

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

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| JMAN2 ENTERPRISES, L.L.C., |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| Eric Vaughan |) | |
| |) | |
| |) | Cause No: _____ |
| Defendant. |) | |
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COMPLAINT

COME NOW Plaintiff JMAN2 Enterprises, L.L.C., by and through its undersigned counsel of record, and for its Complaint against Defendant Eric Vaughan, states as follows:

THE PARTIES

1. JMAN2 Enterprises, L.L.C. (“Plaintiff”) is a limited liability company, organized and existing under the laws of the State of Texas.
2. Eric Vaughan is an individual who resides at 353 Benton Avenue, Fairview, Texas 75069, where he may be served with process.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claim is brought under federal statute 15 U.S.C. §1125 and therefore presents a federal question.

4. This Court has personal jurisdiction over the parties because the claims arise out of Defendant's conduct within the State of Texas, specifically, Defendant's sale and marketing of goods bearing the trademark "Johnny Football." Defendant's place of business is located in the State of Texas and all transactions have been fulfilled in the State of Texas.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff is resident of this District and a substantial part of the events giving rise to this Complaint occurred in this District.

FACTUAL ALLEGATIONS

6. Johnny Manziel is a student-athlete at Texas A&M University. As a result of his achievements in the sport of intercollegiate football during the fall of 2012, Johnny Manziel was awarded the Heisman Trophy, the pre-eminent national honor presented to a college football player on an annual basis. During the 2012 college football season, Johnny Manziel became synonymous with the mark "Johnny Football." Johnny Manziel through his licensee Texas A&M University, has used the mark "Johnny Football" in interstate commerce with regard to marketing his services as an amateur athlete and with regard to the distribution of goods, namely t-shirts bearing the mark "Johnny Football."

7. On November 12, 2012, Plaintiff became aware of t-shirts being sold on the website www.keepcalmandjohnnyfootball.com bearing the trademark "Johnny Football." Prior to and after this date, Defendant has sold the t-shirts bearing the trademark "Johnny Football" on a shirt stating "Keep Calm and Johnny Football."

8. Plaintiff acquired the intellectual property rights of Johnny Manziel regarding the use of his name, nickname, image, picture, likeness, and trademark via an assignment from Johnny Manziel.

9. Based upon information and belief, Defendant has sold goods, namely shirts, bearing the mark “Johnny Football” at significant profit and continues to do so.

10. On November 12, 2012, Defendant was provided with a cease and desist request from Texas A&M University regarding the sale of said t-shirts. On December 11, 2012, Defendant received a cease and desist request from Plaintiff regarding the sale of said t-shirts. Defendant has wholly failed and refused to discontinue sales of the t-shirts. Plaintiff, by assignment, has a protectable interest in the trademark “Johnny Football” as well as all Johnny Manziel’s right of publicity. Defendant has willfully used and continues to use Plaintiff’s property in the form of the mark “Johnny Football” with the intent of profiting from Johnny Manziel’s name, nickname, image, picture, and likeness.

11. On February 2, 2013, Plaintiff filed an application with the United States Patent & Trademark Office seeking to register the mark “Johnny Football.” That application remains pending at this time.

**COUNT I – TRADEMARK INFRINGEMENT PURSUANT TO SECTION 43(a) OF THE
LANHAM ACT (15 U.S.C. §1125(a))**

12. Defendant has infringed on Plaintiff’s common law trademark “Johnny Football” and unfairly competed with Plaintiff by the sale of t-shirts bearing the protected phrase “Johnny Football.” By its actions, Defendant has unfairly competed through false designation of origin, false representation of sponsorship and affiliation, and infringement of Plaintiff’s common law trademark in violation of Section 43(a) of the Lanham Act (15 U.S.C. §1125(a)).

13. Defendant’s actions were willfully intended to trade on the goodwill and reputation of Plaintiff. Defendant knew of the publicity garnered by Johnny Manziel and

produced counterfeit goods in order to profit from the publicity associated with the trademark “Johnny Football.” Said publicity was solely derivative of the athletic exploits of Johnny Manziel. Having been put on notice and requested to cease and desist from all use of the mark “Johnny Football” by both Texas A&M University and Johnny Manziel, Defendant continues to willfully promote and sell its counterfeit goods.

COUNT II – TEXAS UNFAIR COMPETITION

A. Right of Publicity

14. Defendant has appropriated Johnny Manziel’s image and placed it on t-shirts in the form of his nickname, “Johnny Football.” Defendant has sold the t-shirts and marketed them based on the value of the image of Johnny Manziel which is derived from the efforts of Johnny Manziel. At no time did Johnny Manziel, his assignees, agents, or representatives grant any permission or consent to Defendant to use his name, nickname, image, picture, or likeness.

15. The image of Johnny Manziel has commercial value in the public arena due solely to the exploits of Johnny Manziel as an intercollegiate football player for Texas A&M University. The presence of the image of Johnny Manziel, in the form of the nickname, “Johnny Football,” on the goods offered for sale by Defendant indicates that those goods are being sponsored or affiliated with Johnny Manziel. Defendant has used the image of Johnny Manziel for its commercial value.

16. Defendant has wrongfully benefited from his unlawful use of the image of Johnny Manziel in that he has made sales and garnered profits solely based on his unauthorized association with Johnny Manziel.

B. Palming Off

17. “Johnny Football” is Johnny Manziel in the eyes of the consuming public. Any product bearing this moniker is associated with Johnny Manziel and implies his consent and endorsement of the product. Defendant seeks to trade upon the identification of his products with Johnny Manziel without having acquired any consent from Plaintiff.

18. Defendant has palmed off his t-shirts on the consumer by utilizing the protected trademark “Johnny Football” thus confusing the public as to the sponsorship and affiliation of the t-shirts.

C. Misappropriation

19. The moniker “Johnny Football” has been earned by Johnny Manziel through his extensive time, labor, and skill demonstrated by his play for the Texas A&M University football team. The Heisman Trophy was awarded to Johnny Manziel in recognition of his extensive accomplishments in intercollegiate football.

20. Defendant has gained a free ride by selling t-shirts utilizing the protected trademark to sell merchandise based on the accomplishments and notoriety acquired by Johnny Manziel. Defendant’s actions have damaged Plaintiff commercially by selling products based on commercial value owned exclusively by Plaintiff and depriving Plaintiff of the opportunity to preserve and realize the value associated with the protected trademark.

DAMAGES

21. As a result of the Defendant’s unlawful actions, Plaintiff seeks injunctive relief barring any further manufacture, marketing, or sale of t-shirts or any other goods bearing the mark “Johnny Football” or the image, picture, likeness, name, or nickname of Johnny Manziel. Further, Plaintiff seeks compensatory damages for the unlawful sale of goods in excess of the

jurisdictional limits of the Court. As Defendant's actions were done knowingly and willfully, Plaintiff seeks exemplary damages.

22. Plaintiff seeks an award of its attorney's fees as authorized by Section 35(a) of the Lanham Act (15 U.S.C. §1117(a)). Defendant's infringement is willful and deliberate and therefore is an exceptional case justifying an award of Plaintiff's attorney's fees incurred in the prosecution of this complaint.

WHEREFORE, Plaintiff JMAN2 Enterprises, L.L.C. respectfully requests that Defendant be cited to appear and answer and, upon final trial, that Plaintiff have and recover from Defendant all damages, both compensatory and exemplary, attorneys' fees, pre-judgment and postjudgment interest, costs of court, injunctive relief, and all such other and further relief to which Plaintiff may prove itself justly entitled.

RESPECTFULLY SUBMITTED,

By 

J. Bennett White
Texas Bar Card No. 21309800
Virgil J. Jordan
Texas Bar Card No. 24004728

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Tyler, Texas 75711
Telephone 903/597-4300
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ATTORNEYS FOR PLAINTIFF

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

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| <p>I. (a) PLAINTIFFS</p> <p>JMAN2 ENTERPRISES, L.L.C.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Smith</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) J. Bennett White, J. Bennett White, P.C. P.O. Box 6250, Tyler, Texas 75711 903-597-4300; 903-597-4330 - fax</p> | <p>DEFENDANTS</p> <p>ERIC VAUGHN</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p> |
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| <p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p> | <p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table> | | PTF | DEF | | PTF | DEF | Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | PTF | DEF | | PTF | DEF | | | | | | | | | | | | | | | | | | | | |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | | | | | | | | | | | | | | | | | | | | |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | | | | | | | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | | | | | | | | | | | | | | | | | | | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|--|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | <p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other | <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark |
| <p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | <p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act | <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) |
| | | | | <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |
| | | | | <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions |
| | | | | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1125

Brief description of cause:
trademark infringement under the Lanham Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMANDS** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 2-15-13 SIGNATURE OF ATTORNEY OF RECORD J. Bennett White

FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____