

JURISDICTION AND VENUE

4. This is an action arising under the Copyright laws of the United States, and the laws of the State of Texas for misappropriation and unfair competition.

5. The court has personal jurisdiction over all 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 copyright infringement, misappropriation and unfair competition in the State of Texas.

6. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338, and 1367 because there is a Federal Question involved because this civil action arises under the Copyright laws of the United States, and this Court has either original or supplemental jurisdiction over all of the claims at issue in this Action.

7. 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

8. 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 interchangeable bottle cap necklaces having unique artwork.

9. Plaintiff M3Girl Designs, LLC markets and sells the bottle cap necklaces under the trademark "Snap Caps®," and has obtained United States federal trademark Registration No. 3,626,432 on that trademark.

10. Three United States federal copyright registrations have been obtained covering the interchangeable bottle cap necklaces, their unique artwork, and a magnetic "keeper" board, which include United States Copyright Registration Nos. VA 1-665-063, VA 1-684-413, and VA 1-665-059. The Plaintiff has been assigned all rights to the above-identified Copyright Registrations.

11. Apart creating a jewelry concept that allows one jewelry design to be interchanged with other jewelry designs, the Plaintiff produces unique jewelry on the interior (inside) of the bottle cap and produces unique artwork that are both covered by one or more of the above-identified U.S. Copyright Registrations, including (but not limited to): "Animal Prints (zebra stripes)," "Animal Prints (camo)," "Animal Prints (cheetah)," "Tye Dye (letters)," "Peace Love Cheer," "Cheer," "Cheer Megaphone," "I Love Dance," "Peace Love Dance," "Tye Dye Dance," "I Love Softball," "Volleyball," "Soccer," "Basketball," "Birthday Girl," "Cupcakes," "Peace Sign," "Best Friends," "Cross," "Dogs," "Girls Rock," "Love," "Skull," "Princess," and "Daddy's Girl."

12. The Defendants have purposefully, willfully and with bad faith intent copied the copyrighted subject matter including the jewelry designs created by the Plaintiff, and the unique concept of selling jewelry designs on the interior (inside) of the bottle cap.

13. The Defendants have purposefully, willfully and with bad faith intent copied the jewelry design created by the Plaintiff, including using the unique concept of selling jewelry

designs on the interior (inside) of the bottle cap and allowing for those jewelry designs to be interchanged with other jewelry designs.

14. The Defendants have purposefully, willfully and with bad faith intent copied the jewelry design created by the Plaintiff, including selling jewelry designs on the interior (inside) of the bottle cap that has the following designs: "Animal Prints (zebra stripes)," "Animal Prints (camo)," "Animal Prints (cheetah)," "Tye Dye (letters)," "Peace Love Cheer," "Cheer," "Cheer Megaphone," "I Love Dance," "Peace Love Dance," "Tye Dye Dance," "I Love Softball," "Volleyball," "Soccer," "Basketball," "Birthday Girl," "Cupcakes," "Peace Sign," "Best Friends," "Cross," "Dogs," "Girls Rock," "Love," "Skull," "Princess," and "Daddy's Girl."

COUNT I
Copyright Infringement

15. Plaintiff repeats and realleges the allegations of paragraphs 1-12 and 14 as if fully set forth herein.

16. The Plaintiff (and the copyright assignors) have complied in all respects with the Copyright Act, 17 U.S.C. §§ 101, et seq., and with all other laws governing copyrights.

17. The Plaintiff has received and been assigned all right, title and interest to United States Copyright Registration Nos. VA 1-665-063, VA 1-684-413, and VA 1-665-059. (herein collectively "copyrights-at-issue").

18. The Defendants have, after the date of first use of the subject matter covered by the one or more of the copyrights-at-issue, infringed the Plaintiff's statutory and common law copyrights by copying the subject matter covered by one or more of the copyrights-at-issue, including the acts of making and distributing infringing jewelry, authorizing the making and distribution of infringing jewelry; marketing and placing in the market infringing jewelry;

participating in and furthering such infringing acts, or sharing in the proceeds from such infringing acts.

19. The Plaintiff notified the Defendants about their infringement of the subject rights addressed in this Complaint on August 4, 2009 through their Dallas, Texas distributor (Mr. Jerry Coff) and on September 4, 2009 directly via correspondence sent directly to the Defendants.

20. On August 31, 2009, the Plaintiffs specifically identified the intellectual property rights that were being asserted by the Plaintiffs in the August 4, 2009 correspondence, with an explicit identification of the subject copyright registration numbers.

21. On September 8, 2009, Defendants responded to the infringement notification correspondence by stating:

- a. Lucky 11 is “unaware of any intellectual property rights that may be owned by M3Girl,”
- b. “Lucky 11 has not received any concrete information that would lead us to believe that its Cheer Chics Charms infringe any rights claimed by M3Girl,” and,
- c. “We will remove all Cheer Chics Charms in the Bottlecaps design from the website promptly.”

22. Before September 8, 2009, the Defendants had been notified about the specific registration numbers that are associated with the Plaintiffs’ intellectual property rights, and therefore, the Defendants had received concrete information regarding the Plaintiff’s rights when they sent their letter dated September 8, 2009.

23. After September 8, 2009, the Defendants did not remove the infringing subject matter from their website.

24. After September 8, 2009, the Defendants have taken orders for infringing products contrary to their representations that they would cease such activities.

25. Ms. Kristin Almond, as President of Lucky 11 (d/b/a Cheer Chics Charms), directs, controls and ratifies the actions of the Defendant Lucky 11 (d/b/a Cheer Chics Charms), including the infringing activities identified above.

26. After September 8, 2009, the Defendants have infringed and continued to infringe one or more of the identified copyrights-at-issue in a willful, intentional and knowing manner.

27. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Almond personally) willfully, knowingly and intentionally violated, and continue to willfully, knowingly and intentionally violate the Plaintiff's copyright rights.

28. In undertaking the conduct complained of in this action, all the Defendants (including Ms. Almond personally) willfully, knowingly and intentionally violated, and continue to willfully, knowingly and intentionally violate the Plaintiff's copyright rights.

29. Defendant Kristin Almond is personally liable for other Defendants' liability for copyright infringement because Ms. Almond is the moving, active conscious force' behind the other Defendants' infringement.

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

31. 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 copyright rights.

32. 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
Misappropriation and Unfair Competition

33. Plaintiff repeats and realleges the allegations of paragraphs 1-11, 13-14 as if fully set forth herein.

34. None of the Defendants produced, sold, and/or assisted anyone with the production and sale of substantially similar jewelry products prior to the creation and formation of the Plaintiff's business.

35. None of the Defendants manufactured or sold substantially similar jewelry products prior to the creation and formation of the Plaintiff's business.

36. The Defendants began to manufacture, market, and sell substantially similar jewelry products because of the presence of the Plaintiff's products in the market.

37. The Defendants have marketed and sold jewelry products that unlawfully duplicate the Plaintiff's products, including the interchangeable functionality of the Plaintiff's products.

38. The Defendants have improperly misappropriated information regarding the design, physical dimensions and specifications of the Plaintiff's jewelry products, including the interchangeable functionality of the Plaintiff's products.

39. The Defendants have gained an unfair advantage in the marketplace by capitalizing on the design, physical dimensions and specifications of the Plaintiff's jewelry products, including the interchangeable functionality of the Plaintiff's products.

40. The Plaintiff has a pecuniary interest to the design, physical dimensions and specifications of the Plaintiff's jewelry products, including the interchangeable functionality of the Plaintiff's products.

41. The Defendants have profited from the improper use of Plaintiff's information relating to its jewelry products, including the interchangeable functionality of the Plaintiff's products.

42. The improper and unauthorized use, duplication, and copying of information regarding the Plaintiff's jewelry products, including the interchangeable functionality of the Plaintiff's products, has damaged, and will continue to damage, the Plaintiff's business.

43. 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.

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

WHEREFORE, Plaintiff prays for judgment as follows:

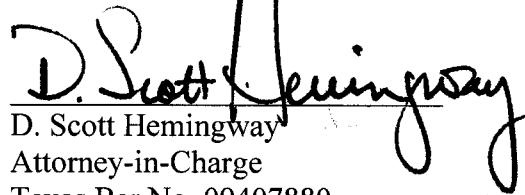
- (i) Adjudge that one or more of the Defendants have violated the Plaintiff's copyright rights to any of the three identified copyright registrations,
- (ii) Adjudge that the Defendants' acts constitute copyright infringement,
- (iii) Adjudge that one or more Defendants' acts constitute willful copyright violations,
- (iv) Award Plaintiff all appropriate damages as a result of Defendants' copyright infringement, including compensatory damages and exemplary damages,
- (v) Preliminarily and permanently enjoin each of the Defendants, and anyone acting in concert therewith, from any further acts of copyright infringement,

- (vi) Adjudge the Defendants to have committed unfair competition and misappropriation in violation of Texas state law;
- (vii) Award the Plaintiff damages suffered as a result of Defendants' acts of unfair competition and misappropriation,
- (viii) Preliminarily and permanently enjoin Defendants, and any other person or entity in concert or participation with the Defendants, from engaging in any further acts of unfair competition or misappropriation;
- (ix) Award Plaintiff all costs, expenses, and attorney's fees that Plaintiff is entitled to under federal or Texas law;
- (x) Award Plaintiff pre-judgment and post-judgment interest on any and all monetary awards; and
- (xi) 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,



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**Attorneys for
Plaintiff M3Girl Designs, LLC**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

M3 Girl Designs, LLC,

(b) County of Residence of First Listed Plaintiff Dallas, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

1. Scott Hemingway, Hemingway & Hansen, LLP, 1717 Main St.,
Suite 2500, Dallas, Texas 75201

DEFENDANTS

Lucky 11, Inc. and Ms. Kristin Almond

County of Residence of First Listed Defendant Denton, Texas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

DEC 8 2009

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
17 U.S.C. Sections 101, et seq.

Brief description of cause:
Copyright Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
12/08/2009

SIGNATURE OF ATTORNEY OF RECORD

D. Scott Hemingway

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____