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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

TELEBRANDS CORP.,)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	ECF Case
MARTFIVE, LLC AND CHARLES M. HENGEL,)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	
)	
)	
_____)	

COMPLAINT

Plaintiff, Telebrands Corp. (“Telebrands”), by its counsel, for its Complaint against Defendants martFIVE, LLC (“martFIVE”) and Charles M. Hengel (“Hengel”) states as follows:

INTRODUCTION

This is an action for a declaratory judgment regarding trademark, trade dress, copyright and patent rights allegedly owned by Defendants which purport to cover Defendant's Stuffies® product and Hurrycane® product. In particular, Telebrands is seeking a declaratory judgment that its POCKET PALS product and TRUSTY CANE product do not infringe any trademark, trade dress, copyright or patent rights owned by Defendants. Telebrands is also seeking a declaratory judgment that the claim of U.S. Design Patent No. D681,744 is invalid for failing to comply with the requirements of 35 U.S.C. §§ 101, 102, 103 and/or 112.

NATURE OF THE ACTION

1. Telebrands seeks a declaratory judgment that a declaratory judgment that its POCKET PALS product and TRUSTY CANE product do not infringe any trademark, trade dress, copyright or patent rights owned by Defendants.
2. Telebrands also seeks a declaratory judgment that the claim of U.S. Design Patent No. D681,744 is invalid.

THE PARTIES

3. Telebrands is a New Jersey corporation with its headquarters located at 79 Two Bridges Road, Fairfield, New Jersey 07004, in this Judicial District.
4. On information and belief, Defendant martFIVE, LLC is a limited liability company organized and existing under the laws of the State of Minnesota, and having a place of business at 110 Cheshire Lane, Suite 200, Minneapolis, Minnesota 55305. On information and

belief, martFIVE conducts business throughout the United States, including in the State of New Jersey.

5. On information and belief, Defendant Charles M. Hengel is an individual and a principal of Defendant martFIVE, LLC, and resides at 3005 Maplewood Road, Wayzata, MN 55391-2642. On information and belief, Hengel conducts business throughout the United States, including in the State of New Jersey, through martFIVE, and has actively and consciously directed martFIVE's actions described herein.

6. On information and belief, each of Defendants martFIVE and Hengel was, relative to the acts herein alleged, the agent of the other, and each was acting within the scope, purpose, and authority of that agency and with the knowledge, permission and consent of the other.

7. On information and belief, there has existed such a unity of interest between martFIVE and Hengel that any individuality and separateness of martFIVE and Hengel has ceased, such that each is the agent and alter-ego of the other in the acts hereinafter alleged.

8. On information and belief, Defendants' actions and statements described in this Complaint were made at each other's direction and/or in concert or participation with each other.

9. On information and belief, Defendants' actions and statements described in this Complaint were made as agents of one another, and for each other's benefit.

JURISDICTION AND VENUE

10. This Court has federal question jurisdiction because this action arises under the Trademark Laws of the United States, 15 U.S.C. §1114 *et seq.*, the Patent Laws of the United

States, 35 U.S.C. § 1 *et seq.*, the Copyright Laws of the United States, 17 U.S.C. § 501 *et seq.*, and under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

11. Defendants are present in the State of New Jersey, and this Court has personal jurisdiction over them, at a minimum, because they sell and/or offer to sell merchandise, including the Stuffies® product and Hurrycane® product, to customers in New Jersey and/or have licensed others to sell and/or offer to sell merchandise, including the Stuffies® product and Hurrycane® product, to customers in New Jersey.

12. This Court also has personal jurisdiction over Defendants because on information and belief, Defendants have sufficient contacts with this Judicial District and/or Defendants regularly conduct business within this Judicial District. Upon information and belief, Defendants directly and/or through their agents distribute, offer for sale or license, sell or license and/or advertise their products and services within the State of New Jersey and this Judicial District, and/or have purposefully availed themselves of the privileges and benefits of the laws of the State of New Jersey.

13. In addition, Defendants have sent a cease and desist letter dated May 20, 2013 to Telebrands in the State of New Jersey, and Hengel has made at least one telephone call to Telebrands' President, in the State of New Jersey, concerning the subject matter of this action. These acts, singularly and together, have created a substantial controversy between the parties of sufficient immediacy and reality to warrant declaratory relief.

14. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and (c).

FACTS

15. Telebrands is a direct marketing company and is engaged in the business of marketing and selling a wide variety of consumer products in this Judicial District and elsewhere through direct response advertising, catalogue, mail order, and Internet sales, and through national retail stores. Telebrands is a recognized leader in the direct response television marketing industry.

16. For over twenty-five years, Telebrands has been a leading developer and marketer of consumer products. Telebrands is widely known through the retail industry for the manner in which it effectively drives retail sells through its nationwide advertising programs. For many years, Telebrands has cultivated relationships with a wide variety of wholesalers, marketers, distributors, sellers, and retailers including, for example, large retail chain stores, catalogues, and Internet sales websites.

17. One product that Telebrands is currently test-marketing nationwide through direct response advertising is a plush toy marketed under the trademark POCKET PALS. Telebrands plans to sell the POCKET PALS product through direct response marketing, national retail outlets and mail-order and catalogue sales.

18. Another product that Telebrands is currently test-marketing nationwide through direct response advertising is a collapsible cane marketed under the trademark TRUSTY CANE. Telebrands plans to sell the TRUSTY CANE product through direct response marketing, national retail outlets and mail-order and catalogue sales.

19. United States Design Patent No. D681,744, entitled “Plush Toy,” issued May 7, 2013 (“the D744 patent”). A copy of the D744 patent is attached as Exhibit A.

20. Hengel is the first named inventor of the D744 patent.

21. On information and belief, martFIVE is the assignee of all right, title and interest in the D744 patent.

22. Defendants market and sell a plush toy under the trademark Stuffies®.

23. Defendants market and sell a collapsible cane under the trademark Hurrycane®.

24. On information and belief, martFIVE is the owner of U.S. Trademark Registration No. 4,286,271 for the mark STUFFIES, which was registered on the Principal Register of the U.S. Patent and Trademark Office on February 5, 2013. A copy of this registration certificate is attached as Exhibit B.

25. On information and belief, martFIVE is the owner of U.S. Trademark Registration No. 4,286,272 for the mark IT'S WHAT'S INSIDE THAT COUNTS!, which was registered on the Principal Register of the U.S. Patent and Trademark Office on February 5, 2013. A copy of this registration certificate is attached as Exhibit C.

26. On information and belief, martFIVE is the owner of U.S. Trademark Registration No. 4,243,464 for the mark HURRYCANE, which was registered on the Principal Register of the U.S. Patent and Trademark Office on November 13, 2012. A copy of this registration certificate is attached as Exhibit D.

27. On information and belief, martFIVE is the owner of U.S. Trademark Registration No. 4,286,043 for the mark THEHURRYCANE.COM, which was registered on the Principal Register of the U.S. Patent and Trademark Office on February 5, 2013. A copy of this registration certificate is attached as Exhibit E.

28. On information and belief, martFIVE is the owner of U.S. Trademark Registration No. 4,191,792 for the mark HURRYCANE THE ALL-TERRAIN CANE & Design, which was registered on the Principal Register of the U.S. Patent and Trademark Office on August 14, 2012. A copy of this registration certificate is attached as Exhibit F.

29. On information and belief, Defendants own U.S. Copyright Registrations which, according to Defendants, cover “several variations of its Stuffies® line of products” and its “Stuffies® advertising campaigns, including its video commercials, broadcast on television and internet outlets, as well as its webpage content” (hereafter “Stuffies Copyrights”).

30. On information and belief, Defendants own U.S. Copyright Registrations which, according to Defendants, cover its “HURRYCANE® advertising campaigns, including video commercials and website content” (hereafter “Hurricane Copyrights”).

31. On information and belief, Defendants claim to own trade dress rights in their Stuffies® product and/or Hurricane® product and/or marketing campaigns relating to such products.

32. On or about May 20, 2013, Defendants’ attorneys sent a cease and desist letter, in which Defendants alleged that Telebrands’ “products and marketing campaigns promoting them are infringements of our client’s copyright, trademark, trade dress and patent protected products.” Attached as Exhibit G is a copy of the cease and desist letter (without exhibits).

33. There is a substantial controversy between Telebrands and Defendants.

34. The controversy is sufficiently immediate and real, and Defendants have threatened “to commence immediate legal action against” Telebrands, if Telebrands does not comply with Defendants’ cease and desist demands.

35. Telebrands and Defendants have adverse legal interests.

36. As a result, there is a justiciable controversy warranting declaratory relief.

COUNT ONE

(Declaratory Judgment of Invalidity of U.S. Patent No. D681,744)

37. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

38. The claims of U.S. Patent No. D681,744 are invalid for failing to comply with the requirements of 35 U.S.C. §§ 101, 102, 103 and/or 112.

39. Telebrands has no adequate remedy at law.

40. Because of Defendants' statement that Telebrands allegedly has infringed the D744 patent, there is an actual and justiciable controversy between Telebrands and Defendants regarding the D744 patent.

COUNT TWO

(Declaratory Judgment of Noninfringement of U.S. Patent No. D681,744)

41. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

42. This cause of action arises under 35 U.S.C. § 271 *et seq.*

43. Telebrands has not infringed, and is not infringing, any valid claim of U.S. Patent No. D681,744.

44. Telebrands has not induced, and is not inducing, infringement of any valid claim of the D744 patent.

45. Telebrands has not contributorily infringed, and is not contributorily infringing, any valid claim of the D744 patent.

46. Telebrands has no adequate remedy at law.

47. Because of Defendants' statement that Telebrands allegedly has infringed the D744 patent, there is an actual and justiciable controversy between Telebrands and Defendants regarding the D744 patent.

COUNT THREE

(Declaratory Judgment of Noninfringement of U.S. Trademark Registration No. 4,286,271)

48. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

49. This cause of action arises under 15 U.S.C. § 1114 *et seq.*

50. Telebrands has not infringed, and is not infringing, U.S. Trademark Registration No. 4,286,271.

51. Telebrands has no adequate remedy at law.

52. Because of Defendants' statement that Telebrands allegedly has infringed Defendants' trademarks, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing the '271 Trademark Registration.

COUNT FOUR

(Declaratory Judgment of Noninfringement of U.S. Trademark Registration No. 4,286,272)

53. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

54. This cause of action arises under 15 U.S.C. § 1114 *et seq.*

55. Telebrands has not infringed, and is not infringing, U.S. Trademark Registration No. 4,286,272.

56. Telebrands has no adequate remedy at law.

57. Because of Defendants' statement that Telebrands allegedly has infringed Defendants' trademarks, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing the '272 Trademark Registration.

COUNT FIVE

(Declaratory Judgment of Noninfringement of U.S. Trademark Registration No. 4,243,464)

58. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

59. This cause of action arises under 15 U.S.C. § 1114 *et seq.*

60. Telebrands has not infringed, and is not infringing, U.S. Trademark Registration No. 4,243,464.

61. Telebrands has no adequate remedy at law.

62. Because of Defendants' statement that Telebrands allegedly has infringed Defendants' trademarks, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing the '464 Trademark Registration.

COUNT SIX

(Declaratory Judgment of Noninfringement of U.S. Trademark Registration No. 4,286,043)

63. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

64. This cause of action arises under 15 U.S.C. § 1114 *et seq.*

65. Telebrands has not infringed, and is not infringing, U.S. Trademark Registration No. 4,286,043.

66. Telebrands has no adequate remedy at law.

67. Because of Defendants' statement that Telebrands allegedly has infringed Defendants' trademarks, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing the '043 Trademark Registration.

COUNT SEVEN

(Declaratory Judgment of Noninfringement of U.S. Trademark Registration No. 4,191,792)

68. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

69. This cause of action arises under 15 U.S.C. § 1114 *et seq.*

70. Telebrands has not infringed, and is not infringing, U.S. Trademark Registration No. 4,191,792.

71. Telebrands has no adequate remedy at law.

72. Because of Defendants' statement that Telebrands allegedly has infringed Defendants' trademarks, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing the '792 Trademark Registration.

COUNT EIGHT

(Declaratory Judgment of Noninfringement of U.S. Copyright Registrations for Stuffies)

73. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

74. This cause of action arises under 17 U.S.C. § 501 *et seq.*

75. Telebrands has not infringed, and is not infringing, any U.S. Copyright Registration owned by Defendants which relates to the Stuffies® product or to the marketing campaign for that product.

76. Telebrands has no adequate remedy at law.

77. Because of Defendants' statement that Telebrands allegedly has infringed Defendants' copyrights, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing the Stuffies Copyrights.

COUNT NINE

(Declaratory Judgment of Noninfringement of U.S. Copyright Registrations for Hurrycane)

78. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

79. This cause of action arises under 17 U.S.C. § 501 *et seq.*

80. Telebrands has not infringed, and is not infringing, any U.S. Copyright Registration owned by Defendants which relates to the Hurrycane® product or to the marketing campaign for that product.

81. Telebrands has no adequate remedy at law.

82. Because of Defendants' statement that Telebrands allegedly has infringed Defendants' copyrights, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing the Hurrycane Copyrights.

COUNT TEN
(Declaratory Judgment of Invalidity and Noninfringement of Stuffies Trade Dress)

83. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

84. This cause of action arises under 15 U.S.C. § 1125 *et seq.*

85. Defendants do not own any valid trade dress rights in the Stuffies® product or the marketing campaign for such product.

86. Any alleged trade dress in the Stuffies® product or the marketing campaign for such product is functional.

87. Telebrands has not infringed, and is not infringing, any trade dress rights owned by Defendants which relate to the Stuffies® product or to the marketing campaign for that product.

88. There is no likelihood of confusion between Defendants' Stuffies® product and Telebrands' POCKET PALS product, or between the marketing campaigns for such products.

89. Telebrands has no adequate remedy at law.

90. Because of Defendants' statement that Telebrands allegedly has infringed Defendants' trade dress rights, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing any trade dress rights in the Stuffies® product or marketing campaign.

COUNT ELEVEN

(Declaratory Judgment of Invalidity and Noninfringement of Hurrycane Trade Dress)

91. Telebrands repeats and realleges all of the factual allegations made above and incorporates them herein by reference.

92. This cause of action arises under 15 U.S.C. § 1125 *et seq.*

93. Defendants do not own any valid trade dress rights in the Hurrycane® product or the marketing campaign for such product.

94. Any alleged trade dress in the Hurrycane® product or the marketing campaign for such product is functional.

95. Telebrands has not infringed, and is not infringing, any trade dress rights owned by Defendants which relate to the Hurrycane® product or to the marketing campaign for that product.

96. There is no likelihood of confusion between Defendants' Hurrycane® product and Telebrands' TRUSTY CANE product, or between the marketing campaigns for such products.

97. Telebrands has no adequate remedy at law.

98. Because of Defendants' statement that Telebrands allegedly has infringed Defendants' trade dress rights, there is an actual and justiciable controversy between Telebrands and Defendants as to whether Telebrands is infringing any trade dress rights in the Hurrycane® product or marketing campaign.

PRAYER FOR RELIEF

WHEREFORE, Telebrands respectfully requests the following relief:

- (a) For a declaration that the D744 patent is invalid;
- (b) For a declaration that Telebrands does not infringe any valid claim of the D744 patent;
- (c) For a declaration that Telebrands does not infringe U.S. Trademark Registration Nos. 4,286,271; 4,286,272; 4,286,043; 4,243,464; or 4,191,792;
- (d) For a declaration that Defendants own no valid trade dress in the Stuffies® product or marketing campaign;
- (e) For a declaration that Telebrands has not infringed any valid trade dress in the Stuffies® product or marketing campaign;
- (f) For a declaration that Defendants own no valid trade dress in the Hurrycane® product or marketing campaign;
- (g) For a declaration that Telebrands has not infringes any valid trade dress in the Hurrycane® product or marketing campaign;
- (h) For a declaration that this is an exceptional case and for an award of its attorneys' fees and costs, pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1117(a), 17 U.S.C. § 505, or any other applicable statute or law; and
- (i) For an award of such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Telebrands demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: May 29, 2013

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