

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA



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EE HOLDING GROUP LLC,

Plaintiff,

v.

**PDGROWTH LLC AND PATRICK D.
GARTON,**

Defendants.

Civil Action No. 1:24-cv-1895

Complaint for Trademark Counterfeiting and
Infringement.

Demand for Jury Trial.

COMPLAINT

Plaintiff EE Holding Group LLC (“Plaintiff”) sues Defendants PDGROWTH LLC and Patrick D. Garton (collectively, “Defendants”), and alleges the following:

JURISDICTION

1. This is an action for trademark counterfeiting and infringement in violation of 15 U.S.C. § 1114, false designation of origin and/or false endorsement in violation of 15 U.S.C. §1125(a), and common law trademark infringement and unfair competition.

2. This Court has subject matter jurisdiction over the Lanham Act claims pursuant to 15 U.S.C. § 1121. This Court has supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367.

3. This Court has personal jurisdiction over Defendant PDGROWTH LLC (“PDGROWTH”) because, on information and belief, PDGROWTH has a principal office address at 10744 Putnam Place, Carmel, Indiana 46032 and conducts business from that address.

4. This Court has personal jurisdiction over Defendant Patrick D. Garton (“Garton”) because, on information and belief, Garton is an Indiana resident residing or located at 10744 Putnam Place, Carmel, Indiana 46032.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a).

THE PARTIES

6. Plaintiff EE Holding Group LLC is a Delaware limited liability company with a corporate office at 270 Lafayette St., Suite 502, New York, New York 10012.

7. On information and belief, PDGROWTH is a Wyoming limited liability company with a principal office address at 10744 Putnam Place, Carmel, Indiana 46032.


8. On information and belief, Garton is an Indiana resident residing or located at 10744 Putnam Place, Carmel, Indiana 46032. Further, on information and belief, Garton is a member of PDGROWTH and is its sole owner.

FACTS COMMON TO ALL COUNTS

9. Plaintiff owns all intellectual property, including all trademark rights, of fashion designer Eric Emanuel and is the current owner of his global trademark portfolio.

10. Eric Emanuel is an independent sportswear designer who has built his business and its vibrant community from the ground up. He gained notoriety in the fashion industry by designing custom python basketball jerseys, which were ultimately worn by artists Travis Scott, ASAP Rocky, Future, and more. Today, his sportswear collection is widely recognized for its signature EE mesh shorts (made in the USA) and ongoing sneaker and apparel collaborations with brands like adidas, Reebok, and New Era.

11. Plaintiff owns various trademarks including ERIC EMANUEL, EE, and its stylized

EE design mark  (collectively, “Marks” or “Plaintiff’s Marks”). Each of Plaintiff’s Marks is valid and enforceable.

12. Plaintiff has used Plaintiff’s Marks in commerce consistently since at least 2014

and has not abandoned any of Plaintiff's Marks.

13. Due to Plaintiff's investment in and use of Plaintiff's Marks for over a decade, Plaintiff's Marks have accrued substantial goodwill and serve to identify goods originating exclusively from or otherwise associated with Plaintiff and are distinctive of Plaintiff's high-quality goods.

14. Plaintiff owns U.S. Trademark Registration Nos. 6721224 and 7310338 for its ERIC EMANUEL mark and its stylized EE design mark ("Plaintiff's Registrations"). Copies of certificates of registration from the U.S. Patent and Trademark Office are attached hereto as Exhibit A.

15. Pursuant to the Lanham Act, 15 U.S.C. § 1115, Plaintiff's Registrations are prima facie evidence of the validity of Plaintiff's Marks and of registration of Plaintiff's Marks, of Plaintiff's ownership of Plaintiff's Marks, and of Plaintiff's exclusive right to use Plaintiff's Marks in commerce on or in connection with the goods specified in the registrations.

16. On information and belief, Garton is an 18-year-old male residing in Carmel, Indiana.

17. On information and belief, Garton created, owns, controls, and/or uses the Instagram username "pd.resells" (the "Username").

18. On information and belief, Garton through the Username advertises, promotes, sells, and/or offers for sale clothing bearing one or more of Plaintiff's Marks and uses Plaintiff's Marks on or in connection with the sale of such goods (the "Accused Products").

19. The Accused Products are not authentic and bear counterfeit copies of one or more of Plaintiff's Marks.

20. Attached hereto as Exhibit B are screenshots of some of Garton's Instagram posts

under his Username which include the Accused Products.

21. On information and belief, Garton has sold hundreds, if not thousands, of Accused Products to consumers in the United States resulting in thousands of dollars' worth of sales and substantial profits to Garton.

22. On information and belief, Garton advertises, promotes, sells, and/or offers for sale the Accused Products with full knowledge that they are not Plaintiff's authentic goods.

23. Garton, through his Username, has admitted in Instagram videos and posts that he buys the Accused Products for \$15-\$20 and resells them on various online marketplaces for \$150-\$200, calling them a "money glitch," "gold mine," and "easy money." (Exhibit B.)

24. Garton imports the Accused Products from China.

25. Garton's Accused Products are categorized by him as either "Passing" or "Not Passing."

26. On information and belief, "Passing" Accused Products are high-quality "replicas" (counterfeits) that are so close to authentic ERIC EMANUEL goods in quality, labeling, style, fit, etc., that they are regularly misidentified as genuine goods when evaluated for authenticity. Thus, these products generally "pass" inspection.

27. "Not Passing" Accused Products do not withstand the scrutiny of authentication/verification inspections and are generally of a lower quality when closely examined. They are more readily identifiable as "fakes" when examined.

28. Garton's advertising, promotion, sale, and offer for sale of both "Passing" and "Not Passing" Accused Products demonstrates his knowledge of the falsity of the Accused Products.

29. On information and belief, Garton also owns and operates a website at www.thesupplyr.com (the "Accused Website"), through which Garton advertises, promotes, sells,

and/or offers for sale Accused Products. (Exhibit C.)

30. As of October 22, 2024, Garton's Accused Website offered at least 14 different styles of Accused Products for sale in sizes Small, Medium, Large, and XL. The Accused Website also advertises a "90% Pass Rate" for the Accused Products and states that the products come with a "Free 9 Page Selling Guide." (*Id.*)

31. On information and belief, Garton also owns and operates one or more Telegram, Discord, TikTok, YouTube, and Snapchat accounts through which he advertises, promotes, sells, and/or offers for sale the Accused Products under a variety of usernames. (Exhibit D.)

32. On information and belief, Garton also promotes, encourages, facilitates, and teaches other individuals or businesses how to obtain, advertise, promote, sell, and/or offer for sale Accused Products through his Username, Accused Website, Telegram and Discord channels, and other social media accounts.

33. On information and belief, Garton also advertises, promotes, sells, and/or offers for sale access to his vendors, suppliers, and/or manufacturers for the Accused Products.

34. On or about August 22, 2024, Plaintiff purchased a list of vendors for Accused Products from Garton for \$20.00. Payment was made to a PayPal account owned by PDGROWTH. However, Garton did not send the vendor list and Plaintiff obtained a refund from PayPal.

35. On or about August 27, 2024, Plaintiff successfully purchased Garton's list of vendors for Accused Products for \$15.00, paying via Square. Plaintiff received two weblinks, one for "Passing" Accused Products and one for "Not Passing" Accused Products. For "Passing" Accused Products the link instructed Plaintiff to contact Garton directly via Telegram. For "Not Passing" Accused Products Garton identified the supplier as Guangzhou Kula Clothing Co. Ltd., a Chinese company selling Accused Products via the Alibaba.com online platform.

36. On or about August 29, 2024, Plaintiff visited the Accused Website and ordered 2 pairs of “Passing” Accused Products for \$65.00 apiece, paying via Wix Payments.

37. On or about September 4, 2024, Plaintiff purchased access to Garton’s Discord channel, called Resellers Takeover, for \$55.00 and paid via PayPal using the same PDGROWTH PayPal information as before. The Resellers Takeover Discord contains numerous references to Plaintiff’s Marks and the Accused Products and contains a plethora of information about how to make money “reselling.”

38. On or about October 3, 2024, Plaintiff received its “Passing” Accused Products and confirmed that neither pair of shorts was Plaintiff’s authentic goods.

39. On information and belief, Garton holds an inventory of Accused Products that is stored in one of two different locations – his residence at 10744 Putnam Place, Carmel, Indiana 46032 which is owned by his mother, Alison Garton, and one or more unknown storage units or warehouses.

40. On information and belief, Garton continues to advertise, promote, sell, and/or offer for sale Accused Products and encourages, facilitates, and teaches others to do the same.

41. On information and belief, Garton has the ability to direct, control, and/or supervise PDGROWTH’s infringing activities, has a financial interest in such activity, and personally participates in PDGROWTH’s infringing activity.

42. Defendants are not authorized to use any of Plaintiff’s Marks in any capacity.

43. Defendants’ actions are willful and in bad faith and have forced Plaintiff to bring this action in this Court to protect its valuable trademarks and brand.

COUNT I.
INFRINGEMENT OF A REGISTERED TRADEMARK
IN VIOLATION OF 15 U.S.C. § 1114

44. Paragraphs 1-43 are re-alleged and incorporated herein by reference.

45. On information and belief, Defendants are using in commerce one or more reproductions, counterfeits, copies, or colorable imitations of one or more of Plaintiff's Marks in connection with the sale, offering for sale, distribution, or advertising of goods in a manner that is likely to cause confusion, or to cause mistake, or to deceive as to the source or origin of Defendants' goods.

46. Defendants' aforesaid actions are likely to cause damage and other irreparable injury to Plaintiff unless such actions are enjoined by this Court, Plaintiff having no adequate remedy at law.

47. Defendants' aforesaid actions constitute an infringement of Plaintiff's rights in and to its federally registered Marks in violation of 15 U.S.C. § 1114.

48. On information and belief, Defendants' aforesaid acts have been and are being committed with knowledge of Plaintiff's Marks and knowledge that such acts are likely to cause confusion, or to cause mistake, or to deceive as to the source or origin of Defendants' goods. Defendants' acts are therefore intentional, willful, and maliciously calculated to cause confusion, to cause mistake, or to deceive. As such, this is an exceptional case.

49. In accordance with 15 U.S.C. § 1117, Plaintiff is entitled to recover from Defendants: (1) their profits, (2) any damages sustained by Plaintiff, and (3) the costs of the instant action. Further, based on the nature of Defendants' violation of Plaintiff's trademark rights, Plaintiff is entitled to recover reasonable attorney's fees, treble damages, and/or enhanced profits.

50. Plaintiff is further entitled to an award of three times its damages or profits from

Defendants' use of a counterfeit mark, pursuant to 15 U.S.C. § 1117(b).

51. Alternatively, Plaintiff is entitled to an award of statutory damages of not less than \$1,000 or more than \$2,000,000 per counterfeit mark per type of good sold or offered for sale pursuant to 15 U.S.C. § 1117(c).

52. Plaintiff has been and will continue to be irreparably damaged by Defendants' aforesaid acts unless Defendants are permanently enjoined by this Court, Plaintiff having no adequate remedy at law.

COUNT II.
FALSE DESIGNATION OF ORIGIN AND/OR FALSE ENDORSEMENT IN
VIOLATION OF 15 U.S.C. § 1125(a)

53. Paragraphs 1-43 are re-alleged and incorporated herein by reference.

54. Defendants are using in commerce a word, term, name, symbol, or device, or a combination thereof, or a false designation of origin, false or misleading description of fact, or false or misleading representation of fact on or in connection with its goods in a manner that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' goods or commercial activities by Plaintiff.

55. On information and belief, Defendants' aforesaid acts have been and are being committed with knowledge of Plaintiff's Marks and knowledge that such acts are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' goods or commercial activities by Plaintiff. Defendants' acts are therefore intentional, willful, and maliciously calculated to cause confusion, to cause mistake, or to deceive. As such, this is an exceptional case.

56. Defendants' acts constitute false designation of origin and/or false endorsement in violation of 15 U.S.C. § 1125(a).

57. In accordance with 15 U.S.C. § 1117, Plaintiff is entitled to recover from Defendants: (1) their profits, (2) any damages sustained by Plaintiff, and (3) the costs of the instant action. Further, based on the nature of Defendants' violation of Plaintiff's trademark rights, Plaintiff is entitled to recover reasonable attorney's fees, treble damages, and/or enhanced profits.

58. Plaintiff has been and will continue to be irreparably damaged by Defendants' aforesaid acts unless Defendants are preliminarily and permanently enjoined by this Court, Plaintiff having no adequate remedy at law.

**COUNT III.
COMMON LAW TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION**

59. Paragraphs 1-43 are re-alleged and incorporated herein by reference.

60. Defendants' use of one or more marks that is/are confusingly similar to one or more of Plaintiff's Marks, in connection with goods which are the same as or are competitive with Plaintiff's goods, is likely to cause confusion, to cause mistake, and to deceive as to the source or origin of its goods.

61. Defendants are offering their goods for sale with full knowledge of Plaintiff's Marks.

62. Defendants have promoted and offered for sale their goods in such a manner as to suggest an association, affiliation, or sponsorship with, or approval by Plaintiff, or so as to cause, or be likely to cause, confusion or mistake among purchasers as to the origin or sponsorship of Plaintiff's or Defendants' goods, all to Defendants' profit and to Plaintiff's damage.

63. Plaintiff is entitled to recover from Defendants actual and compensatory damages

in an amount to be proven at trial in addition to any other available remedies.

64. Defendants' aforesaid conduct constitutes infringement of Plaintiff's common law rights in and to Plaintiff's Marks and further constitutes common law unfair competition, all of which has irreparably damaged and/or will irreparably damage Plaintiff, together with its goodwill and reputation, unless Defendants are enjoined and restrained by this Court, Plaintiff having no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment of the Court as follows:

1. That Defendants, and those persons in active concert or participation with Defendants, be permanently enjoined and restrained from advertising, offering for sale, or selling any goods under or in connection with Plaintiff's Marks or any other designation, trademark, or service mark that is likely to cause confusion, mistake, or deception as to the source or sponsorship of Plaintiff's or Defendants' goods, or from otherwise infringing Plaintiff's Marks;

2. That an accounting be conducted and judgment rendered against Defendants jointly and severally for:

a) all profits received by Defendants from the sale of goods under or in connection with Plaintiff's Marks in the United States;

b) all damages in an amount proven at trial from, *inter alia*, Defendants' trademark infringement, false designation of origin, and false endorsement, pursuant to 15 U.S.C. § 1117; and

c) any other actual and compensatory damages in an amount not presently known but to be computed during the pendency of this action.

3. That any damages assessed against Defendants for trademark infringement, false

designation of origin, and/or false endorsement be trebled as provided by 15 U.S.C. § 1117, and any profits be enhanced as warranted;

4. Alternatively, that Plaintiff be awarded statutory damages from Defendants for their use of a counterfeit mark of no less than \$1,000 and no more than \$2,000,000 per mark per type of good sold;

5. That Defendants be directed to file with the Court and serve upon Plaintiff, no later than thirty (30) days after the issuance of an injunction, a report in writing and under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction requested in the immediately preceding paragraphs and any other provision of this Court's Order;

6. That Plaintiff have and recover its costs in this suit, including but not limited to reasonable attorney's fees and expenses; and

7. That Plaintiff have such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable.

Dated: October 25, 2024.

Respectfully submitted,
s/ Anne K. Ricchiuto
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