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

HENAGER FAMILY MUSEUM, INC)	
d/b/a NATIONAL VETERANS)	
MEMORIAL,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 3:17-cv-28
)	
COLUMBUS DOWNTOWN)	
DEVELOPMENT CORP.,)	
)	
Defendant.)	

COMPLAINT

Comes now the Plaintiff, Henager Family Museum, Inc d/b/a National Veterans Memorial (hereinafter "Plaintiff" or "Henager"), by counsel, and for its complaint against the Defendant, Columbus Downtown Development Corp. (hereinafter "Defendant" or "CDDC"), alleges as follows:

PARTIES

1. Henager is an Indiana nonprofit corporation with its principal office in Buckskin, Gibson County, Indiana.
2. CDDC is an Ohio nonprofit corporation with its principal office Columbus, Franklin County, Ohio.

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 CDDC because, *inter alia*, CDDC has engaged in nationwide promotional activities targeting consumers throughout the United States including, but not limited to, the state of Indiana, by means which include, but are not limited to, the use of the Internet.

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

FACTS

A. Henager and the Mark.

7. Henager is the owner of United States Trademark Registration No. 3,420,974 (“the ‘974 registration”) for the mark NATIONAL VETERANS MEMORIAL (“the Mark”). A true and accurate copy of the ‘974 registration is attached hereto as Exhibit A.

8. The ‘974 registration was filed on October 2, 2007 and granted on April 29, 2008, in connection with promoting public awareness of the need for reconciliation and recognition by all veterans (the “Objective”).

9. Henager also has common law rights in the Mark, including the name NATIONAL VETERANS MEMORIAL, in Indiana.

10. Since as early as May, 2004, Henager began using the NATIONAL VETERANS MEMORIAL mark in association with a museum that meets the Objective and honors American military veterans (“the NVM museum”).

11. Since the NVM museum opened, it has remained opened continuously until the present day and throughout that time it has been known by the name NATIONAL VETERANS MEMORIAL.

12. The NVM museum is dedicated to honoring American veterans of all military conflicts in which the United States has been involved, including veterans of all branches of United States military services.

13. Examples of promotional documents used by the NVM museum are attached hereto collectively as Exhibit B.

14. The NVM museum is promoted online through a website operated by the Plaintiff, the purpose of which is to generate interests in and financial support for the NVM museum and to generally publicize the nature of the NVM museum.

15. CDDC is currently in the process of developing a museum to honor American military veterans which, according to CDDC's promotional materials, will be operated using the name NATIONAL VETERANS MEMORIAL & MUSEUM ("the CDDC museum").

16. According to various promotional materials available on the Internet, CDDC intends to open the CDDC museum sometime during 2018.

17. CDDC is aggressively promoting the CDDC museum under the name NATIONAL VETERANS MEMORIAL & MUSEUM and is engaged in a nationwide fundraising campaign for the construction of a CDDC museum building to be situated in Columbus, Ohio.

18. CDDC's promotional activities include a website used for the purposes of generating interest in and raising financial support for the CDDC museum.

19. Among the statements made by or on behalf of CDDC on the website for the CDDC museum in support of the CDDC museum is the following:

There are almost 22 million living veterans throughout the United States, from Greatest Generation to recent heroes

coming home from Afghanistan and Iraq. And yet, there is no single monument or museum dedicated to the Veteran's experience.

A copy of the page from the CDDC museum website which contains the above statement is attached as Exhibit C.

In fact, the NVM museum is dedicated to the experiences of United States military veterans of all United States military conflicts.

20. The website for the CDDC museum promotes its proposed museum to the same consumers as those who are interested in memorial museums dedicated to American military veterans. Website searches for "veterans memorial museums" or similar queries will result in access to both the NVM website and the CDDC website.

B. Effect of Defendant's unlawful use of the Mark.

21. CDDC's continued use of the name NATIONAL VETERANS MEMORIAL & MUSEUM is confusingly similar to Henager's NATIONAL VETERANS MEMORIAL mark. CDDC uses the name NATIONAL VETERANS MEMORIAL & MUSEUM for the same type of services, i.e., a military museum honoring American veterans, as those for which Henager uses the Mark. Further, CDDC intends to operate the CDDC museum in the middle portion of the state of Ohio, an adjoining state to Indiana where Henager operates the NVM museum. The CDDC museum will thus be situated in the same regional geographic area as the NVM museum.

22. The museum products and services which CDDC advertises and promotes for the CDDC museum using the name NATIONAL VETERANS MEMORIAL & MUSEUM are offered and/or promoted in the same channels of trade as those offered and/or

promoted by Henager in connection with the NVM museum. CDDC's and Henager's advertising and promotional materials are directed to the same or similar consumers.

23. CDDC's continued use of the name NATIONAL VETERANS MEMORIAL & MUSEUM in its advertising and promotional materials and in connection with the CDDC museum and its services is likely to diminish the goodwill associated with the NATIONAL VETERANS MEMORIAL mark.

24. If CDDC continues to use the name NATIONAL VETERANS MEMORIAL & MUSEUM in association with the CDDC museum, it will likely derive revenue from the products and services offered and/or promoted under that name.

25. CDDC's use of the name NATIONAL VETERANS MEMORIAL & MUSEUM is likely to cause confusion or mistake or to deceive consumers into believing that the CDDC museum and the products and services advertised, promoted and offered at the CDDC museum are sponsored, licensed or authorized by, or affiliated, connected or otherwise associated with Henager and/or the NVM museum.

26. Henager's NATIONAL VETERANS MEMORIAL mark is registered with the United States Trademark Office, and is of public record. Information concerning the NVM museum, including Henager's use of the NATIONAL VETERANS MEMORIAL mark for the NVM museum, is readily available through even a cursory Internet search. CDDC's election to use a mark substantially similar if not identical to the NATIONAL VETERANS MEMORIAL mark is with full knowledge of Henager's ownership of the NATIONAL VETERANS MEMORIAL mark and Henager's right to use and control the use of the Mark and CDDC has acted and continues to act without regard to Henager's property rights in and to the NATIONAL VETERANS MEMORIAL mark.

27. As a result of CDDC's use of the name NATIONAL VETERANS MEMORIAL & MUSEUM, CDDC is being unjustly enriched at Henager's expense, and Henager is in turn being damaged.

28. CDDC's use of the name NATIONAL VETERANS MEMORIAL & MUSEUM in association with the CDDC museum and the products and services to be offered by the CDDC museum has significantly injured Henager's interests. Specifically, CDDC (a) has traded upon and continues to trade upon the significant and valuable goodwill in the NATIONAL VETERANS MEMORIAL mark, (b) is likely to cause confusion among the consuming public, including patrons and potential donors, as to the source, sponsorship or affiliation of the CDDC museum's products or services, (c) has damaged and threatens to further damage Henager's significant and valuable goodwill in the NATIONAL VETERANS MEMORIAL mark, (d) has injured and threatens to further injure Henager's right to use the NATIONAL VETERANS MEMORIAL mark as the exclusive indicia of origin of the NVM museum products and services in Indiana and throughout the United States and (e) has lessened the capacity of the NATIONAL VETERANS MEMORIAL mark to indicate that the products and services associated with the Mark are sponsored by Henager and associated with the NVM museum.

29. Unless CDDC's unlawful use of the name NATIONAL VETERANS MEMORIAL & MUSEUM is enjoined by the Court, such unlawful use will cause irreparable injury to Henager and to the public for which there is no adequate remedy at law.

30. CDDC's unlawful use of the name NATIONAL VETERANS MEMORIAL & MUSEUM has been and continues to be deliberate, willful, intentional and in bad faith,

with full knowledge and conscious disregard of Henager's rights in and to the NATIONAL VETERANS MEMORIAL mark. In view of the egregious nature of CDDC's actions, this is an exceptional case within the meaning of Section 35a of the Lanham Act, 15 U.S.C. §1117(a).

COUNT I

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

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

32. The acts of CDDC 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).

33. CDDC's actions constitute knowing, deliberate and willful infringement of Henager's rights in and to the NATIONAL VETERANS MEMORIAL mark, which 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. Henager incorporates by reference the allegations contained in paragraphs 1-34 of this Complaint as if fully set forth herein.

35. The acts of CDDC complained of herein constitute unfair competition in violation of Section 43(a) of the Lanham Act and 15 U.S.C. § 1114(1)(a). Henager 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. CDDC's actions constitute knowing, deliberate and willful infringement of Henager's rights in and to the NATIONAL VETERANS MEMORIAL mark, which 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. Henager incorporates by reference the allegations contained in paragraphs 1-37 of this Complaint as if fully set forth herein.

38. CDDC's wrongful use of the name NATIONAL VETERANS MEMORIAL & MUSEUM in association with the CDDC museum is likely to cause confusion, mistake and deception among consumers as to the affiliation, connection and association of the NVM museum with the CDDC museum, and/or to deceive consumers as to the origin, sponsorship and approval by Henager of the CDDC museum.

39. CDDC's use of the name NATIONAL VETERANS MEMORIAL & MUSEUM in association with the identification and promotion of the CDDC museum constitutes false designation under 15 U.S.C. § 1114(1)(a).

40. CDDC's actions constitute knowing, deliberate and willful infringement of Henager's rights in and to the NATIONAL VETERANS MEMORIAL Mark, which renders this an exceptional case under 15 U.S.C. § 1117(a).

PRAYER FOR RELIEF

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

- a. CDDC, 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 name NATIONAL VETERANS MEMORIAL & MUSEUM, and any other name that is confusingly similar to the NATIONAL VETERANS MEMORIAL mark;

- b. CDDC, 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 materials to eliminate the name NATIONAL VETERANS MEMORIAL & MUSEUM therefrom, and any other mark that is confusingly similar to the NATIONAL VETERANS MEMORIAL mark;
- c. CDDC, 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 CDDC's possession or control that use the name NATIONAL VETERANS MEMORIAL & MUSEUM, or any other mark that is confusingly similar to the NATIONAL VETERANS MEMORIAL mark;
- d. CDDC, 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 name NATIONAL VETERANS MEMORIAL & MUSEUM, and any other name that is confusingly similar to the NATIONAL VETERANS MEMORIAL mark, as a designator of the CDDC museum from any listing in any business directory, internet directory, yellow pages and any other listing service;

- e. CDDC be ordered to file with this Court and to serve upon Henager, within thirty (30) days after the entry and service on CDDC of an injunction enjoining its use of the name NATIONAL VETERANS MEMORIAL & MUSEUM, a report in writing and under oath setting forth in detail the manner and form in which CDDC has complied with the injunction;
- f. Henager recover all damages it sustains as a result of CDDC's infringement and unfair competition, and that said damages be trebled;
- g. CDDC be ordered to conduct an accounting to determine the funds it has received through donations or otherwise resulting from the unlawful use of the name NATIONAL VETERANS MEMORIAL & MUSEUM, and order that such funds be paid over to Henager, with said amount increased as the Court finds to be just and proper under the circumstances of this case;
- h. Henager be awarded statutory damages as provided in 15 U.S.C. § 1117(d);
- i. CDDC and all others acting in concert with it be directed to pay punitive damages as permitted by law to deter CDDC and all others similarly situated from like unlawful conduct in the future;
- j. Henager recover its attorneys' fees;
- k. Henager recover its costs of this action and prejudgment and post-judgment interest; and
- l. Henager 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, Henager 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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