

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

RUBY TUESDAY DESIGNS LLC,)
 a Michigan Limited Liability Company,)
)
 Plaintiff,)
)
 v.)
)
 CAMELFLAGE LLC,)
 a Colorado Limited Liability Company,)
)
 Defendant.)
)
)
 _____)

Case No.:

Hon.

COMPLAINT AND JURY DEMAND

Plaintiff RUBY TUESDAY DESIGNS LLC (“Ruby Tuesday” or “Plaintiff”) for its Complaint against CAMELFLAGE LLC (“Camelflage” or “Defendant”) alleges:

NATURE OF THE ACTION

1. This is a civil action for damages and injunctive relief arising out of Defendant’s acts of trademark infringement, unfair competition, false designation of origin, passing off, dilution and unjust enrichment under state and/or common law as a result of Defendant’s wrongful acts, including willful infringement of Ruby Tuesday’s rights in the mark KAMELFLAGE (the “KAMELFLAGE Mark”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1332(a). The parties are citizens of

different states and, upon information and belief, the amount in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs. Jurisdiction over the state law claims is also appropriate under 28 U.S.C. § 1367(a) and principles of pendent jurisdiction.

3. This Court has personal jurisdiction over Defendant. Upon information and belief Defendant conducts business in the state of Michigan through, at least, its interactive website (www.camelflage.com) on which sales orders can be placed and on which the confusingly similar term “CAMELFLAGE” mark is used in association with the sale of goods. This www.camelflage.com website is accessible by Internet users throughout the country, including users in Michigan. Defendant has used Plaintiff’s KAMELFLAGE Mark without authorization or consent from Plaintiff, including in Michigan. Defendant’s actions are aimed, at least in part, at Michigan residents.

4. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b). Upon information and belief, a substantial part of the activity about which Plaintiff complains has taken place in this Judicial District, and the damages suffered by Plaintiff were suffered, at least in part, in this Judicial District.

THE PARTIES

5. Plaintiff Ruby Tuesday is a Michigan Limited Liability Company, with its principal place of business at 1560 Villa Road, Birmingham, Michigan 48009. Ruby Tuesday is the owner of various proprietary rights in and to the KAMELFLAGE Mark.

6. Upon information and belief, Defendant Camelflage is a Colorado Limited Liability Company, with its principal place of business at 13934 Fillmore Street, Thornton Colorado 80602.

GENERAL ALLEGATIONS

PLAINTIFF'S ACTIVITIES AND PROPRIETARY RIGHTS

7. Plaintiff has been and is now engaged in the selling of undergarments and undergarment inserts under the KAMELFLAGE Mark ("Plaintiff's Goods and Services"). Plaintiff's Goods and Services are used in, at least, retail stores. A website including a photograph of the KAMELFLAGE Mark used in connection with the sale of undergarments and undergarment inserts is attached as **Exhibit A**, a portion of which is reproduced below:



8. Plaintiff has also sold its Goods and Services through its website using the domain name www.kamelflage.com, which was registered by Plaintiff's Chief Financial Officer, Treger Strasberg, on February 17, 2009. This website, at all times relevant to this Complaint, has been used for and continues to be used for the advertising and sales of undergarments and undergarment inserts. A record of the domain name registration is attached as **Exhibit B**.

9. Since at least March of 2009, Plaintiff's KAMELFLAGE Mark has been widely advertised and offered in interstate commerce throughout the United States. Plaintiff's KAMELFLAGE Mark is used extensively in the United States in connection with the Plaintiff's Goods and Services and in various advertising and promotional media, including the Internet. An article in the New York Times dated March 31, 2009, referencing Plaintiff's attempt to persuade the Henri Bendel department store to sell undergarments using the KAMELFLAGE Mark in commerce is attached as **Exhibit C**.

10. As a result of the quality of Plaintiff's Goods and Services and the widespread promotion thereof under Plaintiff's KAMELFLAGE Mark, Plaintiff's Goods and Services have met with substantial commercial success and widespread consumer recognition. As a further result, Plaintiff's distinctive KAMELFLAGE Mark has become extensively known, with the KAMELFLAGE Mark having become a symbol of Plaintiff, its quality products and services, and its goodwill.

DEFENDANT'S WRONGFUL ACTS

11. Upon information and belief, Defendant knew of Plaintiff's Mark and its affiliation with Plaintiff's Goods and Services no later than March 31, 2009.

12. Nevertheless, on May 27, 2009, Defendant registered a domain name to a misspelling of KAMELFLAGE – CAMELFLAGE – in its interactive www.camelflage.com website. A record of the domain name registration is attached as **Exhibit D**.

13. On May 29, 2009, Defendant applied for a registered trademark in the word “CAMELFLAGE,” alleging a first use in commerce on March 15, 2009. Upon information and belief, Defendant’s allegation of the date for the first use in commerce is false. A copy of the registration information is attached at **Exhibit E**.

14. On June 7, 2009, Defendant applied for a registered trademark as depicted below:



Defendant alleges a first use in commerce of the mark on March 15, 2009. Upon information and belief, Defendant’s allegation of the date for the first use in commerce is false. A copy of the registration information is attached at **Exhibit F**.

15. Defendant is currently promoting undergarments on the www.cameflage.com website using the word “CAMELFLAGE” and the graphic reproduced below.



A copy of a page of the www.camelflage.com website is attached as **Exhibit G**.

16. Upon learning of Defendant's infringement of Plaintiff's KAMELFLAGE Mark, Plaintiff contacted Defendant to demand that the infringement cease, but Defendant continues to use the KAMELFLAGE Mark in violation of Plaintiff's rights therein. Indeed, on November 10, 2009, Defendant and Plaintiff were both guests on "The Howard Stern Show" wherein Plaintiff discussed, *inter alia*, Defendant's refusal to cease and desist her use of the KAMELFLAGE Mark. A summary of the discussion from The Howard Stern Show is attached as **Exhibit H**.

17. Defendant continues to use Plaintiff's KAMELFLAGE Mark in connection with the sale of undergarments, which are advertised in the same or similar marketing channels and channels of trade used by Plaintiff and to the same or similar classes of purchasers to whom Plaintiff offers its Goods and Services.

18. Defendant's selection and/or continued use of the KAMELFLAGE Mark for undergarments, which is a misspelling of Plaintiff's common law KAMELFLAGE Mark for undergarments and inserts therefor, while aware of Plaintiff's rights in such mark is a clear indication of Defendant's intent to trade on the goodwill inherent in Plaintiff's KAMELFLAGE Mark.

INJURY TO PLAINTIFF AND THE PUBLIC

19. Defendant's unauthorized use of Plaintiff's KAMELFLAGE Mark has and will continue to irreparably injure Plaintiff by confusing customers, diverting sales, and diluting the distinctiveness of Plaintiff's KAMELFLAGE Mark. If permitted to continue, Defendant's use of Plaintiff's KAMELFLAGE Mark will continue to irreparably injure Plaintiff, Plaintiff's KAMELFLAGE Mark, the reputation and goodwill associated therewith, Plaintiff's reputation for exceedingly high-quality services and products, and the public interest in being free from confusion, mistake or deception.

20. Defendant's use of Plaintiff's KAMELFLAGE Mark has caused and will continue to cause confusion, mistake or deception as to the source or origin of Defendant's goods and services and is likely to suggest falsely a sponsorship, connection, license, endorsement or association of Defendant's goods and services with Plaintiff, thereby injuring Plaintiff and the public.

COUNT I

Federal Unfair Competition

15 U.S.C. §1125(a)

21. Plaintiff incorporates by reference the allegations of Paragraphs 1 - 20.

22. The unauthorized use by Defendant of Plaintiff's KAMELFLAGE Mark for Defendant's undergarments is likely to cause the public to mistakenly believe that such publication originates from, is endorsed by or is in some way affiliated with Plaintiff and thus constitutes trademark infringement, false designation of origin, passing off, and unfair competition and is likely to cause Plaintiff's KAMELFLAGE Mark to lose its significance as an

indicator of origin. Defendant's actions are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

23. Upon information and belief, the appropriation of Plaintiff's KAMELFLAGE Mark by Defendant as set forth above is a part of a deliberate plan to trade on the valuable goodwill established in Plaintiff's KAMELFLAGE Mark. With knowledge of Plaintiff and Plaintiff's rights in the KAMELFLAGE Mark, and with the deliberate intention to unfairly benefit from Plaintiff's goodwill generated through Plaintiff's KAMELFLAGE Mark, the actions of Defendant have been carried out in willful disregard of Plaintiff's rights in violation of 15 U.S.C. Section 1125(a).

COUNT II

Common Law Unfair Competition, Misappropriation And Trademark Infringement

24. Plaintiff incorporates by reference the allegations of Paragraphs 1 - 23.

25. By its aforesaid conduct calculated to increase business and profits by deceiving and confusing members of the public, Defendant continues to misappropriate the valuable goodwill of Plaintiff's KAMELFLAGE Mark, to infringe Plaintiff's rights therein, and to unfairly compete with Plaintiff under the laws of Michigan.

COUNT III

Common Law Dilution

26. Plaintiff incorporates by reference the allegations of Paragraphs 1 - 25.

27. Defendant's advertising and proposed sale of goods and services under Plaintiff's KAMELFLAGE Mark is likely to cause injury to the business reputation of Plaintiff and dilute the distinctive quality of such famous mark in violation of Michigan law.

COUNT IV

Violation of The Michigan Consumer Protection Act, M.C.L. § 445.903

28. Plaintiff incorporates by reference the allegations of Paragraphs 1 - 27.

29. By its aforesaid conduct calculated to increase business and profits by deceiving and confusing members of the public, Defendant continues to misappropriate the valuable goodwill of Plaintiff's KAMELFLAGE Mark, to infringe Plaintiff's rights therein, and to unfairly compete with Plaintiff under the laws of Michigan.

30. Defendant's unauthorized use of Plaintiff's KAMELFLAGE Mark causes a likelihood of confusion as to the source, sponsorship, approval or certification of the undergarments at issue and constitutes unlawful, unfair, and fraudulent business practices and unfair, deceptive, untrue, and misleading advertising under The Michigan Consumer Protection Act, M.C.L. § 445.903 to improperly trade upon the reputation and goodwill of Plaintiff and impair its valuable rights.

COUNT V

Unjust Enrichment

31. Plaintiff incorporates by reference the allegations of Paragraphs 1 - 30.

32. Defendant is being unjustly enriched to the damage and irreparable harm of Plaintiff.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. That Plaintiff is the owner of the entire right, title and interest in and to Plaintiff's KAMELFLAGE Mark.

B. That rights in Plaintiff's KAMELFLAGE Mark are valid, enforceable and violated by Defendant and that Defendant has violated and is violating other relevant federal and state laws and regulations.

C. That Defendant, its agents, servants, employees, attorneys, and all persons in active concert or participation with it, be preliminarily and permanently enjoined and restrained from (1) using Plaintiff's KAMELFLAGE Mark, any designations incorporating any of the foregoing and any variations thereof; and (2) otherwise infringing Plaintiff's KAMELFLAGE Mark and competing unfairly with Plaintiff.

D. That Defendant willfully violated Plaintiff's rights.

E. That Defendant be required to pay to Plaintiff's damages according to proof and Plaintiff's statutory damages, together with prejudgment interest thereon, as Plaintiff has sustained as a consequence of Defendant's wrongful acts, and to account for and return to Plaintiff any monies, profits and advantages wrongfully gained by Defendant.

F. That all damages sustained by Plaintiff be trebled.

G. That Defendant be required to pay to Plaintiff punitive and exemplary damages.

H. That Defendant be required to pay to Plaintiff all attorney fees, expenses and costs incurred in this action.

I. That Defendant deliver up for impoundment during the pendency of this action, and for destruction upon entry of judgment, all products, fixtures, writings, signage, artwork and other materials that infringe Plaintiff's rights, falsely designate source or origin, or otherwise facilitate Defendant's unfair competition with Plaintiff.

J. That an Order be issued directing Defendant to file with this Court and serve on Plaintiff's attorneys, within thirty (30) days after the date of entry of any injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction.

K. That Plaintiff be granted such further relief as this Court may deem appropriate.

Respectfully submitted,

December 1, 2009

By: /s Michael B. Stewart
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