

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

CHATTANOOGA PROFESSIONAL)	
SOCCER MANAGEMENT, LLC,)	
)	
Plaintiff,)	
v.)	Civil Action No.
)	
ARKANSAS STATE UNIVERSITY,)	JURY TRIAL DEMANDED
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

This action is for declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiff, Chattanooga Professional Soccer Management, LLC (“CPSM”), for its complaint against Defendant, Arkansas State University (“ASU”), states and alleges as follows:

PARTIES

1. Chattanooga Professional Soccer Management, LLC (“CPSM”) is a Utah limited liability company authorized to do business in the State of Tennessee. CPSM conducts business in Chattanooga, Tennessee, including at 411 Broad Street, Chattanooga, Tennessee 37402.

2. Arkansas State University (“ASU”) is, a State Agency of Arkansas with a principal place of business at 501 Woodland Drive, Suite 600, Little Rock, Arkansas 72201. Upon information and belief, ASU may be served with process at 501 Woodland Drive, Suite 600, Little Rock, Arkansas 72201, or otherwise as allowed by law. ASU conducts business in the State of Tennessee.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Plaintiff's federal claim pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338 in that this Complaint raises federal questions arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.* and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Further, diversity jurisdiction exists pursuant to 28 U.S.C. § 1332, with the parties being citizens of different states and with the amount in controversy exceeding the sum or value of \$75,000.00, exclusive of interest and costs.

4. This Court has personal jurisdiction over Defendant ASU, which has put at issue the trademark rights of Plaintiff and has expressly advised Plaintiff that it plans to pursue "any other actions it deems necessary to protect its valuable Marks," thus creating an actual controversy.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c), since a substantial part of the events giving rise to Plaintiff's claim occurred in this district, and Plaintiff resides in this district and will suffer injury here. Defendant is subject to personal jurisdiction in this district pursuant to the Tennessee Long-Arm Statute, T.C.A. § 20-2-214.

FACTUAL BACKGROUND

6. On or about September 14, 2018, CPSM filed Federal Trademark Application No. 88/117505 for the name and mark CHATTANOOGA RED WOLVES SC. See Exhibit A attached hereto.

7. On or about November 16, 2018, CPSM filed Federal Trademark Application No. 88/196890 for the name and mark CHATTANOOGA RED WOLVES SC & Design. See Exhibit B attached hereto.

8. On or about December 14, 2018, an agent of ASU, IMG College Licensing, LLC, sent correspondence to the Chattanooga Red Wolves SC at 411 Broad Street, Chattanooga, Tennessee 37402. That letter demanded that CPSM cease and desist all use of its CHATTANOOGA RED WOLVES SC marks, abandon its pending federal trademark applications, and further threatened that, “The University is prepared to escalate to the full extent allowed by law, including litigation, if we do not receive a proper response... .” That correspondence is attached hereto as Exhibit C.

9. Plaintiff CPSM responded through its counsel by letter of December 21, 2018, a copy of which is attached hereto as Exhibit D.

10. Defendant ASU, through new counsel, responded to Plaintiff CPSM’s counsel by letter dated November 18, 2019. A copy of that letter is attached hereto as Exhibit E.

11. That November 18, 2019 correspondence concluded with the threat to Plaintiff CPSM, “My client plans to proceed with the Opposition action and/or any other actions it deems necessary to protect its valuable Marks. All rights are expressly reserved.” CPSM’s two pending trademark applications have proceeded through the United States Patent and Trademark Office (USPTO) examination process and were published for Opposition on August 20, 2019.

12. ASU has obtained extensions from the Trademark Trial and Appeal Board within which to oppose CPSM’s two pending trademark applications. Those extensions are through December 18, 2019.

13. CPSM’s word mark and design mark (“Plaintiff’s Marks”) both relate to a professional soccer team affiliated with the United Soccer League.

14. Upon information and belief, Defendant ASU’s marks and uses of those marks all relate to amateur collegiate sports.

15. Defendant ASU's repeated threats of legal action and filing Oppositions against Plaintiff's two pending federal trademark applications present a real and actual controversy suitable for determination by this Court.

16. There is no good faith basis for Defendant to allege or threaten that Plaintiff's use of Plaintiff's Marks infringes upon any marks of Defendant, constitutes a reproduction, copy, counterfeit, or colorable imitation of Defendant's marks, constitutes unfair competition, or in any way creates a likelihood of confusion with Defendant ASU's marks.

17. The allegations and/or threats contained in the letters set forth above were asserted wrongly, unreasonably, and in bad faith.

18. Defendant's unfounded and bad faith allegations concerning Plaintiff's Marks causes harm to the value, reputation and good will associated with Plaintiff's Marks.

19. Plaintiff would sustain significant harm and/or damage if required to cease use of Plaintiff's Marks, including but not limited to, the loss of good will associated with the marks, and the expenditure of significant time, money, and resources to develop, implement, and acquire good will and secondary meaning associated with the marks.

20. Based on Defendant ASU's allegations and threats contained in the letters set forth above, Plaintiff has a reasonable apprehension and expectation of litigation. Specifically, and without limitation, Plaintiff has a reasonable apprehension Defendant will commence a suit against Plaintiff for, without limitation, alleged trademark infringement, counterfeiting, and/or unfair competition. The dispute between Plaintiff and Defendant is definite, concrete, real and substantial, and touches upon the legal relations of parties having adverse legal interests. This substantial controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Accordingly, a case for controversy exists under 28 U.S.C. § 2201.

COUNT I
DECLARATORY JUDGMENT THAT PLAINTIFF'S MARKS NEITHER VIOLATE
THE LANHAM ACT NOR CONSTITUTE TRADEMARK INFRINGEMENT OR
UNFAIR COMPETITION UNDER STATE LAW

20. Plaintiff incorporates by reference all preceding paragraphs of this Complaint.

21. Plaintiff's use of Plaintiff's Marks is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Plaintiff with Defendant or any other person, or as to the origin, sponsorship, or approval of Plaintiff's goods by Defendant or any other person.

22. Accordingly, Plaintiff is entitled to a declaratory judgment that its use of Plaintiff's Marks does not violate Section 32 or Section 43 of the Lanham Act, 15 U.S.C. § 1114 or 1125, or any other provision thereof, or constitute unfair competition or trademark infringement under the statutes or common law of any state in the United States.

COUNT II
DECLARATORY JUDGMENT THAT PLAINTIFF'S MARKS ARE NOT A
REPRODUCTION, COPY, COUNTERFEIT, OR COLORABLE IMITATION OF
DEFENDANT'S TRADEMARKS

23. Plaintiff incorporates by reference all preceding paragraphs of this Complaint.

24. Plaintiff's Marks are not reproductions, copies, counterfeits, or colorable imitations of any of Defendant's marks under the Lanham Act, 15 U.S.C. § 1051, *et seq.*

25. Accordingly, Plaintiff is entitled to a declaratory judgment that Plaintiff's Marks are not a reproduction, copy, counterfeit, or colorable imitation of Defendant's marks under the Lanham Act, 15 U.S.C. § 1051, *et seq.*

Wherefore, CPSM requests the following relief:

- (a) That the Court enter judgment declaring that CPSM's use of Plaintiff's Marks does not violate § 32 or § 43 of the Lanham Act, 15 U.S.C. § 1114 or 1125, or any other

provision thereof, or constitute unfair competition, or trademark infringement under the Lanham Act or the statutes or common law of any state;

- (b) That the Court enter a judgment declaring CPSM's use of Plaintiff's Marks is not a reproduction, copy, counterfeit, or colorable imitation of Defendant's mark under the Lanham Act, 15 U.S.C. § 1051 *et seq.*;
- (c) That the Court enter judgment enjoining Defendant, its agents, servants, employees, attorneys from (1) interfering with, or threatening to interfere with, use of Plaintiff's Marks by Plaintiff or its agents, employees, representatives, licensees, vendors, customers, successors, or assigns, and/or (2) threatening to institute or instituting any action, including, without limitation, any administrative, USPTO, or Trademark Trial and Appeal Board proceeding, or other district court proceeding placing at issue the validity of Plaintiff's Marks or CPSM's right to use its Plaintiff's Marks;
- (d) That the Court award CPSM its attorneys' fees, costs, and expenses incurred in this action, pursuant to any applicable law; and
- (e) That the Court grant CPSM such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiff hereby demands a trial by jury as to all issues so triable in this action.

Respectfully submitted,

GRANT KONVALINKA & HARRISON, P.C.

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