

The Twisted Case of Jeff Koons and Balloon Dogs

Several days ago, I read about a strange-but-true premises liability case reported by Courthouse News Service,¹ in which a woman is suing her apartment complex because she was allegedly injured when she slipped and fell on a slick, debris-covered grate on the grounds of the complex. The kicker is that at the time of the accident she was busy removing a yogurt container from the head of a wild skunk.

In the same “*Wait . . . they sued over what?*”—vein is the case of *Alexander & Song LLC, d.b.a. Park Life v. Jeff Koons LLC*, filed on January 20, 2011 in the United States District Court, Northern District of California.² This case was also the subject of an article by Courthouse News.³ The plaintiff is a bookstore and art gallery called Park Life, which has a storefront in San Francisco as well an online store.⁴ The defendant, Jeff Koons LLC (“Koons LLC”), is a Delaware limited liability company formed on December 3, 2004, which, according to its complaint, Park Life believes is the entity representing the intellectual property rights of artist Jeff Koons (“Koons”).⁵

On or about December 20, 2010, Koons LLC sent a “cease and desist” letter to Park Life concerning its sale of a bookend that resemble a balloon dog,⁶ which is a dog-shaped figure formed from a twisted balloon (of the long, thin variety) by clowns, magicians, and the like, at children’s birthday parties and other events in dire need of wonder and excitement. In the letter, Koons LLC asserts that Park Life is violating Koons’ intellectual property rights because the bookend has the same “shape and style” as his well-known Balloon Dog Sculpture.⁷ Further, Koons LLC

claims that the masses that purchase the bookends will be under the misapprehension that they are associated with or endorsed by Koons.⁸

In the letter, Koons LLC demanded that Park Life:

1. cease and desist all advertisements, marketing, or promotions concerning the Balloon Dog Bookend (including on its website);
2. cease and desist all sale and/or distribution of the Balloon Dog Bookend;
3. send all existing and remaining inventory of the Balloon Dog Bookend in Park Life's possession to a mutually agreed address;
4. provide an accounting of all sales of the Balloon Dog Bookend;
5. provide written assurance that Park Life will no longer make, offer for sale, sell and/or distribute the Balloon Dog Bookend (or anything substantially similar to the Balloon Dog Bookend); and
6. identify the original source of the Balloon Dog Bookend (*e.g.* manufacturer), including such source's name and address.⁹

In its suit, Park Life seeks a declaratory judgment that the Balloon Dog Bookend, which is manufactured by a third party,¹⁰ does not infringe on Koons LLC's intellectual property rights—copyrights, trademarks (under the Lanham Act, 15 U.S.C. § 1051, et seq.), or other such rights—if any.¹¹ Park Life additionally requests an injunction prohibiting Koons LLC from threatening or bringing a lawsuit against it for violation of intellectual property rights with respect to the bookends. The case was assigned to Magistrate Judge Laurel Beeler who, in turn, assigned it to the court's ADR Multi-Option Program.

This case will surely be followed closely by the aforementioned clowns and magicians, as well as Vince Vaughn, should *Wedding Crashers 2* get green lit.

UPDATE: As of January 30, 2011, the bookend is available for purchase on Park Life's website for \$55.00, and is described as follows:

Based on the classic art of balloon animal making, this bookend is shaped like a dog. Available in two colors, periwinkle and orange. Cast Resin with Painted Matte finish. 10.5" x 3.5" x 8.5", 6 lbs Individually boxed.¹²

¹ www.courthousenews.com/2011/01/14/33320.htm.

² Case no. 4:11-cv-00308-LB; U.S. Magistrate Judge Laurel Beeler.

³ www.courthousenews.com/2011/01/21/33491.htm. See time-stamped complaint at www.courthousenews.com/2011/01/21/Koons.pdf.

⁴ See online store at www.parklifestore.com.

⁵ Complaint at ¶ 7.

⁶ *Id.* at ¶ 16.

⁷ Many of you never thought you would see the term "intellectual" in the same sentence as "Balloon Dog," but there it is.

⁸ *Id.*

⁹ *Id.* at ¶ 17.

¹⁰ *Id.* at ¶ 22.

¹¹ *Id.* at ¶ 23.

¹² http://www.parklifestore.com/Merchant2/merchant.mvc?Screen=PROD&Store_Code=PLS&Product_Code=BALLOONDOGPERRIWINKLE&Category_Code=.

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