

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

HI LIMITED PARTNERSHIP, a Florida limited partnership; **HOOTERS OF AMERICA, LLC**, a Georgia limited liability company,

Plaintiffs,

vs.

NIKKI’S ESCORT SERVICE, a Florida proprietorship, **NIKKI SWAFFORD**, a resident of Florida, and **CRAIGSLIST, INC.**, a Delaware corporation.

Defendants.

Civil Action File No. _____

DEMAND FOR JURY TRIAL

COMPLAINT

COME NOW, HI Limited Partnership (“HILP”) and Hooters of America, LLC (“HOA”), collectively “Plaintiffs”, by and through their undersigned counsel, and file this Complaint against Nikki’s Escort Service (“Nikki’s”), Nikki Swafford, and Craigslist, Inc. alleging as follows:

INTRODUCTION

1.

This is a civil action brought by HI Limited Partnership and Hooters of America against Defendants for: (1) willful trademark dilution by tarnishment arising out of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); (2) trademark

dilution under Florida's Registration and Protection of Trademarks Act, Fla. Stat. Ann. § 495.151; and (3) deceptive trade practices under the Florida Deceptive and Unfair Trade Practices Act Fla. Stat. Ann. § 501.201. As alleged in more detail in this Complaint, Defendants have engaged and are continuing to engage in a willful, intentional, and systematic pattern of trademark dilution to the damage of HILP and HOA and potentially to the confusion of the public, including customers of HILP and HOA. As a result of Defendants' willful conduct, Plaintiffs seek injunctive relief, attorneys' fees and costs, and other relief from this Court.

PARTIES

2.

HI Limited Partnership is a Florida limited partnership duly organized and existing under the laws of Florida, with its principal place of business located at 1815 The Exchange, Atlanta, Georgia 30339, Cobb County.

3.

Hooters of America, LLC is a Georgia limited liability company duly organized and existing under the laws of Georgia, with its principal place of business located at 1815 The Exchange SE, Atlanta, Georgia 30339, Cobb County.

4.

Nikki's Escort Service is a Florida proprietorship with offices located in Mississippi and Florida. Nikki's is operated by its manager and owner, Nikki

Swafford. Nikki's web site is <http://www.escortserviceinmiami.com>, which lists the address for Nikki's as 13756 NW 21st St, Pembroke Pines, FL 33028. Nikki's phone number is also a Florida-based number: (305) 921-9370. Service of process may be made upon Defendants Nikki's and Nikki Swafford by service upon Nikki Swafford, who is believed to reside at 13756 NW 21st St, Pembroke Pines, FL 33028. Defendant Craigslist is a Delaware corporation with its registered principal address located at 222 Sutter St., 9th Floor, San Francisco, CA 94108. Service of process may be made upon Defendant Craigslist by service of its registered agent, Incorporating Services, LTD., 3500 S Dupont Hwy, Dover, DE 19901.

VENUE AND JURISDICTION

5.

This Court has original jurisdiction over Plaintiffs' federal claims and the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). In addition, this Court has pendant jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

6.

At the direction of its owner Swafford, Defendant Nikki's has been regularly engaged in offering escort services in the Miami, FL metro area. At the direction of its owner Swafford, Defendant Nikki's markets and offers these services for

sale, to Florida residents through its fully interactive website, www.escortserviceinmiami.com.

7.

Defendants Nikki's and Nikki Swafford have purposefully availed themselves of the benefit of this State and judicial district, including offering, promoting, and selling services that are the subject of this action in this judicial district and to persons in this district through its website, such that maintenance of suit for such acts in this judicial district would not violate due process.

8.

If and to the extent applicable, Defendants Swafford and Nikki's are subject to personal jurisdiction in this Court pursuant to the provisions of Florida's Long-Arm Statute, Fla. Stat. 48.193 and the Due Process Clause of the Fourteenth Amendment, because Defendants have willfully committed the intentional tortious act of trademark dilution, with knowledge that its conduct would harm Plaintiffs in this District. Moreover, certain instances of the Defendants' infringement took place within the context of its website, which is intentionally directed to and accessible by residents of this judicial district, including customers and prospective customers of the Plaintiffs' goods and services.

9.

Defendant Craigslist offers online classified ads and markets its services

online via its interactive website to Florida residents.

10.

Defendant Craigslist has purposefully availed itself of the benefit of this State and judicial district, including offering, promoting, and selling services which facilitate the co-defendants' dilution of Plaintiff's trademarks, such that maintenance of suit for such acts in this judicial district would not violate due process.

11.

Defendant Craigslist is subject to personal jurisdiction in this Court pursuant to the provisions of Florida's Long-Arm Statute, Fla. Stat. 48.193 and the Due Process Clause of the Fourteenth Amendment, because Defendant is generally present in Florida, and has willfully committed the intentional tortious act of trademark dilution, with knowledge that its conduct would harm Plaintiffs in this District. Moreover, certain instances of the Defendant's infringement took place within the context of its website, which is intentionally directed to and accessible by residents of this judicial district, including customers and prospective customers of the Plaintiffs' goods and services.

12.

Venue is proper in the Southern District of Florida, pursuant to 28 U.S.C. § 1391(b)(2) and (c), because the harm inflicted by Defendants occurs in this

District, and the intellectual property giving rise to this litigation is situated in this District, among others.

FACTS COMMON TO ALL COUNTS

13.

Hooters of America, LLC (“HOA”) is the Atlanta, Georgia-based operator and franchisor of Hooters restaurants.

14.

HOA is the exclusive licensee of the following family of federally registered marks owned by HI Limited Partnership (“HILP”), which are the subject of this litigation: “Hooters” (for example, U.S. Registration No. 1,557,380) and “Hooters & Owl Design” (for example, U.S. Registration No. 1,320,029) (the “Marks”). Each of these Marks are registered in, among other things, International Classes 16, 25 and 43, and are incontestable within the meaning of 15 U.S.C. § 1065. See Exhibits A and B.

In addition to the Marks, Plaintiffs also claim trade dress protection in its casual, beach-themed restaurants that trace their lineage back to the early 1980s. The rough-hewn, beach shack-inspired interiors of its restaurants featuring brown and bright orange color, wood paneling, big-screen TV sports programming, and irreverent signage uniquely distinguish Plaintiffs’ establishments from other restaurants. Plaintiffs also claim trade dress protection in its distinctive Hooters

Girl uniform featuring a white tank top with the Hooters Owl logo, and bright orange dolphin shorts.

Plaintiffs currently operate approximately 375 Hooters restaurant locations in the United States. Many of these locations have been in operation since the early 1980s. Plaintiffs spend millions of dollars annually marketing their brands. Plaintiffs engaging in charitable activities throughout the United States supporting well-known organizations such as the Make-A-Wish Foundation, the U.S.O., Special Olympics, American Diabetes Association, Juvenile Diabetes Foundation, Muscular Dystrophy Association, and Operation Homefront. In addition, Plaintiffs were the title sponsor for the National Golf Association's Hooters Pro Golf Tour from 1988 to 2011, which gave them extensive television coverage and fan support. It also sponsored a Formula One powerboat racing, and an AMA motorcycle team. Plaintiffs' Marks and trade dress have consequently achieved a measure of fame throughout the United States in the markets where they operate.

15.

Plaintiffs have used their Marks, Hooters Girl uniforms and other trade dress in combination continuously in interstate commerce since 1983.

16.

The Marks and related trade dress are inherently distinctive, and have acquired distinction and fame for Plaintiffs as the center of their advertising and

marketing campaign and distinctive franchise operations. Plaintiffs use the Marks and related trade dress in commerce, and expend substantial funds each year advertising their products and services and promoting their business using the Marks. Among other things, Plaintiffs use the Marks and related trade dress to advertise and market their products and services over the internet, in print, and in other media, and in the operations of each restaurant Plaintiffs franchise.

17.

The Marks and related trade dress are widely recognized by the general consuming public as a designation of source of the goods and services of Plaintiffs and their licensed franchisees.

18.

At the direction and under the control of Defendant Swafford, Defendant Nikki's advertises itself as a "professional escort service providing reliable male and female escorts throughout the Miami area for nearly 20 years" through its website, <http://www.escortserviceinmiami.com>. On or before November 7, 2013, at the direction and under the control of Defendant Swafford, Defendant Nikki's posted solicitations on Defendant Craigslist's Tampa listing website, stating "NOW HIRING **HOOTERS GIRLS** \$100 PER HOUR" accompanied by a picture that was taken inside one of Plaintiffs' establishment and showing Hooters Girl waitresses wearing the official Hooters uniform (and which features the

Plaintiffs' marks). Plaintiffs sent a letter to Defendants Nikki's and Swafford notifying them of Plaintiffs' trademark rights and demanding that the ad containing the picture and using the term "Hooters Girls" be removed. *See Exhibit C.* Plaintiff also attempted to contact Defendant Nikki's by phone at the number given in the ad; however, its proprietor, Defendant Swafford, responded in a profane and unprofessional manner before summarily terminating the call. Defendants Nikki's and Swafford also rejected Plaintiffs' written demands in a similarly abusive and unprofessional manner. *See Exhibit D.*

19.

Plaintiffs then contacted Defendant Craigslist via email at abuse@craigslist.org pursuant to the terms posted on its website to report Defendant Nikki's infringing use of the Marks and trade dress and demanded that any ads posted by Defendant Nikki's referencing the Marks or "Hooters Girls" be removed as soon as possible, and in any case no later than December 6, 2013. *See Exhibit E.* On December 9th, Plaintiffs discovered that Defendant Nikki's ads had been replaced with the ad shown in Figure 1 below, which replaced HOOTERS with "Kooters". However, despite the obvious and superficial alterations Defendant Nikki's made to the photograph, the photograph still clearly depicts the interior of Plaintiffs' restaurant and its waitresses' distinctive uniforms.

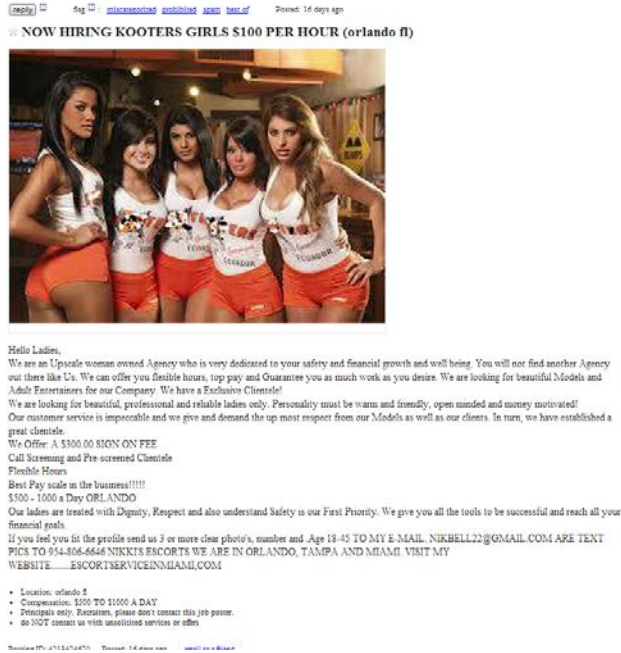


Figure 1

20.

Defendant Nikki's use of the Marks and trade dress began long after Plaintiffs' first use in 1983.

21.

At the control and direction of Defendant Swafford, Defendants Nikki's used and is using Plaintiffs' Marks and trade dress to specifically solicit Plaintiff's employees to work in its escort service without Plaintiffs' consent or authorization, and this use is likely to cause confusion, mistake, or to deceive consumers into believing: (1) that Plaintiffs are affiliated, connected, or associated with Defendant Nikki's; (2) that Plaintiffs sponsor Defendant Nikki's services; and (3) that

Plaintiffs approve of or have licensed the use of its Marks and trade dress for Defendant Nikki's services.

22.

Defendant Nikki's therefore knowingly and intentionally infringed and continues to infringe upon and interfere with Plaintiffs' intellectual property rights in the Marks and trade dress and act with complete and willful disregard for Plaintiffs' rights.

23.

Defendant Nikki's has used and continues to use the Marks and trade dress in a manner that implies Plaintiffs' endorsement of Defendant Nikki's services.

24.

Defendants Swafford and Nikki's have willfully intended to trade on the recognition of Plaintiffs' Marks and trade dress.

25.

Defendant Nikki's unauthorized use of the Marks has caused and will continue to cause irreparable injury to Plaintiffs and to the goodwill associated with the Marks and Plaintiffs have no adequate remedy at law.

26.

Defendant continues to engage in the alleged activities knowingly, willfully and deliberately, so as to justify an award of attorneys' fees in order to deter such future conduct.

COUNT I

Trademark and Trade Dress Dilution by Tarnishment, 15 U.S.C. § 1125(c)

27.

Plaintiffs incorporate by reference and re-allege each and every allegation set forth above in paragraphs 1 through 26 as if fully set forth herein.

28.

Defendant Nikki's unlawfully uses Plaintiff's Marks and trade dress in commerce in such a way as is likely to cause dilution by tarnishment of the famous Marks and trade dress. Defendant Craigslist facilitates such unlawful use by continually allowing Defendant Nikki's solicitations to be posted on its online jobs listings despite being aware of such unlawful use.

29.

Defendant Nikki's has and is damaging the reputation of Plaintiffs' Marks and trade dress through its association with its escort service business. This is being done at the behest of, and under the control and direction of Defendant Swafford, with assistance from Defendant Craigslist.

30.

Defendants' wrongful actions constitute dilution by tarnishment in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). Additionally, Defendant Swafford is vicariously liable for the actions of Defendant Nikki's because she at all times has directed and controlled the infringement, and because she at all times has profited from it. Additionally, Defendant Craigslist is liable for contributory and inducement of the dilution claimed herein based upon its support of the harmful activities despite its actual knowledge of the famous intellectual property being tarnished with its help and cooperation.

31.

As a result of Defendants' conduct, Plaintiffs are entitled to the relief prayed for hereinafter.

COUNT II

Trademark Dilution, Fla. Stat. 495.151

32.

Plaintiffs incorporate by reference and re-allege each and every allegation set forth above in paragraphs 1 through 31 as if fully set forth herein.

33.

At the direction and control of Defendant Swafford, Defendant Nikki's unlawfully uses Plaintiff's Marks and trade dress in commerce in such a way as is

likely to cause dilution by tarnishment of the Marks, in violation of Fla. Stat. 495.151. Defendant Craigslist encourages, promotes, induces, facilitates and contributes to such unlawful use by allowing Defendant Nikki's solicitations to be posted on its online jobs listings despite being made aware of such unlawful use.

34.

As a result of Defendant's conduct, Plaintiffs are entitled to the relief prayed for hereinafter.

COUNT III

Deceptive Trade Practices, Fla. Stat. 501.211

35.

Plaintiffs incorporate by reference and re-allege each and every allegation set forth above in paragraphs 1 through 44 as if fully set forth herein.

36.

Defendants Nikki's and Swafford have knowingly and willfully engaged in deceptive trade practices in the course of their business by: (1) passing themselves off as a business and a person endorsed by Plaintiff; (2) causing a likelihood of confusion or misunderstanding as to the Defendant's Nikki's and Swafford's source, sponsorship, approval, or association; and/or (4) engaging in other conduct described herein which similarly creates a likelihood of confusion or misunderstanding. Defendant Craigslist encourages, promotes, induces, facilitates

and contributes to such deceptive trade practices by allowing Defendant Nikki's solicitations to be posted on its online jobs listings despite being made aware of Defendant Nikki's unlawful activities.

37.

By the knowing and willful conduct outlined herein, Defendant Nikki's has traded upon the goodwill established by Plaintiffs, in violation of Fla. Stat. 501.211.

38.

The aforementioned acts of Defendant have caused and, unless restrained by this Court, will continue to cause irreparable damage, loss, and injury to Plaintiffs for which Plaintiffs have no adequate remedy at law.

39.

As a result of Defendant's conduct, Plaintiffs are entitled to the relief prayed for hereinafter, including a permanent injunction prohibiting Defendants from continuing with their willful false and deceptive trade practices.

COUNT VI

Award of Attorneys' Fees

40.

Plaintiffs incorporate by reference and re-allege each and every allegation set forth above in paragraphs 1 through 39 as if fully set forth herein.

41.

Defendants willful acts diluting Plaintiffs' trademark, as set forth above, renders this an exceptional case under 15 U.S.C. § 1117(a), such that Plaintiffs are entitled to recover an award of reasonable attorneys' fees and taxable costs as well as enhanced damages.

42.

Defendants' deceptive trade practices, as set forth above, warrant an award of reasonable attorneys' fees and taxable costs, pursuant to Fla. Stat. 495.141

JURY DEMAND

43.

Plaintiffs demand a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. That the Court adjudge that Plaintiffs' Marks and trade dress have been infringed and diluted as a direct as the proximate result of Defendants' acts as set forth herein, and impose actual damages in an amount to be determined by a jury at trial.

B. That Defendants, their officers, agents, servants, employees and attorneys, and all those in active concert or participation with them or any of them, be preliminarily and permanently enjoined and restrained:

- (i) using in any form or manner the Marks or trade dress, or any confusingly similar trademark, including any depictions of Hooters Girls in uniform (altered or otherwise) or inside a Hooters restaurant, anywhere in the United States, including but not limited to solicitations for employment;
- (ii) engaging in any conduct which will cause or is likely to cause confusion, mistake or misunderstanding as to the source, affiliation, connection, or association of Defendant Nikki's or its products and services with Plaintiffs and their products and services, including representing or suggesting in any fashion to any third party that Defendant Nikki's or its products and services are authorized by Plaintiffs, or affiliated with or sponsored by Plaintiffs, or that Defendant Nikki's has any relationship whatsoever, whether direct or indirect, with Plaintiffs;
- (iii) otherwise infringing Plaintiffs' trademark rights or unfairly competing with Plaintiffs in any manner whatsoever; and
- (iv) from engaging in deceptive trade practices.

C. That Plaintiffs be awarded their reasonable attorney's fees, expenses of litigation and taxable costs in view of the intentional and willful nature of

Defendant's dilution under 15 U.S.C. § 1117 and/or Fla. Stat. 495.141.

D. That Defendant be ordered to turn over to Plaintiffs all of the infringing articles in its possession, custody or control.

E. That Plaintiffs have such other and further relief as the Court may deem just and proper, including but not limited to enhanced damages of up to three times the amount of actual damages awarded, such as may be allowed by law.

This 26th day of December, 2013.

/s/ Andrew W. Bray

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