

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 08-CVS-24643

WINDSOR JEWELERS, INC.,)
)
 PLAINTIFF,)
)
 vs.)
)
 WINDSOR FINE JEWELERS, LLC;)
 WINDSOR JEWELERS, LLC; and)
 ALPINE INVESTORS, LP)
)
 DEFENDANTS.)
)
 _____)

ORDER

This cause was heard by the Honorable Albert Diaz, Special Superior Court Judge for Complex Business Cases, on November 14, 2008, on the Motion of Windsor Jewelers, Inc. for a Temporary Restraining Order. Having considered the briefs and submissions of the parties and arguments of counsel, the Court **GRANTS** the Motion for the reasons that follow:

1. Plaintiff has shown a likelihood of success on its claim that (1) it holds a valid trademark under the NC Trademark Registration Act (the "NC Act") and applicable North Carolina common law; (2) its use of that mark in the same geographic area as that of the alleged infringer is more than de minimis (as shown by the evidence of Plaintiff's actual sales, advertising efforts, and reputation in the marketplace); and (3) Defendants' use of a similar mark is likely to cause confusion among consumers;

2. There is no evidence of actual confusion because Plaintiff's evidence is vague on the point. Because actual confusion, however, is not required to state a claim under the Lanham Act, I conclude that Plaintiff need not make such a showing to prove a violation of the NC Act;

3. Based on the evidence of record, I find a likelihood of confusion because (1) Plaintiff's mark is sufficiently distinctive to warrant protection, (2) the marks in question appear similar, (3) the goods sold by the Plaintiff and Defendants are similar, (4) the facilities used by the parties are similar, (5) the advertising techniques used by the parties appear to be similar, and (6) Defendants' intent to confuse the consuming public is clear, as (notwithstanding that they have used the name Windsor Jewelers in Georgia and South Carolina) they were aware of Plaintiff's trademark registration in North Carolina when they selected Windsor Fine Jewelers as the name for their NC based stores, and indeed, attempted to purchase the Plaintiff's business and mark before announcing that they intended to change the name of their NC-based stores to Windsor Fine Jewelers;

4. The nature of the Plaintiff's claims necessarily establish the likelihood of irreparable harm; and

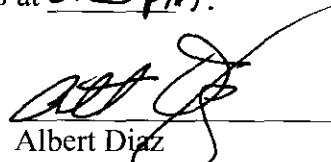
5. Any harm to Defendants in granting temporary injunctive relief will be minimal, as the temporary injunction does not prevent Defendants from operating their NC-based stores in the same manner as they apparently have since December 2006 (i.e. as Lions Jewelers).

It is therefore, **ORDERED** by the undersigned Judge that pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, a Temporary Restraining Order shall be immediately entered pursuant to Rule 65 of the North Carolina Rules of Civil Procedure restraining Defendants from using the name, marks, or terms *Windsor Fine Jewelers*, including any and all variants, in Charlotte, North Carolina in conjunction with the "Lions Jewelers" stores, and that all existing inventory of advertising, brochures, catalogs, apparel or other indicia, whether in electronic format or physical format, and including all broadcast media, that bear or include the terms *Windsor Fine Jewelers* for use in conjunction with the "Lions Jewelers" stores in Charlotte, North Carolina be gathered up and/or recalled and destroyed, and deleting all uses of the name Windsor Fine Jewelers and all variants thereof in reference to the "Lions Jewelers" stores in Charlotte, North Carolina from the website maintained by Windsor Jewelers, LLC on the World Wide Web.

Windsor Jewelers, Inc. shall be required to post a \$10,000.00 bond, at which time the Temporary Restraining Order will become effective. This Order shall expire within ten days of entry.

Plaintiff's Motion for a Preliminary Injunction will be heard on 25 November 2008 at 2 pm in Courtroom 6370.

Entered this 19th day of November, 2008 at 5:55 pm.



Albert Diaz
Special Superior Court Judge for
Complex Business Cases