

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

BULL MOOSE,	)	
	)	Docket No. CV
Plaintiff,	)	
	)	Jury Trial Demanded
v.	)	Injunctive Relief Requested
	)	
RONALD AND SUSAN SABALLUS,	)	
d/b/a BULL MOOSE BAR AND GRILLE,	)	
	)	
Defendants.	)	

**COMPLAINT**

1. This is an action brought by BULL MOOSE, a company selling music, movies and video games and offering live music in stores located in Maine and New Hampshire and on the internet, to stop Ronald and Susan Saballus, d/b/a BULL MOOSE BAR AND GRILLE (hereinafter collectively, “Bull Moose Bar and Grille”) from attempting to take for itself the trademark “BULL MOOSE” which has long been owned and used by BULL MOOSE. BULL MOOSE BAR AND GRILLE has used the mark BULL MOOSE in connection with the promotion of concerts and other live musical entertainment, and this action for declaratory relief, damages and injunctive relief is necessary to prevent further harm as a result of the wrongful attempt to misappropriate the trademark BULL MOOSE.

*Parties*

2. The Plaintiff, Bull Moose (“Bull Moose”) is a Maine corporation with its principal place of business in Portland, Cumberland County, Maine.

3. The Defendants, Ronald and Susan Saballus, d/b/a Bull Moose Bar and Grille

(“Bull Moose Bar and Grille”), are individuals residing in Plano, Kendall County, Illinois and, upon information and belief are doing business as Bull Moose Bar and Grille.

*Jurisdiction and Venue*

4. This Court has subject matter jurisdiction under 15 U.S.C. §§ 1119 and 1121 [trademark jurisdiction], 28 U.S.C. § 1331 [general federal question jurisdiction], 1338(a) and (b) [specific federal question jurisdiction], and 1367(a) [supplemental jurisdiction] because this action involves the federal trademark statutes.

5. Venue is proper under 28 U.S.C. § 1391 (b)-(c) because the Defendants reside in this District.

*Background*

6. Bull Moose sells music, books, movies and video games in stores located in Maine and New Hampshire and on the internet and offers live music events from time to time at its stores and occasionally sponsors events for other entities.

7. Since Bull Moose began using the trademark BULL MOOSE in connection with promoting live music and other goods and services at least as early as 1991 it has spent significant time and money promoting that trademark through media such as radio, print, television and internet throughout the United States, and since 2001 to customers nationwide on its Internet website [www.bullmoose.com](http://www.bullmoose.com) and on its Facebook, Twitter, YouTube and other social media accounts. Consumers have come to know Bull Moose as a physical and online store that sells music, movies, video games and books and frequently has live events in its retail stores.

8. On November 7, 2007, Bull Moose was duly issued U.S. Trademark Registration No. 3345256 for the Word Mark BULL MOOSE, a true copy of which is attached hereto as

Exhibit A.

9. In 2011, over 20 years after the trademark had first been used by Bull Moose, Bull Moose Bar and Grille adopted the mark BULL MOOSE and is using it for the promotion of live music at its venue on its Internet website, and its Facebook account. The use of the BULL MOOSE trademark to promote live music confuses consumers about the source of those products. Specifically, consumers will be confused about whether these products are affiliated with Bull Moose or with Bull Moose Bar and Grille.

10. Immediate injunctive relief is necessary because the more that Bull Moose Bar and Grill promotes live music at its restaurant, the less that consumers will associate the BULL MOOSE mark with Bull Moose, the trademark's senior user and rightful owner.

11. The likelihood of confusion resulting from Bull Moose Bar and Grille's use of the BULL MOOSE trademark will irreparably harm Bull Moose and will undo all of Bull Moose's hard work in establishing its own identity under the BULL MOOSE trademark.

#### COUNT I – Federal Trademark Infringement

12. Bull Moose realleges paragraphs 1-11 as though fully set forth herein.

13. Bull Moose owns the trademark rights in BULL MOOSE by virtue of its federal registration of the mark.

14. The defendants' use of the mark BULL MOOSE in connection with its live music performances is likely to confuse consumers about the source of the live music performances.

15. The defendants have infringed and continues to infringe the trademark rights of Bull Moose under the federal trademark statute, 15 U.S.C. § 1114(1)(a).

16. The defendants' infringement is willful.

17. Bull Moose has suffered and continues to suffer damages and irreparable harm as a result of the defendants' infringement.

18. Bull Moose Bar and Grille's use of the trademark BULL MOOSE is confusingly similar to Bull Moose's use of the trademark BULL MOOSE and the continued use by Bull Moose Bar and Grille is likely to cause confusion, deception and mistake. Bull Moose Bar and Grille's use of the BULL MOOSE mark interferes with Bull Moose's use of its mark, and any continued use by Bull Moose Bar and Grille will seriously damage Bull Moose.

COUNT II – State Common Law Trademark Infringement

19. Bull Moose repeats and realleges paragraphs 1-18 as though fully set forth herein.

20. Bull Moose is the senior user of the BULL MOOSE trademark, and has the exclusive rights to that trademark.

21. Bull Moose Bar and Grille's use of the mark BULL MOOSE in connection with its is likely to confuse consumers about the source of Bull Moose Bar and Grille's products.

22. Bull Moose Bar and Grille has infringed and continues to infringe the trademark rights of Bull Moose under Illinois common law by advertising and promoting its business with the BULL MOOSE mark.

23. Upon information and belief, Bull Moose Bar and Grille knew of Bull Moose's superior rights in the trademark BULL MOOSE, yet continues infringing, making Bull Moose Bar and Grille's infringement willful.

24. Bull Moose has suffered and continues to suffer damages and irreparable harm as a result of Bull Moose Bar and Grille's infringement.

COUNT III – Federal Unfair Competition

25. Bull Moose repeats and realleges paragraphs 1-24 as though fully set forth herein.

26. The confusingly similar BULL MOOSE mark as used by Defendants constitute a false designation of origin within the meaning of 15 U.S.C. § 1125(a) which is likely to cause confusion, mistake or deception as to the source, sponsorship and/or approval of Bull Moose's products, thereby causing Bull Moose to suffer damages and irreparable harm for which Bull Moose has no adequate remedy at law.

27. Bull Moose Bar and Grille's use of the confusingly similar mark BULL MOOSE confuses or deceives the public by misrepresenting that its products are sponsored, licensed or otherwise approved by, or are in some way connected or affiliated with Bull Moose.

28. Such conduct constitutes unfair competition with Bull Moose and is causing and, unless enjoined, will continue to cause damages and immediate and irreparable harm for which Bull Moose has no adequate remedy at law.

COUNT IV – State Unfair Competition

29. Bull Moose repeats and realleges paragraphs 1-28 as though fully set forth herein.

30. The confusingly similar BULL MOOSE mark as used by Defendants constitute a false designation of origin and an unfair and deceptive trade practice within the meaning of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510 *et seq.* which is likely to cause confusion, mistake or deception as to the source, sponsorship and/or approval of Bull Moose's products, thereby causing Bull Moose to suffer damages and irreparable harm for which Bull Moose has no adequate remedy at law.

31. Bull Moose Bar and Grille's use of the confusingly similar mark BULL MOOSE

confuses or deceives the public by misrepresenting that its product is sponsored, licensed or otherwise approved by, or is in some way connected or affiliated with Bull Moose.

33. Such conduct constitutes unfair competition with Bull Moose and is causing and, unless enjoined, will continue to cause damages and immediate and irreparable damage for which Bull Moose has no adequate remedy at law.

Count V – Federal Dilution

33. Bull Moose repeats and realleges paragraphs 1-32 as though fully set forth herein.

34. Bull Moose's mark BULL MOOSE was distinctive and famous within the meaning of 15 U.S.C. § 1125(c) well prior to Bull Moose Bar and Grille's first use of the mark BULL MOOSE.

35. Bull Moose Bar and Grille's use of the mark BULL MOOSE dilutes the distinctive qualities of the BULL MOOSE trademark by blurring, has diminished the value of the mark, and therefore constitutes trademark dilution within the meaning of 15 U.S.C. § 1125(c).

36. Unless enjoined by this Court, Bull Moose Bar and Grille will continue to dilute the trademark, thereby causing Bull Moose to suffer damages and immediate and irreparable injury for which it has no adequate remedy at law.

COUNT VI – State Dilution

37. Bull Moose repeats and realleges paragraphs 1-36 as though fully set forth herein.

38. Bull Moose's mark BULL MOOSE was distinctive and famous within the meaning of section 65 of the Illinois Trademark and Registration Act, 765 ILCS §1036/65 et seq. well prior to Bull Moose Bar and Grille's first use of the mark BULL MOOSE.

39. Bull Moose Bar and Grille's use of the mark BULL MOOSE dilutes the

distinctive qualities of the BULL MOOSE trademark by blurring, has diminished the value of the mark, and therefore constitutes trademark dilution within the meaning of section 65 of the Illinois Trademark and Registration Act, 765 ILCS §1036/65 et seq.

40. Unless enjoined by this Court, Bull Moose Bar and Grille will continue to dilute the trademark, thereby causing Bull Moose to suffer damages and immediate and irreparable injury for which it has no adequate remedy at law.

*Request for Relief*

WHEREFORE, BULL MOOSE requests the following relief:

- a) The Court enter judgment for the plaintiff and against the defendants on all counts;
- b) The Court order the defendants to pay damages and enhanced and/or trebled damages, attorney's fees and costs;
- c) The Court order that the defendants, its agents, officers, servants, employees, attorneys, successors, companies, and assignees and all those in active concert or in participation with it be preliminary and permanently enjoined and restrained from using the name and trademark BULL MOOSE, or any other name, trademark, or slogan that gives rise to a likelihood of confusion, mistake, or deception with respect to Bull Moose's trademark BULL MOOSE; and
- e) The Court award to the plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff demands trial by jury on all counts so triable.

Dated: September 27, 2011

/s/ James G. Goggin

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James G. Goggin, *pro hac vice pending*  
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