

NATURE OF THE ACTION

1. This is a civil action arising under the laws of the United States, specifically under 17 USC § 501 for copyright infringement and under 15 USC § 1125(a) (§ 43(a) of the Lanham Act) for trade dress infringement and unfair competition.

PARTIES

2. BCP Imports, LLC is a limited liability corporation organized under the laws of the State of Ohio with its principal place of business at 148 Main Street, Toledo, Ohio 43605.

3. On information and belief, Wal-Mart Stores, Inc. is a corporation organized under the laws of the State of Arkansas, having a place of business at 702 S.W. 8th Street, Bentonville, Arkansas, 72716.

4. On information and belief, Crimzon Rose International, LLC is a limited liability corporation organized under the laws of the State of Rhode Island, having a place of business at Four Warren Avenue, North Providence, Rhode Island 02911.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 15 USC § 1121 (actions arising under the Lanham Act), 28 USC § 1331 (actions arising under the laws of the United States), 28 USC § 1338(a) (acts of Congress relating to copyrights and trademarks), and 28 USC § 1338(b) (civil actions asserting a claim of unfair competition).

6. This Court has personal jurisdiction over Defendants. On information and belief, Defendants have conducted acts of infringement and unfair competition in this District.

7. Venue is proper in this District pursuant to 28 USC § 1391. On information and belief, Defendants are subject to personal jurisdiction in this District and the acts complained of herein take place within this District.

FACTS COMMON TO ALL COUNTS

8. Plaintiff sells uniquely shaped and brightly colored elastic bands under the trademark *Sillybandz* which is the subject of U.S. Trademark Registration number 3,787,219 (a copy of which is attached hereto as Exhibit A). Plaintiff's products are sold in clear plastic "pillow-shaped" packages with a generally rectangular label located near the top of the package. The label bears a "wave" background design.

9. Defendants sell brightly colored elastic bands in shapes substantially identical to those sold by Plaintiff in clear plastic "pillow-shaped" packages with a rectangular label located near the top of the package including a "wave" background design.

10. Plaintiff's products are packaged in subject matter groupings named, for example, *Princess, Rainforest and Rockbandz*. These products are copyrighted and are covered by U. S. Copyright Registrations. Defendants' products are packaged in subject matter groupings named, for example, *Princess, Rain Forest and Rocker*. Defendants' product packages illustrate and include products which are shaped similarly to the copyrighted product designs included in Plaintiff's respectively named packages.

COUNT 1 – COPYRIGHT INFRINGEMENT

11. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 10 above as though fully set forth herein.

12. Defendants have sold and are selling copies of Plaintiff's copyrighted products, in violation of 17 USC §501, resulting in harm including, but not limited to, damages to Plaintiff's profits, sales, and business.

13. As a direct and proximate result of Defendants' infringement of Plaintiff's copyrighted products, in violation of 17 USC §501, Plaintiff has suffered, and continues to suffer, damages to its profits, sales, and business.

**COUNT 2 – TRADE DRESS INFRINGEMENT
AND UNFAIR COMPETITION**

14. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 13 above as though fully set forth herein.

15. Plaintiff's pillow-shaped product package is widely recognized by consumers and has become a valuable indicator of the source and origin of Plaintiff's products.

16. Defendants' use in commerce of a pillow-shaped package confusingly similar to that of Plaintiff is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities with Plaintiff in violation of 15 USC § 1125(a) (§ 43(a) of the Lanham Act).

17. As a direct and proximate result of Defendants' infringement of Plaintiff's trade dress, Plaintiff has suffered and continues to suffer damages to its profits, sales, and business.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief against Defendants and respectfully requests that this Court:

A. Find that Defendants have engaged in copyright infringement in violation of 17 USC § 501;

B. Find that Defendants have engaged in trade dress infringement and unfair competition in violation of 15 USC § 1125(a) (§ 43(a) of the Lanham Act);

C. Find that Defendants have willfully infringed Plaintiff's copyrights and trade dress, with full knowledge of Plaintiff's use of and rights;

D. Enter judgment for Plaintiff on all Counts of the Complaint;

E. Pursuant to 17 USC § 502, temporarily, preliminarily, and permanently enjoin, restrain, and forbid Defendants, and all of Defendants' principals, servants, officers, directors, partners, agents, representatives, shareholders, employees, affiliates, successors, and assignees and all others acting in privity, concert, or participation with Defendants, from:

(i). imitating, copying, duplicating or otherwise making any use of Plaintiff's copyrighted product designs;

(ii). assisting, aiding or abetting another person or business entity in engaging or performing any of the activities enumerated in sub-paragraph (i) above;

F. Pursuant to 17 USC § 504 and 505, award Plaintiff in excess of \$25,000, including, but not limited to, (1) the Defendants' profits, (2) any damages sustained by the Plaintiff, and (3) the costs of the action plus interest as a result of Defendants' infringements;

G. Pursuant to 15 USC § 1116 (§ 34 of the Lanham Act), temporarily, preliminarily and permanently enjoin, restrain and forbid Defendants, and all of Defendants' principals,

servants, officers, directors, partners, agents, representatives, shareholders, employees, affiliates, successors and assignees and all others acting in privity, concert or participation with

Defendants, from:

(i). imitating, copying, duplicating or otherwise making any use of Plaintiff's trade dress, or any trade dress confusingly similar to or likely to dilute the distinctiveness of Plaintiff's trade dress in any manner;

(ii). using any false designation of origin or false description which can or is likely to lead the trade or public, or individual members thereof, to mistakenly believe that any product advertised, promoted, offered or sold by Defendants is sponsored, endorsed, connected with, approved by, or authorized by Plaintiff;

(iii). causing likelihood of confusion or injury to Plaintiff's business reputation and to the distinctiveness of Plaintiff's trade dress by any unauthorized use of the same;

(iv). engaging in any activity constituting unfair competition with Plaintiff or with Plaintiff's rights in, or to use, or to exploit the same;

(v). assisting, aiding or abetting another person or business entity in engaging or performing any of the activities enumerated in sub-paragraphs (i)-(iv) above;

H. Pursuant to 15 USC § 1118 (§ 36 of the Lanham Act), enter an order requiring Defendants and all of its principals, servants, officers, directors, partners, agents, representatives, shareholders, employees, affiliates, successors, assignees and all others acting in privity, concert or participation with Defendants, who receive actual notice of said order, to deliver up all goods and products, signs, articles, items, and promotional, advertising, and any other printed materials of any kind bearing on Plaintiff's trade dress to the Court for destruction;

I. Pursuant to 15 USC § 1117(a), (§ 35 of the Lanham Act), award Plaintiff in excess of \$25,000, including, but not limited to, (1) the Defendants' profits, (2) any damages sustained by the Plaintiff, and (3) the costs of the action plus interest as a result of Defendants' infringements and unfair competition;

J. Pursuant to 15 USC § 1117(a), find that this is an exceptional case and award Plaintiff reasonable attorneys' fees;

K. Pursuant to 15 USC § 1117(b), award the Plaintiff three times the amount of actual damages or profits by virtue of the willful nature of the Defendants' acts.

L. Order an accounting by Defendants of any profits derived in any way from Defendants' wrongful acts.

M. Award such other and additional relief, at law or equity, as may be warranted by the facts and the law.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all claims properly heard by a jury.

Respectfully submitted,

MACMILLAN, SOBANSKI, & TODD, LLC
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