

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

CARDS AGAINST HUMANITY, LLC,

Plaintiff,

vs.

SKKYE ENTERPRISES d/b/a
SURFTHEMALL.COM and
HOMEANDBABYSTORE.COM, JEREMY
GOULD, and AMY MICHELLE GOULD

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff Cards Against Humanity, LLC (“CAH”) alleges the following in support of its claims and causes of action against defendants Skkye Enterprises d/b/a SurfTheMall.com and HomeandBabyStore.com (“Skkye”), Jeremy Gould (“Jeremy”), and Amy Michelle Gould (“Amy,” together with Jeremy, the “Goulds,” and with Skkye, collectively, “Defendants”):

NATURE OF THE ACTION

2. This is an action for an injunction, damages, and other appropriate relief arising out of Defendants’ violations of the Copyright Act, 17 U.S.C. § 101, *et seq.* (hereinafter the “Copyright Act”), the Lanham Act, 15 U.S.C. § 1114, 15 U.S.C. § 1125; and for trademark infringement and unfair competition under the common law of Missouri, in connection with CAH’s highly successful card game titled “Cards Against Humanity.”

3. In an attempt to capitalize on the popularity of CAH’s products, Defendants have offered for sale and sold purportedly genuine versions of CAH’s card game that are, in fact, counterfeit. Defendants have sold their infringing products on Amazon as well as Skkye’s own websites.

4. Defendants' actions infringe CAH's exclusive rights in its card game; undermine the substantial investment CAH has made in both its products and brand; and cause irreparable damage to the significant goodwill associated with CAH's game.

JURISDICTION AND VENUE

5. This Court has original jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338 in that the claims herein arise under federal copyright law (17 U.S.C. §§ 101 *et seq.*) and federal trademark law (15 U.S.C. §§ 1051 *et seq.*). This Court has jurisdiction over the related state law claims under 28 U.S.C. § 1367(a).

6. Upon information and belief, this Court has personal jurisdiction over Skkye because it transacts business within this district and has caused injury to CAH's interests in this district.

7. Upon information and belief, this Court has personal jurisdiction over the Goulds because they are residents of this district.

8. This district is the proper venue for this action pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events and omissions giving rise to the claims herein occurred in this district, and all Defendants are subject to personal jurisdiction in this district.

THE PARTIES

9. Plaintiff CAH is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois.

10. On information and belief, defendant Skkye is a Missouri entity with its principal place of business in St. Charles, Missouri. On further information and belief, Skkye is qualified to do business, and is doing business, in this judicial district.

11. On information and belief, Skkye has advertised, sold, and/or distributed its infringing goods in or from this judicial district.

12. On information and belief, the Goulds are Skkye’s founders and sole employees. On further information and belief, the Goulds are residents of this judicial district.

FACTUAL BACKGROUND

CAH’s Copyrights and Trademarks

13. Since December 2009, CAH has designed, manufactured, marketed, and sold a highly successful card game titled “Cards Against Humanity,” including “base” card sets, expansion and specialty packs, and other related products and merchandise by the same name (collectively, the “Game”).

14. CAH has created and is the exclusive owner of copyrights for original works used in connection with the Game, including the following card sets (hereinafter, collectively the “Copyrighted Works”):

Title	Registration Effective Date	Registration No.
Cards Against Humanity	February 13, 2012	TX0007492177
Cards Against Humanity: First Expansion	February 13, 2012	TX0007490900
Cards Against Humanity, version 1.1	February 13, 2012	TX0007497922
Cards Against Humanity, version 1.2	June 8, 2012	TX0007554802
Cards Against Humanity: Second Expansion	November 16, 2012	TX0007624700
Cards Against Humanity, version 1.3	November 16, 2012	TX0007624693
Cards Against Humanity, version 1.4	June 8, 2013	TX0007750194
Cards Against Humanity: Third Expansion	July 8, 2013	TX0007838648

Cards Against Humanity, version 1.5	February 19, 2014	TX0007849458
Cards Against Humanity: Fourth Expansion	February 19, 2014	TX0007853589

15. Continuously since December 2009, CAH has used the trademark CARDS AGAINST HUMANITY (the “CAH Mark”), the tagline A PARTY GAME FOR HORRIBLE PEOPLE (the “CAH Tagline”); its distinctive trade dress consisting of white lettering on a black background with vertically aligned text in Helvetica Neue font (the “CAH Trade Dress”); and a three-card design (the “CAH Design Mark,” all of the foregoing, collectively, the “CAH Marks”), in order to distinguish its Game from those offered by others. The CAH Marks are all registered with the United States Patent and Trademark Office (Registration Nos. 4,304,905 (registered March 9, 2013); 4,301,057 (registered March 12, 2013); 4,623,613 (registered October 31, 2014); and 4,840,965 (registered October 27, 2015), respectively).

16. CAH has also (continuously since December 2009) used the CAH Marks in connection with its Copyrighted Works, which have been, and continue to be, extensively sold throughout the United States and internationally. CAH has extensively promoted, advertised, and used the CAH Marks at trade shows, point-of-purchase display materials, on the Game’s packaging, and on CAH’s website, *www.cardsagainsthumanity.com*. The CAH Mark is also used by CAH as its business name, and therefore functions as both a trademark and a trade name.

17. CAH sells the Game to U.S. consumers exclusively through Amazon; its own website (*www.cardsagainsthumanity.com*); its eBay store; and, beginning in October of 2014, various selected retail stores.

18. CAH's Game has become a phenomenon over the last several years, gaining enormous popularity, reaching an audience of millions around the world, and earning millions of dollars in revenues. CAH is acknowledged by the gaming industry and the general public as an industry leader, recognized for the high quality, ingenuity, and creativity of the Game. Specifically, the Game has been recognized and promoted by Amazon on its storefront as the "#1 Best Seller" in the Toys & Games category for five years; featured in leading game-related guides such as Kotaku (www.kotaku.com); and reviewed and heralded in multiple publications and on popular Internet sites including, but not limited to, the Huffington Post, Thrillist, BoingBoing, ABC, NBC, *TIME*, MSNBC, *The Chicago Tribune*, *Business Insider*, *USA Today*, BuzzFeed, TechCrunch, ReCode, The Next Web, *The Telegraph*, and *The Independent*.

19. As a result of all of the foregoing promotional efforts and dedication to providing quality products, the CAH Marks are favorably recognized and relied upon by the relevant consuming public as indicating high-quality goods originating exclusively from CAH. Thus, due to such efforts, CAH's Marks and Copyrighted Works have earned valuable goodwill.

Defendants' Counterfeit Products

20. CAH is informed and believes, and thereon alleges, that Defendants, having recognized the consumer awareness and goodwill associated with CAH's Copyrighted Works and Marks, have designed, manufactured, marketed, and/or sold counterfeit versions of the Game with the intent to infringe upon CAH's Copyrighted Works and Marks and reap profit from unsuspecting customers as a result.

21. Specifically, since at least May of 2015, Defendants have sold or offered for sale its counterfeit products through e-commerce storefronts, including *SurfTheMall.com* and *HomeandBabyStore.com*, in direct competition with CAH and CAH's authentic products.

Defendants have also offered counterfeit products through their Amazon[®] and eBay[®] storefronts.

22. Under “contact info,” *SurfTheMall.com* lists “Skkye Enterprises LLC, 20 Triad South, Suite 300, St. Charles, MO 63304.” Similarly, *HomeandBabyStore.com* notes at the bottom of its home page that its website is “© 2013 Skkye Enterprises LLC.”

23. The Goulds are affiliated with Skkye, and, on information and belief, are Skkye’s founders and sole employees.

24. Jeremy’s social media presence confirms his connection to Skkye. *SurfTheMall.com*’s Twitter account lists the account owner as “Jeremy Gould,” and Jeremy’s LinkedIn profile page lists his current title as “Surfthemall.com.”

25. Moreover, all of CAH’s communications with Skkye have been conducted through either Amy or Jeremy. For instance, following submission of CAH’s takedown request to Amazon, requesting removal of Defendants’ infringing product listings, Amy contacted CAH, asking CAH to communicate to Amazon Defendants’ compliance with the removal request.

26. Similarly, after CAH submitted a takedown notice to eBay, Jeremy contacted CAH, objecting to the removal of Defendants’ listing. Jeremy contacted CAH from the e-mail address “surfthemall79@gmail.com,” which appeared to belong to an individual named “Natalie Asher.” CAH subsequently learned that “Natalie” and “Asher” are the Goulds’ two children.

27. Additional connections between Skkye and the Goulds’ other business endeavors confirm the Goulds’ affiliation with Skkye.

28. For instance, on *SurftheMall.com*'s website, Skkye lists its address as 20 Triad South Drive, Saint Charles, Missouri 63304. This mailing address is also used by Pulsar Distribution, LLC (a now-cancelled Missouri entity whose registered agent is "Brad Gould") and Baby Moon Boutiques LLC (a Missouri corporation whose registered agent is "Amy Michelle Gould").

29. Additionally, *SurfTheMall.com*'s Facebook page lists its contact e-mail address as "jeremy@surfthemall.com" and lists its contact telephone number as (636) 486-2522. This telephone number is also used by Pulsar Distribution, LLC (the corporation identified above).

30. When shipping orders to customers, Skkye uses as its return address 1336 Caulks Hill Road, St. Charles, Missouri 63304. This address is also used by Pulsar Distribution, LLC.

31. Defendants have no license, authority, or other permission from CAH to use the Copyrighted Works or CAH Marks in any manner, including in connection with the promotion, advertisement, distribution, sale, and/or offering for sale of Defendants' infringing products.

32. Defendants are aware that their actions are infringing. CAH has, on multiple occasions, demanded that Defendants cease and desist their counterfeiting activities. Despite notification of CAH's rights and CAH's repeated demands, Defendants have refused to comply with CAH's requests (and, in many instances, have refused to respond to CAH's communications at all).

33. CAH is informed and believes and thereon alleges that Defendants have received a direct financial benefit from marketing and selling the counterfeit products that incorporate CAH's Copyrighted Works and Marks, in an amount that is unknown to CAH. To date, Defendants have communicated to CAH that they have earned only \$241.13 in profits;

however, CAH has reason to believe that Defendants' revenues and profits earned far exceed this amount.

34. CAH is informed and believes and thereon alleges that Defendants' marketing, sale, and distribution of the counterfeit products has damaged CAH in that CAH has lost sales and profits.

35. CAH is informed and believed and thereon alleges that Defendants' counterfeit products are inferior in quality to CAH's products, and consumers who have purchased Defendants' products, and believe those products to be CAH's, have been disappointed by the quality of those products.

36. As a result, Defendants' marketing, sale, and distribution of their fake products have damaged, and will continue to damage, CAH's reputation and goodwill.

COUNT I

Copyright Infringement in Violation of 17 U.S.C. §§ 101 et seq.

37. CAH realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 36 of the Complaint with the same force and effect as if fully set forth at length herein.

38. The Copyrighted Works are original works of authorship and constitute copyrightable subject matter under the laws of the United States.

39. CAH has duly complied in all respects with the copyright laws of the United States, 17 U.S.C. §§ 101 et seq., and has secured exclusive rights and privileges in and to the Copyrighted Works.

40. At all times relevant to the Complaint, CAH is and has been solely and exclusively authorized to, among other things, reproduce and distribute the Copyrighted Works.

41. Defendants have copied, reproduced, distributed, adapted, and/or publicly displayed the Copyrighted Works without the consent or authority of CAH, thereby directly infringing CAH's copyrights.

42. Defendants had access to CAH's Copyrighted Works, as established by, among other things, the accessibility of CAH's Game in the public marketplace, including downloadable versions available on CAH's website (which is made available subject to a Creative Commons license for non-commercial use only), the widespread coverage of the Game in media and industry publications, and the fact that CAH's products are prominently featured and sold on Amazon®, one of the world's largest e-commerce marketplaces, as well as its own website, *www.cardsagainsthumanity.com*.

43. Defendants have deliberately infringed CAH's copyrights in the Copyrighted Works by advertising, offering for sale, and selling substantially identical, counterfeit versions of CAH's Copyrighted Works without CAH's permission in violation of 17 U.S.C. § 106.

44. The infringement of CAH's rights in and to each of the Copyrighted Works constitutes a separate and distinct act of infringement.

45. Defendants' acts have caused and will continue to cause irreparable harm and injury to CAH for which CAH has no adequate remedy at law. CAH is accordingly entitled to an injunction along with damages in an amount to be determined at trial.

COUNT II
Trademark Infringement in Violation of Section 32(1) of the Lanham Act
(15 U.S.C. § 1114(1))

46. CAH realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 45 of the Complaint with the same force and effect as if fully set forth at length herein.

47. CAH possesses exclusive trademark rights in the CAH Marks. Consumers readily identify the CAH Marks as being of the highest quality, and emanating exclusively from, and being sponsored and approved by, CAH.

48. Defendants, without CAH's consent or authorization, have advertised, offered for sale, and/or sold counterfeit products displaying designations that are identical to, or substantially indistinguishable from, the CAH Marks.

49. Defendants' unauthorized use of the CAH Marks is likely to cause mistake, or confuse or deceive the general public as to the affiliation, connection, or association of Defendants or the counterfeit products with CAH.

50. Defendants have infringed and continue to infringe the CAH Marks with full knowledge of CAH's exclusive rights in the CAH Marks and with deliberate intention to benefit from the goodwill associated with the Marks.

51. Defendants' actions constitute an infringement of CAH's rights in the Marks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114(1).

52. Upon information and belief, Defendants have made and will continue to make substantial profits to which they are not in law or equity entitled.

53. Defendants' infringing conduct has caused and, unless restrained by this Court, will continue to cause, irreparable harm, loss, and injury to CAH, for which CAH has no adequate remedy at law.

COUNT III

**False Designation of Origin in Violation of Section 43(a) of the Lanham Act
(15 U.S.C. § 1125(a))**

54. CAH realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 53 of the Complaint with the same force and effect as if fully set forth at length herein.

55. Defendants' unauthorized use of the CAH Marks, including unregistered marks in which CAH has common law rights, is likely to cause confusion, mistake or deception as to the affiliation or connection of Defendants with CAH and as to the sponsorship or approval of Defendants' counterfeit goods by CAH.

56. Upon information and belief, the aforesaid acts of Defendants constitute a false designation of origin, in that Defendants have failed to adequately inform consumers at the point of sale that the counterfeit products are not the CAH Game, and are presenting the counterfeit products as if they were genuine version of the Game, in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

57. Upon information and belief, by their acts, Defendants have made and will continue to earn substantial profits to which they are not in law or equity entitled.

58. Defendants' willful and deliberate acts have caused and, unless restrained by this Court, will continue to cause, irreparable harm, loss, and injury to CAH, including injury to CAH's goodwill, reputation, and business, for which CAH has no adequate remedy at law.

COUNT IV

Common Law Trademark Infringement and Unfair Competition

59. CAH realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 58 of the Complaint with the same force and effect as if fully set forth at length herein.

60. CAH owns all rights in and to the CAH Marks, including all common law rights in such marks.

61. Defendants, without CAH's consent or authorization, have advertised, offered for sale, and/or sold counterfeit products that are substantially indistinguishable from the Game and are likely to cause mistake, or confuse or deceive the general public as to the affiliation, connection, or association of Defendants or the counterfeit products with CAH.

62. Defendants have infringed CAH's Marks with full knowledge of CAH's rights in and to the CAH Marks.

63. Defendants' foregoing acts constitute trademark infringement and unfair competition in violation of the common law of the State of Missouri.

64. Defendants' acts have caused, and will continue to cause, irreparable injury to CAH. CAH has no adequate remedy at law and is thus entitled to injunction along with damages in an amount to be determined at trial.

JURY TRIAL DEMAND

CAH requests a trial by jury on all issues so triable of right pursuant to Fed. R. Civ. P. 38.

PRAYER FOR RELIEF

WHEREFORE, CAH respectfully demands:

A. That the Court find that Defendants infringed CAH's copyrights in the Copyrighted Works and engaged in trademark infringement, false designation of origin, and unfair competition under federal and state law;

B. A preliminary and permanent injunction providing that, pursuant to 17 U.S.C. § 502 and 15 U.S.C. § 1116(a), Defendants, their agents, employees, representatives, partners, joint venturers, and/or anyone acting on behalf of, or in concert with, Defendants, jointly and

severally, be enjoined through the world during the pendency of this action and permanently thereafter from:

- a. manufacturing, reproducing, selling, offering for sale, promoting, advertising, distributing, and/or commercially exploiting in any manner, either directly or indirectly, the counterfeit products or other works which incorporate the original, protectable Copyrighted Works and CAH Marks; and
- b. using any false description, representation, or designation, or otherwise engaging in conduct that is likely to create an erroneous impression that Defendants' products are endorsed by CAH or are connected in any way with CAH; and

C. An order, pursuant to 17 U.S.C. § 503 and 15 U.S.C. § 1118, requiring the impoundment or destruction of all of Defendants' infringing goods; all articles by means of which such infringing goods may be reproduced; and all marketing, advertising, or promotional materials depicting Defendants' infringing goods;

D. An order requiring an accounting of all profits obtained by Defendants from sales of the infringing goods and an order that Defendants hold all such profits in a constructive trust for the benefit of CAH;

E. An order requiring Defendants to pay to CAH either (i) all such actual damages and profits attributable to the infringements of the Copyrighted Works by Defendants and those acting in concert with it in an amount to be proven at trial; or (ii) in the alternative, statutory damages of up to \$150,000 per Copyrighted Work infringed as provided by Section 504(c) of the Copyright Act for Defendants' willful infringement;

F. An award of costs and attorney's fees pursuant to 17 U.S.C. § 505;

G. An order requiring Defendants to pay to CAH either (i) all such actual damages and profits attributable to the infringements of the CAH Marks by Defendants and those acting in concert with it in an amount to be proven at trial, trebled, as well as costs and attorney's fees, pursuant to 15 U.S.C. § 1117; or (ii) in the alternative, statutory damages pursuant to 15 U.S.C. § 1117(c) of up to \$2,000,000 for each trademark that Defendants have counterfeited and infringed;

H. An award of prejudgment interest on all damages awarded by this Court; and

I. An award of such other and further relief as the Court deems just and proper.

Dated: September 20, 2016

Respectfully Submitted,

/s/ Eleanor M. Lackman
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