

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Flava Works, Inc.,)	
)	
Plaintiff,)	
)	Honorable John F. Grady
v.)	
)	Case No. 1:10-cv-06517
Marques Rondale Gunter d/b/a myVidster.com,)	
SalsaIndy, LLC, John Does 1-26, Voxel Dot Net,)	JURY TRIAL DEMANDED
Inc.,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Marques Rondale Gunter and SalsaIndy, LLC ("SalsaIndy"), by their attorneys, Neal, Gerber & Eisenberg LLP, hereby move to dismiss all seven counts of Plaintiff's Amended Complaint. This motion is made that the Complaint because it fails to state a claim upon which relief can be granted:

Plaintiff's first claim, for alleged direct copyright infringement, fails to state a claim upon which relief can be granted, because Plaintiff has not alleged and cannot allege that SalsaIndy has copied Plaintiff's works or otherwise acted volitionally to infringe Plaintiff's works. Plaintiff's second claim, for contributory copyright infringement, also fails to state a claim upon which relief can be granted because Plaintiff has not alleged that SalsaIndy materially contributed to any allegedly infringing acts it had knowledge of. Plaintiff's third claim, for inducement of copyright infringement, fails to state a claim upon which relief can be granted because Plaintiff has not alleged and cannot allege that SalsaIndy had the specific intent that its services be used to infringe Plaintiff's protected works or that SalsaIndy took active steps to encourage users of the myVidster website to infringe Plaintiff's protected works. Plaintiff's fourth claim, for vicarious copyright infringement claim, fails to state a claim upon which relief

can be granted because Plaintiff has not alleged and cannot allege that SalsaIndy had the right and ability to control the allegedly infringing content or that SalsaIndy received a direct financial benefit from the allegedly infringing content. All of Plaintiff's Trademark Claims, which include: (i) false designation of origin; (ii) trademark and trade dress infringement under the Lanham Act; and (iii) trademark infringement and unfair competition under the laws of the State of Illinois, also fail to state a claim upon which relief can be granted because Plaintiff has not alleged that SalsaIndy used Plaintiff's marks in commerce.

WHEREFORE, for the foregoing reasons, SalsaIndy respectfully requests that the Court grant Defendants' Motion to Dismiss Plaintiff's Amended Complaint.

Respectfully submitted,

Date: January 10, 2011

/s/William J. Lenz
One of the Attorneys for Defendants,
Marques Rondale Gunter and SalsaIndy, LLC

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CERTIFICATE OF SERVICE

I, Gregory J. Leighton, an attorney, state that I caused a copy of the foregoing, Defendants' Motion to Dismiss Plaintiff's Amended Complaint, to be served upon the following counsel of record via the Court's ECF system on this 10th day of January, 2011:

Meanith Huon
Huon Law Office
P.O. Box 441
Chicago, Illinois 60690

/s/Gregory Leighton
Gregory J. Leighton

NGEDOCs: 1761532.1