

SOUTHERN DISTRICT OF INDIANA LAURA A. BRIGGS CLERK

FILED U.S. DISTRICT COURT INDIANAPOLIS DIVISION 2012 MAR 23 PM 2:46

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

AUSTRALIAN GOLD, LLC)
Declaratory Judgment Plaintiff,)
v.)
RUELALA, INC.)
Declaratory Judgment Defendant.)

Civil Action No.

1:12-cv-0374 SEB-DML

COMPLAINT FOR DECLARATORY JUDGMENT

Australian Gold, LLC (hereinafter "Australian Gold") manufactures and sells various tanning preparations, among other products. One indoor tanning preparation made and sold by Australian Gold is offered under the name RUE LA LA. Declaratory Judgment Defendant RueLaLa, Inc. ("RueLaLa") operates a limited time private sale event website at www.ruelala.com. RueLaLa has sent cease and desist letters to Australian Gold demanding that Australian Gold stop selling its RUE LA LA product and that Australian Gold abandon its corresponding trademark application. The letter threatens Australian Gold with litigation if Australian Gold does not immediately agree to RueLaLa's demands. RueLaLa's threats have forced Australian Gold to seek relief from this Court.

Australian Gold for its Complaint for Declaratory Judgment against RueLaLa hereby avers as follows:

JURISDICTION AND VENUE

1. Australian Gold, LLC is an Indiana limited liability company having offices at 6270 Corporate Drive, Indianapolis, Indiana 46278.

2. On information and belief, RueLaLa is a Delaware corporation having its offices at 20 Channel Center, 3rd Floor, Boston, Massachusetts 02108.

3. RueLaLa can be served via its agent Corporation Service Company, 84 State Street, Boston, MA 02108.

4. There is a justiciable controversy between Australian Gold and RueLaLa, namely RueLaLa is alleging that Australian Gold is committing trademark infringement and unfair competition.

5. Subject matter jurisdiction arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, the laws of the United States concerning trademarks, and unfair competition (15 U.S.C. §1114, 1115, 1125 and 28 U.S.C. § 1338(b)), and under the supplemental jurisdiction provisions of 28 U.S.C. § 1367(a).

6. Upon information and belief, Defendant RueLaLa is engaged in ongoing activities in and/or otherwise does business in this judicial district, and is subject to personal jurisdiction in this judicial district.

7. Defendant RueLaLa has sent cease and desist letters to Australian Gold in this judicial district.

8. Venue is proper under 28 U.S.C. §1391.

STATEMENT OF FACTS

RueLaLa

9. Upon information and belief, RueLaLa operates an online “flash sale” service via the company’s website or via mobile devices, where members can shop in “private sale boutiques” that are only open for a limited period of time, such as two days.

10. Upon information and belief, RueLaLa typically markets and presents its online sales services using the mark RUELALA in a specific stylized script as *Ruelala*.

11. Upon information and belief, RueLaLa sales are invitation-only private sales where approved members must login and be verified before they are allowed to view and purchase products.

12. Upon information and belief, RueLaLa focuses on providing consumers access to high-end, third-party products, with constantly changing offerings.

13. Upon information and belief, the customers who use RueLaLa's services are sophisticated consumers.

14. Upon information and belief, RueLaLa does not offer any "RUELALA" branded products.

15. RueLaLa claims ownership of U.S. Registration Nos. 3,484,375 for the mark Rue La La and U.S. Registration No. 3,484,376 for the stylized mark *Ruelala*, respectively, for use in connection with:

[o]n-line retail store services featuring clothing and accessories, footwear, jewelry, luggage, handbags, wallets, small leather goods, sunglasses, home furnishings, bath linens, bed linens, appliances, cookware, electronic goods, and toys all on a limited time sales event basis.

16. RueLaLa claims ownership of U.S. Application No. 77/832,710, filed on September 23, 2010, for the mark Rue La La for

[o]n-line retail store services featuring perfume and fragrances, cosmetics, hair care preparations, shampoos, conditioners, skin lotions and oils, body soaps and cleaners, personal care items, wine, travel packages and certificates, cruise line packages and certificates, airline travel packages and certificates, adventure tour packages and certificates, hotel packages and certificates, and health spa packages and certificates all on a limited time sales event basis.

Australian Gold:

17. Australian Gold provides various products including non-medicated indoor and outdoor skin tanning preparations.

18. Australian Gold's RUE LA LA product is an indoor tanning preparation marketed for sale as part of its DESIGNER SKIN® product line.

19. Australian Gold's RUE LA LA product is marketed exclusively for sale in indoor tanning salons.

20. Australian Gold expressly prohibits its distributors and salon customers from marketing Australian Gold indoor tanning products online.

21. Australian Gold's RUE LA LA product features the DESIGNER SKIN® house mark on the front base of the bottle.

22. Australian Gold's RUE LA LA product includes the stylized name RUE LA LA in a white script font on a pink background in a leopard motif, seemingly suspended as a street sign.

23. Australian Gold's RUE LA LA product is packaged in a distinctive bottle which is an established and recognized "DESIGNER SKIN®" bottle profile, base and cap.

24. Australian Gold's RUE LA LA product is typically displayed to consumers as part of an array of similar DESIGNER SKIN® bottles.

25. The consumers purchasing indoor tanning products are sophisticated and purchase such products in the specific environment of intended use with indoor tanning services.

26. The consumers purchasing indoor tanning products are typically guided by trained tanning consultants.

27. Australian Gold has marketed and sold its RUE LA LA indoor tanning preparation since at least November 1, 2011.

28. Australian Gold owns U.S. Trademark Application No. 85/227,366 directed to its RUE LA LA mark for use in connection with "indoor and outdoor non-medicated skin tanning preparations."

29. Designer Skin's RUE LA LA product has an MSRP of \$87.00

30. Despite apparent co-existence with RueLaLa's use of its mark for its services, Australian Gold is unaware of any instances of actual confusion to consumers.

31. Upon information and belief, RueLaLa is unaware of any instances of actual confusion.

CEASE AND DESIST LETTERS

32. On December 14, 2011, RueLaLa's counsel sent Australian Gold a cease and desist letter regarding Australian Gold's RUE LA LA product.

33. The cease and desist letter asserts trademark infringement claims against and demands that Australian Gold agree to end sales and marketing of its RUE LA LA product and that Australian Gold abandon its pending trademark application.

34. In correspondence between counsel in attempts to resolve this matter, RueLaLa's demands were repeated at least in cease and desist letters mailed on February 3, 2012 and March 22, 2012.

35. The parties have been unable to resolve this matter.

36. The cease and desist letters threaten Australian Gold with litigation for trademark infringement and unfair competition if Australian Gold does not immediately agree to RueLaLa's demands.

**COUNT I—DECLARATORY JUDGMENT OF
NO INFRINGEMENT OF DEFENDANT'S TRADEMARK**

37. Each of paragraphs 1-36 is incorporated herein by reference.

38. Infringement of federally registered trademarks is governed by Sections 32 and 33 of the Lanham Act, 15 U.S.C. §§ 1114(1), 1115.

39. There is an actual and justiciable controversy between Australian Gold and RueLaLa as to whether Australian Gold's use of its trademark violates RueLaLa's alleged trademark rights.

40. RueLaLa's allegations of trademark infringement have caused, and will continue to cause, damage to Australian Gold.

41. On information and belief, RueLaLa's will continue its allegations of trademark infringement unless enjoined by this Court.

42. Australian Gold is entitled to a declaratory judgment that it is not infringing RueLaLa's trademark rights.

**COUNT II—DECLARATORY JUDGMENT OF
NO UNFAIR COMPETITION**

43. Each of paragraphs 1-42 is incorporated herein by reference.

44. There is an actual and justiciable controversy between Australian Gold and RueLaLa as to whether Australian Gold's use of its trademark constitutes unfair competition.

45. RueLaLa's allegations of unfair competition have caused, and will continue to cause, damage to Australian Gold.

46. On information and belief, RueLaLa's will continue its allegations of unfair competition unless enjoined by this Court.

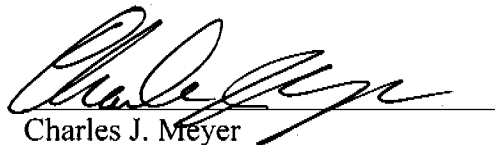
47. Australian Gold is entitled to a declaratory judgment of no unfair competition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Australian Gold prays this Court to:

- A. Enter judgment declaring that Australian Gold has not infringed any trademark rights of Defendant;
- B. Enter judgment declaring that Australian Gold has not engaged in unfair competition with Defendant;
- C. Enter judgment declaring that Australian Gold has caused RueLaLa no recoverable damages;
- D. Order RueLaLa to pay Australian Gold's attorney fees and reasonable costs associated with this matter; and
- E. Provide such other such relief as this Court deems just.

Respectfully submitted,



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