



STATE OF INDIANA)	IN THE TIPPECANOE SUPERIOR COURT
) SS:	
TIPPECANOE COUNTY)	CAUSE NO.: 79D01-2008-PL-_____
)	
THE TRUSTEES OF PURDUE)	
UNIVERSITY)	
)	
Plaintiff,)	
)	
v.)	
)	
)	
VINTAGE BRAND, LLC and)	
SPORTSWEAR INC.)	
)	
Defendants.)	

COMPLAINT

Comes now The Trustees of Purdue University, by counsel, and files this Complaint against the Defendants Vintage Brand, LLC (“Vintage”) and Sportswear Inc. (“Sportswear”) (together, the “Defendants”), and allege the following:

Introduction

1. Plaintiff, The Trustees of Purdue University, brings this lawsuit on behalf of Purdue University (as further defined herein, the “University”) to protect the substantial goodwill that the University has developed in its trademarks and trade dress. The University’s registered and unregistered trademarks and trade dress have gained a reputation as being a source of high-quality goods and services.

2. The goodwill and reputation for quality that the University has cultivated are threatened by Defendants’ actions. Defendants have used and continue to use certain trademarks and trade dress of the University to sell competing goods to many of the same consumers served by the University.

3. Unless Defendants are enjoined from using the University's trademarks and trade dress, Defendants' unauthorized use will continue to cause consumer confusion and will cause irreparable harm to the University.

4. In this action, the University seeks declaratory relief, injunctive relief, damages and other appropriate relief arising from Defendants' willful acts of trademark infringement and unfair competition.

Jurisdiction and Venue

5. This is a civil action for trademark infringement and false designation of origin, arising under the trademark laws of the United States, 15 U.S.C.A. § 1051-1127 (West), and for corresponding common law claims and remedies arising under Indiana law.

6. Vintage has transacted business by offering to sell, selling and delivering goods featuring one or more of the University's trademarks and service marks within Tippecanoe County, Indiana.

7. As a result of Vintage's actions, the Court has personal jurisdiction over Vintage.

8. Sportswear has transacted business by offering to sell, selling and delivering goods featuring one or more of the University's trademarks and service marks within Tippecanoe County, Indiana.

9. As a result of Sportswear's actions, the Court has personal jurisdiction over Sportswear.

10. Tippecanoe County has preferred venue under Trial Rule 75(A) as each of the Defendants has sold its products in Tippecanoe County, Indiana and a substantial part of the events giving rise to the University's claims occurred and are continuing to occur in Tippecanoe County, Indiana.

Parties

11. The Trustees of Purdue University is a body corporate created by and existing under statutes of the State of Indiana including Chapter 6, Section 4, 1869 Acts (Special Session of the Indiana General Assembly), and thereafter codified under Ind. Code § 21-23-2-2.

12. The University is an educational institution of higher learning known as “Purdue University” and was created by and is existing under various statutes of the State of Indiana, including Chapter 45 of the 1865 Acts of the Indiana General Assembly and Chapter 6 of the 1869 Acts (Special Session of the Indiana General Assembly), codified as Ind. Code § 21-23-2-1 *et seq.* and Ind. Code § 21-27-7-1 *et seq.*

13. The Board of Trustees of The Trustees of Purdue University is charged by law with responsibility for operating the University and is authorized and empowered to perform all acts necessary and expedient to put and to keep the University in operation.

14. For purposes of this Complaint, The Trustees of Purdue University, the Board of Trustees of The Trustees of Purdue University and Purdue University are sometimes collectively referred to herein as the “University”.

General Allegations Related to the University

15. The University was founded in 1869; its flagship campus is located in Tippecanoe County, Indiana.

16. The University has more than 40,000 students, employs over 3,000 faculty members, and is nationally regarded and recognized as a leader in education and college athletics.

17. The University currently has 18 Division I/I-A NCAA teams that regularly compete on a national forum.

18. Since its formation, the University has been commonly known as “Purdue” or “Purdue University”.

19. The University’s athletic teams have been widely known throughout the United States as the “Boilermakers” since the nineteenth century.

20. Since the nineteenth century, the University’s official school colors have been old gold and black.

21. The University has incorporated numerous variations of the terms “Purdue”, “Purdue University”, “Boiler”, “Boilers”, “Boilermaker” and “Boilermakers” and other unique designs and logos into certain trademarks and service marks to identify the University as well as goods and services provided by the University.

22. Specifically, the University owns and enjoys common law rights in Indiana and throughout the United States, including, but not limited to the following marks (collectively referred to herein as the “Purdue Marks”):

- a. “Purdue”,
- b. “Purdue University”,
- c. “Boilers”,
- d. “Boilermakers”,
- e. “Purdue Boilermakers”,
- f. Designs and logos featuring images of the University’s unofficial mascot “Purdue Pete” (as shown in Figure 1 below),

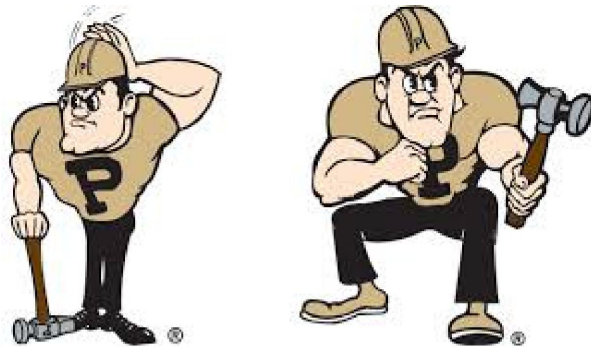


Figure 1: Design mark registrations of "Purdue Pete" the University's unofficial mascot

- g. Designs and logos featuring images of its official mascot the "Boilermaker Special", and
- h. Designs and logos consisting of a seal logo featuring a stylized griffin (as shown in Figure 2 below).




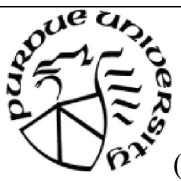



Figure 2: Design mark for the Purdue seal

23. The University's Purdue Marks are in use in commerce throughout the United States to identify the University as well as goods and services provided by the University.

24. The University has numerous federal trademark registrations for the Purdue Marks including, but not limited to, the trademark registrations listed in Figure 3 and attached hereto as "Exhibit A" at 1 through 10.

Figure 3 List of the University's Federal Trademark Registrations

Federal Trademark	Reg. Nos.	Registration Date
"Purdue University" (Class 41)	2367443	July 18, 2000
"Purdue University" (Class 25)	4497302	March 18, 2014
"Boilers" (Class 41)	2317737	February 15, 2000
"Boilermakers" (Class 41)	2317738	February 15, 2000
"Boilermakers" (Class 25, Class 28)	4497301	March 18, 2014
 (Class 25)	2023049	December 17, 1996
 (Class 25)	2023047	December 17, 1996
 (Class 25)	2023048	December 17, 1996
 (Class 25)	2023051	December 17, 1996
 (Class 41)	2023050	December 17, 1996

25. The validity of registration nos. 2367443 (Purdue University®), 2317737 (Boilers®), 2317738 (Boilermakers®), 2023047 (composite Purdue Boilermakers® design mark), 2023048 and 2023049 (the Purdue Pete marks), and 2023051 and 2023050 (the Purdue Seal) are incontestable under 15 U.S.C.A. §§ 1065 and 1115(b).

General Allegations Relating to Vintage

26. Defendant Vintage is a limited liability company organized in the State of Washington and does business as “Vintage Brand”.

27. Defendant Vintage operates a website on the World Wide Web at <https://vintagebrand.com/>. See attached “**Exhibit B**”. On its site, Vintage offers “Vintage Sports Merchandise for all Fans”. Ex. B at 4-5 of 19. In addition to professional sports, Vintage offers “vintage college apparel and gear” which consists of “t-shirts, hats, mugs, magnets, and more!” Ex. B at 5 of 19.

28. Defendant Vintage sells Purdue-branded products under a “college team” webpage entitled “Purdue Boilermakers Apparel & Gear Store”. Ex. B at 6 of 19.

29. Defendant Vintage sells multiple apparel items, magnets, decorations and drinkware which feature the terms “Purdue University”, “Boilermakers”, “Purdue Boilermakers”, “Boilers”, or the University’s “P” logo. Ex. B at 6 through 19.

30. Vintage also sells multiple apparel items, magnets, decorations and drinkware which feature Purdue Pete and the Purdue Seal. Ex. B at 6 through 19.

31. These items include, but are not limited to, the items depicted below:



See Ex. B at 6 through 19.

32. Vintage uses the terms “Purdue University”, “Purdue Boilermakers”, “Boilermakers”, and “Boilers”, as well as images of Purdue Pete and the Purdue Seal with specific intent to associate Vintage’s business with the University.

33. Defendant Vintage’s unauthorized use of these terms and images is highly misleading and consumers are likely to be deceived.

34. The University has made demands on Vintage to cease and desist from any and all use of the Purdue Marks and Vintage has refused to do so.

35. On or about July 1, 2020, Vintage shipped certain Purdue-branded goods to a consumer in Tippecanoe County, Indiana as more specifically indicated in “**Exhibit C**” attached hereto.

36. Injunctive relief is necessary to protect the University from irreparable harm. The University’s goodwill in the Purdue Marks is extremely valuable, and the University will suffer harm should Vintage continue its present conduct to the detriment of the University’s trade reputation and goodwill as a licensor of the Purdue Marks.

General Allegations Relating to Defendant Sportswear

37. Defendant Sportswear is a corporation organized in the State of Washington and does business as “Prep Sportswear”.

38. Defendant Sportswear operates a website on the World Wide Web at <https://www.prepsportswear.com/>. On its site, Sportswear offers “college fan gear and apparel”. See attached “**Exhibit D**”.

39. Sportswear’s website allows users to search a directory of “mascots”. Ex. D at 3 of 6. Under the “mascots” tab, there is a selection for “Boilermakers.” Ex. D at 3 of 6.

40. Within Sportswear’s website, Sportswear maintains a webpage entitled “Boilermakers Apparel Store.” Ex. D at 5-6 of 6. This webpage may be accessed by selecting the “Boilermakers” tab on Sportswear’s “mascot” directory. Ex. D at 3-5 of 6.

41. On the “Boilermakers Apparel Store” webpage, Sportswear displays a number of apparel items which prominently display the term “Boilermakers”. Ex. D at 5-6 of 6. Sportswear displays its “Boilermakers” apparel items in black and gold. This webpage also states “[w]hether you’re a Boilermakers student, parent, player, fan, or alumni, you’ll choose from over 500 products in the Boilermakers Store to customize including the newest Boilermakers Boilermakers [sic] T-shirts, Sweatshirts, Hoodies, Hats, Polos, Shorts, Bags, and more.” Ex. D at 5 of 6.

42. Sportswear uses the term “Boilermakers” with black and gold colors with specific intent to associate Sportswear’s business with the University.

43. Sportswear’s items include, but are not limited to, the items depicted below:





See Ex. D at 5-6 of 6.

44. Sportswear’s unauthorized use of the term “Boilermakers” is highly misleading and consumers are likely to be deceived.

45. The University has made demands on Sportswear to cease and desist from any and all use of the term “Boilermakers”. Sportswear has refused to do so.

46. On or about July 1, 2020, Sportswear shipped certain Purdue-branded goods to a consumer in Tippecanoe County, Indiana as more specifically indicated in “**Exhibit E**” attached hereto.

47. Injunctive relief is necessary to protect the University from irreparable harm. The University’s goodwill in the Purdue Marks is extremely valuable, and the University will suffer harm should Sportswear continue its present conduct to the detriment of the University’s trade reputation and goodwill as a licensor of the Purdue Marks.

Allegations Common to Vintage and Sportswear

48. On information and belief, Vintage and Sportswear have common ownership and are operated by the same principal, Erik Hartvigson.

49. The University’s claims against Vintage and Sportswear involve questions of law

and fact which are common to Vintage and Sportswear.

Count I: Declaratory Relief (Vintage)

50. The University hereby incorporates the above paragraphs by reference.

51. This is an action for a declaratory judgment, pursuant to IC 34-14-1-1 *et seq.* and Indiana Trial Rule 57.

52. Through its conduct, Vintage contends that it has the right to use one or more of the Purdue Marks and confusingly similar variations of the Purdue Marks in connection with the sale of goods and that its current usage offends no rights of the University. The University vigorously disputes those contentions. There thus exists an actual controversy between the University and Vintage, within the jurisdiction of this Court, involving the rights, duties and obligations of the parties, which controversy may be determined by a judgment of this Court, without other suits.

53. The University requests that the Court issue declaratory relief in favor of the University and against Vintage as follows:

- a. The University owns and enjoys common law rights in Indiana and throughout the United States in and to the Purdue Marks, which rights are superior to any rights which Vintage may claim in and to the use of the Purdue Marks.
- b. The University's federal trademark registrations for the Purdue Marks are superior to any rights which Vintage may claim in and to the use of the Purdue Marks and any confusingly similar variations of the Purdue Marks.

Count II Declaratory Relief (Sportswear)

54. The University hereby incorporates the above paragraphs by reference.

55. This is an action for a declaratory judgment, pursuant to IC 34-14-1-1 *et seq.* and Indiana Trial Rule 57.

56. Through its conduct, Sportswear contends that it has the right to use one or more of the Purdue Marks and confusingly similar variations of the Purdue Marks in connection with the sale of goods and that its current usage offends no rights of the University. The University vigorously disputes those contentions. There thus exists an actual controversy between the University and Sportswear, within the jurisdiction of this Court, involving the rights, duties and obligations of the parties, which controversy may be determined by a judgment of this Court, without other suits.

57. The University requests that the Court issue declaratory relief in favor of the University and against Sportswear as follows:

- a. The University owns and enjoys common law rights in Indiana and throughout the United States in and to the Purdue Marks which rights are superior to any rights which Sportswear may claim in and to the use of the Purdue Marks.
- b. The University's federal trademark registrations for the Purdue Marks are superior to any rights which Sportswear may claim in and to the use of the Purdue Marks and any confusingly similar variations thereof.

Count III: Lanham Act – Trademark Infringement (15 U.S.C. § 1114) (Vintage)

58. The University hereby incorporates the above paragraphs by reference.

59. Vintage has infringed the registrations of the Purdue Marks by various acts, including, but not limited to, manufacturing and selling goods which feature the terms “Purdue University”, “Purdue Boilermakers”, “Boilermakers”, “Boilers”, and images of Purdue Pete and the Purdue Seal.

60. Vintage's infringement has been willful and deliberate, designed specifically to trade upon the valuable goodwill associated with the Purdue Marks.

61. The University's goodwill in the Purdue Marks is extremely valuable, and the University will suffer irreparable harm should infringement be allowed to continue to the detriment of the University's trade reputation and goodwill.

62. Vintage's infringing activities will continue unless enjoined by this Court.

63. If not enjoined, Vintage's use of the federally registered Purdue Marks is likely to cause confusion as to the source of Vintage's goods, and detriment to the University's trade reputation and goodwill, and the public will likely associate the goods with, and as originating with, the University, all to the detriment of the University.

64. The University has given notice that its registered marks are registered in the U.S. Patent and Trademark Office by displaying them with the mark the letter "R" enclosed within a circle (®).

65. The University sent Vintage a cease and desist notice for its acts of trademark infringement and therefore has actual notice of the University's trademark registrations.

Count IV: Lanham Act – Trademark Infringement (15 U.S.C. § 1114) (Sportswear)

66. The University hereby incorporates the above paragraphs by reference.

67. Sportswear has infringed the registrations of the Purdue Marks by various acts, including, but not limited to, Sportswear's sale of products which display the term "Boilermakers".

68. Sportswear's infringement has been willful and deliberate, designed specifically to trade upon the valuable goodwill associated with one or more of the Purdue Marks.

69. The University's goodwill in the Purdue Marks is extremely valuable, and the University will suffer irreparable harm should infringement be allowed to continue to the detriment of the University's trade reputation and goodwill.

70. Sportswear's infringing activities will continue unless enjoined by this Court.

71. If not enjoined, Sportswear's use of one or more of the federally registered Purdue Marks is likely to cause confusion as to the source of Sportswear's goods and services, and detriment to the University's trade reputation and goodwill, and the public will likely associate the goods with, and as originating with, the University, all to the detriment of the University.

72. The University has given notice that its registered marks are registered in the U.S. Patent and Trademark Office by displaying them with the mark the letter "R" enclosed within a circle (®).

73. The University sent Sportswear a cease and desist notice for its acts of trademark infringement and therefore has actual notice of the University's trademark registrations.

Count V: Common Law Passing Off/Unfair Competition (Vintage)

74. The University hereby incorporates the above paragraphs by reference.

75. Through its use of the Purdue Marks, Vintage has intentionally misrepresented that its products are sponsored by, affiliated with, approved by, and/or otherwise connected with the University.

76. The conduct of Vintage has the natural and probable tendency to deceive so as to pass off Vintage's goods as and for those of the University.

77. Public deception is the natural and probable consequence of Vintage's actions.

78. As a direct and proximate result of Vintage's actions, the University has suffered and will continue to suffer irreparable loss of income, profits, and goodwill; and Vintage has and will continue to unfairly acquire income, profits, and goodwill.

79. Vintage's actions will continue unless enjoined by this Court. Vintage's acts of unfair competition will cause further irreparable injury to the University if Vintage is not restrained by this Court from further violation of the University's rights. The University has no adequate remedy at law.

Count VI Common Law Passing Off/Unfair Competition (Sportswear)

80. The University hereby incorporates the above paragraphs by reference.

81. Through its use of the Purdue Marks, Sportswear has intentionally misrepresented that its products are sponsored by, affiliated with, approved by, and/or otherwise connected with the University.

82. The conduct of Sportswear has the natural and probable tendency to deceive so as to pass off Sportswear's goods as and for those of the University.

83. Public deception is the natural and probable consequence of Sportswear's actions.

84. As a direct and proximate result of Sportswear's actions, the University has suffered and will continue to suffer irreparable loss of income, profits, and goodwill; and Sportswear has and will continue to unfairly acquire income, profits, and goodwill.

85. Sportswear's actions will continue unless enjoined by this Court. Sportswear's acts of unfair competition will cause further irreparable injury to the University if Sportswear is not restrained by this Court from further violation of the University's rights. The University has no adequate remedy at law.

Count VII – Common Law Trademark Infringement (Vintage)

86. Vintage has infringed the University's common law trademark rights in one or more of the Purdue Marks as evidenced by Vintage's unauthorized uses of the Purdue Marks and confusingly similar variations thereof.

87. Vintage's use of the Purdue Marks is without permission or authority and is likely to cause confusion, to cause mistake, and to deceive as to the affiliation, connection, or association of Vintage's goods and services with the University.

88. Vintage's above-alleged acts have been committed with the intent to cause confusion and to deceive consumers.

89. Vintage is trading on the valuable goodwill associated with the Purdue Marks.

90. The University's goodwill in the Purdue Marks is extremely valuable and the University will suffer irreparable harm should infringement be allowed to continue to the detriment of its trade reputation and goodwill.

91. Vintage's infringing activities will continue unless enjoined by this Court.

92. If not enjoined, Vintage's use of the Purdue Marks is likely to cause confusion as to the source of Vintage's goods and harm the University's trade reputation and goodwill.

93. If not enjoined, the public will likely associate Vintage's goods with, and as originating with, the University, all to the detriment of the University.

Count VIII: Common Law Trademark Infringement (Sportswear)

94. The University hereby incorporates the above paragraphs by reference.

95. Sportswear has infringed the University's common law trademark rights in the Purdue Marks as evidenced by Sportswear's use of one or more of the Purdue Marks and confusingly similar variations thereof.

96. Sportswear's use of one or more of the Purdue Marks is without permission or authority and is likely to cause confusion, to cause mistake, and to deceive as to the affiliation, connection, or association of Sportswear's goods and services with the University.

97. Sportswear has committed the above-alleged acts with the intent to cause confusion and to deceive consumers.

98. Sportswear is trading on the valuable goodwill associated with the Purdue Marks.

99. The University's goodwill in the Purdue Marks is extremely valuable and the University will suffer irreparable harm should infringement be allowed to continue to the detriment of its trade reputation and goodwill.

100. Sportswear's infringing activities will continue unless enjoined by this Court.

101. If not enjoined, Sportswear's use of the Purdue Marks is likely to cause confusion as to the source of Sportswear's goods and services and harm the University's trade reputation and goodwill.

102. If not enjoined, the public will likely associate Sportswear's goods and services with, and as originating with, the University, all to the detriment of the University.

Relief Requested

WHEREFORE, Plaintiff, The Trustees of Purdue University, prays for entry of a judgment in favor of Plaintiff and against each of Defendants:

A. Declaring that:

- i. The University owns and enjoys common law rights in and throughout the United States in and to the Purdue Marks, and
- ii. The University's rights in the Purdue Marks are superior to any rights which Defendants may claim in and to the use of the Purdue Marks including, without

limitation, terms “Purdue University”, “Purdue Boilermakers”, “Boilermakers”, “Boilers”, and images of Purdue Pete and the Purdue Seal;

- B. Entering a judgment that the University’s trademark registrations has been and continues to be infringed by Defendants in violation of 15 U.S.C.A. § 1114(1);
- C. Entering a judgment that Defendants’ use of the terms “Purdue University”, “Purdue Boilermakers”, “Boilermakers”, “Boilers”, and images of Purdue Pete and the Purdue Seal constitutes federal unfair competition in violation of 15 U.S.C.A. § 1125(a);
- D. Entering a judgment that Defendants’ use of the terms “Purdue University”, “Purdue Boilermakers”, “Boilermakers”, “Boilers”, and images of Purdue Pete and the Purdue Seal constitutes common law trademark infringement and common law unfair competition under Indiana law;
- E. Permanently enjoining and restraining the Defendants and each of their agents, representatives, employees, officers, attorneys, successors, assigns, affiliates, and any persons in privity or active concert or participation with any of them from using the terms “Purdue University”, “Purdue Boilermakers”, “Boilermakers”, “Boilers”, and images of Purdue Pete and the Purdue Seal alone or in combination with other words or symbols, as a trademark or trade name component or otherwise, to market, advertise, distribute or identify Defendants’ products or services where that designation would create a likelihood of confusion, mistake, or deception with the University’s trademarks;
- F. Mandating that Defendants delete all software and electronic forms and packaging, labels, sales material, press releases, promotional material, advertising material, and stationery which employ the terms “Purdue University”, “Purdue Boilermakers”,

- “Boilermakers”, “Boilers”, and images of Purdue Pete and the Purdue Seal in any substantial part;
- G. Mandating that Defendants deliver up to the University to be held for destruction at the conclusion of this action any and all hard copies of packaging, labels, sales material, press releases, promotional material, advertising material, stationery, plates, and other materials that employ the terms “Purdue University”, “Purdue Boilermakers”, “Boilermakers”, “Boilers”, and images of Purdue Pete and the Purdue Seal in any substantial part;
- H. Pursuant to 15 U.S.C.A. § 1116(a) (West), directing Defendants to file with the Court and serve on the University within thirty (30) days after issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;
- I. Pursuant to 15 U.S.C.A. § 1118 (West), requiring that Defendants and all others acting under Defendants’ authority, at its cost, be required to deliver up and destroy all devices, literature, advertising, labels, and other material in its possession bearing the infringing designation;
- J. Awarding the University all damages it sustained as the result of Defendants’ acts of infringement and unfair competition, said amount to be trebled, together with prejudgment interest, pursuant to 15 U.S.C.A. § 1117 (West);
- K. Awarding the University all profits received by Defendants from sales and revenues of any kind made as a result of its willful and intentional infringing actions, said amount to be trebled as the Defendants’ have engaged in counterfeiting the University’s trademarks, after an accounting, pursuant to 15 U.S.C.A. § 1117;

- L. If elected by the University, award statutory damages pursuant to 15 U.S.C.A. § 1117;
- M. Awarding the University its reasonable attorneys' fees and costs pursuant to 15 U.S.C.A. § 1117; and
- N. Granting the University such other and further relief as the Court may deem just.

JURY DEMAND

Plaintiff requests trial by jury on all issues so triable.

Respectfully Submitted,

/s/William P. Kealey
William P. Kealey (Atty. No. 18973-79)
David M. Stupich (Atty. No. 32166-79)
Stuart & Branigin LLP
300 Main Street, Suite 900
P.O. Box 1010
Lafayette, Indiana 47902
Telephone: (765) 423-1561
Facsimile: (765) 742-8175
E-mail: wpk@stuartlaw.com
dms@stuartlaw.com
Attorneys for Plaintiff