

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION



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CRAVINVAPES, LLC,)
)
Plaintiff,)
)
vs.)
)
MICHAEL MCCLELLAN, and)
INDIANA VAPES, LLC,)
)
Defendant.)
_____)

CASE NO.

**COMPLAINT FOR TRADEMARK INFRINGEMENT,
UNFAIR COMPETITION, AND UNJUST ENRICHMENT**

CravinVapes, LLC (“CravinVapes”), by counsel, for its Complaint against Michael McClellan (“McClellan”) and Indiana Vapes, LLC (“Indiana Vapes”)(McClellan and Indiana Vapes are collectively referred to as, the “Defendants”), states as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over Defendants because they have purposefully availed themselves of the privilege of conducting business in the Northern District of Indiana, and because McClellan resides in the Northern District of Indiana.

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331, 1338 and 1367. CravinVapes’ claims are, in part, based on violations of the Lanham Act, as amended, 15 U.S.C. §§1051 et seq. The Court has jurisdiction over the state law claim pursuant to 28 U.S.C. §§ 1338(b), and 1367.

3. Venue is proper in this court pursuant to 28 U.S.C. §1391(b)-(c), since McClellan resides in this district, Defendants' store is located in this district, Defendants' products are sold in this district, and a high number of third parties affected by the allegations in this Complaint are located in this district (i.e., consumers).

THE PARTIES

4. CravinVapes is an Indiana limited liability company with its principal place of business in Allen County, Indiana. The members of CravinVapes are all Indiana residents and citizens, and CravinVapes is an Indiana citizen.

5. McClellan is an individual that resides in DeKalb County, Indiana.

6. Upon belief, McClellan is the sole member of Indiana Vapes which has its principal place of business in DeKalb County, Indiana. Indiana Vapes is an Indiana citizen.

FACTUAL BACKGROUND

7. CravinVapes researches, develops, produces, markets, sells, and distributes E-liquids and E-liquid products in brick-and-mortar stores and online.

8. In connection with its business, CravinVapes is the owner of the following federally registered trademark: Registration No. 4714661 (the "Trademark"). A true copy of the Trademark registration is attached as, Exhibit "A". The Trademark covers International Classes 009 for Electronic cigarette batteries, International Class 030 for Chemical flavorings in liquid form used to refill electronic cigarette cartridges, and International Class 34 for cartomizers, namely, combination electronic refill cartridges sold empty and atomizers, sold as a component of electronic cigarettes; Electronic cigarettes; Electronic cigarette refill cartridges sold empty; Electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes.

9. CravinVapes enters into license agreements with individuals/entities allowing them to utilize the Trademark in the operation of E-liquid businesses. The license agreements are non-transferrable, and the rights afforded may not be assigned or sublicensed by the licensee.

10. CravinVapes previously was a party to a license agreement with an individual named Lee Eddy (“Eddy”), who operated a store in Auburn, Indiana, at 630 N. Grandstaff Dr.

11. Pursuant to the license agreement, Eddy paid for the right to use the Trademark and, in fact, did so in the course of his business. including the use of exterior CravinVapes’ signage.

12. On May 5, 2018, Eddy sold his store to McClellan. As noted, Eddy’s license agreement with CravinVapes was nontransferable to McClellan as part of the sale.

13. Following the sale, Defendants operated an E-liquid store at the former Eddy location.

14. Following the purchase of Eddy’s business, Defendants continued the use of the Trademark including, but not limited to, using the Trademark on a Facebook page and maintaining the CravinVapes sign on the exterior of Defendants’ store. Photographs of Defendants’ storefront and Facebook page (taken in December 2019) are attached as Exhibit “B”.

15. Defendants have no license agreement with CravinVapes and no affiliation with CravinVapes whatsoever. Despite this, since acquiring Eddy’s business, Defendants held their business out as being a CravinVapes location, and continue to do so on Facebook.

16. On August 17, 2018, McClellan was notified he had not signed a license agreement, was provided a copy, and was instructed to sign the license agreement. A true copy of the August 17 email is attached as Exhibit “C”.

17. McClellan refused to sign the license agreement, and Defendants have never signed the license agreement. Despite their refusal, Defendants continued to hold their business out as

CravinVapes and continued to utilize the Trademark in the operation of the business, with no right to do so.

18. On November 13, 2019, Defendants were provided with a cease and desist letter, a copy of which is attached as Exhibit “D”.

19. Following receipt of the cease and desist letter, Defendants continued to utilize the Trademark by way of the external sign and Facebook.

20. After further discussion and delay, in December 2019, Defendants eventually removed the exterior sign from the storefront, but did not remove the use of the Trademark on Facebook.

21. The cease and desist letter also demanded an accounting so that CravinVapes could determine the amount of its damages caused by Defendants’ actions. Defendants refused to provide any manner of accounting, and have not compensated CravinVapes for the blatant, knowing, and unauthorized use of the Trademark.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

22. Paragraphs 1 through 21 are incorporated herein.

23. CravinVapes is the owner of the Trademark.

24. The Trademark is entitled to protection under the Lanham Act. 15 U.S.C. §1501, et seq.

25. Defendants have used and continue to use the Trademark in connection with the sale or offering for sale of E-liquids and E-Liquid products.

26. Defendants’ use of the Trademark is unauthorized and causes confusion as to the nature of their affiliation with CravinVapes.

27. Defendants had actual knowledge that the Trademark was registered.

28. The exact amount of profits made by Defendants as a result of their infringement is unknown and cannot be ascertained without an accounting.

29. Unless an injunction is granted, Defendants will continue to use the Trademark without authority, infringe upon the Trademark, and cause irreparable injury to CravinVapes, and deprive CravinVapes of the benefit of the goodwill attached to the Trademark.

30. Defendants' acts of infringement and unauthorized use of the Trademark are (and were) willful and deliberate, and CravinVapes is entitled to recover three times its actual damages, together with the costs of this action, including attorney's fees, as this is an exceptional case under 15 U.S.C. §1117.

COUNT II
FALSE DESIGNATION OF ORIGIN

31. Paragraphs 1 through 30 are incorporated herein.

32. Consumers have come to identify the popular and distinctive Trademark with CravinVapes exclusively as the single source of e-liquids (and associated products) bearing the Trademark.

33. Defendants' use of the Trademark is a false designation of origin, or a false representation, that wrongfully and falsely designates Defendants' goods as originating from, or being connected with, CravinVapes, and constitutes the use of false descriptions or representations in interstate commerce. Defendants' use is likely to deceive consumers into believing their goods are those of, or associated with, CravinVapes, and as a consequence, Defendants' use is likely to divert, and has diverted, consumers away from CravinVapes' goods.

34. Defendants' actions constitute a false designation of origin and unfair competition in violation of 15 U.S.C. §1125.

35. Defendants' actions are and were willful, knowing they had no right to use the Trademark.

36. Defendants' actions have caused, and continue to cause, irreparable injury to the value of CravinVapes' business, goodwill, and reputation. Defendants' actions, if not enjoined, will continue and CravinVapes has no adequate remedy at law.

37. As a result of Defendants' infringement, CravinVapes has incurred damages in an amount to be proven at trial consisting of, among other things, diversion of sales, and diminution in the value of, and goodwill associated with, the Trademark.

38. Defendants' actions are deliberate, willful, fraudulent, and without extenuating circumstances, and constitute a knowing violation of CravinVapes' rights. CravinVapes is entitled to recover its actual damages, and attorney's fees and costs incurred in this action, as this is an exceptional case under 15 U.S.C. §1117.

COUNT III
COMMON LAW UNFAIR COMPETITION

39. Paragraphs 1 through 38 are incorporated herein.

40. Defendants' unauthorized use of the Trademark constitutes passing off and unfair competition of the Trademark in violation of the common law of Indiana.

41. Defendants' wrongful acts have caused and will continue to cause CravinVapes irreparable harm. CravinVapes has no adequate remedy at law.

42. CravinVapes is entitled to a judgment enjoining and restraining Defendants from engaging in further acts of infringement and unfair competition, in addition to recovery of damages and/or equitable compensation.

PRAYER FOR RELIEF

WHEREFORE, CravinVapes, by counsel, respectfully requests that the Court:

(1) Enter an Order providing for a temporary, preliminary, and permanent injunction: (a) enjoining and restraining Defendants from using the Trademark in any manner; and (b) enjoining and restraining Defendants from doing any act or thing calculated or likely to cause confusion or mistake in the minds of members of the public, or prospective customers of CravinVapes' products, as to the source of the products offered for sale, distributed or sold, or likely to deceive members of the public, or prospective customers, into believing there is some connection between Defendants and CravinVapes.

(2) Order an accounting of all of Defendants' profits obtained by use of the Trademark;

(3) Enter judgment for CravinVapes and against Defendants for the amount of CravinVapes' damages including, but not limited to, Defendants' profits, CravinVapes' attorney's fees, treble damages, and the costs of this action as provided for in 15 U.S.C. §1117, in addition to punitive damages under state law as appropriate; and

(4) Grant all other just and proper relief.

Respectfully submitted,

SNYDER MORGAN FEDEROFF
& KUCHMAY LLP

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