

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

**SCENTSIBLE, LLC d/b/a  
POO~POURRI**

**Plaintiff,**

**v.**

**GREAT INNOVATIONS, INC. and  
FOR LIFE PRODUCTS, INC.,**

**Defendants**

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**CIVIL ACTION NO.  
JURY TRIAL DEMANDED**

**PLAINTIFF’S APPLICATION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION AND ORIGINAL COMPLAINT**

COMES NOW, Plaintiff Scentsible, LLC d/b/a Poo~Pourri (“Poo~Pourri”) files its Application for Temporary Restraining Order and Preliminary Injunction and its Original Complaint against Great Innovations, Inc. and For Life Products, Inc. (collectively “Defendants”).

**PRELIMINARY STATEMENT**

This is an action for unfair completion and passing off under the Federal Lanham Act, 15 USC 1125(a) based on Defendant Great Innovations, Inc., and For Life Products, Inc.’s slavish copying of Poo~Pourri’s highly distinctive commercial presentation of its line of toilet deodorizing products in an attempt to sell its own products. Poo~Pourri very recently learned of Defendants’ actions from customers who contacted Poo~Pourri and reported seeing Defendants’ advertisements or commenting on Poo~Pourri’s new product, which is in fact Defendants’ product. Such blatant copying of Poo~Pourri, a leader in the industry, constitutes unfair competition and passing off under §43(a) of the

Lanham Act. Accordingly, Poo~Pourri seeks a temporary restraining order, preliminary and permanent injunctive relief and monetary damages.

As shown by the Declarations that accompany this Application [Exhibits A and B], Poo~Pourri has substantial likelihood of success on the merits because it has a well-established composition of elements that identify its advertising that Defendant has slavishly copied, which is likely to cause consumer confusion; there is a substantial threat of irreparable injury if the injunction is not issued because consumers have been and will continue to be confused and Poo~Pourri cannot prevent such confusion that may harm its goodwill; the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted because any harm to Defendant in having to create its own advertising is outweighed by the harm to Poo~Pourri in losing control of its valuable intellectual property; and the grant of an injunction will not disserve the public interest, as the public has the right not to be confused.

### **PARTIES**

1. Plaintiff Poo~Pourri is a limited liability company organized under the laws of the State of Texas with its principal place of business at 4901 Keller Springs, Suite 106D, Addison, TX 75001.

2. Defendant Great Innovations, Inc. (“Great Innovations”) is a corporation organized under the laws of Florida with its principal place of business at 2301 SW 145th Avenue, Miramar, FL 33027. It may be served by service upon its registered agent for service of process, Joseph McDonnell, 2301 SW 145th Avenue, Miramar, FL 33027.

3. Defendant For Life Products, Inc. (“For Life Products”) is a corporation organized under the laws of Florida with its principal place of business at 2301 SW 145th Avenue, Miramar, FL 33027. It may be served by service upon its registered agent for

service of process, Gary Silberman, Offices at Grand Bay Plaza, 2665 S. Bayshore Dr., Suite 725, Coconut Grove, FL. 33133

### **JURISDICTION AND VENUE**

4. This action arises under the Trademark Laws of the United States, 15 U.S.C. § 1051 *et seq.* Accordingly, original jurisdiction over this cause of action is conferred upon this Court pursuant to 15 U.S.C. § 1121, 1125 and 28 U.S.C. §§ 1331 and 1338 (a) and (b).

5. Defendants do business in Texas and thus, jurisdiction is proper over Defendants in this judicial district. Venue is proper under 28 U.S.C. §§ 1391(b) and (c).

6. This Court has personal jurisdiction over Defendants because they have sufficient contacts with the state of Texas and the Judicial District to subject it to specific and general personal jurisdiction. The contacts with the state of Texas and this Judicial District and Division include sales of products through interactive websites and infomercials shown on television stations, including LOGO TV and QVC, with the knowledge and intent that the products be distributed and sold within this Judicial District.

### **FACTS**

7. Poo~Pourri is an award winning innovator in the toilet deodorizing industry. In 2006, the founder, Suzanne (Suzy) Batiz, invented her first toilet deodorizing product, in what came to be called the Poo~Pourri line of products, in her kitchen (the “Poo~Pourri Products”). She developed a proprietary formula made up of a blend of essential oils that creates a protective barrier or film on the water's surface. This barrier is designed to keep unpleasant bathroom odors from coming into contact with the

air. Ms. Batiz developed a unique and never-before used means to demonstrate how her products worked – she partially filled a clear bowl with water and sprayed the product in so the viewer could actually see how the barrier was created and thus how her product worked (the “Clear Bowl Test”). She incorporated this into her first presentation to QVC in 2007. This unique method is but one part of her commercial presentation of Poo~Pourri Products by which consumers identify the products as emanating from Poo~Pourri. *See* EXHIBIT A, Batiz Decl. ¶¶2-3.

8. In addition to the Clear Bowl Test, Poo~Pourri’s video advertising of its Products, particularly on QVC, includes an animated demonstration of the product usage showing a cut-away of a toilet, a hovering product container that sprays itself, the use of brown arrows to represent the waste product going in the bowl, a barrier on the water’s surface, dots for scents and the words “traps odor” hovering above the bowl. Poo~Pourri also combines several catch phrases throughout their videos, including but not limited to “before you go,” “for those on the go who have to go,” “bad odors go into the bowl,” and “spritz the bowl before you go and no one else will ever know.” Finally, Poo~Pourri uses consistent images to help drive home to the consumer the difference between the Poo~Pourri Products and typical odor masking agents, including matches and aerosol sprays. All of these elements combined to create the Poo~Pourri video advertising campaign (the “Advertising”). *See* EXHIBIT A, Batiz Decl. ¶3; EXHIBIT B Juckem Decl. ¶¶5-7.

9. Moreover, Poo~Pourri is the owner of a federally registered trademark, U.S. Registration No. 3,576,192 in the mark POO~POURRI SPRITZ THE BOWL

BEFORE YOU GO AND NO ONE ELSE WILL EVER KNOW (the “Mark”). *See* EXHIBIT A, Batiz Decl. ¶5.

10. Fourteen of Poo-Pourri's award-winning products have been recognized by the Good Housekeeping Institute earning the internationally respected Good Housekeeping Seal. Since 1909, this designation has given consumers peace of mind as a testament to a product's quality and is awarded only to goods that have passed rigorous review and laboratory testing. *See* EXHIBIT A, Batiz Decl. ¶9.

11. The Advertising and the Mark are well known, inherently distinctive and/or have acquired distinctiveness long prior to Defendants' use of the entrance into the market. The goodwill associated with both the Advertising and Mark is a valuable asset to Poo~Pourri. Poo~Pourri has expended great effort and considerable resources in promoting its Products through Advertising and under the Mark. As a result of this widespread and continuous use and promotion, the Advertising and Mark have become widely associated with Poo~Pourri; the Advertising and Mark identify Poo~Pourri as the source of the goods offered and represents the valuable goodwill of Poo~Pourri among members of the relevant consuming public. *See* EXHIBIT A, Batiz Decl. ¶2.

12. On or around July 12, 2013, Poo~Pourri learned from a customer of a video advertisement for a product called “My Bathroom Secret” that was the same or substantially similar to the Advertising. *See* EXHIBIT A, Batiz Decl. ¶6. The Customer Service page on the website identifies Defendant For Life Products; Defendant Great Innovations is the applicant for the trademark “Bathroom Secret.” Upon reviewing the video on [www.mybathroomsecret.com](http://www.mybathroomsecret.com), Poo~Pourri learned that Defendants have slavishly copied the Advertising, including but not limited to the use of the Clear Bowl

Test, the animation of the product usage, the catch phrases, and the imagery. It also learned that Defendants had a second website, [www.sneekapoo.com](http://www.sneekapoo.com), that uses the same video with the only change being in the name of the product. *See* EXHIBIT A, Batiz Decl. ¶6; EXHIBIT B, Juckem Decl. ¶8. The Customer Service page on the website identifies Defendant For Life Products; Defendant Great Innovations is the applicant for the trademark “Sneek a Poo.” Collectively the advertising for My Bathroom Secret and Sneek a Poo are referred to as the “Infringing Ads.”

13. More specifically, Defendants incorporated the following elements into their Infringing Ads: an animated demonstration of the product usage showing a cut-away of a toilet, a hovering product container that sprays itself, the use of brown arrows, a barrier on the water’s surface, dots for scents and the words “traps odor” hovering above the bowl; a combination of catch phrases throughout the Infringing Ads that are similar to those used by Poo~Pourri, including but not limited to “no one needs to know when you go,” “before you go,” “when you have to go on the go,” “keeps bad odors from getting out” and “spray the bowl before you go and no one will ever know;” and the reference to other masking devices such as matches and aerosol sprays. *See* EXHIBIT A, Batiz Decl. ¶7; EXHIBIT B Juckem Decl. ¶¶5-8.

14. Additionally, Defendants repeatedly use the mark “Spray before you go! And no one will ever know,” which is nearly identical to Poo~Pourri’s Mark and well-known tagline. *See* EXHIBIT B, Juckem Decl. ¶6.

15. Defendants’ use of the Advertising and Mark in its Infringing Ads is likely to confuse consumers into believing that its product is made by, sponsored by, connected with, endorsed by or otherwise affiliated with Poo~Pourri . Further, Defendants’ use of

the Advertising and Mark dilutes the strength of Poo~Pourri's well-established and distinctive Advertising and Mark. This use will substantially harm Poo~Pourri's reputation for quality products. Defendants' willful and deceitful acts will cause irreparable harm to Poo~Pourri and its Mark.

**COUNT ONE**  
**PASSING OFF UNDER THE LANHAM ACT**

16. Poo~Pourri realleges and incorporates by reference paragraphs 1 through 15, inclusive, of this Application and Complaint as fully set forth herein. Defendants' conduct described above constitutes federal passing off under the Lanham Act, 15 U.S.C. §1125(a)(1).

17. Defendants' actions have been with full knowledge of Poo~Pourri's rights and with the intent to trade on Poo~Pourri's goodwill in the Advertising and the Mark, thus making this an exceptional case under 15 U.S.C. §1117(a).

18. Further, the activities of Defendants are intended to, and are likely to, lead the public to conclude, incorrectly, that Defendants' products originate from Poo~Pourri to the damage and harm of Poo~Pourri. Defendants' activities constitute passing off, thus entitling Poo~Pourri to damages, including Defendants' profits from the sale of the Product depicted in the Infringing Ads.

19. As a result of Defendants' activities, Defendant has caused and will continue to cause irreparable harm to Poo~Pourri for which Poo~Pourri has no adequate remedy at law for relief from Defendants' wrongful conduct. Accordingly, Poo~Pourri is entitled to damages and injunctive relief.

**COUNT TWO**  
**UNFAIR COMPETITION**

20. Poo~Pourri realleges and incorporates by reference paragraphs 1 through 19, inclusive, of this Complaint as fully set forth herein. Defendants' conduct described above constitutes federal unfair competition under the Lanham Act, 15 U.S.C. §1125(a)(1).

21. Defendants' actions have been with full knowledge of Poo~Pourri's rights and with the intent to trade on Poo~Pourri's goodwill, thus making this an exceptional case under 15 U.S.C. §1117(a).

22. Further, the activities of Defendant are intended to, and are likely to, lead the public to conclude, incorrectly, that Defendants are associated, affiliated with or sponsored by Poo~Pourri, to the damage and harm of Poo~Pourri. Defendants' activities constitute deliberate infringement of the Advertising and the Mark in violation of the Lanham Trademark Act, including, but not limited to, 15 U.S.C. § 1114(1), entitling Poo~Pourri to damages.

23. As a result of Defendants' activities, Defendant has caused and will continue to cause irreparable harm to Poo~Pourri for which Poo~Pourri has no adequate remedy at law for relief from Defendants' wrongful conduct. Accordingly, Poo~Pourri is entitled to damages and injunctive relief.

**COUNT THREE**  
**FEDERAL TRADEMARK INFRINGEMENT**

24. The Poo~Pourri realleges and incorporates by reference paragraphs 1 through 23, inclusive, of this Complaint as fully set forth herein. Defendants' conduct



described above constitutes trademark infringement under the Lanham Act, 15 U.S.C. § 1114(1).

25. The acts of Defendants, as set forth above, constitute use in interstate commerce of reproductions, copies, and/or colorable imitations of the Mark through its use of the Mark on a similar product being sold through similar channels of trade. Further, Defendants' use of a mark that is nearly identical to Poo~Pourri's federally registered Mark in connection with similar goods, within this judicial district and elsewhere, is likely to cause confusion, cause mistake, and to deceive as to the affiliation, connection, and association of Poo~Pourri with Defendants.

26. Further, the activities of Defendants are intended to, and are likely to, lead the public to conclude, incorrectly, that the infringing uses of the Mark described in this Complaint that are authorized by Poo~Pourri to the damage and harm of Poo~Pourri. Defendants' activities constitute deliberate infringement of the Mark in violation of the Lanham Trademark Act, including, but not limited to, 15 U.S.C. § 1114(1), entitling Poo~Pourri to damages.

27. As a result of Defendants' activities, Defendants have caused and will continue to cause irreparable harm to Poo~Pourri for which Poo~Pourri has no adequate remedy at law for relief from Defendants' wrongful conduct. Accordingly, Poo~Pourri is entitled to damages and injunctive relief.

**COUNT FOUR**  
**DILUTION UNDER TEX. BUS. & COM. CODE §16.29**

28. Poo~Pourri realleges and incorporates by reference paragraphs 1 through 27, inclusive, of this Complaint as fully set forth herein. Defendants' conduct described

above is likely to dilute the distinctiveness of Poo~Pourri's Mark and Advertising. Defendant has profited through the dilution of Poo~Pourri's distinctive Mark.

29. The activities of Defendants have caused and will continue to cause irreparable harm to Poo~Pourri for which Poo~Pourri has no adequate remedy at law for relief from Defendants' wrongful conduct. Accordingly, Poo~Pourri is entitled to damages and injunctive relief.

**COUNT FIVE**  
**COMMON LAW UNFAIR COMPETITION**

30. Poo~Pourri realleges and incorporates by reference paragraphs 1 through 29, inclusive, of this Complaint as fully set forth herein. Defendants' actions described above constitute unfair competition under Texas common law.

31. As a result of Defendants' wrongful conduct, Poo~Pourri is entitled to injunctive relief and damages to be proven at trial.

**REMEDIES INCLUDING INJUNCTIVE RELIEF**

32. Poo~Pourri realleges and incorporates by reference paragraphs 1 through 31, inclusive, of this Complaint as fully set forth herein.

33. Poo~Pourri is entitled to monetary relief, including, (1) the Defendants' profits, (2) any damages sustained by Poo~Pourri, and (3) the cost of this action. *See* 15 U.S.C. § 1117.

34. Poo~Pourri also is entitled to injunctive relief under federal law. *See* 15 U.S.C. § 1116. More specifically, Poo~Pourri is entitled to a temporary restraining order, preliminary injunction and permanent injunction against Defendants and their officers, agents, representatives and any person or entity acting on their behalf or at their direction

from using the Infringing Ads or using the Mark or a mark substantially similar to the Mark.

**ATTORNEYS' FEES**

35. Poo~Pourri is entitled to an award of attorneys' fees under 15 U.S.C. § 1117(a).

**JURY DEMAND**

36. Poo~Pourri requests a trial by jury of all claims.

**PRAYER FOR RELIEF**

WHEREFORE, Poo~Pourri prays that it have judgment against Defendants for the following:

(1) A decree that Defendants' Infringing Ads and use of a mark similar to Poo~Pourri's Mark constitute passing off;

(2) A decree that Defendants' use of the Advertising and Mark constitutes unfair competition under federal and common law;

(3) A decree that Defendant's have infringed the Mark;

(4) A decree that the Mark has been, or will be, diluted by the Defendants' actions;

(5) A temporary restraining order and preliminary injunction enjoining and restraining Defendant and its agents, servants, employees, affiliates, divisions, subsidiaries, agents, servants, and employees, and those in association with them, from using any advertising similar to Poo~Pourri's Advertising, including but not limited to the Infringing Ads, or using Poo~Pourri's Mark or any other mark confusingly similar to the Mark in conjunction with toilet or bathroom deodorizers or other similar products;

(6) A permanent injunction enjoining and restraining Defendant and its agents, servants, employees, affiliates, divisions, subsidiaries, agents, servants, and employees, and those in association with them from using any advertising similar to Poo~Pourri's Advertising, including but not limited to the Infringing Ads, or using Poo~Pourri's Mark or any other mark confusingly similar to the Mark in conjunction with toilet or bathroom deodorizers or other similar products;

(7) An award of damages as requested in each Count above;

(8) An award of exemplary damages;

(9) An award of all costs of this action, including attorneys' fees and interest;

and

(10) Such other and further relief, at law or in equity, to which Poo~Pourri may be justly entitled.

Respectfully submitted,

/s/ Elizann Carroll

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