

THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CLAUDIA CROFT,
(an individual)

and

SHEER DELIGHT, INC.
(a Florida Corporation)
Plaintiffs,

v. CASE NO. _____

JAMES HORNE, d.b.a.
PHS INTERNATIONAL,
(an individual, resident of Arizona)
Defendant. JURY TRIAL REQUESTED

COMPLAINT

Plaintiffs, Claudia Croft, (hereinafter "Croft") and Sheer Delight, Inc., (hereinafter "Sheer Delight"), hereby bring this complaint against the Defendant, James Horne, (hereinafter "Horne") and allege as follows:

THE PARTIES

(1) Plaintiff Claudia Croft is an individual residing in the County of Hillsborough, State of Florida.

(2) Plaintiff Sheer Delight, Inc. is a Florida corporation, organized under the laws of the State of Florida, having its principle place of business within Tampa, Florida, and its agent for service being Claudia Croft, located within Tampa, Florida, also being within the Middle District of Florida.

(3) James Horne is an individual residing in the City of Phoenix, Arizona. On information and belief, Horne owns and controls the day to day activities of a web site having the address of www.areyoufresh.com. Areyoufresh.com is a web site which offers adult articles for sale.

JURISDICTION AND VENUE

(4) This is a civil action concerning Trademark infringement in violation of 15 U.S.C. 1114, et seq.

(5) The District Court for the Middle District of Florida has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338, as it involves substantial claims arising under trademark law.

(6) Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 (a), (b), and (c) and 1400, since Defendant either resides and does business in the Middle District of Florida, or the Defendant is doing business in this judicial district. The Defendant's web site, areyoufresh.com is available and accessible within the Middle District of Florida.

THE TRADEMARK-IN-SUIT

(7) The Plaintiff Croft owns all right, title and interest in and to United States Registered Trademark, "Nipple Huggers", which was duly issued by the United States Patent and Trademark Office

("PTO") on September 14, 2004, registration number 2883839. A copy of the Trademark Office web site, demonstrating the ownership of the mark by Claudia Croft is attached hereto as Exhibit A. Croft manufactures her Nipple Hugger jewelry and provides Nipple Hugger jewelry to Sheer Delight for sale. Sheer Delight is owned by Croft, and is a subchapter S corporation. Sheer Delight markets and sells Croft's Nipple Hugger products and uses the mark with consent of Croft. The profits of Sheer Delight which are derived from the use of the mark, and the sales of products pass through the subchapter S corporation, and are considered to be income of Croft under Internal Revenue Service regulations, see Internal Revenue Publication 525.

COUNT ONE:

TRADEMARK INFRINGEMENT

(8) Allegations 1 through 7 are hereby incorporated by reference as if fully set herein.

(9) Plaintiff Croft has registered the mark "Nipple Hugger" for "wire jewelry for adorning the breast nipples of a wearer". The mark was registered on September 14, 2004, a copy of the trademark office website demonstrating registration of the mark "Nipple Huggers" is hereto attached, as Exhibit A.

(10) Plaintiff Croft manufactures nipple huggers for sale by Sheer Delight. Croft, as sole owner of Sheer Delight can and does exercise control over the items sold by Sheer Delight which bear

the mark "Nipple Hugger", as well as the quality of each of the products. Sheer Delight has use of the mark with the consent of Croft.

(11) Plaintiffs use the designation, or registered mark, in interstate commerce, and in connection with the goods described in the trademark registration. Exhibit B shows the labeling used with the Plaintiffs' products, evincing the designation of the registered trademark "Nipple Huggers®".

(12) Plaintiffs, through their attorney, wrote a letter to PHS, at the PHS address, demanding that PHS cease and desist any further use of the registered mark, Nipple Huggers. The letter was sent on May 11, 2009 by return receipt mail, and is hereto attached as Exhibit C.

(13) On June 9, 2009 a printout of the www.shop.mooluxe.com shows the PHS product, marked with the Plaintiff's registered mark, "Nipple Huggers". A copy of the printout of the website is hereto attached as Exhibit D.

(14) Defendant is using the Plaintiff's mark in interstate commerce, within the same stream of commerce as that of the Plaintiffs. The Defendant's use of the Plaintiff's trademark is done in connection with the same types of goods sold by the Plaintiff, as described in the trademark application, and registration.

(15) The Defendants use of the Plaintiffs mark is likely to

cause confusion, mistake or deception as to the affiliation, connection, or association of the Defendants' products with the Plaintiffs.

(16) The Defendants' mark is confusingly similar to the Plaintiff's mark, and is used in the identical field of commerce, without license or permission from the Plaintiff allowing the Defendant to use the mark in any manner. Defendants use of Plaintiff's mark is likely to continue to cause members of the public to believe that the Defendant's product are offered by way of license or other agreement with Plaintiff, when, in fact, they are not.

(17) The Defendant's use of the trademark on the www.areyoufresh.com website in the sale of products bearing the Plaintiff's mark is likely to cause consumers who are using the words "nipple huggers" to be directed to the Defendant's web site. In so attracting consumers with the use of the Plaintiff's trademark, it is likely that consumers purchase products from the Defendant, without finding the Plaintiffs' web site using the Plaintiff's trademark.

(18) The Plaintiff has been damaged, and will likely continue to be damaged, by the Defendant's actions, in that Defendant's products have received negative evaluations, and in using the Plaintiffs' mark in relation to the product, the public may equate the negative evaluation of the Defendant's products with that of

the Plaintiffs, thereby causing financial injury to the Plaintiffs.

(19) Defendants openly advertise their product using the Plaintiff's mark, as demonstrated in Exhibit D.

(20) Defendants trademark infringement is willful, and has caused damage to the Plaintiffs.

(21) The Plaintiffs lack adequate remedy at law.

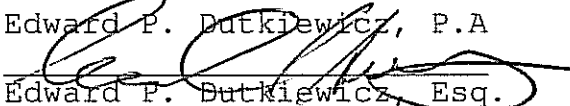
WHEREFORE, PLAINTIFFS CROFT AND SHEER DELIGHT seek judgment, and ask that the Court award the following:

(A) Permanently enjoining Defendant and its principals, shareholders, officers, directors, employees, successors, assigns, suppliers, agents, servants and attorneys, and all those persons in active concert, participation or privity with them, or any of them from using the Plaintiff's trademark, unless the products bearing the mark are purchased from the Plaintiffs, or are sold under license from the Plaintiff;

(B) Awarding the Plaintiffs, pursuant to 15 U.S.C. 1117, damages and profits, together with pre-judgment interest, to compensate the Plaintiffs for the Defendants' infringement of the Plaintiffs' trademark. The Plaintiff requests that the Court find that the Defendant acted willfully, and that the Court increase damages three fold, and include attorney's fees, as provided under 15 U.S.C. 1117; and

(C) Granting such further and other relief as the Court may deem necessary and proper.

Dated: July 22, 2009


Edward P. Dutkiewicz, P.A.
Edward P. Dutkiewicz, Esq.
Trial Attorney
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Dade City, FL 33526-0937
Tel. (352) 467 - 2682
Fax. (352) 567 - 5526
E-Mail: Edduke@embarqmail.com



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Typed Drawing

| | |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Word Mark | NIPPLE HUGGERS |
| Goods and Services | IC 014. US 002 027 028 050. G & S: jewelry - namely, wire jewelry for adorning the breast nipples of a wearer. FIRST USE: 20020821. FIRST USE IN COMMERCE: 20020821 |
| Mark Drawing Code | (1) TYPED DRAWING |
| Serial Number | 76525486 |
| Filing Date | June 25, 2003 |
| Current Filing Basis | 1A |
| Original Filing Basis | 1A |
| Published for Opposition | June 22, 2004 |
| Registration Number | 2883839 |
| Registration Date | September 14, 2004 |
| Owner | (REGISTRANT) Croft, Claudia A. INDIVIDUAL UNITED STATES 13050 Gandy Blvd. St. Petersburg FLORIDA 33702 |
| Disclaimer | NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE NIPPLE APART FROM THE MARK AS SHOWN |
| Type of Mark | TRADEMARK |
| Register | PRINCIPAL |
| Live/Dead Indicator | LIVE |

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EXHIBIT A

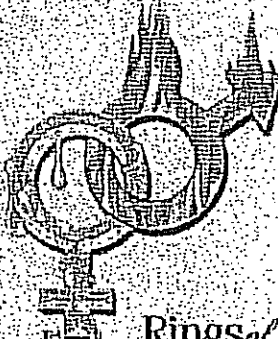
*S*uch fingers arouse every sensual desire in the wearer. The overall sensation is simply euphoric. This is as close to any aphrodisiac presently known to man.

Our nipple ring is non-piercing, one size fits all in both size and your desired tension. The "Firm" has the ability to give a firm grip, where the "Soft" leads to be a softer touch, for those with sensitive nipples.

Hand Made in USA
Questions?
www.nipple-huggers.com
Patent #6,758,061

Nipple Huggers

Soft



Rings of Desire™

Designed by a woman for women.

EXHIBIT B

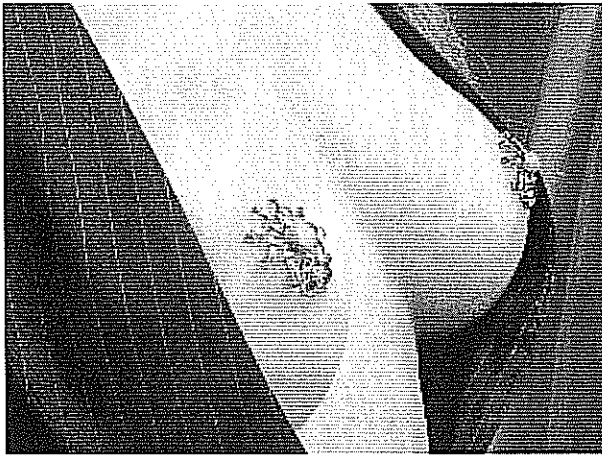


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Our Nipple Jewelry Is:

- 100% Non Invasive (non piercing) **Body Jewelry**
- **Nipple Rings** are 100% Adjustable Size & Tension
- The only PATENTED Non-Piercing Nipple Jewelry System
- FDA approved as Sexually Stimulating - by **Nipple Stimulation**



Imagine tiny rounded wire fingers messaging the base of your nipple with each movement you make. Imagine hands free **nipple stimulation** (versus doing it yourself!) Imagine having your hands free to venture elsewhere during those intimate moments! Just imagine.... The "Original" highest qualityNipple Huggers®...

- Ships discreetly packaged (From: "Shipping Dept." - no other name on package)
- Ships within 24 hrs - 6 days a week (excluding postal holidays)
- **Body Jewelry** designed for *Lovers*, the ultimate Valentine's Day, Anniversary, Any Time gift!

...The Rewards

A few of the many rewarding side effects are that they are sexually 'arousing', and attract admiring attention from men & women alike. Our designs make you feel sexy, naughty & maybe a little adventurous all at the same time. There is no age discrimination here. Free up those hands, lips, tongue and let the mind wander with the delicious stirrings.

Nipple Huggers® is the only PATENTED system.

LAW OFFICE OF
EDWARD P. DUTKIEWICZ, P.A.

Registered Patent Attorney

P.O. Box 937

Dade City, Florida 33526

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Telephone: (352) 467-2682 / Facsimile: (352) 567-5526

U.S. Patent and Trademark Office

Registration No. 46,676

Admitted to Practice in Florida and Connecticut

E-mail: Edduke@embarqmail.com

Web: www.edduke.com

May 11, 2009

PHS International
11222 N Cave Creek Rd
Phoenix, AZ 85020

7008 1140 0000 7699 9715

Re: Infringement of Intellectual Property

Dear Sir or Madam:

Please be advised that I represent the interests of Claudia Croft, the owner of the trademark "Nipple Huggers". I write to demand that you immediately cease and desist the trademark infringement of Ms. Croft's mark, Nipple Huggers, which is used by PHS International in the advertising and sale of "nipple huggers". The products so labeled are sold under the "Fresh" mark, made by PHS International, and, on information and belief, imported by PHS International. Ms. Croft also holds a patent on a form of nipple jewelry, a copy of which is included for your review. You may wish to review your products in light of the patent herein provided.

I have checked the Arizona Secretary of State's database, and have not been able to find "PHS International" as an Arizona corporation, and so this letter is addressed to the only known point of contact, being the Cave Creek Road address, listed above.

You must immediately cease and desist the use of Ms. Croft's "Nipple Hugger" trademark. You must remove all packages from inter and intra state commerce, delete the mark from your internet site, and remove it from all advertising. If this is not done immediately, a suit for infringement will be filed, here, in the Middle District of Florida.

Please respond by confirming that all advertising and labeling has been removed.

EXHIBIT C

PHS International
11222 N Cave Creek Rd
Phoenix, AZ 85020
May 11, 2009
Page -2-

I await your reply.

Sincerely,

Edward P. Dutkiewicz

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FRESH - Beaded Nipple Huggers Pair - Pink/Blue



Cute and understated, this pair of nipple huggers will quickly become one of your favorites. Hand crafted with dazzling pink and blue glass beads, these beauties gently hug your nipples for a look that is oh so sexy.

Color: Pink and Blue Beads
Material: Nickel

Click To Enlarge
Item #: FR1007B
Manufacturer: Fresh!
Status: In-Stock

Qty

Price \$14.00

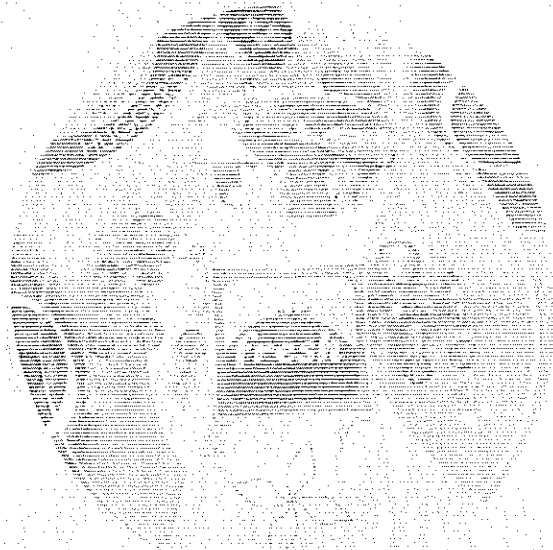
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FRESH - Beaded Nipple Hugger - Long



Enchanting fashion for your breast! wear jewelry! Gorgeous pink and blue beaded nipple hugger. Surprise that certain someone

Color: Pink and blue Beads

Material: Nickel

[Click To Enlarge](#)
Item #: FR1007PB
Manufacturer: Fresh!
Status: In-Stock

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FRESH - Alligator Style Nipple Clamps w/Chain - Blue



FRESH - Alligator Style Nipple Clamps w/Chain - Blue
Item #: FR1000B

Price: \$17.00
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FRESH - Alligator Style Nipple Clamps w/Chain - Pink



FRESH - Alligator Style Nipple Clamps w/Chain - Pink
Item #: FR1000PK

Price: \$17.00
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FRESH - Beaded Nipple Hugger - Long - Pink/Blue



FRESH - Beaded Nipple Hugger - Long - Pink/Blue
Item #: FR1007PB

Price: \$16.00
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FRESH - Beaded Nipple Huggers Pair - Pink/Blue



FRESH - Beaded Nipple Huggers Pair - Pink/Blue
Item #: FR1007B

Price: \$14.00
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FRESH - Clover Style Nipple Clamps w/Chain - Blue



FRESH - Clover Style Nipple Clamps w/Chain - Blue
Item #: FR1005B

Price: \$22.00
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FRESH - Clover Style Nipple Clamps w/Chain - Pink



FRESH - Clover Style Nipple Clamps w/Chain - Pink
Item #: FR1005PK

Price: \$22.00
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FRESH - Tweezers Style Nipple Clamp w/Beads and Star Charm - Blu



FRESH - Tweezers Style Nipple Clamp w/Beads and Star Charm - Blue
Item #: FR1006B


Price: \$15.00
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FRESH - Tweezers Style Nipple Clamps - W/Beads and Bells - Blue

H2H - Alligator Style Nipple Clamps w/Chain and Magnet Stacker W
Item #: H2H1012C

Price: \$10.00
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H2H - Ball Weight w/ Clip - 10 oz. - Black



H2H - Ball Weight w/ Clip - 10 oz. - Black
Item #: H2H1104B

Price: \$14.70
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H2H - Ball Weight w/ Clip - 10 oz. - Chrome



H2H - Ball Weight w/ Clip - 10 oz. - Chrome
Item #: H2H1104C

Price: \$14.70
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H2H - Ball Weight w/ Clip - 2 oz. - Black



H2H - Ball Weight w/ Clip - 2 oz. - Black
Item #: H2H1100B

Price: \$8.40
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