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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FINITO SERVICES LLC dba SUNSPOT
INNS, RESORTS & VACATION RENTALS,

Plaintiff,

v.

CHARLEE & ASSOCIATES, LTD. DBA
GARDEN ISLAND RENTALS,
JON SCHUTZ, and CINDY SCHUTZ,
individually,

Defendants.

Civil Action No. 11-776

COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND FALSE
DESIGNATION OF ORIGIN AND
UNFAIR COMPETITION

JURY TRIAL REQUESTED

Plaintiff Finito Services LLC dba Sunspot Inns, Resorts & Vacation Rentals (“Sunspot”) hereby alleges the following causes of action against Defendants:

I. PARTIES

1. Plaintiff Sunspot is a Washington limited liability company having a place of business in Seattle, Washington.

2. Defendant Charlee & Associates, Ltd. Charlee & Associates, Ltd. is a Hawaii corporation with a mailing address of P O Box 57, Koloa, Hawaii 96756 and a registered agent, Louis Abrams, with an address of P O Box 1040, 2-3850 Kaunualii Hwy, Lawai, Hawaii 96765.

1 3. Defendant Jon Schutz is an individual who, on information and belief, resides
2 and/or does business at 1513 Copper Rose Drive, Golden, Colorado, 80401.

3 4. Defendant Cindy Schutz is an individual who, on information and belief, resides
4 and/or does business at 1513 Copper Rose Drive, Golden, Colorado, 80401.

5 II. JURISDICTION AND VENUE

6 5. This action arises under the copyright and trademark laws of the United States of
7 America, 17 U.S.C. § 101 *et seq.* and 15 U.S.C. § 1051 *et seq.*, respectively. Jurisdiction over the
8 copyright, false designation of origin and federal unfair competition claims is conferred upon this
9 Court by 28 U.S.C. §§ 1331 and 1338.

10 6. Venue is proper in this Court pursuant to 28 USC §§ 1391(b) and (c) and 1400(a).
11 Defendants reside in, have transacted business in and have had continuous and systematic
12 contacts with the Western District of Washington. A substantial part of the events or omissions
13 giving rise to the claims occurred in this district.

14 III. SUNSPOT'S BUSINESS AND COPYRIGHTS AND TRADEMARKS

15 7. Sunspot is a network of independently owned inns, resorts and vacation rental
16 management companies. Sunspot provides support services to assist with reservations,
17 accounting, administration and front office services for home owner associations, resorts and
18 individual vacation property owners.

19 8. As part of its services, Sunspot commissions non-stock, high-dynamic range
20 (HDR), commercial photographs of properties it manages for use in their marketing and rental.
21 Among others, Sunspot is the copyright owner of such high quality photographs to the vacation
22 rental property referred to as the “Kauai Five O” located in Kauai, Hawaii. Sunspot secured
23 federal copyright protection of its photographs under U.S. Copyright Registration
24 Nos. VAu1010970 and/or VAu1025789 (hereinafter “Kauai Five O photographs”). Sunspot has
25 not licensed any Kauai Five O photograph to any Defendants herein.
26

1 9. Sunspot has and continues to brand its services and its high quality photographs
2 with its distinctive Sunspot logo. Sunspot is the owner of geographically based common law
3 rights in the trademark stemming from more than five years of continuous and exclusive use of
4 the mark. Sunspot's promotion, advertising and use of its trademark serves to identify Sunspot's
5 services and photographs throughout the country and the world, distinguish these services and
6 photographs from those provided by others, and identify Sunspot as the source of those services
7 and photographs. As a result, the Sunspot logo trademark has become a valuable asset of Sunspot
8 and a symbol of goodwill to the public. Among the photographs branded with the Sunspot logo
9 trademark are the Kauai Five O photographs.

10 10. Without the permission of Sunspot, Defendants selected, modified and placed one
11 or more Kauai Five O photographs in their rental marketing materials on multiple Internet
12 vacation rental websites, including www.kauairentals.com, www.vrbo.com, and
13 www.homeaway.com. Defendants maintained on the photographs Sunspot's highly prominent
14 and distinctive trademark logo. On information and belief, Defendants widely distributed and
15 publicly displayed one or more Sunspot's Kauai Five O photographs. Defendants used Sunspot's
16 copyrighted works for the purpose of marketing and renting the property for commercial gain.

17 11. Defendants have at all relevant times been aware of Sunspot's copyrighted
18 photographs. Defendants have no license from Sunspot and despite notice of their wrongful
19 activities Defendants deliberately and willfully infringed Sunspot's copyrights.

20 12. Defendants have removed infringing Kauai Five O photographs from at least
21 certain of their rental marketing materials but have refused to compensate Sunspot for the
22 unauthorized use.

23 IV. CAUSES OF ACTION

24 COUNT I: COPYRIGHT INFRINGEMENT

25 13. Sunspot realleges the preceding paragraphs of this complaint.
26

1 14. By copying, modifying and creating one or more derivative works and/or
2 displaying and distributing Sunspot's Kauai Five O photographs, Defendants' actions constitute
3 copyright infringement in violation of 17 U.S.C. § 101 *et seq.*

4 15. Defendants have facilitated possible infringement of others by failing to display
5 Sunspot's work with a credit and copyright notice attached and by publishing one or more Kauai
6 Five O photographs on the Internet.

7 16. Defendants have profited from their unauthorized use of Sunspot's copyrighted
8 work.

9 17. Defendants had access to Sunspot's copyrighted materials and knowledge of
10 Sunspot's ownership rights in the Kauai Five O photographs and their infringing activities were
11 deliberate, knowing, willful, and malicious, and were designed to provide Defendants with an
12 economic advantage over Sunspot or benefit at Sunspot's expense. As a result of Defendants'
13 willfully infringing acts, Sunspot has been injured and has suffered damages in an amount to be
14 proved at trial.

15 18. In addition to actual damages, Sunspot claims such other remedies to which it
16 may be entitled by law, including Defendants' revenues and profits pursuant to 17 U.S.C. 504(b);
17 at Sunspot's election and in the alternative, statutory damages up to \$150,000 pursuant to
18 17 U.S.C. § 504(c); injunctive relief pursuant to 17 U.S.C. § 502; impounding and destruction of
19 infringing articles pursuant to 17 U.S.C. § 503; and attorney's fees and costs pursuant to
20 17 U.S.C. § 505 and otherwise allowed by law.

21 **COUNT II: FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION**

22 19. Sunspot realleges the preceding paragraphs of this complaint.

23 20. In connection with Defendants' marketing activities, Defendants have used a false
24 designation of origin, false or misleading description of fact or false or misleading representation
25 of fact and have advertised and offered services using the Sunspot logo on one or more
26

1 infringing copies of the Kauai Five O photographs, without giving Sunspot credit, instead
2 passing off Sunspot's work as Defendants' own or as the work of third parties.

3 21. Defendants' use of the Sunspot logo trademark on infringing copies of the Kauai
4 Five O photographs has a high likelihood of creating confusion with Sunspot's business and has
5 and will create a false impression in the minds of the public as to the source of Defendants'
6 rental marketing materials and services.

7 22. Defendants have engaged in false designation of origin and unfair competition by
8 knowingly and willfully using Sunspot's photographs and the Sunspot logo trademark even
9 though Sunspot owns the exclusive rights to their use in association with the provision of its
10 services and on its photographs. Defendants' acts are likely to cause confusion or to cause
11 mistake or to deceive as to affiliation, connection or association or as to the origin, sponsorship
12 or approval of Sunspot's work in violation of the Lanham Act, 15 U.S.C. § 1125(a). Sunspot has
13 been injured and suffered damages in an amount to be proved at trial.

14 **V. PRAYER FOR RELIEF**

15 WHEREFORE, Sunspot prays for the following alternative and cumulative relief:

- 16 1. An order preliminarily and permanently enjoining Defendants and all persons in
17 active concert or participation with any of them from copying or creating
18 derivative works based on Sunspot's copyrights, and in using or displaying the
19 Sunspot logo trademark or any other marks confusingly similar thereto, as a
20 service mark, trademark, trade name or part thereof alone or in combination with
21 other words, symbols, styles, titles or marks in connection with the provision of
22 Internet content and related services;
- 23 2. An order, as specifically provided by 17 U.S.C. § 503 and other applicable law,
24 for seizure to recover, impound, and destroy all things infringing Sunspot's
25 copyrighted materials, including any video, written, or digitally maintained
26 materials Defendants may possess or have under their control, or under the
control of any of Defendants' respective officers, agents, servants, employees,
attorneys, or any other person acting in concert or participation with Defendants;
3. An order that Defendants deliver up for destruction all products, printed material,
stationery, business forms, signs, advertisements, brochures, promotional
material, manuals, pamphlets, labels, packages, containers, and all other materials

1 bearing the Sunspot logo trademark, or any derivative, colorable imitation, or
2 confusingly similar marks, together with all means for making or reproducing the
3 same, pursuant to 15 U.S.C. § 1118 and other applicable law;

- 4 4. An order requiring Defendants to file with this Court and serve on Sunspot, within
5 30 days of service of this order, a report in writing under oath setting forth in
6 detail the manner and form in which Defendants have complied with the terms of
7 the ordered relief;
- 8 5. Damages in an amount sufficient to compensate Sunspot for all injury sustained
9 as a result of Defendants' wrongful activities, including wrongful profits of
10 Defendants, as provided under applicable law;
- 11 6. Treble the amount of damages recovered by Sunspot or other exemplary damages
12 and all of its litigation expenses, including reasonable attorneys' fees and costs, as
13 provided under applicable law; and
- 14 7. Such other and further relief as the Court may deem just.

15 RESPECTFULLY SUBMITTED this 6th day of May, 2011.

16 s/David A. Lowe, WSBA No. 24,453

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