

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT CLARK, professionally known as)
ROBERT INDIANA; and SHEARBROOK)
(U.S.) LLC, a New York LLC,)
Plaintiff,)
v.) No.
THOMAS DE DONCKER, d/b/a THE CHICAGO)
ART AUCTION LLC)
Defendant.)
)

COMPLAINT

Plaintiffs, ROBERT CLARK, professionally known as ROBERT INDIANA (“Robert Indiana”) and SHEARBROOK (U.S.) LLC (“Shearbrook”) for their complaint against defendant THOMAS DE DONCKER (“De Doncker”), and THE CHICAGO ART AUCTION LLC (“Chicago Art Auction”), allege as follows:

NATURE OF THE ACTION

1. This is an action for violation of Robert Indiana’s right of attribution under the Visual Artist’s Rights Act, 17 USC §106A (“VARA”) and for false designation of origin under §43(a) of the Lanham Act, 15 U.S.C. §1125(a). The defendants De Doncker and The Chicago Art Auction are offering for sale at auction a sculpture purporting to be an authentic sculpture by the world-famous artist Robert Indiana. The sculpture being offered for auction, however, is a forgery and is not the authentic work of Robert Indiana. Plaintiffs seek damages and injunctive relief.

JURISDICTION AND VENUE

2. The court has jurisdiction of this action under 28 USC §1338(a), as it is an action arising under acts of Congress relating copyrights and trademarks. Jurisdiction is also appropriate under 28 USC §1331 (federal question jurisdiction).

3. Venue is proper in this district pursuant to 28 USC §1391 and §1400(a) because the defendants reside and can be found in this judicial district.

THE PARTIES

5. Robert Indiana is a well-known artist and sculptor currently residing in the state of Maine. Robert Indiana is the creator of one of the most famous and well-known images in the history of modern U.S. art. This sculpture is known as “LOVE”. A photograph of the LOVE sculpture is seen below:



6. Plaintiff Shearbrook is Robert Indiana's exclusive representative in the United States.

7. Defendant Thomas De Doncker, on information and belief, resides in Chicago, Illinois. De Doncker is the owner and founder of The Chicago Art Auction, located at 740 N. Ogden Avenue, Chicago, Illinois.

8. The Chicago Art Auction is an LLC organized and operating under the laws of the State of Illinois.

FACTUAL BACKGROUND

9. Robert Indiana is an American artist. He has created numerous famous works of art, including sculpture. He is generally recognized as one of the leading artists of the "Pop art" movement.

10. Robert Indiana's best known work is the LOVE sculpture, pictured above. It consists of the word "LOVE", arranged in a square with a tilted letter O.

11. Authentic, signed versions of the LOVE sculpture have been installed in various museums, public parks, and campuses in various places in the United States, including the Indianapolis Museum of Art, the New Orleans Museum of Art, LOVE Park in Philadelphia, Middlebury College Campus and University of Pennsylvania Campus among others. Authentic versions of the sculpture are created in limited editions, numbered and signed by the artist.

12. Outside the United States, authentic versions of Indiana's LOVE sculpture have been installed in Taiwan, Japan, Singapore, Spain, and Canada.

13. Defendants De Doncker and Chicago Art Auction are in the business of holding auctions for various items of fine art.

14. Defendants have announced that on December 9, 2007 they will present an auction of numerous pieces of fine art in Chicago, Illinois.

15. Among the pieces identified as being presented for sale at the auction is Lot 288, which purports to be a LOVE sculpture by Robert Indiana. A copy of the homepage of defendants' website showing Lot 288 is attached as Exhibit A.

16. A copy of the catalog entry for Lot 288 from Defendants' website for the items to be auctioned on December 9, 2007 by defendants is attached as Exhibit B.

17. The sculpture identified by Defendants as being a work of art by Robert Indiana is a forgery. It was not created by Indiana or Indiana's authorized fabricator, and it has never been authorized by Indiana or Shearbrook.

18. Robert Indiana's exclusive fabricator for any version of his LOVE sculpture is Milgo/Bufkin of Brooklyn, New York ("Milgo").

19. The sculpture being offered at auction by Defendants was not fabricated by Milgo and is not an authentic Robert Indiana sculpture.

20. The sculpture being offered at auction by Defendants bears a signature which is not the authorized signature of Robert Indiana.

21. The sculpture being offered at auction by Defendants bears the false marking, "1966-2000 R. Indiana 2/6".

22. The catalog for the auction contains the false statement that the sculpture offered at auction as Lot 288 is by Robert Indiana and was "conceived and executed in 2000; number two from an edition of six."

COUNT I

VISUAL ARTISTS' RIGHTS ACT

23. Robert Indiana is the author of the LOVE sculpture. That sculpture is a work of visual art under the Visual Artists Rights Act, 17 USC §106A, and 17 U.S.C. §101.

24. Under §106A(a)(1)(B) of VARA, the author of a work of visual art has the right to prevent the use of his or her name as the author of any work of visual art which he or she did not create. This is known as the right of attribution.

25. Robert Indiana did not create the work of visual art being offered by Defendants at auction as Lot 288.

26. Defendants' offering of Lot 288 for sale at auction as being the work of Robert Indiana is a violation of the artists' right of attribution under VARA.

27. As a result of the aforesaid acts by the Defendants, plaintiffs Robert Indiana and Shearbrook have suffered and will continue to suffer substantial damage and irreparable injury.

COUNT II

FALSE DESIGNATION OF ORIGIN UNDER §43(a) OF THE LANHAM ACT

28. Plaintiffs repeat and reallege paragraphs 1-27 as though fully set forth herein.

29. Defendants' offering for sale a forged version of Robert Indiana's LOVE sculpture constitutes a false designation of origin which is likely to deceive the public into believing that the sculpture offered by the Defendants as Lot 288 is a sculpture of Robert Indiana.

30. Defendants' acts have occurred in interstate commerce and have caused, and unless restrained by this court and will continue to cause, serious and irreparable injury to Robert Indiana and Shearbrook, for which there is no adequate remedy at law.

31. Defendants foregoing conduct constitutes a false designation of origin §43(a) of the Lanham Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Robert Indiana and Shearbrook (U.S.) LLC, pray that this Court enter a judgment and order:

1. That Defendants have violated 17 U.S.C. §106A and §43(a) of the Lanham Act;
2. That Defendants and their officers, directors, agents, employees, successors and assigns, as well as those in active concert or participation with them, be preliminarily and permanently enjoined and restrained from:
 - A. Infringement, or contributing to the infringement, of Robert Indiana's right of attribution under VARA;
 - B. Selling or offering for sale or auction the forged sculpture identified as Lot 288;
 - C. Doing any other act or thing likely to induce the mistaken belief that the sculpture identified as Lot 288 is in any way affiliated, connected, or associated with Robert Indiana;
3. That Defendants turn over to plaintiffs the item identified as Lot 288 for impoundment and destruction as provided in 17 U.S.C. § 503 and 15 U.S.C. § 1118.
4. That the plaintiffs be awarded monetary relief in an amount to be fixed by the Court;

5. That pursuant to 15 U.S.C. §1116(a), Defendant be directed to file with the Court and serve on Plaintiffs within thirty (30) days after issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

6. That, pursuant to 15 U.S.C. §1117(a) and 17 U.S.C. §505, plaintiffs be awarded their reasonable attorneys' fees; and

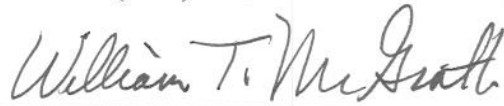
9. That the Court award such other and further relief as it deems just and appropriate.

Respectfully submitted,

ROBERT INDIANA and
SHEARBROOK (U.S.) LLC

Dated: December 6, 2007

By:



William T. McGrath
Davis McGrath LLC
125 South Wacker Drive
Suite 1700
Chicago, Illinois 60606
T: (312) 332-3033
F: (312) 332-6376

Attorneys for Plaintiffs