

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

TOOTSIE ROLL INDUSTRIES, LLC

Plaintiff,

v.

LAFAYETTE BAY PRODUCTS, LLC
d/b/a SPUNKY PUP

Defendant.

Civil Action No. 21-cv-1997

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Tootsie Roll Industries, LLC (“Tootsie”), by and through its undersigned counsel, and for its Complaint against Defendant Lafayette Bay Products, LLC d/b/a Spunky Pup (“Spunky Pup”), alleges as follows:

INTRODUCTION

1. Plaintiff Tootsie is the owner of the famous and federally registered trademarks TOOTSIE ROLL and TOOTSIE POPS for candy products. TOOTSIE ROLL brand candies are sold in likewise famous, registered trade dress comprising a brown cylindrical candy shape sold in packaging that features a dark brown center panel with adjacent red stripes. Defendant Spunky Pup has started selling a dog treat product that, without authorization, copies Tootsie’s trade dress, calling its product by the confusingly similar name “TOOTSIE PUPS.”



NATURE OF SUIT

2. This is an action for: (1) infringement of Tootsie's federally registered marks in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114; (2) federal unfair competition and false designation of origin, association, and endorsement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (3) dilution by blurring in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); (4) deceptive trade practices in violation the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §§ 510/1 et seq.; (5) deceptive trade practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §§ 505/1 et seq.; (6) dilution in violation of the Illinois Trademark Registration and Protection Act, 765 ILCS § 1036/65; and (7) unfair competition in violation of Illinois' common law of unfair competition.

3. Tootsie brings this action to halt and prevent consumer confusion, mistake, and deception as to source, affiliation, or sponsorship of Spunky Pup's dog treat product caused by Spunky Pup's infringement of Tootsie's trademark rights.

4. Tootsie seeks both injunctive and monetary relief for Spunky Pup's deliberate efforts to wrongly profit and otherwise benefit from the goodwill Tootsie has established in its trademarks and trade dress.

THE PARTIES

5. Plaintiff Tootsie is a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 7401 South Cicero Avenue, Chicago, Illinois 60629.

6. On information and belief, Defendant Spunky Pup is a limited liability company organized and existing under the laws of Minnesota, with its principal place of business at 2500 Shadywood Road, Suite #700, Orono, Minnesota 55331.

JURISDICTION AND VENUE

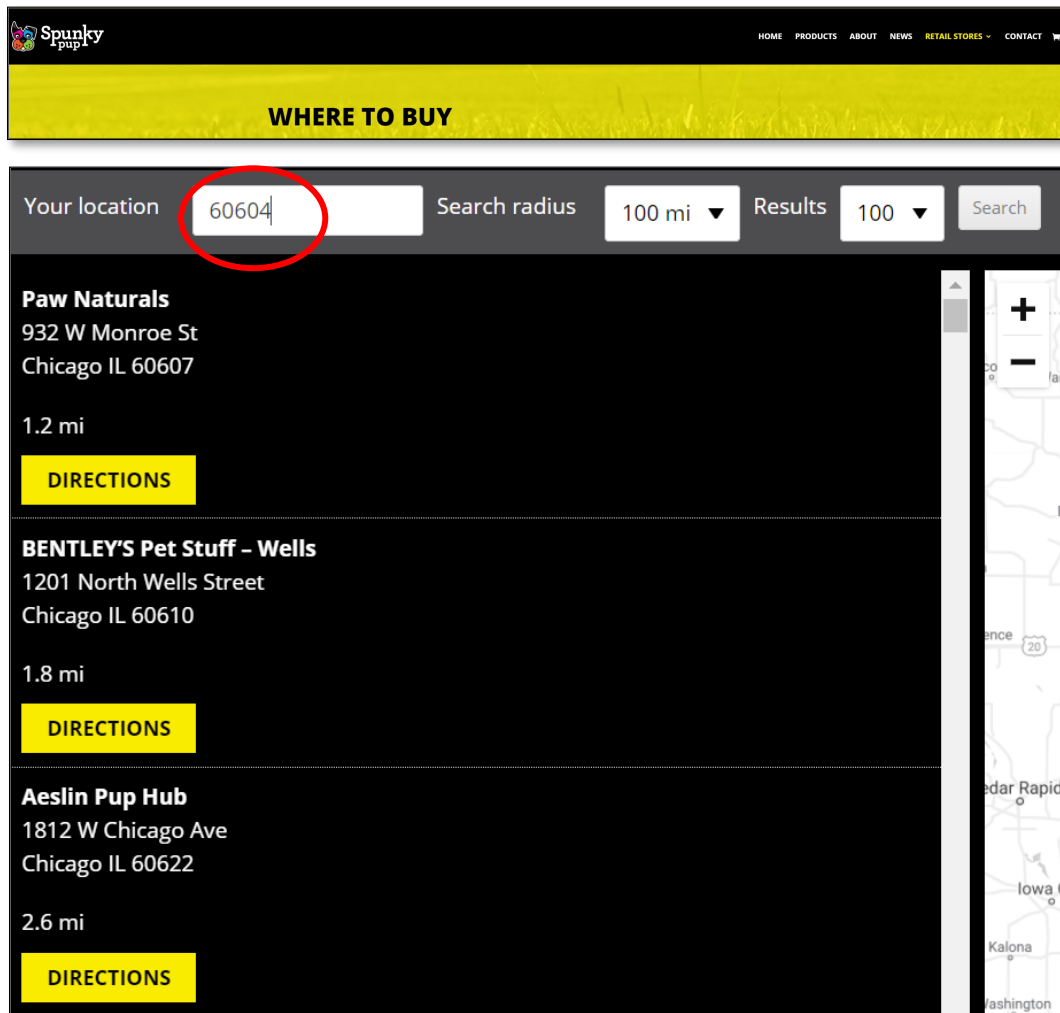
7. Tootsie's claims are based on the Lanham Act, 15 U.S.C. §§ 1051 et seq., and on the statutory and common law of the State of Illinois, including claims arising under the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS §§ 510/1 et seq.; the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §§ 505/1 et seq.; and the Illinois Trademark Registration and Protection Act, 765 ILCS § 1036/65.

8. This Court has subject matter jurisdiction over the federal claims in this action pursuant to 28 U.S.C. §§ 1331, 1338, and 15 U.S.C. § 1121, and has subject matter jurisdiction over the state law claims under 28 U.S.C. § 1338(b) and under the supplemental jurisdiction provision of 28 U.S.C. § 1367.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and a substantial part of the property that is the subject of the action is situated in this District.

10. Personal jurisdiction over the Defendant is proper in this Court in part because Spunky Pup regularly conducts business, directly and indirectly, within the State of Illinois and because the injury caused by Spunky Pup's illegal activities occurs in this District.

11. Personal jurisdiction and venue are also proper in this Court because Spunky Pup intentionally advertises, sells, and provides its infringing goods and services in the State of Illinois and in this District, as demonstrated in the following Spunky Pup webpage, <https://spunkypup.com/where-to-buy/> (version attached as **Exhibit A** (last visited April 14, 2021)):



12. As evidenced in **Exhibit A**, Spunky Pup products are available for sale at several retail locations in this District, including:

- a. Paw Naturals located at 932 W Monroe Street, Chicago, Illinois 60607;
- b. Bentley's Pet Stuff– Wells located at 1201 North Wells Street, Chicago, Illinois 60610;
- c. Aeslin Pup Hub located at 1812 W Chicago Ave, Chicago, Illinois 60622;
- d. Pet Supplies Plus located at 1289 North Milwaukee Avenue, Chicago, Illinois 60622; and
- e. Barks N Bites Co located at 702 W 35th Street, Chicago, Illinois 60616.

BACKGROUND

Plaintiff Tootsie and Its Trademarks and Trade Dress

13. Tootsie's predecessor-in-interest first used the trademark TOOTSIE in United States commerce in the early 1900s. Since then, the trademark TOOTSIE and formatives thereof have been used continuously in the United States by Tootsie and its predecessors, affiliates, and licensees.

14. Tootsie is the owner of, among others, the following federally registered trademarks and the U.S. Trademark Registrations for the same:

U.S. REG. NO.	MARK	SUMMARY OF GOODS	REG. YEAR
75,218	Tootsie	Chocolate candy	1909
292,927	TOOTSIE POPS	Candy	1932
949,931	TOOTSIE ROLLS	Candy	1973
1,369,332	TOOTSIE ROLL	Candy	1985
2,536,259	TOOTSIE	Candy	2002

15. Copies of the trademark registration certificates for the above-listed marks are attached as **Exhibit B**.

16. Pursuant to 15 U.S.C. § 1115(b), each of the above-identified registrations constitutes conclusive evidence of the validity of the registered mark and of the registration of the mark, of Tootsie's ownership thereof, and of Tootsie's exclusive right to use the mark in commerce in connection with the goods specified in the registration.

17. As a result of Tootsie's extensive advertising, promotion, and use of the marks identified in paragraph 14 for candy and a wide variety of other goods and related services, those

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