

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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TILE, INC.,

Plaintiff,

Civil Action No.: 1:20-cv-1761

-against-

COMPLAINT

DIGITAL PAVILION ELECTRONICS LLC,
CHUKA LLC, ULTRA DISCOUNTS CORP,
and FLATBUSH PHOTO AND
ELECTRONICS LLC,

Defendants.
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Plaintiff Tile, Inc. (“Tile” or “Plaintiff”) by and through its undersigned counsel, complains of Defendants Digital Pavilion Electronics LLC (“Digital”), Chuka LLC (“Chuka”), Ultra Discounts Corp (“Ultra”), and Flatbush Photo and Electronics LLC’s (“Flatbush”) (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. Defendants are subject to personal jurisdiction in the State of New York and this District pursuant to because (a) Defendants have sold numerous products into the State and this

District; (b) Defendants have caused injury to Tile's trademarks within the State and this District; (c) Defendants practice the unlawful conduct complained of herein, in part, within the State and this District; (d) Defendants regularly conduct or solicit business within the State and this District; (e) Defendants regularly and systematically direct electronic activity into the State and this District with the manifest intent of engaging in business within the State and this District, including the sale and/or offer for sale to Internet users within the State and this District; and (f) Defendants enter into contracts with residents of the State and this District through the sale of items on various online retail platforms and in Internet auctions. Moreover, Defendants are each incorporated within New York.

12. Venue is proper in this district 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

13. 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").

14. Upon information and belief, defendant Digital Pavilion Electronics LLC is a New York LLC with an address of 1014 Stanley Avenue in Brooklyn. It does business or has done business and sold or offered to sell products to consumers, including Tile products through various online commerce sites, including, but not limited to, Amazon.com, using the seller name "Firemall LLC."

15. Amazon has assigned identification number A9VBWN1Q1U6E6 to Digital Pavilion Electronics LLC's Amazon seller ID.

16. Upon information and belief, defendant Chuka LLC is a New York LLC with an address of Jericho Tpke #170, in Garden City. It does business or has done business and sold or

offered to sell products to consumers, including Tile products through various online commerce sites, including, but not limited to, Amazon.com, using the seller name “Pops Deals.”

17. Amazon has assigned identification number AC5IW3JCE7ZLI to Chuka LLC’s Amazon ID.

18. Upon information and belief, defendant Ultra Discounts Corp is a New York corporation with an address of 5614 15th Avenue in Brooklyn. It does business or has done business and sold or offered to sell products to consumers, including Tile products through various online commerce sites, including, but not limited to, Amazon.com, using the seller name “Ultra Design.”

19. Amazon has assigned identification number AQD8CSXUPVRAZ to Ultra Discounts Corp’s Amazon ID.

20. Upon information and belief, defendant Flatbush Photo and Electronics LLC is New York LLC with an address of 4313 18th Avenue in Brooklyn. It does business or has done business and sold or offered to sell products to consumers, including Tile products through various online commerce sites, including, but not limited to, Amazon.com, using the seller name “Dave Parkers.”

21. Amazon has assigned identification number A2SP7PATXBS8OB to Flatbush Photo and Electronics LLC’s Amazon ID.

22. Upon information and belief, Defendants all work together and pool resources to commit the acts described herein.

FACTS

A. Tile's Authorized Reseller Network

23. 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 New York, the United States, and the world as a manufacturer of high quality products.

24. 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").

25. 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.

26. 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

27. 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").

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