

#1373999



Provided by:
Overhauser Law Offices LLC
www.iniplaw.org
www.overhauser.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

Australian Gold, LLC)
)
Plaintiff,)
)
v.)
)
Devoted Creations, Inc. D/B/A Ed)
Hardy Tanning)
)
Defendant.)

Civil Action No. 1:17-cv-481
DEMAND FOR JURY TRIAL

COMPLAINT FOR TRADEMARK INFRINGEMENT

Plaintiff, Australian Gold, LLC (hereafter “Australian Gold”), complains of Defendant, Devoted Creations, Inc. d/b/a Ed Hardy Tanning (hereafter “Devoted Creations”), and alleges as follows:

INTRODUCTION

Australian Gold is a leading manufacturer and supplier of tanning preparations for the indoor tanning market. One of Australian Gold’s products is a tanning preparation which it promotes and advertises as “BEACHIN’ LIFE®”. Australian Gold has used its BEACHIN’ LIFE trademark since at least 2016. Australian Gold has registered the BEACHIN’ LIFE trademark with the United States Patent and Trademark Office. Devoted Creations has introduced and is selling a competing #BEACHLIFE tanning preparation for the indoor tanning market. This use infringes Australian Gold’s BEACHIN’ LIFE trademark and is likely to cause consumer confusion.

PARTIES

1. Plaintiff, Australian Gold, LLC is a limited liability company organized under the laws of the State of Indiana and has a principal place of business at 8001 Woodland Drive, Indianapolis, Indiana 46278.

2. On information and belief, Defendant, Devoted Creations, Inc. d/b/a Ed Hardy Tanning is a business existing under the laws of the State of Florida, and has a principal place of business at 3874 Tampa Road, Oldsmar, Florida 34677.

3. Devoted Creations can be served via its registered agent, Jeffrey M. Sherman, 3874 Tampa Road, Oldsmar, Florida 34677.

JURISDICTION AND VENUE

4. This case arises under the trademark and unfair competition laws of the United States, Title 15, United States Code, including, among others, sections 1114 and 1125.

5. This Court has jurisdiction of this Action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a); 15 U.S.C. § 1121, 1125 and through the Court's supplemental jurisdiction under 28 U.S.C. §1367.

6. Venue in this district is proper pursuant to the provisions of Title 28, United States Code, Section 1391.

7. This Court has personal jurisdiction over Devoted Creations because it does business in this judicial district.

8. Devoted Creations sells tanning products to Tabs Distribution, Inc. in Danville, Indiana.

9. Defendant is subject to the personal jurisdiction of this Court because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this Judicial District, and Defendant has committed acts that have caused tortuous injury to the Plaintiff in this Judicial District.

BACKGROUND FACTS

Australian Gold and its Trademark Rights

10. Australian Gold manufactures, distributes and sells various indoor and outdoor tanning preparations.

11. Australian Gold uses various names to promote its tanning preparations including BEACHIN' LIFE.

12. Australian Gold has used the BEACHIN' LIFE trademark to identify and promote a tanning preparation since at least 2016.

13. Australian Gold owns United States Federal Trademark Registration No. 5,130,366 issued on January 24, 2017, ("the '366 Registration," copy attached as Exhibit A).

14. The goods listed in the '366 Registration are:

"Indoor and outdoor non-medicated skin tanning preparations."

15. The application for the '366 Registration was filed in the United States Patent and Trademark Office on February 10, 2016.

16. Australian Gold has invested a significant amount of time and money in developing its "BEACHIN' LIFE" trademark to identify Australian Gold's tanning preparations.

Devoted Creations' Product

17. Devoted Creations manufactures, distributes and sells tanning preparations, including products in direct competition against Australian Gold in the indoor tanning market.

18. Devoted Creations has introduced and is selling a #BEACHLIFE tanning preparation.

19. The filing date of the '366 Registration is prior to any use of the #BEACHLIFE mark by Devoted Creations.

TRADEMARK INFRINGEMENT

20. Australian Gold incorporates by reference preceding paragraphs 1- 19.

21. Devoted Creations' manufacture, distribution and sale of tanning preparations with #BEACHLIFE is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of Devoted Creations' product with Australian Gold as to the origin, sponsorship, or approval of Devoted Creations' product.

22. Devoted Creations' manufacture, distribution and sale of its #BEACHLIFE product infringes the trademark rights of Australian Gold under 15 U.S.C. §§1114 & 1125 and the common law.

23. On information and belief, Defendant has acted willfully, intentionally and deliberately in derogation of Plaintiff's rights.

24. Australian Gold's remedy at law is inadequate.

UNFAIR COMPETITION

25. Australian Gold incorporates by reference preceding paragraphs 1-24.

26. Devoted Creations' manufacture, distribution and sale of its #BEACHLIFE product is unfair competition in violation of the Lanham Act, 15 U.S.C. §1125 and the common law.

27. On information and belief, Defendant has acted willfully, intentionally and deliberately in derogation of Plaintiff's rights.

28. Australian Gold's remedy at law is inadequate.

RELIEF

WHEREFORE, Australian Gold prays for judgment as follows:

A. A judgment of infringement of the Plaintiff's BEACHIN' LIFE trademark and the '366 registration against Devoted Creations;

B. An order permanently restraining Defendant or any subsidiaries, employees, agents or servants thereof, from using #BEACHLIFE on a tanning preparation or any other mark or design which is likely to cause confusion, to cause reverse confusion, to cause a mistake, or to cause deception with Plaintiff's BEACHIN' LIFE trademark as registered in the '366 registration;

C. An order that all infringing products and promotional materials in the possession of, or subject to control by Defendant or any employees, agents or servants thereof, infringing the '366 Registration and the BEACHIN' LIFE trademark, and all plates, molds, matrixes and any other means of making the same, be delivered up and destroyed or altered to eliminate any possibility of manufacturing infringing products;

D. An award of damages sufficient to compensate Plaintiff for Defendant's acts of infringement;

E. An award of damages under 15 U.S.C. §1117 and/or 35 U.S.C. § 284 in an amount not less than three times the amount of actual damages caused by Defendant's acts of willful infringement;

F. An award to Plaintiff of its costs and expenses;

G. An order declaring that this is an exceptional case as a result of Defendant's knowing and willful infringement of the '366 Registration, and awarding Plaintiff their attorneys' fees incurred in bringing this action;

H. An order granting all other relief found necessary, just and proper under the circumstances, including monetary damages to which Plaintiff may be entitled.

Plaintiff requests a jury for all issues so triable.

Respectfully submitted,

/s/Charles J. Meyer

Charles J. Meyer

Woodard, Emhardt, Moriarty,

McNett & Henry LLP

111 Monument Circle, Suite 3700

Indianapolis, IN 46204-5137

Tel: (317) 634-3456

Fax: (317) 637-7561

Attorney for Australian Gold, LLC