

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

- (1) AMATEUR SOFTBALL
ASSOCIATION OF AMERICA, INC.,
and
(2) RAWLINGS SPORTING GOODS
COMPANY, INC. d/b/a MIKEN
COMPOSITES L.L.C. and WORTH
L.L.C.

Plaintiffs,

v.

- (1) MICHAEL ROGERS, and
(2) TROY WATERMAN,

Defendants.

Case No.

COMPLAINT

Plaintiffs, for their Complaint against the Defendants, allege and state:

1. This Court has jurisdiction over this action pursuant to: (i) 28 U.S.C. §§ 1331, 1338(a) and (b) and 15 U.S.C. § 1121 as an action for violation of the Lanham Act, 15 U.S.C. §§ 1051 et seq.; and (ii) 28 U.S.C. § 1367(a) pursuant to the principles of supplemental jurisdiction.

2. Plaintiffs are informed and believe and thereupon allege that venue is proper in this district pursuant to 28 U.S.C. § 1391(b) in that, among other things, a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

3. This is an action for: (i) infringement of registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114; (ii) false designation of origin and trademark and trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (iii) unfair competition and trademark infringement in violation of the common law of

the State of Oklahoma; and (iv) violation of the Oklahoma Deceptive Trade Practices Act, O.S. § 78, 51 et seq. (2005).

4. As described more fully below, Defendants have distributed, sold, offered for sale, or otherwise contributed to the sale of softball bats impermissibly bearing one or more of Plaintiffs' marks, and are therefore liable for direct and/or contributory infringement of Plaintiffs' lawfully owned trademarks and trade dress. Defendants' conduct has produced and, unless enjoined by this Court, will continue to produce widespread consumer confusion and deception as well as irreparable injury to Plaintiffs. Defendants' actions constitute deceptive trade practices and infringe one or more of Plaintiffs' trademarks. Defendants are liable to Plaintiffs for monetary damages, attorneys' fees and costs, and this Court should issue an injunction against Defendants' unlawful conduct.

PARTIES

5. Plaintiff Amateur Softball Association of America, Inc. ("ASA") is a nonprofit corporation headquartered in Oklahoma City, Oklahoma, and is the National Governing Body of Softball in the United States. ASA organizes, governs, sanctions, markets and regulates the sport of softball throughout the United States - including the United States Olympic Teams under authority of the United States Olympic Committee.

6. Plaintiff Rawlings Sporting Goods Company, Inc. d/b/a Miken Composites L.L.C. and Worth L.L.C. ("Rawlings") makes and/or sells softball bats in the United States.

7. Defendants Michael Rogers and Troy Waterman ("Defendants") are "bat doctors" that have distributed, sold, offered for sale, or contributed to the sale of infringing softball bats.

MARKS

8. ASA is the exclusive owner of the following marks (collectively, “ASA Marks”) which have been registered on the principal register of the United States Patent and Trademark Office (hereinafter “USPTO”) or are pending before the USPTO.

Registration Number	Registration Date	Trademark
1,442,234	June 9, 1987	AMATEUR SOFTBALL ASSOCIATION OF AMERICA
1,443,350	June 16, 1987	ASA
2,457,961	June 5, 2001	ASA
2,341,661	April 11, 2000	CERTIFIED BY AMATEUR SOFTBALL ASSOCIATION – CONFORMS TO STANDARD – 2000 – ASA 2000
78/270,834	filed July 7, 2003	ASA CERTIFIED

9. Rawlings is the exclusive owner of the following marks (collectively, “Rawlings Marks”) which have been registered on the principal register of the United States Patent and Trademark Office.

Registration Number	Registration Date	Trademark
2,702,052	April 1, 2003	MIKEN
2,706,499	April 15, 2003	Miken Design
999,046	November 26, 1974	WORTH
2,821,799	March 9, 2004	FREAK
2,654,210	November 26, 2002	E-FLEX TECHNOLOGY
1,848,826	August 9, 1994	Worth W
2,439,282	March 27, 2001	PST

BACKGROUND FACTS

10. For many years, Plaintiffs have used, in connection with their respective products and services, ASA Marks and Rawlings Marks, respectively. Plaintiffs have spent substantial time, effort and money advertising and promoting their respective Marks throughout the United States, and these Marks have consequently developed significant goodwill, have become distinctive, and have acquired secondary meaning.

11. In an attempt to profit from Plaintiffs' investments in their respective Marks, Defendants have distributed, sold, offered for sale, or otherwise contributed to the sale of bats that, without authorization, bear one or more of the ASA Marks and one or more of the Rawlings Marks, or spurious marks that are substantially indistinguishable from those Marks.

12. ASA has adopted performance standards for softball bats used in ASA sanctioned play. Softball bats that exceed the ASA performance limit are not allowed in ASA sanctioned play and are not authorized to bear any of the ASA Marks. The bats, distributed and/or sold by Defendants, exceed ASA's performance standards and have been altered to impermissibly bear one or more of the ASA Marks.

13. Consumers and players expect that softball bats containing one or more of the ASA Marks and one or more of the Rawlings Marks would perform at the level of other bats containing those same Marks. However, Defendants have distributed or sold bats that impermissibly bear ASA Marks to appear approved for use in ASA sanctioned play and that exceed ASA's performance standards.

14. During late 2004 and during 2005, one or more representatives of one or more Plaintiffs purchased goods or services related to at least one softball bat from each of the

Defendants. All softball bats purchased from the Defendants impermissibly contained one or more ASA Marks and impermissibly contained at least one of the Rawlings Marks.

15. As a result of Defendants' actions, consumers and players will be confused, and perhaps ill-prepared for potentially-dangerous conditions on the field of play, by the differences between the infringing bats, and those genuine softball bats made and sold by Rawlings. The consequence is that ASA is suffering a loss of the goodwill it has created in its certification marks and other ASA Marks, and Rawlings is likewise suffering a loss of goodwill it has created in its respective Rawlings Marks, and is losing profits from lost sales of genuine products.

CLAIMS

16. The actions of Defendants infringe one or more registered trademarks and therefore violate Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1).

17. The actions of Defendants falsely designate the origin of softball bats and constitute trademark and trade dress infringement, and therefore violate Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

18. The actions of Defendants constitute unfair competition and trademark infringement under Oklahoma common law.

19. The actions of Defendants constitute a willful and deceptive trade practice in violation of the Oklahoma Deceptive Trade Practices Act, O.S. § 78, 51 et seq. (2006).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. For judgment that:

- (i) Defendants have violated Section 32 of the Lanham Act, 15 U.S.C. §1114;
- (ii) Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a);
- (iii) Defendants have violated the Oklahoma Deceptive Trade Practices Act; and
- (iv) Defendants engaged in unfair competition and trademark infringement in violation of the common law of the State of Oklahoma.

B. For an injunction restraining and enjoining Defendants and their divisions, subsidiaries, officers, agents, servants, employees, successors, assigns and attorneys, and all those persons in active concert or participation with them, from doing any of the following:

- (i) altering or counterfeiting in any manner any softball bat containing any of the ASA Marks and Rawlings Marks; or
- (ii) affixing, displaying, advertising, or otherwise using in any manner whatsoever any ASA Mark or Rawlings Mark in any form or style without prior authorization from the respective Mark owner(s); or
- (iii) purchasing, distributing, selling, or offering for sale, any altered softball bat containing any ASA Mark or any Rawlings Mark; or
- (iv) using the ASA Marks and/or Rawlings Marks or trademarks confusingly similar therewith, or the corresponding trade dress or trade dress confusingly similar therewith, with the exception of the sale and offering for sale of genuine softball bats.

C. For an order directing the following:

- (i) Defendants to account for and pay over to Plaintiffs all of Defendants' profits derived from their unlawful conduct, to the full extent provided for by Section 35(a) of the Lanham Act, 15 U.S.C. §1117(a);
- (ii) as an alternative to awarding profits under Section 35(a), awarding Plaintiffs statutory damages as provided for by Section 35(c) of the Lanham Act, 15 U.S.C. §1117(c);

- (iii) awarding Plaintiffs general and special damages to the full extent provided for by the common law of the State of Oklahoma;
- (iv) awarding treble and/or punitive damages in addition to compensatory or statutory damages;
- (v) Defendants to retrieve and surrender for destruction all goods and materials of whatever nature constituting the infringement or dilution;
- (vi) Defendants to provide Plaintiffs with the names of all of Defendants' but doctor customers as well as suppliers of goods or services that enabled Defendants to perform the acts complained of.

D. For attorneys' fees and costs of suit together with interest on any damage award, and for such other and further relief as the Court shall deem appropriate.

JURY TRIAL DEMANDED

Respectfully submitted,

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