

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

JAN 29 PM 1:15

LORETTA G. WHYTE
CLERK

Stacey Uffman Blanchard,

Civil Action No. _____

Plaintiff,

08-778

v.

Judge _____

SECT. C MAG. 5

Bayou Apparel, LLC.;

Daniel McNamara;

Julie Doe; and

Tony Bernard

Magistrate Judge _____

Defendants

Demand For Jury Trial

COMPLAINT

NOW INTO COURT, through undersigned counsel, advances Stacey Uffman Blanchard, a natural person, which for her Complaint alleges as follows:

PARTIES

Plaintiff

1. Plaintiff, Stacey Uffman Blanchard, is a natural person of the full age of majority domiciled in East Baton Rouge Parish at 17611 Silverfox Court, Baton Rouge, LA 70810.

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CtRmDep _____
Doc. No. _____

Defendants

2. Defendant, Daniel McNamara, ("McNamara") is a natural person of the full age of majority domiciled in East Baton Rouge Parish, and having a principle address at 13535 New Wood Avenue, Baton Rouge, LA 70818.
3. Defendant, Bayou Apparel, LLC, is a limited liability company organized and existing under the laws of the State of Louisiana, with its principle place of business located at 8889 B Sullivan Road, Baton Rouge 70818.
4. The true name and capacity of Defendant Julie Doe ("Doe") is unknown to Plaintiff at this time. This Defendant is known to Plaintiff only by the first name "Julie" that appears on one infringing work. Plaintiff believes that information obtained in discovery will lead to the identification of this Defendant's true name.
5. Defendant, Tony Bernard, ("Bernard") is a natural person of the full age of majority domiciled in Lafayette Parish, and having a principle address at 404 Mary View Farm Rd., Lafayette, LA 70507.

JURISDICTION AND VENUE

6. The jurisdiction of this Court over the claim set forth in Count I arises under 28 U.S.C. §1338(a). The Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 (federal question), 1338(a) (copyrights).
7. The jurisdiction of this Court over the claim set for in Count II and III arises under 17 U.S.C. §1051 et seq. The Court has jurisdiction over the subject matter of this action under 28

U.S.C. §§ 1331 (federal question), 1338(a) (trademarks).

8. Although Plaintiff does not know the true name of Defendant Julie Doe, this Defendant is alleged to have committed violations of the same law (e.g., copyright law), by committing the same or similar acts. Accordingly, Plaintiff's right to relief arises out of the same series of transactions or occurrences, and there are questions of law or fact common to all Defendants such that joinder is warranted and appropriate here.
9. Venue for Counts I through III is proper under 28 U.S.C. §1391(b).

COUNT I
COPYRIGHT INFRINGEMENT

10. The allegations of paragraphs 1-9 are incorporated herein, and re-plead.
11. Plaintiff is in the business of creating and selling artistic works and selling art and clothing merchandise, including, *inter alia*, shirts, prints, and jewelry.
12. Plaintiff's design consists of a Fleur-de-lis structured to encapsulate a Tiger's eye, a copy of which is included as Exhibit A to this complaint, which will hereafter be referred to as the "Fleur de Tigre."
13. Plaintiff is the owner of the copyright in the design contained in Exhibit A.
14. Plaintiff filed an application to register her copyrights for the visual works embodied in the design contained in Exhibit A with the United States Library of Congress Copyright Office on or about August 21, 2007, copies of which are included in Exhibit E to this complaint.
15. Plaintiff filed applications to register her Trademark rights in the design embodied in the

plans contained in Exhibit A with the United States Trademark Office on or about September 12, 2007, and December 20, 2007.

BAYOU APPAREL, LLC

16. Plaintiff's customer contacted Daniel McNamara, who personally or, in the alternative, on behalf of his business Bayou Apparel, LLC (collectively, "Bayou"), discussed NCAA licensing with Plaintiff and Plaintiff's customer.
17. When Plaintiff was in resultant discussions with Bayou regarding the use of her work for the subject of NCAA licensed material, copies of her Fleur de Tigre were provided for evaluation and review to Bayou via Plaintiff's website. Bayou indicated that it was willing to produce various clothing items for Plaintiff bearing the Fleur de Tigre.
18. No agreement was ever reached between Plaintiff and Bayou regarding either licensing of material, product production, or any other business dealings regarding the Fleur de Tigre.
19. Bayou never paid Plaintiff for the use of the design contained in Exhibit A.
20. Bayou was never licensed or otherwise authorized to use the design contained in Exhibit A.
21. The products shown in Exhibit C are substantial copies of the design depicted in the work contained in Exhibit A, or in the alternative, a derivative work of the work contained in Exhibit A.
22. Bayou produced the items in Exhibit C and made public displays of the same items.
23. Bayou's production and/or exhibition of the items in Exhibit C are a violation of 17 U.S.C. §106 (1) or (2) and/or (5).

24. Bayou, without the knowledge or consent of Plaintiff, delivered copies of the design contained in Exhibit A to various parties via electronic mail.
25. Bayou's unauthorized distribution of copies of the design contained in Exhibit A, as alleged in paragraph 18, was a violation of 17 U.S.C. §106(3).
26. On or around January 4, 2008, Bayou was featured on television channel 9 (WAFB) publicly displaying the products in Exhibit C which were copies of Plaintiff's design in Exhibit A.
27. The public display referenced in paragraph 26, above, was a violation of U.S.C. §106(1) or (2) and/or (5).
28. Plaintiff communicated with Bayou regarding the design and her protection in the design.
29. Bayou's production of the design contained in Exhibit A or, in the alternative, Bayou's continued preparation of derivative works from the design contained in Exhibit A after being informed of Plaintiff's copyright in the design contained in Exhibit A, constituted willful copyright infringement.

DANIEL MCNAMARA

30. On information and belief Daniel McNamara is the president and/or principal owner of Bayou Apparel, LLC.
31. McNamara had the authority to control whether Bayou Apparel, LLC copied Plaintiff's design.
32. McNamara benefited financially from Bayou Apparel LLC's copying of Plaintiff's design.
33. McNamara is vicariously liable for the infringing acts of Bayou Apparel.

TONY BERNARD

- 34. On information and belief, Bernard had access to the design contained in Exhibit A via Plaintiff's website and/or products bearing the design contained in Exhibit A.
- 35. Bernard never paid Plaintiff for the use of the design contained in Exhibit A.
- 36. Bernard was never licensed or otherwise authorized to use the design contained in Exhibit A.
- 37. The products shown in Exhibit D are substantial copies of the design depicted in the work contained in Exhibit A, or in the alternative, a derivative work of the work contained in Exhibit A.
- 38. Bernard produced the items in Exhibit D.
- 39. Bernard's production of the items in Exhibit D are a violation of 17 U.S.C. §106 (1) or (2) and/or (5).

DOE

- 40. On information and belief, Bayou, without the knowledge or consent of Plaintiff, delivered copies of the design contained in Exhibit A to Defendant, Julie Doe ("Doe").
- 41. On information and belief, Doe prepared the material contained in Exhibit B.
- 42. The design contained on the sheet in Exhibit B is copied from or, in the alternative, is a derivative work of, the design contained in Exhibit A.
- 43. Doe's preparation of the design contained in Exhibit B was a violation of 17 U.S.C. §106 (1) or (2).

44. By requesting that Doe prepare a design from copies of the design contained in Exhibit A and by producing products which bear the design contained in Exhibit C, Bayou contributed to Doe's violation of U.S.C. §106 (1) or (2).

COUNT II
TRADEMARK INFRINGEMENT
(Section 32 of the Lanham Act)

45. The allegations of paragraphs 1-44 are incorporated herein, and re-plead.
46. Stacey Blanchard, herself or through her enterprise has used the Fleur de Tigre logo (hereafter, the "FLEUR Trademark") as seen in Exhibit A in connection with t-shirts, decals and other items since at least August of 2007.
47. As a result of Blanchard's ongoing use of the FLEUR Trademark, this trademark has become associated with Blanchard by the public.
48. Blanchard owns trademark rights in the FLEUR Trademark as evidenced by, *inter alia*, Blanchard's federal trademark applications 77354127 and 77282968.
49. Blanchard has used and is using the FLEUR Trademark extensively throughout Louisiana and the United States in connection with numerous products.
50. On September 19, 2007, Plaintiff filed for a federal trademark registration for the FLEUR Trademark for use on decals, flags and clothing.
51. On December 20, 2007, Plaintiff filed for a federal trademark registration for the FLEUR Trademark for use on magnets, jewelry and porcelain items.

BAYOU APPAREL

- 52. Defendant Bayou is using the FLEUR Trademark in connection with clothing items.
- 53. Defendant Bayou is using the FLEUR Trademark on products that are substantially similar to the products with which Blanchard uses the FLEUR Trademark.
- 54. Defendant Bayou's products are sold in the same channels of trade as Blanchard's products.
- 55. On information and belief, Defendant Bayou's customers and Blanchard's customers overlap.
- 56. Plaintiff has been made aware of several instances of actual confusion between Plaintiff's mark and Defendant Bayou's use of the FLEUR Trademark.
- 57. Bayou's use of the FLEUR Trademark is likely to cause confusion as to affiliation, connection, association, origin, sponsorship or approval with Blanchard, in violation of Section 43(a) of the Lanham Act. 15 U.S.C. §1114.

BERNARD

- 58. Defendant Bernard is using the FLEUR Trademark in connection with clothing items.
- 59. Defendant Bernard is using the FLEUR Trademark on products that are substantially similar to the products with which Blanchard uses the FLEUR Trademark.
- 60. Defendant Bernard's products are sold in the same channels of trade as Blanchard's products.
- 61. Defendant Bernard's customers and Blanchard's customers overlap.
- 62. Bernard's use of the FLEUR Trademark is likely to cause confusion as to affiliation, connection, association, origin, sponsorship or approval with Blanchard, in violation of

Section 43(a) of the Lanham Act. 15 U.S.C. §1114.

COUNT III
UNFAIR COMPETITION
(Section 43a of the Lanham Act)

- 63. The allegations of paragraphs 1-62 are incorporated herein, and re-plead.
- 64. Blanchard owns trademark rights in the name and mark for the FLEUR Trademark.

BAYOU APPAREL

- 65. Defendant Bayou's use of the FLEUR Trademark mark is likely to cause confusion as to affiliation, connection, association, origin, sponsorship, or approval with Blanchard, in violation of Section 43(a) of the Lanham Act. 15 U.S.C. § 1125(a).

BERNARD

- 66. Defendant Bernard's use of the FLEUR Trademark is likely to cause confusion as to affiliation, connection, association, origin, sponsorship, or approval with Blanchard, in violation of Section 43(a) of the Lanham Act. 15 U.S.C. § 1125(a).

JURY DEMAND

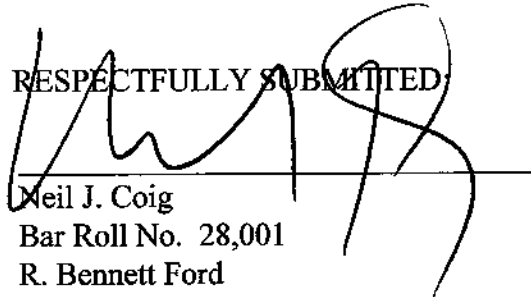
- 67. The allegations of paragraphs 1-66 are incorporated herein, and re-plead.
- 68. Plaintiff respectfully demands a trial by jury as to all issues so triable raised by this Complaint.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

1. That the Court find that Defendants have committed copyright infringement;
2. That the Defendants be found to have willfully infringed Plaintiff's copyright;
3. That the Defendants be cast in judgment to the Plaintiff for the Plaintiff's lost profits and any additional profits of the Defendants pursuant to 17 U.S.C. §504(a) and (b), or in the alternative, for the amount of Statutory Damages as provided by 17 U.S.C. §504(c);
4. That the Defendants be enjoined from any and all further copying of Plaintiff's design;
5. That the Court Preliminarily enjoin Defendants from further use of the FLEUR Trademark and confusingly similar variants thereof;
6. That the Court Permanently enjoin Defendants from further use of the FLEUR Trademark and confusingly similar variants thereof;
7. That the Plaintiff be awarded its costs and attorneys fees;
8. That the Plaintiff be awarded its damages; and
9. That the Court enter such other further relief to which Plaintiff may be entitled as a matter of law or equity and that the Plaintiff receive such other and further relief as the Court may deem just and proper.

Dated: January 23, 2008

RESPECTFULLY SUBMITTED



Neil J. Coig

Bar Roll No. 28,001

R. Bennett Ford

Bar Roll No. 24,093

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