

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FAT CAT MUSTARD LLC, a Washington
limited liability company,

Plaintiff,

v.

FAT CAT GOURMET, a Florida limited
liability company,

Defendant.

CASE NO.

COMPLAINT FOR DECLARATORY
JUDGMENT OF TRADEMARK
NONINFRINGEMENT,
CANCELLATION OF FEDERAL
TRADEMARK REGISTRATION,
TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION

Plaintiff, Fat Cat Mustard LLC (“Fat Cat Mustard”), for its complaint against
Defendant, Fat Cat Gourmet Foods, LLC (“FCGF”), alleges:

NATURE OF ACTION

1. This is an action for declaratory judgment arising under the Federal
Declaratory Judgments Act (28 U.S.C. §§ 2201 and 2202), cancellation of a federal
trademark registration under the federal Trademark Act (the “Lanham Act”) (15 U.S.C. §§
1064, 1118, 1125(a) *et seq.*), trademark infringement and unfair competition under federal
and Washington State common law.

THE PARTIES

2. Plaintiff Fat Cat Mustard LLC is a Washington limited liability company with its principle address at 22273 NE Stottlemeyer Road, #B, Poulsbo, Kitsap County, Washington 98370.

3. On information and belief, Defendant Fat Cat Gourmet Foods, LLC is a Florida limited liability company with its principle address at 8849 Silk Bay Place, Orlando, Florida 32827.

JURISDICTION AND VENUE

4. This action arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202 *et seq* and the Lanham Act, 15 U.S.C. §§ 1064, 1118, 1125(a) *et seq*. The Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1521, 28 U.S.C. §§ 1331 and 1338. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b), (c) or 1400(b) in that, on information and belief, FCGF has done business in this district or a substantial part of the events giving rise to Fat Cat Mustard's claims occurred in or were aimed at this judicial district. On information and belief, FCGF is subject to the personal jurisdiction of this Court as, on information and belief, FCGF has done business in this district. In addition, FCGF sent multiple letters into this judicial district to Fat Cat Mustard alleging trademark infringement.

FACTS

5. Fat Cat Mustard hand-makes and sells gourmet, natural mustards based on a family recipe.

1 6. Fat Cat Mustard's founder, Carly McLeod, first began selling mustard under
2 the FAT CAT MUSTARD trademark at the end of 2010 with some small scale sales. Ms.
3 McLeod's first major order was in January 2011 to Kingston IGA. FAT CAT MUSTARD is
4 now carried in stores around Western Washington and is sold at area fairs and farmer's
5 markets.

6
7 7. FAT CAT MUSTARD is also sold on online at www.fatcatmustard.com. The
8 site was first launched in June 2011.

9 8. The FAT CAT MUSTARD Facebook page was launched on June 3, 2011.

10 9. In September 2011, Ms. McLeod formed Fat Cat Mustard LLC, which
11 continues to make and sell mustard under the FAT CAT MUSTARD trademark.

12 10. On information and belief, Defendant FCGF has been selling hot sauces and
13 condiments under the mark FAT CAT since June 3, 2011.

14
15 11. On information and belief, FCGF's products are sold direct to the public, to
16 vendors and via FCGF's website at www.fatcatfoods.com.

17 12. FCGF filed a trademark application for the mark FAT CAT GOURMET
18 FOODS ITS PURR-FECTLY GOOD + DESIGN on June 3, 2011, for sauces, alleging a date
19 of first use of June 3, 2011. Registration No. 4,130,897 was issued on April 24, 2012.



1 13. On June 25, 2012, FCGF's counsel emailed a cease and desist letter dated
2 June 14, 2012 to Fat Cat Mustard alleging a likelihood of confusion and demanding that Fat
3 Cat Mustard cease use of the Fat Cat Mustard trademark and shut down its website. If Fat
4 Cat Mustard did not comply, FCGF threatened "legal action to enforce its intellectual
5 property rights, including seeking all remedies which are available to it under the Federal
6 Lanham Act, including but not limited to treble damages and attorney's fees for any willful,
7 continued infringement by your company."

9 14. On July 6, 2012, FCGF's counsel sent a second cease and desist letter
10 accusing Fat Cat Mustard of trademark infringement and enclosing a draft complaint for
11 trademark infringement, unfair competition and deceptive trade practices. The letter, labeled
12 THIRD AND FINAL NOTICE CEASE AND DESIST NOTICE, threatened "Your
13 continued intentional infringement of my client's trademark or your failure to contact us so
14 as to discuss terms for resolving your ongoing, intentional infringement **will** result in the
15 Complaint being filed on **Friday July 13, 2012.**"

17 15. In its draft complaint and correspondence, FCGF has alleged that it is
18 experience confusion, namely that FCGF's representatives have been contacted by vendors
19 who have confused it for Fat Cat Mustard.

20 16. On July 13, 2012, Fat Cat Mustard's counsel responded to FCGF's cease and
21 desist letter and subsequently discussed the matter with FCGF's counsel on July 16, 2012.

22 17. On July 23 and 25, 2012, FCGF's counsel sent additional emails demanding
23 Fat Cat Mustard change its name and threatening to file an infringement lawsuit.
24
25
26

1 18. The correspondence from FCGF, all sent to Fat Cat Mustard in the state of
2 Washington, has created for Fat Cat Mustard a reasonable apprehension that FCGF will file a
3 lawsuit against it.

4 **DECLARATORY JUDGMENT OF TRADEMARK**
5 **NONINFRINGEMENT UNDER 28 U.S.C. §§ 2201 AND 2202 *et seq.***

6 19. Fat Cat Mustard repeats and realleges each of the allegations contained in
7 paragraphs 1 through 18 of this Complaint, as if fully set forth herein.

8 20. A dispute has now arisen between the parties, and an actual and justiciable
9 controversy exists, in that FCGF asserts, and Fat Cat Mustard denies, that use of
10 FAT CAT MUSTARD mark infringes FCGF's rights.

11 21. FCGF began use of its mark and filed its U.S. trademark application on June
12 3, 2011, well after Fat Cat Mustard commenced use of its FAT CAT MUSTARD mark in the
13 state of Washington and elsewhere.

14 22. Fat Cat Mustard has acquired senior rights in the FAT CAT MUSTARD
15 mark.

16 23. Fat Cat Mustard requests a declaration and judicial determination by this
17 Court that its use of the FAT CAT MUSTARD mark does not infringe any trademark right of
18 FCGF.

19 24. Plaintiff has no other existing, speedy, adequate or proper remedy other than a
20 declaration and determination of the parties' rights as prayed for herein.

**CANCELLATION OF FEDERAL TRADEMARK REGISTRATION
UNDER 15 U.S.C. §1064**

25. Fat Cat Mustard repeats and realleges each of the allegations contained in paragraphs 1 through 24 of this Complaint, as if fully set forth herein.

26. Fat Cat Mustard has adopted and continuously used the mark FAT CAT MUSTARD in connection with mustards since at least as early as January 2011.

27. FCGF's application for trademark registration was filed on June 3, 2011 and it alleges a date of first use of June 3, 2011. Accordingly, Fat Cat Mustard is the senior user and has prior rights.

28. FCGF's trademark registration encompasses the dominant, non-descriptive portion of Fat Cat Mustard's trademark those of Fat Cat Mustard.

29. FCGF's trademark registration covers sauces. Such goods are closely related and in some instances identical to Fat Cat Mustard's goods.

30. FCGF has alleged that it has experienced confusion between it or its mark and the Plaintiff and/or Plaintiff's FAT CAT MUSTARD mark.

31. If FCGF is permitted to retain the registration sought to be cancelled, and thereby, the *prima facie* exclusive right to use in commerce the mark on goods identical and related to those sold by Fat Cat Mustard, confusion in trade is likely to result from any concurrent use of Fat Cat Mustard's mark and that of FCGF, all to the detriment of Fat Cat Mustard.

32. Fat Cat Mustard is or will be damaged by Registration No. 4,130,897. The registration should be cancelled.

**FEDERAL UNFAIR COMPETITION
UNDER 15 U.S.C. §1125(a)**

33. Fat Cat Mustard realleges and incorporates by reference paragraphs 1 through 32 above.

34. FCGF's conduct described above constitutes unfair competition, false designation of origin, false or misleading descriptions or representations of fact, false advertising and/or unfair or deceptive trade practices, in that they are likely to cause confusion or cause mistake, or to deceive others as to the affiliation, connection or association of FCGF with Fat Cat Mustard, or as to the origin, sponsorship or approval of FCGF's goods, all in violation of 15 U.S.C. §1125(a).

35. As a direct and proximate result of the foregoing actions of FCGF, Fat Cat Mustard has been and is likely to continue to be substantially injured in its business, including its reputation, resulting in lost revenues and profits, and diminished goodwill and reputation.

36. The foregoing actions will cause irreparable harm to Fat Cat Mustard for which there is no adequate remedy at law, such that damages alone cannot fully compensate Fat Cat Mustard for FCGF's misconduct.

37. Unless enjoined by this Court, FCGF will continue to compete unfairly, falsely designate the origin of its goods, make false descriptions or representations, and cause confusion to the irreparable injury of Fat Cat Mustard. The threat of future injury to the business, identity, goodwill and reputation of Fat Cat Mustard requires preliminary and permanent injunctive relief.

**FEDERAL AND WASHINGTON STATE
COMMON LAW TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION**

38. Fat Cat Mustard realleges and incorporates by reference paragraphs 1 through 37 above.

39. FCGF's actions described above pass off FCGF's goods as those of Fat Cat Mustard, are calculated to and/or likely to confuse and mislead the public into believing that FCGF's goods are associated with or related to Fat Cat Mustard, and to cause the public to trade with FCGF when they intended to and would otherwise have traded with Fat Cat Mustard, and constitute trademark infringement and unfair competition in violation of the federal and Washington state common law.

40. As a direct and proximate result of the foregoing act, practices and conduct of FCGF, Fat Cat Mustard has been and is likely be substantially injured in its business, including its goodwill and reputation, resulting in lost revenues and profits, and diminished goodwill and reputation.

41. The foregoing actions will cause irreparable harm to Fat Cat Mustard for which there is no adequate remedy at law, such that damages alone cannot fully compensate Fat Cat Mustard for FCGF's misconduct.

42. Unless enjoined by this Court, FCGF will continue to engage in unfair competition and cause confusion and mistake by its unauthorized use and infringement of a mark confusingly similar to Fat Cat Mustard's FAT CAT MUSTARD mark, all to the irreparable injury of Fat Cat Mustard. The threat of future injury to the business, identity,

1 goodwill and reputation of Fat Cat Mustard requires preliminary and permanent injunctive
2 relief.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Fat Cat Mustard prays for entry of a judgment by this Court
5 against FCGF providing that:

6 1. A declaratory judgment that Fat Cat Mustard's use of its FAT CAT
7 MUSTARD mark does not infringe any trademark right of FCGF;

8 2. An order to the U.S. Patent and Trademark Office cancelling U.S. Trademark
9 Registration No. 4,130,897 for the mark FAT CAT GOURMET FOODS ITS PURR-
10 FECTLY GOOD + DESIGN;

11 3. FCGF has violated the laws of the United States and the State of Washington,
12 as set forth herein;

13 4. The FCGF and its affiliates, officers, agents, servants, employees, attorneys,
14 and all other persons in active concert or participation with any of them, be preliminarily and
15 permanently enjoined and restrained from using the mark FAT CAT GOURMET FOODS
16 ITS PURR-FECTLY GOOD + DESIGN or any other mark confusingly similar to Plaintiff's
17 FAT CAT MUSTARD mark;

18 5. FCGF be required to pay Fat Cat Mustard for all damages Fat Cat Mustard
19 has suffered by reason of FCGF conduct;

20 6. That FCGF's infringement and unfair competition be found willful and that
21 increased damages, together with interest and costs, be awarded under the Lanham Act or as
22 otherwise provided by law;

Respectfully submitted,

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