

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON

KRISTEN COLLIANDER,

Plaintiff,

v.

DOUGLAS NAFTZGER, DBA
GOLDBERG ENTERTAINMENT INC.,

Defendants.

No. 2:10-cv-536

**PLAINTIFF'S COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

COMES NOW plaintiff Kristen Colliander, by and through her attorneys Mona Ibrahim
and Imua Legal Advisors, and alleges as follows:

PARTIES

1. Plaintiff Kristen Colliander ("Colliander" or "Plaintiff") is an entertainer who performs
under the names Kaycee Cole and Kristen Collianeli. She resides in King County,
Washington.

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2. Upon information and belief, Defendant Douglas Allen Naftzger (“Naftzger”) is a resident of Whiteside County, Illinois.

3. Upon information and belief, Defendant Goldberg Entertainment Inc. (“Goldberg Entertainment”) is an Illinois company owned in whole or in part by Naftzger. Its principal place of business is unknown.

JURISDICTION AND VENUE

4. This is a civil action seeking damages and injunctive relief for copyright infringement, removal or alteration of copyright management information, common-law Lanham Act violations, violation of the Computer Fraud and Abuse Act (“CFAA”), misappropriation of name and likeness, and interference with business relationships.

5. The Court has original subject matter jurisdiction over this action pursuant to the provisions of the Copyright Act of 1976 (“Copyright Act”), 17 U.S.C. § 101 *et seq*, the CFAA, 18 U.S.C. § 1030 *et seq*, 28 U.S.C. § 1338 (a) and (b), and 28 U.S.C. § 1331 (federal question).

6. This Court has jurisdiction over the Washington state law claims pursuant to 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over the Naftzger and Goldberg Entertainment (collectively “Defendants”) pursuant to RCW 4.28.185 due to business transactions conducted by Defendants within the State of Washington.

8. Venue in United States District Court for the Western District of Washington is proper pursuant to 28 U.S.C. § 1391(b) (2). A substantial part of the wrongful acts of the Defendant alleged herein occurred in and caused injury to Plaintiff in Washington.

BACKGROUND

9. Defendants provide entertainment services to casinos, resorts, and other venues throughout the world. These services include tribute shows and combined musical and dance performances. Defendants engaged Plaintiff from February 2005 to July 6, 2008. Plaintiff created, choreographed, directed, starred in, and performed in several of Defendants' shows.
10. "Made in America", subsequently re-titled "The Angels: A Pussycat Dolls Tribute" ("Angels") when it opened in the United States, is a burlesque-style song and dance tribute show first performed in Seoul, Korea on May 6, 2006 as part of a Morale, Welfare, and Recreation (MWR) Military tour. "Angels" combines song, dance, humor, and costume in a wholly original and entertaining manner. A group of five professional female performers, originally including Plaintiff, perform choreographed original dances of a variety of styles, including jazz, hip hop, and modern. The performance received positive reviews worldwide.
11. Plaintiff created or caused to be created the choreography, stage direction, costumes, and all other creative elements in and to the "Angels" performance. Plaintiff also created the "Angels" trademark and continues to use that mark in connection with commercial performances. Accordingly, Plaintiff is the registered owner of Copyright Certificate # PA 1-666-663 (attached as Exhibit 1) and is the owner of the common law "Angels" trademark.
12. Although Plaintiff is no longer associated with Goldberg Entertainment, Defendants have used and continue to use Plaintiff's copyrighted material, trademark, unique pseudonyms, images, and likeness in promotional and marketing materials for infringing "Angels" performances without Plaintiff's permission.
13. From 2006 to 2008, numerous venues have contracted with Goldberg Entertainment for the "Angels" performance.

1 14. Upon information and belief, Goldberg Entertainment received as much as \$60,000 per
2 contract.

3 15. Plaintiff and Defendant Naftzger also performed a Johnny Cash and June Carter tribute
4 show known as "Cash Forever" at the Royal River Casino in Flandreau, South Dakota on
5 April 7, 2008.

6 16. Plaintiff and Defendant Naftzger co-produced a sound recording entitled "Circle Be
7 Unbroken." The sound recording contains songs originally written and/or performed by
8 Johnny Cash and June Carter that are arranged and performed by Plaintiff and Defendant
9 Naftzger.

10 17. The sound recording is sold online through various retailers, including CDBaby and
11 Amazon.com.

12 18. After the release of the sound recording, Plaintiff was listed as a co-author in the work,
13 including on the online retail sites where the sound recording was sold. The copyright
14 notification on these sites read: "© 2009 Doug Allen and KC Collianeli".

15 19. Upon information and belief, Defendants have sold approximately 3,000 copies of the
16 "Circle Be Unbroken" recording through various media outlets.

17 20. On or before May of 2006, Defendants purchased the domain name "kristencollianeli.com"
18 for the purposes of promoting Plaintiff's business and performances.

19 21. During Plaintiff's tenure at Goldberg Entertainment, Plaintiff used the registered website to
20 promote her business and performances.

21 22. Plaintiff also used and continues to use social networking websites such as MySpace to
22 promote her business and performances. She further uses these sites to find and connect with
23 potential employers and other professionals in the entertainment industry who may engage
24 her services.
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1 23. There is no written instrument detailing the business relationship between Plaintiff and
2 Defendants, including any assignment of ownership in any right, claim, or interest in and to
3 any intellectual property or privacy rights belonging to Plaintiff, including performances,
4 sound recordings, or other media.

5 24. Plaintiff withdrew from her engagement with Defendants on July 6, 2008 and has received
6 no compensation for her work or intellectual property.

7
8 **FIRST CAUSE OF ACTION: COPYRIGHT INFRINGEMENT**
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10 25. Plaintiff incorporates Paragraphs 1 – 24 above, as though fully set forth herein.

11 26. Plaintiff holds a valid and exclusive copyright to the “Angels” performance.

12 27. Despite Plaintiff’s copyright and without her authorization, Defendants performed and
13 continue to perform “Angels” the Taj Mahal Hotel and Casino in Atlantic City, New Jersey
14 regularly since July, 2009.

15 28. Despite Plaintiff’s copyright and without her authorization, Defendants were engaged to
16 perform “Angels” at an event known as “Folsom Live” in Folsom, CA on September 26,
17 2009.

18 29. Despite Plaintiff’s copyright and without her authorization, Defendants have repeatedly
19 performed or caused to be performed “Angels”, or a derivative thereof, in public.

20 30. The actions and conduct by Defendants as described above infringe upon Colliander’s
21 exclusive rights granted under 17 U.S.C. § 106 to perform publicly, distribute, and prepare
22 derivative works of the “Angels” performance.

23 31. Such actions constitute copyright infringement under 17 U.S.C. § 501.
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32. As a result of the copyright infringement described above, Plaintiff is entitled to relief including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorney's fees, and prejudgment interest.

**SECOND CAUSE OF ACTION: REMOVAL AND FALSIFICATION OF
COPYRIGHT MANAGEMENT INFORMATION**

33. Plaintiff incorporates Paragraphs 1 – 32 above, as though fully set forth herein.

34. Upon information and belief, Defendants removed Plaintiff's pseudonym from copyright notifications listed by online retailers in connection with the "Circle Be Unbroken" sound recording.

35. By removing, or having removed on his behalf, Plaintiff's pseudonym from copyright notifications listed by online retailers, Defendants knowingly and with the intent to enable, facilitate, or conceal infringement, falsified copyright management information and distributed copyright management information that is false.

36. Such actions and conduct constitute the removal and falsification of copyright management information under 17 U.S.C. § 1202.

37. As a result of the removal and falsification of copyright management information as described above, Plaintiff is entitled to relief including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorneys' fees, and prejudgment interest under 17 U.S.C. § 1203.

THIRD CAUSE OF ACTION: MISREPRESENTATION UNDER THE LANHAM ACT

38. Plaintiff incorporates Paragraphs 1 – 37 above, as though fully set forth herein.

39. At all times during Plaintiff's tenure with Defendants, Defendants used Plaintiff's unique pseudonyms, image, voice, and likeness in promotional and marketing materials for "Angels" and for the "Circle Be Unbroken" performance and sound recording.

40. After the conclusion of Plaintiff's engagement with Defendants, Defendants have used and continue to use Plaintiff's unique pseudonyms, image, voice, and likeness in promotional and marketing materials for the infringing "Angels" performance and for the "Circle Be Unbroken" performance without Plaintiff's consent and for the purpose of creating consumer confusion.

41. The continued unauthorized use of Plaintiff's pseudonym, image, voice, and likeness has created the false and misleading representation that she has continued performing in, or other association with, the infringing "Angels" performances and "Circle be Unbroken" performances.

42. Defendant's continuous and willful false and misleading representations in promotional and marketing materials constitute violations of the Lanham Act, 15 U.S.C. § 1125(a).

43. As a result of these false and misleading representations and subject to the principles of equity, Plaintiff is entitled to relief including, but not limited to, injunctive relief, statutory costs and attorneys' fees, and prejudgment interest.

FOURTH CAUSE OF ACTION: COMMON LAW TRADEMARK INFRINGEMENT

44. The Plaintiff re-alleges and incorporates by reference the allegations contained in Paragraphs 1 – 43 as though fully set forth herein.

45. Defendants have used and continue to willfully and wrongfully use Plaintiff's "Angels" common law trademark to identify and promote infringing "Angels" performances.

46. Defendants' use of Plaintiff's "Angels" mark is likely to cause and has caused confusion and mistake regarding the source of the "Angels" performance.

47. Purchasers of the "Angels" performance, specifically venues, casinos, and performance halls have and will continue to associate Defendants' infringing performances with the performances originating from Plaintiff as a result of Defendants' unauthorized use of Plaintiff's "Angels" mark.

48. Defendant's use of Plaintiff's "Angels" mark is intentionally designed to cause such confusion and mimic Plaintiff's performance.

49. Defendant's continued use of Plaintiff's "Angels" mark will continue to cause confusion unless Defendant is enjoined.

50. As a result of Defendant's willful infringement of Plaintiff's "Angels" mark as described above and subject to the principles of equity, Plaintiff is entitled to relief including, but not limited to, injunctive relief, statutory costs and attorneys' fees, and prejudgment interest.

FIFTH CAUSE OF ACTION: LANHAM ACT CYBER-PIRACY

51. The Plaintiff re-alleges and incorporates by reference the allegations contained in Paragraphs 1 – 50 as though fully set forth herein.

52. Plaintiff uses the pseudonyms and trade names/trademarks "Kristen Collianeli," "Kaycee Cole," and "KC Collianeli" (Plaintiff's "pseudonyms") exclusively in connection with Plaintiff's business and productions.

53. Plaintiff uses her pseudonyms commercially as service marks and trademarks that designate the source of her commercial products and services.

54. After Plaintiff's departure from Goldberg Entertainment, Defendants removed the contents of the "kristencollianeli.com" website and denied Plaintiff access to the domain.

55. Upon information and belief, Defendants subsequently requested bids, starting at \$69, to sell the domain name.

56. Defendants continue to “squat” on the domain name comprised of Plaintiff’s pseudonym and trademark in violation of the Lanham Act § 43(d), 15 U.S.C. § 1125(d).

57. As a result of Defendant’s cyber-piracy and subject to the principles of equity, Plaintiff is entitled to relief including, but not limited to, injunctive relief, statutory costs and attorneys’ fees, and prejudgment interest.

SIXTH CAUSE OF ACTION: VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT

58. The Plaintiff re-alleges and incorporates by reference the allegations contained in Paragraphs 1 – 57 as though fully set forth herein.

59. On January 10, 2010 Plaintiff discovered that certain media from her MySpace page were removed without her authorization.

60. Upon information and belief, Defendants had the ability to access certain private passwords to computer accounts, including a MySpace account, owned by Plaintiff.

61. Upon information and belief, Defendants accessed without authorization Plaintiff’s Myspace account for the purpose of damaging Plaintiff’s business in violation of 18 U.S.C. § 1030(c)(4)(A)(i)(I).

62. As a result of the removal of this media, Plaintiff suffered economic losses in excess of \$5,000.

63. Plaintiff is therefore entitled to relief, including but not limited to injunctive relief, profits of the Defendants, actual damages, statutory costs and attorneys’ fees, and prejudgment interest.

SEVENTH CAUSE OF ACTION: MISAPPROPRIATION OF NAME AND LIKENESS

64. The Plaintiff re-alleges and incorporates by reference the allegations contained in Paragraphs 1 – 63 as though fully set forth herein.
65. Defendants use Plaintiff's name, image, and likeness on marketing and promotional materials for their infringing "Angels" performance.
66. Plaintiff has not given Defendants implied or express consent to use Plaintiff's name, image, and likeness in connection with the infringing performance.
67. Defendants' continued improper use of Plaintiff's name, image, and likeness in violation of RCW 63.60.050 has impaired and continues to impair Plaintiff's reputation, business, and goodwill.
68. Plaintiff is therefore entitled to relief including, but not limited to, injunctive relief, profits of the Defendants, actual damages, statutory damages, statutory costs and attorneys' fees, and prejudgment interest.

**EIGHTH CAUSE OF ACTION: INTERFERENCE WITH BUSINESS AND
CONTRACTUAL RELATIONSHIPS**

69. The Plaintiff re-alleges and incorporates by reference the allegations contained in Paragraphs 1 – 68 as though fully set forth herein.
70. Plaintiff's pseudonym, "Kristen Collianeli", is her most recognizable and widely known pseudonym in the entertainment industry.
71. Plaintiff's prior use of the domain "kristencollineli.com" has created reasonable business expectancy among various production companies and employers in connection with her entertainment career.

72. Defendant knew or should have known that Plaintiff's pseudonym "Kristen Collianeli" is the one in which she is most known by, and thus has reason to know that intentional interference with a domain name using that pseudonym has and continues to interfere with Plaintiff's business and contractual prospects.

73. Defendant knows or should know that the continued use of Plaintiff's name, likeness, and pseudonym in connection with the infringing "Angels" performance also interferes with Plaintiff's business and contractual prospects.

74. As a result of Defendant's interference with Plaintiff's business and contractual prospects, Plaintiff is entitled to relief including, but not limited to, injunctive relief, profits of the Defendants, actual damages, and prejudgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. On the First Cause of Action, for an award of actual profits earned by Defendants pursuant to 17 U.S.C. § 504(b). Alternatively, for an award of up to \$150,000 upon a finding of willful infringement pursuant to 17 U.S.C. § 504(c)(2). And for an order permanently enjoining Defendants from performing, reproducing, or creating derivative works of "Angels".
2. On the Second Cause of Action, for actual damages sustained by Plaintiff pursuant to 17 U.S.C. § 1203(c)(2). Alternatively, for an award of up to \$25,000 pursuant to 17 U.S.C. § 1203(c)(3)(B).
3. On the Third, Fourth, and Fifth Causes of Action, for injunctive relief according to the principles of equity and upon such terms as the Court deems reasonable pursuant to 15 U.S.C. 1116(a).

- 1 4. On the Fifth Cause of Action, for forfeiture or transfer of the domain name
2 "kristencollianeli.com" to Plaintiff pursuant to 15 U.S.C. 1125(d)(1)(c).
- 3 5. On the Sixth Cause of Action, compensatory damages pursuant to 18 U.S.C. 1030(g). Also,
4 injunctive relief pursuant to the same.
- 5 6. On the Seventh Cause of Action, actual profits earned by Defendants that are attributable to
6 Defendants' use of Colliander's name and likeness pursuant to RCW 63.60.060(2).
7 Alternatively, statutory damages of up to \$1,500 pursuant to the same. Also, injunctive relief
8 pursuant to RCW 63.60.060(1).
- 9 7. On the Eight Cause of Action, actual losses sustained by Plaintiff that are attributable to
10 Defendant's interference with contractual prospects pursuant to theories of equity.
- 11 8. For prejudgment interest on the amount of the award to Plaintiff;
- 12 9. And for such other and further relief as the Court deems equitable, proper, and just.

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14 DATED this 26TH day of March, 2010
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