

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

The Honorable _____

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE TOPLINE CORPORATION, a Washington Corporation,

Plaintiff,

v.

FLURT FOOTWEAR, a California Company; JIA JENCHEN a/k/a JEFFREY JIA, an individual d/b/a FLURT FOOTWEAR; C MERIT USA, INC., a California Corporation; CONTINENTAL MERIT (XIAMEN) FOOTWEAR CO., LTD., a Chinese Company; RETRO VIVA INC., a Washington Corporation d/b/a RETRO VIVA; POWDER ROOM, INC., a Washington Corporation d/b/a THE POWDER ROOM; PARIS TEXAS LLC, a Washington Limited Liability Company d/b/a PARIS TEXAS; DENNIS SALES COMPANY, a Washington Corporation d/b/a DENNIS & COMPANY and DENNIS COMPANY; GENESCO INC., a Tennessee Corporation d/b/a UNDERGROUND STATION; SPOILED ROTTEN LLC, a Connecticut Limited Liability Company d/b/a SPOILED ROTTEN BOUTIQUE; and HOUSER SHOES, INCORPORATED, a North Carolina Corporation d/b/a HOUSER SHOES,

Defendants.

)
) Civil Action No. _____
)
) COMPLAINT FOR WILLFUL
) TRADEMARK INFRINGEMENT,
) UNFAIR COMPETITION AND
) UNFAIR BUSINESS PRACTICES
)
) **DEMAND FOR JURY TRIAL**

Plaintiff The Topline Corporation ("Topline") by and through its undersigned attorneys,
avers and states as follows for its Complaint:

STATEMENT OF THE CASE

1
2 1. This is an action asserting claims for trademark infringement, unfair competition
3 and unfair business practices under the federal Lanham Act, the common law and the laws of the
4 State of Washington.

PARTIES

5
6 2. Plaintiff Topline is a Washington corporation, with a principal place of business at
7 13150 SE 32nd Street, Bellevue, Washington 98005. Topline was founded in 1980 and has
8 grown to be a major supplier of women’s footwear under brands including REPORT and FLIRT.
9 Topline’s women’s shoes are sold by the major retailers such as Nordstrom, Macy’s, Victoria’s
10 Secret and Kohl’s, as well as small fashion boutiques.

11 3. On information and belief, Defendant Flurt Footwear is a California company
12 having a place of business at 17531 Railroad Street Suite F, City of Industry, California 91748.

13 4. On information and belief, C Merit USA, Inc., is a California corporation doing
14 business as Flurt Footwear having a place of business at 17531 Railroad Street Suite F, City of
15 Industry, California 91748.

16 5. On information and belief, Defendant Jia Jenchen, also known as Jeffrey Jia, is an
17 individual doing business as Flurt Footwear in Los Angeles County, California, is the president of
18 Defendant C Merit USA, Inc. and directs and controls or has the ability to direct and control the
19 acts of infringement complained of herein.

20 6. On information and belief, Continental Merit (Xiamen) Footwear Co., Ltd., is an
21 affiliate of C Merit USA, Inc., is a company organized under the laws of China, has a place of
22 business at Flat B, 3/F, Building D, Xiangyu Free Trade Zone, Xiamen, Fujian, China, 361006,
23 and is the owner of a domain name, flurtfootwear.com, used by Defendants Flurt Footwear, C
24 Merit USA, Inc. and Jia Jenchen to promote sales of FLURT shoes in the United States.

25 7. On information and belief, Defendant Retro Viva Inc. is a Washington corporation
26 doing business as Retro Viva, having a place of business at 4536 University Way NE, Seattle,
27 Washington 98105.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

8. On information and belief, Defendant Powder Room, Inc. is a Washington corporation doing business as The Powder Room, having a place of business at 4536 University Way NE, Seattle, Washington 98105. On information and belief, Defendant Retro Viva Inc. and Powder Room, Inc. have a common ownership as both have the same address and issue common receipts.

9. On information and belief, Defendant Paris Texas LLC is a Washington limited liability company doing business as Paris Texas, having a place of business at 4 Prospect Street, Bellingham, Washington 98225.

10. On information and belief, Defendant Dennis Sales Company is a Washington corporation doing business as Dennis & Company and Dennis Company, having a place of business at 146 5th Street, Raymond, Washington 98577.

11. On information and belief, Defendant Genesco Inc. is a Tennessee corporation doing business as Underground Station, having a place of business at Genesco Park, 1415 Murfreesboro Rd., Suite 550, Nashville, Tennessee 37217, and doing business at a retail website located at www.undergroundstation.com.

12. On information and belief, Defendant Spoiled Rotten LLC, is a Connecticut limited liability company doing business as Spoiled Rotten Boutique, having places of business at 2653 Cameron Park Dr., Cameron Park, California, 95682; 3330 Cameron Park Dr., Suite 100, Cameron Park, California 95682; and 4741 Elen Court, Shingle Springs, California 95682, and doing business at a retail website located at www.spoiled-rotten.org.

13. On information and belief, Defendant Houser Shoes, Incorporated, is a North Carolina corporation doing business as Houser Shoes, having a place of business at 812 Merrimon Avenue, Asheville, North Carolina 28804, and doing business at a retail website located at www.housershoes.com.

JURISDICTION AND VENUE

14. This action is brought under the federal Lanham Act, 15 U.S.C. § 1051 *et seq.*, and the common law and statutory law of the State of Washington.

1 15. This Court has subject matter jurisdiction pursuant to 15 U.S.C. Section 1121 as
2 well as 28 U.S.C. Section 1367(a), which provides for supplemental jurisdiction over related
3 state-law claims.

4 16. Venue in this Court is proper in this district pursuant to 28 U.S.C. Section
5 1391(a), in that, on information and belief, a substantial part of the events or omissions giving
6 rise to the claims at issue herein occurred within this judicial district, and a substantial part of the
7 injury to the property and rights of Topline that is the subject of these claims occurred in this
8 judicial district, and the Defendants do business in this judicial district by marketing and selling
9 shoes infringing FLURT shoes in this district.

10 **PLAINTIFF TOPLINE AND ITS RIGHTS**

11 17. Plaintiff Topline has been involved in the footwear industry since its incorporation
12 in 1980.

13 18. Since as early as January, 1997, Topline has used, and continues to use, the mark
14 FLIRT in connection with the marketing and sale of footwear.

15 19. Topline is the owner of U.S. Trademark Registration No. 2283566 for the mark
16 FLIRT for "shoes" in International Class 25. That registration is valid and subsisting. A copy of
17 the Registration Certificate is attached hereto as Exhibit 1.

18 20. Since 1997, Topline has conducted substantial business under and engaged in
19 substantial promotion of its FLIRT mark. Attached hereto as Exhibit 2 are photographs of
20 Topline's footwear bearing its FLIRT trademark.

21 21. As a result of Topline's extensive use and promotion, its FLIRT mark has become
22 known to and recognized by relevant consumers as identifying quality footwear. The FLIRT
23 mark and the goodwill associated therewith are valuable assets of Topline.

24 **DEFENDANTS AND ITS ACTIVITIES**

25 22. Flurt Defendants Flurt Footwear, C Merit USA, Inc., Continental Merit (Xiamen)
26 Footwear Co., Ltd., and Jia Jenchen do business marketing and selling shoes using the marks
27

1 FLURT, GOTTA FLURT, and other word and/or design marks having the term FLURT
2 (collectively “FLURT Marks”). Attached hereto as Exhibit 3 are copies of photographs of
3 footwear bearing the FLURT Marks.

4 23. Defendants are using the mark FLURT, a mark substantially identical to Topline’s
5 FLIRT mark, to promote and sell the same goods, *i.e.*, women’s shoes.

6 24. Defendants’ FLURT shoes are sold to the same consumers and through the same
7 channels of trade as Topline’s FLIRT shoes, such as, for example, at the same trade shows.

8 25. Defendants’ FLURT shoes are available for sale in this judicial district and
9 elsewhere.

10 26. Retailers located in this judicial district are currently selling and/or have recently
11 sold FLURT shoes, including Defendants Retro Viva Inc., Powder Room, Inc., Paris Texas LLC,
12 and Dennis Sales Company.

13 27. Defendant Underground Station has sold infringing FLURT shoes into this district
14 through its retail website www.undergroundstation.com. Defendant Spoiled Rotten Boutique has
15 sold infringing FLURT shoes into this district through its retail website located at
16 www.spoiled-rotten.org. Defendant Houser Shoes has sold infringing FLURT shoes into this
17 district through its retail website located at www.housershoes.com.

18 28. Flurt Defendants knew or should have known of Topline’s FLIRT trademark when
19 they began using and decided to continue and expand their use of the FLURT Marks for directly
20 competing goods sold through the same channels of trade. Further, Flurt Defendants had
21 constructive knowledge of Topline’s rights in its registered FLIRT trademark when they engaged
22 in such activities.

23 29. As early as January 13, 2006, Flurt Defendants had actual knowledge of Topline’s
24 federal trademark registration for FLIRT for shoes. Defendant Jeffrey Jia attempted to register
25 the mark FLURT with the U.S. Patent and Trademark Office for women’s “shoes, sandals, boots
26 and slippers,” but his application was rejected on the grounds that FLURT was likely to be
27 confused with Topline’s U.S. Trademark Registration for FLIRT. The Trademark Office sent

1 Mr. Jia a copy of Topline's U.S. Registration No. 2283566 for FLIRT with the January 13, 2006
2 Office Action rejecting his application.

3 30. Mr. Jia attempted to overcome the citation of Topline's FLIRT registration by
4 arguing to the Trademark Office that Topline was no longer using the FLIRT mark. The Flurt
5 Defendants apparently did little or no investigation to verify the status of Topline's FLIRT mark.
6 In particular, they did not make an inquiry to Topline or its counsel of record for the FLIRT
7 registration, either of which would have resulted in confirmation that Topline had not abandoned
8 its FLIRT mark. Instead, the Flurt Defendants opted to proceed with use of FLURT and soon
9 found themselves offering FLURT shoes at the same trade shows where Topline was offering
10 FLIRT shoes.

11 31. Topline learned of the Flurt Defendants' infringement when both companies were
12 offering shoes at the World Shoe Association ("WSA") trade show in Las Vegas, Nevada in early
13 August 2006. Topline promptly put Defendants on notice of its objections by hand-delivering a
14 cease and desist letter, a copy of which is attached hereto as Exhibit 4. Topline has contacted
15 Flurt Defendants several times since, demanding that Flurt Defendants cease and desist their
16 infringing activity, but they have not done so.

17 32. In November 2006, Flurt Defendants advised Topline that they would stop using
18 FLURT prior to the next major trade show, the December 2006 Fashion Footwear Association of
19 New York trade show (known as "FFANY"). Upon information and belief, Flurt Defendants
20 continued to show and offer for sale infringing FLURT shoes at the FFANY trade show.
21 Moreover, shoes sold under Flurt Defendants' FLURT Marks and signs displaying the FLURT
22 Marks were at the most recent major trade show at Las Vegas Convention Center in February
23 2007.

24 33. Flurt Defendants had and continue to have bad-faith intent to profit from
25 infringement of Topline's FLIRT mark through use of the FLURT Marks to promote and sell
26 shoes, including on Flurt Defendants' website at www.flurtfootwear.com, which domain name
27 was secured and website was launched *after* Topline's Flurt Defendants learned of Topline's

1 federal registration for FLIRT and *after* Topline's objections to their use of FLURT. Flurt
2 Defendants continue to market and sell infringing FLURT shoes, including on the
3 www.flurtfootwear.com website, despite actual knowledge of Topline's FLIRT footwear and
4 Topline's rights in the FLIRT mark.

5 **FIRST COUNT**

6 **TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114**

7
8 34. Topline realleges and incorporates by reference the allegations of Paragraphs 1
9 through 33 of the Complaint as though fully set forth herein.

10 35. Defendants' use of the FLURT Marks in connection with the sale and marketing
11 of shoes is likely to cause confusion and mistake and to deceive others into believing that
12 Defendants' footwear are sponsored by, approved by, or affiliated with Topline.

13 36. Defendants' acts, as herein alleged, constitute infringement of Topline's registered
14 FLIRT mark under U.S.C. Section 1114.

15 37. Flurt Defendants have carried out these acts with knowledge of and in conscious
16 disregard of Topline's rights, making this an exceptional case within the meaning of 15 U.S.C.
17 Section 1117.

18 38. Topline has been, and will continue to be, damaged by Flurt Defendants' willful
19 trademark infringement and Retail Defendants' trademark infringement of Topline's registered
20 FLIRT mark in a manner and amount that cannot be fully measured or compensated in economic
21 terms, for which there is no adequate remedy at law.

22 39. The actions of Defendants have damaged and will continue to damage Topline's
23 business, market, reputation, and goodwill, and may discourage current and potential customers
24 from dealing with Topline. Such irreparable damage will continue unless the acts of Defendants
25 are enjoined.

26 40. Topline has been damaged by Defendants' actions in an amount to be proven at
27 trial.

SECOND COUNT

**FEDERAL FALSE DESIGNATION OF ORIGIN
AND UNFAIR COMPETITION UNDER 15 U.S.C. § 1125**

41. Topline realleges and incorporates by reference the allegations of Paragraphs 1 through 40 of the Complaint as though fully set forth herein.

42. Topline’s FLIRT mark is a designation of origin that identifies Topline as the exclusive source of its goods, and distinguishes Topline’s goods from the goods of others in the marketplace.

43. Defendants’ use of the FLURT Marks constitutes false designation of origin, false or misleading description, and/or false or misleading representation. Defendants’ use of a confusingly similar variation of Topline’s FLIRT mark is likely to cause confusion, mistake, or deception of others as to the affiliation, connection, or association of Defendants with Topline and vice versa. It is also likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendants’ shoes having the FLURT Marks.

44. Such false designation, description, and/or representation constitutes unfair competition and is an infringement of Topline’s rights in its FLIRT mark in violation of Sections 43(a) and (d) of the Lanham Act, 15 U.S.C. § 1125(a) and (d).

45. Flurt Defendants had actual knowledge of Topline’s rights in its FLIRT mark when Defendants adopted the FLURT Marks for their own use. Flurt Defendants’ false description, false representation, and false designation of origin were knowing, willful, and deliberate, making this an exceptional case within the meaning of 15 U.S.C. Section 1117.

46. Topline has been, and will continue to be, damaged by Defendants’ false description, false representation, false designation of origin, and other acts of unfair competition in a manner and amount that cannot be fully measured or compensated in economic terms. Defendants’ actions have damaged, and will continue to damage, Topline’s market, reputation,

1 and goodwill, and may discourage current and potential customers from dealing with Topline.
2 Such irreparable harm will continue unless Defendants' acts are restrained and/or enjoined.

3 47. Topline has been damaged by Defendants' actions in an amount to be proven at
4 trial.

5 **THIRD COUNT**

6 **COMMON LAW TRADEMARK INFRINGEMENT**

7 48. Topline realleges and incorporates by reference the allegations set forth in
8 paragraphs 1 through 47 of the Complaint.

9 49. Defendants' use of confusingly similar variations of Topline's FLIRT mark in
10 association with the sale of footwear is likely to cause confusion and mistake. Such use of
11 Topline's trademark by Defendants, for example Defendants' use of the FLURT Marks in
12 connection with the sale of shoes, is likely to deceive others into believing that Defendants'
13 products are sponsored by, approved by, or affiliated with Topline.
14

15 50. Defendants' acts, as above alleged, constitute infringement of Topline's trademark
16 rights in violation of the common law.

17 51. Despite actual and/or constructive knowledge of Topline's rights, Flurt Defendants
18 initiated and, on information and belief, are continuing their acts of infringement. Flurt
19 Defendants have carried out their acts of infringement in conscious disregard of Topline's rights.

20 52. Topline has been and continues to be damaged in a manner that cannot be fully
21 measured or compensated in economic terms and for which there is no adequate remedy at law.
22 The actions of Defendants have damaged and will continue to damage Topline's market,
23 reputation, and goodwill.

24 53. Topline has been damaged by Defendants' actions in an amount to be proven at
25 trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FOURTH COUNT

UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICE

UNDER RCW 19.86.020

54. Topline realleges and incorporates by reference the allegations set forth in paragraphs 1 through 53 of this Complaint, as if set forth fully herein.

55. Defendants' use of the FLURT Marks in connection with the promotion and sale of women's shoes, which infringes Topline's FLIRT trademark, constitutes an unfair method of competition in business and an unfair trade practice in business, which is damaging to the public interest in violation of the Washington Consumer Protection Act, RCW 19.86.020.

56. Flurt Defendants' use of a mark that infringes Topline's trademark in connection with the marketing and sale of footwear has been and is knowing, willful, and deliberate, and constitutes fraudulent representation.

57. Topline has been and will continue to be irreparably injured by reason of Defendants' unfair methods of competition and unfair trade practices in violation of the Washington Consumer Protection Act. Such irreparable damage will continue unless the acts of Defendants are enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Topline respectfully prays for judgment against Defendants as follows:

1. That Defendants, and their affiliates, officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them, be preliminarily and permanently enjoined and restrained from using the FLURT Marks or any other mark confusingly similar to Topline's FLIRT trademark.

2. That Defendants, and their affiliates, officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them, be preliminarily and permanently enjoined and restrained from all acts of false description and

1 representation and false designation of origin, and all acts of unfair competition, including the use
2 of the FLURT Marks or any other mark confusingly similar to Topline's FLIRT mark.

3 3. That Defendants, and their affiliates, officers, agents, servants, employees,
4 attorneys and all other persons in active concert or participation with any of them, be
5 preliminarily and permanently enjoined and restrained from all manufacture, purchase,
6 promotion, sale, and use of any products, packaging, advertising, labels, or other sales or shipping
7 material that infringe Topline's FLIRT mark, including retail websites such as
8 www.flurtfootwear.com and products, packaging, advertising, labels, or other sales or shipping
9 material having the FLURT Marks or any other mark confusingly similar to Topline's FLIRT
10 mark.

11 4. That Defendants, and their affiliates, officers, agents, servants, employees,
12 attorneys and all other persons in active concert or participation with any of them, be ordered to
13 deliver to all products, packaging, advertising, labels, or other sales or shipping material in their
14 possession or control to Topline that infringe Topline's FLIRT mark, including products,
15 packaging, advertising, labels, or other sales or shipping material having the FLURT Marks or
16 any other mark confusingly similar to Topline's FLIRT mark.

17 5. That Defendants, and their affiliates, officers, agents, servants, employees,
18 attorneys and all other persons in active concert or participation with any of them, be ordered to
19 withdraw and/or cancel all trademark, service mark, or any other type of trademark application
20 filed in the United States and elsewhere for the FLIRT Marks or any other mark confusingly
21 similar to Topline's FLIRT mark.

22 6. That Defendants be directed to file with this Court and serve on Topline within
23 thirty (30) days after the service of an injunction a report in writing, under oath, setting forth in
24 detail the manner and form in which Defendants and their affiliates, officers, agents, servants,
25 employees, attorneys and all other persons in active concert or participation with any of them
26 have complied with the injunction.
27

1 . 7. That Defendants be required to pay Topline such damages as Topline have
2 sustained, or will sustain, in consequence of Defendants' false description and representation,
3 false designation of origin, unfair competition and trademark infringement, and to account for all
4 gains, profits, and advantages derived by Defendants that are attributable to such unlawful acts;
5 and that such damages be trebled against Flurt Defendants, as provided by 15 U.S.C. Section
6 1117.

7 8. That the Court adjudge this to be an exceptional case and require Flurt Defendants
8 to pay over to Topline the costs of this action, including reasonable attorneys' fees and interest,
9 and treble damages as provided by 15 U.S.C. Section 1117.


10 **DEMAND FOR JURY TRIAL**

11 Plaintiff Topline demands a trial by jury as to all issues so triable.

12 DATED this 1st day of March, 2007, at Seattle, Washington.

13 Respectfully submitted,

14 SEED IP Law Group PLLC

15 
16 _____
17 William O. Ferron, Jr., WSBA #11831
18 BillF@SeedIP.com
19 Timothy L. Boller, WSBA #29079
20 TimB@SeedIP.com
21 701 Fifth Avenue, Suite 5400
22 Seattle, Washington 98104
23 Telephone: (206) 622-4900

24 Attorneys for Plaintiff
25 THE TOPLINE CORPORATION

26 914377_1.DOC