

ESTTA Tracking number: **ESTTA107545**

Filing date: **11/02/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91170580
Party	Plaintiff AMERICAN STORES COMPANY
Correspondence Address	RAMON A. KLITZKE II KLARQUIST SPARKMAN, LLP 121 SW SALMON STREET ONE WORLD TRADE CENTER, SUITE 1600 PORTLAND, OR 97204 ptotmdocket@klarquist.com
Submission	Other Motions/Papers
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Signature	/J. Christopher Carraway/
Date	11/02/2006
Attachments	American Stores v GWG-Complaint.pdf.pdf (40 pages)(6522411 bytes)

CIVIL COVER SHEET

060 2741

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

060 274

<p>(a) PLAINTIFFS AMERICAN STORES COMPANY, LLC, and JEWEL FOOD STORES, INC.,</p>	<p>DEFENDANTS GLOBAL WINE GROUP</p>
<p>(b) County of Residence of First Listed Plaintiff <u>Ada County (ID)</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p>
<p>(c) Attorney's (Firm Name, Address, and Telephone Number) Steven P. Rouse, MENGES & MOLZAHN, LLC, 20 North Clark Street, Suite 2300, Chicago, IL 60602-5002, Phone: 312-917-1880</p>	<p>Attorneys (If Known) _____ MAY 18 2006</p>

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <table style="width:100%;"> <tr> <td><input type="checkbox"/> 1 U.S. Government Plaintiff</td> <td><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input type="checkbox"/> 2 U.S. Government Defendant</td> <td><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</td> </tr> </table>	<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1 PTF <input type="checkbox"/> 1 DEF</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4 PTF <input type="checkbox"/> 4 DEF</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 PTF <input type="checkbox"/> 2 DEF</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5 PTF <input type="checkbox"/> 5 DEF</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 PTF <input type="checkbox"/> 3 DEF</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 PTF <input type="checkbox"/> 6 DEF</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1 PTF <input type="checkbox"/> 1 DEF	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 PTF <input type="checkbox"/> 4 DEF	Citizen of Another State	<input type="checkbox"/> 2 PTF <input type="checkbox"/> 2 DEF	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 PTF <input type="checkbox"/> 5 DEF	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 PTF <input type="checkbox"/> 3 DEF	Foreign Nation	<input type="checkbox"/> 6 PTF <input type="checkbox"/> 6 DEF
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 PTF <input type="checkbox"/> 3 DEF	Foreign Nation	<input type="checkbox"/> 6 PTF <input type="checkbox"/> 6 DEF														

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
<p>CONTRACT</p> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl. vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>TORTS</p> <p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Inj.	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<p>FORFEITURE/PENALTY</p> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<p>BANKRUPTCY</p> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 ADA—Employment <input type="checkbox"/> 446 ADA—Other <input type="checkbox"/> 440 Other Civil Rights	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<p>OTHER STATUTES</p> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Security/Commodity/Exch. 12 USC 3410 <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions				

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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<p>VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)</p> <p>15 U.S.C. § 1051 et seq. (trademark infringement, unfair competition, dilution); state law unfair trade and business acts</p>	<p>VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter perviously adjudicated by a judge of this Court. Use a separate attachment if necessary)</p>
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VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** Amount TBD **CHECK YES only if demanded in complaint:** **JURY DEMAND:** Yes No

IX. This case is not a refiling of a previously dismissed action. is a refiling of case number _____, previously dismissed by Judge _____

DATE: 5/16/06 SIGNATURE OF ATTORNEY OF RECORD: *Steven P. Rouse*



JUDGE SWANER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MAGISTRATE JUDGE KEAN

AMERICAN STORES COMPANY,)
LLC, a Delaware limited liability)
company, and JEWEL FOOD STORES,)
INC., a New York corporation,)

Plaintiffs,)

v.)

GLOBAL WINE GROUP, a Nevada)
corporation,)

Defendant.)

Civil Action No. 06C 2741

COMPLAINT FOR TRADEMARK
INFRINGEMENT, UNFAIR
COMPETITION, TRADEMARK
DILUTION, DECEPTIVE TRADE
PRACTICES, AND DECEPTIVE
BUSINESS PRACTICES

JURY DEMANDED

RECEIVED
MAY 16 2006
MICHAEL W. DUBBING
CLERK, U.S. DISTRICT COURT

Plaintiffs American Stores Company, LLC ("American Stores") and Jewel Food Stores, Inc. ("Jewel"), collectively referred to herein as "Plaintiffs," respectfully make the following allegations for their Complaint against Defendant Global Wine Group ("Defendant"). These allegations are made upon knowledge with respect to Plaintiffs and their own acts, and upon information and belief as to all other matters.

INTRODUCTION

1. For more than seventy years, Plaintiffs and their predecessors have operated grocery stores under the service mark JEWEL. Today, there are over 200 Jewel and Jewel-Osco grocery stores in Illinois, Indiana, and Wisconsin, and the stores have the largest share of the grocery market in the Chicago metropolitan area. In addition to and as part of their grocery store services, Jewel and Jewel-Osco stores sell many house-branded products under the trademark JEWEL. The public has come to recognize and look for the JEWEL marks as an assurance of quality grocery products and services.

2. Less than six years ago, Defendant Global Wine Group began selling a series of wines under the names “Jewel” and “Jewel Collection.” Defendant distributes its wines to restaurants, grocery stores, and other retail stores. Recently, Plaintiffs learned that Defendant was distributing its Jewel-labeled wines to grocery and other retail stores in Illinois, Indiana, and Wisconsin.

3. Because of the excellent reputation of Jewel and Jewel-Osco grocery stores and the house-branded grocery products sold under the JEWEL trademark and service mark, consumers in the Midwest are likely to be confused, and almost certainly have already been confused, by Defendant’s sales of its wine. Because Defendant has unlawfully adopted the valuable JEWEL marks, Plaintiffs have been forced to bring this action for trademark infringement, unfair competition, trademark dilution, deceptive trade practices, and deceptive business practices.

PARTIES

4. Plaintiff American Stores Company, LLC is a limited liability company organized and existing under the laws of Delaware, and is located and doing business at 250 E. Parkcenter Blvd., Boise, Idaho 83706.

5. Jewel Food Stores, Inc. is a corporation organized and existing under the laws of New York, and is located and doing business at 250 E. Parkcenter Blvd., Boise, Idaho 83706. Jewel operates grocery and drug stores throughout this judicial district.

6. Defendant Global Wine Group is a Nevada corporation located at 3750 E. Woodbridge Road, Woodbridge, California 95220.

JURISDICTION AND VENUE

7. This is a civil action for trademark infringement, trademark dilution, and unfair competition, arising under the common law and the Lanham Act, 15 U.S.C. § 1051 et seq., and for violations of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 et seq., Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq., and the anti-dilution laws of the State of Illinois, 765 ILCS 1036/65. Federal subject matter jurisdiction is found in 28 U.S.C. §§ 1331 (federal question), 1367 (supplemental), 1338(a) (trademark), and 1338(b) (related claims of unfair competition), and 15 U.S.C. § 1121 (Lanham Act actions).

8. Defendant does regular business in this judicial district. Defendant has also committed acts of trademark infringement, trademark dilution, unfair competition, deceptive trade practices, and deceptive business practices by selling, distributing, advertising, and marketing its Jewel-labeled wines in this judicial district.

9. Venue is proper in this district under 28 U.S.C. § 1391.

PLAINTIFFS' RIGHTS IN THE JEWEL MARKS

10. In 1902, the Jewel Tea Company was founded to sell coffee and tea from the back of horse-drawn wagons in Chicago. In 1932, the company moved into the grocery store business by acquiring the Chicago chain of Loblaws grocery stores, which were then operated as Jewel Food Stores using the mark JEWEL. The company acquired Osco Drug Stores in 1961 and continued to use the mark JEWEL by operating side-by-side Jewel and Osco stores and later both standalone Jewel stores as well as combination Jewel-Osco stores.

11. Plaintiff Jewel was acquired by Plaintiff American Stores in 1984. Since then, Plaintiffs have continued to operate Jewel and Jewel-Osco stores using the JEWEL trademark

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