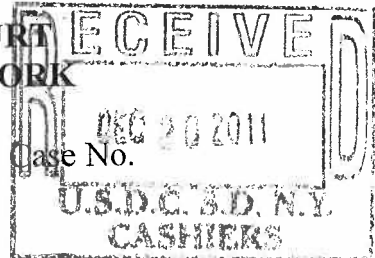


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11 CIV 9321

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK



ROLEX WATCH U.S.A., INC.,

Plaintiff,

v.

COMPLAINT

ROLEX DELI CORP. and ALI
 MOHAMAD

Defendants.

Plaintiff Rolex Watch U.S.A., Inc. ("Rolex"), through its attorneys, complaining of defendants, Rolex Deli Corp. and Ali Mohamad (hereinafter referred to as "Defendants") hereby alleges as follows:

STATEMENT OF THE CASE

1. This is a suit by Rolex against Defendants seeking injunctive relief, Defendants' profits, compensatory damages, costs and attorneys fees of this action for Defendants' acts of trademark infringement, use of a false designation of origin and false

description and dilution by blurring. Defendants are being sued by Rolex as a result of Defendants' use of the mark, "ROLEX," as a business/trade name and advertising and promotion of their services and goods. Defendants' use of this confusing and identical mark is likely to bring to mind Plaintiff's famous "ROLEX" trademark, create consumer confusion, a false association between Rolex and Defendants and dilute the distinctiveness of the ROLEX trademark. In order to avoid further confusion and mistake as to an affiliation with Plaintiff and to avoid dilution of its famous trademark, Plaintiff brings this action. As set forth below, Defendants' acts constitute federal trademark infringement, use of a false designation of origin, false description and unfair competition, and dilution by blurring in violation of 15 U.S.C. §§1114 & 1125 (a) and (c).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the federal trademark claims asserted in this action under 15 U.S.C. § 1121, and 28 U.S.C. § 1331 and 28 U.S.C. § 1338.

3. Defendants are subject to the Court's jurisdiction because they do business and have committed the acts complained of in this District.

4. Defendants are subject to the jurisdiction of this Court pursuant to and in accordance with Rule 4 of the Federal Rules of Civil Procedure.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

6. Rolex is a corporation duly organized and existing under the laws of the State of New York, having an office and principal place of business at 665 Fifth Avenue,

New York, New York, 10022.

7. Upon information and belief, Defendant Rolex Deli Corp. is duly organized and existing under the laws of the State of New York, having an office and principal place of business at 700 Fulton Street, Brooklyn, NY 11217.

8. Upon information and belief, Defendant Ali Mohamad is an individual who acts as the President and controls the activities of Defendant Rolex Deli Corp., operating its business under the laws of the State of New York, having an office and principal place of business at 700 Fulton Street, Brooklyn, NY 11217.

9. Defendants are subject to the jurisdiction of this Court because they are domiciled in and conduct substantial business within this District.

FACTUAL ALLEGATIONS

A. Rolex's Famous Products and Trademarks

10. Rolex is the exclusive distributor and warrantor in the United States of Rolex watches, all of which bear the trademark ROLEX, as defined below, and numerous other trademarks.

11. Rolex watches are identified by the trade name and trademark ROLEX.

12. Rolex is responsible for assembling, finishing, marketing and selling in interstate commerce high quality, distinctive Rolex watches, watch bracelets and related products for men and women (hereinafter referred to as "Rolex Watches").

13. Rolex is responsible for maintaining control over the quality of Rolex products and services in this country.

143. Rolex has developed an outstanding reputation because of the uniform high quality of Rolex Watches and the ROLEX trademark is a distinctive mark used to identify these high quality products originating with Rolex.

15. Rolex is the owner of the following federal trademark registration in the U.S. Patent and Trademark Office:

Trademark	Reg. No.	Reg. Date	Goods
ROLEX	101,819	1/12/15	Watches, clocks, parts of watches and clocks, and their cases.

A correct and true copy of Rolex's federal trademark registration ("ROLEX") is attached hereto as **Exhibit 1** and is incorporated herein by reference.

16. The ROLEX trademark is valid and subsisting and in full force and effect and has become incontestable pursuant to 15 U.S.C. § 1065.

17. The ROLEX trademark is a fanciful trademark and is entitled to the highest level of protection afforded by law.

18. Rolex and its predecessors have used ROLEX for nearly a century on and in connection with Rolex Watches and related products.

19. Based on Rolex's continuous and exclusive use of the ROLEX trademark throughout the U.S. and worldwide, and its extensive advertising, sales and the wide popularity of Rolex products, the ROLEX trademark is famous and became famous well prior to the activities of Defendants complained of herein.

20. Rolex has gone to great lengths to protect its name and enforce its rights as the exclusive owner of its ROLEX trademark.

B. Defendants' Activities

21. Upon information and belief Defendants began using and adopted the name ROLEX as a business/trade name long after Plaintiff's ROLEX trademark became famous.

22. Defendants use the mark ROLEX to identify its business as the ROLEX DELI. See photograph of Defendants' store attached hereto as Exhibit 2.

23. By letters dated September 13 2010, November 8 2010 and February 4 2011, Plaintiff wrote to Defendants advising, among other things, that their use of the ROLEX trademark was in violation of Plaintiff's rights.

24. Defendants never responded to Plaintiff's aforementioned letters.

25. Despite Plaintiff's letters, Defendants continue to use the name Rolex Deli in their business/trade name and on promotional materials.

26. Long after Rolex's adoption and use of its ROLEX trademark on its products and after the ROLEX trademark became famous, Defendants began using the name Rolex Deli as a business/trade name and in its promotion and advertising of its business.

27. Defendants' adoption and use of the business/trade name Rolex Deli is designed to cause consumer confusion and create a false association and affiliation with Plaintiff's reputation for high quality goods from which Defendants seek to improperly benefit.

28. Defendants' acts will dilute Plaintiff's distinctive and exclusive use of its ROLEX trademark.

29. Defendants are not now, nor have they ever been, associated, affiliated, connected with, endorsed or sanctioned by Rolex.

30. Rolex has never authorized or consented in any way to the use by Defendants of ROLEX or any mark confusingly similar thereto.

31. Defendants, by using the ROLEX trademark to conduct business, advertise and promote their services, is trading upon the goodwill and reputation of Rolex and creating a likelihood of confusion and false impression that Defendants and their services and goods are in some way affiliated with Rolex.

32. Defendants' use of the mark ROLEX blurs the distinctiveness of Plaintiff's ROLEX trademark.

33. Defendants' use of the mark ROLEX tarnishes the distinctiveness of Plaintiff's ROLEX trademark

34. Defendants had knowledge of Plaintiff's use of the ROLEX trademark and its reputation for distinctive high quality goods, prior to its adoption and use of its ROLEX mark.

35. Rolex has no adequate remedy at law.

36. Rolex has suffered irreparable harm and damages as a result of Defendants' conduct, including blurring and tarnishment of its trademark, loss of control over its reputation, and loss of goodwill. Defendants' wrongful acts will continue unless enjoined by the Court. Accordingly, Defendants must be restrained and enjoined from any further infringing, unfairly competitive or dilutive activities.

FIRST CLAIM FOR RELIEF
(Trademark Infringement, 15 U.S.C. § 1114)

37. Rolex hereby incorporates by reference paragraphs 1-36 as though fully set forth herein.

38. Defendants use an identical copy of the ROLEX trademark in their business/trade name and advertise their services and goods knowing that their mark is confusingly similar to the ROLEX trademark.

39. Defendants engage in the above described activities with the intent to confuse and deceive the public into believing that the services and goods they offer are sponsored, affiliated or associated with Rolex, when in fact they are not.

40. Defendants' activities, as described above, constitutes use in commerce of a copy or colorable imitation of Rolex's registered mark in a manner which is likely to cause confusion and mistake in the minds of the public in violation of 15 U.S.C. § 1114.

41. Defendants' acts constitute willful trademark infringement in violation of 15 U.S.C. § 1114.

SECOND CLAIM FOR RELIEF
(Trademark Infringement, Unfair Competition, False Designation of Origin & False Description, 15 U.S.C. § 1125(a))

42. Rolex hereby incorporates by reference paragraphs 1-36 as though fully set forth herein.

43. In connection with Defendants' business/trade name and promotion of their services and goods, Defendants have used a mark confusingly similar, if not identical, to the ROLEX trademark in interstate commerce.

44. Rolex has exclusively used the ROLEX trademark for almost 100 years and has invested millions of dollars in the advertising and publicity of its mark and created a reputation as the originator of prestigious and high quality goods.

45. Defendants' use of a colorable imitation or copy of the ROLEX trademark in their business/trade name and the promotion of their services and goods, is likely to deceive customers as to the origin, sponsorship, association or approval by Rolex of the Defendants' services and goods.

46. Defendants use a colorable imitation or copy of the ROLEX trademark with full knowledge of the falsity of such affiliation and sponsorship of Defendants and their goods and services.

47. Defendants' use of a colorable imitation or copy of the ROLEX trademark constitutes false descriptions and representations tending falsely to describe or represent Defendants and their services as being authorized, sponsored, affiliated or associated with Rolex.

48. Defendants have used a mark similar to the ROLEX trademark in a manner which is likely to mislead the public, and trade upon the reputation of Rolex by misappropriating the valuable trademark rights of Rolex.

49. Defendants' acts constitute use in commerce of false designations of origin and false and/or misleading descriptions or representations, tending to falsely or misleadingly describe and/or represent their services as those of Rolex in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

50. Defendants' acts constitute unfair competition under federal law.

51. Defendants' acts are causing and continue to cause irreparable harm to Rolex regarding its loss of control over its reputation and goodwill. Plaintiff has no adequate remedy at law, unless and until Defendants' actions are enjoined.

THIRD CLAIM FOR RELIEF
(Federal Trademark Dilution, 15 U.S.C. §1125(c))

52. Rolex hereby incorporates by reference paragraphs 1-36 as though fully set forth herein.

53. Defendants' use of the ROLEX trademark in its business/trade name and in association with its services, constitutes Defendants' commercial use of a mark substantially similar, if not identical, to the ROLEX trademark.

54. Long before Defendants' use of the ROLEX mark, Plaintiff's ROLEX trademark had become famous in the United States and worldwide.

55. The ROLEX trademark is inherently distinctive.

56. The ROLEX trademark is recognized throughout the United States and worldwide as a symbol of quality, luxury, success and value.

57. Defendants' use of the ROLEX mark constitutes dilution by blurring of the distinctiveness of the ROLEX trademark. Unless restrained, Defendants' use will continue to dilute the distinctive quality of Plaintiff's famous mark by destroying and blurring the exclusive association between the ROLEX trademark and Plaintiff's products and/or by lessening the ability for consumers to exclusively identify Plaintiff with its merchandise.

58. Defendants' use of the ROLEX mark constitutes dilution by tarnishment harming the reputation of Plaintiff's famous ROLEX trademark. Unless restrained, Defendants' use will continue to dilute the distinctive quality of Plaintiff's famous trademark by destroying and tarnishing the exclusive association between the ROLEX trademark and Plaintiff's products and/or by harming Plaintiff's reputation as being the source of high quality, distinctive and exclusive goods.

59. Defendants' acts as aforesaid are diluting the distinctive quality of the ROLEX trademark in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

60. Defendants' acts were done with full knowledge and awareness of Plaintiff's famous trademark and reputation.

61. Rolex is suffering and will continue to suffer irreparable harm from the Defendants' dilutive activities, without any adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Rolex respectfully requests that the Court order the following relief:

I. That the Court enter an injunction ordering that Defendants, their agents, servants, employees, and all other persons in privity or acting in concert with them be enjoined and restrained from:

(a) using the mark ROLEX, or any mark similar thereto, specifically but not limited to, their trade/business name, "Rolex Deli", or in any other name or as a trademark to identify its goods or services;

(b) using the mark ROLEX or any mark similar thereto in a manner which may injure Rolex's business reputation or weaken the distinctive quality of the ROLEX trademark, Rolex's name, reputation or goodwill;

(c) using the mark ROLEX or any mark similar thereto in a manner which is likely to cause confusion or tends to falsely describe or represent Defendants' services as being sponsored by or associated with Rolex and from offering such services in commerce; and

(d) using or continuing to use the ROLEX mark as a trade/business name in any variation thereof on the Internet (either in the text of a website, as a domain name, or as a keyword, search word, metatag, or any part of the description of the site in any submission for registration of any Internet site with a search engine or index).

II. That Defendants, within thirty (30) days of judgment, file and serve Rolex with a sworn statement setting forth in detail the manner and form in which it has complied with this injunction pursuant to 15 U.S.C. § 1116(a).

III. That Defendants immediately remove and change its present name with the New York Secretary of State.

IV. That Defendants be required to immediately destroy any and all signs, posters, advertising, promotional, or marketing materials, or supplies used to conduct business within its possession, custody or control that use the ROLEX trademark.

V. Requiring Defendants to pay to Rolex such damages Rolex has sustained as a consequence of its acts of unfair competition as alleged herein, and to account for all gains, profits and advantages derived by Defendants from their activities.

VI. Ordering that Rolex recover the costs of this action, together with reasonable attorneys' fees and pre-judgment interest in accordance with 15 U.S.C. § 1117.

VII. Directing that this Court retain jurisdiction of this action for the purpose of enabling Rolex to apply to the Court at any time for such further orders and interpretation or execution of any Order entered in this action, for the modification of any such Order, for the enforcement or compliance therewith and for the punishment of any violations thereof.

VIII. Awarding to Rolex such other and further relief as the Court may deem just and proper, together with the costs and disbursements that Rolex has incurred in connection with this action.

Dated: December 19, 2011

Respectfully submitted,

By: 

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