

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

Cub Club Investment, LLC,
Plaintiff,
v.
Apple, Inc.,
Defendant.

Case No. 6:20-cv-856

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff Cub Club Investment, LLC (“CCI” or “Plaintiff”) files this Original Complaint for Copyright Infringement against Defendant Apple, Inc. (“Apple” or “Defendant”).

NATURE OF THE ACTION

1. This is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* This action involves U.S. Copyright Registration Nos. VAu 001-204-290, VAu 001-186-920, VAu 001-152-200, VAu 001-152-192, VAu 001-152-187, VAu 001-180-102, and VAu 001-152-204 (collectively, “Works”). *See* Ex. A. This action also involves trade dress infringement, unfair competition, misappropriation, and unjust enrichment. This action arises under the Copyright Act, the Lanham Act, Texas Business & Commerce Code, and state common law, including the laws of Texas.

PARTIES

2. Plaintiff CCI is a Texas limited liability company with its principal place of business at 2912 Port Rose Lane, League City, Texas 77573. CCI is the owner by assignment of the Works. CCI is owned and operated by Katrina A. Parrott.

3. Defendant Apple, Inc. is a California corporation, and has a physical place of business at 5505 W. Parmer Lane, Austin, Texas 78727. Apple is actively transacting business in

Texas. Apple's Registered Agent for service of process is CT Corporation System, located at 1999 Bryan St., Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction over this action in accordance with 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* and the Lanham Act, 15 U.S.C. § 1125. Additionally, this Court has supplemental jurisdiction over this action in accordance with 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over Apple because Apple maintains multiple places of business in the State of Texas within this judicial district and has purposely availed itself of the privileges and benefits of the laws of the State of Texas. Apple has continuous and systematic business contacts with the State of Texas. Apple has a physical place located in the district at 5505 W. Parmer Lane, Austin, Texas 78727. In addition, Apple Stores are located at Barton Creek Mall (2901 S. Capital of Texas Hwy, Austin, TX 78746), at The Domain (3121 Palm Way, Austin, TX 78758), at The Shops at La Cantera (15900 La Cantera Parkway, San Antonio, TX 78256), and at North Star Mall (7400 San Pedro Avenue, San Antonio, TX 78216).

6. Venue is proper in this district under 28 U.S.C. §§ 1391, 1400(a).

FACTUAL BACKGROUND

CCI's Development of *iDiversicons*® Emoji

7. Emoji are digital images or icons used to express an idea or emotion by the sender. Emoji are ubiquitous in the digital age, including through communication on smartphones and social media platforms. Before 2013, people had limited options of emoji to represent themselves, especially in terms of race or color. In June 2013, Mrs. Katrina A. Parrott envisioned bringing racial diversity into the realm of digital communication after her daughter raised the question, "Wouldn't it be nice to have emoji that look like the person sending them?" With this vision,

Mrs. Parrott developed an innovative solution and assembled a team to create emoji so that people of all races, gender, orientations, and abilities can express themselves through an abundance of diverse emoji. Mrs. Parrott founded CCI and created the *iDiversicons*® brand, the world's first diverse emoji.

8. On October 11, 2013, *iDiversicons*® emoji were launched and released on the Apple App Store with versions compatible on the iPhone, iPad, and iPod Touch. Additionally, *iDiversicons*® emoji were released on Apple iTunes on December 20, 2014.

CCI's Registered Copyrights and Other Intellectual Property

9. CCI registered its first set of copyrighted works, covering emoji with five skin tones, with the U.S. Copyright Office on July 31, 2013. Today, CCI holds over 20 registered copyrights covering diverse emoji. *See* Ex. A. The Works are of great value to CCI and are used daily by its numerous customers that own the application. CCI is the sole owner and proprietor of all rights, title, and interest in and to the copyrights in the Works. The copyrights in the Works are presently valid and subsisting and were valid and subsisting at all times affecting the matters complained herein. The Works are a collection of creative, diverse emoji, including emoji with five skin tones. Each of the five skin tones comprises one of African-American tone, Asian tone, Latino/Hispanic tone, Indian tone, and Caucasian tone.

10. Additionally, the innovative, diverse emoji created by CCI are the subject of three pending applications before the U.S. Patent and Trademark Office, including utility and design patent applications.

CCI's Proposals to Unicode

11. To make her solution accessible to consumers, CCI and Mrs. Parrott brought *iDiversicons*® emoji to Silicon Valley beginning in 2013. Mrs. Parrott joined the Unicode

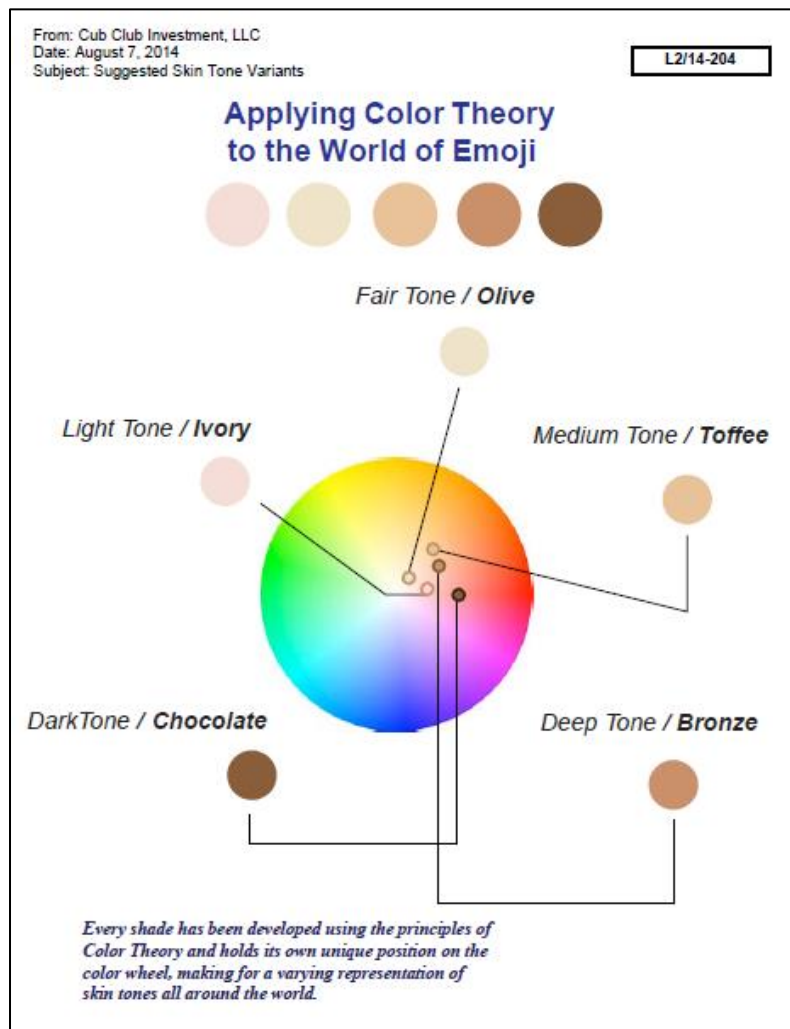
Consortium (“Unicode”) on November 5, 2013 and became actively involved with the Unicode Technical Committee (“UTC”) as a means to raise awareness among technology leaders about the digital diversity and inclusion issue. On April 9, 2014, Mrs. Parrott submitted to the UTC document L2/14-085, titled “Request Approval to add ‘Our New iDiversicons: Diverse Emoji Characters’ to the next updated Unicode Standard.” When Mrs. Parrott presented her proposal on *iDiversicons*® emoji, its mission of bringing diverse emoji to the world, and its five skin tone emoji standard at UTC Meeting 139 on May 7, 2014 in San Jose, California, technology leaders praised her efforts, which sparked a deeper conversation among UTC members regarding the fact that no one was seriously addressing this issue. The *iDiversicons*® emoji solution for advancing the Unicode Standard to include diverse emoji gained traction at UTC meetings as Mrs. Parrott continued to submit reports and proposals, including “Report on Diversity Emoji Use in iDiversicons and Proposal to Add New Emoji from iDiversicons Collection to Unicode”; “Applying Color Theory to the World of Emoji”; “Adding gender counterparts to emoji list?”¹ At UTC Meeting 141 on October 28, 2014, hosted by Apple in Sunnyvale, CA, Mrs. Parrott presented her solution of using a color modifier pallet to implement the five skin tone options on digital keyboards, a solution recognized and utilized globally.

12. Unicode held the following UTC Meetings: UTC Meeting 139 from May 6 – 9, 2014 in San Jose, California; Unicode held UTC Meeting 140 from August 5 – 8, 2014 in Redmond, Washington; UTC Meeting 141 from October 27 – 30, 2014 in Sunnyvale, California (hosted by Apple); and UTC Meeting 142 from February 2 – 5, 2015 in Mountain View, California.

¹ UTC document L2/14-154, titled “Report on Diversity Emoji Use in iDiversicons and Proposal to Add New Emoji from iDiversicons Collection to Unicode (revised)” (August 5, 2014); UTC document L2/14-204, titled “Applying Color Theory to the World of Emoji” (August 7, 2014); UTC topic L2/15-048 “Adding gender counterparts to emoji list?” (February 3, 2015).

13. Mrs. Parrott attended UTC Meetings 139, 140, 141, and 142.

14. Mrs. Parrott submitted the following documents to the UTC: document L2/14-085 titled “Request Approval to add ‘Our New iDiversicons: Diverse Emoji Characters’ to the next updated Unicode Standard” (April 9, 2014); document L2/14-085 titled “Request Approval to add ‘Our New iDiversicons: Diverse Emoji Characters’ to the next updated Unicode Standard.” (May 7, 2014); document L2/14-154 titled “Report on Diversity Emoji Use in iDiversicons and Proposal to Add New Emoji from iDiversicons Collection to Unicode (revised).” (August 5, 2014); document L2/14-204 titled “Applying Color Theory to the World of Emoji.” (August 7, 2014); topic L2/15-048 “Adding gender counterparts to emoji list?” (February 3, 2015).



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