

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

KATIE E. BOYD d/b/a KATIE BOYD'S
MISS FIT CLUB,

Plaintiff,

v.

MizzFit LLC

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

Plaintiff Katie E. Boyd, by her counsel, as and for her complaint against Defendant MizzFit LLC, alleges as follows:

The Parties

1. Plaintiff Katie E. Boyd d/b/a Katie Boyd's Miss Fit Club ("Ms. Boyd" or "Plaintiff") is an individual domiciled in Massachusetts and having a primary place of business at 873 Worcester Street, Wellesley, Massachusetts, 02481.

2. On information and belief, Defendant MizzFit LLC ("MizzFit" or "Defendant") is a Limited Liability Company organized under the laws of New York and having a principal place of business at 95 Horatio Street, New York, New York, 10014.

Jurisdiction and Venue

3. This action arises under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, under Chapter 93A of the Massachusetts General Laws.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1338(b); 28 U.S.C. § 1367; 15 U.S.C. § 1121; the Declaratory Judgment Act, 28 U.S.C. § 2201; and the doctrine of supplemental jurisdiction.

5. In addition, because there is complete diversity between Ms. Boyd and MizzFit, and the amount in controversy is in excess of \$75,000, exclusive of interest and costs, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332.

6. A substantial part of the events and omissions giving rise to the claims asserted herein occurred in this District, and venue is thus proper in this District pursuant to 28 U.S.C. § 1391(b) and (c).

Count I — Declaratory Judgment of Non-Infringement

7. Plaintiff Katie Boyd is a well-known personal trainer who has long provided beauty, fitness, nutrition, and pageant instruction, training, and advice under the marks KATIE BOYD'S MISS FIT CLUB, MISS FIT CLUB, and/or MISS FIT. Since 2004, she has offered in-person instruction, training, and consulting services in the fields of physical fitness, exercise, beauty pageant competition, nutrition, and beauty. Ms. Boyd has offered these services in interstate commerce to clients from across the country at their local gyms, at gyms with which she has been affiliated, at her home, and at her own facility founded in 2010, in Wellesley, Massachusetts.

8. Since January 2008, Ms. Boyd has also offered her services through a website at <missfitco.com>, at which the mark MISS FIT CLUB mark is and has been prominently displayed. A printout of a page from Ms. Boyd's website exemplifying how her MISS FIT CLUB mark has been used is attached hereto as **Exhibit A**.

9. Ms. Boyd, her services, and the mark KATIE BOYD'S MISS FIT CLUB will be featured prominently in a new television series, *Wicked Fit*, premiering on the NBC-owned Style Network on October 23, 2011.

10. On or about September 23, 2011, Ms. Boyd's counsel received a voice mail and an email from Ryan E. Long, counsel for Defendant MizzFit. A true and correct copy of the email is attached hereto as **Exhibit B**. Mr. Long asserted that MizzFit owns service mark registrations for the marks MIZZFIT (U.S. Registration No. 3,988,931, hereinafter "the '931 Registration") and MIZZFIT FITNESS COUTURESS (U.S. Registration No. 3,802,190, hereinafter "the '190 Registration"). Printouts from the United States Patent and Trademark Office's website database showing the status of those registrations are attached hereto as **Exhibit C**. Mr. Long alleged that Ms. Boyd's MISS FIT CLUB mark was confusingly similar to, and infringed, MizzFit's registered marks.

11. Mr. Long's email further stated that, if he did not hear from counsel for Ms. Boyd by 5:00pm on September 26, 2011, he would "be forced to take more aggressive measures including, but not limited to, the sending of a cease and desist letter followed by an order to show cause for preliminary injunction against [Ms. Boyd] and [the Style Network]." Mr. Long also indicated that MizzFit reserved all of its remedies with respect to the "pending infringement of [MizzFit's] registered marks."

12. On information and belief, on or about September 29, 2011, Mr. Long telephoned legal counsel for NBC, owner of the Style Network, to accuse Ms. Boyd and/or NBC of trademark infringement by reason of the display of Plaintiff's mark in the planned television show.

13. By reason of said email and phone calls, Ms. Boyd is under a reasonable fear and apprehension that MizzFit will commence a lawsuit against her for infringement of the registered marks MIZZFIT and MIZZFIT FITNESS COUTURESS that Defendant purportedly owns.

14. Therefore, an actual controversy exists between Ms. Boyd and MizzFit with regard to the infringement of the marks MIZZFIT and MIZZFIT FITNESS COUTURESS.

15. MizzFit's '931 Registration states a date of first use in commerce of June 2009 for the mark MIZZFIT. The '190 Registration states a date of first use in commerce of June 8, 2009 for the mark MIZZFIT FITNESS COUTURESS.

16. By virtue of her earlier use of her KATIE BOYD'S MISS FIT CLUB and MISS FIT CLUB mark, Ms. Boyd is the prior, senior user of her marks and therefore cannot and does not infringe the MIZZFIT and MIZZFIT FITNESS COUTURESS marks. The issuance by the Court of a declaratory judgment of non-infringement under the Declaratory Judgment Act is therefore appropriate.

Count II — Cancellation of MizzFit's Service Mark Registrations
Under 15 U.S.C. § 1119

17. Paragraphs 1–16 are incorporated by reference and re-alleged as if fully stated herein.

18. Ms. Boyd has used her marks KATIE BOYD'S MISS FIT CLUB, MISS FIT CLUB, and/or MISS FIT continuously in commerce to identify her services since at least as early as January 2004.

19. On information and belief, MizzFit commenced use of the marks MIZZFIT and MIZZFIT FITNESS COUTURESS marks no earlier than June 2009, and in any case well after Plaintiff's first use of her marks.

20. By virtue of her earlier use, Ms. Boyd has priority of use over MizzFit for her marks.

21. MizzFit has asserted that its MIZZFIT and MIZZFIT FITNESS COUTURESS marks are "confusingly similar" to Ms. Boyd's marks.

22. Because Plaintiff is the prior user and owner of her marks, and because Defendant has admitted that the respective marks of the parties are confusingly similar, MizzFit's '931 and '190 Registrations should be canceled on the ground of likelihood of confusion with Plaintiff's marks, pursuant to 15 U.S.C. §§ 1052(d), 1064, and 1119.

Count III — False Designation of Origin Under 15 U.S.C. § 1125

23. Paragraphs 1–22 are incorporated by reference and re-alleged as if fully stated herein.

24. Ms. Boyd's marks KATIE BOYD'S MISS FIT CLUB, MISS FIT CLUB, and/or MISS FIT are inherently distinctive of her services and those marks have served and continue to serve to identify Ms. Boyd as the source of the high-quality services offered thereunder.

25. MizzFit's use of the admittedly confusingly similar marks MIZZFIT and MIZZFIT FITNESS COUTURESS is bound to cause confusion, mistake, and/or deception of the

relevant public as to whether MizzFit's services emanate from, or are licensed or approved by, Ms. Boyd.

26. Defendant's conduct has damaged and will continue to damage irreparably Ms. Boyd's valuable goodwill unless enjoined by this Court. Said conduct constitutes a false designation of origin in violation of 15 U.S.C. § 1125.

Count IV — Violation of M.G.L. ch. 93A

27. Paragraphs 1–26 are incorporated by reference and re-alleged as if fully stated herein.

28. The acts of MizzFit complained of herein constitute unfair or deceptive trade practices in violation of Mass. Gen. Laws c. 93A.

29. Plaintiff has incurred and/or may incur damages as a result of said acts of MizzFit, and is entitled to recompense therefor under § 11.

WHEREFORE, Plaintiff Katie E. Boyd prays that this Court enter judgment:

A. Declaring that Plaintiff Katie E. Boyd has priority of use of her KATIE BOYD'S MISS FIT CLUB, MISS FIT CLUB, and/or MISS FIT marks, is the owner of said marks, and has not infringed and is not infringing any rights that Defendant claims in the marks MIZZFIT and MIZZFIT FITNESS COUTURESS.

B. Enjoining Defendant MizzFit LLC, and those in privity with it, from asserting, against Plaintiff and its representatives, agents, customers, and contractors, present and prospective that Plaintiff has infringed or is infringing said marks.

C. Preliminarily and permanently enjoining Defendant and all of its partners, officers, agents, servants, employees, attorneys, and all persons and entities in active concert or participation with them, from using its infringing MIZZFIT and MIZZFIT FITNESS COUTURESS marks, and any confusingly similar variations thereof, whether alone or in combination with other words or symbols, for its identified services, and from any further infringement, unfair competition, and/or tortious interference with existing and prospective economic relations.

D. Ordering that Defendant's U.S. Registration No. 3,988,931 and U.S. Registration No. 3,802,190 be canceled forthwith.

E. Ruling that Defendant's acts of infringement and unfair competition have been knowing and willful.

F. Ordering that Defendant pay to Plaintiff the actual damages sustained by Plaintiff as a result of the actions complained of herein, together with any gains, profits, and advantages realized by the Defendant, and together with the costs of this action pursuant to 15 U.S.C. § 1117(a), Mass. Gen. Laws c. 93A, § 11, or otherwise.

G. Ordering that Defendant pay to Plaintiff treble damages pursuant to 15 U.S.C. § 1117(a) and Mass. Gen. Laws c. 93A, § 11.

H. Ordering that Defendant pay to Plaintiff the reasonable attorneys fees incurred by Plaintiff in connection with this action.

I. Granting to Plaintiff such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Fed. R. Civ. P., Plaintiff hereby demands trial by jury of all issues so triable.

Respectfully submitted,

KATIE E. BOYD

By her attorneys,

/s/ John L. Welch


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