

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

SPECIAL OLYMPICS, INC.

1133 19th Street, N.W.
Washington, DC 20036-3604

Plaintiff,

v.

DAVID & GOLIATH, INC. (a Florida
corporation)

Defendant.

Civil Action No.: _____

COMPLAINT

Plaintiff, Special Olympics, Inc. (“Special Olympics”), by and through its counsel, KENYON & KENYON LLP, for its *Complaint* against Defendant, David & Goliath, Inc. (“David & Goliath” or “Defendant”), alleges upon knowledge as to its own acts and upon information and belief as to the acts of others as follows:

Nature of Action and Subject Matter Jurisdiction

1. This is a civil action for unfair competition, false representation, and false designation of origin arising under the trademark laws of the United States, 15 U.S.C. §§1051 *et seq.*

2. Subject matter jurisdiction over this action is conferred upon this Court by 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338.

Personal Jurisdiction and Venue

3. This Court has jurisdiction over Defendant and venue is properly laid in the District of the District of Columbia pursuant to 28 U.S.C. §1391(b) and (c) in that, on information and belief, Defendant either regularly transacts business in this District or has committed the tortious acts complained of herein within this District, which acts have caused and will cause injury to Plaintiff.

The Parties

4. Plaintiff, Special Olympics, Inc. (“Special Olympics”), is an nonprofit corporation organized under the laws of the District of Columbia, and has a place of business at 1133 19th Street, N.W., Washington, DC 20036-3604.
5. Defendant David & Goliath, Inc. (“David & Goliath”) is a corporation organized under the laws of the State of Florida, and has a place of business at 1230 South Myrtle Avenue #401, Clearwater, Florida 33756. The registered agent for service of process on David & Goliath is Todd H. Goldman, at the same address.

The SPECIAL OLYMPICS Program

6. Special Olympics is an international nonprofit organization dedicated to empowering individuals with intellectual disabilities to become physically fit, productive, and respected members of society through sports training and competition. Special Olympics offers children and adults with intellectual disabilities year-round training and competition in 30 Olympic-type summer and winter sports, and currently serves more than 2.25 million persons with intellectual disabilities in more than 200 Programs in more than 160 countries.
7. To help in its goal of reaching the up to 190 million people with intellectual disabilities around the world, Special Olympics and its local chapters also actively solicit charitable contributions from all sources, including individual contributions and corporate partnerships. In addition, Special Olympics Programs conduct a series of public events, both to raise public awareness and to raise funds.
8. Special Olympics' LAW ENFORCEMENT TORCH RUN[®] is the movement's largest grass-roots fundraiser and public awareness vehicle. Each year, more than 85,000 law enforcement officers carry the Special Olympics FLAME OF HOPE[™] torch to the Opening Ceremonies of local Special Olympics competitions, state/provincial Games, and National Summer or Winter Games (and every two years to the Special Olympics World Summer or World Winter Games). Thousands more support the runners' efforts through runner sponsorships, local fundraising events, corporate sponsorships, and sales of TORCH RUN[®] T-shirts

(more than 400,000 sold to date) and other merchandise to participants, sponsors, and the public.

9. This year marks the 26th Anniversary of the TORCH RUN[®] fund raising program, which last year raised approximately \$25.5 million for Special Olympics and its Programs around the world. As a result of Special Olympics' long involvement with the TORCH RUN[®] program, and considering further the public's general association of a torch with the global Olympics movement, Special Olympics is closely associated with the symbol of a torch. That relationship has been further cemented through Special Olympics' ownership and use of several "torch" related trademarks over the years, including the following federally registered trademark:



(U.S. Trademark Reg. No. 2188346).

10. All of the uses of the SPECIAL OLYMPICS name by local Programs of Special Olympics in connection with fundraising and athletic events are consistent with the mission and standards of Special Olympics, and have been done for the purpose of helping advance Special Olympics' mission and goals. As a result, all

such local uses have inured to the benefit of Special Olympics, which owns all rights in and to the SPECIAL OLYMPICS trademark in the United States.

11. By virtue of Special Olympics' long and extensive use of the distinctive SPECIAL OLYMPICS name, the SPECIAL OLYMPICS trademark is famous among the general public in the United States in connection with charitable fundraising services and athletic events. As such, Special Olympics is entitled to broad protection for its valuable intellectual property against infringement.

Defendant's Infringing Activities

12. Despite full knowledge of Special Olympics and of its longstanding use of the SPECIAL OLYMPICS name, and knowing that the public associates Special Olympics with the image of a torch, Defendant has been selling T-shirts that use both the SPECIAL OLYMPICS name and a torch image, as shown below:



(See Exhibit A).

13. At no time did Defendant seek or receive permission from Special Olympics to use the SPECIAL OLYMPICS name (in which Special Olympics holds strong common law trademark rights) in connection with sales of clothing.
14. On or about April 25, , 2007, and again on May 8, 2007, Special Olympics contacted Defendant to complain about the infringing activity and to demand the immediate cessation of further sales. Defendant, however, has refused to halt sales of the infringing merchandise, thus necessitating this action.
15. As a result of Defendant's actions, consumers are likely to be confused or misled into believing that Defendant is somehow affiliated with Special Olympics and/or its TORCH RUN[®] program (which it is not), or that the sales of Defendant's goods somehow benefit (or are sanctioned by) Special Olympics.
16. Indeed, the likelihood of confusion in this case is exceptionally high given that Defendant's clothing explicitly references Special Olympics. *See* Exhibit A. It is only logical that consumers would believe that a T-shirt bearing the SPECIAL OLYMPICS name is somehow associated with Special Olympics.

COUNT I

Unfair Competition, False Representation, and False Designation of Origin Under Federal Law

17. This cause of action for unfair competition, false representation, and false designation of origin arises under Section 1125 of Title 15 of the United States

Code (“Section 43(a) of the Lanham Act”). In support thereof, Special Olympics repeats and realleges paragraphs 1 through 16 as though fully set forth herein.

18. Defendant’s use of the “SPECIAL OLYMPICS” names in connection with the sale of clothing and other merchandise constitutes unfair competition with Special Olympics in violation of Section 43(a) of the Lanham Act because such use is likely to cause confusion, mistake, and deception as to the origin of goods sold or provided in connection with the SPECIAL OLYMPICS name, and it is likely to mislead consumers and potential consumers into believing that such goods are somehow affiliated with, or are sponsored, authorized, approved, or sanctioned by, Special Olympics, or that goods and services sold or provided in connection with Special Olympics’ own SPECIAL OLYMPICS mark are somehow affiliated with, or are sponsored, authorized, approved, or sanctioned by, Defendant.
19. Defendant’s use of the “SPECIAL OLYMPICS” names in connection with the sale of clothing and other merchandise constitutes a false representation and false designation of origin in violation of Section 43(a) of the Lanham Act in that such use tends to describe or represent that goods sold or provided in connection with the SPECIAL OLYMPICS name are somehow affiliated with, or are sponsored, authorized, approved, or sanctioned by, Special Olympics, or that goods and services sold or provided in connection with Special Olympics own SPECIAL OLYMPICS mark are somehow affiliated with, or are sponsored, authorized, approved, or sanctioned by, Defendant.

20. Defendant's use of the "SPECIAL OLYMPICS" names in connection with the sale of clothing and other merchandise trades upon the goodwill that Special Olympics has established in its distinctive SPECIAL OLYMPICS mark.
21. Defendant has engaged and continues to engage in the above-complained of activity knowingly, willfully, and in bad faith, so as to justify the assessment of treble damages against it in an amount to be determined at the time of trial, along with Special Olympics' reasonable attorneys fees and the costs of this action.
22. The aforesaid acts have caused Special Olympics to sustain monetary damage, loss, and injury, in an amount to be determined at the time of trial.
23. The aforesaid acts of Defendant have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to Special Olympics for which it has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Special Olympics, Inc. prays for an Order and judgment:

- A. That Defendant, David & Goliath, Inc., along with any officers, agents, representatives, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of the Order by personal service or otherwise, be preliminarily and permanently enjoined from:

- (1) Using the name “SPECIAL OLYMPICS,” or any other reproduction, counterfeit, copy, colorable imitation, or confusingly similar variation of thereof, as any portion of a trademark that is to be used in the connection with the sale or provision of any good or service;
 - (2) Using a “torch” (shown in Exhibit A) or any other reproduction, counterfeit, copy, colorable imitation, or confusingly similar variation of thereof, as any portion of a trademark or Logo that is to be used in the connection with the sale or provision of any good or service related to fundraising events or athletic competitions;
 - (3) Engaging in acts that constitute infringement, unfair competition, false representation, or false designation of origin, under the trademark laws of the United States and which would damage or injure Special Olympics; or
 - (4) Inducing, encouraging, instigating, aiding, abetting, or contributing to any of the aforesaid acts.
- B. That Defendant be required to take any actions as may be directed by this Court for the purpose of remedying and alleviating any consumer confusion or any loss of goodwill suffered by Special Olympics as a result of Defendant’s prior acts;
- C. That in accordance with 15 U.S.C. §1118, Defendant be ordered to deliver up for destruction as the Court shall direct, any and all goods, labels, signs, prints, packages, wrappers, receptacles, and advertisements (and the like) in its possession or under its custody or control that use the “SPECIAL OLYMPICS” name, including but not limited to any unsold clothing;

- D. That in accordance with 15 U.S.C. §1116, Defendant be directed to file with the Court and serve on Special Olympics, no later than thirty days after receiving service of this Order, a report in writing and under oath setting forth in detail the manner and form in which it has complied with the Order;
- E. That in accordance with 15 U.S.C. § 1117(a), Defendant be ordered to:
- (1) Account for and pay over to Special Olympics an amount equal to three times all of the gains, profits, savings, and advantages realized by Defendant as a result of their unlawful activities;
 - (2) Pay over to Special Olympics an amount equal to three times the amount of damages sustained by Special Olympics as a result of Defendant's unlawful activities, said amount to be determined by this Court;
 - (3) Reimburse Special Olympics for the costs of this action; and
 - (4) Reimburse Special Olympics for any reasonable attorney fees incurred as a result of Defendant's unlawful activities, including all attorney fees incurred during this action;
- F. That Special Olympics be awarded both pre-judgment and post-judgment interest on any monies to be paid to Special Olympics by Defendant; and
- G. That Special Olympics be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: August 3, 2007



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*Counsel for Plaintiff,
Special Olympics, Inc.*

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EXHIBIT A

REVOLUTION GOLFATH

We Make Shirts So You Don't have to



HOME • DOWNLOADS & FUN • COMPANY INFO • YOUR ACCOUNT

SEARCH:

GO

VIEW CART
0 ITEMS

SHOP

Womens

Mens

Kids

Character

Accessories

Novelty Tees

ON SALE!

NEW ITEMS

Live Help

SPECIAL OLYMPICS CHAMPION



100% COTTON
50/50 HEATER
FINE RINGSPUN JERSI
\$20.00

STYLE MEN'S TEES

COLOR HEATHER/GRAY
CHART


SIZE M
CHART

QTY 1


+ ADD TO CART

100% Cotton 50/50 Heat
Fine Ringspun Jersey.

Only 326 days until the n
Special Olympics gotta ge
shape...



THIS WEEK'S
FEATURED ITEM



THIS WEEK'S
FEATURED ITEM

OSAK-A-SACK

OSAK-A-SACK -
WOMEN'S
Accessories
GREEN
Novelty Ties
Available in
Osak-A-Sack

ON SALE!

NEW ITEMS

ASKED QUESTIONS

- WHO IS TODD
- **Live the King**
- **PRIVACY POLICY**
click here
- CONTACT
- STORES

**THIS WEEK'S
FEATURED ITEM**

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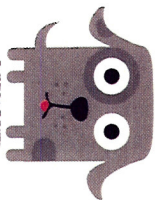
Click on an image for a larger view



FREE MYSPACE
SPECIAL - I'm Cooler
Than You



STICKERS - I Can
Lick Special Places



WHADDUP DAWG - I
Can Lick Special
Places

David & Goliath also recommends checki
out these other great products.



- [JOBS](#)
- [FREQUENTLY ASKED QUESTIONS](#)
- [WHO IS TODD](#)
- [UPS TRACKING](#)
- [PRIVACY POLICY](#)
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