

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAY 11 2007

JAMES W. McCORMACK, CLERK
By: Jean Swann
DEP. CLERK

WINDCHIMES BY RUSSCO III, INC.

Plaintiff

v.

Civil Case No. 3:07CV00056 GTE

**KIDS OF AMERICA CORP.,
MAGIC POWER,
YI QIANG GLASS CRAFTS CO. LTD,**
and Doe Defendants 1 through 10

This case assigned to District Judge Essele
and to Magistrate Judge Ray

Defendants

COMPLAINT

Plaintiff, Windchimes by Russco III, Inc., for its Complaint against Defendants Kids of America Corp., Magic Power, Yi Qiang Glass Crafts Co. Ltd (collectively "Defendants") hereby states and alleges as follows:

THE PARTIES

1. This is an action for copyright infringement under the Copyright Act of 1976, Title 17 U.S.C., §§ 101 et seq. and the Lanham Act, 15 U.S.C. § 1125(a), as hereinafter more fully appears.

2. Plaintiff Windchimes by Russco III, Inc. (hereinafter "Plaintiff") is a corporation duly organized and existing under the laws of the State of Arkansas, with its principal place of business located within this judicial district in Jonesboro, Arkansas.

3. Upon information and belief, Defendant Kids of America Corp. (hereinafter "Kids") is a foreign corporation organized and existing under the laws of the State of New

Jersey, with its principal place of business located in Fairfield, New Jersey; Kids engages in business constituting actionable misconduct occurring on a regular basis in Arkansas, including this judicial district.

4. Upon information and belief, Defendant Magic Power (hereinafter “Magic”) is a foreign entity organized and existing under the laws of the People’s Republic of China, that has an ongoing affiliation with Kids and utilizes Kids to perform its product sales functions in the United States, including (without limitation) contributing to the business constituting actionable misconduct occurring on a regular basis in Arkansas, including this judicial district.

5. Upon information and belief, Defendant Yi Qiang Glass Crafts Co. Ltd (hereinafter “Glass Crafts”) is a foreign entity organized and existing under the laws of the People’s Republic of China; Glass Crafts regularly sells products intended for sale in the United States, including (without limitation) the copyrighted products at issue herein which it sold to Magic for resale to Kids; Glass Crafts induced Magic to purchase the copyrighted products at issue herein, and to otherwise contributed to Magic’s engaging in the business constituting actionable misconduct occurring on a regular basis in Arkansas, including this judicial district.

6. Upon information and belief, Doe Defendants 1 through 10 are individuals or business organizations whose identities and/or participation in the misconduct alleged herein are presently not known to Plaintiff, but who may have participated in the actionable misconduct alleged herein, or may otherwise be liable to Plaintiff for the misconduct alleged herein; Plaintiff reserves the right to amend this Complaint to include the identity of any such Doe Defendant within a reasonable time after such identity is determined.

7. Upon information and belief, each Defendant acted as an affiliate, agent or co-conspirator of one or more other Defendants in connection with the misconduct alleged herein.

JURISDICTION AND VENUE

8. This court has jurisdiction under 28 U.S.C. §§ 1331, 1338(a), and 1338(b). The claims asserted herein arose in this judicial district, and all Defendants do business in this judicial district within the meaning of the Arkansas long-arm statute. Further, this Court has supplemental jurisdiction over all pendent state law claims pursuant to 28 U.S.C. § 1367 because such claims are so related to claims in this action within this Court's original jurisdiction that they form part of the same case or controversy.

9. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

COMMON FACTS

10. Plaintiff is in the business of designing, having manufactured, marketing, offering for sale and selling uniquely and creatively designed decorative home and garden products including, as it relates to this litigation, a series of decorative luminary windchimes, including (without limitation) the two works at issue herein (the "Copyrighted Works").

11. Plaintiff's Copyrighted Works are original works of authorship, the product of its creativity, skill, labor and judgment, and they are copyrightable under United States law.

12. On or about June 1, 2005, Plaintiff applied to the Register of Copyrights for a Certificate of Copyright for the Copyrighted Works; after complying with all registration requirements, Plaintiff was issued Certificate of Copyright Registration No. VA 1-327-681, effective June 1, 2005; a copy of said registration certificate is attached hereto as Exhibit "A".

13. Plaintiff is currently, and at all times relevant to this Complaint has been, the sole owner of all right, title and interest in and to the Copyrighted Works.

14. Plaintiff has not authorized Glass Crafts to manufacture or have manufactured Plaintiff's Copyrighted Works, or any derivative or partial reproduction thereof.

15. Prior to October of 2006, Glass Crafts manufactured or caused to be manufactured copies of Plaintiff's Copyrighted Works, or derivatives or partial reproductions thereof (hereinafter the "Infringing Products").

16. Glass Crafts sold numerous copies of the Infringing Products to Magic commencing in or about October of 2006, with notice and intent that the same would be re-sold in the United States.

17. Upon information and belief, commencing in or about October of 2006, Magic began selling the Infringing Products in the United States, without Plaintiff's permission and without compensating Plaintiff for the same; attached hereto as Exhibit B is a copy of a photograph of said Infringing Products (next to Copyrighted Works), purchased by Plaintiff in Jonesboro, Arkansas.

18. Said Infringing Products are copies of Plaintiff's Copyrighted Works, or derivatives or partial reproductions thereof.

19. Said Infringing Products are displayed to the purchasing public in the same fashion as are Plaintiff's Copyrighted Works.

20. The substantial similarities between said Infringing Products and Plaintiff's Copyrighted Works are likely to deceive potential customers or users into purchasing said Infringing Products under the mistaken belief that they were Plaintiff's Copyrighted Works, or otherwise mistakenly believing that said Infringing Products were authorized, sponsored or endorsed by Plaintiff.

COUNT 1 - COPYRIGHT INFRINGEMENT

21. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 20 of this Complaint, as though fully set forth herein.

22. Upon information and belief, one or more Defendants had access to Plaintiff's Copyrighted Works.

23. Defendants infringed Plaintiff's copyrights in the Copyrighted Works, directly or indirectly, by, among other things, manufacturing, displaying, selling and importing the Infringing Products.

24. Upon information and belief, the infringing misconduct of Defendant alleged herein has been committed intentionally, with knowledge of Plaintiff's rights, willfully and in deliberate disregard for Plaintiff's rights.

25. Defendants' continued misconduct alleged herein, especially that of Glass Crafts, threatens imminent irreparable harm to Plaintiff.

26. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff has suffered and will continue to suffer irreparable harm for which it cannot be adequately compensated by money damages, entitling Plaintiff to permanent injunctive relief enjoining Defendants from continuing the misconduct alleged herein.

27. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff is entitled to recover from Defendants (a) actual damages, (b) all gains and profits realized by Defendants as a result of its infringing misconduct, (c) all costs and expenses incurred by Plaintiff in this action, including reasonable attorney fees, and (d) and accounting of all gains and profits realized by Defendants as a result of its infringing misconduct.

COUNT 2 – CONTRIBUTORY COPYRIGHT INFRINGEMENT

28. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 27 of this Complaint, as though fully set forth herein.

29. Upon information and belief, all Defendants induced, contributed, participated, and profited from, the copying of Plaintiff's Copyrighted Works.

30. Upon information and belief, each Defendant committed a tortious act in concert with the other(s) or pursuant to a common design, or gave substantial assistance or encouragement to the other Defendant(s) under circumstances that said Defendant knew or should have known that the other's conduct constitutes actionable misconduct.

31. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff is entitled to recover from Defendants (a) actual damages, (b) all gains and profits realized by Defendants as a result of its infringing misconduct, (c) all costs and expenses incurred by Plaintiff in this action, including reasonable attorney fees, and (d) an accounting of all gains and profits realized by Defendants as a result of its infringing misconduct.

COUNT 3 - FEDERAL UNFAIR COMPETITION

32. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 31 of this Complaint, as though fully set forth herein.

33. Defendants' misconduct alleged herein constitutes unfair competition under §43(a) of the Lanham Act, 15 U.S.C. § 1125(a) because it is likely to deceive potential customers or users into purchasing the Infringing Products under the mistaken belief that they were Plaintiff's Copyrighted Works, or otherwise mistakenly believing that the Infringing Products were authorized, sponsored or endorsed by Plaintiff.

34. Upon information and belief, the infringing misconduct of Defendants alleged herein has been committed intentionally, with knowledge of Plaintiff's rights, willfully and in deliberate disregard for Plaintiff's rights.

35. Defendants' continued misconduct alleged herein threatens imminent irreparable harm to Plaintiff.

36. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff has suffered and will continue to suffer irreparable harm for which it cannot be adequately compensated by money damages, entitling Plaintiff to permanent injunctive relief enjoining Defendants from continuing the misconduct alleged herein.

37. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff has suffered and will continue to suffer general and special damages including, but not limited to, damage to Plaintiff's business and reputation, resulting in the loss of earnings and profits in an amount to be proven at trial.

38. As a direct and proximate result of the misconduct of Defendants alleged herein, Plaintiff is entitled to recover from Defendants (a) actual damages, (b) all gains and profits realized by Defendants as a result of its infringing misconduct, (c) all costs and expenses incurred by Plaintiff in this action, including reasonable attorneys' fees, and (d) an accounting of all gains and profits realized by Defendants as a result of the respective misconduct.

COUNT 4 - COMMON LAW UNFAIR COMPETITION

39. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 38 of this Complaint, inclusive, as though fully set forth herein.

40. Defendants' misconduct alleged herein constitutes unfair competition under Arkansas common law.

41. Defendant's marketing and sale of Plaintiff's work misappropriates the extensive and long-standing goodwill built up by the Plaintiff.

42. As a result of the unfair competition alleged herein, Plaintiff is entitled to recover from Defendant (a) actual damages realized by Plaintiff; (b) any gains, profits and/or advantages realized by Defendants; and (c) all costs and expenses, including, without limitation, reasonable attorney fees incurred by the Plaintiff in this action.

COUNT 5 - ARKANSAS DECEPTIVE TRADE PRACTICES ACT

43. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 42 of this Complaint as though fully set forth herein.

44. Defendants' misconduct alleged herein constitutes a deceptive and unconscionable trade practice in violation of the Arkansas Deceptive Trade Practices Act, codified as Ark. Code Ann. §§4-88-101, et seq.

45. Defendants knowingly made a false representation as to the source, sponsorship, approval, or certification of goods.

46. Defendants engaged in an unconscionable, false or deceptive act or practice in business.

47. Defendant has willfully engaged in these trade practices knowing them to be false, misleading, and deceptive. Defendant has intended to injure and have injured Plaintiff and have intended to destroy or substantially lessen competition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands a jury trial and prays for judgment jointly and severally against Defendants as follows:

A. For a permanent injunction against each Defendant and its officers, agents, servants, representatives, employees, attorneys, parents, subsidiaries, related companies, partners, successors, predecessors, assigns, and all persons acting for, with, by, through, or under them, and each of them, restraining and enjoining them from directly or indirectly engaging in any further acts of copyright infringement in connection with Plaintiff's Copyrighted Works or continuing to market, offer to sell, dispose of, license, lease, transfer, display, advertise, reproduce, develop, or manufacture any works derived or copied from Plaintiff. Further, that each Defendant be enjoined and prohibited from selling the Copyrighted Works or derivatives thereof in such a manner that is likely to create the erroneous belief that these goods or services are authorized by, sponsored by, licensed by, or are in some way associated with Plaintiff.

B. For an award of damages in an amount to be proven at trial, consisting of the actual damages sustained by Plaintiff as a result of Defendants' unlawful and infringing conduct, together with all gains, profits or advantages realized by Defendants as a result of their unlawful and infringing acts.

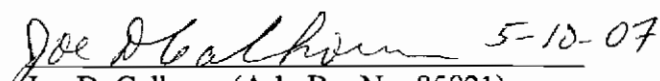
C. For all costs and expenses of this action, including without limitation, reasonable attorneys' fees incurred by Plaintiff in this action.

D. For prejudgment and post-judgment interest at the maximum legal rate.

E. And for such other and further relief as the Court may deem proper.

Respectfully submitted,

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