

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

JAMES HAICK
DON HANDFIELD

CASE NO.

Plaintiffs

v.

MICHAEL MORECI,
GARY DAUBERMAN
and VAULT MEDIA HOLDINGS, LLC

Defendants

VERIFIED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

Plaintiff, James Haick and Don Handfield, sues the Defendants, Michael Moreci ("Moreci"), Gary Dauberman ("Dauberman") and Vault Media Holdings, LLC ("Vault") and states as follows:

The Parties

1. Plaintiffs are the creators of a comic book series through Scout Comic Books named The Mall since on or about February 1, 2018. This comic book series has become very popular, is currently up to issue 6 and has been optioned for television shows.
2. Defendants Moreci and Dauberman are the creators of a comic book series called "Mall" which first started being published on or about July 2019.
3. Defendant Vault is the publisher, marketer and distributor of the Mall comic book.

Jurisdiction and Venue

4. There is jurisdiction over this trademark action pursuant to 28 USC 1338(a)

and 15 USC 1116(a).

5. Venue is proper in this judicial district pursuant to 28 USC 1391(b) and (c) because it is Plaintiff's principal place of business and a substantial portion of the events giving rise to the asserted claims have occurred and continue to occur, within this district. Finally the damage to the Plaintiffs and their intellectual property occurred in this District.

6. Defendants transact business in the State of Florida by virtue of the sale of the Mall comic book and other comic books.

7. Vault contracts to provide comic books to retailers in the State of Florida.

8. Vault and the Defendants engage in a persistent course of conduct in selling comic books to residents of the State of Florida.

9. The Defendants contracted with retailers in the State of Florida to sell comic books including the Mall to retailers within the State of Florida.

10. The Defendants engaged in a tortious act outside the state causing injury inside the State of Florida to Plaintiffs.

11. Defendants derive substantial revenue from residents of the State of Florida.

12. Defendants further solicit business within the State of Florida.

13. Defendants further promote themselves via online presence and social media within the State of Florida.

14. Defendants deliver its products into the stream of commerce with the expectation that they will be purchased by consumers in the State of Florida.

Facts

15. Since on or about February 1, 2018, the Plaintiffs have been publishing and distributing their comic book series called "The Mall."

16. On or about May 16, 2019, Defendants were advised by Plaintiffs that there upcoming comic book series the Mall uses a name that infringes upon and causes confusion with the series of the Plaintiffs. See attached.

17. On or about May 28, 2019, Defendants advised Plaintiffs that they refused to change the name of their upcoming series. See, attached. Thereafter, Defendants heavily promoted its Mall comic book at the San Diego Comic-Con in July 2019 and thereafter published and distributed at least 4 issues of their comic book.

18. On or about December 31, 2019, the USPTO issued a trademark registration to the Plaintiffs for the federal trademark "The Mall" in the international class of comic books, Registration No: 5,948,554.

19. Plaintiffs believe that Defendants will continue to sells its competing comic books as well as its trade paperback for the "Mall."

20. All conditions precedent have been performed waived and/or excused.

21. Plaintiffs have retained the undersigned counsel and have agreed to pay it a reasonable fee for its services.

Count I-Trademark-Lanham Act Section 32 and 43(a)

22. Plaintiff re-allege the allegations of paragraph 1 through 21 as fully set forth herein.

23. The actions of the Defendants violate section 32 of the Lanham Act.

24. When Defendants began using "the Mall" in commerce on or about May 2019, they were aware of the Defendants trademark claims to the name they intended to use.

25. Defendants have been using "the Mall" trademark for the same or similar

products as the Plaintiffs.

26. At all times material hereto, Vault has sold, distributed and/or marketed the infringing products.

27. Vault is a co-infringer with the Defendant creators.

28. Even after notice of the claims to the Mall trademark, Defendants willfully and intentionally infringed by selling its own comic book series which they continue to do through the date of filing of this Complaint.

29. The public is likely to be confused and has been confused with the Defendants use of the Mall trademark for its comic book series.

30. Defendants conduct was in bad faith.

31. Defendants have willfully, knowingly and intentionally infringed upon the Trademark of Plaintiffs and have continued to do so even after being placed on notice of same.

32. Section 43(a) of the Lanham Act, 15 U.S.C. 1125(a), provides in pertinent part, that "any person who, or in connection with any goods or services, uses in commerce any word, term, name symbol...or any false designation of origin, false or misleading description of fact, which is likely to cause confusion or to cause mistake, or to deceive as to affiliation...or as to origin, sponsorship, or approval...goods [or] services...shall be liable in a civil action."

33. The unauthorized use and infringement of Plaintiff's intellectual property is a false designation of origin, a false and misleading description of fact and a false and misleading representation of fact that cause and are likely to continue to cause confusion, or to cause mistake, or to deception as to the affiliation of Defendants businesses and to

cause confusion, or to cause mistake or deception as to the effect that the Plaintiffs, sponsor or approve of the goods and services provided by Defendants in violation of Section 43(a) of the Lanham Act.

34. Section 43 (c) of the Lanham Act, 15 U.S.C. 1125 (c) provides in pertinent part that “the owner of a famous Mark shall be entitled to, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another persons commercial use in commerce of a mark or trade name, if such use begins after the Mark has become famous and causes dilution of the distinctive quality of the Mark and to obtain such relief as is provided in this subsection.”

35. Defendants use of Plaintiff’s marks in connection with its goods and services, caused and will continue to cause dilution and disparagement of the distinctive quality of the Plaintiff’s marks, and lessened and will continue to lessen the capacity of the Plaintiffs marks to identify and distinguish the goods and services of the Plaintiffs, all in violation of Section 43 (c) of the Lanham Act.

36. Defendant’s ongoing acts of infringement in violation of Section 32, 43 (a) and 43 (c) of the Lanham Act are malicious, fraudulent, willful and deliberate.

37. Defendants ongoing acts of infringement in violation of Section 32, 43(a) and 43 (c) of the Lanham Act have inflicted and continue to inflict irreparable harm on Plaintiffs.

38. Plaintiffs have no adequate remedy at law.

39. No previous injunctive relief has been awarded with respect to this matter in this case or any other case.

WHEREFORE, pursuant to 15 U.S.C. 1114 and 1125, Plaintiffs demand judgment

against the Defendants for \$500,000 as follows:

a. Preliminarily and permanently restraining and enjoining Defendants, its affiliates, subsidiaries, officers, shareholders, agents, servants, employee and attorneys and all those who are in concert or participation with them from marketing, promoting or selling goods or services with the Mall marks.

b. Preliminarily and permanently restraining and enjoining Defendants its affiliates, subsidiaries, officers, shareholders, agents, servants, employee and attorneys and all those who are in concert or participation with them from marketing, promoting or selling goods or services with the Mall marks or otherwise infringing upon the Mall Marks, slogans, logos, trade names, or trade dress.

c. Granting compensatory damages, including disgorgement of profits, treble damages, attorneys' fees pursuant to U.S.C. 1117(a), prejudgment interest, costs of suit, and such other relief as this Court shall deem just and proper.

Count II-Dilution Pursuant to Fla. Stat. 495.151

40. The Plaintiffs reallege and reaver the allegations set forth in Paragraphs 1-21 of this Complaint.

41. Plaintiffs are the owner of the name for comic books the Mall which are famous and has been used prior to use of name by the Defendants.

42. Defendants use of the name Mall for its comic books is likely to cause dilution of the distinctive quality of the name of Plaintiffs' comic books unless enjoined by this Court and constitutes dilution and violation of Fla. Statutes 495.151.

43. Defendants have willfully intended to trade upon the Plaintiffs' reputation to cause dilution of its marks.

44. As a direct and proximate result of the conduct of Defendants, Plaintiffs have suffered damages and will continue to suffer irreparable harm to their business and goodwill if the dilution continues.

WHEREFORE, Plaintiffs seeks damages against Defendants for actual damages, injunctive relief, attorneys fees and any other relief this Court deems just and proper under the circumstances.

Count III-Common Law Trademark Infringement

45. The Counter plaintiff realleges and reavers the allegations set forth in Paragraphs 1-21 of this Counterclaim.

46. Plaintiffs established its marks as a way of establishing good will and reputation for its services and to distinguish itself from other comic books.

47. Defendants have commenced the use of a confusingly similar name to indicate or identify similar services rendered by the Plaintiffs.

48. As a consequence of Defendants actions, consumer confusion is probable or inevitable and has in fact occurred.

49. As a direct and proximate result of the conduct of Defendants, Plaintiffs will suffer and continue to suffer damage and irreparable harm to their business, reputation and good will.

50. Plaintiffs have no other adequate remedy at laws

WHEREFORE, Plaintiffs seeks damages against Defendants for actual damages, injunctive relief, attorneys fees and any other relief this Court deems just and proper under the circumstances.

Demand for Jury Trial

Plaintiffs demand a trial by jury of all issues so triable.

Behren Law Firm
1930 N. Commerce Parkway
Suite 4
Weston, Florida 33326
Telephone (954) 636-3802
Facsimile (772) 252-3365
scott@behrenlaw.com
www.behrenlaw.com

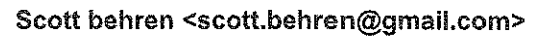
By: /Scott M. Behren/
Scott M. Behren
Florida Bar No. 987786

Verification

We hereby attest to the foregoing facts being truthful and accurate to the best of our knowledge.

By: _____
James Haick

By: _____
Don Handfield



1 message

Wed, Jan 15, 2020 at 9:03 AM

To: Scott Behren <scott@behrenlaw.com>

----- Forwarded message -----

To: Brendan Deneen <brendan.deneen@scoutcomics.com>, James Haick <james.haick@scoutcomics.com>

Hey guys, hope you are doing well. Your announcement today was brought to my attention concerning your new title The Mall. First off, sounds very interesting, but I do need to let you know that Scout Comics already has a title called The Mall, co-written by Don Handfield, a known Hollywood writer and producer, and we've published four issues to date. This comic has already been optioned by Ivan Reitman to develop as a possible television series. I know nothing was done intentionally on your end, but we respectfully request that you change the title of your upcoming new series as we have already established the name The Mall and are currently publishing it. Thanks for your attention to this matter and if you would please give me the professional courtesy of acknowledging that you received this request and will comply.

Respectfully, James Pruett, Publisher, Scout Comics

James Pruett
Publisher
Scout Comics & Entertainment
www.ScoutComics.com

James Haick
President, Scout Comics & Entertainment, Inc.





Scott behren <scott.behren@gmail.com>

Fwd: MALL Title

1 message

James Haick <james.haick@scoutcomics.com>

Wed, Jan 15, 2020 at 9:02 AM

To: Scott Behren <scott@behrenlaw.com>

Vault's response.

----- Forwarded message -----

From: **James Pruett** <james.pruett@scoutcomics.com>

Date: Tue, May 28, 2019 at 4:33 PM

Subject: Fwd: MALL Title

To: James Haick <james.haick@scoutcomics.com>, Don Handfield <don.handfield@gmail.com>, Brendan Deneen <brendan.deneen@scoutcomics.com>

Gentlemen, here is Vault's response.

----- Forwarded message -----

From: **Damian Wassel** <damian@vaultcomics.com>

Date: Tue, May 28, 2019, 4:07 PM

Subject: MALL Title

To: <james.pruett@scoutcomics.com>, Adrian Wassel <editor@vaultcomics.com>

Hi, Jim,

After discussion with both our creators and our legal counsel, our current plan is to release the book under its current title. Our counsel has advised that titles are not protectable under copyright law, and the series creator is firmly committed to this title.

In addition to this, the titles are not at all confusable in terms of content: one is a crime story set in the eighties, the other is a post-apocalyptic story of clan rivalry reminiscent of THE WARRIORS.

For what it's worth, our book is titled "MALL" not "THE MALL"; the current presence of the article in our Diamond solicits is the result of a Diamond typo.

Kind regards,

Damian Wassel
CEO & Publisher

Vault Comics

Email: damian@vaultcomics.com

Email: publisher@vaultcomics.com

Mobile: +1 (406) 201-1236

www.vaultcomics.com

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James Haick**President, Scout Comics & Entertainment, Inc.**

VAULT

(<https://vaultcomics.com/>)

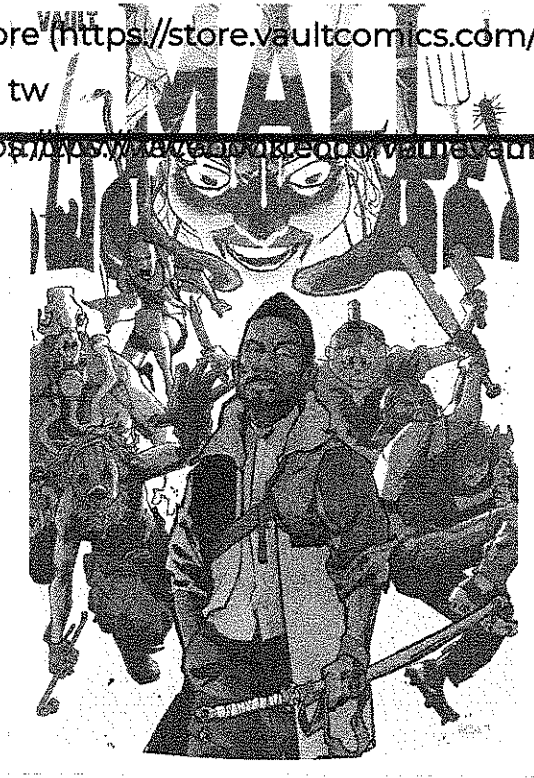
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(https://www.hollywoodreporter.com/movies/movie-news/vault-comics-mall-1211097?utm_source=twitter&utm_medium=social&utm_source=t.co&utm_medium=referral)



Here in the heartland of the U.S. of A., the world has ended! But worry not, because the mall still stands. And within the walls of this consumeristic mecca lies a new world order: box store tribes and name brand gangs, all vying for limited space and resources. So, actually...you can worry! Especially for poor Andre Reed, who—after the assassination of a tribal leader—has to navigate the mad haven to prove his innocence, and prevent the end of world, again!

Vault is thrilled to announce **MALL**, a new comic book series co-written by Hollywood screenwriter **Gary Dauberman** & author **Michael Moreci**, in partnership with Emile Gladstone, and with art by Zak Hartong, colors by Addison Duke, and letters by Jim Campbell.

First announced by The Hollywood Reporter (https://www.hollywoodreporter.com/heat-vision/mall-gary-dauberman-write-post-apocalyptic-comic-1211097?utm_source=twitter&utm_medium=social&utm_source=t.co&utm_medium=referral), **MALL** is

set to hit shelves August 28. In addition to its main cover, it will feature a Vault Vintage homaging Gray Morrow's classic 1975 cover for Marvel's Marvel Preview No. 3.

"I couldn't be more excited to have VAULT release **MALL**," said Dauberman. "Sometimes there are stories that just scream 'MAKE ME A COMIC!' and this was one of them. Working with partners like Emile Gladstone, Mike Moreci and Zak Hartong, along with Damian and Adrian at Vault, has elevated this story beyond my wildest expectations."



(https://www.hollywoodreporter.com/movies/movie-news/vault-comics-mall-1211097?utm_source=twitter&utm_medium=social&utm_source=t.co&utm_medium=referral)

Gary and Emile originally developed the story idea and both agreed it would make a great

comic. Gary brought the idea to Vault and began collaborating with Moreci on the script. "MALL

is madness at its finest," says Adrian Wawel, Editor in Chief at Vault. "It's a story about the end

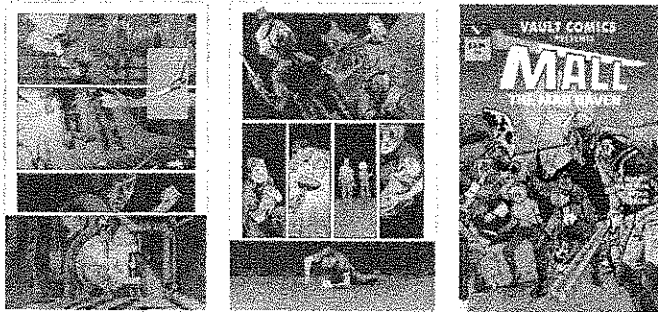
(<https://vaultgomics.com/>)
of the world....after the end of the world. It's as though Gary and Mike reached into my brain,

Comics ([/comic/](#)) Preorder (<https://bookit.vaultcomics.com>)

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Current Issue No.: 1

Current Issue On Sale Date: Aug 28, 2019

Future Issues:

Issue No. 2 Release Date: Sep 25, 2019

Issue No. 3 Release Date: Oct 30, 2019

Issue No. 4 Release Date: Nov 20, 2019

Issue No. 5 Release Date: Dec 18, 2019

Contributors



(<https://www.fr>

Artists:

Zak Hartong

Writers:

Michael Moric

Colorists:

Addison Duke

VAULT

(https://vaultcomics.com/) Gary Dauberman

Comics (/comic/)

Preorder (https://bookit.vaultcomics.com)

Creators:**Letterers:**

Store (https://store.vaultcomics.com/)

About (https://vaultcomics.com/about/)

Emile Gladstone

Jim Campbell

fb tw

(https://www.facebook.com/vaultcomics/)

← SERA & THE ROYAL STARS

(https://vaultcomics.com/comic/sera-the-royal-stars/)

The Necromancer's Map

(https://vaultcomics.com/comic/the-necromancers-map/) →

Developed by LoudFeed (http://loudfeed.tv)



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