infringement and false designation of origin in violation of §§ 32 and 43(a) of the federal Lanham Act (15 U.S.C. §§ 1114 and 1125(a)), and state common law.
4. This Court has subject matter jurisdiction over this action under 15 U.S.C. § 1121 (actions arising under the Lanham Act); 28 U.S.C. § 1331 (actions under the laws of the United States of America); 28 U.S.C. § 1332(a) (diversity of citizenship between the parties) and 28 U.S.C. § 1338(a) (actions arising under an Act of Congress relating to, among other things, trademarks).

5. This Court has supplemental jurisdiction over the claims in this Complaint that arise under state common law pursuant to 28 U.S.C. § 1367(a) because these state law claims are so related to Baby Trend's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

6. The exercise of *in personam* jurisdiction over Defendant Phil & Teds comports with the laws of the State of Indiana and the constitutional requirements of due process because Phil & Teds advertises and offers its goods to customers and/or potential customers in Indiana.

7. On information and belief, Defendant Phil & Teds directly or through others has sold its goods to customers in Indiana, including Phil & Teds goods bearing the infringing trademark at issue.

8. Venue is properly founded in this judicial district pursuant to 28 U.S.C. § 1391 because Phil & Teds is a limited company subject to personal jurisdiction in this judicial district and because a substantial part of the events or omissions giving rise to Baby Trend's claims in this action occurred within this judicial district.

GENERAL ALLEGATIONS

Baby Trend and its NAVIGATOR Mark

9. Baby Trend is in the business of designing, manufacturing and marketing juvenile products. Throughout its 26-year history, Baby Trend has been on the forefront of new and innovative solutions that meet the ever increasing demands of new parents by providing safe, reliable products at an affordable price. Baby Trend continually tailors its products with the changing challenges facing families as they grow.

10. Baby Trend has for more than fifteen years made extensive use of the mark NAVIGATOR in connection with Baby Trend's strollers and related products.

11. As a result of Baby Trend's extensive advertising, publicity and sales, the NAVIGATOR mark has come to be widely-recognized by the general consuming public as a designation of source of Baby Trend's strollers and related products.

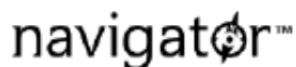
12. Baby Trend is the owner of U.S. Trademark Registration No. 4,514,646 (the "'646 Registration") issued on April 15, 2014, for the mark NAVIGATOR for use in connection with, among other goods, baby strollers. A true and correct copy of the '646 Registration is attached hereto as Exhibit A.

Phil & Teds and Its Infringing Activities

13. Phil & Teds sells strollers and stroller related products in competition with Baby Trend.

14. Phil & Teds uses NAVIGATOR in standard characters and in a stylized form (collectively, the "Infringing Mark") to identify the strollers and stroller related products that it sells in competition with Baby Trend.

15. The stylized form of the Infringing Mark is shown below.



navigator™

16. A photograph showing Phil & Teds' use of the Infringing Mark on packaging for Phil & Teds' stroller products is shown below.



17. Phil & Teds also uses the Infringing Mark in offering on-line retail sales services in connection with its stroller and stroller related goods at www.philandteds.com.

18. The Infringing Mark is also used on-line in connection with third party websites that offer Phil & Teds stroller and stroller related goods, such as www.toysrus.com (Toys R Us/Babies R Us website) and www.buybuybaby.com (BuyBuyBaby website).

19. Phil & Teds stroller and stroller related goods that bear the Infringing Mark have been physically present and offered for sale in BuyBuy Baby retail stores located in Indianapolis, Indiana (Castleton).

20. Baby Trend does not sponsor, approve, or authorize any of Phil & Teds' products or services.

21. Phil & Teds' products and services do not originate from Baby Trend.

22. The Infringing Mark as employed by Phil & Teds is likely to cause confusion, to cause mistake, and/or to deceive vis-à-vis Baby Trend's federally-registered and well-known NAVIGATOR mark.

23. Requests from Baby Trend beginning at least as early as June 30, 2015 notwithstanding, Phil & Teds has refused to discontinue its confusing and deceptive use of the Infringing Mark.

24. On information and belief, Phil & Teds has engaged in the conduct described above willfully, intentionally, knowingly, and in reckless disregard of the obvious and inevitable injurious consequences of this conduct to Baby Trend. In using the Infringing Mark, Phil & Teds has a bad-faith intent to trade on and profit from Baby Trend's hard-earned goodwill and reputation and to confuse and mislead the public.

25. This is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

**COUNT I: FEDERAL TRADEMARK INFRINGEMENT
(15 U.S.C. § 1114)**

26. Baby Trend realleges and incorporates all preceding paragraphs, as if fully set forth herein.

27. Baby Trend's '646 Registration evidences Baby Trend's exclusive right to use the mark reflected therein in connection with the goods identified therein.

28. Baby Trend commenced use of the NAVIGATOR mark in interstate commerce in connection with strollers and stroller related goods well prior to Phil & Teds' commencement of use of the Infringing Mark.

29. Phil & Teds is not authorized to use the Infringing Mark or any mark confusingly similar or that in any way represents or implies that Phil & Teds and/or Phil & Teds' goods are in any way associated with Baby Trend.

30. Phil & Teds' unauthorized use of the Infringing Mark in connection with its offering of strollers and/or stroller related goods and services constitutes trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

31. Phil & Teds' use of the Infringing Mark is likely to cause confusion, mistake, and/or deception in the marketplace as to the source or origin of Phil & Teds' goods and/or services, and has falsely suggested that Phil & Teds and/or its goods or services are sponsored by, connected to, or otherwise associated with Baby Trend.

32. As a direct and proximate result of Phil & Teds' knowing, deliberate, and willful and/or reckless infringement of Baby Trend's NAVIGATOR mark, Baby Trend has suffered, and will continue to suffer, irreparable harm to its business, reputation, and goodwill, unless and until Phil & Teds' actions as alleged herein are enjoined.

**COUNT II: FEDERAL UNFAIR COMPETITION
AND FALSE DESIGNATION OF ORIGIN
(15 .S.C. § 1125(a))**

33. Baby Trend realleges and incorporates all preceding paragraphs, as if fully set forth herein.

34. Baby Trend commenced use of the NAVIGATOR mark in interstate commerce in connection with strollers and stroller related goods well prior to Phil & Teds' commencement of use of the Infringing Mark.

35. As a result of Baby Trend's sales, advertising and promotion over more than fifteen years, the NAVIGATOR mark has become identified in the public mind as an indicator that the goods to which it is applied emanate from a single source.

36. As a result of Baby Trend's sales, advertising and promotion over more than a decade, the NAVIGATOR mark has become associated with Baby Trend's goods, and has come to symbolize the reputation for quality and excellence of Baby Trend's goods.

37. Phil & Teds' use of the Infringing Mark in connection with Phil & Teds' strollers and stroller related goods and services is likely to cause confusion, mistake, or deception as to

the source, origin, sponsorship, or affiliation of Phil & Teds' goods and services vis-à-vis Baby Trend and/or its goods and services.

38. Phil & Teds is not authorized to use Baby Trend's NAVIGATOR mark or any mark or designation confusingly similar or that in any way represents or implies that Phil & Teds is in any way affiliated with Baby Trend.

39. Phil & Teds' use of the Infringing Mark in connection with Phil & Teds' goods constitutes false designation of origin in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125.

40. As a direct and proximate result of Phil & Teds' knowing, deliberate, and willful and/or reckless false designation of origin, Baby Trend has suffered, and will continue to suffer, irreparable harm to its business, reputation, and goodwill, unless and until Phil & Teds' actions as alleged herein are enjoined

**COUNT III: COMMON LAW UNFAIR COMPETITION
AND TRADEMARK INFRINGEMENT**

41. Baby Trend realleges and incorporates all preceding paragraphs, as if fully set forth herein.

42. Phil & Teds' use in commerce of the Infringing Mark in connection with strollers and stroller related goods and services is likely to cause confusion, mistake, and deception as to source, affiliation or sponsorship vis-à-vis Baby Trend and/or its goods.

43. Phil & Teds' conduct constitutes trademark infringement and unfair competition under the common law.

44. Phil & Teds has unfairly profited from the actions alleged herein.

45. By reason of Phil & Teds' actions described above, Baby Trend has suffered damage to the goodwill associated with Baby Trend's NAVIGATOR mark and has suffered irreparable harm.

46. By reason of Phil & Teds' actions described above, Baby Trend's remedy at law is not adequate to compensate it for the injuries inflicted by Phil & Teds. Accordingly, Baby Trend is entitled to permanent injunctive relief.

47. On information and belief, Phil & Teds' conduct has been intentional and willful and/or reckless in disregard of Baby Trend's rights.

DEMAND FOR JURY TRIAL

Baby Trend hereby respectfully requests that all issues raised by this Complaint be tried by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Baby Trend respectfully prays that the Court enter judgment against Defendant Phil & Teds as follows:

A. Grant preliminary and permanent injunctive relief against Phil & Teds, its agents, servants, employees, attorneys, successors, licensees, parents, subsidiaries, affiliates and assigns, and anyone acting in concert or privity with Phil & Teds.

- (1) prohibiting the use of the Infringing Mark or any other mark or designation that is confusingly similar to Baby Trend's NAVIGATOR mark; and
- (2) directing Phil & Teds to file with the Court and serve on Baby Trend within thirty (30) days after the service on Phil & Teds of such injunction a report in writing under oath setting forth in detail the manner and form in which Phil & Teds has complied with the injunction.

B. Declare that Phil & Teds' infringement and other wrongful acts herein alleged be determined deliberate, willful, and/or reckless in disregard of Baby Trend's rights;

C. Grant an award to Baby Trend of all of Phil & Teds' gross and net sales, revenues, and profits received or derived by Phil & Teds or its affiliates from use of the Infringing Mark, and/or to award such other relief as may be available pursuant to 15 U.S.C. § 1117, and other applicable federal law;

D. Order Phil & Teds to deliver for impoundment and destruction any and all advertising, circulars, price lists, signs, banners, business stationery, prints, packages, labels, containers, freights, cartons, receptacles, wrappers, art work, and other materials in its possession or custody or under their control bearing the Infringing Mark;

E. Find that this case is an "extraordinary case" within the meaning of 15 U.S.C. § 1117(a);

F. Award treble damages to Baby Trend, together with costs, interest, and reasonable attorneys' fees as permitted by 15 U.S.C. § 1117(a);

G. Award Baby Trend all damages, costs, disbursements, expenses, and attorneys' fees owed to them pursuant to the Lanham Act and state common law by reason of Phil & Ted's deliberate, willful, conscious, and/or reckless infringement of Baby Trend's NAVIGATOR mark;

H. Award pre-judgment and post-judgment interest as allowed by law; and

I. Grant Baby Trend such other equitable and legal relief as the Court deems just and proper.

Respectfully submitted,

Dated: August 26, 2015

/s/ Brad R. Maurer

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