

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

GALLERIA, INC.,

Plaintiff,

versus

RAY COURTEMANCHE, SHAWNEE
COURTEMANCHE, and CHRIS WYATT,

Defendants.

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United States Courts
Southern District of Texas
ENTERED

AUG 12 1999

Civil Action H-99-2382

Michael N. Milby, Clerk of Court

Agreed Final Judgment And Permanent Injunction

1. Defendants' unauthorized use of the name "GALLERIA" as part of the trade name and service mark for their business is likely to cause confusion as to defendants' affiliation with plaintiff or with plaintiff's famous real estate developments.

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

3. Defendants' 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).

4. Defendants are ordered, pursuant to 15 U.S.C. § 1118, to deliver up for destruction to plaintiff's attorneys, within two months after entry of this judgment, all literature, signs, labels, prints, packages, wrappers, containers, advertising materials, stationery, any other items in their 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. One month after entry of this judgment Defendants shall take the following actions. If Defendants use "GALLERIA" in a d/b/a, Defendants 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 Defendants use "GALLERIA" in a corporate name, Defendants 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. For any telephone directory in which defendants have a listing which uses the name "Galleria", defendants shall request the telephone directory company to change the name of defendants' business to a name that does not use the name "Galleria". Defendants 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.

6. Defendants and their agents, servants, and employees, and all others in concert or participation with them, are enjoined from using "Galleria Area". They are also enjoined from using the name "GALLERIA" as a part of Defendants' trade name, or in any other manner, except as part of a truthful informational statement regarding the location of Defendants' 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. Defendants shall be in compliance with these provisions no later than two months after entry of this judgment.

7. Defendants and their agents, successors, assigns, or other individuals or entities controlling, controlled by, or affiliated with, and all those in privity, active concert, or participation with defendants (collectively "defendants and their agents") are enjoined from:

- a. using, attempting to use, or causing to be used, including but not limited to, registering, attempting to register, or causing to be registered, either directly or through agents, servants, representative, successors, assigns or other individuals or entities (collectively "other entities"), the "GALLERIA" marks, any variation thereof, or any other similar names or marks in connection with any commercial activity on the Internet or in any other medium;
- b. listing, printing, posting, indexing, linking, storing, or otherwise associating, either directly or through other entities, the "GALLERIA" marks, any variation thereof, or any other similar names or marks in connection with

any commercial activity in any form, including, but not limited to, visible, invisible, encrypted, searchable, or non-searchable forms, within web sites, web pages, home pages, Internet sites, Internet pages, databases, programs, or any other storage means, either temporary or permanent, on the Internet or any other medium;

c. using the "GALLERIA" marks, any variation thereof, or any other similar names or marks as a domain name or in any other medium; and

d. otherwise engaging in acts, either directly or through other entities, constituting trademark infringement or dilution of the "GALLERIA" marks.

8. Within five (5) days after entry of this injunction, defendants and their agents shall take all actions necessary to transfer the registration of the "houstongalleria.com" domain name to plaintiff's designee. Plaintiff's designee is:

Galleria Center Association
Administrative contact: Julie Cuenod
5075 Westheimer, Suite 875
Houston, TX 77056
Work: 713-966-3525
Fax: 713-966-3596
E-Mail: julie_brown@hines.com

For any other Internet domain name owned by defendants, which domain name includes the name "Galleria", defendants shall request the Internet domain name registrar to change the name of defendants' domain name to a name that does not use the name "Galleria".

9. Defendants shall file with the Court and serve on plaintiff, within thirty (30) days after entry of this injunction, a report in writing and under oath setting forth in detail the manner and form in which defendants have complied with the injunction.

10. Beginning five days after entry of the injunction, defendants shall post, for one month, the following notice on its web site(s), and, within five days after entry of the injunction, also email this notice to each person that had accessed defendants' web site while defendants had statements on that web site about the Hines Company:

We, the operators of the former houstongalleria.com web site, have reached a settlement with Galleria, Inc., the owner of the "GALLERIA" trademarks and service marks. We now realize that our use of the houstongalleria.com domain name was actually infringing upon the rights of Galleria, Inc.'s "GALLERIA" trademarks and service marks. Accordingly, we have decided to operate our web site under a new domain name.

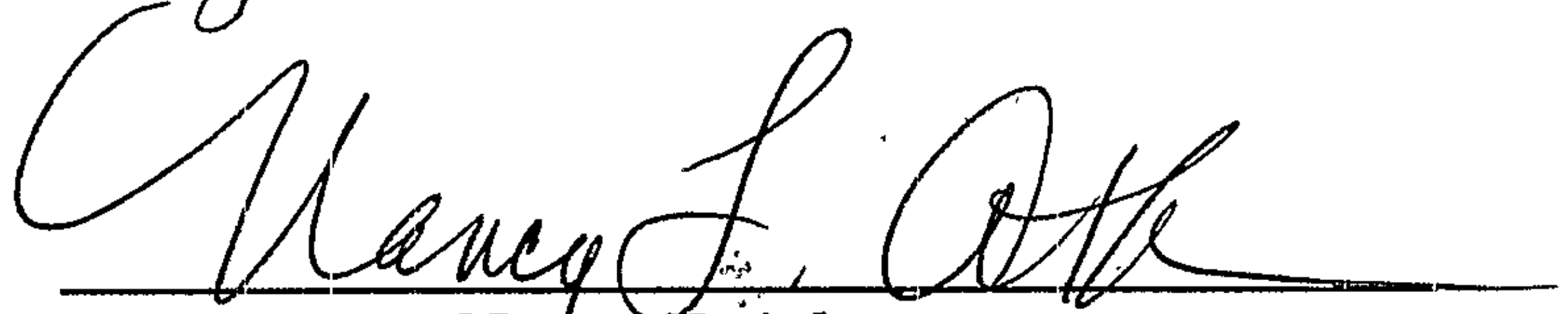
Contrary to what we previously stated on our web site, Galleria, Inc. never requested that we just sign over our web site. Galleria, Inc. only requested that we cease our use of the houstongalleria.com domain name. Galleria, Inc. did not want to prevent us from providing art, music, games, and reviews to the public, but only wanted to ensure that we were providing our services in a manner that did not constitute infringement or dilution of Galleria, Inc.'s trademarks and service marks.

We now recognize that the Hines Corporation was not trying to "bully" us, but rather, was just attempting to protect its valuable trademarks and service marks. We now understand that, according to the law, Galleria, Inc. must pursue unauthorized users of the "GALLERIA" marks, or else risk forfeiting its rights in its marks.

We apologize for any negative statements we may have made about the Hines Company, Gerald Hines, or the Galleria, because we now realize that such statements were unfounded. While we appreciate the support of our followers, we hope that all of you will not let this matter tarnish your opinion of the Hines Company, Gerald Hines, or the Galleria. We are pleased with the final amicable and professional resolution of this matter.

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

Signed this 11th day of August, 1999.



Nancy F. Atlas
United States District Judge

Approved as to form and substance:

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Fax: 713-722-9539

Date: 8-6-99

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Date: August 06, 1999

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