

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORHTERN DISTRICT OF OHIO
EASTERN DIVISION**

Slep-Tone Entertainment Corporation
14100 South Lakes Drive
Charlotte, North Carolina 28273-6792

Plaintiff,

v.

Kenneth Lanning, dba Shots Club
Entertainment fka United Entertainment
116 North Gateway Boulevard
Elyria, Ohio 44035

and

Rich Mauk, dba Thumpurrz Toonz Karaoke
and DJ
750 North Trimble Road
Mansfield, Ohio 44906-2004

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

For its complaint against Kenneth Lanning, dba Shots Club Entertainment fka United Entertainment ("Lanning") and Rich Mauk, dba Thumpurrz Toonz Karaoke and DJ ("Mauk")(collectively "Defendants"), Plaintiff Slep-Tone Entertainment Corporation ("Slep-Tone") alleges as follows:

PARTIES

1. Slep-Tone is a North Carolina corporation having its principal place of business at 14100 South Lakes Drive, Charlotte, North Carolina 28273-6792.

2. Upon information and belief, Lanning is an individual who is engaged in the business of providing karaoke entertainment under the trade name Shots Club Entertainment fka United Entertainment in the Sheffield Lake, Ohio area and has a principal place of business at 116 North Gateway Boulevard, Elyria, Ohio 44035

3. Upon information and belief, Mauk is an individual who is engaged in the business of providing karaoke entertainment under the trade name Thumpurrz Toonz Karaoke and DJ in the Mansfield, Ohio area and has a principal place of business at 750 North Trimble Road, Mansfield, Ohio 44906-2004.

JURISDICTION AND VENUE

4. This is an action for trademark infringement and unfair competition arising under §§ 32 and 43 of the Trademark Act of 1946, 15 U.S.C. §§ 1114 and 1125. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, in that this is a civil action arising under the laws of the United States.

5. This Court further has original jurisdiction over Count One pursuant to 28 U.S.C § 1338(a), in that this civil action arises under an Act of Congress relating to trademarks, and, as to Plaintiff's federal unfair competition claim (Count Two), pursuant to 28 U.S.C. § 1338(b), in that the claim is joined with a substantial and related claim under the trademark laws of the United States. This Court has supplemental jurisdiction over Counts Three and Four because they are so related to Counts One and Two that they form part of the same case or controversy under Article III of the United States Constitution.

6. This Court also has original jurisdiction pursuant to 28 U.S.C. 1332 because Plaintiff and all Defendants are citizens of different states, Plaintiff and all

Defendants have principal places of business in different states, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

7. This Court has personal jurisdiction over each of Defendants because each of them is a resident of this judicial district.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this State and judicial district and because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

FACTS

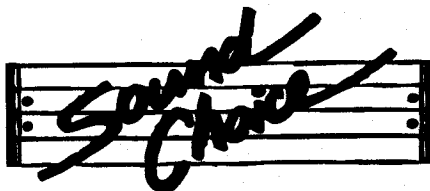
9. Slep-Tone is a leading manufacturer and distributor of karaoke phonorecords. Slep-Tone distributes songs under license from the copyright owner(s) or licensor(s) in a special encoded format known as "CD+G" (compact disc plus graphics). Operating under the trade name "Sound Choice," Slep-Tone sells its CD+Gs to karaoke jockeys ("KJs") who use the CD+Gs to put on karaoke shows. In the near future, Slep-Tone will commence selling its recordings in MP3+G format. Slep-Tone sells its products via a network of dealers and distributors and direct to the consumers on the internet at www.soundchoice.com.

10. A typical CD+G contains music and lyrics, but not a lead vocal track. The lead vocal tracks usually are omitted so that a karaoke participant can sing along as though he or she were the lead singer. The recording is encoded with data to provide a contemporaneous video display of the lyrics in order to aid the performer. The encoded portion is known as the graphics portion of the recording.

11. Slep-Tone is the owner of U.S. Trademark Registration No. 1,923,448, registered October 3, 1995, for the trademark SOUND CHOICE as used in conjunction

with “pre-recorded magnetic audio cassette tapes and compact discs containing musical compositions and compact discs containing video relating to musical compositions.”

12. Slep-Tone also is the owner of U.S. Trademark Registration No. 2,000,725, registered September 17, 1996, for a display trademark as follows:



as used in conjunction with “pre-recorded magnetic audio cassette tapes and compact discs containing musical compositions and compact discs containing video relating to musical compositions.”

13. The two registered Slep-Tone marks will be referred to herein as “the SOUND CHOICE marks.” Slep-Tone marks its CD+Gs with the SOUND CHOICE marks. Slep-Tone also encodes the graphics portion of its CD+Gs with the SOUND CHOICE marks so that the SOUND CHOICE marks appear on a video display while a performance is occurring.

14. Slep-Tone has provided the public with notice that the SOUND CHOICE marks have been federally registered through the consistent display of the symbol ® with the SOUND CHOICE marks as used on its goods.

15. In May, 2007, Slep-Tone sold its then existing catalog of CD+G masters, including copyright rights owned by it, to Stingray Digital Media Group of Montreal, Quebec, Canada (“Stingray”). Slep-Tone received a license from Stingray to continue

to sell its existing inventory of CD+Gs and to make new CD+Gs from the masters for commercial sales. Subsequent to the Stingray sale, Slep-Tone made new CD+Gs from the masters and sold those CD+Gs commercially. In addition, subsequent to the Stingray sale, Slep-Tone made and sold new CD+Gs that are not affected by the Stingray sale/license agreement.

16. It is very expensive to manufacture new CD+Gs. Slep-Tone has spent over \$18 million to create a library of authentic, re-recorded popular music songs that span different eras and genres of music. Slep-Tone's high manufacturing costs are due to a number of reasons, including the cost of production and distribution facilities, labor costs for musicians and computer programmers, and copyright licensing fees. In contrast, it is very inexpensive to duplicate an existing CD+G in CD form or to copy it to a computer hard drive or MP3 player.

17. Slep-Tone only sells its recordings in CD+G format. Slep-Tone authorizes its customers to "format and/or media shift" and transfer the contents of a genuine SOUND CHOICE CD+G recording to a single computer or MP3 player, provided that the customer keeps the original copy of the CD+G in his possession as an archival copy that is not used.

18. Upon information and belief, Defendants have no musical production facilities and have never recorded a song in CD+G format. Instead, Defendants have obtained counterfeit copies of CD+Gs manufactured by Slep-Tone and, without authorization from Slep-Tone, have used and displayed them publicly and/or copied them to computer hard drives and MP3 players for subsequent public use and display.

19. Defendants' activities also have caused harm to KJs who lawfully acquired a library of CD+Gs from Slep-Tone. This is because KJs who legitimately acquired all of their music at great cost are being forced by illicit competition from KJs such as Defendants to produce shows for lower and lower fees. Illegitimate KJs such as Defendants offer libraries of tens of thousands of songs, which would have cost \$50,000 to \$100,000 or more to acquire legitimately, but produce shows for one-third the rates a legitimate KJ can offer. The result is significant financial pressure on legitimate KJs to skirt or ignore the law and become pirates simply to stay in business.

INVESTIGATION OF DEFENDANTS' ACTIVITIES

20. Plaintiff's investigators observed Defendants possessing and/or using unauthorized counterfeit copies of at least one work bearing the SOUND CHOICE marks.

21. Defendant Lanning was observed infringing the trademarks in suit at Shoreway Lounge in Sheffield Lake, Ohio, during January, 2010.

22. Defendant Mauk was observed infringing the trademarks in suit at Sons of Italy in Mansfield, Ohio, during January, 2010.

COUNT ONE -- FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)

23. Slep-Tone realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein, and incorporates them herein by reference.

24. Defendants used a reproduction, counterfeit, or copy of the SOUND CHOICE marks in connection with the provision of services including karaoke services, by displaying the reproduction, counterfeit, or copy of the SOUND CHOICE marks during the provision of those services.

25. Defendants' use of the SOUND CHOICE marks was "in commerce" within the meaning of the Trademark Act of 1946 as amended.

26. Slep-Tone did not license Defendants to use the SOUND CHOICE marks in connection with the provision of those services.

27. Defendants' use of the SOUND CHOICE marks is likely to cause confusion, or to cause mistake, or to deceive Defendants' customers and patrons into believing that Defendants' services are being provided with the authorization of Slep-Tone.

28. Unless enjoined by the Court, Defendants' infringing activities as described above will continue unabated and will continue to cause harm to Slep-Tone.

COUNT TWO – FEDERAL UNFAIR COMPETITION (15 U.S.C. § 1125)

29. Slep-Tone realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein, and incorporates them herein by reference.

30. Defendants' use of the SOUND CHOICE marks on or in connection with media used or displayed by them is likely to cause confusion, or to cause mistake, or to deceive in that observers, karaoke show participants, customers, purchasers and/or prospective purchasers are likely to be deceived into believing, falsely, that Slep-Tone manufactured or approved the manufacture of goods used or displayed by Defendants, in violation of 15 U.S.C. § 1125(a).

31. Defendants' use of the SOUND CHOICE marks in this fashion would have inured to the benefit of Slep-Tone if Defendants had legitimately acquired genuine SOUND CHOICE CD+Gs instead of counterfeiting them or acquiring counterfeit copies, in that Slep-Tone would have received revenue from such sales.

32. Because Slep-Tone has been denied this revenue, it has been damaged by Defendants' uses.

33. Unless enjoined by the Court, Defendants' unfair competition activities as described above will continue unabated and will continue to cause harm to Slep-Tone.

COUNT THREE – OHIO DECEPTIVE TRADE PRACTICES (4165.02 O.R.C.)

34. Slep-Tone realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein, and incorporates them herein by reference.

35. Defendants' willful, unauthorized use of the SOUND CHOICE marks on or in connection with media used by them or which display the SOUND CHOICE marks when performed or played constitutes (a) causing likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods, and (b) causing likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another in violation of Section 4165.02(A)(2) and (3), Ohio Revised Code.

36. By using without authorization media under the SOUND CHOICE marks or which display the SOUND CHOICE marks when performed or played, Defendants have represented that their goods or services have sponsorship, approval, or characteristics that they do not have or that Defendants have a sponsorship, approval, status, affiliation, or connection with Slep-Tone that they do not have, in violation of Section 4165.02(A)(7), Ohio Revised Code.

37. Defendants' use of the SOUND CHOICE marks in this fashion would have inured to the benefit of Slep-Tone if Defendants had legitimately acquired genuine

SOUND CHOICE CD+Gs instead of counterfeiting them or acquiring counterfeit copies, in that Slep-Tone would have received revenue from such sales.

38. Because Slep-Tone has been denied this revenue, it has been damaged by Defendants' uses.

39. Unless enjoined by the Court, Defendants' deceptive trade practices as described above will continue unabated and will continue to cause harm to Slep-Tone.

COUNT FOUR – OHIO COMMON LAW TRADEMARK INFRINGEMENT

40. Slep-Tone realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein, and incorporates them herein by reference.

41. Defendants willfully and without authorization used a reproduction, counterfeit, or copy of the SOUND CHOICE marks by using media that display the SOUND CHOICE marks or which display the SOUND CHOICE marks when performed or played, in violation of Ohio common law.

42. Slep-Tone did not license Defendants to use the SOUND CHOICE marks in connection with those uses.

43. Defendants' use of the SOUND CHOICE marks was intentional and is likely to cause confusion, or to cause mistake, or to deceive Defendants' customers into believing that Defendants' goods or services are being provided by or with the authorization of Slep-Tone, in violation of Ohio common law.

44. Unless enjoined by the Court, Defendants' infringing activities as described above will continue unabated and will continue to cause harm to Slep-Tone.

PRAYER FOR RELIEF

WHEREFORE, Slep-Tone prays for judgment against Defendants and that the Court:

- A. Find that Defendants have committed acts of infringement, including but not limited to counterfeiting, of the SOUND CHOICE marks, in violation of 15 U.S.C. § 1114;
- B. Find that Defendants have engaged in unfair competition against Slep-Tone in violation of 15 U.S.C. § 1125(a);
- C. Find that Defendants have engaged in deceptive trade practices in violation of Ohio law, § 4165.02(A), O.R.C.
- D. Find that Defendants have engaged in trademark infringement pursuant to Ohio common law;
- E. Enter judgment against Defendants jointly and severally and in favor of Slep-Tone;
- F. Find that Defendants' activities were in all respects conducted willfully and for profit;
- G. Award to Slep-Tone Defendants' profits and the damages sustained by Slep-Tone because of Defendants' conduct in infringing the SOUND CHOICE marks, or, in the alternative, statutory damages per trademark infringed by counterfeiting;
- H. Award to Slep-Tone Defendants' profits and the damages sustained by Slep-Tone because of the Defendants' acts of deceptive trade practices and unfair competition under federal and Ohio common law;

- I. Award to Slep-Tone treble and/or punitive damages, as available, for Defendants' acts of willful infringement, unfair competition, and deceptive trade practices;
- J. Order the seizure of all computer disks, drives, or other media in the possession, custody, or control of Defendants which contain counterfeits or reproductions of the SOUND CHOICE marks;
- K. Grant Slep-Tone permanent injunctive relief against further acts of infringement, unfair competition, and deceptive trade practices by Defendants;
- L. Award to Slep-Tone its costs of suit, attorney's fees, pre-judgment interest, and post-judgment interest; and

M. Grant Slep-Tone such other and further relief as justice may require.

A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE.

SLEP-TONE ENTERTAINMENT CORPORATION

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