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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

WILLAMETTE COUNTRY MUSIC
FESTIVAL, INC, an Oregon
Corporation and WARREN
WILLIAMSON,

Plaintiffs

vs.

BI-MART CORPORATION, a California
corporation; WILLAMETTE
COUNTRY MUSIC CONCERTS, INC,
an Oregon Corporation; ANNE
HANKINS; DONALD LEBER; and
DOES 1-5, inclusive,

Defendants.

Case No. 11-6007-110

COMPLAINT FOR DAMAGES

(DEMAND FOR JURY TRIAL)

Plaintiffs (collectively "Plaintiffs" or the "Festival") for their claims against Defendants (collectively referred to as "Defendants" or "Concert") allege as follows:

JURISDICTION AND VENUE

1. Plaintiff's file this action against Defendants for trademark infringement and dilution under 18 USC Section 1125 et. seq. and related claims for unfair trade competition,

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intentional interference with business relationships, breach of fiduciary duty under the common law and statutes of the State of Oregon. This Court has subject matter jurisdiction over the trademark infringement claims under 28 U.S.C. Sections 1121(a), 11131, 1338(a) and 1367.

2. This Court has personal jurisdiction over Defendants because they either reside in Oregon or have their principal place of business in Oregon.
3. Venue is proper within this judicial district pursuant to 28 U.S.C Section 1391 because the claims asserted herein arose from wrongful acts committed by Defendants within this district.

THE PARTIES

4. Plaintiff Willamette Country Music Festival, Inc. is a corporation organized and existing under the laws of Oregon with its only office and place of business in Oregon. Plaintiff Warren Williamson, is the sole owner of said corporation, the developer of the trademarks, and actual producer of the music festival held yearly from 2008 through 2010.
5. Upon information and belief, Defendant Bi-Mart Corporation is a California corporation, but has its principal office at 220 S. Seneca Road, Eugene, Oregon 97402. Defendant Willamette Country Music Concerts, Inc. is an Oregon corporation, and Anne Hankins is the organizer and president of said corporation. Donald Leber is a vice president of Bi-Mart Corporation, and an active participant with Anne Hankins in all things alleged herein to have been done by her.

6. Plaintiffs are unaware of the names and true capacities of Defendants, whether individual, corporate and/or partnership entities, named herein as DOES 1-5, inclusive, and therefore sue them by their fictitious names. Plaintiff will seek leave to amend this complaint when their true names and capacities are ascertained. Plaintiffs are informed and believe and based thereon allege that Defendants and DOES 1 through 5, inclusive, are in some manner responsible for the wrongs alleged herein, and that at all times referenced each was acting either as agent or servant of the other Defendants, within the course and scope of said agency or employment, or as individuals acting together with the other Defendants with a common intent or as part of a conspiracy.
7. Plaintiffs are informed and believe, and based thereon allege, that at all times relevant herein, Defendants, including DOES 1-5, inclusive, knew or reasonably should have known of the acts and behavior alleged herein and the damages caused thereby, and by their actions ratified and encouraged such acts and behavior. Plaintiffs further allege that Defendants, including Does 1 through 5, inclusive, have a non-delegable duty to prevent such acts and the behavior described herein, of which duty all said Defendants failed and/or refused to perform.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. Plaintiff's Trademarks, Logos, and Designs

8. In 2007 Plaintiff, Warren Williamson, conceived of a country music festival to be held in the Brownsville, Oregon area. In late 2007 he incorporated Plaintiff Willamette Country Music Festival, Inc, but did not take any further steps to perfect said corporate

existence until August of 2010. Between 2007 and 2010 three country music festivals were produced and held in the Brownsville area by Plaintiffs, which country music festivals were named Willamette Country Music Festival, and became known and admired by many fans of country music. In connection with said festival, Plaintiffs sold tickets for viewing, sold parking, sold concessions, sold camping spots, and otherwise developed revenue. Plaintiffs also developed contacts with country music performers throughout the United States who came and performed at said festivals.

9. In connection with the development and production of the three country music festivals Plaintiffs developed a website, tickets with a distinctive design, and many other logos and design elements identifying the Willamette Country Music Festival and used in the promotion, and sale of the festival as a product of Plaintiffs. Plaintiffs expended substantial time, money and other resources in developing, advertising and other wise promoting the Willamette Country Music Festival. As a result the Willamette Country Music Festival became widely recognized by consumers, the public, and within the trade as a country music festival worth attending, advertising in, and performing in, with much admiration from country music fans all over the country.
10. Because of Plaintiff's longstanding use and advertisement of the Willamette Country Music Festival, such name, and ticket design, website design, and other advertisement material have become highly recognizable to consumers thereby qualifying as famous marks. By reason thereby the marks and name Willamette Country Music Festival, and the goodwill associated therewith are valuable, vital assets of Plaintiffs.

B. Defendants infringement of Plaintiff's Designs and Marks

11. Defendants, acting together and pursuant to a common intent, are now involved in producing, and advertising a festival of their own in August 2011, using the same name, Willamette Country Music Festival, using the same location as it has been held by Plaintiffs in the last three years, using similarly designed tickets, similarly designed websites, similar advertising and otherwise claiming to customers, performers, newspapers, and the general public that they are the same festival as has been produced by Plaintiffs for the previous three years only "under new management". Plaintiffs have not authorized said infringement of their name, designs and marks, or the use thereof in any way identical or substantially similar or indistinguishable from those of Plaintiffs.

FIRST CLAIM FOR RELIEF

(False designations of Origin and False Advertising – 15 U.S.C. Section 1125(a))

12. Plaintiffs incorporate here by reference the averments of the preceding paragraphs as though fully set forth herein.
13. Defendants have continued to use, without Plaintiff's authorization, spurious designations identical to or substantially indistinguishable from the marks, designs and name of Plaintiffs in connection with their sale and promotion of their Willamette Country Music Festival for 2011 using words, terms, names, symbols and devices, or combinations thereof, as well as a false impression of the origin of the festival so as to create a false or misleading description of facts which are likely to cause confusion, or mistake or deceive as to the affiliation, connection or association of

Defendants with Plaintiffs, or the origin, sponsorship, or approval of the services or commercial activities sought to be provided by Defendants.

14. Defendants acts constitute a violation of 15 U.S.C. Section 1125(a)(1).
15. Upon information and belief Defendants have made and will continue to make substantial profits and gains to which they are not in law or equity entitled.
16. Upon information and belief, Defendants intend to continue committing its infringing acts unless it is restrained by this Court. Plaintiffs have no adequate remedy at law.
17. The Defendants at all times material hereto have willfully intended to trade on the owners reputation or cause dilution of the owner's marks, and by reason thereof Plaintiffs are not only entitled to injunctive relief, but are also entitled to recover all damages, including attorney's fees that Plaintiffs have sustained and will result from such infringing acts, and all gains, profits and advantages obtained by Defendants as a result thereof in an amount that is not yet known, as well as the costs of this action pursuant to 15 U.S.C Section 1117(a), attorneys fees and not to exceed treble damages, as well as destruction of all infringing articles and materials pursuant to Section 1118 of said section.

SECOND CLAIM FOR RELIEF

(Federal Trademark Dilution—15 U.S.C. Section 1125(c))

18. Plaintiffs incorporate here by reference the averments of the preceding paragraphs as though fully set forth herein.
19. The name Willamette Country Music Festival, and marks and designs associated

therewith are strong and distinctive, have been in use since 2007 and have gained widespread public recognition. Thus, they are “famous” with the meaning of the Lanham Act.

20. Defendants have used counterfeit reproductions of the marks and designs, as well as using the name of the festival in connection with their sponsorship and production as well as advertising for a “Willamette Country Music Festival 2011”. This has likely caused and will continue to cause confusion or mistake as to the affiliation, connection, or association between Defendants and Plaintiffs, or that the services or production being sold originate from, are sponsored by, or are approved by Plaintiffs.
21. Defendants’ acts described above have diluted and continue to dilute the unique and distinctive marks and name Willamette Country Music Festival. These acts violate the Lanham Act, causing damage to Plaintiffs in an amount to be determined at trial, as well as causing irreparable injury to Plaintiff’s goodwill and reputations associated with the value of their name and trademarks. Defendants actions did not begin until 2010, long after Plaintiff’s trademarks and name became famous.
22. Defendants acted knowingly, deliberately and willfully, with the intent to trade on the reputation of Plaintiff’s brand, and to dilute the name and brand. Defendants conduct is willful, wanton and egregious.
23. Plaintiffs have no adequate remedy at law to compensate them fully for the damages that Defendant’s unlawful acts have caused and will continue to cause them unless Defendants are restrained by this Court.

24. In light of the foregoing, Plaintiffs are entitled to injunctive relief prohibiting Defendants from using the name Willamette Country Music Festival or other designs or marks associated therewith which are either identical or confusingly similar thereto. Plaintiffs are entitled to recover all damages, including attorney's fees, that they have sustained and will sustain as a result of such infringing acts, and all gains, profits and advantages obtained by Defendants as a result thereof in an amount that is not yet known, as well as the costs of this action.

THIRD CLAIM FOR RELIEF

(Cyberpiracy—Violation of 15 U.S.C. Section 1125(d))

25. Plaintiffs incorporate here by reference the averments of the preceding paragraphs as though fully set forth herein.
26. The name Willamette Country Music Festival, and marks and designs associated therewith are strong and distinctive, have been in use since 2007 and have gained widespread public recognition. Thus, they are “famous” with the meaning of the Lanham Act, as are Plaintiffs’ website design and site, and other internet domain information.
27. Defendants had a bad faith intent to profit from the marks, name and internet domain name and website, and trafficked in and used Plaintiffs information in a way that was both identical, or confusingly similar to the mark and designs of Plaintiffs’ website and used Plaintiffs’ domain name.
28. In light of the foregoing, Plaintiffs are entitled to injunctive relief prohibiting

Defendants from trafficking or using the domain name of Plaintiffs, forfeiture or cancellation of the domain name or transfer of the domain name to Plaintiffs.

Plaintiffs are entitled to recover all damages, including attorney's fees, that they have sustained and will sustain as a result of such infringing acts, and all gains, profits and advantages obtained by Defendants as a result thereof in an amount that is not yet known, as well as the costs of this action.

FOURTH CLAIM FOR RELIEF

(Common Law Appropriation of Name or Likeness)

29. Plaintiffs incorporate here by reference the averments of the preceding paragraphs as though fully set forth herein.
30. Defendants used Plaintiffs' name and likeness intentionally for their own purposes and benefit, including economic benefit without Plaintiffs' consent.
31. By reason thereof Plaintiffs are entitled to damages in a sum to be set at trial.

FIFTH CLAIM FOR RELIEF

(Common Law Unfair Competition)

32. Plaintiffs incorporate here by reference the averments of the preceding paragraphs as though fully set forth herein.
33. Plaintiffs own and enjoy common law trademark rights to the name Willamette Country Music Festival, as well as the design of its advertising, website, tickets and other marks used by them since 2007.

34. Defendant's unlawful acts in appropriating the rights described above were intended to capitalize on Plaintiffs' goodwill for Defendant's own pecuniary gain.

Plaintiffs have expended substantial time, resources, and effort to obtain excellent reputations for themselves and their brands. As a result of Plaintiff's efforts Defendant is now unjustly enriched and is benefiting from property rights that rightfully belong to Plaintiffs.

35. Defendants unauthorized use of the name Willamette Country Music Festival has caused and is likely to further cause confusion as to the source of Defendant's services and products, to the detriment of Plaintiffs.

36. Defendant's acts are willful, deliberate and intended to confuse the public and injure Plaintiffs.

37. Defendant's acts constitute unfair competition under Oregon law.

38. Plaintiffs have been irreparably harmed and will continue to be irreparably harmed as a result of Defendant's unlawful acts unless Defendants are permanently enjoined from their unlawful conduct.

39. The conduct herein complained of was extreme, outrageous, fraudulent and inflicted on Plaintiffs in reckless disregard of Plaintiff's rights. Said conduct was despicable and harmful to Plaintiffs and, as such, supports and award of exemplary and punitive damages in an amount sufficient to punish and make an example of the Defendants and to deter them from such similar conduct in the future.

40. Plaintiffs have no adequate remedy at law.

41. In the light of the foregoing Plaintiffs are entitled to injunctive relief, and are entitled to recover all damages, including exemplary damages as well as damages for infringing on the rights of Plaintiffs including all gains, profits and advantages obtained by Defendants as a result of their actions in an amount that is not yet known, as well as the costs of this action.

SIXTH CLAIM FOR RELIEF

**(Statutory Cause of Action for Misappropriation of Trade Secrets under ORS
646.461 to 646.475)**

42. Plaintiffs incorporate here by reference the averments of the preceding paragraphs as though fully set forth herein.
43. At all times material hereto Plaintiffs had lists of customers, leases and contracts with providers and similar contacts which were trade secrets within the definitions of trade secrets under Oregon law.
44. At all times material hereto, Anne Hankins, Vice President of Plaintiff from 2008 until doing the acts herein complained of had access and was intimately involved with dealing with customers, leases and suppliers of services to Plaintiffs, and in such position had a duty to Plaintiffs to maintain the secrecy of said lists, leases and contacts. She also had the passwords to the website and other information concerning internet domain and advertising on the internet.
45. Beginning in August, 2010 Defendants began to change the website and internet advertising, use the lists and contacts for their own purposes, including taking the

renewal information obtained from the 2010 festival and obtaining money from the renewal applicants by promising Defendants would be producing a Willamette Country Music Festival in 2011, and that the business of Plaintiffs was now “under new management”.

46. As a result of the misappropriation of trade secrets Defendants have obtained renewals in excess of \$60,000, the exact amount being unknown to Plaintiffs, have entered into leases with the former supplier of the festival site, and entered into agreements with former suppliers of goods and services to the business of Plaintiffs and have advertised extensively that they were producing the Willamette Country Music Festival for 2011, and are now selling tickets for said event.
47. By reason thereof Plaintiffs have been damaged in an amount as yet unknown, and will be damaged in the future unless Defendants are enjoined from using the information misappropriated under Oregon law. Plaintiffs are entitled to recover both the actual loss caused by such misappropriation, and the unjust enrichment caused thereby but not less than a reasonable royalty for the unauthorized disclosure of the trade secrets.
48. The actions of Defendants were willful and malicious and by reason thereof Plaintiffs are entitled to damages not exceeding twice any award made for compensatory damages as alleged in paragraph 47 hereof.
49. Plaintiffs, should they prevail herein, are also entitled to their reasonable attorneys fees if a willful or malicious misappropriation is found by the court or jury.

SEVENTH CLAIM FOR RELIEF

(Intentional Interference with Business Relationship under Oregon Law)

50. Plaintiffs incorporate here by reference the averments of the preceding paragraphs as though fully set forth herein.
51. Defendants knew that Plaintiffs had operated and produced the Willamette Country Music Festival in 2008, 2009, 2010, and intended to produce said festival in 2011. Notwithstanding said knowledge, Defendants began to tell the press, and other media that they were taking over the festival for 2011, that Plaintiff Williamson was not a person to be trusted or a proper person to produce the festival, and that the providers of good, services and a site for the festival should deal with Defendants and send letters to Plaintiffs saying they no longer would have anything to do with Plaintiffs. They further told customers the same things, and commenced to take renewals for tickets, produce tickets, sell tickets, and advertise in various publications, online, and in the Country Music Awards on national television that they were producing the Willamette Country Music Festival for 2011. In addition they began to initiate and conclude contacts with musicians to entertain at the festival for 2011. They changed the website of Plaintiff without consent, made new websites substantially similar for themselves, and otherwise took steps to assume the goodwill and the reputation of Plaintiffs for themselves. They further attempted to force the Plaintiff Corporation into bankruptcy so that it could not compete with them in the festival for 2011.

52. All said actions were undertaken to interfere with Plaintiff and prevent Plaintiff's from producing the festival themselves and to induce the press and public to believe that Plaintiffs were no longer in business, were not proper entities to produce the Festival for 2011 and that Defendants were now the owners of the right to produce the Willamette Country Music Festival in 2011. Said actions were willful, malicious, and intentionally done to harm Plaintiffs and their business interests.
53. By reason of the actions of Defendants Plaintiffs are entitled to actual damages in an amount to be determined at trial, and punitive and exemplary damages together with their costs and disbursements incurred herein.

EIGHTH CLAIM FOR RELIEF (AGAINST DEFENDANT HANKINS ONLY)

(Conversion and Money Had and Received)

54. Plaintiffs incorporate here by reference the averments of the preceding paragraphs as though fully set forth herein.
55. Beginning in 2009, and continuing until August, 2010 when she began to take the actions hereinbefore alleged to take the business of Plaintiffs for herself with the other Defendants, and while Defendant Hankins was vice-president of Plaintiff corporation, she commenced taking money from the bank account of the company without authority and depositing said money in a personal bank account of herself and her husband, thereafter using the money for her own uses and that of her husband. In 2009 she took approximately \$9,000, and in 2010 approximately \$21,000, for a total of approximately \$30,000.

56. By reason of said misappropriation of money from the accounts of the corporation numerous bills of the corporation went unpaid, which bills she had a duty to pay as part of her duties as the person in charge of paying bills for the corporation.

Thereafter, she, in conjunction with the other Defendants induced a creditor of the Plaintiff corporation to file an involuntary bankruptcy petition against Plaintiff corporation as hereinbefore alleged.

57. By reason of the acts of said Defendant as hereinbefore alleged, said Defendant owes Plaintiffs the sums taken by misappropriation, as well as necessary and foreseeable expenses needed in the defense of the involuntary petition in bankruptcy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants as follows:

1. Granting temporary, preliminary and permanent injunctive relief restraining and enjoining Defendants, their officers, agents, employees, and attorneys and all those persons or entities in avive concert or participation with Defendants from:
 - (a) advertising, marketing, promoting, supplying, or taking any other actions promoting the Willamette Country Music Festival for 2011 or any other year festival;
 - (b) engaging any other activity constituting unfair competition with Plaintiffs, or acts or practices which deceive customers, the public, the media of any kind, and/or trade vendors or suppliers, including, without limitation, the use of

designations and design elements or websites or domain names associated with Plaintiffs;

(c) engaging in any other activity that will dilute the trademarks or designs or marks of Plaintiffs;

(d) committing any other act that falsely represents, or had the effect of falsely representing that the goods and services of Defendants are licensed by, authorized by, offered by, sponsored by, or in any other way associated with Plaintiffs.

(e) disclosing to anyone the trade secrets of Plaintiffs

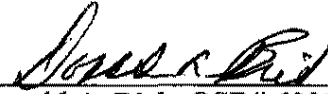
2. Ordering Defendants to recall from any distributors, retailers and any other persons in possession of the same all tickets, advertising brochures, and any other promotional material of any kind, as well as the means of making the same, and to deliver the same to Plaintiffs for destruction or other disposition;
3. Ordering Defendants to file with this Court and serve on Plaintiffs within 30 days after entry of the injunction a report in writing, under oath setting forth in detail the manner and form through which Defendants have complied with the injunction;
4. Ordering an accounting by Defendants of all gains, profits, and advantages derived from their wrongful acts;
5. Awarding Plaintiffs all of Defendants' profits and all damages by Plaintiffs as a result of Defendants wrongful acts, and such other compensatory damages as the

Court determines to be fair and equitable pursuant to U.S.C. Section 1125, or Section 1117.

6. Awarding treble damages in the amount of Defendant's profits, or Plaintiffs' damages, whichever is greater, for willful infringement; applicable interest, costs, disbursements and attorneys fees as well as statutory damages, all as provided in 15 U.S.C. 1117 or 1125.
7. With respect to Plaintiffs claims under Oregon law, such damages as provided by Oregon law, costs and disbursements, as well as punitive damages
8. With respect to the Eighth Claim for Relief, damages against Defendant Hankins in the amount she misappropriated from the Plaintiffs and damages for her actions with respect to the bankruptcy claim filing.
9. Such other relief as may be just and proper under either Federal trademark law or Oregon law as herein alleged.

DATED this ____ day of _____.

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Court determines to be fair and equitable pursuant to U.S.C. Section 1125, or Section 1117.

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7. With respect to Plaintiffs claims under Oregon law, such damages as provided by Oregon law, costs and disbursements, as well as punitive damages
8. With respect to the Eighth Claim for Relief, damages against Defendant Hankins in the amount she misappropriated from the Plaintiffs and damages for her actions with respect to the bankruptcy claim filing.
9. Such other relief as may be just and proper under either Federal trademark law or Oregon law as herein alleged.

DATED this 3rd day of January, 2011.