

JUN 04 1999

UNITED STATES DISTRICT COURT *Michael N. Milby, Clerk of Court* SOUTHERN DISTRICT OF TEXAS

GALLERIA, INC.,

Plaintiff,

versus

GARY RICKETTS, dba
THE DENTISTS OF THE GALLERIA,

Defendant.

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Civil Action No. H-99-643

**AGREED FINAL JUDGMENT
AND PERMANENT INJUNCTION**

1. Plaintiff Galleria, Inc. ("Plaintiff") is a Texas corporation having an office and place of business in Houston, Texas. Defendant operates a business in Houston, Texas. Therefore, the Court has personal jurisdiction over the defendant.

2. The Court has jurisdiction over the subject matter of this action under 15 U.S.C. § 1121, 28 U.S.C. § 1338, and the doctrine of pendent jurisdiction.

3. Since at least as early as 1970, plaintiff and its predecessors have used the mark "GALLERIA" in connection with the management, operation, rental and promotion of space in a commercial real estate development operated as a multi-use development in Houston, Texas. Since at least as early as 1982, plaintiff and its predecessors have used the mark "Galleria" in connection with the operation of a multi-use development in Dallas, Texas. Plaintiff, through its licensees, has offered for sale

to the public various goods, including T-shirts, postcards, and shopping bags which bear the mark "GALLERIA". The name "GALLERIA" has acquired widespread fame and public recognition in the Houston and Dallas areas and elsewhere as designating plaintiff's business and services.

4. On November 1, 1972, plaintiff's predecessor registered the mark "theGalleria" as a service mark with the State of Texas under Registration No. 30119 for rental and promotional services relative to business space in a commercial development. Effective January 1, 1981, that registration and all of the rights to the name "GALLERIA" were assigned to plaintiff. The registration was renewed on May 19, 1982, and it is presently in force.

5. Although defendant is not in any way affiliated with plaintiff, it has been using the name "GALLERIA" in identifying his business, including in the telephone book.

6. Defendant's unauthorized use of the name "GALLERIA" as part of the trade name and service mark for his business is likely to cause confusion as to defendant's affiliation with plaintiff or with plaintiff's famous real estate developments.

7. On at least two occasions plaintiff has advised defendant that defendant's use of the name "GALLERIA" in connection with defendant's business infringes plaintiff's rights. However, defendant has refused to discontinue his use of the name "GALLERIA" in connection with its business. Defendant's continued infringement of plaintiff's rights is willful and deliberate.

8. Defendant's actions constitute (a) the use of a false description or representation, a false designation of origin, or false advertising, in violation of 15 U.S.C. § 1125(a), (b) infringement of plaintiff's registered marks under § 16.26 of the Texas Business & Commerce Code, (c) common law trademark infringement and unfair competition under Texas law, (d) injury to and dilution of plaintiff's trade name, trademarks, and service marks under § 16.29 of the Texas Business & Commerce Code, and (e) injury to and dilution of plaintiff's trade name, trademark, and service mark under 15 U.S.C. § 1125(c).

9. Defendant is ordered, pursuant to 15 U.S.C. § 1118, to deliver up for destruction to plaintiff's attorneys, within thirty (30) days after entry of this judgment, all literature, signs, labels, prints, packages, wrappers, containers, advertising materials, stationery, and any other items in its possession or control which contain the infringing designation "GALLERIA", either alone or in combination with other words or symbols, except for the phrase "Dentists Near the Galleria", and all plates, molds, matrices, masters, and other means of making any of the infringing items.

10. Thirty (30) days after entry of this judgment defendant shall take the following actions. If defendant uses "GALLERIA" in a d/b/a, defendant shall (a) file a withdrawal certificate withdrawing the assumed name which has "GALLERIA" as part of the name, and (b) file a new assumed name certificate which does not have "GALLERIA" as part of the name. If defendant uses "GALLERIA" in a corporate name, defendant shall (a) change the name of the corporation to delete the term "GALLERIA", and (b) file amended articles of incorporation with the Texas Secretary

of State, indicating the name change. Defendant shall request the telephone directory company to change the name of defendant's business in the alphabetical listings, the topical listings, and in any advertisement in the telephone books. Defendant shall provide plaintiff's Attorney-in-Charge with a copy of all paperwork associated with the withdrawal certificate, the new assumed name, amended articles of incorporation, the filing of those articles with the Texas Secretary of State, and the requests to the telephone directory company.

11. Defendant and its agents, servants, and employees, and all others in concert or participation with them, are enjoined from using (a) "Galleria Area"; or (b) the name "GALLERIA" as a part of defendant's trade name, or in any other manner, except as part of a truthful informational statement regarding the location of defendant's business with respect to the GALLERIA multi-use development, in which statement the word "Galleria" shall appear in the same size, format, color, and type style as the other words in the statement. Defendant shall be in compliance with these provisions no later than thirty (30) days after entry of this judgment. Defendant may use the name "Dentists Near the Galleria" in all telephone directory listings.


12. Defendant will change its equipment and materials used for printing its invoices, so that thirty (30) days after entry of this judgment its invoices will be in conformance with this judgment.

13. Effective immediately, defendant shall not create, order, or contract for any invoices, literature, posters, cards, labels, prints, packages, wrappers, containers, advertising materials, or other items which contain the term "GALLERIA" in any form,

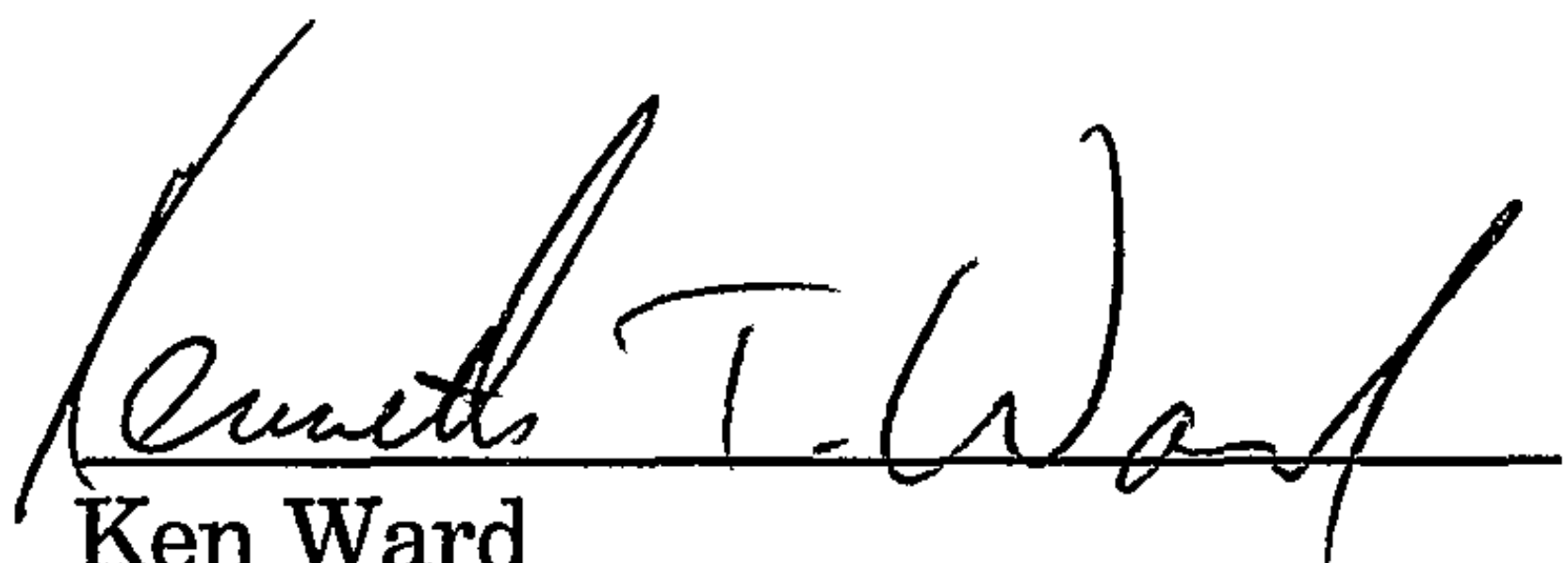
except for the phrase "Dentists Near the Galleria", as specifically permitted in this judgment. Defendant shall deliver a written certification to plaintiff's attorney-in-charge thirty (30) days after entry of this judgment as to when all existing advertising contracts expire, and shall further certify that defendant has changed all invoices, listings, advertisements, and signs to be in conformance with this judgment.

14. Defendant shall pay plaintiff's attorneys' fees for any legal action plaintiff takes to enforce this judgment.

SIGNED this 2nd day of June, 1999.


John D. Rainey
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:



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