

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
DR. HAUSCHKA SKIN CARE, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:12-cv-30022-MAP
)	
DEMETER ASSOCIATION, INC.,)	
)	
Defendant.)	
_____)	

DEFENDANT’S ANSWER AND COUNTERCLAIMS

Defendant Demeter Association, Inc. (“DEMETER USA”), by its counsel, responds as follows to the allegations set forth in the Complaint herein.

1. DEMETER USA admits that Plaintiff seeks the relief stated in paragraph 1 of the Complaint herein, but denies that any such relief is warranted.

2. DEMETER USA admits that it is the owner of the three identified registrations. The remaining statements in paragraph 2 of the Complaint do not require response.

3. Denied.

4. DEMETER USA lacks sufficient knowledge and information to form a belief as to the truth of the allegations of paragraph 4 of the Complaint, and therefore denies same.

5. DEMETER USA admits the allegations of the first sentence of paragraph 5. As to the second sentence, DEMETER USA states that it is a not-for-profit corporation whose mission is to enable people to farm successfully in accordance with BIODYNAMIC[®] practices and principles. As the owner of the registered certification mark BIODYNAMIC[®], DEMETER USA is responsible for ensuring that farms and products that employ the mark meet the Demeter Farm and Processing Standards. To the extent that the allegations of the second sentence of paragraph 5 are inconsistent with that mission and that responsibility, denied.

6. As to the first sentence of paragraph 6, DEMETER USA admits that it is the United States representative of Demeter International, the only internationally recognized certifier of BIODYNAMIC practices and principles. To the extent that the allegations of the first sentence are inconsistent with that admission, denied. DEMETER USA admits the allegations of the second sentence of paragraph 6.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. As to the first sentence of paragraph 11, DEMETER USA recognizes the historical origins of “sustainable” agriculture, as stated at Demeter’s website. DEMETER USA denies that farms and agriculturally-based products available in the marketplace came to be called “biodynamic” in the United States or otherwise. DEMETER USA admits that the document attached as Exhibit 4 to the Complaint appeared at the www.demeter-use.org website.

DEMETER USA otherwise denies the allegations of this paragraph as vague and incomprehensible

12. DEMETER USA admits that the term BIODYNAMIC is suggestive but denies the remaining allegations of paragraph 12.

13. The allegations of paragraph 13 are vague and incomprehensible, and therefore denied.

14. DEMETER USA admits that it is the owner of federal registrations for certification marks comprising or including the term BIODYNAMIC and that this gives DEMETER USA the exclusive right to certify compliance with its Farm and Processing standards, but otherwise denies the allegations of this paragraph as vague and incomprehensible.

15. DEMETER USA admits that there are such things as “biodynamic farming and advocacy groups” in the United States. As to the remaining allegations of this paragraph, DEMETER USA lacks sufficient knowledge and information to form a belief as to the truth of the allegations and therefore denies same.

16. DEMETER USA lacks sufficient knowledge and information to form a belief as to the truth of the allegations of paragraph 16, and therefore denied same.

17. DEMETER USA lacks sufficient knowledge and information to form a belief as to the truth of the allegations of paragraph 17 of the Complaint, and therefore denies same, and DEMETER USA specifically denies that Plaintiff’s products are certified as BIODYNAMIC[®].

18. DEMETER USA lacks sufficient knowledge and information to form a belief as to the truth of the allegations of paragraph 18 of the Complaint, and therefore denies same.

19. DEMETER USA lacks sufficient knowledge and information to form a belief as to the truth of the allegations of paragraph 19 of the Complaint, and therefore denies same.

20. DEMETER USA lacks sufficient knowledge and information to form a belief as to the truth of the allegations of paragraph 20 of the Complaint, and therefore denies same.

21. DEMETER USA admits that Plaintiff claims that its products, which are made outside of the United States, are “biodynamic” and that it labels and promotes them as such, but denies that Plaintiff’s products are certified as BIODYNAMIC[®] in the United States, and lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations of paragraph 18 of the Complaint, and therefore denies same.

22. Denied, except that DEMETER USA admits that Plaintiff recently began labeling products in the USA with the mark BIODYNAMIC, in violation of the certification mark rights of DEMETER USA.

23. The allegations of the first sentence of paragraph 23 are vague and incomprehensible, and therefore DEMETER USA denies same. As to the remainder of paragraph 23, DEMETER USA admits that Plaintiff claims that its herb garden meets the Demeter International Biodynamic Farm Standard, but denies that Plaintiff’s products are certified in the United States or elsewhere, and otherwise denies the remaining allegations of this paragraph.

24. DEMETER USA admits that Plaintiff contacted it on numerous occasions about how to comply with the Demeter Biodynamic Farm and Processing Standards, that DEMETER

USA over many years supplied Plaintiff with the standard, requested Plaintiff's input, but never received any input from Plaintiff. Otherwise the allegations of paragraph 24 are denied.

25. DEMETER USA admits that it requested that Plaintiff comply with the Demeter Biodynamic Farm and Processing Standards, that Plaintiff refused to do so and continued selling products labeled as "biodynamic" in Whole Foods even though they had not been certified; otherwise the allegations of paragraph 25 are denied.

26. DEMETER USA admits that it requested that Plaintiff comply with the Demeter Biodynamic Farm and Processing Standards and that Plaintiff now claims it is unable to do so; otherwise the allegations of paragraph 26 are denied.

27. DEMETER USA admits that it requested that Plaintiff comply with the Demeter Biodynamic Farm and Processing Standards and that Plaintiff now claims it is unable to do so; otherwise the allegations of paragraph 27 are denied.

28. DEMETER USA admits that it owns United States Registration No. 2,286,984 for the certification mark BIODYNAMIC for the goods identified therein. To the extent that the allegations of paragraph 28 are inconsistent with that registration, denied.

29. DEMETER USA admits that it owns U.S. Registration No. 3,102,570 for the certification mark BIODYNAMIC for the goods identified therein, and owns U.S. Registration No. 3,448,478 for the certification mark DEMETER CERTIFIED BIODYNAMIC & Design for the goods identified therein. To the extent that the allegations of paragraph 29 are inconsistent with those registrations, denied.

30. Denied.

31. Denied.

32. Denied.

33. The allegations of paragraph 33 are vague and incomprehensible, and therefore denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. The allegations of paragraph 38 are vague and incomprehensible, and therefore denied.

39. The allegations of paragraph 39 are vague and incomprehensible, and therefore denied.

40. Denied.

41. The allegations of paragraph 41 are vague and incomprehensible, and therefore denied.

42. Denied.

43. No response required.

44. As to the first sentence of paragraph 44, DEMETER USA admits that it owns U.S. Registration No. 3,102,570 for the certification mark BIODYNAMIC for the goods identified therein. As to the second sentence, denied.

45. Denied.

46. The allegations of paragraph 46 are incomprehensible, since the mark BIODYNAMIC is not registered as an “indicator of origin” but as a certification mark, and therefore DEMETER USA denies the allegations of paragraph 46.

47. No response required.

48. As to the first sentence of paragraph 48, DEMETER USA admits that it owns U.S. Registration No. 2,286,984 for the certification mark BIODYNAMIC for the goods identified therein. As to the second sentence, denied.

49. Denied.

50. The allegations of paragraph 50 are incomprehensible, since the mark BIODYNAMIC is not registered as an “indicator of origin” but as a certification mark, and therefore DEMETER USA denies the allegations of paragraph 50.

51. No response required.

52. As to the first sentence of paragraph 52, DEMETER USA admits that it owns U.S. Registration No. 3,448,478 for the certification mark DEMETER CERTIFIED BIODYNAMIC & Design for the goods identified therein. As to the second sentence of paragraph 52, denied.

53. As to the first sentence of paragraph 53, the certification mark of Registration No. 3,448,478 is depicted on that registration. As to the second sentence, denied.

54. Denied.

55. The allegations of paragraph 55 are incomprehensible, since the mark BIODYNAMIC is not registered as an “indicator of origin” but as a certification mark, and therefore DEMETER USA denies the allegations of paragraph 55.

56. No response required.

57. Denied.

58. If Plaintiff does indeed hold the belief set forth in paragraph 58, then Plaintiff is mistaken. To the extent this paragraph is understood, denied.

59. Denied.

60. To the extent understood, denied.

61. Denied.

62. Despite what Plaintiff requests in this paragraph, it is not entitled to the relief requested. To the extent this paragraph can be understood to contain factual allegations, denied.

FIRST AFFIRMATIVE DEFENSE

Plaintiff is barred from the relief it seeks by the doctrine of equitable estoppel in light of its own conduct.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is barred from the relief it seeks by the doctrine of unclean hands in view of Plaintiff's prior communications to DEMETER USA seeking information regarding possible improper use of the BIODYNAMIC[®] certification mark by Plaintiff's competitors, for possible use by Plaintiff against its competitors.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is barred from relief by the doctrines of laches and estoppel.

FOURTH AFFIRMATIVE DEFENSE

DEMETER USA reserves its right to assert any and all additional affirmative defenses to the Complaint that these proceedings may hereafter reveal to be appropriate.

WHEREFORE, DEMETER USA prays that Plaintiff be denied all of the relief that it requests, and that judgment be entered in DEMETER USA's favor and against Plaintiff on all Counts of the Complaint.

COUNTERCLAIMS

1. The term BIODYNAMIC[®] is a registered certification mark owned by the Demeter Association, Inc. ("DEMETER USA"), a non-profit corporation whose vision is to heal the planet through agriculture. DEMETER USA holds this certification mark in order to protect the integrity of BIODYNAMIC[®] agriculture and the products that result, both for consumers and for farmers.

2. The Demeter Biodynamic Farm Standard is a comprehensive organic farming method that requires the creation and management of a closed system minimally dependent on imported materials, and instead meets its needs from the living dynamics of the farm itself. In order for a commercial farm or agriculturally-based product to legally use the term BIODYNAMIC[®] in reference to its farm or products, it must have obtained certification through DEMETER USA and be re-certified every year.

3. The Demeter Biodynamic Processing Standard (there are fourteen categories in all, including oil, wine, cosmetics and body care) fundamentally ensures an unbroken chain of accountability from the farm to the finished product. The Standard protects against manipulation of the Biodynamic agricultural ingredients as much as possible to allow for their integrity to define the product. Products must contain significant and verifiable BIODYNAMIC[®] ingredients in order to qualify for use of the term BIODYNAMIC[®] on product packaging and labeling, in order not to mislead consumers.

4. Dr. Hauschka Skin Care, Inc. (“DR. HAUSCHKA”) brought this suit claiming that the term “biodynamic” should not be legally defined by a certification program, but instead be left to interpretation in the marketplace. Although it does operate a certified biodynamic farm in Germany, DR. HAUSCHKA does not, upon information and belief, offer certified BIODYNAMIC[®] products in this country. However DR. HAUSCHKA claims that it should be entitled to sell its products- and present them at retail and to the consumer- using the

certification mark BIODYNAMIC[®], even if the individual products carry little or no verifiable BIODYNAMIC[®] ingredients.

5. DR. HAUSCHKA's stated reason for bringing this lawsuit is at odds with its marketing program. Although it states that the requirement to utilize significant and verifiable BIODYNAMIC[®] ingredients "would compromise the quality and/or effectiveness of these products", it nevertheless touts the purity and integrity of "biodynamic" agriculture as a reason to purchase its products.

6. DR. HAUSCHKA also claims that creating a certification standard for BIODYNAMIC[®] skincare and cosmetics is "unrealistic and futile," despite the fact that there is a company in the United States that is selling DEMETER USA certified skin care products, and despite the fact that there are several international skin care companies meeting the standards of DEMETER International, one whose entire line is DEMETER USA certified.

FIRST COUNTERCLAIM – VIOLATION OF 15 U.S.C. SECTION 1114

7. Demeter Association, Inc. ("DEMETER USA") is a Massachusetts not-for-profit corporation having its principal place of business in Philomath, Oregon.

8. Dr. Hauschka Skin Care, Inc. ("DR. HAUSCHKA") is a Massachusetts corporation having its place of business in Hatfield, Massachusetts.

9. DEMETER USA is the United States representative of Demeter International, the only internationally recognized certifier of BIODYNAMIC[®] practices and principles.

10. DEMETER USA is the owner of the following United States Certification Mark Registrations (copies of the registration certificates are attached as Exhibits 1, 2, and 3 of the complaint): Registration No. 2,286,984 for the certification mark BIODYNAMIC; Registration No. 3,102,570 for the certification mark BIODYNAMIC; and Registration No. 3,448,478 for the certification mark DEMETER CERTIFIED BIODYNAMIC & Design, shown immediately below.



11. On information and belief, DR. HAUSCHKA is using, without permission or authorization of DEMETER USA, the registered certification mark BIODYNAMIC[®] in connection with body care products that do not meet the qualifications for BIODYNAMIC[®] certification. Such illegal use of the BIODYNAMIC[®] certification mark is likely to cause confusion of consumers in that consumers encountering DR. HAUSCHKA'S products improperly labeled with the BIODYNAMIC[®] certification mark, are likely to believe that DEMETER USA has authorized use of the mark, and that the products contain significant and verifiable amounts of BIODYNAMIC[®] ingredients.

12. These activities of DR. HAUSCHKA were undertaken with full knowledge of the applicable BIODYNAMIC[®] certification standard and with full knowledge that its products are

not certified, and therefore constitute a willful and deliberate infringement of the rights of DEMETER USA in its registered certification marks, in violation of 15 U.S.C. Section 1114.

SECOND COUNTERCLAIM – VIOLATION OF M.G.L., CHAPTER 93A

13. DEMETER USA repeats and realleges the allegations contained in paragraphs 1 through 12 immediately above as if fully set forth herein.

14. DEMETER USA and DR. HAUSCHKA are engaged in the conduct of trade or commerce within the meaning of Mass. Gen. Laws ch. 93A, § 11.

15. The acts, conduct, and practices of DR. HAUSCHKA described above occurred and are occurring primarily and substantially within the Commonwealth of Massachusetts.

16. The acts, conduct, and practices of DR. HAUSCHKA described constitute unfair methods of competition and/or unfair or deceptive acts or practices, which are unlawful under Mass. Gen. Laws ch. 93A.

17. As a direct and proximate result of the violations of Mass. Gen. Laws ch. 93A by DR. HAUSCHKA, DEMETER USA has been damaged and will continue to be damaged.

WHEREFORE, DEMETER USA prays that the court grant it the following relief:

A. That this Court preliminarily and permanently enjoin DR. HAUSCHKA, its employees, agents, servants, and representatives, and all in privity with it, from using the mark BIODYNAMIC® in connection with its products.

- B. That this Court award DEMETER USA compensatory damages in an amount to be determined at trial;
- C. That this Court award DEMETER USA treble damages;
- D. That this Court award DEMETER USA its attorneys' fees and costs; and
- E. That this Court award plaintiffs such other and further relief as this Court deems just and proper.

Respectfully submitted,

DEMETER ASSOCIATION, INC.

By its attorneys,

Dated: March 13, 2012

/s/ John L. Welch
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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which automatically sends email notification of such filing to registered participants.

/s/ John L. Welch
John L. Welch