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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
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10  
11 UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13  
14 MARION ZIMMER BRADLEY,  
15 LITERARY WORKS TRUST, and  
16 ANN SHARP, Trustee,  
Plaintiffs,

17 v.

18 MARY BATTLE, and DOE 1,  
19 Defendants.

Case No: 12-0018  
COMPLAINT FOR COPYRIGHT AND  
TRADEMARK INFRINGEMENT

20 INTRODUCTION

21 Plaintiffs, the Marion Zimmer Bradley Literary Works Trust ("the Trust"), and Ann Sharp,  
22 Trustee of the Trust, seek an injunction and damages against the defendants, Mary Battle and Doe  
23 1, for copyright and trademark infringement.

24 PARTIES

25 1. Plaintiff Marion Zimmer Bradley Literary Works Trust is an unincorporated entity.  
26 Plaintiff is the holder of all copyrights and trademarks for and regarding the literary works of  
27 author Marion Zimmer Bradley ("Bradley"), and has been since the time of her death. Plaintiff is

28 COMPLAINT

1 and was, at all times relevant hereto, a resident of the State of California.

2 2. Plaintiff Ann Sharp is the trustee of the Trust, and has been since the Trust was  
3 created. Plaintiff is and was, at all times relevant hereto, a resident of the State of California.

4 3. Defendant Mary Battle is the author of the infringing works *Molly of Darkover* and  
5 *Women of Darkover*. Defendant is and was, at all times relevant hereto, a resident of the State of  
6 Pennsylvania.

7 4. Defendant Doe 1 materially assisted in and/or profited from the creation,  
8 distribution, and/or sale of the infringing works. Defendant is and was, at all times relevant hereto,  
9 a resident of the State of Pennsylvania.

10 **JURISDICTION AND VENUE**

11 5. The jurisdiction of this court for the causes of action is invoked pursuant to 17 U.S.C.  
12 § 301 (federal preemption of copyright claims); 28 U.S.C. § 1331 (original jurisdiction over federal  
13 questions); and 28 U.S.C. § 1338 (original jurisdiction over copyright and trademark claims).

14 6. Venue is proper in this Court because the infringing works were offered for sale in  
15 this District, were purchased in, sold in, and shipped to this District, and the harms resulting from  
16 the infringements have been and will be imposed on the Plaintiff in this District. In addition, the  
17 property at issue is held by the Trust, whose principal offices are in San Francisco, and a  
18 substantial portion of the events giving rise to this claim occurred in this District.

19 **FACTUAL ALLEGATIONS**

20 7. Marion Zimmer Bradley authored a series of science fiction/fantasy books,  
21 collectively referred to as the Darkover series, named after the planet on which most of the stories  
22 take place. This series has been continuously in print since 1962, and possesses a large fanbase.

23 8. Bradley, and the Trust after her, have actively controlled and protected the  
24 copyrights, marks, and other commercial rights to the Darkover series and all other works  
25 authored by Bradley. All authorized third-party derivative works were and are granted permission  
26 through a written contract.

27 9. In 2006, Defendant Battle published *Molly of Darkover*, a literary work of inferior  
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1 quality taking place within the Darkover universe. The work was published through Lulu Press, a  
2 subsidy publisher.

3 10. Sometime thereafter, Plaintiffs were informed of Defendant Battle's publication.

4 11. Immediately upon learning of Defendant's unauthorized publication, Plaintiff  
5 Sharp sent takedown notices to the various websites selling Defendant Battle's novel.

6 12. Shortly thereafter, Defendant Battle contacted Plaintiffs to ask permission to sell  
7 her work. Plaintiffs refused. Lulu Press then removed *Molly of Darkover* from its website.

8 13. In late 2007, Plaintiff Sharp learned that Defendant Battle had published *Women of*  
9 *Darkover*, another work of inferior quality taking place in the Darkover universe, and which  
10 included *Molly of Darkover* in its entirety.

11 14. Plaintiffs purchased a copy of *Women of Darkover* for the purpose of determining  
12 whether and to what extent it infringed on the copyrights to the Darkover series. *Women of*  
13 *Darkover* was purchased from and sent to San Francisco.

14 15. On August 10, 2009, the Trust filed a trademark application for "Darkover."

15 16. On March 23, 2010, the Trust's trademark application for "Darkover" was granted.  
16 A true and correct copy of the trademark certificate is attached and marked as "Exhibit 1."

17 17. In September 2011, the literary agent for Marion Zimmer Bradley sent out take-  
18 down notices to all websites selling Defendant Battle's Darkover novels. Thereafter, Lulu  
19 removed *Women of Darkover* from its website and Defendant Battle's account, per its policy on  
20 repeat infringers.

21 18. Fans of the Darkover series have contacted the Trust to inquire whether the *Women*  
22 *of Darkover* book was authorized.

23 **FIRST CAUSE OF ACTION**

24 **Copyright Infringement**

25 **(17 USC § 501)**

26 19. Plaintiffs incorporate by reference paragraphs 1 through 18 as if fully set forth  
27 herein.

28 **COMPLAINT**

1 20. Defendant Battle intentionally wrote fiction taking place in the Darkover universe,  
2 as evidenced by the use of "Darkover" in the title, the use of settings and history from previously  
3 published, authorized Darkover novels, and the reference to characters from said novels.

4 21. Defendant Battle intentionally wrote and published fiction taking place in the  
5 Darkover universe without the authorization of the copyright holder, as evidenced by her  
6 contacting Plaintiffs for permission, after the infringing work had already been published.

7 22. Defendant Battle willfully continued to write and publish fiction taking place in the  
8 Darkover universe after permission was denied, as evidenced by the publication of *Women of*  
9 *Darkover* one year after *Molly of Darkover* was removed from distribution.

10 23. This action is within the statute of limitations for copyright infringement, as the  
11 infringement continued until September 28, 2011.

12 24. Based on the above, Defendant has willfully and repeatedly infringed on Plaintiffs'  
13 copyright rights, including without limitation the exclusive right to create and distribute derivative  
14 works. As such, Defendant is liable to Plaintiffs for copyright infringement, and Plaintiffs are  
15 entitled to damages for same.

16 **SECOND CAUSE OF ACTION**

17 **Trademark Infringement**

18 **(Common Law and 15 USC § 1111 et seq.)**

19 25. Plaintiffs incorporates by reference paragraphs 1 through 24 as if fully set forth  
20 herein.

21 26. "Darkover" is a distinctive term, and even before the filing of the trademark  
22 application has been associated with Bradley's novels by readers and the publishing industry, such  
23 that creative works bearing or using the mark are considered to have been authorized by the rights  
24 holder of the Darkover novels.

25 27. Defendant uses the mark "Darkover" in the title of both infringing works, as well as  
26 throughout the text of her novels.

27 28. Several people have contacted Plaintiff, asking whether the infringing works were  
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1 published with permission, showing that consumers were confused as to the origin of the  
2 infringing works.

3 29. Consumers who have purchased Defendant's novels have not gone on to purchase  
4 authorized Darkover novels, showing that the availability of the works harms and will continue to  
5 harm Plaintiff's sales, as well as the author's reputation.

6 30. Given the above, Defendant has willfully infringed on Plaintiff's trademark, and  
7 Plaintiff is entitled to damages for same.

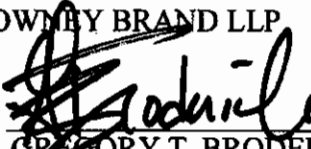
8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays that this court:

- 10 A. Issue an injunction barring Defendant from creating, publishing, and/or distributing any  
11 work taking place in the Darkover universe, or any other universe created by Marion  
12 Zimmer Bradley, or inducing any third party to do so;
- 13 B. Issue an injunction barring Defendant from using the Darkover mark in commerce, in any  
14 capacity;
- 15 C. Award punitive, compensatory and statutory damages to Plaintiff for violation of  
16 copyright;
- 17 D. Award punitive and compensatory damages to Plaintiff for violation of trademark;
- 18 E. Grant costs of suit incurred herein;
- 19 F. Grant reasonable attorney's fees as provided by statute; and
- 20 G. Grant such other and further relief as the court deems just and proper.

21 Dated: January 4, 2011

DOWNBY BRAND LLP

22 By   
23 GREGORY T. BRODERICK  
24 Attorneys for Plaintiffs