

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

~~AUG 11 1999~~

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

GALLERIA, INC.,

Plaintiff,

versus

DENISE FISHER, dba
GALLERIA DREAM GIRLS

Defendant.

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Civil Action H-99-644

Agreed Final Judgment And Permanent Injunction

1. 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.

2. Defendant's continued infringement of plaintiff's rights is willful and deliberate.

3. 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).

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4. 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 its 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.

5. 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.

6. 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.

7. 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.

8. 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.

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

SIGNED this 1st DAY of August, 1999.

Judge Lynn N. Hughes



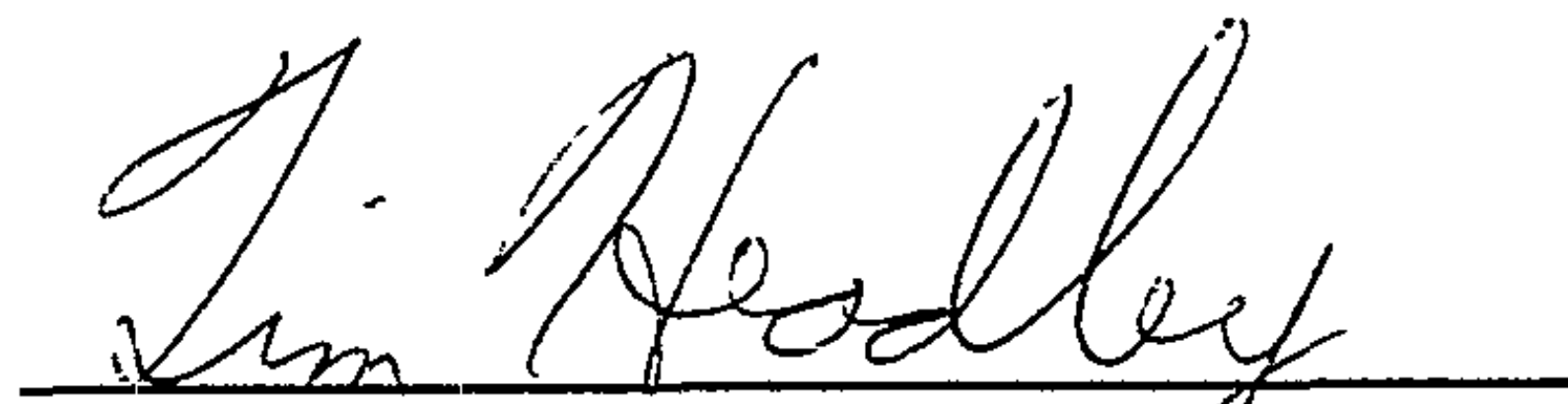
Lynn N. Hughes
United States District Judge

APPROVED AS TO FORM AND SUBSTANCE:



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