

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION**

RICHARD LITOV,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 3:16-cv-241
	)	
FREEDOM HERITAGE MUSEUM, INC.,	)	
	)	
Defendant.	)	

**COMPLAINT**

Comes now Plaintiff, Richard Litov (hereinafter “Plaintiff” or “Litov”), by counsel, and for his complaint against Defendant, Freedom Heritage Museum, Inc. (hereinafter “Defendant” or “FHM”), alleges as follows:

**PARTIES**

1. Litov is an individual residing in Evansville, Vanderburgh County, Indiana.
2. FHM is an Indiana corporation doing business in Evansville, Vanderburgh County, Indiana.

**NATURE OF ACTION AND JURISDICTION**

3. This is an action for Trademark Infringement and Unfair Competition brought pursuant to Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a) and the common law of the state of Indiana.
4. The Court has jurisdiction over this action under Section 39 of the Lanham Act, 15 U.S.C. 1121, and Title 28 of the United States Code, Sections 1331 and 1338.

5. The Court has personal jurisdiction over the FHM because, *inter alia*, FHM does business in this judicial district and the conduct of FHM complained of in this Complaint occurred in this judicial district.

6. Venue is proper in this district under 28 U.S.C. § 1391(a).

## **FACTS**

### **A. Litov and his Mark.**

7. Litov is the owner of United States Trademark Registration No. 4,939,292 (“the ‘292 registration”) for the mark FREEDOM HERITAGE MUSEUM (“the Mark”) and design. A true and accurate copy of the ‘292 registration is attached hereto as Exhibit A.

8. The ‘292 registration was filed on July 6, 2015 and granted April 19, 2016, in connection with “museums.”

9. Litov also has common-law rights in the Mark including the name FREEDOM HERITAGE MUSEUM in Indiana.

10. Prior to September, 2012, Litov conceived the idea of opening a military history museum in Evansville, Indiana under the name FREEDOM HERITAGE MUSEUM and displaying therein a collection of exhibits and artifacts from the World War II era.

11. In or about September, 2012, Litov began using the Mark in association with a military history museum owned and operated by FHM (“the FHM museum”).

12. When FHM was formed, Litov was its president and a member of its board of directors.

13. As president and board member of FHM, Litov gave permission to FHM to use the Mark in connection with the FHM museum.

14. In or about October, 2016, Litov was removed as an officer and board member of FHM and is no longer associated with FHM in any capacity.

15. By correspondence dated October 31, 2016 (the "Notice"), Litov notified FHM that FHM no longer had his permission to use the Mark and demanded that FHM immediately cease and desist from further use of the Mark. A true and accurate copy of the Notice, which Litov sent to each of the board members of FHM, is attached hereto as Exhibit B.

**B. Defendant's Unlawful Conduct.**

16. FHM, with actual knowledge of Litov's ownership and registration of the Mark, continues to use the Mark to identify and promote the FHM museum.

17. As a result of Litov's Notice to FHM and each of the board members of FHM, FHM has actual notice of Litov's superior rights in the Mark and notice that FHM no longer has Litov's permission to use the Mark.

18. Since receiving the Notice, FHM has continued to use the Mark in connection with the FHM museum in violation of Litov's rights in and to the Mark.

19. FHM's continued use of the Mark is without the permission, consent or authority of Litov.

**C. Effect of Defendant's Conduct on Litov and the Consuming Public.**

20. Following Litov's removal as board member and officer and his disassociation from FHM, Litov began promoting a new museum under the Mark, specifically calling the new museum the FREEDOM HERITAGE MUSEUM ("the Litov museum").

21. FHM's continued use of the Mark is not only confusingly similar but is in fact identical to Litov's use. FHM uses the Mark on the same type of services, i.e., museums, as those for which Litov uses the Mark. Further, FHM operates the FHM museum in the same geographic area as that in which Litov intends to operate the Litov museum, specifically the Evansville, Indiana metropolitan area.

22. The museum products and services which FHM advertises and promotes using the Mark and derivatives of the Mark are offered and/or promoted in the same channels of trade as those offered and/or promoted by Litov in connection with the Litov museum under the Mark. Litov's and FHM's advertising and promotional materials are directed to the same or similar consumers.

23. FHM's continued use of the Mark and derivatives of the Mark in its advertising and promotional materials, on its signage, and in connection with its museum services is likely to diminish the goodwill associated with the Mark

24. FHM derives and will continue to derive revenue from its products and services offered and/or promoted under Mark and derivatives of the Mark unless enjoined from doing so.

25. FHM's unauthorized use of the Mark and derivatives of the Mark is likely to cause confusion or mistake or to deceive consumers into believing that FHM's products and services advertised, promoted, and offered under the Mark and derivatives of the Mark are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Litov and/or the Litov museum.

26. FHM's continued use of the Mark and derivatives of the Mark is with full knowledge of Litov's ownership of the Mark and Litov's right to use and control the use of

the Mark and FHM has acted and continues to act without regard to Litov's property rights in and to the Mark.

27. As a result of FHM's unauthorized use of the Mark and derivatives of the Mark, FHM is being unjustly enriched at Litov's expense, and Litov is being damaged.

28. FHM's unauthorized use of the Mark and derivatives of the Mark in association with its products and services has significantly injured Litov's interest. Specifically, FHM (a) has traded upon and continues to trade upon the significant and valuable goodwill in the Mark, (b) is likely to cause confusion among the consuming public as to the source, sponsorship or affiliation of FHM's products or services, (c) has damaged and threatens to further damage Litov's significant and valuable goodwill in the Mark, (d) has injured and threatens to further injure Litov's right to use the Mark as the exclusive indicia of origin of Litov's museum products and services in Indiana and throughout the United States and (e) has lessened the capacity of the Mark to indicate that the products and services associated with the Mark are sponsored by Litov and associated with the Litov museum.

29. Unless FHM's unlawful use of the Mark is enjoined by the Court, such unlawful use will cause irreparable injury to Litov and to the public for which there is no adequate remedy at law.

30. FHM's unlawful use of the Mark has been and continues to be deliberate, willful, intentional, and in bad faith, with full knowledge and conscious disregard of Litov's rights in and to the Mark. In view of the egregious nature of Defendant's actions, this is an exceptional case within the meaning of Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

**COUNT I**  
**FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114(1)(a)**

31. Litov incorporates by reference the allegations contained in paragraphs 1-30 of this Complaint as if fully set forth herein.

32. The acts of FHM complained of herein are likely to cause confusion, mistake, or deception as to origin, sponsorship or approval and therefore constitute federal trademark infringement and violation of 15 U.S.C. § 1114(1)(a). By reason of FHM's bad faith and willful infringement, Litov is entitled to recover actual damages, treble damages, an accounting for FHM's profits, attorneys' fees, and costs of this litigation pursuant to 15 U.S.C. § 1117 and injunctive relief pursuant to 15 U.S.C. § 1116.

33. FHM's actions constitute knowing, deliberate and willful infringement of Litov's Mark. The knowing and intentional nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a).

**COUNT II**  
**UNFAIR COMPETITION UNDER 15 U.S.C. § 1114(1)(a)**

34. Litov incorporates by reference the allegations contained in paragraphs 1-33 of this Complaint as if fully set forth herein.

35. The acts of FHM complained of herein constitute unfair competition in violation of Section 43(a) of the Lanham Act and 15 U.S.C. § 1114(1)(a). Litov is entitled to recover actual and treble damages, attorneys' fees, and the costs of this litigation pursuant to 15 U.S.C. § 1117 and injunctive relief pursuant to 15 U.S.C. § 1116.

36. FHM's actions constitute knowing, deliberate and willful infringement of Litov's Mark. The knowing and intentional nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a).

**COUNT III**  
**FALSE DESIGNATION UNDER 15 U.S.C. § 1114(1)(a)**

37. Litov incorporates by reference the allegations contained in paragraphs 1-36 of this Complaint as if fully set forth herein.

38. FHM's wrongful use of the Litov Mark in association with the FHM museum is likely to cause confusion, mistake and deception among consumers as to the affiliation, connection and association of the Litov Museum, or to deceive consumers as to the origin, sponsorship and approval by Litov of the FHM museum.

39. FHM's use of the Litov Mark in association with the identification and promotion of the FHM museum constitutes false designation under 15 U.S.C. § 1114(1)(a).

40. FHM's actions constitute knowing, deliberate and willful infringement of Litov's Mark. The knowing and intentional nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a).

**COUNT IV**  
**UNFAIR COMPETITION UNDER THE COMMON LAW OF INDIANA**

41. Litov incorporates by reference the allegations contained in paragraphs 1-40 of this Complaint as if fully set forth herein.

42. By engaging in the foregoing acts, FHM has knowingly engaged in unlawful passing off and competed unfairly with Litov in violation of the common law of unfair competition in the state of Indiana.

43. Litov is entitled to recover actual and punitive damages for FHM's unfair competition.

**PRAYER FOR RELIEF**

WHEREFORE, Litov prays that the Court enter judgment in its favor and against FHM as follows:

- a. FHM, its agents, servants, employees, board members, attorneys, and all those persons in active concert or participation with any of them, be permanently enjoined from using the Mark, and any other mark that is confusingly similar to the Litov Mark;
- b. FHM, its agents, servants, employees, board members, attorneys, and all those persons in active concert or participation with any of them, be required to modify all signage, advertising, social media usage and promotional material to eliminate the Litov Mark therefrom, and any other mark that is confusingly similar to the Litov Mark;
- c. FHM, its agents, servants, employees, board members, attorneys, and all those persons in active concert or participation with any of them, be required to deliver to the Court for destruction, or show proof of destruction, any and all labels, signs, prints, packages, advertisements, and any other materials or media in FHM's possession or control that use the Litov Mark, and any other mark that is confusingly similar to the Litov Mark;
- d. FHM, its agents, servants, employees, board members, attorneys, and all those persons in active concert or participation with any of them, be required to take all reasonably available steps to remove the Litov Mark, and any other mark that is confusingly similar to the Litov Mark, as a designator of



the FHM museum from any listing in any business directory, yellow pages, internet directory, and other listing service;

- e. FHM be ordered to file with this Court and to serve upon Litov within thirty (30) days after the entry and service on FHM of an injunction enjoining its use of the Litov Mark, a report in writing and under oath setting forth in detail the manner and form in which FHM has complied with the injunction;
- f. Litov recover all damages it sustains as a result of FHM's infringement and unfair competition, and that said damages be trebled;
- g. an accounting be directed to determine FHM's profits resulting from its activities complained of herein, and that such profits be paid over to Litov, increased as the Court finds to be just under the circumstances of this case;
- h. statutory damages as provided for in 15 U.S.C. § 1117(d);
- i. FHM and all others acting in concert with it be directed to pay punitive damages as permitted by law to deter FHM and all others similarly situated from like unlawful conduct in the future due to FHM's unfair competition;
- j. Litov recover his attorneys' fees;
- k. Litov recover his costs of this action and prejudgment and post-judgment interest; and
- l. Litov recover such other and further relief as the Court may deem just and appropriate.

**JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Litov hereby demands a trial by jury on all issues triable as of right by a jury.

Respectfully submitted,

/s/ Keith E. Rounder

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