

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

GENERAL CONFERENCE)	
CORPORATION OF SEVENTH-)	
DAY ADVENTISTS, et al.,)	
)	
Plaintiffs,)	
)	
VS.)	No. 06-1207-T-An
)	
WALTER MCGILL d/b/a/ CREATION)	
SEVENTH DAY ADVENTISTS, et al.,)	
)	
Defendants.)	

ORDER DENYING PLAINTIFFS' MOTION TO STRIKE
DEFENDANT'S JURY DEMAND

Plaintiffs have moved the court to strike the jury demand of Defendants pursuant to Rule 39(a)¹ of the Federal Rules of Civil Procedure [DE# 32]. Plaintiffs contend that Defendants are not entitled to a jury because Plaintiffs' claims are equitable in nature. Defendant has responded to the motion. For the reasons set forth below, Plaintiffs' motion is DENIED.

¹ Fed. R. Civ. P. 39(a) provides as follows:

When a Demand Is Made. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

- (1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or
- (2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial.

The Seventh Amendment to the United States Constitution provides that “[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...” Federal policy favors jury decisions of disputed fact questions and requires resolving any doubts in favor of the right to a jury trial. Lee Pharmaceuticals v. Mishler, 526 F.2d 1115, 1117 (2nd Cir. 1975) (citing Byrd v. Blue Ridge Cooperative, 356 U.S. 525, 538 (1958)). The constitutional right to a trial by jury is not dependent on the choice of words used in the pleadings. Dairy Queen v. Wood, 369 U.S. 469, 477 (1962). As a general rule, monetary relief is legal, and an award of statutory damages serves purposes traditionally associated with legal relief, such as compensation and punishment. Feltner v. Columbia Pictures TV, 523 U.S. 340, 352 (1998) (holding that the Seventh Amendment provides a right to a jury trial when a copyright owner elects to recover statutory damages).

In the present case, Plaintiffs contend that their cause of action is equitable in nature and that the damages they seek are incidental to their request for injunctive relief. The complaint, however, does not support such a conclusion. While the complaint does seek injunctive relief, it also alleges a right to damages, including statutory damages and attorney fees.

Count I of the complaint alleges trademark infringement and unfair competition and seeks “damages and other appropriate relief” including statutorily provided attorney fees. Complaint at ¶¶ 48, 49. Count II alleges dilution of Plaintiffs’ marks under 15 U.S.C. § 1125(c) and seeks “damages and other appropriate relief.” Id. at ¶ 52. Count III alleges violations of the Anticybersquatting Consumer Protection Act, 15 U.S.C. 1125(d)(1), and

seeks actual damages, statutory damages, and attorney fees. Id. at ¶ 56. Count IV alleges unfair or deceptive trade practices under the Tennessee Consumer Protection Act, T.C.A. §§ 47-18-101 et seq., and Plaintiffs seek damages, including treble damages, and statutory attorney fees and costs. Id. ¶ 59. Count V alleges a breach of common law infringement of marks and seeks “damages and other appropriate relief.” Id. at ¶ 63. Count VI alleges common law unfair competition and seeks “damages and other appropriate relief.” Id. at ¶ 66. Count VII alleges injury to business reputation and dilution of marks under T.C.A. § 47-25-513 (“Section 513”) of the Tennessee Trade Mark Act of 2000, and seeks “damages and/or other appropriate relief.” Id. at ¶ 70.

The Supreme Court has determined that an action for damages for trademark infringement was originally an action at law and that, if a trademark suit seeks an injunction as well as damages, the holding in Beacon Theaters, Inc. v. Westover, 359 U.S. 500, 506-08 (1959), requires, absent “imperative circumstances,” that the legal issues be tried to a jury. Dairy Queen, 369 U.S. at 473. In Dairy Queen, the complaint sought: “(1) temporary and permanent injunctions to restrain petitioner from any future use of or dealing in the franchise and the trademark; (2) an accounting to determine the exact amount of money owing by petitioner and a judgment for that amount; and (3) an injunction pending accounting to prevent petitioner from collecting any money from ‘Dairy Queen’ stores in the territory.” Id. at 475. The Court looked to whether the claim for an accounting and judgment for money owing was legal and, thus, could support a jury demand. The complaint was unclear as to whether the plaintiff sought the money judgment for breach of a licensing contract or for

trademark infringement. The Supreme Court did not resolve the ambiguity:

We find it unnecessary to resolve this ambiguity in the respondents' complaint because we think it plain that their claim for a money judgment is a claim wholly legal in its nature however the complaint is construed. The respondents' contention that this money claim is "purely equitable" is based primarily upon the fact that their complaint is cast in terms of an "accounting," rather than in terms of an action for "debt" or "damages." But the constitutional right to trial by jury cannot be made to depend upon the choice of words used in the pleadings.

Id. at 477-78. The Court held that, except when an action presents "purely equitable" claims or when a legal action involves " 'accounts between the parties' ... of such a 'complicated nature' that only a court of equity can satisfactorily unravel them," a timely demand for a jury trial may not be denied. Id. at 478 (citing Kirby v. Lake Shore & Michigan Southern & Co., 120 U.S. 130, 134 (1887)). See also Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001) ("Leatherman filed this action asserting, inter alia, violations of the Trademark Act of 1946 (Lanham Act). Ultimately, a trial jury awarded Leatherman \$50,000 in compensatory damages and \$4.5 million in punitive damages.")

Plaintiffs cite the case of Coca-Cola v. Wright, 55 F.R.D. 11, 12 (W.D. Tenn. 1971), for the proposition that actions for injunctive relief based on trademark infringement are equitable in nature, even when they seek money damages. Subsequent courts, however, have found that Dairy Queen is clear and that there is a right to jury trial when damages are claimed in a trademark action even though the damages claim may be presented as incidental to an equitable suit for an injunction. See e.g., Oxford Industries, Inc. v. Hartmarx Corp., 1990 WL 65792 (N.D. Ill) ("Some cases, such as Coca-Cola Co. v. Wright . . . have sought to

distinguish Dairy Queen on the grounds that the plaintiff and defendant in Dairy Queen had a contractual relationship, giving rise to a claim at law for breach of contract. But this reading ignores the express language of Dairy Queen which called the plaintiff's claim 'wholly legal,' whether construed as a complaint for breach of contract or for trademark infringement.")

In the present case, Plaintiffs have clearly requested damages, statutory damages, and attorney fees in their complaint, as well as injunctive relief. Therefore, Defendants are entitled to a jury trial, and Plaintiffs' motion to strike jury demand is DENIED.

IT IS SO ORDERED.

s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE