

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED

2007-05-15 PM 3:03

LIZZIE BORDEN BED & BREAKFAST, LLC,)
)
Plaintiff,)
)
v.)
)
LEONARD PICKEL and DIVERSIFIED)
ADVENTURES, doing business as THE TRUE)
STORY OF LIZZIE BORDEN GIFT SHOP)
AND MUSEUM,)
)
Defendants.)

C.A. No. _____

VERIFIED COMPLAINT FOR FEDERAL TRADEMARK INFRINGEMENT

NATURE OF THE ACTION

This is an action by Plaintiff Lizzie Borden Bed & Breakfast, LLC against Defendants Leonard Pickel and Diversified Adventures which are doing business as The True Story of Lizzie Borden Gift Shop and Museum (collectively "Defendants") for federal trademark infringement pursuant to 15 U.S.C. § 1114 arising out of Defendants' unlawful use of the Plaintiff's incontestable registered trademark LIZZIE BORDEN MUSEUM. Defendants are using both the identical mark in their Internet domain name and e-mail address as well as confusingly similar names and marks in connection with a competing museum and tourist attraction located in Salem, Massachusetts. In the instant action, Plaintiff seeks a preliminary and permanent injunction, compensatory damages and other damages that may be just and reasonable, and attorney's fees for violation of its rights.

PARTIES

1. Plaintiff is a Delaware business entity with an business address of 230 Second Street, Fall River, Massachusetts 02721.

2. Upon information and belief, Leonard Pickel is an individual with an address of 940 Gold Hill Road, Fort Mill, SC 29708.

3. Upon information and belief, Diversified Adventures is a foreign business entity owned and operated by Mr. Pickel with a place of business listed as 940 Gold Hill Road, Fort Mill, SC 29708.

4. Upon information and belief, The True Story of Lizzie Borden Gift Shop and Museum is a business owned and operated by Leonard Pickel and Diversified Adventures with an address of 203 Essex Street, Salem, Massachusetts 01970.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 15 U.S.C. §§ 1116, 1121, as this action arises under the United States trademark laws.

6. This Court has personal jurisdiction over Defendants because Defendants are soliciting and conducting business in Massachusetts and have committed acts of trademark infringement within this judicial district.

7. Venue is proper pursuant to 15 U.S.C. § § 1391(b)(2) because a substantial part of the events giving rise to the claims herein occurred and continued to occur in this judicial district.

GENERAL ALLEGATIONS

A. Plaintiff's Use and Registration of the LIZZIE BORDEN MUSEUM Trademark

8. Plaintiff is the owner of the incontestable trademark registration LIZZIE BORDEN MUSEUM on the Principal Register.

9. Plaintiff's registered trademark is used in connection with a museum about the Borden murders located in Fall River, Massachusetts.

10. The Borden murders are one of the most widely known, yet unsolved crimes of the Victorian era. The Bordens' daughter, Lizzie, was tried for the crimes and acquitted

11. Plaintiff's LIZZIE BORDEN MUSEUM opened to the public on August 4, 1996.

12. In the ensuing 12 years, visitors to Plaintiff's LIZZIE BORDEN MUSEUM have come from across the United States, including among them forensic scholars and historians as well as the general public.

13. Plaintiff's LIZZIE BORDEN MUSEUM contains numerous displays of items and information relating to the Borden murders, the trial of Lizzie Borden, the persons implicated in the murders and life in Fall River circa 1892, including a preeminent library of Borden murder materials.

14. Plaintiff's LIZZIE BORDEN MUSEUM also features a gift shop with unique items for the museum visitors to commemorate their experience.

15. The Plaintiff's LIZZIE BORDEN MUSEUM services and gift shop are directed to tourists in Massachusetts as well as people interested in historical events.

16. Plaintiff's LIZZIE BORDEN MUSEUM has been featured in the local and national media.

17. Plaintiff's LIZZIE BORDEN MUSEUM has been featured in numerous newspaper and magazine articles, including The Boston Herald, The Boston Globe, The Providence Journal, The Hartford Courant, The New York Times, Newsday (New York), The Wall Street Journal, Pittsburgh Post-Gazette, The Washington Post, The Miami Herald, The Chicago Tribune, St. Louis Post-Dispatch, The Denver Post, The Houston Chronicle, The Santa Fe New Mexican,

Inside Bay Area (California), Oakland Tribune, USA Today, Time magazine, Travel magazine and others.

18. Plaintiff's LIZZIE BORDEN MUSEUM has been featured on the A&E Network, The History Channel, Food Network, Travel Channel, Discovery Channel, Sci-Fi Channel, the Montel Williams' Show and NBC's Today Show.

19. Plaintiff's LIZZIE BORDEN MUSEUM is advertised by large signs on Interstate 195 located prominently near the national tourist attraction "Battleship Cove."

20. Plaintiff has invested substantial time, effort and money to promote its trademark LIZZIE BORDEN MUSEUM in connection with its museum, gift shop and tourist venue.

21. Plaintiff is the owner of United States Trademark Registration, No. 2,668,044, dated December 31, 2002, on the Principal Register for LIZZIE BORDEN MUSEUM for museum services in Class 41.

22. Attached hereto at Exhibit 1 is a true and accurate copy of printouts from the on-line records of the United States Patent and Trademark Office Trademark Electronic Search System (TESS) and Trademark Applications and Registrations Retrieval (TARR) for United States Trademark Reg. No. 2,668,044 for LIZZIE BORDEN MUSEUM.

23. The Application to register LIZZIE BORDEN MUSEUM was filed on February 2, 2001, based upon use dating back to August 4, 1996.

24. In accordance with Sections 7(b), 22 and 33(a) of the Lanham Trademark Act, Plaintiff's registration of LIZZIE BORDEN MUSEUM constitutes prima facie evidence of the validity of the such trademark and of the registrations thereof, Plaintiff's ownership of the mark shown in said registration, and Plaintiff's exclusive right to use the mark in commerce in connection with the services named therein, without condition or limitation.

25. Plaintiff filed its Combined Declaration of Use & Incontestability under 15 U.S.C. §§ 1058, 1065 (Sections 8 & 15 of the Lanhan Act) for its LIZZIE BORDEN MUSEUM trademark registration, resulting in the LIZZIE BORDEN MUSEUM trademark registration becoming incontestable.

26. In accordance with 15 U.S.C. § 1115(b), Plaintiff's trademark, Registration No. 2,668,044 for the mark LIZZIE BORDEN MUSEUM for museum services in Class 41 is immune from claims that it lacks secondary meaning or is merely descriptive because of its incontestable status.

27. Plaintiff's registration on the Principal Register of LIZZIE BORDEN MUSEUM for museum services named after a historical, famous figure is not unique. Plaintiff is one in a long line of registrants of similar trademarks issued by the United States Patent and Trademark Office on the Principal Register for a museum named after a historical or famous person: SHOeless JOE JACKSON MUSEUM AND BASEBALL LIBRARY (Reg. No. 3,406,140); JAMES MONROE MUSEUM (Reg. No. 3,164,683); SALVADOR DALI MUSEUM (Reg. No. 1,692,000); JUDY GARLAND MUSEUM (Reg. No. 2,053,653); MARGARET MITCHELL HOUSE & MUSEUM (Reg. No. 2,385,380); CHARLES M. SCHULTZ MUSEUM (Reg. No. 2,490,529); JIMMIE RODGERS MUSEUM (Reg. No. 2,561,534) and others. See Attached printouts from the on-line records of the United States Patent and Trademark Office Trademark Electronic Search System (TESS) and Trademark Applications and Registrations Retrieval (TARR) for the foregoing registrations at Exhibit 2.

28. Plaintiff's registration of the LIZZIE BORDEN MUSEUM trademark on the Principal Register constitutes constructive notice to Defendants of Plaintiff's claim of ownership of the trademark shown within such registration.

29. Consumers associate Plaintiff's LIZZIE BORDEN MUSEUM trademark with a high-quality presentation of facts, artifacts and historical materials relating to the Borden murders.

30. By virtue of the quality of Plaintiff's museum and as a result of its considerable promotional activity, Plaintiff has built up valuable goodwill in its LIZZIE BORDEN MUSEUM trademark, which is of immeasurable value to Plaintiff.

31. Plaintiff has an active presence on the Internet at <www.lizzie-borden.com>. Plaintiff's website provides both information about and advertisement for its LIZZIE BORDEN MUSEUM. Plaintiff's website also has an on-line gift shop for the LIZZIE BORDEN MUSEUM.

32. The Internet has become an extremely important communication and marketing tool and revenue source for Plaintiff.

B. Defendant's Infringing Use of LIZZIE BORDEN MUSEUM

33. Defendants are opening a competing museum dedicated to the Borden murders in Salem, Massachusetts.

34. In connection with Defendants' museum, Defendants are using the confusingly similar and virtually identical names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM and THE TRUE STORY OF LIZZIE BORDEN.

35. In connection with Defendants' museum, Defendants are using the Internet Domain <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com, which are identical to Plaintiff's registered trademark LIZZIE BORDEN MUSEUM.

36. A true and accurate copy of the homepage of Defendants' website is attached hereto as Exhibit 3.

37. On information and belief, Defendants have advertised their museum on their Internet website at <www.lizziebordenmuseum.com> and in print materials for the Salem, Massachusetts tourist industry.

38. On information and belief, Defendants will open shortly after August 4, 2008 – 116 years after the Borden murders and 12 years after the opening of the LIZZIE BORDEN MUSEUM.

39. On June 17, 2008, Plaintiff, through its attorneys, sent a letter demanding Defendants to cease its infringement of Plaintiff's registered LIZZIE BORDEN MUSEUM trademark.

40. Defendants responded to the June 17, 2008 correspondence on June 19, 2008 in which Defendants admitted that they had actual knowledge of Plaintiff's earlier trademark registration of LIZZIE BORDEN MUSEUM.

41. Notwithstanding the Defendants' actual knowledge of the Plaintiff's earlier registered trademark, Defendants refused to cease their infringing uses of Plaintiff's registered trademark and continued their plans to use the names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM and THE TRUE STORY OF LIZZIE BORDEN.

42. Plaintiff reiterated its demand that Defendants cease their infringing uses of Plaintiff's registered LIZZIE BORDEN MUSEUM trademark in correspondence from its attorneys to Defendant dated June 26, 2008 and again on July 21, 2008.

43. To date, Defendant has not responded to either the June 26, 2008 or July 21, 2008 correspondence.

44. Defendants' first use of the names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Domain name <www.lizziebordenmuseum.com> and e-mail address

lizziebordenmuseum@gmail.com was long after Plaintiff's date of first use of LIZZIE BORDEN MUSEUM in August 1996.

45. The registered trademark LIZZIE BORDEN MUSEUM has been used by Plaintiff and not abandoned since a date long prior to any legitimate date upon which Defendants may rely.

46. LIZZIE BORDEN MUSEUM is virtually identical in sound and appearance and creates the same commercial impression as THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM.

47. LIZZIE BORDEN MUSEUM is virtually identical in sound and appearance and creates the same commercial impression as THE TRUE STORY OF LIZZIE BORDEN.

48. LIZZIE BORDEN MUSEUM is identical in sound and appearance and creates the same commercial impression as <www.lizziebordenmuseum.com>.

49. LIZZIE BORDEN MUSEUM is virtually identical in sound and appearance and creates the same commercial impression as lizziebordenmuseum@gmail.com.

50. LIZZIE BORDEN is the dominant feature of Plaintiff's registered trademark.

51. LIZZIE BORDEN is the dominant feature of Defendants' names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM and THE TRUE STORY OF LIZZIE BORDEN.

52. LIZZIE BORDEN is the dominant feature of Defendants' Domain name <www.lizziebordenmuseum.com> and e-mail address lizziebordenmuseum@gmail.com.

53. The Defendants' museum services and gift shop which are the subject of this Complaint and Plaintiff's museum services and gift shop which are the subject of this Complaint are competitive and highly related, if not identical.

54. Defendants' museum services and gift shop services are directed to tourists in Massachusetts as well as people interested in historical events.

55. Upon seeing Defendants' names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, Defendants' Domain name <www.lizziebordenmuseum.com> and Defendants' e-mail address lizziebordenmuseum@gmail.com, consumers are likely to believe that Defendants' museum is related to or affiliated with Plaintiff.

56. The Defendants' use of the names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, Defendants' Domain name <www.lizziebordenmuseum.com> and Defendants' e-mail address lizziebordenmuseum@gmail.com is likely to cause confusion, mistake or deception of purchasers as to the source of the goods and services offered in connection with such names and marks.

57. Consumers are likely to expect that Defendants' museum and gift shop, so named, are of the same quality as Plaintiff's LIZZIE BORDEN MUSEUM branded services.

58. Upon information and belief, Defendants adopted and are using the names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Domain name <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com with actual knowledge of Plaintiff's prior rights in and to LIZZIE BORDEN MUSEUM for museum services.

59. Upon information and belief, Defendants adopted and are using the names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY

OF LIZZIE BORDEN, the Domain name <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com in bad faith.

C. The Effect of Defendants' Unauthorized Use Of Plaintiff's Mark

60. Plaintiff has already experienced instances of actual confusion.

61. On multiple occasions, visitors have questioned the Plaintiff's tour guides at the LIZZIE BORDEN MUSEUM about the connection between the LIZZIE BORDEN MUSEUM and the Salem, Massachusetts museum.

62. The Salem News newspaper, in an interview with Defendant dated July 25, 2008, referred to Defendants' business as the "new Lizzie Borden Museum" on multiple occasions, a true and accurate copy of which is attached hereto as Exhibit 4.

63. A Letter to the Editor of the Salem News, dated July 29, 2008, from a Salem resident suggests that Salem's tourists know very little about the city's history and will be misled as to the connection between Lizzie Borden and Salem, Massachusetts, a true and accurate copy of which is attached hereto as Exhibit 5.

64. The confusion regarding the Defendants' names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Internet domain <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com and the Plaintiff's LIZZIE BORDEN MUSEUM creates a significant risk of harm to Plaintiff.

65. Plaintiff cannot control the nature of Defendants' services or the public perception of them.

66. Defendants have admitted in a newspaper interview with the Salem News dated July 25, 2008, that public response to the proposed Salem museum has not been altogether positive. See attached Exhibit 4.

67. This negative reaction to Defendants' Salem museum, coupled with the confusion regarding it's affiliation to Plaintiff's LIZZIE BORDEN MUSEUM harms the goodwill established by the Plaintiff in its federally registered trademark LIZZIE BORDEN MUSEUM as a source of high quality museum services.

68. The natural, probable and foreseeable result of Defendants' wrongful conduct has been and will continue to be to deprive Plaintiff of the benefit of its exclusive right to use the LIZZIE BORDEN MUSEUM registered trademark, to deprive Plaintiff of goodwill, and to injure Plaintiff's relations with present its and perspective customers.

69. Upon information and belief, Plaintiff will sustain and continue to sustain damage as a result of Defendants' wrongful conduct and Defendants' unauthorized use of THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Domain name <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com.

70. Plaintiff believes that, unless enjoined by this Court, Defendants intend to continue their course of conduct to wrongfully use, infringe upon and otherwise profit from Plaintiff's registered, incontestable trademark.

71. As a direct and proximate result of the acts of Defendants alleged above, Plaintiff has already suffered irreparable damage.

72. Plaintiff has no adequate remedy at law to address all of the injuries that Defendants have caused and intends to cause by their conduct.

73. Plaintiff will continue to suffer irreparable damage and sustain lost profits unless Defendants' actions alleged above are enjoined by this Court.

COUNT I
(Trademark Infringement Of A Federal
Trademark Pursuant to 15 U.S.C. § 1114(1))

74. Plaintiff restates and incorporates by reference the allegations continued in paragraphs 1 through 73 as if fully stated herein.

75. This action is for infringement of a federally registered, incontestable trademark under 15 U.S.C. §1114(1).

76. Plaintiff holds a valid, federal trademark registration for the mark LIZZIE BORDEN MUSEUM.

77. Defendants are using the names and marks THE TRUE STORY OF LIZZIE BORDEN BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Internet domain <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com in connection with the provision of museum services in commerce.

78. Defendants' names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Internet domain <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com are virtually identical in appearance and sound, and create the same commercial impression as Plaintiff's LIZZIE BORDEN MUSEUM trademark.

79. Plaintiff has clear priority over Defendants by virtue of its registration of the mark LIZZIE BORDEN MUSEUM on the Principal Register prior to Defendants' date of first use of the names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM,

THE TRUE STORY OF LIZZIE BORDEN, the Internet domain

<www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com.

80. Defendants' names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Internet domain <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com and Plaintiff's registered trademark LIZZIE BORDEN MUSEUM are used on the same or similar goods and services.

81. Consumers are likely to see Defendants' THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Internet domain <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com and mistakenly believe that Defendants' museum is related to, affiliated with, or sponsored by Plaintiff.

82. Plaintiff has no control over the quality of the services that Defendants provide under the names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Internet domain <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com.

83. The favorable goodwill that Plaintiff has developed in its valuable LIZZIE BORDEN MUSEUM trademark is at risk as a result of Defendants' use of the names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Internet domain <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com.

84. Plaintiff has suffered and will continue to suffer irreparable harm, as a result of Defendants' use of the names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT

SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Internet domain <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com for museum services.

85. Defendants use of the names and marks THE TRUE STORY OF LIZZIE BORDEN GIFT SHOP AND MUSEUM, THE TRUE STORY OF LIZZIE BORDEN, the Internet domain <www.lizziebordenmuseum.com> and the e-mail address lizziebordenmuseum@gmail.com constitutes trademark infringement in violation of Section 32(1) of the Lanham Act., codified at 15 U.S.C. § 1114(1).

86. By reason of the foregoing, Plaintiff has been damaged and Plaintiff is entitled to injunctive relief and damages in an amount to be proven at trial.

WHEREFORE, Plaintiff demands judgment against Defendants for the following:

1. That Defendants, their respective agents, servants, employees, officers, directors, successors and assigns, and all those in active concert or participation with them, be temporarily restrained and preliminary and permanently enjoined from:

- (a) using in any form or manner LIZZIE BORDEN in whole or in part in or in connection with any trade name, trademark, service mark, domain name or email address for museum services, tourist attractions or products to be sold in such venues;
- (b) expressly or impliedly representing itself or its services as being affiliated in any manner with Plaintiff or as authorized, sponsored, or endorsed by or otherwise connected with the LIZZIE BORDEN MUSEUM;
- (c) engaging in any conduct which will cause or is likely to cause confusion, mistake or misunderstanding as to the source, affiliation, connection, or association of Defendants or their products or services with Plaintiff or its services; and
- (d) otherwise infringing upon the trademark rights of Plaintiff or unfairly competing with Plaintiff in any manner whatsoever.

2. That the Court enter an order requiring Defendant Pickel to immediately disable and transfer to Plaintiff the domain name <www.lizziebordenmuseum.com>;
3. That the Court enter an order requiring Defendant Pickel to immediately disable and transfer to Plaintiff the e-mail address lizziebordenmuseum@gmail.com;
4. That the Court find that Defendants' acts complained of herein were done willfully and with knowledge of Plaintiff's rights and award Plaintiff compensatory damages, treble damages, costs, and attorneys' fees; and
5. That the Court award Plaintiff such other relief as this Court deems proper.

Dated: August 6, 2008

Respectfully submitted,

LIZZIE BORDEN BED & BREAKFAST, LLC

By its attorneys,



William R. Grimm

Jeremy Blackowicz (BBO # 650945)

HINCKLEY, ALLEN & SNYDER LLP

28 State Street

Boston, Massachusetts 02109

(617) 345-9000

VERIFICATION

I, Donald E. Woods, Manager of Lizzie Borden Bed & Breakfast, LLC hereby certify, under the penalties of perjury: (a) that I have read the foregoing Verified Complaint; and (b) that the allegations contained in the Verified Amended Complaint are true and accurate based upon my personal knowledge, except such allegations as are made upon information and belief, which allegations I believe to be true.

Dated: August 4, 2008

Donald E. Woods

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

LIZZIE BORDEN BED AND BREAKFAST, LLC

(b) County of Residence of First Listed Plaintiff Bristol, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
William R. Grimm, Jeremy Blackowicz, Hinckley, Allen & Snyder,
LLP, 28 State Street, Boston, MA 02109, (617) 345-9000

DEFENDANTS

LEONARD PICKEL, DIVERSIFIED ADVENTURES, THE
TRUE STORY OF LIZZIE BORDEN GIFT SHOP & MUSEUM

County of Residence of First Listed Defendant York, SC
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury				<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract					<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability					<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise					<input type="checkbox"/> 890 Other Statutory Actions
					<input type="checkbox"/> 891 Agricultural Acts
					<input type="checkbox"/> 892 Economic Stabilization Act
					<input type="checkbox"/> 893 Environmental Matters
					<input type="checkbox"/> 894 Freedom Allocation Act
					<input type="checkbox"/> 895 Freedom of Information Act
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Lanham Act, 15 U.S.C. 1114

Brief description of cause:
Action for Federal Trademark Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

8.6.08
FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) LIZZIE BORDEN BED AND BREAKFAST, LLC v. LEONARD PICKEL

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(e)(1)).

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 196, 368, 400, 440, 441-448, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 382, 385, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 462, 453, 466, 480, 490, 510, 530, 610, 620, 630, 640, 650, 680, 890, 810, 881-885, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

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