IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

LOUIS VUITTON MALLETIER S.A. Plaintiff, v. HAUTE DIGGITY DOG, LLC, VICTORIA D.N. DAUERNHEIM, and WOOFIES, LLC Defendants.	)	1:06cv321(JCC)

M E M O R A N D U M O P I N I O N

This matter comes before the Court on Plaintiff's and Defendants' cross-motions for summary judgment. This "dog of a case" gave the Court a great amount of facts to chew upon and applicable law to sniff out. Nonetheless, having thoroughly gnawed through the record, this Court finds that no material dispute of fact remains, and summary judgment is appropriate on all counts. For the following reasons, the Court will deny Plaintiff's motion and grant Defendants' motion.

I. Background

Plaintiff, Louis Vuitton Malletier S.A., ("LVM") is a manufacturer of luxury consumer goods, including luggage and handbags. In 1896, LVM created a Monogram Canvas Pattern Design mark and trade dress, which includes, *inter alia,* an entwined L and V monogram with three motifs and a four pointed star, and is used to identify its products. In 2002, Vuitton introduced a new signature design in collaboration with Japanese designer Takashi

Murakami. LVM manufactures a limited number of high-end pet products, such as leashes and collars that range in price from $250 to $1600.

Plaintiff filed this action on March 24, 2006 against Defendants Haute Diggity Dog, LLC ("HDD"), Victoria Dauernheim, and Woofies, LLC d/b/a Woofie's Pet Boutique. HDD is a company that markets plush stuffed toys and beds for dogs under names that parody the products of other companies. HDD sells products such as Chewnel #5, Dog Perignon, Chewy Vuiton, and Sniffany & Co. in pet stores, alongside other dog toys, bones, beds, and food, and most are priced around $10. Plaintiff's complaint specifically refers to HDD's use of the mark "Chewy Vuiton" and alleges that this mark, as well as other marks and designs that imitate Plaintiff's trademarks and copyrights, violate Plaintiff's trademark, trade dress, and copyright rights. Plaintiff and Defendants have filed cross-motions for summary judgment. These motions are currently before the Court.

II. Standard of Review

Summary judgment is appropriate only if the record shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986); *Evans v. Techs. Applications & Serv., Co.*, 80 F.3d 954, 958-59 (4th Cir. 1996)(citations

omitted). In reviewing the record on summary judgment, "the court must draw any inferences in the light most favorable to the non-movant" and "determine whether the record taken as a whole could lead a reasonable trier of fact to find for the non-movant." *Brock v. Entre Computer Ctrs.*, 933 F.2d 1253, 1259 (4th Cir. 1991)(citations omitted).

The very existence of a scintilla of evidence or of unsubstantiated conclusory allegations, however, is insufficient to avoid summary judgment. *Anderson*, 477 U.S. at 248-52. Rather, the Court must determine whether the record as a whole could lead a reasonable trier of fact to find for the non-movant. *Id.* at 248.

III. Analysis

Count I: Trademark Infringement

Plaintiff and Defendants have filed cross-motions for summary judgment on the issue of trademark infringement. To prevail on a claim for trademark infringement, Plaintiff must show that it possesses a protectable mark, which Defendants used in commerce in connection with sale, offering for sale, distribution, or advertising in a manner likely to confuse customers. *People for Ethical Treatment of Animals v. Doughney*, 263 F.3d 359, 364 (4th Cir. 2001). The unauthorized use of a trademark infringes the trademark holder's rights if it is likely to confuse an "ordinary consumer" as to the source or sponsorship

of the goods. *Anheuser-Busch, Inc. v. L&L Wings, Inc.*, 962 F.2d 316, 318 (4th Cir. 1992).

Factors considered when determining the likelihood of confusion are: (1) strength and distinctiveness of the plaintiff's mark; (2) degree of similarity between the two marks; (3) similarity of the products that the marks identify; (4) similarity of the facilities the two parties use in their business; (5) similarity of the advertising used by the two parties; (6) defendant's intent; and (7) actual confusion. *Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1527 (4th Cir. 1984). No single factor is dispositive, and these factors are not of equal importance or relevance in every case. *Petro Shopping Centers v. James River Petroleum, Inc.*, 130 F.3d 88, 91 (4th Cir. 1997). This Court must carefully consider each of these factors and determine by a totality of the circumstances if likelihood of confusion exists, and then determine if summary judgment is appropriate for Plaintiff or Defendants.

A. Strength of Plaintiff's Mark

Strength of mark is usually a strong factor in determining customer confusion. However, in cases of parody, the opposite can be true. *See, e.g., Tommy Hilfiger Licensing, Inc. v. Nature Labs, LLC*, 221 F.Supp.2d 410, 416 (S.D.N.Y. 2002). A "parody" is defined as a "simple form of entertainment conveyed by juxtaposing the irreverent representation of the trademark

with the idealized image created by the mark's owner." *People for Ethical Treatment of Animals*, 263 F.3d at 366 (citing *LL Bean, Inc. v. Drake Publishers, Inc.*, 811 F.2d 26, 34 (1st Cir. 1987). A parody must "convey two simultaneous-and contradictory-messages: that it is the original, but also that it is *not* the original and is instead a parody." *Id.* In cases of parody, a strong mark's fame and popularity is precisely the mechanism by which likelihood of confusion is avoided. *See Hormel Foods Corp. v. Jim Henson Productions, Inc.*, 73 F.3d 497, 503-04 (2d Cir. 1996); *Schieffelin & Co. v. Jack Co. Of Boca, Inc.*, 850 F.Supp. 232, 248 (S.D.N.Y. 1994)("[c]ertainly it is unremarkable that [defendant] selected as the target of parody a readily recognizable product; indeed, one would hardly make a spoof of an obscure or unknown product!"); *see also Hilfiger*, 221 F.Supp.2d at 416 ("Hilfiger's famous mark likely allows consumers both immediately to recognize the target of the joke and to appreciate the obvious changes to the marks that constitute the joke").

In the *Tommy Hilfiger* case, cited by Defendants, the Southern District of New York dismissed Plaintiff Hilfiger's claim of infringement on summary judgement, finding the use of the name "Timmy Holedigger" for a brand of pet perfume was a permissible parody of the Hilfiger name and did not infringe Hilfiger's trademark. 221 F.Supp.2d at 420. The Court found that although Hilfiger was in the fragrance business, it did not

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.