

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Intercontinental Packaging Company,
d/b/a Crosby Lakes Spirits Company
a Minnesota corporation,

Plaintiff,

Case No. 15-cv-70

v.

Global Distillers SRL LLC,
d/b/a Minhas Micro Distillery,
a foreign LLC,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff Intercontinental Packaging Company, d/b/a Crosby Lakes Spirits Company (“Crosby”), for its Complaint against Defendant Global Distillers SRL LLC, d/b/a Minhas Micro Distillery, states and alleges as follows:

THE PARTIES

1. Crosby is a Minnesota corporation with its principal place of business in St. Paul, Minnesota. Crosby develops various spirits, including its highly successful KINKY® Liqueur.

2. On information and belief, Global Distillers SRL LLC is a Barbados entity, which is a registered foreign LLC in Wisconsin doing business as Minhas Micro Distillery at 1404 13th Street, Monroe, Wisconsin, 53566 (Defendant is referred to herein as “Minhas”).

3. Crosby brings this lawsuit because Minhas has embarked on an unlawful campaign to lure customers into purchasing its fruit-infused vodka liqueur under the mistaken belief that it comes from, is sponsored by, or is associated or affiliated with the KINKY® brand, Crosby's highly successful line of fruit-infused vodka liqueurs. At the heart of Minhas' campaign is the deliberate copying of KINKY® Liqueur's well-recognized pink color and the other design elements that identify KINKY® branded products. In particular, and as shown in the image below, Minhas has infringed Crosby's trade dress because Minhas' product shares at least the following elements with KINKY® Liqueur: (1) bold hot pink liqueur; (2) stylized pink font; (3) scroll designs; (4) contoured, frosted bottle; and (5) unique product description in white font on front of bottle.



4. Minhas' unlawful conduct is causing and will continue to cause harm to Crosby. In particular, consumers seeing Minhas' product will believe that it is Crosby's KINKY® Liqueur or at least associated with Crosby's product. This conduct, if not enjoined, will undermine the goodwill that Crosby has spent years cultivating for the KINKY® brand.

JURISDICTION AND VENUE

5. This is an action for trademark infringement, trade dress infringement, and unfair competition arising under the federal Lanham Act, 15 U.S.C. § 1114 *et seq.*, and the common law.

6. The Court has jurisdiction under 28 U.S.C. § 1338(a) and (b), and 1367. Venue is proper under 28 U.S.C. § 1391(b)-(d).

7. The Court has personal jurisdiction because Minhas' distillery is located in Wisconsin and Crosby's claims arise out of Minhas' wrongful conduct in Wisconsin.

CROSBY'S TRADEMARK RIGHTS

8. Crosby owns U.S. Registration No. 4,499,598 for the KINKY mark for use with alcoholic beverages except beers in International Class 33.

9. Crosby also owns U.S. Registration No. 4,549,310 for the FLIRTY BIRD mark for use with alcoholic beverages except beers in International Class 33.

10. In addition to its registered trademarks, Crosby has common law trademark rights in the KINKY® logo, which is shown below.



11. Crosby also owns the inherently distinctive trade dress for its KINKY® Liqueur. The non-functional trade dress is shown below and consists of a combination of features that combine to create the unique look and feel of KINKY® Liqueur.



12. The trade dress for KINKY® Liqueur includes, but is not limited to, the following elements (hereafter “Trade Dress”):

- Bold hot pink liqueur
- Stylized pink font
- Scroll designs
- Contoured, frosted bottle
- Unique product description in white font on front of bottle

13. Crosby began using the Trade Dress in 2011.

14. As a result of Crosby's use of the Trade Dress, and through its efforts to promote the look and feel of KINKY® Liqueur, the Trade Dress has gained widespread public recognition, and has become a highly valuable asset representing substantial good will.

15. Crosby's Trade Dress is inherently distinctive and customers rely upon it to differentiate the source of services. The nature of the Trade Dress – with its eye catching pink color – supports Crosby's marketing strategy because, even from far away, a KINKY® Liqueur bottle can be recognized by its distinctive Trade Dress.

CROSBY'S SALES AND MARKETING OF KINKY® LIQUEUR

16. Crosby launched the KINKY® brand in June 2011 with KINKY® Liqueur, a proprietary recipe consisting of a super-premium vodka distilled five times with mango, blood orange liqueur and passion fruit.

17. The brand quickly took off. In 2012, KINKY® Liqueur was the second fastest growing brand of wine and spirits, with volume up 665% to 52,342 cases. KINKY® Liqueur was also the second fastest growing brand by sales with a 672% increase to \$10.6 million.

18. KINKY® products are sold at liquor stores and major retailers nationwide. In 2014, Crosby sold over 400,000 cases of its original KINKY® Liqueur. To date, Crosby has sold 1.5 million cases of KINKY® Liqueur, and has earned more than \$100 million on those sales.

19. The success of KINKY® Liqueur led to the launch of KINKY® Blue, infused with tropical and wild berry flavors, and KINKY® Gold, infused with peach and tropical flavors.

20. The KINKY® product line became available in Canada in 2012. KINKY® products are sold in Calgary in Alberta, Canada.

21. Crosby's KINKY® products have received extensive media attention. In 2013, the brand received an Impact Hot Brand Award from Market Watch Magazine, a leading source of data and trends for the United States beverage industry. The award is given to brands that achieve a drastic increase in sales the previous year.

22. Crosby has invested substantially in promoting and advertising its KINKY® brand. In 2014, Crosby spent over \$600,000 on advertising for the KINKY® brand, the majority of which was on print advertisements. An example of a print ad for KINKY® Liqueur is below.



23. As shown above, the ads for KINKY® Liqueur display the KINKY mark as well as the product's distinctive trade dress. The ad above was run in issues of Cosmopolitan, InStyle, Elle, and Marie Claire in 2014. These magazines have total circulations of 971,708 to 3 million.

24. Crosby sales agents promote the KINKY® brand through on-premises visits and point of sale displays. Crosby has a sales agent promoting the KINKY® brand in Alberta, Canada.

25. Crosby also promotes its KINKY® products on social media, including Facebook, Twitter, Pinterest, and Instagram.

MINHAS' WRONGFUL CONDUCT

26. At the Wine & Spirits Wholesalers of America 71st Annual Convention Exposition in Las Vegas in April 2014, one of Crosby's employees saw the poster below advertising Minhas' Flirty liqueur product ("Flirty").



27. Later, Crosby learned that an employee of Liquor Barn stores had requested that Minhas create a "knock-off" version of KINKY® Liqueur that could be sold more cheaply.

28. On April 10, 2014, Crosby sent a cease and desist letter to Minhas, reminding Minhas of Crosby's superior trademark and trade dress rights and demanding that Minhas refrain from producing, promoting, advertising, distributing, or selling Flirty.

29. Minhas did not respond to Crosby's letter.

30. On February 2, 2015, one of Crosby's employees received an email from a contact in Canada with the ad below.



31. Upon further investigation, Crosby learned that Flirty is available for purchase in approximately fifty discount liquor stores in Alberta, Canada. The Flirty product that is currently being sold in Canada is shown below.



32. The label on the back of Flirty's bottle states that it was produced and bottled by Minhas in Monroe, Wisconsin.



33. Flirty incorporates all elements of Crosby's Trade Dress, including, but not limited to (1) bold hot pink liqueur, (2) stylized pink font, (3) scroll designs, (4) contoured, frosted bottle, and (5) unique product description in white font on front of bottle. As shown below, the product descriptions are strikingly similar.



34. Flirty is selling for about half the cost of KINKY® Liqueur.

LIKELIHOOD OF CONFUSION

35. Given the striking similarity between the product names and the trade dress of KINKY® Liqueur and Flirty, there is a likelihood that consumers will buy Flirty under the mistaken belief that it comes from, is sponsored or licensed by, or is associated or affiliated with Crosby, the maker of KINKY® Liqueur.

36. The likelihood of confusion is further exacerbated by the fact that fruit-infused vodka liqueur is a relatively low-cost item (less than \$25 per bottle), and consumers are unlikely to exercise a great deal of care before making a purchase.

37. Confusion is also likely because Flirty is being sold in the same geographic area as KINKY® Liqueur and has the same flavor profile.

38. The foregoing allegations are incorporated in the claims below.

COUNT ONE
Trademark Infringement in Violation of Section 32 of the Lanham Act

39. Minhas' conduct described in the foregoing paragraphs constitutes use in commerce of a colorable imitation of a registered mark in connection with the sale, offering for sale, distribution or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, in violation of 15 U.S.C. 1114(1).

40. Minhas' actions were not authorized by Crosby.

41. Minhas acted deliberately and willfully in attempt to trade upon the goodwill associated with Crosby's KINKY and FLIRTY BIRD trademarks.

42. Minhas' conduct is causing, and will continue to cause, irreparable harm to Crosby unless it is enjoined by this Court.

43. Crosby has suffered damages as a result of Minhas' actions in an amount to be proven at trial.

COUNT TWO
Trademark and Trade Dress Infringement
in Violation of Section 43 of the Lanham Act

44. Minhas' conduct described in the foregoing paragraphs constitutes unauthorized use in commerce, in connection with goods, of words, terms, names, symbols, or devices, or combinations thereof, or false designation of origin, false or

misleading representation of fact which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Minhas with Crosby, or as to the origin, sponsorship, or approval of Flirty by Crosby in violation of 15 U.S.C. § 1125(a).

45. Minhas' actions were not authorized by Crosby.

46. Minhas acted deliberately and willfully in attempt to trade upon the goodwill associated with the KINKY® Trade Dress and the KINKY® logo.

47. Minhas' conduct is causing, and will continue to cause, irreparable harm to Crosby unless it is enjoined by this Court.

48. Crosby has suffered damages as a result of Minhas' actions in an amount to be proven at trial.

COUNT THREE
Unfair Competition

49. Minhas' conduct described in the foregoing paragraphs constitutes unfair competition.

50. Crosby has been damaged as a result of Minhas' actions in an amount to be proven at trial.

JURY DEMAND

51. Crosby demands a jury trial for all issues triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Crosby asks the Court to:

1. Enter judgment against Minhas in favor of Crosby, in an amount to be determined at trial;
2. Preliminarily and permanently enjoin Minhas from producing, promoting, advertising, distributing, or selling Flirty;
3. Declare this case exceptional under 15 U.S.C. § 1117 and award Crosby treble damages and attorneys' fees for Minhas' willful infringement;
4. Award Crosby enhanced damages in light of Minhas' intentional and willful trademark and trade dress infringement;
5. Award Crosby the costs and fees incurred in this action, including reasonable attorneys' fees; and
6. Grant any other relief the Court deems just and equitable.

Dated: February 4, 2015

s/ Jennifer L. Gregor

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