

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PALM BEACH DIVISION

NO. _____

GLADIATOR LACROSSE, LLC,

Plaintiff

v.

SPORT GUARD INCORPORATED,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Gladiator Lacrosse, LLC, by its undersigned counsel, sues Defendant Sport Guard Incorporated by filing this Complaint for Declaratory Judgment and alleges as follows:

1. This is a declaratory judgment action seeking a declaration of non-infringement.
2. Plaintiff is Gladiator Lacrosse, LLC, a Florida limited liability company with its principal place of business in Boca Raton, Florida.
3. Defendant is Sport Guard Incorporated, a Pennsylvania company with its principal place of business in Philadelphia, Pennsylvania.
4. This Complaint arises under the Declaratory Judgment Act, 28 U.S.C.A. § 2201 et seq. and the Lanham Act, 15 U.S.C.A. § 1051 et seq., based upon an actual controversy between the parties to declare that Plaintiff is free to use its federally registered Gladiator Lacrosse® mark.
5. This Court has original jurisdiction over the subject matter of these claims pursuant to 28 U.S.C. Sec. § 1331.

6. The Court has personal jurisdiction over Defendant pursuant to Fla. Stat. § 48.193(1)(a) as Defendant operates and conducts its business in the State of Florida, including, but not limited to, offering its goods over the internet to residents of the State of Florida and offering its products at a retail site in Orlando, Florida.
7. Venue is appropriate pursuant to 28 U.S.C. § 1391 because Defendant's demand letter alleging infringement was sent to Palm Beach County, Florida and both parties offer their products in Palm Beach County, Florida, at a minimum via the internet.
8. Plaintiff sells lacrosse equipment in Florida and elsewhere in the United States, primarily through its website.
9. Rachel Zietz founded Gladiator Lacrosse as a thirteen year old girl. In Seventh Grade, Rachel attended the Greater Boca Raton Chamber of Commerce Young Entrepreneurs Academy, where she learned to draft a business plan around something she loved to do. Rachel enjoys playing lacrosse, and wanted to start a company that made lacrosse practice equipment. So, Rachel redesigned lacrosse rebounder equipment to withstand regular practice by designing thicker netting and more durable frames. Starting with a family loan and some warehouse space from a family business, she started Gladiator Lacrosse and began to sell her product on Amazon.com.
10. Rachel's business has been a success. She has been a finalist for the Greater Miami Chamber of Commerce's 2015 Entrepreneur Award for young professionals, and even has been featured on *Shark Tank* on ABC. Gladiator Lacrosse, LLC ("Gladiator Lacrosse") was founded in 2013 by then 13-year old seventh grade student, Rachel Zietz ("Rachel"). The idea for Gladiator Lacrosse came to Rachel while attending the Young Entrepreneurs Academy program for students. As an avid lacrosse player, all of her

previously owned equipment and everything she found was expensive and made from low quality materials that didn't last.

11. Rachel wanted to create a version of a lacrosse rebounder and goal that would be able to stand up to all weather conditions and hardcore practicing. As she was a teen starting a new business, Rachel looked for the most economical ways of starting the business, and with the help of the Young Entrepreneurs Academy mentors, researched the name Gladiator Lacrosse, made sure to check for its availability, and based on the fact that the website www.gladiatorlacrosse.com was available for the sum of \$10.00, decided to give her company the name it has today.
12. Gladiator began selling only a lacrosse rebounder (a "pitch-back" which allows players to throw the ball and practice shooting skills), and a lacrosse goal. Rachel spent much of the summer and later part of 2012 and beginning of 2013 sourcing the factory to produce the products, designing and approving prototypes, building her website, and designing the packaging for the two products. She continued to work on her company while remaining a straight-A student through 9th, 10th and to date in her Junior year in high school.
13. Gladiator officially began selling its products online in December 2013; and saw its sales soar very quickly. With the exception of shipping, Rachel initially handled all aspects of the business, from online product listings, customer inquiries, direct sales, etc. Gladiator was wildly supported by the lacrosse community, and through word of mouth, the company grew exponentially and Rachel quickly began to receive media attention due to her inspirational story of hard work and perseverance.
14. Since starting Gladiator Lacrosse, Rachel and her business have been featured in the *New York Times, USA Today, Forbes, Entrepreneur Magazine, Inc.com, The South Florida*

Business Journal, US Lacrosse Magazine, Seventeen Magazine, Girls Life Magazine, and countless other magazines and publications. Rachel was also named one of *Time Magazine's* 30 Most Influential Teens in 2016. In May 2016, Rachel and Gladiator Lacrosse appeared on *ABC's Shark Tank*.

15. In January 2016, Rachel And Gladiator Lacrosse were recognized by Governor Rick Scott in his State of the State Address for her business success, which recognized some of Florida's top business leaders and their contribution to the State and was also awarded the Governor's Young Entrepreneur Award for her business success. She has been honored with the "Rising Star Award" from the Greater Miami Chamber of Commerce, was the recipient of the 2016 Boca Raton Chamber of Commerce's Diamond Award, which honors a woman who has achieved successes in her respective field and makes a difference in the Boca Raton Community. Rachel was the national winner of the U.S. Chamber of Commerce competition for top student entrepreneur and received a \$15,000 grant towards her business in 2015.
16. Most recently, Gladiator Lacrosse entered into a partnership with Casey Powell, one of men's lacrosse's most decorated professional players, to produce a signature line of training products exclusive to Gladiator Lacrosse, and most recently announced a partnership with Dick's Sporting Goods to offer its products online and in select stores across the U.S. She also recently joined the board of the Casey Powell World Lacrosse Foundation.
17. As an inspirational young entrepreneur and role model to women entrepreneurs of all ages, Rachel has also been a featured speaker for numerous youth leadership and professional organizations, including the U.S. Chamber of Commerce's Corporate

Citizenship Conference, Young President's Organization (YPO), the Boca Raton Chamber of Commerce's Young Entrepreneurs Academy, the 2013 Round Square International Conference, the 2015 Greater Miami Chamber's Youth Leadership Conference, Cisco's Corporate Social Responsibility Global Girl's Power Tech day, the Extraordinary Women Leading Change Conference, the Start Up Grind 2016 Conference, and the Hatchpad Engage Conference.

18. Currently, there is a children's book entitled "*Kidpreneur*" being produced about Rachel and Gladiator Lacrosse, as well as two separate network television projects which are subject to confidentiality provisions.
19. Plaintiff has used the mark Gladiator Lacrosse® in commerce from December 30, 2013, to the present.
20. On December 27, 2016, Plaintiff received a trademark registration for its Gladiator Lacrosse® trademark on the Principal Register of the United States Patent and Trademark Office. *See* Trademark Registration (Ex. 1). The trademark registration provides for registration in "Class 28: lacrosse equipment, namely, lacrosse goal, lacrosse rebounder, lacrosse goal replacement net, lacrosse goal target and lacrosse goal shot blocker." (Id.)
21. Defendant does not sell lacrosse equipment. Instead, Defendant sells custom mouthguards.
22. Defendant sells its custom mouthguards under the "Gladiator" brand. *See* <http://www.gladiatorguards.com>.
23. Plaintiff does not sell mouthguards.

24. Nevertheless, on December 14, 2016, Defendant sent Plaintiff a bullying letter demanding that Plaintiff cease using the word “Gladiator” in relation to its sales of Gladiator Lacrosse® products and threatening to take legal action against Plaintiff under 15 U.S.C. §§ 1114 and 1125(a) in regard to its demands. Defendant sent a second letter on January 17, 2017 again demanding that Plaintiff cease using this word.
25. Precluding Plaintiff from using the Gladiator Lacrosse® trademark will put Plaintiff out of business and negate all the goodwill that Plaintiff has built up since it started using the trademark.
26. Plaintiff has hired the undersigned counsel to represent it in this lawsuit and is obligated to pay their reasonable attorneys’ fees and costs.
27. All conditions precedent to bringing this action have occurred.

COUNT I: DECLARATORY JUDGMENT

28. Plaintiffs incorporate Paragraphs 1 through 27 by reference as if fully incorporated herein.
29. This Court has the authority to enter a declaratory judgment pursuant to 28 U.S.C. Sec. §2201(a) to determine a question of actual controversy between the parties regarding the non-infringement by Plaintiff’s federally registered Gladiator Lacrosse® mark on Defendant’s “GLADIATOR” mark.
30. There is a substantial and continuing controversy between Plaintiff and Defendant and a declaration of rights is both necessary and appropriate to determine that Plaintiff’s federally registered Gladiator Lacrosse® mark does not infringe on Defendant’s “GLADIATOR” mark.

31. Plaintiff is not infringing on Defendant's GLADIATOR mark, and the Plaintiff's use of the word "Gladiator" in relation to the sale of its lacrosse equipment products is not likely to cause confusion as to the affiliation between Plaintiff and Defendant pursuant to 15 U.S.C. §§ 1114 or 1125(a).
 32. Indeed, the Patent and Trademark Office's TESS database lists hundreds of marks using the word, "Gladiator," and a number of those trademarks relate to athletic gear or activities.
 33. Plaintiff's and Defendant's goods are dissimilar. Plaintiff sells lacrosse equipment, while Defendant makes custom mouthguards.
 34. The parties have different sales channels, distribution and customers.
 35. The parties also use different advertising.
 36. Plaintiff certainly had no intent to infringe upon Defendant's mark.
 37. Plaintiff has never observed and has never been informed of any actual confusion between the marks.
 38. Nevertheless, Defendant has threatened to sue Plaintiff under 15 U.S.C. §§ 1114 or 1125(a).
 39. Plaintiff is being injured by Defendant's threat to bring a claim for trademark infringement against it, as well as Defendant's claims of infringement, which may lead to lost sales and/or loss of goodwill and reputation.
 40. Plaintiff has no adequate remedy at law.
- WHEREFORE, Plaintiff respectfully requests the Court enter judgment as follows:
1. Declaring that Plaintiff's Gladiator Lacrosse® trademark does not infringe on Defendant's "GLADIATOR" trademark;

2. Awarding Plaintiff its costs, expenses, and reasonable attorneys' fees pursuant to the Lanham Act, 15 U.S.C.A. §1117; and
3. Awarding Plaintiff such other relief that the Court deems just and proper under the circumstances.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Respectfully submitted on this 6th day of February, 2017.

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