



ORIGINAL

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

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
2017 APR 11 PM 2:20
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
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HER IMPORTS f/k/a EZJR, INC.,)

Plaintiff,)

v.)

HER HAIR COMPANY, INC.,)

Defendant.)

CIVIL ACTION FILE NUMBER

1 17-cv- 1148 WTL -DKL

COMPLAINT

DEMAND FOR JURY TRIAL

COMES NOW, Her Imports *f/k/a* EZJR, Inc., Plaintiff in the above-styled action, and hereby files this, its Complaint against Her Hair Company, Inc., showing the Court as follows:

NATURE OF ACTION

1.

This is an action for trademark infringement, trade dress infringement, and dilution by blurring of the Plaintiff's exclusive rights to utilize the Federally Registered Trademark "Her Imports," Serial No. 86899746 (the "Trademark"), as well as Plaintiff's exclusive rights to utilize its store interior trade dress, arising

from the Defendant's use of a confusingly similar mark and trade dress, brought pursuant to 15 U.S.C. §§ 1051 - 1127 (the "Lanham Act").

2.

Plaintiff brings this action to protect itself from the Defendant's ongoing and persistent use of a confusingly similar mark to that of Plaintiff's Trademark. This action is further prosecuted to protect Plaintiff's unique store interior trade dress. The Defendant has engaged and continues to engage in the use of a confusingly similar Trademark and trade dress for its own profit motive by intentionally deceiving the public into believing it is actually the Plaintiff, and is doing so with sub-standard products and customer service that have caused actual confusion in the marketplace and substantial damage to the revenue, earnings, and reputation of the Plaintiff.

THE PARTIES

3.

Plaintiff Her Imports *f/k/a* EZJR, Inc. ("Her Imports") is a foreign limited liability company doing business in several states as "Her Imports, LLC." Her Imports markets and sells wigs, hairpieces, add-in and add-on hair accessories constructed primarily of synthetic and/or human hair, and hair extensions.

4.

The Defendant Her Hair Company, Inc. (“Her Hair Company”) is a corporation duly incorporated under the laws of the State of Indiana, and may be served with service of process via its duly appointed Registered Agent Erick Armstrong, whose address is 6120 North College Avenue, Indianapolis, Indiana 46220.

JURISDICTION AND VENUE

5.

This action arises under the Lanham Act. Therefore, the Court has federal question jurisdiction over the above-styled action pursuant the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and particularly §§ 1114 and 1125 (a), as well as 28 U.S.C. § 1338(a).

6.

Venue is proper as to the Defendant in the Southern District of Indiana pursuant to 28 U.S.C. § 1391(b)(1) and (2) because a substantial part of the events giving rise to the claims occurred in this District and because the Her Hair Company maintains its principal place of business in this District.

7.

Her Hair Company is a resident of the State of Indiana and the Southern District, and this Court therefore has personal jurisdiction over said Defendant.

FACTUAL ALLEGATIONS

8.

Plaintiff, including its assignees, began operating as “Her Imports” in May of 2012 in association with providing high quality wigs, hairpieces, and add-in and add-on hair accessories constructed primarily of synthetic and/or human hair.

9.

Since its inception, the Her Imports brand has achieved unprecedented success within the industry, becoming the leading seller of high quality wigs, hairpieces, and accessories, with stores in London, New York, Atlanta, and across the United States.

10.

Further since its inception, Plaintiff has continuously and exclusively utilized the name “Her Imports” and for most of its existence used a single, stylized logo for brand recognition.

The Trademarks

11.

On or about November 4, 2014, the name “Her Imports” was registered with the United States Patent and Trademark Office on the principle register, Serial No. 86222695.

12.

On or about September 27, 2016, the United States Patent and Trademark Office registered Plaintiff's Trademark in favor of Plaintiff on the principal register, Serial No. 86899746. A true and correct copy of said mark is attached hereto as Plaintiff's Exhibit "A."

13.

Both Plaintiff's Trademark and the name "Her Imports" are nonfunctional.

14.

In October 2015, Her Imports sent a demand letter to Her Hair Company notifying it that its logo was confusingly similar to Her Imports' and was causing actual customer confusion. Almost immediately thereafter, Her Hair submitted an application to register its confusingly similar mark. Thereafter, on or about February 21, 2017, Her Hair Company registered a trademark on the principal register, Serial No. 86861584. A true and correct copy of said mark is attached hereto as Plaintiff's Exhibit "B" (the "competing mark").

15.

Plaintiff's Trademark and Her Hair Company's competing mark are confusingly similar, and upon information and belief, Her Hair Company intentionally designed and registered its competing mark for the sole purposes of imitating Plaintiff's Trademark, causing actual confusion among the general

public, and attempting to pass itself off as being associated with the Her Imports brand.

16.

Upon information and belief, and as discussed more thoroughly *infra*, Her Hair Company's mark is being used by its registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used, and to deceive the general public into thinking that Her Hair Company is or is affiliated with Her Imports.

17.

Upon further information and belief, and as further discussed more thoroughly *infra*, Her Hair Company's mark has resulted in a high likelihood of dilution by blurring of the Her Imports brand, image, and name.

Plaintiff's Trade Dress

18.

As part of its unique brand, Her Imports specifically designs its store interiors in a certain manner to set it apart from its competitors.

19.

Specifically, each Her Imports store has an inherently distinctive and unique black and white Damask wallpaper with red trim that runs throughout the store. This wallpaper gives each store interior a unique and inherently distinctive look,

and is designed to provide a unique experience for Her Imports' clientele. True and correct copies of pictures from Her Imports' Facebook page showing the Damask wallpaper with red trim are collectively attached here as Plaintiff's Exhibit "C."

20.

Her Imports also uses a particular red frame around its advertising materials that is also distinctive and unique.

21.

The Damask wallpaper and trim in Her Imports store interiors, as well as the red frames around advertising materials, have become a symbol and design associated with Her Imports products, stores, and services, and serves to identify the overall Her Imports brand.

22.

This unique store interior comprises the trade dress of Her Imports' services and products, *i.e.* "its total image and overall appearance." *See Novelty, Inc. v. Jacob's Paradise, Inc.*, No. 1:08-cv-0079-SEB-JMS, 2009 U.S. Dist. LEXIS 100106, at *20 (S.D. Ind. Oct. 26, 2009).

23.

The Damask wallpaper and trim makes each Her Imports store interior inherently distinctive from its competitors in the hair and wig market.

24.

Her Imports' interior store design, taken as a whole, is nonfunctional, as it is not "essential to the use or purpose" of the services and product, *Traffix Devices v. Mktg. Displays*, 532 U.S. 23, 25 (2001), and serves to identify the product and services of Her Imports.

Confusion Among the General Public and Her Hair Company, Inc.'s Trade Dress Infringement and Dilution by Blurring

25.

Her Hair Company is a competitor of Plaintiff, and operates a store in Indianapolis, Indiana as well as website, www.herhaircompany.com.

26.

Promptly after Her Hair Company began selling products online and through its retail location, Her Imports began receiving telephone calls from dissatisfied customers, saying they purchased hair from Her Imports and were disappointed in the services and product. In fact, after inquiry, it was determined that individuals purchased products from Her Hair Company; not Her Imports.

27.

Her Imports is preparing to open a retail store location in Indiana, which will result in an even greater likelihood of confusion amongst customers in Indiana.

28.

Upon information and belief, customers in Indiana and throughout the United States purchased products from Her Hair Company, thinking that Her Hair Company was in fact Her Imports.

29.

Upon further information and belief, the primary source of the confusion among the general public is the confusingly similar nature of Her Hair Company's competing mark.

30.

As evidenced by the attached Exhibits and the actual confusion amongst the general public, there is a high degree of similarity between Plaintiff's Trademark and Her Hair Company's competing mark.

31.

Moreover, upon investigating the cause of these telephone calls, personnel from Her Imports inspected Her Hair Company's store interior and website, and discovered that the Her Hair Company's store interior trade dress was substantially identical to that of Her Imports—it had the same black and white Damask wallpaper, and the same red trim that runs throughout the store. True and correct copies of photographs of the exterior and interior of the Her Hair Company store showing this identical trade dress are attached hereto as Plaintiff's Exhibit "D."

32.

Upon information and belief, before learning that Her Hair Company was imitating its store interior trade dress, Her Imports used its store interior trade dress exclusively in the hair extension and wig market.

33.

There is a high degree of similarity between Her Imports' store interior trade dress and Her Hair Company's competing store interior trade dress.

34.

Plaintiff's Trademark and store interior trade dress have achieved a high degree of recognition, and have become symbols and a source of recognition of the Her Imports brand and quality of products. It is a distinctive feature which sets Her Imports retail locations apart from other sellers of hair extensions and wigs.

35.

Upon information and belief, Her Hair Company began using a confusingly similar competing mark and imitating Her Imports' store interior trade dress to create the appearance of an association with Her Imports and its products and services.

36.

The fact that Her Imports received telephone calls from Her Hair Company customers complaining about Her Imports products and services, when in reality

they were the products and services of Her Hair Company, is direct evidence that there is an actual association among the general public between Her Imports and Her Hair Company, when in reality no such association exists or is desired.

37.

Upon information and belief, Her Hair Company's use of a confusingly similar competing mark caused actual confusion among the general public, as evidenced by the fact that Her Imports received telephone calls from Her Hair Company customers, thinking that the products were from Hair Imports.

38.

Upon further information and belief, Her Hair Company's imposter store interior trade dress also caused actual confusion among the general public.

39.

By using its competing mark and a substantially similar store interior trade dress, Her Hair Company intended to pass off its product, services, and store image as that of Her Imports, with the specific intent to cause actual confusion among the general public.

40.

This actual confusion was exacerbated by the fact that both Her Imports and Her Hair Company operate in the same broad market, pursue the same customer-

base (*i.e.* individuals seeking hair extensions, wigs, and weaves), and offer the same types services and products.

41.

As a direct and proximate result of Her Hair Company using a confusingly similar competing mark and imitating Her Imports' store interior trade dress, Her Hair Company has impaired the distinctiveness of Her Imports' brand image and recognition of both its Trademark and store interior trade dress.

42.

This has, in turn, caused a high likelihood of confusion among Her Imports' customers and the general public.

43.

Her Hair Company's actions are likely to cause confusion, mistake, or deceive as to the affiliation, connection, or association of its products and services with those of Her Imports.

44.

As a direct and proximate result of Her Hair Company's trademark infringement, trade dress infringement, and dilution by blurring, Plaintiff has incurred damages to its overall image and reputation in an amount to be proven at trial.

COUNT I
MARK CANCELLATION
15 U.S.C. § 1064

45.

Plaintiff incorporates and re-alleges Paragraphs 1 through 44 of this its Complaint as if expressly set forth herein.

46.

Plaintiff has utilized the name “Her Imports” since their inception in 2012.

47.

The name “Her Imports” has become a symbol of the high-quality products, services, and brand offered by Plaintiff. For substantially of all its existence, since 2012, Her Imports utilized a distinctive logo for brand recognition.

48.

Plaintiff obtained registration of its Trademark on or about September 27, 2016.

49.

Her Hair Company obtained registration of its competing mark thereafter on or about February 21, 2017, and applied for registration with actual knowledge that customers had confused the two marks.

50.

Her Hair Company's mark is being used by its registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.

51.

Upon information and belief, Her Hair Company intentionally created and then registered its mark so as to misrepresent the source of its goods and services and create actual confusion between Her Imports and Her Hair Company products and services.

52.

Her Hair Company's use of its mark has created actual confusion among the relevant public between Her Imports and Her Hair Company.

53.

Her Hair Company's use of its mark has resulted in a high likelihood and actual dilution by blurring under 15 U.S.C. § 1125(c).

54.

As a direct and proximate result of Her Hair Company's use of its mark, Plaintiff has and will continue to be damaged.

55.

Plaintiff petitions the Court to cancel Her Hair Company's mark, same being Serial No. 86861584, based on the grounds set forth in the above-styled Complaint, and that Her Hair Company be ordered to discontinue its use of the current competing mark.

COUNT II
TRADE DRESS INFRINGEMENT
15 U.S.C. § 1125(a)
(as to the Store Interior)

56.

Plaintiff incorporates and re-alleges Paragraphs 1 through 55 of this its Complaint as if expressly set forth herein.

57.

Her Imports stores have an inherently distinctive and unique black and white Damask wallpaper with red trim that runs throughout the store. This wallpaper gives each store interior a unique and inherently distinctive look, and is designed to provide a unique experience for Her Imports' clientele.

58.

This distinctive interior decoration is a part of Her Imports' trade dress.

59.

Her Imports' trade dress is nonfunctional.

60.

Her Imports' store interior trade dress is inherently distinctive.

61.

Her Hair Company has imitated Her Imports' distinctive store interior trade dress.

62.

Her Hair Company's actions of imitating Her Imports' distinctive store interior trade dress has created a high likelihood of confusion between the two competitors among the general population.

63.

Further, Her Hair Company's actions of imitating Her Imports' distinctive store interior trade dress has created actual confusion between the two competitors among the general population.

64.

As a direct and proximate result of Her Hair Company's actions, Plaintiff has incurred damages in an amount to be proven at trial.

COUNT III
DILUTION BY BLURRING—15 U.S.C. § 1125(c)
(as to Plaintiff's Trademark)

65.

Plaintiff incorporates and re-alleges Paragraphs 1 through 64 of this its Complaint as if expressly set forth herein.

66.

There is a high degree of similarity between Plaintiff's Trademark and Her Hair Company's competing mark.

67.

This high degree of similarity impairs the distinctiveness of Her Imports' Trademark.

68.

Plaintiff's Trademark has been diluted by blurring, as is further evidenced as follows:

- i) There is a high degree of similar Plaintiff's Trademark and Her Hair Company's competing mark;
- ii) There is a high degree of inherent distinctiveness of Plaintiff's Trademark;
- iii) Plaintiff's Trademark is widely recognized in the industry as being associated with Her Imports;

- iv) Upon information and belief, Her Hair Company created its competing mark to create a false and misleading association with Her Imports; and
- v) There has been actual association between Her Imports and Her Hair Company, by virtue of Her Hair Company's competing mark.

69.

Plaintiff's Trademark is not functional and is famous.

70.

As a direct and proximate result of Her Hair Company's dilution by blurring, Plaintiff has incurred damages in an amount to be proven at trial.

COUNT IV
DILUTION BY BLURRING—15 U.S.C. § 1125(c)
(as to Plaintiff's Store Interior Trade Dress)

71.

Plaintiff incorporates and re-alleges Paragraphs 1 through 70 of this its Complaint as if expressly set forth herein.

72.

There is a high degree of similarity between Her Imports' store interior trade dress and Her Hair Company's mark and imposter store interior trade dress.

73.

This high degree of similarity impairs the distinctiveness of Her Imports' store interior trade dress.

74.

Her Imports' Trademark and store interior trade dress have been diluted by blurring, as is further evidenced as follows:

- i) There is a high degree of similar Her Imports' and Her Hair Company's store interior;
- ii) There is a high degree of inherent distinctiveness of Her Imports' store interior;
- iii) Prior to learning of Her Hair Company's imposter store interior trade dress, Her Imports exclusively used its distinctive store interior to market its brand;
- iv) Her Imports' store interior trade dress is widely recognized in the industry as being associated with Her Imports;
- v) Upon information and belief, Her Hair Company began imitating Her Imports' store interior trade dress to create a false and misleading association with Her Imports; and
- vi) There has been actual association between Her Imports and Her Hair Company, by virtue of Her Hair Company's imitation of Her Hair Company's store interior trade dress.

75.

Her Imports' store interior trade dress, taken as a whole, is not functional and is famous.

76.

As a direct and proximate result of Her Hair Company's dilution by blurring, Plaintiff has incurred damages in an amount to be proven at trial.

COUNT IV
RECOVERY OF PROFITS, DAMAGES, COSTS, AND ATTORNEYS'
FEEES PURSUANT TO 15 U.S.C. § 1117(a)

77.

Plaintiff incorporates and re-alleges Paragraphs 1 through 76 of this its Complaint as if expressly set forth herein.

78.

15 U.S.C. § 1117(a) provides in relevant part

When a . . . willful violation under [15 U.S.C. § 1125(c)], shall have been established in any civil action arising under this Act, the plaintiff shall be entitled . . . to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. . . . In assessing profits the plaintiff shall be required to prove defendant's sales only. . . . The court in exceptional cases may award reasonable attorney fees to the prevailing party.

79.

Her Hair Company has acted willfully, wantonly, and has exercised a lack of care that exhibits reckless indifference for the consequences of its actions.

80.

Her Hair Company has willfully violated 15 U.S.C. § 1125(c) by its intentional dilution by blurring of Plaintiff's Trademark.

81.

Her Hair Company has further willfully violated 15 U.S.C. § 1125(c) by its intentional dilution by blurring of Her Imports' store interior trade dress.

82.

Plaintiff is entitled to Her Hair Company's profits it received from using a confusingly similar competing mark and imposter store interior trade dress, as well as treble damages, costs, and an award of attorneys' fees.

COUNT VI
DESTRUCTION OF INFRINGING ARTICLES
15 U.S.C. § 1118

83.

Plaintiff incorporates and re-alleges Paragraphs 1 through 82 of this its Complaint as if expressly set forth herein.

84.

15 U.S.C. § 1118 provides in relevant part

In any action arising under this Act, . . . in the case of a violation of [15 U.S.C. § 1125(a)] the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation shall be delivered up and destroyed.

85.

Her Hair Company has damaged Plaintiff by its trade dress infringement of the Her Imports store interior trade dress in violation of 15 U.S.C. § 1125(a).

86.

Plaintiff submits it is entitled to an Order compelling Her Hair Company to change its logo and to alter the interior appearance of its store. Further, Defendant should deliver up and destroy any and all items in its possession or control that contributed to, caused, or furthered its trade dress infringement of Plaintiff's store interior trade dress, specifically any labels, signs, or other packaging that bears the confusingly similar mark.

COUNT VII
INJUNCTIVE RELIEF
15 U.S.C. § 1125(c)(1)

87.

Plaintiff incorporates and re-alleges Paragraphs 1 through 85 of this its Complaint as if expressly set forth herein.

88.

15 U.S.C. § 1125(c)(1) provides

Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence

or absence of actual or likely confusion, of competition, or of actual economic injury.

89.

Plaintiff is the owner of a famous mark, *to wit* the Her Imports Trademark and store interior trade dress.

90.

Plaintiff's Trademark and store interior trade dress have acquired distinctiveness in that it is inherently unique.

91.

Her Hair Company created, uses, and registered its confusingly similar competing mark, after receiving notice from Her Imports that Her Hair was using a confusingly similar mark and that its mark was causing actual customer confusion.

92.

Further, Her Hair Company began using an imitation store interior of Her Imports' store interior trade dress, after Her Imports' store interior trade dress became famous and achieved notoriety.

93.

Her Hair Company's registration of its confusingly similar competing mark and use of an imitation store interior trade dress is likely to, and actually has, caused dilution by blurring of Plaintiff's Trademark and store interior trade dress.

94.

Principles of equity and fairness demand that Her Hair Company cease and desist using a confusingly similar competing mark and an imitation store interior trade dress to that of Her Imports.

95.

Plaintiff is entitled to a preliminary, interlocutory, and permanent injunction, causing Her Hair Company to cease and desist using an imitation store interior trade dress to that of Her Imports and its current competing mark.

WHEREFORE, Plaintiff prays the Court grant the following relief:

- a) That Her Hair Company be served with service of process as required by law;
- b) That Her Hair Company's competing mark be cancelled pursuant to 15 U.S.C. § 1064 as averred in Count I of the above-styled Complaint;
- c) That Her Hair Company be found liable to Plaintiff for Trade Dress Infringement as averred in Count II of the above-styled Complaint;
- d) That Her Hair Company be found liable to Plaintiff for Dilution by Blurring Plaintiff's Trademark as averred in Count III of the above-styled Complaint;

- e) That Her Hair Company be found liable to Plaintiff for Dilution by Blurring Plaintiff's store interior trade dress as averred in Count IV of the above-styled Complaint;
- f) That Her Hair Company be found liable to Plaintiff for Profits, Damages, Costs, and Attorneys' Fees pursuant to 15 U.S.C. § 1117(a) as averred in Count V of the above-styled Complaint;
- g) That the Court Order the Destruction of Infringing Articles pursuant to 15 U.S.C. § 1118 as averred in Count VI of the above-styled Complaint;
- h) That the Court grant the Plaintiff a preliminary, interlocutory, and permanent injunction pursuant to 15 U.S.C. § 1125(c)(1) as averred in Count VII of the above-styled Complaint; and
- i) For such other relief the Court deems just and proper.

This 10th day of April, 2017.

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