

STATE OF INDIANA)
)
) SS:
COUNTY OF MARION)

MARION COUNTY SUPERIOR COURT
ROOM NO. _____

49004061 0P L 04 43 & 8

CAUSE NUMBER:

COWPARADE HOLDINGS CORPORATION,)

Plaintiff,)

v.)

MICHAELS STORES, INC.; and)
DOLLAR TREE STORES, INC.,)

Defendants.)

FILED

195

OCT 30 2006

Debra Ann Snollen
CLERK OF THE
MARION CIRCUIT COURT

COMPLAINT

For this Complaint against Michaels Stores, Inc. (“Michaels”) and Dollar Tree Stores, Inc. (“Dollar Tree”), collectively referred to as “Defendants”, Plaintiff, CowParade Holdings Corporation (“CowParade”), hereby alleges as follows:

SUBSTANCE OF THE ACTION

1. This case involves infringement upon the distinctive and world-famous CowParade trademarks, trade dress and copyrights (“collectively referred to as the “CowParade intellectual property” or “CowParade IP”) owned and used by CowParade in connection with the sale and promotion of its art. Defendants’ infringement arises out of the unauthorized use of the CowParade intellectual property on stickers distributed, advertised and/or sold by Defendants. Copies of the infringing stickers are attached to this Complaint and labeled, Exhibit A.
2. Defendants’ use of the CowParade IP on the infringing stickers violates CowParade’s rights under federal trademark and copyright law, common law and Indiana state law. CowParade asserts claims for copyright infringement, false designation of origin or

sponsorship, false advertising, trade dress infringement, common law trademark infringement, unfair competition, conversion, forgery, counterfeiting, and deception. CowParade seeks a permanent injunction preventing Defendants from using the distinctive CowParade IP, along with an award of damages, treble damages, profits, attorney's fees and costs.

THE PARTIES

3. CowParade is a company organized and existing under the laws of the state of Connecticut.
4. Defendant Michaels is a business organized and existing under the laws of California. Michaels may be served through its registered agent, CT Corporation System, 818 W. 7th Street, Los Angeles, CA 90017.
5. Defendant Dollar Tree is a company organized and existing under the laws of the state of Virginia. Dollar Tree may be served through its registered agent, William Old Jr., 999 Waterside Drive, Suite 1700, Norfolk, VA 23510.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this action pursuant to Ind. Code § 33-28-1-2 and Ind. Code § 33-33-49-9.
7. Defendant Michaels has submitted to this Court's jurisdiction by doing business in the state of Indiana.
8. Defendant Dollar Tree has submitted to this Court's jurisdiction by doing business in the state of Indiana.
9. Venue properly lies in this Court because a substantial part of the events giving rise to the claims alleged herein arose in Marion County, Indiana.

GENERAL ALLEGATIONS AS TO COWPARADE

CowParade's Intellectual Property Rights

10. CowParade is the world's largest public art event. CowParade engages individuals to create life-size sculptures of whimsical themed cows. The cow sculptures are then featured in public exhibits held throughout the U.S. and the world. After each exhibition, the sculptures are auctioned off and the proceeds donated to charity.
11. CowParade is the exclusive copyright owner for all of its themed cow sculptures and holds the exclusive right to prepare or authorize derivative works based upon its copyrighted works.
12. CowParade is identified by its themed cow sculptures. The themed cows are distinctive and famous, and as such, represent the trademarks and trade dress of CowParade.
13. These copyrights, trademarks and trade dress collectively make up the CowParade IP.
14. CowParade is engaged in the sale and/or licensing of promotional items, including calendars, books, reproduction figurines, and other derivative works, which utilize the CowParade IP.
15. CowParade maintains strict control over the quality and nature of its derivative works.
16. CowParade has invested considerable time and money in advertising the CowParade IP throughout Indiana and the world. As a result of extensive global advertising, the CowParade IP is immediately recognizable.
17. CowParade has acquired substantial goodwill among consumers.
18. As a result of such goodwill and immediate recognition, and as a result of extensive advertising, the CowParade IP has become highly valuable.

Defendant's Infringement of CowParade's Intellectual Property Rights

19. Subsequent to CowParade's development, use and/or registration of the CowParade IP, Defendants began using the CowParade IP or confusingly similar variations.
20. Defendants have distributed, advertised and/or sold stickers bearing the CowParade IP.
[See, Exhibit A]
21. Defendants have not received permission from CowParade, or anyone acting on CowParade's behalf, to manufacture, produce, advertise or sell any item bearing the CowParade IP.
22. By manufacturing, producing, advertising and/or selling items bearing the CowParade IP without permission, Defendants have attempted to profit from and capitalize on the intellectual property rights and substantial goodwill developed by CowParade.
23. Defendants have willfully and intentionally manufactured, produced, advertised and/or sold products bearing the CowParade IP with knowledge that the CowParade IP is owned by CowParade.
24. Defendants manufactured, produced, advertised and/or sold items bearing the CowParade IP with knowledge that Defendants' use of the CowParade IP was unauthorized.
25. The manufacture, production, advertisement, and/or sale of items bearing the CowParade IP created a likelihood of consumer confusion.
26. Defendants used the CowParade IP with the intent to confuse and/or deceive consumers.
27. Defendants had access to the CowParade works of art and copied the works through the infringing stickers.

COUNT I
FEDERAL COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 501

28. CowParade incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.
29. The CowParade themed cow sculptures are original expressions or works of art fixed in a tangible medium of expression.
30. Defendants had access to the CowParade sculptures and had a reasonable opportunity to copy the works.
31. The CowParade sculptures are protectable expressions.
32. Defendants copied CowParade's works.
33. The infringing stickers are substantially similar to the CowParade works.
34. The CowParade works are not in the public domain.
35. As a result of Defendants' infringement under 17 U.S.C. § 501, CowParade has been injured and is entitled to damages, including but not limited to, Defendants' profits from the sale of all infringing goods, actual damages, statutory damages, costs of suit and attorney's fees.

COUNT II
**FALSE DESIGNATION OF ORIGIN OR SPONSORSHIP,
FALSE ADVERTISING AND
TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a)**

36. CowParade incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
37. Defendants used the CowParade IP in commerce and in connection with the sale of goods or services.

38. Defendants use of the CowParade IP is likely to cause confusion or mistake and/or is likely to deceive consumers as to the affiliation, connection or association of Defendants with CowParade; or as to the origin, sponsorship, or approval of Defendants' goods by CowParade.
39. The color combinations, graphics, design and visual features of the CowParade themed cow sculptures constitute CowParade's trade dress.
40. The CowParade trade dress is inherently distinctive.
41. The CowParade trade dress has acquired secondary meaning. Consumers associate the themed cow sculptures with CowParade.
42. CowParade's trade dress is non-functional.
43. Defendants' conduct constitutes false or misleading descriptions, false advertising, and false designations of the origin and/or sponsorship of Defendants' goods and constitutes trade dress infringement in violation of § 43(a) of the Lanham Act, as amended, 15 U.S.C. § 1125(a).
44. As a result of Defendants' conduct, CowParade has suffered irreparable harm to valuable CowParade IP. Unless Defendants are permanently enjoined from further false designations, false advertisement and trade dress infringement, CowParade will continue to suffer irreparable harm.
45. A permanent injunction is necessary to prevent Defendants from further interference with CowParade's trademark rights.
46. Defendants' violations of 15 U.S.C. §1125(a) have caused CowParade to incur damages, including, but not limited to, Defendants' profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

COUNT III
COMMON LAW TRADEMARK INFRINGEMENT

47. CowParade incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
48. The whimsical themed cows identify the CowParade business and distinguish it from other businesses. As such, CowParade owns protectable common law trademarks in all of its themed cow designs.
49. CowParade was the first to use the CowParade trademarks or any marks similar thereto. As a result of the continued promotion and sale of its themed cow sculptures, CowParade has become identified in the public mind as the manufacturer and/or licensor of items bearing the CowParade trademarks.
50. CowParade has acquired a reputation among consumers for quality and excellence, and the CowParade trademarks have come to symbolize that reputation.
51. The CowParade marks are inherently distinctive.
52. Defendants, with knowledge of and with intentional disregard for the rights of CowParade, manufactured, produced, advertised and/or sold items using the CowParade marks or confusingly similar imitations thereof.
53. Defendants' use of the CowParade marks has created the likelihood of confusion among consumers as to the source of the infringing stickers.
54. Defendants' acts constitute trademark infringement and willful infringement under the common law.
55. As a result of Defendants' conduct, CowParade has suffered irreparable harm to valuable CowParade trademarks. Unless Defendants are permanently enjoined from further infringement, CowParade will continue to suffer irreparable harm.

56. A permanent injunction is necessary to prevent Defendants from further interference with CowParade's trademark rights.

57. As a result of Defendants' infringement, CowParade has suffered damages, including, but not limited to, Defendants' profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

COUNT IV
UNFAIR COMPETITION

58. CowParade incorporates by reference the allegations contained in all previous paragraphs of this Complaint.

59. Defendants' unlawful and unauthorized use of the CowParade IP constitutes unfair competition with CowParade.

60. Defendants' conduct creates consumer confusion as to the source and/or origin of the infringing items.

61. Defendants' use of the CowParade IP is an attempt to interfere with CowParade's business relationship with its consumers and to trade on CowParade's goodwill.

62. As a result of Defendants' conduct, CowParade has suffered irreparable harm to valuable CowParade IP. Unless Defendants are permanently enjoined from further unfair competition, CowParade will continue to suffer irreparable harm.

63. A permanent injunction is necessary to prevent Defendants from further interference with CowParade's intellectual property rights.

64. Defendants' unfair competition has caused CowParade to incur damages, including but not limited to, Defendants' profits from the sale of the infringing products, actual damages, costs of suit and attorney's fees.

COUNT V
CONVERSION UNDER IND. CODE § 35-43-4-3

65. CowParade incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
66. Defendants knowingly or intentionally exerted unauthorized control over the property of CowParade.
67. Defendants sold items bearing CowParade intellectual property without CowParade's consent and in a manner or to an extent other than that to which CowParade had consented.
68. Defendants knowingly or intentionally exerted unauthorized control over the goodwill developed by CowParade.
69. As a result of Defendants' conversion, CowParade was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

COUNT VI
FORGERY UNDER IND. CODE § 35-43-5-2(b)

70. CowParade incorporates by reference the allegations contained in the previous paragraphs of this Complaint.
71. Defendants, with the intent to defraud, made, uttered, and/or possessed a written instrument in such a manner that it purports to have been made by CowParade.
72. CowParade did not give Defendants the authority to make or possess the infringing items.
73. As a result of Defendants' forgery, CowParade was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

COUNT VII
COUNTERFEITING UNDER IND. CODE § 35-43-5-2(a)

74. CowParade incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.
75. Defendants knowingly or intentionally made and/or uttered a written instrument in such a manner that it purports to have been made by CowParade.
76. CowParade did not give Defendants the authority to make or utter the infringing items.
77. As a result of Defendants' counterfeiting, CowParade was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

COUNT VIII
DECEPTION UNDER IND. CODE § 35-43-5-3

78. CowParade incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.
79. Defendants knowingly or intentionally made a false or misleading written statement with the intent to obtain property.
80. Defendants, with the intent to defraud, misrepresented the identity or quality of property.
81. As a result of Defendants' deception, CowParade was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

PRAYER FOR RELIEF

WHEREFORE, CowParade prays for relief against the Defendants as follows:

- a. That Defendants, their officers, partners, agents, servants, affiliates, employees, attorneys, and representatives, and all those in privity or acting in consent or

participation with Defendants, and each and all of them, be permanently enjoined from:

- (i) Imitating, copying, reproducing, or using, in any manner, the CowParade IP, or any other mark or design confusingly similar to the CowParade IP;
- (ii) Committing any act that is likely to create the impression that Defendants' business or products are in any way sponsored by, approved of or otherwise affiliated or connected with CowParade;
- (iii) Importing, manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any product or service using any simulation, reproduction, counterfeit, copy or imitation of any CowParade IP; and
- (iv) instructing, assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (iv) above.

b. That Defendants be required to:

- (i) Deliver to CowParade for destruction all goods and materials bearing CowParade IP which Defendants have in their possession;
- (ii) Recall and deliver to CowParade for destruction all goods and materials bearing the CowParade IP that have been previously distributed or sold;
- (iii) Pay compensatory damages to CowParade in an amount to be determined at trial for the injuries CowParade has sustained as a consequence of the acts complained of;
- (iv) Pay CowParade treble damages, or alternatively, Defendants' profits

trebled, whichever is greater;

- (v) Pay all of CowParade's litigation expenses, including reasonable attorneys' fees and costs of this action;
- (vi) Pay interest to CowParade, including pre-judgment interest on the foregoing sums; and
- (vii) File with this Court and serve on CowParade an affidavit setting forth in detail the manner and form of Defendants' compliance with the terms of this Court's orders.

- c. That CowParade be awarded such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL JURY

CowParade hereby respectfully requests a trial by jury in this cause, and for all other relief just and proper in the premises.

Respectfully submitted,

Darlene R. Seymour
Attorney # 23133-49

By:  _____

Continental Enterprises
9135 N. Meridian St.
Suite A-1
Indianapolis, IN 46260

EXHIBIT A

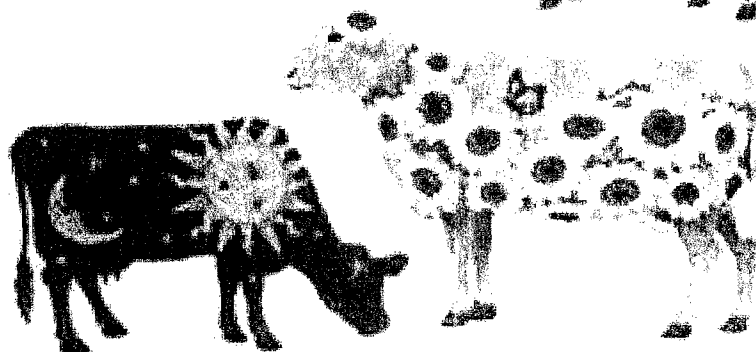
Mylar®

2 Sheets
Feuilles



SANDYLION

STICKER DESIGNS



Mylar®

1 Sheet
10 x 10 in.



Client: [REDACTED] 12/01/2006

Rate: [REDACTED]
 Balance: [REDACTED]
 Ledger: [REDACTED]
 Deposit Number: [REDACTED]

Account number: [REDACTED]
 version: [REDACTED]
 CHASE # [REDACTED]
 Received from: [REDACTED]
 LIABILITY: [REDACTED]
 B/T INCOME: [REDACTED]
 [REDACTED] Treasury [REDACTED]
 [REDACTED] [REDACTED] \$15.00
 [REDACTED] [REDACTED] \$2.00

Interest Income	\$142.00
Gain	\$0.00
Check	\$142.00
Money Order	\$0.00
Interfund Transfer	\$0.00
Credit Memo	\$0.00
Amount Tendered	\$142.00
Change Amount	\$0.00
Refund Amount	\$0.00