

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PANINI AMERICA, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:13-cv-1703
	§	
LEAF TRADING CARDS, LLC,	§	
	§	JURY TRIAL DEMANDED
Defendant.	§	

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff Panini America, Inc. (“Panini”) files this Complaint for Copyright Infringement against Defendant Leaf Trading Cards, LLC (“Leaf”).

A. NATURE OF THIS ACTION

1. This is a civil action arising under the laws of the United States, specifically under 17 U.S.C. § 101 *et seq.* for copyright infringement seeking damages and injunctive relief.

B. THE PARTIES

2. Plaintiff Panini is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 5325 FAA Blvd., Suite 100, Irving, Texas 75061. Panini is an industry leader in the design, creation and marketing of sports memorabilia, including trading cards and holds license agreements with the major professional sports leagues and players’ associations.

3. On information and belief, Defendant Leaf is a Texas limited liability company with its principal place of business at 3330 Earhart Dr., Suite 204, Carrollton, Texas 75006. Leaf markets its products on-line and through distributors throughout the United States, including the state of Texas and this district.

C. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. On information and belief, Leaf is subject to personal jurisdiction because its resides in this District and the acts of infringement complained of herein occurred in this District.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(a).

D. BACKGROUND

7. In 1998, Pinnacle Brands, Inc. authored original works of authorship and introduced same on a line of trading cards with unique styling and colors entitled its “Crusade” design.

8. In 1998 and 1999, the Crusade design was released in three different products: 1998 Donruss Baseball (“Baseball”), 1998 Rookies & Stars Baseball Update (“Update”), and 1998 Rookies & Stars Football (“Football”). Each of these three products contained the Crusade design in three different color combinations: green/yellow, purple/yellow, and red/yellow.

9. Panini has acquired the copyrights in and to the Crusade original works of authorship and is the rightful owner of the copyrights therein. Applications for copyright registration for the designs have been filed with the Copyright Office.

10. The Crusade design is a card design in which a photograph of a player is in the foreground and the background contains the player’s name at the top of the card and the Crusade logo towards the bottom of the card. The background is further divided in half along a vertical line from the top of the card to the bottom of the card. The card features two complimentary-colored mythical-shaped creatures in mirror image across the vertical line. Again, the complimentary colors are green/yellow, purple/yellow, and red/yellow. The mythical-shaped

creatures appear to be standing on one foot with the other foot raised. The mythical creatures have their arms positioned such that one hand is positioned in front of the creature's face with the other in front of the chest. The creatures have their mouths open and their tongues extended. The creatures have tufts of hair protruding from their arms, legs and back. The cards have a raised metallic background color with a repeating metallic print. The metallic print of the background takes on the color of the mythical creatures and reflects that color varying in intensity, beginning towards the bottom of the card and fading towards the top of the card, with the color on the creature fading in the opposite direction. The cards have an overall glossy appearance.

11. The Crusade design is a parallel design of a regular trading card in which the same player picture is used on each of the three color schemes in varying degrees of quantity across the total production of trading cards produced each year. These cards are much more rare than the common cards, and as such have greater value. The potential of unwrapping one of these specialty cards in a pack of trading cards is what drives sales and increases the value of the overall set.

12. Upon information and belief, Defendant Leaf introduced its "Valiant" card design in 2011.

13. Upon information and belief, Leaf has released or will release the Valiant design in five different products: 2011 Leaf Rookie Retro, 2011 Leaf Valiant Baseball, 2012 Leaf Valiant Baseball, 2012 Leaf Valiant Football, 2013 Leaf Valiant Football and 2012-2013 Leaf Metal Basketball.

14. The Valiant designs are substantially similar to the Crusade designs. The Valiant design is a card design in which a photograph of a player is in the foreground and the

background contains the player's name at the top of the card and the Valiant logo towards the bottom of the card. The background is further divided in half along a vertical line from the top of the card to the bottom of the card. The card features two complimentary-colored mythical-shaped creatures in mirror image across the vertical line. Again, the complimentary colors are green/yellow, purple/yellow, and red/yellow. The mythical-shaped creatures appear to be standing on one foot with the other foot raised. The mythical creatures have their arms positioned such that one hand is positioned in front of the creature's face with the other in front of the chest. The creatures have their mouths open and their tongues extended. The creatures have tufts of hair protruding from their arms, legs and back. The cards appear to have a raised metallic background color with a repeating metallic print. The metallic print of the background takes on the color of the mythical creatures and reflects that color varying in intensity, beginning towards the outside of the card and fading towards the inside of the card, with the color on the creature fading in the opposite direction. The cards have an overall glossy appearance.

15. Exhibit 1 depicts Panini's 1998 Rookies & Stars Football Crusade Green design on the left and the 2013 Leaf Valiant Football green design on the right. Both designs feature a dual green/yellow background with the mirror-image mythical creature. The creature appears raised on its hind legs with its tail behind in both designs. Furthermore, it appears to have fur and is sticking out its tongue in both designs. The player's name is at the top of the card and the Crusade and Valiant logos are at the bottom. The two designs are strikingly similar.

16. Exhibit 2 depicts Panini's 1998 Rookies & Stars Football Crusade Purple design on the left and the 2013 Leaf Valiant Football purple design on the right. Both designs feature a dual purple/yellow background with the mirror-image mythical creature. The creature appears raised on its hind legs with its tail behind in both designs. Furthermore, it appears to have fur

and is sticking out its tongue in both designs. The player's name is at the top of the card and the Crusade and Valiant logos are at the bottom. The two designs are strikingly similar.

17. Upon information and belief, on September 19, 2011 on a website forum, the owner and CEO of Defendant Leaf, under the username "Leaf," admitted that the Valiant design "was designed by the designer that originally created the Crusades." Exhibit 3 is a true and correct copy of the <http://www.freedomcardboard.com> thread, in which this comment appears on page 6 as post #41.

COUNT I

LEAF'S INFRINGEMENT OF PANINI'S COPYRIGHTS

18. Plaintiff Panini hereby repeats and realleges the allegations in paragraphs 1-17 of this Complaint as if fully set forth herein.

19. Panini is the copyright owner with respect to certain copyrighted trading card designs, including but not limited to the copyrighted trading card designs identified in Exhibits 4-12 attached hereto, each of which is the subject of a valid application for Certificate of Copyright Registration to be issued by the Register of Copyrights (the "Copyrighted Designs").

20. Among the exclusive rights granted to Panini under the Copyright Act are the exclusive rights to reproduce the Copyrighted Designs and to distribute the Copyrighted Designs to the public.

21. Defendant Leaf had access to the Crusade design before Leaf developed its Valiant design.

22. Leaf used the same designer that created the Crusade design to produce the Valiant design.

23. The Valiant designs are substantially similar to the Crusade designs.

24. Leaf has infringed the copyrights of Panini.

25. Defendant Leaf has sold and is selling trading cards that infringe the Copyrighted Designs in violation of 17 U.S.C. § 501, resulting in profit to Leaf and damages and harm to Panini including, but not limited to, damages to Panini's profits, sales and business.

26. Defendant Leaf's infringement of the Copyrighted Designs has been willful and intentional, in disregard of and with indifference to the rights of Panini.

27. The conduct of Leaf is causing and, unless enjoined and restrained by this Court, will continue to cause Panini great and irreparable injury that cannot be fully compensated or measured in money. Panini has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Panini is entitled to injunctive relief prohibiting Leaf from further infringing Panini's copyrights, and ordering Leaf to destroy all copies of infringing trading cards made in violation of Panini's exclusive rights.

28. Panini is entitled to its actual damages and any additional profits of Defendant Leaf pursuant to 17 U.S.C. § 504. Panini is further entitled to its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

E. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Panini respectfully requests that the Court enter judgment in favor of Panini granting the following relief:

- (i) A finding that Defendant Leaf has engaged in copyright infringement in violation of 17 U.S.C. § 501;
- (ii) A finding that Defendant Leaf has willfully infringed Panini's Copyrighted Designs, with full knowledge of Panini's use of and rights;
- (iii) Pursuant to 17 U.S.C. §502, temporarily, preliminarily and permanently enjoin, restrain and forbid Leaf, and all of Leaf's principals, servants, officers, directors,

partners, agents, representatives, employees, affiliates, successors, and assignees and all others acting in privity, concert or participation with Leaf, from:

- 1) imitating, copying, duplicating or otherwise making any use of Panini's Copyrighted Designs or any designs substantially similar thereto;
 - 2) assisting, aiding or abetting another person or business entity in engaging or performing any of the activities enumerated in the foregoing sub-paragraph;
- (iv) Pursuant to 17 U.S.C. §§ 504 and 505, award Panini its actual damages, Leaf's profits and Panini's costs and attorneys' fees;
- (v) An order awarding pre-judgment and post-judgment interest on all damages, attorneys' fees, expenses, and costs awarded to Panini; and
- (vi) Such other and further relief as the Court may deem just and proper.

F. JURY DEMAND

Plaintiff respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: May 3, 2013

Respectfully submitted,

/s/ Charles E. Phipps

Charles E. Phipps

Texas State Bar No. 00794457

cphipps@lockelord.com

Galyn D. Gafford

Texas State Bar No. 24040938

ggafford@lockelord.com

Robert E. Nail

Texas State Bar No. 24025556

rnail@lockelord.com

LOCKE LORD LLP

2200 Ross Avenue, Suite 2200

Dallas, Texas 75201

Phone: (214) 740-8000

Fax: (214) 740-8800

ATTORNEYS FOR PLAINTIFF
PANINI AMERICA, INC.