

ESTTA Tracking number: **ESTTA651635**

Filing date: **01/22/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057511
Party	Defendant Origami Owl, LLC
Correspondence Address	RAY K HARRIS FENNEMORE CRAIG 2394 E CAMELBACK RD, STE 600 PHOENIX, AZ 85016 UNITED STATES ssmith@fclaw.com, ip@fclaw.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Ray K. Harris
Filer's e-mail	rharris@fclaw.com, mtollive@fclaw.com
Signature	/Ray K. Harris/
Date	01/22/2015
Attachments	Motion to Suspend Proceedings.pdf(6011 bytes ) Complaint v. Mayo.pdf(383397 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In the matter of*  
Trademark Registration No. 4307520

ANN MAYO,

Petitioner,

v.

ORIGAMI OWL, LLC,

Respondent.

Cancellation No. 92057511

Trademark Registration No.: 4,307,520

Mark: LIVING LOCKETS

Registered: March 26, 2013

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513  
Box: TTAB No Fee

**MOTION TO SUSPEND PROCEEDINGS**

Origami Owl, LLC, Respondent in this cancellation proceeding, has filed a civil action against Ann Mayo, Petitioner in this action, to enforce the LIVING LOCKETS trademark at issue in this cancellation proceeding. Pursuant to TTAB Rule of Practice 2.117(a) Respondent moves to suspend these proceedings until termination of the civil action. A copy of the Complaint in the civil action, filed today in the U.S. District Court in the District of Arizona, is attached.

Respectfully Submitted,

By:                   /s/Ray K. Harris                    
Ray K. Harris, Esq.  
FENNEMORE CRAIG  
2394 East Camelback Road  
Suite 600



1 FENNEMORE CRAIG, P.C.  
2 Ray K. Harris (No. 007408)  
2394 East Camelback  
Suite 600  
3 Phoenix, AZ 85016-3429  
Telephone: (602) 916-5000  
4 Email: rharris@fclaw.com

5 Attorneys for Plaintiff  
Origami Owl, LLC  
6  
7

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF ARIZONA

10 Origami Owl, LLC, a Delaware  
corporation,

11 Plaintiff,

12 v.

13 Julie E. Mayo, a single woman, Ann L.  
14 Mayo, a single woman, doing business  
as West Coast Charms and 5th Avenue  
15 Pets,

16 Defendants.  
17

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR**

**(1) Design Patent Infringement  
(35 U.S.C. § 271)**

**(2) Trademark Infringement  
(15 U.S.C. § 1114)**

**(3) Copyright Infringement  
(17 U.S.C. § 501)**

**Demand For Jury Trial**

18 Plaintiff Origami Owl, LLC (“O2”), for its Complaint against Julie E. Mayo and  
19 Ann L. Mayo, d.b.a. West Coast Charms and 5<sup>th</sup> Avenue Pets, alleges:

20 **THE PARTIES**

21 1. O2 is a Delaware corporation with its principal place of business at 410 S.  
22 Benson Lane, Suite 1, Chandler, AZ 85224.

23 2. On information and belief, Julie E. Mayo is a resident of California, residing  
24 at 6900 Birchwood Circle, Citrus Heights, CA 95621 or 2485 Notre Dame Boulevard,  
25 Suite 370-121, Chico, CA 95928. Julie E. Mayo does business as West Coast Charms and  
26 5th Avenue Pets.



1           9.     Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400  
2 because Defendants have, among other things, sold infringing goods in this district.

3                           **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

4   **The Business of O2**

5           10.    O2 creates jewelry products and distributes them primarily through a direct  
6 sales channel of independent designers who conduct in-home shows. O2 distributes to  
7 independent designers, and to end users, through online sales. The O2 products include  
8 charms, floating lockets, lanyard lockets, chains, plates, dangles, tags, bracelets and  
9 earrings.

10          11.    O2 began doing business in 2011 and now has more than 350 full time  
11 employees at its headquarters in Arizona and 60,000 independent designers throughout the  
12 United States .

13          12.    Since 2011, O2 has added to its product line by introducing Seasonal  
14 collections as well as specialty collections related to holidays or other special occasions.

15          13.    O2 also utilizes a number of trademarks to distinguish its jewelry collections  
16 from products offered by competitors. O2 has obtained U.S. federal trademark  
17 registrations for a number of trademarks, including ORIGAMI OWL (Reg. No.  
18 4,170,416) and LIVING LOCKETS (Reg. No. 4,307,520).

19          14.    O2 has invested a substantial amount to establish goodwill in its trademarks.

20          15.    O2's products embody various forms of intellectual property that O2 has  
21 developed and vigorously protected. O2 has (1) obtained a patent (U.S. Patent No.  
22 D711,278 (“the design patent”)); (2) developed substantial trademark rights in LIVING  
23 LOCKET, which consumers immediately recognize as indicating the source of the  
24 products as originating from O2; and (3) acquired copyright registrations for the product  
25 designs.

26          16.    O2 has garnered widespread media acclaim and developed a deep

1 connection with its loyal consumer base. Capitalizing on its strong reputation, O2 has  
2 experienced tremendous sales since its launch in 2011.

3 **Defendants' Copyright Infringement**

4 17. Defendants sell charms, dangles, tags, floating lockets, bracelets and lanyard  
5 lockets. On information and belief, Defendants sell at wholesale to customers who sell at  
6 retail.

7 18. Defendants offer numerous charms, dangles, tags and floating lockets  
8 substantially similar or identical to O2's copyrighted and patented designs. Since April  
9 2012, Defendants have been on notice that they are selling products that infringe O2's  
10 copyrighted designs.

11 19. As O2 has added new designs to its copyrighted collection, Defendants have  
12 copied those designs.

13 20. Defendants have acted in bad faith to take advantage of the aesthetic appeal  
14 of O2's copyrighted designs.

15 **Defendants' Trademark Infringement**

16 21. Defendants have also emulated O2's trademarks in order to confuse  
17 consumers and divert sales. Beginning in late 2012, Defendants began using "Living Life  
18 Locketts" on the 5thAvenuePets.com and WestCoastCharms.com websites.

19 22. As early as November 2012, O2 requested the Defendants cease using  
20 "Living Life Locketts" because it is confusingly similar to LIVING LOCKETS.

21 23. Defendants sought to federally register "Living Life Locketts" as a  
22 trademark and sought to cancel O2's trademark registration for LIVING LOCKETS.

23 24. Defendants have acted in bad faith to take advantage of the goodwill and  
24 reputation for high quality for O2's goods sold under the LIVING LOCKETS trademark.

25 25. Defendants willfully intend to confuse consumers into believing that there is  
26 an affiliation, connection, or relationship between Defendants and O2 when there is not.

1           26. Defendants' websites trade on the goodwill of the LIVING LOCKETS mark  
2 and unfairly competes with goods sold by O2 by creating initial interest confusion.

3                                   **Defendants Induce Others to Infringe**

4           27. Defendants induce and encourage third party retailers operating on eBay,  
5 Etsy and other websites to sell infringing charms using "Living Life Locketts".

6           28. On information and belief, Defendants are materially contributing to  
7 infringing conduct by third party retailers who sell at kiosks and other store-front  
8 locations or over the Internet.

9                                   **Continuing Harm from Defendants' Infringement**

10          29. Defendants' conduct has been willful and has continued, despite receipt of  
11 notice of O2's intellectual property rights and Defendants' ongoing intellectual property  
12 infringement.

13          30. Rather than develop their own designs and brand, Defendants have blatantly  
14 copied O2, thereby infringing O2's patent, copyrights and trademark.

15          31. Defendants are direct competitors of O2 and they are infringing O2's  
16 intellectual property to divert sales from O2.

17          32. Due to O2's renown and consumers' recognition, consumers will likely  
18 suffer confusion and mistakenly believe that Defendants and their goods are endorsed,  
19 approved, or sponsored by, or affiliated, connected, or associated with O2. Defendants  
20 will thus reap the benefits of O2's reputation and goodwill based on this consumer  
21 confusion, to O2's detriment.

22          33. Defendants' commercial conduct violates O2's valuable intellectual property  
23 rights, and Defendants' knowing, intentional, and willful infringement of O2's LIVING  
24 LOCKETS trademark and proprietary designs is damaging O2.

25          34. O2's interest in protecting its intellectual property rights and its products  
26 from consumer confusion outweigh any harm to Defendants. The public interest is best

1 served by granting O2's requested relief against Defendants.

2 **COUNT ONE**

3 **Patent Infringement – 35 U.S.C. § 271**

4 35. O2 incorporates by reference the factual allegations set forth above.

5 36. On August 19, 2014, the USPTO duly and legally issued U.S. Patent  
6 D711,278 (the “design patent”). O2 is the owner of the design patent for the Heart-  
7 Shaped Locket and holds all rights and interests in the design patent.

8 37. On information and belief, Defendants have been and currently are  
9 infringing the design patent by, among other things, making, using, selling, and/or  
10 offering to sell, within the territorial boundaries of the United States, heart-shaped lockets  
11 that are covered by the design patent.

- 12 • Figure 2 of D711,278:



- 18 • Accused devices:



23 38. As a direct and proximate result of Defendants' infringement of the design  
24 patent, O2 has been and will continue to be irreparably damaged and deprived of its rights  
25 in the design patent. Thus, O2 is entitled to its actual damages, lost profits and a  
26 permanent injunction against further infringement pursuant to 35 U.S.C. §§ 283 and 284.

1 In the alternative, O2 is entitled to Defendants' total profit, but not less than \$250,  
2 pursuant to 35 U.S.C. § 289.

3 39. Defendants' acts make this an exceptional case under 35 U.S.C. § 285.  
4 Thus, O2 is entitled to an award of attorneys' fees and costs.

5 **COUNT TWO**

6 **Trademark Infringement – 15 U.S.C. § 1114**

7 40. O2 incorporates by reference the factual allegations set forth above.

8 41. O2 has established a unique, protectable, and recognizable trademark for  
9 LIVING LOCKETS. The LIVING LOCKETS mark has been used by O2 since at least as  
10 early as August 2011.

11 42. O2's federal registration for LIVING LOCKETS (Reg. No. 4,307,520)  
12 issued prior to the first use by Defendants of “Living Life Lockets”.

13 43. As a result of O2's marketing, advertising, and promotion of its goods, O2's  
14 LIVING LOCKETS mark has become well-known as a distinctive indicator of the origin  
15 of O2's goods, has acquired a highly favorable reputation among members of the  
16 purchasing public, and has become a valuable symbol of O2's goodwill. The trade and the  
17 general public recognize goods labeled LIVING LOCKETS as originating from O2.

18 44. LIVING LOCKETS is inherently distinctive as applied to O2's goods.  
19 Moreover, the distinctiveness of LIVING LOCKETS has increased by virtue of O2's use  
20 and promotion of the mark and the resulting secondary meaning among consumers as a  
21 source indicator for O2's goods.

22 45. On information and belief, the relevant trade and the general public are  
23 confused and believe Defendants' goods labeled “Living Life Lockets” originate from O2.

24 46. On information and belief, Defendants intended to, and did in fact, confuse  
25 and mislead consumers into falsely believing that Defendants' products originated from,  
26 were licensed, sponsored, or approved by, or were somehow affiliated, connected, or

1 associated with O2. Defendants sell competing goods and seek to create initial interest  
2 confusion for consumers seeking O2's goods.

3 47. In fact, there is no affiliation, connection, association, or licensing  
4 relationship between O2 and Defendants, nor has O2 ever authorized, licensed, or  
5 provided permission to Defendants to use LIVING LOCKETS in any manner whatsoever.

6 48. Defendants' actions constitute trademark infringement in violation of  
7 15 U.S.C. § 1114.

8 49. As a direct and proximate result of Defendants' wrongful conduct, O2 has  
9 been damaged and, unless Defendants are enjoined, will continue to be damaged.

10 50. On information and belief, Defendants' activities have caused, and will  
11 cause, confusion and deception of the consuming public and irreparable harm to O2 for  
12 which it has no adequate remedy at law.

13 51. O2's trademark rights comprise unique and valuable property rights.  
14 Defendants' infringement constitutes an interference with O2's goodwill and customer  
15 relationships and will substantially harm O2's reputation as a source of high quality goods  
16 and services. Defendants' wrongful conduct, and the damages resulting to O2, are  
17 continuing. Accordingly, O2 is entitled to injunctive relief. 15 U.S.C. § 1116(a).

18 52. O2 is entitled to an order: (1) requiring Defendants to account to O2 for any  
19 and all profits derived by Defendants from their actions, to be increased in accordance  
20 with the applicable provisions of law; and (2) awarding all damages sustained by O2  
21 caused by Defendants' conduct. 15 U.S.C. § 1117(a).

22 53. Defendants' conduct was intentional and without foundation in law. Thus,  
23 O2 is entitled to an award of enhanced profits and damages against Defendants. 15 U.S.C.  
24 § 1117(a).

25 54. Defendants' acts make this an exceptional case. Thus, O2 is entitled to an  
26 award of attorneys' fees and costs. 15 U.S.C. § 1117(a).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**COUNT THREE**

**Copyright Infringement – 17 U.S.C. § 501**

55. O2 incorporates by reference the factual allegations set forth above.

56. The United States Copyright Office issued U.S. registrations to O2 as shown on Exhibit A. O2 is sole owner of the copyrights and the registrations shown on Exhibit A. The registrations are prima facie evidence of the validity of O2's copyrights and of the facts stated in the registration certificates.

57. Defendants infringed individual designs contained in copyright registrations for O2's collections as also shown in Exhibit A.

58. Defendants also infringed O2's copyrights in individual copyrighted designs by copying the O2 designs and selling a substantially similar product without O2's permission. The United States Copyright Office issued U.S. registrations to O2 as shown in the following paragraphs. O2 is sole owner of the copyrights and the registrations. The registrations are prima facie evidence of the validity of O2's copyrights and of the facts stated in the registration certificates. The following paragraphs depict images for O2 designs in copyright registrations issued to O2 and the Defendants' infringing designs:

a. Registration No. VAu001121483:

O2



West Coast Charms



b. Registration No. VAu001121482

O2



West Coast Charms



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

c. Registration No. VAu001121546

O2

West Coast Charms



d. Registration No. VAu00121478

O2

West Coast Charms



e. Registration No. VAu001121497

O2

West Coast Charms



f. Registration No. VAu001121501

O2

West Coast Charms



g. Registration No. VAu001121491

O2

West Coast Charms



...

1 h. Registration No. VAu001121545

2 O2

West Coast Charms



5 i. Registration No. VAu001121495

6 O2

West Coast Charms



9  
10 59. On information and belief, Defendants' actions were willful.

11 60. Defendants' infringing acts have caused, and will continue to cause,  
12 irreparable injury to O2, and O2 has no adequate remedy at law. Accordingly, O2 is  
13 entitled to an injunction, pursuant to 17 U.S.C. § 502, and an order impounding any and  
14 all infringing materials, pursuant to 17 U.S.C. § 503.

15 61. Defendants' actions constitute copyright infringement. O2 is entitled to its  
16 actual damages and Defendants' profits. 17 U.S.C. § 504(a).

17 62. Alternatively, O2 is entitled to elect statutory damages (instead of actual  
18 damages and profits), including enhanced statutory damages due to Defendants' willful  
19 infringement. 17 U.S.C. § 504(c).

20 63. O2 is entitled to its attorneys' fees and costs. 17 U.S.C. § 505.

21 **COUNT FOUR**

22 **Federal Unfair Competition --15 U.S.C. § 1125**

23 64. O2 incorporates by reference the factual allegations set forth above.

24 65. Defendants use "Living Life Locketts" to falsely represent that Defendants  
25 offer O2's LIVING LOCKETS products in order to divert customers to Defendants'  
26 websites. These false representations constitute unfair competition in violation of

1 15 U.S.C. § 1125(a)(1)(A).

2 66. Defendants' unauthorized use of "Living Life Locketts" falsely designates  
3 the origin of Defendants' goods and services.

4 67. Defendants have caused, and unless enjoined by this Court, will continue to  
5 cause, irreparable injury and damage to O2, for which O2 has no adequate remedy at law.

6 68. Defendants' actions demonstrate an intentional, willful, and malicious intent  
7 to trade on the goodwill associated with O2's federally registered LIVING LOCKETS  
8 mark. O2 is entitled to injunctive relief and to an award of Defendants' profits, actual  
9 damages, enhanced profits and damages, costs, and attorneys' fees pursuant to 15 U.S.C.  
10 §§ 1114, 1116, and 1117.

11 **COUNT FIVE**

12 **Common Law Unfair Competition**

13 69. O2 incorporates by reference the factual allegations set forth above.

14 70. Defendants use "Living Life Locketts" to cause confusion, deception and  
15 mistake by, and thereby divert to Defendants, consumers seeking O2 products.  
16 Defendants sell those diverted consumers their competing products.

17 71. Defendants' conduct is contrary to honest practice in commercial matters  
18 and constitutes palming off and unfair competition under Arizona law.

19 72. Defendants' conduct is willful and intentional.

20 73. Defendants' conduct has caused and will continue to cause irreparable injury  
21 to O2, its business reputation and the associated goodwill. O2 has no adequate remedy at  
22 law. O2 will continue to be irreparably injured unless and until Defendants are enjoined  
23 from the unlawful conduct.

24 74. Defendants' conduct evidences an evil hand guided by an evil mind  
25 warranting the imposition of punitive damages.

26 75. Defendants' actions demonstrate an intentional, willful, and malicious intent

1 entitling O2 to injunctive relief and to an award of Defendants' profits, actual damages,  
2 and punitive damages.

3 **PRAYER**

4 WHEREFORE, O2 prays for a judgment that:

5 A. Defendants have infringed the design patent in violation of 35 U.S.C. § 271.

6 B. Defendants have willfully infringed O2's LIVING LOCKETS trademark in  
7 violation of 15 U.S.C. § 1125(a).

8 C. Defendants have willfully engaged in copyright infringement in violation of  
9 17 U.S.C. § 501.

10 D. Defendants, their officers, agents, servants, employees, successors, and  
11 assigns, their subsidiary and related entities, attorneys, and all other persons, firms,  
12 associations, and entities who are in active concert or participation with them, are  
13 permanently enjoined from:

- 14 1. infringing the design patents;  
15 2. infringing O2's LIVING LOCKETS trademark; and  
16 3. infringing O2's copyrights.

17 E. Within thirty (30) days after the entry and service on Defendants of an  
18 injunction, Defendants must file with this Court and serve upon O2's counsel a report in  
19 writing and under oath setting forth in detail the manner and form in which Defendants  
20 have complied with the injunction pursuant to 15 U.S.C. § 1116(a).

21 F. O2 is awarded damages as follows:

- 22 1. pursuant to 35 U.S.C. § 284, all damages adequate to compensate O2  
23 for Defendants' infringement of the design patent, and in no event  
24 less than a reasonable royalty for Defendants' acts of infringement;  
25 2. In the alternative, Defendants total profits but not less than \$250  
26 pursuant to 35 U.S.C. § 289;



EXHIBIT A

O2's Collection	O2's Charms	WestCoast's Charms
First Charms VA0001842166 Spring 2012		
Dangles Collection VA0001893589 Fall 2013		
Fall Collection VA0001893593 Fall 2013		
Valentine's Day 2014 Collection VA0001909315		
Mother's Day 2014 Collection VAu001170135		

O2's Collection	O2's Charms	WestCoast's Charms
Graduation Collection 2014 VA0001915256		
Bienvenidos Collection 2014 Va0001915258	 	 
Fall Charms Collection 2014 VA0001928064	 	 
Spring Charms Collection 2014	              	              

<b>O2's Collection</b>	<b>O2's Charms</b>	<b>WestCoast's Charms</b>
New Charms VA0001842167 (Summer 2012)		
Holiday 2014 Collection VA0001932182		