

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Dallas Division**

M3Girl Designs, LLC
Plaintiff,

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vs.

CIVIL ACTION NO. 3-09cv2390-F

Blue Brownies, LLC
Charlotte Liles,
Krista Dudte,
Robert Dudte

Defendants.

**PLAINTIFF’S ANSWER TO
DEFENDANTS’ COUNTERCLAIM IN
SECOND AMENDED ANSWER**

COMES NOW Plaintiff, M3Girl Designs, LLC, to respond to Counterclaim Counts raised by the Defendants’ Counterclaim in the Defendants’ Second Amended Answer filed by Defendants Blue Brownies, LLC, Krista Dudte and Robert Dudte (hereinafter “Defendants”), and alleges as follows:

Jurisdiction and Venue

188. Jurisdiction exists pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 1367, and 15 U.S.C. §§ 1116 and 1121.

Answer: Plaintiff admits that Defendants’ Counterclaims invoke jurisdiction under the above-identified statutes, but denies that any of the Defendants’ requested relief in the Counterclaims should be granted. Admitted that this Court has jurisdiction over the subject matter of this action.

189. The suit is based on a Federal question and statute, namely 15 U.S.C. §§ 1051 *et seq.*

Answer: Plaintiff admits that Defendants' Counterclaims invoke Federal Question jurisdiction under the Trademark Act, but denies that any of the Defendants' requested relief in the Counterclaims should be granted.

190. This Court has pendent jurisdiction over the state claims herein under the provisions of 28 U.S.C. § 1338(b) because these claims are joined with substantial and related claims under the trademark laws of the United States, 15 U.S.C. §§ 1051 *et seq.*, and the other federal claims described herein

Answer: Plaintiff admits that Defendants' Counterclaims invoke pendent jurisdiction over state claims that are related to Trademark Act claims, but denies that any of the Defendants' requested relief in the Counterclaims should be granted.

191. The amount in controversy exceeds the sum or value of \$75,000.00.

Answer: Plaintiff admits that Defendants' Counterclaims claim to involve damages that exceed \$75,000, but denies that any of the Defendants' requested damages or relief in the Counterclaims should be granted.

192. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. § 1391(b).

Answer: Plaintiff admits that Defendants' Counterclaims invoke venue under §1391(b), but denies that any of the Defendants' requested relief in the Counterclaims should be granted.

193. Furthermore, a substantial portion of the events giving rise to the causes of action described herein have occurred in and/or are continuing to occur in Dallas, Texas, located in the Dallas Division of the Northern District of Texas.

Answer: Plaintiff admits that Defendants' Counterclaims claim that a substantial portion of the events giving rise to the causes of action occurred in Dallas, Texas, but denies that any of the Plaintiff's actions support the Defendants' requested relief in the Counterclaims.

194. In about September of 2008, Krista Dudte purchased 3 magnetic bottle caps and one choker necklace from ladies at her daughter's elementary school in Arkansas.

Answer: Admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons associated with an elementary school, admitted that Ms. Dudte admits to taking active steps to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Otherwise, denied.

195. The name of their company was Click-A-Rooz. *See* <http://www.facebook.com/pages/Click-A-Rooz/56106161119>. It was run by Heather Steel Bakelekos and Shannon Johnson Walters of Little Rock, Arkansas.

Answer: It is unclear what "their" refers to in this allegation, but it is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons associated with an elementary school, admitted that Ms. Dudte admits to taking active steps to make money

based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Otherwise, denied.

196. After looking at the concept, Blue Brownies thought it was a fun idea and started thinking of ideas of what could be put inside the caps.

Answer: It is unclear what "it" refers to in this allegation, but it is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons associated with an elementary school, admitted that Ms. Dudte admits to taking active steps to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Otherwise, denied.

197. Blue Brownies shopped at Hobby Lobby and Michaels for charms & buttons that would fit inside the 1" round bottle cap. Blue Brownies ordered its first bottle caps on October 7, 2008.

Answer: It is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons

associated with an elementary school, admitted that Ms. Dudte admits to taking active steps to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law.

Otherwise, denied.

198. Blue Brownies spent some time looking on Ebay to see who else was making the caps. While looking, Blue Brownies found a person who was making bottle caps that hung on a chain (not magnetic) and that sealed the inside of them with liquid resin or epoxy.

Answer: It is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons associated with an elementary school and others located on the Internet, admitted that Ms. Dudte admits to taking active steps to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Otherwise, denied.

199. After some research, Blue Brownies found a suitable epoxy at Michaels and

started experimenting with it. Blue Brownies made one hundred (100) or so caps and went to a local craft show to see how it would do.

Answer: It is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons associated with an elementary school, admitted that Ms. Dudte admits to taking active steps to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law.

Otherwise, denied.

200. The process for making its bottle cap jewelry includes several steps.

Answer: It is unclear what is meant by "the process." Otherwise, admitted.

201. The process begins with an unembellished bottle cap as shown below.

Answer: It is unclear what is meant by "the process." Otherwise, admitted that there are numerous steps in making bottle cap jewelry, which can begin with any number of different steps.

202. The next step is to affix a magnet to the back of the bottle cap with some type of adhesive.

Answer: Admitted that there are numerous steps in making bottle cap jewelry, which can include any number of "next steps."

203. Designs and artwork are then added to the interior of the bottle cap.

Answer: Admitted that there are numerous steps in making bottle cap jewelry, which can include any number of next steps or components that can be “then added.”

204. A clear resin is applied to the artwork to protect it.

Answer: Admitted that there are numerous steps in making bottle cap jewelry, which can include any number of next steps or components that can be applied.

205. Small figures or synthetic jewels may be applied before or after the resin is applied.

Answer: Admitted that there are numerous steps in making bottle cap jewelry, which can include any number of next steps or components that can be applied or added.

206. Once magnetized and decorated, bottle cap jewelry can be attached to the magnetic metal element of a choker necklace.

Answer: Admitted that there are numerous steps in making bottle cap jewelry, which can include any number of next steps or components that can be applied or added.

207. The shiny metal element, shown below, is nothing more than a standard fender washer on an elastic band that snaps onto the magnetic component on the back of the bottle cap to releaseably hold the jewelry item in place on the wearer’s body or neck.

Answer: It is unclear what is meant by “the shiny metal element” or “fender washer,” but admitted that components for interchangeable, magnetic bottlecap jewelry can include many different types of components.

208. The bottle cap elements can be interchanged among different choker necklaces or bracelets, depending on the size of the elastic bands, and other apparel items or mounts with magnetic metal elements as customers see fit.

Answer: It is unclear what is meant by “bottle cap elements,” but admitted that interchangeable, magnetic bottlecap jewelry can be interchanged using many different types of components.

209. The stretchable cord used for Plaintiff’s necklaces is a standard craft supply item that long predates Plaintiff’s copying of this staple article and is sold by companies like www.artfire.com.

Answer: It is unclear what is meant by “standard” and “the stretchable cord,” but admitted that components for interchangeable, magnetic bottlecap jewelry can include many different types of components.

210. Plaintiff is not the first person to use a standard steel fender washer purchased from a hardware store as a necklace attachment, and necklaces with washers are also sold by www.artfire.com.

Answer: Before the formation of Plaintiff, Plaintiff was not aware of any prior product having a metallic element used in the manner used in the Plaintiff’s interchangeable, magnetic bottlecap jewelry. As such, denied.

211. From late October to early December of 2008, Blue Brownies worked on different designs which were sold at several craft stores and to a local store in Little Rock, Arkansas.

Answer: It is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies’ business concept and product design from persons

associated with an elementary school, admitted that Ms. Dudte admits to taking active steps to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Admitted that Ms. Dudte and Blue Brownies sold their misappropriated designs and products at stores and on their website. Otherwise, denied.

212. The web site and the official formation of Blue Brownies did not take place until January 2009. Krista Dudte and Charlotte Liles were the founding members. Robb Dudte has assisted in the technical aspects of manufacturing the Blue Brownies bottle caps.

Answer: It is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons associated with an elementary school, admitted that Ms. Dudte admits to taking active steps to make money based on a business concept taken from other people, including formation of the business entity known as Blue Brownies, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Admitted that Ms.

Dudte and Blue Brownies sold their misappropriated designs and products at stores and on their website. Otherwise, denied.

213. In the beginning, Krista Dudte and Charlotte Liles were both involved in developing and making the designs or the inside portion of the caps.

Answer: It is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons associated with an elementary school, admitted that Ms. Dudte admits to taking active steps with Ms. Liles to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Admitted that Ms. Dudte and Blue Brownies sold their misappropriated designs and products at stores and on their website, and Ms. Liles was a shopper at the Dallas market centers, which included sales of the Plaintiff's product. Otherwise, denied.

214. The Blue Brownie's cap designs incorporated a piece of scrapbook paper cut into a 1" circle and decorations, such as a brad, raised letter, charm, button, or anything else that would fit into the 1" circle. The scrap paper was glued to the inside of the bottle cap and then the epoxy was poured over it. The decorations were usually added.

Answer: It is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons

associated with an elementary school, admitted that Ms. Dudte admits to taking active steps to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Admitted that Ms. Dudte and Blue Brownies sold their misappropriated designs and products at stores and on their website, and Ms. Liles was a shopper at the Dallas market centers, which included sales of the Plaintiff's product. Otherwise, denied.

215. Blue Brownies has experimented with glue, changed magnet sizes, started using printed inserts, and the designs have evolved, but the same basic method and design principles are used. Blank bottle caps and magnets are available from such companies as www.bottlecapco.com and www.outsidethemargins.com.

Answer: It is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons associated with an elementary school, admitted that Ms. Dudte admits to taking active steps to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Admitted

that Ms. Dudte and Blue Brownies sold their misappropriated designs and products at stores and on their website, and Ms. Liles was a shopper at the Dallas market centers, which included sales of the Plaintiff's product. Otherwise, denied.

216. The majority of Blue Brownies' designs were put together by either Krista Dudte or Charlotte Liles. There has been a phrase, or school logo that has been requested by a customer and Blue Brownies has made them at their request or suggestion.

Answer: It is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons associated with an elementary school, admitted that Ms. Dudte admits to taking active steps to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Admitted that Ms. Dudte and Blue Brownies sold their misappropriated designs and products at stores and on their website, and Ms. Liles was a shopper at the Dallas market centers, which included sales of the Plaintiff's product. Otherwise, denied.

217. The first time that Blue Brownies heard of M3 Girl Designs was December of 2008.

Answer: It is admitted that Ms. Dudte admits that she misappropriated, stole, and derived the Blue Brownies' business concept and product design from persons associated with an elementary school, admitted that Ms. Dudte admits to taking active

steps to make money based on a business concept taken from other people, admitted that Ms. Dudte admits she did not start the Blue Brownies based as her own independent idea, admitted that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Admitted that Blue Brownies was contacted by M3 Girl Designs on or around that time frame, but this allegation is directed to first knowledge by a corporate entity – as opposed to the Defendants Ms. Dudte and Ms. Liles. Admitted that Ms. Dudte and Blue Brownies sold their misappropriated designs and products at stores and on their website, and Ms. Liles was a shopper at the Dallas market centers, which included sales of the Plaintiff's product. Otherwise, denied.

218. Plaintiff represents to have begun selling bottle cap jewelry in July of 2006.

Answer: No indication is given as to what “representation” this allegation is referring to, but admitted that the Plaintiff's prior representations speak for themselves. The Defendants should refer to those prior representations or allegations. Otherwise, denied.

219. Diane Bradshaw registered the domain name www.m3girldesigns.com on January 21, 2007.

Answer: Admitted that the registration of domain name documents speak for themselves on the date of registration and the person registering the domain name by or for the Plaintiff or its predecessor-in-interest.

220. Plaintiff, M3 Girl Designs, LLC, was formed January 14, 2008 by Diane Wilson Bradshaw.

Answer: Admitted that the corporate formation documents speak for themselves on the date of formation and the person signing the corporate documents.

221. Plaintiff is managed and operated and controlled by Diane Bradshaw.

Answer: Admitted that Ms. Bradshaw assists her daughters in the management, operations and control of the Plaintiff.

222. Plaintiff, M3 Girl Designs, LLC, is a Texas limited liability company with a principal place of business at 14456 Midway Road, Farmers Branch, Texas, 75244.

Answer: Admitted.

221. (second occurrence of no. 221) Plaintiff filed an application to register THE ORIGINAL INTERCHANGEABLE BOTTLE CAP NECKLACE for jewelry on October 10, 2008 claiming a date of use of July 15, 2008.

Answer: Admitted that the trademark application documents speak for themselves on the filing date, trademark, goods and services designation, and claimed date of first use. Otherwise denied.

222. (second occurrence of no. 222) Plaintiff filed an application to register SNAP CAPS for jewelry on October 9, 2008 claiming a date of use of July 15, 2008.

Answer: Admitted that the trademark application documents speak for themselves on the filing date, trademark, goods and services designation, and claimed date of first use. Otherwise denied.

223. Plaintiff advertises that “When 10 year old Maddie Bradshaw had a desire to

decorate her locker with something creative, Snap Caps® bottle cap necklaces were born.”

Answer: No indication is given as to what “advertisement” this allegation is referring to, but admitted that the Plaintiff’s prior advertisements speak for themselves. The Defendants should refer to those prior advertisements. Otherwise, denied.

224. Plaintiff also advertises that “With \$300 of her own money and a unique idea, Maddie’s SNAP CAPS® have turned M3 Girl Designs into a national brand, selling 50,000 necklaces per month in less than two year’s time.”

Answer: No indication is given as to what “advertisement” this allegation is referring to, but admitted that the Plaintiff’s prior advertisements speak for themselves. The Defendants should refer to those prior advertisements. Otherwise, denied.

225. Plaintiff also advertises that “Sassy and vibrant, Margot Bradshaw was inspired by her sister’s ingenuity and started designing her own collections for the company at 6 years old. Her collections include tween favorites such as ‘The Jonas Brothers’ and the ‘Peace & Love’ series. Since opening the business in 2006, Margot has progressively become more involved in the organization, maintains good grades and is active in school sports and social activities.”

Answer: No indication is given as to what “advertisement” this allegation is referring to, but admitted that the Plaintiff’s prior advertisements speak for themselves. The Defendants should refer to those prior advertisements. Otherwise, denied.

226. Plaintiff advertises that Ms. Madeline Bradshaw was the original inventor of bottle cap magnets and interchangeable bottle cap jewelry and initially started Plaintiff’s

business in 2006 as part of a fourth-grade school project while attending The Hockaday School in Dallas, Texas.

Answer: No indication is given as to what “advertisement” this allegation is referring to, but admitted that the Plaintiff’s prior advertisements speak for themselves. The Defendants should refer to those prior advertisements. Otherwise, denied.

227. Madeline Bradshaw, commonly called Maddie, who was born in about 1996, represents to have founded Plaintiff.

Answer: Admitted that Madeline Bradshaw founded the Plaintiff company, or its unincorporated predecessor, and conducted additional formation activities, all in association with and with the assistance of her mother, Ms. Diane Bradshaw.

228. Plaintiff was actually founded by her mother, Diane Bradshaw.

Answer: Admitted that Madeline Bradshaw founded the Plaintiff company, or its unincorporated predecessor, and took conducted additional formation activities, all in association with and with the assistance of her mother, Ms. Diane Bradshaw.

229. Plaintiff copied the old idea of bottle cap magnets and jewelry in 2006.

Answer: Denied. There was no interchangeable, magnetic bottlecap jewelry makers that produced a necklace product like the Plaintiff’s on or before 2006, which makes the Plaintiff the “Original, Interchangeable Bottlecap Necklace”® source.

230. The Plaintiff’s story is merely a marketing plan by Diane Bradshaw to front her teenage daughters as the inventors of bottle cap magnets and jewelry, which were well know craft items for decades before 2006, were not unique, and were already on sale in the market.

Answer: Denied.

231. Plaintiff advertises that it is run by Madeline Bradshaw and her sister, Margot Bradshaw who was born in about 2001.

Answer: No indication is given as to what “advertisement” this allegation is referring to, but admitted that the Plaintiff’s prior advertisements speak for themselves. The Defendants should refer to those prior advertisements. Otherwise, denied.

232. Plaintiff was actually founded by Madeline Bradshaw’s mother, Diane Bradshaw.

Answer: Admitted that Madeline Bradshaw founded the Plaintiff company, or its unincorporated predecessor, and took conducted additional formation activities in association with and with the assistance of her mother, Ms. Diane Bradshaw.

233. Plaintiff is not managed and operated and controlled by teenagers and sisters Madeline E. Bradshaw and Margot Bradshaw.

Answer: Admitted that Ms. Diane Bradshaw assists her daughters in the management, operations and control of the Plaintiff. Otherwise denied.

234. Diane Bradshaw came up with the marketing plan of having her teenage daughters be the front persons and spokespersons for Plaintiff.

Answer: Madeline Bradshaw and Margot Bradshaw are persons that speak for and represent the M3 Girl Designs business. To the extent “front persons and spokepersons” implies that Madeline Bradshaw and Margot Bradshaw have no involvement in the M3Girl Designs business, denied.

235. Maddie Bradshaw has not been running Plaintiff, a multi-million dollar a year company, while completing grade school and participating on the swim team at The Hockaday School in Dallas.

Answer: Denied, see above Responses to ¶221-234.

236. The bottle cap jewelry allegedly represented by Plaintiff was not invented by Plaintiff and is not a novel idea as required by the United States patent laws to be protectable and patentable.

Answer: This is a compound allegation, and it is uncertain what is meant by the “bottle cap jewelry allegedly represented by Plaintiff.” This allegations also requests a position on whether a corporation invented something under United States patent law, which is a legal question. Denied.

237. Prior art consisting of both patents and non-patent literature demonstrates that the bottle cap magnets are not patentable subject matter.

Answer: It is uncertain what “prior art” this allegation is referring to or what is meant by “bottle cap magnets.” Denied.

238. Plaintiff has stated that it has pending patent applications on its jewelry.

Answer: No indication is given as to what “statement” this allegation is referring to, but admitted that the Plaintiff’s prior statements speak for themselves. The Plaintiff has filed and is prosecuting patent applications. Otherwise, denied.

239. Plaintiff has no pending patent applications on its jewelry.

Answer: Denied.

240. Klutz, a large company dedicated to creating how-to books packaged with the tools of their trade, published a bottle cap magnet and jewelry making kit in 2005 called CAPSTERS which disclosed the old idea of decorating the inside of bottle caps and using them in jewelry and with magnets. A photo of the CAPSTERS bottle cap kit is shown below.

Answer: Plaintiff does not have sufficient information about CAPSTERS to admit or deny (but the cover of the CAPSTERS catalog shows nothing about their use with magnets), and as such, denied.

241. Plaintiff's nominal principal, Madeline Bradshaw, was about 9 years old when the CAPSTERS kit was published.

Answer: Plaintiff does not have sufficient information about CAPSTERS to admit or deny, and as such, denied.

242. The CAPSTERS kit was marketed nationwide in 2005 by Klutz and were sold and marketed in Dallas, Texas in 2005 and 2006.

Answer: Plaintiff does not have sufficient information about CAPSTERS to admit or deny, and as such, denied.

243. Additionally, several prior art patents deal specifically with magnetic changeable jewelry.

Answer: It is uncertain what "several prior art patents" this allegation is referring to or what is meant by "magnetic changeable jewelry," which is phrase that apparently has a different meaning than magnetic interchangeable bottlecap jewelry. Denied.

244. Schlinger et al.'s U.S. patent No. 5,806,346 issued September 15, 1998, and titled *Magnetic Pendant Necklace Set and Manufacture* discloses a pendant necklace which uses magnets to provide secure attachment between the necklace's pendant clasp and a removable and interchangeable pendant ornament.

Answer: Admitted that the above-identified patent speaks for itself as to what it discloses. Otherwise, denied.

245. Additionally, Crosley et al.'s U.S. patent No. 4,912,944, issued April 3, 1990 and titled *Magnetic Jewelry* invention, discloses a decorative item held by magnetic attraction to a base element for the purpose of interchangeability. Like Plaintiff's bottlecap jewelry, only the decorative portion in the Crosley invention contains a magnet allowing it to be affixed to a metal surface material.

Answer: Admitted that the above-identified patent speaks for itself as to what it discloses. Otherwise, denied.

246. The Schlinger patent discloses a magnetic pendant necklace with removable and interchangeable pendant ornaments. The Crosley patent discloses creating magnetic attraction by using only one magnet and a magnetic surface. Additionally, the Crosley patent discloses the desirability of interchangeable jewelry.

Answer: Admitted that the above-identified patent speaks for itself as to what it discloses. Otherwise, denied.

247. The 2005 *Capster* book also discloses making bottle cap art and using it for jewelry and attaching magnets to make it bottle cap magnets.

Answer: Plaintiff does not have sufficient information about CAPSTERS to admit or deny (but the cover of the CAPSTERS catalog shows nothing about their use with magnets), and as such, denied.

248. In view of this prior art, the Bradshaw sisters are not remotely the first creators or inventors of either bottle cap magnets jewelry or interchangeable magnetic jewelry.

Answer: Denied. There was no interchangeable, magnetic bottlecap jewelry makers that produced a necklace product like the Plaintiff's products when formed, which makes the Plaintiff the "Original, Interchangeable Bottlecap Necklace"® source.

249. Therefore, even if Plaintiff had submitted a patent application, the application would have been denied in light of the prior art since Plaintiff or the Bradshaws are not remotely the first inventor.

Answer: This allegation includes a "therefore" which is not tied to any particular preceding statement. This allegation requests a position on whether recently-occurring innovations and enhancements can be patented. Denied.

250. In any event, it is now too late for Plaintiff to receive any type of patent protection because it introduced its idea into the public domain over one year ago and cannot now file for patent protection.

Answer: This allegation requests a position on whether recently-occurring innovations and enhancements can be patented, as well as pending patent applications. Denied.

251. Accordingly, neither federal patent law nor state unfair competition law can prevent Defendants' competition with Plaintiff through the sale of similar competing products.

Answer: It is unclear what is meant by "federal patent law," "state unfair competition law, and "Defendants' competition with Plaintiff." Admitted that there are presently state unfair competition claims that are included in the active pleadings and the Defendants have answered those allegations in its Answer. Admitted that the present state claims are directed to potential consumer confusion issues. Also admitted that Ms.

Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law. Otherwise, denied.

252. The idea of magnetic jewelry has been is public domain since before the 1990s so it is not available for patent protection.

Answer: It is unclear what is meant by "idea of magnetic jewelry" or what jewelry has been known since the 1990s, but the Plaintiff is not aware of any prior source for interchangeable, magnetic bottlecap necklaces before its formation, which makes the Plaintiff the "Original, Interchangeable Bottlecap Necklace"® source.

253. Plaintiff has represented that Defendant copied its copyrighted jewelry designs.

Answer: No indication is given as to what "representation" this allegation is referring to, but admitted that the Plaintiff's prior representations speak for themselves. The Defendants should refer to those prior representations. Otherwise, denied.

254. Plaintiff obtained three United States federal copyright registrations and have represented that they cover 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.

Answer: Denied. The Defendants have received more than three copyright registrations, and there is no indication is given as to what "representation" this allegation is referring to, but admitted that the Plaintiff's prior representations speak for themselves. The Defendants should refer to those prior representations. Otherwise, denied.

255. Plaintiff represents it has been assigned all rights to the above-identified Copyright Registrations.

Answer: No indication is given as to what “representation” this allegation is referring to, but admitted that the Plaintiff’s prior representations speak for themselves. The Defendants should refer to those prior representations. Assignments have been executed for the above-identified copyright registrations. Otherwise, denied.

256. Plaintiff has also represented that apart from the uniqueness of producing jewelry on the interior (inside) of the bottle cap and allowing for those jewelry designs to be interchanged with other jewelry designs, Plaintiff produces unique artwork that is covered by one or more of the above-identified U.S. Copyright Registrations, including (but not limited to): “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).

Answer: No indication is given as to what “representation” this allegation is referring to, but admitted that the Plaintiff’s prior representations speak for themselves. The Defendants should refer to those prior representations. Otherwise, denied.

257. Plaintiff also represents it produces three versions of unique “keeper” magnetic boards that hold the bottlecap jewelry designs having a magnetic backing.

Answer: No indication is given as to what “representation” this allegation is referring to, but admitted that the Plaintiff’s prior representations speak for themselves. The Defendants should refer to those prior representations. Otherwise, denied.

258. Plaintiff has represented that the Defendants have purposefully, willfully and with bad faith intent copied the jewelry designs created by the Plaintiff, including using the unique concept of selling jewelry designs on the interior (inside) of the bottle cap.

Answer: No indication is given as to what “representation” this allegation is referring to, but admitted that the Plaintiff’s prior representations speak for themselves. The Defendants should refer to those prior representations. Otherwise, denied.

259. Plaintiff has also represented that 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.

Answer: No indication is given as to what “representation” this allegation is referring to, but admitted that the Plaintiff’s prior representations speak for themselves. The Defendants should refer to those prior representations. Otherwise, denied.

260. Plaintiff has also represented that 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 (but not limited to): “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).”

Answer: No indication is given as to what “representation” this allegation is referring to, but admitted that the Plaintiff’s prior representations speak for themselves. The Defendants should refer to those prior representations. Otherwise, denied.

261. Plaintiff has also represented that the Defendant also produces four versions of unique “keeper” magnetic boards that hold the bottlecap jewelry designs having a magnetic backing.

Answer: No indication is given as to what “representation” this allegation is referring to, but admitted that the Plaintiff’s prior representations speak for themselves. The Defendants should refer to those prior representations. Otherwise, denied.

262. Plaintiff knew that Defendants did not copy any copyrighted jewelry designs or other protectable and proprietary products and that its allegations were false.

Answer: Plaintiff denies making any false allegations, but admits that Ms. Dudte’s co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement (including copyright infringement allegations) of all the Plaintiff’s claims in the Original Complaint, and admitted that Ms. Dudte’s co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law, including further copyright infringement activities. Otherwise, denied.

263. Plaintiff has misled the public to believe that it is managed and operated and all of the designs in its bottle caps are by teenagers Madeline E. Bradshaw and Margot Bradshaw.

Answer: Denied.

264. Plaintiff's designs in its bottle caps are in large part plagiarized from clip art.

Answer: Denied. There was no interchangeable, magnetic bottlecap jewelry makers or bottlecap designs that produced a necklace product like the Plaintiff's products when formed, which makes the Plaintiff the "Original, Interchangeable Bottlecap Necklace"® source.

265. Over one hundred (100) of the "original" designs of Plaintiff are taken from clip art such as contained in Microsoft clip art.

Answer: Denied. There was no interchangeable, magnetic bottlecap jewelry makers or bottlecap designs that produced a necklace product like the Plaintiff's products when formed, which makes the Plaintiff the "Original, Interchangeable Bottlecap Necklace"® source.

266. Plaintiff brought an untenable copyright lawsuit, including state law claims equivalent to the U.S. copyright claims, against Defendants.

Answer: Plaintiff denies making any untenable allegations, but admits that Ms. and Mr. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement (including copyright infringement allegations) of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law, including further copyright infringement activities. Otherwise, denied.

267. Plaintiff caused Defendants tens of thousands of dollars in attorney fees in defending against the untenable copyright and equivalent state law claims.

Answer: Denied. Plaintiff denies making any untenable allegations, but admits that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement (including copyright infringement allegations) of all the Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law, including further copyright infringement activities. It is believed that any expenditure of attorney fees predominately occurring before the dismissal of Ms. Liles case would have been expended on copyright claims that Defendant acknowledged were valid and viable claims. Further, it is unreasonable for the Defendants to claim that tens of thousands of dollars of attorney fees were expended between the dismissal of Ms. Liles and the Plaintiff's filing of the First Amended Complaint. Otherwise, denied.

268. The Court dismissed the equivalent state law claims because they were preempted by Federal laws.

Answer: The active pleadings include state law claims that have been answered by the Defendants and are not subject to any claim of preemption. These claims have not been dismissed. Otherwise, denied.

269. After Plaintiff received discovery requests from Defendants and causing Defendants tens of thousands of dollars in attorney fees regarding the untenable copyright claims, Plaintiff amended its claims by dropping its copyrighted claims.

Answer: Denied. Plaintiff denies making any untenable allegations, but admits that Ms. Dudte's co-defendant, Ms. Liles, has admitted and acknowledged to the validity and infringement (including copyright infringement allegations) of all the

Plaintiff's claims in the Original Complaint, and admitted that Ms. Dudte's co-defendant, Ms. Liles, has agreed to an injunction preventing her from continuing any further infringing activities or violations of state law, including further copyright infringement activities. It is believed that any expenditure of attorney fees predominately occurring before the dismissal of Ms. Liles case would have been expended on copyright claims that Defendant acknowledged were valid and viable claims. Further, it is unreasonable for the Defendants to claim that tens of thousands of dollars of attorney fees were expended between the dismissal of Ms. Liles and the Plaintiff's filing of the First Amended Complaint. Admitted that if the Defendants insurance company, which is paying for the Defendants' defense, has been charged "tens of thousands of dollars" by the Defendants' attorneys for defending a copyright claim that has been on the very periphery of issues in this action, the Defendants' insurance company may have received incorrect or mistaken billings because such billings would not appear to be reasonable or justified in light of the actual issues that have been litigated to date in this case. (e.g. Defendants' Motion to Dismiss for Lack of Personal Jurisdiction, Defendants' Motion to Transfer, Defendants' Motion to Dismiss State Law Claims (preemption)). Otherwise, denied.

270. Plaintiff's bottle cap necklaces are not the original interchangeable bottle cap necklace.

Answer: Denied. There was no interchangeable, magnetic bottlecap jewelry makers that produced a necklace product like the Plaintiff's products when formed, which makes the Plaintiff the "Original, Interchangeable Bottlecap Necklace"® source.

COUNT I: VIOLATION OF LANHAM ACT SECTION 43(a) (False Advertising)

271. Defendants repeat and hereby reallege the above factual allegations, as if fully set forth herein.

Answer: No response required.

272. One or more of Plaintiff's advertisements and representations to the public are literally and/or impliedly false, and misleading and in direct violation of Section 43(a) of the Lanham Act which provides in relevant part that "[a]ny person who, in connection with any goods or services . . . uses in commerce any . . . false or misleading description of fact or misleading representation of fact, which . . . in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable to a civil action by any person who believes that he or she is likely to be damaged by such act."

Answer: Denied.

273. Pursuant to 15 U.S.C. § 1117, Defendant is entitled to damages for Plaintiff's Lanham Act violations, an accounting of profits made by Plaintiff, as well as, recovery of costs and reasonable attorneys' fees incurred in this action.

Answer: Denied.

274. Plaintiff's acts are willful, wanton, and calculated to deceive, and are undertaken in bad faith, making this an exceptional case entitling Defendant to recover additional damages and its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

Answer: Denied.

275. Unless enjoined by this Court, Plaintiff's acts will irreparably injure Defendants.

Answer: Denied.

276. Pursuant to 15 U.S.C. § 1116, Defendants are entitled to preliminary and permanent injunctive relief to Plaintiff's continuing acts.

Answer: Denied.

COUNT II: Copyright Infringement – Attorney Fees

277. Defendants repeat and hereby reallege the above factual allegations, as if fully set forth herein.

Answer: No response required.

278. Defendants are the prevailing party on Defendants untenable copyright claims.

Answer: Denied as to all Defendants, but especially Mr. Dudte who was never the subject of any copyright infringement claims in this matter.

279. Under 17 USC § 505, the court may award a reasonable attorney's fee to the prevailing party which includes a defendant.

Answer: Denied as not appropriate in this matter, and denied as to all Defendants, but especially Mr. Dudte who was never the subject of any copyright infringement claims in this matter.

280. The courts in Texas typically award attorney fees to the prevailing plaintiff or defendant in a copyright suit.

Answer: Denied as to all Defendants, but especially Mr. Dudte who was never the subject of any copyright infringement claims in this matter.

281. There was bad faith on the Plaintiff's part in prosecuting the action.

Answer: Denied as the good faith viability and validity of the Plaintiff's copyright claims was admitted by the Defendants' own co-defendant, Charlotte Liles. Denied as to all Defendants, but especially Mr. Dudte who was never the subject of any copyright infringement claims in this matter.

282. There was no substantial similarities in the designs of Plaintiff and Defendants.

Answer: Denied as the good faith viability and validity of the Plaintiff's copyright claims was admitted by the Defendants' own co-defendant, Charlotte Liles. Denied as to all Defendants, but especially Mr. Dudte who was never the subject of any copyright infringement claims in this matter.

283. Plaintiffs claimed copyrights in designs it copied from others like Microsoft and other clip art companies.

Answer: Denied as the Plaintiff's copyright rights include all aspects of the Plaintiff's bottlecap jewelry designs, which include aspects of the bottlecap design that have nothing to do with alleged or identified clip art.

284. An example of the bad faith is found in Plaintiff's copyright registrations which do not adequately identify what is registered.

Answer: Denied as the Plaintiff identified its copyrights to the satisfaction of the United States Copyright Office.

285. There was no colorable basis for a claim of infringement.

Answer: Denied as the good faith viability and validity of the Plaintiff's copyright claims was admitted by the Defendants' own co-defendant, Charlotte Liles.

Denied as to all Defendants, but especially Mr. Dudte who was never the subject of any copyright infringement claims in this matter.

286. There was a good faith attempt by the Defendants to avoid infringement.

Answer: Denied as admitted by the Defendants' own co-defendant, Charlotte Liles (who admitted and acknowledged the viability of the Plaintiff's copyright claims).

287. Plaintiff knew or should have known that its copyright claims were untenable.

Answer: Denied as the good faith viability and validity of the Plaintiff's copyright claims was admitted by the Defendants' own co-defendant, Charlotte Liles. Denied as to all Defendants, but especially Mr. Dudte who was never the subject of any copyright infringement claims in this matter.

288. Defendants request that the Court award Defendants attorney fees and costs as the prevailing party on the copyright claim.

Answer: Denied that any such attorney fees should be awarded in this matter to the Defendants. The good faith viability and validity of the Plaintiff's copyright claims was admitted by the Defendants' own co-defendant, Charlotte Liles, and Mr. Dudte was never the subject of any copyright infringement claims in this matter.

COUNT III: State Unfair Competition

289. Defendants repeat and hereby reallege the above factual allegations, as if fully set forth herein.

Answer: No response required.

290. Texas unfair competition is an umbrella for all statutory and non-statutory causes of action arising out of business conduct which is contrary to honest practice in industrial or commercial matters.

Answer: This is a legal conclusion and a partial statement of Texas law. No response is required as to a legal conclusion, but as it is a partial and incomplete statement of the law, it is denied.

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

Answer: Admitted as to the Defendants and the Plaintiff's allegations against the Defendants.

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

Answer: Admitted as to the Defendants and the Plaintiff's allegations against the Defendants.

293. The Defendants acts of unfair competition were perpetrated to cause actual or likely deception of consumers in the market.

Answer: Admitted as to the Defendants and the Plaintiff's allegations against the Defendants.

294. In undertaking the conduct complained of in this action, Plaintiff continues to willfully, knowingly and intentionally violate Texas state unfair competition laws.

Answer: Denied.

295. The Defendants have been damaged by the Plaintiff's actions, and the Defendants are entitled to compensatory and enhanced damages (as well as attorney fees

and costs) resulting from the Plaintiff's knowing, willful, and intentional violation of Texas state unfair competition laws.

Answer: Denied.

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

Answer: Denied.

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

Answer: Denied.

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

Answer: Denied.

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

Answer: Denied.

JURY DEMAND

300. Defendant hereby demands a trial by jury.

Answer: Both parties have requested a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Plaintiff pray for judgment that:

A. the Defendants' take nothing by its claims against Plaintiff,

B. Plaintiff be awarded their attorneys' fees, costs, and pre-and post-judgment interest; and

C. Plaintiff be awarded such other relief as the Court deems just and equitable.

Respectfully submitted,



June 13, 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 June 13, 2011.


