

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT 2016 MAY 18 PM 9:52

Otter Creek Brewing Company LLC)
d/b/a The Shed Brewery)
)
Plaintiff,)
)
vs.)
)
Noble Brewing Company LLC)
d/b/a GoodLife Brewing Company,)
)
Defendant.)
_____)

CLERK
BY RC
DEPUTY CLERK

Civil Action No. 2:16-cv-130

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Otter Creek Brewing Company LLC d/b/a The Shed Brewery ("The Shed"), for its Complaint against the Defendant, Noble Brewing Company LLC d/ba/ GoodLife Brewing Company ("GoodLife"), alleges and states:

INTRODUCTION

1. This is an action at law and in equity for trademark infringement, unfair competition, and deceptive trade practices arising under the Trademark Act of 1946, 15 U.S.C. §§ 1051 et seq. (2004) (the "Lanham Act"), and the common law.

2. GoodLife is manufacturing, offering for sale and selling beer utilizing confusingly similar imitations of The Shed's distinctive registered trademark. GoodLife's beer is not manufactured by The Shed; nor is GoodLife connected with, affiliated with, or authorized by The Shed in any way. GoodLife's products are likely to cause confusion and to deceive consumers and the public regarding their source, and diminishes the value of The Shed's well-known valuable trademark.

PARTIES AND JURISDICTION

3. Otter Creek Brewing Company LLC is a limited liability company duly formed and existing under the laws of the State of Vermont and having its principal place of business in Vermont. Otter Creek Brewing Company LLC does business pertinent to this Complaint under the registered trade name “The Shed Brewery.”

4. GoodLife is a limited liability company formed and existing under the laws of the State of Oregon and having a principal place of business at 70 SW Century Dr., Bend, Oregon 97702.

5. GoodLife does business pertinent to this Complaint under the trade name GoodLife Brewing Company.

6. This Court has jurisdiction of the subject matter pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1332 and 1338(a) and (b), and supplemental jurisdiction pursuant to 28 U.S.C. § 1367, in that it arises under the trademark laws of the United States and the law of unfair competition and is brought pursuant to Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a) and (c), and the common law of trademark infringement, unfair competition and deceptive trade practices.

7. This Court has personal jurisdiction over GoodLife in that GoodLife conducts business in the State of Vermont by placing goods, including the products at issue in this action, in the stream of commerce with knowledge that they will be sold in Vermont and because GoodLife has engaged in acts which have caused damage to The Shed in Vermont.

8. GoodLife’s products at issue in this case have been shipped to and sold in Vermont, and have been promoted as having been consumed in Vermont.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

ALLEGATIONS COMMON TO ALL COUNTS

10. For a quarter of a century, The Shed has been a leader in the competitive business of craft brewing and has been making and selling high-quality beers and other products.

The Shed Trademarks

11. The Shed adopted the word “shed” as a distinctive brand name and trademark for its beer and ale. The Shed, through its predecessors, has used the SHED brand name for more than two decades to identify its beers and ales, and distinguish them from the products of other brewers.

12. The Shed products are well known and enjoy a reputation for high quality, which is symbolized by the SHED brand name.

13. The Shed expends and has expended a substantial amount of money using, advancing, promoting and advertising the SHED name on beer and other products. As a result of these expenditures and the reputation of The Shed’s products, the SHED brand name has attained substantial goodwill in the marketplace.

14. As a result of The Shed’s substantial sales, advertising, promotion and publicity, and through favorable industry acceptance and recognition, the SHED brand has become an asset of incalculable value as a symbol of The Shed, its quality products and goodwill.

15. The Shed was awarded and is the owner of U.S. Federal Trademark Registration No. 4,614,003 for the trademark SHED, covering beer and ale. A copy of the Certificate of Registration for this trademark is attached as Exhibit A.

16. The Shed was awarded and is the owner of U.S. Federal Trademark Registration No. 4,194,407 for the trademark THE SHED, covering beer and ale. A copy of the Certificate of Registration for this trademark is attached as Exhibit B.

17. The Shed's aforesaid trademark registrations are valid, subsisting and remain in full force and effect. Said registrations establish The Shed's exclusive rights to use the registered marks in connection with beer and ale.

GoodLife Brewing and its Infringing Activities

18. Upon information and belief, GoodLife was launched publicly in 2011 and manufactures and markets beer and ale.

19. Sometime in 2016 GoodLife introduced to the market beer products that it has sold under the trademarks "SHED" and/or "BREW SHED," which prominently feature the name SHED on their label as shown below:



20. The Shed has no connection or affiliation with GoodLife, and has not consented to or authorized any aspect of GoodLife's ale.

21. GoodLife's SHED and/or BREW SHED name were adopted and used with at least constructive knowledge of The Shed's registered trademarks.

22. GoodLife thereby uses in commerce a reproduction, counterfeit, copy, or colorable imitation of The Shed's registered marks without the consent of The Shed.

23. GoodLife's use of "SHED" in connection with its ale products is likely to cause confusion and mistake and to deceive consumers. GoodLife's infringement will create the false and misleading impression that GoodLife's products are manufactured by The Shed, or are affiliated, connected, or associated with The Shed or its beers, or have the sponsorship, endorsement or approval of The Shed.

24. By the acts complained of in this action, GoodLife has infringed The Shed's trademark, engaged in unfair and deceptive practices, and traded on The Shed's goodwill and reputation, to the irreparable injury and damage of The Shed.

25. The Shed has no adequate remedy at law.

26. By reason of GoodLife's acts herein alleged, GoodLife has been unjustly enriched, and The Shed is entitled to an accounting for all of GoodLife's profits derived from infringing sales.

27. By reason of GoodLife's acts herein alleged, The Shed has suffered and is likely to suffer substantial actual damages for injury to its goodwill and reputation and injury to its relationships with its customers.

COUNT I (Federal Trademark Infringement)

28. The Shed realleges and incorporates herein by reference paragraphs 1 through 34 of this Complaint.

29. GoodLife has used trademarks identical to or confusingly similar with The Shed's federally registered marks in violation of 15 U.S.C. § 1114, and GoodLife's activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception

of members of the trade and public and, additionally, injury to The Shed's goodwill and reputation as symbolized by its federally registered trademarks, for which The Shed has no adequate remedy at law.

30. GoodLife's actions demonstrate an intentional and willful intent to trade on the goodwill associated with The Shed's federally registered marks, all to The Shed's great and irreparable injury.

31. GoodLife's use of "SHED" in connection with beer and ale infringes The Shed's exclusive rights in its federally registered trademark in violation of 15 U.S.C. § 1114(1).

32. GoodLife has caused and is likely to continue causing substantial injury to the public and to The Shed, and The Shed is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

33. By reason of GoodLife's acts herein alleged, The Shed is entitled to recover GoodLife's profits or such sum as the Court shall find to be just, damages sustained by The Shed, and the costs of this action, as well as a sum in excess of The Shed's actual damages not exceeding three times such amount, and attorneys' fees pursuant to 15 U.S.C. § 1117.

COUNT II (Federal False Designation of Origin and Unfair Competition)

34. The Shed realleges and incorporates herein by reference paragraphs 1 through ___ of this Complaint.

35. GoodLife's use of SHED in commerce constitutes a false designation of origin, false description, and false representation that GoodLife and its ale products are sponsored by, authorized by, or affiliated with The Shed. GoodLife's acts are calculated and likely to cause confusion or mistake and deceive consumers as to the true origin, source, sponsorship or affiliation of GoodLife's products, in violation of 15 U.S.C. § 1125(a).

36. Defendant's use of use of "SHED", on or in connection with its beer products, and on the container for such products, constitutes use in commerce of a word, term, name, symbol, or device, and a false designation of origin, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of GoodLife with The Shed, or as to the origin, sponsorship, or approval of GoodLife's products and commercial activities; all to the damage or likely damage of The Shed

37. GoodLife's use of "SHED" is likely to cause confusion, deception, and mistake by creating the false and misleading impression that GoodLife's goods are manufactured or distributed by The Shed, or are affiliated, connected, or associated with The Shed, or have the sponsorship, endorsement, or approval of The Shed.

38. Defendant's false representations, false descriptions, and false designations of origin have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the public and, additionally, injury to The Shed's goodwill and reputation as symbolized by the name SHED, for which The Shed has no adequate remedy at law.

39. Defendant's actions demonstrate a willful intent to trade on the goodwill associated with SHED brand, all to the great and irreparable injury of The Shed.

40. GoodLife has caused and is likely to continue causing substantial injury to the public and to The Shed, and The Shed is entitled to preliminary and permanent injunctive relief under 15 U.S.C. § 1116.

41. By reason of GoodLife's acts herein alleged, The Shed is entitled to recover GoodLife's profits or such sum as the Court shall find to be just, damages sustained by The Shed, and the costs of this action, as well as a sum in excess of The Shed's actual damages not exceeding three times such amount, and attorneys' fees pursuant to 15 U.S.C. § 1117.

COUNT III (Common Law Unfair Competition)

42. The Shed realleges and incorporates herein by reference paragraphs 1 through 52 of this Complaint.

43. Upon information and belief, GoodLife has sold, promoted, and offered for sale its products using SHED in violation of and with knowledge of The Shed's rights to the SHED name, for the purpose of trading upon The Shed's goodwill and reputation and the passing off of GoodLife's ale product as that of The Shed.

44. GoodLife's acts constitute improper and unfair competition.

45. By reason of GoodLife's acts herein alleged, The Shed is entitled to recover its damages attributable to GoodLife's unfair competition.

COUNT IV (Common Law Trademark Infringement)

46. The Shed realleges and incorporates herein by reference paragraphs 1 through 45 of this Complaint.

47. GoodLife's use of SHED in connection with its beer product constitutes infringement of The Shed's common law rights in the SHED brand, and has created and/or will create a likelihood of confusion to the irreparable injury of The Shed unless restrained by this Court. Plaintiff has no adequate remedy at law for this injury.

48. Upon information and belief, GoodLife acted with knowledge of The Shed's use of and statutory rights in the well-known SHED brand and without regard to the likelihood of confusion of the public created by GoodLife's activities.

49. GoodLife's actions demonstrate an intentional and willful intent to trade on the goodwill associated with The Shed's well-known brand to the great and irreparable injury of The Shed.

50. By reason of GoodLife's acts herein alleged, The Shed, as a result of Defendant's acts, has been damaged in an amount not as yet determined or ascertainable, and Plaintiff is entitled to injunctive relief, to an accounting of GoodLife's profits, to damages, and to costs.

PRAYER FOR RELIEF

WHEREFORE, The Shed is entitled to and demands:

1. GoodLife and all of its agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by, through, or under authority from GoodLife, or in concert or participation with GoodLife, and each of them, be enjoined preliminarily and permanently, from:
 - a. using to identify beer or ale the word "SHED" or the phrases "THE SHED" or "BREW SHED", or any other copy, reproduction, or colorable imitation or simulation thereof;
 - b. using any trademark, trade dress, service mark, name, logo, design or source designation of any kind on or in connection with GoodLife's goods or services that is a copy, reproduction, colorable imitation, or simulation of, or confusingly similar to the trademarks, service marks, names, or logos of The Shed;
 - c. using any trademark, trade dress, service mark, name, logo, design or source designation of any kind on or in connection with GoodLife's goods or services that is likely to cause public misunderstanding that such goods or services are produced

or provided by The Shed, are sponsored or authorized by The Shed, or are in any way connected or related to The Shed; and

- d. passing off, palming off, or assisting in passing off or palming off, GoodLife's goods or services as those of The Shed, or otherwise continuing any and all acts of unfair competition as alleged in this Complaint.

2. GoodLife be ordered to recall all products bearing the SHED trademark or any confusingly similar imitation of this trademark, which have been shipped by GoodLife or under its authority, to any customer, including but not limited to, any wholesaler, distributor, retailer, consignor, or marketer, and also to deliver to each customer a copy of this Court's order as it relates to said injunctive relief against GoodLife;

3. GoodLife be ordered to deliver up for impoundment and for destruction all cans, bags, boxes, labels, tags, signs, packages, receptacles, advertising, promotional material or other materials in the possession, custody, or under the control of GoodLife that are found to infringe any of The Shed's trademarks or that otherwise unfairly compete with The Shed and its products;

4. GoodLife be compelled to account to The Shed for any and all profits derived by GoodLife from the sale or distribution of infringing goods as described in this Complaint, including prejudgment interest thereon;

5. The Shed be awarded all damages caused by the acts forming the basis of this Complaint, together with prejudgment interest thereon and that the damages award be trebled and the award of GoodLife's profits be enhanced as provided for by 15 U.S.C. § 1117;

6. GoodLife be required to pay to The Shed the costs of this action and The Shed's reasonable attorneys' fees pursuant to 15 U.S.C. § 1117; and

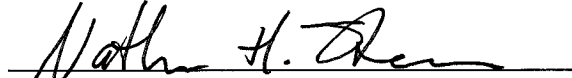
7. The Shed be awarded other and further relief as the Court may deem just.

JURY TRIAL DEMAND

The Shed demands trial by jury on all claims and issues triable by jury in this action.

Dated this 16th day of May, 2016.

Respectfully submitted,
Otter Creek Brewing Company
d/b/a The Shed Brewing Company,
By its Attorneys,



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