

**UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF ILLINOIS
EASTERN DIVISION**

**JOURNALINESH, INC.,
a Colorado Corporation,**

Plaintiff,

v.

**THE PARTNERSHIPS and
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A”
a Foreign Entity,**

Defendants.

Case No. 22-3740

JURY DEMANDED

COMPLAINT

NOW COMES Plaintiff, Journalinesh, Inc. (“Plaintiff”), by its attorney, Ariel Weissberg of the law firm of Weissberg and Associates, Ltd., and hereby brings the present action against the Partnerships and Unincorporated Associations identified on Schedule A attached hereto (collectively, “Defendants”) and alleges as follows:

I. JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, *et seq.*, the Copyright Act 17 U.S.C. § 501, *et seq.*, 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331, and for common law trademark infringement, unfair competition and trade dress infringement under Illinois law.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in the United States, including Illinois, through at least the fully interactive e-commerce stores operating under the seller aliases

identified in Schedule A attached hereto (the “Seller Aliases”). Specifically, Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, have sold products using infringing and counterfeit versions of Plaintiff’s federally registered trademarks and/or unauthorized copies of Plaintiff’s federally registered copyrighted designs (collectively, the “Plaintiff’s Product”) to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois.

II. INTRODUCTION

3. Plaintiff is a leader in the production of calendars, planners and journals (“Planners”) and related products. Plaintiff’s products are distinguishable due to their specific design that involves copyrighted background artwork at the header of the pages of the planners, turquoise-colored elements in the planners and motivational quotes included with each calendar month that the planner has.

III. PARTIES

Plaintiff

4. Plaintiff is a corporation formed and existing under the laws of Colorado.

5. Plaintiff has registered its Copyrighted Designs with the United States Copyright Office. The registrations include but are not limited to: Plaintiff’s artwork that is enclosed and appended at the header of its planners (U.S. Copyright Registration No. VA 2-303-531), issued by the Register of Copyrights on June 9, 2022. Among the exclusive rights granted to Plaintiff under the U.S. Copyright Act are the exclusive rights to reproduce, prepare

derivative works of, distribute copies of, and display the Copyrighted Designs to the public. A true and correct copy of the record from the U.S. Copyright Office website for the above referenced Copyrighted Design is attached hereto as **Exhibit 1**.

The Defendants

6. Defendants are individuals and business entities of unknown makeup who own and/or operate one or more of the e-commerce stores under at least the Seller Aliases identified on Schedule A and/or other seller aliases not yet known to Plaintiff. On information and belief, Defendants reside and/or operate in the People's Republic of China or other foreign jurisdictions with lax trademark enforcement systems or redistribute products from the same or similar sources in those locations. Defendants have the capacity to be sued pursuant to Federal Rule of Civil Procedure 17(b).

7. On information and belief, Defendants, either individually or jointly, operate one or more e-commerce stores under the Seller Aliases listed in Schedule A attached hereto. Tactics used by Defendants to conceal their identities and the full scope of their operation make it virtually impossible for Plaintiff to learn Defendants' true identities and the exact interworking of their counterfeit network. If Defendants provide additional credible information regarding their identities, Plaintiff will take appropriate steps to amend the Complaint.

IV. SUBSTANTIVE ALLEGATIONS

Plaintiff's Common Law Trademark Rights

8. Plaintiff is a prominent designer and manufacturer of diaries, academic planners and calendars distributed throughout the U.S. and the world. Plaintiff consistently is ranked as top seller on online ecommerce platforms.

9. Since 2020, Plaintiff has continuously used the turquoise color in its academic planners applied to each and every page where the month is indicated, and where holiday tabs are. Additionally, Plaintiff has applied copyrighted artwork to the header of each of his pages for the whole month, with a motivational quote at the top right-hand corner of the month indicator page (“Plaintiff’s Mark”). This arbitrary, non-functional color pattern along with the artwork design and the quote is an indicator of Plaintiff as the source and origin of its planners. For example, the turquoise used in the planners is preeminently featured on all plaintiff’s products. Attached hereto as **Exhibit 2** is an example of Plaintiff’s product design with the Plaintiff’s Mark.

10. Plaintiff’s planners bearing the Plaintiff’s Mark have been prominently featured throughout the U.S. in multiple markets and promotional venues

11. Due to the quality of its products and its international reputation Plaintiff has achieved extensive sales throughout the United States and the world.

15. The Plaintiff’s Mark is nonfunctional because:

- a. So far as currently known, no statutes, regulations, ordinances, codes or industry standards require, regulate and/or standardize the use of the identified color on the goods.
- b. So far as currently known, the turquoise color elements, the copyrighted artwork, and the motivational quote do not serve as a safety feature of the identified goods.

16. Plaintiff offers and has sold a wide variety of planners and other similar products that have the distinctive color turquoise applied to the month and holiday designations, as well as the copyrighted artwork included along the header of the months on each page. These features as

applied to the planners are not functional, nor do they serve merely a decorative or utilitarian purpose, but rather is an unusual color to be applied to the planner and is done to distinguish plaintiff's products. Plaintiff's mark is not a natural by-product of the manufacturing process for the goods, and has no bearing on the cost, quality, or functionality of the goods. The mark serves no purpose as used on Plaintiff's products other than enhancing recognition products by persons encountering the products in use, and thereby serving a source-identifying function. Given the longevity and widespread geographic use of Plaintiff's Mark on planners has an "acquired distinctiveness," that is, a secondary meaning, as indicating Plaintiff as the source of the origin of the planners.

17. As such, Plaintiff has prominently and extensively advertised, marketed and promoted products offered under the Plaintiff's Mark throughout the United States and the world through such varied media as the internet. As a result, Plaintiff has developed substantial and valuable goodwill in Plaintiff's Mark.

Plaintiff's Trade Dress in its Mark and Defendants' Unlawful Conduct

18. As set out above, Plaintiff's use of Plaintiff's Mark in commerce is widespread and substantial in the United States.

19. Given such widespread notoriety and use in commerce of the color turquoise combined with the other features of Plaintiff's Mark in sales and advertising, the color turquoise as applied to Planners and calendars with other features of the Plaintiff's Mark has secondary meaning—*i.e.*, acquired distinctiveness—as a source indicator for Plaintiff's products.

20. Defendants have counterfeited Plaintiff's mark by using identically designed planners and calendars

21. Defendants have targeted sales to Illinois residents by setting up and operating e-

commerce stores that target United States consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, have sold Unauthorized Products to residents of Illinois.

22. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales by designing the e-commerce stores operating under the Seller Aliases so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. E-commerce stores operating under the Seller Aliases appear sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Amazon Pay, Western Union, and/or PayPal. E-commerce stores operating under the Seller Aliases often include content and images that make it very difficult for consumers to distinguish such stores from an authorized retailer. Plaintiff has not licensed defendants to use its marks.

23. On information and belief, Defendants have engaged in fraudulent conduct when registering the Seller Aliases by providing false, misleading and/or incomplete information to Internet based e-commerce platforms. On information and belief, certain Defendants have anonymously registered and maintained Seller Aliases to prevent discovery of their true identities and the scope of their e-commerce operation

24. On information and belief, Defendants regularly register or acquire new seller aliases for the purpose of offering for sale and selling Unauthorized Products. Such seller alias registration patterns are one of many common tactics used by the Defendants to conceal their identities and the full scope and interworking of their counterfeiting operation, and to avoid being shut down.

25. Even though Defendants operate under multiple fictitious aliases, the e-commerce stores operating under the Seller Aliases often share unique identifiers, such as templates with

common design elements that intentionally omit any contact information or other information for identifying Defendants or other Seller Aliases they operate or use. E-commerce stores operating under the Seller Aliases include other notable common features such as use of the same registration patterns, accepted payment methods, check-out methods, keywords, illegitimate search engine optimization (SEO), advertising tactics, similarities in price and quantities, the same incorrect grammar and misspellings, and/or the use of the same text and images.

26. Counterfeiters such as Defendants typically operate under multiple seller aliases and payment accounts so that they can continue operation in spite of Plaintiff's enforcement efforts. On information and belief, Defendants maintain off-shore bank accounts and regularly move funds from their financial accounts to off-shore accounts outside the jurisdiction of this Court to avoid payment of any monetary judgment awarded to Plaintiff. Indeed, analysis of financial transaction logs from previous similar cases indicates that off-shore counterfeiters regularly move funds from U.S. based financial accounts to off-shore accounts outside the jurisdiction of this Court.

27. On information and belief, Defendants are an interrelated group of counterfeiters working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell Unauthorized Products in the same transaction, occurrence, or series of transactions or occurrences. Defendants, without any authorization or license from Plaintiff, have jointly and severally, knowingly and willfully used and continue to use the Plaintiff's Marks in commerce.

COUNT I

Federal Trade Dress Infringement – 15 U.S.C. § 1125 (Plaintiff's Trade Dress)

28. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth

above in Paragraphs 1 – 27.

29. Consumers have come to associate the distinctive turquoise color, the copyrighted artwork and other features of Plaintiffs Mark which comprise Plaintiff’s trade dress, with Plaintiff’s products and services (“Trade Dress”).

30. Through Plaintiff’s promotional efforts, business conduct, and continuous use of its E-Commerce store, its marketing displays and their associated trade dress, Plaintiff has developed and maintained clients throughout the United States, including in Illinois. Through its widespread and favorable acceptance and recognition by the consuming public, the turquoise “look and feel” of the Plaintiff’s products have become an asset of substantial value as a symbol of Plaintiff, Plaintiff’s high quality products and services, and its goodwill.

31. Accordingly, Plaintiff has established valid and enforceable rights in the turquoise “look and feel” of its products as described herein.

32. Notwithstanding Plaintiff’s preexisting, valid and enforceable rights in the turquoise color as applied to the planners and other features of Plaintiffs Marks and Defendants, without permission or approval, are using Plaintiff’s Marks and its trade dress on their products in Illinois and the United States.

33. As a result of Defendants’ unauthorized use of Plaintiff’s Trade Dress, Plaintiff and Defendants have each used and are using Plaintiff’s Trade Dress in connection with the advertising, marketing, offering to sell, and reselling of identical products and services.

34. Plaintiff and Defendants have each offered and are offering their respective products and services to like customers in the same geographical locations and through the same trade channels.

35. Defendants are direct competitors of Plaintiff.

36. Defendants' unauthorized use of the Plaintiff's Marks and Trade Dress, in connection with offering related and competing products and services, is not authorized by Plaintiff and is likely to cause consumer confusion and mistake, and to deceive consumers as to the source, origin, or affiliation of Defendants' products and services.

37. The acts by Defendants described herein constitute infringement and misappropriation of Plaintiff's rights in and to the use of and, specifically, give rise to this claim under 15 U.S.C. § 1125(a)(1).

38. Pursuant to 15 U.S.C. § 1117 and other applicable law, Plaintiff seeks and is entitled to Defendants' profits, damages sustained by Plaintiff, and the costs of this action, and under the circumstances of this case, treble damages. Further, to the extent recovery based on profits is inadequate, Plaintiff seeks and is entitled to judgment for such sum as the Court in its discretion shall find to be just.

39. Because of the blatant and willful nature of the Defendants' infringement, Plaintiff submits that this is an exceptional case and seeks its reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(b) and other applicable law.

COUNT II

Common Law Trademark Infringement, Unfair Competition and Trade Dress Infringement

40. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth above in Paragraphs 1 – 39.

41. Plaintiff was the first to use the Plaintiff's Mark. As a result of Plaintiff's widespread and continuous use in commerce, including its promotion and sales of products bearing the Plaintiff's Mark and Trade Dress, Plaintiff's Mark and Trade Dress, have become widely known. Plaintiff has been identified by the public as the manufacturer of the products to

which the Plaintiff's Mark is applied.

42. As a result of the experience, care, and service of Plaintiff in producing the products to which the Plaintiff's Mark is applied, these products have become widely known and acquired a worldwide reputation for quality, styling and utility. Moreover, the Plaintiff's Mark, and Plaintiff's Trade Dress have come to symbolize Plaintiff's reputation for quality and excellence. The Plaintiff's Mark, Trade Dress have also acquired secondary meaning (*i.e.*, acquired distinctiveness) in the U.S. marketplace and the unusual color yellow is non-functional and serves no utilitarian purpose.

43. Defendants, with knowledge of and with the intentional disregard of Plaintiff's rights, continue to advertise, promote and sell products using the Plaintiff's Mark, Trade Dress or colorable and confusing imitations thereof. Defendants' acts are likely to cause, have caused, and will continue to cause confusion as to the source and/or sponsorship of Plaintiff's products and services.

44. Defendants' acts alleged herein are specifically, without limitation, their use, manufacture, promotion, offers to sell, selling, and/or importing into the United States products that are confusingly similar to products bearing the Plaintiff's Mark and Trade Dress, which infringe Plaintiff's exclusive trademark rights in violation of the common law.

45. Defendants' acts alleged herein have caused, and if not enjoined will continue to cause, irreparable and continuing harm to Plaintiff's trademarks, business reputation, and goodwill. Plaintiff has no adequate remedy at law because monetary damages are inadequate to compensate Plaintiff for the injuries caused by Defendants to its trademarks, business, reputation, and goodwill.

46. Defendants' use of colorable imitations of the Plaintiff's Mark, and Trade Dress

have been intentional and willful. Defendants' bad faith is evidenced at least by Defendants' use of a mark identical to the Plaintiff's Mark on its Infringing Products. Plaintiff is entitled to injunctive relief, and Plaintiff is also entitled to recover Defendants' profits, actual damages, enhanced profits and damages, punitive damages, and costs.

COUNT III

Copyright Infringement of U.S. Copyright Registration (17 U.S.C. §§ 106 and 501)

47. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

48. Plaintiff is the owner of valid and enforceable Copyrighted Designs, which contain certain copyrightable subject matter under 17 U.S.C. §§ 101, *et seq.*

49. Plaintiff has complied with the registration requirements of 17 U.S.C. § 411(a) for the Copyrighted Designs.

50. Defendants do not have any ownership interest in the Plaintiff's Copyrighted Designs. Defendants had access to the Plaintiff's Copyrighted Designs via the internet.

51. Without authorization from Plaintiff, or any right under the law, Defendants have deliberately copied, displayed, distributed, reproduced and/or made derivative works incorporating the Plaintiff's Copyrighted Designs on e-commerce stores operating under the Seller Aliases and the corresponding Unauthorized Products. Defendants' derivative works are virtually identical to and/or are substantially similar to the look and feel of the Plaintiff's Copyrighted Designs. Such conduct infringes and continues to infringe the Copyrighted Designs in violation of 17 U.S.C. § 501(a) and 17 U.S.C. §§ 106(1)–(3), (5).

52. Defendants reap the benefits of the unauthorized copying and distribution of the Plaintiff's Copyrighted Designs in the form of revenue and other profits that are driven by the

sale of Unauthorized Products.

53. Defendants have unlawfully appropriated Plaintiff's protectable expression by taking material of substance and value and creating Unauthorized Products that capture the total concept and feel of the Plaintiff's Copyrighted Designs.

54. On information and belief, Defendants' infringement has been willful, intentional, and purposeful, and in disregard of and with indifference to Plaintiff's rights.

55. Defendants, by their actions, have damaged Plaintiff in an amount to be determined at trial.

56. Defendants' conduct is causing, and unless enjoined and restrained by this Court will continue to cause, Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a preliminary and permanent injunction prohibiting further infringement of the Plaintiff's Copyrighted Designs.

GENERAL PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

A. Judgment that Defendants have (i) willfully engaged in trademark counterfeiting in violation of 15 USC §1114; (ii) willfully infringed the Plaintiff's Mark in violation of 15 U.S.C. §1114; (iii) willfully used false designations of origin and/or engaged in unfair competition in violation of 15 U.S.C. 1125(a); and (iv) willfully violated Plaintiff's common law rights in the Plaintiff's Mark, and/or Plaintiff's Trade Dress;

B. Ongoing injunctive relief during the pendency of this case and a permanent injunction against further counterfeiting, infringement, false designation of origin, and unfair competition directed against the Plaintiff's Mark and Trade Dress by Defendants, their agents,

servants, employees, attorneys, and all persons in active concert or participation therewith;

C. A finding that this is an exceptional case in accordance with 15 U.S.C. §1117(a) and an award to Plaintiff as the prevailing party of its reasonable attorneys' fees;

D. An award of damages adequate to compensate Plaintiff for the trademark infringement that has occurred pursuant to 15 U.S.C. §1117(a), which amount shall include Defendants' profits, Plaintiff damages and the costs of this action;

E. At Plaintiff's election, either (1) an award of damages adequate to compensate Plaintiff for the intentional acts of trademark counterfeiting that have occurred pursuant to 15 U.S.C. §1117(b), which amount shall include three times the amount of Defendants' profits or Plaintiff's damages (whichever is greater), together with reasonable attorneys' fees; or (2) statutory damages in the amount of: (i) not less than \$1,000 and no more than \$200,000 per counterfeit mark per type of goods and services sold, offered for sale, or distributed, as the Court considers just; or (ii) if the Court finds the use of the counterfeit mark was willful, not more than \$2 million per counterfeit mark per type of goods and services sold, offered for sale or distributed, as the Court considers just; and

F. As a direct and proximate result of Defendants' infringement of the Plaintiff's Copyrighted Designs, Plaintiff is entitled to damages as well as Defendants' profits, pursuant to 17 U.S.C. § 504(b);

G. Alternatively, and at Plaintiff's election prior to any final judgment being entered, Plaintiff is entitled to the maximum amount of statutory damages provided by law, \$150,000 per work infringed pursuant to 17 U.S.C. § 504(c), or for any other such amount as may be proper pursuant to 17 U.S.C. § 504(c);

H. Plaintiff is further entitled to recover its attorneys' fees and full costs for

bringing this action pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1117(a); and

I. Award any and all other relief that this Court deems just and proper.

Date: July 19, 2022

JOURNALINESH, INC., Plaintiff

By: /s/ Ariel Weissberg
One of its attorneys

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Federal Rules of Civil Procedure, Plaintiff respectfully demands a trial by jury on all issues so triable by jury.