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MICHE BAG, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MICHE BAG, LLC, a Utah limited liability company,)	Civil Action No. 2:09-cv-00166-TC
)	
Plaintiff,)	COMPLAINT FOR TRADEMARK INFRINGEMENT
)	
v.)	(JURY TRIAL DEMANDED)
)	
REBECCA COOK, an individual,)	Honorable Judge Tena Campbell
)	
Defendant.)	

Plaintiff Miche Bag, LLC, (“Plaintiff”) complains against defendant Rebecca Cook, (“Defendant”), and for causes of action alleges as follows:

PARTIES

1. Plaintiff is a Utah limited liability company having its principal place of business in Riverton, Salt Lake County, State of Utah.
2. On information and belief, Defendant is an individual residing in Manassas, Virginia.
3. On information and belief, Defendant conducts business in this judicial district and has committed the acts complained of herein in this judicial district.

4. Plaintiff and Defendant are competitors in the market of purses, hand bags and related products.

JURISDICTION AND VENUE

5. This is a civil action for trademark infringement under 15 U.S.C. § 1052 *et seq.*

6. This action arises under the trademark laws of the United States, 15 U.S.C. § 1052 *et seq.*, and subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

7. On information and belief, Defendant has transacted business, contracted to supply goods or services, and has otherwise purposely availed itself of the privileges and benefits of the laws of the State of Utah and therefore is subject to the jurisdiction of this Court pursuant to § 78-27-24, Utah Code.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

BACKGROUND

9. Plaintiff manufactures and distributes hand bag, purse and related products to customers in the United States.

10. Plaintiff is the owner of United States Trademark Registration No. 3,528,628 (the “628 Registration”) for the trademark MICHE for use in connection with purses, handbags, straps for purses and handbags, and removable decorative covers for purses and handbags. A copy of the certificate of registration is attached hereto as Exhibit A.

11. Plaintiff has sold purses, handbags, straps for purses and handbags, and removable decorative covers for purses and handbags using the mark MICHE.

12. As a result of Plaintiff’s continuous use of the mark MICHE, including advertising, labeling and marketing utilizing this mark, the MICHE mark has become an asset of substantial value to Plaintiff as a distinctive indication of the origin and quality of

Plaintiff's products. Plaintiff uses the mark MICHE in interstate commerce in connection with the sale and advertising of its products nationwide and throughout the world.

13. By using the mark MICHE, Plaintiff has developed significant and valuable goodwill in this mark.

FIRST CLAIM FOR RELIEF

Trademark Infringement, 15 U.S.C. § 1114

14. Plaintiff restates, realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

15. Plaintiff is the owner of the '628 Registration for the mark MICHE.

16. Plaintiff has been using the MICHE mark in interstate commerce since at least July of 2007.

17. On information and belief, Defendant has utilized advertising and/or marketing which used Plaintiff's MICHE mark. Defendant has otherwise conducted business utilizing the MICHE mark.

18. Defendant's acts set forth above constitute trademark infringement of Plaintiff's '628 Registration under 15 U.S.C. § 1114, in that these designations create a likelihood of confusion among the consuming public as to the source, origin or association of the parties.

19. Upon information and belief, Defendant was aware of Plaintiff's MICHE mark and Defendant committed its acts of infringement in willful and flagrant disregard of Plaintiff's lawful rights.

20. Defendant will, if not enjoined by this Court, continue its acts of trademark infringement set forth above, which have caused and will continue to cause Plaintiff immediate and irreparable harm.

21. Plaintiff has no adequate remedy at law for the damage to its reputation and goodwill and will continue to be irreparably damaged unless Defendant is permanently enjoined from its infringing and improper conduct.

22. As a result of Defendant's acts of willful trademark infringement of Plaintiff's MICHE mark as set forth above, Plaintiff has suffered damages and continues to be damaged in an amount to be established at trial, including Defendant's profits and Plaintiff's lost profits.

23. Pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, Plaintiff is entitled to a judgment for damages not to exceed three times the amount of its actual damages, together with interest thereon, in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

Trademark Infringement, 15 U.S.C. § 1125(a)

24. Plaintiff restates, realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

25. Plaintiff is the owner of the trademark MICHE and the consuming public recognizes the MICHE mark as being distinctive of and identifying high quality services associated with a single source, namely Plaintiff.

26. Plaintiff has been using its MICHE mark in interstate commerce since at least July of 2007.

27. Plaintiff's MICHE mark is arbitrary.

28. Plaintiff's MICHE mark has acquired secondary meaning.

29. On information and belief, Defendant has utilized advertising and/or marketing which used Plaintiff's MICHE mark. Defendant has otherwise conducted business utilizing the mark MICHE.

30. Defendant's acts set forth above constitute trademark infringement of Plaintiff's MICHE mark under 15 U.S.C. § 1125(a), in that these designations create a likelihood of confusion among the consuming public as to the source, origin or association of the parties.

31. Upon information and belief, Defendant was aware of Plaintiff's MICHE mark and Defendant committed its acts of infringement in willful and flagrant disregard of Plaintiff's lawful rights.

32. Defendant will, if not enjoined by this Court, continue its acts of trademark infringement set forth above, which have caused and will continue to cause Plaintiff immediate and irreparable harm.

33. Plaintiff has no adequate remedy at law for the damage to its reputation and goodwill and will continue to be irreparably damaged unless Defendant is permanently enjoined from its infringing and improper conduct.

34. As a result of Defendant's acts of willful trademark infringement of Plaintiff's MICHE mark as set forth above, Plaintiff has suffered damages and continues to be damaged in an amount to be established at trial, including Defendant's profits and Plaintiff's lost profits.

35. Pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, Plaintiff is entitled to a judgment for damages not to exceed three times the amount of its actual damages, together with interest thereon, in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

Common Law Trademark Infringement

36. Plaintiff restates, realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

37. Plaintiff is the owner of the trademark MICHE and the consuming public recognizes the MICHE mark as being distinctive of and identifying high quality services associated with a single source, namely Plaintiff.

38. Plaintiff's MICHE mark is arbitrary.

39. Plaintiff's MICHE mark has acquired secondary meaning.

40. Defendant's infringing use of the MICHE mark is likely to deceive or cause confusion or mistake among the consuming public as to the origin of Defendant's products and/or services.

41. Plaintiff has been and will continue to be damaged and irreparably harmed by Defendant's infringement.

42. Upon information and belief, Defendant was aware of Plaintiff's MICHE mark and Defendant committed its acts of infringement in willful and flagrant disregard of Plaintiff's lawful rights.

43. Defendant will, if not enjoined by this Court, continue its acts of trademark infringement set forth above, which have caused and will continue to cause Plaintiff immediate and irreparable harm.

44. Plaintiff has no adequate remedy at law for the damage to its reputation and goodwill and will continue to be irreparably damaged unless Defendant is permanently enjoined from its infringing and improper conduct.

WHEREFORE, Plaintiff prays for judgment as set forth hereinafter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants as follows:

1. For a judgment holding Defendant liable for trademark infringement pursuant to 15 U.S.C. § 1114;
2. For a judgment holding Defendant liable for trademark infringement pursuant to 15 U.S.C. § 1125(a);
3. For a judgment holding Defendant liable for common law trademark infringement;
4. That Defendant be ordered to deliver up for destruction all products infringing the MICHE mark that are in its possession;
5. That the claims against Defendant be declared an exceptional case and that Plaintiff be awarded its attorneys fees against Defendant;

6. For a preliminary and permanent injunction, under 15 U.S.C. § 1116, restraining and enjoining Defendant, its agents, servants, employees, officers and those persons in act of concert or participation with Defendant, from any further trademark infringement of Plaintiff's '628 Registration;

7. For an order directing Defendant to recall and destroy any and all products, packaging and advertising bearing Plaintiff's MICHE mark;

8. For an award of costs, profits and damages, which damages and profits are then trebled, under 15 U.S.C. § 1117, for Defendants' infringement of Plaintiff's '628 Registration and the MICHE mark;

9. That Defendants' infringement of Plaintiff's '628 Registration be declared exceptional and Plaintiff be awarded its reasonable attorneys fees under 15 U.S.C. § 1117; and

10. For such further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury as to all issues in this action triable by a jury.

DATED this 24th day of February, 2009.

WORKMAN | NYDEGGER

By: /s/ James B. Belshe
James B. Belshe
Amber B. Leavitt

Attorneys for Plaintiff
MICHE BAG, LLC