

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RIN TIN TIN, INC., and)	
DAPHNE HEREFORD,)	
)	
Plaintiffs)	Civil Action
v.)	
FIRST LOOK STUDIOS, INC.,)	No. _____
FIRST LOOK HOME ENTERTAINMENT, INC,)	Jury Requested
FIRST LOOK HOLDINGS, LLC.,)	
NU IMAGE, INC., and)	
MILLENNIUM FILMS, INC.,)	
)	
Defendants)	
_____)	

Rin Tin Tin, Inc. and Daphne Hereford (“Plaintiffs”) file this lawsuit for trademark and service mark infringement and dilution, and for unfair competition, against First Look Studios, Inc., First Look Home Entertainment, Inc., First Look Holdings, LLC, Nu Image, Inc., and Millennium Films, Inc. (“Defendants”).

PARTIES

1. Rin Tin Tin, Inc. is a Texas corporation organized under the laws of the States of Texas.
2. Daphne Hereford (“Hereford”) is an individual resident of the State of Texas, having an address in Crockett, Texas.
3. First Look Studios, Inc. (“First Look Studios”) is a Delaware corporation, having offices at 2000 Avenue of the Stars, Suite 410, Los Angeles, California 90067 and doing business in various places throughout the United States, including in Houston, Texas.
4. First Look Home Entertainment, Inc. is a California corporation having offices at 2000 Avenue of the Stars, Suite 530, Century City, California 90067.

5. First Look Holdings, LLC controls and operates First Look Studios, Inc. and is believed to be a limited liability corporation organized under the laws of the state of Delaware, having a place of business at 6423 Wilshire Boulevard, Los Angeles, California 90048.

6. Nu Image, Inc (“Nu Image”) is a film producer and distributor and a California corporation, having offices at 6423 Wilshire Boulevard, Los Angeles, California 90048 and doing business in various places throughout the United States, including in Houston, Texas.

7. Millennium Films, Inc. is a Delaware corporation having offices at 6423 Wilshire Boulevard, Los Angeles, California 90048.

JURISDICTION AND VENUE

8. The Court has jurisdiction over the subject matter of this action under 15 U.S.C. § 1121, 28 U.S.C. § 1338 and the doctrine of pendent jurisdiction.

9. The Court has jurisdiction over the Defendants as they have conducted or do conduct business in Houston Texas, directly and/or indirectly through distributors, and/or as they have engaged in internet advertising and promotion in a manner sufficient for Plaintiffs to bring their complaints in this forum.

FACTUAL BACKGROUND

10. Rin Tin Tin is the name of a real dog, who lived from 1918 to 1932. He and his life story became famous throughout the United States following World War I and he made personal appearances and starred in motion pictures.

11. During Rin Tin Tin’s life, Rin Tin Tin’s owner, Lee Duncan, began a German Shepherd Dog breeding program based on Rin Tin Tin. Lee Duncan trained and showed Rin Tin Tin II, Rin Tin Tin III, and Rin Tin Tin IV from this line, and Rin Tin Tin II and Rin Tin Tin IV starred in a 1950’s television show.

12. In 1957, Rin Tin Tin's owner, Lee Duncan, provided a puppy from Rin TinTin IV to Jannettia Brodsgaard, Plaintiff Daphne Hereford's grandmother, in Houston, Texas, and he endorsed her breeding program of German Shepherd Dogs to carry on the bloodline of Rin Tin Tin for future generations.

13. Plaintiff Daphne Hereford helped her grandmother Jannettia Brodsgaard with the breeding program of the Rin Tin Tin line of German Shepherd Dogs, including among other things showing Rin Tin Tin V. Plaintiff Daphne Hereford assumed complete responsibility for the Rin Tin Tin German Shepherd Dog breeding program when her grandmother died in 1988.

14. Plaintiff Daphne Hereford has vigorously and consistently pursued the Rin Tin Tin German Shepherd Dog breeding program to the present day. She has shown and owned Rin Tin Tin VI, Rin Tin Tin VII, Rin Tin Tin VIII, Rin Tin Tin IX, and Rin Tin Tin X, as well as many other German Shepherd Dogs that she has bred from the Rin Tin Tin bloodline.

15. Plaintiff Daphne Hereford, through her German Shepherd Dog breeding program, owns the Rin Tin Tin property rights with respect to the Rin Tin Tin bloodline and the Rin Tin Tin name as associated with that bloodline, with respect to German Shepherd Dogs and puppies.

16. Plaintiff Daphne Hereford has actively promoted Rin Tin Tin, and his memory, herself as an individual and through Plaintiff corporation, Rin Tin Tin, Inc., which Plaintiff Daphne Hereford founded and serves as chairman of the board.

17. Plaintiffs have actively promoted Rin Tin Tin by and through providing a Rin Tin Tin museum, an internet website, www.rintintin.com, public appearances and exhibitions by a German Shepherd Dog from the Rin Tin Tin bloodline, mail order fan club services providing materials promoting breeding, training, raising, and showing of dogs of authentic Rin Tin Tin

German Shepherd Dog lineage, and a Canine Ambassador Club to promote responsible dog ownership through programs presented to schools and groups.

18. In connection with these and other promotions of RinTinTin by Plaintiffs, Plaintiffs have used and continue to use a number of RIN TIN TIN trademarks and service marks, in various categories, as set forth in the Federal Trademark Registrations listed in the table below.

MARK	IDENTIFICATION OF GOODS AND SERVICES	REG. NO.	REG. DATE
RIN TIN TIN	Live German Shepherd Puppies	1763135	April 6, 1993
RIN TIN TIN CANINE AMBASSADOR CLUB	Education and Entertainment; namely promotion of responsible dog ownership through programs presented to schools and groups.	2384745	Sept. 12, 2000
RIN TIN TIN	Mail order fan club service providing materials promoting the breeding, training, raising and showing of the authentic RIN TIN TIN German Shepherd Dog lineage.	2538312	Feb. 12, 2002
RIN TIN TIN	Printed publications, namely, magazines, pamphlets, books and comic books about German Shepherd Dogs; activity and coloring books, posters, stickers, business cards, and cards in the nature of greeting cards and trading cards; Playing cards.	2969852	July 19, 2005
RIN TIN TIN	Printed publications, namely, children's books	3111161	July 4, 2006
RIN TIN TIN	Dog clothing; Dog collars; Dog leashes; Dog shoes; Handbags; Purses; Tote bags; Bowls; Brushes for pets; Cups; Mugs; Pet brushes; Pet feeding dishes; Caps; Hats; Jackets; Muffs; Scarves; Slippers; Sweat shirts; T-shirts; Board games; Dog toys; Plush toys; Puzzles; Soft sculpture plush toys.	3215700	May 10, 2006
RIN TIN TIN	Dog Food	3380788	Feb. 12, 2008
RIN TIN TIN	Live German Shepherd Dogs of Rin Tin Tin Lineage; Animal exhibitions and live animal performances featuring a German Shepherd Dog.	Reg. Pending Serial No. 77386979	(Pending)

19. Because of the efforts of Plaintiffs Daphne Hereford and Rin Tin Tin, Inc., the famous German Shepherd Dog named Rin Tin Tin and his story continue to be famous and to have fans to this day, and the RIN TIN TIN trademarks and service marks have become associated with Plaintiffs.

20. Plaintiff Daphne Hereford's Federal Trademark Registration No. 1763135 for the trademark RIN TIN TIN for live German Shepherd puppies is incontestable under 15 U.S.C. § 1065.

21. The mark RIN TIN TIN is distinctive and famous in connection with Plaintiff Daphne Hereford's German Shepherd Dog breeding program.

22. Although Defendants in no way are affiliated with either Plaintiff, Defendants have used the name and mark RIN TIN TIN in association with a German Shepherd Dog and puppy in a movie they made or had made entitled, FINDING RIN TIN TIN.

23. Defendants were aware of Plaintiffs' RIN TIN TIN trademarks and Plaintiff Daphne Hereford's RIN TIN TIN German Shepherd Dog breeding program at the time they made the movie FINDING RIN TIN TIN.

24. On or about September 16, 2008, Defendants began selling and renting in commerce DVDs containing their FINDING RIN TIN TIN movie through distributors and on the internet throughout the United States.

25. Defendants were aware of Plaintiffs' RIN TIN TIN trademarks and Plaintiff Daphne Hereford's RIN TIN TIN German Shepherd Dog breeding program at the time they began selling and renting DVDs containing the FINDING RIN TIN TIN movie. Defendants were also aware at that time that Plaintiffs thought that the movie FINDING RIN TIN TIN would likely cause confusion in the minds of potential consumers as to the source, affiliation

and/or sponsorship of the FINDING RIN TIN TIN movie and of the German Shepherd Dog and puppy in that movie.

26. Defendants' unauthorized use of the term "RIN TIN TIN" in connection with a German Shepherd Dog and puppy in their movie FINDING RIN TIN TIN, which purports to be based on or to tell part of the life story of Rin Tin Tin, has caused actual confusion, and is likely to cause further confusion, as to Defendants' affiliation with Plaintiffs or with Plaintiffs' German Shepherd Dogs and puppies descended from Rin Tin Tin.

FIRST CLAIM FOR RELIEF

27. Plaintiffs incorporate herein all statements and allegations contained in paragraphs 1 through 26 above.

28. The incontestable status of Federal Trademark Registration No. 1763135 for the trademark RIN TIN TIN for live German Shepherd puppies is evidence under 15 U.S.C. § 1115 of the validity of the mark, of Plaintiff Daphne Hereford's ownership of the mark, and of Plaintiff Daphne Hereford's exclusive right to use the mark in commerce in connection with live German Shepherd puppies.

29. Defendants' unauthorized use of the term "RIN TIN TIN" in association with a German Shepherd Dog and puppy is likely to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. § 1114.

30. Unless enjoined, Defendants will continue their infringing activities, resulting in irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law. Plaintiffs are entitled to injunctive relief under 15 U.S.C. § 1116.

31. Plaintiffs are entitled to recover their damages, Defendants' profits, the costs of suit, and reasonable attorneys fees under 15 U.S.C. § 1117.

32. The damages or profits, whichever is greater, should be trebled under 15 U.S.C. § 1117, because Defendants' use of the RIN TIN TIN mark with respect to a German Shepherd puppy in promoting their movie FINDING RIN TIN TIN qualifies as use of a counterfeit mark.

SECOND CLAIM FOR RELIEF

33. Plaintiffs incorporate herein all statements and allegations contained in paragraphs 1 through 32 above.

34. Defendants' unauthorized use of the term "RIN TIN TIN" in association with a German Shepherd Dog and puppy constitutes the use of a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of one or more Defendants with one or both Plaintiffs, in violation of 15 U.S.C. § 1125(a).

35. Unless enjoined, Defendants will continue their unfair activities, resulting in irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law. Plaintiffs are entitled to injunctive relief under 15 U.S.C. § 1116.

36. Plaintiffs are entitled to recover their damages, Defendants' profits, the costs of suit, and reasonable attorneys fees under 15 U.S.C. § 1117.

THIRD CLAIM FOR RELIEF

37. Plaintiffs incorporate herein all statements and allegations contained in paragraphs 1 through 36 above.

38. Defendants' unauthorized use of the term "RIN TIN TIN" in association with a German Shepherd Dog and puppy constitutes the use of a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of

Defendants' FINDING RIN TIN TIN movie, and/or commercial activities related to that movie, by one or both Plaintiffs, in violation of 15 U.S.C. § 1125(a).

39. Unless enjoined, Defendants will continue their unfair activities, resulting in irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law. Plaintiffs are entitled to injunctive relief under 15 U.S.C. § 1116.

40. Plaintiffs are entitled to recover their damages, Defendants' profits, the costs of suit, and reasonable attorneys fees under 15 U.S.C. § 1117.

FOURTH CLAIM FOR RELIEF

41. Plaintiffs incorporate herein all statements and allegations contained in paragraphs 1 through 40 above.

42. Defendants' unauthorized use of the term "RIN TIN TIN" in association with a German Shepherd Dog and puppy in advertising and/or promoting their movie FINDING RIN TIN TIN constitutes the use of a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which misrepresents the nature, characteristics, and/or qualities of Defendants' movie, in violation of 15 U.S.C. § 1125(a).

43. Unless enjoined, Defendants will continue their unfair activities, resulting in irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law. Plaintiffs are entitled to injunctive relief under 15 U.S.C. § 1116.

44. Plaintiffs are entitled to recover their damages, Defendants' profits, the costs of suit, and reasonable attorneys fees under 15 U.S.C. § 1117.

FIFTH CLAIM FOR RELIEF

45. Plaintiffs incorporate herein all statements and allegations contained in paragraphs 1 through 44 above.

46. Defendants' actions, as alleged above, constitute injury to and dilution of Plaintiffs' RIN TIN TIN trademarks and service marks, and Plaintiff Rin Tin Tin, Inc.'s tradename RIN TIN TIN, under 15 U.S.C. § 1125(c).

47. Unless enjoined, Defendants will continue their unauthorized use of "RIN TIN TIN", resulting in irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law. Plaintiffs are entitled to injunctive relief.

48. Defendants' actions being willful, Plaintiffs are entitled to recover their damages, Defendants' profits, the costs of suit, and reasonable attorneys fees under 15 U.S.C. § 1117.

SIXTH CLAIM FOR RELIEF

49. Plaintiffs incorporate herein all statements and allegations contained in paragraphs 1 through 48 above.

50. Defendants' actions, as alleged above, constitute injury to and dilution of Plaintiffs' RIN TIN TIN trademarks and service marks, and Plaintiff Rin Tin Tin, Inc.'s tradename RIN TIN TIN, under TEX. BUS. & COM. CODE § 16.29.

51. Unless enjoined, Defendants will continue their actions, resulting in irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law. Plaintiffs are entitled to injunctive relief.

SEVENTH CLAIM FOR RELIEF

52. Plaintiffs incorporate herein all statements and allegations contained in paragraphs 1 through 51 above.

53. Pursuant to Tex. Prop. Code § 26.013, Defendants are liable to Plaintiff Daphne Hereford for use of Rin Tin Tin's name in an unauthorized manner related to German Shepherd Dogs and puppies,

54. Plaintiff Daphne Hereford is entitled to recover: her damages as a result of the unauthorized use or \$2500, whichever is greater; the amount of Defendants' profits from the unauthorized use that are attributable to the unauthorized use; the amount of any exemplary damages that may be awarded; and reasonable attorneys' fees and expenses and court costs incurred in recovering the damages and profits established by Tex. Prop. Code § 26.013.

EIGHTH CLAIM FOR RELIEF

55. Plaintiffs incorporate herein all statements and allegations contained in paragraphs 1 through 54 above.

56. Defendants' actions as alleged above constitute common law trademark infringement and unfair competition under Texas law. Unless enjoined, Defendants will continue their infringing activities, resulting in irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law. Plaintiffs are entitled to injunctive relief. Plaintiffs are also entitled to recover their damages, costs of suit, and punitive damages.

JURY DEMAND

57. Plaintiff requests a trial by jury for all issues triable by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request the following relief:

(i) That Defendants and their agents, servants, and employees, and all others in concert or participation with them, be enjoined from using the name "RIN TIN TIN" in connection with a German Shepherd Dog or puppy, in a movie or in promoting a movie;

(ii) That Defendants be ordered, pursuant to 15 U.S.C. § 1118, to deliver up for destruction all DVDs and other copies of their movie FINDING RIN TIN being offered for sale in the United States of America;

(iii) That Defendants be ordered to file with the Court and to serve on Plaintiffs, within thirty (30) days after the entry of an injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;

(iv) That Plaintiffs recover their damages from Defendants, and also Defendants' profits, trebling of all damages and profits awarded, punitive damages, costs of suit, and reasonable attorneys' fees;

(v) That Plaintiffs recover from Defendants prejudgment and post judgment interest at the applicable rates on all amounts awarded; and

(vi) That Plaintiffs have such further relief to which they may be entitled.

Respectfully submitted,

Dated: September 24, 2008

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