

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RAGS TO RICK PRODUCTIONS INC.

Plaintiff

v.

OWN LLC

Defendant

Case No: 1:14-cv-6290

Plaintiff Rags to Rick Productions Inc. ("Productions"), by and through its undersigned counsel, upon knowledge as to itself and its own acts, hereby brings this action against Defendant OWN LLC ("OWN"), and alleges as follows:

NATURE OF THE CASE

1. Productions brings this action for trademark infringement, deceptive trade practices, and unfair competition against OWN for the unauthorized and deceptive use of Productions' trademarks used in connection with Productions' reality entertainment program. OWN's wrongful misappropriation of Productions' trademarks are likely to lead to confusion, mistake, and deception among members of the consuming public as to the source, origin, sponsorship or affiliation of OWN's new reality entertainment program, thus infringing on Productions' trademarks.

THE PARTIES

2. Productions is a Canadian corporation with a principal place of business at 125 Don Hillock Drive, Unit #2, Aurora, Ontario, Canada L4G 0H8.

3. OWN is a Delaware limited liability company with its principal place of business at 5700 Wilshire Boulevard, Suite 120, Los Angeles, California, United States 90036.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332, 1338 and 1367, in that this is a civil action involving claims arising under the laws of the United States, including an Act of Congress relating to trademarks, as well as claims between a citizen of a state of the United States and a citizen of foreign state, and wherein all other claims are so related to claims within the Court's original jurisdiction that they form part of the same case or controversy.

5. This Court has personal jurisdiction over OWN on the grounds that (a) OWN is doing business and/or transacting business within the State of Illinois out of which Productions' causes of actions arise; and (b) OWN has committed, and is continuing to commit acts of trademark infringement and unfair competition in the State of Illinois.

6. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391(c) because OWN transacts business in this judicial district, is subject to personal jurisdiction and/or has substantial contacts within this judicial district.

FACTS

Productions and Its Trademarks

7. Productions is a production company that engages in the production and distribution of reality-based entertainment programming.

8. Productions has produced a reality entertainment program titled WING-MEN that features the life of Rick Smiciklas, an entrepreneur with little to his name when he opened his first chicken wing restaurant in 1999, who now owns a chain of chicken wing restaurants with over 100 locations (the "Productions Program Series").

9. The pilot of the Productions Program Series premiered on December 5, 2013, on the internet, and is still available to be viewed online throughout the United States, including within this judicial district.

10. Since the pilot's premiere, Productions has continued its production of the Productions Program Series. Productions is preparing to release the first of the yet to be aired episodes on the internet.

11. Productions is also in talks with networks in the United States regarding television broadcast of the Productions Program Series.

12. Since at least as early as December 2013, and prior to the commencement of OWN's infringing acts, Productions has used the mark WING-MEN as the title of its Productions Program Series, as well as using the marks WING-MEN and WINGMEN (the "WINGMEN Marks") in connection with promotional activities for the Productions Program Series.

13. In addition to owning Canadian Trademark Applications for the marks WINGMEN and WING-MEN, Productions also has filed two United States Trademark Applications, Serial No. 86/278502 and Serial No. 86/367646, for the marks WINGMEN and WING-MEN (the "WINGMEN Filings").

14. The WINGMEN Filings were filed for "[p]roviding entertainment information about a television program, namely a reality-based television show via the internet; entertainment services in the form of television program, namely, a reality-based television show; the production of a television program namely a reality-based television show" and "[p]re-recorded media namely DVD's, downloadable programs and video tapes concerning a reality-based television show."

15. Productions also controls the following Internet domain names:

Domain Name	Registration Date
wing-men.com	December 19, 2012
wingmentv.com	November 25, 2013
wingmen.ca	November 25, 2013
best-wing-men.com	November 25, 2013
bestwingmen.ca	November 25, 2013

16. Productions uses the website located at wing-men.com to promote the Productions Program Series under the WING-MEN mark, as illustrated by the true and correct copies of the website homepage in Exhibit A.

17. Thus, Productions has continuously used the WINGMEN Marks in commerce in the United States in connection with its Productions Program Series and the promotion thereof to identify the source of the Productions Program Series, thereby distinguishing it from the goods and services of others.

18. In addition, Productions has invested significant resources in promoting its Productions Program Series under the WINGMEN Marks in the United States via the Internet, itself and through public relations agencies.

19. Through uninterrupted and continuous promotion and use, the WINGMEN Marks have come to be associated with Productions and identify Productions as the source of the Productions Program Series offered in connection with the WINGMEN Marks.

OWN's Wrongful Acts

20. OWN is in the business of entertainment television, and broadcasts entertainment programming, including, related programming, via its television network known as OWN: Oprah Winfrey Network.

21. On July 9, 2014, in a press release on its website, OWN announced the premiere of a scripted entertainment program on its network, also titled WINGMEN, which features two best friends and their small-town food truck business selling a revolutionary twist on a culinary

classic: stuffed chicken wings" (the "OWN Program"). A true and correct copy of the press release is in Exhibit B.

22. The press release describes the OWN Program as follows: "For these two best friends, this isn't just another food trend, it's their meal ticket and chance to strike it rich. 'Wingmen' will follow the pair as they attempt to get their crazy business habits in order and make their dreams of owning a million-dollar wing empire a reality."

23. The OWN Program is scheduled to air on August 16, 2014.

24. The OWN Program is titled, and promoted under the mark, WINGMEN.

25. OWN's use of the title WINGMEN for the OWN Program, and use of the WINGMEN mark to promote same, is likely to cause confusion, mistake or deception among members of the public given that both the OWN Program and the Productions Program Series are programs featuring the antics of entrepreneurs in the chicken wing business.

26. OWN's use of the mark WINGMEN has been without license, permission, or authorization of Productions.

Injury to Productions

27. OWN's use of the mark WINGMEN in connection with the OWN Program has irreparably injured and, if permitted to continue, will irreparably injure Productions, its WINGMEN Marks, and the public interest in being free from confusion.

28. OWN's use of the WINGMEN mark in connection with its OWN Program is likely to cause confusion, mistake, or to deceive as to the origin of the OWN Program, and is likely to suggest falsely a sponsorship, connection, license or association of the OWN Program with the Productions Program Series, thereby injuring Productions and the public.

29. OWN's adoption and use of the WINGMEN mark will have the result of diverting potential viewers of the Productions Program Series under the identical and previously established WINGMEN Mark.

30. Productions has been irreparably damaged and has no adequate remedy at law.

COUNT ONE

**Federal Infringement of an
Unregistered Trademark and Unfair Competition Under
Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)**

31. Productions repeats and realleges each and every allegation set forth in Paragraphs 1 through 30 above as if fully set forth herein.

32. OWN's actions specified above are likely to cause confusion, mistake, or deception as to the source, origin, connection, sponsorship or approval of the OWN Program, and thus constitute trademark infringement, false designation of origin, and unfair competition with respect to the WINGMEN Marks, and is further likely to cause consumers to draw the false impression that the OWN Program is authorized, endorsed or sponsored by Productions.

33. The actions of OWN have at all times relevant to this action been willful, in that OWN could, by searching records at the United States and Patent Trademark Office or the Canadian Intellectual Property Office, easily have learned of Productions' activities and the existence of Productions' WINGMEN Marks and the fact that Productions has applied to register these Marks in the United States and Canada, and have caused, and continue to cause, substantial injury to Productions.

34. As a result of OWN's unlawful actions, Productions has been and will be damaged and have suffered, and will continue to suffer, immediate and irreparable injury for which Productions has no adequate remedy at law.

35. OWN's conduct as described above constitutes the use in commerce of false designations of origin, false or misleading descriptions of fact, or false and misleading representations of fact in violation of Section 43(a) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(a).

COUNT TWO

Illinois Uniform Deceptive Trade Practices Act

36. Productions repeats and realleges each and every allegation set forth in Paragraphs 1 through 35 above as if fully set forth herein.

37. By the unauthorized acts specified above, OWN has engaged in unlawful and unfair business practices that have injured and will continue to injure Productions in its business and property, in violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §§ 510, *et seq.*

38. OWN has violated the Illinois Uniform Deceptive Trade Practices Act by causing a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, affiliation, connection or association of its entertainment services, and engaging in conduct which creates a likelihood of confusion or misunderstanding among the public.

39. OWN's unauthorized use of the WINGMEN mark in connection with the OWN Program trades on the business reputation and goodwill of Productions.

40. The actions of OWN have at all times relevant to this action been willful, and if not enjoined will continue to cause, irreparable and continuing harm to the WINGMEN Marks and Productions' business, reputation and goodwill. Productions' has no adequate remedy at law as money damages are inadequate to compensate Productions for the injuries caused by OWN.

41. As a direct and proximate result of OWN's conduct alleged herein, OWN has been unjustly enriched and should be ordered to disgorge any and all profits earned as a result of such unlawful conduct.

COUNT THREE

Unfair Competition under Illinois Common Law

42. Productions repeats and realleges each and every allegation set forth in Paragraphs 1 through 41 above as if fully set forth herein.

43. OWN misappropriated Productions' commercial advantage by using the WINGMEN mark in commerce in connection with the promotion, marketing, or sale of entertainment services likely to cause confusion or mistake with Productions' WINGMEN Marks, or to deceive as to the source, affiliation, connection, association, or sponsorship of OWN's entertainment services, namely, the OWN Program, in violation of the common law of unfair competition of Illinois.

44. OWN could, by searching records at the United States and Patent Trademark Office or the Canadian Intellectual Property Office, easily have learned of Productions' activities and the existence of Productions' WINGMEN Marks and the fact that Productions has applied to register these Marks in the United States and Canada, and in misusing the WINGMEN mark, OWN acted knowingly, wantonly, in bad faith and with intentional disregard for the rights of Productions.

45. The foregoing acts of OWN were done without justification and unfairly benefiting OWN.

46. OWN's acts of unfair competition have caused, and will continue to cause irreparable harm to Productions and the goodwill associated with the WINGMEN Marks, for which Productions has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Productions prays that this Court enter judgment in its favor on each and every claim for relief set forth above and award relief including, but not limited to, the following:

A. That OWN be found to have engaged in acts of intentional and willful trademark infringement.

B. That OWN, its officers, agents, servants, representatives, related entities, employees, attorneys, successors or assigns, and all persons or entities acting in concert or participation with it, be preliminarily and permanently enjoined from:

(1) Engaging in trademark infringement by the unauthorized use of any WINGMEN Marks or any variations thereof or marks confusingly similar thereto on any products or services, including, without limitation, using, registering or applying to register or authorizing others to use, register or apply to register anywhere for any goods or services any name, mark or domain name comprising or containing any WINGMEN Marks or any variations thereof or marks confusingly similar thereto or dilutive thereof as a trademark, service mark, trade name, business name, program name and/or domain name or in any social networking account or location in a manner that is confusingly similar to or dilutive of Productions' rights;

(2) Engaging in any activities that represent, by any means whatsoever, directly or indirectly, that OWN's activities, actions, goods or services originate from, are sponsored by, or are affiliated or connected with Productions in any way;

(3) Engaging in any other activity that will dilute Productions' rights to the WINGMEN Marks or otherwise cause injury to Productions' reputation and goodwill; and

(4) Assisting, aiding or abetting any other person or business entity in engaging or in performing any of the activities referred to in subparagraphs (1)-(3) above.

C. That OWN be required to deliver to Productions for destruction all products, merchandise, packaging, labels, catalogs, promotional materials, signage, brochures, and other things possessed, used or distributed by OWN, or on its behalf, that depict, incorporate or bear the WINGMEN Marks or any trademark confusingly similar to any WINGMEN Marks.

D. That OWN be required to remove all depictions or references to the WINGMEN Marks or any other confusingly similar mark from all websites and other mediums related to commercial activities owned, operated, or under the control of OWN.

E. That OWN be ordered to file with the Court and serve upon Productions a written report under oath setting forth in detail the manner and form in which OWN has complied with the injunction and judgment within thirty (30) days after the services of the injunction and judgment upon OWN.

F. That OWN be required to reimburse Productions for its attorneys' fees and costs, of this civil action pursuant to the Lanham Act.

G. For such other and further relief as this Court deems just and proper.

Dated: August 15, 2014

DENTONS US LLP

By: _____

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Exhibit A





Exhibit B

NEWS



United States

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OWN: OPRAH WINFREY NETWORK TAKES CULINARY FLIGHT WITH 'WINGMEN' ON SATURDAY, AUGUST 16

Special Follows Two Best Friends Frying Up Big Dreams with their Small-town Food Truck Business

July 9, 2014

Contact · Kristin Robinson

Los Angeles - OWN: Oprah Winfrey Network will take culinary flight with "Wingmen" Saturday, August 16 at 10 p.m. ET/PT. The one-hour special features Columbia, South Carolina best friends Ramona Dickson and Corey Simmons as they navigate 2 Fat 2 Fly, their small-town food truck business selling a revolutionary twist on a culinary classic: stuffed chicken wings.

Self-made and self-taught, Corey and Ramona will stuff anything into a chicken wing and get inspiration for their creations from the most unexpected places. As seen in the special, their marrying of fried chicken wings with savory ingredients such as jambalaya or mac & cheese inside a chicken wing are by trial and error, a cue to how the pair often tackle business choices. For these two best friends, this isn't just another food trend, it's their meal ticket and chance to strike it rich. "Wingmen" will follow the pair as they attempt to get their crazy business habits in order and make their dreams of owning a million-dollar wing empire a reality.

Cameras will roll as 2 Fat 2 Fly attempts to take the top prize at Billion Head Island's annual Wingfest. For a sneak peek, please visit: www.oprah.com/wingmenfirstlook

"Wingmen" is executive produced by Paperny Entertainment.

Broadcast clips and audio links are available upon request. Please contact Kristin.Robinson@own.tv. For photography and additional information, please visit the OWN Press site: <http://press.discovery.com/us/own/>

About OWN: Oprah Winfrey Network

OWN: Oprah Winfrey Network is the first and only network named for, and inspired by, a single iconic leader. Oprah Winfrey's heart and creative instincts inform the brand - and the magnetism of the channel. Winfrey provides leadership in programming and attracts superstar talent to join her in primetime, building a global community of like-minded viewers and leading that community to connect on social media and beyond. OWN is a singular destination on cable. Depth with edge. Heart. Star power. Connection. And endless possibilities. OWN is a joint venture between Harpo, Inc. and Discovery Communications. The network debuted on January 1, 2011 and is available in 85 million homes. The venture also includes the award-winning digital platform Oprah.com. For more information, please visit www.oprah.com/own and www.press.discovery.com/us/own/.

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