

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

SCS DIRECT, INC.	:	Case No.:
	:	
Plaintiff,	:	<u>COMPLAINT</u>
against -	:	
	:	
CARDS AGAINST HUMANITY, LLC	:	April 29, 2016
	:	
Defendant.	:	<u>Jury Trial Demanded</u>

Plaintiff, SCS Direct, Inc. (“SCS Direct”), by and through its attorneys, for its complaint against Defendant Cards Against Humanity, LLC (“CAH”), alleges as follows:

INTRODUCTION

1. This is an action in law and equity under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, and unfair competition under the Connecticut Unfair Trade Practices Act, Connecticut General Statutes §§ 42-110a, *et seq.*, as well as other claims under the common law.

2. SCS Direct has recently begun producing and marketing a political playing card game named, HUMANITY HATES TRUMP. SCS Direct has attempted to raise funds for that game through the online webpage, Kickstarter.com (“Kickstarter”), and has begun marketing HUMANITY HATES TRUMP through various marketplaces.

3. CAH, a manufacturer and distributor of another playing card game, CARDS AGAINST HUMANITY, has engaged in a campaign to thwart the production and sales of HUMANITY HATES TRUMP, by sending letters and notices to others, including Kickstarter,

alleging baseless infringement claims. The central predicate for its claim is that HUMANITY HATES TRUMP has black and white playing cards, which are the same colors used in CARDS AGAINST HUMANITY's playing cards. It alleges infringement, notwithstanding that there are – and have consistently been long before the introduction of CARDS AGAINST HUMANITY – a multitude of other playing card games with black and white playing cards.

4. To avoid becoming entangled in an intellectual property dispute, Kickstarter removed HUMANITY HATES TRUMP from public view on its website and suspended fundraising activities as a result of CAH's notice alleging infringing material.

5. CAH has stated through counsel that it may take other action against SCS Direct if SCS Direct does not change the colors of HUMANITY HATES TRUMP's playing cards.

6. CAH has wrongfully and without justification made infringement assertions against SCS Direct, and has singled out its playing card game, HUMANITY HATES TRUMP, attempting to remove it from the marketplace.

7. As a result of CAH's conduct, CAH is liable to SCS Direct based upon common law and statutory claims, as described below. Further, Given CAH's representations and past conduct, its wrongful activities will continue unless enjoined by the Court.

PARTIES

8. SCS Direct is a Connecticut corporation with a principal place of business in Trumbull, Connecticut.

9. CAH is believed to be a Delaware limited liability company with a principal place of business in Chicago, Illinois.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1332, 1338(a) and (b), 15 U.S.C. §1051 et seq. (the Trademark Act), and 28 U.S.C. §§2201-2202 (the Declaratory Judgment Act). This Court has supplemental jurisdiction over the Connecticut state law and common law claims pursuant to 28 U.S.C. §1367(a).

11. This Court has personal jurisdiction over CAH, since CAH produces, markets and sells CARDS AGAINST HUMANITY nationwide, regularly and systematically does business in Connecticut and with Connecticut residents, and because CAH has taken wrongful actions against and has damaged SCS Direct, a Connecticut corporation, as further described below.

12. Venue is proper in this District pursuant to 28 U.S.C. §1391.

FACTS COMMON TO THE COUNTS

I. HUMANITY HATES TRUMP PLAYING CARD GAME

13. In early 2016, SCS Direct, a seller of consumer products, introduced its HUMANITY HATES TRUMP playing card game. The game generally puts a satirical spin on politics, adding humor to the 2016 presidential race.

14. To raise funds for the HUMANITY HATES TRUMP playing card game production, to gauge market appeal, and to help promote the game, SCS Direct launched HUMANITY HATES TRUMP playing card game on Kickstarter.

15. As its website provides, “Kickstarter is a funding platform for creative projects.” See <https://www.kickstarter.com/press?ref=hello>. Those who view the website review various projects and can pledge an amount to help fund or launch a particular project. As the website states: “If people like the project, they can pledge money to make it happen.”

16. The HUMANITY HATES TRUMP playing card game immediately gained strong support on Kickstarter, and raised over 7 times its fundraising goal within a short time. As of April 2016, the HUMANITY HATES TRUMP playing card game was funded and ready for distribution and sales.

II. CAH’S BASELESS INFRINGEMENT ASSERTIONS

17. As its website and packaging state, “Cards Against Humanity is a party game for horrible people.” It is not a game in the political space and is unrelated to the 2016 presidential election.

18. In March/April 2016, while the HUMANITY HATES TRUMP playing card game was gaining financial support and media attention, CAH, through its counsel, made multiple demands of SCS Direct. It first demanded that SCS Direct remove a tag line on the HUMANITY HATES TRUMP playing card game packaging, “Cards Against Everybody,” claiming that it was confusingly similar to CARDS AGAINST HUMANITY. In a gesture to resolve the matter, SCS Direct promptly removed that tag line from its packaging.

19. Also, CAH claimed that the font on the HUMANITY HATES TRUMP playing cards was confusingly similar to the font on the CARDS AGAINST HUMANITY playing cards,

notwithstanding that there were many games with cards bearing exactly the same font as the CARDS AGAINST HUMANITY playing cards. Again, to avoid any confusion, SCS Direct changed the font on the HUMANITY HATES TRUMP playing cards.

20. CAH then demanded and continues to demand that SCS Direct change the colors of HUMANITY HATES TRUMP playing cards to colors other than black and white, which are the colors of the CARDS AGAINST HUMANITY'S playing cards, notwithstanding that black and white are the card colors of a multitude of other playing card games unaffiliated with CARDS AGAINST HUMANITY, and that CAH has no trademark or trade dress registrations with respect to its playing cards. SCS Direct has not agreed to this most recent demand.

21. Thereafter, CAH sent notices to others, including Kickstarter, alleging baseless infringement claims against SCS Direct, specifically asserting that HUMANITY HATES TRUMP's black and white playing cards infringe upon their cards, which are also black and white.

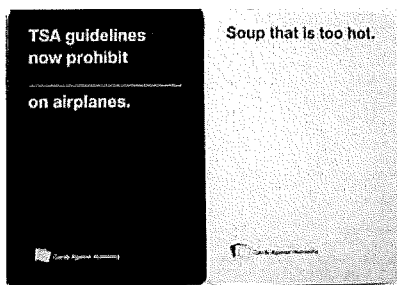
22. Given CAH's notice alleging infringing material, Kickstarter removed HUMANITY HATES TRUMP from public view on its website and suspended related fundraising activities.

23. CAH has threatened to take other action against SCS Direct if SCS Direct does not change the colors of HUMANITY HATES TRUMP playing cards.

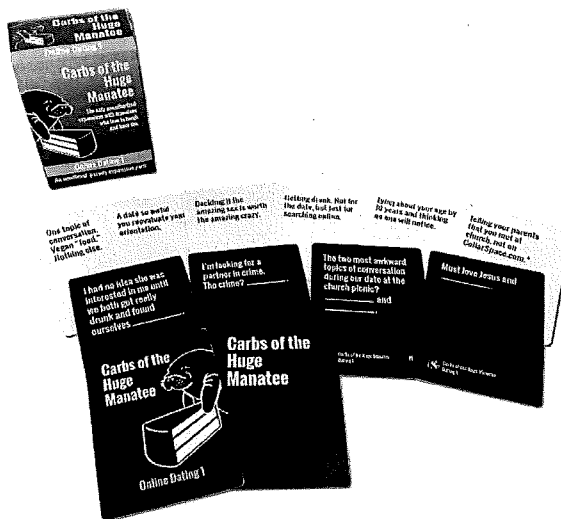
III. CAH CANNOT PROPERLY CLAIM RIGHTS TO BLACK AND WHITE CARDS.

24. Along with HUMANITY HATES TRUMP and CARDS AGAINST HUMANITY, there are a multitude of playing cards games with black and white cards, as evidenced by the card games below and more fully in Exhibit A, attached hereto, which currently are all selling on Amazon.com.

Cards Against Humanity



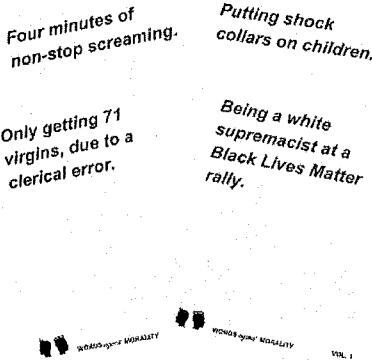
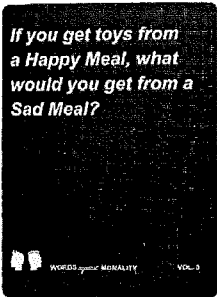
Carbs of the Huge Manatee



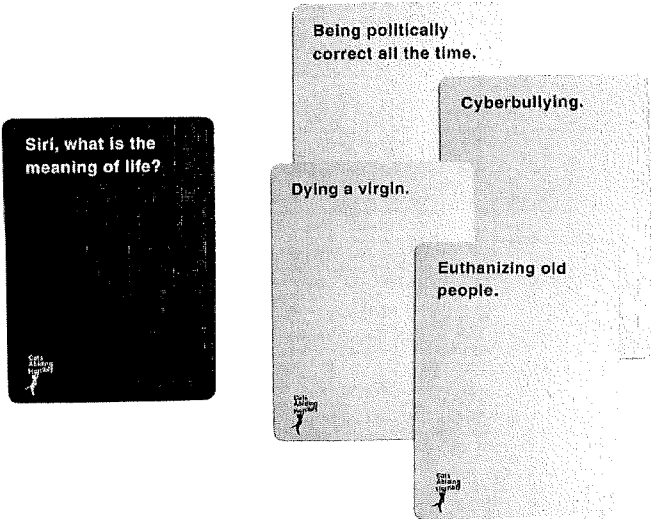
Guards Against Insanity



Words Against Morality



Cats Abiding Horribly



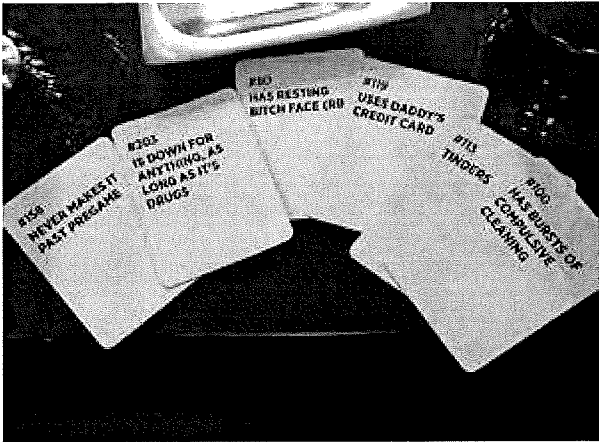
Black Card Revoked



Superfight

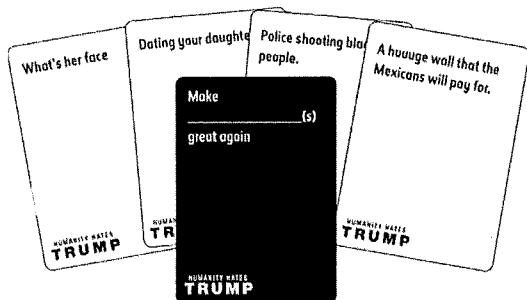


Drunk, Stoned, or Stupid [A Party Game]



25. The HUMANITY HATES TRUMP cards – while black and white like so many other card games – have a different font and have different spacing than the CARDS AGAINST HUMANITY playing cards. HUMANITY HATES TRUMP is also boldly stated on the playing cards.

**HUMANITY HATES TRUMP
PLAYING CARDS**

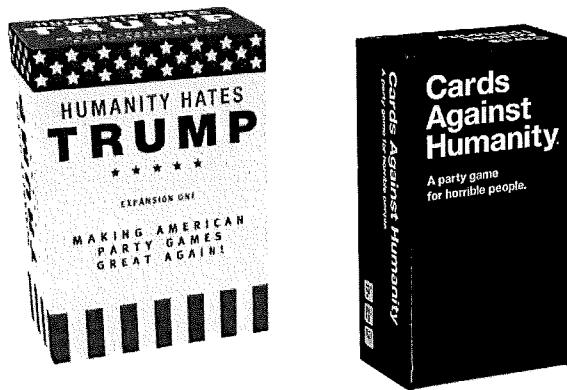


**CARDS AGAINST HUMANITY
PLAYING CARDS**



26. Indeed, as also reflected in Exhibit A, attached hereto, there are a multitude of playing card games not only with black and white cards, but with names that sound strikingly similar to CARDS AGAINST HUMANITY, such as “Carbs of the Huge Manatee,” “Guards Against Insanity,” “Words Against Morality,” “Cats Abiding Horribly,” “Cocks Abreast Hostility,” “Crabs Adjust Humidity,” and “Carps & Angsty Manatee.” In contrast, HUMANITY HATES TRUMP is not a parody of, and bears little resemblance to, CARDS AGAINST HUMANITY.

27. Further, the HUMANITY HATES TRUMP packaging looks entirely different from the CARDS AGAINST HUMANITY's packaging, as shown below.



CLAIMS

FIRST COUNT (DECLARATION OF NON-INFRINGEMENT OF THE CARDS AGAINST HUMANITY TRADE DRESS, NO FALSE DESIGNATION OF ORIGIN AND NO UNFAIR COMPETITION)

28. SCS Direct repeats and realleges each and every allegation of paragraphs 1 through 27, as though fully set forth herein.

29. An actual controversy has arisen and presently exists between SCS Direct and CAH with regard to their respective rights related to the CARDS AGAINST HUMANITY'S playing card game's alleged trade dress or trademark rights. The controversy has arisen notwithstanding that CAH has no trademark or trade dress registrations with respect to its playing cards.

30. SCS Direct believes that there is no legal or factual basis for CAH's claim that the HUMANITY HATES TRUMP playing card game's trade dress has caused, or is likely to cause, confusion with the CARDS AGAINST HUMANITY playing card game's trade dress or any of CAH's purported trade dress or trademark rights. SCS Direct further believes that the design of the respective cards, and particularly the black and white colors therein, is not protectable or enforceable, since it is generic and/or functional. Black and white is a classic color combination, which offers stark contrast and makes words easy to read.

31. SCS Direct desires a judicial determination of its rights in regard to the matters raised herein, including its rights with respect to its using black and white playing cards in its HUMANITY HATES TRUMP playing card game.

32. A judicial declaration, pursuant to 15 U.S.C. §§ 1051 *et seq.*, and 28 U.S.C. §§ 2201 and 2202 (the Declaratory Judgment Act), is necessary and appropriate at this time under the circumstances. More specifically, SCS Direct requests an order declaring that CAH's alleged trade dress rights with respect to the color and other characteristics of its playing cards lack the requisite legal requirements to be protectable and to be enforceable, and that SCS Direct is not infringing CAH's alleged trade dress rights under the Lanham Act and that it does not constitute false designation of origin or unfair competition or trademark or trade dress infringement under the applicable common law.

SECOND COUNT (TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY)

33. SCS Direct repeats and realleges each and every allegation of paragraphs 1 through 32, as though fully set forth herein.

34. SCS Direct had a business relationship with Kickstarter, whereby Kickstarter offered a platform to SCS Direct to raise funds for its HUMANITY HATES TRUMP playing card game.

35. Having knowledge of that business relationship, CAH engaged in a campaign to thwart the production and sales of HUMANITY HATES TRUMP, by sending notices to others, including Kickstarter, alleging baseless infringement claims. The central predicate for its claim was that HUMANITY HATES TRUMP is allegedly infringing upon CAH's purported trade dress rights by using black and white playing cards, the same colors found in the CARDS AGAINST HUMANITY's playing cards.

36. As a result of CAH's notice alleging infringing material, Kickstarter removed HUMANITY HATES TRUMP from public view on its website and suspended fundraising activities.

37. Funders have withdrawn their pledges based on CAH's infringement claims and the resulting suspension of fundraising activities.

38. As a result of CAH's interference, SCS Direct has suffered losses.

THIRD COUNT (VIOLATION OF CUTPA)

39. SCS Direct repeats and realleges each and every allegation of paragraphs 1 through 38 as though fully set forth herein.

40. CAH is engaged in trade or commerce in Connecticut within the meaning of Section 42-110a(4) of the Connecticut Unfair Trade Practices Act, *Conn. Gen. Stat.* § 42-110a, *et seq.* (“CUTPA”), and its misconduct, as set forth above, was done in the course of trade or commerce in Connecticut.

41. The acts of CAH set forth above offend public policy, constitute immoral, unethical, oppressive and unscrupulous conduct, and cause substantial injury to SCS Direct.

42. By virtue of this conduct, CAH has violated the Connecticut Unfair Trade Practices Act, *Conn. Gen. Stat.* §§42-110a, *et seq.*

43. Based upon the foregoing, SCS Direct has suffered ascertainable loss of money or property. SCS Direct is also entitled to equitable relief, so that CAH permanently ceases alleging that SCS Direct is infringing upon CARDS AGAINST HUMANITY’S alleged trade dress.

44. A copy of this Complaint will be mailed to the Attorney General of the State of Connecticut and to the Commissioner of Consumer Protection of the State of Connecticut pursuant to *Conn. Gen. Stat.* §42-110g(c).

FOURTH COUNT (PRELIMINARY AND PERMANENT INJUNCTION)

45. SCS Direct repeats and realleges each and every allegation of paragraphs 1 through 44 as though fully set forth herein.

46. CAH's campaign to thwart the production and sales of HUMANITY HATES TRUMP, by sending notices to others, including Kickstarter, alleging baseless infringement claims concerning the color of HUMANITY HATES TRUMP'S playing cards has already caused, and if not restrained, will continue to cause harm to SCS Direct.

47. Unless restrained by this Court, CAH will continue to willfully and wrongfully notify third parties that SCS Direct's HUMANITY HATES TRUMP playing cards game infringes upon the trade dress rights of CAH's CARDS AGAINST HUMANITY.

48. SCS Direct has no adequate remedy at law.

JURY DEMAND

SCS Direct demands a trial by jury on all issues so triable pursuant to Fed. R. Civ. P. 38.

PRAYER FOR RELIEF

WHEREFORE, SCS Direct seeks judgment awarding it the following relief:

A. An order declaring that CAH's alleged trade dress rights with respect to the color and other characteristics of its playing cards lacks the requisite legal requirements to be protectable and to be enforceable, and that SCS Direct is not infringing CAH's alleged trade dress rights;

B. Granting a preliminary and permanent injunction restraining CAH, its officers, directors, members, principals, agents, servants, employees, successors and assigns, and all individuals or entities acting in concert or participation with CAH, from notifying third parties or otherwise publishing that SCS Direct's HUMANITY HATES TRUMP playing card game infringes upon the purported trade dress rights of CAH's CARDS AGAINST HUMANITY playing card game;

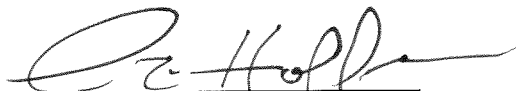
C. Directing that CAH be ordered to pay to SCS Direct damages, attorneys' fees and costs, punitive and exemplary damages as provided by common law and statutory law, including, but not limited to, pursuant to *Conn. Gen. Stat. §42-110a et seq.*, including any equitable relief pursuant to CUTPA;

D. Directing that CAH be ordered to pay to SCS Direct its reasonable attorneys' fees, costs and disbursements incurred herein;

E. Awarding SCS Direct pre-judgment and post-judgment interest to the maximum extent provided by law; and

F. Awarding SCS Direct such other and further relief as the Court may deem just and proper.

SCS DIRECT, INC.

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