

after admitting to personal jurisdiction in the Northern District of Texas and admitting to liability under the claims and causes of action set forth in the Plaintiff's Original Complaint.

4. Defendant Krista Dudte is a citizen and resident of Arkansas, officer, director, owner, and/or managing agent of Blue Brownies, LLC, and has a principal place of business as 16 Southshore Circle, Maumelle, Arkansas, 72113. Ms. Dudte has admitted to personal jurisdiction in the Northern District of Texas.

5. Robert Dudte is a citizen and resident of Arkansas, officer, director owner, and/or managing agent of Blue Brownies, LLC, and has a principal place of business as 16 Southshore Circle, Maumelle, Arkansas, 72113.

6. Various wholesale and retail customers of Blue Brownies, LLC products are also liable for the identified claims and causes of action.

JURISDICTION AND VENUE

7. This is an action arising under the Trademark laws of the United States, and the laws of the State of Texas for trade dress infringement, dilution by blurring, dilution by tarnishment, palming off, and unfair competition.

8. This Court has personal jurisdiction over each of the Defendants because each has established minimum contacts with the State of Texas relating to the controversy at issue such that the exercise of jurisdiction over the Defendants comports with due process requirements either because the Defendants are citizens of the State of Texas or because the Defendants have purposefully availed themselves of the rights and privileges of the State of Texas. Further, the Defendants committed a tort in whole or in part in the State of Texas, which may include trade dress infringement, dilution by blurring and tarnishment, trademark infringement, passing off, and unfair competition in the State of Texas.

9. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332, 1338, and 1367 because there is complete diversity of citizenship between the Plaintiff and the Defendants, the amount in controversy exceeds \$75,000, there is a Federal Question involved because this civil action arises under the Trademark laws of the United States, and this Court has either original or supplemental jurisdiction over all of the claims at issue in this Action.

10. Venue properly lies in the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(a).

FACTUAL BACKGROUND

11. Plaintiff M3Girl Designs, LLC is a business started by sisters Madeline Bradshaw and Margot Bradshaw, with the supervision and assistance of their mother, Diane Bradshaw. The business creates, manufactures and sells bottle cap necklace jewelry.

12. Plaintiff M3Girl Designs, LLC markets and sells the bottle cap necklace jewelry under the trademark “Snap Caps®,” and has obtained United States federal trademark Registration No. 3,626,432 on that trademark.

13. The bottlecap necklace jewelry made, used, sold and marketed by M3Girl Designs, LLC includes one or more of the following one or more of the following trade dress features: (1) a slim choker necklace, colored or white, fabric (2) an attachment having a metallic sheen tied in a knot at the front of the choker necklace, (3) a conventional soft-drink bottlecap with crowned ridges around the edge, (4) the crowned ridges of the bottlecap positioned outwardly on the choker necklace with the internal surface of the bottlecap exposed, and/or (5) a raised projection having a geometric shape on the top surface of the bottlecap.

14. The bottlecap jewelry made, used, sold and marketed by M3 Girl Designs, LLC can be worn on a necklace, anklet, hairclip, bracelet, or positioned on a bulletin board, where the

bottlecap jewelry includes one or more of the following trade dress features: (1) a conventional soft-drink bottlecap with crowned ridges around the edge, (2) the crowned ridges of the bottlecap positioned outwardly with the internal surface of the bottlecap exposed, and/or (3) a raised projection having a geometric shape on the top surface of the bottlecap.

15. The Plaintiff produces three versions of “keeper” metal boards that display the ridges of the bottlecap outwardly and the interior surface of the bottlecap jewelry.

16. Upon information and belief, the Plaintiff’s trademark rights are inherently distinctive, and the Plaintiff’s trade dress rights have acquired distinctiveness.

17. Defendants Blue Brownies, LLC is an Arkansas business started (after the initiation of M3 Girl Designs, LLC) by Ms. Dudte and Ms. Liles, to create, manufacture and sell bottle cap necklace jewelry.

18. The Defendants have used in commerce, on their interactive Internet website, the words “Click It Caps” to sell their bottlecap necklace jewelry.

19. The bottlecap necklace jewelry made, used, sold and marketed by Blue Brownies, LLC is likely to cause consumer confusion because the Blue Brownies jewelry includes one or more of the following one or more of the following trade dress features: (1) a slim choker necklace, colored or white, fabric, (2) an attachment having a metallic sheen tied in a knot at the front of the choker necklace, (3) a conventional soft-drink bottlecap with crowned ridges around the edge, (4) the crowned ridges of the bottlecap positioned outwardly on the choker necklace with the internal surface of the bottlecap exposed, and/or (5) a raised projection having a geometric shape on the top surface of the bottlecap.

20. The bottlecap jewelry made, used, sold and marketed by Blue Brownies can be worn on a necklace, anklet, hairclip, bracelet, or positioned on a bulletin board, where the

bottlecap jewelry including one or more of the following trade dress features: (1) a conventional soft-drink bottlecap with crowned ridges around the edge, (2) the crowned ridges of the bottlecap positioned outwardly with the internal surface of the bottlecap exposed, and/or (3) a raised projection having a geometric shape on the top surface of the bottlecap.

21. The Defendant produces four versions of “keeper” metal boards that display the ridges of the bottlecap outwardly and the interior surface of the bottlecap jewelry.

22. The Defendants adoption and continued use of the Plaintiff’s trade dress and trademark rights is behavior conducted in a manner to deceive the consuming public as to the source of the product, cause actual or cause likely consumer confusion in the market.

23. By its acts in commerce, the Defendants’ intended to cause deception, actual or likely consumer confusion as to the source of their product.

24. Upon information and belief, the Defendants have acted purposefully, willfully and with bad faith intent cause deception, actual or likely consumer confusion as to the source of their product.

25. Plaintiff produces bottlecaps that have the following designs shown in the interior (inside) of the bottlecap: “Letters on Tye Dye,” “Letters on Cheetah Spots”” “Letters on Blue Polka Dots” “Crosses (7 versions),” “Cheer,” “Peace Sign,” “Peace,” “Peace Fingers,” “Ballerina Shoes,” “Guitar,” “I Love Gymnastics,” “Soccer Ball,” “Basketball,” “Volleyball,” “Football,” “BFF (best friends forever),” “Cupcakes (3 versions),” “Ice Cream Cone,” “Butterfly (4 versions),” “Horses,” “Drama Queen,” “Flowers (4 versions).

26. The Defendants have made, used and sold bottlecap jewelry with the following designs on the interior (inside) of the bottle cap: “Letters on Tye Dye,” “Letters on Cheetah Spots”” “Letters on Blue Polka Dots” “Crosses (4 versions),” “Cheer,” “Peace Sign,” “Peace,”

“Peace Fingers,” “Ballerina Shoes,” “Guitar,” “Gymnastics,” “Soccer Ball,” “Basketball,” “Volleyball,” “Football,” “BFF (best friends forever),” “Cupcakes (3 versions),” “Ice Cream Cone (3 versions),” “Butterfly (2 versions),” “Horses (2 versions),” “Drama Queen,” “Flowers (4 versions).”

27. The Plaintiff requested that the Defendants cease their sales of infringing products on February 13, 2009 and May 15, 2009 via correspondence sent directly to the Defendants. After the initial notification letter to the Defendants on February 13, 2009, the Defendants have taken orders of infringing products, and continue in these sales to date.

28. Defendant Charlotte Liles as owner, officer/director and/or managing agent of Blue Brownies, LLC directs, controls and ratifies the actions of the Defendant Blue Brownies, LLC, including the infringing activities identified above.

29. Defendant Krista Dudte owner, officer/director and/or managing agent of Blue Brownies, LLC directs, controls and ratifies the actions of the Defendant Blue Brownies, LLC, including the infringing activities identified above.

COUNT I
State Trade Dress Infringement

30. Plaintiff repeats and re-alleges the allegations of paragraphs 1-24 and 27-29 as if fully set forth herein.

31. “Trade dress refers to the total image and overall appearance of a product and may include features such as the size, shape, color, color combinations, textures, graphics, and even sales techniques that characterize a particular product.” *Pebble Beach*, 155 F.3d at 536 (internal quotation marks omitted)

32. “The design of elements that constitute the appearance or images of goods or services as presented to prospective purchasers, including . . . displays [and] decor, . . . is eligible

for protection as a mark . . .” *Sunbeam Prods.*, 123 F.3d at 251 & n.3); accord RESTATEMENT § 16, at 156.

33. “The purpose of trade dress protection, like trademark protection, is to ‘secure the owner of the trade dress the goodwill of his business and to protect the ability of consumers to distinguish among competing products.’” *Eppendorf–Netheler–Hinz GmbH v. Ritter GmbH*, 289 F.3d 351, 355 (5th Cir. 2002) (alteration omitted) (quoting *Two Pesos*, 505 U.S. at 774).

34. “Trade dress” refers to a concept closely related to trademark law, but instead of protecting a name or logo, trade dress refers to the overall look and appearance of a product.

35. Trade dress essentially protects a product's image, which can encompass colors, shapes, textures, ornamental, and “nonfunctional” features of a product.

36. The Plaintiff's trade dress, as identified above, is non-functional and acquired distinctiveness in the minds of consumers.

37. The Defendants have infringed, and continue to infringe, the Plaintiff's common law trade dress rights by their acts in commerce.

38. Before and after notification on February 13, 2009, the Defendants have infringed and continue to infringe the Plaintiff's state trade dress rights in a willful, intentional and knowing manner.

39. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) willfully, knowingly and intentionally violated the Plaintiff's state trade dress rights.

40. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) continue to willfully, knowingly and intentionally violate the Plaintiff's state trade dress rights.

41. Defendants Ms. Liles and Ms. Dudte are personally liable for liability for state trade dress infringement because Ms. Liles and Ms. Dudte are the moving, active conscious force behind the other Defendants' infringement.

42. The Plaintiff has given the Defendants a substantial amount of time to reform their activities, but the Defendants have not done so.

43. The Plaintiff has been damaged by the Defendants' actions, and the Plaintiff is entitled to compensatory and enhanced damages (as well as attorney fees and costs) resulting from the Defendants knowing, willful, and intentional infringement of the Plaintiff's state trade dress rights.

44. The Plaintiff is entitled a preliminary and permanent injunction against any further infringing acts committed by the Defendants, or anyone acting in concert with those Defendants.

COUNT II
State Dilution by Blurring

45. Plaintiff repeats and re-alleges the allegations of paragraphs 1-24, 27-29 and 31-35 as if fully set forth herein.

46. The Plaintiff's trade dress, as identified above, is non-functional and acquired distinctiveness in the minds of consumers.

47. Dilution by "blurring" occurs when a defendant's use of an owner's trademark creates: (1) a loss of distinctiveness, and (2) creates the possibility that the mark will lose its ability to serve as a unique identifier of the plaintiff's product. *Pebble Beach Co. v. Tour 181 Ltd.*, 942 F. Supp. 1513, 1567 (S.D. Tex. 1996).

48. The Defendants actions in using the Plaintiff's trade dress in commerce are impairing the distinctiveness of the Plaintiff's trade dress through dilution by blurring.

49. The Defendants are diluting and blurring the distinctiveness of the Plaintiff's distinctive trade dress and the goodwill associated therewith.

50. The Defendants have diluted by blurring, and continue to dilute by blurring, the Plaintiff's common law trade dress rights by their acts in commerce.

51. Before and after notification on February 13, 2009, the Defendants have diluted, and continue to dilute, by blurring the Plaintiff's state trade dress rights in a willful, intentional and knowing manner.

52. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) willfully, knowingly and intentionally diluted by blurring the Plaintiff's state trade dress rights.

53. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) continue to willfully, knowingly and intentionally dilute by blurring the Plaintiff's state trade dress rights.

54. Defendants Ms. Liles and Ms. Dudte are personally liable for liability for state trade dress dilution by blurring because Ms. Liles and Ms. Dudte are the moving, active conscious force behind the Defendants' actions.

55. The Plaintiff has given the Defendants a substantial amount of time to reform their activities, but the Defendants have not done so.

56. The Plaintiff has been damaged by the Defendants' actions, and the Plaintiff is entitled to compensatory and enhanced damages (as well as attorney fees and costs) resulting from the Defendants knowing, willful, and intentional dilution by blurring of the Plaintiff's state trade dress rights.

57. Texas provides a statutory cause of action for dilution of protectable marks:

A person may bring an action to enjoin an act likely to injure a business reputation or to dilute the distinctive quality of a mark registered under this chapter or Title 15, U.S.C., or a mark or trade name valid at common law, regardless of whether there is competition between the parties or confusion as to the source of goods or services. . . .

Tex. Bus. & Com. Code Ann. § 16.29.

58. The Plaintiff is entitled a preliminary and permanent injunction against any further dilution by blurring acts committed by the Defendants, or anyone acting in concert with those Defendants.

COUNT III
State Dilution by Tarnishment

59. Plaintiff repeats and re-alleges the allegations of paragraphs 1-24, 27-29 and 31-35 as if fully set forth herein.

60. The Plaintiff's trade dress, as identified above, is non-functional and acquired distinctiveness in the minds of consumers.

61. Tarnishment is the linking of an inferior product's quality or unwholesomeness to another product, where an association is created between the inferior product and the trade dress holder's product causing the trade dress to suffer negative associations through the defendant's use. *Scott Fetzer Co. v. House of Vacuums, Inc.*, 381 F.3d 477, 489 (5th Cir. 2004); *Hormel Foods Corp. v. Jim Henson Prods*, 73 F.3d 497, 506 (2d Cir. 1996); *Deere & Co. v. MTD Products, Inc.*, 41 F.3d 39, 43 (2d Cir. 1994).

62. The Defendants actions in using the Plaintiff's trade dress in commerce has tarnished, and continues to tarnish, the Plaintiff's trade dress.

63. The Defendants are diluting and tarnishing the Plaintiff's distinctive trade dress and the goodwill associated therewith.

64. The Defendants have diluted by tarnishment, and continue to dilute by tarnishment, the Plaintiff's common law trade dress rights by their acts in commerce.

65. Before and after notification on February 13, 2009, the Defendants have diluted, and continue to dilute, by tarnishment the Plaintiff's state trade dress rights in a willful, intentional and knowing manner.

66. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) willfully, knowingly and intentionally diluted by tarnishment the Plaintiff's state trade dress rights.

67. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) continue to willfully, knowingly and intentionally dilute by tarnishment the Plaintiff's state trade dress rights.

68. Defendants Ms. Liles and Ms. Dudte are personally liable for liability for state trade dress dilution by tarnishment because Ms. Liles and Ms. Dudte are the moving, active conscious force behind the Defendants' actions.

69. The Plaintiff has given the Defendants a substantial amount of time to reform their activities, but the Defendants have not done so.

70. The Plaintiff has been damaged by the Defendants' actions, and the Plaintiff is entitled to compensatory and enhanced damages (as well as attorney fees and costs) resulting from the Defendants knowing, willful, and intentional dilution by tarnishment of the Plaintiff's state trade dress rights.

71. Texas provides a statutory cause of action for dilution of protectable marks:

A person may bring an action to enjoin an act likely to injure a business reputation or to dilute the distinctive quality of a mark registered under this chapter or Title 15, U.S.C., or a mark or trade name valid at common law, regardless of whether there is

competition between the parties or confusion as to the source of goods or services. . . .

Tex. Bus. & Com. Code Ann. § 16.29.

72. The Plaintiff is entitled a preliminary and permanent injunction against any further acts of dilution by tarnishment committed by the Defendants, or anyone acting in concert with those Defendants.

COUNT IV
State “Palming Off” Claims

73. Plaintiff repeats and re-alleges the allegations of paragraphs 1-24, 27-29 and 31-35 as if fully set forth herein.

74. The Plaintiff’s trade dress, as identified above, is non-functional and acquired distinctiveness in the minds of consumers.

75. “Palming off” is the sale, distribution or marketing of one product as that of another through the improper use of trademark or trade dress rights, and the question is whether the defendant is “palming off” his goods or services as those of the plaintiff by virtue of the Defendants’ actions in leading to actual or potential confusion on the part of potential customers. *Sun-Fun Prods., Inc. v. Suntan Research & Development, Inc.*, 656 F.2d 186, 192 (5th Cir. 1981) (quoting *Boston Professional Hockey Ass’n v. Dallas Cup & Emblem Mfg., Inc.*, 510 F.2d 1004, 1010 (5th Cir. 1975)).

76. The elements of a “palming off” claim include the use in commerce of any word, symbol or device in connection with any goods, services, or trade dress, that creates a false designation of origin, which is likely to cause confusion, mistake, or deception as to origin, affiliation, association or connection with the approved source.

77. The Defendants actions in using the Plaintiff’s trade dress in commerce constitutes violations of “palming off” under Texas state law.

78. The Defendants are “palming off” their products as if they were the Plaintiff’s products through the use of the Plaintiff’s distinctive trade dress and the goodwill associated therewith.

79. The Defendants have violated, and continue to violate, the Texas state “palming off” prohibitions by their acts in commerce with respect to the improper and deceptive use of the Plaintiff’s common law trade dress rights.

80. Before and after notification on February 13, 2009, the Defendants have violated Texas state “palming off” prohibitions, by the improper and deceptive adoption and use in commerce of the Plaintiff’s state trade dress rights in a willful, intentional and knowing manner meant to cause consumer confusion.

81. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) willfully, knowingly and intentionally “palmed off” the Defendants’ products using the Plaintiff’s trade dress.

82. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) continue to willfully, knowingly and intentionally “palmed off” the Defendants’ products using the Plaintiff’s trade dress.

83. Defendants Ms. Liles and Ms. Dudte are personally liable for liability for state trade dress “palming off” violations because Ms. Liles and Ms. Dudte are the moving, active conscious force behind the Defendants’ actions.

84. The Plaintiff has given the Defendants a substantial amount of time to reform their activities, but the Defendants have not done so.

85. The Plaintiff has been damaged by the Defendants' actions, and the Plaintiff is entitled to compensatory and enhanced damages (as well as attorney fees and costs) resulting from the Defendants knowing, willful, and intentional "palming off" actions.

86. The Plaintiff is entitled a preliminary and permanent injunction against any further "palming off" acts committed by the Defendants, or anyone acting in concert with those Defendants.

COUNT V
State Unfair Competition

87. Plaintiff repeats and re-alleges the allegations of paragraphs 1-24, 27-29, 31-35 and 36-72 as if fully set forth herein.

88. The Plaintiff's trade dress, as identified above, is non-functional and acquired distinctiveness in the minds of consumers.

89. The Fifth Circuit Court of Appeals in *Conan Properties, Inc. v. Conans Pizza, Inc.*, 752 F.2d 145, 155-56 (5th Cir. 1985), recognized that "Texas courts have consistently expanded the scope of protection afforded by the unfair competition laws." *Id.* (citing *Capital Films Corp. v. Charles Fries Productions, Inc.*, 628 F.2d 387, 394 (5th Cir. 1980), and *Universal City Studios, Inc. v. Kamar Industries, Inc.*, 217 U.S.P.Q. (BNA) 1162, 1168 (S.D. Tex. 1982)

90. Texas unfair competition is an "umbrella for all statutory and nonstatutory causes of action arising out of business conduct which is contrary to honest practice in industrial or commercial matters." *United States Sporting Prods., Inc. v. Johnny Stewart Game Calls, Inc.*, 865 S.W.2d 214, 217 (Tex.App.-Waco 1993, writ denied) (quoting *American Heritage Life Ins. Co. v. Heritage Life Ins. Co.*, 494 F.2d 3, 14 (5th Cir.1974)).

91. The Defendants have conducted market activities using the Plaintiff's trademark and/or trade dress rights to cause actual or likely consumer confusion and/or deception of the consuming public, which results in the Defendants committing acts of unfair competition.

92. The Defendants have gained an unfair advantage in the marketplace by their acts of unfair competition.

93. The Defendants have profited from their acts of unfair competition.

94. The Defendants acts of unfair competition were perpetrated to cause actual or likely consumer confusion and/or deception of consumers in the market.

95. Before and after notification on February 13, 2009, the Defendants have diluted, and continue to dilute, by tarnishment the Plaintiff's state trade dress rights in a willful, intentional and knowing manner.

96. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) willfully, knowingly and intentionally diluted by tarnishment the Plaintiff's state trade dress rights.

97. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) continue to willfully, knowingly and intentionally violate Texas state unfair competition laws.

98. Defendants Ms. Liles and Ms. Dudte are personally liable for liability for violations of Texas state unfair competition laws because Ms. Liles and Ms. Dudte are the moving, active conscious force behind the Defendants' actions.

99. The Plaintiff has given the Defendants a substantial amount of time to reform their activities, but the Defendants have not done so.

100. The Plaintiff has been damaged by the Defendants' actions, and the Plaintiff is entitled to compensatory and enhanced damages (as well as attorney fees and costs) resulting

from the Defendants knowing, willful, and intentional violation of Texas state unfair competition laws.

101. The Defendants actions in committing unfair competition has damaged, and will continue to damage, the Plaintiff's business.

102. The Defendants acts have caused and will continue to cause injury to Plaintiff for which Plaintiff is entitled to relief that includes damages, enhanced damages and attorney fees, which should be awarded to the Plaintiff.

103. The Defendants' actions have caused and will continue to cause immediate and irreparable injury to Plaintiff for which Plaintiff is entitled to injunctive relief.

104. The Plaintiff is entitled a preliminary and permanent injunction against any further violations Texas state unfair competition laws committed by the Defendants, or anyone acting in concert with those Defendants.

COUNT VI
Trademark Infringement 15 U.S.C. § 1114

105. Plaintiff repeats and re-alleges the allegations of paragraphs 1-24, 27-29 as if fully set forth herein.

106. Plaintiff owns all right, title and interest to the federal trademark "Snap Caps," United States Trademark Registration No. 3,626,432 ("the '432 Registration"), for use on "jewelry."

107. Plaintiff uses, directly or through its distributors, the trademark Snap Caps® on jewelry.

108. The Defendants have, without consent of the Plaintiff registrant, directly or indirectly used in commerce a reproduction, counterfeit, copy or colorable imitation of the '432

Registration in connection with the sale, offering for sale, distribution, or advertising of goods, which such use is likely to cause confusion, mistake or deception.

109. The Defendants have, without consent of the Plaintiff registrant, directly or indirectly reproduced, counterfeited, copied or colorably imitated the '432 Registration on labels, signs, prints, packages, wrappers, receptacles, webpages or advertisements as used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods, which such use is likely to cause confusion, mistake or deception.

110. The Defendants use and have used the mark Snap Caps® or a substantially similar trademark in commerce, and in its advertising associated with the sale of infringing merchandise and jewelry.

111. The Defendants' use of Snap Caps® or a substantially similar trademark is likely to have caused confusion, mistake or deception in the consuming public, all activities proscribed by 15 U.S.C. § 1114.

112. Upon information and belief, the acts of the Defendants have been and are committed with the intention to cause confusion, mistake, and deception.

113. The Defendants' usage of the mark Snap Caps® or a substantially similar trademark is unauthorized by the registrant Plaintiff, and constitutes an infringement of the Plaintiff's trademark rights under Title 15 of the United States Code.

114. Defendant Charlotte Liles as owner, officer/director and/or managing agent of Blue Brownies, LLC directs, controls and ratifies the actions of the Defendant Blue Brownies, LLC, including the infringing activities identified above.

115. Defendant Krista Dudte owner, officer/director and/or managing agent of Blue Brownies, LLC directs, controls and ratifies the actions of the Defendant Blue Brownies, LLC, including the infringing activities identified above.

116. After notification on February 13, 2009, the Defendants have infringed and continue to infringe the identified trademark in a willful, intentional and knowing manner.

117. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) willfully, knowingly and intentionally violated the Plaintiff's trademark rights.

118. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) continue to willfully, knowingly and intentionally violate the Plaintiff's trademark rights.

119. The Plaintiff has been, and will continue to be, damaged by the Defendant's acts, business activities, and business operations with respect to the use of the '432 Registration.

120. The Plaintiff is entitled to recover damages as set forth in 15 U.S.C. § 1114, and the Plaintiff is entitled to a preliminary and permanent injunction preventing any further infringement of the Snap Caps® trademark registration by any of the Defendants.

COUNT VII

False Designation/Description 15 U.S.C. § 1125(a)

121. Plaintiff repeats, re-alleges and incorporates the allegations of paragraphs 1-24, 27-29 as if fully set forth herein.

122. Snap Caps® or a substantially similar trademark is directly connected by the consuming public with the Plaintiff's business activities.

123. Defendant's acts and business activities have included various concerning behavior and actions, such as using the phrase "Click It Caps," on its website in connection with the use in commerce, sale, and offering for sale of bottlecap necklaces.

124. Defendants have cooperatively, actively, and willfully infringed the Plaintiff's trademark rights by advertising, making, distributing, and selling infringing jewelry products that possess the name "Click It Caps," as well as offering a confusingly similar product line using that tagline and other trademark or slogans that are likely to create consumer confusion.

125. Defendant's acts and business activities are likely to cause confusion, mistake, and and/or deception as to the origin, sponsorship, and/or approval of Defendant's products and services vis-à-vis the Plaintiff's products.

126. Defendant's acts and business activities are likely to cause confusion, mistake, and/or deception as to the affiliation, connection, and association of the Defendants' business vis-à-vis the Plaintiff's business.

127. Defendant's acts and business activities constitute false designations of origin and/or false descriptions of source in violation of 15 U.S.C. 1125(a).

128. Defendant Charlotte Liles as owner, officer/director and/or managing agent of Blue Brownies, LLC directs, controls and ratifies the actions of the Defendant Blue Brownies, LLC, including the infringing activities identified above.

129. Defendant Krista Dudte owner, officer/director and/or managing agent of Blue Brownies, LLC directs, controls and ratifies the actions of the Defendant Blue Brownies, LLC, including the infringing activities identified above.

130. After notification on February 13, 2009, the Defendants have infringed and continue to violate §43(a) of the Lanham Act in a willful, intentional and knowing manner.

131. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) willfully, knowingly and intentionally violated the Plaintiff's trademark rights.

132. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) continue to willfully, knowingly and intentionally violate the Plaintiff's trademark rights.

133. As a result of confused with the Defendant's acts, business activities, or businesses, the Plaintiff's business has incurred or will likely incur significant damages.

134. The Plaintiff is entitled to damages resulting from the Defendants' acts in violation of 15 U.S.C. § 1125(a), and the Plaintiff is entitled to a preliminary and permanent injunction against further violations of 15 U.S.C. § 1125(a) by the Defendants.

COUNT VIII

False Designation/Description 15 U.S.C. § 1125(a) (Trade Dress)

135. Plaintiff repeats and re-alleges the allegations of paragraphs 1-24, 27-29 and 31-35 as if fully set forth herein.

136. "Trade dress" refers to a concept closely related to trademark law, but instead of protecting a name or logo, trade dress refers to the overall look and appearance of a product. Trade dress essentially protects a product's image, which can encompass colors, shapes, textures, ornamental, and "nonfunctional" features of a product.

137. The Plaintiff's trade dress, as identified above, is non-functional and acquired distinctiveness in the minds of consumers.

138. A primary basis for federal trade dress protection is found under 43(a) of the Lanham Act, codified at 15 U.S.C. § 1125.

139. The Plaintiff's trade dress, as identified above, is directly connected by the consuming public with the Plaintiff's business activities.

140. Defendant's acts and business activities have included various behavior and actions, such as using the Plaintiff's trade dress, in connection with the use in commerce, sale, and offering for sale of bottlecap necklaces.

141. Defendants have cooperatively, actively, and willfully violated Section 43(a) by the unauthorized use of the Plaintiff's trade dress rights, which have cause actual or likely consumer confusion or deception.

142. Defendant's acts and business activities are likely to cause confusion, mistake, and and/or deception as to the origin, sponsorship, and/or approval of Defendant's products and services vis-à-vis the Plaintiff's products.

143. Defendant's acts and business activities are likely to cause confusion, mistake, and/or deception as to the affiliation, connection, and association of the Defendants' business vis-à-vis the Plaintiff's business.

144. Defendant's acts and business activities constitute false designations of origin and/or false descriptions of source in violation of 15 U.S.C. 1125(a).

145. Defendant Charlotte Liles as owner, officer/director and/or managing agent of Blue Brownies, LLC directs, controls and ratifies the actions of the Defendant Blue Brownies, LLC, including the infringing activities identified above.

146. Defendant Krista Dudte owner, officer/director and/or managing agent of Blue Brownies, LLC directs, controls and ratifies the actions of the Defendant Blue Brownies, LLC, including the infringing activities identified above.

147. After notification on February 13, 2009, the Defendants have infringed and continue to violate §43(a) of the Lanham Act in a willful, intentional and knowing manner.

148. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) willfully, knowingly and intentionally violated the Plaintiff's trademark rights.

149. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Liles and Ms. Dudte personally) continue to willfully, knowingly and intentionally violate the Plaintiff's trademark rights.

150. As a result of confused with the Defendant's acts, business activities, or businesses, the Plaintiff's business has incurred or will likely incur significant damages.

151. The Plaintiff is entitled to damages resulting from the Defendants' acts in violation of 15 U.S.C. § 1125(a), and the Plaintiff is entitled to a preliminary and permanent injunction against further violations of 15 U.S.C. § 1125(a) by the Defendants.

WHEREFORE, Plaintiff prays for judgment as follows:

- (i) Adjudge that one or more of the Defendants have violated the Plaintiff's state and/or federal trademark or trade dress rights,
- (ii) Adjudge that the Defendants' acts constitute state trade dress infringement, dilution by blurring, dilution by tarnishment, "palming off" violations, unfair competition, federal trademark infringement, violations of 43(a) with respect to trademark and trade dress rights,
- (iii) Adjudge that one or more Defendants' acts constitute willful, intentional or bad faith violations of the law,

- (iv) Award Plaintiff all appropriate damages against each Defendant as a result of Defendants' violations of the law, including compensatory damages and exemplary damages,
- (v) Preliminarily and permanently enjoin each of the Defendants, and anyone acting in concert therewith, from any further violations of the law alleged in the complaint,
- (vi) Award Plaintiff all costs, expenses, and attorney's fees that Plaintiff is entitled to under federal or Texas law;
- (vii) Award Plaintiff pre-judgment and post-judgment interest on any and all monetary awards; and
- (viii) Award such other and further relief that the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable in this Action.

Respectfully submitted,



Feb. 28, 2011
Date

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CERTIFICATE OF SERVICE

I certify that the foregoing was served on Defendants' counsel by Electronic Mail (ECF-Pacer) this day February 28, 2011.



D. Scott Heringway
