

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HOLIDAY PUBLIC RELATIONS &
EVENTS, LLC,

Plaintiff,

v.

THE EDGARTOWN LIBRARY
FOUNDATION, INC., SUSAN
CAHOON, ANNE VOSE, HEATHER
COHAN, MELISSA ALDEBORGH

Defendants.

Civil Action No. __-CV-_____

COMPLAINT

Plaintiff, Holiday Public Relations & Events, LLC (“Holiday”), for its Complaint against The Edgartown Library Foundation, Inc., Susan Cahoon, Anne Vose, Heather Cohan and Melissa Aldeborgh (collectively “Defendants”), alleges as follows:

THE PARTIES

1. Holiday is a Texas corporation with a place of business at 5773 Woodway, Suite 142, Houston, Texas 77057.
2. The Edgartown Library Foundation, Inc. (“ELF”) is a Massachusetts corporation with a place of business at 40 South Summer Street, P.O. Box 1198, Edgartown, Massachusetts 02539.
3. Susan Cahoon, Anne Vose, Heather Cohan and Melissa Aldeborgh are individuals who reside at Martha’s Vineyard, Massachusetts.

JURISDICTION AND VENUE

4. This is a civil action for injunctive relief and damages for violation of the copyright laws of the United States, 17 U.S.C. § 101, *et seq.*, for violation of the Lanham Act,

15 U.S.C. § 1051, *et seq.*, for trademark infringement in violation of Mass. Gen. L. ch. 110H, and unfair and deceptive trade practices in violation of Mass. Gen. L. ch. 93A.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.
6. This Court has personal jurisdiction over ELF because ELF has a place of business in this judicial district, and has extensive business contacts with this judicial district, including the business which forms the basis for this civil action.
7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400.

BACKGROUND

8. Since 1998, Holiday has specialized in providing services related to event planning and public relations projects.
9. In about July 2009, Danielle Pendergraft, the Director of Holiday, created the slogan “Frankly We Love Our Library,” set alongside the image of a hotdog in a bun. Holiday owns the text and image depicted below:



10. On May 4, 2011, Holiday obtained U.S. Copyright Reg. No. VA0001772009 (Exhibit A) to the “Frankly We Love Our Library” text and artwork (“Frankly Copyright”) that Holiday had created in 2009.

11. Since 2009, Holiday has used the mark “Frankly We Love Our Library” (“LOVE Mark”) in connection with the event planning and public relations services it offers, including at community events for libraries where hot dogs are served. In addition, Holiday has licensed and has ongoing negotiations to license the LOVE Mark and Frankly Copyright to libraries in the United States.

12. As a result of its use of the LOVE Mark, Holiday has established common law trademark rights in the Mark.

13. Holiday owns Massachusetts State Registration No. 74171 for WE (HEART) OUR LIBRARY, issued on September 2, 2011 (Exhibit B).

14. Holiday owns Massachusetts State Registration No. 74172 for FRANKLY, WE (HEART) OUR LIBRARY, issued on September 2, 2011 (Exhibit C).

ELF’s Use of Holiday’s Copyright and Trademarks

15. In about August 2009, Holiday entered into a contract with ELF to provide public relations and event planning services, which included, among other events, the planning and production of a FRANKLY WE (HEART) OUR LIBRARY Labor Day event.

16. In about July 2010, Holiday entered into a second contract with ELF to provide public relations and event planning services, which included, among other events, the planning and production of another FRANKLY WE (HEART) OUR LIBRARY Labor Day event.

17. In about February 2011, Holiday notified ELF that it wished to terminate its contract with ELF. Holiday suggested a termination date of September 30, 2011. ELF

requested and Holiday agreed that Holiday's contract would terminate on July 31, 2011.

18. In about April 2011, Pendergraft contacted ELF and certain members of the Library Board of Trustees regarding licensing Holiday's Frankly Copyright and LOVE Mark for use in connection with ELF's upcoming 2011 Labor Day event, which would occur after the Holiday-ELF contract had terminated.
19. In about May 2011, Pendergraft met with ELF's newly appointed chairman, Susan Cahoon, and explained that Holiday had a copyright registration to the Frankly Copyright.
20. In about June 2011, ELF board member Heather Cohan informed Pendergraft that she was in charge of ELF's 2011 Labor Day event. Cohan asked Pendergraft for Holiday's Labor Day event planning template and materials. Pendergraft explained that Holiday was not retained to consult on the 2011 Labor Day event. ELF declined Holiday's offer of a license to the Frankly Copyright and LOVE Mark.
21. In about July 2011, Pendergraft attended an ELF board meeting and again explained Holiday's rights in the Frankly Copyright and LOVE Mark. ELF declined Holiday's offer of a license to the Frankly Copyright and LOVE Mark.
22. In about August 2011, ELF board member Anne Vose came to Pendergraft's residence to discuss whether ELF could use the language FRANKLY WE (HEART) OUR LIBRARY in materials for ELF's 2011 Labor Day event and if Pendergraft would provide a large vinyl banner from a 2009 Labor Day event containing the Frankly Copyright. Vose asked whether or not Pendergraft would be willing to

provide these items “as a friend.” Pendergraft declined and explained to Vose that ELF did not have a license to use the Frankly Copyright or LOVE Mark.

23. On information and belief, in about August 2011, ELF attempted to obtain the Frankly Copyright artwork from two different employees of a printing company which Holiday had used for printing materials containing the Frankly Copyright. The printing company denied the request.

24. In about August 2011, ELF retained the freelance graphic design services of Melissa Aldeborgh to create newspaper advertisements published in at least two newspapers using the language FRANKLY WE (HEART) OUR LIBRARY and WE (HEART) OUR LIBRARY and other copy provided by Holiday in previous years (Exhibit D). Holiday advised Aldeborgh of its rights in the Frankly Copyright and LOVE Mark in writing and by telephone.

25. Despite Holiday’s notices, on information and belief, Aldeborgh created and ELF mailed hundreds of fliers in August 2011 using the language FRANKLY WE (HEART) OUR LIBRARY (Exhibit E) and other copy provided by Holiday in previous years.

26. Despite Holiday’s notices, on information and belief, Aldeborgh created posters, additional fliers, and a large vinyl banner displayed by ELF over Main Street in Edgartown, MA (Exhibit F) using the LOVE Mark and other copy provided by Holiday in previous years.

27. On information and belief, Cohan placed internet advertisements for ELF’s 2011 Labor Day event. In at least one internet advertisement, Cohan’s name and email address are listed as the contact person for the event. On information and belief,

Cohan was responsible for the content of these advertisements and used Holiday's Frankly Copyright and the LOVE Mark to advertise the upcoming 2011 Labor Day event on the internet as late as on September 2, 2011 at www.mvol.com/events/8910 (Exhibit G) and www.ticketsmv.com/event.php?id=19762 (Exhibit H). In addition, language on the internet promoting the event includes language provided by Holiday in previous years, "Quite frankly, everyone loves the Edgartown Library. Join us in support of the Library – enjoy frankfurters, hamburgers, baked beans and ice cream. Climbing wall, field activities, airplanes galore and so much more. Fun for the whole family."

28. In August 2011, two newspapers published letters to the editor written by ELF Chairman Susan Cahoon stating ELF was hosting a Labor Day event entitled FRANKLY WE LOVE OUR LIBRARY (Exhibit I).
29. Even after many proposals by Holiday to settle the dispute, ELF proceeded with the Labor Day event.
30. On information and belief, ELF received revenue from its 2011 Labor Day event, e.g., through ticket sales.
31. On information and belief, ELF's event was poorly organized, had low attendance, and was not well regarded.
32. On information and belief, ELF's infringement of Holiday's Frankly Copyright and LOVE Mark and its unfair and deceptive trade practices, have been knowing and willful, and will continue.
33. On information and belief, ELF's infringement of Holiday's Frankly Copyright and LOVE Mark and Holiday's enforcement of its rights in the same have injured

Holiday's business reputation and directly impacted its ability to secure new contracts within the community.

COUNT I
(Copyright Infringement under 17 U.S.C. § 101)

34. Holiday repeats and re-alleges the allegations of the paragraphs above as though fully set forth herein.
35. Defendants have infringed Holiday's Frankly Copyright, in violation of 17 U.S.C. § 501, by using U.S. Copyright Reg. No. VA0001772009 without any license.

COUNT II
(False Designation of Origin under 15 U.S.C. § 1125(a))

36. Holiday repeats and re-alleges the allegations of the paragraphs above as though fully set forth herein.
37. Holiday's Frankly Copyright and LOVE Mark are recognized for quality in the event planning and public relations services industry.
38. On information and belief, Defendants have used and will continue to use the LOVE Mark in commerce in connection with the 2011 Labor Day event and similar future events.
39. Defendants' use of a mark confusingly similar to Holiday's LOVE Mark has the effect of associating ELF with Holiday's LOVE Mark in the minds of the purchasing public and of trading off the goodwill acquired by Holiday.
40. Defendants' actions are likely to cause confusion or mistake, or to deceive as to the affiliation, connection or association of ELF with Holiday or as to the origin, sponsorship or approval of ELF's services by Holiday, entitling Holiday to relief under 15 U.S.C. § 1125(a).

41. On information and belief, Defendants Susan Cahoon, Anne Vose, Heather Cohan and Melissa Aldeborgh, induced ELF's infringement of the LOVE Mark and Frankly Copyright. These individuals are therefore contributorily and vicariously liable to Holiday under 15 U.S.C. § 1125(a).
42. Holiday has been damaged by such conduct in an amount to be determined at trial.
43. Unless enjoined, Defendants' behavior will continue and will cause Holiday to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Holiday is entitled to injunctive relief. It is also entitled to damages for such false designation of origin.

COUNT III
(Common Law Infringement and Unfair Competition)

44. Holiday repeats and re-alleges the allegations of the paragraphs above as though fully set forth herein.
45. Holiday owns rights in the LOVE Mark at common law.
46. By the above-described conduct, Defendants have engaged in infringement and unfair competition under common law.
47. Holiday has been damaged by such conduct in an amount to be determined at trial.
48. Unless enjoined, Defendants' behavior will continue and will cause Holiday to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Holiday is entitled to injunctive relief. It is also entitled to damages for such conduct.

COUNT IV
(State Trademark Registration Infringement Under Mass. Gen. L. ch. 110H Sec. 12)

49. Holiday repeats and re-alleges the allegations of the paragraphs above as though fully set forth herein.

50. Defendants are, and at all relevant times were, engaged in commerce.
51. Defendants' acts and/or omissions as described above occurred primarily and substantially in Massachusetts.
52. Defendants' acts and/or omissions as described above constitute infringement of Holiday's Massachusetts State Trademark Registrations under Mass. Gen. L. ch. 110H Sec. 12.
53. Defendants' acts and/or omissions as described above were knowing and willful.
54. Defendants' practices damaged Holiday in an amount to be determined at trial.

COUNT V
(Unfair And Deceptive Trade Practices Under Mass. Gen. L. ch. 93A)

55. Holiday repeats and re-alleges the allegations of the paragraphs above as though fully set forth herein.
56. Defendants are, and at all relevant times were, engaged in commerce.
57. Defendants' acts and/or omissions as described above occurred primarily and substantially in Massachusetts.
58. Defendants' acts and/or omissions as described above constitute unfair and deceptive trade practices under Mass. Gen. L.ch. 93A.
59. Defendants' acts and/or omissions as described above were knowing and willful.
60. Defendants' unfair and deceptive trade practices damaged Holiday in an amount to be determined at trial.

RELIEF REQUESTED

For the above reasons, Holiday prays that the Court declare and a judgment be entered that:

A. Permanently enjoins Defendants, including ELF, its partners, officers, trustees, agents, servants, employees, attorneys, and all those persons and entities in active concert or participation with them, from further infringement of Holiday's Frankly Copyright pursuant to 17 U.S.C. § 502, from further infringement of Holiday's LOVE Mark pursuant to 15 U.S.C. § 1116, and Mass. Gen. L. ch. 110H, and from further unfair and deceptive trade practices pursuant to Mass. Gen. L. ch. 93A.

B. Order the recall, impounding and destruction of all infringing copies made, used or distributed by Defendants in violation of Holiday's exclusive rights in and to its Frankly Copyright, pursuant to 17 U.S.C. § 503.

C. Direct Defendants to pay to Holiday its actual damages and any additional profits realized by Defendants, pursuant to 17 U.S.C. § 504.

D. Order that, in the alternative to actual copyright damages, at Holiday's election, Defendants shall pay Holiday statutory damages pursuant to 17 U.S.C. § 504.

E. Defendants shall pay to Holiday any damages attributable to Defendants' infringement of Holiday's LOVE Mark and shall account for all gains, profits, and advantages derived through that infringement (including an accounting up through the entry of injunction), and such damages authorized by law, including 15 U.S.C. § 1117 and Mass Gen. L. ch. 110H;

F. Direct Defendants to pay to Holiday its damages sustained as a result of Defendants' unfair and deceptive trade practices.

G. Enter judgment that Defendants' copyright infringements, trademark infringements and unfair and deceptive trade practices have been knowing and willful.

H. Award Holiday its attorney fees and costs in prosecuting this action, pursuant to 17 U.S.C. § 505, 15 U.S.C. § 1117, 28 U.S.C. § 1920, Mass. Gen. L. chs. 93A and 110H, or otherwise.

I. Award Holiday treble damages pursuant to Mass. Gen. L. chs. 93A and 110H or otherwise.

J. Award Holiday such further relief as this Court may deem just and proper.

JURY DEMAND

Holiday hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

HOLIDAY PUBLIC RELATIONS &
EVENTS, LLC
By its counsel,

Dated: December 2, 2011

/s/ Douglas R. Wolf
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