

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

BEACH MART, INC.)
Plaintiff,)
v.)
L & L WINGS, INC.)
Defendant.)

JUDGMENT
No. 2:11-CV-44-FL

L & L WINGS, INC.)
Plaintiff)
v.)
SUPER WINGS, LLC, and BEACH)
MART, INC.)
Defendants)

JUDGMENT
No. 2:14-CV-52-FL

DECISION BY THE COURT.

It is **ORDERED, ADJUDGED AND DECREED** that for the reasons detailed in the Court’s October 3, 2014, Order, that L&L Wings, Inc.’s claims for trademark infringement under 28 U.S.C. § 1114 and 15 U.S.C. § 1125(a) are dismissed with prejudice.

It is further **ORDERED, ADJUDGED AND DECREED** that for the reasons detailed in the Court’s October 3, 2014 and March 29, 2018 Orders, sanctions in the amount of \$107,436.25 in attorney’s fees and \$11,318.83 in costs are awarded against L&L Wings, Inc., in favor of Beach Mart, Inc.

JURY VERDICT. The remaining claims in this action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED, ADJUDGED AND DECREED that Beach Mart, Inc. has proven by the preponderance of the evidence that L&L Wings, Inc. fraudulently induced Beach Mart, Inc. to enter into the parties’ August 29, 2005, agreement, and L&L Wings, Inc. negligently misrepresented information in connection with the parties’ August 29, 2005, agreement, upon which Beach Mart, Inc. justifiably relied, thereby causing damage to Beach Mart, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Beach Mart, Inc. has proven by clear and convincing evidence that L&L Wings, Inc. knowingly made false

representations of material fact with an intent to deceive to the United States Patent and Trademark Office in 2006, 2007, and/or 2008, resulting in the issuance of federal trademark Registration No. 3,458,144 (the “ ’144 Registration”), and in 2011, resulting in the issuance of federal trademark Registration No. 4,193,881 (the “ ’881 Registration”), thereby causing injury to Beach Mart, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Beach Mart, Inc. has proven by the preponderance of the evidence that L&L Wings, Inc. made false statements and/or misrepresentations in connection with the solicitation and negotiation of the August 29, 2005, agreement with Beach Mart, Inc., and L&L Wings, Inc. made false statements and/or misrepresentations in connection with the 2006 application leading to the ’144 Registration and the 2011 application leading to the ’881 Registration, in or affecting commerce, thereby causing damages to Beach Mart, Inc. The Court finds that the foregoing acts of L&L Wings, Inc. constitute unfair and deceptive conduct, as prohibited under N.C. GEN. STAT. § 75-1.1, and Beach Mart, Inc. is entitled to recover all of its damages arising therefrom.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Beach Mart, Inc. is entitled to compensatory damages arising from the foregoing in the amount of \$4,184,135.00, and that such compensatory damages shall be trebled pursuant to N.C. GEN. STAT. § 75-16 such that Beach Mart, Inc. is entitled to recover of L&L Wings, Inc. in the amount of \$12,552,405.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Beach Mart, Inc. has proven by the preponderance of the evidence that all right, title, and interest in and to the WINGS trademark for use in connection with retail clothing stores was owned by Shepard R. Morrow in April of 1993 when L&L Wings, Inc. and Shepard R. Morrow entered into the April 29, 1993, license agreement for the use by L&L Wings, Inc. of the WINGS mark.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Beach Mart, Inc. has proven by the preponderance of the evidence that the April 29, 1993, trademark license between Shepard R. Morrow and L&L Wings, Inc. (the “Morrow License”) remains in effect and has not terminated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that because Beach Mart, Inc. has proven by clear and convincing evidence that L&L Wings, Inc. knowingly made false representations of material fact with an intent to deceive to the United States Patent and Trademark Office in 2006, 2007, and/or 2008, resulting in the issuance of federal trademark Registration No. 3,458,144, and in 2011, resulting in the issuance of federal trademark Registration No. 4,193,881, thereby causing injury to Beach Mart, Inc., it is hereby **ORDERED AND DECREED** pursuant to 15 U.S.C. § 1119 that:

- 1) the Clerk of Court is hereby directed to send a certified copy of this Judgment, within 14 days of the date hereof, to the Director of the United States Patent and Trademark Office, Office of the Solicitor, Mail Stop 8, P.O. Box 1450, Alexandria, Virginia 22313-1450. 2) the Director of the United States Patent and Trademark Office is directed to cancel Registration No. 3,458,144 for WINGS and Registration No. 4,193,881 for

WINGS;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Beach Mart, Inc. has proven by the preponderance of the evidence that Beach Mart, Inc. has all right, title and interest in and to its SUPER WINGS trademark arising from use for retail store services in North Carolina as of January 1, 2006.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claims for declaratory judgment of L&L Wings, Inc. and Beach Mart, Inc., to the extent not otherwise addressed herein, are hereby dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Beach Mart, Inc. shall recover pre-judgment interest, accruing from September 9, 2011, up to and until date of entry of judgment at the rate of eight percent (8%) per annum on the sum of \$4,184,135.00. for a total amount of \$3,196,908.41. Beach Mart, Inc. is entitled to and shall recover post-judgment interest on the entire amount awarded under this judgment, in an amount determined by the rate established by 28 U.S.C. § 1961, accruing as of the date of entry of judgment up to and until satisfaction in full.

This Judgment Filed and Entered on March 29, 2021, and Copies To:

Jacob S. Wharton (via CM/ECF Notice of Electronic Filing)
John D. Wooten, IV (via CM/ECF Notice of Electronic Filing)
David L Brown (via CM/ECF Notice of Electronic Filing)
David G. Harris, II (via CM/ECF Notice of Electronic Filing)
Madison B. Waller (via CM/ECF Notice of Electronic Filing)
Robert Danny Mason, Jr. (via CM/ECF Notice of Electronic Filing)
Stephen F. Shaw (via CM/ECF Notice of Electronic Filing)
Charles A. Burke (via CM/ECF Notice of Electronic Filing)
Amanda A. Bailey (via CM/ECF Notice of Electronic Filing)
Brooke R. Watson (via CM/ECF Notice of Electronic Filing)
Henrietta U. Golding (via CM/ECF Notice of Electronic Filing)

March 29, 2021

PETER A MOORE, JR., CLERK

/s/ Sandra K. Collins
(By) Sandra K. Collins, Deputy Clerk