

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

GULLIVER’S TAVERN, INC., DBA FOXY

LADY,

Plaintiff,

vs.

FOXXY LADY CABARET; LE PETIT  
CADEAU, LLC; MURALE’S BRIC A BRAC,  
LLC; JOHANNA M. CELCIS,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT**

For its Complaint against Defendants Foxy Lady Cabaret (“FLC”), Le Petit Cadeau, LLC (“LPC”), and Murale’s Bric a Brac, LLC (“MBB”) and Johanna M. Celcis, Plaintiff Gulliver’s Tavern d/b/a Foxy Lady (“Foxy Lady”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for trademark infringement and unfair competition under the Lanham Act with pendant claims for common law trademark infringement and violation of the Florida Deceptive and Unfair Trade Practices Act. Plaintiff Foxy Lady seeks damages, attorneys’ fees, costs, and permanent injunctive relief.

**JURISDICTION**

2. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a). The Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(a).

3. This Court has personal jurisdiction over Defendant FLC based upon the following: FLC's principal place of business is in this judicial district.

4. This Court has personal jurisdiction over Defendants LPC and MBB based upon the following: (a) both Defendants are Florida limited liability companies; and (b) both have their principal places of business in this judicial district.

5. This Court has personal jurisdiction over Defendant Johanna Celcis based upon the following: (a) she resides in this judicial district; (b) she is the owner and operator of FLC, which is located in this judicial district; (c) she is the Vice-President of MBB, which is located in this judicial district; and (d) she is the CEO of LPC, which is located in this judicial district.

6. Venue is proper in the United States District Court for the Southern District of Florida under 28 U.S.C. § 1391(b) and (c).

#### **THE PARTIES**

7. Foxy Lady is a Rhode Island corporation with its principal place of business in Providence, Rhode Island. Foxy Lady owns and operates the Foxy Lady adult entertainment club in Providence, Rhode Island.

8. LPC is a Florida limited liability company with its principal place of business in North Miami, Florida. Upon information and belief, LPC is involved with the ownership and/or operation of the Foxy Lady Cabaret in North Miami, Florida.

9. MBB is a Florida limited liability company with its principal place of business in North Miami, Florida. Upon information and belief, MBB is involved with the ownership and/or operation of the Foxy Lady Cabaret in North Miami, Florida.

10. FLC is an entity of unknown origin with its principal place of business in North Miami, Florida.

11. Johanna Celcis is the owner and operator of the Foxy Lady Cabaret in North Miami, Florida and is an officer with Defendants LPC and MBB.

**ALLEGATIONS COMMON TO ALL COUNTS**

12. Foxy Lady operates the Foxy Lady adult entertainment club in Providence, Rhode Island. The club has been in operation since 1979.

13. Foxy Lady owns the mark FOXY LADY and variants thereto and has obtained a federal mark registration for FOXY LADY (U.S. Reg. No. 2,809,938) for entertainment in the nature of live performances for an adult audience, namely exotic dance performances and restaurant services and bar services.

14. Foxy Lady's federal trademark registration has not been abandoned, cancelled, or revoked. In fact, it has become incontestable through the filing of Section 8 and Section 15 affidavits in the United States Patent and Trademark Office. 15 U.S.C. § 1058; 15 U.S.C. § 1065.

15. Since it commenced using the mark in 1979, Foxy Lady and its licensees have continuously used the mark in connection with advertising and promoting its goods and services. Foxy Lady has spent significant funds advertising and promoting its FOXY LADY marks, including on the internet through a website accessible at <foxyladyri.com>.

16. Based upon its federal trademark registrations and extensive use, Foxy Lady owns the exclusive right to use the FOXY LADY mark in connection with exotic dance performances, bar services, and restaurant services.

17. Foxy Lady additionally owns valid and subsisting common law rights to the FOXY LADY mark by continually using the FOXY LADY name and mark in connection with the goods and services it provides, specifically exotic dance, bar, and restaurant services.

18. Defendants' FLC gentleman's club has been in operation for much less time than Gulliver's club.

19. Defendants use a confusingly similar variation of Plaintiff's registered FOXY LADY mark for the exact same purposes as Plaintiff uses the mark. Specifically, Defendants simply added a superfluous "x" into the first portion of their club's name. Defendants' use of the mark infringes upon Foxy Lady's trademark rights and attempts to trade on the goodwill of Plaintiff Foxy Lady.

20. Through their use of the FOXXY LADY mark, Defendants were and are trying to create an association between Plaintiff Foxy Lady and the club operated by Defendants.

21. Even if there is no intent, there is no required *mens rea* for trademark infringement – and thus, in the alternative, the Defendant has infringed negligently upon the Plaintiff's trademark, and must be enjoined from further use.

22. Plaintiff's mark was distinctive at the time Defendants commenced use of the FOXXY LADY mark.

23. Upon information and belief, Defendants used Plaintiff's FOXXY LADY mark with the bad faith intent to profit from Plaintiff's marks.

24. Alternatively, Defendants used Plaintiff's FOXXY LADY mark negligently and must be enjoined from future use of the mark.

25. Upon information and belief, Defendants did not believe or have reasonable grounds to believe that the use of Plaintiff's mark was a fair use or otherwise lawful.

**FIRST CLAIM FOR RELIEF**

**Trademark Infringement – 15 U.S.C. § 1114**

26. Plaintiff incorporates the allegations of the preceding paragraphs as if fully set forth herein.

27. Defendants used and are using a business name which contains the entirety of Plaintiff's FOXY LADY trademark and is thus confusingly similar to Plaintiff's FOXY LADY trademark.

28. Defendants' use in commerce of Plaintiff's mark constitutes a reproduction, copying, counterfeiting, and colorable imitation of Plaintiff's mark in a manner that is likely to cause confusion or mistake or is likely to deceive consumers.

29. By using Plaintiff's mark with the knowledge that Plaintiff owns and has used, and continues to use, its trademark in the United States, Defendants have intended to cause confusion, cause mistake, or deceive consumers.

30. Even if the Defendants had no actual knowledge of the Plaintiff's mark, the Defendants have constructive knowledge of the Plaintiff's trademark, by virtue of its registration on the Principal Register, which confers constructive knowledge. 15 U.S.C. § 1072.

31. Defendants are using a mark identical to Plaintiff's FOXY LADY trademark in connection with the sale, offering for sale, or advertising of services in a manner that is likely to cause confusion or mistake or to deceive consumers as to affiliation, connection, or association with Plaintiff or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by Plaintiff.

32. Defendants' use of Plaintiff's marks has created a likelihood of confusion among the consuming public who may falsely believe that Defendants' business is associated with Plaintiffs or that Plaintiff sponsors or approves of Defendants' services or commercial activities.

33. As a direct and proximate result of Defendants' infringement, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

## **SECOND CLAIM FOR RELIEF**

### **Unfair Competition – 15 U.S.C. § 1125(a)**

34. Plaintiff incorporates the allegations of the preceding paragraphs as if fully set forth herein.

35. Defendants' use in commerce of marks identical to Plaintiff's in connection with Defendants' services, which are the same as Plaintiff's, constitutes a false designation of origin and/or a false or misleading description or representation of fact, which is likely to cause confusion, cause mistake, or deceive as to affiliation, connection, or association with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by Plaintiff.

36. Defendants' use in commerce of Plaintiff's marks with the knowledge that Plaintiff owns and has used, and continues to use, its trademarks constitutes intentional conduct by Defendants to make false designations of origin and false descriptions about Defendant's services and commercial activities.

37. As a direct and proximate result of such unfair competition, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

### **THIRD CLAIM FOR RELIEF**

#### **Common Law Trademark Infringement**

38. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth fully herein.

39. By virtue of having used and continuing to use its trademarks, Plaintiff has acquired common law rights in those marks.

40. Defendants' use of marks identical to Plaintiff's trademarks infringes Plaintiff's common law rights in its trademarks, and this use is likely to cause confusion, mistake, or deception among consumers, who will falsely believe that Defendants' services originate from, or are affiliated with, or endorsed by Plaintiff.

41. As a direct and proximate result of Defendants' infringement of Plaintiff's common law trademark rights, Plaintiff has suffered, and will continue to suffer, monetary damages and irreparable injury to its business, reputation, and goodwill.

### **FOURTH CLAIM FOR RELIEF**

#### **Florida Deceptive and Unfair Trade Practices Act – Fla. Stat. Ch. 501 Part II**

42. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth fully herein.

43. Chapter 501.204, Florida Statutes declares that unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

44. FDUTPA states, in pertinent part, “[t]rade or commerce” means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. “Trade or commerce” includes the conduct of any trade or commerce,

however denominated, including any non-profit or not-for-profit person or activity. “Thing of value” includes, but is not limited to any monies donations, membership, credential, certificate, prize, award, benefit, license, interest, professional opportunity, or chance of winning.

45. Plaintiff operates in trade or commerce because it operates an exotic dance club with a food service and bar operations.

46. Defendants’ conduct is willful and intentional as evidenced by its formation after Plaintiff had been operating for several years. Defendants additionally have constructive knowledge that Plaintiff owns the FOXY LADY mark for exotic dance clubs, bars, and restaurants.

47. Defendants’ deceptive conduct deceived and harmed the public, and Defendants knew or should have known that their conduct was unfair, deceptive, and harmful to the public.

48. Defendants’ use of Plaintiff’s mark is misleading and injurious to consumers.

49. As a direct result of Defendants’ actions, Plaintiff Foxy Lady has suffered actual damages, including the loss of profits, customers, and goodwill.

50. Defendants’ actions are in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, et seq.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

A. Injunctive relief prohibiting Defendants, their respective officer, agents, servants, employees, and/or all persons acting in concert or participation with them, or any of them, from using Plaintiff’s trademarks or confusingly similar variations thereof, alone or in combination with any other letters, words, letter strings, phrases, or designs, in commerce or in connection with any business or for any other purpose;



B. An award of compensatory, consequential, statutory, and punitive damages to Plaintiff in an amount to be determined at trial;

C. An award of interest, costs, and attorneys' fees incurred by Plaintiff in prosecuting this action; and

D. All other relief to which Plaintiff is entitled.

Dated: January 4, 2023

Respectfully submitted,

/s/ Marc J. Randazza

Marc J. Randazza (FL Bar No. 625566)

ecf@randazza.com

RANDAZZA LEGAL GROUP, PLLC

2 S Biscayne Blvd #2600

Miami, FL 33131

702-420-2001

Ronald D. Green (*pro hac vice forthcoming*)

rdg@randazza.com

RANDAZZA LEGAL GROUP, PLLC

4974 S. Rainbow Blvd., Ste. 100

Las Vegas, NV 89118

702-420-2001

Robert J. Morris, II (*pro hac vice forthcoming*)

rjm@randazza.com

RANDAZZA LEGAL GROUP, PLLC

30 Western Avenue

Gloucester, MA 01930

Tel: (702) 420-2001

*Attorneys for Plaintiff,*

Gulliver's Tavern

d/b/a Foxy Lady

CIVIL COVER SHEET

The JS 44 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, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

GULLIVER'S TAVERN, INC., DBA FOXY LADY

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Randazza Legal Group, PLLC 2 S Biscayne Blvd #2600, Miami, FL 33131 702-420-2001, <ecf@randazza.com>

(d) Check County Where Action Arose: [X] MIAMI-DADE [ ] MONROE [ ] BROWARD [ ] PALM BEACH [ ] MARTIN [ ] ST. LUCIE [ ] INDIAN RIVER [ ] OKEECHOBEE [ ] HIGHLANDS

DEFENDANTS

FOXY LADY CABARET; LE PETIT CADEAU, LLC; MURALE'S BRIC A BRAC, LLC; JOHANNA M. CELCIS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Reremanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case [ ] YES [X] NO b) Related Cases [ ] YES [X] NO

JUDGE:

DOCKET NUMBER:

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Trademark infringement and unfair competition under the Lanham Act with pendant claims for common law trademark infringement and violation of the Florida Deceptive and Unfair Trade Practices Act. LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

January 4, 2023

FOR OFFICE USE ONLY : RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.