

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

EXPERIMENTAL AIRCRAFT ASSOCIATION, INC.,

Plaintiff,

v.

Case No.

CARL SOSNOSKI
DEAN SOSNOSKI
STEVEN SOSNOSKI
d/b/a SOS BROS,

JURY TRIAL DEMANDED

Defendants.

COMPLAINT

Plaintiff Experimental Aircraft Association, Inc. (“EAA”), by its undersigned attorneys, Boyle Fredrickson S.C., complains against Defendants Carl Sosnoski, Dean Sosnoski, and Steve Sosnoski (collectively the “Sosnoskis” or “Defendants”), d/b/a SOS Bros (“SOS Bros”), as follows:

NATURE OF THE ACTION

1. EAA owns and controls trademarks rights for the trademarks AIRVENTURE, EAA, Airplane Design, KIDVENTURE and WOMENVENTURE. EAA puts on an annual family-friendly event called EAA® AirVenture® Oshkosh™ which is the “World’s Greatest Aviation Celebration”® and EAA’s yearly membership convention. The Sosnoskis have been using various trademarks owned and controlled by EAA to promote and conduct an event under the SOS Bros name called “Beer Venture” located adjacent to and visible from the AirVenture® event grounds. Defendants’ use of EAA’s trademarks in an unauthorized manner falsely suggests

and is likely to create the mistaken impression that Defendants and their products, services, and commercial activities are sponsored by, approved by, affiliated with, connected with, or originate from EAA. Defendants' unauthorized use of EAA's trademarks constitutes willful trademark infringement, counterfeiting, false designation of origin, unfair competition, and dilution under federal and state law.

THE PARTIES

2. EAA is a nonstock Wisconsin corporation with a principal office located at 3000 Poberezny Road, Oshkosh WI 54902.

3. Defendant Carl Sosnoski, an individual and a citizen of the State of Wisconsin, may be served process at 2475 Knapp Street, Oshkosh WI 54902-9020.

4. Defendant Dean Sosnoski, an individual and a citizen of the State of Wisconsin, may be served process at N2549 Sommers Drive, Appleton WI 54913.

5. Defendant Steven Sosnoski, an individual and a citizen of the State of Wisconsin, may be served process at 1625 Maricopa Drive, Oshkosh WI 54904.

6. Upon information and belief, the Sosnoskis operate the SOS Bros "Beer Venture" venue, which according to its Facebook page, is located at 1679 W. Waukau Avenue, Oshkosh WI 54902.

7. Plaintiff believes Allan Sosnoski may also have liability with respect to the claims asserted herein. However, since Allan Sosnoski is believed to be recovering from a very serious recent motorcycle accident, Plaintiff has elected to refrain from bringing a claim at this time, pending further investigation. Plaintiff reserves the right to make a claim against Allan Sosnoski if the results of investigation mandate or otherwise warrant his inclusion in this action.

JURISDICTION AND VENUE

8. Subject matter jurisdiction is expressly conferred on this Court under 15 U.S.C. §§ 1116 and 1121 and 28 U.S.C. §§ 1331 and 1338(a) and (b).

9. Personal jurisdiction is vested in this Court because the Sosnoskis are citizens in this judicial district and because the Sosnoskis have committed one or more of the acts complained of herein within this judicial district.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) because the Sosnoskis reside in this judicial district and are subject to the Court's personal jurisdiction with respect to this action, and because a substantial part of the events giving rise to the claims stated in this Complaint occurred in this judicial district.

FACTS COMMON TO ALL COUNTS

EAA's Background and the EAA Trademarks

11. EAA is an organization for aviation enthusiasts whose mission is to grow participation in general aviation.

12. EAA was founded in 1953 and has more than 225,000 members worldwide.

13. EAA is headquartered in Oshkosh, Wisconsin.

14. In 1966, EAA established the EAA Museum, now called the EAA Aviation Museum. The museum is open daily all year round, except New Year's Day, Easter Sunday, Thanksgiving Day, Christmas Eve Day, and Christmas Day.

15. Beginning in 1970, EAA began holding its annual "Fly-In Convention" in Oshkosh, Wisconsin.

16. By the 1980s, the EAA Fly-In Convention was attracting over 100,000 visitors each year.

17. In 1998, the EAA Fly-In Convention was renamed the AirVenture® convention. In 2014 it was renamed the EAA® AirVenture® Oshkosh™ convention.

18. The EAA AirVenture Oshkosh convention is a gathering of aviation enthusiasts held each summer at Wittman Regional Airport and the EAA AirVenture grounds in Oshkosh, Wisconsin.

19. The 2019 EAA AirVenture Oshkosh convention attracted 642,000 aviation enthusiasts from across the nation and around the world.

20. The EAA AirVenture Oshkosh convention has a significant, positive impact on the local economy. According to a 2017 study by the University of Wisconsin Oshkosh, the gross economic impact of the convention was more than \$170 million to the Fox Valley region. Additionally, the EAA Aviation Museum draws aviation enthusiasts year-round.

21. The EAA AirVenture Oshkosh convention is and has a reputation of being a family-friendly event. Attached as Exhibit 1 is a screenshot of the AirVenture website.

22. EAA owns U.S. Registration No. 2286207 for the mark AIRVENTURE in International Classes 25 and 41.

23. EAA owns U.S. Registration No. 3120648 for the mark AIRVENTURE in International Class 9.

24. EAA owns U.S. Registration No. 1166870 for the mark EAA in US Class 200.

25. EAA owns U.S. Registration No. 2289467 for the mark EAA and Design in International Classes 16, 25, and 41.

26. EAA owns U.S. Registration No. 2286435 for an Airplane Design mark in International Classes 16, 25, and 41 (the “Airplane Design”).

27. EAA owns U.S. Registration No. 4826762 for the mark KIDVENTURE in International Classes 16, 25 and 41.

28. Copies of the U.S. Trademark Registrations are attached as Exhibits 2-7.

29. The U.S. Trademark Registrations discussed above (collectively “EAA Registrations”) are in full force and effect on the U.S. Patent and Trademark Office Principal Register. The EAA Registrations constitute *prima facie* evidence of the validity of the trademarks, EAA’s ownership of the marks, and EAA’s right to exclusive use of the marks in connection with the goods and services identified in the EAA Registrations.

30. EAA holds common law trademark rights in the mark WOMENVENTURE, with first use in commerce beginning in 2009. WOMENVENTURE is an annual event during the AirVenture event that celebrates women in all facets of the aviation community.

31. EAA has invested substantial time, money and effort developing and promoting its registered and common law trademarks identified above (collectively the “EAA Marks”).

32. The EAA Marks are inherently distinctive, as they neither serve as a name for the products or services themselves nor describe any quality, characteristic, or ingredient of the products or services.

33. EAA has used and promoted the EAA Marks with respect to its products, services, and events. As a result of extensive use and promotion of the EAA Marks, the EAA Marks have acquired a favorable reputation with consumers as an identifier and symbol of Plaintiff and its products, services, and goodwill. Accordingly, the EAA Marks are strong and are entitled to broad protection.

34. EAA continues to invest substantial sums in promoting its goods and services offered under the EAA Marks.

The Sosnoskis' Infringing Conduct

35. The Sosnoskis operate the SOS Bros food, beverage and entertainment venue including the SOS Bros tent, in Oshkosh, Wisconsin.

36. The SOS Bros venue is a temporary bar and restaurant located adjacent to and visible from the AirVenture event grounds.

37. For at least the last few years, the Sosnoskis have been hosting an event named "Beer Venture" each year during the AirVenture event.

38. The "Beer Venture" event heavily promotes consumption of alcoholic beverages and utilizes female servers wearing bikini swimsuits. Both activities conflict with the family friendly image and nature of EAA and its AirVenture event.

39. On July 2, 2019, prior to the 2019 AirVenture event held July 22-28, 2019, attorneys for EAA sent a cease and desist letter to the Sosnoskis, copy at Exhibit 8, demanding, inter alia, that the Sosnoskis: cease any and all uses of the EAA Marks, "Beer Venture", and any other trademarks confusingly similar to the EAA Marks; deliver to EAA, or destroy, all promotional and advertising materials and merchandise bearing any infringing trademarks or copyrighted works; and provide EAA with written confirmation that the Sosnoskis have complied with the demands no later than July 15, 2019.

40. During the 2019 AirVenture event held July 22-18, 2019, the following conduct of the Sosnoskis was witnessed and documented:

- (1) Carl Sosnoski was photographed wearing a "Beer Venture" T-shirt, see Exhibit 9;
- (2) Caps with "Beer Venture" were on sale at the SOS Bros venue, see Exhibit 10;
- (3) T-shirts with "Beer Venture" were on sale at the SOS Bros venue, see Exhibit 11; and
- (4) T-shirts with the Airplane Design were on sale at the SOS Bros venue; see Exhibit 12.

41. During 2019, prior to the July 2, 2019 date of EAA's cease and desist letter to the Sosnoskis, the following conduct of the Sosnoskis was documented:

- (1) Use of "Beer Venture" on commercial venue signage as shown on Exhibit 13;
- (2) Use of the Airplane Design and "Beer Venture" on commercial venue signage as shown on Exhibit 14;
- (3) Use of "Beer Venture at EAA" on a Facebook® page as shown on Exhibit 15;
- (4) Use of the "EAA SOS Bros. Beer Tent AirVenture 2015" by Jill G on a YouTube® post as shown on Exhibit 16;
- (5) Use of the Airplane Design and "Beer Venture" on merchandise including T-shirts as shown on Exhibit 17;
- (6) Use of the Airplane Design "and "Beer Venture" to promote a restaurant and bar venue as shown on Exhibit 18;
- (7) Use of "Beer Venture" on merchandise including hats as shown on Exhibit 19;
- (8) Use of "Beer Venture" on merchandise including T-shirts as shown on Exhibit 20; and
- (9) Use of "Beer Venture" on merchandise include beer koozies as shown on Exhibit 21.

42. The Sosnoskis' use of the EAA Marks and colorable imitations of the EAA Marks are deliberate attempts to trade on EAA's valuable goodwill and reputation in the industry, and to compete unfairly.

43. The Sosnoskis have and had actual knowledge of their trademark infringement, counterfeiting, dilution and unfair competition.

44. Sosnoskis' actions described above have resulted in irreparable harm to EAA's reputation and goodwill and damage to consumers.

COUNT ONE
FEDERAL TRADEMARK INFRINGEMENT

45. EAA incorporates the allegations of paragraphs 1-44 as if fully set forth herein.

46. The Sosnoskis' uses of EAA, Airplane Design and "Beer Venture" and other colorable imitations of the EAA Marks falsely indicate to consumers that the services and goods sold at the SOS Bros venue originate from, are approved by, are sponsored by, are licensed by, or are affiliated with EAA or are otherwise associated with EAA.

47. The Sosnoskis' unauthorized use of EAA, Airplane Design and "Beer Venture" in the manner described above is likely to cause confusion, to cause mistake, or to deceive customers and potential customers of the parties by suggesting some affiliation, connection, or association of the Sosnoskis with EAA.

48. The Sosnoskis' actions, as described above, constitute trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

49. The Sosnoskis' actions have taken place with knowledge of the EAA Marks and, therefore, have been intentional, deliberate, and willful.

50. As a direct and proximate result of the Sosnoskis' actions as alleged above, EAA has been damaged and will continue to be damaged.

COUNT TWO
FEDERAL UNFAIR COMPETITION

51. EAA incorporates the allegations of paragraphs 1-50 as if fully set forth herein.

52. The Sosnoskis have unfairly competed with EAA by using EAA, Airplane Design and "Beer Venture" and other colorable imitations of the EAA Marks to attempt to cause confusion, mistake, or deception as to the source, origin, affiliation, connection or association of

the Sosnoskis' services with EAA, or as to the approval of the Sosnoskis' goods and services by EAA.

53. The Sosnoskis' actions, as described above, constitute unfair competition with respect to the EAA Marks, in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

54. The Sosnoskis' actions have taken place with full knowledge of the EAA Marks and, therefore, have been intentional, deliberate, and willful.

55. As a direct and proximate result of these actions, EAA has been damaged and will continue to be damaged.

COUNT THREE **TRADEMARK DILUTION**

56. EAA incorporates the allegations of paragraphs 1-55 as if fully set forth herein.

57. EAA has engaged in extensive nationwide advertising, promotion and use of at least the marks EAA and AIRVENTURE (the "Famous EAA Marks") and has had extensive sales of its goods and services sold under these marks.

58. EAA's success has had a substantial impact on the public and has created an association in the minds of consumers between EAA and Famous EAA Marks. The Famous EAA Marks are famous and were famous nationwide before the Sosnoskis commenced their unauthorized use of the Famous EAA Marks.

59. The Sosnoskis' actions described above, all occurring after the Famous EAA Marks became famous, are likely to cause dilution by blurring and/or dilution by tarnishment of the distinctive quality of those trademarks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

60. The Sosnoskis' actions have taken place with the full knowledge of the Famous EAA Marks and, therefore, have been intentional, deliberate, and willful.

61. As a direct and proximate result of these actions, EAA has been damaged and will continue to be damaged.

COUNT FOUR
COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

62. EAA incorporates the allegations of paragraphs 1-61 as if fully set forth herein.

63. The Sosnoskis' uses of EAA, Airplane Design and "Beer Venture" and other colorable imitations of the EAA Marks are intended and likely to cause confusion, mistake, or deception as to the source, origin, affiliation, connection or association of the Sosnoskis' services with EAA, or as to the approval of the Sosnoskis' services by EAA, and thus constitute trademark infringement and unfair competition in violation of Wisconsin common law.

64. The Sosnoskis' actions have taken place with full knowledge of the EAA Marks and, therefore, have been intentional, deliberate, and willful.

65. As a direct and proximate result of these actions, EAA has been damaged and will continue to be damaged.

66. As a direct and proximate result of the Sosnoskis' conduct, EAA suffered actual damages and lost profits.

67. The Sosnoskis knew that their unauthorized use of a mark confusingly similar to the EAA Marks would result in a benefit to SOS Bros.

68. The Sosnoskis' unauthorized use of EAA, Airplane Design and "Beer Venture" has unjustly enriched the Sosnoskis at the expense of EAA's reputation and goodwill.

COUNT FIVE
TRADEMARK COUNTERFEITING

69. EAA incorporates the allegations of paragraphs 1-68 as if fully set forth herein.

70. The Sosnoskis have used marks substantially identical to EAA's Marks including but not limited to the Airplane Design. Such use is likely to cause confusion or to cause mistake or to deceive the consuming public as to the source, origin, affiliation, connection or association of the Sosnoskis' services with EAA.

71. The Sosnoskis' actions having taken place with full knowledge of EAA's ownership and use of the EAA Marks, have been intentional, deliberate, and willful.

72. As a direct and proximate result of these actions, EAA has been damaged and will continue to be damaged.

73. As a direct and proximate result of the Sosnoskis' conduct, EAA suffered actual damages and lost profits and are entitled to statutory damages.

PRAYER FOR RELIEF

WHEREFORE, EAA demands judgment in its favor on each and every claim for relief set forth above and an award for relief including, but not limited to the following:

1. An injunction permanently enjoining the Sosnoskis and their employees, contractors, agents, partners, officers, directors, owners, shareholders, principals, subsidiaries, related companies, affiliates, joint venturers, distributors, dealers, licensees, and all persons in active concert or participation with any of them:

- a. From using the EAA Marks and any other trademark owned by EAA, any variations thereof including but not limited to "Beer Venture" or other colorable imitations thereof that are likely to cause confusion with the EAA Marks or any other trademark owned by EAA;

- b. From manufacturing, distributing, promoting, and/or selling any goods or services bearing the EAA Marks and any other trademark owned by EAA, any variations thereof including but not limited to “Beer Venture” or other colorable imitations thereof that are likely to cause confusion with the EAA Marks or any other trademark owned by EAA;
- c. From representing by any means whatsoever, directly or indirectly, that the Sosnoskis, any goods or services offered by the Sosnoskis, or any activities undertaken by the Sosnoskis, are sponsored or licensed by EAA or otherwise associated or connected in any way with EAA;
- d. From passing off any of its products or services as originating with, associated with or sponsored by EAA; and
- e. From manufacturing, distributing, promoting, and/or selling any goods or services bearing the EAA Marks and any other trademark owned by EAA, any variations thereof including but not limited to “Beer Venture” or other colorable imitations thereof the counterfeit the Airplane Design.

2. An Order requiring the Sosnoskis to deliver to EAA for destruction all goods, advertisements, literature and other written or printed material which bear any of the EAA Marks or any other mark confusingly similar to the EAA Marks including but not limited to EAA, Airplane Design and “Beer Venture”, or any other mark owned by EAA.

3. An Order directing the Sosnoskis to remove from all domain names and/or websites that it owns or controls, directly or indirectly, including any online directories or advertisements, the EAA Marks, and any other trademark owned by EAA, any variations thereof including but not “Beer Venture” and any other marks that are likely to cause confusion with EAA’s trademarks.

4. An Order directing the Sosnoskis to file with this Court and serve on EAA’s attorneys within thirty (30) days after the date of entry of any injunction or final order, a report in writing and under oath setting forth in detail the manner and form in which the Sosnoskis has complied with the injunction or final order.

5. An Order requiring the Sosnoskis to account for and pay to EAA any and all profits arising from the foregoing acts of infringement, dilution, counterfeiting, and unfair competition,

and trebling such profits in accordance with 15 U.S.C. § 1117 and other applicable statutes and laws.

6. An Order requiring the Sosnoskis to pay to EAA compensatory damages in an amount as yet undetermined caused by the foregoing acts of infringement, dilution, counterfeiting and unfair competition, and trebling such compensatory damages in accordance with 15 U.S.C. § 1117 and other applicable statutes and laws.

7. An Order requiring the Sosnoskis to pay to EAA statutory and punitive damages in an amount as yet undetermined caused by the foregoing acts of the Sosnoskis.

8. An Order requiring the Sosnoskis to pay EAA's costs and attorneys' fees in this action pursuant to 15 U.S.C. § 1117 and other applicable statutes and laws.

9. Any and all other relief as this Court deems just and equitable.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, EAA demands a trial by jury on all matters and issues triable by jury.

Dated this 22nd day of November 2019.

/s/ Adam L. Brookman
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