

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LAUTREC CORPORATION, INC.

Plaintiff,

v.

Civil Action No. _____

ROBERT JAMES d/b/a Your Gemologist, LLC,
and International School of Gemology,

Defendant.

COMPLAINT

The plaintiff, LAUTREC CORPORATION, by its attorneys, Boyle Fredrickson, S.C., for its complaint against the defendant, pleads as follows:

NATURE OF THE CASE

1. In this action, Plaintiff seeks injunctive relief and damages under the laws of the United States and the State of Wisconsin for acts of trademark disparagement, unfair competition, defamation, and false advertising engaged in by Defendant.
2. Defendant has harmed Plaintiff's business in the way of its trade by falsely asserting that the public is being deceived about the quality and origin of Plaintiff's products. These statements are simply false.

JURISDICTION AND VENUE

3. This action arises under the Lanham Trademark Act of 1946, 15 U.S.C. §§1051 *et seq.* (the "Lanham Act"), and the common law of the State of Wisconsin. This court has jurisdiction pursuant to 28 U.S.C. §§1331, 1332 and 1338 and 15 U.S.C.

§1121. This action is between Plaintiff, a corporation with its principal place of business in Wisconsin, and Defendant, an individual who resides in a foreign state. This Court has supplemental jurisdiction over the State law claim pursuant to 28 U.S.C. §1367.

4. Venue of this action is properly laid in the Eastern District of Wisconsin pursuant to 28 U.S.C. §1391(b) and (c) because Defendant conducts business in this District.
5. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.

PARTIES

6. Plaintiff, Lautrec Corporation, is a Wyoming corporation, with its Diamond Nexus Labs division having a principal place of business located at 50550 West Ashland Way, Franklin, Wisconsin 53132.
7. Defendant, Robert James, is an individual holding himself out as a gemologist and the owner and operator of a business known as the International School of Gemology (“ISG”), located at 11118 Wurzbach Road, Suite 204, San Antonio, Texas 78230.
8. Defendant, Your Gemologist, LLC, is a Texas limited liability company with a place of business located at 11118 Wurzbach Road, Suite 204, San Antonio, Texas 78230.
9. Defendant Robert James is the conscious, active, and dominant force behind the unlawful acts of ISG and Your Gemologist, LLC complained of herein, which

wrongful acts he has engaged in for the gain and benefit of ISG and Your Gemologist, LLC, and for his own individual gain and benefit.

10. Defendant, individually and through ISG, conducts business and recruits students in the Eastern District of Wisconsin.

FACTS

11. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 10 of the Complaint as set forth here in their entirety.

12. Plaintiff is a designer, producer, marketer, and seller of fine jewelry products including but not limited to products incorporating diamond simulants.

13. Plaintiff has discovered that Defendant willfully, maliciously, and without justification or privilege, published and/or caused to be published to other persons in the gemstone community, including but not limited to Plaintiff's customers and potential customers, false and defamatory statements concerning products sold by Plaintiff. Such statements are defamatory *per se*.

14. Defendant, through his website at www.yourgemologist.com, has made defamatory statements for the purpose of falsely denigrating Plaintiff's products for his own benefit, gain, and notoriety.

15. Defendant has falsely asserted that Diamond Nexus Lab does "not have a product laboratory and they do not manufacture any products."

16. Defendant has falsely asserted that "the same cubic zirconia that Diamond Nexus sells for over \$100.00 can be purchased on eBay for about \$5.00."

17. Defendant has falsely asserted that Diamond Nexus Labs products are ordinary cubic zirconia and not diamond simulant products made from a variety of materials.
18. Defendant's statements and claims are done without regard for the truth with the intention of generating publicity for Defendant and his company.
19. Plaintiffs' diamond simulant product had contained and continues to contain additional and differentiating elements from common cubic zirconium. The gemstone is then coated with a proprietary substance that alters the optical and physical properties of the gemstone to make it more exactly match a natural diamonds properties. Common cubic zirconium has no coating.
20. Plaintiff's diamond simulant product, The World's Most Technologically Advanced Gemstone®, is the near exact optical and physical match to natural mined diamond, it looks identical and wears identically, but the chemistry is different, it is not pure carbon.
21. Plaintiff's diamond simulants have been accepted for rating and grading by AIG, American International Gemologists.
22. Defendant, through his website, proposed and allegedly completed a test of Plaintiff's product gemstone, posted at <http://www.yourgemologist.com/DiamondNexusLabs.html>. A true and correct copy of this website publication is attached hereto and incorporated herein as Exhibit A. The results of the test are false and misleading and do not accurately represent the characteristics of Diamond Nexus Labs' products.

23. Defendant, through his website's "student forum" continues to denigrate and damage Plaintiff's trademarks and products through his false allegations of quality.

COUNT I:
Federal Unfair Competition

24. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 23 of the Complaint as set forth here in their entirety.

25. This claim arises under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

26. Plaintiff owns all the right, title and interest in and to, and holds the exclusive right to market and sell diamond simulants bearing Diamond Nexus trademarks in the United States.

27. Plaintiff has expended considerable sums of money in promoting the Diamond Nexus trademarks in connection with its gemstones. As a result of such authorized activities, both the trade and the public at large have come to identify the Diamond Nexus trademarks with Plaintiff, and Plaintiff's Diamond Nexus trademarks, and its associated gemstones, jewelry, and distinctive creative elements have developed a secondary meaning associating them with Plaintiff and with its products.

28. Defendant caused his test and results to be cited and republished on other Internet-based websites and internet forums, including www.diamond.info, www.betterthandiamond.com, and www.schoolofgemology.com (ISG's website).

29. Defendant's Test Report falsely claims that Plaintiff "has been deceptive to me regarding my purchase. And that they may have violated US CFR Title 16, Section 23.11 in making this claim to me regarding their product."

30. Defendant has used false and misleading representations of fact in commercial advertising or promotion that misrepresents the nature, characteristics, and qualities of Plaintiff's goods, with full knowledge of the falsity of such misrepresentations, all to the detriment of Plaintiff.
31. Defendant's conduct has damaged Plaintiff in its business, and is likely to continue to damage Plaintiff and its business.
32. Defendant's acts are calculated and intended to deceive and are likely to deceive consumers into believing that Plaintiff is selling goods under false pretenses, or are "frauds" in the gemstone community, when in fact, Plaintiff is not.
33. Defendant's continued acts, upon information and belief, will damage and dilute the goodwill and reputation of Plaintiff, further impair the value of Plaintiff's trademarks, and dilute the sales of Plaintiff's products.
34. Plaintiff has suffered and continues to suffer serious, irreparable harm and injury as a result of the aforesaid unlawful acts of Defendant, and Plaintiff is without an adequate remedy at law, in that damages are extremely difficult to ascertain and, unless injunctive relief is granted, Plaintiff will be required to pursue a multiplicity of actions.
35. Plaintiff has sustained damage as a result of Defendant's wrongful acts. Plaintiff is presently unable to ascertain the full extent of the money damages it has suffered and will suffer by reason of the acts of unfair competition, but upon information and belief, such damages exceed \$100,000.
36. Defendant has obtained gains, profits, notoriety, and other advantages as a result of his acts of unfair competition as alleged. Plaintiff is presently unable to

ascertain the full extent of the money damages it has suffered and will suffer by reason of the acts of unfair competition, but upon information and belief, such gains, profits, and advantages exceed \$100,000.

COUNT II:
Defamation Under Wisconsin Common Law

37. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 36 of the Complaint as set forth here in their entirety.
38. Defendant has made defamatory statements of fact on the internet, through his website, concerning Plaintiff's products, which Plaintiff sells and distributes in Wisconsin.
39. Defendant's statements are defamatory *per se* because, by attacking the integrity of Plaintiff's products and falsely asserting that Plaintiff's products are cubic zirconia, Defendant disparages Plaintiff in the way of its trade.
40. By impugning the authenticity of Plaintiff's own claims regarding its products, Defendant has attempted to undermine the profitability of Plaintiff's business in Wisconsin and throughout the United States. Defendant's statements have clearly disparaged Plaintiff in the way of its trade.

COUNT III:
Defamation, §942, Wis. Stats.

41. Plaintiff hereby incorporates the allegations contained in paragraphs 1 through 38 of the Complaint as set forth here in their entirety.
42. Defendant's statements, as alleged herein, were in fact false and made for the sole purpose of maliciously denigrating Plaintiff's business.

43. Plaintiff has made a demand that Defendant retract its false and defamatory statements but he has failed to do so.
44. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff has suffered and will continue to suffer damages to its business.
45. Defendant's conduct as alleged was intentional, despicable, malicious, and oppressive and in conscious disregard of Plaintiff's rights, justifying an award of exemplary and punitive damages in an amount sufficient to punish and make an example of Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, as follows:

1. On all of its Claims, permanently enjoining and restraining Defendant, and all those in active concert and participation with him from:
 - a. Making any false statements or representations whatsoever concerning Plaintiff, its products, or the diamond simulant industry, including but not limited to alleging that Diamond Nexus Lab products are fraudulent or merely cubic zirconia;
 - b. Engaging in any other activity constituting unfair competition with Plaintiff, or constituting an infringement of any of Plaintiff's trademarks, or of Plaintiff's rights in, or rights to use or to exploit its trademarks, or constituting any dilution of Plaintiff's names, reputation, or goodwill;

- c. Engaging in any acts or activities directly or indirectly calculated to trade upon or injure the reputation or the goodwill of Plaintiff or in any manner to compete unfairly with Plaintiff; and
 - d. Effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs 1(a) through (c) above.
2. Directing that Defendant issue a retraction through the same channels of communication that he made his false statements. The circulation of the retraction must be to the same extent as the circulation of the defamation.
3. Directing such other relief as the Court may deem appropriate to prevent the trade and public from deriving any erroneous impression that any products or services manufactured, distributed, offered for sale or sold by Plaintiff are in any way cubic zirconia or fraudulent in any way.
4. Directing that an accounting of and judgment be rendered against Defendant for all profits received by Defendant and all damages sustained by Plaintiff on account of Defendant's unfair competition; and furthermore that such profits and damages are trebled, as provided by 15 U.S.C. §1117.
5. Awarding Plaintiff its costs in this action, including reasonable attorneys' fees and investigative fees, as provided by 15 U.S.C. §1117.
6. Directing that the Court retains jurisdiction of this action for the purpose of enabling Plaintiff to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the interpretation or execution

of any order entered in this action, for the modification of any such order, for the enforcement or compliance therewith, and for the punishment of any violations thereof.

7. Awarding to Plaintiff any such other and further relief as the Court may deem just and proper.

Dated this ____ day of August, 2009.

Respectfully submitted,

Boyle Fredrickson, S.C.

s/Adam L. Brookman _____

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