

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

DENT POPPERS, L.L.C.

Plaintiff,

v.

**ADEL ABU-EL-JIBIEN,
INDIVIDUALLY AND D/B/A DENT
POPPERS**

Defendants.

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Case No. 3:12-cv-02208

PLAINTIFF DENT POPPERS, L.L.C.'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff DENT POPPERS, L.L.C., and files this Original Complaint against Defendant ADEL ABU-EL-JIBIEN, INDIVIDUALLY AND D/B/A DENT POPPERS (the "Complaint"), and in support of said Complaint avers the following:

I. SUMMARY OF CAUSES OF ACTION

1. This is a suit for trademark infringement and related causes of action, as follows:
i) Trademark Infringement Under 15 U.S.C. §1114(1)(a) (Section 32 of the Lanham Act); ii) Counterfeiting in Violation of 15 U.S.C. §1114(1)(b) (Section 32 of the Lanham Act); iii) False Designation of Origin, False Advertising, and Trade Dress Infringement Under 15 U.S.C. §1125(a); iv) Unfair Competition Under the Lanham Act; v) Unjust Enrichment; and, vi) Tortious Interference with Prospective Business Relations.

II. PARTIES

2. Plaintiff DENT POPPERS, L.L.C. (“DENT POPPERS”) is a Texas limited liability company whose principal place of business is located at P.O. Box 700476, Dallas, Texas 75370.

3. Defendant ADEL ABU-EL-JIBIEN, INDIVIDUALLY AND D/B/A DENT POPPERS (“ABU-EL-JIBIEN”) is a Texas resident whose primary place of business is located at and who may be served at 1842 W. Division St., Ste. 110, Arlington, Texas 76012 or wherever else he may be found.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over DENT POPPER’s claims pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

5. Venue is proper in this district with respect to DENT POPPER’s claims pursuant to 28 U.S.C. §§ 1391.

IV. FACTUAL BACKGROUND

6. DENT POPPERS is the owner of a trademark for “Dent Poppers,” specifically Federal Trademark Registration Number 4,134,909 (the “Mark”), and of a domain name, “dentpoppers.com” (the “Domain”). A true and correct copy of DENT POPPERS’ Trademark Registration is attached hereto as “Exhibit A” and is incorporated by reference as if fully set forth herein.

7. In or about June 2012, DENT POPPERS became aware that Defendant ABU-EL-JIBIEN had been doing business as “Dent Poppers” (the “DBA”) at least since June 14, 2011, as evidenced by ABU-EL-JIBIEN’s Certificate of Ownership filed with the Tarrant County Assumed Name Records, and potentially since January 1, 2009, as evidenced by ABU-EL-

JIBIEN's listing with the Better Business Bureau. True and correct copies of said Certificate of Ownership and Better Business Bureau Listing are attached hereto as "Exhibit B" and "Exhibit C" respectively and are incorporated by reference as if fully set forth herein. Additionally, DENT POPPERS became aware that ABU-EL-JIBIEN has registered the domain name "www.dent-poppers.com." as evidenced by a registration record obtained from www.whoisentry.com, and, upon information and belief, is intending to operate a website on said domain in competition with DENT POPPERS (the "Infringing Domain"). A true and correct copy of said registration record is attached hereto as "Exhibit D" and is incorporated by reference as if fully set forth herein.

8. Defendant ABU-EL-JIBIEN used the Mark and sold products bearing the Mark and/or offered services under the Mark without DENT POPPERS' authorization or permission.

9. Defendant ABU-EL-JIBIEN's unauthorized use of the Mark caused consumers to erroneously believe that Defendant ABU-EL-JIBIEN is sponsored by, connected to, and/or otherwise affiliated with DENT POPPERS.

10. Defendant ABU-EL-JIBIEN's unauthorized use of the Mark caused consumers to erroneously believe that Defendant ABU-EL-JIBIEN's goods and/or services are sponsored by, connected to, and/or otherwise affiliated with DENT POPPERS.

11. Defendant ABU-EL-JIBIEN's unauthorized use of the Mark and the Infringing Domain has caused and/or will cause consumers to erroneously believe that Defendant ABU-EL-JIBIEN's websites, including, but not limited to, www.dent-poppers.com, are sponsored by, connected to, and/or otherwise affiliated with DENT POPPERS.

12. Defendant ABU-EL-JIBIEN purposely used the Mark to cause confusion in the marketplace with regard to the sponsorship, approval, and/or affiliation of Defendant ABU-EL-JIBIEN's goods and/or services with DENT POPPERS.

13. Defendant ABU-EL-JIBIEN intentionally and fraudulently held out his goods and/or services to be the products of DENT POPPERS.

14. Defendant ABU-EL-JIBIEN's unauthorized sale of goods bearing the Mark and/or offer of services under the Mark has tortuously interfered with DENT POPPERS' ability to consummate sales with customers who are attempting to purchase products bearing the Mark, services offered under the Mark, and/or products and/or services sponsored by, approved by, and/or otherwise connected with DENT POPPERS.

15. On or about June 5, 2012, counsel for DENT POPPERS issued a Cease and Desist Letter to Defendant ABU-EL-JIBIEN, notifying Defendant ABU-EL-JIBIEN to cease and desist his use of the Mark and the Infringing Domain (the "C&D Letter"). A true and correct copy of said C&D Letter is attached hereto as "Exhibit E" and is incorporated by reference as if fully set forth herein.

16. As of the date of this Complaint, DENT POPPERS has received no response to the C&D Letter. Upon information and belief, despite receiving the C&D Letter, Defendant ABU-EL-JIBIEN has continued his unauthorized use of the Mark and sale and/or marketing of goods and/or services under Mark and/or goods bearing the Mark.

**V. FIRST CAUSE OF ACTION—TRADEMARK INFRINGEMENT UNDER
15 U.S.C §1114(1)(a) (SECTION 32 OF THE LANHAM ACT)**

17. DENT POPPERS hereby reincorporates paragraphs 1 through 16 hereinabove.

18. DENT POPPERS has a protectable right in its Mark. DENT POPPERS owns registrations of the Mark with the United States Patent and Trademark Office, specifically United States Patent and Trademark Registration Number 4,134,909.

19. DENT POPPERS' use of the Mark and related stylistic designs predates Defendant ABU-EL-JIBIEN's use of the Mark.

20. Defendant ABU-EL-JIBIEN's use of the Mark and related stylistic designs is in the same class as DENT POPPERS' use.

21. DENT POPPERS is the owner of a valid, protectable, and/or registered trademark, namely the Mark. In addition and/or in the alternative, in the minds of the public, the primary significance of the Mark is to identify the source of the product and/or service in addition to the product and/or service itself.

22. Defendant ABU-EL-JIBIEN infringed upon DENT POPPERS' exclusive rights to the proprietary Mark by, *inter alia*, placing into commerce, offering to sell, selling, and/or distributing goods and/or services under the Mark and/or colorable imitations of the Mark without DENT POPPERS' consent or authorization.

23. Such unauthorized use by Defendant ABU-EL-JIBIEN has caused actual confusion and is likely to continue causing confusion, mistake, or deception to the public.

24. Defendant ABU-EL-JIBIEN's conduct constitutes trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. 1114(1)(a).

25. In accordance with Section 34 of the Lanham Act, 15 U.S.C. §1116, Defendant ABU-EL-JIBIEN should be preliminarily and permanently enjoined, upon notice and hearing, from using DENT POPPERS' Mark and any confusingly similar variant thereof, alone or in

combination with other words, as a trademark, corporate name, trade name component, domain name, or to otherwise market, advertise, distribute, or identify products or services.

26. As a direct and proximate result of Defendant ABU-EL-JIBIEN's infringement, DENT POPPERS has suffered damages within the jurisdictional limits of the Court. Under Section 35 of the Lanham Act, 15 U.S.C. §1117, DENT POPPERS is entitled to recover from Defendant ABU-EL-JIBIEN: i) Defendant ABU-EL-JIBIEN's profits from his unauthorized use of the Mark; ii) actual damages sustained by DENT POPPERS; and, iii) the costs of this action.

27. Due to the knowing, intentional, and purposeful manner of Defendant ABU-EL-JIBIEN's infringement, this case is exceptional within the meaning of Section 35 of the Lanham Act, 15 U.S.C. §1117, and, therefore, DENT POPPERS is entitled to recover damages of treble the amount of DENT POPPERS' actual damages and attorneys' fees, pursuant to Section 35(b) of the Lanham Act, 15 U.S.C. §1117(b).

VI. SECOND CAUSE OF ACTION—COUNTERFEITING IN VIOLATION OF 15 U.S.C. § 1114(1)(b) (SECTION 32 OF THE LANHAM ACT)

28. DENT POPPERS hereby reincorporates paragraphs 1 through 16 hereinabove.

29. DENT POPPERS has a protectable right in its Mark. DENT POPPERS owns registrations of the Mark with the United States Patent and Trademark Office, specifically United States Patent and Trademark Registration Number 4,134,909.

30. In violation of 15 U.S.C. §1114(1)(b), Defendant ABU-EL-JIBIEN offered to sell, distributed, sold, and/or advertised goods and/or services under reproductions, counterfeits, and/or colorable copies of the Mark and/or goods bearing reproductions, counterfeits, and/or colorable copies of the Mark for ultimate sale and/or distribution to the public.

31. Defendant ABU-EL-JIBIEN's offer to sell, sale, distribution, and/or advertisement of such goods is likely to cause confusion or mistake and/or to deceive the public.

32. Defendant ABU-EL-JIBIEN reproduced, copied, or colorably imitated DENT POPPERS' Mark and stamped or otherwise fixed such reproductions, counterfeits, copies, or colorable imitations to labels, signs, prints, packages, wrappers, receptacles and/or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods and/or services, which is likely to cause confusion or mistake and to deceive the public.

33. Defendant ABU-EL-JIBIEN's actions as described hereinabove were done with Defendant ABU-EL-JIBIEN's knowledge that the imitation marks and the items on which they were stamped and/or affixed were likely to cause confusion, mistake, and/or deception.

34. As a direct and proximate result of Defendant ABU-EL-JIBIEN's violations, DENT POPPERS has been damaged in an amount within the jurisdictional limits of this Court. Under Section 35 of the Lanham Act, 15 U.S.C. §1117, DENT POPPERS is entitled to recover from Defendant ABU-EL-JIBIEN: i) Defendant ABU-EL-JIBIEN's profits from such violations; ii) the actual damages sustained by DENT POPPERS; and, iii) the costs of this action. Alternatively, DENT POPPERS may elect to recover statutory damages not to exceed \$1,000,000.00 per counterfeit mark per type of good and/or service sold in place of actual damages and profits, pursuant to 15 U.S.C. §1117(c).

VII. THIRD CAUSE OF ACTION—FALSE DESIGNATION OF ORIGIN OR SPONSORSHIP, FALSE ADVERTISING, AND TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a)

35. DENT POPPERS hereby reincorporates paragraphs 1 through 16 hereinabove.

36. DENT POPPERS is the owner of a valid and protectable mark, namely the Mark. In addition and/or in the alternative, in the minds of the public the primary significance of the

Mark is to identify the source of the product and/or service rather than the product and/or service itself.

37. DENT POPPERS has developed valuable goodwill associated with its Mark.

38. Without DENT POPPERS' permission or authorization, Defendant ABU-EL-JIBIEN knowingly and intentionally used and continues to use DENT POPPERS' Mark and trade dress and/or counterfeits, reproductions, copies, or colorable imitations thereof in commerce in connection with the products and/or services that Defendant ABU-EL-JIBIEN manufactures, advertises, promotes, and/or sells.

39. Defendant ABU-EL-JIBIEN's willful and knowing actions render this case exceptional within the meaning of 15 U.S.C. §1117(a).

40. Defendant ABU-EL-JIBIEN's use of DENT POPPERS' Mark and/or trade dress alleged above is likely to cause and/or has caused customers, purchasers, and members of the public to be confused, misled, and/or deceived as to the origin, source, sponsorship, or affiliation of Defendant ABU-EL-JIBIEN's goods and/or services and is likely to cause people to believe in error that Defendant ABU-EL-JIBIEN's goods and/or services have been authorized, sponsored, endorsed, and/or licensed by DENT POPPERS or are in some way affiliated with DENT POPPERS or its products and/or services.

41. Defendant ABU-EL-JIBIEN's acts constitute false and misleading descriptions, false advertising, and false designations of the origin and/or sponsorship of Defendant ABU-EL-JIBIEN's goods and/or services and constitute trade dress infringement in violation of 15 U.S.C. §1125(a).

42. As a direct and proximate result of Defendant ABU-EL-JIBIEN's improper actions, DENT POPPERS has been damaged in an amount within the jurisdictional limits of this

Court. Under Section 35 of the Lanham Act, 15 U.S.C. §1117, DENT POPPERS is entitled to recover from Defendant ABU-EL-JIBIEN: i) Defendant ABU-EL-JIBIEN's profits; ii) the actual damages sustained by DENT POPPERS; and, iii) the costs of this action.

43. Due to the knowing, intentional, and purposeful nature of Defendant ABU-EL-JIBIEN's improper conduct, this case is exception within the meaning of Section 35 of the Lanham Act, 15 U.S.C. §1117; therefore, DENT POPPERS is entitled to recover treble damages under Section 35(b) of the Lanham Act, 15 U.S.C. §1117 (b).

VIII. FOURTH CAUSE OF ACTION—UNFAIR COMPETITION UNDER THE LANHAM ACT

44. DENT POPPERS hereby reincorporates paragraphs 1 through 16 hereinabove.

45. DENT POPPERS is the owner of a valid and protectable or registerable mark, namely the Mark. In addition and/or in the alternative, in the minds of the public, the primary significance of the Mark is to identify the source of the product rather than the product itself.

46. DENT POPPERS has developed valuable goodwill and name recognition associated with its Mark.

47. As alleged hereinabove, Defendant ABU-EL-JIBIEN unlawfully misappropriated DENT POPPERS' valuable Mark to his commercial benefit and DENT POPPERS' commercial detriment.

48. Defendant ABU-EL-JIBIEN's unlawful actions constitute unfair competition in violation 15 U.S.C. §1125(a).

49. Upon information and belief, Defendant ABU-EL-JIBIEN's unfair competition has been willful and malicious, constituting an exceptional case under 15 U.S.C. §1117(a).

50. As a direct result of Defendant ABU-EL-JIBIEN's unlawful misappropriation and unfair competition, DENT POPPERS has suffered damages within the jurisdictional limits of

this Court. As such, DENT POPPERS is entitled to recover damages in an amount to be proven at trial, including enhanced damages as allowed by law, as well as recovery of reasonable and necessary attorneys' fees and costs incurred in bringing this suit.

IX. FIFTH CAUSE OF ACTION—UNJUST ENRICHMENT

51. DENT POPPERS hereby reincorporates paragraphs 1 through 16 hereinabove.

52. DENT POPPERS is the owner of a valid and protectable or registerable mark, namely the Mark. In addition and/or in the alternative, in the minds of the public, the primary significance of the Mark is to identify the source of the product rather than the product itself.

53. DENT POPPERS has developed valuable goodwill associated with its Mark.

54. As alleged hereinabove, Defendant ABU-EL-JIBIEN unlawfully misappropriated DENT POPPERS' valuable Mark to his benefit and DENT POPPERS' detriment.

55. Defendant ABU-EL-JIBIEN has been unjustly enriched, to DENT POPPERS' detriment, by his unlawful misappropriation of the Mark. Defendant ABU-EL-JIBIEN has knowingly and willfully profited and caused harm to DENT POPPERS by his unauthorized use of the Mark.

56. As a result, DENT POPPERS is entitled to recover all valuable considerations Defendant ABU-EL-JIBIEN has gained by his unlawful misappropriation and use of the Mark.

X. SIXTH CAUSE OF ACTION—TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS

57. DENT POPPERS hereby reincorporates paragraphs 1 through 16 hereinabove.

58. DENT POPPERS, by and through its use of its Mark, was reasonably likely to enter into business relations with consumers.

59. Defendant ABU-EL-JIBIEN, by his continued unauthorized use of the Mark after receiving notice of DENT POPPERS' ownership thereof through the C&D Letter, intentionally

interfered with DENT POPPERS' prospective and foreseeable business relations by diluting the Mark and creating confusion about the Mark in the market.

60. Defendant ABU-EL-JIBIEN's unauthorized use of the Mark was and is independently tortious and unlawful.

61. Defendant ABU-EL-JIBIEN's tortious interference has caused injury to DENT POPPERS by diluting the Mark and creating confusion about the Mark in the market, directly and detrimentally impacting DENT POPPERS' ability to consummate business relations with consumers.

XI. DEMAND FOR ACCOUNTING, REQUEST FOR TURN OVER, AND REQUEST TO HOLD HARMLESS

31. DENT POPPERS demands an accounting of Defendant ABU-EL-JIBIEN's sales resulting from Defendant ABU-EL-JIBIEN's unlawful use of the Mark and/or sales involving Defendant ABU-EL-JIBIEN's goods and/or services under the Mark. DENT POPPERS requests that, after such accounting, all Defendant ABU-EL-JIBIEN's profits from such sales, particularly those sales occurring after the C&D Letter had been received and notice of DENT POPPERS' ownership of the Mark given, be paid to DENT POPPERS. DENT POPPERS further requests that all goods and advertisements bearing the Mark in Defendant ABU-EL-JIBIEN's possession, custody, or control be turned over to DENT POPPERS and/or destroyed as the Court deems proper.

32. DENT POPPERS requests that the Court order Defendant ABU-EL-JIBIEN to indemnify and hold harmless DENT POPPERS against any and all possible claims of third parties arising out of the sale, offer of sale, distribution or use of Defendant ABU-EL-JIBIEN's goods bearing the Mark, bearing confusingly similar designs to the Mark, or otherwise based on or incorporating DENT POPPERS' Mark and/or Defendant ABU-EL-JIBIEN's services

marketed and/or sold under the Mark. DENT POPPERS further requests the Court order Defendant ABU-EL-JIBIEN to identify vendors or resellers used to produce or sell his infringing goods.

XII. APPLICATION FOR TEMPORARY RESTRAINING ORDER

33. Because of Defendant ABU-EL-JIBIEN's unauthorized use of the Mark, Defendant ABU-EL-JIBIEN has undermined DENT POPPERS' business by selling goods and/or services that bear the Mark and/or confusingly similar designs and/or by falsely representing the goods and/or services produced, offered, and/or sold by Defendant ABU-EL-JIBIEN to have the sponsorship of DENT POPPERS.

34. Defendant ABU-EL-JIBIEN's sale of goods and/or products bearing the Mark and/or confusingly similar designs have caused and continue to cause DENT POPPERS irreparable harm for which there is no adequate remedy at law.

35. Since DENT POPPERS can readily establish itself as owner of the Mark, DENT POPPERS is likely to succeed on the merits of the case prohibiting Defendant ABU-EL-JIBIEN's unauthorized use of the Mark and confusingly similar designs.

36. The injury faced by DENT POPPERS outweighs the injury that would be sustained by enjoining Defendant ABU-EL-JIBIEN from his unauthorized use of the Mark and related stylistic designs.

37. Furthermore, the Court's granting of a temporary restraining order against Defendant ABU-EL-JIBIEN's use of the Mark and confusingly similar designs would not adversely affect public policy or public interest.

38. Accordingly, DENT POPPERS respectfully demands that Defendant be restrained from selling any goods and/or products containing either the Marks and/or confusingly similar

designs and from marketing goods and/or services under the Mark and/or confusingly similar designs. If necessary, DENT POPPERS is willing to post a bond in order for the Court to issue the temporary restraining order against Defendant ABU-EL-JIBIEN.

XIII. ATTORNEY'S FEES

39. Because of the conduct of Defendant ABU-EL-JIBIEN, DENT POPPERS has been compelled to engage the services of an attorney to prosecute this action. As a result, DENT POPPERS is entitled to recover from Defendant ABU-EL-JIBIEN a reasonable sum for the necessary services of Wilson Legal Group, P.C. in the preparation and trial of this action and for any appeals related thereto.

XIV. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff DENT POPPERS, L.L.C., respectfully requests:

- a. that judgment be entered in favor of Plaintiff against Defendant ABU-EL-JIBIEN for actual damages in an amount in excess of the minimum jurisdictional limits of the Court as can be shown;
- b. that the Court enter an Order enjoining Defendant from:
 - i. manufacturing, marketing, or selling products or offering services based on, bearing, incorporating, or derived from Plaintiff's trademarks and trade dress;
 - ii. using Plaintiff's Mark or any deceptively similar variation thereof, alone or in combination with other words, as a trademark, service mark, corporate name, fictitious business name, trade name component, internet

domain name, or otherwise to market, advertise, or identify Defendant's services or products;

- c. that the Court enter an Order requiring Defendant to forthwith deliver to Plaintiff all materials in Defendant's possession, custody, or control, the possession and/or use of which would violate Plaintiff's proprietary rights, including, without limitation, its right to the Mark, including an Order requiring Defendant to identify vendors used to produce his infringing goods;
- d. that the Court enter an Order requiring Defendant to prepare, at his sole expense, a true and accurate audited accounting of all of the activities of Defendant, including, without limitation, all activities related to his acquisition, marketing, and disposal, sale, or transfer of any goods or any other product bearing Plaintiff's Mark or incorporating Plaintiff's proprietary rights;
- e. an award of Plaintiff's actual and special damages as plead within the jurisdictional limits of the Court;
- f. an award to Plaintiff of Defendant's ill-gotten profits;
- g. an award of Plaintiff's court costs in an amount to be determined by the Court;
- h. an award of Plaintiff's reasonable and necessary attorneys' fees;
- i. that Plaintiff recover pre-judgment and post-judgment interest on all sums awarded at the highest rate permitted by law; and
- j. an award to Plaintiff for such further relief, at law or in equity, to which it is justly entitled.

DATED: July 11, 2012.

Respectfully submitted,
WILSON LEGAL GROUP P.C.

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