

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FILED  
U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION  
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SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

HEINEKEN USA, INC., )

Plaintiff, )

v. )

BAPE CO., INC., )

Defendant. )

**1 : 0 8 -cv- 0 1 3 4 -DFH -WTL**

CASE NO. \_\_\_\_\_

**NOTICE OF REMOVAL**

Defendant, Nowhere Co., Ltd. (incorrectly sued as Bape Co., Inc.), files this Notice of Removal to this Court of an action pending against it in the Hamilton County Superior Court, State of Indiana (the "State Court"), styled *Heineken USA, Inc. v. Bape Co., Inc.*, Cause No. 29D01-0801-PL-045 (the "Action"). Removal of the Action to this Court is based on the following grounds:

1. The plaintiff in the Action, Heineken USA, Inc. ("Heineken"), commenced this civil Action against the Defendant in the State Court on January 17, 2008.
2. Defendant received by certified mail a Summons and a copy of the Complaint in the Action no sooner than January 28, 2008. Copies of the Complaint with exhibits and the Summons are attached hereto under Tabs 1 and 2, respectively. No other process, pleadings or orders were served on Defendant.

Because the Defendant did not receive a copy of the Complaint and/or Summons any earlier than January 28, 2008, the thirty-day deadline for filing this Notice of Removal (counted from the earliest possible date that the Defendant could have received service) would

fall no sooner than February 27, 2008. Therefore, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b) and Fed. R. Civ. P. 6(a).

3. This Court has original federal question jurisdiction over Counts I, II, and III of the Complaint pursuant to 28 U.S.C. §§ 1331 and 1338(a). Counts I, II, and III of the Complaint allege trademark infringement under 15 U.S.C. § 1114; trademark dilution under 15 U.S.C. § 1125(c); and false designation of origin or sponsorship, false advertising, and trade dress infringement under 15 U.S.C. § 1125(a), respectively. Each of Counts I, II, and III of the Complaint arise under an act of Congress - namely, the Lanham Act - thus giving the Court original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). These causes of action may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

4. Count V of the Complaint asserts a claim for alleged unfair competition. 28 U.S.C. § 1338(b) provides: "[t]he district court shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws." Count V of the Complaint thus falls within the purview of 28 U.S.C. § 1338(b). This cause of action may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

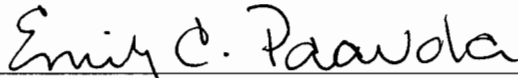
5. This Court has supplemental jurisdiction over Counts IV, VI, VII, VIII, IX, and X of the Complaint pursuant to 28 U.S.C. § 1367(a). Counts IV, VI, VII, VIII, IX, and X of the Complaint allege common law trademark infringement; conversion under Ind. Code § 35-43-4-3; forgery under Ind. Code § 35-43-5-2(b); counterfeiting under Ind. Code § 35-43-5-2(a); deception under Ind. Code § 35-43-5-3; and a common law claim for corrective advertising damages, respectively. This court has original jurisdiction over Counts I, II, III, and V, and Counts IV, VI, VII, VIII, IX, and X of the Complaint are "so related to [Counts I, II, III, and V]

that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). Furthermore, none of the exceptions in 28 U.S.C. § 1367(b) or (c) are met. Thus, removal of Counts IV, VI, VII, VIII, IX, and X of the Complaint is proper.

6. This Court is situated in the judicial district and division that embraces the county where the Action is currently pending.

7. Pursuant to 28 U.S.C. § 1446(d), promptly upon the filing of this Notice, Defendant's counsel will give written notice of this removal to counsel of record for Heineken, and will file a copy of this Notice of Removal with the Clerk of the State Court.

Respectfully submitted,



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*Attorneys for the defendant, Nowhere Co., Ltd.*

**CERTIFICATE OF SERVICE**

I certify that on February 1, 2008, a copy of the foregoing was mailed, by first-class mail, postage prepaid and properly addressed, to the following:

Darlene R. Seymour  
1292 East 91st Street  
Indianapolis, IN 46240

Emily C. Paravola