



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

INDIANA BOTANIC GARDENS, INC.) Civil Action No. 16-cv-197
Plaintiff,)
v.)
SNYDER MANUFACTURING)
CORPORATION)
d/b/a EUROSPA AROMATICS,)
d/b/a EUROSPA CHEMICALS)
Defendants)

COMPLAINT

Plaintiff, INDIANA BOTANIC GARDENS, INC. (hereafter sometimes "INDIANA BOTANIC") for its complaint against Defendant, SNYDER MANUFACTURING CORPORATION (hereafter sometimes "SNYDER"), EUROSPA AROMATICS and EUROSPA CHEMICALS (hereafter sometimes jointly "EUROSPA") alleges:

PARTIES

- 1. Plaintiff, INDIANA BOTANIC, is a corporation organized under the laws of Indiana, with its principal place of business located at 3401 West 37th Avenue, Hobart, Indiana, 46342.
2. Defendant, SNYDER, is, on information and belief, a corporation organized and existing under the laws of California with a place of business located at 1541 W. Cowles St., Long Beach, CA90813.
3. Defendants EUROSPA AROMATICS and EUROSPA CHEMICAL are, on information and belief, Unincorporated Organizations with a place of business in Long Beach, CA.

JURISDICTION AND VENUE

4. This action is for Federal trademark infringement, unfair competition and false designation of origin involving claims arising under the Trademark Act of the United States commonly known as the Lanham Act 15 U.S.C. §§ 1051 et seq., state trademark infringement, and unfair competition under the laws of the State of Indiana.

5. This Court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331, 1338(a) and 15 U.S.C. § 1121.

6. Venue properly lies within the Northern District of Indiana pursuant to 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to the claim occurred by virtue of the sale and offer for sale of infringing goods in Indiana and a substantial part of property that is the subject of the action is the property of INDIANA BOTANIC.

7. Personal jurisdiction is proper over SNYDER and EUROSPA by virtue of the sale and offering for sale of infringing goods and sale of goods in Indiana, through means of, but not limited to, websites that advertise the infringing goods nationwide, without any geographical limitation, communications regarding those potential sales and actual sales including electronic communications to Indiana, inclusion in said websites means for ordering from and shipping to Indiana, and the consummation of sales including, but not limited to, sales to purchasers in Indiana and shipment of infringing goods to those purchasers.

8. INDIANA BOTANIC has, for many years, been engaged in processing, packaging and otherwise selling variety of herbal products in this District, in the United States and internationally and INDIANA BOTANIC's property is substantially located in this District.

9. For many years INDIANA BOTANIC has sold under its mark EUCAMINT camphorated ointment products sold at retail and in traditional mail order and electronic media,

and has incurred expenses associated with its advertising and promotional efforts in support of said mark and has extensively used the mark in commerce.

10. INDIANA BOTANIC owns United States Federal Trademark Reg. No. 1327965 for EUCAMINT covering a topical aromatic product namely “camphorated ointment” with a date of first use in commerce of 1925, which registration has long ago achieved incontestable status. INDIANA BOTANIC has also established common law rights in EUCAMINT for a camphorated ointment product. A copy of the registration is attached as Exhibit 1. A copy of INDIANA BOTANIC’s web page offering for sale EUCAMINT is attached as Exhibit 2.

11. By reason of INDIANA BOTANIC’s use, promotion and dissemination of its goods, its mark EUCAMINT has acquired recognition, and the relevant trade and public has come to recognize the mark as being a source indicator of and signifying INDIANA BOTANIC. Through this use and promotion and due to the favorable recognition of EUCAMINT, the mark has become recognized as a designation of origin for camphorated ointment products.

12. Notwithstanding Plaintiff’s prior established rights in its mark EUCAMINT, SNYDER and EUROSPA commenced the production, labeling, sale and offering for sale of an aromatic product sold under the trademark EUCAMINT, namely a shower mist. A copy of a web page offering for sale SNYDER’s and EUROSPA’s EUCAMINT is attached as Exhibit 3.

13. EUCAMINT aromatic product is sold and offered for sale under circumstances which cause a likelihood of confusion, mistake or deception of a not insignificant number of prospective purchasers into believing that there is some affiliation, association or common source of sponsorship with INDIANA BOTANIC and INDIANA BOTANIC’S mark EUCAMINT.

14. Persons familiar with INDIANA BOTANIC's mark EUCAMINT and business are likely to be confused, mistaken and/or to be deceived upon seeing SNYDER and EUROSPA's use of EUCAMINT and are therefore likely to believe that SNYDER's business is endorsed by, sponsored by, or emanates from, or in some way is connected with INDIANA BOTANIC or with the mark EUCAMINT.

15. INDIANA BOTANIC will be unable to police the nature and quality of the aromatic products sold by SNYDER and EUROSPA under the complained of mark at issue or of variations thereof. The sale or offer for sale by SNYDER and EUROSPA of aromatic products or services, and the receipt of funds solicited under the mark EUCAMINT will also blur and diminish the distinctive quality of INDIANA BOTANIC'S mark EUCAMINT, and lessen its capacity to identify and distinguish the products and services of INDIANA BOTANIC.

16. Use by SNYDER and EUROSPA of the mark EUCAMINT is without INDIANA BOTANIC's consent or permission.

17. Upon information and belief, SNYDER, with knowledge of Plaintiff's mark EUCAMINT and in willful disregard of INDIANA BOTANIC's rights, is engaging in a deliberate course of conduct designed to appropriate the goodwill associated with INDIANA BOTANIC's mark.

18. SNYDER and EUROSPA have, on information and belief, intentionally and willfully attempted to trade upon the goodwill of INDIANA BOTANIC.

19. SNYDER and EUROSPA's use of a mark, name or content which is confusingly similar to INDIANA BOTANIC's mark EUCAMINT will irreparably harm Plaintiff by diminishing the reputation and goodwill of INDIANA BOTANIC's mark EUCAMINT.

20. The public association of the mark EUCAMINT with INDIANA BOTANIC's aromatic products is sufficiently great that the use by another of the mark at issue under the circumstances at issue for SNYDER and EUROSPA's aromatic products will inevitably cause the trade or consumers to believe that it is produced, authorized, licensed, or sponsored by INDIANA BOTANIC or that it is somehow connected with INDIANA BOTANIC.

COUNT I

(Federal Trademark Infringement)

21. INDIANA BOTANIC realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 20 hereof as if set forth in full.

22. SNYDER and EUROSPA's unauthorized use in commerce of the mark EUCAMINT, with respect to SNYDER and EUROSPA's product sales and offers for sale is likely to result in confusion, deception, or mistake and therefore constitutes an infringement of INDIANA BOTANIC's registered trademark under 15 U.S.C. §1114.

23. SNYDER and EUROSPA have used and are continuing to use the mark EUCAMINT, with full knowledge of INDIANA BOTANIC's prior rights and with the intent and purpose to trade upon the goodwill of INDIANA BOTANIC's marks, and SNYDER and EUROSPA's infringement is thus willful and deliberate.

COUNT II

(Unfair Competition Under Federal Law)

24. INDIANA BOTANIC realleges and incorporates herein by this reference the allegations contained in paragraphs 1-23 of this Complaint as if set forth in full.

25. SNYDER and EUROSPA's unauthorized use in commerce of the mark EUCAMINT constitutes a false designation of origin and a false or misleading representation of

fact that is likely to confuse or deceive consumers, or cause consumers to believe mistakenly that SNYDER and EUROSPA and their aromatic goods are made or produced, sold and offered for sale by INDIANA BOTANIC or are otherwise affiliated, connected, or associated with, or sponsored or approved by INDIANA BOTANIC and therefore constitutes unfair competition pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. §§ 1125(a).

26. SNYDER and EUROSPA's use in commerce of the mark EUCAMINT in connection with SNYDER and EUROSPA's marketing, distribution, promotion and sale to the consuming public of their aromatic goods constitutes a misappropriation of the distinguishing and identifying features which INDIANA BOTANIC created through substantial effort and expense, thus evoking from the trade, consumers and others an immediate commercial impression or association favorable to SNYDER and EUROSPA, based on and derived from INDIANA BOTANIC's mark EUCAMINT and the goodwill associated therein.

27. SNYDER and EUROSPA's use of the mark EUCAMINT constitutes false representations that SNYDER and EUROSPA have some connection or association with, or sponsorship by INDIANA BOTANIC, and that the products and deliveries of products identified with INDIANA BOTANIC are available from and will be performed by SNYDER and EUROSPA.

28. Said actions of SNYDER and EUROSPA constitute violations of 15 U.S.C. §1125(a) in that such false designation and representations of origin and quality are used on or in connection with the products that SNYDER and EUROSPA cause to enter into, or to affect commerce, which may lawfully be regulated by Congress.

29. SNYDER and EUROSPA have used and are continuing to use the mark EUCAMINT or variations thereof with full knowledge of INDIANA BOTANIC's rights, and,

based upon information and belief, said actions by SNYDER and EUROSPA are with an intent and purpose to trade upon the goodwill of INDIANA BOTANIC's EUCAMINT. SNYDER and EUROSPA's infringement is thus willful and deliberate.

COUNT III

(Common Law Trademark Infringement and Unfair Competition Under Indiana Law)

30. INDIANA BOTANIC realleges and incorporates herein by this reference the allegations contained in paragraphs 1-29 of this Complaint as if set forth in full.

31. INDIANA BOTANIC's long use of EUCAMINT in connection with its camphorated ointment has entitled INDIANA BOTANIC to trademark rights in the common law, in Indiana and nationwide.

32. SNYDER and EUROSPA have sold and marketed aromatic products namely shower mist under the designation EUCAMINT in the same channels of distribution and geographical areas as INDIANA BOTANIC. As a result, the purchasing public is likely to attribute to INDIANA BOTANIC defendant SNYDER's use of the EUCAMINT designations that are confusingly similar to INDIANA BOTANIC's EUCAMINT mark as a source, authorization and/or sponsorship of SNYDER's goods and services, and therefore, to utilize SNYDER's goods and services in that erroneous belief.

33. As such, SNYDER has committed trademark infringement and unfair competition under the common law, and, unless enjoined, will continue to cause irreparable harm and damage to INDIANA BOTANIC and its business reputation and goodwill and has caused INDIANA BOTANIC to suffer monetary damages. Unless restrained and enjoined, the Defendants' aforesaid acts will cause INDIANA BOTANIC irreparable harm and damage for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF INDIANA BOTANIC prays for judgment as follows:

1. SNYDER and EUROSPA, their officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under or in active concert with them (hereafter collectively “SNYDER”) be enjoined and restrained from:
 - a. using the EUCAMINT trademark or any reproduction, counterfeit copy or colorable imitation thereof in any manner in connection with the distribution, advertising, offering for sale, or sale of any product that is not a genuine EUCAMINT product originating from INDIANA BOTANIC or not authorized by INDIANA BOTANIC to be sold or offered for sale in connection with the EUCAMINT trademark;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine INDIANA BOTANIC product or any other product produced by INDIANA BOTANIC, that is not INDIANA BOTANIC's or not produced under the authorization, control or supervision of INDIANA BOTANIC and approved by INDIANA BOTANIC for sale under the EUCAMINT trademark;
 - c. committing any acts calculated to cause customers or potential customers to believe that SNYDER's products are those sold or offered under the authorization, control or supervision of INDIANA BOTANIC, or are sponsored by, approved by, or otherwise connected with INDIANA BOTANIC;
 - d. infringing any INDIANA BOTANIC trademarks and damaging

INDIANA BOTANIC's goodwill;

- e. otherwise competing unfairly with INDIANA BOTANIC;
 - f. deceiving customers or prospective customers in any manner;
 - g. shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for INDIANA BOTANIC, nor authorized by INDIANA BOTANIC to be sold or offered for sale, and which bear the EUCAMINT trademark or any reproductions, counterfeit copies or colorable imitations thereof.
2. That INDIANA BOTANIC be awarded the profits secured by SNYDER and EUROSPA as a result of their unlawful activities, and that said award be trebled as provided by law or in the alternative that INDIANA BOTANIC be awarded statutory damages in an amount determined by the Court for willful use of an infringing or counterfeit mark.
 3. That INDIANA BOTANIC be awarded punitive and exemplary damages in such amount as the Court shall find sufficient to deter SNYDER and EUROSPA's willful unlawful conduct.
 4. That INDIANA BOTANIC be awarded its costs incurred in this action, including its reasonable attorneys' fees.
 10. That SNYDER and EUROSPA be required to file with this Court and serve upon Plaintiff within ten (10) days after entry of the order of judgment a report, in writing and under oath, setting forth the manner and form of SNYDER and EUROSPA's compliance with the Court's order.

11. That INDIANA BOTANIC have such other and further relief as is warranted by the facts established at trial or which this Court may deem as just and equitable.

Respectfully submitted,

By: /David C Brezina/
One of Plaintiff's Attorneys

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