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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BALL & CHAIN LLC., a Washington limited liability
company,)

Plaintiff,)

v.)

RANDOM HOUSE, INC., a New York corporation,)

Defendant.)

Civil Action No.

**COMPLAINT FOR TRADEMARK
INFRINGEMENT AND RELATED
CAUSES OF ACTION**

JURY TRIAL DEMANDED

Plaintiff, Ball & Chain LLC (“Ball & Chain”), alleges the following as its Complaint against Defendant, Random House, Inc. (“Random House”).

I. PARTIES

1. Ball & Chain is a Washington limited liability company with its principal place of business located in Auburn, Washington. Ball & Chain is the owner of the trademarks and federal trademark registrations from which this action arises.

2. Random House is a New York corporation with its principal place of business located in New York, New York. Random House conducts business in the State of Washington.

3. On information and belief, Random House offers for sale and sells the infringing products that are the subject of this action in the State of Washington under the infringing trademarks BEDROOM BUCKS and IOU.

1 **II. JURISDICTION AND VENUE**

2 4. This action arises under the Trademark Act of July 5, 1946 (the "Lanham Act"), as
3 amended (15 U.S.C. § 1051 et seq.). This Court has jurisdiction over the subject matter of this action
4 pursuant to 15 U.S.C. §§ 1053, 1121(a), and 1125(a) and (c), and 28 U.S.C. § 1331 (*federal question*).

5 5. Random House is subject to personal jurisdiction of this Court because it has offered to
6 sell and/or sold, either by itself and/or through established distribution channels, products within the
7 State of Washington, including specifically the infringing BEDROOM BUCKS and IOU coupon books.

8 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

9 **III. FIRST CLAIM FOR RELIEF**

10 **(Statutory Trademark Infringement Under 15 U.S.C. § 1114)**

11 7. Ball & Chain incorporates by reference paragraphs 1 through 6 set forth above.

12 8. Ball & Chain is the owner of various IOU trademark registrations. Ball & Chain's marks
13 were registered on the principal register of the United States Trademark Office on September 9, 2008
14 and June 16, 2009, bearing Registration Numbers 3498101, 3498123, and 3640775, respectively. The
15 mark IOU was first used in interstate commerce at least as early as November 11, 2003 on card games
16 and at least as early as September 23, 2008 for coupon books.

17 9. On information and belief, Random House recently began using the mark IOU on coupon
18 books.

19 10. Random House's use of the identical and confusingly similar mark IOU was intended to
20 trade on the goodwill established by Ball & Chain through years of use of the mark IOU.

21 11. Upon information and belief, Random House was notified of its infringement before
22 selling its IOU product, but Random House has made no effort to cease use of that mark.

23 12. Random House's IOU mark is identical to and confusingly similar to Ball & Chain's IOU
24 trademark. Random House's use of the IOU mark on products virtually identical to Ball & Chain's
25

1 products has created actual confusion in the market place and continues to create a likelihood of
2 confusion.

3 13. Random House's unauthorized use of a confusingly similar mark in connection with
4 selling coupon books causes, and is likely to cause, confusion, mistake, or deception of others, as to the
5 affiliation, connection, or association of Random House with Ball & Chain, and also causes, and is
6 likely to cause, confusion, mistake, or deception as to the origin, sponsorship, or approval of the goods
7 and commercial activities of Random House.

8 14. The use of Ball & Chain's registered marks constitutes trademark infringement in
9 violation of 15 U.S.C. § 1114.

10 15. Random House knew, or should have known, of Ball & Chain's rights, and Random
11 House's trademark infringement is knowing, willful, and deliberate, making this an exceptional case
12 within the meaning of 15 U.S.C. § 1117.

13 16. Ball & Chain has been damaged by such trademark infringement in an amount that will
14 be proved at trial.

15 17. The harm to Ball & Chain arising from Random House's trademark infringement cannot
16 be fully measured or compensated in economic terms. Random House's actions have irreparably
17 damaged, and will continue to irreparably damage, Ball & Chain's market, reputation, and goodwill, and
18 may discourage current and potential customers from dealing with Ball & Chain. Such irreparable harm
19 will continue unless Random House's acts are enjoined during the pendency of this action and
20 thereafter.

21 **IV. SECOND CLAIM FOR RELIEF**

22 **(False Designation of Origin under 15 U.S.C. § 1125(a))**

23 18. Ball & Chain incorporates by reference paragraphs 1 through 17 set forth above.

24 19. In addition to its registered IOU marks, Ball & Chain owns the mark BEDROOM
25 BUCKS.

20. Ball & Chain has used its BEDROOM BUCKS mark in interstate commerce since as

1 early as April 2009 on coupon books—nearly a year before Random House started using the
2 BEDROOM BUCKS mark on its competing coupon books.

3 21. Random House’s unauthorized use of the BEDROOM BUCKS and IOU marks, as
4 described above, in connection with coupon books constitutes a false designation of origin, false or
5 misleading description, and/or false or misleading representation. Such unauthorized use causes, has
6 caused, and is likely to continue to cause, confusion, mistake, or deception of others, as to the affiliation,
7 connection, or association of Random House and/or its BEDROOM BUCKS and IOU product with Ball
8 & Chain and/or its BEDROOM BUCKS and IOU products, and also has caused, and is likely to
9 continue to cause, confusion, mistake, or deception as to the origin, sponsorship, or approval of the
10 services and commercial activities of Ball & Chain.

11 22. Such false designation, description, and/or representation constitutes unfair competition
12 and is an infringement of Ball & Chain’s rights in its BEDROOM BUCKS and IOU trademarks in
13 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

14 23. Random House knew, or should have known, of Ball & Chain’s rights, and Random
15 House’s false description, false representation, and false designation of origin are knowing, willful, and
16 deliberate making this an exceptional case within the meaning of 15 U.S.C. § 1117.

17 24. Ball & Chain has been, and will continue to be, damaged by such false description, false
18 representation, and false designation of origin in an amount to be proved at trial.

19 25. Ball & Chain has been, and will continue to be, damaged also in a manner and amount
20 that cannot be fully measured or compensated in economic terms. Random House’s actions have
21 damaged, and will continue to damage, Ball & Chain’s market, reputation, and goodwill, and may
22 discourage current and potential customers from dealing with Ball & Chain. Such irreparable harm will
23 continue unless Random House’s acts are enjoined during the pendency of this action and thereafter.

24 **V. THIRD CLAIM FOR RELIEF**

25 **(Washington Consumer Protection Act RCW 19.86.020)**

1 26. Ball & Chain incorporates by reference paragraphs 1 through 25 set forth above.

2 27. Random House's unauthorized use of the BEDROOM BUCKS and IOU marks in
3 connection with coupon books has caused, and is likely to continue to cause, confusion and mistake.
4 Random House's use of the BEDROOM BUCKS and IOU marks deceives, has deceived and is likely to
5 continue to deceive, others into believing that Random House's BEDROOM BUCKS and IOU coupon
6 books are sponsored by, approved by, or affiliated with Ball & Chain.

7 28. Random House's acts constitute infringement of Ball & Chain's BEDROOM BUCKS
8 and IOU trademarks.

9 29. Random House knew, or should have known, of Ball & Chain's rights in and to the
10 BEDROOM BUCKS and IOU trademark, and that the use of the BEDROOM BUCKS and IOU marks
11 for coupon books would create a likelihood of confusion. Random House's unauthorized use of the
12 confusingly similar BEDROOM BUCKS and IOU marks has been knowing, willful, and deliberate.

13 30. Random House's trademark infringement constitutes unfair competition, which is
14 injurious to the public interest, in violation of the Washington State Unfair Business Practices and
15 Consumer Protection Act, RCW 19.86.010 *et seq.*

16 31. Ball & Chain has been, and will continue to be, damaged by Random House's willful
17 trademark infringement in a manner and amount that will be proved at trial.

18 32. Ball & Chain has been, and will continue to be, damaged by Random House's willful
19 trademark infringement in a manner and amount that cannot be fully measured or compensated in
20 economic terms. Random House's actions have damaged, and will continue to damage, Ball & Chain's
21 market, reputation, and goodwill, and may discourage current and potential customers from dealing with
22 Ball & Chain. Such irreparable harm will continue unless Random House's acts are restrained and/or
23 enjoined during the pendency of this action and thereafter.

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VI. FOURTH CLAIM FOR RELIEF

(Common-Law Unfair Competition)

33. Ball & Chain incorporates by reference paragraphs 1 through 32 set forth above.

34. Ball & Chain has been using the IOU trademark in the State of Washington and in interstate commerce on, and in close association with, its products, sales and services relating to card games since at least as early as 2003 on card games and at least as early as 2008 for coupon books.

35. Ball & Chain has been using the BEDROOM BUCKS trademark in the State of Washington and in interstate commerce on, and in close association with, its products, sales and services relating to coupon books since at least as early as 2009.

36. Random House's unauthorized use of the confusingly similar BEDROOM BUCKS and IOU marks on coupon books constitutes an attempt to palm off its products as those of Ball & Chain and to compete unfairly with Ball & Chain. This conduct constitutes common-law unfair competition.

37. Ball & Chain has been, and will continue to be, damaged as a result of Random House's unfair competition in a manner and amount that cannot be fully measured or compensated in economic terms. Random House's actions have damaged, and will continue to damage, Ball & Chain's market, reputation, and goodwill, and may discourage current and potential customers from dealing with Ball & Chain. Such irreparable harm will continue unless Random House's acts are restrained and/or enjoined during the pendency of this action and thereafter.

VII. REQUEST FOR RELIEF

Ball & Chain requests that judgment be entered in its favor and against Random House as follows:

A. Determining that Random House has infringed Ball & Chain's federally registered trademarks (U.S. Trademark Registration Nos. 3498101, 3498123, and 3640775);

B. Determining that Random House had knowledge of Ball & Chain's ownership and use of the IOU and BEDROOM BUCKS trademarks and, therefore, Random House's actions constitute willful

1 infringement;

2 C. Permanently enjoining Random House, its officers, agents, servants, employees and
3 attorneys, and all other persons in active concert or participation with Random House from using in any
4 way the trademark BEDROOM BUCKS or IOU on coupon books, card games, or other games, and any
5 other mark or designation that is confusingly similar to Ball & Chain's IOU and BEDROOM BUCKS
6 trademarks, and from otherwise infringing any Ball & Chain trademark right, from diluting Ball &
7 Chain's trademark rights, and from otherwise competing unfairly with Ball & Chain;

8 D. Ordering Random House to deliver to Ball & Chain for destruction all labels, signs,
9 posters, prints, emblems, devices, literature, video or audio recordings, advertising and any other
10 marketing materials in its possession, custody or control bearing the marks IOU or BEDROOM BUCKS
11 or any other trademark or designation confusingly similar to Ball & Chain's IOU and BEDROOM
12 BUCKS trademarks, or which benefits from Random House's use of the confusingly similar IOU and
13 BEDROOM BUCKS marks, pursuant to 15 U.S.C. § 1118;

14 E. Ordering Random House to cancel any registration or application to register BEDROOM
15 BUCKS, IOU, or any other mark that is confusingly similar to Ball & Chain's IOU and BEDROOM
16 BUCKS trademarks, or which benefits from Random House's use of the identical and confusingly
17 similar IOU and BEDROOM BUCKS marks;

18 F. Awarding Ball & Chain the damages it has sustained as a result Random House's
19 infringements of Ball & Chain's IOU and BEDROOM BUCKS trademarks and/or Random House's use
20 of the confusingly similar IOU and BEDROOM BUCKS marks, including but not limited to Ball &
21 Chain's lost profits on its IOU and BEDROOM BUCKS coupon books, card games, or related games as
22 well as Random House's profits for the sale of its products marketed under the confusingly similar
23 BEDROOM BUCKS and IOU marks;

24 G. Determining that this is an exceptional case under 15 U.S.C. § 1117;

25 H. Awarding Ball & Chain reasonable attorneys' fees, costs, and interest, pursuant to 15

1 U.S.C. § 1117, RCW 19.86.010, or as otherwise provided by law;

2 I. Awarding Ball & Chain treble damages under the Washington Consumer Protection Act,
3 19.86.010, *et seq* and 15 U.S.C. § 1117;

4 J. Ordering Random House to file with this Court and serve on Ball & Chain within 30 days
5 after the entry of a permanent injunction a report in writing, under oath, setting forth in detail the manner
6 and form in which Random House has complied with the Court's injunction and orders;

7 K. Awarding Ball & Chain pre-judgment interest; and

8 L. Awarding Ball & Chain such other and further relief as the Court deems just and
9 equitable.

10 **VIII. JURY DEMAND**

11 Pursuant to FED. R. CIV. P. 38(b)(1), Ball & Chain demands a trial by jury.
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1 DATED this 9th day of February, 2010.

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JMR LAW GROUP PLLC

/s/ Jason M. Rhodes
JASON M. RHODES, WSBA NO. 31883
118 N. 36TH STREET, SUITE B.
SEATTLE, WA 98103
TELEPHONE: (206) 633-7833
FAX: (206) 733-7834
E-MAIL: JASON@JMRLAWGROUP.COM

ATTORNEY FOR PLAINTIFF
BALL & CHAIN LLC