



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

ALBERT’S DIAMOND JEWELERS, INC.,

Plaintiff,

v.

AALAND DIAMOND JEWELERS LLC,

Defendant.

Civil Action No: 2:23-cv-39

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Albert’s Diamond Jewelers, Inc. (“Albert’s” or “Plaintiff”), for its Complaint against Defendant AaLand Diamond Jewelers LLC (“AaLand” or “Defendant”), hereby alleges as follows and demands a jury trial on all issues so triable.

NATURE OF THE ACTION

1. This action arises from Defendant’s willful infringement of Albert’s’ trademark rights, to wrongfully profit from the substantial goodwill and widespread positive reputation that Albert’s has created and maintained for many years.

2. In 1905, Albert’s opened its first diamond jewelry store. Starting in a tiny storefront in East Chicago, over the last century it has grown into one of the largest and most successful family-owned jewelers in the entire country. Albert’s operates now in one location, in Schererville, Indiana.

3. Over its many years of operating in Northwest Indiana, Albert’s has generated substantial goodwill throughout Northwest Indiana and the greater Chicagoland community. It’s television and print advertising is famous throughout the region.

4. Since at least 2002, Albert’s has employed in connection with its sale of diamond and other jewelry, what is now a widely recognized logo trademark. It uses this mark broadly,

and displays it proudly on print, television and other media advertising, marketing and advertising materials more generally, and its Schererville storefront.

5. Fully aware of the fame and reputation of the Albert's logo trademark, Defendant recently opened a new store, in a location within the region that Albert's has operated in for over a century, but in a city in which Albert's has not previously maintained a storefront. Defendant did so, moreover, all while prominently displaying on its new storefront a large sign consisting of a logo that, with the exception of the business name "AaLand," appears substantially and confusingly similar to the famous Albert's logo trademark.

6. Defendant's intentional actions have led to actual consumer confusion. Upon learning of this confusion, Albert's attempted, numerous times, to amicably resolve the situation and remedy the consumer confusion. Defendant has failed and refused, however, to cooperate or meaningfully engage in discussions directed at resolving the dispute.

7. As a result, Albert's brings this action for trademark infringement and unfair competition under Federal and Indiana statutory and common law, to ensure that the consuming public is not further confused, deceived or misled into purchasing Defendant's products thinking that they originate from or are in some way sponsored by or affiliated with Albert's, and to enjoin Defendant from further acts of willful infringement and unfair competition.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to Section 39 of the Lanham Act (15 U.S.C. § 1121), and 28 U.S.C. §§ 1331 and 1338, and has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367. Albert's claims are predicated upon the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051 et seq., and substantial and related claims under the statutory and common law of the State of Indiana.

9. Venue is properly founded in this judicial district and division pursuant to 28 U.S.C. § 1391(b) and L.R. 3-1, because Defendant resides in this judicial district and division and is subject to personal jurisdiction within this judicial district and division, and because events giving rise to these claims occurred within this judicial district and division.

PARTIES

10. Plaintiff Albert's is a corporation organized under the laws of the State of Indiana, having a principal place of business at 711 Main Street, Schererville, IN 46375. Albert's is a family-owned and operated business that sells diamond jewelry and other jewelry products at its site in Schererville, Indiana.

11. On information and belief, Defendant AaLand Diamond Jewelers LLC is a limited liability company organized and existing under the laws of the State of Indiana, having a principal place of business at 10460 Broadway, Crown Point, IN 46307. Defendant sells diamond jewelry and other jewelry products at its site in Crown Point, IN.

ALBERT'S AND THE ALBERT'S TRADEMARK

12. Albert's has operated a diamond jewelry business in Northwest Indiana since 1905. Over this 115+ year period of time, Albert's has become renowned for its unique branding in connection with the sale of high-quality diamond jewelry and other jewelry products, as well as personalized service related to those products. It has done so at a number of locations in the Northwest Indiana region, including former locations in East Chicago and Merrillville, as well as its current Schererville location since 2002. Throughout this lengthy period of time, Albert's has developed a strong reputation throughout Northwest Indiana for its high-quality diamond and other jewelry products and personalized service related to those products.

13. For many years, Albert's has offered for sale and sold its diamond jewelry and other jewelry products under a common law logo trademark. It began using the current version of

the mark in 2002 (the “Albert’s Trademark”). The mark prominently incorporates a diamond drawing with sharp edges and a multitude of internal sketch lines, all intended to evoke in a potential customer’s mind a precision cut, high-quality diamond. It’s name “Albert’s” appears above the term “Diamond Jewelers,” and incorporates a distinct style of typeface/font – all of which have become extremely well-recognized by consumers throughout Northwest Indiana and the greater Chicagoland area.

14. Below is a current exemplar of the Albert’s logo trademark:



15. Albert’s has extensively advertised and promoted the products offered in connection with the Albert’s Trademark, including in print, billboard, television, and other advertising venues. As a result, Albert’s has realized substantial success in its sales of products offered under the Albert’s Trademark.

16. As a result of its extensive marketing, advertising, and promotional efforts related to the products that it offers in connection with its Albert’s Trademark, consumers closely associate high-quality diamond and other jewelry and personalized service with Albert’s as the source of those goods.

17. Through its long-time presence in Northwest Indiana, advertising and marketing, and high-quality product offerings coupled with personalized service, Albert’s has developed a loyal customer following that spans well beyond Schererville. Albert’s is regularly recognized and awarded as a favorite diamond jeweler in Northwest Indiana.

18. Albert's has generated substantial goodwill and customer recognition in its Albert's Trademark. Consumers immediately associate the Albert's Trademark with Albert's diamond jewelry business and products, and service. The Albert's Trademark has become well-known and famous, particularly among purchasers of diamond and other jewelry products throughout Northwest Indiana and beyond.

19. Moreover, Albert's always endeavors to maintain its reputation for high quality diamond jewelry and other jewelry products that customers have come to associate with the Albert's Trademark. Albert's painstaking adherence to the highest quality standards has resulted in widespread and favorable public acceptance among consumers for all products and services offered under the Albert's Trademark.

20. As a result of Albert's advertising and promotion, adherence to the highest quality standards, and sales success over the course of 115+ years in business, the Albert's Trademark is widely-recognized in Northwest Indiana, immediately identifying Albert's as the exclusive source of the products which are offered in connection with the Albert's Trademark, and signifying goodwill of incalculable value.

DEFENDANT'S UNLAWFUL ACTS

21. Defendant recently moved its single storefront from a location in Merrillville, Indiana to a new location in Crown Point, Indiana. In connection with the opening of its new Crown Point store, Defendant installed and continues to use and display exterior signage that incorporates a prominent logo. Immediately below is a photo showing Defendant's storefront and its exterior sign:



22. As one can see in the Defendant exterior sign, Defendant is using a logo that is suspiciously similar to the Albert's Trademark. That logo (the "Infringing Mark") appears immediately below:



23. Defendant's Infringing Mark as presented to the consuming public through signage, its website, and other materials incorporates the prominent features of the Albert's Trademark. The

Infringing Mark utilizes a diamond sketch, that, just like the Albert's Trademark, incorporates internal lines evoking prevision cuts and high quality. The Infringing Mark displays the business name above the phrase "Diamond Jewelers," and utilizes a distinct typeface/font – all of which is suspiciously similar to that used by Albert's in the Albert's Trademark.

24. Defendant located its new storefront in Northwest Indiana, the same region that Albert's has operated in for over 115 years. However, it chose a specific city within the Albert's Northwest Indiana sales territory, namely Crown Point.

25. As such, Defendant now offers to sell and sells diamond jewelry and other jewelry products, using a logo that is confusingly similar to the Albert's Trademark, in the same region that Albert's has been operating for 115+ years, all of which leading consumers to believe that Defendant's storefront is either a new location for Albert's or somehow related to or sponsored by Albert's.

26. Albert's competes in the marketplace for the same consumers as Defendant. In fact, Defendant's actions in opening a new store in Crown Point, but using the Infringing Mark, have led to actual consumer confusion. Albert's is currently aware of at least one Albert's customer who, after seeing the new Defendant storefront, contacted Albert's and congratulated it on opening a new store. That consumer was confused, of course, because Albert's has not opened a store in Crown Point, Indiana.

27. On October 13, 2022, Albert's' through counsel sent a letter to Defendant explaining that Defendant's use of the Infringing Mark was in violation of Section 43(a)(1)(A) of the Lanham Act (15 U.S.C. § 1125) and Indiana state law. The letter noted the actual consumer confusion that Albert's was aware of, and proposed an amicable resolution in which the Defendant would voluntarily stop using the Infringing Mark on all signage, marketing materials, printed or electronic materials, and/or any and all other references to Defendant's jewelry store. It offered to coordinate to ensure

that any new mark to be used by Defendant would be agreeable and avoid further conflict. A true and accurate copy of the letter is attached as Exhibit A.

28. Defendant through counsel responded to the October 13 letter. In a letter dated November 3, 2022, Defendant through counsel acknowledged Albert's longtime and extensive advertising, marketing and promotion. It further admitted that "Albert's indeed is very well known because of its marketing, television commercials and billboards, which are prominent throughout the Northwest Indiana area." The letter curiously failed to acknowledge or respond to Albert's notice to it of actual consumer confusion. The letter conveyed the Defendant "is not wiling to modify its logo."

29. In follow-on communications by electronic mail and telephone, Albert's through counsel attempted to propose a further amicable resolution to change and discontinue use of the Infringing Mark. Defendant has to date failed and refused to substantively reply to Albert's proposal.

30. Defendant's continuing use of the Infringing Mark has caused, and is likely to continue to cause confusion, mistake, or to deceive as to the affiliation, connection, or association of Defendant's business with Albert's and to damage Albert's' business relations with consumers and prospective consumers.

31. Defendant is aware of the strength and fame of the Albert's Trademark, and the goodwill symbolized thereby, and that the Infringing Mark cannot be legally used by it as an indicator of source or sponsorship for the goods it is offering. Accordingly, Defendant has been engaging in the above-described unlawful activities knowingly and intentionally, or with reckless disregard for Albert's' rights in the Albert's Trademark.

COUNT I

**Trademark Infringement, False Designation of Origin, and Unfair Competition
(15 U.S.C. § 1125(a))**

32. Albert's incorporates fully herein paragraphs 1 to 31 as set forth above.

33. Albert's solely and exclusively owns the common law Albert's Trademark and all right, title and interest therein.

34. Defendant's use of the Infringing Mark in commerce and in connection with its products, is likely to cause confusion, mistake or deception: (i) as to the affiliation, connection or association with Albert's, and (ii) as to the origin, sponsorship or approval of its products and services by Albert's.

35. Defendant has acted with knowledge of the Albert's Trademark and with the deliberate intention to unfairly benefit from the incalculable goodwill symbolized thereby.

36. Defendant's actions have continued despite being expressly notified of the Albert's Trademark and Albert's' request that it cease and desist use thereof.

37. Defendant's acts therefore constitute willful trademark infringement, false designation of origin, and unfair competition in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

38. Defendant has profited from its unlawful actions and it has been unjustly enriched to the detriment of Albert's. Defendant's unlawful actions have caused Albert's monetary damage in an amount presently unknown, but in an amount to be determined at trial.

39. Upon information and belief, by its acts, Defendant has made and will realize substantial profits and gain to which it is not entitled in law or equity.

40. Defendant's intentional and willful conduct has caused, and will continue to cause, Albert's irreparable harm unless enjoined, and Albert's has no adequate remedy at law.

COUNT II

Trademark Infringement (Indiana Common Law; Ind. Code § 24-2-1-13.5)

41. Albert's incorporates fully herein paragraphs 1 to 40 as set forth above.

42. Albert's owns all right, title, and interest in and to the Albert's Trademark as aforesaid, including all common law rights in such mark, and such mark is famous, distinctive and fanciful.

43. The aforesaid acts of Defendant constitute trademark infringement in violation of the common law of the State of Indiana and Ind. Code § 24-2-1-13.5.

44. Defendant has acted with knowledge of the Albert's Trademark and with the deliberate intention to unfairly benefit from the incalculable goodwill symbolized thereby.

45. Defendant has profited from its unlawful actions and has been unjustly enriched to the detriment of Albert's. Defendant's unlawful actions have caused Albert's monetary damage in an amount presently unknown, but in an amount to be determined at trial.

46. Upon information and belief, by its acts, Defendant has made and will realize substantial profits and gain to which it is not entitled in law or equity.

COUNT III

Common Law Unfair Competition

47. Albert's incorporates fully herein paragraphs 1 to 46 as set forth above.

48. Defendant's use of the Infringing Mark in commerce in connection with its goods and services is intended to cause, has caused, and is likely to continue to cause confusion, mistake and deception among the general consuming public and the trade as to whether the goods and services bearing the Infringing Mark originate from, or are affiliated with, sponsored by, or endorsed by Albert's.

49. Albert's competes with Defendant for a common pool of customers.

50. Defendant has acted with knowledge of the Albert's Trademark and with the deliberate intent to deceive the general consuming public and the industry, and to benefit unfairly from the incalculable goodwill symbolized by the Albert's Trademark.

51. The aforesaid acts of Defendant constitute unfair competition in violation of the common law of the State of Indiana.

52. Defendant has profited from its unlawful actions and has been unjustly enriched to the detriment of Albert's. Defendant's unlawful actions have caused Albert's monetary damage in an amount presently unknown, but in an amount to be determined at trial.

53. Upon information and belief, by its acts, Defendant has made and will realize substantial profits and gain to which it is not entitled in law or equity.

54. Defendant's intentional and willful conduct has caused, and will continue to cause, Albert's irreparable harm unless enjoined, and Albert's has no adequate remedy at law.

PRAYER FOR RELIEF

Albert's respectfully requests that this Court enter judgment in its favor and provide relief as follows:

1. Finding that (i) Defendant has violated Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)); and (ii) Defendant has engaged in trademark infringement and unfair competition under the common law of Indiana;
2. Granting an injunction preliminarily and permanently restraining and enjoining Defendant, its officers, agents, employees and attorneys, and all those persons or entities in active concert or participation with it, or any of them, from:
 - a. advertising, marketing, promoting, supplying, distributing, offering for sale or selling any products or services which bear the Infringing Mark, the Albert's Trademark, or any other mark substantially or confusingly similar thereto, and

engaging in any other activity constituting an infringement of any of Albert's rights in the Albert's Trademark, or any other trademark owned by Albert's; and

b. engaging in any other activity constituting unfair competition with Albert's, or any other practices that confuse the public and/or the industry.

3. Directing such other relief as the Court may deem appropriate to prevent the industry and public from deriving any erroneous impression that any product or service at issue in this case that has been advertised, marketed, promoted, supplied, distributed, offered for sale or sold by Defendant, has been authorized by Albert's, or is related to or associated in any way with Albert's or its products and services.

4. Directing that Defendant accounts to and pay over to Albert's all profits realized by its wrongful acts and directing that such profits be trebled in accordance with Section 35 of the Lanham Act, 15 U.S.C. § 1117 and Indiana law.

5. Awarding Albert's its actual damages in accordance with Section 35 of the Lanham Act, 15 U.S.C. § 1117 and Indiana law.

6. Awarding Albert's its costs and attorney's fees and investigatory fees and expenses to the full extent provided for by Section 35 of the Lanham Act, 15 U.S.C. § 1117 and Indiana law.

7. Requiring Defendant to deliver to Albert's for destruction or other disposition all advertising, promotional and marketing materials bearing the Infringing Mark, as well as all means of making same.

8. Awarding Albert's pre- and post- judgment interest on any monetary award made part of the judgment against Defendant.

9. Awarding Albert's such additional and further equitable or legal relief as the Court deems just and proper.

JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Albert's hereby demands a trial by jury on all issues so triable.

February 1, 2023

Respectfully submitted,

s/s Gary E. Hood
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October 13, 2022

Mr. Cullen Wulf
AaLand Diamond Jewelers
10460 Broadway
Crown Point IN 46307

Re: Infringement of Albert's Diamond Jewelers Trademarks

Dear Mr. Wulf,

This firm represents Albert's Diamond Jewelers ("Albert's"). Albert's is a longtime diamond jeweler in Northwest Indiana and the greater Chicagoland area, selling diamond and other fine jewelry for over 100 years. From humble beginnings as a storefront East Chicago shop in 1905, it has become one of the largest, most successful family-owned jewelers in the entire country.

For many years, Albert's has sold its jewelry under the trademark "Albert's Diamond Jewelers." It prominently incorporates this word mark into its well-known, immediately recognizable design mark:



Jewelry customers throughout Northwest Indiana and the greater Chicagoland area readily recognize this mark. These customers immediately associate the mark with Albert's Diamond Jewelers and the high quality of product and service they have come to know from Albert's.



To be sure, Albert's has invested millions of dollars annually in advertising, marketing, and promotion of its consistent high quality product offerings. As a result of its continuous efforts to promote its brand in connection with its trademarks, Albert's has developed a loyal customer following that spans well beyond its immediate location in Schererville, Indiana.

Through many years of carefully and personally addressing its customers and their needs, Albert's has generated substantial goodwill - not only with current customers, but with potential customers too. Many throughout Northwest Indiana and Chicagoland more broadly fondly recognize Albert's as the high quality jeweler that regularly runs what some characterize as down-home, family oriented television commercials about its business. Consumers immediately associate the Albert's marks with this top quality, personable jewelry business and its products.

It has recently come to Albert's attention that you are offering to sell and are selling diamond and other fine jewelry from a store located in Crown Point, Indiana. You are doing so, moreover, in connection with a mark that is suspiciously and confusingly similar to the Albert's trademarks, in particular:



Your trademark (the "AaLand logo") incorporates elements and features that appear prominently in the Albert's marks. In particular, the logo you are using includes a business name that prominently features the phrase "Diamond Jewelers" immediately below a proper noun. That proper noun, moreover, prominently starts with the letter "A," just like the Albert's marks. It does so, moreover, in a font that appears identical to that used in the Albert's marks. In addition, the logo you are using incorporates a prominent diamond schematic, which appears strikingly similar to the diamond schematic incorporated in the Albert's logo mark.

Combined in this manner, a consumer viewing the AaLand logo is left with the false impression that there is an association between Albert's Diamond Jewelers and AaLand Diamond Jewelers, or that AaLand Diamond Jewelers is somehow sponsored or endorsed by Albert's Diamond Jewelers. This is especially problematic, given that your store is located within the Northwest Indiana/Greater Chicagoland area, but in a city in which Albert's does not presently have a physical location.

Your actions are misleading, and stand to confuse consumers. Albert's is already aware, in fact, of actual consumer confusion caused by your improper use of such a strikingly similar logo in this way. Already, an Albert's customer congratulated Albert's on supposedly opening a new location in Crown Point – of course, Albert's has done no such thing. This customer, however, confused by your logo into thinking that your store was a new Albert's store in a location that it had not had a store in before, believed that your store was an Albert's store. Given that the legal standard relevant here is a "*likelihood* of consumer confusion," the fact that there is already *actual* consumer confusion is telling – and troubling.

Your unauthorized use of a logo design that is strikingly similar to the Albert's marks, in connection with what we understand to be a move of your jewelry business to a new location that is nevertheless still within the region in which Albert's and its marks are so well-known, appears intended to trade on the goodwill first developed by Albert's under its brand and marks. Your actions in this regard violate the federal Lanham Act, 15 U.S.C. § 1125 et seq., and various state laws. Your acts subject your company to claims of trademark infringement, unfair competition, and violation of deceptive trade practice laws, the remedies for which include injunction, monetary damages (including possible treble damages) and payment of Albert's attorneys' fees.

On behalf of Albert's, we demand that you immediately stop marketing, selling, offering for sale or importing products that bear trademarks, logos, or designs confusingly similar to Albert's trademarks. To be clear, Albert's requests that you remove the AaLand logo from any and all signage,

marketing materials, printed or electronic materials, and any and all other references to your jewelry store of any nature or form. To avoid any further consumer confusion, Albert's insists that you complete this action no later than November 17, 2022.

Albert's further requests that you modify any logo or design that you intend to use in connection with marketing, selling, offering for sale or importing diamond and other fine gem jewelry products, so that it is not confusingly similar to the Albert's marks. To avoid any further dispute of this nature, Albert's invites you to coordinate with it, through us, to ensure that whatever mark(s) you intend to use going forward are not confusingly similar to the Albert's marks.

Please confirm in writing (email directly to me at ghood@hoodlegalgroup.com) no later than October 27, 2022, your willingness to resolve this matter as stated in this letter. Unless we receive an unequivocal response by then, we will proceed in other ways to enforce Albert's valuable intellectual property rights. And to make clear, while Albert's is not presently demanding payment for trademark infringement damages to date, Albert's expressly reserves all available rights and remedies including to seek compensation for past damages. I look forward to hearing from you.

Very Truly Yours,

Hood Legal Group PC



By: _____

Gary E. Hood
President

Cc: Albert's Diamond Jewelers (Mr. Joshua Halpern, Mr. Kerry Phillips)
Mr. Michael Baniak, Esq.

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