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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOC# \_\_\_\_\_  
DATE FILED: 8/15/16

BURBERRY LIMITED, a United Kingdom  
Corporation, BURBERRY LIMITED, a  
New York Corporation,

Plaintiffs,

v.

PERRY MOISE,

Defendant.

No. 1:16-cv-05943-ER-GWG

~~PROPOSED~~ ORDER GRANTING  
PRELIMINARY INJUNCTION

Upon Plaintiffs’ Burberry Limited (UK) and Burberry Limited (US) (together, “Plaintiffs” or “Burberry”) Summons and Verified Complaint, together with all of the exhibits thereto, Plaintiffs’ papers in support of the Order to Show Cause For A Temporary Restraining Order and A Preliminary Injunction, the Show Cause hearing held on August 2, 2016, and the preliminary injunction hearing held on August 15, 2015, the Court hereby finds that:

1. Plaintiffs have demonstrated that they are entitled to injunctive relief, enjoining Defendant Perry Moise (“Defendant”), his agents, servants, employees, officers, associates, attorneys, and all persons acting by, through, or in concert with him, from any and all use of the BURBERRY, BURBERRY CHECK, and EQUESTRIAN KNIGHT DEVICE trademarks (collectively, the “Burberry Trademarks,” attached as Exhibit A) or any variations thereof, by establishing: (i) a likelihood of success on the merits on Plaintiffs’ trademark infringement and dilution claims; (ii) Plaintiffs will suffer irreparable harm in the absence of an injunction based on the strength of Plaintiffs’ case on the merits, Defendant’s continuing use of the Burberry Trademarks without permission, and the lack of remedies at law to adequately compensate Plaintiffs for their injury; (iii) that the balance of hardships tip decidedly in favor of Plaintiffs;

and (iv) that the public interest is not disserved by the issuance of the injunction;

2. With respect to the likelihood of success on the merits on Plaintiffs' claims for trademark infringement under 15 U.S.C. § 1114, false designation of origin under 15 U.S.C. § 1125(a), and trademark infringement under New York General Business Law § 360-o and the common law of the State of New York, Plaintiffs have demonstrated that Burberry owns valid and protectable trademark rights in the Burberry Trademarks, including many incontestable federal trademark registrations, and Defendant's use of the Burberry Trademarks is likely to cause confusion under the *Polaroid* test, particularly given the strong similarities between Defendant's use and Plaintiffs' use of the Burberry Trademarks;

3. With respect to the likelihood of success on the merits of Plaintiffs' claims for trademark dilution under 15 U.S.C. § 1125(c), and dilution and injury to business reputation under New York General Business Law § 360-l, Plaintiffs have demonstrated that Defendant's use of the Burberry Trademarks dilutes the distinctiveness of the Burberry Trademarks by establishing that: the Burberry Trademarks are "famous" within the meaning of the Lanham Act; Defendant has used and continues to use the Burberry Trademarks in commerce through Defendant's advertising, promotion, production, offering for sale, and sale of music, including through Defendant's burberryperry@gmail.com e-mail account, "Burberry Perry" social media accounts, and music credits as "Burberry Perry" on songs offered for sale in the iTunes Store and through the paid music streaming services Apple Music and Spotify; Defendant's use began decades after the Burberry Trademarks became famous; and that Defendant's unauthorized use is likely to cause the unique identifying features of the Burberry Trademarks to become vague and less distinctive by blurring, based on the six non-exclusive factors under 15 U.S.C. § 1125(c)(2)(B);

4. Defendant's infringement and dilution of the Burberry Trademarks that occurred and continues to occur on various websites and social media and music platforms has caused, and will continue to cause, immediate irreparable harm to the goodwill and reputation in the Burberry Trademarks that Plaintiffs have cultivated;

5. The harm to Plaintiffs' goodwill and reputation is irreparable because it is immeasurable, and the remedies at law cannot adequately compensate Plaintiffs;

6. The harm to Plaintiffs, who have spent significant resources developing and nurturing the valuable reputation and goodwill in the Burberry Trademarks, from denial of the requested preliminary injunction, would decidedly outweigh any harm to Defendant from granting an injunction since, to the extent Defendant is harmed at all, it is harm which is entirely self-inflicted by Defendant's explicit and deliberate copying of the Burberry Trademarks without Plaintiffs' permission;

7. The public interest is best served by preventing Defendant's continued use of the Burberry Trademarks given the otherwise strong risk for public confusion, deception, and mistake;

For these reasons, and for the Court's reasons stated on the record during the August 15, 2016 hearing, it is therefore **ORDERED** that Plaintiffs are granted a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure and Defendant, his agents, servants, employees, officers, associates, attorneys, and all persons acting by, through, or in concert with him, are preliminarily restrained and enjoined from:

(i) Using the Burberry Trademarks and any variation thereof as a trademark, service mark, trade name component, title, Internet domain name, or otherwise, to market, advertise, distribute, sell, produce, promote, offer for sale, sell, or identify any business, products, or

services;

(ii) Displaying the Burberry Trademarks and any variation thereof on any advertising, album artwork, promotional material, websites, and social media accounts, including but not limited to, SoundCloud, Spotify, Apple Music, iTunes Store, Twitter, Instagram, Snapchat, Facebook, Periscope, Gmail, and wherever else the same may appear;

(iii) Using “Burberry Perry” or “Burberry” as or as part of a username and/or account name, on any website or social media platform, including but not limited to, SoundCloud, Spotify, Apple Music, iTunes Store, Twitter, Instagram, Snapchat, Facebook, Periscope, and Gmail;

(iv) Doing any other act likely to induce the confusion or mistaken belief that Defendant or his business, products, services, or other commercial activities are in any way affiliated, connected, or associated with Burberry;

(v) Engaging in any activity under the “Burberry Perry” name;

(vi) Engaging in any other activity constituting unfair competition with Burberry, or acts and practices that deceive consumers, the public, and/or trade, including without limitation, the use of designations and design elements associated with Burberry;

(vii) Engaging in any other activity that would dilute the distinctiveness of the Burberry Trademarks; and

(viii) Committing any other act which falsely represents or which has the effect of falsely representing that the goods and services of Defendant are licensed by, authorized by, offered by, produced by, sponsored by, or in any other way associated with Burberry; and further,

Defendant, his agents, servants, employees, officers, associates, attorneys, and all persons

acting by, through, or in concert with him are hereby **FURTHER ORDERED** to:

(i) Remove all references to “Burberry Perry” from all albums and songs on Defendant’s “TheGoodPerry” SoundCloud page, including from all album and song titles, and from all music credits;

(ii) Remove all references to “Burberry Perry” from all albums and songs available in the iTunes Store, Apple Music, and Spotify, including from all album and song titles, and from all music credits;

(iii) Remove “Burberry Perry” from the Twitter name “Burberry Perry” used in Defendant’s Twitter account @thegoodperry;

(iv) Remove all references to “Burberry Perry” from the Twitter bio of Defendant’s Twitter account @thegoodperry and the Instagram bio of Defendant’s @thegoodperry Instagram account;

(v) Remove “burberryperry” from the Snapchat username and account, “burberryperry1,” or delete and disable such account;

(vi) Remove the reference to Defendant’s prior “Burberry Perry” SoundCloud page from Defendant’s @thegoodperry Twitter bio;

(vii) Delete and disable the Gmail account and address burberryperry@gmail.com;

(viii) Remove all references to Defendant’s burberryperry@gmail.com e-mail from Defendant’s @thegoodperry Twitter bio and @thegoodperry Instagram bio;

(ix) Remove “BurberryPerry” from Defendant’s “BurberryPerry” Periscope username and account, or delete and disable such account;

(x) Remove “Burberry Music” from the Facebook name and username of the “Burberry Music” Facebook page, or delete and disable the “Burberry Music” Facebook page;

(xi) Remove “Burberry Perry” from the Facebook name of Defendant’s “GoodPerry” Facebook page; and

(xii) Delete all posts and re-posts by Defendant on Defendant’s “GoodPerry” Facebook page, “Burberry Music” Facebook page, and @thegoodperry Twitter page that display the Burberry Trademarks, including in the form of the infringing album artwork of Defendant’s “Burberry Perry” album; and it is further

**ORDERED** that Defendant shall forthwith give actual notice of this Order to each of Defendant’s agents, servants, employees, officers, associates, attorneys, and all other persons acting by, through, or in concert with him; and it is further

**ORDERED** that this Order shall take effect on Defendant upon entry, and Defendant shall comply fully with the Order no later than August 29, 2016; and it is further

**ORDERED** that this Order shall take effect on Defendant’s agents, servants, employees, officers, associates, attorneys, and all other persons acting by, through, or in concert with him, within seven (7) days of receipt of this Order, and it is further

**ORDERED** that this Order Granting Preliminary Injunction shall remain in effect until a permanent injunction is issued, or otherwise vacated by this Court; and it is further

**ORDERED** that security in the amount of \$5,000, has been posted by Plaintiffs in connection with this Court’s Temporary Restraining Order and constitutes sufficient security in support of this Preliminary Injunction; and it is further

**ORDERED** that delivery or transmission of this Order Granting Preliminary Injunction, and the exhibit submitted in connection therewith, to Defendant or Defendant’s counsel by electronic mail by noon Aug. 16 2016 shall be deemed good and sufficient service thereof.

New York, New York

August 15, 2016



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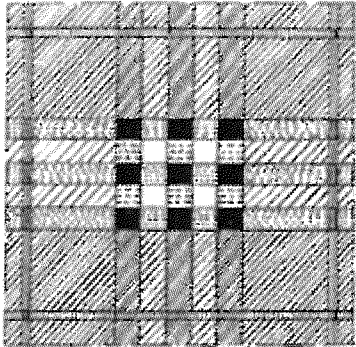
HONORABLE EDGARDO RAMOS  
United States District Judge  
Southern District of New York

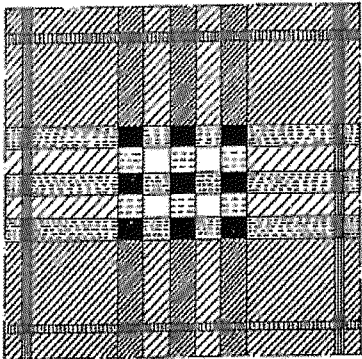
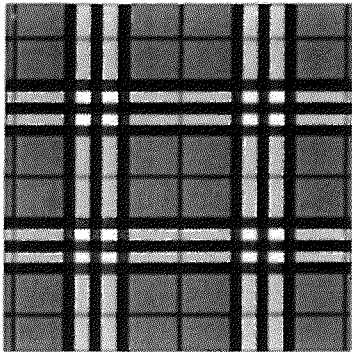
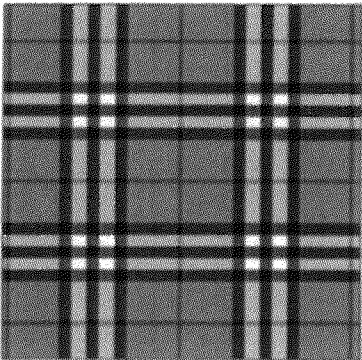
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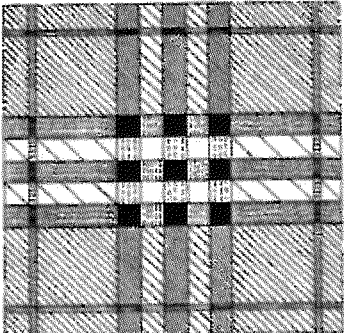
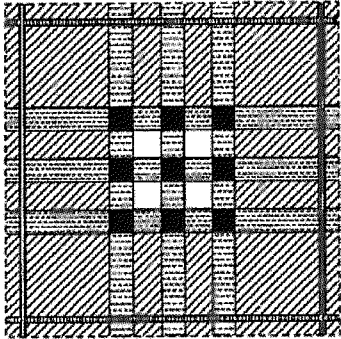
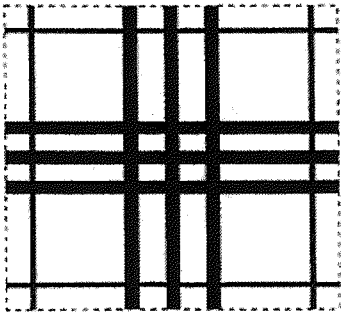
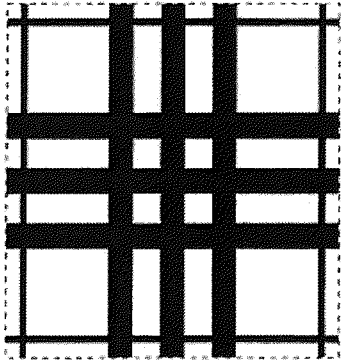
# **EXHIBIT A**

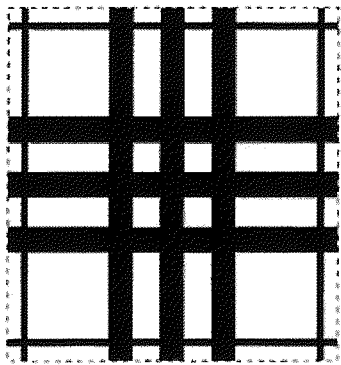
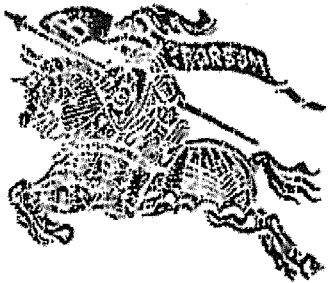
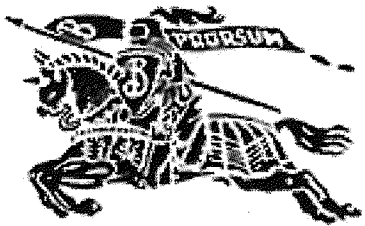
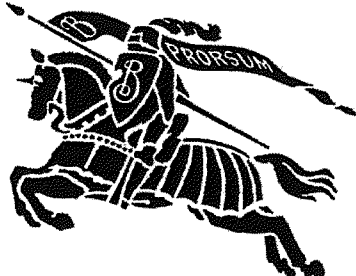




**Burberry Trademarks**

Mark	U.S. Trademark
<b>BURBERRY</b>	Reg. No. 260,843
BURBERRY	Reg. No. 4,212,001
<b>BURBERRY</b>	Reg. No. 1,133,122
BURBERRY	Reg. No. 3,879,249
BURBERRY	Reg. No. 3,898,440
<b>BURBERRY</b>	Reg. No. 2,624,684
BURBERRY	Reg. No. 2,875,336
BURBERRY	Reg. No. 4,714,346
	Reg. No. 2,015,462

Mark	U.S. Trademark
	Reg. No. 2,022,789
	Reg. No. 3,529,814
	Reg. No. 4,123,508

Mark	U.S. Trademark
	Reg. No. 1,241,222
	Reg. No. 2,845,852
	Reg. No. 2,612,272
	Reg. No. 2,728,709

Mark	U.S. Trademark
	Reg. No. 2,732,617
	Reg. No. 863,179
	Reg. No. 1,622,186
	Reg. No. 4,036,908

Mark	U.S. Trademark
	Reg. No. 3,766,097
	Reg. No. 1,903,508