

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

DRASSEL, INC.,

Plaintiff,

v.

CABOT HOSIERY MILLS, INC.,

Defendant.

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Civil Action No. 6:08-cv-02040-LRR

COMPLAINT AND JURY DEMAND

Drassel, Inc. (hereinafter "Drassel" or "Plaintiff") brings this action against Cabot Hosiery Mills, Inc. (hereinafter "Cabot" or "Defendant") for violation of the trademark laws of the United States, along with state law claims forming a part of the same case or controversy.

THE PARTIES

1. Drassel, Inc. is an Iowa corporation residing at 227 Poplar Street, Osage, Iowa 50461 and is a leading manufacture of socks.

2. Cabot Hosiery Mills, Inc. is, on information and belief, a Vermont corporation with its principal place at R.R. 2, Whetstone Drive, Northfield, Vermont 05663.

3. This is a civil action for trademark infringement arising under the trademark laws of the United States 15 U.S.C. §§ 1051-1127; for false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a); and for trademark infringement and unfair competition under the common law of the State of Iowa.

4. The amount in controversy in this action is in excess of \$75,000.

5. Subject matter jurisdiction of this Court is invoked under 15 U.S.C. § 1121(a), 28 U.S.C. §§ 1331, 1332(a), and 1338(a).

6. Based on information and belief, Cabot has done and regularly does business in this judicial district, in every state, and worldwide, and the acts complained of herein have in part taken place, and will continue to take place in this judicial district. Defendant has intentionally directed its actions to this district by undertaking some of the conduct alleged below, while knowing or at least should have known that the brunt of injury would be suffered by Drassel or its exclusive licensee, Fox River Mills, Inc. in this district. Therefore, Defendant is subject to the jurisdiction of this Court.

7. Venue is proper under 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

8. Since at least as early as November 15, 1966, Drassel, Inc. and/or Fox River Mills, Inc. and/or its predecessor-in-interest have used the trademark in commerce for socks WICKDRY.

9. Drassel, Inc. and/or Fox River Mills, Inc. and/or its predecessor-in-interest has sold socks in conjunction with the trademark WICKDRY continuously throughout the United States since the date of first use in November 1966, both in intrastate and interstate commerce.

10. Drassel, Inc., Fox River Mills, Inc. and their predecessors-in-interest have spent substantial sums to accrue goodwill associated with their sock products in conjunction with the mark WICKDRY, to the point where said mark has become uniquely associated with Drassel, Inc. and/or Fox River Mills, Inc. and has acquired secondary meaning to identify Fox River Mills' sock products.

11. Fox River Mills is the exclusive licensee of Drassel, Inc. for the right to sell in commerce WICKDRY socks.

12. Drassel, Inc. has applied for and obtained U.S. Trademark Registration 947,966, which was originally duly issued and registered November 28, 1972 and has since been renewed November 28, 1992 and most recently on August 5, 2002. A copy of the most recent renewal is attached as Exhibit A.

13. Registration No. 947,966 is incontestable.

COUNT I
Federal Trademark Infringement

14. Drassel repeats and realleges paragraphs 1-13 as though herein pled.

15. At a point in time presently unknown but well subsequent to the first use of Drassel, Inc. and/or Fox River Mills, Inc., Cabot began using and selling socks and hosiery bearing the mark WICKIT DRY and in fact filed a now-abandoned Trademark Application No. 78/536,851, on or about December 22, 2004 for the mark WICKIT DRY TECHNOLOGY, alleging a date of first use at least as early as October 25, 2004. The trademark WICKIT DRY appears on sock bands, advertisements, trade journals, etc. for Cabot's "Darn Tough" socks. The mark appears with the abbreviation "TM" indicating it is being used as a trademark.

16. Fox River Mills' socks are sold to the same customers in the same channels of trade and compete for the same customer dollars both in this district and elsewhere throughout the United States.

17. Cabot does business in this district and elsewhere using its WICKIT DRY mark on socks in direct competition with Fox River Mills. As such, its use of WICKIT DRY being so similar in sound, meaning and appearance to the incontestable registration WICK DRY,

especially when used for identical goods, causes a likelihood of confusion of customers as to source of Cabot's goods and therefore is an infringement of Registration No. 947,966, issued November 28, 1972.

18. Drassel has provided actual notice of its incontestable registration to Cabot in a letter dated April 25, 2005, and on information and belief Cabot in fact ceased use of WICKIT DRY thereafter, but has since resumed use.

19. Despite actual notice, Defendant is now using its infringing mark WICKIT DRY, which use began much later than Plaintiff's use.

20. The Cabot use causes irreparable harm to Drassel, Inc. and Fox River Mills, directs customers away from Fox River Mills' sock products to Cabot, and causes confusion as to source in the marketplace, causing damage in an amount not yet ascertained to Drassel, Inc. and Fox River Mills.

COUNT II
15 U.S.C. § 1125(a) Federal Unfair Competition

21. Drassel repeats and realleges paragraphs 1-20 as though herein pled.

22. Cabot uses in this district and elsewhere the mark WICKIT DRY in interstate commerce in connection with socks. This constitutes a false designation of origin, and/or a false or misleading description which is likely to cause confusion or to cause mistake or to deceive as to the affiliation, source and/or origin creating a wrong impression of sponsorship or approval of Cabot's socks by Drassel, Inc. and/or Fox River Mills. This representation of the nature, characteristics and/or geographic origin of Cabot's socks is a violation of 15 U.S.C. § 1125(a).

23. Defendant is liable in a civil action to Plaintiff who has been damaged in an amount not yet ascertained by such conduct.

24. Unless Defendant is preliminary and permanently enjoined by this Court from further violations, Plaintiff will have no adequate remedy at law.

COUNT III
State Common Law Infringement

25. Drassel, Inc. repeats and realleges paragraphs 1-24 as though herein pled.

26. Drassel, Inc. has priority of use of WICKDRY having used many, many years before the Defendant adopted WICKIT DRY, on information and belief with both actual notice and constructive notice of Plaintiff's prior use.

27. Cabot has adopted a confusingly similar registration for its socks. Cabot's sold similar goods with Plaintiffs and did so for socks for sale in the same channels of trade to the same customer base, all as a junior user with knowledge and therefore not in good faith.

28. Cabot's use impacts the Plaintiff's business in this district and elsewhere in the United States of America and as such its adoption of a confusingly similar mark as a junior user constitutes infringement of state common law trademark rights of the Plaintiff.

29. Cabot's use and conduct as described herein has caused substantial and irreparable damage to Plaintiff and will continue to cause such further irreparable damage to the Plaintiff if Cabot is not preliminary and permanently enjoined by this Court from further violation of Plaintiff's rights both federal, state and common law and Plaintiff has no amicable remedy at law.

PRAYER FOR RELIEF

WHEREFORE Drassel, Inc. demands judgment in its favor and against Defendant on all Counts as follows:

A. That the Defendant, its officers, directors, agents, attorneys, servants, employees, successors and assigns and all other the persons in active concert or participation with them, and all those acting under the authority of or in privity with the Defendant be preliminary and permanently enjoined from the use of WICKIT DRY and/or WICKIT DRY TECHNOLOGY and any mark/slogan or phrase which is confusingly similar with Plaintiffs' registered mark WICKDRY;

B. That the Defendant be ordered to remove all advertisements, promotions, displays, packaging, price log, catalogs, application, articles, display booth materials or any other materials in its control or any of its agents' control which bear or represent in any way a copy, simulation, colorful imitation, reproduction, photograph, copy, or similar device that is confusingly similar with the Plaintiffs' trademark rights as above-alleged;

C. That the Defendant be order to account for and pay over to Plaintiff all earnings, profits, receipts and advantages derived by the Defendant through the marketing of its socks in association with the unlawful acts alleged herein;

D. That the Defendant be ordered to compensate Plaintiff for the advertising or other expenses necessary to expel, cure or counteract any public confusion caused by the Defendant's unlawful acts;

E. That the Defendant be ordered to pay Plaintiff compensatory damages in a sum equal to three (3) times the amount of Plaintiff's actual damages pursuant to 15 U.S.C. § 1117;

F. That the Plaintiff be awarded its costs, expenses, and attorney's fees for bringing and prosecuting this action; and

G. That the Plaintiff be awarded such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands jury trial on all issues triable by jury.

Respectfully submitted,

/s/ Edmund J. Sease

Edmund J. Sease

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