

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

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TILE, INC.,

Plaintiff,

Civil Action No. 1:20-CV-0428 (FJS/DJS)

-against-

COMPLAINT

CELLNTELL DISTRIBUTION INC. and
RELIANCE DISTRIBUTION INC.,

Defendants.
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Plaintiff Tile, Inc. (“Tile” or “Plaintiff”) by and through its undersigned counsel, complains of Defendants CellnTell Distribution Inc. and Reliance Distribution Inc.’s (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 thought to be stolen 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, potentially stolen, 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, used, or even potentially stolen 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, liquidation, or potentially stolen 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 State of New York and this District 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, defendant Reliance Distribution Inc. is incorporated within New York.

13. Venue is proper in the United States District Court for the Northern District of New York 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 Reliance Distribution Inc. is a New York corporation with a principal place of business in Albany, New York. It does business or has done business and sold or offered to sell products to consumers, including Tile products, within the State of New York.

16. Upon information and belief, defendant CellnTell Distribution Inc. is a Canadian corporation with a principal place of business in Mississauga, Ontario. Upon information and belief, CellnTell Distribution Inc. is the parent company of defendant Reliance Distribution Inc. CellnTell Distribution Inc. does business or has done business and sold or offered to sell products to consumers, including Tile products, within the State of New York.

17. Defendants sell products, including Tile products, through various means including but not limited to the Amazon seller IDs “cellulartech” and “évoluer.”

18. The Amazon seller identification number for Defendants’ cellulartech seller account is A34YHZBJ3H3XXW.

19. The Amazon seller identification number for Defendants’ évoluer account is A2BCTGGGPILFXE.

FACTS

A. Tile’s Authorized Reseller Network

20. 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.

21. 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”).

22. 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. Tile also ensures that its Authorized Reseller Network is familiar with the subtle differences between its products to ensure that customers receive exactly the Tile product they intend to purchase.

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 consumers meet high standards of quality control. As a result of such actions, Tile has established substantial goodwill and widespread recognition in its Tile Marks, and those marks have become associated exclusively with Tile and its products by both customers and potential customers, as well as the general public at large.

C. Defendants’ Infringing and Improper Conduct

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