

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
Civil Action No.: 7:16-cv-148

LUMBEE TRIBE OF NORTH CAROLINA,
a North Carolina State Recognized Indian
Tribe,

Plaintiff,

v.

ANHEUSER-BUSCH, LLC, a Missouri
Limited Liability Company, and R.A.
JEFFREYS DISTRIBUTING COMPANY,
LLC, a North Carolina Limited Liability
Company,

Defendants.

**COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff Lumbee Tribe of North Carolina (“the Lumbee Tribe” or “Plaintiff”) complains of Defendants Anheuser-Busch, LLC (“Anheuser-Busch”) and R.A. Jeffreys Distributing Company, LLC (“R.A. Jeffreys”) (collectively, “Defendants”) as follows:

NATURE OF ACTION

1. This is a civil action seeking injunctive relief and damages against Defendants for: (i) trademark infringement and unfair competition in violation of § 43(a) of the Federal Trademark Act of 1946, also known as the Lanham Act, codified at 15 U.S.C. § 1125(a), *et seq.*; (ii) trademark infringement in violation of North Carolina common law; (iii) unfair competition in violation of North Carolina common law; and (iv) unfair and deceptive trade practices and unfair methods of competition in violation of the North Carolina Unfair and Deceptive Trade Practices Act, codified at N.C. Gen. Stat. § 75-1.1, *et seq.*

2. Trademark law and the law of unfair competition protect trademark owners from

the unauthorized use of their marks and unfair trade practices, and also protect the public from confusion regarding the source of products and services, and about the affiliation of parties offering products or services. Confusion occurs when a person or company uses a mark in a way that creates a likelihood that members of the public will mistakenly believe that the person or company's goods or services originate from, or are affiliated with, the trademark owner when they are not.

3. This is a trademark infringement and unfair competition case in which the Defendants are promoting and selling alcoholic beverages in connection with advertising that prominently displays the Lumbee Tribe's LUMBEE TRIBE OF NORTH CAROLINA & Design mark (the "LUMBEE TRIBE Logo Mark"), shown directly below,



and the Lumbee Tribe's "HERITAGE, PRIDE & STRENGTH" slogan mark (collectively, the "LUMBEE TRIBE Marks") in association with Anheuser-Busch's BUDWEISER and BUD LIGHT marks, creating the false impression in the minds of the public that the Lumbee Tribe has approved of Defendants' use of the LUMBEE TRIBE Marks and, by extension, of Defendants' alcoholic beverage products.

4. Defendants' infringing uses of the LUMBEE TRIBE Marks has created a significant amount of actual confusion in the community, including in the minds of some members of the Lumbee Tribe, and in the minds of consumers who mistakenly believe that the Lumbee Tribe has given Defendants permission to use the LUMBEE TRIBE Marks in a way that

many members of the tribe find offensive because alcohol abuse is often associated with Native American culture.

5. Defendants have engaged in this conduct in spite of the fact that the Lumbee Tribe has used its LUMBEE TRIBE Logo Mark in commerce and in connection with its services, beginning at least as early as February 22, 2004, and has used its “HERITAGE, PRIDE & STRENGTH” slogan mark in commerce, in connection with its services, beginning at least as early as July 18, 2015.

THE PARTIES

6. Plaintiff the Lumbee Tribe has been recognized as an American Indian Tribe by the State of North Carolina since 1885. The Lumbee Tribe maintains an office at 6984 NC Hwy 711 West PO Box 2709 Pembroke, NC 28372.

7. Defendant Anheuser-Busch, LLC (“Anheuser-Busch”) is a limited liability company organized and existing under the laws of Missouri. Anheuser-Busch maintains a principal office address at One Busch Place, Saint Louis, Missouri 63118-1849, and a registered agent address at 150 Fayetteville Street, Suite 1011, Raleigh, NC 27601-2957. On information and belief, Anheuser-Busch is doing business related to the claims asserted in this complaint in this judicial District.

8. Defendant R.A. Jeffreys Distributing Company, LLC (“R.A. Jeffreys”) is a limited liability company organized and existing under the laws of North Carolina. R.A. Jeffreys maintains a principal office address at 420 Civic Boulevard, Raleigh, North Carolina 27610-2967, and a registered mailing address at 2026 US Highway 70 W, Goldsboro, NC 27530-9542. On information and belief, R.A. Jeffreys is doing business related to the claims asserted in this complaint in this District.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 because this action arises under the Lanham Act. This Court has supplemental jurisdiction over the Lumbee Tribe's related state law claims under 28 U.S.C. § 1367(a).

10. This Court has specific personal jurisdiction over Defendants because Defendants have purposefully availed themselves of the privileges of conducting activities and doing business in the State of North Carolina and in this District, thus invoking the benefits and protections of North Carolina's laws, by advertising, distributing and selling products to businesses and consumers throughout this District in connection with their infringing uses of the LUMBEE TRIBE Marks that are the subjects of the claims set forth herein. This Court also has personal jurisdiction over Defendants because their contacts with North Carolina have been continuous and systematic such that general jurisdiction may be asserted against each of them. This Court also has personal jurisdiction over R.A. Jeffereys because it resides in this District.

11. Venue is proper in this Court under 28 U.S.C. § 1391.

MATERIAL FACTS

The Lumbee Tribe.

12. The Lumbee Tribe are the present-day descendants of the Cheraw Tribe and have continuously existed in and around Robeson County since the early part of the eighteenth century. In 1885, the Lumbee Tribe was recognized as Indian by the State of North Carolina. In 1956, the United States Congress passed the Lumbee Act, which recognized the Tribe as Indian.

13. Today, the Lumbee Tribe is the largest tribe in North Carolina, the largest tribe east of the Mississippi River and the ninth largest tribe in the nation.

14. The Lumbee Tribe is the owner of the LUMBEE TRIBE Marks.

15. As shown above, the LUMBEE TRIBE Logo Mark consists of the circular shape of the Lumbee Logo, which is symbolic of the Circle of Life and emphasizes the importance of each Lumbee being a whole person. The four parts of the circle represent the four qualities of a balanced life: the spiritual, the emotional, the physical, and the intellectual. The colors and location of the colors represent the four directions - East (yellow), South (red), West (black) and North (white). It is believed that together they not only represent a well-balanced individual, but also a complete human being. This balance and completeness is believed to be universal and to represent the equality of all humankind, thus the colors - red, yellow, black and white. The Lumbee Pine Cone Patchwork surrounding the Circle of Life in the LUMBEE TRIBE Logo Mark represents the pride, power and will of the Lumbee Tribe. The four directions, colors and Lumbee Pine Cone Patchwork are central features of the LUMBEE TRIBE Logo Mark and portray the coming together of the old and new traditions in one symbol of unity for the Lumbee Tribe. The LUMBEE TRIBE Logo Mark is strong and distinctive when used in connection with the Lumbee Tribe's services.

16. The Lumbee Tribe's HERITAGE, PRIDE & STRENGTH slogan mark is strong and distinctive when used in connection with the Lumbee Tribe's services. To the extent that the Lumbee Tribe's HERITAGE, PRIDE & STRENGTH slogan mark could be characterized as descriptive, it has acquired secondary meaning through its widespread use by the Lumbee Tribe in connection with the Lumbee Tribe's services and has become strong and distinctive when used in connection with the Tribe's services.

17. The Lumbee Tribe uses the LUMBEE TRIBE Logo Mark and HERITAGE, PRIDE & STRENGTH slogan mark in all aspects of its operations and services. Both are prominently displayed on the Lumbee Tribe's official website. (A true and accurate printout of

the homepage of the Lumbee Tribe's website located at www.lumbee-tribe.com printed directly to PDF format is attached hereto as **Exhibit A** and is incorporated herein by reference.)

18. In addition, the LUMBEE TRIBE Logo Mark is proudly displayed on the cover page of the Lumbee Tribe's Constitution (available at: http://media.wix.com/ugd/756e16_72e7de6efe2f40549c0c49fcc88c8ad3.pdf); it hangs on the wall in the Lumbee Tribal Administrative Court; it appears on Lumbee Tribe identification cards; it appears on signage in the Lumbee Government Building; it is on the front of the podiums the tribal leaders and honored guests use when they speak; and it appears in many other places related to Tribal life and activities.

The Defendants.

19. According to its website, Defendant Anheuser-Busch is the U.S. arm of Anheuser-Busch InBev. Anheuser-Busch InBev touts itself as is one of the world's top five consumer products companies with a portfolio of more than 200 beer brands, including three global flagship beers, one of which is BUDWEISER. The company reportedly holds the No. 1 or No. 2 market position in 19 different countries and, in 2010, generated revenues of 36.3 billion dollars. (A true and accurate printout of a page from Anheuser-Busch's website located at <http://anheuser-busch.com/index.php/our-company/about-anheuser-busch/information-about-ab-inbev/> printed directly to PDF format is attached hereto as **Exhibit B** and is incorporated herein by reference.)

20. According to the online records of the United States Patent and Trademark Office ("USPTO"), Anheuser-Busch is the owner of record of the BUD LIGHT family of marks and BUDWEISER family of marks.

21. According to its website, Defendant R.A. Jeffreys has been distributing products

by Anheuser-Busch InBev since 1923. It now sells Anheuser-Busch's BUDWEISER and BUD LIGHT-branded products across 36 counties in North Carolina. (A true and accurate printout of a page from R.A. Jeffereys' website located at <http://www.rajeffreys.com/about> printed directly to PDF format is attached hereto as **Exhibit C** and is incorporated herein by reference.)

22. On information and belief, R.A. Jeffereys uses Anheuser-Busch's BUDWEISER and BUD LIGHT marks pursuant to a license from Anheuser-Busch under which Anheuser-Busch has oversight and quality control over R.A. Jeffereys use of such marks.

23. On information and belief, R.A. Jeffereys and Anheuser-Busch created or had created a series of in-store advertisements that prominently display the LUMBEE TRIBE Marks in close connection with Anheuser-Busch's BUDWEISER and BUD LIGHT marks in an effort to promote the sale of Defendants' BUDWEISER and BUD LIGHT-branded products.

24. Defendants' unpermitted uses of the LUMBEE TRIBE OF NORTH CAROLINA & Design mark and HERITAGE, PRIDE & STRENGTH slogan mark in these displays creates the false impression that the Lumbee Tribe is affiliated, connected or associated with Defendants, or approves of Defendants' products being sold under its logo and slogan.

25. Examples of Defendants' infringing uses of the LUMBEE TRIBE Marks are shown in the true and accurate photographs (shown in figures 1 & 2 below) of in-store advertisements for Defendants' products under the LUMBEE TRIBE Marks.

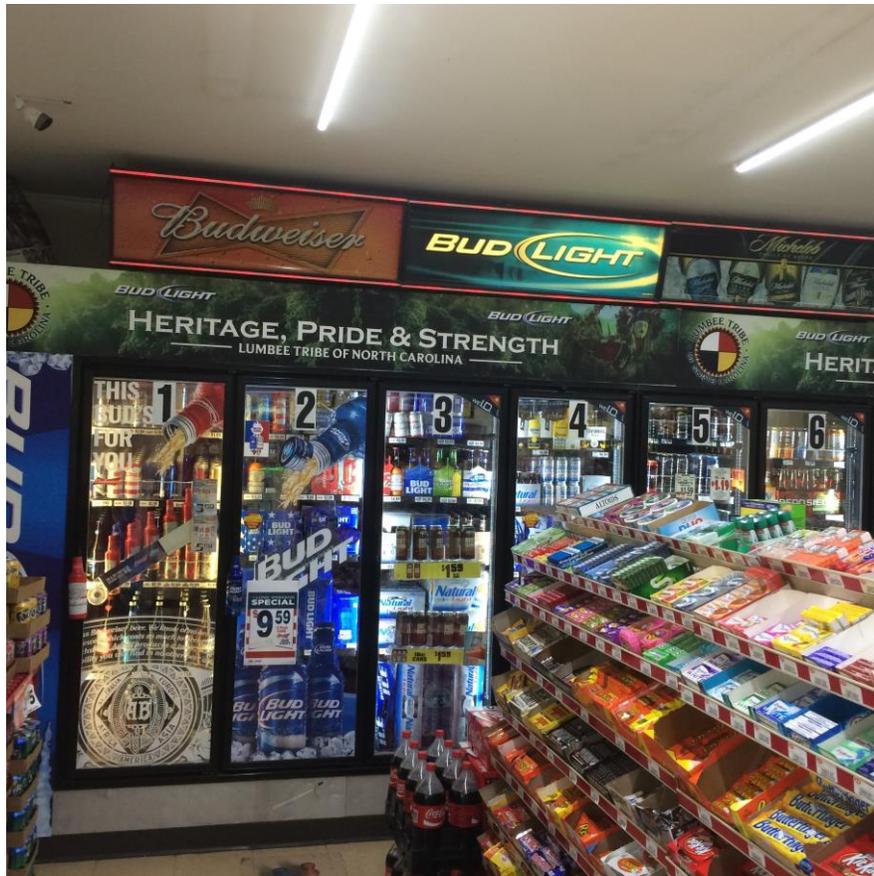


Figure 1.

26. The image shown in figure 1 above shows Defendants' advertising display above a beer refrigerator in a store located on Canton Road in Lumberton, North Carolina. Defendants' advertising is intended to promote the sale of BUDWEISER and BUD LIGHT-branded products by advertising those products under the BUDWEISER and BUD LIGHT marks in close connection with the LUMBEE TRIBE Marks. Such advertising is intended to, and does, create the false impressions that there is an affiliation between the Lumbee Tribe and Defendants, and that the Lumbee Tribe approves of Defendants and their BUDWEISER and BUD LIGHT-branded products.



Figure 2.

27. The image in figure 2 is of an advertising display above the beer refrigerator in a store located on U.S. Route 401 in Raeford, North Carolina. This advertising is intended to promote the sale of BUD LIGHT-branded products by advertising those products under the BUD LIGHT mark in close connection with the LUMBEE TRIBE Marks. Such advertising is intended to, and does, create the false impressions that there is an affiliation between the Lumbee Tribe and Defendants, and that the Lumbee Tribe approves of Defendants and their BUD LIGHT-branded products.

28. Defendants do not have the Lumbee Tribe's permission to use the LUMBEE TRIBE Marks as described above.

29. There is no issue as to priority. The Lumbee Tribe acquired rights in the LUMBEE TRIBE Marks long before any date of use upon which Defendants can rely.

30. Defendants have infringed and continue to infringe the LUMBEE TRIBE marks in spite of having actual and/or constructive knowledge of the Lumbee Tribe's rights in the LUMBEE TRIBE Marks.

31. Defendants are using the LUMBEE TRIBE Marks in a manner that is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of the Lumbee Tribe with Defendants, and as to the sponsorship or approval of Defendants' products or commercial activities by the Lumbee Tribe.

32. Members of the public are likely to be confused by Defendants' uses of the LUMBEE TRIBE Marks described herein, and are likely to mistakenly believe that the products Defendants advertise, offer to sell and sell in connection with the LUMBEE TRIBE Marks are, contrary to fact, associated with, endorsed by, or otherwise related to the Lumbee Tribe.

33. Unless enjoined by this Court, Defendants' conduct will continue to result in a likelihood of consumer confusion and irreparable injury to the Lumbee Tribe.

FIRST CLAIM FOR RELIEF
(TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION
UNDER 15 U.S.C. § 1125(a), *et seq.*)

34. The Lumbee Tribe repeats and incorporates by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 33 of this complaint.

35. This claim is brought under 15 U.S.C. § 1125(a) for trademark infringement and unfair competition.

36. The LUMBEE TRIBE Marks are valid and enforceable.

37. The Lumbee Tribe's uses of the LUMBEE TRIBE Marks predate any use by Defendants of any of the LUMBEE TRIBE Marks.

38. Defendants have used the LUMBEE TRIBE Marks in commerce in the United

States in connection with the sale, offering for sale, distribution, and advertising of alcoholic beverage and related products.

39. Defendants' use of the LUMBEE TRIBE Marks in commerce in connection with the advertising, promotion and sales of alcoholic beverage and related products is likely to cause confusion, or to cause mistake, or to deceive the relevant public as to Defendants' affiliation, connection or association with the Lumbee Tribe, and/or as to the sponsorship or approval of Defendants' products by the Lumbee Tribe, all in violation of 15 U.S.C. § 1125(a).

40. On information and belief, Defendants is using the LUMBEE TRIBE Marks in knowing violation of, and in reckless disregard of, the Lumbee Tribe's rights in the LUMBEE TRIBE Marks.

41. The activities of Defendants complained of herein constitute unfair competition and infringement of the Lumbee Tribe's LUMBEE TRIBE Marks, and were commenced and have continued in spite of Defendants' actual and constructive knowledge of the Lumbee Tribe's rights in the LUMBEE TRIBE marks, and in spite of Defendants' knowledge that its activities were and are in direct contravention of the Lumbee Tribe's rights.

42. Because of Defendants' blatant and ongoing infringement of the Lumbee Tribe's federally protected trademark rights and objectively unreasonable failure to stop such infringement in spite of the significant discrepancy between the weakness of Defendants' position on the one hand and the strength of the Lumbee Tribe's litigating position on the other hand, and the reasonableness of the Lumbee Tribe's out-of-court efforts to resolve the matter, this case stands out from other cases making it an exceptional case and creating the need to advance considerations of compensation and deterrence by having any monetary remedies awarded to the Lumbee Tribe trebled and awarding the Lumbee Tribe its reasonable attorneys'

fees under 15 U.S.C. § 1117.

43. The Lumbee Tribe has been and will continue to be irreparably injured by Defendants' conduct. The Lumbee Tribe cannot be adequately compensated for these injuries by monetary remedies alone, and the Lumbee Tribe has no adequate remedy at law for Defendants' infringement of its rights. The Lumbee Tribe is therefore entitled to injunctive relief against Defendants, and to recover any damages proven to have been caused, or any profits of Defendants which have been earned unjustly, by reason of Defendants' acts of infringement.

SECOND CLAIM FOR RELIEF
(COMMON LAW TRADEMARK INFRINGEMENT)

44. The Lumbee Tribe repeats and incorporates by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 43 of this complaint.

45. This is a claim for common law trademark infringement arising under the common law of North Carolina.

46. Defendants are using the LUMBEE TRIBE Marks in this State without the permission of the Lumbee Tribe. Such unauthorized use by Defendants constitutes trademark infringement under North Carolina common law.

47. The activities of Defendants complained of herein have the natural and probable tendency to deceive the public and create confusion as to the existence of an affiliation between Defendants and the Lumbee Tribe. As a result, members of the public are likely to be confused and deceived.

48. Defendants' unlawful acts violate the Lumbee Tribe's common law trademark rights and have damaged and continue to damage the Lumbee Tribe, causing irreparable harm, for which there is no adequate remedy at law. Such unlawful acts and damage will continue to occur unless enjoined by this Court.

49. The Lumbee Tribe is entitled to injunctive relief against Defendants, and, after trial, to recovery of any damages proven to have been caused, or profits earned unjustly, by reason of Defendants' acts of infringement.

THIRD CLAIM FOR RELIEF
(COMMON LAW UNFAIR COMPETITION)

50. The Lumbee Tribe repeats and incorporates by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 49 of this complaint.

51. This is a claim for common law unfair competition arising under the common law of the state of North Carolina.

52. Defendants' use of the LUMBEE TRIBE Marks constitutes common law unfair competition in violation of the common law of North Carolina.

53. The Lumbee Tribe has sustained, and will continue to sustain, irreparable injury as a direct and proximate cause of Defendants' unfair competition

54. The aforesaid unlawful acts by Defendants will continue unabated unless and until enjoined by this Court.

55. The Lumbee Tribe is entitled to injunctive relief against Defendants, and, after trial, to recovery of any damages proven to have been caused, or any profits earned unjustly, by reason of Defendants' acts of infringement.

FOURTH CLAIM FOR RELIEF
(UNFAIR AND DECEPTIVE TRADE PRACTICES
UNDER N.C. GEN. STAT. § 75-1.1, *et seq.*)

56. The Lumbee Tribe repeats and incorporates by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 55 of this complaint.

57. This is a claim for unfair and deceptive trade practices under N.C. Gen. Stat. § 75-1.1, *et seq.*

58. Defendants' infringing use of the LUMBEE TRIBE Marks has injured the Lumbee Tribe by creating a likelihood of confusion, and harming the goodwill in the LUMBEE TRIBE Marks.

59. On information and belief, Defendants used the LUMBEE TRIBE Marks with actual and/or constructive knowledge that the Lumbee Tribe had prior rights in and was using the exact same marks.

60. On information and belief, Defendants used the LUMBEE TRIBE Marks in order to suggest a connection between Defendants and Defendants' BUDWEISER and BUD LIGHT brands and the Lumbee Tribe when, in fact, no such relationship exists.

61. Defendants' conduct complained of herein is immoral, unethical, oppressive, unscrupulous, and offends the ethos of the marketplace.

62. Defendants' conduct complained of herein was and is in or affecting United States and North Carolina commerce.

63. Under N.C. Gen. Stat. § 75-1.1, Defendants' infringement of the Lumbee Tribe's trademark rights and other unlawful conduct complained of herein constitutes an unfair method of competition in or affecting commerce and an unfair and deceptive act or practice in and affecting commerce.

64. Defendants have also engaged in deceptive acts and practices because the infringement of the Lumbee Tribe's LUMBEE TRIBE Marks has the capacity or tendency to deceive consumers.

65. The Lumbee Tribe has sustained, and will continue to sustain, irreparable injury and harm, including harm to its rights in the LUMBEE TRIBE Marks and to its reputation and goodwill, as a direct and proximate result of Defendants' unfair and deceptive trade practices and

unfair methods of competition.

66. Defendants' unfair and deceptive activities have damaged the Lumbee Tribe and, unless restrained, will continue to damage the Lumbee Tribe, including causing irreparable injury to the Lumbee Tribe for which the Lumbee Tribe has no adequate remedy at law.

67. The Lumbee Tribe is entitled to seek and does seek recovery from Defendants of all damages caused by, and all profits earned unjustly by, Defendants' actions in violation of N.C. Gen. Stat. § 75-1.1 and § 75-16, and to have such damages trebled.

68. The Lumbee Tribe is also entitled to seek and does seek recovery of its reasonable attorneys' fees under to N.C. Gen. Stat. § 75-16.1.

PRAYER FOR RELIEF AND JURY DEMAND

WHEREFORE, Plaintiff demands a trial by jury on all issues so triable and judgment in its favor, and against Defendants, for the following:

1. That the Court enter judgment in Plaintiff's favor and against Defendants on all claims herein.

2. That Defendants be adjudged to have infringed Plaintiff's trademark rights and to have engaged in unfair competition in violation of 15 U.S.C. § 1125 by its use of the LUMBEE TRIBE Marks in derogation of Plaintiff's rights its LUMBEE TRIBE Marks;

3. That Defendants' infringement and other wrongdoings be adjudged willful in nature;

4. That, pursuant to 15 U.S.C. § 1116(a) and North Carolina common law, Defendants, their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing or otherwise violating Plaintiff's trademark rights

in this country by, among other things, the following:

- a. Using either of the LUMBEE TRIBE Marks or any name or mark or domain name that contains or comprises “LUMBEE TRIBE” or “HERITAGE, PRIDE & STRENGTH” or any phonetic equivalents;
- b. Using any domain name or any social media account name, “handle,” or other identification that is the same as or confusingly similar to the LUMBEE TRIBE Marks, or either of them, or any confusingly similar variation thereof;
- c. Marketing, promoting, printing, using, selling, distributing, or otherwise disseminating, either directly or indirectly in this country, any goods, services, advertisements or promotional materials of any sort in any medium of communication or reproducing or causing others to reproduce any products or packaging incorporating the LUMBEE TRIBE Marks, or either of them, or any confusingly similar variation thereof, and from offering for sale or selling products and services incorporating the LUMBEE TRIBE Marks, or either of them, and/or any confusingly similar variation thereof;
- d. Manufacturing, having manufactured, producing, having produced, distributing, circulating, selling, offering for sale, advertising, promoting, or displaying in this country any products or services under or bearing the LUMBEE TRIBE Marks, or either of them, or any confusingly similar variation thereof; and
- e. Using any false or misleading designations of origin or false or misleading descriptions or representations of fact in this country in connection with the manufacture, production, distribution, circulation, sale, offering for sale, advertising, promotion, or display of its products or services under the LUMBEE TRIBE Marks, or either of them, or any confusingly similar variation thereof;

5. That Defendants, their officers, members, managers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be directed to file with this Court and serve on Plaintiff within thirty (30) days after service of the injunction order, a report in writing and under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

6. That the Court award pre-judgment and post-judgment interest and costs by virtue of Defendants' infringement of Plaintiff's LUMBEE TRIBE Marks;

7. That the Court issue an award to Plaintiff of its damages and/or Defendants' profits to compensate Plaintiff for Defendants' infringement, pursuant to 15 U.S.C. § 1117;

8. The Court treble the damages awarded with respect the First Claim for Relief under 15 U.S.C. § 1117, and/or the Fourth Claim for Relief pursuant to N.C. Gen. Stat. §75-16;

9. That the Court award Plaintiff its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117 and/or N.C. Gen. Stat. §75-16.1, *et. seq.*, and other applicable law; and

10. That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

This the 14th day of June, 2016.

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