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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

GULLIVER’S TAVERN, INCORPORATED
d/b/a FOXY LADY,

Plaintiff,

v.

FOXY LADY, INC. d/b/a FOXY LADY
COFFEE,

Defendant.

Case No. 3:23-cv-5027

COMPLAINT

JURY DEMAND

1 **COMPLAINT**

2 Plaintiff Gulliver’s Tavern, Incorporated d/b/a Foxy Lady (“Foxy Lady”) alleges
3 for its Complaint against Defendant Foxy Lady, Inc. d/b/a Foxy Lady Coffee (“FLC”)
4 on personal information as to Foxy Lady’s own activities, and upon information and belief
5 as to the activities of others, as follows:

6 **NATURE OF THE ACTION**

7 1. This is an action for trademark infringement and unfair competition under the
8 Lanham Act with pendent claims for violation of the Washington Consumer Protection
9 Act and common law trademark infringement.

10 2. Foxy Lady seeks damages, attorneys’ fees, costs, and permanent injunctive
11 relief.

12 **JURISDICTION**

13 3. This Court has subject matter jurisdiction over this case under 28 U.S.C.
14 §§ 1331 and 1338(a). The Court has supplemental jurisdiction over Plaintiff’s state law
15 claims under 28 U.S.C. § 1367(a).

16 4. This Court has personal jurisdiction over Defendant FLC based upon the
17 following: (a) FLC is incorporated in the State of Washington; and (b) FLC’s principal
18 place of business is in this judicial district.

19 5. Venue is proper in the United States District Court for the Western District of
20 Washington under 28 U.S.C. § 1391(b) and (c) because this is a judicial district in which
21 the defendant resides and because a substantial part of the acts or omissions giving rise to
22 Plaintiff’s claims occurred in this judicial district.

23 **THE PARTIES**

24 6. Plaintiff Gulliver’s Tavern, Incorporated is a Rhode Island corporation with its
25 principal place of business in Providence, Rhode Island. Foxy Lady owns and operates the
26 Foxy Lady adult entertainment club in Providence, Rhode Island.

27 7. Defendant FLC is a Washington corporation with its principal place of
28 business in Tacoma, Washington. FLC operates the Foxy Lady Bikini Bar in Tacoma,

1 Washington; and Foxy Lady Latte in Arlington, Burlington, and Mount Vernon,
2 Washington. While it has not opened yet, FLC is additionally engaged in active
3 preparations to open the Foxy Lady Café in Centralia, Washington.

4 **ALLEGATIONS COMMON TO ALL COUNTS**

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

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

11 10. Foxy Lady’s federal trademark registration has not been abandoned, cancelled,
12 or revoked. In fact, it has become incontestable through the filing of Section 8 and Section
13 15 affidavits in the United States Patent and Trademark Office.

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

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

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

26 14. Defendant FLC operates what it describes as a “unique coffee house and
27 espresso drive thru concept that was established in 2008.” *See* <foxyladycoffee.com>
28 Homepage, attached as **Exhibit 1**.

1 15. FLC operates three separate businesses using the infringing “Foxy Lady”
2 name:

3 16. Foxy Lady Latte has three locations and is, upon information and belief, a
4 coffee shop with baristas that dress in provocative lingerie.

5 17. Foxy Lady Bikini Bar is located in Tacoma. FLC advertises that it has a “Full
6 Service Bar: Ice Cold Beer on draft, Wine, & Spirits!” It serves breakfast, lunch, and
7 dinner and features servers that dress in provocative lingerie.

8 18. Foxy Lady Café has not yet opened and will be located in Centralia,
9 Washington. Upon information and belief, it will be a full-service restaurant that may
10 serve alcohol with servers that dress in provocative lingerie.

11 19. FLC uses the entirety of Plaintiff Foxy Lady’s FOXY LADY mark, combining
12 it with the generic terms “coffee,” “café,” and “bikini bar.” Those generic terms do not
13 diminish the likelihood of customer confusion, and “bikini bar” increases the likelihood
14 of confusion since consumers expect to see scantily clad women in a full-service bar at
15 Plaintiff’s establishment.

16 20. FLC owns trademark registrations with the USPTO for FOXY LADY
17 LATTE (U.S. Reg. No. 5,427,417) and FOXY LADY CAFÉ (U.S. Reg. Nos. 5,427,415
18 and 5,417,545). While these registrations are for coffee and coffee shops, FLC has used
19 derivations of the FOXY LADY mark for far more than coffee, including for the services
20 that Plaintiff Foxy Lady offers under its marks.

21 21. FLC operates an Instagram page, located at
22 <https://www.instagram.com/foxyladylattemv/>. FLC’s Instagram page almost exclusively
23 features images of women in various stages of undress, including fully topless, in a
24 manner that creates confusion with Foxy Lady’s use of its mark. *See* FLC Instagram Page,
25 attached as **Exhibit 2**.

26 22. Through its use of the FOXY LADY mark, FLC is trying to create an
27 association between Foxy Lady and the bikini bar, café, and coffee shops operated by
28 Defendant FLC.

1 23. Even if Defendant FLC does not have the intent to infringe upon Plaintiff's
2 mark, there is no *mens rea* for trademark infringement. Thus, in the alternative,
3 Defendant has negligently infringed upon Plaintiff's trademark and must be enjoined
4 from further use.

5 24. Plaintiff Foxy Lady and its predecessors-in-interest had been using the mark
6 for nearly 30 years when Defendant FLC commenced its infringing use of the mark in
7 2008. Plaintiff's mark was distinctive when Defendant began to unlawfully use it.

8 25. Upon information and belief, Defendant used the FOXY LADY mark with the
9 bad faith intent to profit from Plaintiff's marks.

10 26. Alternatively, Defendant used Plaintiff's FOXY LADY mark negligently and
11 must be enjoined from further use.

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

14
15 **FIRST CLAIM FOR RELIEF**
16 **Trademark Infringement – 15 U.S.C. § 1114**

17 28. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth
18 fully herein.

19 29. Defendant used and is using a business name which, without Plaintiff's
20 consent, contains the entirety of Plaintiff's FOXY LADY trademark and is thus
21 confusingly similar to Plaintiff's FOXY LADY trademark.

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

25 31. Even if Defendant had no actual knowledge of Plaintiff's FOXY LADY mark,
26 Defendant has constructive knowledge of Plaintiff's trademark, by virtue of its
27 registration on the Principal Register, which confers constructive knowledge. 15 U.S.C.
28 § 1072.

32. Defendant is using a mark identical to Plaintiff's FOXY LADY trademark in

1 connection with the sale, offering for sale, or advertising of services in a manner that is
2 likely to cause confusion or mistake or to deceive consumers as to affiliation, connection,
3 or association with Plaintiff or as to the origin, sponsorship, or approval of Defendant’s
4 services or commercial activities by Plaintiff.

5 33. The addition of generic terms, such as “coffee” and “café,” do not decrease
6 the likelihood of confusion, and use of the term “bikini bar” actually increases the
7 likelihood of consumer confusion.

8 34. Defendant’s use of Plaintiff’s marks has created a likelihood of confusion
9 among the consuming public who may falsely believe that Defendant’s business is
10 associated with Plaintiff or that Plaintiff sponsors or approves of Defendant’s services or
11 commercial activities.

12 35. As a direct and proximate result of Defendant’s infringement, Plaintiff has
13 suffered, and will continue to suffer, monetary loss and irreparable injury to its business,
14 reputation, and goodwill.

15
16 **SECOND CLAIM FOR RELIEF**
Unfair Competition – 15 U.S.C. § 1125(a)

17 36. Plaintiff incorporates the allegations of the preceding paragraphs as if fully set
18 forth herein.

19 37. Defendant’s use in commerce of marks identical to Plaintiff’s in connection
20 with Defendant’s services, which are the same as Plaintiff’s, constitutes a false
21 designation of origin and/or a false or misleading description or representation of fact,
22 which is likely to cause confusion, cause mistake, or deceive as to affiliation, connection,
23 or association with Plaintiff, or as to the origin, sponsorship, or approval of Defendant’s
24 services or commercial activities by Plaintiff.

25 38. Defendant’s use in commerce of Plaintiff’s marks with the knowledge that
26 Plaintiff owns and has used, and continues to use, its trademarks constitutes intentional
27 conduct by Defendant to make false designations of origin and false descriptions about
28 Defendant’s services and commercial activities.

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

4
5 **THIRD CLAIM FOR RELIEF**
6 **Common Law Trademark Infringement**

7 40. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth
8 fully herein.

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

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

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

18 **FOURTH CLAIM FOR RELIEF**
19 **Washington Consumer Protection Act - RCW Ch. 19.86**

20 44. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth
21 fully herein.

22 45. Unfair methods of competition and unfair or deceptive acts or practices in the
23 conduct of any trade or commerce are unlawful. RCW § 19.86.020.

24 46. Any company or person may bring a civil action in superior court to enjoin
25 further violations, to recover actual damages, together with costs of suit, including a
26 reasonable attorneys' fee. RCW § 19.86.090. In its discretion, the court may increase the
27 award of reasonable damages to three times the actual damages sustained. *Id.*

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

1 48. Defendant's conduct is willful and intentional, evidenced by its formation after
2 Plaintiff had been operating for nearly 30 years. Defendant additionally has constructive
3 knowledge that Plaintiff owns the FOXY LADY mark for exotic dance clubs, bars, and
4 restaurants.

5 49. Defendant's deceptive conduct deceived and harmed the public, and
6 Defendant knew or should have known that its conduct was unfair, deceptive, and
7 harmful to the public.

8 50. Defendant's use of Plaintiff's mark is misleading and injurious to consumers.

9 51. Defendant's actions are in violation of RCW § 19.86.020.

10 52. As a direct result of Defendant's actions, Plaintiff Foxy Lady has suffered
11 actual damages, including the loss of profits, customers, and goodwill.

12
13 **FIFTH CLAIM FOR RELIEF**
Cancellation of U.S. Reg. No. 5,427,417

14 53. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth
15 fully herein.

16 54. Defendant FLC owns the FOXY LADY LATTE mark (U.S. Reg. No.
17 5,427,417) for coffee shops, namely drive-thru coffee shops serving specialty coffee
18 drinks.

19 55. Defendant FLC's FOXY LADY LATTE mark dilutes Plaintiff's mark
20 through blurring in that it contains the entirety of Plaintiff's mark, adding only the generic
21 term "latte".

22 56. Plaintiff's FOXY LADY mark has acquired distinctiveness and significant
23 consumer recognition through its continuous use for over 40 years, and Plaintiff owns an
24 incontestable trademark registration for the FOXY LADY mark.

25 57. Upon information and belief, Defendant intended to create an association with
26 Plaintiff's FOXY LADY mark when it chose the FOXY LADY LATTE name, as
27 Plaintiff's mark had been in continuous use for nearly 30 years and had been registered for
28 over a decade when Defendant chose its mark.

1 58. Upon information and belief, Defendant intended to, and has, created an
2 actual association between Plaintiff's mark and its mark.

3 59. This Court has authority to order the cancellation of Defendant's FOXY
4 LADY LATTE registration under 15 U.S.C. § 1119.

5 60. This Court should cancel the registration of U.S. Reg. No. 5,427,417 under the
6 provisions of 15 U.S.C. § 1064.

7
8 **SIXTH CLAIM FOR RELIEF**
Cancellation of U.S. Reg. No. 5,427,415

9 61. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth
10 fully herein.

11 62. Defendant FLC owns the FOXY LADY CAFÉ mark (U.S. Reg. No.
12 5,427,415) for coffee.

13 63. Defendant FLC's FOXY LADY CAFÉ mark dilutes Plaintiff's mark through
14 blurring in that it contains the entirety of Plaintiff's mark, adding only the generic term
15 "café".

16 64. Plaintiff's FOXY LADY mark has acquired distinctiveness and significant
17 consumer recognition through its continuous use for over 40 years, and Plaintiff owns an
18 incontestable trademark registration for the FOXY LADY mark.

19 65. Upon information and belief, Defendant intended to create an association with
20 Plaintiff's FOXY LADY mark when it chose the FOXY LADY CAFÉ name, as Plaintiff's
21 mark had been in continuous use for nearly 30 years and had been registered for over a
22 decade when Defendant chose its mark.

23 66. Upon information and belief, Defendant intended to, and has, created an
24 actual association between Plaintiff's mark and its mark.

25 67. This Court has authority to order the cancellation of Defendant's FOXY
26 LADY CAFÉ registration under 15 U.S.C. § 1119.

27 68. This Court should cancel the registration of U.S. Reg. No. 5,427,415 under the
28 provisions of 15 U.S.C. § 1064.

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SEVENTH CLAIM FOR RELIEF
Cancellation of U.S. Reg. No. 5,417,545

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

70. Defendant FLC owns the FOXY LADY CAFÉ mark (U.S. Reg. No. 5,427,545) for coffee.

71. Defendant FLC's FOXY LADY CAFÉ mark dilutes Plaintiff's mark through blurring in that it contains the entirety of Plaintiff's mark, adding only the generic term "café".

72. Plaintiff's FOXY LADY mark has acquired distinctiveness and significant consumer recognition through its continuous use for over 40 years, and Plaintiff owns an incontestable trademark registration for the FOXY LADY mark.

73. Upon information and belief, Defendant intended to create an association with Plaintiff's FOXY LADY mark when it chose the FOXY LADY CAFÉ name, as Plaintiff's mark had been in continuous use for nearly 30 years and had been registered for over a decade when Defendant chose its mark.

74. Upon information and belief, Defendant intended to, and has, created an actual association between Plaintiff's mark and its mark.

75. This Court has authority to order the cancellation of Defendant's FOXY LADY CAFÉ registration under 15 U.S.C. § 1119.

76. This Court should cancel the registration of U.S. Reg. No. 5,427,415 under the provisions of 15 U.S.C. § 1064.

PRAYER FOR RELIEF

Plaintiff Gulliver's Tavern, Incorporated d/b/a Foxy Lady respectfully prays that the Court grant the following relief:

1. Injunctive relief prohibiting Defendant and its officers, 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

1 thereof, alone or in combination with any other letters, words, letter strings,
2 phrases, or designs, in commerce or in connection with any business or for any
3 other purpose;

- 4 2. Cancellation of U.S. Reg. Nos. 5,427,417; 5,427, 415; and 5,417,545.
5 3. An award of compensatory, consequential, statutory, and punitive damages to
6 Plaintiff in an amount to be determined at trial;
7 4. An award of interest, costs, and attorneys' fees incurred by Plaintiff in
8 prosecuting this action; and
9 5. All other relief to which Plaintiff is entitled.

10
11 Dated: January 9, 2023

Respectfully submitted,

s/ Derek A. Newman

s/ Derek Linke

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Attorneys for Plaintiff

Gulliver's Tavern d/b/a Foxy Lady

DEMAND FOR JURY TRIAL

Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Gulliver's Tavern, Incorporated d/b/a Foxy Lady respectfully requests a trial by jury of all issues so triable.

Dated: January 9, 2023

Respectfully submitted,

s/ Derek A. Newman

s/ Derek Linke

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Attorneys for Plaintiff

Gulliver's Tavern d/b/a Foxy Lady

Exhibit 1



Welcome to Foxy Lady Coffee!

Delicious Coffee and Foxy Ladies!

We're a unique coffee house and espresso drive thru concept that was establish in 2008, 'Foxy Lady' was born and raised in Washington, we know coffee! We are by no means your average 'bikini barista establishment', with our awesome coffee and food, we prove you don't need to trade entertainment and fun for quality. We love our customers and they love us!



Foxy Ladies Reality TV Show Now on Amazon Prime!





Don't Let The Bikinis Fool You!

Foxy Lady® has worked closely with our blue ribbon award winning Master Roaster In order to create our own unique blend and roast of gourmet espresso that delights the most distinctive tastes, Foxy Lady will only buy its coffee beans from farmers who support sustainable agriculture.

Our coffee beans are fresh roasted daily, using only the highest quality Hand Picked, Organic, Arabica beans. We drum roast our beans to exact standards insuring a great espresso taste, less bitterness and a higher caffeine content.

This “drum roasting” technique also lowers the acid content in the coffee and insures a much higher consistency in the roast and taste’s much better than other roasting techniques such as “Air Roasting” or as some call it, the “Pop Corn” method.





Foxy Lady Coffee, Inc.

EMPLOYMENT

CONTACT US

EMPLOYEE PORTAL

Exhibit 2

Instagram

Log In

Sign Up



foxyladylattemv

Follow



1,002 posts

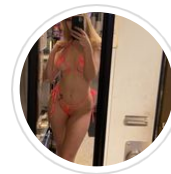
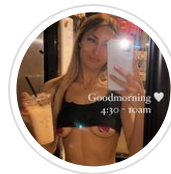
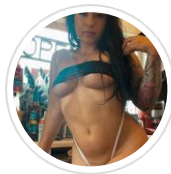
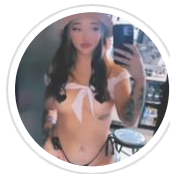
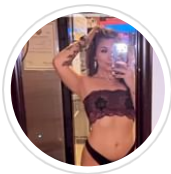
34.9K followers

25 following

Foxy Lady Latte

2626 Henson Rd. Mount Vernon, Wa 98273 👍 Like us on Facebook @ Foxy Lady Latte Mount Vernon ❤️

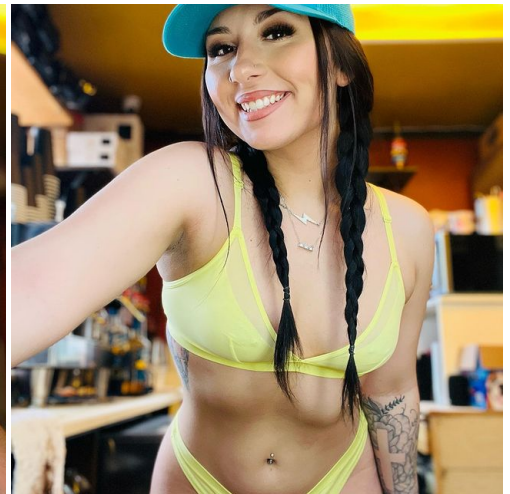
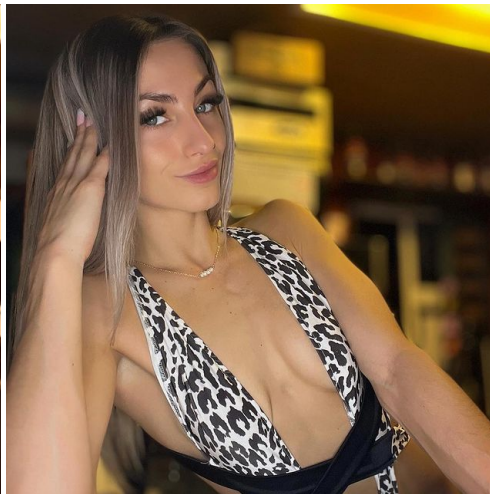
foxyladycoffee.com



📷 POSTS

🎬 REELS

🏷️ TAGGED



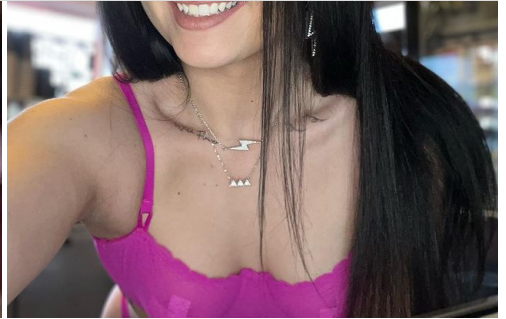
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