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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 PAISANO PUBLICATIONS, LLC, a
12 Delaware limited liability company,

13 Plaintiff,

14 v.

15 KSLB&D, INC., a North Dakota
16 corporation; and DOES 1 through 20,
inclusive,

17 Defendants.
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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUN 22 2012

John A. Clarke, Executive Officer/Clerk
BY Rigena Juliano Deputy

BC487011

Case No.

COMPLAINT FOR:

(1) BREACH OF CONTRACT - LICENSE
AGREEMENT;

(2) BREACH OF CONTRACT - VENDOR
AGREEMENT;

(3) INJUNCTIVE RELIEF; and

(4) DECLARATORY RELIEF

1 Plaintiff Paisano Publications, LLC ("Paisano") alleges as follows:

2
3 **THE PARTIES**

4 1. Paisano is a Delaware corporation organized and existing under the laws of
5 Delaware, with its principal place of business located in Agoura Hills, California. Paisano is the
6 publisher of several motorcycle enthusiast magazines, including the well-known *Easyriders*
7 magazine. Paisano is also the owner of the well-established *Easyriders* trademark in such classes
8 of goods as print and electronic publications, apparel, leather goods, eyewear, motorcycle
9 accessories, events, and restaurant and bar services.

10 2. Paisano is informed and believes, and based thereon alleges, that KSLB&D, Inc.
11 ("KSLB&D") is a North Dakota corporation organized and existing under the laws of the State of
12 North Dakota, with its principal place of business located in Fargo, North Dakota. Paisano is
13 further informed and believes, and based thereon alleges, that KSLB&D is engaged in the
14 business of owning and operating bar and restaurant establishments.

15 3. The true names and capacities of the defendants named herein as Does 1 through
16 20, inclusive, are currently unknown to Paisano, who therefore sues said defendants by such
17 fictitious names. Paisano will amend this complaint to show their true names and capacities when
18 the same have been ascertained. Does 1 through 20, inclusive, were legally responsible for the
19 events and damages suffered by Paisano as alleged herein.

20 4. Paisano is informed and believes, and based thereon alleges, that in doing the acts
21 alleged herein, each of the defendants was the agent, principal, employee, or co-conspirator of
22 one or more of the other defendants, and acted with the other defendants' knowledge, consent and
23 approval and/or within the course and scope of such agency, employment or conspiracy. As such,
24 each of the defendants is responsible for the liabilities of the other defendants, as alleged herein.

25
26 **JURISDICTION AND VENUE**

27 5. On or about March 22, 2011, Paisano and KSLB&D entered into a written
28 "License Agreement" (the "License Agreement") under which, among other things, Paisano

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1 granted to KSLB&D the right to use several of Paisano's trademarks, including the *Easyriders*
2 mark (the "Marks") in connection with a bar and restaurant owned by KSLB&D in Sturgis, South
3 Dakota, to be operated under the name "Easyriders Saloon" (the "Saloon"). Paragraph 22 of the
4 License Agreement states that it "shall be governed by and construed in accordance with the laws
5 of the State of California," that "[a]ny action arising under [the License Agreement] shall be
6 brought in a state or federal court within Los Angeles County, California," and that the "parties
7 expressly consent to personal jurisdiction in Los Angeles County, California and agree that such
8 court(s) will have exclusive jurisdiction over any and all issues related to [the License
9 Agreement]."

10 6. Concurrently upon entering the License Agreement, Paisano and KSLB&D
11 entered into a written Vendor Sales Agreement (the "Vendor Agreement"). Under the Vendor
12 Agreement, Paisano was to act as KSLB&D's exclusive agent for the sale of vendor space
13 adjacent to the Saloon during the famous motorcycle enthusiast rally held in Sturgis each summer
14 (the "Sturgis Event"). Paragraph 8.1 of the Vendor Agreement states that it "shall be governed by
15 and construed in accordance with the laws of the State of California."
16

17 THE LICENSE AGREEMENT

18 7. In addition to granting to KSLB&D the right to operate the Saloon under the name
19 "Easyriders Saloon," the License Agreement further grants KSLB&D the right, "subject to the
20 approval of Paisano," to sell appropriate merchandise featuring the Marks (License Agreement,
21 Paragraph 2(a)) (the "Merchandise Approval Provision"). Under the License Agreement, Paisano
22 is entitled to either a 2.5% or 5% royalty on defined "Gross Sales" of the Saloon, including sales
23 of food, beverages, and merchandise.

24 8. Under the License Agreement, KSLB&D also agreed that it would "reasonably
25 cooperate with Paisano in maximizing the image and reputation of the Marks as applied to" the
26 Saloon and Merchandising Provision (License Agreement, Paragraph 3.2) (the "Maximization
27 Provision"). KSLB&D further agreed that it would "use and maintain at the Business signs
28 bearing the Marks which have been approved and/or designated by Paisano in writing" and that it

1 would "not identify the Business with any other signs without receiving prior written approval
2 from Paisano" (License Agreement, Paragraph 10) (the "Signs Provision").

3 9. Paragraph 15.2 of the License provides that KSLB&D will not use the Marks in a
4 way that will (a) "disparage or reflect adversely upon the Marks, or hold the Marks up to scorn or
5 ridicule" and (b) that KSLB&D "acknowledges that the Marks constitute valuable intellectual
6 property of Paisano, and that improper use of the Marks could cause Paisano irreparable harm."
7 Paragraph 21 of the License Agreement states that KSLB&D "acknowledges that any breach of
8 this Agreement concerning the permitted use of the Marks...would be likely to cause irreparable
9 harm to Paisano, as a consequence of which Paisano shall be entitled to injunctive relief in the
10 event of breach of any such provision."
11

12 THE VENDOR AGREEMENT

13 10. Under paragraph 2.2 of the Vendor Agreement, KSLB&D engaged Paisano to act
14 as its "exclusive agent for the sale of vendor space" adjacent to the Saloon surrounding the
15 Sturgis Event, and further agreed that it would "not directly sell any vendor space on the Saloon
16 Site, but rather [would] do so only through Paisano..." (the "Exclusive Vendor Provision"). In
17 exchange, Paisano was to receive a commission on vendor space sales.

18 11. Paragraph 3.3 of the Vendor Agreement states that "[e]ither party shall have the
19 right, upon ten (10) days advance notice, to terminate this Agreement prior to expiration of the
20 Term in the event that the other party materially breaches its obligations under this Agreement,
21 provided that if such breach is capable of being cured, fails to cure the same by the
22 commencement of the next applicable Sturgis Event, after receipt of notice from the non-
23 breaching party which specifies the nature of the breach" (the "Vendor Termination Provision").

24 12. Paragraph 3.4 of the Vendor Agreement states that "[u]pon termination of this
25 Agreement, neither party shall have the right to use the other party's trade or service marks, logos
26 or other indicia of business identity in connection with the Saloon site, or otherwise."
27
28

KSLB&D'S UNLAWFUL ATTEMPT TO TERMINATE THE AGREEMENTS

13. On or about May 31, 2012, KSLB&D sent Paisano a "Notice of Termination" purporting to terminate the Vendor Agreement pursuant to the Vendor Termination Provision. In the "Notice of Termination," KSLB&D claimed Paisano had materially breached the Vendor Agreement by failing to sell sufficient vendor space in advance of the approaching 2012 Sturgis Event to be held in August 2012, over two months after May 31, 2012. KSLB&D further informed Paisano that it had begun selling the remaining available vendor space on its own behalf.

14. Several days later, in early June 2012, Paisano discovered that KSLB&D began covering the signs around the Saloon bearing Paisano's valuable Marks, including the main outdoor sign identifying the Saloon as the "Easyriders Saloon." Paisano further discovered that KSLB&D began advertising the Saloon under the name "The Saloon & Steakhouse." Furthermore, Paisano learned that KSLB&D had commissioned and, on information and belief, was selling, merchandise featuring the Marks without Paisano's prior approval.

15. KSLB&D's attempt to terminate the Vendor Agreement violated the terms of the Vendor Agreement because Paisano had not breached the Vendor Agreement -- and even if Paisano had breached, its cure period did not expire until "the commencement of the next applicable Sturgis Event," in August 2012. KSLB&D's subsequent removal of all affiliation with Paisano's Marks was a transparent attempt to avoid its royalty and commission obligations under the Vendor and License Agreements prior to the 2012 Sturgis Event. Further, KSLB&D had itself previously breached the Vendor Agreement by violating Paisano's exclusivity rights. Although Paisano had hoped to resolve this matter amicably, Paisano was forced to bring this action to vindicate its rights under the Agreements.

FIRST CLAIM FOR RELIEF

(Breach of Contract (License Agreement) - Against all Defendants)

16. Paisano realleges and incorporates herein by this reference paragraphs 1 through 15 set forth above as though fully set forth herein.

17. Defendants have materially breached the License Agreement in multiple respects, including, but not limited to by: (a) covering the signs in and around the Saloon bearing Paisano's valuable Marks, failing to maximize the image and reputation of the Marks and, on information and belief, discontinuing the sale of merchandise featuring the Marks, in violation of the terms of the License Agreement and, specifically, the Maximization Provision; (b) failing to use and maintain the Saloon signs bearing the Marks, and publicly identifying and advertising the Saloon as "The Saloon & Steakhouse" in violation of the Signs Provision; (c) conduct which disparaged and reflected adversely on the Marks; (d) failing to obtain Paisano's approval of merchandise featuring the Marks in violation of the Merchandise Approval Provision; and (e) anticipatorily repudiating its obligation to pay royalties.

18. In addition to the above-described breaches of the express terms of the License Agreement, defendants have also breached the implied covenant of good faith and fair dealing, which is implied in every contract and imposes on each party to an agreement the duty to do whatever was reasonable to accomplish the purpose of the agreement, and the duty to refrain from knowingly doing anything to frustrate the accomplishment of that purpose or to engage in any conduct to deprive the other of the benefits of the agreement.

19. At all times relevant hereto, Paisano fully performed all conditions, duties and obligations required of it under the License Agreement, except as may have been excused, waived, or prevented by the acts or omissions of defendants.

20. As a direct and proximate result of defendants' breaches, Paisano has been damaged in an amount, to be determined according to proof, but which Paisano is informed and believes exceeds \$1,000,000.

SECOND CLAIM FOR RELIEF

(Breach of Contract (Vendor Agreement) - Against all Defendants)

21. Paisano realleges and incorporates herein by this reference paragraphs 1 through 20 set forth above as though fully set forth herein.

22. Defendants have materially breached the Vendor Agreement in multiple respects, including, but not limited to by: (a) acting as their own sales agent and selling vendor space adjacent to the Saloon for the 2012 Sturgis Event in violation of the Exclusive Vendor Provision; and (b) prematurely and improperly attempting to terminate the Vendor Agreement and remove the Marks from the Saloon in violation of the Vendor Termination Provision and paragraph 3.4 of the Vendor Agreement.

23. In addition to the above-described breaches of the express terms of the Vendor Agreement, defendants have also breached the implied covenant of good faith and fair dealing, which is implied in every contract and imposes on each party to an agreement the duty to do whatever was reasonable to accomplish the purpose of the agreement, and the duty to refrain from knowingly doing anything to frustrate the accomplishment of that purpose or to engage in any conduct to deprive the other of the benefits of the agreement.

24. At all times relevant hereto, Paisano fully performed all conditions, duties and obligations required of it under the Vendor Agreement, except as may have been excused, waived, or prevented by the acts or omissions of defendants.

25. To the extent that any covenants, conditions or promises required of Paisano pursuant to the terms and conditions of the Vendor Agreement remain outstanding, Paisano was at all times, and still is, ready, willing and able to perform all such covenants, conditions and promises.

26. As a direct and proximate result of defendants' breaches, Paisano has been damaged in an amount, to be determined according to proof, but which Paisano is informed and believes exceeds \$1,000,000.

THIRD CLAIM FOR RELIEF

(Injunctive Relief - Against All Defendants)

27. Paisano realleges and incorporates herein by this reference paragraphs 1 through 26 set forth above as though fully set forth herein.

28. Paisano is informed and believes, and based thereon alleges, that unless restrained by this Court, defendants will continue to: (a) cover and otherwise obscure the signs in and around the Saloon bearing Paisano's valuable Marks in violation of the terms of the License Agreement; and/or (b) fail to use and maintain the Saloon signs bearing the Marks, while publicly identifying and advertising the Saloon as "The Saloon & Steakhouse" in violation of the Signs Provision.

29. Defendants' wrongful conduct, unless and until enjoined and restrained by order of this Court, will cause great and irreparable injury to Paisano.

30. Paisano has no plain, speedy or adequate remedy at law for the injuries alleged above. Furthermore, the License Agreement's provisions at paragraphs 15.2(c) and/or 21 expressly acknowledge that improper use of the Marks could cause Paisano irreparable harm, as a consequence of which, Paisano shall be entitled to injunctive relief.

31. Paisano seeks a preliminary injunction and permanent injunction from the Court enjoining defendants, and each of them, and their agents, attorneys, servants, representatives and all other persons acting in concert with them or on their behalves from: (a) covering and otherwise obscuring the signs in and around the Saloon bearing Paisano's valuable Marks; (b) failing to use and maintain the Saloon signs bearing the Marks; and/or (c) publicly identifying and advertising the Saloon as "The Saloon & Steakhouse."

FOURTH CLAIM FOR RELIEF

(Declaratory Relief - Against All Defendants)

32. Paisano realleges and incorporates herein by this reference paragraphs 1 through 31 set forth above as though fully set forth herein.

33. By reason of the foregoing facts, an actual controversy has arisen between the

1 parties as to whether Paisano materially breached the Vendor Agreement by failing to sell
2 sufficient vendor space in advance of the 2012 Sturgis Event, thereby entitling KSLB&D to
3 terminate the Vendor Agreement. Paisano contends that: (a) it did not breach the Vendor
4 Agreement; (b) defendants were not entitled to terminate the Vendor Agreement; (c) defendants'
5 attempt to terminate the Vendor Agreement was without legal effect and violated the Vendor
6 Termination Provision; (d) KSLB&D itself breached the Vendor Agreement by violating
7 Paisano's exclusivity rights; and (e) defendants were not entitled to stop using the Marks in the
8 manner required by the License Agreement. Paisano is informed and believes, and based thereon
9 alleges, that KSLB&D contends to the contrary.

10 34. Paisano requires a declaration from this Court that: (a) it did not breach the Vendor
11 Agreement; (b) defendants were not entitled to terminate the Vendor Agreement; (c) defendants'
12 attempt to terminate the Vendor Agreement was without legal effect and violated the Vendor
13 Termination Provision; (d) KSLB&D itself breached the Vendor Agreement by violating
14 Paisano's exclusivity rights; and (e) defendants were not entitled to stop using the Marks in the
15 manner required by the License Agreement. This declaration is necessary so that the parties may
16 know their respective rights and obligations under the License Agreement and the Vendor
17 Agreement.

18 PRAYER FOR RELIEF

19
20 WHEREFORE, Paisano prays for judgment against defendants as follows:

- 21 1. For damages in an amount to be proven at trial in excess of \$2,000,000;
- 22 2. For a preliminary injunction and permanent injunction enjoining
23 defendants, and each of them, and their agents, attorneys, servants, representatives and all
24 other persons acting in concert with them or on their behalves from: (a) covering and
25 otherwise obscuring the signs in and around the Saloon bearing Paisano's valuable Marks;
26 (b) failing to use the Marks in the manner required by the License Agreement; and/or (c)
27 publicly identifying and advertising the Saloon as "The Saloon & Steakhouse;"
- 28 3. For a declaration that Paisano (a) did not breach the Vendor Agreement;

1 (b) that defendants were not entitled to terminate the Vendor Agreement; (c) that
2 defendants' attempt to terminate the Vendor Agreement was without legal effect and
3 violated the termination provision of the Vendor Agreement; (d) that KSLB&D itself
4 breached the Vendor Agreement by violating Paisano's exclusivity rights; and (e) that
5 defendants were not entitled to stop using the Marks in the manner required by the
6 License Agreement.

- 7 4. For attorney fees;
8 5. For costs of suit incurred herein;
9 6. For prejudgment interest at the maximum legal rate on all damages
10 awarded; and
11 7. For such other and further relief as the Court may deem just and proper.

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14 DATED: June 22, 2012

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP

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16 By: 

LEE A. DRESKE
Attorneys for Plaintiff PAISANO
PUBLICATIONS, LLC