

**United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

GIBSON BRANDS, INC.,

Plaintiff,

v.

ARMADILLO DISTRIBUTION
ENTERPRISES, INC., and CONCORDIA
INVESTMENT PARTNERS, LLC,

Defendants.

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Civil Action No. 4:19-CV-358
Judge Mazzant

VERDICT FORM

SECTION 1: INFRINGEMENT - ARMADILLO

Question No. 1:

Do you find, by a preponderance of the evidence, that Armadillo infringed an alleged Gibson trademark and engaged in unfair competition in a manner that creates, when viewed in its entirety, a likelihood of confusion among ordinary consumers as to the source, affiliation, or sponsorship of Armadillo's products?

Answer "Yes" or "No" for each trademark listed below:

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The ES Body Shape: Yes

The SG Body Shape: Yes

The Dove Wing Headstock: Yes

The HUMMINGBIRD: Yes

The FLYING V: No

If you answered "Yes" for any trademark, please proceed to Question No. 2. If you answer "No" for each trademark, please proceed to Section 8.

Question No. 2:

Do you find by a preponderance of the evidence that Armadillo sold or marketed a counterfeit of any alleged Gibson trademark?

Answer "Yes" or "No" for each trademark listed below. You should only provide an answer for those trademarks which you answered "Yes" in Question No. 1.

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The SG Body Shape: Yes

The Dove Wing Headstock: No

The HUMMINGBIRD: Yes

The FLYING V: _____

If you answered "Yes" for any trademark in Question No. 2, please proceed to Question No. 3. Otherwise, please proceed to Section 2.

Question No. 3

Do you find, by a preponderance of the evidence, that Armadillo willfully infringed an alleged Gibson trademark?

Answer "Yes" or "No" for each trademark listed below. You should provide an answer for those trademarks which you answered "Yes" in Question No. 2.

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The ES Body Shape: Yes

The SG Body Shape: Yes

The Dove Wing Headstock: _____

The HUMMINGBIRD: Yes

The FLYING V: _____

Please proceed to Section 2.

SECTION 2: LACHES - ARMADILLO

If you answered “Yes” for any of the trademarks in Question No. 1, please answer the question below. Otherwise, please proceed to Section 8.

Question No. 4:

Do you find, by a preponderance of the evidence, that Gibson delayed in asserting its trademark right(s) against Armadillo?

Answer “Yes” or “No” for each trademark listed below. You should only provide an answer for those trademarks which you answered “Yes” in Question No. 1.

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The ES Body Shape: No

The SG Body Shape: No

The Dove Wing Headstock: Yes

The HUMMINGBIRD: No

The FLYING V: _____

If you answered "Yes" for any trademark in Question No. 4, answer the question below. Otherwise, please proceed to Section 3.

Question No. 5:

Do you find, by a preponderance of the evidence, that Gibson's delay was inexcusable and caused undue prejudice to Armadillo?

Answer "Yes" or "No" for each trademark listed below. You should only provide an answer for those trademarks which you answered "Yes" in Question No. 4.

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The ES Body Shape: _____

The SG Body Shape: _____

The Dove Wing Headstock: Yes

The HUMMINGBIRD: _____

The FLYING V: _____

If you answered "Yes" for any trademark in Question No. 5, please proceed to Question No. 6. Otherwise, please proceed to Section 3.

Question No. 6:

Has Gibson proven, by a preponderance of the evidence, that Armadillo at any point had "unclean hands" in connection with its use of an alleged Gibson trademark?

Answer "Yes" or "No" for each trademark listed below. You should only provide an answer for those trademarks which you answered "Yes" in Question No. 5.

The Flying V Body Shape: No

The Explorer Body Shape: No

The ES Body Shape: _____

The SG Body Shape: _____

The Dove Wing Headstock: No

The HUMMINGBIRD: _____

The FLYING V: _____

Please proceed to Section 3.

SECTION 3: CONTRIBUTORY INFRINGEMENT - CONCORDIA

If you answered "Yes" for any of the trademarks in Question No. 1, answer the following question. Otherwise, please proceed to Section 8.

Question No. 7:

Do you find by a preponderance of the evidence that Concordia contributed to Armadillo's conduct in infringing of the alleged Gibson trademarks?

Answer "Yes" or "No" for each trademark listed below:

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The ES Body Shape: YES

The SG Body Shape: Yes

The Dove Wing Headstock: Yes

The HUMMINGBIRD: Yes

The FLYING V: No

If you answered "Yes" for any trademark in Question No. 7, please proceed to Section 4.

If you answered "No" for all of the trademarks in Question No. 7, but answered "Yes" for any trademark in Question No. 1, please proceed to Section 5.

If you answered "No" for all of the trademarks Question No. 7, and if you answered "No" for all of the trademarks in Question No. 1, please proceed to Section 8.

SECTION 4: LACHES - CONCORDIA

If you answered "Yes" for any of the trademarks in Question No. 1, and if you answered "Yes" for any of the trademarks in Question No. 7, please answer the question below. Otherwise, please proceed to Section 5.

Question No. 8:

Do you find, by a preponderance of the evidence, that Gibson delayed in asserting its trademark right(s) against Concordia?

Answer "Yes" or "No" for each trademark listed below. You should only provide an answer for those trademarks which you answered "Yes" in Question No. 1.

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The ES Body Shape: No

The SG Body Shape: No

The Dove Wing Headstock: Yes

The HUMMINGBIRD: No

The FLYING V: _____

If you answered "Yes" for any trademark in Question No. 8, answer the question below. Otherwise, please proceed to Section 5.

Question No. 9:

Do you find, by a preponderance of the evidence, that Gibson's delay was inexcusable and caused undue prejudice to Concordia?

Answer "Yes" or "No" for each trademark listed below. You should only provide an answer for those trademarks which you answered "Yes" in Question No. 8.

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The ES Body Shape: _____

The SG Body Shape: _____

The Dove Wing Headstock: Yes

The HUMMINGBIRD: _____

The FLYING V: _____

If you answered "Yes" for any trademark in Question No. 9, please proceed to Question No. 10. If you answered "No" for each trademark, please proceed to Section 5.

Question No. 10:

Has Gibson proven, by a preponderance of the evidence, that Concordia at any point had "unclean hands" in connection with its use of an alleged Gibson trademark?

Answer "Yes" or "No" for each trademark listed below. You should only provide an answer for those trademarks which you answered "Yes" in Question No. 9.

The Flying V Body Shape: No

The Explorer Body Shape: No

The ES Body Shape: _____

The SG Body Shape: _____

The Dove Wing Headstock: No

The HUMMINGBIRD: _____

The FLYING V: _____

Please proceed to Section 5.

SECTION 5: DAMAGES

If you answered "Yes" for any trademark in Question No. 1, and if you answered "Yes" for any trademark in Question Nos. 4 and 5, and if you answered "No" for Question No. 6, answer the following question. Otherwise, please proceed to Section 6.

Question No. 11:

Has Gibson proven by a preponderance of the evidence that Gibson suffered actual damages as a result of Armadillo's infringement?

Answer "Yes" or "No."

Answer: No

If you answered "Yes" to Question No. 11, please answer Question No. 12. Otherwise, please proceed to Section 6.

Question No. 12:

What sum of money, if paid now in cash, would fairly and reasonably compensate Gibson for profits earned by Armadillo for its infringement, if any?

Answer in dollars and cents, if any.

Answer: ^{0.00}
~~4000.00~~ SK

Please proceed to Section 6.

SECTION 6: STATUTORY DAMAGES

If you answered "Yes" for any trademark in Question No. 2, and if you answered "Yes" for any trademark in Question Nos. 4 and 5, and if you answered "No" for Question No. 6, answer the question below. Otherwise, please proceed to Section 7.

Question No. 13:

What sum of money, if paid now in cash, do you find Gibson has proven by a preponderance of the evidence in counterfeiting statutory damages, if any, per counterfeit trademark per type of goods sold, offered for sale, or distributed?

Answer in dollars and cents, if any.

Answer: 4000.00

Please proceed to Section 7.

SECTION 7: EXEMPLARY DAMAGES

If you answered "Yes" to Question No. 11, answer the following question. Otherwise, please proceed to Section 8.

Question No. 14:

Do you find by clear and convincing evidence that the harm to Gibson resulted from malice?

Answer "Yes" or "No" for each Defendant listed below. But only answer for Concordia if you answered "Yes" for any of the trademarks in Question No. 7, and if you answered "Yes" for any trademarks in Question Nos. 8 and 9, and if you answered "No," for Question No. 10.

Armadillo: _____

Concordia: _____

If you answered "Yes" for either Defendant in Question No. 14, please proceed to Question No. 15. Otherwise, please proceed to Section 8.

Question No. 15:

What sum of money, if paid now in cash, should be assessed against Armadillo and awarded to Gibson as exemplary damages, if any, for the conduct found in response to Question No. 14?

Answer in dollars and cents, if any.

Answer: _____

Question No. 16:

What sum of money, if paid now in cash, should be assessed against Concordia and awarded to Gibson as exemplary damages, if any, for the conduct found in response to Question No. 14?

Answer in dollars and cents, if any.

Answer: _____

Please proceed to Section 8.

SECTION 8: CANCELLATION

Question No. 17:

Do you find, by a preponderance of the evidence, that any of the Gibson trademark registrations should be cancelled because they are generic?

Answer "Yes" or "No" for each trademark listed below:

The Flying V Body Shape: No

The Explorer Body Shape: No

The ES Body Shape: No

The SG Body Shape: No

Please proceed to Section 9.

SECTION 9: TORTIOUS INTERFERENCE

Question No. 18:

Do you find, by a preponderance of the evidence, that Gibson tortiously interfered with Armadillo's prospective business relation(s)?

Answer "Yes" or "No."

Answer: No

If you answered "Yes" to Question No. 18, answer Question No. 19.

If you answered "No" to Question No. 18, do not answer any other questions. Please proceed to the last page to sign and date the Jury Verdict.

Question No. 19:

Do you find, by a preponderance of the evidence, that Gibson justifiably interfered with Armadillo's prospective business relation(s)?

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" to Question No. 19, do not answer any other questions. Please proceed to the last page to sign and date the Jury Verdict.

If you answered "No" to Question No. 19, answer Question No. 20.

Question No. 20:

What sum of money, if any, if paid now in cash, has Armadillo proven, by a preponderance of the evidence, would fairly and reasonably compensate Armadillo for its actual damages, if any, that proximately resulted from Gibson's conduct?

Answer in dollars and cents, if any.

Answer: _____

Please proceed to Question No. 21.

Question No. 21:

Do you find by clear and convincing evidence that the harm to Armadillo resulted from malice?

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" to Question No. 21, please proceed to Question No. 22. Otherwise, do not answer any other questions. Please proceed to the last page to sign and date the Jury Verdict.

Question No. 22:

What sum of money, if any, if paid now in cash, should be assessed against Gibson and awarded to Armadillo as exemplary damages, if any, for the conduct found in response to Question No. 21?

Answer in dollars and cents, if any.

Answer: _____

Please proceed to the last page to sign and date the Jury Verdict.

Foreperson's Initials: _____

_____ Date: 5-27-22