

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

OCT 30 2015


CLERK

<p>STURGIS MOTORCYCLE RALLY, INC.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RUSHMORE PHOTO & GIFTS, INC.; JRE, INC.; CAROL NIEMANN; PAUL A. NIEMANN; BRIAN M. NIEMANN; and WAL-MART STORES, INC.,</p> <p>Defendants.</p> <p>AND</p> <p>RUSHMORE PHOTO & GIFTS, INC.; JRE, INC.; CAROL NIEMANN; PAUL A. NIEMANN; BRIAN M. NIEMANN,</p> <p>Counterclaim-Plaintiffs,</p> <p>vs.</p> <p>STURGIS MOTORCYCLE RALLY, INC.,</p> <p>Counterclaim-Defendant.</p>	<p>CIV. 11-5052-JLV</p> <p>VERDICT FORM</p>
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**You are required to separately and independently consider each of the parties' claims.
Your decision on each response must be unanimous.**

REGISTERED TRADEMARK INFRINGEMENT CLAIMS

Before resolving these claims you must unanimously answer each of the following questions.

With regard to the STURGIS mark

	YES	NO	
Was the STURGIS certificate of registration obtained through fraudulent representations to the United States Patent & Trademark Office?		X	
Is the STURGIS mark registration invalid?		X	

If you answered "yes" to one or both of the above questions, do not complete the next section.
If you answered "no" to both of the above questions, please complete the following section.

	Rushmore Photo & Gifts, Inc.	JRE, Inc.	Carol Niemann	Paul Niemann	Brian Niemann	Wal-Mart
If you find a defendant infringed on the STURGIS mark, check the name of that defendant.	X		X	X	X	X
If you find that a defendant's infringement was willful and intentional, check the name of that defendant.	X		X	X	X	X

If you did not check the name of any defendant in the first question above you must find for the Defendants on SMRI's Registered Trademark Infringement Claim as it relates to the STURGIS mark. If you checked the name of one or more defendants in the first question above you must find for SMRI on its Registered Trademark Infringement Claim as it relates to the STURGIS mark.

	SMRI	Defendants
On SMRI's Registered Trademark Infringement Claim as it relates to the STURGIS mark we unanimously find in favor of:	X	

If you found in favor of the Defendants you must skip to the next mark. If you found in favor of SMRI, you may only assess money damages against a defendant who you found infringed on SMRI's STURGIS mark:

Rushmore Photo & Gifts, Inc.	\$ 25,000
JRE, Inc.	\$ 0
Carol Niemann	\$ 25,000
Paul Niemann	\$ 25,000
Brian Niemann	\$ 25,000
Wal-Mart Stores, Inc.	\$ 20,000

	YES	NO
Is any one of Defendants' Sturgis Designations a counterfeit of SMRI's STURGIS mark?		X

Please proceed to the next mark

With regard to the TAKE THE RIDE TO STURGIS mark						
	Rushmore Photo & Gifts, Inc.	JRE, Inc.	Carol Niemann	Paul Niemann	Brian Niemann	Wal-Mart
If you find a defendant infringed on the TAKE THE RIDE TO STURGIS mark, check the name of that defendant.						
If you find that a defendant's infringement was willful and intentional, check the name of that defendant.						
If you did not check the name of any defendant in the first question above you must find for the Defendants on SMRI's Registered Trademark Infringement Claim as it relates to the TAKE THE RIDE TO STURGIS mark. If you checked the name of one or more defendants in the first question above you must find for SMRI on its Registered Trademark Infringement Claim as it relates to the TAKE THE RIDE TO STURGIS mark.						
	SMRI			Defendants		
On SMRI's Registered Trademark Infringement Claim as it relates to the TAKE THE RIDE TO STURGIS mark we unanimously find in favor of:				X		
If you found in favor of the Defendants you must skip to the next mark. If you found in favor of SMRI, you may only assess money damages against a defendant who you found infringed on SMRI's TAKE THE RIDE TO STURGIS mark:						
Rushmore Photo & Gifts, Inc.	\$					
JRE, Inc.	\$					

Carol Niemann	\$					
Paul Niemann	\$					
Brian Niemann	\$					
Wal-Mart Stores, Inc.	\$					
	YES	NO				
Is any one of Defendants' Sturgis Designations a counterfeit of SMRI's TAKE THE RIDE TO STURGIS mark?						
Please proceed to the next mark						
With regard to the STURGIS BIKE WEEK mark						
	YES	NO				
Is the STURGIS BIKE WEEK mark invalid?		X				
If you answered "yes" to the preceding question, do not answer the remaining questions concerning the STURGIS BIKE WEEK mark. If you answered "no" please complete the following section.						
	Rushmore Photo & Gifts, Inc.	JRE, Inc.	Carol Niemann	Paul Niemann.	Brian Niemann	Wal-Mart
If you find a defendant infringed on the STURGIS BIKE WEEK mark, check the name of that defendant.	X	X	X	X	X	X

If you find that a defendant's infringement was willful and intentional, check the name of that defendant.	X	X	X	X	X	
If you did not check the name of any defendant in the first question above you must find for the Defendants on SMRI's Registered Trademark Infringement Claim as it relates to the STURGIS BIKE WEEK mark. If you checked the name of one or more defendants in the first question above you must find for SMRI on its Registered Trademark Infringement Claim as it relates to the STURGIS BIKE WEEK mark.						
	SMRI		Defendants			
On SMRI's Registered Trademark Infringement Claim as it relates to the STURGIS BIKE WEEK mark we unanimously find in favor of:	X					
If you found in favor of the Defendants you must skip to the next mark. If you found in favor of SMRI, you may only assess money damages against a defendant who you found infringed on SMRI's STURGIS BIKE WEEK mark:						
Rushmore Photo & Gifts, Inc.	\$ 15,000					
JRE, Inc.	\$ 15,000					
Carol Niemann	\$ 15,000					
Paul Niemann	\$ 15,000					
Brian Niemann	\$ 15,000					
Wal-Mart Stores, Inc.	\$ 20,000					

	YES	NO				
Is any one of Defendants' Sturgis Designations a counterfeit of SMRI's STURGIS BIKE WEEK mark?		X				
Please proceed to the next mark						
With regard to the BLACK HILLS MOTOR CLASSIC STURGIS RALLY & RACES BLACK HILLS S.D. mark (the "Composite Design Mark")						
	Rushmore Photo & Gifts, Inc.	JRE, Inc.	Carol Niemann	Paul Niemann	Brian Niemann	Wal-Mart
If you find a defendant infringed on the Composite Design Mark, check the name of that defendant.	X	X	X	X	X	X
If you find that a defendant's infringement was willful and intentional, check the name of that defendant.	X	X	X	X	X	X
If you did not check the name of any defendant in the first question above you must find for the Defendants on SMRI's Registered Trademark Infringement Claim as it relates to the Composite Design Mark. If you checked the name of one or more defendants in the first question above you must find for SMRI on its Registered Trademark Infringement Claim as it relates to the Composite Design Mark.						
	SMRI			Defendants		
On SMRI's Trademark Infringement Claim as it relates to the Composite Design Mark we unanimously find in favor of:	X					

If you found in favor of the Defendants you must skip to the next claim. If you found in favor of SMRI, you may only assess money damages against a defendant who you found infringed on SMRI's Composite Design Mark:

Rushmore Photo & Gifts, Inc.	\$	20,000	
JRE, Inc.	\$	20,000	
Carol Niemann	\$	20,000	
Paul Niemann	\$	20,000	
Brian Niemann	\$	20,000	
Wal-Mart Stores, Inc.	\$	20,000	
	YES	NO	
Is any one of Defendants' Sturgis Designations a counterfeit of SMRI's Composite Design Mark?	X		
Please proceed to the next claim			
UNREGISTERED TRADEMARK INFRINGEMENT CLAIMS			
Before resolving these claims you must unanimously answer each of the following questions:			
With regard to the STURGIS MOTORCYCLE RALLY mark			
	YES	NO	
Is the STURGIS MOTORCYCLE RALLY mark invalid?		X	

If you answered "yes" to the preceding question, do not answer the remaining questions concerning the STURGIS MOTORCYCLE RALLY mark. If you answered "no" please complete the following section.

	Rushmore Photo & Gifts, Inc.	JRE, Inc.	Carol Niemann	Paul Niemann	Brian Niemann	Wal-Mart
If you find a defendant infringed on the STURGIS MOTORCYCLE RALLY mark, check the name of that defendant.	X		X	X	X	X
If you find that a defendant's infringement was willful and intentional, check the name of that defendant.	X		X	X	X	X
If you did not check the name of any defendant in the first question above you must find for the Defendants on SMRI's Unregistered Trademark Infringement Claim as it relates to the STURGIS MOTORCYCLE RALLY mark. If you checked the name of one or more defendants in the first question above you must find for SMRI on its Unregistered Trademark Infringement Claim as it relates to the STURGIS MOTORCYCLE RALLY mark.						
	SMRI			Defendants		
On SMRI's Unregistered Trademark Infringement Claim as it relates to the STURGIS MOTORCYCLE RALLY mark we unanimously find in favor of:	X					
If you found in favor of the Defendants you must skip to the next mark. If you found in favor of SMRI, you may only assess money damages against a defendant who you found infringed on SMRI's STURGIS MOTORCYCLE RALLY mark:						
Rushmore Photo & Gifts, Inc.	\$ 12,500					

JRE, Inc.	\$	0				
Carol Niemann	\$	12,500				
Paul Niemann	\$	12,500				
Brian Niemann	\$	12,500				
Wal-Mart Stores, Inc.	\$	20,000				
Please proceed to the next mark						
With regard to the STURGIS RALLY & RACES mark						
		YES	NO			
Is the STURGIS RALLY & RACES mark invalid?			X			
If you answered "yes" to the preceding question, do not answer the remaining questions concerning the STURGIS RALLY & RACES mark. If you answered "no" please complete the following section.						
	Rushmore Photo & Gifts, Inc.	JRE, Inc.	Carol Niemann	Paul Niemann	Brian Niemann	Wal-Mart
If you find a defendant infringed on the STURGIS RALLY & RACES mark, check the name of that defendant.	X		X	X	X	X
If you find that a defendant's infringement was willful and intentional, check the name of that defendant.	X		X	X	X	X

If you did not check the name of any defendant in the first question above you must find for the Defendants on SMRI's Unregistered Trademark Infringement Claim as it relates to the STURGIS RALLY & RACES mark. If you checked the name of one or more defendants in the first question above you must find for SMRI on its Unregistered Trademark Infringement Claim as it relates to the STURGIS RALLY & RACES mark.

	SMRI	Defendants
On SMRI's Unregistered Trademark Infringement Claim as it relates to the STURGIS RALLY & RACES mark we unanimously find in favor of:	X	

If you found in favor of the Defendants you must skipto the next mark. If you found in favor of SMRI, you may only assess money damages against a defendant who you found infringed on SMRI's STURGIS RALLY & RACES mark.

Rushmore Photo & Gifts, Inc.	\$ 12,500
JRE, Inc.	\$ 0
Carol Niemann	\$ 12,500
Paul Niemann	\$ 12,500
Brian Niemann	\$ 12,500
Wal-Mart Stores, Inc.	\$ 20,000

Please proceed to the next mark

With regard to the STURGIS mark

If you found in favor of SMRI on its Registered Trademark Infringement Claim for its STURGIS mark you must not complete the following section. If you found against SMRI on its Registered Trademark Infringement Claim for the STURGIS mark you must complete the following section as to SMRI's Unregistered Trademark Claim for the STURGIS mark.

	YES	NO	
Is the STURGIS mark invalid?			

If you answered "yes" to the preceding question, do not answer the remaining questions concerning the STURGIS mark. If you answered "no" please complete the following section.

	Rushmore Photo & Gifts, Inc.	JRE, Inc.	Carol Niemann	Paul Niemann	Brian Niemann	Wal- Mart
If you find a defendant infringed on the STURGIS mark, check the name of that defendant.						
If you find that a defendant's infringement was willful and intentional, check the name of that defendant.						

If you did not check the name of any defendant in the first question above you must find for the Defendants on SMRI's Unregistered Trademark Infringement Claim as it relates to the STURGIS mark. If you checked the name of one or more defendants in the first question above you must find for SMRI on its Unregistered Trademark Infringement Claim as it relates to the STURGIS mark.

	SMRI	Defendants
On SMRI's Unregistered Trademark Infringement Claim as it relates to the STURGIS mark we unanimously find in favor of:		
If you found in favor of the Defendants you must skip to the next claim. If you found in favor of SMRI, you may only assess money damages against a defendant who you found infringed on SMRI's STURGIS mark:		
Rushmore Photo & Gifts, Inc.	\$	
JRE, Inc.	\$	
Carol Niemann	\$	
Paul Niemann	\$	
Brian Niemann	\$	
Wal-Mart Stores, Inc.	\$	
Please proceed to the next claim		

TRADEMARK DILUTION CLAIM

If you found SMR's registered STURGIS mark was either obtained by fraudulent representations or invalid, you must not complete the following section. Otherwise, you must complete the following section as to SMRI's Trademark Dilution claim for the STURGIS mark.

	SMRI	Defendants
On SMRI's Trademark Dilution Claim we unanimously find in favor of:	X	

If you found in favor of the Defendants you must skip to the next claim. If you found in favor of SMRI, you may only assess money damages against a defendant who you found diluted SMRI's STURGIS mark:

Rushmore Photo & Gifts, Inc.	\$ 18,750
JRE, Inc.	\$ 0
Carol Niemann	\$ 18,750
Paul Niemann	\$ 18,750
Brian Niemann	\$ 18,750
Wal-Mart Stores, Inc.	\$ 32,500

Please proceed to the next claim

DECEPTIVE TRADE PRACTICES CLAIM

	SMRI	Defendants
On SMRI's Deceptive Trade Practices Claim we unanimously find in favor of:	X	

If you found in favor of the Defendants you must skip to the next claim. If you found in favor of SMRI, you may only assess money damages against a defendant who you found engaged in deceptive trade practices:

Rushmore Photo & Gifts, Inc.	\$ 18,750
JRE, Inc.	\$ 0
Carol Niemann	\$ 18,750
Paul Niemann	\$ 18,750
Brian Niemann	\$ 18,750
Wal-Mart Stores, Inc.	\$ 32,500

Please proceed to the next claim

ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT CLAIM

If you find that a defendant violated SMRI's rights under the Anti-Cybersquatting Consumer Protection Act check the name of that defendant with regard to one or more of the following domain names:						
	Rushmore Photo & Gifts, Inc.	JRE, Inc.	Carol Niemann	Paul Niemann	Brian Niemann	
AuthenticSturgis.com	✓	✓			✓	
Legendary-Sturgis.com	✓	✓			✓	
LicensedSturgis.com	✓	✓			✓	
OfficialSturgis.com	✓	✓			✓	
SturgisCentral.com	✓	✓			✓	

SturgisMotorClassic.com	✓	✓			✓	
SturgisRallyOnline.com	✓	✓			✓	
<p>If you did not check the name of any defendant in the question above you must find for the Defendants on SMRI's Anti-Cybersquatting Consumer Protection Act claim. If you checked the name of one or more defendants in the question above you must find for SMRI on its Anti-Cybersquatting Consumer Protection Act claim.</p>						
	SMRI			Defendants		
On SMRI's Anti-Cybersquatting Consumer Protection Act Claim we unanimously find in favor of:	X					
<p>If you found in favor of the Defendants you must skip to the next claim. If you found in favor of SMRI, you may only assess money damages against a defendant who you found violated the Anti-Cybersquatting Consumer Protection Act:</p>						
Rushmore Photo & Gifts, Inc.	\$	2,500				
JRE, Inc.	\$	2,500				
Carol Niemann	\$	0				
Paul Niemann	\$	0				
Brian Niemann	\$	2,500				
Wal-Mart Stores, Inc.	\$	0				
Please proceed to the next claim						

FALSE ADVERTISING CLAIM		
	SMRI	Defendants
On SMRI's False Advertising Claim we unanimously find in favor of:	X	
If you found in favor of the Defendants you must to the next claim. If you found in favor of SMRI, you may only assess money damages against a defendant who you found engaged in false advertising.		
Rushmore Photo & Gifts, Inc.	\$ 15,000	
JRE, Inc.	\$ 15,000	
Carol Niemann	\$ 15,000	
Paul Niemann	\$ 15,000	
Brian Niemann	\$ 15,000	
Wal-Mart Stores, Inc.	\$ 32,500	
Please proceed to the next claim		
UNFAIR COMPETITION CLAIM		
	SMRI	Defendants
On SMRI's Unfair Competition Claim we unanimously find in favor of:	X	
If you found in favor of the Defendants you must to the next claim. If you found in favor of SMRI, you may only assess money damages against a defendant who you found unfairly competed with SMRI.		
Rushmore Photo & Gifts, Inc.	\$ 18,750	

JRE, Inc.	\$	0
Carol Niemann	\$	18,750
Paul Niemann	\$	18,750
Brian Niemann	\$	18,750
Wal-Mart Stores, Inc.	\$	32,500
Please proceed to the next claim		
FRAUDULENT REGISTRATION CLAIM		
	SMRI	Rushmore Photo & Giftss, Inc.
On the Fraudulent Registration Claim of Rushmore Photo & Gifts, Inc., we unanimously find in favor of:	X	
If you found in favor of SMRI you must to the next claim. If you found in favor of Rushmore Photo & Gifts, Inc., you may assess money damages against SMRI and in favor of Rushmore Photo & Gifts, Inc.:		
Rushmore Photo & Gifts, Inc.	\$	
Please proceed to the next claim		
INTERFERENCE WITH BUSINESS RELATIONSHIPS CLAIM		
	SMRI	Rushmore Photo & Gifts, Inc.
On the Interference with Business Relationships Claim of Rushmore Photo & Gifts, Inc., we unanimously find in favor of:	X	

If you found in favor of SMRI you must skip the next section. If you found in favor of Rushmore Photo & Gifts, Inc., you may assess money damages against SMRI and in favor of Rushmore Photo & Gifts, Inc.:

Rushmore Photo & Gifts, Inc.

\$

Dated: 10/30/2015

Signature of Foreperson _____