

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

L.C. INDUSTRIES, INC,)	
an Illinois corporation,)	
)	
Plaintiff,)	
)	
v.)	No. 19-cv-8058
)	
TRIPADVISOR, LLC, and)	
E.S.I. CASES & ACCESSORIES, INC.,)	Jury Demand
)	
Defendants.)	

COMPLAINT

Plaintiff L.C. Industries, Inc., an Illinois corporation, by its attorneys, Schoenberg Finkel Newman & Rosenberg, LLC, as its Complaint against Defendants TripAdvisor, LLC and E.S.I. Cases & Accessories, Inc., alleges and states as follows:

COUNT I

(LANHAM ACT VIOLATIONS)

The Parties

1. Plaintiff L.C. Industries, Inc. (“Plaintiff”) is an Illinois corporation with its principal place of business in Elk Grove Village, Illinois. Plaintiff is engaged in the business of, *inter alia*, designing, manufacturing and selling travel accessories.
2. Defendant TripAdvisor, LLC (“TripAdvisor”) is a New York limited liability company which is registered, and doing business, in Cook County, Illinois.
3. Defendant E.S.I. Cases & Accessories, Inc. (“ESI”) is a New York corporation doing business in Cook County, Illinois.

Jurisdiction and Venue

4. Jurisdiction is proper in this Court pursuant to 5 U.S.C. § 1121 and 28 U.S.C. § 1331, and 28 U.S.C. § 1338, as this action arises under the laws of the United States, specifically the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and asserts a claim of unfair competition joined with a substantial and related claim under the Lanham Act.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400, as defendants reside in this District.

Factual Background

6. Since 1971, Plaintiff has produced, advertised and sold travel accessories under its own name. At great expense and effort, Plaintiff has advertised its name and products such that Plaintiff's name and brand is well-known in the travel industry.

7. In November 2019, Plaintiff discovered that TripAdvisor and ESI were advertising and selling travel products using Plaintiff's name throughout the United States, including Illinois and California. TripAdvisor and ESI are selling, offering for sale, distributing, and advertising products with Plaintiff's name without Plaintiff's authorization.

8. Attached hereto as Exhibit A are copies of examples of Defendants' advertisements for products using Plaintiff's name that are being sold and advertised without Plaintiff's prior knowledge or consent.

9. On or about November 12, 2019, Plaintiff received a Sixty-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code ¶ 25249.5, *et seq.*) ("Proposition 65"), alleging violations of Proposition 65 concerning Phone Mount Holder Containing Bis (2-ethylhexyl) phthalate ("DEHP"), which

resulted from the unauthorized use by TripAdvisor and ESI of Plaintiff's name. A copy of the Sixty-Day Notice is attached hereto as Exhibit B.

10. After discovering the unauthorized use of Plaintiff's name by TripAdvisor and ESI, on November 22, 2019, Plaintiff sent TripAdvisor and ESI letters demanding that they cease and desist from using its name in connection with the sale, offering for sale, distribution, or advertising of their goods, including by listing Plaintiff's name on products and/or packaging they are offering for sale. A copy of the November 22, 2019 letter is attached hereto as Exhibit C.

11. Plaintiff has already incurred and will continue to incur fees and expenses related to the Sixty-Day Notice, notwithstanding that Plaintiff has no connection to Defendants' products which are the subject of the Notice. Accordingly, in the November 22, 2019 letter, Plaintiff demanded that TripAdvisor and ESI defend and indemnify Plaintiff against and from all claims, costs, and attorney's fees relating to or arising out of any of Defendants' products containing the unauthorized use of Plaintiff's name.

12. TripAdvisor and ESI have failed and refused to cease their unauthorized use of Plaintiff's name and have failed and refused to indemnify Plaintiff against and from all claims, costs, and attorney's fees relating to or arising out of any of Defendants' products containing the unauthorized use of Plaintiff's name.

13. In violation of 15 U.S.C. § 1125(a), in connection with their sale and advertisements of products, TripAdvisor and ESI have used Plaintiff's name in commerce without its authorization, thereby creating a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of TripAdvisor and ESI with Plaintiff,

or as to the origin, sponsorship, or approval of TripAdvisor's and ESI's products and commercial activities by Plaintiff.

14. As a direct result of Defendants' violation of 15 U.S.C. § 1125(a) and the ensuing confusion, a potential plaintiff has erroneously concluded that Plaintiff is responsible for an alleged violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code ¶ 25249.5, *et seq.*), and has directed to it a Sixty-Day Notice of Intent to Sue. In fact, Plaintiff has no connection whatsoever to the product identified in the Sixty-Day Notice.

15. The use by TripAdvisor and ESI of Plaintiff's name has caused and will continue to cause irreparable injury to Plaintiff.

WHEREFORE, Plaintiff L.C. Industries, Inc. prays that:

A. Pursuant to 15 U.S.C. § 1116, TripAdvisor and ESI and all those controlled by Defendants, be preliminarily and permanently enjoined from: (a) using in any way Plaintiff's name, (b) unfairly competing with Plaintiff through any false designation of origin, affiliation, connection, or association with Plaintiff; and (c) unfairly competing with Plaintiff in any other manner.

B. TripAdvisor and ESI be ordered to account for and pay over to Plaintiff all of Defendants' profits derived from their unlawful conduct, to the full extent provided by 15 U.S.C. § 1117(a);

C. Pursuant to 15 U.S.C. § 1117(b), this Court enter judgment against TripAdvisor and ESI for all damages sustained by Plaintiff including, but not limited to, all damages and attorneys' fees incurred as a result of the Sixty-Day Notice and all damage to Plaintiff's goodwill and reputation;

D. Pursuant to 15 U.S.C. § 1117(b), this Court enter judgment for three times such profits and damages as a result of the intentional infringement by TripAdvisor and ESI;

E. In the alternative, this Court award Plaintiff statutory damages as provided by 15 U.S.C. § 1117(c);

F. This Court award Plaintiff's attorneys' fees, together with the costs of this suit, pursuant to 15 U.S.C. § 1117; and

G. This Court order such other and further or different relief as it deems appropriate.

COUNT II

(UNFAIR COMPETITION)

1-15. Plaintiff adopts and re-alleges paragraphs 1 through 15 of Count I of this Complaint as paragraphs 1 through 15 of this Count II.

16. As a result of Plaintiff's widespread and extensive use, and advertising and promotion, of its name, such name has developed and now has a distinctive meaning in the industry and has come to indicate to the industry the high quality of products sold by Plaintiff.

17. The acts of TripAdvisor and ESI constitute unfair competition in that they are likely to cause the industry to believe erroneously that the product of TripAdvisor and ESI are guaranteed by, or otherwise associated with, Plaintiff. Such acts have and will continue to injure the business reputation of Plaintiff and dilute or otherwise injure or destroy the distinctive character and quality of Plaintiff's name, thereby substantially and irreparably harming Plaintiff.

18. The acts of TripAdvisor and ESI further constitute unfair competition with Plaintiff in that these acts are calculated to result, and have resulted, in the unjust enrichment of TripAdvisor and ESI since they avail to TripAdvisor and ESI the benefit of Plaintiff's good name and valuable goodwill, thereby substantially and irreparably harming Plaintiff.

19. As a result of the unfair competition engaged in by TripAdvisor and ESI, Plaintiff has suffered and will continue to suffer damages to its good will and reputation and further damages resulting from fees, expenses and potential liability in connection with the Sixty-Day Notice.

WHEREFORE, Plaintiff L.C. Industries, Inc. prays that:

A. TripAdvisor and ESI and all those controlled by Defendants, be preliminarily and permanently enjoined from: (a) using in any way Plaintiff's name; (b) unfairly competing with Plaintiff through any false designation of origin, affiliation, connection, or association with Plaintiff; and (c) unfairly competing with Plaintiff in any other manner.

B. This Court enter judgment against TripAdvisor and ESI for all damages sustained by Plaintiff including, but not limited to, all damages and fees incurred as a result of the Sixty-Day Notice and all damage to Plaintiff's goodwill and reputation;

C. TripAdvisor and ESI be ordered to account for and pay over to Plaintiff all of Defendants' profits derived from their unlawful conduct; and

D. This Court order such other and further or different relief as it deems appropriate.

COUNT III

(VIOLATION OF THE CALIFORNIA BUSINESS & PROFESSIONAL CODE)

1-19. Plaintiff adopts and re-alleges paragraphs 1 through 19 of Count II of this Complaint as paragraphs 1 through 19 of this Count III.

20. In violation of Cal. Bus. & Prof. Code § 17200, TripAdvisor and ESI engaged in unfair competition, unlawful, unfair or fraudulent business acts and practices and unfair, deceptive, untrue or misleading advertising.

21. As a result of the unfair competition engaged in by TripAdvisor and ESI in violation of the California Business & Professional Code, Plaintiff has suffered and will continue to suffer damage to its good will and reputation and further damages resulting from fees, expenses and potential liability in connection with the Sixty-Day Notice.

WHEREFORE, Plaintiff L.C. Industries, Inc. prays that:

- A. Pursuant to Cal. Bus. & Prof. Code § 17070, TripAdvisor and ESI and all those controlled by Defendants, be preliminarily and permanently enjoined from: (a) using in any way Plaintiff's name, (b) unfairly competing with Plaintiff through any false designation of origin, affiliation, connection, or association with Plaintiff; and (c) unfairly competing with Plaintiff in any other manner;
- B. TripAdvisor and ESI be ordered to account for and pay over to Plaintiff all of Defendants' profits derived from their unlawful conduct;
- C. This Court enter judgment against TripAdvisor and ESI for all damages sustained by Plaintiff including, but not limited to, all damages and fees incurred as a result of the Sixty-Day Notice and all damage to Plaintiff's goodwill and reputation;
- D. Pursuant to Cal. Bus. & Prof. Code § 17082, this Court enter judgment for three times such profits and damages as a result of the intentional infringement by TripAdvisor and ESI;
- E. This Court award Plaintiff's attorneys' fees, together with the costs of this suit, pursuant to Cal. Bus. & Prof. Code § 17082; and
- F. This Court order such other and further or different relief as it deems appropriate.

L.C. INDUSTRIES, INC.

By: /s/ Norman T. Finkel
One of Its Attorneys

Norman T. Finkel (Norm.Finkel@sfnr.com)
William R. Klein (Bill.Klein@sfnr.com)
Richard M. Goldwasser (Richard.Goldwasser@sfnr.com)
Schoenberg Finkel Newman & Rosenberg, LLC
222 S. Riverside Plaza, Suite 2100
Chicago, Illinois 60606
312/648-2300