

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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FUNKY BROWN CHICK CORP.,)	
P.O. Box 2018)	
New York, NY 10108)	Civil Action No.:
Plaintiff,)	
)	
v.)	
)	
YESHA CALLAHAN,)	
d/b/a FUNKY BLACK CHICK,)	
d/b/a FUNG'KE BLAK CHIK,)	
108 Militia Pl.)	
Odenton, Anne Arundel County, MD 21113)	Jury Trial Demanded
)	
Defendant.)	
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COMPLAINT

For its Complaint, Funky Brown Chick Corp. ("Plaintiff"), by and through counsel, alleges as follows:

NATURE OF ACTION

1. This is an action to remedy acts of unfair competition under Title 15 of the United States Code, Chapter 22 (the "Lanham Act"), the Maryland trademark statute, Md. Code, Bus. Reg. §1-401 *et seq.*, and under the common law of the State of Maryland with regard to trademark infringement and unfair competition.

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over this action pursuant to 15 U.S.C. §1121(a) and 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff's claims arise under the Lanham Act. This Court has supplemental jurisdiction over all other claims not asserted under the Lanham Act pursuant to 28 U.S.C. §1367(a) and

§1331(b), as these unfair competition claims relate to claims within the Court’s original jurisdiction.

3. Venue is proper in this district under 28 U.S.C. §1391(b) because a substantial part of the events giving rise to the claims occurred in this district. Venue is also proper because Defendant resides within the Northern Division of the District of Maryland.

THE PARTIES

4. Plaintiff Funky Brown Chick Corp. is a corporation organized and existing under the laws of the State of New York, with a mailing address of P.O. Box 2018, New York, NY 10108. Plaintiff Funky Brown Chick Corp. is owned by Twanna A. Hines, a resident of New York, New York.

5. Upon information and belief, Defendant Yesha Callahan (“Defendant”) is an individual residing at 108 Militia Pl, Odenton, Maryland 21113.

PLAINTIFF’S USE OF HER MARK

6. Since at least as early as June 2005, Twanna A. Hines has used the trademark **FUNKY BROWN CHICK** in commerce in connection with an educational and entertainment service, namely, a continuing information and education program about interpersonal relationships accessible by computer networks.

7. Since at least as early as September 2006, Twanna A. Hines has registered and used the domain name “funkybrownchick.com” in connection with the educational and entertainment service.

8. Twanna A. Hines assigned all right, title and interest in and to the trademark **FUNKY BROWN CHICK**, including United States Trademark Application

Serial No. 77/473,384 for the trademark **FUNKY BROWN CHICK**, filed on May 13, 2008, in International Class 41, to Plaintiff Funky Brown Chick Corp.

9. Over the years, Plaintiff has exercised significant effort and resources in promoting services bearing the **FUNKY BROWN CHICK** trademark, and establishing the **FUNKY BROWN CHICK** trademark in the minds of consumers as identifying Plaintiff's services.

10. By virtue of Plaintiff's extensive and continuous use of her **FUNKY BROWN CHICK** mark, the mark has developed significant consumer recognition and good will. Plaintiff's **FUNKY BROWN CHICK** mark has grown to be recognized throughout the entertainment community and by the public as identifying Plaintiff and as a source of origin for Plaintiff's service.

DEFENDANT'S INFRINGEMENT

11. Upon information and belief, subsequent to Plaintiff's substantial use of her **FUNKY BROWN CHICK** mark, Defendant started using the confusingly similar mark **FUNKY BLACK CHICK** in connection with services strikingly similar to those provided by Plaintiff under **FUNKY BROWN CHICK**.

12. Defendant's **FUNKY BLACK CHICK** mark is so similar to Plaintiff's inherently distinctive **FUNKY BROWN CHICK** mark that it has actually caused confusion and mistake as to whether Defendant's service is Plaintiff's, and vice-versa. Such public confusion has and will continue to cause irreparable harm to Plaintiff.

13. On May 18, 2008, Plaintiff contacted Defendant and asked that Defendant cease the use of **FUNKY BLACK CHICK** in connection with Defendant's service. A copy of Plaintiff's communication to Defendant is attached hereto as **Exhibit A**.

14. On May 19, 2008, Defendant responded to Plaintiff and declined to cease using the **FUNKY BLACK CHICK** mark. Defendant represented that an application for the registration of **FUNKY BLACK CHICK** mark had already been submitted. A copy of Defendant's response is attached hereto as **Exhibit B**.

15. Upon information and belief, Defendant has not applied to register her **FUNKY BLACK CHICK** mark with the United States Patent and Trademark Office and has not filed any application for state trademark registration.

16. On information and belief, beginning as early as May 19, 2008, and continuing until the present, Defendant, with knowledge of Plaintiff's mark, has continued to use the confusingly similar mark **FUNKY BLACK CHICK** in connection with services similar to those provided by Plaintiff under **FUNKY BROWN CHICK**.

17. Upon information and belief, Defendant has not ceased in her unauthorized use of a mark that is confusingly similar to Plaintiff's **FUNKY BROWN CHICK** trademark, and is continuing to use the confusingly similar mark **FUNKY BLACK CHICK**.

18. The acts of Defendant complained of above are unlawful, willful and knowingly performed with the intent and result of injuring Plaintiff.

FIRST CAUSE OF ACTION
(False Designation of Origin or Representation and
Unfair Competition Under 15 U.S.C. §1125(a))

19. Plaintiff realleges and incorporates the allegations in Paragraphs 1 through 18 as if fully set forth herein.

20. Defendant's unauthorized use of the **FUNKY BLACK CHICK** designation in connection with Defendant's service is likely to cause and has actually caused consumers to mistakenly believe that Defendant has an affiliation with Plaintiff,

or that Defendant's service is sponsored or approved by Plaintiff, or that Defendant is otherwise associated with Plaintiff.

21. Plaintiff has given Defendant actual notice in writing of Plaintiff's rights in and to the trademark described above, and that Defendant's acts were infringing of Plaintiff's rights. Defendant has willingly continued her infringing activity.

22. Defendant's acts have caused irreparable injury to Plaintiff's goodwill and reputation in an amount that cannot be ascertained at this time and, unless enjoined, will cause further irreparable injury, leaving Plaintiff with no adequate remedy at law.

23. By reason of the foregoing, Plaintiff is entitled to injunctive relief against Defendant, and, after trial, to recover any damages and recover any profits realized by Defendant by Defendant's acts of false designation of origin.

**SECOND CAUSE OF ACTION
(Trademark Infringement and Unfair Competition Under Maryland State Law)**

24. Plaintiff realleges and incorporates the allegations in Paragraphs 1 through 23 as if fully set forth herein.

25. The acts of Defendant as described above constitute trademark infringement and unfair competition in violation of Plaintiff's rights under the common law of the State of Maryland and Md. Code, Bus. Reg. §1-104 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in its favor as follows:

A. Declare that Defendant's unauthorized conduct violates Plaintiff's rights under the Lanham Act, the common law of the State of Maryland, and the Maryland Business Regulation Article;

B. Enjoin Defendant from:

(1) Using the name and designation **FUNKY BLACK CHICK**, or any other designations confusingly similar to **FUNKY BROWN CHICK**, alone or in combination with other words, names, styles, titles, designs or marks in connection with educational or entertainment services;

(2) Doing any other acts or things calculated or likely to cause confusion or mistake in the mind of the public or to lead consumers into the belief that products sold, offered for sale, or distributed by Defendant are authorized, sponsored, licensed, endorsed, promoted or condoned by Plaintiff, or are otherwise affiliated with or connected to Plaintiff; and

(3) Representing by any means whatever, directly or indirectly, that any services offered or provided by Defendant are offered or provided by the Plaintiff, or from otherwise taking any action likely to cause confusion, mistake or deception on the part of consumers as to the origin or sponsorship of such goods and services.

C. Order that Defendant cease use of the domain “funkyblackchick.com”.

D. Order that Defendant assign the domain “funkyblackchick.com” to Plaintiff.

E. Order that Defendant, pursuant to 15 U.S.C. §1116, serves on Plaintiff within thirty (30) days after service on Defendant of the requested mandatory injunction orders, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction(s), and that such recall delivery and destruction occurred.

F. Award to Plaintiff Defendant’s profits and any damages suffered by Plaintiff arising from Defendant’s acts of federal, state and common law unfair competition, false designations of origin, false descriptions and representation, and injury

to the business reputation of Plaintiff, and punitive damages in connection with Plaintiff's state law claims.

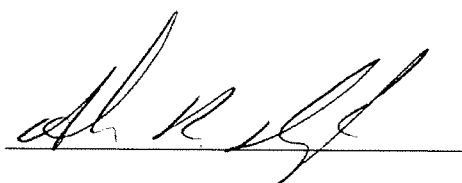
G. Award to Plaintiff treble damages for Defendant's willful infringement.

H. Award Plaintiff its costs, including reasonable attorneys' fees and disbursements in this action, pursuant to 15 U.S.C. §1117.

I. Award Plaintiff such other and further relief as the Court deems just equitable and proper.

Dated: November 13, 2008

By:



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