

Law Offices Of
FRASER CLEMENS MARTIN & MILLER LLC
Intellectual Property and Technology Law

Donald R. Fraser
William J. Clemens ¹
Richard G. Martin
J. Douglas Miller

28366 Kensington Lane
Perrysburg, Ohio 43551-4163

e-mail: dockins@fraser-ip.com
Telephone: (419) 874-1100
Facsimile: (419) 874-1130

Michael E. Dockins ²
Jacob M. Ward ³
William C. Dusseau
Brenda J. Kruse
Carrie A. Johnson ⁴
Michael J. Riesen

¹ Admitted in Ohio and Michigan
² Admitted in Ohio and Indiana
³ Admitted in Michigan only
⁴ Admitted in Georgia only

April 23, 2009

Fee & Jeffries, P.A.
Attn: Kathleen M. Wade, Esq.
1227 N. Franklin St.
Tampa, Florida 33602

VIA EMAIL: kwade@FEEJEFFRIES.COM
(FIRST CLASS MAIL TO FOLLOW)

Re: *Black Swamp Percussion, LLC v. Dunnett Classic Drums Ltd.*
Docket No. 1:09-cv-00325-RJJ
U.S. District Court, Western District of Michigan, Southern Division
(1-40048)

Dear Ms. Wade:

As you are aware, we represent Mr. Eric Sooy and Black Swamp Percussion, LLC with respect to the above-referenced action in the Western District of Michigan.

Mr. Sooy is the owner of U.S. Trademark Registration No. 3,199,753 for DRUM FOUNDRY, a copy of which is enclosed. Mr. Sooy and Black Swamp Percussion, LLC have been using the mark DRUM FOUNDRY on percussion instruments and parts since at least as early as 2005. The trademark was registered in 2007. Black Swamp Percussion, LLC has been doing business on the internet for quite some time.

When Black Swamp Percussion, LLC learned that the term "drum foundry" was included in the meta-tags of the drumsmith.com website, a complaint was filed with the U.S. District Court of the Western District of Michigan to initiate the above-referenced lawsuit. The complaint notes that the term "drum foundry" appeared in the drumsmith.com website meta-tags at least as early as 2007. We can only assume that the term "drum foundry" has been included in the drumsmith.com website since its creation in 2001. Black Swamp Percussion, LLC also learned that representatives of Dunnett Classic Drums, Ltd. have posted disparaging and defamatory remarks with respect to Black Swamp Percussion, LLC and Mr. Eric Sooy on the drumsmith.com website.

The term "drum foundry" is identical to the registered trademark DRUM FOUNDRY in U.S. TM Reg. No. 3,199,753 owned by Mr. Sooy. The use of the term "drum foundry" in the drumsmith.com website meta-tags is an intentional effort to intercept customers searching for the website and products of Black Swamp Percussion, LLC and to divert them to the drumsmith.com website. Such use is calculated to cause confusion among consumers. Courts have consistently held that this activity causes "initial interest confusion" and is actionable under federal law as trademark infringement.

We note that, subsequent to the filing of the complaint with the Federal District Court of the Western Division of Michigan, the infringing meta-tags were removed from the drumsmith.com website. Black Swamp Percussion, LLC acknowledges the removal of meta-tags. However, removal of the complained-of meta-tags does not obviate the liability of Dunnett Classic Drums, Ltd. for the intentional trademark infringement.

Federal trademark law protects the owners of trademarks from trademark infringement, trademark dilution, and unfair trade practices. Trademark infringement occurs where a person, without the consent of the owner of the trademark, uses in commerce any "reproduction, counterfeit, copy, or colorable imitation" of a registered mark in connection with the sale or advertising of any goods or services where such use is likely to cause confusion, or to cause mistake, or to deceive. See 15 U.S.C. Sec. 1114. The owner of a registered trademark may bring an action in U.S. District Court against a party who uses a mark that is likely to cause confusion or mistake among consumers, or to deceive. Remedies include injunctive relief, defendant's profits, plaintiff's losses or damages, and costs. Damages may be trebled and attorneys fees may be awarded under appropriate circumstances. See Sections 43(a) of the Lanham Act, 15 U.S.C. Sec. 1125(a); Section 43(c)(1) of the Lanham Act, 15 U.S.C. Sec. 1125(c). The actions of your client may also constitute unfair competition and deceptive trade practices under the laws of Michigan and Massachusetts.

It is our opinion that Black Swamp Percussion, LLC will prevail against Dunnett Classic Drums, Ltd. in an action for trademark infringement and unfair trade practices under federal law and state law.

This matter can be resolved without further litigation if Dunnett Classic Drums, Ltd. will agree to the following:

1. Dunnett Classic Drums, Ltd. must provide written assurances by June 1, 2009 that it will respect the legal rights of Black Swamp Percussion, LLC and guarantee that Dunnett Classic Drums, Ltd. and Mr. Ronn Dunnett will refrain from future use of the trademarks of Black Swamp Percussion, LLC, or colorable imitations thereof, in website meta-tags or elsewhere.
2. Dunnett Classic Drums, Ltd. and Mr. Ronn Dunnett must provide written assurances by June 1, 2009 that it will respect the legal rights of Black Swamp Percussion, LLC and Mr. Eric Sooy and guarantee that it will refrain from making

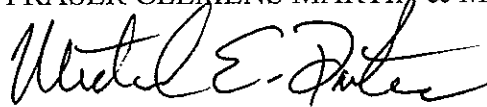
further disparaging remarks on the Dunnett Classic Drums, Ltd. website or drumsmith.com website with respect to Black Swamp Percussion, LLC or Mr. Eric Sooy.

3. Dunnett Classic Drums, Ltd. must reimburse Black Swamp Percussion, LLC \$5,000 for its attorneys fees to cover the cost of resolving this matter.

In exchange for the prompt resolution of this matter pursuant to the terms outlined above, Black Swamp Percussion, LLC will dismiss its complaint against Dunnett Classic Drums, Ltd. If we are unable to resolve this matter, we will continue to enforce the rights of Black Swamp Percussion, LLC to the fullest extent allowed under United States trademark law.

Respectfully,

FRASER CLEMENS MARTIN & MILLER LLC



Michael E. Dockins

MED/jlh

- c. Black Swamp Percussion, LLC.
William J. Clemens, Esq.