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DERECK SELTZER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DERECK SELTZER,

Plaintiff,

vs.

GREEN DAY, INC., a corporation;
GREEN DAY TOURING, INC., a
corporation; GREEN DAY, a
partnership; GREEN DAY, a business
entity (form unknown);
BILLIE JOE ARMSTRONG, an
individual; FRANK EDWIN
WRIGHT III professionally known as
TRE COOL, an individual;
MICHAEL RYAN PRITCHARD
professionally known as MIKE
DIRNT, an individual;
WARNER BROS. RECORDS INC.,
a corporation;
INFECT PRODUCTIONS, a
partnership; INFECT
PRODUCTIONS, a sole
proprietorship; INFECT
PRODUCTIONS, a business entity
(form unknown); ROGER STAUB,
an individual; and
DOES 1 through 10, inclusive,

Defendants.

Case No. **CV 10-02103-PSG**
**COMPLAINT FOR DIRECT AND
CONTRIBUTORY LIABILITY
FOR:**

- (1) COPYRIGHT INFRINGEMENT;
- (2) VIOLATION OF SECTION 43(a) OF LANHAM TRADEMARK ACT - UNFAIR COMPETITION;
- (3) UNFAIR COMPETITION; AND
- (4) DILUTION AND/OR INJURY TO BUSINESS REPUTATION

DEMAND FOR JURY TRIAL

1 Plaintiff, DERECK SELTZER (hereinafter referred to as "Plaintiff"),
 2 complains and alleges as follows:

3 **ALLEGATIONS COMMON TO ALL CLAIMS**

4 **JURISDICTION AND VENUE**

5 1. The first and second claims hereof each arise under the Copyright Act
 6 of 1976, 17 U.S.C. § 101 *et seq.* This Court has jurisdiction over the subject matter
 7 of these claims pursuant to 28 U.S.C. Sections 1331 and 1338(a). The third and
 8 fourth claims hereof arise under the provisions of the Lanham Trademark Act of
 9 1946, as amended, 15 U.S.C. § 1051 *et seq.*, particularly under 15 U.S.C. Section
 10 1125(a), as amended, and allege the use in interstate commerce of false designations
 11 of origin and of false descriptions and representations. This Court has jurisdiction
 12 over the subject matter of these claims pursuant to 15 U.S.C. Section 1121 and 28
 13 U.S.C. Sections 1331 and 1338. The fifth and sixth claims hereof each arise under
 14 the common law and statutory law of this State relating to trademark infringement
 15 and unfair competition. This Court has jurisdiction over the subject matter of such
 16 claims pursuant to the provisions of 28 U.S.C. Section 1338(b), such being claims of
 17 unfair competition, dilution and injury to business reputation joined with substantial
 18 and related claims under the Trademark Laws of the United States, and under the
 19 law of supplemental jurisdiction.

20 2. Venue is proper in this judicial district pursuant to 28 U.S.C. Sections
 21 1391(b) through (c), 1392 and 1400(a).

22 **THE PARTIES**

23 3. Plaintiff is, and at all times material hereto was, an individual residing
 24 in the State of California and this District.

25 4. Plaintiff is informed and believes, and upon that basis alleges, that at all
 26 times relevant hereto:

27 a. Defendant GREEN DAY, INC. (hereinafter "Green Day, Inc.")
 28 is a California corporation doing business in the County of Los Angeles, State of

1 California, with its principal place of business in the State of California and this
 2 District, and is and/or was carrying out the activities and/or causing the injuries and
 3 damages complained of herein in this District and elsewhere;

4 b. Defendant GREEN DAY TOURING, INC. (hereinafter "Green
 5 Day Touring, Inc.") is a California corporation doing business in the County of Los
 6 Angeles, State of California, with its principal place of business in the State of
 7 California and this District, and is and/or was carrying out the activities and/or
 8 causing the injuries and damages complained of herein in this District and elsewhere;

9 c. Defendant GREEN DAY is a partnership (hereinafter "Green
 10 Day Partnership") doing business in the County of Los Angeles, State of California,
 11 with its principal place of business in the State of California and this District, and is
 12 and/or was carrying out the activities and/or causing the injuries and damages
 13 complained of herein in this District and elsewhere;

14 d. Defendant GREEN DAY is a business entity of unknown form
 15 (hereinafter "Green Day Business Entity") doing business in the County of Los
 16 Angeles, State of California, with its principal place of business in the State of
 17 California and this District, and is and/or was carrying out the activities and/or
 18 causing the injuries and damages complained of herein in this District and elsewhere;

19 e. Defendant BILLIE JOE ARMSTRONG (hereinafter "B.
 20 Armstrong") is an individual residing in the State of California, is an officer and
 21 owner of defendants Green Day, Inc. and/or Green Day Touring, Inc., is a partner of
 22 Green Day Partnership, is doing business in the County of Los Angeles, State of
 23 California, and is and/or was carrying out the activities and/or causing the injuries
 24 and damages complained of herein in this District and elsewhere;

25 f. Defendant FRANK EDWIN WRIGHT III professionally known
 26 as TRE COOL (hereinafter "T. Cool") is an individual residing in the State of
 27 California, is an officer and owner of defendants Green Day, Inc. and/or Green Day
 28 Touring, Inc., is a partner of Green Day Partnership, is doing business in the County

1 of Los Angeles, State of California, and is and/or was carrying out the activities
2 and/or causing the injuries and damages complained of herein in this District and
3 elsewhere;

4 g. Defendant MICHAEL RYAN PRITCHARD professionally
5 known as MIKE DIRNT (hereinafter "M. Dirnt") is an individual residing in the
6 State of California, is an officer and owner of defendants Green Day, Inc. and/or
7 Green Day Touring, Inc., is a partner of Green Day Partnership, is doing business in
8 the County of Los Angeles, State of California, and is and/or was carrying out the
9 activities and/or causing the injuries and damages complained of herein in this
10 District and elsewhere;

11 h. Defendant WARNER BROS. RECORDS INC. (hereinafter
12 "Warner Bros.") is a corporation doing business in the County of Los Angeles, State
13 of California, with its principal place of business located at 3300 Warner Boulevard
14 Burbank, California 91505-4694, and is and/or was carrying out the activities and/or
15 causing the injuries and damages complained of herein in this District and elsewhere;

16 i. Defendant INFECT PRODUCTIONS is a partnership
17 (hereinafter "Infect Partnership") doing business in the County of Los Angeles,
18 State of California, with its principal place of business located at 8819 Appian Way,
19 Los Angeles, California 90046, and is and/or was carrying out the activities and/or
20 causing the injuries and damages complained of herein in this District and elsewhere;

21 j. Defendant INFECT PRODUCTIONS is a sole proprietorship
22 (hereinafter "Infect Proprietorship") doing business in the County of Los Angeles,
23 State of California, with its principal place of business located at 8819 Appian Way,
24 Los Angeles, California 90046, and is and/or was carrying out the activities and/or
25 causing the injuries and damages complained of herein in this District and elsewhere;

26 k. Defendant INFECT PRODUCTIONS is a business entity of
27 unknown form (hereinafter "Infect Business Entity") doing business in the County
28 of Los Angeles, State of California, with its principal place of business located at

1 8819 Appian Way, Los Angeles, California 90046, and is and/or was carrying out
 2 the activities and/or causing the injuries and damages complained of herein in this
 3 District and elsewhere;

4 l. Defendant ROGER STAUB (hereinafter "R. Staub") is an
 5 individual residing in the State of California, is a partner of Infect Partnership, is
 6 doing business as Infect Proprietorship, is an officer and owner of Infect Business
 7 Entity, is doing business in the County of Los Angeles, State of California, and is
 8 and/or was carrying out the activities and/or causing the injuries and damages
 9 complained of herein in this District and elsewhere;

10 m. Defendants B. Armstrong, T. Cool, M. Dirnt and DOES 1
 11 through 20, inclusive, are each officers, directors, owners, partners or agents of
 12 defendants Green Day, Inc., Green Day Touring, Inc., Green Day Partnership and/or
 13 Green Day Business Entity, and are each doing business under the name and style
 14 "Green Day," on the World Wide Web at www.greenaday.com, within the County of
 15 Los Angeles, State of California, and elsewhere; and

16 n. Defendants R. Staub and DOES 21 through 30, inclusive, are
 17 each officers, directors, owners, partners or agents of defendants Infect Partnership,
 18 Infect Proprietorship and/or Infect Business Entity, and are each doing business
 19 under the name and style "Infect Productions," at 8819 Appian Way, Los Angeles,
 20 California 90046.

21 5. The true names and capacities, whether individual, corporate, associate
 22 or otherwise, of defendant DOES 1 through 50, inclusive, and each of them, are
 23 unknown to Plaintiff at this time, who therefore sues said defendants by such
 24 fictitious names. Each of defendant DOES 1 through 50, inclusive, has and/or is
 25 assisting, aiding and abetting the named defendants in carrying out the activities
 26 complained of herein, or otherwise participated in, contributed to, or is legally
 27 responsible in some other manner for the events and occurrences herein alleged,
 28 Plaintiff's damages as alleged herein were proximately caused thereby, and each

1 such defendant is liable to Plaintiff thereon. Plaintiff will, with leave of court,
2 amend this Complaint to show the true names and capacities of each of DOES 1
3 through 50 when the same have been ascertained.

4 6. Plaintiff is informed and believes, and upon that basis alleges, that
5 defendants Green Day, Inc., Green Day Touring, Inc., Green Day Partnership, Green
6 Day Business Entity, B. Armstrong, T. Cool, M. Dirnt, Warner Bros., Infect
7 Partnership, Infect Proprietorship, Infect Business Entity, R. Staub and DOES 1
8 through 50, inclusive, and each of them (hereinafter individually and collectively
9 referred to as "Defendants"), were at all times relevant hereto the agents, servants,
10 partners, employees, representatives, co-conspirators and/or alter egos of each of the
11 other defendants with respect to the matters and events alleged herein, and were
12 acting within the course and scope of such agency, partnership, employment,
13 representative, conspiracy and/or alter ego relationship in doing the things herein
14 alleged with the consent, permission, authorization and ratification of said other
15 defendants, and each of them.

16 **PLAINTIFF'S ACTIVITIES**

17 7. Plaintiff is an up-and-coming Los Angeles-based artist and illustrator.
18 On or about July 3, 2003, Plaintiff created certain artwork entitled *Scream Icon*, and
19 thereby obtained copyright protection for the work(s), in the United States of
20 America and elsewhere. *Scream Icon* is a striking close-up image of a face that is
21 unique and highly identifiable.

22 8. The appearance and other qualities of *Scream Icon* is inherently
23 distinctive and serves to identify Plaintiff and his licensee as the source of goods and
24 services bearing the images and/or other qualities thereof. The design, configuration
25 and distinctive features of *Scream Icon*, and of works related thereto (hereinafter
26 individually and collectively referred to as "Seltzer's Copyrighted Works"), are
27 wholly original with Plaintiff and constitute copyrightable subject matter under the
28 Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*

1 9. Among other things and without limitation, Plaintiff used Seltzer's
2 Copyrighted Works, including without limitation *Scream Icon*, as a personal icon in
3 the years following their creation. Through this use, as well as through showings
4 and licensed use of the work(s) and derivative images Plaintiff created thereof,
5 Seltzer's Copyrighted Works, including without limitation *Scream Icon*, each
6 became closely associated with Plaintiff.

7 10. Plaintiff owns and controls all right, title and interest in and to Seltzer's
8 Copyrighted Works, and each of them, including without limitation *Scream Icon*,
9 including all intellectual property rights, copyrights and trademarks therein and
10 thereto.

11 11. Plaintiff has complied in all respects with the laws governing copyright
12 and has secured the exclusive rights and privileges in and to the copyrights to
13 *Scream Icon* and other copyrighted works of Plaintiff, and, as alleged below, has
14 received one or more certificates of registration for Seltzer's Copyrighted Works
15 from the United States Copyright Office.

16 12. The copyrights infringed by the Defendants herein, and each of them,
17 include, but are not necessarily limited to, the copyrights reflected in Certificate of
18 Registration No. VA 1-690-424, a copy of which is attached hereto at Exhibit "A"
19 and incorporated herein by this reference as if fully set forth herein.

20 13. Plaintiff has openly and actively used Seltzer's Copyrighted Works,
21 and each of them, including without limitation *Scream Icon*. Seltzer's Copyrighted
22 Works, including without limitation *Scream Icon*, have each acquired a secondary
23 and distinctive meaning among members of the public, who have come to identify
24 the image(s), and each of them, through the authorized public display and/or sale
25 and distribution thereof, and the distinctive features thereof, as designating goods
26 and services associated with Plaintiff and/or his licensees. (All the marks referred to
27 in paragraphs 9 through 13 of this Complaint are referred to hereinafter individually
28 and collectively as "Plaintiff's Marks.")

1 14. Plaintiff has at no time granted Defendants, or any of them, the right to
 2 use Seltzer's Copyrighted Works, or any of them, including without limitation
 3 *Scream Icon*, or Plaintiff's Marks, or any aspect thereof.

4 **DEFENDANTS' UNLAWFUL ACTIVITIES**

5 15. Plaintiff is informed and believes, and upon that basis alleges, that
 6 Defendants, and each of them, have, without permission, authority or license from
 7 Plaintiff, knowingly and intentionally used, infringed and diluted, and threaten to
 8 further use, infringe and dilute, Plaintiff's copyrights in certain of Seltzer's
 9 Copyrighted Works, including in particular and without limitation *Scream Icon*, and
 10 Plaintiff's Marks, and each of them, injured Plaintiff's business reputation, and
 11 otherwise competed unfairly with Plaintiff by, among other things, participating in
 12 or otherwise knowingly contributing to the manufacture or causing to be
 13 manufactured, production, importation, exportation, advertisement, display,
 14 promotion, marketing, distribution, provision, public performance, offering for
 15 license and/or licensing, offering for rental and/or renting, offering for sale and/or
 16 selling, within this judicial district and elsewhere, of goods and/or services,
 17 including but not necessarily limited to artwork, photographs and other images,
 18 stage backdrops, concert performances, videos and the purported right to use the
 19 same for republication, and other services and goods featuring certain of Seltzer's
 20 Copyrighted Works, including in particular and without limitation *Scream Icon*, or
 21 an unauthorized derivative work thereof, as well as Plaintiff's Marks. Without
 22 limitation, such activities of Defendants, and each of them, include public displays
 23 and distribution of certain of Seltzer's Copyrighted Works, including in particular
 24 and without limitation *Scream Icon*, or an unauthorized derivative work thereof, on a
 25 large backdrop exhibited behind the band Green Day on stage during an
 26 international concert tour, including but not limited to an appearance at the Forum in
 27 Los Angeles County in August of 2009, and including but not limited to
 28 reproductions of *Scream Icon* on the website www.greenday.com, on performances

1 of the song "East Jesus Nowhere" as distributed on video, and broadcast on
 2 television as part of the Green Day presentation in connection with the *American*
 3 *Music Awards*. The unauthorized goods and/or services which have been and/or are
 4 being produced, manufactured, imported, exported, advertised, displayed, promoted,
 5 marketed, distributed, provided, performed, offered for license, licensed, offered for
 6 rental, rented, offered for sale and/or sold by, for or on behalf of the Defendants, or
 7 any of them, and/or Defendants' promotional activities with respect thereto, utilize
 8 unauthorized copies of Plaintiff's intellectual property, including *Scream Icon*, as
 9 well as Plaintiff's Marks.

10 FIRST CLAIM

11 (For Direct Copyright Infringement

12 -- Against All Defendants)

13 16. Plaintiff repeats, realleges and incorporates the allegations contained in
 14 paragraphs 1 through 15, inclusive, hereof as if fully set forth herein.

15 17. Plaintiff is informed and believes, and upon that basis alleges, that
 16 Defendants, and each of them, have infringed and threaten to further infringe
 17 Plaintiff's copyrights in *Scream Icon*, injured Plaintiff's business reputation, and
 18 otherwise competed unfairly with Plaintiff by, among other things, manufacturing or
 19 causing to be manufactured, producing, importing, exporting, advertising, displaying,
 20 promoting, marketing, distributing, providing, publicly performing, offering for
 21 license, licensing, offering for rental and/or renting, offering for sale and/or selling
 22 within this judicial district and elsewhere, including at concerts, in videos, on
 23 television and over the World Wide Web at www.green day.com, certain
 24 unauthorized goods and/or services featuring or otherwise using *Scream Icon*, or
 25 unauthorized derivative works thereof. The unauthorized goods and/or services
 26 which have been and/or are being produced, manufactured, imported, exported,
 27 advertised, displayed, promoted, marketed, distributed, provided, publicly
 28 performed, offered for license, licensed, offered for rental, rented, offered for sale

1 and/or sold by, for or on behalf of the Defendants, or any of them, and/or
2 Defendants' respective promotional activities with respect thereto, utilize
3 simulations and unauthorized copies and/or depictions of *Scream Icon* and/or
4 constitute unauthorized "derivative works" within the purview of 17 U.S.C. Sections
5 101 and 106. The production or manufacture of such infringing goods and/or
6 services is an unauthorized reproduction of Plaintiff's copyrighted works by
7 Defendants in violation of 17 U.S.C. Section 106(1), and/or the unauthorized
8 preparation of derivative works violating 17 U.S.C. Section 106(2). The marketing
9 of such infringing goods and/or services by Defendants is an unauthorized
10 distribution of copies of Plaintiff's copyrighted works violating 17 U.S.C. Section
11 106(3). The advertising and/or display of such infringing goods and/or services by
12 Defendants is an unauthorized public display of Plaintiff's copyrighted works
13 violating 17 U.S.C. Section 106(5).

14 18. Plaintiff has fully complied with his obligations under the copyright
15 laws, and as stated above Plaintiff has at all times been and still is the sole proprietor
16 of all right, title and interest in and to the copyrights in Seltzer's Copyrighted Works,
17 including *Scream Icon*.

18 19. The manufacture, production, importation, exportation, advertisement,
19 display, promotion, marketing, distribution, public performance, provision, licensing,
20 rental and/or sale of the unauthorized and infringing goods and/or services by
21 Defendants is without any permission, license or other authorization from Plaintiff.

22 20. Defendants have been notified of their infringing and illegal activity.
23 Despite clear requests to Defendants, Plaintiff is informed and believes, and upon
24 that basis alleges, that Defendants, and each of them, have willfully and knowingly
25 undertaken and continued at least certain of their respective unlawful infringing
26 activities through the date of the filing of this Complaint.

27 21. Plaintiff has no adequate remedy at law and has suffered, and is
28 continuing to suffer, irreparable harm and damage as a result of the aforesaid acts of

1 infringement. Defendants are each liable in amounts within the jurisdiction of this
2 Court.

3 22. Plaintiff is informed and believes, and upon that basis alleges, that the
4 aforesaid infringements by Defendants of *Scream Icon* was and continues to be with
5 the knowledge that *Scream Icon* is copyrighted, and that the Defendants, and each of
6 them, in doing the acts complained of herein, have willfully infringed Plaintiff's
7 rights under the Copyright Laws of the United States, 17 U.S.C. Section 101 *et seq.*

8 23. Plaintiff is informed and believes, and upon that basis alleges, that
9 Defendants have each obtained gains, profits and advantages as a result of their
10 respective wrongful acts in amounts within the jurisdiction of this Court.

11 24. Plaintiff is informed and believes, and upon that basis alleges, that he
12 has suffered, and is continuing to suffer, direct and actual damages as a result of
13 Defendants' wrongful conduct as alleged herein, in amounts within the jurisdiction
14 of this Court. In order to determine the full extent of such damages, including such
15 profits as may be recoverable under 17 U.S.C. Section 504, Plaintiff will require an
16 accounting from each defendant of all monies generated from the manufacture,
17 production, importation, exportation, distribution, provision, public performance,
18 licensing, rental and/or sale of infringing goods and/or services as alleged herein.

19 25. In the alternative, Plaintiff may potentially elect to recover for each of
20 his federally registered copyrighted works infringed statutory damages pursuant to
21 17 U.S.C. Section 504(c). Defendants have each violated certain copyrighted works
22 of Plaintiff, as set forth above. Plaintiff is informed and believes, and upon that
23 basis alleges, that Defendants have each infringed *Scream Icon*, a federally
24 registered work of Plaintiff. Plaintiff is informed and believes, and upon that basis
25 alleges, that Defendants, and each of them, may be liable for statutory damages to
26 Plaintiff pursuant to 17 U.S.C. Section 504(c). Furthermore, Plaintiff is informed
27 and believes, and upon that basis alleges, that each defendant's acts as described
28 above are in willful violation of Plaintiff's rights, and statutory damages against

1 each such willfully infringing defendant in the Court's discretion up to the amount
 2 of \$150,000.00 for the infringement of *Scream Icon* should be assessed by the Court
 3 pursuant to 17 U.S.C. Section 504(c)(2).

4 26. Plaintiff is informed and believes, and upon that basis alleges, that
 5 unless enjoined by the Court, the unlawful infringement by Defendants of Plaintiff's
 6 copyrights will continue with irreparable harm and damage to Plaintiff. Accordingly,
 7 Plaintiff seeks preliminary and permanent injunctive relief pursuant to 17 U.S.C.
 8 Section 502.

9 27. By reason of the foregoing, Plaintiff has incurred, and will continue to
 10 incur, attorneys' fees and other costs in connection with the prosecution of his
 11 claims herein, which attorneys' fees and costs Plaintiff may depending upon the
 12 circumstances be entitled to recover from the Defendants, and each of them, herein.

13 SECOND CLAIM

14 (For Contributory Copyright Infringement

15 -- Against All Defendants Other Than DOES 48 through 50, Inclusive)

16 28. Plaintiff repeats, realleges and incorporates the allegations contained in
 17 paragraphs 1 through 27, inclusive, hereof as if fully set forth herein.

18 29. Plaintiff is informed and believes, and upon that basis alleges, that
 19 Defendants, and each of them, other than DOES 48 through 50, inclusive
 20 (hereinafter individually and collectively referred to as the "Supplier Defendants"),
 21 with knowledge of the infringing activities of their third party customers and other
 22 of the Defendants, as well as with the ability to control same and the intent to
 23 themselves benefit, either directly or indirectly, therefrom, have infringed and
 24 threaten to further infringe Plaintiff's copyrights in *Scream Icon* by, among other
 25 things, participating in or otherwise knowingly contributing to the manufacture,
 26 production, importation, exportation, advertisement, display, promotion, marketing,
 27 distribution, provision, public performance, offering for license, licensing, offering
 28 for rental and/or renting, offering for sale and/or selling within this judicial district

1 and elsewhere of certain unauthorized goods and/or services by such third party
 2 customers and other Defendants featuring or otherwise utilizing *Scream Icon*, or
 3 unauthorized derivative works thereof, and have induced, caused and materially
 4 contributed to, and continue to induce, cause and materially contribute to, the
 5 infringing conduct by such third party customers and other Defendants. The
 6 unauthorized goods and/or services which have been and/or are being produced,
 7 manufactured, imported, exported, advertised, displayed, promoted, marketed,
 8 distributed, provided, publicly performed, offered for license, licensed, offered for
 9 rental, rented, offered for sale and/or sold by, for or on behalf of Supplier
 10 Defendants, or any of them, and/or Supplier Defendants' respective promotional
 11 activities with respect thereto, utilize simulations and unauthorized copies and/or
 12 depictions of *Scream Icon* and/or constitute unauthorized "derivative works" within
 13 the purview of 17 U.S.C. Sections 101 and 106. The participation in or otherwise
 14 knowing contribution by Supplier Defendants to the production or manufacture of
 15 such infringing goods and/or services is an unauthorized reproduction of Plaintiff's
 16 copyrighted works violating 17 U.S.C. Section 106(1), and/or the unauthorized
 17 preparation of derivative works violating 17 U.S.C. Section 106(2). The
 18 participation in or otherwise knowing contribution by Supplier Defendants to the
 19 marketing of such infringing goods and/or services is an unauthorized distribution of
 20 copies of Plaintiff's copyrighted works violating 17 U.S.C. Section 106(3). The
 21 participation in or otherwise knowing contribution by Supplier Defendants to the
 22 advertisement and/or display of such infringing goods and/or services is an
 23 unauthorized public display of Plaintiff's copyrighted works violating 17 U.S.C.
 24 Section 106(5).

25 30. The manufacture, production, importation, exportation, advertisement,
 26 display, promotion, marketing, distribution, provision, public performance, licensing,
 27 rental and/or sale of the unauthorized and infringing goods and/or services by
 28 Supplier Defendants, or any of them, and/or their third party customers and others

1 for resale or other use(s) in commerce is without any permission, license or other
2 authorization from Plaintiff.

3 31. Supplier Defendants have been notified of their infringing and illegal
4 activity. Despite clear requests to Supplier Defendants, Plaintiff is informed and
5 believes, and upon that basis alleges, that Supplier Defendants, and each of them,
6 have willfully and knowingly undertaken and continued at least certain of their
7 unlawful infringing activity through the date of the filing of this Complaint.

8 32. Plaintiff has no adequate remedy at law and has suffered, and is
9 continuing to suffer, irreparable harm and damage as a result of the aforesaid
10 respective acts of contributory infringement. Supplier Defendants are each liable in
11 amounts within the jurisdiction of this Court.

12 33. Plaintiff is informed and believes, and upon that basis alleges, that the
13 aforesaid contributory infringements by Supplier Defendants of *Scream Icon* was
14 and continues to be with the knowledge that *Scream Icon* is copyrighted, and that
15 the Supplier Defendants, and each of them, in doing the acts complained of herein,
16 have willfully infringed Plaintiff's rights under the Copyright Laws of the United
17 States, 17 U.S.C. Section 101 *et seq.*

18 34. Plaintiff is informed and believes, and upon that basis alleges, that
19 Supplier Defendants have each obtained gains, profits and advantages as a result of
20 their respective wrongful acts of contributory infringement in amounts within the
21 jurisdiction of this Court.

22 35. Plaintiff is informed and believes, and upon that basis alleges, that he
23 has suffered, and is continuing to suffer, direct and actual damages as a result of
24 Supplier Defendants' respective wrongful conduct as alleged herein, in amounts
25 within the jurisdiction of this Court. In order to determine the full extent of such
26 damages, including such profits as may be recoverable under 17 U.S.C. Section 504,
27 Plaintiff will require an accounting from each defendant of all monies generated
28 from the manufacture, production, importation, exportation, distribution, provision,

1 public performance, licensing, rental and/or sale of infringing goods and/or services
2 as alleged herein.

3 36. In the alternative, Plaintiff may potentially elect to recover for each of
4 his federally registered copyrighted works infringed statutory damages pursuant to
5 17 U.S.C. Section 504(c). Supplier Defendants have each contributed to the
6 violation of certain copyrighted works of Plaintiff, as set forth above. Plaintiff is
7 informed and believes, and upon that basis alleges, that Supplier Defendants have
8 each contributorily infringed *Scream Icon*, a federally registered work of Plaintiff.
9 Plaintiff is informed and believes, and upon that basis alleges, that Supplier
10 Defendants, and each of them, may be liable for statutory damages to Plaintiff
11 pursuant to 17 U.S.C. Section 504(c). Furthermore, Plaintiff is informed and
12 believes, and upon that basis alleges, that each defendant's respective acts as
13 described above are in willful violation of Plaintiff's rights, and statutory damages
14 against each such willfully infringing defendant in the Court's discretion up to the
15 amount of \$150,000.00 for the contributory infringement of *Scream Icon* should be
16 assessed by the Court pursuant to 17 U.S.C. Section 504(c)(2).

17 37. Plaintiff is informed and believes, and upon that basis alleges, that
18 unless enjoined by the Court, the unlawful contributory infringement by Supplier
19 Defendants of Plaintiff's copyrights will continue with irreparable harm and damage
20 to Plaintiff. Accordingly, Plaintiff seeks preliminary and permanent injunctive relief
21 pursuant to 17 U.S.C. Section 502.

22 38. By reason of the foregoing, Plaintiff has incurred, and will continue to
23 incur, attorneys' fees and other costs in connection with the prosecution of his
24 claims herein, which attorneys' fees and costs Plaintiff may depending upon the
25 circumstances be entitled to recover from Supplier Defendants, and each of them,
26 herein.

27

28

THIRD CLAIM

(For Direct Violation of Section 43(a)
of Lanham Trademark Act -- Unfair Competition
-- Against All Defendants)

39. Plaintiff repeats, realleges and incorporates the allegations contained in paragraphs 1 through 38, inclusive, hereof as if fully set forth herein.

40. Plaintiff owns all right, title and interest in and to Plaintiff's Marks, and each of them.

41. Seltzer's Copyrighted Works, including without limitation *Scream Icon*, and Plaintiff's Marks, and elements associated with the same, have each acquired a secondary and distinctive meaning among the public, who has come to identify Seltzer's Copyrighted Works and Plaintiff's Marks, and elements associated with the same, and each of them, and the distinctive features of Seltzer's Copyrighted Works, including without limitation *Scream Icon*, and Plaintiff's Marks, and elements associated with the same, as designating goods and/or services associated with Plaintiff. The advertising, media exposure, sales and/or public recognition of Seltzer's Copyrighted Works, including without limitation *Scream Icon*, as well as of Plaintiff's Marks, and elements associated with the same, combined with the positive experiences of the public in its relationship with Plaintiff, Seltzer's Copyrighted Works and Plaintiff's Marks, have made Seltzer's Copyrighted Works, including without limitation *Scream Icon*, and Plaintiff's Marks, and elements associated with the same, each symbolic of and identifying Plaintiff.

42. Plaintiff is informed and believes, and upon that basis alleges, that Defendants, and each of them, have, without permission, authority or license from Plaintiff, affixed, applied and/or used in connection with the manufacture, production, importation, exportation, advertisement, display, promotion, marketing, public performance, distribution, provision, offering for license, licensing, offering for rental, rental, offering for sale and/or sale of goods and/or services, false

1 descriptions and representations and other indicia of origin, including words or other
2 symbols, which tend falsely to describe or represent Seltzer's Copyrighted Works,
3 including without limitation *Scream Icon*, and Plaintiff's Marks, as Defendants'
4 and/or as affiliated with Defendants, and each of them, or alternatively Defendants'
5 goods, services and/or business as affiliated with Plaintiff, and have caused the entry
6 of such goods and/or services into interstate commerce with full knowledge of the
7 falsity of such designations of origin and such descriptions and representations, all
8 to the detriment of Plaintiff; in particular, the manufacture, production, importation,
9 exportation, advertisement, display, promotion, marketing, distribution, provision,
10 public performance, offering for license, licensing, offering for rental, rental,
11 offering for sale and/or sale by Defendants, and each of them, of goods and/or
12 services incorporating or otherwise using for promotional purposes unauthorized
13 infringements and/or the style of Seltzer's Copyrighted Works, including without
14 limitation *Scream Icon*, and/or employing all or part of Plaintiff's Marks, and
15 elements associated with the same, constitutes false descriptions and representations
16 tending falsely to describe or represent goods and services provided, licensed,
17 rented, performed, displayed, distributed and/or sold by Defendants, and each of
18 them. Defendants, and each of them, by misappropriating and using Seltzer's
19 Copyrighted Works, including without limitation *Scream Icon*, and/or Plaintiff's
20 Marks, and elements associated with the same, in connection with Defendants'
21 respective goods and/or services, have misrepresented and falsely described to the
22 general public the origin, source, association, affiliation or sponsorship of goods and
23 services so as to create the likelihood of confusion by the ultimate purchaser as to
24 both the source and sponsorship of said goods and services.

25 43. Plaintiff is informed and believes, and upon that basis alleges, that the
26 unauthorized goods and/or services being manufactured, produced, imported,
27 exported, advertised, displayed, marketed, distributed, provided, performed, offered
28 for license, licensed, offered for rental, rented, offered for sale and/or sold by

1 Defendants, and each of them, are of inferior quality and are otherwise offensive,
 2 and the conduct complained of herein will be damaging to and dilute both the
 3 goodwill and reputation of Plaintiff.

4 44. Defendants' acts and conduct as alleged hereinabove, including without
 5 limitation Defendants' duplication and imitation of Seltzer's Copyrighted Works,
 6 including without limitation *Scream Icon*, and/or of Plaintiff's Marks, and elements
 7 associated with the same, are each business practices likely to deceive or confuse the
 8 purchasing public and trade upon Plaintiff's reputation and skill, both as to the
 9 source, origin, sponsorship and approval of the goods and/or services provided and
 10 as to the affiliation, connection or association of Defendants, and each of them, with
 11 Plaintiff, and vice versa, and constitute acts of unfair competition, false designation
 12 of origin and false representation of affiliation, all in violation of Section 43(a) of
 13 the Lanham Trademark Act, 15 U.S.C. § 1125(a), as amended. Plaintiff is informed
 14 and believes, and upon that basis alleges, that each defendant's respective acts of
 15 reputational appropriation and unfair competition was or may have been willful.

16 45. Defendants' respective unauthorized and unlawful acts of federal unfair
 17 competition, and each of them, have enabled Defendants, and each of them, to trade
 18 unlawfully upon the established goodwill, reputation and artistic skill of Plaintiff.
 19 Defendants, and each of them, are thereby unjustly enriching themselves at the
 20 expense and to the damage and injury of Plaintiff, and unless enjoined by this Court
 21 will further impair the value of Plaintiff's trademarks, service marks, trade names,
 22 copyrights and goodwill. By reason of the aforesaid, the continued use by any of the
 23 Defendants of any of Seltzer's Copyrighted Works, including without limitation
 24 *Scream Icon*, or Plaintiff's Marks, and/or the likenesses thereof, has caused, and
 25 unless restrained will continue to cause, serious irreparable injury to Plaintiff.

26 46. Plaintiff is informed and believes, and upon that basis alleges, that
 27 Defendants, and each of them, have willfully and knowingly continued at least
 28

1 certain of their wrongful conduct in violation of Plaintiff's rights through the date of
2 the filing of this Complaint.

3 47. Plaintiff has no adequate remedy at law and has suffered, and is
4 continuing to suffer, irreparable harm and damage as a result of Defendants'
5 respective acts of federal unfair competition in amounts thus far not determined but
6 within the jurisdiction of this Court, which amounts should each be trebled pursuant
7 to 15 U.S.C. Section 1117.

8 48. Plaintiff is informed and believes, and upon that basis alleges, that
9 unless enjoined by the Court, the confusion and deception noted above, and the
10 likelihood thereof, will continue with irreparable harm and damage to Plaintiff.
11 Accordingly, Plaintiff seeks preliminary and permanent injunctive relief pursuant to
12 15 U.S.C. Section 1116.

13 49. Plaintiff is informed and believes, and upon that basis alleges, that
14 Defendants have each obtained gains, profits and advantages as a result of their
15 wrongful acts of federal unfair competition in amounts thus far not determined but
16 within the jurisdiction of this Court, which amounts should each be trebled pursuant
17 to 15 U.S.C. Section 1117.

18 50. In order to determine the full extent of such damages, including such
19 profits as may be recoverable, Plaintiff will require an accounting from each
20 defendant of all monies generated from the manufacture, production, importation,
21 exportation, distribution, provision, performance, licensing, rental and/or sale of the
22 competing goods and/or services as alleged herein.

23 51. By reason of the foregoing, Plaintiff has incurred, and will continue to
24 incur, attorneys' fees and other costs in connection with the prosecution of his
25 claims herein, which attorneys' fees and costs Plaintiff is entitled to recover from the
26 Defendants, and each of them, herein.

27
28

FOURTH CLAIM

(For Contributory Violation of Section 43(a)

of Lanham Trademark Act -- Unfair Competition

-- Against All Defendants Other Than DOES 48 through 50, Inclusive)

52. Plaintiff repeats, realleges and incorporates the allegations contained in paragraphs 1 through 51, inclusive, hereof as if fully set forth herein.

53. Plaintiff is informed and believes, and upon that basis alleges, that, as alleged above, Supplier Defendants, and each of them, have, without permission, authority or license from Plaintiff, participated in or otherwise knowingly contributed to the affixation, application and/or use by other Defendants, their third party customers and others in connection with the manufacture, production, advertisement, display, promotion, marketing, distribution, provision, public performance, offering for license, licensing, offering for rental, rental, offering for sale and/or sale of goods and/or services, false descriptions and representations and other indicia of origin, including words or other symbols, which tend falsely to describe or represent Seltzer's Copyrighted Works, including without limitation *Scream Icon*, and Plaintiff's Marks, as Supplier Defendants' and/or as affiliated with Supplier Defendants or their customers, and each of them, or alternatively the goods, services and/or business of Supplier Defendants or their customers as affiliated with Plaintiff, and have participated in or otherwise knowingly contributed to causing such goods and/or services to enter into interstate commerce with full knowledge of the falsity of such designations of origin and such descriptions and representations, all to the detriment of Plaintiff; in particular, Supplier Defendants' participation in or otherwise knowing contribution to the manufacture, production, advertisement, display, promotion, marketing, distribution, provision, performance, offering for license, licensing, offering for rental, rental, offering for sale and/or sale of goods and/or services incorporating unauthorized depictions, counterfeits, infringements and/or the style of Seltzer's Copyrighted Works, including without limitation

1 *Scream Icon*, and/or employing all or part of Plaintiff's Marks, and elements
2 associated with the same, constitutes false descriptions and representations tending
3 falsely to describe or represent goods and services provided, displayed and/or sold
4 by Supplier Defendants, their customers and others.

5 54. Supplier Defendants' contributory conduct in connection with their
6 customers, clients and others' respective unauthorized and unlawful acts of federal
7 unfair competition, and each of them, have enabled, assisted, aided and abetted their
8 customers, clients and others to trade unlawfully upon the established goodwill and
9 reputation of Plaintiff. Supplier Defendants, and each of them, are thereby unjustly
10 enriching themselves at the expense and to the damage and injury of Plaintiff, and
11 unless enjoined by this Court will further impair the value of Plaintiff's Marks,
12 service marks, trade names, copyrights and goodwill. By reason of the aforesaid,
13 the continued use by any of the Supplier Defendants' customers of Seltzer's
14 Copyrighted Works, including without limitation *Scream Icon*, Plaintiff's Marks,
15 and/or the likenesses thereof, has caused, and unless restrained will continue to
16 cause, serious irreparable injury to Plaintiff.

17 55. Plaintiff has no adequate remedy at law and has suffered, and is
18 continuing to suffer, irreparable harm and damage as a result of Supplier
19 Defendants' respective acts of contributory federal unfair competition in amounts
20 thus far not determined but within the jurisdiction of this Court, which amounts
21 should each be trebled pursuant to 15 U.S.C. Section 1117.

22 56. Supplier Defendants have been notified of their infringing and illegal
23 activity. Despite clear requests to Supplier Defendants, Plaintiff is informed and
24 believes, and upon that basis alleges, that Supplier Defendants, and each of them,
25 have willfully and knowingly continued at least certain of their wrongful conduct in
26 violation of Plaintiff's rights through the date of the filing of this Complaint.

27 57. Plaintiff is informed and believes, and upon that basis alleges, that
28 unless enjoined by the Court, the confusion and deception noted above, and the

1 likelihood thereof, will continue with irreparable harm and damage to Plaintiff.
 2 Accordingly, Plaintiff seeks preliminary and permanent injunctive relief pursuant to
 3 15 U.S.C. Section 1116.

4 58. Plaintiff is informed and believes, and upon that basis allege, that
 5 Supplier Defendants have each obtained gains, profits and advantages as a result of
 6 their respective wrongful acts of contributory federal unfair competition in amounts
 7 thus far not determined but within the jurisdiction of this Court, which amounts
 8 should each be trebled pursuant to 15 U.S.C. Section 1117.

9 59. In order to determine the full extent of such damages, including such
 10 profits as may be recoverable, Plaintiff will require an accounting from each
 11 defendant and others of all monies generated from the manufacture, production,
 12 importation, exportation, distribution, provision, performance, licensing, rental
 13 and/or sale of the competing goods and/or services as alleged herein.

14 60. By reason of the foregoing, Plaintiff has incurred, and will continue to
 15 incur, attorneys' fees and other costs in connection with the prosecution of his
 16 claims herein, which attorneys' fees and costs Plaintiff is entitled to recover from
 17 Supplier Defendants, and each of them, herein.

18 FIFTH CLAIM

19 (For State Law Unfair Competition)

20 -- Against All Defendants

21 61. Plaintiff repeats, realleges and incorporates the allegations contained in
 22 paragraphs 1 through 60, inclusive, hereof as if fully set forth herein.

23 62. As described above, Seltzer's Copyrighted Works, including without
 24 limitation *Scream Icon*, and Plaintiff's Marks have each come to have a secondary
 25 meaning indicative of origin, relationship, sponsorship, and/or association with
 26 Plaintiff. The purchasing public is likely to attribute to Plaintiff the use by
 27 Defendants and/or their customers, or any of them, of Seltzer's Copyrighted Works,
 28 including without limitation *Scream Icon*, and Plaintiff's Marks, as a source of

1 origin, authorization and/or sponsorship for Defendants' and/or their customers'
2 respective goods and/or services and, therefore, to purchase or otherwise acquire
3 such goods and services in that erroneous belief.

4 63. Plaintiff is informed and believes, and upon that basis alleges, that
5 Defendants, and each of them, have intentionally appropriated Seltzer's Copyrighted
6 Works, including without limitation *Scream Icon*, Plaintiff's Marks, or elements
7 associated with the same, with the intent of causing confusion, mistake, and
8 deception as to the source of such works or of their and/or their customers' goods
9 and/or services, and with the intent to palm off Seltzer's Copyrighted Works,
10 including without limitation *Scream Icon*, and/or Plaintiff's Marks, as those of
11 Defendants, and place others in a position to do likewise, and, as such, Defendants
12 have each committed trademark infringement, misleading advertising and unfair
13 competition under the common law and under the California Unfair Business
14 Practices Act, Cal. Bus. & Prof. Code §17200 *et seq.*

15 64. Defendants' respective appropriation, adoption and use of Seltzer's
16 Copyrighted Works, including without limitation *Scream Icon*, and/or Plaintiff's
17 Marks, including without limitation the manufacture, production, importation,
18 exportation, advertisement, display, distribution, provision, performance, offering
19 for license, licensing, offering for rental, rental, offering for sale and sale of
20 infringing goods and/or services bearing or using Plaintiff's trademarks and/or
21 goods and/or services incorporating the distinctive features of Seltzer's Copyrighted
22 Works, including without limitation *Scream Icon*, and/or Plaintiff's Marks, or
23 elements thereof, in connection with the provision of goods and services, are each
24 likely to cause confusion between such goods and/or services offered by one or
25 more of the Defendants and/or their customers and the goods and services
26 authorized by Plaintiff, thus constituting a violation of the California Unfair
27 Business Practices Act, Cal. Bus. & Prof. Code §17200 *et seq.*

28

1 65. Plaintiff is informed and believes, and upon that basis alleges, that these
2 deceptive, unfair and fraudulent practices have been undertaken with knowledge by
3 each defendant of their wrongfulness, in violation of the California Unfair Business
4 Practices Act, Cal. Bus. & Prof. Code §17200 *et seq.* In connection therewith,
5 Plaintiff is informed and believes, and upon that basis alleges, that each defendant's
6 respective use of Seltzer's Copyrighted Works, including without limitation *Scream*
7 *Icon*, and/or Plaintiff's Marks, or elements associated with the same, is with full
8 knowledge of Plaintiff's prior use and rights in Seltzer's Copyrighted Works,
9 including without limitation *Scream Icon*, and/or Plaintiff's Marks, and elements
10 associated with the same. Plaintiff is informed and believes, and upon that basis
11 alleges, that the Defendants' respective use of Seltzer's Copyrighted Works,
12 including without limitation *Scream Icon*, and/or Plaintiff's Marks, or elements
13 associated with the same, is for the willful and calculated purpose of
14 misappropriating the fruit of Plaintiff's labor as well as Plaintiff's goodwill and
15 business reputation at Plaintiff's expense and at no expense to Defendants. By
16 usurping and taking one or more of Seltzer's Copyrighted Works, including without
17 limitation *Scream Icon*, and/or Plaintiff's Marks, or elements associated with the
18 same, Plaintiff has been deprived of an opportunity to conduct business under his
19 marks and indicia and deprived of the right to control the use of his marks and
20 indicia, and Defendants have each been unjustly enriched.

21 66. Plaintiff has no adequate remedy at law and has suffered, and is
22 continuing to suffer, irreparable harm and damage as a result of each defendant's
23 acts in amounts thus far not determined but within the jurisdiction of this Court.

24 67. Plaintiff is informed and believes, and upon that basis alleges, that
25 unless enjoined by the Court, the confusion and deception noted above, and the
26 likelihood thereof, will continue with irreparable harm and damage to Plaintiff.

27 68. Plaintiff is informed and believes, and upon that basis alleges, that
28 Defendants have each unlawfully and wrongfully derived, and will continue to

1 derive, income, gains, profits and advantages as a result of their wrongful acts of
 2 unfair competition in amounts thus far not determined but within the jurisdiction of
 3 this Court. In addition, Plaintiff is informed and believes, and upon that basis
 4 alleges, that he has lost and will continue to lose profits and goodwill as a result of
 5 Defendants' respective conduct.

6 69. By reason of the foregoing acts of unfair competition, Plaintiff is
 7 entitled to restitution from each defendant of all income, gains, profits and
 8 advantages resulting from their wrongful conduct in amounts to be determined
 9 according to proof at trial.

10 70. In order to determine the full extent of such damages, including such
 11 profits as may be recoverable, Plaintiff will require an accounting from each
 12 defendant of all monies generated from the manufacture, production, importation,
 13 exportation, distribution, provision, performance, licensing, rental and/or sale of the
 14 competing goods and services as alleged herein.

15 71. Plaintiff is informed and believes, and upon that basis alleges, that
 16 Defendants, and each of them, committed the acts alleged herein intentionally,
 17 fraudulently, maliciously, willfully, wantonly and oppressively with intent to injure
 18 Plaintiff in his business and with conscious disregard of Plaintiff's rights, thereby
 19 justifying awards of punitive and exemplary damages against each defendant in
 20 amounts sufficient to punish said defendant and set an example for others.

21 SIXTH CLAIM

22 (For Dilution and/or Injury To Business Reputation

23 -- Against All Defendants

24 72. Plaintiff repeats, realleges and incorporates the allegations contained in
 25 paragraphs 1 through 71, inclusive, hereof as if fully set forth herein.

26 73. Plaintiff's business reputation, Seltzer's Copyrighted Works, including
 27 without limitation *Scream Icon*, and Plaintiff's Marks, and each of them, are entitled
 28

1 to protection pursuant to Section 14330 of the California Business and Professions
2 Code.

3 74. Each defendant's unauthorized appropriation(s) of part or all of one or
4 more of Plaintiff's marks as alleged hereinabove, which are each valid at common
5 law, are acts likely to injure Plaintiff's business reputation and/or dilute the
6 distinctive quality of Plaintiff's trademark interests in one or more of Plaintiff's
7 marks, and each defendant's unauthorized acts should be enjoined pursuant to
8 California Business and Professions Code Section 14330 as a result thereof.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment as follows:

11 1. That Defendants, and each of them, be adjudged to have infringed,
12 willfully or otherwise, Plaintiff's copyrights in and to certain of Seltzer's
13 Copyrighted Works, including without limitation *Scream Icon*, according to proof.

14 2. That Supplier Defendants, and each of them, be adjudged to have
15 contributorily infringed, willfully or otherwise, Plaintiff's copyrights in and to
16 certain of Seltzer's Copyrighted Works, including without limitation *Scream Icon*,
17 according to proof.

18 3. That Defendants, and each of them, be adjudged to have infringed,
19 willfully or otherwise, certain of Plaintiff's Marks, according to proof.

20 4. That Supplier Defendants, and each of them, be adjudged to have
21 contributorily infringed, willfully or otherwise, certain of Plaintiff's Marks,
22 according to proof.

23 5. That Defendants, and each of them, and each of their respective officers,
24 directors, agents, servants, employees, affiliated companies, representatives,
25 licensees, attorneys, successors and assigns, and all those persons, firms,
26 associations, corporations or other entities, in active concert or participation with
27 any of them, be enjoined throughout the world during the pendency of this action,
28 and permanently thereafter from:

1 a. Further violating, directly or indirectly, any of the exclusive
2 rights of Plaintiff in any of Seltzer's Copyrighted Works, including without
3 limitation *Scream Icon*, and/or in Plaintiff's Marks, including the manufacture,
4 production, importation, exportation, reproduction, preparation, advertisement,
5 marketing, promotion, display, provision, performance, licensing, rental, sale,
6 distribution or other disposal of any and all goods and/or services which infringe
7 any of Seltzer's Copyrighted Works, including without limitation *Scream Icon*,
8 and/or Plaintiff's Marks;

9 b. Otherwise infringing any of Plaintiff's copyrights and/or
10 Plaintiff's Marks, or any elements thereof, and from otherwise unfairly competing,
11 directly or contributorily, with Plaintiff in any manner whatsoever;

12 c. Importing, manufacturing, exporting, marketing, producing,
13 reproducing, distributing, publishing, advertising, displaying, promoting, providing,
14 performing publicly, holding out for license, rental or sale, licensing, renting, selling
15 and/or otherwise commercially exploiting any product, merchandise, good and/or
16 service bearing or using any simulation, reproduction, counterfeit or copy of any of
17 Seltzer's Copyrighted Works, including without limitation *Scream Icon*, and/or
18 Plaintiff's Marks, trademarks, service marks or trade names, or any colorable
19 imitation thereof, or any other images or words which dilute the distinctive quality
20 of any of Seltzer's Copyrighted Works, including without limitation *Scream Icon*,
21 and/or Plaintiff's Marks, or any other of Plaintiff's copyrights, trademarks, service
22 marks or trade names;

23 d. Directly or indirectly applying or using on goods or services, or
24 using in connection with the manufacture, production, publication, marketing,
25 licensing, rental, sale, provision, performance, distribution or promotion thereof, any
26 of Seltzer's Copyrighted Works, including without limitation *Scream Icon*,
27 Plaintiff's Marks, trademarks, service marks, trade names, or any elements thereof,
28 or any marks, images, emblems, logos, decals or terms which in any way dilute,

1 imitate or simulate, or are otherwise confusingly similar in any manner to, any of the
2 same;

3 e. Engaging in any acts or activities directly or indirectly likely to
4 trade upon or injure the name, reputation or goodwill of Plaintiff, or in any manner
5 competing unfairly with Plaintiff, by appropriating the distinctive features of any of
6 Seltzer's Copyrighted Works, including without limitation *Scream Icon*, Plaintiff's
7 Marks or other trademarks, service marks, trade names, or any of them;

8 f. Using any simulation, reproduction, counterfeit, copy or
9 colorable imitation of any of Seltzer's Copyrighted Works, including without
10 limitation *Scream Icon*, Plaintiff's Marks or other trademarks, service marks, trade
11 names, or any elements thereof, in connection with the promotion, advertisement,
12 display, provision, rental, offering for rental, sale, offering for sale, manufacture,
13 importation, exportation, production, circulation, offering for license, licensing, or
14 distribution of any good or service, in such fashion as to relate or connect, or tend to
15 relate or connect, such good or service in any way to Plaintiff, or to any goods or
16 services sold, provided, manufactured, sponsored or approved by, or connected with,
17 Plaintiff;

18 g. Making any statement or representation whatsoever, or using any
19 false designation of origin or false description, or performing any act, which can, or
20 is likely to, lead the trade or public, or individual members thereof, to believe that
21 any good or service manufactured, produced, imported, exported, provided,
22 distributed, published, offered, performed, licensed, rented or sold by the
23 Defendants, or any of them, is in any manner associated or connected with Plaintiff,
24 or is sold, rented, imported, exported, provided, manufactured, produced, performed,
25 licensed, offered, published, sponsored, approved or authorized by Plaintiff;

26 h. Transferring, consigning, selling, licensing, renting, shipping or
27 otherwise moving or providing any goods, services, packaging or other materials in
28 their possession, custody or control bearing a design or style substantially identical

1 or confusingly similar to any or all of Seltzer's Copyrighted Works, including
2 without limitation *Scream Icon*, Plaintiff's Marks, trademarks, service marks, trade
3 names, or any elements thereof;

4 i. From using Plaintiff's Marks and/or any of Seltzer's Copyrighted
5 Works, including without limitation *Scream Icon*, or any element or combination of
6 elements thereof, or any other form of design or artwork which so resembles any of
7 Plaintiff's copyrights, Plaintiff's Marks or other trademarks, service marks, trade
8 names and/or Seltzer's Copyrighted Works, including without limitation *Scream*
9 *Icon*, or any elements thereof, as to be likely to cause confusion, deception or
10 mistake, on or in connection with the importation, manufacture, exportation,
11 promotion, distribution, provision, publication, licensing, rental, sale, offering for
12 license, rental or sale, advertisement, or promotion of any good or service;

13 j. Representing in any manner, or by any method whatsoever, that
14 any goods and/or services not sponsored, approved, or authorized by or originating
15 from Plaintiff, but imported, manufactured, produced, exported, promoted,
16 displayed, distributed, provided, published, performed, offered for license, rental or
17 sale, licensed, rented and/or sold by the Defendants, or any of them, are sponsored,
18 approved, or authorized by or originate from Plaintiff, or from otherwise taking any
19 action likely to cause dilution of Plaintiff's Marks and/or Seltzer's Copyrighted
20 Works, including without limitation *Scream Icon*, trademarks, service marks and/or
21 trade names, or confusion, mistake, or deception as to the origin, approval,
22 sponsorship, or certification of such goods and/or services;

23 k. Representing in any manner or by any method whatsoever that
24 any business conducted by Defendants, or any of them, is connected, affiliated, or
25 otherwise associated with Plaintiff, or from otherwise taking any action likely to
26 cause dilution of any of Seltzer's Copyrighted Works, including without limitation
27 *Scream Icon*, and/or Plaintiff's Marks, other trademarks, service marks and/or trade
28 names, or confusion, mistake, or deception on the part of the public as to the

1 connection, affiliation, or other association of the business(es) of Defendants, or any
2 of them, with Plaintiff;

3 l. Committing any acts calculated to cause purchasers to falsely
4 believe that any of the Defendants' respective goods and/or services are licensed,
5 rented, sold or otherwise provided under the control or supervision of Plaintiff, or
6 sponsored by, approved by, or associated with, affiliated with, or produced under the
7 control or supervision of Plaintiff;

8 m. From otherwise competing unfairly with Plaintiff, in any
9 manner;

10 n. From assisting, aiding or abetting any other person or business
11 entity in engaging in or performing any of the prohibited activities referred to in
12 subparagraphs 5(a) through 5(m), above;

13 o. Effecting assignments or transfers, forming new entities or
14 associations or utilizing any other device for the purpose of circumventing or
15 otherwise avoiding the prohibitions set forth in subparagraphs 5(a) through 5(n),
16 above, or otherwise contributing thereto in any way; and

17 p. Secreting, destroying, altering, removing or otherwise dealing
18 with the unauthorized goods and/or services or any books or records which contain
19 any information relating to the production, importing, manufacturing, exporting,
20 producing, distributing, circulating, publishing, providing, performing, licensing,
21 selling, renting, marketing, offering for license, offering for rental, offering for sale,
22 advertising, promoting or displaying of any goods and/or services which infringe
23 any of Plaintiff's copyrights or trademark rights.

24 6. That Defendants, and each of them, further be ordered and directed:

25 a. To deliver up for destruction all of the merchandise, labels, tags,
26 signs, certificates, prints, catalogs, trade press and advertising, marketing and
27 promotional materials, and packaging in any defendant's possession, custody and
28 control bearing any reference to, or any or all of the distinctive features of, or are

1 otherwise diluting to, any of Seltzer's Copyrighted Works, including without
2 limitation *Scream Icon*, Plaintiff's Marks or other trademarks, service marks, trade
3 names, or any elements thereof, or any simulations, reproductions, counterfeits,
4 copies or colorable imitations thereof, and all tools, molds, plates, matrices,
5 materials and other means for producing and/or reproducing the same;

6 b. To make a diligent effort to recall and deliver up for destruction
7 all of Defendants' respective infringing goods and/or services and packaging,
8 catalogs, trade press and advertising, marketing and promotional materials, already
9 distributed so that such goods and/or services and packaging, catalogs, trade press
10 and advertising, marketing and promotional materials, can be destroyed; and

11 c. To file with this Court and serve on Plaintiff, ten (10) days after
12 the issuance of any preliminary or permanent injunction by the Court, whichever
13 occurs sooner, a report in writing and under oath setting forth in detail the manner
14 and form in which Defendants have each complied with the foregoing.

15 7. For a full and complete accounting from each defendant of all
16 infringing goods and/or services produced, manufactured, imported, exported,
17 reproduced, distributed, marketed, provided, publicly performed, held for license,
18 licensed, held for rental, rented, held for sale and/or sold by it, any other defendant
19 and their respective licensees and other customers, and of all income, profits, gains
20 and advantages received by such defendant therefrom;

21 8. That judgment be rendered jointly and severally against Defendants,
22 and each of them, for:

23 a. All profits, gains and advantages received by any of the
24 Defendants as a result of any of the Defendants' respective acts of copyright
25 infringement, as provided by 17 U.S.C. Section 504;

26 b. All damages suffered by Plaintiff as a result of any of the
27 Defendants' respective acts of copyright infringement, as provided by 17 U.S.C.
28 Section 504;

1 c. Statutory damages against each of the Defendants in the amount
 2 of up to \$30,000.00, or \$150,000.00 if such acts are found to be willful, for each
 3 copyrighted work infringed according to proof, as provided for in 17 U.S.C. Section
 4 504(c), if statutory damages are recoverable under the circumstances and such
 5 amounts are greater than the amounts of items (a) and (b), above;

6 d. All income, gains, profits and other advantages received by any
 7 of the Defendants and all damages sustained by Plaintiff, on account of the
 8 Defendants' respective acts of unfair competition; and furthermore, that such profits
 9 and damages as found herein be trebled pursuant to 15 U.S.C. Section 1117;

10 e. All income, gains, profits and other advantages received by any
 11 of the Defendants and all damages sustained by Plaintiff on account of the
 12 Defendants' respective acts of state law unfair competition and/or dilution or injury
 13 to business reputation;

14 f. Exemplary and punitive damages; and

15 g. Such other and further damages as may be available in accord
 16 with California Business and Professions Code Sections 14330 and/or 17200 *et seq.*

17 9. That judgment be further rendered jointly and severally against the
 18 Supplier Defendants, and each of them, for:

19 a. All profits, gains and advantages received by any of the Supplier
 20 Defendants as a result of any of the Supplier Defendants' respective acts of
 21 contributory copyright infringement, as provided by 17 U.S.C. Section 504;

22 b. All damages suffered by Plaintiff as a result of any of the
 23 Supplier Defendants' respective acts of contributory copyright infringement, as
 24 provided by 17 U.S.C. Section 504;

25 c. Statutory damages against each of the Supplier Defendants in the
 26 amount of up to \$30,000.00, or \$150,000.00 if such acts are found to be willful, for
 27 each copyrighted work contributorily infringed according to proof, as provided for
 28 in 17 U.S.C. Section 504(c), if statutory damages are recoverable under the

1 circumstances and such amounts are greater than the amounts of items (a) and (b),
2 above;

3 d. All income, gains, profits and other advantages received by any
4 of the Supplier Defendants and all damages sustained by Plaintiff, on account of the
5 Supplier Defendants' respective acts of contributory unfair competition; and
6 furthermore, that such profits and damages as found herein be trebled pursuant to 15
7 U.S.C. Section 1117;

8 e. All income, gains, profits and other advantages received by any
9 of the Supplier Defendants and all damages sustained by Plaintiff on account of the
10 Supplier Defendants' respective acts of contributory state law unfair competition
11 and/or dilution or injury to business reputation;

12 f. Exemplary and punitive damages; and

13 g. Such other and further damages as may be available in accord
14 with California Business and Professions Code Section 17200 *et seq.*

15 10. That judgment be further rendered jointly and severally against each of
16 the Defendants for restitutionary damages in amounts to be determined at trial, but
17 in no event less than all income, gains, profits and other advantages derived as a
18 result of such defendant's direct and/or contributory unfair business activities.

19 11. That Plaintiff have and recover his costs and disbursements incurred in
20 this action, including an award of his reasonable attorneys' and investigator's fees.

21 12. That Plaintiff have and recover prejudgment interest on all profits and
22 damages awarded by this Court.

23 13. That the Court retain jurisdiction of this action for the purpose of
24 enabling Plaintiff to apply to the Court at any time for such further orders and
25 directions as may be necessary or appropriate for the interpretation or execution of
26 any order entered in this action, for the modification of any such order, for the
27 enforcement of compliance therewith and for the punishment of any violations
28 thereof.

1 14. That Plaintiff have such other and further relief as the Court may deem
2 just and proper.

3
4 DATED: March __, 2010

TODD W. BONDER, ESQ.
WILLIAM NATHAN CANBY, ESQ.
ROSENFELD, MEYER & SUSMAN, LLP

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7 By: 

8 Todd W. Bonder
Attorneys for Plaintiff DERECK SELTZER
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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff DERECK SELTZER hereby demands trial by jury of all issues so triable.

DATED: March __, 2010

TODD W. BONDER, ESQ.
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By: 

Todd W. Bonder
Attorneys for Plaintiff DERECK SELTZER

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number
VA 1-690-424

Effective date of
registration:
November 19, 2009

Title

Title of Work: Scream Icon

Completion/Publication

Year of Completion: 2003

Date of 1st Publication: October 7, 2006

Nation of 1st Publication: United States

Author

Author: Dereck Seltzer

Author Created: 2-D artwork

Citizen of: United States

Year Born: 1985

Copyright claimant

Copyright Claimant: Dereck Seltzer

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Rights and Permissions

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Date: November 16, 2009

Applicant's Tracking Number: 00157-030000