

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

GEORGE & COMPANY, LLC, a
New York limited Liability company,

Civil No. 09-2973 (DWF/RLE)

Plaintiff,

v.

**FINAL ORDER, JUDGMENT,
AND PERMANENT INJUNCTION**

XAVIER ENTERPRISES, INC.
a Minnesota corporation; and
KEITH MILLER, an individual, both
d/b/a GAME PLANET and
d/b/a GAMEOUTFITTER.COM;
and DOES 1-95,

Defendants.

Anthony R. Zeuli, Esq., Gregory C. Golla, Esq., and Scott W. Johnston, Esq., Merchant & Gould PC, counsel for Plaintiff.

Brock P. Alton, Esq., and Roger H. Gross, Esq., Gislason & Hunter LLP, counsel for Defendants.

This cause is before the Court pursuant to the parties' Stipulation for Entry of Final Order, Judgment, and Permanent Injunction (Doc. No. [32]). The Court, having been fully advised of the premises, it is:

ORDERED AND ADJUDGED that the parties' Stipulation for Entry of Final Order, Judgment, and Permanent Injunction (Doc. No. [32]) is hereby **APPROVED** and the Court finds as follows:

The Court has jurisdiction over the subject matter in this dispute and overall parties herein. Venue is proper in this district. Defendants, Xavier Enterprises, Inc.; and Keith Miller; both d/b/a Game Planet and d/b/a Gameoutfitter.com, and Does 1-95, have filed an Answer and have appeared in this case and are represented by legal counsel. Defendants admit those allegations in the Verified Complaint necessary for the Court to find jurisdiction, venue, factual basis, and legal basis for entry of this Final Judgment and Agreed Permanent Injunction and for the enforceability of this Final Judgment and Agreed Permanent Injunction.

PLAINTIFF AND ITS TRADEMARK RIGHTS

Plaintiff George & Co. owns all right, title and interest in the federally-registered trademarks LCR® and LCR® and Design (together, the “LCR Marks”). George & Co. uses the LCR® Marks, along with other marks including LEFT CENTER RIGHT, in connection with dice games, party games, and board games featuring specially-marked dice and chips, and in particular the “Left Center Right” dice game, which George & Co. developed, branded and has been manufacturing and selling continuously since 1986.

For 25 years, Plaintiff has enjoyed an excellent reputation for its products and has established public good will throughout the United States. Plaintiff has policed its trademarks and kept the marketplace free from non-party users of its trademarks. Plaintiff’s reputation and considerable expenditures have resulted in a strong brand value, brand identity and recognition, and Plaintiff’s LCR® Left Center Right™ brand stands for excellence in its field and is well known and recognized in toy and dice markets.

At great expense, Plaintiff has federally registered and enforced LCR® and LCR® & Design, the latter is now incontestable. United States Trademark Registration No. 2,989,658 covers the word mark LCR® for dice and games. The application was filed by Plaintiff on July 1, 2004, with a 1983 date of first use and a 1986 date of first commercial use. U.S. Registration No. 2,802,321 covers LCR® and Design, also with a 1983 date of first use. The registration is now incontestable. Plaintiff has also spent considerable sums of money enforcing its trademark rights. Plaintiff has widely advertised and sold millions of its dice games under Plaintiff's marks since approximately 1986 and used its marks on well over 500,000 sales per year in recent years to a variety of well-known stores.

PLAINTIFF AND ITS SUCCESS

Plaintiff George & Co. is the developer, long-time manufacturer and source of the highly-popular LCR® Left Center Right™ dice game which is among the most popular dice games in the world, with Plaintiff selling millions of the games since 1986. For over twenty-five years, the LCR® Left Center Right™ game has been the subject of a great deal of advertising by Plaintiff as well as public acclaim and unsolicited publicity including on the November 23, 2006 episode of the popular "Rachel Ray Show," which was televised nationally and also appears on the show's web site located at www.rachelrayshow.com. The LCR® Left Center Right™ dice game has been featured in the 2007, 2008 and 2009 issues of TD Monthly Magazine, trade magazine for the toy, hobby, game and gift industry, and was listed as one of the "top ten most wanted games"

and quoted certain retailers as identifying LCR® as their number one and biggest seller. Plaintiff's LCR® Left Center Right™ game was also recently featured in a talk show segment about the resurgent of popular games. In addition, Plaintiff's LCR® Left Center Right™ game has its own Wikipedia entry which describes the game and indicates that it is published by Plaintiff, George & Co. Plaintiff's long-term, extensive and broadly publicized use of its trademarks for its dice game makes the marks distinctive and enforceable brands that Plaintiff has protected against infringement.

DEFENDANTS' ACTS

Defendants are and have been actively engaged in the business of offering to the consuming public dice games utilizing the term "LCR," "Left Center Right" or variations thereof including on its website, www.gameoutfitter.com, its source code, metatags, online ads. On November 17, 2009, this Court ordered a Temporary Restraining Order related to some of Defendants' activities listed above. In its verified Complaint, George & Co. asserted claims for federal trademark infringement, federal unfair competition in related claims, counterfeiting, state trademark and unfair competition, violation of Deceptive Trade Practices Act, a violation of Unlawful Trade Practices Act, and copyright infringement.

Defendants concede that the Plaintiff's trademarks, including LCR and LEFT CENTER RIGHT, are valid, protectable, and infringed.

ORDER

It is therefore ORDERED and ADJUDGED that Defendants', Xavier Enterprises, Inc.; and Keith Miller; both d/b/a Game Planet and d/b/a Gameoutfitter.com, and Does 1-95, are enjoined and restrained, together with their officers, directors, principals, agents, service employees, successors, assigns, attorneys, and all those persons in active concert or participation therewith having notice of this Order as follows:

- (a) from using in any way the LCR® Marks, Left Center Right™, or any reproduction, counterfeit, copy, colorable imitation, or confusingly similar term on any game, packaging, web site, online ad, sign, advertisement, slogans, internet domain name, promotional material, promotional communication, and/or printed electronic matter, except in connection with the sale of Plaintiff's games, unless authorized by Plaintiff.
- (b) from purchasing or using any form of advertising, including key words, online ads or "ad words" in internet advertising containing the mark incorporating LCR® or Left Center Right™, or any confusingly similar mark, except when used in the sale of Plaintiff's games or unless authorized by Plaintiff, and shall when purchasing internet advertising using key words, ad words or the like, require the activation of the term "LCR" or "Left Center Right" as negative key words or negative ad words in any advertising purchased or used, unless for use in promoting the sale of Plaintiff's goods.

- (c) directly or indirectly falsely designating or representing that any goods or services are authorized, approved, associated with, or originating from Plaintiff, except in the sale or promotion of Plaintiff's game, or unless Plaintiff has provided authorization to do so.
- (d) from contesting the validity, ownership, enforceability of Plaintiff's LCR Marks and Plaintiff's LEFT CENTER RIGHT trademarks.
- (e) from using any game instructions that are the same or substantially similar to those copyrighted by Plaintiff except in the connection with the sale of Plaintiff's games.
- (f) from contesting the validity, ownership or enforceability of Plaintiff's copyright concerning LCR® or Left Center Right™.
- (g) Defendants shall account to Plaintiff for all accused games ordered and sold, and shall deliver to Plaintiff any unsold accused games, instructions, chips, promotional materials and online materials concerning the accused dice games for destruction. Defendants shall also identify all sources of the accused games, instructions, and chips known to Defendants.

It is further Ordered and Adjudged that Defendants shall be in full compliance with this Order no later than April 1, 2010. Each party in this Action will bear its own costs and legal fees incurred in connection with this Action unless otherwise agreed to by the Parties.

Dated: March 31, 2010

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge