

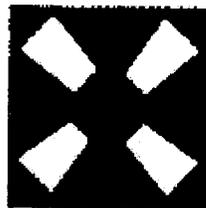
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Holland USA, Inc.,)	FILE NO:
)	
Plaintiff,)	COMPLAINT FOR
)	TRADEMARK INFRINGEMENT,
vs.)	UNFAIR COMPETITION, AND
)	COUNTERFEITING
)	
Comda, Ltd.,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	
)	
)	

For its Complaint against Comda, Ltd. (“Comda”), Plaintiff Holland USA, Inc. (“Holland”) states and alleges as follows:

PRELIMINARY STATEMENT

1. Holland, doing business as Amsterdam Printing and Lithograph or simply Amsterdam, has for many years been one of North America’s leading sellers of custom imprinted pens and related goods and services. Beginning at least as early as 1975, Holland began featuring on the clips of its pens a distinctive stylized windmill design mark (the “Windmill Mark”). Holland’s Windmill Mark is illustrated here in black and white format:



2. Long after Holland began using its Windmill Mark, and with constructive and actual knowledge of Holland's use of the Mark, Comda began promoting, advertising, and selling pens featuring Holland's identical Windmill Mark on their clips.

3. Comda's actions are likely to cause confusion, mistake and deception among consumers as to the source of Comda's goods and services, as well as to the existence of any affiliation or association between Holland and Comda.

4. Holland seeks injunctive and monetary relief to redress Comda's willful violations of law.

THE PARTIES

5. Holland is a Minnesota corporation with its principal place of business in North Mankato, Minnesota.

6. Upon information and belief, Comda is a Canadian corporation headquartered in Toronto, Ontario, Canada. Comda markets and sells its products to buyers in the United States and Canada, including to buyers in Minnesota.

JURISDICTION AND VENUE

7. Holland's action is for trademark infringement, trademark dilution, false designation of origin, unfair competition, and counterfeiting under the Lanham Trademark Act of 1946 ("Lanham Act"), 15 U.S.C. § 1051 *et seq.*; deceptive trade practices under § 325D.44 of the Minnesota Statutes; and common

law unfair competition. This Court has jurisdiction over this case under 15 U.S.C. § 1121, 28 U.S.C. § 1331 and 28 U.S.C. § 1338, and supplemental jurisdiction under 28 U.S.C. § 1367(a). Venue in this Court is proper under 28 U.S.C. §§ 1391(b) and (c).

HOLLAND'S REGISTRATION AND USE OF ITS WINDMILL MARK

8. Holland sells a wide range of custom imprinted products to businesses. See www.amsterdamprinting.com. One of Holland's most popular product lines consists of custom imprinted pens. Beginning at least as early as 1975, Holland has sold custom imprinted pens whose clips feature its distinctive Windmill Mark to customers worldwide. Holland custom imprints its pens by engraving or imprinting a business name or logo on the pen as instructed by the customer.

9. Since 1998, Holland's Windmill Mark has been registered with the U.S. Patent and Trademark Office ("USPTO"), Reg. No. 2,153,694, in connection with, among other things, "mail order services in the field of pens."

10. The validity of Holland's federally registered Windmill Mark, and the validity of Holland's registration and exclusive right to use the Windmill Mark in commerce, is incontestable pursuant to 15 U.S.C. §§ 1065 and 1115(b), as the required affidavits have been filed with and accepted by the USPTO.

10. For more than thirty-five years, Holland has used the Windmill Mark continuously and extensively throughout the United States. As a result of

Holland's long-standing use of the Mark, and due to its extensive promotion and advertising of the Mark, the Mark has become strongly associated in the minds of the consuming public with pens emanating from Holland.

11. Holland has spent substantial amounts of time and money advertising and promoting its pens in all manner of media, including print advertisements and catalogs, as well as on the Holland website and other internet sites.

COMDA'S CONDUCT GIVING RISE TO VIOLATIONS OF LAW

12. Beginning at a time unknown to Holland, Comda began promoting, offering and selling custom imprinted pens bearing Holland's Windmill Mark. A true and accurate copy of a photograph depicting both a Comda "Excalibur" pen and a Holland "Delane" pen, which bear the identical Windmill Mark, is attached as Exhibit A.

13. Comda adopted Holland's Windmill Mark in bad faith, and with actual knowledge of Holland's registration and long use of the Mark in connection with the sale of custom imprinted pens and related products.

14. Upon information and belief, despite its knowledge of the infringing nature of its use of the Windmill Mark, Comda continues to use the Mark in connection with the sale of its custom imprinted pens and related products in the United States, Canada, and worldwide, constituting intentional, bad faith, and willful infringement of the Mark.

15. Holland and Comda market their respective goods and services to the same class of consumers, through identical trade channels.

16. Comda's continuing use of Holland's Windmill Mark in connection with the sale of custom imprinted pens is likely to cause confusion, mistake and deception among consumers in the United States and elsewhere as to the source of Comda's goods and services, and as to the existence of a relationship of sponsorship, affiliation, association or approval between Holland and Comda, when in fact no such relationship exists.

17. Comda's continuing use of the Holland's Windmill Mark constitutes a bad faith intent to profit from the Mark and the valuable good will and public recognition associated with the Mark.

18. Comda's continuing use of Holland's Windmill Mark is likely to damage and tarnish the valuable image and good will associated with the Mark.

19. Upon information and belief, there is a real and substantial concern that Comda will continue to unlawfully use the Windmill Mark to promote and sell its goods and services unless enjoined by the Court.

20. As a direct and proximate result of Comda's continuing improper conduct and use of the infringing Windmill Mark, Holland has been and will continue to be subjected to injury and damages, including irreparable harm for which Holland has no adequate remedy at law.

FIRST CLAIM FOR RELIEF

(Trademark Infringement)

21. Paragraphs 1 through 20 are incorporated by reference.

22. Comda's conduct, as described above, constitutes trademark infringement in violation of 15 U.S.C. § 1114.

23. The willful nature of Comda's unlawful conduct renders this an "exceptional case" within the meaning of 15 U.S.C. § 1117(a), entitling Holland to, among other things, an award of attorneys' fees.

SECOND CLAIM FOR RELIEF

(False Designation of Origin & Unfair Competition Under Federal Law)

24. Paragraphs 1 through 24 are incorporated by reference.

25. Comda's conduct is likely to cause confusion, mistake or deception as to an affiliation, connection or association between Holland, or as to Holland's sponsorship or approval of Comda's goods and services. Comda's conduct therefore constitutes false and misleading designations of origin and unfair competition in violation of 15 U.S.C. § 1125(a).

THIRD CLAIM FOR RELIEF
(Trademark Dilution)

26. Paragraphs 1 through 25 are incorporated by reference.

27. Holland's federally registered Windmill Mark is a famous mark.

28. Comda's conduct is likely to cause, and has caused, dilution of the distinctive quality of the Windmill Mark. Comda's conduct therefore constitutes trademark dilution in violation of 15 U.S.C. § 1125(c).

FOURTH CLAIM FOR RELIEF
(Counterfeiting)

29. Paragraphs 1 through 28 are incorporated by reference.

30. Comda has, by reason of the foregoing acts, knowingly used a reproduction, counterfeit, copy, or colorable imitation of the Windmill Mark in connection with the sale, offering for sale, distribution, or advertising of custom imprinted pens, without the consent of Holland.

31. Comda has, by reason of the foregoing acts, knowingly reproduced, counterfeited, copied, or colorably imitated Holland's Windmill Mark and applied the Mark to pens that it intend to be used in commerce, or in connection with the sale, offering for sale, distribution, or advertising of pens without the consent of Holland.

32. Comda's conduct is likely to cause confusion, mistake or deception.

33. Comda's conduct therefore constitutes trademark counterfeiting in violation of 15 U.S.C. § 1114, entitling Holland to an award of attorneys' fees and treble damages under 15 U.S.C. § 1117(b) and (c).

FIFTH CLAIM FOR RELIEF

(Deceptive Trade Practices)

34. Paragraphs 1 through 33 are incorporated by reference.

35. Comda's conduct is likely to cause confusion or misunderstanding as to any sponsorship, approval or certification of its goods and services by Holland, and as to an affiliation, connection, or association between Holland and Comda where none exists. Comda's conduct therefore constitutes a deceptive trade practice in violation of Minn. Stat. § 325D.44.

36. Comda has, by reason of the foregoing acts, impaired Holland's business and otherwise adversely affected Holland's business and reputation.

37. Comda's acts have caused and, unless restrained by this Court, will continue to cause Holland to suffer great and irreparable damage and injury.

38. Comda's acts have caused Holland to suffer loss of profits and other damage as a result, in an amount to be proven at trial.

39. The willful and knowing nature of Comda's unlawful conduct renders this a case where damages under Minn. Stat. § 325D.45 subd. 1 and 2, including an award of attorneys' fees, are appropriate.

SIXTH CLAIM FOR RELIEF
(Common Law Unfair Competition)

40. Paragraphs 1 through 39 are incorporated by reference herein.

41. Comda's conduct, as described above, constitutes unfair competition in violation of Holland's rights under the common law.

PRAYER FOR RELIEF

WHEREFORE, Holland prays for judgment and relief as follows:

A. A judgment that Holland's Windmill Mark has been infringed by Comda's use of the identical Windmill Mark;

B. A judgment that Comda has used false or misleading descriptions and committed unfair competition;

C. Preliminarily and permanently enjoining and restraining Comda and its partners, agents, servants, employees, parents, subsidiaries, and affiliates, and all persons acting in active concert or participation with any of them, from:

(1) Using the Windmill Mark, or any other mark confusingly similar to the Windmill Mark;

(2) Representing by any means whatsoever, directly or indirectly, or doing any other acts or things calculated or likely to cause confusion, mistake or deception among members of the public or members of the trade as to the source, sponsorship, affiliation or approval of Comda's goods and services;

D. Directing that Comda, at its own expense, recall all of the marketing, promotional and advertising materials, and edit any websites, that bear or incorporate the Windmill Marks, or any other mark not in conformance with Section C(1) of Holland's prayer for relief;

E. Directing that Comda file with this Court and serve upon Holland, within thirty (30) days after service upon Comda of an injunction in this action, a written report by Comda, under oath, setting forth in detail the manner in which Comda has complied with the injunction;

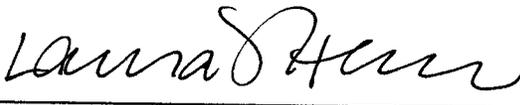
F. Directing that Comda provide to Holland a certified accounting of all infringing goods sold at any time, including an accounting of its gross revenues and its profits from the sales;

G. Directing that Comda deliver up to Holland all infringing goods in its possession or under its control for impoundment and destruction or other disposition, at Holland's option;

- H. Awarding Holland as damages Comda's profits generated in connection with its use of the infringing Marks;
- I. Awarding Holland all damages permitted by 15 U.S.C. § 1117;
- J. Awarding Holland all damages and relief permitted by Minn. Stat § 325D.45;
- K. Awarding Holland its reasonable attorneys' fees, taxable costs and disbursements herein and incurred in this action; and
- L. Awarding Holland such other and further relief as this Court deems just and proper.

Date: July 23, 2010.

GRAY, PLANT, MOOTY
MOOTY & BENNETT, P.A.

By: 

Laura J. Hein (#0155160)

Dean C. Eyler (#0267491)

Brian A. Dillon (#0386643)

500 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

Telephone: (612) 632-3000

Facsimile: (612) 632-4444

ATTORNEYS FOR PLAINTIFF



COMD A
Excalibur Pen

C-Line Products, Inc.
47246



Wen Kui
Deluxe Pen

C-Line Products, Inc.
47246

EXHIBIT
A



Wen Kwi

Delane Pen



COMD A

Excalibur Pen