IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SANTOS M. VILELLA, an individual,)	10000	
Plaintiff,	10 CV 002	
v.)	Civil Action No.	40
BUDA BEAN, INC., AMAZON.COM,) INC., EBAY ENTERPRISES, INC.; and) VIM JEANS STORES, INC.)	JURY TRIAL DEMANDED	
Defendants.	÷ 	

COMPLAINT FOR TRADEMARK INFRINGEMENT, <u>UNFAIR COMPETITION AND RELATED CLAIMS</u>

Plaintiff, Santos M. Vilella, alleges his complaint against Defendants, Buda Bean, Inc., Amazon.com, Inc., Ebay Enterprises, Inc., and VIM Jeans Stores, Inc. as follows:

NATURE OF THE ACTION

1. This action arises from Defendants' infringement of Plaintiff's "ownership" and exclusive "use" rights in the marks LAVISH TRENDS® and LAVISH™, in conjunction with clothing. Despite Plaintiff being the registered owner of the trademark LAVISH TRENDS® and having common law ownership rights in the mark LAVISH™ and offering various clothing items under such brand names, the Defendants have infringed Plaintiff's rights in the LAVISH™ and LAVISH TRENDS® marks by selling, offering for sale and advertising clothing items under a confusingly similar mark then that of Plaintiff's trademarks. Plaintiff has already experienced "actual confusion" in connection with this matter and is likely to continue to experience confusion as to the affiliation or connection between the Defendants and Plaintiff resulting in the unjust enrichment of Defendants by using Plaintiff's registered and common law trademarks.

JURISDICTION AND VENUE

- 2. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1051 et seq., 15 U.S.C. Sections 1114-1116; under Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a) and Section 43(c) of the Trademark Act, 15 U.S.C. §1125(c).
- 3. This Court has personal jurisdiction over the Defendants because Defendants are either corporations registered with the NYS Department of State Division of Corporations and/or because Defendants engage in continuous and significant business activities in, and directed to the State of New York within this judicial district, and because Defendants have committed tortuous acts aimed at and causing harm within the State of New York and this judicial district.
- 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) because it is where Plaintiff resides and the Defendant transacts business and/or maintain a business location in this district, and because a substantial portion of the events giving rise to the asserted claims have occurred, and continue to occur, within this district. Furthermore, the damage to Plaintiff and its intellectual property described herein continues to occur in this judicial district.

THE PARTIES

- 5. Plaintiff, Santos M. Vilella is an individual residing in New York, New York with a mailing address at 154 East 105th Street, New York, NY 10029.
- 6. Upon information and belief, Defendant Buda Bean, Inc. is a New Jersey corporation with a principal place of business at 10 Willow Street, Moonachie, New Jersey 07074.
- 7. Upon information and belief, Defendant Amazon.com, Inc. is a Washington corporation with a principal place of business at 410 Terry Avenue N., Seattle, WA 98109.

- 8. Upon information and belief, Defendant Ebay Enterprises, Inc. is a Pennsylvania corporation with a principal place of business at 935 First Avenue, King of Prussia, Pennsylvania 19406.
- 9. Plainitff does not know the true and exact legal corporate name of Defendant VIM Jeans Inc. but believes it may be a New York corporation with a store and business location at 2239 3rd Avenue, New York, NY 10035.

FACTS

- 10. Since at least as early as 2012, Plaintiff Santos M. Vilella has been selling and offering for sale, t-shirts, sweaters, hooded sweatshirts and other clothing items under the LAVISH TRENDS® and LAVISHTM brand names.
- 11. Since at least as early as 2012, Plaintiff has been independently operating a clothing business under the trade name LAVISH TRENDS CLOTHING CO., which has sold tshirts, sweaters, hooded sweatshirts and other related clothing items under the marks LAVISH TRENDS® and LAVISHTM.
- 12. In addition to selling and offering for sale clothing items under the LAVISHTM and LAVISH TRENDS® brand names, Plaintiff has also continuously sold and offered for sale various clothing items including hooded sweatshirts which bear the LAVISH TRENDS® and LAVISHTM marks in various fonts and design styles which are prominently displayed on the front and/or back of the clothing items.
- 13. Plaintiff sells, and promotes the sale of his LAVISH TRENDS® and LAVISHTM clothing via his website <u>www.lavishtrendsnyc.com</u>, in retail clothing stores and in other ways customary in the clothing business.
- 14. Plaintiff advertises his LAVISH TRENDS® brand and clothing items through flyers, posters, stickers and through grass root street marketing methods." Plaintiff also regularly

conducts photo shoots of customers who purchase his clothing and promotes it on social media platforms including but not limited to Instagram®.

- 15. Plaintiff is the registered owner of United States Trademark Registration No. 4,568,162 for the mark LAVISH TRENDS®. (See Exhibit A).
- 16. Plaintiff is informed and believes and thereon alleges that Defendant Buda Bean Inc. introduced and began manufacturing, marketing, selling, offering for sale and distributing clothing under the mark LAVISH SOCIETY which is confusingly similar to Plaintiff's registered trademark.
- 17. Upon information and belief Defendant Amazon.com, Inc. is a seller and distributor of the LAVISH SOCIETY clothing offered by Buda Bean, Inc. (See Exhibit B).
- 18. Upon information and belief Defendant Ebay Enterprises, Inc. is a seller of the LAVISH SOCIETY brand by Buda Bean, Inc. and provides it with a means throughout its web service platform to promote, offer for sale and sell clothing under the LAVISH SOCIETY brand that is likely to cause confusion with Plaintiff's clothing under his registered trademark LAVISH TRENDS®. (See Exhibit C).
- 19. Upon information and belief Defendant VIM Jeans Store, Inc. is a seller and distributor of the LAVISH SOCIETY clothing offered by Buda Bean, Inc. (See Exhibit D).
- 20. Plaintiff has already experienced instances of actual confusion in connection with Defendants' use of a closely related and confusingly similar brand. Plaintiff also believes that he will experience instances of reverse confusion since Defendants are a much more established clothing businesses that operate in the New York and tri-state area.

FIRST CAUSE OF ACTION TRADEMARK INFRINGEMENT (15 U.S.C. §§ 1114-1116)

- 21. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 20 of this Complaint.
- 22. The use in commerce by Defendants of an identical and slightly identical version of Plaintiff's registered trademark is likely to cause confusion, mistake and deception among members of the public and in trade as to the source, origin, or sponsorship of defendants' goods and services. Such use by defendants constitutes a clear and direct infringement of Plaintiff's rights in and to Plaintiff's registered trademark, and has resulted in injury and damage to Plaintiff that will continue if defendants are not ordered to cease all use of the LAVISH SOCIETYTM mark.

SECOND CAUSE OF ACTION

UNFAIR COMPETITION & FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a)

- 23. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 22 of this Complaint.
- 24. Plaintiff has the exclusive right to market, brand and provide clothing related goods using the LAVISH TRENDS® mark.
- 25. Defendants by reason of the aforementioned acts, have falsely described, represented and designated the origin of its goods and services. Defendant's activities already have confused the public into believing that Defendant and Plaintiff's clothing goods and accessories come from one and the same source, and Defendant's continued activities are likely to create further confusion and deceive the public concerning the source of the goods/services.
- 26. Defendants has unfairly profited from the actions alleged herein and will continue to unfairly profit and become unjustly enriched unless and until such conduct is enjoined by this Court.

27. By reason of Defendants willful acts conducted in conscious disregard for Plaintiff's rights, Plaintiff is entitled to treble damages under 15 U.S.C. § 1117(a).

THIRD CAUSE OF ACTION

COMMON LAW TRADEMARK INFRINGEMENT & UNFAIR COMPETITION

- 28. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 27 of this Complaint.
- 29. Defendants conduct constitutes deception by which Defendants' goods will be palmed off as those of Plaintiff. Such conduct constitutes trademark infringement and unfair competition in violation of the laws of the State of New York.
- 30. Defendants unauthorized use of Plaintiff's marks is likely to continue to cause further confusion to the public as to the clothing goods and accessories of the respective parties.
- 31. By reason of the foregoing, Defendants' has infringed and continues to infringe on Plaintiff's common law rights in the LAVISHTM mark and Defendant has become unjustly enriched by such acts of infringement.
- 32. Defendants unlawful conduct has been and will continue to be willful or willfully blind to Plaintiff's rights, as Defendants have reason to know of Plaintiff's rights.

FOURTH CAUSE OF ACTION UNJUST ENRICHMENT

- 33. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 32 of this Complaint.
- 34. Defendants have unjustly retained profits from the sale of clothing goods and accessories bearing Plaintiff's marks.

35. Defendant's actions constitute unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief as follows:

- 1. Entry of an order and judgment requiring that all defendants, their subsidiaries, officers, agents, servants, employees, owners, and representatives, and all other persons or entities in active concert or participation with them, be preliminarily and, thereafter, permanently enjoined and restrained from (a) using in any manner the trade name, trademark, domain name or other indicia or origin, including in whole or part the term LAVISHTM, or any colorable imitation thereof; (b) advertising, operating a website, using business stationary or offering any goods or services using the trade name, trademark, domain name, URL, or any other indicia of origin including in whole or part the term LAVISHTM and/or LAVISH TRENDS®, or any colorable imitation thereof; (c) otherwise engaging in any acts of unfair competition and infringement which tend to injure Plaintiff's rights in the LAVISH TRENDS® and LAVISHTM marks.
- 2. That Defendant be required to account to Plaintiff for any and all profits derived by it, and to compensate Plaintiff for all the damages sustained by reason of the acts complained of herein, and that the damages herein be trebled pursuant to the Trademark Act.
- 3. That Defendant be ordered to deliver up for destruction any and all infringing materials bearing the LAVISH SOCIETY mark, and any colorable imitation thereof, in whole or part.
 - 4. That Plaintiff be awarded punitive damages.
 - 5. That Defendants be required to place advertisements or send notifications to past and present customers that it improperly has been using the LAVISH SOCIETY mark.
 - 6. That Plaintiff be awarded the cost and disbursements of this action.

7. That Plaintiff have such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all issues.

Dated: January 4, 2016 New York, NY Respectfully submitted, Santos M. Vilella – Pro Se

Santos M. Vilella Pro Se Plaintiff 154 East 105th Street New York, New York 10029 (347) 290-9905



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LAVISH TRENDS

Word Mark

LAVISH TRENDS

Goods and Services

IC 025. US 022 039. G & S: Baseball caps and hats; Crew neck sweaters; Headwear; Hooded pullovers; Hooded sweatshirts; Short-sleeved or long-sleeved t-shirts; Sweaters; Sweatshirts; T-shirts; V-neck sweaters. FIRST USE: 20121201. FIRST USE IN COMMERCE: 20121201

Standard Characters Claimed

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Serial Number Filing Date

86140729 December 11, 2013

Current Basis

1A

Original Filing

Basis

1A

Published for Opposition

April 29, 2014

Registration

4568162

Number

Registration Date July 15, 2014 Owner

(REGISTRANT) Vilella, Santos M. INDIVIDUAL UNITED STATES 230 Clinton Street - Suite 11C

New York NEW YORK 10002

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

LIVE

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\$31.00 FREE Shipping



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by LAVISH SOCIETY

\$14.99

FREE Shipping and 3 more promotions



Casual Urban Mens Lavish Emoji 100 Printed Knit Capri Jogger by LAVISH SOCIETY

\$12.99 - \$26.99 Some sizes are Prime eligible FREE Shipping and 3 more



NYC Harlem Drop Crotch Lavish Society Dance Twill Joggers by LAVISH SOCIETY

\$24.99

FREE Shipping and 3 more promotions

Men's Lavish Society-Twill Jogger Navy Short by LAVISH SOCIETY

\$39.99 - \$50.00 Some sizes are Prime eligible FREE Shipping on orders over \$35



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MEN'S BASIC FRENCH TERRY PAISLEY ACTIVE JOGGER PANTS 31032 by LAVISH SOCIETY

\$30.00 FREE Shipping



More Colors Available

Lavish Society Men's 100

Emoji Printed Knit Shorts
by LAVISH SOCIETY

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\$12.99
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Style: Size Type: Twill Joggers Regular

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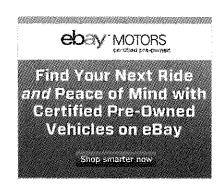
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