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UNITED STATES DISTRICT COURT 2014 AUG 12 AM 11:51
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

WARNER BROS. ENTERTAINMENT INC.,

Case No.: 6:14cv1294-ORL-37GJK

Plaintiff,

Complaint Seeking
Permanent Injunction,
Damages, Attorneys' Fees
and Costs

v.

STEPHEN WESLEY PHILLIPS d/b/a
WWW.EWINGGLOBAL.ORG,
WWW.EWINGOIL.ORG,
WWW.EWINGOIL.NET,
WWW.ZAZZLE.COM/SWPSWP,
HTTPS://TWITTER.COM/EWINGOILSTORE
and
WWW.FACEBOOK.COM/EWINGOILCO;
and SWP OMNIMEDIA, INC. d/b/a
WWW.EWINGGLOBAL.ORG,
WWW.EWINGOIL.ORG,
WWW.EWINGOIL.NET,
WWW.ZAZZLE.COM/SWPSWP and
HTTP://TWITTER.COM/IAMSWP,

Defendant.

_____ /

COMPLAINT

Plaintiff Warner Bros. Entertainment Inc. by and through its undersigned attorneys, Holihan Law, allege for its Complaint as follows:

INTRODUCTION

1. This action is filed to combat the Defendants' willful use of Plaintiff's trademarks, and includes claims for federal trademark infringement, false

designation of origin and unfair competition as well as for violation of the Anticybersquatting Consumer Protection Act.

2. Plaintiff seeks a Permanent Injunction, damages, costs, and attorneys' fees as authorized by the Lanham Act.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1338(a) as the Plaintiff's cause of action arises under the Federal Trademark Act ("The Lanham Act of 1946"), 15 U.S.C. § 1051 et seq.

4. Venue is proper within the Middle District of Florida pursuant to 28 U.S.C. §§ 1391(b).

THE PARTIES Plaintiff

5. Warner Bros. Entertainment Inc. (hereinafter "Warner Bros." or "Plaintiff") is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business in Burbank, California. Warner Bros., or one of its wholly owned subsidiaries, is engaged in a variety of businesses including, without limitation, the production, distribution and broadcast of filmed entertainment, including motion pictures and television programming.

A. Warner Bros. and its affiliates produce and distribute television programming through a variety of distribution channels in the U.S. and internationally. This programming includes both new first-run syndicated series and animated programming as well as second run programming.

B. A significant aspect of Warner Bros.' business is the merchandising and licensing of distinctive trademarks associated with its media products including its television productions. These productions include the original *Dallas* television series that was produced from 1978 through 1991. *Dallas* was one of the longest lasting full hour prime time dramas ever produced in American television history with 357 episodes being broadcast. A continuation of the *Dallas* series began production in 2012 and is currently in its third season of broadcast through TNT. Warner Bros. owns all rights including all names, characters, logos and related indicia connected with the *Dallas* series. Included in these are the trademarks DALLAS and SOUTHFORK, as well as the characters "J.R Ewing", "Bobby Ewing", "Miss Ellie", "Jock", the "Ewing" family as well as the fictional oil development company, "Ewing Oil", and Ewing family home, "Southfork" (hereinafter individually and collectively referred to as the "Warner Bros. Dallas Properties").

C. Warner Bros. is the owner of world famous registered marks, DALLAS and SOUTHFORK, which further serve to distinguish Warner Bros. products and services. Federal trademark registrations for the DALLAS and SOUTHFORK trademarks are attached as Exhibits A and B herein (collectively the Warner Bros. Trademarks"). The Warner Bros. Trademarks are all valid, extant and in full force and effect. The Warner Bros. Trademarks are all exclusively owned by Warner Bros. and/or its' subsidiaries. Warner Bros. has continuously used each of

the Warner Bros. Trademarks from a date earlier than any upon which the Defendants could rely. (The Warner Bros. Dallas Properties and Warner Bros. Trademarks will hereinafter be referred to as the Warner Bros. Properties.)

D. The Warner Bros. Properties are licensed and/or merchandised by Warner Bros.'s affiliate, Warner Bros. Consumer Products Inc. The appearance and other features of the Warner Bros. Properties are inherently distinctive and serve to identify Warner Bros. and its licensees as the source of products bearing the Warner Bros. Properties. The Warner Bros. Properties constitute famous marks and have each acquired secondary meaning in the minds of consumers throughout the United States and the World.

E. Warner Bros. and its affiliates have conducted substantial advertising and marketing in connection with the *Dallas* series over the run of its production from 1978 through 1991 and 2012 through the present. As a result the Warner Bros. Properties are well known and widely accepted by the consuming public.

Defendants

6. Defendant, Stephen Wesley Phillips (hereinafter "Phillips"), is upon information and belief, an individual who resides at 318 Sheila Drive, Henderson, TN 38340, and who is a controlling force in the operation of the entity SWP Omnimedia, Inc. and the websites and social media sites www.ewingoil.net, www.ewingoil.org, www.ewingglobal.org, www.zazzle.com/swpswp,

<https://twitter.com/EwingOilStore> and www.facebook.com/EwingOilCo. Phillips has the right and ability to supervise and control the infringing activity alleged herein and upon information and belief has a direct financial interest in such activity. In addition, or alternatively, Phillips has knowledge or reason to know of the infringing activity and took actions in which he contributed to such activity. Phillips is, upon information and belief an individual residing in Chester County, TN.

7. Defendant, SWP Omnimedia, Inc. (hereinafter "SWP") is upon information and belief, a Tennessee corporation, whose principle place of business is 318 Sheila Drive, Henderson, TN 38340. SWP conducts business through the Internet via the websites www.ewingoil.net, www.ewingoil.org, www.ewingglobal.org, www.zazzle.com/swpswp, as well as the social networking pages located at the domain <http://twitter.com/iAMsWp>.

8. Phillips and SWP will hereinafter be collectively referred to as "Defendants".

INFRINGING CONDUCT

9. Defendants utilize the domain names www.ewingoil.org, www.ewingoil.net, www.ewingglobal.org, in conjunction with websites that offer for sale and sell infringing merchandise that reproduces without authorization one or more of the Warner Bros. Properties (hereinafter referred to as the "Infringing

Merchandise"). Examples of the Infringing Merchandise sold, offered for sale and distributed through these websites are shown on Exhibit C.

10. Defendants operate interactive websites through the domains www.ewingoil.org, www.ewingoil.net, and www.ewingglobal.org that sell and distribute Infringing Merchandise nationwide including the State of Florida and this U.S. District. The Infringing Merchandise is also offered through the online store known as www.zazzle.com/swpswp, in Florida and this U.S. District. *See* Exhibit D. A sample of Infringing Merchandise purchased from this store online store in Florida and in this U.S. District is attached as Exhibit E.

11. In furtherance of the sale and marketing of the Infringing Merchandise, Defendants sell, distribute and offer the product through three websites, www.ewingoil.org, www.ewingoil.net, and www.ewingglobal.org, which each incorporate the EWING and/or EWING OIL marks as part of their domain name to suggest a connection, association or sponsorship between the Defendants' Infringing Merchandise and Warner Bros. This false and misleading message is further reinforced by the Defendants' use of a banner advertisement which runs across the top of its home page identifying the website as the "Ewing Oil Company Store". *See* Exhibit F. Additionally, Defendants' solicit business for the Infringing Merchandise through social media websites, which incorporates the Warner Bros. Properties, <https://twitter.com/EwingOilStore> and www.facebook.com/EwingOilCo. *See* Exhibit G. Defendants' websites, domain

names and Internet advertisements that incorporate the Warner Bros. Properties will be collectively referred to as the "Infringing Promotions".

12. Warner Bros. has never at any time authorized Defendants to utilize the Infringing Promotions in conjunction with any business and/or the sale or offer for sale of merchandise including but not limited to the Infringing Merchandise.

13. Warner Bros. has made written demand upon the Defendants to cease in their infringing conduct. Through the date of filing this complaint, Warner Bros.' lawful demands have been ignored and Defendants have continued with their infringing conduct.

14. Warner Bros. has also made demand upon various Internet Service Providers (ISPs) that have hosted the Defendants' www.ewingoil.org and www.ewingglobal.org websites to pull the infringing content. However, each time that Warner Bros. received compliance from the subject ISP the Defendants' moved the Infringing Promotions and sale of the Infringing Merchandise sold through the www.ewingoil.org and www.ewingglobal.org websites to a new ISP. Currently, the ISP utilized by the Defendant is located in the Netherlands and Warner Bros. has not been successful at obtaining compliance in removing the infringing content.

15. Defendants have ignored Warner Bros. lawful demands and continue to utilize the Infringing Promotions in conjunction with the Infringing Merchandise.

16. Defendants are using the Infringing Promotions, including the www.ewingoil.org, www.ewingoil.net, and www.ewingglobal.org domain names, intentionally with a bad faith intent to profit from it.

17. Defendants' use of the Infringing Promotions is likely to cause confusion, to cause mistake, and to deceive as to the affiliation, connection or association of Defendants' Infringing Merchandise with Warner Bros. or as to the origin, sponsorship, or approval of Defendants' Infringing Merchandise and/or products by Warner Bros.

18. Defendants' use of the Infringing Promotions blurs the unique association which has heretofore existed between the Warner Bros. Properties and the goods and service sold and offered by Warner Bros., thereby lessening the capacity of the Warner Bros. Properties to identify and distinguish the goods and services offered by Warner Bros.

19. Warner Bros has made repeated requests that Defendants' cease and desist from these infringing activities. Despite these requests, Defendants continue to utilize and maintain the Infringing Promotions in the marketing, advertising and solicitation of the Infringing Merchandise. Defendants have performed the complained of acts willfully and with knowledge of the infringement, dilution and unfair competition they would cause and to appropriate and unfairly trade upon the Warner Bros. Properties.

20. By reason of Defendants acts alleged above, Warner Bros. has and will continue to suffer damage to its business, reputation and goodwill, and Defendants have and will enjoy profits to which they are not entitled, for which Warner Bros. is entitled to relief.

COUNT I - TRADEMARK INFRINGEMENT

21. Plaintiff, Warner Bros., brings the following claim of trademark infringement against Defendants and incorporates by reference paragraphs 1 through 20 and brings the following claim for trademark infringement pursuant to 15 U.S.C. § 1114 against Defendants.

22. Warner Bros. owns the exclusive rights to the DALLAS and SOUTHFORK trademarks evidenced by the registrations attached as Exhibits A and B. The Warner Bros. Trademarks as evidenced by these trademarks registrations are in full force and effect and are owned by Warner Bros. The Warner Bros. Trademarks are incontestable pursuant to 15 U.S.C. § 1065.

23. Warner Bros., or those under its authority, manufacture and distribute all of its products and services in conformity with the provisions of United States Trademark law.

24. Notwithstanding Warner Bros.' well-known and prior common law and statutory rights in the Warner Bros. Trademarks, Defendants have, with actual and constructive notice of Warner Bros.' federal registration rights, and long after Warner Bros. established its rights, adopted and used the Warner Bros. Trademarks

in conjunction with the Infringing Merchandise in the State of Florida and interstate commerce.

25. Defendants have utilized their Infringing Promotions bearing the Warner Bros. Trademarks without Warner Bros.' authorization. Defendants' use of the Infringing Promotions bearing the Warner Bros. Trademarks and sale of the Infringing Merchandise in Florida and interstate commerce has and will cause the likelihood of confusion, deception, and mistake in that the buying public will conclude that the business and/or products offered by Defendants are authorized, sponsored, approved, or associated with Warner Bros.

26. Said acts of infringement will cause irreparable injury to Warner Bros. if Defendants are not restrained by the Court from further violation of Warner Bros.' rights, as Warner Bros. has no adequate remedy at law.

27. Warner Bros. has suffered damages as a result of Defendants' acts.

28. Defendants' use in commerce of the Warner Bros. Trademarks in conjunction with the Infringing Promotions and sale of Infringing Merchandise is an infringement of Warner Bros.' registered trademarks in violation of 15 U.S.C. § 1114(1).

29. Defendants committed the acts alleged herein intentionally, fraudulently, maliciously, willfully, wantonly, and oppressively with the intent to injure Warner Bros. and its business.

COUNT II - FALSE DESIGNATION OF ORIGIN

30. Plaintiff, Warner Bros., brings the following claim against Defendants and incorporates by reference allegations 1 through 20, 21 through 29 above.

31. As a direct result of Warner Bros.' longstanding use, sales, advertising, and marketing, the Warner Bros. Properties have acquired a secondary and distinctive meaning among the public who have come to identify the Warner Bros. Properties with Warner Bros. and its products and services.

32. The Infringing Promotions utilized by Defendants to advertise and promote their Infringing Merchandise, that duplicate and appropriate the Warner Bros. Properties, has and will delude and confuses the public into believing that Warner Bros. approved, authorized, or sponsored the Infringing Promotions and related Infringing Product sold, offered for sale, or distributed by Defendants.

33. Defendants, by misappropriating and using the likenesses of the Warner Bros. Properties through the use of the Infringing Promotions in connection with their sale of Infringing Merchandise, is misrepresenting and will continue to misrepresent and falsely describe to the general public the origin and sponsorship of their business and/or product. Defendants have operated the Infringing Promotions and offered for sale the Infringing Merchandise into interstate commerce willfully with full knowledge of the falsity of the designation of their origin and description and representation in an effort to mislead the purchasing public into believing that their Infringing Merchandise is authorized or emanate from Warner Bros.

34. These acts constitute a violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

35. Defendants have obtained gains, profits, and advantages as a result of their unlawful acts.

36. Warner Bros. has suffered monetary damages as a result of Defendants' acts.

COUNT III - VIOLATION OF THE ANTICYBERSQUATTING
CONSUMER PROTECTION ACT

37. Warner Bros. incorporates by reference the allegations set forth in paragraphs 1 through 20, 21 through 29, and 30 through 36.

38. Defendants' acts as plead herein are in violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1)(A).

39. Defendants have registered and used the www.ewingoil.net, www.ewingoil.org, and www.ewingglobal.org domain names, which incorporate and are confusingly similar to and dilutive of the Warner Bros. Properties, with a bad faith intent to profit from the Warner Bros. Properties.

40. Warner Bros. has sustained irreparable harm and, unless Defendants are enjoined, Warner Bros. will continue to sustain irreparable harm as a result of Defendants' wrongful conduct in violation of 15 U.S.C. § 1125(d)(1)(A).

PRAYER FOR RELIEF

WHEREFORE, Warner Bros. demands entry of a judgment against Defendants as follows:

1. Permanent injunctive relief restraining each of the Defendants, their officers, agents, servants, employees, attorneys, and all those in active concert or participation with them from:

a. further infringing upon the Warner Bros. Properties by selling, distributing, offering for sale, marketing, and/or advertising any products bearing a design or image which is of a substantially similar appearance to any of the Warner Bros. Properties, including apparel, glassware, office products and automobile products, not authorized by Warner Bros. (hereinafter "Unauthorized Product");

b. from passing off, inducing or enabling others, to produce or pass off as authentic any Unauthorized Product, including television memorabilia, in conjunction with the Warner Bros. Properties so as to suggest that such products are being authorized or produced by Warner Bros. or are being authorized or produced under the control or supervision of Warner Bros. or approved by Warner Bros.;

c. from committing any act calculated to make the purchasing public believe that the Defendants' products are under the control and supervision of Warner Bros., or are sponsored, approved or guaranteed by Warner Bros., or are connected with and provided under the control or supervision of Warner Bros. including but not limited through the use of the Infringing Promotions;

d. from diluting and infringing the Warner Bros. Properties and damaging their goodwill;

e. from effecting assignments or transfers, forming new entities or associations or using any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in Subparagraphs a. through e.;

f. from secreting, destroying, altering, removing, or otherwise dealing with the Infringing Merchandise or Infringing Promotions, or any books or records, electronic or paper, that may contain any information relating to the Infringing Merchandise and/or Infringing Promotions; and

g. from aiding, abetting, contributing to, or otherwise assisting anyone from infringing upon any of the Warner Bros. Properties.

2. Directing that the Defendants deliver for destruction any and all Unauthorized Products as well as any physical signage, marketing materials or other advertisements related to the sale and offer for sale of the Unauthorized Products.

3. Directing that Defendants remove any and all Infringing Promotions and/or artwork bearing unauthorized simulations, reproductions, counterfeits, copies or colorable imitations of the Warner Bros. Properties or bearing a design or image which is of a substantially similar appearance to any of the Warner Bros. Properties from any Internet advertisement utilized by the Defendants to sell any products or services, including but not limited to any websites, social medium venues, bulletin boards or similar outlet.

4. Directing that Defendants immediately cease using and claiming ownership of the registration of the www.ewingoil.net, www.ewingoil.org, and www.ewingglobal.org domain names, and shall immediately request the transfer of the domain name registrations to Warner Bros. Such Order shall further direct Defendants to sign all appropriate paperwork and take all required actions to effectuate the transfer.

5. If the ISP delegates complete control regarding the disposition of the registration and use of the www.ewingoil.net, www.ewingoil.org, and www.ewingglobal.org domain names to this Court, that said domain name registration be ordered to be cancelled and transferred to Warner Bros. and that Warner Bros. be ordered to notify the ISP of this.

6. Directing that Defendants report to this Court within thirty (30) days after a Permanent Injunction is entered to show its compliance with paragraphs 1 through 6 above.

7. Directing such other relief as the Court may deem appropriate to prevent the trade and public from gaining the erroneous impression that Warner Bros. authorized or is related in any way to any services distributed, sold, or otherwise circulated or promoted by Defendants.

8. That Warner Bros. be awarded from each Defendant utilizing the Infringing Promotions and offering the Infringing Merchandise three times the Defendants' profits, after an accounting, pursuant to 15 U.S.C. § 1114 and § 1117.

9. That Warner Bros. be awarded from each Defendant utilizing the Infringing Promotions and offering the Infringing Merchandise three times such Defendant's profits there from, after an accounting pursuant to 15 U.S.C. § 1125(a) and § 1117.

10. That Warner Bros. be awarded its reasonable attorneys' fees and investigative fees pursuant to 15 U.S.C. § 1117.

11. That Warner Bros. be awarded its costs in bringing this action.

12. That Warner Bros. be awarded other such relief as this Court deems just.

Dated this 12th day of August, 2014.



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