

Original

UNITED STATES DISTRICT COURT

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

NOV 03 1999

GALLERIA, INC.,

Plaintiff,

versus

ABE DUNN AND AUTOWORLD/GALLERIA,  
INC.

Defendants.

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MICHAEL N. MILBY, CLERK OF COURT

Civil Action H-99-2289

**Agreed 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 General Counsel, at Galleria, Inc., 2800 Post Oak Boulevard, Suite 5000, Houston, Texas, 77056-6110, within nine months after entry of this judgment, all remaining 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. Three months 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. Defendants do not have to change their existing corporate name, as long as they comply with the rest of the terms of this injunction.

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". For any 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".



Three months after entry of this judgment, Defendants shall provide plaintiff's General Counsel and plaintiff's Attorney-in-Charge with a copy of all paperwork associated with the withdrawal certificate, the new assumed name, 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 nine months after entry of this judgment.

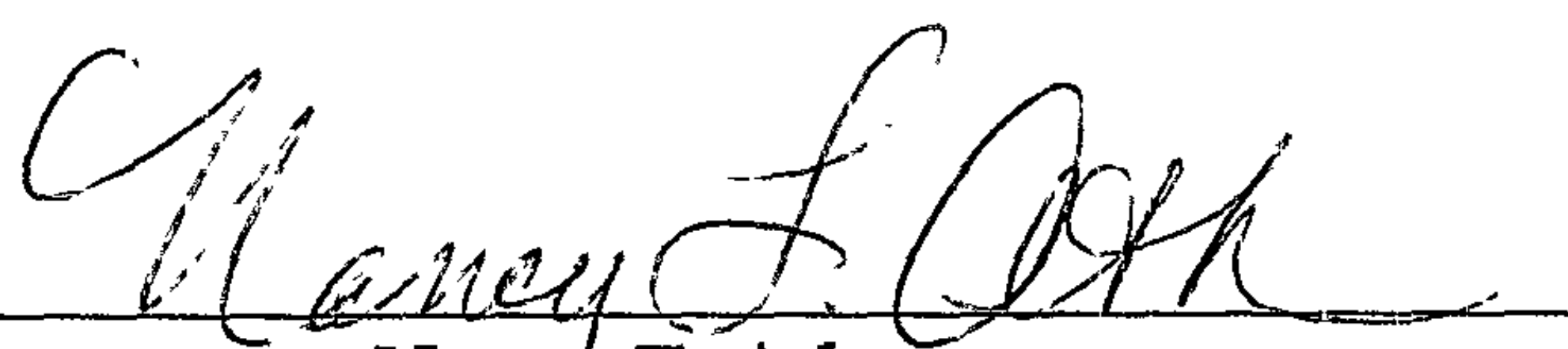
7. Defendants shall change their equipment and materials used for printing their invoices, so that nine months after entry of this judgment, their invoices shall be in conformance with this judgment.

8. Effective immediately, Defendants 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. Within three months after entry of this judgment, Defendants shall change all signs and billboards to be in conformance with the terms of this judgment. Nine months after entry of this judgment, Defendants shall

deliver a written certification to plaintiff's General Counsel and to plaintiff's Attorney-in-Charge as to when all existing advertising contracts expire, and shall further certify that Defendants have changed all invoices, listings, advertisements, and signs to be in conformance with this judgment.

9. Defendants shall pay plaintiff's attorneys' fees for any legal action plaintiff takes to enforce this Agreed Permanent Injunction. *This Order closes this case.*

Signed this 30<sup>th</sup> day of October, 1999.

  
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Nancy F. Atlas  
United States District Judge



**Approved as to form and substance:**

Mike Stenglein

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