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JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

INHALE, INC., a California Corporation,)	Case No.:2:11-cv-03838-ODW-FFM
)	
Plaintiff,)	Honorable Otis D. Wright II
)	
v.)	FINAL JUDGMENT
)	
STARBUZZ TOBACCO, INC., a)	
California Corporation; WAEL SALIM)	
ELHALAWANI, an individual residing in)	
California,)	
)	
Defendants.)	
)	
_____)	
And Related Counterclaims.)	
)	
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1 On May 4, 2011, Plaintiff Inhale, Inc. (“Inhale”) filed a complaint (the
2 “Complaint”) against Defendants Starbuzz Tobacco, Inc. (“Starbuzz”) and Wael
3 Salim Elhalwani (collectively the “Defendants”) for copyright infringement. [ECF
4 No. 1].

5
6 On August 23, 2011, Defendants subsequently filed an answer [ECF No. 17] to
7 the Complaint and Starbuzz filed a counterclaim for invalidity of Inhale’s Copyright
8 (the “Counterclaim”) [ECF No. 19].

9
10 On April 13, 2012, Defendants filed a motion for summary judgment with
11 respect to Inhale’s Complaint [ECF No. 40], which was granted by the Court on June
12 18, 2012. [ECF No. 54].

13
14 Pursuant to and for the reasons stated in this Court’s June 18, 2012 order, in
15 which the Court granted Defendants’ motion for summary judgment with respect to
16 Inhale’s claim for copyright infringement, the Court hereby enters final judgment in
17 this matter as follows:
18

19
20 **JURISDICTION**

21 1) The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
22 and 1338, and venue is proper in this district.
23

24 **FINDINGS ON SUMMARY JUDGMENT**

25 2) On May 4, 2011, Plaintiff sued Defendants for copyright infringement,
26 alleging Starbuzz sold water containers, beginning on December 29, 2010, that
27 infringe Plaintiff’s copyrighted design. Plaintiff alleges infringement based solely on
28

1 the shape of the water container, and not on the skull and crossbones graphic.

2 3) On August 29, 2008, Plaintiff published a water container decorated with
3 a skull and crossbones graphic. On April 21, 2011, Plaintiff registered its water
4 container with the United States Copyright Office. Plaintiff's copyright registration is
5 for a "sculpture/3-D artwork" titled "Hookah Water Container."
6

7
8 4) For the purposes of this lawsuit, Plaintiff disclaimed copyright protection
9 to the skull and crossbones.

10 5) The water container is a useful article that holds water for and serves as a
11 base to an attached hookah.
12

13 6) The shape of the water container in this case cannot be physically or
14 conceptually separable from the container because the container's shape and the
15 container are one and the same.
16

17 7) The artistic aspects—if any—of Plaintiff's water container shape, are not
18 separable from its utilitarian elements. Thus, with the skull and crossbones graphic
19 disclaimed, there is no copyright protection for the shape of the water container.
20

21 8) Accordingly, the Defendants do not infringe Plaintiff's copyright.
22

23 **DEFENDANT'S COUNTERCLAIM**

24 The parties have stipulated to the voluntary dismissal of Starbuzz's
25 Counterclaim without prejudice. Thus, all issues in this action are resolved.
26
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1 **JUDGMENT**

2 Based upon the reasons stated above, **IT IS HEREBY ORDERED,**

3 **ADJUDGED AND DECREED** that:

4 A) Final Judgment is entered in Defendants' favor on all of Inhale's claims
5 in the Complaint.

6 B) Defendants shall recover the costs they incurred in defending against
7 Inhale's claims.

8 C) The parties may, not later than fourteen days after entry of this judgment,
9 file any motion and memorandum in support of a request for fees, in accordance with
10 law.

11 D) Starbuzz's Counterclaim is dismissed without prejudice.


12 E) Inhale shall take nothing in this action.

13 F) This Court shall retain jurisdiction of this action for purposes of
14 enforcing any award of costs and attorneys fees, by way of contempt or otherwise.

15 G) The Clerk is directed to enter this Final Judgment.

16 **IT IS SO ORDERED.**

17 DATED: July 6, 2012

18 
19 _____
20 Honorable Otis D. Wright II
21 United States District Judge