

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

THE MARINE EXHIBITION
CORP.,

CASE NUMBER _____

Plaintiff,

vs.

TIMOTHY GORSKI,

VERIFIED COMPLAINT

Defendant.
_____ /

COMES NOW the Plaintiff, MARINE EXHIBITION CORPORATION, d/b/a MIAMI SEAQUARIUM (hereinafter referred to as "SEAQUARIUM"), hereby sues Defendant, TIMOTHY GORSKI (hereinafter referred to as "GORSKI") and alleges:

INTRODUCTION

1. This is a civil action for the infringement of a copyright and a trademark and unfair competition. The action arises from the willful misappropriation of Plaintiff's copyright design and trademark which is registered with the United States Patent Trademark Office.

2. Plaintiff seeks a temporary and permanent injunction barring Timothy GORSKI from continuing to infringe upon the copyrighted design and trademark of Plaintiff. Plaintiff also seeks an award of nominal damages, attorneys fees and costs.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the claims for relief based upon Federal law herein pursuant to 28 U.S.C. §§1331, 1332, and 1338, and has jurisdiction of the claims for relief based upon state law herein pursuant to 28 U.S.C. §1367.

4. Venue of this action is proper in this judicial district in that this cause

of action arose in Miami-Dade County, Florida.

FACTS

5. At all times material hereto, SEAQUARIUM is and was a Florida corporation authorized to do business in the State of Florida and in fact is doing business as Miami SEAQUARIUM in Miami, Miami-Dade County, Florida.

6. At all times material hereto, GORSKI is and was a resident of Broward County, Florida, is over the age of eighteen (18) years, is not in the military and is otherwise sui juris.

7. SEAQUARIUM is a marine exhibition facility that features among other things, shows consisting of whales, dolphins, seals and other marine life habitat. In exchange for a person to be able to enter the SEAQUARIUM to enjoy the exhibits and amenities offered by SEAQUARIUM, the person must purchase an admission ticket.

8. Upon information and belief, GORSKI is an activist for animal rights and deals closely with the Animal Rights Foundation of Florida.

9. Plaintiff is the holder of Certificates of Registration Numbered 1648383, 0772473, and 0767700.

10. On January 19, 2005, Plaintiff, through its counsel, notified GORSKI with regard to the claimed infringements and demanded, amongst other things, that GORSKI cease and desist from the on-going infringements of Plaintiff's rights in and to the Work. A true and correct copy of such notice is attached hereto as Exhibit "A".

COUNT I - COPYRIGHT INFRINGEMENT

11. Plaintiff hereby re-alleges each and every allegation contained in paragraphs 1 through and including 10 of the Complaint as fully set forth herein.

12. In connection with Plaintiff's business as described in paragraph 7 above,

Plaintiff published an Internet web site at the uniform resource locator ("URL") www.miamiSEAQUARIUM.com (hereinafter referred to as the SEAQUARIUM Website"). A copy of the SEAQUARIUM Website is attached hereto as Exhibit "B".

13. The SEAQUARIUM Website is, and at all times relevant hereto was, compromised of text, photographs, and illustrations relating to Plaintiff's business.

14. The SEAQUARIUM Website contains material wholly original with Plaintiff that is copyrightable subject matter under the laws of the United States.

15. Plaintiff is currently, and at all relevant times has been, the sole proprietor of all right, title, and interest in and to the copyright in each of the works described herein in strict conformity with the Copyright Act of 1976 and all other laws governing copyright.

16. Plaintiff is informed and believed, and on that basis alleges, that GORSKI knowingly and willfully directly copied substantial portions of the works in the SEAQUARIUM Website, and that Gorksi knowingly and willfully directly copied the entirety of the works covered in the SEAQUARIUM Website. The copies appear on GORSKI's internet website located at the URL www.miamiseaprisson.com (hereinafter referred to as "GORSKI's Website"). Copies of pages of GORSKI's Website displaying the infringing works are attached hereto as Exhibit "C". Additionally, on or about May 12, 2002, GORSKI disrupted the Miami SEAQUARIUM whale show by protesting for his "cause" for animal rights and arranged this protest to be filmed. Footage of the filming arranged by GORSKI to be taken on May 12, 2002 is in a movie produced by GORSKI titled "Lolita, Slave to Entertainment" (hereinafter referred to as the "Movie"). The Movie contains among other things, the Miami SEAQUARIUM's exhibitions taken that day. In addition to containing the footage obtained on May 12, 2002, on or

about the summer of 2002, GORSKI trespassed into the Miami SEAQUARIUM whale arena and took additional footage of Lolita, the whale and of the Miami SEAQUARIUM and used this additional footage in the Movie. The Movie is provided, distributed, displayed and/or sold by GORSKI to third parties as part of his animal rights activities.

17. Plaintiff is further informed and believe, and on that basis alleges, that GORSKI copied the aforesaid works for the specific purpose of infringing Plaintiff's copyright and unfairly competing with Plaintiff's business to further his "cause".

18. Plaintiff is further informed and believe, and on that basis alleges, that since at least as early as the summer of 2002, GORSKI has been reproducing and displaying the works in the SEAQUARIUM Website in GORSKI's Website and in the Movie and perhaps elsewhere.

19. By the actions alleged above, GORSKI has infringed and will continue to infringe Plaintiff's copyrights in and relating to the works described herein, by reproducing and displaying such works on GORSKI's Website and in the Movie, and perhaps elsewhere, in violation of 17 U.S.C. §§ 101 et. seq.

20. Plaintiff is informed and believes, and on that basis alleges, that GORSKI is attempting to pass off his "cause" for animal rights in a manner calculated to confuse and deceive Plaintiff's present and prospective customers and members of the general public, in that GORSKI has copied the copyrighted works displayed on the SEAQUARIUM Website and in the Movie and displayed those copyrighted works belonging to Plaintiff on GORSKI's Website and in the Movie in such a manner as to confuse Plaintiff's present and prospective customers and the public in general as to Plaintiff's business and reputation.

21. The natural, probable, and foreseeable result of GORSKI's wrongful conduct has been, and will continue to be, to deprive Plaintiff of the benefits of the exclusive display of Plaintiff's copyrighted works on the SEAQUARIUM Website and in the Movie, and elsewhere, to deprive Plaintiff of goodwill, to create confusion among Plaintiff's present and prospective customers and the general public and to injure Plaintiff's relations with present and prospective customers and Plaintiff's business reputation.

22. Plaintiff is informed and believes, and on that basis alleges, that it has lost and will continue to lose nominal damages as a result of GORSKI's wrongful conduct.

23. Plaintiff is informed and believes, and on that basis alleges, that unless enjoined by this Court, GORSKI intends to continue his course of conduct and to wrongfully use, infringe upon, and otherwise profit from Plaintiff's copyrighted works and works derived from such copyrighted works.

24. As a direct and proximate result of the acts of GORSKI alleged above, Plaintiff has already suffered irreparable damage and has sustained nominal damages. Plaintiff has no adequate remedy at law to redress all of the injuries that GORSKI has caused, and intends to cause, by his conduct.

25. Plaintiff will continue to suffer irreparable damage and sustain nominal damages until GORSKI's actions are enjoined.

26. Plaintiff is entitled to an injunction restraining GORSKI and all persons acting in concert with him, from engaging in any further such acts in violation of the copyright laws.

27. Plaintiff is further entitled to recover from GORSKI all of the nominal

damages, including attorneys fees, that it has sustained or will sustain, including statutory damages under 17 U.S.C. §504(c), and any gains, profits, and advantages obtained by GORSKI as a result of GORSKI's acts of infringement alleged above. At present the amount of such damages, gains, profits, and advantages cannot be fully ascertained.

COUNT II - TRADE NAME INFRINGEMENT, TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION UNDER SECTION 43(A)(1) OF THE LANHAM ACT, 15 U.S.C. §1125(A)(1)(A)

28. Plaintiff hereby re-alleges each and every allegation contained in paragraphs 1 through and including 10 of the Complaint as fully set forth herein.

29. Plaintiff formed its Florida corporation on or about December 7, 1953. Subsequent to the formation of the Florida corporation, Plaintiff registered various trademarks encompassing its form of business with the United States Patent Trademark Office and the Florida Secretary of State. At all times relevant hereto, GORSKI has been aware of Plaintiff's exclusive rights in the trade name and trademark.

30. Since the establishment of Miami SEAQUARIUM, Plaintiff conducted and continues to conduct substantial promotional activity under the trade name of Miami SEAQUARIUM and made substantial efforts to attract customers.

31. On or about June 13, 1963, Plaintiff registered its trademark with the United States Patent Trademark Office, Registration Number 0767700 and 0772473 (collectively hereinafter referred to as "Registration Number 1."). On or about November 9, 1989, Plaintiff registered its trademark with respect to its drawing with the United States Patent Trademark Office, Registration Number 1648383 (hereinafter referred to as "Registration Number 2."). On August 17, 1967, Plaintiff registered its

trademark name of SEAQUARIUM with the Florida Secretary of State, Document Number 917642 (hereinafter referred to as "Registration Number 3.").

32. Since the establishment of Plaintiff's business, Plaintiff registered the domain names "miamiSEAQUARIUM.com" and published a home page for Miami SEAQUARIUM at URL "www.miamiSEAQUARIUM.com" establishing trade names and trade slogans. A copy of Plaintiff's original home page for the SEAQUARIUM Website is attached hereto as Exhibit "B".

33. The SEAQUARIUM Website made prominent use of the Miami SEAQUARIUM trade names. The SEAQUARIUM Website was and is used to promote including but not limited to, Miami SEAQUARIUM exhibitions, shows, and products.

34. In or about the summer of 2002, Plaintiff discovered that GORSKI had published GORSKI's Website at the URL "www.miamiseaprisson.com". A copy of GORSKI's Website as it is published and printed is attached hereto as Exhibit "C". GORSKI's Website made, and continues to make, prominent use of the name and mark of Miami SEAQUARIUM, all in violation of Plaintiff's exclusive rights in that name and mark.

35. Additionally, in or about the summer of 2002, Plaintiff discovered that GORSKI produced the Movie. Gorksi has provided and continues to provide and/or sell the Movie to third parties as part of his "cause" for animal rights, and make prominent use of the name and mark of Miami SEAQUARIUM, all in violation of Plaintiff's exclusive rights in that name and mark.

36. As a result of the continuous and extensive use of the Miami SEAQUARIUM name and mark by Plaintiff, and as a result of the substantial advertising, promotion, and sale of products and services under the Miami

SEAQUARIUM name and mark, the Miami SEAQUARIUM name and mark enjoys strong recognition and distinctiveness.

37. GORSKI uses the name and mark of Miami SEAQUARIUM in connection with the website URL search result, products and services that are identical or virtually identical to Miami SEAQUARIUM's website URL search result, products and services offered by Plaintiff in association with its Miami SEAQUARIUM name and mark. Additionally, GORSKI uses the name and mark of Miami SEAQUARIUM in connection with the Movie that are identical or virtually identical to Miami SEAQUARIUM's mammals, products and services.

38. GORSKI promotes its "cause" for animal rights via GORSKI's Website at the URL "miamiseaprison.com" and the Movie.

39. GORSKI's Website name and results after a standard URL search and the Movie are virtually identical to Plaintiff's SEAQUARIUM Website name and mark, and is likely to confuse consumers into mistakenly believing that GORSKI and/or its services are offered, authorized, or sponsored by Plaintiff, or are otherwise connected, associated, or affiliated with Plaintiff.

40. Upon information and belief, GORSKI has profited and will continue to profit from the use of Plaintiff's name and trademark in the GORSKI Website and in the Movie.

41. On information and belief, GORSKI began using the Miami SEAQUARIUM name and trademark in the GORSKI Website and in the Movie in or about the summer of 2002, well after Plaintiff first used Plaintiff's Miami SEAQUARIUM name and mark with full knowledge of Plaintiff's use of Plaintiff's name and mark.

42. GORSKI's use of the virtually identical mark and name of Miami

SEAQUARIUM as described above is likely to cause consumers to be confused and deceived into falsely believing that a connection, affiliation, sponsorship, or association exists between Plaintiff and GORSKI, when, in fact, no such connection, affiliation, sponsorship or association exists between Plaintiff and GORSKI.

43. GORSKI's display of Plaintiff's copyrighted works without appropriate attribution of Plaintiff's rights creates the false impression that such works are the property of, and originate from, GORSKI.

44. Plaintiff is being, and will continue to be, irreparably harmed and injured.

45. Plaintiff has no adequate remedy at law.

46. GORSKI's actions are likely to cause confusion, mistake, or deception as to the original, sponsorship or approval of GORSKI's products and commercial activities, and this constitute trademark infringement, trade name infringement, false designation of origin, passing off, and unfair competition with respect to Plaintiff's name and mark.

47. As a direct and proximate result of the willful actions, conduct, and practices of GORSKI, Plaintiff has suffered nominal damages.

**COUNT III - COMMON LAW TRADEMARK INFRINGEMENT,
PALMING OFF AND UNFAIR COMPETITION**

48. Plaintiff hereby re-alleges each and every allegation contained in paragraphs 1 through and including 11 of the Complaint as fully set forth herein.

49. GORSKI's actions stated above constitute common law trademark and trade name infringement and misappropriation of the goodwill associated with Plaintiff's name and mark and Plaintiff's copyrighted works.

50. As a direct and proximate result of the actions, conduct, and practices

of GORSKI, Plaintiff has suffered nominal damages and will continue to be irreparably harmed.

COUNT IV - COMMON LAW UNFAIR COMPETITION

51. Plaintiff hereby re-alleges each and every allegation contained in paragraphs 1 through and including 10 of the Complaint as fully set forth herein.

52. This claim for relief arises out of GORSKI's violations of the common law of Florida against unfair competition and unfair business practices.

53. GORSKI has made false and misleading statements in the GORSKI Website and in the Movie to current and potential customers of Plaintiff in and attempt to gain an unfair advantage over Plaintiff.

54. By reason of GORSKI's unfair competition and false and misleading statements, Plaintiff has been and will continue to be irreparably harmed and has suffered nominal damages.

COUNT V - INJURIOUS FALSEHOOD/TRADE LIBEL

55. Plaintiff hereby re-alleges each and every allegation contained in paragraphs 1 through and including 10 of the Complaint as fully set forth herein.

56. This claim for relief arises out of GORSKI's violations of the common law of Florida against injurious falsehood and trade libel.

57. GORSKI published false statements in the GORSKI Website and in the Movie, which falsely, wrongfully and unjustifiably accuses Plaintiff's business as being a sea prison, disparaging the quality of Plaintiff's business. Specifically, GORSKI's website contains defamatory statements that include but are not limited to, (a) refers to the SEAQUARIUM as an "Animal Abusement Park"; (b) "The Miami SEAQUARIUM is a run-down 3rd-rate park that had it's heyday back in the 1960's when NBC"; (c)

"Home of Lolita, the world's oldest performing orca, 33 years in a chlorinated tub and still alive. AMAZING!"; (d) All this and more, right here at the Miami SEAQUARIUM... or is it Seaprison?" Additionally, GORSKI's Website displays and promotes the Movie.

58. All of the false statements published by GORSKI in the GORSKI Website and in the Movie as set forth above were injurious and prejudicial to Plaintiff's business, and as such, GORSKI's statements are actionable per se.

59. GORSKI published such statements with malice and with the intention of harming the business interest of Plaintiff, and GORSKI knew or should have known that such statements would likely harm the business interests of Plaintiff and influence and deter customers from going to Plaintiff's business.

60. Such statements played a material and substantial part in influencing third parties not to go to Plaintiff's business.

61. As a direct and proximate result of GORSKI's false statements as set forth above, Plaintiff has suffered, and continues to suffer, actual nominal damages.

COUNT VI - FEDERAL UNFAIR COMPETITIOIN COMPRISING FALSE AND MISLEADING STATEMENTS OF FACT UNDER SECTION 43(A)(1)(B) OF THE LANHAM ACT, 15 U.S.C. § 1125(A)(1)(B)

62. Plaintiff hereby re-alleges each and every allegation contained in paragraphs 1 through and including 10 of the Complaint as fully set forth herein.

63. By engaging in the above described activities, GORSKI has made false and misleading representations of fact to the general public as to their ownership of Plaintiff's copyrighted works and their ownership of, and right to engage in activities under the mark and name of Miami SEAQUARIUM in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), by making the above described false and misleading representations of fact to the general public concerning Plaintiff's business

in GORSKI's advertising and promotion in GORSKI's Website and in the Movie.

64. As a direct and proximate result of the willful actions, conduct, and practices of GORSKI, Plaintiff has suffered nominal damages and will continue to be irreparably harmed.

DEMANDS FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment in its favor on each and every Claim for Relief set forth above and award relief including, but not limited to the following:

- A. A preliminary injunction and permanent injunction enjoining GORSKI and all persons in active concert or participation with GORSKI:
 1. From reproducing, distributing, displaying, or creating derivative works from Plaintiff's copyrighted works identified herein including but not limited to, the GORSKI Website and the movie;
 2. From continuing to reproduce, distribute and display the GORSKI Website and the Movie;
 3. From representing by any means whatsoever, directly or indirectly, that Plaintiff's copyrighted works are the property of, or otherwise originate with GORSKI.
- B. In connection with the willful infringement of Registration Number, 1, 2 and 3 as set forth above, an Order requiring GORSKI to account for and pay to Plaintiff any and all profits arising from the foregoing acts in accordance with 17 U.S.C. §504(b);

- C. In connection with the willful infringement of Registration Number, 1, 2 and 3 as set forth above, statutory damages at least in the amount of \$300,000 (\$150,000 for each of GORSKI's multiple infringements on GORSKI's Website and the Movie, together with attorneys fees expended by Plaintiff in pursuing such claims;
- D. In connection with Plaintiff's claims for relief stated above, an Order requiring GORSKI to account for and to deliver to this Court all copies of the infringing works in GORSKI's possession;
- E. A preliminary injunction and permanent injunction enjoining GORSKI and all persons in active concert or participation with any of them:
1. From using the marks and names owned by Plaintiff and all variations thereof which include but not limited to, the terms "Miami SEAQUARIUM" in the mark or name, as a trade name, trademark, service mark, domain name ("miamiseaprison") or other indicator of source, in any manner likely to cause confusion with the mark or to otherwise cause injury to Plaintiff's business reputation;
 2. From registering the mark, "Miami SEAQUARIUM" and any variations thereof in the mark or name, as a trademark, service mark, or domain name;
 3. From using the marks and names owned by Plaintiff and all variations thereof which include but not limited to, the terms "Miami SEAQUARIUM" in the mark or name, as a trade name,

