

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SCRUB DADDY, INC., :
 :
Plaintiff, : Civ. Action No. _____
 :
v. : JUDGE _____
 :
DEBRA CIKOVIC, d/b/a : JURY TRIAL DEMANDED
Belleza Jewelry, :
Defendant. :

COMPLAINT

Plaintiff, for its complaint against Defendant, alleges and avers as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Scrub Daddy, Inc., (hereinafter "Scrub Daddy"), is a Pennsylvania Corporation having a place of business at Suites 1-4, 777 Henderson Boulevard, Folcroft, Pennsylvania 19032.
2. Defendant, Debra Cikovic (hereinafter "Cikovic"), is an individual residing at 2445 Poppywood Road, Knoxville, Tennessee 37932.
3. This Court has jurisdiction over Count I of this complaint under 28 U.S.C. § 1338(a) in that the cause of action arises under the Patent Laws of the United States and, particularly, 35 U.S.C. §§ 271 and 289. This Court has jurisdiction over Counts II, III and IV under 28 U.S.C. § 1338(a) and 15 U.S.C. § 1121 in that the causes of action stated therein arise under the Trademark Laws of the United States and, particularly, 15 U.S.C. §§ 1114 and 1125(a). This Court has jurisdiction over the remaining counts herein under the provisions of 28 U.S.C. §

1338(b) in that the claims set forth therein are joined with substantial and related claims under the Patent Laws and under the Trademark Laws of the United States. Jurisdiction over the remaining counts is also proper under 28 U.S.C. § 1367.

4. Venue is proper in this judicial district under 28 U.S.C. § 1400 and under 28 U.S.C. § 1391.

COUNT I - DESIGN PATENT INFRINGEMENT

5. Scrub Daddy is the owner of U.S. Design Patent No. D 690,892 entitled “Dishwashing and Scrubbing Tool,” which duly and legally issued on October 1, 2013 (hereinafter the “Patent”). The Patent is in full force and effect and a copy is attached hereto as Exhibit 1.

6. In contravention to 35 U.S.C. §§ 271 and 289, Cikovic has willfully and deliberately infringed the Patent by making, using, selling, and/or offering to sell, or causing others to make, use, sell, and/or offer to sell products embodying the invention claimed in the Patent. A photograph (taken from her website) of one of Cikovic’s infringing products is attached hereto as Exhibit 2.

7. Scrub Daddy has enjoyed commercial success throughout the United States for its sponges made in accordance with the Patent and this enjoyment is being damaged and will continue to be damaged by the infringing activities of Cikovic complained of herein.

COUNT II – INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARK

8. Scrub Daddy repeats the allegations of Paragraphs 1-7 above as if fully set forth herein.

9. In order to identify its sponges and distinguish them from products of others, in 2007 Scrub Daddy adopted the arbitrary and fanciful trademark SCRUB DADDY.

10. Scrub Daddy has sold millions of SCRUB DADDY sponges over the years and has had extensive national exposure including being a successful contestant on the television show *Shark Tank*.

11. SCRUB DADDY sponges are sold in more than 6,000 retail stores throughout the United States.

12. As a result of Scrub Daddy's extensive sales and promotion of its SCRUB DADDY sponges, the trademark SCRUB DADDY has acquired secondary meaning and has become distinctive of Scrub Daddy's sponges.

13. On September 6, 2011, the United States Patent and Trademark Office registered the trademark SCRUB DADDY to Scrub Daddy. A copy of the Certificate of Registration No. 4,022,758 is attached hereto as Exhibit 3.

14. Long after Plaintiff's adoption and use of the SCRUB DADDY trademark, Cikovic began selling almost identical sponges under the confusingly similar trademark SMILE DADDY. Exhibit 2 shows Cikovic promoting her product utilizing the SMILE DADDY trademark.

15. Cikovic's use of the trademark SMILE DADDY is without permission or authority of Scrub Daddy and is likely to cause confusion, to cause mistake or to deceive and is, therefore, an infringement of Scrub Daddy's trademark rights under 15 U.S.C. § 1114.

16. On information and belief, all acts done by Cikovic were done willfully with the intent to infringe upon Scrub Daddy's registered mark.

COUNT III - FEDERAL UNFAIR COMPETITION - TRADEMARK

17. Scrub Daddy repeats the allegations of Paragraphs 1-16 above as if fully set forth herein.

18. In order to further identify its products and distinguish them from products of others, Scrub Daddy adopted the arbitrary and fanciful trademark FLEXTURE in June 2011 and has placed that trademark on all packaging for its products since that date. A sample of Scrub Daddy's packaging for its sponges showing the use of the trademark FLEXTURE is attached hereto as Exhibit 4.

19. As a result of Scrub Daddy's long use of the FLEXTURE trademark and the extensive sales of sponges in packages bearing that mark, the trademark FLEXTURE has acquired secondary meaning and has become distinctive of Scrub Daddy's sponges.

20. Long after Plaintiff's adoption and use of the FLEXTURE trademark, Cikovic began selling almost identical sponges promoting the identical trademark. A copy of a portion of Cikovic's website for her product and wherein the mark FLEXTURE is shown is attached hereto as Exhibit 5.

21. Cikovic's adoption and use of Scrub Daddy's trademark FLEXTURE is without permission or authority of Scrub Daddy and is likely to cause confusion or mistake or to mislead the relevant public into believing that her goods originate with Scrub Daddy or that

Cikovic is somehow connected to or related to Scrub Daddy and, therefore, constitutes a false description and false representation in violation of 15 U.S.C. §1125(a).

22. On information and belief, all acts done by Cikovic were done willfully with the intent to infringe upon Scrub Daddy's rights in violation of 15 U.S.C. §1125(a).

COUNT IV - FEDERAL UNFAIR COMPETITION – PRODUCT CONFIGURATION

23. Scrub Daddy repeats the allegations of Paragraphs 1-22 above as if fully set forth herein.

24. All of Scrub Daddy's sponges have the same appearance as shown in Exhibit 6 attached hereto. The product configuration is also printed on all packaging for the sponges and the appearance of the sponges is prominently displayed in all promotional and advertising materials.

25. As a result of Scrub Daddy's extensive sales of its sponges and the promotion and advertising of the same, the appearance of its sponge has acquired secondary meaning and has become distinctive of Scrub Daddy's sponges.

26. Long after Plaintiff's adoption and use of the specific appearance for its sponges, Cikovic began selling almost identically appearing sponges. Cikovic's infringing sponges are shown in Exhibit 2.

27. Cikovic's adoption and use of Scrub Daddy's product configuration of the sponges is without permission or authority of Scrub Daddy and is likely to cause confusion or mistake or to mislead the relevant public into believing that her goods originate with Scrub Daddy or that Cikovic is somehow connected to or related to Scrub Daddy and, therefore, constitutes a false description and false representation in violation of 15 U.S.C. §1125(a).

28. On information and belief, all acts done by Cikovic were done willfully with the intent to infringe upon Scrub Daddy's rights in violation of 15 U.S.C. §1125(a).

COUNT V – COMMON LAW UNFAIR COMPETITION and TENNESSEE CONSUMER PROTECTION ACT, TENN. CODE ANN. § 47-18-101, et seq.

29. Scrub Daddy repeats the allegations of Paragraphs 1-28 above as if fully set forth herein.

30. Cikovic has committed unfair and deceptive acts and practices affecting the conduct of trade and commerce in violation of the common law of the state of Tennessee and the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-104, by falsely passing off her infringing products as those of Scrub Daddy, causing a likelihood of confusion as to the source, sponsorship, or approval of her infringing products, and causing a likelihood of confusion as to affiliation, connection, or association with Scrub Daddy.

31. Cikovic's unfair and deceptive trade practices have proximately caused Scrub Daddy irreparable harm and injury and, unless she is enjoined by this Court, will continue to cause Scrub Daddy irreparable harm and injury. Considering the balance of hardships between the parties, a remedy in equity is warranted. And the public interest would be served by an injunction as an injunction would protect the public from Cikovic's deceptive conduct.

32. Cikovic's unfair and deceptive trade practices have been willful and intentional. Therefore, Scrub Daddy is also entitled to recover damages for common law unfair competition, and treble damages, Cikovic's wrongful profits, costs and expenses, and attorney's fees pursuant to Tenn. Code Ann. § 47-18-109.

WHEREFORE, Scrub Daddy prays for judgment against Cikovic as follows:

A. That, pursuant to 35 U.S.C. § 283, preliminary and final injunctions be issued enjoining Cikovic, her officers, agents, servants, employees and all those persons in active concert or participation with any of them from further infringement of the Patent;

B. That, pursuant to 35 U.S.C. § 284, Cikovic account to Scrub Daddy for damages for all past infringement, including treble damages because of the willful nature of such infringement;

C. That, pursuant to 35 U.S.C. § 285, Scrub Daddy be awarded costs and attorney's fees incurred in connection with this action;

D. That, pursuant to 35 U.S.C. § 289, Cikovic account to Scrub Daddy for the total extent of Cikovic's profits resulting from Cikovic's past infringement;

E. That Cikovic, her agents, servants, employees and attorneys and all those persons in active concert or participation with her who receive actual notice hereof be enjoined pendente lite and thereafter from:

1. Distributing a sponge that resembles Scrub Daddy's sponge;
2. Utilizing the trademark SMILE DADDY or any mark that includes the term DADDY in connection with the sale of sponges or related products;
3. Utilizing the trademark FLEXTEXTURES or any mark confusingly similar thereto in connection with the sale of sponges or related products;

F. That Cikovic be required to account for and pay over to Scrub Daddy all gains, profits and advantages derived by Cikovic and, in addition, the damages sustained by Scrub Daddy as a result of Cikovic's infringement and unfair competition together with legal interest from the date of accrual thereof and that, because of the willful nature of such

infringement and unfair competition, and pursuant to 15 U.S.C. § 1117 and state law, the Court enter judgment for three times the amount of said damages.

G. That pursuant to 15 U.S.C. § 1117 and state law, Cikovic be required to pay Scrub Daddy the cost of this action and reasonable attorney's fees.

H. That Scrub Daddy have such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Scrub Daddy, Inc. demands trial by jury for all issues so triable.

Dated: February 10, 2014

Respectfully submitted,

DICKINSON WRIGHT PLLC

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