

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLAYBOY ENTERPRISES, INC. : CIVIL ACTION
v. :
UNIVERSAL TEL-A-TALK, INC., :
ADULT DISCOUNT TOYS, and :
STANLEY HUBERMAN : NO. 96-6961

MEMORANDUM OF DECISION

McGLYNN, J.

NOVEMBER , 1998

Plaintiff, Playboy Enterprises, Inc. (“PEI”) filed this action on October 2, 1996, alleging trademark infringement and related causes of action under the Lanham Act, 15 U.S.C. §§ 1114-1125 and Pennsylvania’s anti-dilution law, 54 Pa.C.S.A. § 1124, et. seq. at defendant’s web site “adult sex.com/playboy.” The Court entered a temporary restraining order and later a consent decree enjoining the defendants use of PEI’s trademarks. Thereafter, the complaint was amended to include a counterfeiting claim under 15 U.S.C. § 1116(d).

The matter came on for a final hearing and bench trial on October 8th and 13th, 1998.

Upon consideration of the evidence and the briefs and arguments of counsel, the court makes the following

FINDINGS OF FACT

1. Plaintiff Playboy Enterprises, Inc. (PEI), is a Delaware corporation having offices at 730 Fifth Avenue, New York, New York and a principal place of business in Chicago, Illinois.
2. Defendant Universal Tel-A-Talk, Inc. is a Pennsylvania corporation having a principal place of business in Philadelphia, Pennsylvania. Defendant Stanley Huberman is the president

and sole shareholder.

3. Defendant Adult Discount Toys is a business entity having a principal place of business in Philadelphia, Pennsylvania and is owned by defendant Stanley Huberman.¹

4. Defendant Stanley Huberman is a citizen and resident of the Commonwealth of Pennsylvania.

5. Since 1953, PEI has published *Playboy* magazine. *Playboy* magazine is read by approximately 10 million readers each month and is published worldwide in 16 international editions.

6. *Playboy* magazine is known for its display of erotic and provocative pictorials of PEI models and adult entertainment material.

7. PEI and its licensees have sold a wide variety of merchandise; such as, wearing apparel, cosmetics, sunglasses, watches and other personal accessories under the trademark PLAYBOY, in interstate commerce, including the Commonwealth of Pennsylvania.

8. PEI is the owner of a number of U.S. trademark registrations for the mark PLAYBOY, including the following registrations: U.S. Reg. No. 600,018 (monthly magazine); U.S. Reg. No. 1,040,491 (sunglasses); U.S. Reg. No. 1,308,905 (watches and clocks); U.S. Reg. No. 1,328,611 (clothing articles, including ties, t-shirts and visors); U.S. Reg. No. 1,320,822 (footwear); and U.S. Reg. No. 755,301 (cigarette lighters).

9. Over the years, PEI has sold merchandise bearing the PLAYBOY trademark. Through

¹ As noted below, there is no evidentiary basis for holding Adult Discount Toys liable for the events that are at issue here. Accordingly, Adult Discount Toys will be dismissed. Hereinafter, the use of the word “defendants” applies only to Universal Tel-A-Talk and Stanley Huberman.

its licenses, products bearing the PLAYBOY trademark are sold throughout the United States and in more than 50 countries around the world. PEI and its licensees have and continue to spend considerable time and money promoting the PLAYBOY trademark. As a result of PEI's longstanding use of the PLAYBOY trademark, the PLAYBOY trademark has become well known and has developed a secondary meaning, such that the public has come to associate it with PEI.

10. In addition to the PLAYBOY trademark, PEI also utilizes a Rabbit Head Design trademark (hereafter the "RABBIT HEAD DESIGN") in connection with *Playboy* magazine and a wide variety of goods sold by PEI and/or its licensees. Since 1954, PEI has used the RABBIT HEAD DESIGN mark in connection with *Playboy* magazine. The RABBIT HEAD DESIGN mark traditionally appears in the masthead of *Playboy* magazine. PEI has also used the RABBIT HEAD DESIGN in connection with a wide variety of merchandise and services.

11. PEI also owns a number of U.S. trademark registrations for the RABBIT HEAD DESIGN mark, including U.S. Reg. No. 643,926 (monthly magazine); U.S. Reg. No. 871,533 (billfolds, pocket secretaries and card cases); U.S. Reg. No. 1,058,294 (sunglasses); U.S. Reg. No. 759,207 (cuff links, tie tacks, earrings, necklaces, key chains, bracelets and pins); U.S. Reg. No. 728,889 (ties and men's and women's shirts); U.S. Reg. No. 1,276,287 (clothing articles, including hats, caps and t-shirts); and U.S. Reg. No. 764,819 (perfume).

12. In addition to the PLAYBOY trademarks and RABBIT HEAD DESIGN, the mark "BUNNY" has been registered by PEI with the United States Patent and Trademark Office.

13. PEI is the owner of U.S. Trademark Registration No. 810,555 for the mark BUNNY.

14. Over the years, PEI has sold merchandise bearing the RABBIT HEAD DESIGN

mark. Through its licensees, products bearing the RABBIT HEAD DESIGN mark are sold throughout the United States and in more than 50 countries around the world. Products bearing the RABBIT HEAD DESIGN mark are available worldwide by mail order catalog and through PLAYBOY specialty boutiques, department stores, art galleries and museum shops. PEI and its licensees have spent considerable time and money promoting products bearing the RABBIT HEAD DESIGN mark nationwide and throughout the world. As a result of PEI's longstanding use of the RABBIT HEAD DESIGN mark, the RABBIT HEAD DESIGN mark has become famous and has developed significant goodwill and secondary meaning, such that the public has come to associate it exclusively with PEI.

15. As a result of PEI's use and promotion of the RABBIT HEAD DESIGN mark, the mark BUNNY has also become associated with PEI in connection with adult entertainment services. Indeed, the RABBIT HEAD DESIGN trademark is commonly referred to by the public as the "Playboy Bunny."

16. The Internet is an international computer "super-network" of over 15,000 computer networks which is used by 30 million or more individuals, corporations, organization and educational institutions worldwide. Users of the Internet can access each others computers, can communicate directly with each other (by means of electronic mail or "e-mail"), and can access various types of data and information. Each Internet user has an address, consisting of one or more address components, which address is otherwise commonly referred to within the Internet as a "domain" or "domain name."

17. Domain names serve as an address for sending and receiving e-mail and for posting information or providing other services. On the Internet, a domain name serves as the primary

identifier of the source of information, products or services. It is common practice for companies to form Internet domain names by combining their trade name or one of their famous trademarks as a prefix and their business category as a suffix. The suffix “.com” (usually pronounced “dot com”) identifies a service provider as commercial in nature.

18. The domain name is one component of the “Uniform Resource Locator” (“URL”). The URL may also include root directories and subdirectories which serve as a guide to the contents of a Web site.

19. In August, 1994, PEI launched <http://www.playboy.com> on the Internet on the World Wide Web. The website currently receives approximately six million “hits” a day. The trademark <http://www.playboy.com> offers access to some of PEI’s copyrighted images and other contents from *Playboy* magazine and other PEI publications. [Http://www.playboy.com](http://www.playboy.com) has also been registered with the U.S. Patent and Trademark Office.

20. PEI also operates <http://cyber.playboy.com>, a subscription and pay per visit website (the “PLAYBOY CYBER CLUB”) which allows members access to individual PLAYMATE home pages, video clips from PLAYMATE home pages, video clips from PLAYBOY home video and PLAYBOY TV and contents of *Playboy* magazine.

21. Both <http://www.playboy.com> and <http://cyber.playboy.com> are used by PEI to promote subscriptions to its monthly *Playboy* magazine, to display erotic pictorials of PEI models, and to advertise and sell PEI’s merchandise and other services under PEI’s trademarks. PEI’s websites prominently feature the PEI trademarks PLAYBOY and RABBIT HEAD DESIGN, as well as photographs, articles of interest, PEI merchandise, videos and subscription information for *Playboy* magazine. PEI’s Website contains electronic versions of *Playboy*

magazine in that it displays the contents of *Playboy* magazine on-line. An Internet user is able to view the contents of *Playboy* magazine by visiting www.playboy.com or the PLAYBOY CYBER CLUB.

22. Defendant Universal Tel-A-Talk, Inc. created and is maintaining several Internet World Wide Web sites which may be accessed throughout the United States, including the Commonwealth of Pennsylvania.

23. On or about October 2, 1996, PEI learned that Universal-Tel-A-Talk, Inc. was using PEI's registered trademarks PLAYBOY and BUNNY in conjunction with their website to advertise on-line a collection of photographs, which both plaintiff and defendant describe as "hard core." However, neither side has defined that term, at least on this record, except as a modifier of the term sexually explicit photographs.

24. Defendant Universal Tel-A-Talk, Inc.'s website advertises and offers a subscription service called "Playboy's Private Collection" (located at <http://www.adult-sex.com> (hereafter "Defendant's website")) for a charge of \$3.95 per month, which features hard core photographs. The PLAYBOY trademark is prominently featured in defendants' website. Defendants also used the term "Bunny" on the navigational bar of the introductory page of the defendants' website. The navigational bar serves as a table of contents and appears on the bottom of the introductory screens and web pages. When a user clicks onto one of six "Bunny" segments of the navigational bar on the introductory page, the user becomes connected to another level of hard core on-line services offered by Defendants.

25. A subscriber to defendants' "Playboys Private Collection" service is greeted by a "home page" which is the equivalent of the cover and table of contents page of a magazine in that

it displays the name of the site and a menu of information that is available for review. A subscriber to defendants' Playboy subscription service, upon assessing the URL "adult-sex.com/playboy/members" is welcomed by defendants' home page which reads: "Welcome to PLAYBOYS PRIVATE COLLECTION." Defendants' website <http://www.adult-sex.com> is an on-line collection of "hard core" photographs sold under the PLAYBOY and BUNNY trademarks and portrayed as an extension of PEI's *Playboy* magazine. Defendants' unlawful use of the PLAYBOY trademark also appears at least twice on every printed web page. "Playboys Private Collection" appears on the upper left-hand corner and the URL "adult-sex.com/playboy/members/pictures" appears at the upper right-hand corner.

26. Subscribers can "click" onto a portion of the home page which reads: "Let me see the pictures in Playboys Private Collection" and obtain a lengthy list of hard core photographs on a variety of topics which may be viewed on screen, downloaded to disk or printed.

27. Defendants also provided an electronic mail address which utilizes the PLAYBOY trademark in the text of defendants' website. The home page of defendants' service invites subscribers to "Send E-mail to Playboy @adult-sex.com."

28. Defendant has also "linked" their adult-sex website to PEI's website at "Playboy.com." A "link" is a connection of one website to another.

29. Defendants are not now and never have been authorized by PEI to use the PLAYBOY trademark or the BUNNY trademark in connection with any business or service.

30. Defendants consented to the entry of a Preliminary Injunction on Consent on November 29, 1996.

31. Defendants had 1,363 subscribers to its adult-sex.com website between July 13, 1990

and October 12, 1996.

32. Defendants used the terms PLAYBOYS PRIVATE COLLECTION and PLAYBOY in connection with the adult-sex.com website for approximately three (3) months.

33. Defendant Huberman personally made the decision to use the term PLAYBOY in connection with the adult-sex.com website and authorized its implementation in the website. Defendant Huberman personally made the decision to use the term BUNNY in connection with the adult-sex.com website and authorized its implementation in the website.

34. Defendant Universal Tel-A-Talk was on-line for only four months -- July 1996 to October 1996.

35. The contents of Plaintiff's website during this period of time did not display the words "Registered in U.S., Patent and Trademark Office" or "Reg. - U.S. Pat & TM Off" or the letter R enclosed in a circle.

36. Plaintiff did not prove any actual loss or injury.

37. Defendant Universal Tel-A-Talk lost money on the operation of its website.

DISCUSSION

This is a civil action for trademark infringement, false designation of origin, dilution and trademark counterfeiting under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051-1127; trademark infringement and unfair competition under the Commonwealth of Pennsylvania, and dilution under the statutory law of Pennsylvania, 54 Pa. C.S.A. § 1124 et seq.

PEI has alleged infringement of the PLAYBOY trademark under Section 32 of the Lanham Act (Count I), Section 43(a) of the Lanham Act (Count II) and the common law of the Commonwealth of Pennsylvania (Count IV). The test for infringement is the same for each

count, namely, whether the alleged infringement creates a likelihood of confusion. See Scott Paper Co. v. Scott's Liquid Gold, 589 F.2d 1225 (3d Cir. 1978).

In order to succeed on the merits, a plaintiff must establish that: (1) the marks are valid and legally protectible; (2) the marks are owned by the plaintiff; and (3) the defendants' use of the marks to identify goods or services is likely to create confusion concerning the origin of the goods and services." Opticians Ass'n v. Independent Opticians, 920 F.2d 187, 192 (3d Cir. 1990).

The trademark PLAYBOY has attained incontestable status pursuant to 15 U.S.C. § 1065. PEI's ownership of incontestable U.S. Registrations for the PLAYBOY trademark constitutes prima facie evidence of PEI's ownership of the PLAYBOY trademark and the validity of the mark. Optician's Ass'n v. Independent Opticians, 920 F.2d at 194 .

In determining whether a likelihood of confusion exists, the court may take into account

- (1) the degree of similarity between the owner's mark and the alleged infringing mark;
- (2) the strength of owner's mark;
- (3) the price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase;
- (4) the length of time the defendant has used the mark without evidence of actual confusion arising;
- (5) the intent of the defendant in adopting the mark;
- (6) the evidence of actual confusion;
- (7) whether the goods, though not competing, are marketed through the same channels of trade and advertised through [sic] the same media;
- (8) the extent to which the targets of the parties' sales efforts are the same;
- (9) the relationship of the goods in the minds of the public because of the similarity of function;
- (10) other facts suggesting that the consuming public might expect the prior owner to manufacture a product in the defendant's market.

Scott Paper Co. v. Scott's Liquid Gold, *supra* at 1229.

Defendants' use of the words "Playboy" and "Bunny" in their website and in the

identifying directories of defendants' URL's are identical to PEI's duly registered trademarks PLAYBOY and BUNNY. PEI's registered trademarks have previously been adjudicated as very strong. See, Playboy Enterprise, Inc. v. Chuckleberry Pub, Inc., 687 F.2d 563 (2d Cir. 1982). Suggestive marks are entitled to protection without proof of secondary meaning. See e.g., Dominion Bankshares Corp. v. Devon Holding Co., Inc., 690 F. Supp. 338, 345 (E.D. Pa. 1988); American Diabetes Assn. v. National Diabetes Ass'n, 214 U.S.P.Q. 231, 233 (E.D. Pa. 1981).

Even if secondary meaning were required, PEI has established that the PLAYBOY trademark and the RABBIT HEAD DESIGN trademark for adult entertainment goods and services have become famous, and have acquired significant secondary meaning, such that the public has come to associate these trademarks with PEI.

Defendants' intentionally adopted PLAYBOY and BUNNY trademarks in an effort to capitalize on PEI's established reputation in the PLAYBOY and RABBIT HEAD DESIGN marks. This is evidenced by defendant's establishment of a "link" between their website and PEI's actual PLAYBOY website at "Playboy.com" and their appropriation of the words "playboy" and "Bunny" to advertise their own on-line service.

Evidence of actual confusion is not required. It has long been recognized that because evidence of confusion is notoriously difficult to obtain, it is not necessary to find a likelihood of confusion. See, e.g., Coach Leatherware Co. v. Ann Taylor, Inc., 933 F.2d 162 (2d Cir. 1991); Lois Sportswear U.S.A., Inc. v. Levi Strauss & Co., 631 F. Supp. 735, 743 (S.D.N.Y.), aff'd, 799 F.2d 867 (2d Cir. 1986); Brockum Co. v. Blaylock, 729 F. Supp 438, 445 (E.D. Pa. 1990) (lack of evidence of actual confusion is not a bar to injunctive relief). PEI and defendant market their services through the same channel of trade: the Internet. The consuming public is likely to

believe the PEI is connected with defendants' hard core.

With respect to the dilution claim, dilution refers to the lessening of a mark's distinctiveness. Factors to be considered by the Court are: (1) similarity of the marks; (2) similarity of the products covered by the marks; (3) sophistication of customers; (4) predatory intent; (5) renown of senior mark; (6) renown of the junior mark; (7) the duration and extent of advertising of the mark; (8) the geographical extent of the trading area in which the mark is used; and (9) the nature and extent of use of the mark by third parties." 15 U.S.C. § 1125(c)(1); Wawa, Inc. v. Haaf, 40 U.S.P.Q. 2d 1629 (E.D. Pa. 1996) (citing Mead Data, Inc. v. Toyota Motor Sales, 875 F.2d 1026, 1035 (2d Cir. 1989) (Sweet, J. Concurring)). Applying the foregoing factors, the Court concludes that PEI has established its dilution claims with respect to the PLAYBOY trademark.

PEI has also alleged that defendants' activities constitute counterfeiting of PEI's registered trademark PLAYBOY in violation of 15 U.S.C. § 1116(d). In order to prove counterfeiting, a plaintiff must establish that the defendant (1) infringed a registered trademark in violation of 15 U.S.C. §1114(1)(a). (2) intentionally use the trademark knowing it was counterfeit or was willfully blind to such use. 15 U.S.C. §§ 1116(d), 1117(b); Nintendo of America, Inc. v. Brown, No. 95-15954, 1996 U.S. App. LEXIS 21373 (9th Cir. Aug. 12, 1996); Babbitt Electronics, Inc. v. Dynascan Corporation, 38 F.3d 1161, 1181 (11th Cir. 1994); Interstate Battery System v. Wright, 811 F. Supp. 237, 244-45 (N.D. Tex. 1993).

"Counterfeiting is the act of producing or selling a product with a sham trademark that is an intentional and calculated reproduction of the genuine trademark." 3 J. THOMAS McCARTHY, McCARTHY ON TRADEMARKS §25:10 (3d ed. 1997). A "counterfeit mark"

means:

a counterfeit of a mark that is registered on the principal register in the United States Patent and Trademark Office for such goods or services sold, offered for sale, or distributed and that is in use, whether or not the person against whom relief is sought knew such mark was so registered.

15 U.S.C. § 1116(d)(1)(B)(I); see Electronic Laboratory Supply Co. v. Motorola, Inc., Civ. No. 88-4494, 1989 U.S. Dist. LEXIS 16475, *6 (E.D. Pa. Sept. 20, 1989).

A “counterfeit” is a “spurious mark which is identical with, or substantially indistinguishable from, a registered mark.” 15 U.S.C. § 1127; Babbitt Electronics, supra at 1181.

Defendant Huberman contends that he cannot be held personally liable because he was acting as an officer of defendant Universal Tel-A-Talk and that it is defendant Universal Tel-A-Talk which committed the infringing acts complained of by PEI. However, the law is clear that “[a] corporate officer is individually liable for the torts he commits and cannot shield himself behind a corporation when he is an actual participant in the tort.” Donsco, Inc. v. Casper Corp., 587 F.2d 602, 606 (3d Cir. 1978).

This principle is applicable in cases brought under the Lanham Act. See, e.g., Donsco, 587 F.2d at 606 (unfair competition); Max Daetwyler Corp. v. Input Graphics, Inc., 541 F. Supp. 115 (E.D. Pa. 1982) (false advertising); Polo Fashions, Inc. v. BDB, Inc., 223 U.S.P.Q. 43, 44 (D.S.C. 1983) (counterfeiting).

The liability of a corporate officer who actively participates in the infringing acts is “distinct from the liability resulting from the ‘piercing of the corporate veil’ as that term is commonly used.” Donsco, 587 F.2d at 606; BDB, Inc., 223 U.S.P.Q. at 44. Moreover, “it is immaterial whether the officer knows that his acts will result in an infringement.” Polo Fashions,

Inc. v. Branded Apparel Merchandising, Inc., 592 F. Supp. 848, 652-53 (D. Mass. 1984).

The defendant Huberman actively participated in the infringing acts. Although Huberman did not physically type the html code for the website, he did make the decision to use the mark PLAYBOY and BUNNY and approved of all work done by Mr. Merkel on the website. In addition, Huberman approved all requests for subscriptions to the PLAYBOYS PRIVATE COLLECTION service.

The Lanham Act provides that a prevailing plaintiff who establishes infringement of its registered trademark is, subject to the principles of equity, entitled to recover (1) defendant's profits; (2) plaintiff's actual damages; and (3) costs of the action. 15 U.S.C. § 1117(a); see Ferrero U.S.A., Inc. v. Ozak trading, Inc., 952 F.2d 44, 47 (3d Cir. 1991); Automated Tool & Connector, Co. v. Amphanol Corp., Civ. No. 96-3249, 1997 U.S. Dist. LEXIS 22720, *1 (D.N.J. Nov. 17, 1997) (permitting accounting of profits even when defendant is "innocent" infringer). Here, defendants did not have any profits and plaintiff has failed to prove actual damages.

Nevertheless, when a violation of 15 U.S.C. § 1116(d) is involved, plaintiff may elect to recover statutory damages. Statutory damages for counterfeiting are (1) not less than \$500 or more than \$100,000 per counterfeit mark per type of goods or services sold; or (2) if the Court finds that the use of the counterfeit mark was willful, not more than \$1,000,000 per counterfeit mark per type of goods or services sold. 15 U.S.C. § 1117(c).

Defendants' use of PEI's registered trademark PLAYBOY in connection with the sale and offering for sale of adult entertainment images on the PLAYBOYS PRIVATE COLLECTION portion of defendant's adult-sex.com website is a counterfeit use under 15 U.S.C. §§ 1116(d) and 1117(c) entitling plaintiff to an award of statutory damages.

“Trademark policies are designed to ‘(1) to protect consumers from being misled as to the enterprise, or enterprises, from which the goods or services emanate or with which they are associated; (2) to prevent an impairment of the value of the enterprise which owns the trademark; and (3) to achieve these ends in a manner consistent with the objectives of free competition.’”
Intel Corp. v. Terabyte International, Inc., 6 F.3d 614, 618 (9th Cir. 1993) (quoting Anti-Monopoly, Inc. v. General Mills Fun Group, 611 F.2d 296, 300-01 (9th Cir. 1979).

To the extent this discussion contains findings of fact not specifically mentioned under that heading, they are to be regarded as though they were.

Accordingly, the Court arrives at the following

CONCLUSIONS OF LAW

1. This court has jurisdiction over the parties and the subject matter of this action. 15 U.S.C. § 1121, 28 U.S.C. § 1331, 28 U.S.C. § 1332 and 28 U.S.C. § 1338.
2. Defendants have infringed on Plaintiff’s PLAYBOY trademark.
3. Defendants have violated the anti-dilution provision of the Lanham Act, 15 U.S.C. § 1125(c) and Pennsylvania’s anti-dilution statute, 54 Pa.C.S. § 1125.
4. Defendants’ activities constituted counterfeiting of plaintiff’s registered trademark in violation of 15 U.S.C. § 1116(d).
5. PEI is entitled to judgment against Universal Tel-A-Talk and Stanley Huberman.
6. Defendant Adult Discount Toys is entitled to Judgment against plaintiff PEI.
7. PEI is entitled to recover statutory damages, reasonable counsel fees and costs.
8. PEI is entitled to an injunction permanently enjoining Universal Tel-A-Talk and Stanley Huberman from using the PLAYBOY trademark as more specifically spelled out in a

separate order filed herewith.

9. The court awards statutory damages in the amount of \$10,000.

10. Plaintiff is entitled to recover reasonable attorney's fees.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLAYBOY ENTERPRISES, INC. : CIVIL ACTION
v. :
UNIVERSAL TEL-A-TALK, INC., :
ADULT DISCOUNT TOYS, and :
STANLEY HUBERMAN : NO. 96-6961

INJUNCTION

AND NOW, this day of , 1998, in accordance with the Findings of Fact and Conclusions of Law filed herewith, it is hereby ORDERED:

1. Defendants, Tel-A-Talk and Stanley Huberman, their agents, servants, employees, successors, attorneys, and all those subject to their control are hereby ENJOINED from using the PLAYBOY trademarks or any colorable facsimile thereof in connection with their business, products, services or Web site and, from providing a link to Plaintiff's Web site "Playboy.com."

2. Defendants, their agents, employees, successors, attorneys and all persons in active concert and participation with it or them, are hereby ENJOINED from:

(a) using in any manner the PLAYBOY Trademarks or any term or terms likely to cause confusion therewith as Defendants' domain name, directory, or other such computer address, as the name of their Web site service, on their home page, on computer diskettes

or in connection with the retrieval of data or information or on other goods or services, or in connection with the advertising or promotion thereof so long as such goods or services do not emanate from or originate with PEI;

(b) using in any manner the PLAYBOY Trademarks in connection with Defendants' goods or services in such a manner that is likely to create an erroneous belief that said goods or services are authorized by, sponsored by, licensed by or are in some way associated with PEI;

(c) disseminating, using or distributing any Web site pages or other promotional materials whose appearance so resembles the Web site pages used by PEI as to create a likelihood of confusion, mistake or deception; or

(d) linking Defendants' Web site or services to PEI's Web site at "Playboy.com";

(e) otherwise engaging in any other acts or conduct which would cause consumers to erroneously believe that Defendants' goods or services are somehow sponsored by, authorized by, licensed by, or in any other way associated with PEI.

3. Defendants, their officers, agents, servants, employees, attorneys, parent companies, subsidiaries and related companies and all persons acting for, with, by, through or under them, are ENJOINED from diluting the distinctive quality of the PLAYBOY Trademarks.

BY THE COURT:

JOSEPH L. McGLYNN, JR. J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLAYBOY ENTERPRISES, INC. : CIVIL ACTION
v. :
UNIVERSAL TEL-A-TALK, INC., :
ADULT DISCOUNT TOYS, and :
STANLEY HUBERMAN : NO. 96-6961

O R D E R

AND NOW, this day of NOVEMBER, 1998, it is hereby

ORDERED that Judgment is entered in favor of the plaintiff Playboy Enterprises, Inc. and against the defendants Universal Tel-A-Talk, Inc. and Stanley Huberman in the amount of \$10,000, jointly and severally.

It is further ORDERED that Judgment is entered in favor of the defendant Adult Discount Toys and against the plaintiff Playboy Enterprises, Inc.

BY THE COURT:

JOSEPH L. McGLYNN, JR. J.