

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RUDOLPH AND ME, INC.,
A Florida Corporation,

Plaintiff,

vs.

Ornament Central, LLC
A Massachusetts Limited Liability
Company;

Smudges

and

Christine Casey, an individual

Defendants.

JUDGE _____

Case No. _____

**COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF SOUGHT,
AND DEMAND FOR JURY TRIAL**

1. Plaintiff, RUDOLPH AND ME, INC., a Florida corporation (hereinafter "RMI") hereby sues Defendants, Ornament Central, LLC a Massachusetts Limited Liability Company, and alleges:

INTRODUCTION

2. RMI is a corporation incorporated under the laws of the State of Florida and has its principal place of business in Sarasota, Florida. RMI is a family owned and

operated business that designs, manufactures and sells distinctive, premium quality, hand painted ornaments.

3. Upon further information and belief, Defendant, ORNAMENT CENTRAL, LLC, is a limited liability company formed under the laws of the State of Massachusetts and has its principal place of business in Gardner, Massachusetts. Upon information and belief, Ornament Central, LLC is engaged in the principal business of manufacture (either directly or indirectly), distribution (directly or through its customers) and sale of ornaments.

4. Upon information and belief, Defendant, SMUDGES, is an unincorporated business entity with its principal place of business located in Massachusetts. On further information and belief, Ms. Casey is an officer and/or the alter ego of SMUDGES. Upon further information and belief, Defendant, SMUDGES, is the predecessor company to Plaintiff, ORNAMENT CENTRAL, LLC.

5. Upon information and belief, Defendant, CHRISTINE CASEY, an individual, is a designer, manufacturer and/or seller of ornaments. On further information and belief, Ms. Casey is an officer and/or the alter ego of ORNAMENT CENTRAL, LLC. Upon information and belief, CHRISTINE CASEY is a resident of the State of Massachusetts.

6. This is an action by RMI against ORNAMENT CENTRAL, LLC, SMUDGES, and CHRISTINE CASEY for copyright infringement, common law trademark infringement and other claims based upon federal and state law.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is based upon diversity of citizenship pursuant to 28 U.S.C. § 1332. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §1338 as this dispute involves federal questions arising under the Copyright Laws of the United States, 17 U.S.C. §§ 101, et seq. and the Lanham Act, 15 U.S.C. §§1051, et seq.

8. This is a civil action in which the matter in controversy exceeds the sum or value of \$150,000, exclusive of interest and costs.

9. Pursuant to section 48.193(2), Florida Statutes, this Court has general jurisdiction over Defendants as they are, on information and belief, engaged in substantial and not isolated activity within the State of Florida.

10. Pursuant to section 48.193(1)(b) and (f), Florida Statutes, the Court has specific jurisdiction over Defendants because, on information and belief, Defendants have committed tortious acts in the State of Florida and Defendants have further caused injury to RMI in the State of Florida.

11. This Court has jurisdiction over Defendants in that, upon information and belief, infringing goods are being offered for sale and/or have been sold in Florida, including this District, and Defendants has sufficient contacts with the State of Florida and this District to subject it to the jurisdiction of this Court. Upon information and belief, the contacts of Defendants include directing goods into the stream of commerce and to consumers in the State of Florida, including this District. Upon information and belief, Defendants derives revenues from the sale of its products in the State of Florida,

including this District. Upon information and belief, the injury and damages caused by Defendants' infringement is occurring or has occurred in the State of Florida and this District.

12. Upon information and belief, ORNAMENT CENTRAL, LLC sells, and actively offers for sale, goods in the State of Florida, including this District, through their website(s) and/or websites that they have authorized their ornaments to be distributed through, which include www.ornamentcentral.com, www.russellrhodes.com, www.ornamentsandmore.com and www.treasuredornaments.com.

13. Upon information and belief, Defendants further sell their products to consumers and retail/dealer locations within the State of Florida and the District.

14. This Court has supplemental or pendent jurisdiction of all state law claims.

15. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. §1400(a).

FACTUAL BACKGROUND AND ALLEGATIONS PERTINENT TO ALL CLAIMS

16. RMI is a family owned business founded by Joseph and Susan Brielmann in 2002 as a means to create, manufacture and sell distinctive and personalized ornaments. Susan Brielmann has been designing personalized gift products since as early as 1980. Through Susan Brielmann's efforts, design creativity and business acumen, RMI has grown to become a premier wholesaler of original ornaments that can be personalized by consumers. The ornaments are sold at various retail outlets worldwide.

17. All of RMI's ornaments are original designs that can be broadly classified into general categories including, but not limited to: family, baby, child, sports, hobby, profession/trade, wedding and special occasion, and general holiday. RMI has established itself as a leader in the personalized ornament marketplace and wholesales its ornaments to retailers throughout the United States and in foreign markets.

18. Some of RMI's ornaments include: Scrub Nurse – Female (RM816); Scrub Nurse – Male (RM817); Wrestler (RM738Y/B); Carpenter (RM71); Bed Heads (RM705-2 through RM705-5); Christmas Tree Caravan (RM709-2 through RM709-5); Year with Faces (RM604-2 through RM604-5); Reindeer Scroll (RM104) and Saxophone Boy (RM657B). A picture of the ornaments (hereinafter referred to as "RMI's Ornaments") is shown in Exhibit A (left side of Exhibit A) attached hereto. The copyrights for these ornaments are registered under U.S. Copyright Registration Nos. VA0001348363, VA0001403354, VA0001236363, VA0001292050; VA0001686520 and/or VA0001760954.

19. RMI has developed a business reputation for producing distinctive Christmas and holiday ornaments and decorations. RMI has invested enormous amounts of time and resources into creating, producing, promoting, advertising and distributing RMI's Ornaments. RMI's Ornaments represent the principal products of RMI's business.

20. Jan Carle is one of the original entrepreneurs in the personalized ornament industry, and she started designing, manufacturing and selling her ornaments at least as early as 1976. Jan Carle sold her ornaments under the trade name

“Rascals”. Jan Carle’s principal place of business was in Colorado Springs, Colorado. Jan Carle’ ornaments contain her distinctive and signature trademark face. Jan Carle has created and used a “mouth” trademark (shown in Exhibit B) since at least as early as 1976 and has created and used an “entire face” trademark (shown in Exhibit C) since at least as early as 1977 (hereinafter collectively, “RMI’s Mouth and Face Trademarks”).

21. RMI acquired, by license or assignment, copyrights and trademarks and associated goodwill of various ornaments from Jan Carle, including the RMI Mouth and Face Trademarks and also including all rights to sue for past infringement.

22. Defendants have copied and have made unauthorized derivatives of RMI’s Ornaments and the RMI Mouth and Face Trademarks (hereinafter referred to the “Infringing Products”). The Infringing Products were copied, manufactured and distributed without authority or license from RMI.

23. Attached hereto as Exhibit A is a side-by-side comparison of various RMI ornaments compared to various Defendants’ Ornaments.

24. Upon information and belief, Defendants displayed images of the Infringing Products on Defendants’ websites or websites through which Defendants are believed to have authorized their products to be distributed. The websites include, but not limited to, www.ornamentcentral.com, www.russellrhodes.com, www.ornamentsandmore.com and www.treasuredornaments.com) Defendants did not have or provide any authority, attribution of authorship or ownership to RMI.

25. Upon information and belief, Defendants’ website(s) touts that all ornaments are designed by their owner, Christine Casey, based on 25 years

experience, and on what its wholesale customers, tell Defendants that shoppers are asking for. In the case of the Infringing Products, the designs were, upon information and belief, conceived by copying RMI's Ornaments and RMI's Mouth and Face Trademarks or making unauthorized derivatives thereof.

26. Upon information and belief, Defendants have sold the Infringing Products directly or indirectly to consumers and/or to Defendants' customers, who then sold the Infringing Products to consumers.

27. Upon information and belief, Defendants have marketed and sold the Infringing Products to consumers in the State of Florida and/or to customers in the State of Florida who sold them to consumers.

28. RMI's Ornaments are marked with a copyright notice.

29. Upon information and belief, Defendants knew or should have known that their activities, namely, their copying of RMI's Ornaments, as well as their manufacture, importation, sale and promotion of the Infringing Products, infringed upon RMI's copyrights in one or more of the RMI's Ornaments. Further, Defendants were never licensed to manufacture, import, distribute or sell any of RMI's Ornaments or derivatives thereof.

30. Upon information and belief, Defendants are continuing to copy and reproduce unauthorized derivatives of RMI's Ornaments, offer for sale and sell the Infringing Products without authority or license from RMI and Defendants will continue to sell the Infringing Products to their customers and consumers.

31. Upon information and belief, the aforesaid actions of Defendants were and are deliberate, intentional and willful violations of RMI's rights for the purpose of pecuniary and commercial gains, and were done without authorization by RMI.

COUNT I
FEDERAL COPYRIGHT INFRINGEMENT

32. RMI re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 31 above.

33. This is an action under 17 U.S.C. § 101, et seq., for infringement of federally protected copyrights.

34. RMI is the sole owner of all rights, title, and interest in and to the copyrights in RMI's Ornaments.

35. Upon information and belief, Defendants are operating their business by reproducing and selling the Infringing Products that are copies and/or unauthorized derivatives of RMI's Ornaments. Defendants are also displaying digital images of their copies and/or unauthorized derivatives of RMI's Ornaments on Defendant's website(s) (www.ornamentcentral.com). At no time were Defendants authorized to copy, reproduce, sell and/or display RMI's Ornaments or derivatives thereof.

36. Upon information and belief, Defendants' actions have caused monetary damages to RMI, and Defendants' continuance of such actions will cause irreparable harm to RMI.

37. As a direct and consequential result of Defendants' willful and intentional infringement of RMI's exclusive rights under the Copyright Act, 17 U.S.C. § 101 et seq.,

RMI is entitled to injunctive relief enjoining the Defendants from distributing any Infringing Products and to an award of actual damages in an amount to be determined at trial, including RMI's lost profits and/or Defendants' profits from infringement and/or, at RMI's election, statutory damages, including damages for willful infringement of up to \$150,000 for each and every infringing ornament, and attorneys' fees.

COUNT II
FEDERAL TRADEMARK INFRINGEMENT UNDER SECTION 43(a) OF THE
LANHAM ACT

38. RMI re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 37 above.

39. This is an action under 43(a) of the Lanham Act for trademark infringement.

40. Because the Infringing Products incorporate RMI's Mouth and Face Trademarks or a mouth and face that is confusingly similar to RMI's Mouth and Face Trademarks, they are likely to cause consumer confusion, or to cause mistake, or to deceive, as to the origin or source of the association of such Infringing Products with the RMI Mouth and Face Trademarks, or as to the origin, source or approval of the Infringing Products. Such consumer confusion has threatened and caused, and will continue to threaten and cause, substantial injury to RMI.

41. As a direct and consequential result of Defendants' unlawful conduct, RMI has suffered substantial monetary loss and harm to their businesses.

42. Upon information and belief, Defendants' infringement is willful and deliberate.

43. Upon information and belief, unless enjoined by this Court, Defendants intend to continue their course of conduct and to wrongfully use and pass off the Infringing Products as their own works.

44. Defendants' conduct has caused and will continue to cause irreparable injury to Plaintiff unless enjoined by this Court. Plaintiff has no adequate remedy at law.

45. As a direct and consequential result of Defendants' willful and intentional infringement, RMI is entitled to injunctive relief enjoining the Defendants from distributing any Infringing Products and to an award of actual damages in an amount to be determined at trial, including RMI's lost profits and/or Defendants' profits from infringement, treble damages and attorneys' fees.

COUNT III
UNFAIR COMPETITION AND FALSE AND MISLEADING ADVERTISING
UNDER 15 U.S.C. § 1125

46. RMI re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 45 above.

47. This is an action under 15 U.S.C. § 1125 for unfair competition and false and misleading advertising.

48. Upon information and belief, Defendants produced digital images of Infringing Products that are unauthorized copies and/or derivatives of RMI's Ornaments and/or RMI's Mouth and Face Trademarks on Defendants' website (www.ornamentcentral.com) without authorization or license by RMI.

49. Upon information and belief, Defendants' website advertises one or more of the Infringing Products that are unauthorized copies and/or derivatives of RMI's Ornaments and include RMI Mouth and Face Trademarks, under one or more of the Defendants' trademarks, without attribution to RMI. The websites also advertises the Infringing Products as being original, stating "[a]ll ornaments are designed by our owner, Christine Casey, based on our 25 years' experience, and on what you, our wholesale customers, tell us your shoppers are asking for."

50. Upon information and belief, Defendants' advertising is false and misleading because the Infringing Products are not unique and original because they are copies and/or derivatives of RMI's Ornaments and include RMI's Mouth and Face Trademarks. Also, Defendants' marketing on their websites constitutes false and misleading advertising. Defendants' false and misleading advertising has been made in interstate commerce.

51. Upon information and belief, Defendants' false and misleading advertising is likely to deceive and confuse a significant number of consumers in the trade to which such advertising is directed.

52. Upon information and belief, Defendants' actions have caused monetary damages to RMI and have damaged RMI's business reputation and goodwill, and Defendants' continuation of such activities will cause irreparable harm to the RMI.

53. As a direct and consequential result of Defendants' willful and intentional infringement, RMI is entitled to injunctive relief enjoining the Defendants from distributing any Infringing Products and to an award of actual damages in an amount to

be determined at trial, including RMI's lost profits and/or Defendants' profits from infringement, treble damages and attorneys' fees.

COUNT IV
UNFAIR COMPETITION AND FALSE AND MISLEADING ADVERTISING UNDER
FLORIDA COMMON LAW

54. RMI re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 53 above.

55. This is an action under Florida common law for unfair competition and false and misleading advertising.

56. Upon information and belief, Defendants produced digital images of Infringing Products that are unauthorized derivatives of RMI's Ornaments and RMI Mouth and Face Trademarks on Defendants' websites, without authorization or license by RMI.

57. Upon information and belief, www.ornamentcentral.com advertises one or more of the Infringing Works that are unauthorized copies and/or derivatives of RMI's Ornaments and RMI Mouth and Face Trademarks as originally designed by Defendants, without attribution to RMI. The website also advertises the Infringing Products as being original, stating "[a]ll ornaments are designed by our owner, Christine Casey, based on our 25 years' experience, and on what you, our wholesale customers, tell us your shoppers are asking for."

58. Upon information and belief, Defendants' advertising is false and misleading because the Infringing Products are not unique and original because they

are copies and/or derivatives of RMI's Ornaments and RMI Mouth and Face Trademarks. Also, Defendants' marketing on their websites constitutes false and misleading advertising. Defendants' false and misleading advertising has been made in interstate commerce.

59. Upon information and belief, Defendants' false and misleading advertising has or is likely to deceive and confuse a significant number of consumers in the trade to which such advertising is directed.

60. Upon information and belief, Defendants' actions have caused monetary damages to RMI and have damaged RMI's business reputation and goodwill, and Defendants' continuation of such activities will cause irreparable harm to the RMI.

61. As a direct and consequential result of Defendants' willful and intentional infringement, RMI is entitled to to have the Court enjoin Defendants from distributing any Infringing Products and to an award of actual damages in an amount to be determined at trial, including RMI's lost profits and/or Defendants' profits from infringement, treble damages and attorneys' fees.

COUNT V
COMMON LAW TRADEMARK INFRINGEMENT

62. RMI re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 61 above.

63. Defendants offer for sale Infringing Products that use copies, variations, simulations or colorable imitations of RMI's Mouth and Face Trademarks, including but not limited to the distinctive and signature faces.

64. On information and belief, Defendants copied RMI's Mouth and Face Trademarks with the intent to trade on the goodwill in the RMI Mouth and Face Trademarks. Defendants' intentional copying is further evidenced by the degree of similarity between the Infringing Products and Defendants' Ornaments and related trademarks.

65. RMI has not authorized, licensed nor otherwise permitted Defendants to use RMI's Mouth and Face Trademarks. Therefore, Defendants' acts were committed in violation of the RMI Mouth and Face Trademarks.

66. Because the Infringing Products are confusingly similar to RMI's Ornaments, they are likely to cause consumer confusion, or to cause mistake, or to deceive, as to the association of such Infringing Products with the RMI Mouth and Face Trademarks, or as to the origin, source, approval of the Infringing Products. Such consumer confusion has threatened and caused, and will continue to threaten and cause, substantial injury to RMI.

67. As a direct and consequential result of Defendants' unlawful conduct, RMI has suffered substantial monetary loss and harm to their businesses.

68. Upon information and belief, Defendants' infringement is willful and deliberate.

69. Upon information and belief, unless enjoined by this Court, Defendants intend to continue their course of conduct and to wrongfully use and pass off the Infringing Products as their own works.

70. Defendants' conduct has caused and will continue to cause irreparable injury to RMI unless enjoined by this Court. RMI has no adequate remedy at law.

71. As a direct and consequential result of Defendants' willful and intentional infringement, RMI is entitled to have the Court enjoin Defendants from distributing any Infringing Products and to an award of actual damages in an amount to be determined at trial, including RMI's lost profits and/or Defendants' profits from infringement, treble damages, attorneys' fees.

COUNT VI
REQUEST FOR A CONSTRUCTIVE TRUST

72. RMI re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 71 above.

73. By virtue of their wrongful conduct, Defendants illegally received money and profits that rightfully belonged to RMI in violation with federal copyright and trademark laws.

74. Defendants are therefore involuntary trustees, holding the gross receipts from their Infringing Product sales and revenues to the extent attributable to the Infringing Products, and therefore attributable to the infringement of intellectual property rights. Defendants hold such moneys and funds on behalf of and subject to a first and prior lien against all others and in favor of RMI. On information and belief, Defendants hold this illegally received money and profits in the form of bank accounts, real property, equipment and personal property and intangible assets that can be located and traced.

75. RMI is entitled to the remedy of a constructive trust in view of Defendants' wrongful infringement of RMI's intellectual property rights.

COUNT VII
UNJUST ENRICHMENT UNDER FLORIDA COMMON LAW

76. RMI re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 75 above.

77. This is an action under Florida common law for unjust enrichment.

78. Upon information and belief, the conduct of Defendants as described above, namely, dissemination of the Infringing Products and use of the aforementioned advertising, has resulted in Defendants being unjustly enriched. It would be inequitable for Defendants to retain the sale proceeds from the sale of the Infringing Products.

79. Upon information and belief, Defendants' actions have caused monetary damages to RMI and have damaged RMI's business reputation and goodwill, and Defendants' continuation of such activities will cause irreparable harm to RMI.

PRAYER FOR RELIEF

WHEREFORE, RMI prays:

A. That RMI be awarded the greater of its actual damages, Defendants' profits, statutory damages of one hundred fifty thousand dollars (\$150,000) for each of the infringing works and attorneys' fees as provided by 17 U.S.C. §§ 502, 503, 504, 505 and any other statute or law as the Court deems appropriate.

B. That RMI be awarded the greater of its actual damages, Defendants' profits or statutory damages as provided by 15 U.S.C. § 1117.

C. That RMI be awarded enhanced, exemplary, or treble damages threefold its actual damages pursuant to 15 U.S.C. § 1117 and any other statute or law as the Court deems appropriate.

D. That RMI be awarded its actual damages, consequential damages, statutory damages, enhanced damages, and Defendants' profits and its costs and attorney fees and relief based upon the Copyright Act, the Lanham Act, Florida Statute or Common Law or any other applicable statute or law as the Court deems appropriate.

E. Pursuant to 17 U.S.C. § 502, 15 U.S.C. § 1116 and any other statute or law as the Court deems appropriate, that Defendants, jointly and severally, their employees, agents, officers, directors, servants and all those controlled by or acting on behalf of the Defendants be preliminarily and permanently enjoined from:

- i. infringing each of the RMI's copyrighted works by manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, displaying, or otherwise disposing of the Infringing Products or any of products bearing any simulation, reproduction, copy, or colorable imitation of any of RMI's copyrighted works;
- ii. using any simulation, reproduction, copy or colorable imitation of any of RMI's copyrighted works in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of the Infringing Products in such fashion as to relate or connect, or tend to relate or connect, such products in any way to the RMI, or to any

goods sold, manufactured, sponsored by, approved by, or connected with the RMI;

- iii. making any statement or representation, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any products manufactured, distributed or sold by the Defendants are in any manner associated or connected with the RMI, or are sold, manufactured, licensed, sponsored, approved or authorized by the RMI;
- iv. engaging in any other activity constituting unfair competition with the RMI, or constituting infringement of any of RMI's copyrighted properties, or constituting dilution or injury to RMI's business reputation, names, or goodwill;
- v. using the RMI Mouth and Face Trademarks or any trademarks or faces in association with ornamating in a manner that is likely to cause confusion, mistake or deception among consumers.

F. Order Defendants to report to this Court within thirty (30) days after a Permanent Injunction is entered to show their compliance with the above paragraph.

G. That the Court declare, adjudge, and decree that Defendants, and each of them, have been and are involuntary and constructive trustees, holding the gross receipts from the aforesaid production, marketing, distribution, sale or other exploitation of the Infringing Products, or Defendants' misuse of the protectable intellectual property

rights of RMI, and that Defendants hold all such monies and funds on behalf of and subject to a first and prior lien against all other and in favor of RMI;

H. Order such other actual damages, contributory damages, exemplary damages, attorneys' fees and costs and other relief as the Court may deem appropriate under any state or Federal law, including but not limited to preventing the trade and public from gaining the erroneous impression that any products manufactured sold or otherwise circulated or promoted by the Defendants are authorized by RMI, or related in any way to RMI's products.

I. Order an accounting of the profits derived by Defendants by the acts of infringement and unfair competition, and further ordering that said profits be paid to RMI with interest pursuant to 15 U.S.C. §1117, 17 U.S.C. § 504 and any other statute or law as the Court deems appropriate.

J. That RMI be awarded reasonable attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117, 17 U.S.C. § 505 as well as any other applicable statute or law.

K. Order of impound pursuant to 17 U.S.C. § 503 of all of the Defendants' Infringing Products, labeling, packaging, advertising, promotions, displays, statements, representations, descriptions or any other simulation, reproduction, copy or colorable imitation of RMI's copyrighted properties.

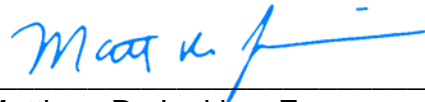
L. Order that Defendants deliver for destruction all Infringing Products pursuant to 17 U.S.C. § 503, 15 U.S.C. § 1118 and any other statute or law as the Court deems appropriate.

M. That RMI be granted or awarded such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

RMI hereby demands trial by jury for all issues so triable.

Plaintiff's Attorney:



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