

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

H-D U.S.A., LLC,

Plaintiff,

v.

Case No. 14-CV-654-JPS

JULIE MAYO a/k/a Shelly LaRocca,
d/b/a West Coast Charms
d/b/a 5th Avenue Pets
d/b/a Charms from the Heart,

Defendant.

ORDER

This matter is before the Court on the Civil L. R. 7(h) Expedited Non-dispositive Motion for Civil Contempt filed by Plaintiff H-D U.S.A., LLC ("Plaintiff") against Defendant Julie Mayo, a/k/a Shelly LaRocca, d/b/a West Coast Charms, d/b/a 5th Avenue Pets, d/b/a Charms from the Heart ("Defendant").

Having evaluated Plaintiff's Civil L. R. 7(h) Expedited Non-dispositive Motion for Civil Contempt and supporting declaration (Docket #18, #19), the Court holds that Plaintiff has established by clear and convincing evidence that: (1) the Court's October 16, 2014 Order (Docket #17, hereafter the "October 16, 2014 Order") set forth the unambiguous commands detailed below; (2) Defendant violated all of those commands; (3) Defendant failed to substantially comply with those commands; and (4) Defendant failed to make a reasonable and diligent effort to comply, and in fact, made little to no effort to do so. Therefore, the Court holds the Defendant in civil contempt.

The Court finds that the following commands of the October 16, 2014 Order are unambiguous:

- (1) Defendant, together with her employees, agents, partners, related companies, affiliates, and all persons in active concert

or participation with any of them who receive actual notice of this Order by personal service or otherwise, is hereby ORDERED, within ten (10) days after H-D emails this Order to Defendant at the following email addresses with which H-D has previously communicated with Defendant, charmsfromtheheart@yahoo.com and jmfinds01@yahoo.com (regardless of whether such emails are received or acknowledged by Defendant) and sends this Order to Defendant via Federal Express to the address listed in paragraph 4 of the Complaint, to remove all of the Counterfeit Products and all unauthorized uses of the H-D Marks from: (a) all websites owned, operated, used, or controlled by Defendant including, but not limited to the websites 5thavenuepets.com, 5thavenuepets.net, 5thavenuepet.net, 5thavenuepet.com, westcoastcharms.com, charmsfromtheheart.net, horizonwholesalers.com, norcalcharms.com, and norcalcharms.net (collectively, the "Websites"); and (b) all of Defendant's stores or presences on all third-party websites including, but not limited to, eBay.com and Etsy.com (October 16, 2014 Order, Section C);

- (2) Within ten (10) days after the entry of this Order, Defendant is ORDERED to surrender for destruction to H-D at 3700 W. Juneau Avenue, Milwaukee, Wisconsin 53208 all products, merchandise, advertising and promotional materials, and other materials and things in Defendant's possession or control that bear counterfeits of the H-D Marks including, but not limited to, the Counterfeit Products and all associated packaging, labeling, and advertising and promotional materials for the Counterfeit Products (October 16, 2014 Order, Section F);
- (3) Within ten (10) days after the entry of this Order, Defendant is ORDERED to provide to H-D: (a) the identity and complete contact information for all persons and entities from which Defendant received, obtained, or otherwise acquired the Counterfeit Products including, but not limited to, all manufacturers, wholesalers, distributors, suppliers, brokers, and retailers (the "Sources"); (b) a complete accounting of all Counterfeit Products received, obtained, or otherwise acquired by Defendant from each Source; and (c) a complete accounting

of all Counterfeit Products sold, distributed, or otherwise disposed of by Defendant including, but not limited to, a complete list of all customers and recipients of the Counterfeit Products including their contact information (the "Customers") and the specific products purchased or received by each Customer, the total revenues received by Defendant from the sales, distribution, or other disposition of the Counterfeit Products, and the total profits received by Defendant from the sales, distribution, or other disposition of the Counterfeit Products (October 16, 2014 Order, Section G); and

- (4) Within ten (10) days after the entry of this Order, Defendant is ORDERED to pay to H-D statutory damages for Defendant's willful counterfeiting of the H-D Marks in the amount of \$750,000, in accordance with 15 U.S.C. § 1117(c), of \$250,000 per mark per each of the three Counterfeit Products (October 16, 2014 Order, Section H).

This Court further finds that Plaintiff sent a copy of the October 16, 2014 Order to Defendant by email and FedEx on October 17, 2014, as required by the Order. Defendant was therefore required to remove the Counterfeit Products from her websites by October 27, 2014, but Defendant failed to do so. Further, after Plaintiff contacted the internet service providers (ISPs) for Defendant's noncompliant websites on October 28, 2014, to remove the Counterfeit Products as permitted by the October 16, 2014 Order, Defendant contacted the ISPs to have her websites reactivated. Defendant on multiple occasions contacted the ISP of two of her sites and represented to the ISP that the Counterfeit Products either had been removed or that she would remove them, but she repeatedly failed to do so resulting in the ISP suspending her sites several times. Finally, as a result of Plaintiff's objections, the ISP of her noncompliant sites removed the Counterfeit Products from Defendant's website for her on November 1, 2014. In short, Defendant failed to comply with the provisions of Section C of the

October 16, 2014 Order requiring her to remove the Counterfeit Products from her websites by October 27, 2014.

This Court further finds that Defendant also has failed to comply with the other above-listed commands of the October 16, 2014 Order—Sections F, G, and H. Specifically, Defendant failed to surrender the Counterfeit Products and related materials to Plaintiff (Section F), failed to provide an accounting of the Counterfeit Products and the supplier information (Section G), and failed to pay to Plaintiff the \$750,000 statutory damage award (Section H).

This Court finds that the Defendant has unlawfully used counterfeits of Plaintiff's trademarks on her websites in violation of this Court's Permanent Injunction, that Defendant has failed to comply with and intentionally ignored the other commands of the October 16, 2014 Order, and that there is sufficient evidence to show that Defendant will likely continue to violate the October 16, 2014 Order.

Accordingly,

IT IS ORDERED that the Motion for Contempt (Docket #18) be and the same is hereby GRANTED, and the Court holds Defendant in civil contempt;

IT IS FURTHER ORDERED that to ensure Defendant's compliance with the October 16, 2014 Order:

(1) the domain name registrars for Defendant's domain names 5thavenuepets.com, westcoastcharms.com, charmsfromtheheart.net, norcalcharms.net, and norcalcharms.com (the "Domain Names") are hereby ORDERED to immediately transfer the Domain Names to Plaintiff;

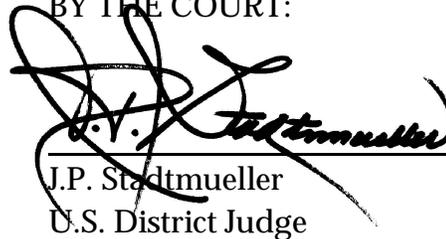
(2) Plaintiff may post at each of the websites associated with the Domain Names a single-page notice about this lawsuit containing a copy of

the Order 16, 2014 Order and this Order as shown in the website mock-up (or a substantially similar presentation) (see Docket #18, Ex. 1 at 5) unless and until Defendant surrenders the Counterfeit Products and provides an accounting and supplier information therefor as required in Sections F & G of the October 16, 2014 Order; and

(3) if and when Defendant complies with this Order, Plaintiff is ORDERED to transfer the Domain Names back to Defendant.

Dated at Milwaukee, Wisconsin, this 15th day of December, 2014.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge