

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

(1) COLLECTABLE PROMOTIONAL
PRODUCTS, INC., an Oklahoma corporation

Plaintiff,

v.

Civil Action No. _____

JURY TRIAL DEMANDED

(1) DISNEY ENTERPRISES, INC., a Delaware
corporation and (2) MATTEL, INC., a Delaware
corporation

Defendants.

COMPLAINT FOR TRADEMARK INFRINGEMENT

Plaintiff, Collectable Promotional Products, Inc. (hereinafter "CPP"), for its Complaint against Defendants, Disney Enterprises, Inc. (hereinafter "Disney") and Mattel, Inc. (hereinafter "Mattel") (collectively "Defendants"), states and alleges as follows:

NATURE OF THE ACTION

1. CPP is an Oklahoma corporation that designs, promotes and sells toy cars. In 1994, CPP was created to market and sell limited edition toy cars and negotiated an arrangement to market and sell the "Carroll Shelby, Limited Edition, 1965 Shelby Cobra 427 S/C." Mattel, a Defendant in this lawsuit, agreed to manufacture and package the miniature die-cast metal toy car for CPP. CPP next decided to market and sell "Dan Garlits' Custom Dodge Ram Truck." Mattel also packaged and manufactured this limited edition toy car for CPP. Mattel packaged the products using both its own **HOT WHEELS®** trademark and CPP's **REAL CARS®** trademark. CPP continues to sell these limited edition products at trade shows and on the internet.

2. CPP brings this trademark infringement action against Disney for damages arising from Disney's use of a confusingly similar trademark to promote and sell toy cars related to its 2006 motion picture "Cars." Disney, similar to CPP, enlisted the help of Mattel to manufacture and package miniature die-cast toy cars. CPP also brings this action against Mattel for manufacturing and selling the infringing toy cars for Disney.

3. CPP obtained federal trademark registration in Class 28 for the mark **REAL CARS®** (hereinafter the "Mark"), Registration No. 2163023, with the United State Patent and Trademark Office (the "PTO") on March 17, 1998 and remains the owner of the Mark. The Mark is a design mark which consists of a chevron (a "V" shape) design with the words "Real Cars" above the chevron. CPP was using the Mark in interstate commerce as early as September of 1994. For over twelve (12) years, CPP has sold toy cars bearing the Mark in Oklahoma and in interstate commerce.

4. Upon information and belief, Disney filed eighteen (18) separate trademark applications in December of 2004 relating to its "Cars" movie covering goods ranging from hockey pucks to cosmetics, fruit drinks to televisions, and jewelry to toy cars. All of these applications were assigned to the same Patent and Trademark Office ("PTO") examiner. Two of the trademark applications were filed in Class 28, Serial Nos. 78538945 and 78977548. The latter of those applications covers, among other things, "toy vehicles; toy cars; toy trucks." Disney's "Cars" applications are also design marks which consist of a chevron (a "V" shape) design with the word "Cars" above the chevron (collectively the "Infringing Mark").

5. CPP's Mark has nearly twelve (12) years priority over Disney's Infringing Mark and both use the chevron symbol in association with the word "Cars" above it. Both the Mark and the Infringing Mark cover miniature automobile toys or toy cars. The Mark and the

Infringing Mark are the only two active marks in the PTO database using the chevron design code in conjunction with the word "Cars."

THE PARTIES

6. Plaintiff Collectable Promotional Products, Inc. is an Oklahoma corporation located at 3519 Apache Drive, Woodward, Oklahoma 73801, and is the owner of the trademark rights asserted in this action.

7. Defendant Disney Enterprises, Inc. is a corporation incorporated under the laws of the state of Delaware with its principal place of business at 500 South Buena Vista Street, Burbank, California, 91521.

8. Defendant Mattel, Inc. is a corporation incorporated under the laws of the state of Delaware with its principal place of business at 333 Continental Boulevard, El Segundo, California, 90245.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1338(a) and (b). Because the parties are citizens of different states and the amount in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs, this Court also has jurisdiction under 28 U.S.C. § 1332.

10. This Court has personal jurisdiction over Defendants. Defendants have placed infringing products into the stream of commerce with the expectation that they will arrive in, and be sold in, Oklahoma and this District. Such infringing products have in fact arrived within Oklahoma and this District and have been sold within Oklahoma and this District. As such, Defendants have purposefully availed themselves of personal jurisdiction of this Court.

11. Venue is proper in the Western District of Oklahoma pursuant to 28 U.S.C. § 1391 (b) and (c). A substantial portion of the activity about which CPP complains has taken place in this district, and the damages suffered were, at least in part, in this judicial district. Venue is also proper because defendants are corporations, and subject to personal jurisdiction in this district.

FIRST CLAIM FOR RELIEF

Trademark Infringement Under Section 32(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a).

12. CPP hereby incorporates and realleges each and every preceding allegation in its Complaint.

13. Defendants' actions described above are likely to cause confusion, mistake or deception as to the origin, sponsorship, or approval of Defendants' products and commercial activities, and constitute infringement of CPP's federally registered Mark in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114(1)(a).

14. Defendants' violations and infringement of the Mark were willful.

15. CPP has been directly and proximately damaged by Defendants' actions and will continue to suffer damage.

SECOND CLAIM FOR RELIEF

Trademark Infringement, False Designation of Origin, and Unfair Competition Under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

16. CPP hereby incorporates and realleges each and every preceding allegation in its Complaint.

17. Defendants' actions are likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendants' product or commercial activities, and constitute

trademark infringement, false designation of origin, and unfair competition of CPP's federally registered Mark in violation of Section 43 of the Lanham Act, 15 U.S.C. §1125 (a)(1)(A).

18. Defendants' violations and infringement of the Mark were willful.

19. CPP has been directly and proximately damaged by Defendants' actions and will continue to suffer damage.

PRAYER FOR RELIEF

WHEREFORE, CPP prays 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. An Order requiring an accounting of Defendants' profits arising from the foregoing acts of infringement, and unfair competition in accordance with 15 U.S.C. § 1117 and payment of the same to CPP;

B. An Order requiring payment of compensatory damages sustained by CPP arising from the foregoing acts of infringement and unfair competition in accordance with 15 U.S.C. § 1117;

C. An Order requiring the damages or profits awarded be trebled in accordance with 15 U.S.C. § 1117;

D. An Order requiring payment of costs and attorney's fees in this action in accordance with 15 U.S.C. § 1117;

E. An Order enjoining Defendants from using manufacturing, selling or promoting the Infringing Mark in conjunction with toy cars; and

F. Any other relief the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Respectfully submitted,

s/ Lance E. Schneiter

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