

IN THE CIRCUIT COURT FOR THE COUNTY OF OKTIBBEHA, MISSISSIPPI

R. DAKOTA PRESCOTT

PLAINTIFF

VS.

CIVIL ACTION NO. 2014-0523-CVH

**MATTHEW PRINT & APPAREL
COMPANY LLC & CHRISTIAN MATTHEW**

DEFENDANTS

COMPLAINT

Plaintiff Rayne Dakota Prescott files this Complaint for injunctive relief and damages against Defendants.

PARTIES

1. Plaintiff, Rayne Dakota "Dak" Prescott is an individual who is currently a student at Mississippi State University.
2. Defendant Christian Matthew is a citizen of the State of Mississippi, who lives in or near Gulfport, Mississippi.
3. Defendant Matthew Print & Apparel Company LLC is or was a Mississippi limited liability company that does business in Mississippi.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to Miss. Code § 9-7-81.
5. Venue is proper in this Court as a substantial alleged act or omission occurred and/or where a substantial event that caused the injury occurred in this County.

FACTS

6. Rayne Dakota "Dak" Prescott is a student-athlete who plays football for Mississippi State University.
7. Prescott has received vast recognition and attention during the 2013 and 2014 football seasons.

8. By all accounts, the Mississippi State football team is having a historical season.
9. Prescott has broken several season football records while at Mississippi State and is being mentioned for consideration of various national football awards.
10. Due to the success of Prescott and Mississippi State, certain vendors have sought to sell t-shirts or other items with the name or likeness of Prescott without Prescott's consent.
11. Defendant Matthew Print & Apparel Company LLC is a company that is located at and/or does business at 500 Courthouse Rd., Suite C, Gulfport, MS 39507.
12. According to the Mississippi Secretary of State, the registered agent is Christian Matthew.
13. According to the Mississippi Secretary of State, an intent to dissolve notice has been issued as the LLC has not filed an annual report.
14. Defendants have been selling shirts that include the name of Plaintiff. Defendants have been selling shirts with the phrases "DAK ATTACK" and "DAK DYNASTY."
15. The Defendants have been selling shirts with Plaintiff's name on them online at matthewprintcompany.com and advertising them on their Facebook page.¹ See Ex. A.
16. The registrant of the domain name matthewprintcompany.com is Christian Matthew. Ex. B.
17. On October 16, 2014, counsel for Plaintiff sent Defendants a cease and desist letter, requesting Defendants to stop selling shirts using Dak Prescott's name.
18. A copy of this letter was sent via certified mail to two different addresses of record for Defendant, including 500 Courthouse Rd., Suite C, Gulfport, MS 39507. See Ex. C.
19. A copy of this cease and desist letter was also emailed to defendant. See Ex. D.

¹<https://www.facebook.com/pages/Matthew-Print-Apparel-Company/242567865754516>

20. The cease and desist letter also informs Defendants that under NCAA bylaws, the use of Dak Prescott's name, image or likeness for commercial purposes is impermissible and could affect his eligibility as a student athlete.

21. NCAA Bylaw 12.5.2.2 states that "if a student-athlete's name or picture appears on commercial items (e.g., T-shirts, sweatshirts, ... photographs) or is used to promote a commercial product sold by an individual or agency without the student-athlete's knowledge or permission, the student-athlete (or the institution ...) is required to take steps to stop such activity in order to retain his or her eligibility for intercollegiate athletics." Additionally, Bylaw 12.5.2.1 provides that a student-athlete "shall not be eligible for participation in intercollegiate athletics if the individual: ... Accepts any remuneration for or permits the use of his name or picture to advertise, recommend or promote directly the sale or use of a commercial product or service of any kind."

22. The Defendants did not respond to the cease and desist letter.

23. Counsel for Plaintiff sent another letter via US Mail to Defendants on October 23, 2014. *See* Ex. E.

24. Defendants did not respond to this letter either.

25. As of November 19, 2014, Defendants were still advertising these t-shirts on their website with the phrases "DAK ATTACK" and "DAK DYNASTY."

26. Counsel for Plaintiff sent yet another cease and desist letter via US Mail to Defendants on November 19, 2014. *See* Ex. F.

27. This letter enclosed a copy of the draft Complaint and advised Defendants that since we have not received a response, if we don't receive a response by November 26, 2014, we will proceed with filing the Complaint.

28. Defendants have not responded to the letters and continue to advertise, promote and sell the t-shirts at issue.

29. In fact, Defendants posted on their Facebook page on December 5th, 2014, that they have extended sales on "items including the Dak Attack, Dak Dynasty and Bo Knows Tees." Ex. G.

30. Thus, Defendants have ignored the cease and desist letters and willfully continue to offer, advertise and sell these t-shirts with Plaintiff's name, without Plaintiff's consent.

CLAIMS FOR RELIEF

COUNT ONE RIGHT OF PUBLICITY/APPROPRIATION OF NAME

31. Plaintiff hereby incorporates by reference each and every allegation set forth in the preceding paragraphs of the Complaint;

32. Plaintiff has the right to control his name and likeness for use in commerce.

33. The Defendants have misappropriated and used the name of Plaintiff, Dak Prescott.

34. Plaintiff has not given Defendants consent to use his name on the t-shirts or with respect to any goods or services.

35. The Defendants are using Plaintiff's name in their commercial enterprise.

36. As a direct and proximate result, Plaintiff is entitled to damages.

37. Plaintiff seeks all compensatory damages available, which includes commercial damages for the goods that Defendants have sold.

38. Because the Defendants continue to sell the shirts after being sent several cease and desist letters, punitive damages are appropriate.

**COUNT TWO
TRADEMARK INFRINGEMENT**

39. Plaintiff hereby incorporates by reference each and every allegation set forth in the preceding paragraphs of the Complaint.

40. Under both state and federal law, Prescott has trademark rights in his name and phrases associated with his name.

41. Defendants' use of these marks in commerce creates a likelihood of confusion with respect to the source of the goods.

42. Defendants' use of these marks in commerce constitutes trademark infringement.

**COUNT THREE
SECTION 43(A) ENDORSEMENT/AFFILIATION CLAIMS**

43. Plaintiff hereby incorporates by reference each and every allegation set forth in the preceding paragraphs of the Complaint;

44. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), provides in pertinent part that “[a]ny person who, on or in connection with any goods or services . . . uses in commerce any word, term, name, symbol . . . or any 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 affiliation . . . or as to the origin, sponsorship, or approval of . . . goods [or] services . . . shall be liable in a civil action”

45. The acts of Defendants in marketing, promoting, and selling shirts give off the false impression that they are affiliated with or endorsed or sponsored by the trademark owner.

46. The Defendants' use creates a likelihood of confusion as to source, sponsorship, affiliation, or approval.

47. Plaintiff has not authorized Defendants to use his name in any way.

48. Thus, Defendants have been and are selling goods all in violation of Section 43(a) of the Lanham Act.

**COUNT FOUR
TRADEMARK DILUTION**

49. Plaintiff hereby incorporates by reference each and every allegation set forth in the preceding paragraphs of the Complaint;

50. The marks "DAK PRESCOTT", "DAK ATTACK" and "DAK DYNASTY" have become well known and are famous.

51. Plaintiff's marks are distinctive.

52. Defendants have been using the marks in commerce and caused dilution of the distinctive quality of the Plaintiff's marks.

53. The acts of Defendants described above constitute trademark dilution.

**COUNT FIVE
UNJUST ENRICHMENT**

54. Plaintiff hereby incorporates by reference each and every allegation set forth in the preceding paragraphs of the Complaint;

55. In addition to and in the alternative to the claims above, Defendants have been unjustly enriched by the acts described in the Complaint.

56. Unjust enrichment applies when the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another.

57. Defendants have received money which they in good conscience should not be allowed to retain, because it was based on the unauthorized use of Plaintiff's name.

INJUNCTIVE RELIEF

58. Plaintiff hereby incorporates by reference each and every allegation set forth in the preceding paragraphs of the Complaint;

59. Defendants have continued to advertise and sell the infringing products without Plaintiff's consent and after several cease and desist letters.

60. Plaintiff has a substantial likelihood of success on the merits. Plaintiff will be irreparably harmed in the event that Defendants are allowed to continue their illegal sales. Pursuant to Mississippi Rule of Civil Procedure 65, Plaintiff is entitled to preliminary injunction restraining and enjoining Defendants from the threatened conduct.

61. The threatened harm to Plaintiff is imminent and irreparable, and it outweighs any harm to Defendants. As stated above, under NCAA bylaws, the use of Prescott's name, image or likeness for commercial purposes is impermissible and could affect his eligibility as a student athlete. NCAA Bylaw 12.5.2.2 states that "if a student-athlete's name or picture appears on commercial items (e.g., T-shirts, sweatshirts, ... photographs) or is used to promote a commercial product sold by an individual or agency without the student-athlete's knowledge or permission, the student-athlete (or the institution ...) is required to take steps to stop such activity in order to retain his or her eligibility for intercollegiate athletics." Additionally, Bylaw 12.5.2.1 provides that a student-athlete "shall not be eligible for participation in intercollegiate athletics if the individual: ... Accepts any remuneration for or permits the use of his name or picture to advertise, recommend or promote directly the sale or use of a commercial product or service of any kind."

62. The injunction requested will not disserve the public interest.

63. Plaintiff requests a preliminary injunction and upon a final hearing in this action a permanent injunction enjoining Defendants from continuing to sell the shirts at issue.

WHEREFORE, Plaintiff demands judgment against the Defendants awarding Plaintiff the following:

Compensatory damages from Defendants for the sales of the shirts at issue, including all commercial damages, such as profits of the Defendants attributable to the infringement, plus all other foreseeable and consequential damages caused by said Defendants' conduct;

Because Defendants acted intentionally, willfully, fraudulently, and with malice, punitive damages are warranted for violating Plaintiff's right of publicity;

In the alternative, treble damages are appropriate under the Lanham Act because Defendants have knowingly and intentionally infringed Plaintiff's marks and violated the Lanham Act by the false endorsement, affiliation and trademark dilution described above;

Plaintiff seeks to recover attorney's fees, as the Defendants engaged in willful and intentional misconduct;

A preliminary and permanent injunction against Defendants enjoining them from selling the products at issue and from using Plaintiff's name or likeness in any fashion either directly or indirectly; and

Such other and further relief as is proper under the circumstances.


Dated: December 9th, 2014.

Respectfully submitted,

RAYNE DAKOTA PRESCOTT

By His Attorneys,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC



JASON R. BUSH

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