

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

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| ABG EPE IP LLC, | § | |
| | § | |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | NO. _____ |
| | § | |
| Fabbrica d’Armi Pietro Beretta S.p.A., | § | JURY DEMANDED |
| | § | |
| <i>Defendant.</i> | § | |

COMPLAINT

Plaintiff avers:

PARTIES

1. Plaintiff, ABG EPE IP LLC ("ABG EPE") is a Tennessee limited liability company.
2. Defendant, Fabbrica d’Armi Pietro Beretta S.p.A. (“Beretta”), is an Italian company having its principal place of business in Gardine Val Trompia, Italy.

NATURE OF ACTION AND JURISDICTION

3. This is an intellectual property infringement action arising from Beretta’s unlicensed and unauthorized use of plaintiff’s intellectual property with respect to a worldwide marketing campaign undertaken by Beretta to introduce a new sporting clays shotgun made by Beretta (hereinafter defined as “Elvis Themed Advertising Campaign”).
4. This Court has subject matter jurisdiction over this action under Section 39 of the Lanham Act, 15 U.S.C. § 1121, and Title 28 of the United States Code §§ 1331 and 1338, and

supplemental jurisdiction over ABG EPE's claims under state law pursuant to 28 U.S.C. § 1367(a).

5. The matter in controversy in this action exceeds the sum or value of seventy five thousand dollars (\$75,000.00), exclusive of interest and costs, a citizen of a state and a citizen of a foreign state. Accordingly, this Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(2).

6. Beretta is an alien corporation and venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c) (3).

7. This Court has personal jurisdiction over Beretta pursuant to Tenn. Code Ann. § 20-2-214 and/or Fed. R. Civ. Proc. 4(k)(2).

8. Beretta is an Italian firearms manufacturer conducting business throughout the world and having a broad distribution network selling its products in the United States including in this judicial district.

9. Beretta's distribution network for its firearms includes the use of numerous authorized dealers located throughout Tennessee, including at least five (5) dealers located within this judicial district. These dealers are authorized to advertise, offer for sale and sell Beretta products, including model 692, as more fully described below. These independent dealers act as Beretta's agents and only a Beretta dealer is authorized sell a Beretta firearm. Through this dealership relationship, Beretta sells numerous firearms in Tennessee annually.

10. Beretta offers for sale its model 692 in Tennessee, and intended it that the Elvis Themed Advertising Campaign would create interest and enthusiasm in model 692 and encourage sales of the firearm in Tennessee and throughout the world. Beretta maintains one or

more websites accessible by Tennessee residents where Tennessee residents are provided information regarding where Beretta firearms, including model 692, can be purchased within this judicial district.

11. The Elvis Themed Advertising Campaign was broadly distributed by use of Beretta's Facebook page and the posting of videos on various Internet sites. Such activity was intended to create a virtual presence in Tennessee to promote sales of Beretta's model 692. On information and belief, Beretta distributed the posters used in the Elvis Themed Advertising Campaign, as more fully described below, to the Beretta dealers located within Tennessee.

12. Beretta has committed a tortious act within Tennessee by wrongfully appropriating plaintiff's property so as to cause injury to plaintiff in Tennessee, and Beretta should have reasonably anticipated that the plaintiff would have been injured in Tennessee.

FACTS

I. PLAINTIFF'S PROPERTY

13. Elvis Presley ("Elvis") was a world famous entertainer, and his career is without parallel in the entertainment industry.

14. Elvis was aware of his fame and sought to capitalize on it during his lifetime.

15. Elvis and his business advisors entered into agreements granting commercial licenses throughout the world to allow others to use Elvis' name and likeness, trademarks, and other intellectual property in connection with the numerous goods and in connection with advertising for goods and services.

16. As early as 1956, Elvis' name and likeness could be found on a variety of merchandise and in advertisements for products of others.

17. Elvis, a Memphis, Tennessee resident, died on August 16, 1977.
18. The Estate of Elvis Presley was created by the admission to probate of the Last Will and Testament of Elvis A. Presley (“Will”) in the Probate Court of Shelby County, Tennessee, U.S.A., on August 22, 1977.
19. Pursuant to the terms of the Will, the Elvis Presley Residuary Trust was created under Item IV of the Will, and Lisa Marie Presley was the sole beneficiary of the Elvis Presley Residuary Trust.
20. The co-executors of the Estate of Elvis Presley incorporated Elvis Presley Enterprises, Inc. (“EPE”) as a Tennessee corporation on February 26, 1981. The co-executors and co-trustees of the Will and the Elvis Presley Residuary Trust transferred and assigned all right, title and interest in and to the name, likeness and image of Elvis and trademarks related to Elvis to EPE (“Elvis Intellectual Property”) by an assignment dated as of September 18, 1981 that was recorded with the United States Patent and Trademark Office on February 10, 1984.
21. By assignment dated November 18, 2013 and recorded with the United States Patent and Trademark Office on December 3, 2013, EPE transferred all of its right title and interest in and to the Elvis Intellectual Property to the plaintiff.
22. EPE and its predecessors in interest have been involved in a worldwide licensing program, with products and advertisements featuring Elvis’ name, image and likeness in every major category. Plaintiff continues that licensing program today.
23. EPE and its successors in interest have continuously used the marks, ELVIS and ELVIS PRESLEY (and derivations of these marks), to identify certain authorized goods and services offered by it and its licensees.

24. Plaintiff and its affiliates also own and license numerous copyrighted works including music, audiovisual works and photographs in connection with authorized goods and services offered by it and its licensees.

25. Prior to the plaintiff's acquisition of the Elvis Intellectual Property, EPE licensed the use of the Elvis Intellectual Property to a firearms manufacturer.

26. EPE and its predecessors and successors in interest have invested many millions of dollars spanning over four decades in advertising and promoting the Elvis Intellectual Property and the goods and services sold utilizing such property. The result of this extensive promoting and advertising is that the purchasing public has come to know, rely upon, and recognize that advertisements featuring the Elvis Intellectual Property are authorized and approved by the owner of such property. EPE and the plaintiff have established valuable goodwill in such intellectual property.

27. EPE and the plaintiff have actively policed and protected the Elvis Intellectual Property, and they have on numerous occasions taken action against others who used or attempted to trade upon their rights in and to the Elvis Intellectual Property.

II. BERETTA'S UNAUTHORIZED USE OF PLAINTIFF'S PROPERTY

26. Beretta is an Italian company specializing in the manufacture and sale of weapons including over-and-under shotguns for hunting and competition in different gauges and finish grades.

27. Beretta's sales exceed one hundred and seventy five (175) million dollars annually.

28. Elvis' interest in firearms and target shooting is well-known by his fans and gun aficionados.

29. Gun enthusiasts and Elvis fans also know that Elvis was the owner of a Beretta made firearm.

30. Beretta decided to create, produce and sell another over and under shotgun for sporting clays shooting designated as Beretta 692 competition shotgun or model 692 to be sold throughout the world including in this judicial district.

31. Beretta made a deliberate and intentional decision to tie its new product, model 692, to Elvis and trade on his popularity to generate as much publicity as possible when introducing model 692 to the public.

32. Beretta developed the Elvis Themed Advertising Campaign for the model 692 describing the gun as the "new legend in clay shooting" and used advertising material and techniques intended to suggest that the gun's status ultimately would be equivalent to Elvis' legendary status as an entertainer.

33. Beretta conducted openings throughout the world to introduce the model 692 including at its Australian headquarters in Dandenong, South Australia; in London, England at the Beretta Gallery; at the La Almenara shooting range located just outside Madrid in Burguillos, Spain; and at the United States' most popular gun trade show known as the 2014 SHOT Show in Las Vegas, Nevada.

34. As part of the Elvis Themed Advertising Campaign, Beretta advertised that Elvis was coming to these events. At every venue, Beretta had Elvis impersonators to appear and/or perform and greet the gun enthusiasts attending such events. In some cases, they had the Elvis

impersonators pose with the weapons.

35. As part of the Elvis Themed Advertising Campaign, Beretta created or had created advertising posters that feature an image of a performer appearing to be Elvis facing an audience wearing a jump suit in the style typically associated with Elvis with a shooting vest and ear protectors on so as to associate Beretta's products with Elvis.

36. The Elvis Themed Advertising Campaign was expressly created so as to draw the maximum amount of attention to Beretta's product by exploiting Elvis' iconic status in violation of the plaintiff's rights.

37. On January 28, 2014, plaintiff sent a formal cease and desist letter to representatives of Beretta asserting its objection to Beretta's use of the Elvis Intellectual Property in connection with Elvis Themed Advertising Campaign for Beretta's model 692.

38. As of the filing date of the complaint, Beretta has refused to pay compensation for its unauthorized and unlicensed use of the Elvis Intellectual Property.

III. EFFECT OF BERETTA'S ACTIVITIES ON ABG EPE AND THE CONSUMING PUBLIC

39. Beretta's unauthorized use of the Elvis Intellectual Property in connection with the Elvis Themed Advertising Campaign falsely indicated to the purchasing public that Beretta, its business, and its goods were somehow sponsored, endorsed, or approved by plaintiff, or are in some manner related to plaintiff.

41. Beretta's unauthorized use of the Elvis Intellectual Property in connection with the Elvis Themed Advertising Campaign caused injury to the plaintiff by depriving the plaintiff of its right to control the usage of its property and to derive monetary benefit from authorized usage of such property. As a result of Beretta's unauthorized use of the Elvis Intellectual

Property in connection with the Elvis Themed Advertising Campaign, Beretta was unjustly enriched at the expense of the plaintiff.

COUNT I: VIOLATION OF LANHAM ACT SECTION 43(a)

42. Plaintiff incorporates by reference all factual allegations set forth in paragraphs 1 through 41.

43. Beretta's acts constitute false designations of origin, false or misleading descriptions or representations of fact and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

44. Plaintiff has been damaged by Beretta's acts of false designations of origin and/or false endorsement and unfair competition.

45. Beretta's acts were willful and in bad faith, making this an exceptional case under 15 U.S.C. § 1117.

COUNT II: VIOLATION OF RIGHT OF PUBLICITY

46. Plaintiff incorporates by reference the factual allegations set forth above in paragraphs 1 through 41.

47. Plaintiff is the exclusive owner of all rights in and to the name, likeness and image of Elvis.

48. Beretta used the name, likeness, image of Elvis and other indicia of Elvis' identity without permission and authority from the plaintiff in connection with Elvis Themed Advertising Campaign to generate interest and sales in Beretta's products.

49. Beretta's unauthorized use of the name, likeness and image of Elvis violates plaintiff's common law rights of publicity as well as the rights provided by Tennessee Code Ann.

§ 47-25-1101 to 47-25-1106 and Nevada Revised Statute 597.770-597.810.

50. Beretta's actions have caused damage to plaintiff including the loss of the right to receive fair compensation for the usage of plaintiff's property.

COUNT III: COMMON LAW UNFAIR COMPETITION

51. Plaintiff incorporates by reference the factual allegations set forth above in paragraphs 1 through 41.

52. Beretta's acts constitute unfair competition in violation of Tennessee common law.

53. Plaintiff has been damaged by Beretta's acts of common law unfair competition.

PRAYER

WHEREFORE, Plaintiff requests the following relief:

- A) Defendant Beretta, its agents, servants, employees, attorneys, and all those persons in active concert or participation with them, be required to remove or otherwise eliminate all remaining usage of the Elvis Intellectual Property that appear in any media source including Beretta's websites and advertising, and promotional materials;
- B) Beretta be ordered to file with this Court and to serve upon plaintiff, within thirty (30) days after the entry and service on Beretta of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Beretta has complied with the injunction;
- C) Plaintiff recover all damages that it has sustained as a result of Beretta's infringement and unfair competition, and that said damages be trebled or, in the alternative, punitive damages be awarded;

- D) Plaintiff be awarded its reasonable and necessary attorney fees;
- E) Plaintiff recover its costs of this action and prejudgment and post-judgment interest; and
- F) Plaintiff recover such other relief as the Court may find appropriate.

JURY DEMAND

Under Fed. R. Civ. P. 38(b), plaintiff demands a trial by jury on all issues triable of right by a jury.

Respectfully submitted,

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