UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| E'STEPHENIE, INC., Plaintiff / Counter-Defendant | ) | |
| vs. | ) | 1:04-cv-1235-LJM-WTL |
| GREEK HOUSE INTERNATIONAL, LLC, E RETAILING ASSOCIATES, LLC, d/b/a CUSTOMIZEDGIRL.COM, JOE THIBAULT, and BRIAN THIBAULT, Defendants / Counter-Plaintiffs | ) | |

**ORDER ON MOTIONS FOR SUMMARY JUDGMENT**

This cause is before the Court on defendants' / counter-plaintiffs', Greek House International, LLC, E Retailing Associates, LLC, d/b/a Customizedgirl.com, Joe Thibault, and Brian Thibault ("Customizedgirl"), motion for summary judgment, partial motion for summary judgment on counterclaims, and plaintiff's / counter-defendant's, E'Stephenie, Inc. ("E'Stephenie"), motion for partial summary judgment on counterclaims, all pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1.

E'Stephenie filed its seven-count Complaint in July 2004, alleging false designation of origin and unfair competition under the United States Trademark Act (the "Lanham Act"), trade dress infringement and dilution, common law trade dress infringement, common law copyright infringement, unfair competition, conversion, violations of the Indiana Crime Victim's Act, Indiana Code § 34-2-3-1 *et seq.*, interference with prospective economic advantage, and unjust enrichment. On November 10, 2005, E'Stephanie voluntarily dismissed with prejudice the conversion and

copyright infringement counts. Greek House counterclaims federal and common law trademark infringement, and unfair competition.

For the reasons stated herein, the Court **GRANTS** Greek House's motion for summary judgment, **DENIES** Greek House's motion for partial summary judgment on counterclaims, and **DENIES AS MOOT** Greek House's motion entitled "Offer for Oral Argument." Further, the Court **GRANTS** E'Stephenie's motion for partial summary judgment on counterclaims as to all federal claims, and **DISMISSES WITHOUT PREJUDICE** all state claims.

## II. BACKGROUND[1]

Greek House, an Ohio Company, specialized in the sale of custom apparel for collegiate "Greek" fraternities and sororities, as well as other personalized apparel. Def.'s Exh. 1, ¶ 2. Greek House adopted Customized Girl as its trademark for a new product line featuring customized apparel for women. *Id.*, ¶ 5. The Greek House website (www.greek-house.com) then began marketing the Customized Girl product line. *Id.*, ¶ 6.

Greek House representatives visited 25 colleges and universities throughout the Midwest to promote its Customized Girl line. *Id.*, ¶ 7. Greek House hired students from a number of colleges to act as independent sales representatives to promote and market Greek House merchandise, including its Customized Girl line, on their campuses. *Id.*, ¶ 9. Greek House began realizing sales from the Customized Girl line and continued to sell its Customized Girl product line through personal visits to campuses, a catalog, and online orders. *Id.*, ¶ 5.

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[1] The parties dispute most of the dates relevant to the facts discussed. However, with regard to the instant motion, those disputes prove to be inconsequential to the Court's decision in this matter.

Greek House later registered the domain name www.customizedgirl.com and began operating a website using that name shortly thereafter. *Id.*, ¶ 6.

E'Stephanie uses the term "Custom Glam Girl" to market and sell apparel. Comp., ¶ 19. E'Stephenie applied to federally register the term Custom Glam Girl on June 29, 2004, and to register the term CustomGlamGirl in August, 2005.[2] Both applications remain pending.

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## III. SUMMARY JUDGMENT STANDARD

As stated by the Supreme Court, summary judgment is not a disfavored procedural shortcut, but rather is an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). *See also United Ass'n of Black Landscapers v. City of Milwaukee*, 916 F.2d 1261, 1267-68 (7th Cir. 1990), *cert. denied*, 111 S.Ct. 1317 (1991). Motions for summary judgment are governed by Rule 56(c) of the Federal Rules of Civil Procedure, which provides in relevant part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Once a party has made a properly-supported motion for summary judgment, the opposing party may not simply rest upon the pleadings but must instead submit evidentiary materials which "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). A genuine issue of material fact exists whenever "there is sufficient evidence favoring the nonmoving

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[2] For the purposes of the instant motion, the Court shall refer to both marks as "CustomGlamGirl," but makes no distinction between the two marks.

party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992, 997 (7th Cir. 1996), *cert. denied*, 520 U.S. 1116 (1997). It is not the duty of the court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying the evidence upon which he relies. *See Bombard v. Fort Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996). When the moving party has met the standard of Rule 56, summary judgment is mandatory. *Celotex*, 477 U.S. at 322-23; *Shields Enters., Inc. v. First Chicago Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992).

In evaluating a motion for summary judgment, a court should draw all reasonable inferences from undisputed facts in favor of the nonmoving party and should view the disputed evidence in the light most favorable to the nonmoving party. *See Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996), *cert. denied*, 519 U.S. 1109 (1997). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive law will preclude summary judgment. *See Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Irrelevant or unnecessary facts do not deter summary judgment, even when in dispute. *See Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992). "If the nonmoving party fails to establish the existence of an element essential to his case, one on which he would bear the burden of proof at trial, summary judgment must be granted to the moving party." *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996), *cert. denied*, 519 U.S. 1115 (1997).

## IV. DISCUSSION

### A. E'STEPHENIE'S TRADEMARK INFRINGEMENT CLAIM

In a trademark dispute, the Court first inquires whether any party has trademark rights in the words or symbols that are at issue. *See TMT N. Am., Inc., Magic Touch GmbH.*, 124 F.3d 876, 881 (7th Cir. 1997). While federal registration of a mark provides it with certain advantages, including the presumption of validity, *see* 15 U.S.C. § 1115(a); *CAE, Inc. v. Clean Air Eng'g, Inc.*, 267 F.3d 660, 673 (7th Cir.2001), a mark need not be registered to be protected under the Lanham Act. *See Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992). A mark also is protectable once it is used in commerce. 15 U.S.C. §§ 1125(a), 1127. *See also TMT'N*, 124 F.3d at 881; *Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 954-55 (7th Cir. 1992).

E'Stephenie's claim is brought under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), which prohibits infringement of unregistered marks. To succeed on this claim, E'Stephenie must demonstrate: (1) the validity of CustomGlamGirl, and (2) the infringement of that mark. *See Platinum Home Mortgage Corp. v. Platinum Fin. Group, Inc.*, 149 F.3d 722, 726 (7th Cir. 1998) (citing *Echo Travel, Inc. v. Travel Assocs., Inc.*, 870 F.2d 1264, 1266 (7th Cir. 1989)). The first element, validity, pertains to whether a "word, term, name, symbol or device" is entitled to protection. The inquiry focuses on whether a mark specifically identifies and distinguishes one company's goods or services from those of its competitors. *See id.* "The infringement of a mark concerns whether the actions of a subsequent user of a substantially similar or identical mark causes a likelihood of confusion among consumers as to the source of those specific goods or services." *Id.* "When the identifying 'word, term, name, symbol or device' claimed as a trade name or mark

is not registered with the United States Patent and Trademark Office, the burden is on the claimant . . . to establish that it is entitled to protection." *Id.*

Marks are classified into five categories of increasing distinctiveness: (1) generic, (2) descriptive, (3) suggestive, (4) arbitrary, and (5) fanciful. *See Mil-Mar Shoe Co., Inc. v. Shonac Corp.*,75 F.3d 1153, 1156 (7th Cir. 1996). In general, the level of trademark protection available accords with the distinctiveness of the mark. As a result, generic terms receive no trademark protection, and descriptive marks are protected only if they have achieved "secondary meaning" in the relevant community. *See id.* Suggestive, arbitrary, and fanciful marks are deemed inherently distinctive, and thus are entitled to full protection. *See id.*

A generic term is one that is commonly used to name or designate a kind of goods. *See id.* "Unlike a trademark, which identifies the source of a product, a generic term merely specifies the type, or genus, of thing into which common linguistic usage consigns that product." *Id.* (citing *Gimix, Inc. v. JS&A Group, Inc.*, 699 F.2d 901, 905 (7th Cir. 1983)). On the other hand, a descriptive mark is one that merely describes the ingredients, qualities, or characteristics of an article of trade or service. Such marks generally are not protectable as trademarks, "both because they are poor means of distinguishing one source of services from another and because they are often necessary to the description of all goods or services of a similar nature." *Id.* (citing *Liquid Controls Corp. v. Liquid Control Corp.*, 802 F.2d 934, 936 (7th Cir. 1986)). As such, descriptive marks are only protectable where the holder can establish that the mark has acquired "secondary meaning" in the collective consciousness of the relevant community. *See id.* Finally, if a mark stands for an idea which requires some operation of the imagination to connect it with the goods, it is suggestive. If

the mark imparts information directly it is descriptive. *See Platinum Home Mortgage Corp.*, 149 F.3d at 727.

Greek House argues that E'Stephenie cannot establish that the term is a valid mark because it is either generic (and, therefore, not entitled to any protection), or merely descriptive of E'Stephenie's goods, and E'Stephenie cannot show that the term has secondary meaning. E'Stephenie makes two arguments that CustomGlamGirl is not merely descriptive, both of which the Court rejects. First, E'Stephenie argues that because some thought or perception is required to determine the nature of the goods and services from the mark, then the mark is suggestive and is protectable without proof of secondary meaning, *see Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 052 (7th Cir. 1992). And, because it is in the business of selling apparel over the Internet, CustomGlamGirl does not "immediately convey" the qualities or characteristics of an on-line store. The Court disagrees. E'Stephenie is undisputably in the business of selling customized glamorous products for girls, and, true, they do so by means of the internet. But the method by which E'Stephenie's customers make purchases is irrelevant. Whether by means of a conventional retail store, by mail-order catalogs, or, as in this case, through internet-based sales, E'Stephenie must associate its *goods* with the term CustomGlamGirl, not potential means of procuring sales of those goods.

Second, E'Stephenie asserts that the Indiana Secretary of State's Office found CustomGlamGirl is not descriptive.[3] E'Stephenie cites either "Ex 1" or "Ex I" to support the

[3] Indiana Code 24-2-1-3 states that "[a] trademark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it . . . (e) consists of a mark which: (1) when applied to the goods or services of the applicant, is merely descriptive. . . ." By registering CustomGlamGirl, E'Stephenie asserts that the State of Indiana necessarily determined that the mark is not merely "descriptive."

contention that the CustomGlamGirl has been registered as a trademark by the State of Indiana. The Court cannot locate said exhibit, as it has not been attached to E'Stephenie's response brief. The Court would be fully justified in failing to credit the supposed "facts" asserted because E'Stephenie has failed to support them with citations to specific and pertinent evidence, as it is not the Court's function to "scour the record in search of evidence to defeat a motion for summary judgment," *Bombard v. Fort Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996), or to construct a party's argument for him, *Spath Hayes Wheels Intern.-Ind., Inc.*, 211 F.3d 392, 397 (7th Cir. 2000). But even if properly supported by an admissible exhibit, E'Stephenie does not cite any authority, and indeed there appears to be none, indicating that a state registration is relevant to determining whether a mark is descriptive or suggestive under federal law.[4]

A court must determine whether a party has a protectable right in a mark "on a case by case basis, considering the totality of the circumstances." *Johnny Blastoff, Inc. v. Los Angeles Rams Football Co.*, 188 F.3d 427, 433-34 (7th Cir. 1999). The Court finds that there is no evidence to dispute that the term CustomGlamGirl is descriptive. The Seventh Circuit noted in *Door Sys. Inc. v. Pro-Line Door Sys., Inc.*, 83 F.3d 169, 172 (7th Cir. 1996), that even if "door systems" is not generic, it is descriptive since it is plain the way that it is being used is to describe the product that it sells. A mark need not depict the service or product itself to be considered descriptive, it need only refer to a characteristic of the service or product. *See e.g. Forum Corp. of N. America v. Forum, Ltd.*, 903 F.2d 434, 444 (7th Cir. 1990). The words Custom, Glam, and Girl are of common usage,

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[4] It is well established that state registration doesn't create any ownership rights to a mark. *See Armstrong Paint v. Nu-Enamel Corp.*, 305 U.S. 315, 334 (1938). "State registration of a service mark does not create rights which would not otherwise exist; no substantive rights are established by registration." 3 McCarthy, McCarthy on Trademarks and Unfair Competition § 22:1 (4th ed. 1997).

as demonstrated by dictionary definitions. *See* Def.'s Exh. 4. The term CustomGlamGirl merely describes characteristics of the merchandise – customized glamorous products for girls. It is a composite term made of generic words that are, in fact, found in all dictionaries and is nothing more than the sum of its parts.

Because there is no evidence to dispute that CustomGlamGirl is merely descriptive, to prove that the mark is valid, E'Stephenie must prove that it has secondary meaning. E'Stephenie's evidence falls short. "Secondary meaning refers to the manner in which a consumer identifies a specific business or a business's reputation by a particular trademark." *Platinum Home Mortgage*, 149 F.3d at 728 (citing *Vaughan Mfg. Co. v. Brikam Int'l, Inc.*, 814 F.2d 346, 348 (7th Cir. 1987)). In other words, in the minds of internet users or consumers the term "Custom Glam Girl" must have become synonymous with E'Stephenie's products only. There are several factors that inform the inquiry into secondary meaning including: (1) the amount and manner of advertising; (2) the amount of sales or number of customers; (3) the exclusivity, length, and manner of use; (4) an established place in the marketplace; (5) proof of intentional copying; (6) direct consumer testimony; and (7) consumer surveys. *See id.; Echo Travel.*, 870 F.2d at 1267. The later two "factors" are considered "direct evidence" of secondary meaning; the others are considered "circumstantial evidence" of secondary meaning. *Id.*[5]

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[5] The Court disagrees with E'Stephenie's assertion that it is not their burden to show secondary meaning in order to defeat summary judgment. To the contrary, as E'Stephenie has claimed trademark infringement, it must show that, at a minimum, a question of fact exists as to whether or not the term CustomGlamGirl obtained secondary meaning. Furthermore, the Court fails to understand how Greek House's motion to stay discovery – ostensibly including discovery on the issue of secondary meaning – could possibly affect E'Stephenie's ability to proffer evidence that CustomGlamGirl has secondary meaning. That evidence should be under the direct control of and accessible by E'Stephenie. It is baseless to assert that it is "fundamentally unfair" for Greek House to base its summary judgment motion on lack of secondary meaning when it

Here, E'Stephenie provides no direct evidence of secondary meaning. Specifically, E'Stephenie provides no direct consumer testimony that the term CustomGlamGirl has become synonymous with E'Stephenie's products. E'Stephenie also does not rely upon any consumer surveys to show such a mental association. E'Stephenie's resort to circumstantial evidence of secondary meaning fails to create a genuine issue of material fact.

Greek House points to the following: 1) there is widespread use of similar terms – illustrating the weakness of the mark; 2) the term has only been used since January, 2003, co-existing with a number of similar terms used by third parties; and 3) E'Stephenie has used three vastly different stylized logos since its inception. Greek House argues that ,as a result, E'Stephenie cannot establish that the consuming public has come to identify CustomGlamGirl exclusively with E'Stephenie's products.

However, there exists another critical problem with E'Stephenie's evidence. E'Stephenie claims to have developed substantial secondary meaning in the term CustomGlamGirl, evidenced by investing over $748,000 in promotion, having sold over 300,000 items, having at least 16,520 repeat customers, being the first company to offer made-to-order women's apparel on the internet, counting dozens of celebrities (such as Britney Spears, Carmen Electra, Denise Richards, and Jennifer Love Hewitt) as wearing their products, and having been mentioned in popular magazines. *See* Pl.'s Br. Resp. at 23-24. These assertions are supported exclusively by citation to paragraph four of Matthew Stewart's ("Stewart"), President of E'Stephenie, affidavit.

Because E'Stephenie bears the burden of proof on this element, it must go beyond its own affidavits, and designate the "specific facts" in interrogatories, depositions, and the other evidence

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elected to forego discovery.

produced in discovery showing that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324. A dispute about a material fact is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248 ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."). "[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Id.* at 252 (summary judgment standard evaluates "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law."). Conversely, "[i]f the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50, 106 S.Ct. 2505 (citations omitted).

The Court shall not give probative weight to an affidavit provided by the trademark holder. *See Echo Travel*, 870 F.2d at 1270 ("A party's subjective, self-serving view of its own alleged trademark is not competent evidence on which to base a finding of secondary meaning."); *Filipino Yellow Pages, Inc. v. Asian Journal Publications, Inc.*, 198 F.3d 1143 (9th Cir.1999) (granting summary judgment because "[e]vidence of secondary meaning from a partial source[, in the form of the company president's affidavit,] possesses very limited probative value;" it was "vague, uncorroborated, and clearly self-interested;" and it "emanat[ed] from a far-from-objective source."); *Co-Rect Prods., Inc. v. Marvy! Adver. Photography, Inc.*, 780 F.2d 1324, 1332 (8th Cir. 1985) ("[D]esires or intentions of the creator . . . are irrelevant. Instead, it is the attitude of the consumer that is important."); *Seabrook Foods, Inc. v. Bar-Well Foods Ltd.*, 568 F.2d 1342, 1345 (C.C.P.A. 1977) ("[R]egardless of the [mark owner's] intentions, it is the association, by the consumer, of the . . . design with the [mark owner] as the source that is determinative."); *Plastilite Corp. v. Kassnar*

*Imports*, 508 F.2d 824, 827 (C.C.P.A.1975) (holding that in determining distinctiveness, "it is the association of the mark with a particular source by the ultimate consumers which is to be measured – not [applicant's] intent" in adopting the mark).[6]

These cases provide a sound rationale for discounting the significance of affidavits provided by a trademark holder. First, the decisions emphasize that statements from a trademark holder do not accurately reflect the consuming public's perception of the trademark. Second, the cases reveal that courts view the uncorroborated opinions of interested parties with distrust – even at the summary judgment stage. Although such affidavits may satisfy the lenient standard for relevance under Rule 401 of the Federal Rules of Evidence, they carry minimal probative weight and cannot defeat summary judgment.

## B. E'STEPHENIE'S TRADE DRESS CLAIM

"Trade dress" refers to the appearance of a product when that appearance is used to identify the producer. *Publications Int'l, Ltd. v. Landoll, Inc.*, 164 F.3d 337, 338 (7th Cir. 1998). In order to prevail on a claim for trade dress infringement under the Lanham Act, a claimant must demonstrate that: (1) its trade dress is primarily non-functional; (2) its overall image has acquired distinctiveness through secondary meaning; and (3) the similarity of the non-claimant's trade dress

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[6] The same rings true for affidavits submitted by interested parties from outside the company. *See Self-Realization Fellowship Church v. Ananda Church of Self-Realization*, 59 F.3d 902, 910 (9th Cir. 1995) ("Trademark law is skeptical of the ability of an associate of a trademark holder to transcend personal biases to give an impartial account of the value of the holder's mark. Attestations from persons in close association and intimate contact with (the trademark claimant's) business do not reflect the views of the purchasing public.") (internal quotations, citations and alterations omitted); 2 McCarthy § 15:40 at 15-61 ("Conclusory testimony by employees as to the probable mental reactions of buyers is often merely self-serving evidence given to satisfy the employer.").

causes a likelihood of confusion as to the source or affiliation of the product. *Thomas & Betts Corp. v. Panduit Corp.*, 138 F.3d 277, 284 (7th Cir. 1998). E'Stephenie makes no attempt, *inter alia*, to show the acquisition of distinctiveness through secondary meaning. Instead, it argues that prior versions of Greek House's website looked more similar to E'Stephenie's website than the versions submitted to the Court, and actual confusion may be inferred from Greek House's intentional copying. Accordingly, this claim fails.

### C. E'STEPHENIE'S UNFAIR COMPETITION CLAIM

As the Court has found that E'Stephenie does not have a protectable trademark or trade dress, E'Stephenie cannot prevail on its Section 43(a) unfair competition claim under the Lanham Act. Under Section 1125(a), "a plaintiff making a claim of false designation of origin must show that the mark is entitled to protection as a trademark," and that "the false designation of origin creates a likelihood of confusion." *Rust Env. & Infrastructure, Inc. v. Teunissen*, 131 F.3d 1210, 1214 (7th Cir. 1997) (internal citations omitted).[7] Claims for false designation or origin, including use of metatags to misdirect internet shoppers, as it failed to establish that it has a protectable trademark. Accordingly, E'Stephenie's accusations of internet misuse as a means of unfair competition also fail.

### D. GREEK HOUSE'S COUNTERCLAIMS

E'Stephenie seeks partial summary judgment on Greek House's counterclaims for: (1) federal and common law trademark infringement; and 2) false advertising and unfair competition based on

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[7] The same analysis for E'Stephenie's trademark infringement claims applies to its unfair competition claim. *See Meridian Mut. Ins. Co. v. Meridian Ins. Group, Inc.*, 128 F.3d 1111, 1115 (7th Cir.1997).

misuse of statutory registration notice. Greek House seeks summary judgment in their favor with respect to their federal and common law trademark infringement counterclaims.

Greek House focuses the entirety of its argument on having trademark rights superior to E'Stephenie. It presents no argument or evidence that it's CustomizedGirl mark is valid and protectable; only that it has established priority of use. E'Stephenie also expends great effort discussing priority, yet neither party acknowledges that the marks at issue must be protectable. The parties engage in absolutely no discussion of whether or not CustomizedGirl is generic, descriptive, suggestive, or fanciful, or whether it has developed secondary meaning. As Greek House moved for summary judgment on its trademark claim, and the parties have not stipulated that the marks are assumed to be protectable, even for the purposes of the instant motions, Greek House bore the burden to address the substantive requirements of its claim and failed to do so. Accordingly, Greek House's motion for partial summary judgment with respect to its federal and common law trademark infringement counterclaims must be denied, and E'Stephenie's motion for partial summary judgment on Greek House's counterclaim for federal trademark infringement shall be granted.

Greek House also claims that E'Stephenie engaged in false advertising and unfair competition. Greek House claims that E'Stephenie's website impermissibly states that "CustomGlamGirl.com is a registered trademark of E'Stephenie, Inc." Again, the same analysis for Greek House's trademark infringement claims applies to its unfair competition claim. *See Meridian Mut.*, 128 F.3d at 1115. Greek House has failed to show it is the owner of a protectable mark and the Court has found that E'Stephenie's CustomGlamGirl does not constitute a protectable mark. Accordingly, summary judgment must be granted in favor of E'Stephenie on Greek House's unfair competition claim under the Lanham Act.

### E. PARTIES' REMAINING STATE CLAIMS

Federal district courts are granted supplemental jurisdiction over all claims "that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367. In general, when a district court has dismissed all claims over which it has original jurisdiction, it may decline to exercise its jurisdiction over any supplemental state law claims. 28 U.S.C. § 1367(c)(3). As summary judgment has been granted on all federal claims, the Court declines to exercise supplemental jurisdiction over remaining state law claims.

## V. CONCLUSION

For the reasons stated herein, the Court **GRANTS** defendants' / counter-claimants', Greek House International, LLC, E Retailing Associates, LLC, d/b/a Customizedgirl.com, Joe Thibault, and Brian Thibault, motion for summary judgment, **DENIES** defendants' / counter-claimants' motion for partial summary judgment on counterclaims, and **DENIES AS MOOT** defendants' / counter-claimants' motion entitled "Offer for Oral Argument." Further, the Court **GRANTS** plaintiff's / counter-defendant's, E'Stephenie, Inc., motion for partial summary judgment on counterclaims as to all federal claims and **DISMISSES WITHOUT PREJUDICE** all state claims. Each party to bear its own costs.

IT IS SO ORDERED this 13th day of June, 2006.

LARRY J. McKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

Distribution attached.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| vs. | ) | 1:04-cv-1235-LJM-WTL |
| GREEK HOUSE INTERNATIONAL, LLC, E RETAILING ASSOCIATES, LLC, d/b/a CUSTOMIZEDGIRL.COM, JOE THIBAULT, and BRIAN THIBAULT, Defendants / Counter-Plaintiffs | ) | |

**ENTRY OF JUDGMENT**

Through an order dated June 13, 2006, this Court granted summary judgment in favor of the defendants / counter-plaintiffs, Greek House International, LLC, E Retailing Associates, LLC, d/b/a Customizedgirl.com, Joe Thibault, and Brian Thibault, on all federal claims, and also granted partial summary judgment in favor of plaintiff / counter-defendant, E'Stephenie, Inc., on all federal counterclaims. The Court **DISMISSED WITHOUT PREJUDICE** all state claims

DATED this 13th day of June, 2006.

LARRY J. McKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

LAURA A. BRIGGS, CLERK
United States District Court
Southern District of Indiana

By: _____
Deputy Clerk

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