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08-CV-00706-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FANTASTIC SAMS FRANCHISE CORPORATION, a Delaware corporation,)

Plaintiff,)

v.)

REGIS CORPORATION, a Minnesota corporation; JANCORPORATION, INC., a Washington corporation; THOMAS HUNTER and JAN ELLIOTT HUNTER, husband and wife, and their marital community,)

Defendants.)

No.

COMPLAINT

C 08-0706 RAS

The plaintiff Fantastic Sams Franchise Corporation ("FSFC"), through the undersigned counsel, for its Complaint alleges as follows:

PRELIMINARY STATEMENT

The defendant Regis Corporation ("Regis"), which owns the largest chain of hair salons in the country, has embarked on a campaign to raid its competitor, the FANTASTIC SAMS chain of hair salons, of which the plaintiff is the franchisor. Regis has induced the owners of FANTASTIC SAMS salons to breach their agreements with FSFC by ceasing to operate their FANTASTIC SAMS hair salons and instead selling the assets of those salons

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1 to Regis, so that it can operate them under one of its brands. In this case, Regis induced
2 JanCorporation, Inc. ("JanCorporation") and its owners, Thomas Hunter ("Hunter") and
3 Jan Elliott Hunter, who owned the exclusive right to develop and grant third parties the
4 right to develop franchised FANTASTIC SAMS Salons in the Seattle-Tacoma market, to
5 sell its FANTASTIC SAMS hair salons to Regis. Despite having some sixteen years left
6 in the term of its regional license agreement with FSFC, and without any prior notice to
7 FSFC, or any attempt to keep the salons in the FANTASTIC SAMS system,
8 JanCorporation sold the assets of its FANTASTIC SAMS salons to Regis, which
9 immediately began operating them under its HAIR MASTER brand, though without
10 completely removing all the aspects of the FANTASTIC SAMS service marks from the
11 premises. FSFC brings this action to seek redress for the wrongs done to it as a result of
12 this conduct.

13 THE PARTIES

14 1. FSFC is a Delaware corporation with its principal place of business in
15 Massachusetts.

16 2. Regis is a Minnesota corporation with its principal place of business in
17 Minnesota.

18 3. On information and belief, JanCorporation is a Washington corporation
19 with its principal place of business in Washington within this judicial district.

20 4. Hunter is a citizen and resident of Washington. On information and belief,
21 he is the sole shareholder of JanCorporation and controls the affairs of JanCorporation. On
22 information and belief, Hunter and Jan Elliott Hunter are husband and wife and constitute a
23 marital community under the laws of the State of Washington. All acts or omissions

1 alleged to have been done by either were done for and on behalf of the other and their
2 marital community.

3 JURISDICTION AND VENUE

4 5. This is a civil action arising under the Lanham Act, 15 U.S.C. § 1051 *et*
5 *seq.*, and the contracts between the parties.

6 6. This Court has subject matter jurisdiction over this action pursuant to 28
7 U.S.C. §§ 1331, 1332, 1367 and 2201-02, and 15 U.S.C. §§ 1121 and 1116. This is an
8 action between parties of diverse citizenship with an amount in controversy that exceeds
9 \$75,000.

10 7. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(a) because a
11 substantial part of the events or omissions giving rise to these claims occurred in this
12 District.

13 THE FANTASTIC SAMS SYSTEM

14 8. FSFC operates and licenses others to operate hair salons under the
15 nationally-recognized service mark “FANTASTIC SAMS” and related marks (the
16 “FANTASTIC SAMS Marks”). FSFC owns numerous federal registrations for the
17 FANTASTIC SAMS Marks. Each of these registrations is valid, incontestable, and fully
18 enforceable.

19 9. FSFC franchises FANTASTIC SAMS salons principally through Regional
20 License Agreements, pursuant to which a Regional Licensee is granted the right, and
21 undertakes the obligation, to develop and/or grant third parties subfranchises to develop
22 and operate FANTASTIC SAMS salons in a given region.

1 10. There are approximately 1400 FANTASTIC SAMS salons in North
2 America. FANTASTIC SAMS salons are operated under the FANTASTIC SAMS Marks
3 in association with the distinctive FANTASTIC SAMS trade dress and in accordance with
4 the standards, specifications, and methods prescribed by FSFC (the “FANTASTIC SAMS
5 System”).

6 **THE AGREEMENTS BETWEEN FSFC AND JANCORPORATION**

7 11. FSFC’s predecessor in interest as franchisor of the FANTASTIC SAMS
8 franchise system and JanCorporation entered into a FANTASTIC SAMS Regional License
9 Agreement in 1984. Pursuant to the original Regional License Agreement (“RLA”),
10 JanCorporation was granted the exclusive right to develop FANTASTIC SAMS salons in
11 sixteen counties in the Seattle-Tacoma market. JanCorporation agreed to open ten
12 FANTASTIC SAMS salons per year for the first eight years of the RLA. JanCorporation
13 also agreed to pay the franchisor a fixed weekly fee per salon that was opened, a fixed
14 advertising fee, plus a fee of 15% of all receipts from its licensees or from any other
15 business or activity in which the FANTASTIC SAMS Marks or system were used.

16 12. FSFC’s predecessors and JanCorporation entered into several amendments
17 and modifications to the RLA. Typically, these amendments and modifications reduced
18 the number of salons JanCorporation was required to open, and extended the term of the
19 RLA.

20 13. Pursuant to the RLA, as it was in effect as of February 2008,
21 JanCorporation had the obligation to open eleven (11) FANTASTIC SAMS salons in its
22 territory, either itself or through subfranchisees, and the term of the RLA extended to 2024.
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1 The RLA did not grant JanCorporation any right to terminate the RLA prior to the
2 expiration of the term.

3 14. In addition, JanCorporation agreed in the RLA, as amended, that it would
4 “use its best efforts to enhance the value of the [FANTASTIC SAMS] service mark in the
5 region.”

6 15. The RLA, as amended, granted FSFC the option to purchase any
7 FANTASTIC SAMS salons operated by JanCorporation.

8 16. Hunter executed a personal guaranty of all of JanCorporation’s obligations
9 under the RLA (the “Guaranty”).

10 17. For approximately the past 10 years, JanCorporation had no sublicenses for
11 the operation of FANTASTIC SAMS salons by third parties. Rather, all the FANTASTIC
12 SAMS salons in its region were owned and operated by JanCorporation itself.

13 18. On information and belief, as of February 2008, JanCorporation was
14 operating six (6) FANTASTIC SAMS salons.

15 **REGIS’S RAIDING OF THE FANTASTIC SAMS SYSTEM**

16 19. Regis owns and licenses others to operate hair salons under the various
17 brands it owns. Regis operates hair salons nationwide under several different brand names,
18 including without limitation REGIS, SUPERCUTS, COST CUTTERS, PRO-CUTS and
19 HAIR MASTERS. Some of Regis’s brands are franchised.

20 20. Regis owns and licenses more hair salons in North America than any other
21 company. Regis operates or licenses others to operate more than 11,000 hair salons in
22 North America. Approximately 4,000 of these hair salons operating under Regis’s brands
23 are franchised.

1 21. Over the past approximately 18 months, Regis has embarked on a campaign
2 to raid the FANTASTIC SAMS system by acquiring the assets of FANTASTIC SAMS
3 hair salons from FANTASTIC SAMS licensees, despite the licensees' contractual
4 obligations to continue operating their hair salons under the FANTASTIC SAMS marks.

5 22. On or about February 26, 2008, Regis and JanCorporation entered into an
6 agreement pursuant to which Regis acquired all the assets of JanCorporation's company-
7 owned FANTASTIC SAMS hair salons.

8 23. On or about February 27, 2008, all of the hair salons formerly operated by
9 JanCorporation under the FANTASTIC SAMS Marks opened for business with the
10 FANTASTIC SAMS exterior signs covered up, and signs bearing Regis's HAIR
11 MASTERS mark covering them.

12 24. Notwithstanding the covering of the exterior FANTASTIC SAMS signs, the
13 interior of many of JanCorporation's former hair salons continued to display some of the
14 FANTASTIC SAMS Marks.

15 25. On February 27, 2008, counsel for JanCorporation sent to FSFC a letter
16 purporting to terminate the RLA, despite the absence of any right of termination in the
17 RLA.. The letter stated no basis for the termination of the RLA.

18 26. Prior to the February 27, 2008 letter, JanCorporation never advised FSFC
19 that it intended to sell its FANTASTIC SAMS hair salons.

20 27. JanCorporation at no time offered to sell its FANTASTIC SAMS hair
21 salons to FSFC.

1 System, or that Regis's HAIR MASTERS salons are somehow affiliated with the
2 FANTASTIC SAMS System.

3 37. Regis is willfully, intentionally, and knowingly using service marks and
4 designations that are confusingly similar to the FANTASTIC SAMS Marks in violation of
5 Section 32 of the Lanham Act, 15 U.S.C. § 1114.

6 38. To the extent this infringement is ongoing, it is causing irreparable injury to
7 the reputation and goodwill of FSFC, which will continue unabated unless enjoined by this
8 Court. In addition, this infringement has caused, and is causing, monetary damage to
9 FSFC.

10 39. JanCorporation and Hunter are liable under Section 32 of the Lanham Act,
11 15 U.S.C. § 1114 as contributory infringers.

12 **COUNT TWO**
13 **(Federal Unfair Competition)**

14 40. FSFC realleges every other paragraph of this Complaint.

15 41. The actions of the defendants constitute a false designation of the origin,
16 sponsorship or affiliation of the hair salon that formerly operated under the FANTASTIC
17 SAMS Marks.

18 42. The defendants' conduct violates section 43(a) of the Lanham Act, 15
19 U.S.C. § 1125(a).

20 43. To the extent this conduct is ongoing, it is causing irreparable injury to the
21 reputation and goodwill of FSFC, which will continue unabated unless enjoined by this
22 Court. In addition, this conduct has caused, and is causing, monetary damage to FSFC.
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1 1. Preliminarily and permanently enjoining Regis and all those acting in
2 concert or privity with it, including any of their agents, servants, employees, and attorneys,
3 from using the FANTASTIC SAMS Marks in any manner whatsoever, including, without
4 limitation, in connection with the advertising, promotion or sale of any product or service,
5 and including, without limitation, all signs, furniture, fixtures, equipment, advertising
6 materials, stationery, forms, and any other articles that display the FANTASTIC SAMS
7 Marks.

8 2. Ordering Regis to file with the Court and serve on counsel for FSFC, within
9 five (5) calendar days after service of any injunction issued herein, a written report setting
10 forth in detail, under oath, the manner and form in which it has complied with such
11 injunction.

12 3. Awarding FSFC, pursuant to 15 U.S.C. §1117, (a) Regis's profits, (b)
13 FSFC's damages, and (c) the costs of the action.

14 4. Awarding FSFC treble damages and attorneys' fees pursuant to 15 U.S.C.
15 1117(a) and (b).

16 5. Awarding FSFC the damages it has suffered as a result of the breach of
17 contract of JanCorporation, and the guaranty of Hunter, in an amount to be proven at trial
18 but believed to be at least \$ 1 million.

19 6. Awarding FSFC the damages it has suffered as a result of Regis's tortious
20 conduct and unfair competition, in an amount to be proven at trial but believed to be at
21 least \$ 1 million.
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