

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
TILE, INC.,)	
)	
Plaintiff,)	Case No.:
)	
v.)	
)	JURY TRIAL DEMANDED
S&W DEALZ and TRENDS GOODS,)	
)	
Defendants.)	
_____)	

COMPLAINT FOR PERMANENT INJUNCTION AND DAMAGES

Plaintiff Tile, Inc. (“Tile” or “Plaintiff”) by and through its undersigned counsel, complains of Defendants S&W Dealz and Trends Goods’ (together, “Defendants”) conduct and alleges upon information and belief as follows:

NATURE OF THIS ACTION

1. Plaintiff seeks injunctive relief and monetary damages for Defendants’ trademark infringement, unfair competition, and false advertising under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, as well as related state law claims, arising from Defendants’ wrongful, unauthorized promotion and sale of Tile’s products through online commerce sites including but not limited to, Amazon.com.
2. Tile sells its products through a nationwide network of Authorized Resellers.
3. Further, Tile sells its products under the “Tile” brand. Tile is the owner of a federally-registered trademark TILE®, and has been utilizing that trademark since 2014.

4. Defendants offer for sale and sell non-genuine Tile products bearing this registered trademark through websites including but not limited to Amazon.com. Tile products sold via unauthorized resellers do not come with a Tile warranty.

5. Despite advertising their Tile products as “new,” Defendants are deceiving customers by selling liquidated or used Tile products.

6. Defendants have undertaken these wrongful acts willfully and with full knowledge of their wrongdoing.

7. Consumers are likely to be and have been actually confused by Defendants’ sale of Tile products that are being falsely advertised as new product when they are in fact used or liquidation products.

8. Defendants’ conduct has produced and, unless enjoined by this Court, will continue to produce a likelihood of consumer confusion and deception, to the irreparable injury of consumers and Tile.

9. As a result of Defendants’ actions, Tile is suffering a loss of the enormous goodwill that Tile has created in its trademarks and is losing profits from lost sales of products. This action seeks permanent injunctive relief and damages for Defendants’ trademark infringement and unfair competition.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b), as these claims arise under the Trademark Laws of the United States.

11. This Court has supplemental jurisdiction over the pendent state law claims pursuant to 28 U.S.C. § 1367(a).

12. Defendants are subject to personal jurisdiction in the Commonwealth of Massachusetts and this District pursuant to Mass. Gen. Laws ch. 223A §3 because (a) Defendants have sold numerous products into the Commonwealth and this District; (b) Defendants have caused tortious injury to Tile’s trademarks within the Commonwealth and this District; (c) Defendants practice the unlawful conduct complained of herein, in part, within the Commonwealth and this District; (d) Defendants regularly conduct or solicit business within the Commonwealth and this District; (e) Defendants regularly and systematically direct electronic activity into the Commonwealth and this District with the manifest intent of engaging in business within the Commonwealth and this District, including the sale and/or offer for sale to Internet users within the Commonwealth and this District; and (f) Defendants enter into contracts with residents of the Commonwealth and this District through the sale of items on various online retail platforms and in Internet auctions.

13. Venue is proper in the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this claim occurred in this District.

PARTIES

14. Plaintiff Tile, Inc. is a Delaware corporation with its principal place of business in San Mateo, CA. Tile designs, manufactures, and sells a variety of wireless tracking devices used to locate objects (“Tile Products”).

15. Upon information and belief, defendant S&W Dealz is an Amazon Seller account, whose name and address are presently unknown. It does business or has done business and sold or offered to sell products to consumers, including Tile products, within the Commonwealth of Massachusetts through various online commerce sites, including, but not limited to, Amazon.com, using the seller name “S&W Dealz.”

16. The Amazon seller identification number for Defendant's S&W Dealz seller account is AELADINQQCCQ7.

17. Upon information and belief, defendant Trends Goods is an Amazon Seller account, whose name and address are presently unknown. It does business or has done business and sold or offered to sell products to consumers, including Tile products, within the Commonwealth of Massachusetts through various online commerce sites, including, but not limited to, Amazon.com, using the seller name "Trends Goods."

18. The Amazon seller identification number for Defendant's Trends Goods seller account is A17W5Z9BSG4H6V.

FACTS

A. Tile's Authorized Reseller Network

19. To create and maintain goodwill among its customers, Tile has taken substantial steps to ensure that Tile-branded products are of the highest quality. As a result, Tile has become widely known and is recognized throughout Massachusetts, the United States, and the world as a manufacturer of high quality products.

20. One of the most significant steps taken in this regard is Tile's development of a nationwide network of exclusive and authorized Resellers ("Authorized Resellers" and the "Authorized Reseller Network").

21. As a prerequisite to becoming part of the carefully selected Authorized Reseller Network, Tile requires that each of its Authorized Resellers agrees to sell Tile products only at the locations and websites designated in their agreement (the "Authorized Reseller Agreement"). The terms of the Authorized Reseller Agreement also prohibit the transshipment, diversion, or transfer of any Tile products to any other party.

22. Tile's requirement that each of its Authorized Resellers agrees not to transfer any Tile products to any other party is well known in the retail industry, particularly among retailers of consumer electronics. Upon information and belief, Defendants were fully aware of this at all relevant times.

B. Tile's Trademark Usage

23. On September 11, 2018, the U.S. Patent and Trademark Office ("USPTO") issued Reg. No. 5,561,760 for use of the Tile mark on, *inter alia*, a "Wireless tracking device..." (hereinafter, the "Tile Mark").

24. Tile is the sole and exclusive owner of the federally registered Tile Mark on the USPTO's Principal Register. The Tile Mark has been in continuous use since at least 2014. Said registration is in full force and effect.

25. Tile owns several other federal trademark and service mark registrations, many of which utilize the Tile Mark. Said registrations are in full force and effect. All of Tile's trademarks, including the Tile Mark, are collectively referred to as the "Tile Marks."

26. Tile advertises, distributes, and sells its products to consumers under the Tile Marks.

27. Tile has also acquired common law rights in the use of the Tile Marks throughout the United States.

28. Tile's federal trademark registrations were duly and legally issued, are valid and subsisting, and constitute *prima facie* evidence of Tile's exclusive ownership of the Tile Marks.

29. Tile has invested significant time, money, and effort in advertising, promoting, and developing the Tile Marks throughout the United States and the world. Tile has also implemented an Authorized Reseller Network in order to guarantee that Tile products sold to

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