

LARRY R. LAYCOCK (USB No. 4868)
DAVID R. WRIGHT (USB No. 5164)
JAMES B. BELSHE (USB No. 9826)
WORKMAN | NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111
Telephone: (801) 533-9800

Attorneys for Plaintiff
JEFFREY T. LESTER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JEFFREY T. LESTER, an individual,)	Civil Action No. 2:08-cv-00092-DAK
)	
Plaintiff,)	
)	
v.)	COMPLAINT FOR
)	CYBERSQUATTING AND
)	TRADEMARK INFRINGEMENT
CHRIS LACEY ORIGINALS, LLC /dba/)	
HUNTIN' HARD, a Nevada limited)	(JURY TRIAL DEMANDED)
liability company,)	
)	Honorable Judge Dale A. Kimball
Defendant.)	

Plaintiff Jeffrey T. Lester, ("Plaintiff") complains against Defendant Chris Lacey Originals, LLC /dba/ Huntin' Hard, ("Defendant"), and for causes of action alleges as follows:

PARTIES

1. Plaintiff is an individual residing in Apache County, Arizona.
2. On information and belief, Defendant is a Nevada limited liability company having its principal place of business in Sparks, State of Nevada.
3. On information and belief, Defendant conducts business in this judicial district and has committed the acts complained of herein in this judicial district.

4. Plaintiff and Defendant are competitors in the market for hunting related goods and services.

JURISDICTION AND VENUE

5. This is a civil action for cybersquatting under 15 U.S.C. § 1125(d) and trademark infringement under 15 U.S.C. § 1052 *et seq.*

6. This action arises under the trademark laws of the United States, 15 U.S.C. § 1052 *et seq.*, and subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

7. On information and belief, Defendant has transacted business, contracted to supply goods or services and has otherwise purposely availed itself of the privileges and benefits of the laws of the State of Utah and therefore is subject to the jurisdiction of this Court pursuant to § 78-27-24, Utah Code Ann.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

BACKGROUND

9. Plaintiff manufactures and distributes hunting related products to customers in the United States.

10. Plaintiff is the owner of United States Trademark Registration No. 2,847,551 (“the ‘551 Registration”) for the trademark HUNT HARD[®] for use in connection with men’s, women’s and children’s clothing, namely, shirts, shorts, pants, jackets, sweatpants, sweatshirts, underwear, socks and hats. A copy of the certificate of registration is attached hereto as Exhibit A.

11. Plaintiff is the owner of United States Trademark Registration No. 2,644,571 (“the ‘571 Registration”) for the trademark HUNT HARD[®] for use in connection with printed matter, namely, decals, bumper stickers and window stickers. A copy of the certificate of registration is attached hereto as Exhibit B.

12. For many years, Plaintiff has sold hunting products and services including clothing using the mark HUNT HARD.

13. As a result of Plaintiff's continuous use of the mark HUNT HARD, including advertising, labeling and marketing utilizing these marks, HUNT HARD mark has become an asset of substantial value to Plaintiff as a distinctive indication of the origin and quality of Plaintiff's products. Plaintiff uses the mark HUNT HARD in interstate commerce in connection with the sale and advertising of its products nationwide.

14. By using the mark HUNT HARD, Plaintiff has developed significant and valuable goodwill in this mark.

FIRST CLAIM FOR RELIEF
Cybersquatting, 15 U.S.C. § 1125(d)

15. Plaintiff restates, realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

16. Plaintiff, is informed and believes, and on that basis alleges, that Defendant is the registrant of the domain "huntinhard.com" ("Domain Name").

17. The mark HUNT HARD was distinctive at the time Defendant registered the Domain Name.

18. The mark HUNT HARD was registered at the time Defendant registered the Domain Name.

19. The Domain Name is confusingly similar to the mark HUNT HARD.

20. Defendant registered, trafficked in, and or used the Domain Name with the bad faith intent to profit from the HUNT HARD mark.

21. Defendant does not have any intellectual property rights in the HUNT HARD mark.

22. Defendant has registered and uses the Domain Name to divert customers from Plaintiff for its commercial gain by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

23. Defendant's registration, use and trafficking in the Domain Name constitutes cybersquatting in violation of 15 U.S.C. Section 1125(d), entitling Plaintiff to relief.

24. By reason of Defendant's acts alleged herein, Plaintiff's remedy at law is not adequate to compensate them for the injuries inflicted by Defendant. Accordingly, Plaintiff is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

25. Plaintiff is informed and believes, and on that basis alleges, that Defendant's acts are willful and malicious, and intended to injure and cause harm to Plaintiff.

26. By reason of Defendant's acts alleged herein, Plaintiff is entitled to recover Defendant's profits, actual damages and the costs of the action, or statutory damages under 15 U.S.C. § 1117(d), on election by Plaintiff, in the amount of \$100,000.

27. This is an exceptional case making Plaintiff eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

SECOND CLAIM FOR RELIEF

Trademark Infringement, 15 U.S.C. § 1114

28. Plaintiff restates, realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

29. Plaintiff is the owner of the '551 Registration for the mark HUNT HARD[®] and the '571 Registration for the mark HUNT HARD[®].

30. Plaintiff has been using its HUNT HARD[®] marks in interstate commerce since at least May of 2002.

31. On information and belief, Defendant has utilized advertising and/or marketing which used Plaintiff's HUNT HARD[®] marks. Defendant conducts business utilizing that name HUNTIN' HARD. Upon information and belief, Defendant has registered and is using the domain name, <http://www.huntinhard.com>.

32. Defendant's acts set forth above constitute trademark infringement of Plaintiff's '551 and '571 Registrations under 15 U.S.C. § 1114, in that these designations create a likelihood of confusion among the consuming public as to the source, origin or association of the parties.

33. Upon information and belief, Defendant was aware of Plaintiff's HUNT HARD® marks and Defendant committed its acts of infringement in willful and flagrant disregard of Plaintiff's lawful rights.

34. Defendant will, if not enjoined by this Court, continue its acts of trademark infringement set forth above, which have caused and will continue to cause Plaintiff immediate and irreparable harm.

35. Plaintiff has no adequate remedy at law for the damage to its reputation and goodwill and will continue to be irreparably damaged unless Defendant is permanently enjoined from its infringing and improper conduct.

36. As a result of Defendant's acts of willful trademark infringement of Plaintiff's HUNT HARD® marks as set forth above, Plaintiff has suffered damages and continues to be damaged in an amount to be established at trial, including Defendant's profits and Plaintiff's lost profits.

37. Pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, Plaintiff is entitled to a judgment for damages not to exceed three times the amount of its actual damages, together with interest thereon, in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

Trademark Infringement, 15 U.S.C. § 1125(a)

38. Plaintiff restates, realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

39. Plaintiff is the owner of the trademark HUNT HARD and the consuming public recognizes the HUNT HARD mark as being distinctive of and identifying high quality services associated with a single source, namely Plaintiff..

40. Plaintiff has been using its HUNT HARD mark in interstate commerce since at least May of 2002.

41. Plaintiff's HUNT HARD mark is arbitrary.

42. Plaintiff's HUNT HARD mark has acquired secondary meaning.

43. On information and belief, Defendant has utilized advertising and/or marketing which used Plaintiff's HUNT HARD mark. Defendant is conducting business utilizing the name HUNTIN' HARD. Upon information and belief, Defendant has registered and is using the domain name, <http://www.huntinhard.com>.

44. Defendant's acts set forth above constitute trademark infringement of Plaintiff's HUNT HARD mark under 15 U.S.C. § 1125(a), in that these designations create a likelihood of confusion among the consuming public as to the source, origin or association of the parties.

45. Upon information and belief, Defendant was aware of Plaintiff's mark HUNT HARD and Defendant committed its acts of infringement in willful and flagrant disregard of Plaintiff's lawful rights.

46. Defendant will, if not enjoined by this Court, continue its acts of trademark infringement set forth above, which have caused and will continue to cause Plaintiff immediate and irreparable harm.

47. Plaintiff has no adequate remedy at law for the damage to its reputation and goodwill and will continue to be irreparably damaged unless Defendant is permanently enjoined from its infringing and improper conduct.

48. As a result of Defendant's acts of willful trademark infringement of Plaintiff's HUNT HARD mark as set forth above, Plaintiff has suffered damages and continues to be damaged in an amount to be established at trial, including Defendant's profits and Plaintiff's lost profits.

49. Pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, Plaintiff is entitled to a judgment for damages not to exceed three times the amount of its actual damages, together with interest thereon, in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF

Common Law Trademark Infringement

50. Plaintiff restates, realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

51. Plaintiff is the owner of the trademark HUNT HARD and the consuming public recognizes the HUNT HARD mark as being distinctive of and identifying high quality services associated with a single source, namely Plaintiff.

52. Plaintiff's HUNT HARD mark is arbitrary.

53. Plaintiff's HUNT HARD mark has acquired secondary meaning.

54. Defendant's infringing use of the HUNT HARD mark is likely to deceive or cause confusion or mistake among the consuming public as to the origin of Defendant's products and/or services.

55. Plaintiff has been and will continue to be damaged and irreparably harmed by Defendant's infringement.

56. Upon information and belief, Defendant was aware of Plaintiff's mark HUNT HARD and Defendant committed its acts of infringement in willful and flagrant disregard of Plaintiff's lawful rights.

57. Defendant will, if not enjoined by this Court, continue its acts of trademark infringement set forth above, which have caused and will continue to cause Plaintiff immediate and irreparable harm.

58. Plaintiff has no adequate remedy at law for the damage to its reputation and goodwill and will continue to be irreparably damaged unless Defendant is permanently enjoined from its infringing and improper conduct.

WHEREFORE, Plaintiff prays for judgment as set forth hereinafter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants as follows:

1. For a judgment holding Defendant liable for cybersquatting pursuant to 15 U.S.C. Section 1125(d);
2. For injunctive relief enjoining Defendant, its officers, agents, servants, employees and attorneys and all other persons in active concert or participation with it from cybersquatting on the HUNT HARD mark or any derivative thereof;
3. For an order granting entitling Plaintiff to recover Defendant's profits, actual damages and the costs of the action, or statutory damages under 15 U.S.C. § 1117(d), on election by Plaintiff, in the amount of \$100,000;
4. For an order declaring this action to be an exceptional case making Plaintiff eligible for an award of attorneys' fees under 15 U.S.C. § 1117;
5. For an order transferring ownership and or control of the Domain Name to Plaintiff;
6. For a judgment holding Defendant liable for trademark infringement pursuant to 15 U.S.C. § 1114;
7. For a judgment holding Defendant liable for trademark infringement pursuant to 15 U.S.C. § 1125(a);
8. For a judgment holding Defendant liable for common law trademark infringement;
9. That Defendant be ordered to deliver up for destruction all products infringing the HUNT HARD mark that are in its possession;
10. That the claims against Defendant be declared an exceptional case and that Plaintiff be awarded its attorneys fees against Defendant;
11. For a preliminary and permanent injunction, under 15 U.S.C. § 1116, restraining and enjoining Defendant, its agents, servants, employees, officers and those

persons in act of concert or participation with Defendant, from any further trademark infringement of Plaintiff's '551 and '571 Registrations;

12. For an order directing Defendant to recall and destroy any and all products, packaging and advertising bearing Plaintiff's HUNT HARD mark.

13. For an award of costs, profits and damages, which damages and profits are then trebled, under 15 U.S.C. § 1117, for Defendants' infringement of Plaintiff's '551 and '571 Registrations and the HUNT HARD mark;

14. That Defendants' infringement of Plaintiff's '551 and '571 Registrations be declared exceptional and Plaintiff be awarded its reasonable attorneys fees under 15 U.S.C. § 1117; and

15. For such further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury as to all issues in this action triable by a jury.

DATED this 4th day of February, 2008.

WORKMAN | NYDEGGER

By: /s/ James B. Belshe
Larry R. Laycock
David R. Wright
James B. Belshe

Attorneys for Plaintiff
JEFFREY T. LESTER