

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THE LINDY BOWMAN COMPANY
(a Maryland Corporation)
7180 Troy Hill Drive
Elkridge, Maryland 21075
Howard County

Plaintiff,

Civil Action No.

VS.

JEANMARIE CREATIONS, LLC
(a Delaware LLC)
4221 South 68th East Avenue
Tulsa, OK 74145

and

WALGREEN CO.
(an Illinois Corporation)
200 Wilmot Road
Deerfield, IL 60015

Defendants.

COMPLAINT WITH JURY DEMAND

Plaintiff The Lindy Bowman Company (hereinafter "Lindy Bowman" or "Plaintiff") files this Complaint against Defendants Jeanmarie Creations, LLC and Walgreen Co. (collectively referred to as "Defendants" where applicable), and states as follows:

NATURE OF THE ACTION

1. This is an action for federal trademark infringement, false designation of origin, unfair competition and passing off in violation of the laws of the United States and the State of Maryland.

PARTIES

2. Plaintiff The Lindy Bowman Company is a Maryland corporation having its principal place of business at 7180 Troy Hill Drive, Elkridge, Maryland 21075.

3. Upon information and belief, defendant Jeanmarie Creations, LLC, is a Delaware LLC having an address of 4221 South 68th East Avenue, Tulsa, OK 74145.

4. Upon information and belief, defendant WALGREEN CO. is an Illinois Corporation having its principal place of business at 200 Wilmot Road, Deerfield, IL 60015.

JURISDICTION AND VENUE

5. This action arises under the trademark laws of the United States, the Lanham Act, 15 U.S.C. § 1051 *et seq.* It also arises under Maryland law.

6. Federal question jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331 and 1338(1), and 15 U.S.C. § 1121(a). Jurisdiction over the claims brought under the Maryland law is conferred pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

7. Venue in this Court is based upon 28 U.S.C. § 1391(b).

FACTS APPLICABLE TO ALL COUNTS

8. Started in 1995 as an eponymous, family-owned and operated business, Lindy Bowman has continuously developed, produced, and sold nationally, its line of gift wrapping and specialty packaging since that time.

9. In its markets, Plaintiff's product line is regarded as being of highest quality and reliability. Plaintiff has and continues to be dedicated to provide excellent products and customer service. Lindy Bowman's excellent reputation is a direct result

of its careful selection of quality products, its dedication to customer service, and the efforts of its employees to maintain the highest levels of integrity in their marketing and sales efforts.

10. Based on the quality of the goods that it sells and the quality of its service to its customers, Plaintiff has earned substantial goodwill and a reputation of high regard in its gift wrapping product market.

11. Plaintiff has actively promoted itself and its products through various channels in the trade including, notably, direct sale calls with merchandise sampling programs primarily to selected retailers and direct television sales. Other than by word-of-mouth, the foregoing activities comprise the principal marketing and promotional vehicles employed by Plaintiff.

12. As a result of its programs and efforts, Lindy Bowman has established very substantial goodwill and a correspondingly substantial network of regional and national product distribution channels since it commenced business.

Plaintiff's GIFT WRAP IN A SNAP Kits

13. A significant product in Lindy Bowman's product line is a series of pre-packaged gift wrapping kits.

14. In 2001 Plaintiff began to develop a concept for a pre-packaged giftwrap kit.

15. In 2002, Lindy Bowman commenced selling and distributing gift wrap kits comprised of pre-folded gift wrap, with or without ribbon, with or without gift cards, and at least one folding gift box under the name GIFT WRAP IN A SNAP. Since then,

Plaintiff has continuously sold and distributed its gift wrap kits directly to consumers through retailers and television. Through such use, Plaintiff has developed substantial trademark rights in the mark GIFT WRAP IN A SNAP.

16. Since it commenced sales of the pre-packaged gift wrap kits under the name GIFT WRAP IN A SNAP, Plaintiff does not recall having received a single customer complaint about the quality of the products or Plaintiff's services associated therewith. Consequently, for over the past five years of commercial activity under the trademark GIFT WRAP IN A SNAP, Plaintiff has developed substantial value in its mark as a source designator by undertaking to maintain its goodwill and reputation and to protect its ability to fully utilize its trademark.

17. Although it is a small company, to remain viable since its founding, Lindy Bowman has dedicated substantial efforts in promoting and selling pre-packaged, gift wrap kits under the GIFT WRAP IN A SNAP mark.

18. In December 2001, Plaintiff filed a trademark application in the United States Patent and Trademark Office for federal registration of GIFT WRAP IN A SNAP as applied to PRE-FORMED GIFT WRAP KITS in International Class 16. On April 2, 2002, following evaluation of the application the Examining Attorney of the United States Patent and Trademark Office issued an office action rejecting the original identification of the goods as being indefinite and requiring clarification. On April 30, 2002, Applicant responded and amended the identification of the goods to include a description of the kit contents. That amended identification was accepted and the application was published in the Official Gazette of the United States Patent and

Trademark Office for Opposition on September 24, 2002. Thereafter, in December 2002, a Notice of Allowance issued and a Statement of Use under 37 C.F.R. §2.88 was filed claiming a date of first use of December 31, 2002 of the mark GIFT WRAP IN A SNAP as applied to preformed gift wrap kits. U.S. Trademark Registration No. 2,839,004 for the mark GIFT WRAP IN A SNAP issued on May 4, 2004, and is valid, subsisting and unrevoked. A copy of this registration is attached as Exhibit A. This registration is prima facie evidence of Plaintiff Lindy Bowman's exclusive right to use the mark GIFT WRAP IN A SNAP in commerce in connection with pre-formed gift wrap kits, the goods specified in the registration. Lindy Bowman has continuously engaged in United States commerce since December 2002.

Defendants' GIFT WRAP IN A SNAP Kits

19. In late November/early December 2007, Plaintiff discovered pre-packaged gift bag kits in a Walgreens Store with a tag bearing the phrase GIFT WRAP IN A SNAP. The gift wrap product included a label which upon inspection identified Defendant Jeanmarie Creations as the product source. (A copy of that label is attached as Exhibit B.) Plaintiff never authorized either of Defendants, Walgreens or Jeanmarie Creations to use its registered trade mark GIFT WRAP IN A SNAP.

20. On December 20, 2007, Plaintiff sent a Cease and Desist letter to Jeanmarie Creations. (a copy of that letter is attached as Exhibit C).

21. Apparently in response to the letter, Jeanmarie Creations called Plaintiff's president and reported that Walgreens was its customer and that the

product had been packaged according to Walgreen's specifications.

22. On January 7, 2008 Plaintiff, via counsel, had a conversation and exchanged e-mails with Walgreen's in-house counsel.

23. On January 11, 2008 Defendant Jeanmarie's counsel telephoned Plaintiff's president, Mr. Bowman directly.

24. On January 14, 2008 one of Plaintiff's counsel and Defendant Jeanmarie's counsel engaged in a telephone conversation in which Defendant's counsel inquired about Plaintiff's objectives. On that same day, Plaintiff's counsel discussed the situation with Walgreen's in-house counsel.

25. The next day, January 15, Walgreen's counsel sent an e-mail to Plaintiff stating:

Walgreens has directed its store staff to remove all hang tags containing the phrase "Gift Wrap in a Snap" from products purchased from Jean Marie Creations pending further investigation.

26. However, on January 31, employees of Plaintiff purchased pre-packaged gift bag kits labeled with GIFT WRAP IN A SNAP from at least two different Walgreens stores in Maryland (copies attached as Exhibit D).

FIRST COUNT - TRADEMARK INFRINGEMENT UNDER FEDERAL LAW

27. Plaintiff Lindy Bowman realleges and incorporates herein by reference all of the allegations of Paragraphs 1-26.

28. By their unauthorized use of the mark GIFT WRAP IN A SNAP for pre-packaged gift bag kits, Defendants have, without Lindy Bowman's consent, used and are using in commerce a reproduction, counterfeit, copy or colorable imitation of

Plaintiff's federally registered GIFT WRAP IN A SNAP trademark in connection with the sale, offering for sale, distribution and advertising of Defendants' pre-packaged gift wrapping kit products. Such use is likely to cause confusion or to cause mistake or to deceive in violation of 15 USC. § 1114(1)(a).

29. By their unauthorized and intended use of the mark GIFT WRAP IN A SNAP on such kits, Defendants have, without Plaintiff's consent, reproduced, counterfeited, copied or colorably imitated Lindy Bowman's federally registered GIFT WRAP IN A SNAP trademark in connection with the sale, offering for sale, distributing and advertising of Defendants' pre-packaged gift bag kits. Such use is likely to cause confusion or to cause mistake or to deceive in violation of 15 U.S.C. § 1114(1)(b).

30. As a result of these wrongful and illegal acts by Defendants, there is damage and a likelihood of further damage and injury to Plaintiff through Plaintiff's loss of control over its GIFT WRAP IN A SNAP mark leading to declining sales and loss of goodwill.

31. Defendants have unlawfully profited from the unauthorized use of Plaintiff's GIFT WRAP IN A SNAP mark in connection with sales of its gift bag kits. Plaintiff is entitled to damages in no event less than said profit by reason of Defendants' infringement of Plaintiff's trademark. The amount of such damages not being known presently but being ascertainable upon the conduct of appropriate discovery herein.

32. On information and belief, Defendants' actions have been committed intentionally with the knowledge that the use of such a colorable imitation is likely to cause confusion or to cause mistake or to deceive.

33. Lindy Bowman has and is suffering harm and irreparable harm as a result of the actions of Defendants as complained herein. Lindy Bowman has no adequate remedy at law. Therefore, Lindy Bowman seeks temporary and permanent injunctive relief against such trademark infringement and all damages recoverable by statute.

34. Plaintiff is further entitled to exemplary damages from Defendants because Defendants acted with the malice required to support an award of such damages. Defendants acted with the specific knowledge of Plaintiff's trademark rights, with specific intent to cause injury to Plaintiff, with a conscious indifference to the rights or welfare of the Plaintiff, and with actual and/or subjective awareness that its acts involved an extreme degree of risk of harm to Plaintiff.

SECOND COUNT - FALSE DESIGNATION OF ORIGIN

35. This count is for false designation of origin under 15 U.S.C. § 1125(a).

36. The allegations of paragraphs 1-34 are incorporated by reference as if fully set forth herein.

37. Lindy Bowman has used its trademark GIFT WRAP IN A SNAP on pre-packaged gift wrapping products for over five years.

38. Jeanmarie and Walgreens sale of pre-packaged gift bag products labeled with GIFT WRAP IN A SNAP is likely to cause confusion or mistake as to source.

39. Jeanmarie's and Walgreen's actions represent a false designation of origin which has caused and is likely to cause confusion, mistake, and deception as to the affiliation, connection, sponsorship, and/or association with Lindy Bowman when in fact Defendants have no connection with or authorization from Plaintiff. This constitutes a false designation of origin in violation of 15 U.S.C. § 1125(a), which violation is likely to

damage Lindy Bowman and for which Lindy Bowman is without an adequate remedy at law.

32. Upon information and belief, the aforesaid acts were undertaken willfully with the intention of causing confusion, mistake or deception.

39. Upon information and belief, the aforesaid acts were undertaken willfully with the intention of causing confusion, mistake or deception.

THIRD COUNT - UNFAIR COMPETITION AND PASSING OFF

40. This is a cause of action for unfair competition and passing off under the common law of the state of Maryland.

41. The allegations of Paragraphs 1-39 are incorporated by reference as if fully set forth herein.

42. By using GIFT WRAP IN A SNAP on their products, Defendants unfairly compete with Lindy Bowman by creating the impression among the public that Lindy Bowman has licensed or sponsored Defendants, when in fact it has not. Defendants have and continue to misappropriate Lindy Bowman's valuable good will and public recognition of the GIFT WRAP IN A SNAP trademark which have been developed nationally and in the State of Maryland over the last five years by Lindy Bowman, where Defendants jointly and severally have unlawfully benefited and been unjustly enriched by such activities.

43. Defendants' false GIFT WRAP IN A SNAP designation constitutes unfair competition and passing off under the common law of the State of Maryland.

Defendants' practices have and continue to injure Lindy Bowman, and will cause

irreparable harm and damage to Lindy Bowman unless restrained and enjoined by this Court.

45. Upon information and belief, the aforesaid acts were undertaken willfully with the intention of causing confusion, mistake or deception.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Consolidated hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Lindy Bowman prays:

A. Plaintiff be awarded injunctive relief, including being preliminarily and permanently enjoined from representing or passing off by words or implication that they and/or any company with which they are involved are affiliated or associated with, or sponsored or authorized by Lindy Bowman Company and an order requiring Defendants individually and collectively immediately discontinue use of the mark "GIFT WRAP IN A SNAP";

B. That each of Defendants be ordered to file with this Court and serve on Plaintiff within thirty (30) days after the service of such an order, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the order to discontinue use of the mark GIFT WRAP IN A SNAP.

C. Plaintiff be awarded damages and other relief available in accordance with its claims, including all actual and consequential damages resulting from the acts of Defendants' trademark infringement, including, but not limited to, Defendants' profits from use of the Lindy Bowman's GIFT WRAP IN A SNAP mark in an amount to be proven at trial;

D. Plaintiff be awarded damages and other relief available in accordance with its claims pursuant to 15 U.S.C. § 1125, including all actual and consequential damages resulting from Defendants' unfair competitive acts in commerce including, but not limited to, Defendants' profits from use of Lindy Bowman's GIFT WRAP IN A SNAP mark in an amount to be proven at trial;

E. Plaintiff be awarded all damages against Defendants, jointly and severally, which are proven at trial for injury to it and its GIFT WRAP IN A SNAP trademark;

F. Plaintiff be awarded damages and other relief available in accordance with its claims pursuant to 15 U.S.C. § 1114, including all actual and consequential damages resulting from Defendants' trademark infringement including that Defendants be ordered to pay Lindy Bowman all profits, if any, realized by defendants by reason of the unlawful acts of Defendants as set forth in this Complaint.

G. Plaintiff be awarded all exemplary and other damages as allowed by law;

H Plaintiff be awarded prejudgment and post-judgment interest as allowed by law;

I. Plaintiff be awarded all attorneys fees, costs and expenses as allowed by law;

J. Plaintiff be granted such other and further relief, at law and in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

/s/ Maurice U. Cahn

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