

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF OHIO
 WESTERN DIVISION

HAUNTED THINGS, LLC
 9891 Montgomery Road, Suite 273
 Cincinnati, OH 45242

Plaintiff,

-v-

HALLOWEEN PRODUCTIONS, INC.
 1525 South 8th Street
 St. Louis, MO 63129

Defendant.

Civil No.: 1:09-cv-677

Judge: _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Haunted Things, LLC (“Haunted Things”) for its Complaint against Defendant Halloween Productions, Inc. (“Defendant”) states as follows:

NATURE OF THE ACTION

1. This is an action by Haunted Things against Defendant for trademark infringement, unfair competition and cybersquatting in violation of Sections 32(1) and 43(a) of the Trademark Act of 1946.

2. Plaintiff Haunted Things is a limited liability corporation organized and existing under the laws of the state of Ohio. Haunted Things is in the business of publishing a magazine under the trademarks HAUNTED ATTRACTION and HAUNTED ATTRACTION MAGAZINE (the “Haunted Attraction Trademarks”) directed to all aspects of the haunted house and haunted entertainment industry. Haunted Things also runs a web site directed to all aspects of the haunted house and haunted entertainment industry located at www.hauntedattraction.com.

Haunted Things is the owner of all right, title and interest to the Haunted Attraction Trademarks as used previously by Prion, Inc., a Texas corporation d/b/a Haunted Attraction Magazine on the basis of an asset purchase agreement between Haunted Things and Prion, Inc. The Haunted Attraction Trademarks have been used substantially exclusively and continuously in connection with the aforementioned magazine publishing services in interstate commerce since at least August 1st, 1995.

3. On information and belief, Defendant is a corporation organized and existing under the laws of the state of Missouri which operates “a web site featuring information about Halloween entertainment” located at www.hauntworld.com and is listed as the owner of the domain names hauntedattractionmagazine.com and hauntedattractionsmagazine.com. A true and correct copy of the Whois registration information for those domain names is attached as Exhibit A.

4. On information and belief, since at least February 16, 2006 until September 8, 2009, Defendant configured the domain names hauntedattractionmagazine.com and hauntedattractionsmagazine.com to “point to” or “resolve to” Defendant’s website located at www.hauntworld.com. A true and correct copy of the homepage located at www.hauntworld.com to which those domain names resolved and/or pointed to prior to September 10, 2009 is attached as Exhibit B.

JURISDICTION AND VENUE

5. Haunted Things brings this action for federal trademark infringement and cybersquatting in violation of Sections 32(1) and 43(a) of the Trademark Act of 1946, as amended (the “Lanham Act”), 15 U.S.C. §§ 1114(1), 1125(a), 1125(d); deceptive trade practices in violation of Section 4165 of the Ohio Revised Code; and trademark infringement in violation of the common laws of the State of Ohio and of the several states of the United States.

6. This Court has original jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over all other claims asserted herein under 28 U.S.C. § 1367(a).

7. This Court has personal jurisdiction over Defendant pursuant to § 2307.382 of the Ohio Revised Code by virtue of their transacting business in this State, causing tortious injury in this State as described herein.

8. Defendant is doing business in this judicial district at least by its use of an interactive website and transacting of business through that site.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

THE TRADEMARK RIGHTS

10. Haunted Things owns common law rights in the Haunted Attraction Trademarks as a result of the longstanding and substantially exclusive use thereof in interstate commerce.

11. As a result of the widespread public use and recognition thereof, the Haunted Attraction Trademarks are an asset of substantial value and goodwill to Haunted Things.

12. Defendant's registration and use of the hauntedattractionmagazine.com and hauntedattractionsmagazine.com domain names was with knowledge of the prior use and rights of Haunted Things in the Haunted Attraction Trademarks and with the specific intent to trade on Haunted Things goodwill associated therewith, is likely to cause and/or has caused confusion in the consuming public as to the source, sponsorship, or affiliation of the Defendant's services, and has caused considerable damage to Haunted Things.

COUNT I

FEDERAL TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

13. As a cause of action and ground for relief, Haunted Things alleges that Defendant is engaged in acts of trademark infringement under Sections 32(1) and 43(a) of the Lanham Act,

15 U.S.C. §§ 1114(1), 1125(a), and incorporates by reference paragraphs 1 through 12 above as if fully set forth herein.

14. Defendant's use of the Haunted Attraction Trademarks is without the permission, consent, or authorization of Haunted Things.

15. Defendant's unauthorized use of the Haunted Attraction Trademarks gives rise to a likelihood of confusion, deception and mistake among the consuming public and trade as to the source, origin, sponsorship, or affiliation of Defendant's goods and/or services. As such, Defendant's use of said trademarks infringes Haunted Things rights in the Haunted Attraction Trademarks under Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a).

16. Defendant's use of the Haunted Attraction Trademarks was with knowledge of the pre-existing rights of Haunted Things. As such, Defendant's use thereof constitutes willful infringement.

17. If Defendant is allowed to continue such conduct Haunted Things rights in the Haunted Attraction Trademarks will be diminished and the goodwill and reputation associated with those marks will continue to suffer immediate, substantial, and irreparable injury that cannot be adequately calculated and compensated solely by monetary damages.

18. By reason of the foregoing, Haunted Things is entitled to injunctive relief against Defendant, restraining further acts of trademark infringement and to recover damages resulting from the aforesaid acts of trademark infringement, together with Defendant's profits related thereto.

COUNT II

**VIOLATION OF THE ANTICYBERSQUATTING
CONSUMER PROTECTION ACT (ACPA)**

19. Haunted Things hereby realleges and incorporates by reference the allegations of paragraphs 1-18 of this Complaint.

20. Defendant has willfully registered the domain names hauntedattractionmagazine.com and hauntedattractionsmagazine.com incorporating Haunted Things' federally protected Haunted Attractions Trademarks.

21. Defendant has trafficked in and/or has used the hauntedattractionmagazine.com and hauntedattractionsmagazine.com domain names.

22. The hauntedattractionmagazine.com and hauntedattractionsmagazine.com domain names registered by Defendant are identical or confusingly similar to Haunted Things' Haunted Attraction Trademarks.

23. Haunted Things' Haunted Attractions Trademarks became distinctive prior to Defendant's registration of the hauntedattractionmagazine.com and hauntedattractionsmagazine.com domain names.

24. Defendant's registration, trafficking, and use of the hauntedattractionmagazine.com and hauntedattractionsmagazine.com domain names is based on Defendant's bad faith intent to profit from Haunted Things' federally protected Haunted Attraction Trademarks and, as such, is in violation of the ACPA, 15 U.S.C. §1125(d).

25. Haunted Things has been and continues to be damaged by Defendant's actions.

COUNT III

DECEPTIVE TRADE PRACTICES UNDER OHIO STATUTORY LAW

26. Haunted Things hereby realleges and incorporate by reference the allegations of paragraphs 1 through 25 of this Complaint.

27. Defendant's acts, as described above, constitute likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services; likelihood of confusion or misunderstanding as to the affiliation, connection, or association with, or certification, by Haunted Things; representations that Defendant's goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that Defendant has a sponsorship, approval, status, affiliation, or connection that Defendant does not have.

28. Defendant's acts, as described above, constitute willful engagement in a deceptive trade practice knowing them to be deceptive.

29. Defendant's acts, as described above, constitute deceptive trade practices in violation of Section 4165 of the Ohio Revised Code.

30. Defendant's acts, as described above, have caused and are causing great and irreparable harm and damage to Haunted Things, and unless preliminarily and permanently restrained by this Court, said irreparable injury will continue.

COUNT IV

TRADEMARK INFRINGEMENT UNDER OHIO COMMON LAW

31. Haunted Things hereby realleges and incorporates by reference the allegations of paragraphs 1 through 30 of this Complaint.

32. Defendant's acts, as described above, constitute trademark infringement in violation of Ohio common law.

33. Defendant's acts, as described above, have caused and are causing great and irreparable harm and damage to Haunted Things, and unless preliminarily and permanently restrained by this Court, said irreparable injury will continue.

COUNT V

UNFAIR COMPETITION UNDER OHIO COMMON LAW

34. Haunted Things hereby realleges and incorporate by reference the allegations of paragraphs 1 through 33 of this Complaint.

35. Defendant's acts, as described above, constitute unfair competition in violation of Ohio common law.

36. Defendant's acts, as described above, have caused and are causing great and irreparable harm and damage to Haunted Things, and unless preliminarily and permanently restrained by this Court, said irreparable injury will continue.

RELIEF REQUESTED

WHEREFORE, Haunted Things prays for a judgment in their favor and against Defendant ordering:

a. That Defendant, and each of its officers, directors, agents, servants, employees and representatives, and those persons in active concert or participation with them or any of them, be preliminarily and permanently enjoined and restrained from:

- (1) Using on or in connection with the production, manufacture, advertisement, promotion, displaying for sale, offering for sale, sale, or distribution of any goods or services, or for any purposes whatsoever, Haunted Things' Haunted Attraction Trademarks, or any colorable imitation thereof or anything confusingly similar thereto;

(2) Representing by any means whatsoever, directly or indirectly, or doing any other acts or things calculated or likely to cause confusion, mistake or to deceive consumers into believing that Defendant's goods and/or services are sponsored, approved or otherwise affiliated with Haunted Things;

b. That pursuant to Section 34(a) of the Lanham Act, 15 U.S.C. § 1116(a), Defendant be directed to file with this Court and to serve upon Haunted Things within thirty days after service upon Defendant of this Court's injunction issued in this action, a written report by Defendant under oath setting forth in detail the manner and form in which Defendant has complied with this injunction;

c. That pursuant to Section 36 of the Lanham Act, 15 U.S.C. § 1118, Defendant and those controlled by Defendant be required to deliver up and destroy all advertisements or other promotional materials in the possession of Defendant that utilize the Haunted Attraction Trademarks, or any colorable imitation thereof;

d. That Defendant and those controlled by Defendant be required to take affirmative steps to dispel any false suggestion of a connection to Haunted Things by virtue of its infringing activities, including without limitation, all necessary and appropriate corrective advertising measures;

e. That Haunted Things recover its damages sustained as a result of Defendant's trademark infringement, unfair competition, and unfair business practices, together with an accounting of Defendant's profits arising from such activities and statutory damages in the amount of \$200,000 pursuant to 15 U.S.C. § 1117(d);

f. That Defendant transfer ownership of the domain names hauntedattractionmagazine.com and hauntedattractionsmagazine.com to Haunted Things;

g. That Haunted Things have and recover treble damages pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117;

h. That Haunted Things have and recover its reasonable attorneys' fees pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117;

i. That Haunted Things have and recover its taxable costs, filing fees and disbursements herein;

j. That Haunted Things have and recover prejudgment interest on the monetary recovery awarded;

k. That Haunted Things have such other and further relief as the Court may deem just and proper.

Dated: September 15, 2009

By: /s/ John M. Mueller
John M. Mueller(0068876)
Ryan M. Bednarczuk (0079795)
TAFT, STETTINIUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
Telephone (513) 381-2838
Facsimile (513) 381-0205
mueller@taftlaw.com
bednarczuk@taftlaw.com

Trial Attorneys for Plaintiff,
Haunted Things, LLC

JURY DEMAND

Plaintiff hereby demands a trial by jury for all issues in this action triable of right by jury.

By: /s/ John M. Mueller
John M. Mueller(0068876)
Ryan M. Bednarczuk (0079795)
TAFT, STETTINIUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
Telephone (513) 381-2838
Facsimile (513) 381-0205
mueller@taftlaw.com
bednarczuk@taftlaw.com

Trial Attorneys for Plaintiff,
Haunted Things, LLC