

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**

**JUN 27 2012**

CLERK, U.S. DISTRICT COURT  
By M.F.  
Deputy

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**M3 GIRL DESIGNS, LLC**  
*Plaintiff,*

v.

**BLUE BROWNIES, LLC  
KRISTA DUDTE, and  
ROBERT DUDTE**  
*Defendants.*

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**CIVIL ACTION NO. 3-09-CV-2390-F**

**JURY VERDICT FORM**

In the course of your deliberations, you are to answer the following questions and fill out this Verdict Form. When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answers to each question must be unanimous. Please refer to the Court's Charge to the Jury for guidance on the law applicable to the subject matter covered by each question. You are to answer each and every question, unless otherwise directed.

**QUESTIONS AND ANSWERS**

We, the Jury, unanimously agree to the answers to the following questions and return them under the instructions of this Court as our verdict in this case

**TRADE DRESS**

**QUESTION NO. 1:**

Did Plaintiff M3 Girl Designs prove that its asserted trade dress is not functional?

Answer "yes" or "no":

Answer: No

**If your answer to Question No. 1 is "yes," then answer the next question. Otherwise do not answer the following question and proceed to Question No. 5.**

**QUESTION NO. 2:**

Has Plaintiff M3 Girl Designs proven that its asserted trade dress acquired secondary meaning before January 14, 2009?

Answer "yes" or "no":

Answer: \_\_\_\_\_

**If your answer to Question No. 2 is "yes," then answer the next question. Otherwise do not answer the following question and proceed to Question No. 5.**

**QUESTION NO. 3:**

Has Plaintiff M3 Girl Designs proven that Defendant Blue Brownies infringed Plaintiff's trade dress by creating a likelihood of confusion in the market?

Answer "yes" or "no":

Answer: \_\_\_\_\_

**DEFENDANTS' FAIR USE AFFIRMATIVE DEFENSE**

**QUESTION NO. 4:**

Have Defendants proven that they marketed their product in good faith and not as a mark?

Answer "yes" or "no":

Answer: \_\_\_\_\_

**TRADEMARK INFRINGEMENT**

**QUESTION NO. 5:**

Have Defendants presented sufficient evidence to rebut the presumption of validity of the "Snap Caps" trademark registration by showing it is merely descriptive?

Answer "yes" or "no":

Answer: No

**If your answer to Question No. 5 is "yes," then answer the next question. Otherwise do not answer the following question and proceed to Question No. 7.**

**QUESTION NO. 6:**

Has Plaintiff M3 Girl Designs proven that its "Snap Caps" trademark acquired secondary meaning before January 14, 2009?

Answer "yes" or "no":

Answer: \_\_\_\_\_

**If your answer to Question No. 6 is "yes," then answer the next question. Otherwise do not answer the following question and proceed to Question No. 8.**

**QUESTION NO. 7:**

Has Plaintiff M3 Girl Designs proven that Defendant Blue Brownies infringed Plaintiff's "Snap Caps" trademark by creating a likelihood of confusion in the market in 2009?

Answer "yes" or "no":

Answer: No

**TEXAS "PALMING OFF" CLAIM**

**QUESTION NO. 8:**

Has Plaintiff M3 Girl Designs proven that Defendant Blue Brownies is liable for "palming off" Plaintiff's products in Texas?

Answer "yes" or "no":

Answer:     No    

**TEXAS TRADE DRESS DILUTION CLAIMS**

**If your answer to Question No. 1 or Question No. 2 was "no," then do not answer the following question and proceed to Question No. 10.**

**QUESTION NO. 9:**

Did Plaintiff M3 Girl Designs prove that its asserted trade dress is sufficiently distinctive and that Defendant Blue Brownies caused a likelihood of dilution by blurring or tarnishment?

Answer "yes" or "no" for each

Dilution by blurring: \_\_\_\_\_

Dilution by tarnishment: \_\_\_\_\_

**TEXAS UNFAIR COMPETITION CLAIM**

**QUESTION NO. 10:**

Did M3 Girl Designs prove by a preponderance of the evidence that Blue Brownies actions constitute unfair competition?

Answer "yes" or "no"

Answer:     No

**PERSONAL LIABILITY**

**QUESTION NO. 11:**

Did Plaintiff M3 Girl Designs prove that Defendant Krista Dudte or Defendant Robert Dudte is personally liable for the acts of Defendant Blue Brownies?

Answer "yes" or "no" for each Defendant:

Krista Dudte:       No      

Robert Dudte:       No      

**WILLFUL INFRINGEMENT**

**QUESTION NO. 12:**

Has Plaintiff proven by clear and convincing evidence that Krista Dudte maliciously, fraudulently, deliberately, or willfully used Plaintiff's product design trade dress?

Answer "yes" or "no" for each

Krista Dudte:

Maliciously       No      

Fraudulently       No      

Deliberately       No      

Willfully       No      

**QUESTION NO. 13:**

Has Plaintiff proven by clear and convincing evidence that Krista Dudte maliciously, fraudulently, deliberately, or willfully used Plaintiff's "Snap Caps" trademark?

Answer "yes" or "no" for each

Krista Dudte:

Maliciously No

Fraudulently No

Deliberately No

Willfully No

**QUESTION NO. 14:**

Has Plaintiff proven by clear and convincing evidence that Robert Dudte maliciously, fraudulently, deliberately, or willfully used Plaintiff's product design trade dress?

Answer "yes" or "no" for each

Robert Dudte:

Maliciously No

Fraudulently No

Deliberately No

Willfully No

**QUESTION NO. 15:**

Has Plaintiff proven by clear and convincing evidence that Robert Dudte maliciously, fraudulently, deliberately, or willfully used Plaintiff's "Snap Caps" trademark?

Answer "yes" or "no" for each

Robert Dudte:

Maliciously No

Fraudulently No

Deliberately No

Willfully No

**QUESTION NO. 16:**

Has Plaintiff proven by clear and convincing evidence that Blue Brownies maliciously, fraudulently, deliberately, or willfully used Plaintiff's product design trade dress?

Answer "yes" or "no" for each

Blue Brownies:

Maliciously No

Fraudulently No

Deliberately No

Willfully No

**QUESTION NO. 17:**

Has Plaintiff proven by clear and convincing evidence that Blue Brownies maliciously, fraudulently, deliberately, or willfully used Plaintiff's "Snap Caps" trademark?

Answer "yes" or "no" for each

Blue Brownies:

Maliciously No

Fraudulently No

Deliberately No

Willfully No

**DAMAGES**

**QUESTION NO. 18:**

Has Plaintiff proven that it suffered injury caused by Defendant Blue Brownies' use of Plaintiff's trade dress?

**Answer:** YES or NO? No

If YES, enter the amount; if NO enter "zero":

Lost profits: \$ 0

**QUESTION NO. 19:**

Has Plaintiff proven that it suffered injury caused by Defendant Blue Brownies' use of Plaintiff's "Snap Caps" trademark?

**Answer:** YES or NO? No

If YES, enter the amounts; if NO enter "zero":

Lost profits: \$ 0

**Signed:** Cochran Brauman  
**FOREPERSON**

**Date:** 6-27-12