

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

THOMAS NELSON, INC.)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
ZONDERVAN CORPORATION and)	
MEREDITH JOHNSON,)	JURY DEMAND
)	
Defendants.)	

COMPLAINT

Plaintiff Thomas Nelson, Inc. for its Complaint against Defendants, Zondervan Corporation and Meredith Johnson, states as follows:

I. The Parties

1. Plaintiff Thomas Nelson, Inc. (“Thomas Nelson”) is a corporation organized and existing under the laws of the State of Tennessee, with its principal place of business in Tennessee. Thomas Nelson is engaged in the business of, among other things, publishing books.
2. Defendant Zondervan Corporation (“Zondervan”) is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business in Grand Rapids, Michigan. Zondervan is engaged in the business of, among other things, publishing books and is one of Thomas Nelson’s competitors.
3. Defendant Meredith Johnson (“Johnson”) is a citizen and resident of California.

II. Jurisdiction and Venue

4. This Court has original jurisdiction over this action under 15 U.S.C. § 1121, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a). The Court also has original jurisdiction over this action under 28 U.S.C. § 1332 because there is absolute diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of costs and interest. The Court has supplemental jurisdiction over the state common law and statutory claims under 28 U.S.C. § 1367.

5. This Court may exercise personal jurisdiction over Defendants pursuant to Tenn. Code Ann. § 20-2-214 in that Defendants have transacted business in the State of Tennessee, and a substantial part of the events occurred in the State of Tennessee and in this District. Further, Johnson entered into at least two written contracts with Thomas Nelson, one of which included Johnson's stipulation that a Tennessee Court may exercise personal jurisdiction over her for claims arising out of that contract.

6. Venue is proper in this District under 28 U.S.C. § 1391(b) in that a substantial part of the acts that give rise to the claims occurred in the State of Tennessee and in this District, and Defendants have done business in the State of Tennessee and in this District. Moreover, Defendant Johnson entered into two contracts with Thomas Nelson in which she agreed that venue for any lawsuit arising out of those agreements would be in Nashville, Tennessee.

III. Factual Background

7. Thomas Nelson is a leading provider of Bibles, related products, and live events emphasizing Christian, inspirational and family value themes. Thomas Nelson markets and distributes those products through various imprints. Thomas Nelson publishes children's books and distributes children's product through the "Tommy Nelson" imprint and division.

8. Zondervan publishes Christian-themed books and Bibles, as well as related products, under various imprints. Zondervan publishes children's books through the Zonderkidz imprint and division.

9. Johnson is an artist and illustrator of children books. Johnson entered into multiple agreements with Thomas Nelson to provide illustrations for a series of children books, and related products, to be published and distributed by Thomas Nelson.

10. In 2004, Thomas Nelson began work on a series of children's books and related products entitled "Gigi, God's Little Princess" (the "Gigi Series"). The theme of the Gigi Series was to provide Christian lessons to children, with the focus being on girls between the ages of four and eight years of age. The Gigi Series contained stories centered on a dark-haired little girl named Gigi. Many of the stories in the Gigi Series also featured another girl character, Frances.

11. Thomas Nelson contracted with Johnson to provide illustrations for the Gigi Series. Thomas Nelson and Johnson first entered into an Artist Work-for-Hire Agreement (the "2004 Agreement") in October 2004, a copy of which is attached as Exhibit A. The 2004 Agreement contemplated a series of works based on the Gigi character, and that Johnson would provide 15 spreads of illustrations and the cover illustration for the first work. Through the 2004 Agreement, Johnson agreed, among other things, that she would not use the artwork for any purpose during or after the term of the agreement and that she would not use the artwork in any manner in a book that competed with the Gigi series.

12. After seeing the success of the Gigi Series, Johnson expressed to Thomas Nelson her dissatisfaction with the compensation she received under the Agreement. Johnson and Thomas Nelson later entered into an Independent Contractor Agreement in December 2005 (the "2005 Agreement") that provided for different compensation to Johnson for two future works in

the Gigi Series. Thomas Nelson has attached a copy of the 2005 Agreement as Exhibit B. Pursuant to the 2005 Agreement, the illustrations Johnson prepared for the Gigi Series likewise became Thomas Nelson's property and Johnson agreed she owned no interest in the illustrations or the books. In short, in exchange for lump sum payments, Johnson relinquished to Thomas Nelson all rights in the artwork she provided for the Gigi Series under both the 2004 and 2005 agreements.

13. Thomas Nelson registered copyrights in the Gigi works and the illustrations. Those registrations include United States Copyright Office Registration Nos. TX0006232009, TX0006376749, TX0006517917, TX0006954768 and TX0006959106.

14. Thomas Nelson published numerous books in the Gigi Series, and manufactured and distributed other products derived from the series, including DVDs, dolls, toys, stickers, dress-up kits and apparel. The products derived from the Gigi Series have been extremely popular, and that popularity is widely-known within the publishing industry. For example, the DVD "Gigi's First Day of School" was the number one selling Christian DVD for at least two weeks in 2009, according to the SoundScan chart. Those in the Christian publishing industry, including Thomas Nelson's competitor Zondervan, are aware of Thomas Nelson's tremendous success with the Gigi Series.

15. As the Gigi Series continued to achieve success, Johnson apparently remained disgruntled with the compensation she agreed to in the 2004 and 2005 agreements. Johnson then negotiated with Zondervan to illustrate a series of children's books for release beginning in 2009 entitled "The Princess Twins" (the "Princess Twins Series") that targeted little girls between the age of six and seven years.

16. With at least constructive knowledge of the Agreements and Thomas Nelson's ownership in the rights related to Johnson's illustrations for the Gigi Series, Zondervan hired Johnson to provide illustrations for Zondervan's Princess Twins Series. The illustrations Johnson provided to Zondervan for the Princess Series are substantially similar to those she provided to Thomas Nelson for the Gigi Series. Several of the story lines are substantially similar, including the Gigi Series book The Royal Tea Party and the Princess Twins book The Princess Twins and the Tea Party.

17. Johnson's illustration of the "Princess Emma" character in the Zondervan Princess Twins Series is substantially similar to her illustration of Gigi in the Gigi Series. For example and without limitation, Emma and Gigi both have dark hair, both have round faces, dark wavy hair, button noses, two prominent front teeth and virtually identical smiles. Because the character "Princess Abby" in the Princess Twins Series is Emma's twin but with blond hair, the illustration of Abby is substantially identical to the illustration of Gigi, with the exception of the different hair color. Additionally, both Gigi and the Princess Twins have white cats that are virtually identical in appearance. Examples of drawings of the Princess Twins and Gigi characters are attached as Exhibit C.

COUNT I
(Breach of Contract Against Johnson)

18. Plaintiff incorporates by reference the above paragraphs of the Complaint as if set forth in full and makes the following allegations.

19. Thomas Nelson and Johnson entered into binding contracts in October 2004 and December 2005 related to Johnson's work as an illustrator for the Gigi Series. Through both contracts, Johnson relinquished all rights in her illustrations.

20. In the October 2004 Agreement, Johnson agreed that she would not publish the artwork “in any manner that would compete or conflict with any of the rights” granted to Thomas Nelson in the Agreement.

21. By agreeing to provide illustrations for the Princess Twins Series to Zondervan that are substantially similar to Johnson’s illustrations of Gigi for the Gigi Series, Johnson breached her Agreements with Thomas Nelson.

22. Johnson’s breach of the Agreements has directly and proximately caused Thomas Nelson to suffer damages in an amount to be determined at trial.

COUNT II
(Intentional Interference with Business Relations against Zondervan)

23. Plaintiff incorporates by reference the above paragraphs of the Complaint as if set forth in full and makes the following allegations.

24. Zondervan knew of Thomas Nelson’s contractual relationship with Johnson with respect her illustrations for the Gigi series.

25. On information and belief, Zondervan acted and intended to cause Johnson to breach her contract with Thomas Nelson by entering into an agreement for Johnson to provide illustrations substantially similar to the Gigi Series in a manner that competes with the Gigi Series. In so doing, Zondervan acted with an improper motive or used improper means.

26. Zondervan’s wrongful interference with Thomas Nelson’s contractual relations has been willful and deliberate and has directly and proximately caused Thomas Nelson to incur loss and damages, and entitles Thomas Nelson to compensatory and punitive damages or treble damages in an amount to be determined at trial.

COUNT III
(Copyright Infringement)

27. Plaintiff incorporates by reference the above paragraphs of the Complaint as if set forth in full and makes the following allegations.

28. Thomas Nelson owns and has registered the copyrights in the works contained in the Gigi Series, including the illustrations described above.

29. Defendants had access to and knowledge of Thomas Nelson's copyright in the Gigi Series before publication of the Princess Twins Series. Without Thomas Nelson's permission, Defendants copied the illustrations of Gigi for use in Zondervan's Princess Twins Series. Defendants' willful infringement of Thomas Nelson's copyrighted works were for commercial gain and done with knowledge of the prior publication of those works and Thomas Nelson's rights in those works.

30. As a direct and proximate result of Defendants' infringements, Thomas Nelson has been damaged and is entitled to injunctive relief to prevent the further infringement of its copyright; its actual or statutory damages and any additional profits of the infringers; pre-judgment interest; and impoundment and destruction of all infringing articles in the custody, control and possession of Defendants.

COUNT IV
(Violation of the Lanham Act)

31. Plaintiff incorporates by reference the above paragraphs of the Complaint as if set forth in full and makes the following allegations.

32. Defendants' actions described above have directly and proximately caused, and are likely to continue to cause confusion or to cause mistake, or to deceive the public as to the affiliation, connection or association between the Gigi Series and the Princes Twins Series, or as

to the origin, sponsorship or approval by Thomas Nelson of the Princes Twins Series, in violation of 15 U.S.C. § 1125.

33. Such wrongful acts and unfair competition by Defendants have directly and proximately caused and are likely to continue to cause Thomas Nelson substantial damages. Accordingly, Thomas Nelson seeks recovery from Defendants of all amounts to which Thomas Nelson is entitled, including, without limitation, Defendants' profits from the sale of books and related products for the Princess Twins Series, all damages sustained by Thomas Nelson, attorneys' fees, the costs of the action and any additional amount that the Court considers just.

COUNT V
(Unfair Competition against Zondervan)

34. Plaintiff incorporates by reference the above paragraphs of the Complaint as if set forth in full and makes the following allegations.

35. Zondervan's unauthorized use of the illustrations that are substantially similar to the Gigi Series illustrations constitutes unfair competition and has created a likelihood of confusion among consumers, constitutes common-law unfair competition and has proximately damaged Thomas Nelson, entitling it to compensatory and punitive damages.

36. Thomas Nelson has expended significant sums of money, including legal fees and registration fees, in its business endeavors to protect its rights in the Gigi Series. Zondervan is engaged in unfair competition with Thomas Nelson because Zondervan uses illustrations in the Princess Twins Series that are substantially similar to the well known and popular Gigi Series. Zondervan's conduct has directly and proximately caused Thomas Nelson to suffer damages in an amount to be determined at trial.

COUNT VI
**(Violation of the Tennessee Consumer Protection Act,
Tenn. Code Ann. § 47-18-101, et seq.)**

37. Plaintiff incorporates by reference the above paragraphs of the Complaint as if set forth in full and makes the following allegations.

38. By their actions described above, Defendants have violated the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 et seq., by willfully, intentionally and knowingly engaging in fraudulent and deceptive acts, including, but not limited to:

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- Causing likelihood of confusion or misunderstanding as to the affiliation, connection or association with, or certification by, another; and
- Otherwise generally deceiving consumers or other persons.

39. Accordingly, Thomas Nelson entitled to injunctive relief, compensatory damages, treble damages, costs and attorneys' fees.

COUNT VII
(Civil Conspiracy)

40. Plaintiff incorporates by reference the above paragraphs of the Complaint as if set forth in full and makes the following allegations.

41. Zondervan and Johnson have had a common design to accomplish by concerted action an unlawful purpose, to create a competing series of books and related products that are substantially similar to the Gigi Series and that infringe Thomas Nelson's rights and create a likelihood of confusion as to the origin and source of the Princes Twins Series.

42. Defendants engaged in overt acts in furtherance of the conspiracy, including but not limited to: (1) infringing Thomas Nelson's rights in the illustrations for the Gigi Series; and

(2) creating and publishing works that are substantially similar to the Gigi Series that are likely to cause confusion as to the origin of those works.

43. As a direct and proximate cause of Defendants' conduct, Thomas Nelson has suffered injury and damages from the civil conspiracy, and is entitled to recover compensatory damages in an amount to be established at trial, together with punitive damages in an amount sufficient to punish Defendants for their intentional misconduct, and to dissuade others from engaging in similar conduct.

COUNT VIII
(Action for Attorneys' Fees and Expenses against Zondervan)

44. Plaintiff incorporates by reference the above paragraphs of the Complaint as if set forth in full and makes the following allegations.

45. Because of Zondervan's tortious acts, Thomas Nelson has been required to act in the protection of its interests by bringing claims against Johnson and incurring other costs, including attorneys' fees, in connection therewith.

46. As the Tennessee Supreme Court held in Pullman Standard, Inc. v. Abex Corp., 693 S.W.2d 336 (Tenn. 1985), Thomas Nelson is entitled to recover from Zondervan reasonable compensation for loss of time, attorneys' fees and other expenditures suffered or incurred in pursuing claims against Johnson and related matters.

WHEREFORE, Thomas Nelson demands judgment awarding the following relief:

1. All available remedies set forth in the Copyright Act, 17 U.S.C. § 501 et seq., including actual or statutory damages, pre-judgment interest, impoundment and destruction of the infringing articles, and the costs of this action and reasonable attorneys' fees;
2. All available remedies set forth in the Lanham Act, including a permanent

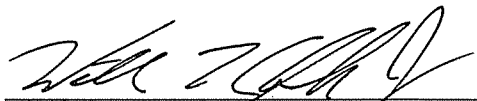
injunction to prevent further publication of the Princess Twins Series, pursuant to 15 U.S.C. § 1116; and Defendants' profits, the actual damages sustained by Thomas Nelson, including impairment of Thomas Nelson's goodwill, the costs of this action and reasonable attorneys' fees under 15 U.S.C. § 1117(a);

3. All available remedies set forth in the Tennessee Consumer Protection Act, including a permanent injunction to prevent further publication of the Princess Twins Series, pursuant to Tenn. Code Ann. § 47-18-108; and the actual damages sustained by Thomas Nelson, the costs of this action, reasonable attorneys' fees and treble damages under Tenn. Code Ann. § 47-18-109;

4. Actual and compensatory damages;
5. Punitive damages;
6. Attorneys' fees and costs;
7. Prejudgment interest; and
8. Such other and further relief as may be appropriate.

JURY DEMAND

Plaintiff demands a jury to try this cause.



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