

BEAUTY EYE

Claim to Notorious has faint scent of Hitchcock

NEW YORK — It must be the name. The concept of a Notorious fragrance is already causing controversy, beginning with who can use the trademark.

Cosmair, Inc., has brought what it believes is the Notorious trademark for a fragrance from a retail outfit in Salt Lake City. Sources say this is what the company wants to call the upcoming women's fragrance by Ralph Lauren.

Faberge, Inc., talked to an apparel and shoe retailer that claims to own the Notorious name but has since abandoned the idea for such a scent, saying it won't pursue an idea that may become tangled in litigation.

Cosmair bought the name in early February from Notorious Enterprises, which owns a makeup and fragrance store in Salt Lake City, according to John D. Sullivan, Cosmair corporate counsel. The store has sold its own women's fragrance called Notorious since 1981, he said.

It was Sullivan's understanding that the Edison Bros. Stores, Inc., of St. Louis sells Notorious shoes but does not own the mark for fragrances and cosmetics.

Peggy Newman, a staff attorney for Edison, which owns such shoe stores as Chandlers, Leeds and Bakers, would only say that her company owns the trademark. She would not explain what Edison uses it for. "I really don't want to get into that," she said Wednesday. "There are some sensitive negotiations going on, and I don't want to comment on that."

Faberge says it does not want to get involved in a trademark dispute, although it had been considering the Notorious name for a fragrance. Cary Grant, a Faberge director, starred in the Alfred Hitchcock classic, "Notorious," in 1946.

"It was an idea we had," said Dan Manella, chief executive officer of Faberge. The company inquired about the trademark at Edison — but never actually negotiated to buy it — and never contacted Notorious Enterprises, he said. "It is safe to say we are not planning a Notorious fragrance. I don't think we want to get involved in litigation over a trademark. We have enough brands."

— ROBIN WIEST

Faberge now is saying it wants Notorious name

NEW YORK — Faberge is still interested in acquiring the Notorious trademark for a fragrance, after all.

In March, Faberge chairman Daniel J. Manella said, "It is safe to say we are not planning a Notorious fragrance. I don't think we want to get involved in litigation over a trademark." This week, he said that what he meant was Faberge was not planning a Notorious scent for this year.

Manella is awaiting the outcome of a suit involving Edison Bros. Stores, Inc., and Cosmair, Inc. Both companies claim to own the trademark.

As reported on March 21, Cosmair bought what it considers the official trademark rights from Notorious Enterprises, a retailer in Salt Lake City. Cosmair is believed to want the name for its new Ralph Lauren women's scent, planned for 1987. Edison had been negotiating to sell its mark to Faberge, which wants to do a Notorious women's fragrance next year, too.

"If they (Edison) win we will go ahead with it; if they lose we won't," Manella said. "We have a deal subject to the outcome of the case."

On April 10, Edison filed suit against Cosmair in federal court in Chicago to protect its Notorious trademark, for which it said it first registered on May 24, 1983, for women's apparel. Edison claims, in court papers, that Notorious Enterprises filed for a trademark for use on fragrance and cosmetics products on May 2, 1985, and was rejected, and that

Notorious Enterprises said it had been using the name since 1983.

In January, according to court papers, Edison asked Notorious Enterprises to stop using the mark because it was "likely to cause confusion in the trade." A month later, Cosmair informed Edison it had bought the Notorious name and intended to use it for fragrances and cosmetics in U.S. department stores.

Edison also claims it had been negotiating with Faberge over the sale of the trademark since December, but because of the dispute with Cosmair a final agreement has been delayed and put in jeopardy.

The company seeks a temporary and permanent injunction enjoining Cosmair from using the Notorious name, from initiating action to cancel Edison's trademark rights and from interfering with Edison's prospective business relations.

Cosmair argues in a memorandum that Notorious Enterprises had used the name since 1981, and Edison started in 1982. The company states that it told Edison in February of its intention to make a Notorious fragrance, but that Edison did not mention its dealings with Faberge. It says Edison did not "seek relief" until Faberge broke off negotiations.

"Edison Brothers seeks to use the court as a vehicle to resurrect its deal with Faberge, a deal evidently lost through Edison Brothers's own actions," Cosmair's memorandum says.

— ROBIN WIEST

US court rules Cosmair may use Notorious mark

NEW YORK (FNS) — The use of the name Notorious by Cosmair, Inc., on fragrance does not infringe on a trademark for women's apparel and shoes held by Edison Bros. Stores, a federal judge has ruled.

In its complaint filed April 2, Edison contended that Cosmair's planned use of Notorious for a Ralph Lauren fragrance represented trademark infringement and unfair competition.

Edison was using the Notorious name on women's apparel and shoes and had plans to license the name to Faberge, Inc., for use on cosmetics, according to court papers.

Cosmair argued that in early 1986 it purchased the rights to the mark Notorious, including a pending trademark application, from a small cosmetics company and retailer, Notorious Enterprises of Salt Lake City.

The court decided in a three-day trial that Cosmair's use of the name would not confuse purchasers into believing that the two are related.

Cosmair is planning to launch Notorious as Ralph Lauren's third women's fragrance in spring 1988. Many of the elements of the fragrance are already completed, said John R. Wendt, senior vice president and general manager of the designer fragrances division. "We now can pursue the project with renewed vigor and reestablish a firm timetable."

Niro, Scavone, Haller & Niro represented Edison. Brumbaugh, Graves, Donohue & Raymond was counsel for Cosmair. Judge Louis L. Stanton handled the case.

The man who was Notorious

WOMEN'S WEAR DAILY, FRIDAY, JUNE 5, 1987

SALT LAKE CITY (FNS) — Selling the rights to the Notorious trademark, which was once the name of his cosmetics stores and their products, turned into an expensive and frustrating venture for Russ L. Isenbug, who now calls his business Infamous Enterprises.

Isenbug sold the Notorious trademark to Cosmair in February 1986 for \$85,000, and according to the terms of the agreement, he had until this month to adopt another identity for his shops and beauty products.

That \$85,000 has since dwindled to \$6,900, Isenbug said. The trademark search, the application for the Infamous name and a new sign for his store, located in the Crossroads Plaza Mall in downtown Salt Lake City, have brought his expenses to \$30,000, he said, while the rest was used to pay off debts.

Knowing what he does now, Isenbug said he probably wouldn't do it again.

It wasn't a smooth transition for Cosmair, either.

Less than two months after signing the deal with Isenbug, Edison Bros. Stores,



Russ L. Isenbug

ness," he said. "By the time I paid back my investors and attorneys, I had \$6,900 left," he said. Since selling the rights, Isenbug had to design new labels for his 12 skin care products, 200 makeup items and 40 fragrances, which he formulated himself.

After the store's new Infamous sign went up, Isenbug noted a 20 percent drop in business.

"I didn't think customers would no-

nostic and European manufacturers and chemists to develop the formulas.

He also developed a makeup line and a variety of fragrances during his first year. All the products carried the Notorious name after Isenbug's uncle, a banker, conducted a trademark search and found the name had not been used before for cosmetics or fragrances.

The skin care and makeup items are composed of natural ingredients, such as aqualene and marine oils, which he had found to be closest to human skin oils. There are also 40 fragrances, each numbered to represent a specific family, such as florals, spices, woods, mosses, Orientals and fruits.

With some financial backing from relatives and friends, Isenbug opened his own store in the Crossroads mall in 1984.

Isenbug, who would not reveal sales volume for the store, said business is "starting to climb," after last year's decline. Sales are divided equally among the skin-care, cosmetics and fragrance categories.

His boutique has a separate skin care and cosmetics area, with makeup application stations where he does free consultations and makeovers. The semiprivate atmosphere of the consultation area allows customers to feel comfortable and unharmed, said Isenbug.

The fragrance area displays Isenbug's line of Infamous scents, which he mixes at the store. In addition, he stocks

Infamous

which holds the Notorious trademark for women's apparel and shoes, filed suit against the company, claiming trademark infringement and unfair competition.

Edison itself had been negotiating to sell the Notorious name to Faberge, which, like Cosmair, wanted to call a women's fragrance Notorious. In January, a New York federal judge ruled in Cosmair's favor.

Isenbug said he voluntarily testified for Cosmair at the three-day trial, while Edison Bros. accused him of not only stealing the name from them, but of copying their logo.

"It was hysterical," he said.

Dealing with Cosmair, on the other hand, has been a "delight," and the company has offered to purchase any of Isenbug's leftover Notorious products after this month's deadline, Isenbug said.

Although Isenbug has been in business since 1980, he said the name change has made him feel like he's starting over again. His situation might not have been so overwhelming had he not elected to use most of the money to settle his debts with several investors who had helped him open his 600-square-foot store in June 1984.

"I wanted to be in control of the busi-



The Infamous store in the Crossroads Plaza Mall

ness the name change, but many have, and some even thought I'd gone out of business," he said. To provide some continuity, the Infamous logo is written in Isenbug's handwriting, just like the Notorious one. Except for the name, the packaging looks the same. He also sent more than 2,000 mailers to his customers and business contacts to inform them of the switch.

Isenbug started selling his skin care products in the back room of a friend's Salt Lake City card shop. He worked with do-

about 150 brand name women's and men's fragrances, along with cosmetics accessories, such as atomizers, makeup bags and brushes. The Infamous line generates about 75 percent of the store's overall fragrance sales.

He plans to open six more Infamous boutiques in the San Francisco and Los Angeles areas by the end of the year.

—CATHY GRADT

Photos by RICK McCLAIN