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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

2013 JUL -3 PM 2:14

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS, FLORIDA

LARRY C. FLYNT,  
8484 Wilshire Boulevard  
Beverly Hills, California 90211,

and

L.F.P. IP, LLC,  
8484 Wilshire Boulevard  
Beverly Hills, California 90211,

Plaintiff,

vs.

JIMMY FLYNT SEXY GIFTS -  
NAPLES, LLC,  
1410 Pine Ridge Road, Suite 15  
Naples, Florida 34109,

and

JIMMY R. FLYNT,  
68 East Serene Avenue  
Las Vegas, Nevada 89123,

Defendants.

Case No. 2:13-cv-493 -FtM-29UAM

Judge: JOHN E. STEELE  
UNITED STATES DISTRICT JUDGE

**UNASSIGNED**

**PLAINTIFFS' COMPLAINT FOR  
TRADEMARK INFRINGEMENT  
INJUNCTIVE RELIEF SOUGHT**

Plaintiffs Larry C. Flynt ("Larry") and L.F.P. IP, LLC ("LFP IP") (collectively referred to as "Plaintiffs") state for their Complaint against Defendants, Jimmy Flynt Sexy Gifts - Naples, LLC ("Flynt Sexy Gifts") and Jimmy R. Flynt ("Jimmy") (collectively referred to as "Defendants") as follows:

**PARTIES, VENUE AND JURISDICTION**

1. Plaintiff Larry is an individual residing in Los Angeles, California.

2. Plaintiff LFP IP is a Delaware Limited Liability Company with a principal business address located at 8484 Wilshire Boulevard, Beverly Hills, California.

3. Defendant Flynt Sexy Gifts is a Florida limited liability company with a principal business address located at 1410 Pine Ridge Road, Suite 15, Naples, Florida. Flynt Sexy Gifts operates an adult boutique, located on a pedestrian walk-way, which sells various adult-themed merchandise. Flynt Sexy Gifts' location, design, and business model are based upon Larry's highly successful HUSTLER HOLLYWOOD stores.

4. Defendant Jimmy is an individual residing in Las Vegas, Nevada. Jimmy owns and controls Flynt Sexy Gifts. Jimmy is Larry's younger brother.

5. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338(b), because this action arises under the Lanham Act, 15 U.S.C. §1051, *et seq.* This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367(a).

6. Venue is proper in the United States District Court for the Middle District of Florida because many of the acts giving rise to this case, including the infringement of Plaintiffs' trademarks, occurred in the Middle District of Florida.

7. The amount in controversy exceeds \$75,000.

### **FACTUAL BACKGROUND**

#### **The History of the FLYNT Mark**

8. Since the early 1970's, through the various "LFP" (originally Larry Flynt Publishing) companies, Plaintiffs have used FLYNT in connection with a variety of products and services including with the registered trademark HUSTLER for adult magazines and other similar publications; operation of various adult-themed retail stores; production and distribution of numerous motion pictures in video cassette and

DVD format under Plaintiffs' various affiliated companies; and operation of various Internet Websites and related adult entertainment vehicles. As a result of these longstanding and exclusive uses, the FLYNT name and trademark has become famous.

9. Since 1998, Plaintiffs have owned and operated a number of highly visible and successful adult retail stores with locations throughout the country, including in Florida. These stores prominently feature clothing and novelties with Larry's name and likeness, including the famous FLYNT trademark.

10. Plaintiffs are currently the owner of a family of federal trademark registrations and applications from the United States Patent and Trademark Office (the "PTO") in connection with various adult goods. These include a registration for LARRY FLYNT in connection with "Pre-recorded digital video disks featuring adult entertainment; and downloadable films and television programs featuring adult entertainment provided via a video-on-demand service," U.S. Registration No. 3,991,482; a registration for IN LIKE FLYNT for "Adult sexual stimulation aids, namely, artificial vagina for use as an aid to masturbation and copulation," U.S. Registration No. 3,785,946; and a pending application for LARRY FLYNT in connection with "Adult sexual stimulation aids, namely, artificial penises, mechanical apparatus to aid in the erection of the penis, rubber ring to be worn about the penis, vibrators, benwa balls, artificial vaginas," Serial No. 77/656873 (collectively these marks and the famous common law FLYNT trademark are hereinafter referred to as the "FLYNT Marks"). True and accurate copies of these registrations are attached hereto as **Exhibits A-C**.

11. Larry and his Flynt surname have become personally famous throughout the United States and much of the world under the FLYNT Marks.

12. In addition, Larry was the principal subject of a well-known 1996 Columbia Pictures feature motion picture entitled "The People vs. Larry Flynt," by internationally acclaimed director Milos Forman, depicting Plaintiff as heroically championing the rights of free expression under the First Amendment to the United States Constitution.

13. In sum, Larry has become internationally known and symbolic of adult entertainment magazines, retail stores, motion pictures, adult products, Internet Websites, and the like.

14. Plaintiffs' FLYNT Marks have become famous, have acquired secondary meaning to the public, and he is entitled to protect the intellectual property rights associated with the name and mark FLYNT.

**Defendants' Infringement of the FLYNT Marks**

15. Jimmy previously worked for many of Plaintiffs' retail stores and became familiar with Plaintiffs' business model and retail strategies, including the FLYNT Marks. Plaintiffs terminated Jimmy in 2009.

16. Jimmy has now formed a company, Flynt Sexy Gifts, to enter the adult entertainment business on his own, seeking to trade off and usurp the famous FLYNT Marks of Plaintiffs.

17. Jimmy, together with Flynt Sexy Gifts, is now seeking to operate an adult retail store using the FLYNT Marks associated with Plaintiffs to confuse the public into buying Jimmy's inferior products and/or believing that Flynt Sexy Gifts is owned, associated, or endorsed by Plaintiffs.

18. Defendants are already advertising their "FLYNT" infringing mark on the Internet and elsewhere, causing confusion among the general consuming public as to

the origin of Defendants' store and products, since consumers associate the FLYNT Marks with Plaintiffs.

**Defendants' Infringement Is Willful and Deliberate**

19. Upon information and belief, the foregoing conduct by Defendants has been willful and deliberate, specifically intended by Defendants to trade off on the goodwill, fame and secondary meaning associated with the famous FLYNT Marks, and to "palm off" their store as being associated with Larry and LFP IP, while Jimmy has not achieved any fame or secondary meaning for his own name.

20. In fact, this is not the first time a member of Jimmy's family has attempted to trade off the famous FLYNT Marks. In 2009 Jimmy's sons, Dustin and Jimmy II, attempted to compete with Plaintiffs in the adult video market under the name "Flynt Media Corporation." On February 8, 2010, the United States District Court for the Central District of California in *Flynt v. Flynt Media Corp.*, Case No. CV 09 0048, granted Larry's request for a permanent injunction against Jimmy's sons which prohibited them from using FLYNT without including their full name and a prominent disclaimer of any connection to Larry.

21. Jimmy is keenly aware of his sons' dispute with Plaintiffs, and has previously suggested that he was fired by Plaintiffs in 2009 because of that litigation.

22. Jimmy is also aware of Larry's exclusive rights to the FLYNT Marks as a result of his own conduct. Larry and Jimmy have been embroiled in several litigations in Ohio related to Jimmy's business relationship with Larry. Among other disputes, Larry successfully sued Jimmy and his Ohio company Hustler Cincinnati, Inc. ("HCI") for trademark infringement (Jimmy is the sole shareholder of HCI and HCI is a member

of Flynt Sexy Gifts). In that case, Jimmy and HCI were found to have infringed upon several of Larry's marks, including the HUSTLER mark.

23. Specifically, on December 30, 2011, the United States District Court for the Southern District of Ohio entered an Order of Permanent Injunction ("Permanent Injunction") against Jimmy and HCI which prohibited them from, *inter alia*, "using any trademark or any variation thereof owned by L.F.P., Inc., LFP IP, LLC, Larry C. Flynt, HH Entertainment, Inc., any Hustler Hollywood retail store, or any other entity owned, in whole or part, by Larry C. Flynt or the Larry Flynt Revocable Trust." *See LFP IP, LLC v. Hustler Cincinnati, Inc.*, case no. 1:09-cv-913.

24. Despite the Permanent Injunction, in 2012 Jimmy opened a store in Florence, Kentucky under the name "Flynt Sexy Gifts." Because Jimmy was improperly using the FLYNT Marks, Larry moved to hold Jimmy and HCI in contempt of court for violating the Permanent Injunction.

25. On June 7, 2012, the Southern District of Ohio found that "the signage at Jimmy's new store in Florence, Kentucky creates a likelihood of confusion with the 'Larry Flynt' mark owned by plaintiffs, in violation of ¶ 1(c) of the permanent injunction." Relying on the Central District of California's decision in 2010, the Southern District of Ohio required Jimmy to use his full name in connection with any public displays of the name Flynt. The court further required Jimmy to use a disclaimer similar to the one ordered by the Central District of California.

26. On August 29, 2012, the Southern District agreed to set aside its finding of contempt pending Jimmy's appeal of the Permanent Injunction. That appeal is currently pending.

27. Despite the two prior court decisions prohibiting Jimmy and his sons from using the FLYNT Marks, Jimmy has willfully and deliberately infringed upon Plaintiffs' intellectual property rights by promoting his new store as "Flynt Sexy Gifts" without using his full name or any disclaimer.

28. Unless Defendants are preliminarily and permanently enjoined by this Court, Plaintiffs will suffer irreparable injury and lost goodwill associated with the FLYNT Marks by the Defendants' willful and deliberately infringing conduct as aforesaid.

**COUNT I**  
**INFRINGEMENT OF TRADEMARK/  
FALSE ENDORSEMENT**  
**(15 U.S.C. §§ 1114 and 1125(a))**

29. Larry incorporates by reference the allegations contained in Paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. Plaintiffs own all registered and common law rights in the FLYNT Marks. Under 15 U.S.C. § 1115, the registered trademarks are *prima facie* evidence of the validity of the marks and of Plaintiffs' exclusive right to use the FLYNT Marks in commerce.

31. The FLYNT Marks are widely recognized by the general consuming public of the United States as designating the source of various goods and services originating with Plaintiffs.

32. The FLYNT Marks have become famous and have acquired secondary meaning to the consuming public.

33. By intentionally using the FLYNT Marks in commerce on the adult-themed retail stores without Plaintiffs' permission, and which upon information and

belief they intend to continue to operate as aforesaid, Defendants are deliberately, intentionally and willfully infringing upon the FLYNT Marks, and the goodwill associated by the public with the FLYNT Marks, and falsely making it appear that Plaintiffs are endorsing, sponsoring, or are otherwise affiliated with Defendants and constitutes a willful violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

34. If not preliminarily and permanently enjoined by this Court pursuant to 15 U.S.C. § 1116, Defendants will continue to advertise and display, and will sell, distribute and otherwise exploit the FLYNT Marks for their own commercial use in violation of Plaintiffs' rights under the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a).

35. Plaintiffs also seek monetary damages and attorneys' fees for Defendants' willful use and advertising of the FLYNT Marks on their Internet Websites which Defendants own and/or operate.

36. Defendants' intentional and willful conduct entitles Plaintiffs to an award of treble damages and attorneys' fees under 15 U.S.C. § 1117(a).

37. The foregoing conduct of Defendants further constitutes a false designation of origin in violation of 15 U.S.C. § 1125(a).

38. Plaintiffs have no adequate remedy at law.

**COUNT II**  
**DILUTION OF TRADEMARK**  
**(15 U.S.C. § 1125 (c))**

39. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 38 of this Complaint as if fully set forth herein.

40. Larry has become nationally and internationally known as a spokesman for the right of free expression, particularly in the field of adult retail and entertainment,



and the FLYNT Marks have become famous and distinctive, through registration and having acquired secondary meaning to the consuming public.

41. By deliberately, intentionally and willfully displaying the FLYNT Marks on their retail store and Internet Websites in commerce without Plaintiffs' permission, Defendants have advertised and threatened to further use the FLYNT Marks, which has already resulted in actual dilution thereof by blurring and tarnishment, in violation of 15 U.S.C. § 1125(c).

42. By advertising and marketing their store using the FLYNT Marks in a large font of capital letters, Defendants have blurred and tarnished the distinctive quality and goodwill of the FLYNT Marks in the adult industry.

43. By reason of the foregoing, Defendants have deliberately, willfully and knowingly diluted and threatened to further dilute the rights of Plaintiffs in the FLYNT Marks, in order to intentionally deceive and mislead consumers and the public at large, and to willfully usurp the goodwill and reputation associated with the FLYNT Marks in the adult industry.

44. Unless preliminarily and permanently enjoined by this Court, Defendants will continue to dilute, and to cause serious and irreparable harm and damage to the reputation and goodwill associated with the FLYNT Marks.

45. Plaintiffs have no adequate remedy at law.

**COUNT III**  
**FEDERAL UNFAIR COMPETITION**  
**(15 U.S.C. § 1125(a))**

46. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 45 of this Complaint as if fully set forth herein.

47. The FLYNT Marks are widely recognized by the general consuming public of the United States as a designation of the source of goods sold utilizing said mark by Plaintiffs.

48. Larry has become famous throughout the United States and much of the world by reason of his advocacy of free expression, his well-known publication of Hustler Magazine, and his operation of various other adult-themed businesses, including retail stores.

49. Defendants have advertised, and are threatening to utilize the FLYNT Marks without Plaintiffs' permission, with the intent to create an association and affiliation with Plaintiffs, and to trade-off on their fame by usurping the goodwill of the FLYNT Marks.

50. The continued use by Defendants of the FLYNT Marks will continue to result in deception and confusion of the public as to the source of their store and possibly other goods as genuine products of Plaintiffs, and constitutes unfair competition and violation of the federal Lanham Act, 15 U.S.C. § 1125(a), and violation of the Plaintiffs' exclusive rights to exploit the FLYNT Marks.

51. Unless preliminarily and permanently enjoined by this Court, Defendants will continue to unlawfully advertise and exploit the famous FLYNT Marks, causing them irreparable damage and injury.

52. Plaintiffs have no adequate remedy at law.

**COUNT IV**  
**COMMON LAW TRADEMARK INFRINGEMENT**  
**(Florida Common Law)**

53. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 52 of this Complaint as if fully set forth herein.

54. This cause of action under Florida state common law is separate and independent of the federally-based causes of action previously set forth herein, but it is between the same parties and is based on the same operative facts as set forth in the prior causes of action; this Court accordingly has supplemental jurisdiction over said claim.

55. As set forth above, Plaintiffs do business in the State of Florida, where they own and enjoy trademark rights throughout the United States in the FLYNT Marks for adult entertainment, including magazines, DVD's, the Internet, retail stores, goods, and other adult entertainment vehicles.

56. The use of the FLYNT Marks by Defendants in connection with the advertising and operation of their adult-themed retail store without Plaintiffs' permission, in the State of Florida and elsewhere in the United States, is likely to cause and has caused confusion among consumers as to the source of Defendants' products, and purchasers thereof will likely associate such products as originating with Larry, all to the detriment of Larry.

57. Unless preliminarily and permanently enjoined by this Court, Defendants will continue their aforesaid willful and deliberate infringement of the FLYNT Marks.

58. Plaintiffs have no adequate remedy of law.

**COUNT V**  
**VIOLATION OF FLORIDA'S ANTI-DILUTION STATUTE**  
**(Florida Statutes 495.151)**

59. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60. This cause of action arises under Section 495.151, Florida Statutes, for injury to Business Reputation and Dilution.

61. As described more fully herein, Defendants wrongful acts dilute Plaintiffs' famous FLYNT Marks in that Defendants unauthorized and unlicensed use of the FLYNT Marks has caused and will continue to cause the diminution of the value of the goodwill represented by, and of the distinctiveness of, Plaintiffs' famous and distinctive FLYNT Marks in violation of Section 495.151, Florida Statutes.

62. Defendants' willful acts have damaged Plaintiffs and will continue to cause damage to Plaintiffs in the future unless enjoined by this Court.

63. Defendants' wrongful acts are, and will continue to be, greatly and irreparably damaging to Plaintiffs unless enjoined by this Court. Accordingly, Plaintiffs have no adequate remedy at law.

**COUNT VI**  
**VIOLATION OF LARRY'S RIGHT OF PUBLICITY**  
**(Florida Statutes 540.08)**

64. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 63 of this Complaint as if fully set forth herein.

65. Defendants have knowingly, willfully used Larry's famous FLYNT name and the FLYNT Marks in connection with the advertising and operation of their adult-themed retail store and on their Internet Website for the purposes of commercial selling and distributing their goods and services to the consuming public.

66. Defendants did not have Larry's consent to use his FLYNT name or the FLYNT Marks in connection with the aforementioned commercial enterprise.

67. Defendants' use of the FLYNT name and FLYNT Marks was and is directly connected to Defendants' commercial purpose.

68. Defendants' actions have and will continue to cause harm to Larry.

69. By reason of the foregoing, Defendants are liable to Larry for his actual damages sustained, and any profits realized by Defendants, as well as punitive damages and Larry's reasonable attorneys' fees and costs, pursuant to § 540.08, Florida Statutes.

WHEREFORE, Plaintiffs Larry C. Flynt and L.F.P. IP, LLC demand judgment against Defendants as follows:

(1) Restraining and enjoining Defendants Jimmy Flynt Sexy Gifts – Naples, LLC, and Jimmy R. Flynt, permanently and preliminarily during the pendency of this action, together with Defendants' officers, agents, members, employees, successors and assigns, and all those in privity and/or acting in concert with them, from advertising or otherwise using the FLYNT Marks, or any confusingly similar name or mark, or from selling or otherwise distributing adult-themed goods bearing the FLYNT Marks, or any other confusingly similar name or mark, including Internet Websites owned, operated or controlled by Defendants, without Plaintiffs' permission, or from passing off Defendants' goods or services as those of Plaintiffs;

(2) Awarding Plaintiffs their monetary damages, including actual damages sustained as a result of Defendants' infringement of Plaintiffs' FLYNT Marks and other unlawful conduct set forth herein, together with an accounting of Defendants' profits, as provided in 15 U.S.C. § 1117, and Florida common law, all in amounts to be determined at trial;

(3) Directing Defendants to surrender for destruction all signs, goods, labels, advertising material and other items containing or including the FLYNT Marks without authorization of Plaintiffs;

(4) Awarding Plaintiffs treble and punitive damages against Defendants for their willful misconduct in an amount to be determined at trial;

(5) Awarding Plaintiffs their costs and reasonable attorneys' fees and expert witness fees in this action; and

(6) Granting Plaintiffs such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

/s/ Paul A. Giordano

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