

Hoyt

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT OF TEXAS
SOUTHERN DISTRICT OF TEXAS

ENTERED

GALLERIA, INC.,

§ JUL 29 1999

Plaintiff,

§
Michael N. Milby, Clerk

versus

§ Civil Action No. H-99-1221

HELEN G. BENSON, dba
GALLERIA AREA ESCORTS

Defendant.

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**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

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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. 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, any other items in her possession or control which contain the infringing designation "GALLERIA", either alone or in combination with other words or symbols, 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 listing, the topical listing, 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 companies, and to the Internet domain name registrars.

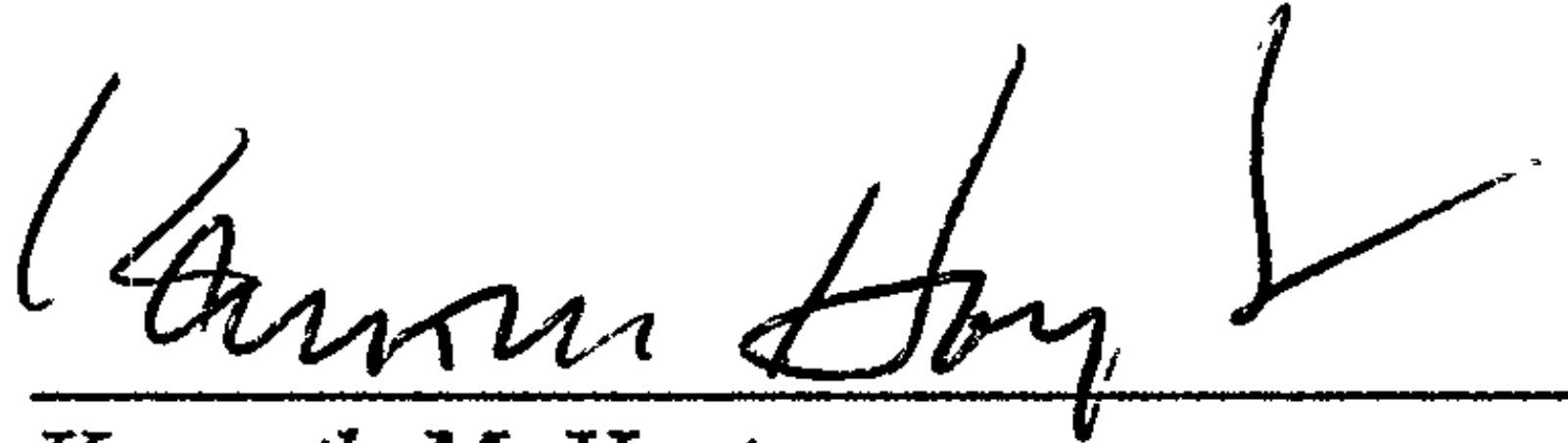
11. Defendant and its agents, servants, and employees, and all others in concert or participation with them, are enjoined from using (a) "Galleria Area"; or (b) the name "GALLERIA" as a part of defendant's trade name, or in any other manner, except as part of a truthful informational statement regarding 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.

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 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.

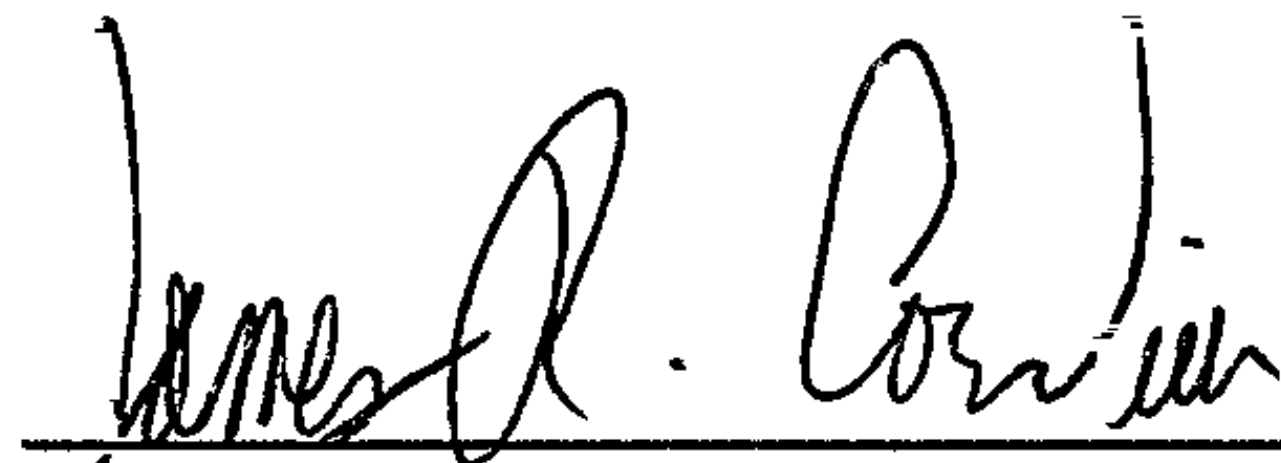
14. Defendant shall pay plaintiff's attorneys' fees for any legal action plaintiff takes to enforce this judgment.

SIGNED this 28th day of July, 1999.



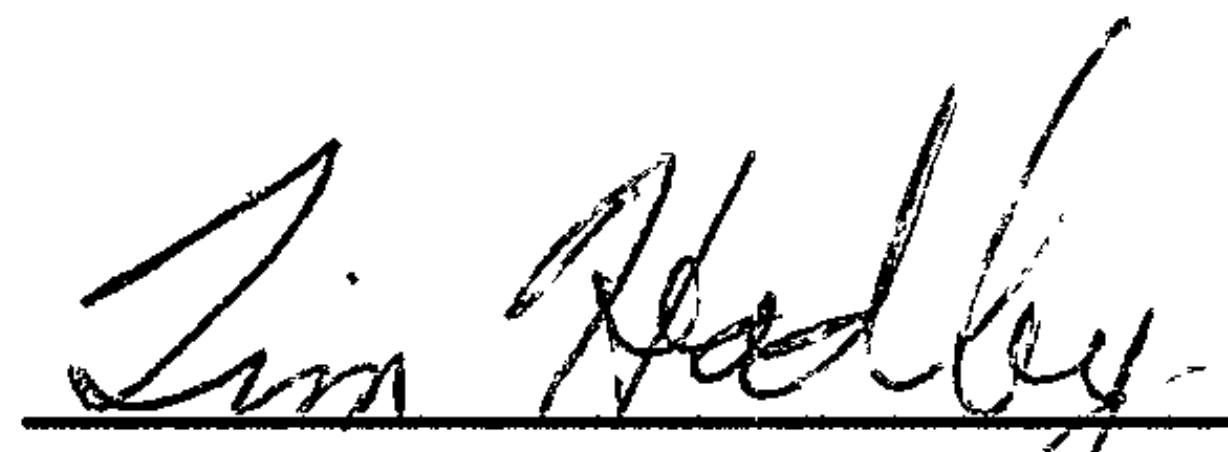
Kenneth M. Hoyt
United States District Judge

APPROVED AS TO FORM AND SUBSTANCE:



James R. Cornelius
Attorney-in-Charge for Defendant
State Bar No. 04834010
Southern District Bar No. _____
510 Bering, Suite 300
Houston, TX 77057
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Date: 7-21-99



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Date: 7-23-99

CLOSED

**U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:99-cv-01221**

Galleria Inc, et al v. Benson
Assigned to: Judge Kenneth M. Hoyt
Demand: \$0
Cause: 28:1338 Trademark Infringement

Date Filed: 04/22/1999
Date Terminated: 07/28/1999
Jury Demand: None
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

Galleria Inc

represented by **John Timothy Headley**
Law Offices of Tim Headley
7941 Katy Fwy
Suite 506
Houston, TX 77024-1924
713-467-8500
Fax: 713-467-8501
Email: Tim.Headley@HeadleyIPLaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

HG Shopping Centers LP

represented by **John Timothy Headley**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Helen G Benson
doing business as
Galleria Area Escorts

represented by **James Russell Cornelius**
State Bar Information
7447 Harwin
Ste 288
Houston, TX 77036
713-914-0508
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Movant

James R Cornelius

represented by **James R Cornelius**
7447 Harwin, Suite 288
Houston, Tx 77036
713-914-0508
PRO SE

Date Filed	#	Docket Text
04/22/1999	1	COMPLAINT filed; FILING FEE \$ 150.00 RECEIPT # 489235 (bchurchill) (Entered: 04/23/1999)
04/22/1999	2	Order setting Initial Pretrial and Scheduling Conference on 3:45 9/20/99 by telephone before Judge Kenneth M. Hoyt and Order to Disclose Interested Persons, filed. Party filing case notified. (bchurchill) (Entered: 04/23/1999)
04/22/1999		1 SUMMONS issued for Helen G Benson (bchurchill) (Entered: 04/23/1999)
04/28/1999	3	RETURN OF SERVICE executed as to Helen G Benson 4/24/99 filed Answer due on 5/14/99 for Helen G Benson (fmrempp) (Entered: 04/28/1999)
07/01/1999	4	INITIAL DISCLOSURE pursuant to Order for Accelerated Discovery by Galleria Inc , filed. (fmrempp) (Entered: 07/01/1999)
07/06/1999	5	Joint Report of Meeting and Joint Discovery/Case Management Plan by Galleria Inc, Helen G Benson , filed. (fmrempp) (Entered: 07/06/1999)
07/26/1999		Rec'd and fwd to CRD: Agreed Final Judgment and Permanent Injunction (fmrempp) (Entered: 07/26/1999)
07/28/1999	6	FINAL JUDGMENT for Galleria Inc and PERMANENT INJUNCTION entered. Deft shall pay pltf's attys' fees for any legal action pltf takes to enforce this judgment. Parties ntfd. (signed by Judge Kenneth M. Hoyt) (fmrempp) (Entered: 07/29/1999)
07/28/1999		Case closed (fmrempp) (Entered: 07/29/1999)
11/23/1999	7	MOTION for contempt by Galleria Inc, Motion Docket Date 12/13/99 [7-1] motion , filed. (psmith) (Entered: 11/23/1999)
11/24/1999	8	ORDER Motion hearing set for 9:00 12/17/99 for [7-1] motion for contempt , Response to motion reset to 12/13/99 for [7-1] motion for contempt , Motion Docket Date 12/13/99 [7-1] motion for contempt , entered; Parties notified. (signed by Judge Kenneth M. Hoyt) (fmrempp) (Entered: 11/24/1999)
12/20/1999	9	Minute entry: Motion Hearing held. Terminated deadlines Appearances: J Headley & N Peffer f/Pltf; J Cornelius f/Deft. Ct Reporter: K. Metzger. The Deft did not appear. Counsel for the Deft announced on the record that he does not represent the deft. Mr. Cornelius to provide all available information on the location and phone numbers for the deft to Pltf's counsel and the Court today. On Pltf's oral m/for assessment of attorney fees, Pltf counsel to file proposed orders as stated on the record. (fmrempp) (Entered: 12/20/1999)
12/20/1999	10	MOTION for attorney fees by HG Shopping Centers LP, Motion Docket Date 1/9/00 [10-1] motion , filed. (ltien) Modified on 12/21/1999 (Entered: 12/20/1999)
12/20/1999	11	MOTION for full disclosure of all information about Benson's location by HG Shopping Centers LP, Motion Docket Date 1/9/00 [11-1] motion , filed. (hlerma) Modified on 12/21/1999 (Entered: 12/21/1999)
12/20/1999	12	RESPONSE by James R. Cornelius, atty for Helen G Benson to Pltf's [10-1] motion for attorney fees , filed. (fmrempp) (Entered: 12/21/1999)

12/20/1999	12	Part 2: REQUEST for attorney fees by Helen G Benson, Motion Docket Date 1/9/00 [12-1] motion , filed. (fmremf) (Entered: 12/21/1999)
12/22/1999	13	REPLY by HG Shopping Centers to Defts response to [10-1] motion for attorney fees , filed (psmith) (Entered: 12/23/1999)
01/05/2000	14	ORDER granting in part, Pltf's [10-1] motion for attorney fees; denying Respondent's [12-1] motion for attorney fees , entered; Parties notified. (signed by Judge Kenneth M. Hoyt) (fmremf) (Entered: 01/05/2000)
01/05/2000	15	ORDER Mr Cornelius shall give a cashier's check, in the amount of \$600.00 to Pltf's counsel, Mr. Tim Headley, on or before 1/31/00. Mr. James R. Cornelius's [12-1] motion for attorney fees is denied, entered; Parties notified. (signed by Judge Kenneth M. Hoyt) (fmremf) (Entered: 01/05/2000)
01/05/2000	16	ORDER granting [11-1] motion for full disclosure of all information about Benson's location. Mr. James R. Cornelius shall make a full disclosure within 2 days , entered; Parties notified. (signed by Judge Kenneth M. Hoyt) (fmremf) (Entered: 01/05/2000)
01/25/2000	17	MOTION for contempt by HG Shopping Centers, Motion Docket Date 2/14/00 [17-1] motion , filed. (fmremf) (Entered: 01/26/2000)
01/26/2000	18	ORDER TO SHOW CAUSE: Show Cause Hearing set for 11:00 2/22/00, entered; Parties notified; (signed by Judge Kenneth M. Hoyt) (fmremf) (Entered: 01/26/2000)
02/01/2000	19	MOTION for contempt by Galleria Inc, HG Shopping Centers, Motion Docket Date 2/21/00 [19-1] motion , filed. (fmremf) (Entered: 02/01/2000)
02/22/2000	20	Minute entry of hearing held 2/22/2000, filed; reset show cause hearing for 9:00 2/25/00 before Judge Kenneth M. Hoyt ; Ct Reporter: June Simon; Appearances: Tim Headly f/Pltf; no appearance by counsel for Deft (fmremf) (Entered: 02/23/2000)
02/25/2000	21	Minute entry: Show Cause Hearing held. Terminated deadlines Ct Reporter: J. Schaffer. Appearances: T. Headley, N. Peiffer, J. Cornelius. Mr. Cornelius' oral motion for continuance - Denied. The Court finds that Mr. Cornelius is in contempt of the Court's order dated 1/5/00. Order of 1/5/00 is modified. Mr. Cornelius shall pay by cashier check the amount of \$600 as previously ordered, plus \$1200.00 for proceedings on Tuesday and today. Mr. Cornelius is required to write a letter of apology to the Court and send a copy to opposing counsel, within 10 days. (fmremf) (Entered: 02/25/2000)
02/25/2000	22	MOTION to dismiss by James R Cornelius, Motion Docket Date 3/16/00 [22-1] motion , filed. (fmremf) (Entered: 02/28/2000)
02/25/2000	22	ANSWER/RESPONSE by James R Cornelius to [19-1] motion for contempt , filed. (fmremf) (Entered: 02/28/2000)
04/06/2000	23	ORDER denying/mooting [22-1] motion to dismiss , entered; Parties notified. (signed by Judge Kenneth M. Hoyt) (fmremf) (Entered: 04/06/2000)

PACER Service Center	
Transaction Receipt	
05/27/2012 17:31:29	
PACER Login:	th6751
Client Code:	