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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

06-CV-00277-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RUBBER STAMP MANAGEMENT,
INCORPORATED, a Washington Corporation,
Plaintiff,

No. **C06-0277**
COMPLAINT

v.

ORIGINAL

KALMBACH PUBLISHING COMPANY, a
Wisconsin Corporation,
Defendant.

Plaintiff Rubber Stamp Management, Incorporated ("RSM") hereby complains of
Defendant Kalmbach Publishing Company ("Kalmbach") as follows:

PARTIES

1. RSM is a Washington corporation having a principal place of business at 1000
Town Center, Suite 1, Browns Point, Washington, 98422. RSM is an on-line retailing
company supplying a wide variety of goods including beads and beaded jewelry, rubber
stamps, craft kits, crafting products, books, DVDs, and other similar goods.

2. On information and belief, Defendant Kalmbach is a Wisconsin corporation
having a principal place of business at 21027 Crossroads Circle, Waukesha, Wisconsin,
53187.

JURISDICTION AND VENUE

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3. This is an action arising under the Trademark Act of 1946 (15 U.S.C. § 1051 *et seq.*), the laws of the State of Washington, and the common law. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and § 1332 (diversity) in that the amount in controversy exceeds \$75,000. Further, this Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 (actions arising under the Lanham Act), 28 U.S.C. § 1338 (acts of Congress relating to trademarks and unfair competition), and 28 U.S.C. § 1367 (supplemental jurisdiction over related state law claims).

4. This court has personal jurisdiction over Defendant because Defendant conducts business within this district and injuries relating to causes of action pleaded herein occurred within this judicial district.

5. Venue is proper in this district under 28 U.S.C. § 1391.

BACKGROUND

A. Plaintiff's Trademark and Trade Dress Rights

6. From 1995 to 2000, RSM's predecessor in interest, Addicted To Rubber Stamps, used the color purple as a source identifier for its web site, www.AddictedToRubberStamps.com, and the rubber stamps and crafting supplies sold through the site.

7. In 2000, RSM purchased all of Addicted To Rubber Stamps' trademarks and the goodwill associated therewith. RSM then created the arch design and began using it as a source identifier for its web site www.AddictedToRubberStamps.com and the products advertised and sold on this web site.

8. In 2001, Plaintiff RSM began using its distinctive purple-colored arch design ("purple arch mark"). Plaintiff's purple arch mark consists of a masthead design in the shape of an arch filled in a shade of purple. A representative example of this mark is attached as Exhibit A.

1 9. Since 2001, RSM has consistently used its purple arch mark as the masthead
2 and key visual feature on its web site www.AddictedToRubberStamps.com (see Exhibit B)
3 and in multiple editions of magazine, television, and online advertisements, email newsletters,
4 business cards, and company letterhead.

5 10. Since at least as early as January 2002, RSM has specifically advertised and
6 sold beads and beading products under its purple arch mark on its web site
7 www.AddictedToRubberStamps.com. RSM currently sells at least one bead-related
8 instructional booklet on this site, as displayed as Exhibit C. RSM's predecessor in interest,
9 Addicted To Rubber Stamps also sold beads on the www.AddictedToRubberStamps.com web
10 site from 1995 through 1998.

11 11. The color purple dominates RSM's print advertisements. In addition to
12 consistently displaying its signature purple arch, RSM also uses varying shades of purple in
13 the backgrounds, borders, and graphics of its advertisements. RSM also uses the color purple
14 as a tie in to promotions, in preference to other colors. For example, one of RSM's recurring
15 and most popular sales is its "Purple Dot" sale where a purple dot is placed next to sale items
16 on RSM's web site www.AddictedToRubberStamps.com.

17 12. RSM has invested in excess of \$500,000 in magazine advertisements that
18 prominently feature its purple arch mark. Representative examples of these advertisements
19 are attached as Exhibit D.

20 13. RSM has substantially invested in television advertisements prominently
21 featuring its purple arch mark. These ads have aired on Home & Garden TV and other
22 national networks.

23 14. RSM has sent approximately 10 million email newsletters displaying the
24 purple arch mark as the newsletter's dominant feature to mailing list members, all of whom
25 self-subscribed to the list.

1 15. RSM has shipped in excess of 200,000 packages from its facility bearing its
2 purple arch mark. Plaintiff has invested approximately \$20,000 in the design and production
3 of packaging and labeling featuring the mark.

4 16. RSM has purchased millions of internet banner advertisements displaying the
5 purple arch mark and has also purchased various "newsletter blasts," i.e., advertisements in
6 newsletters published by other companies.

7 17. RSM has a pending U.S. Trademark Application for its distinctive purple color
8 (Serial No. 78/790,130), attached as Exhibit E. The application was filed on the basis of
9 current use by the Plaintiff in association with "on-line retail store services featuring rubber
10 stamping and scrapbooking materials; namely, rubber stamps, inks, papers, scrapbook albums,
11 scrapbook pages stickers, adhesives, cutting tools, stencils, embellishments, and other craft
12 related items."

13 18. Through its extensive advertising featuring the purple arch mark, RSM has
14 built a reputation as one of the largest online craft stores in the world. RSM has advertised
15 and marketed its products using its purple arch mark in a manner to associate the mark with
16 RSM, its web site www.AddictedToRubberStamps.com, and products originating from RSM.

17 19. Actual purchasers associate RSM's purple arch mark with RSM and its web
18 site www.AddictedToRubberStamps.com. RSM's purple arch mark has acquired
19 distinctiveness or so-called "secondary meaning," and is a famous mark.

20 **B. Defendant's Infringing Activities**

21 20. Defendant Kalmbach sells magazines and instructional booklets about beads,
22 beaded jewelry, and other bead-related crafts, in association with a mark confusingly similar
23 to RSM's purple arch mark. A representative example of Kalmbach's use of the mark, the
24 cover of a Bead & Button Products booklet entitled "Making Crystal Jewelry," is attached as
25 Exhibit F.

26 21. Defendant published an advertisement in the January 2006 issue of
27 "Craftrends" magazine displaying a purple arch masthead confusingly similar to Plaintiff's

1 mark. A reproduction of the advertisement is attached as Exhibit G. In addition to the purple
2 arch masthead at the top of the page, the advertisement includes a photograph of a Kalmbach
3 publication entitled "Scrapbooking with Beads," also featuring an arch masthead.

4 22. On information and belief, Defendant began using a purple arch masthead in
5 its advertising and on the covers of bead-related booklets in 2005. Reproductions of the
6 covers of four of these booklets are attached as Exhibit H.

7 23. Defendant's "2006 Beading, Jewelry & Crafts Catalog," attached as Exhibit I,
8 displays 49 total bead-related publications. Of these, 44 feature an arched masthead design on
9 their covers and 12 feature the color purple in conjunction with an arched masthead design on
10 their covers.

11 24. On January 9, 2006, Plaintiff's President, Mr. David Kovanen, called Ms.
12 Cindy Schultz, Assistant to the President of Kalmbach, to discuss Plaintiff's trademark
13 infringement concerns and sent a follow-up email sent to Ms. Schultz that same day. See
14 Exhibit H. In this email, Mr. Kovanen provided the details of Plaintiff's purple arch mark
15 rights and RSM's use of the mark on www.AddictedToRubberStamps.com, in print
16 advertisements in craft-related magazines, and in internet and national television
17 advertisements.

18 25. On January 25, 2006, Plaintiff's counsel sent a cease-and-desist letter to
19 Defendant's President, Mr. Gerald B. Boettcher, again informing Kalmbach of RSM's
20 trademark rights to the purple arch mark, particularly in association with crafts, and of
21 Kalmbach's infringing activities.

22 26. On January 30, 2006, Defendant's counsel acknowledged receipt of Plaintiff's
23 January 25, 2006 letter and stated that they were in the process of reviewing the allegations
24 and would "provide you with a substantive response in the near future." Plaintiff has received
25 no further correspondence from Kalmbach or its counsel.

26 27. On information and belief, since Defendant was notified of RSM's rights in the
27 purple arch mark, it has apparently expanded its use of the arch device in conjunction with the

1 color purple. In February 2006, Defendant displayed what appeared to be custom-made
2 signage incorporating a purple arch at the industry's largest trade show, sponsored by the
3 Craft and Hobby Association.

4 28. Defendant's use and registration of the purple arch mark is wholly without
5 authorization or approval from RSM. Defendant's infringing activities described herein are
6 causing harm to the distinctive character of RSM's purple arch mark and, if not ceased, will
7 result in irreparable damage to RSM's mark.

8 **CLAIMS FOR RELIEF**

9 **COUNT ONE: FALSE DESIGNATION OF ORIGIN, FALSE REPRESENTATIONS,
10 AND FALSE ADVERTISING**

11 29. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if
12 fully set forth herein.

13 30. Defendant's infringing activities described herein constitute false designation
14 of origin, false representations, and false advertising in violation of 15 U.S.C. § 1125(a).

15 **COUNT TWO: FEDERAL TRADEMARK DILUTION**

16 31. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if
17 fully set forth herein.

18 32. Defendant's confusingly-similar commercial use of the purple arch masthead
19 device mark dilutes RSM's famous mark in violation of 15 U.S.C. § 1125(c).

20 **COUNT THREE: STATE UNFAIR COMPETITION AND UNFAIR BUSINESS
21 PRACTICE**

22 33. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if
23 fully set forth herein.

24 34. Defendant's actions constitute a violation of R.C.W. 19.86.010, *et seq.*

25 35. Defendant has caused, and is causing, irreparable harm to RSM in an amount
26 that cannot be ascertained at this time and, unless enjoined, will cause RSM further
27 irreparable injury, leaving no adequate remedy at law. By reason of the foregoing RSM is

1 entitled to recover punitive damages and injunctive relief restraining further acts of unfair
2 competition and business practices, together with attorneys' fees and costs.

3 **COUNT FOUR: COMMON LAW TRADEMARK INFRINGEMENT**

4 36. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if
5 fully set forth herein.

6 37. RSM owns and enjoys exclusive rights in and to the purple arch mark under
7 the common law of the State of Washington that are superior to any rights that Defendant may
8 claim. Defendant's infringing activities described herein constitute trademark infringement in
9 violation of the common law of Washington.

10 WHEREFORE, RSM prays for judgment as follows:

11 a. That the Court enter a preliminary and permanent injunction against Defendant
12 Kalmbach Publishing Company enjoining Kalmbach's agents, representatives, servants,
13 employees, and all those acting in concert or participation therewith from using any and all
14 marks confusingly similar to Plaintiff's purple arch mark in association with craft-related
15 goods and/or services, including use of the masthead arch device and source-identifying use
16 of the color purple;


17 b. That the Court enter judgment against Defendant Kalmbach Publishing
18 Company for actual and compensatory damages in an amount to be determined, recoverable
19 under any of the pleaded statutory causes of action, including but not limited to, punitive,
20 statutory, and other damages under the Washington State Consumer Protection Act, which
21 provides for treble damages and attorneys' fees;

22 c. For an award against Defendant Kalmbach Publishing Company for all of
23 Plaintiff's costs, disbursements, and reasonable attorney's fees incurred herein; and

24 d. For such other and further relief as the Court deems just and equitable.
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1 Dated this 27 day of February, 2006.

2 CHRISTENSEN O'CONNOR
3 JOHNSON KINDNESS^{PLLC}

4
5 /s/ 
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