

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

(Electronically Filed)

BLUEGRASS BREWING COMPANY,)
INC.)
A Kentucky Corporation)
3929 Shelbyville Road)
Louisville, Kentucky 40207)
Plaintiff,)

v.)

Civil Action No. 3:15-cv-114-DJH

CAFEPRESS INC.)
A Delaware Corporation)
6901 A Riverport Drive)
Louisville, KY 40258)

COMPLAINT FOR INJUNCTIVE
RELIEF AND MONETARY DAMAGES

Serve: CSC Lawyers Incorporating)
Service Company)
Registered Agent for Service)
421 W. Main Street)
Frankfort, KY 40601)

-and-)

UNKNOWN DEFENDANT)

Defendants.)

COMPLAINT
(JURY TRIAL DEMANDED)

Plaintiff, Bluegrass Brewing Company (“BBC” or “Plaintiff”), by counsel, for its
Complaint against Defendants, Cafepress Inc. (“Cafepress”) and a certain Unknown Defendant
(“Unknown Defendant”) (collectively “Defendants”), alleges as follows:

INTRODUCTION

1. This is an action for trademark infringement under the Lanham Act, 15 U.S.C. §1114; unfair competition and false designation of origin under the Lanham Act, 15 U.S.C. § 1125(a); and unfair competition and unjust enrichment under Kentucky common law. Plaintiff is seeking monetary damages, attorneys' fees, and permanent injunctive relief preventing continuing acts of infringement and unfair competition on the part of Defendants.

THE PARTIES

2. BBC is a corporation organized and existing under the laws of Kentucky, with its principal place of business at 3929 Shelbyville Road, Louisville, Kentucky 40207.

3. Upon information and belief, Cafepress is a corporation organized and existing under the laws of Delaware, with its principal place of business at 6901 A Riverport Drive, Louisville, Kentucky 40258.

4. The identity of Unknown Defendant cannot be ascertained at this time. On information and belief, BBC assumes it is a single individual. Upon the issuance of discovery in this action BBC will be able to ascertain Unknown Defendant's identity and will amend its Complaint to name that individual or entity as a defendant in this action.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction by virtue of the fact that this is a civil action under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, jurisdiction being conferred in accordance with 15 U.S.C. §1121 and 28 U.S.C. § 1338(a) and (b); and with respect to certain claims, supplemental jurisdiction under 28 U.S.C § 1367.

6. This Court has personal jurisdiction over Defendant, Cafepress, since, *inter alia*, Cafepress is a resident of this judicial district.

7. This Court has personal jurisdiction over Unknown Defendant under the Kentucky Long Arm Statute, KRS § 454.210(2)(a). On information and belief, Unknown Defendant has transacted business in this judicial district, has committed and is continuing to commit tortious activity in this judicial district giving rise to the actions complained of herein, and/or has committed tortious actions within this judicial district causing injury to BBC in this judicial district.

8. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c), because Defendant, Cafepress' principal place of business is located within this District and a substantial part of the events or omissions giving rise to the claims occurred within this District; because this district is the lawful situs of the intellectual property which is the subject of this action; and/or because Defendants have committed actions including publishing materials evidencing violation of BBC's Lanham Act rights within this district.

FACTS COMMON TO ALL CLAIMS

The Plaintiff and its Well Known Marks

9. BBC first opened its doors in Louisville, Kentucky in 1993 as a restaurant and brewery for hand-crafted, micro-brewed beers. The original BBC location, in the St. Matthews neighborhood, has become a landmark establishment in the City of Louisville. BBC is well known as a great place to eat and enjoy exceptional hand-crafted beer. Over the years, several BBC locations have opened, and thrived, throughout the Louisville area. BBC has also expanded to include retail keg and bottle beer sales served throughout the country.

10. The retail market has helped the BBC name and associated marks expand and become well-known throughout Kentucky, Indiana, Ohio, Tennessee and Virginia. BBC's beers have won many local and national awards and are well-recognized throughout the country.

11. BBC is the owner of all right, title and interest in and to certain trademarks and other assets as set forth herein, including the following trademarks and/or service marks registered with the United States Patent & Trademark Office (“USPTO”):

Trademark	Goods/Services	Serial/Reg. No.	Status/Status Date	Owner
BEER IS FOOD	Class 25: Clothing in the form of apparel, namely, tee-shirts and hats	78-675954 3,112,008	REGISTERED – July 4, 2006	Bluegrass Brewing Company, Inc.
BEER IS FOOD	Class 43: restaurant and bar services offering crafted beers and other beverages	76-539968 2,962,833	REGISTERED – June 21, 2005	Bluegrass Brewing Company, Inc.

12. A copy of the relevant certificates of registration as issued by the USPTO, along with relevant TESS printouts from the USPTO website, are attached hereto as collective **Exhibit 1** (“the BEER IS FOOD Marks”).

13. The BEER IS FOOD Marks are valid and incontestable pursuant to 15 U.S.C. § 1065.

14. Starting in 1999, BBC came up with name and slogan “Beer is Food” to use in connection with the promotion of its restaurants and in connection with the sale of clothing and other products associated with the restaurant and the retail beer sold by BBC. Soon thereafter, starting as early as September 8, 1999, BBC began using its BEER IS FOOD Marks in connection with clothing, including t-shirts and hats (as set forth above), and in connection with restaurant and bar services (as set forth above).

15. The BEER IS FOOD Marks have been continuously used by BBC, in commerce, since at least as early as September 8, 1999.

16. Over the years, the consuming public has come to recognize the slogan “Beer is Food” and/or the BEER IS FOOD Marks as signifying BBC’s high quality goods and services and distinguish those goods and services from competitors in the marketplace.

17. Through and as a result of this longtime use of the BEER IS FOOD Marks, and by virtue of extensive and significant advertising and use of the BEER IS FOOD Marks by BBC, the BEER IS FOOD Marks are well known to the public in Kentucky and throughout the United States. The BEER IS FOOD Marks have thereby acquired substantial goodwill and value to BBC.

18. The BEER IS FOOD Marks are well-known and recognized throughout the United States. The BEER IS FOOD Marks have achieved widespread public recognition and acceptance throughout the United States in connection with BBC’s goods and services (as set forth above).

19. The BEER IS FOOD Marks are inherently distinctive and/or have acquired distinctiveness as a result of the longstanding, widespread use of the BEER IS FOOD Marks throughout the United States.

The Defendants and the Unlawful Use of the BEER IS FOOD Marks

20. On information and belief, Defendant Cafepress began sometime in 1999 as an online platform or website where individuals could “express themselves on t-shirts.” Cafepress has evolved over the years and, in essence, is a company which offers “print on demand” apparel and gifts. That is, individuals (or entities) come up with a slogan, logo, design etc. and Cafepress identifies potential products to affix said slogans, etc. The individual enters into a relationship with Cafepress whereby the individual can create a virtual store front contained on the <cafepress.com> website from which to sell products created by Cafepress which contains the

slogan etc. originating from the individual user. The individual users are known as “shop owners” within the Cafepress “marketplace.”

21. On information and belief, the Unknown Defendant is an individual user and/or “shop owner” within the Cafepress marketplace that sells products on <cafepress.com>.

22. Over the years, BBC has taken great steps to enforce its rights in and to the BEER IS FOOD Marks. As part of this, in 2009, BBC discovered that t-shirts and other products were being offered for sale on the <Cafepress.com> website which incorporated the BEER IS FOOD Marks. As a result, BBC, through counsel, sent Cafepress a cease and desist letter on October 23, 2009. A copy of this letter is attached hereto as **Exhibit 2**, and incorporated by reference herein.

23. In response to this letter, Cafepress agreed to remove the products at issue from the <Cafepress.com> website, and did so soon thereafter. *See* Exhibit 2 hereto.

24. On or around January 15, 2015, Plaintiff discovered that t-shirts (and other products) were being offered for sale on the <cafepress.com> website which featured the exact phrase and mark “Beer is Food.” As a result, counsel for Plaintiff sent a communication to Cafepress requesting the infringing material to be removed from the <cafepress.com> website at once. *See* Jan. 15, 2015 Cease and Desist Letter, attached hereto as **Exhibit 3**.

25. Cafepress responded on January 20, 2015 and indicated that the infringing material would be removed from the website and that any references to the term “beer is food” would be blocked on the <cafepress.com> website. *See* Cafepress Response, attached hereto as **Exhibit 4**.

26. However, on January 22, 2015, Plaintiff discovered additional products we still being offered for sale using the exact term and phrase “beer is food” on the <cafepress.com>

website. As such, counsel for Plaintiff sent another communication to CafePress requesting that the infringing material be removed at once. A copy of the second communication and an image of the infringing material as offered on the <cafePress.com> website are attached hereto as collective **Exhibit 5** and incorporated by reference herein.

27. On January 28, 2015, CafePress responded and refused to take the infringing material down from the <cafePress.com> website. *See* CafePress Response(s), attached hereto as collective **Exhibit 6** and incorporated by reference herein.

28. On information and belief, the t-shirts and other infringing products offered for sale on the <cafePress.com> website, originate from Unknown Defendant.

29. Notwithstanding BBC's demands, as of the filing of this Complaint, Defendants continue to use the exact term "Beer is Food" in connection with the sale and/or offer for sale of t-shirts and other products on the <cafePress.com> website.

30. Defendants do not have permission or authorization from BBC to use the BEER IS FOOD Marks, or anything confusingly similar thereto, in any fashion.

31. Defendants use the BEER IS FOOD Marks, and/or a name, symbol, or device confusingly similar to the BEER IS FOOD Marks, in direct competition with BBC's goods and services.

32. Defendants' use of the BEER IS FOOD Marks, and/or a name, symbol or device confusing similar to the BEER IS FOOD Marks, is likely to cause confusion as to the source of the goods and services associated with the BEER IS FOOD Marks, is likely to suggest sponsorship of the services and/or affiliation between BBC and Defendants.

COUNT I
Federal Trademark Infringement of Registered Trademarks
(15 U.S.C. § 1114)

33. BBC repeats and realleges paragraphs 1 through 32 of this Complaint as if set forth herein.

34. Defendants' use of the BEER IS FOOD Marks and/or a name, symbol or device confusing similar to the BEER IS FOOD Marks, in interstate commerce, without the consent of BBC for the purpose of selling goods and providing services competitive with or related to those sold by BBC under the BEER IS FOOD Marks (including but not limited to U.S. Reg. No.'s: 3,112,008 and 2,962,833), creates the same or similar commercial impression with the BEER IS FOOD Marks and is likely to cause confusion, or to cause mistake or to deceive the public. By promoting and/or selling goods and services in connection with the infringing designation, Defendants have infringed BBC's federally registered BEER IS FOOD Marks (as set forth herein) in interstate commerce in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

35. Defendants' use of the BEER IS FOOD Marks and/or a name, symbol or device confusing similar to the BEER IS FOOD Marks, in connection with its products or services is without permission from BBC.

36. By reason of Defendants' acts alleged herein, BBC has and will suffer damage to its business, reputation and goodwill and the loss of sales and profits BBC would have made but for Defendants' infringing acts.

37. Defendants' trademark infringement is damaging to BBC's goodwill and reputation; creates a likelihood of injury to BBC's business and product reputation; and otherwise unfairly competes with BBC. If such actions are continued by Defendant, they will

cause irreparable and substantial damage to BBC and will result in Defendants being unjustly enriched and unlawfully deriving profits and gains.

38. Defendants' ongoing violations of §32 of the Lanham Act against BBC are committed willfully, intentionally, knowingly and in bad faith.

39. Defendants' aforementioned actions have caused and will continue to cause irreparable injury to BBC if Defendant is not restrained by this Court from violations of BBC's rights. BBC has no adequate remedy at law and therefore seeks injunctive relief from this Court pursuant to 15 U.S.C. § 1116 and such monetary relief to which it is entitled pursuant to 15 U.S.C. § 1117, including treble actual damages and reasonable attorneys' fees and costs.

COUNT II
Federal Unfair Competition and False Designation of Origin
(15 U.S.C. § 1125(a))

40. BBC repeats and realleges paragraphs 1 through 39 of this Complaint as if set forth herein.

41. The aforesaid acts of Defendants, including, but not limited to, the use of the BEER IS FOOD Marks and/or a name, symbol or device which is confusingly similar to the BEER IS FOOD Marks, in connection with the sale of Defendants' goods, constitutes the use of words, terms, names, symbols and devices and combinations thereof; false designations of origin; and false and misleading representations of fact that are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with BBC, or as to the origin, sponsorship or approval of Defendants' goods and/or services, or other commercial activities by BBC.

42. The aforesaid acts of Defendants constitute the use of words, terms, names, symbols and devices and combinations thereof; false designations of origin; and false and

misleading representations of fact that in commercial advertising or promotion, misrepresent the nature, characteristics or qualities of Defendants' goods and/or services, or other commercial activities.

43. Defendants' use of the BEER IS FOOD Marks and/or a name, symbol or device which is confusingly similar to the BEER IS FOOD Marks, in connection with the sale of Defendants' goods and/or services constitutes false designation of origin, false and misleading descriptions and representations in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

44. The Defendants are passing off their products as having come from BBC, or having been endorsed, affiliated, sponsored by, or endorsed by BBC. The Defendants are creating a false designation of origin and are deceiving and confusing customers through the violation of the rights of BBC as set forth herein.

45. The aforesaid acts of Defendants were knowing, deliberate, willful, intended to cause mistake or to deceive, and in disregard of BBC's rights.

46. Defendants' continued unauthorized use of the BEER IS FOOD Marks and/or a name, symbol or device which is confusingly similar to the BEER IS FOOD Marks, in advertising, in interstate commerce, for a competing service station, infringes upon BBC's goodwill, reputation, and trademark rights; creates a likelihood of injury to BBC's business reputation; causes a likelihood of confusion as to the affiliation, connection, or association of Defendants' business with BBC, and/or as to the origin, sponsorship, or approval of Defendants' goods and/or services, or commercial activities by BBC; and otherwise unfairly competes with BBC. If such actions are continued, they will cause irreparable and substantial damage to BBC and will result in Defendants being unjustly enriched and unlawfully deriving profits and gains.

47. Defendants' aforementioned actions have caused and will continue to cause irreparable injury to BBC if Defendants are not restrained by this Court from violations of BBC's rights. BBC has no adequate remedy at law and therefore seeks injunctive relief from this Court under 15 U.S.C. § 1116 and such monetary relief to which it is entitled pursuant to 15 U.S.C. § 1117, including treble actual damages, reasonable attorneys' fees and costs.

COUNT III
Common Law Unfair Competition

48. BBC repeats and realleges paragraphs 1 through 47 of this Complaint as if set forth herein.

49. The foregoing acts of Defendants constitute unfair competition in violation of the common law of the Commonwealth of Kentucky.

50. Upon information and belief, Defendants have made and will continue to make substantial profits and/or gains to which they are not in law or equity entitled.

51. Upon information and belief, Defendants intend to continue acts of unfair competition, unless restrained by this Court.

52. Defendants' acts have damaged and will continue to damage BBC, and BBC has no adequate remedy at law.

COUNT IV
Unjust Enrichment

53. BBC repeats and realleges paragraphs 1 through 52 of this Complaint as if set forth herein.

54. The acts complained of above constitute unjust enrichment of Defendants at BBC's expense, in violation of the common law of Kentucky.

RELIEF REQUESTED

WHEREFORE, Plaintiff, Bluegrass Brewing Company, Inc., requests a judgment in its favor and against Defendants, Cafepress Inc. and Unknown Defendant; ordering as follows:

A. That Judgment enter in favor of Plaintiff and against Defendants on Counts I through IV of the Complaint;

B. That Defendants, and each of their officers, directors, agents, servants, employees and representatives, and those persons in active concert or participation with them or any of them, be permanently enjoined and restrained from:

(1) Committing any acts of trademark infringement, unfair competition and/or from implying a false designation of origin or a false description or representation with respect to Plaintiff's BEER IS FOOD Marks;

(2) Committing any acts of unfair competition by passing off or inducing or enabling others to sell or pass off good/services which are not Plaintiff's goods/services as those of Plaintiff;

(3) Committing any acts of unfair competition; and

(4) From otherwise unjustly enriching itself at Plaintiff's expense.

C. Defendants remove all reference to the term "beer is food" and/or the BEER IS FOOD Marks from the <Cafepress.com> website, and any other website owned, operated or controlled by Defendants, and are hereby restrained from using the term "beer is food" and/or the BEER IS FOOD Marks at any time in the future.

D. Defendants' destroy any and all products and any advertising or promotional materials, and any materials used in the preparation thereof, which in any way infringe upon, unlawfully use or make reference to Plaintiff's BEER IS FOOD Marks.

E. Defendants to account and pay over to Plaintiff all damages sustained by Plaintiff, Defendants' profits, Plaintiff's attorney's fees, and costs, and order that the amount of damages awarded Plaintiff be increased three times the amount thereof;

F. That Plaintiff recovers prejudgment interest; and

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

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY FOR ALL ISSUES SO TRIABLE

Dated: February 2, 2015

Respectfully submitted,

s/Brian McGraw

Brian P. McGraw
MIDDLETON REUTLINGER
401 S. 4th Street, Suite 2600
Louisville, Kentucky 40202
Phone: (502) 584-1135
Fax: (502) 561-0442
bmcgraw@middletonlaw.com

-and-

Bob Donald
BOB DONALD, LAWYER PLLC
P.O. Box 1342
Prospect, KY 40059
Phone: (502) 664-1608
Bob@donaldlawyer.com

ATTORNEYS FOR PLAINTIFF
BLUEGRASS BREWING COMPANY, INC.