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11 **UNITED STATES DISTRICT COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

13 GRUMPY CAT LIMITED, an Ohio) Case No.:

14 Limited Liability Entity,)

15 Plaintiff,)

16 v.)

17 GRENADE BEVERAGE LLC, a)

18 California Limited Liability)

19 Company; PAUL SANDFORD, an)

20 individual; NICK SANDFORD, an)

21 individual; and DOES 1-50,)

22 Defendants.)

) **COMPLAINT FOR:**

-) **1. COPYRIGHT INFRINGEMENT;**
-) **2. TRADEMARK INFRINGEMENT**
-) **(15 U.S.C. § 1114);**
-) **3. TRADEMARK INFRINGEMENT,**
-) **FALSE DESIGNATION OF**
-) **ORIGIN (15 U.S.C. § 1125(A));**
-) **4. TRADEMARK DILUTION (15**
-) **U.S.C. § 1125(C));**
-) **5. CYBERSQUATTING (15 U.S.C. §**
-) **1125(D))**
-) **6. BREACH OF CONTRACT; AND**
-) **7. ACCOUNTING**

) **DEMAND FOR JURY TRIAL**

1 Plaintiff GRUMPY CAT LIMITED (“Plaintiff”), by and through its undersigned
2 counsel, alleges as follows against Defendants GRENADE BEVERAGE LLC, PAUL
3 SANDFORD and NICK SANDFORD (collectively, “Defendants”):

4 **NATURE OF THE ACTION**

5 1. Ironically, while the world-famous feline Grumpy Cat and her valuable
6 brand are most often invoked in a tongue-and-cheek fashion, Defendants’ despicable
7 misconduct here has actually given Grumpy Cat and her owners something to be
8 grumpy about.

9 2. In particular, this case arises out of the unlawful and inexplicable conduct
10 of Defendants, who induced Plaintiff (the lawful and exclusive owner of the copyrights
11 and trademarks in and to the valuable “Grumpy Cat” brand) to grant them limited
12 rights to the “Grumpy Cat” brand, only to repeatedly abuse and infringe those rights by
13 creating and exploiting unauthorized “Grumpy Cat” branded products and further
14 failing to account to Plaintiff for the sale of the only product that was actually
15 authorized to be sold by Defendants.

16 3. Through this action, Plaintiff seeks to recover the substantial
17 compensatory and statutory damages to which it is entitled as a result of Defendants’
18 misconduct, as well as to permanently enjoin any further misconduct by Defendants.

19 **JURISDICTION AND VENUE**

20 4. This action arises under the the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*,
21 and the United States Copyright Act, 17 U.S.C. §§ 101, *et seq.* This Court has
22 exclusive federal question jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331
23 and 1338.

24 5. This Court has supplemental jurisdiction over Plaintiff’s claims arising
25 under the laws of California pursuant to 28 U.S.C. § 1367(a) because these claims are
26 so related to Plaintiff’s claims under federal law that they form part of the same case or
27 controversy and derive from a common nucleus of operative fact.

1 including the Doe Defendants, will sometimes be referred to collectively as
2 “Defendants.”

3 12. Plaintiff is informed and believes and based thereon alleges that
4 Defendants, and each of them, were the agents, employees, partners, joint-venturers,
5 co-conspirators, owners, principals and employers of the remaining Defendants, and
6 each of them, and are, and at all times herein mentioned were, acting within the course
7 and scope of that agency, partnership, employment, conspiracy, ownership or joint
8 venture. Plaintiff is further informed and believes and based thereon alleges that the
9 acts and conduct herein alleged of each such Defendant were known to, authorized by,
10 and/or ratified by the other Defendants, and each of them.

11 **FACTS COMMON TO ALL CLAIMS**

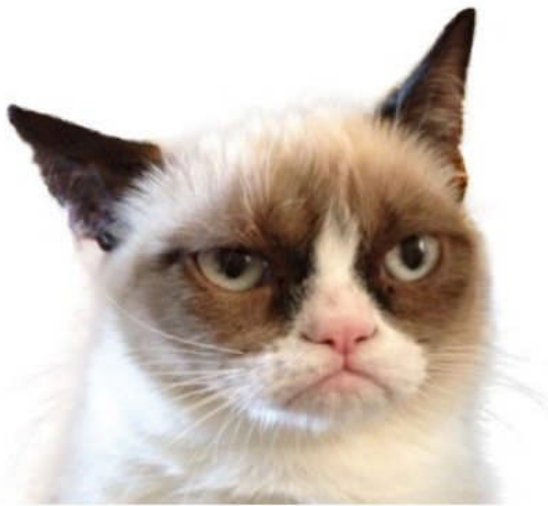
12 ***Plaintiff’s Exclusive Intellectual Property Rights In The Grumpy Cat Brand***

13 13. Grumpy Cat (a/k/a Tardar Sauce) is one of the most famous and
14 recognizable felines in the world due to her perpetually grumpy expression. After a
15 picture of Grumpy Cat was posted to the internet in 2012, her name and likeness
16 spread like wildfire across the globe garnering worldwide media attention. Grumpy
17 Cat has since appeared in numerous major television shows (including *Today*, *Good*
18 *Morning America*, *American Idol*, and *The Bachelorette*), been featured on the front
19 page of major periodicals such as *The Wall Street Journal* and *New York Magazine*,
20 starred in advertisements for Cheerios and McDonalds, starred in her own Lifetime
21 Television Christmas movie, “authored” three (3) books that debuted on the *New York*
22 *Times* bestsellers list, and even has her own animatronic waxwork at Madame
23 Tussauds in San Francisco. Accordingly, there is substantial consumer recognition,
24 good will and monetary value in the famous Grumpy Cat brand.

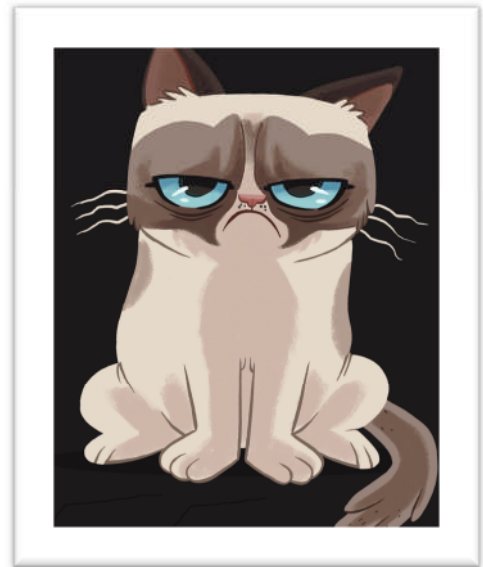
25 14. Plaintiff is the sole and exclusive owner of all relevant intellectual
26 property rights in and to Grumpy Cat’s name, image, and likeness, specifically
27 including the copyrights and trademarks forming the basis of this action. As a result of
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1 Plaintiff’s calculated handling of the Grumpy Cat brand alongside professional brand
2 management, over the past few years, Plaintiff and its authorized licensees have
3 realized millions of dollars in sales of a wide range of goods and services incorporating
4 the “Grumpy Cat” brand, including without limitation t-shirts, calendars, and plush
5 toys.

6 15. Plaintiff is the sole and exclusive owner of the copyrights in and to certain
7 photographs and an illustration of Grumpy Cat, which are protected by U.S. Copyright
8 Reg. Nos. VA0001849042, VA0001849043, VA0001849044, and VA0001901628
9 (the “Grumpy Cat Copyrights”), issued by the United States Copyright Office on
10 December 4, 2012 and December 18, 2013. These copyrights include the following
11 photograph and illustration:





21 **Copyright Reg. No.**
22 **VA0001849042**



21 **Copyright Reg. No.**
22 **VA0001901628**

23 16. Plaintiff is also the sole and exclusive owner of all federal and common
24 law rights in and to the word mark “GRUMPY CAT” as used and registered in, *inter*
25 *alia*, International Class 030 (Coffee and tea) (protected by U. S. Trademark Reg. No.
26 4,527,097 issued by the United States Patent and Trademark Office (the “USPTO”) on
27 May 6, 2014), and International Classes 021 (Coffee and Tea cups/mugs), 025
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1 (“Clothing, namely, t-shirts, shirts, long-sleeved shirts, polo shirts, sweatshirts,
2 hoodies”), and 041 (website services) (protected by U. S. Trademark Reg. No. 4,417,
3 549 issued by the USPTO on October 15, 2013) (collectively, the “Federal Word
4 Marks”). Plaintiff is also the sole and exclusive owner of all federal and common law
5 rights in and to the image mark  for the above-depicted photograph of Grumpy Cat,
6 as used and registered in, *inter alia*, International Classes 021 (Coffee and Tea
7 cups/mugs) and 025 (“Clothing, namely, t-shirts, shirts, long-sleeved shirts, polo shirts,
8 sweatshirts, hoodies”) (protected by U. S. Trademark Reg. Nos. 4,820,434, issued by
9 the the USPTO on September 29, 2015) (collectively, the “Federal Design Marks”).

10 17. Plaintiff is also the sole and exclusive owner of any and all common law
11 trademark rights in and to the word mark “GRUMPY CAT” and the design mark 
12 for the above-depicted photograph of Grumpy Cat, in connection with a variety of
13 products and services, including for the purpose of this action, on coffee drinks and
14 non-alcoholic beverages, and t-shirts (collectively, the “Common Law Grumpy Cat
15 Trademarks” and, along with the Federal Word Marks and the Federal Design Marks,
16 referred to herein as the “Grumpy Cat Trademarks”). Plaintiff also has numerous
17 international trademark registrations for the Grumpy Cat brand.

18 18. The Grumpy Cat Trademarks are distinctive, have been been continually
19 used throughout the United States, as well as worldwide, and are well known to the
20 trade and members of the purchasing public.

21 ***The License Agreement Between Plaintiff and Grenade***

22 19. Defendant Grenade, which on Plaintiff’s information and belief is owned
23 and operated solely by Defendants Nick and Paul Sandford, is a beverage
24 development, manufacturing, marketing, and distribution company. Notably, while
25 Grenade held itself out to Plaintiff as an upstanding and law-abiding company in order
26 to induce Plaintiff to enter into the below-described license agreement, Plaintiff has
27 since learned that Grenade was sued for trademark infringement by E & J Gallo
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1 Winery for engaging in misconduct remarkably similar to that giving rise to this action
2 – namely, the unauthorized use and exploitation of E & J Gallo Winery’s valuable
3 intellectual property. Plaintiff is informed and believes that E & J Gallo Winery
4 recently obtained a judgment and permanent injunction against Grenade in that
5 lawsuit.

6 20. On or around May 31, 2013, Plaintiff entered into a license agreement
7 with Grenade (the “License Agreement”), pursuant to which Plaintiff granted Grenade
8 certain limited rights to use Grumpy Cat’s copyrighted and trademarked name and
9 image (the “Licensed Properties”) in connection with the advertisement, distribution,
10 offering for sale, and sale of “a line of Grumpy Cat-branded coffee products.” In
11 exchange for the foregoing limited grant of rights, Grenade agreed to pay Plaintiff
12 royalties from Grenade’s sale and exploitation of the Licensed Properties, as well as a
13 monetary advance against those royalties.

14 21. The mutually understood intent of the License Agreement was to allow
15 Grenade to produce and distribute a line of “Grumpy Cat” branded iced-coffee
16 beverages called “Grumpy Cat Grumppuccino.” The parties further understood and
17 agreed, as clearly memorialized in the language of the License Agreement, that any
18 additional product offerings would require further negotiations and approval from
19 Plaintiff.

20 22. Of relevance here are the following material provisions from the License
21 Agreement:

- 22 • Pursuant to Section 4(a), “**all** uses” of the Licensed Properties
23 (including any visual depictions, interpretation or adaptations thereof)
24 by Grenade are subject to Plaintiff’s “prior approval.”
- 25 • Pursuant to Section 4(b), “All right, title and interest in and to all
26 copyrights and trademarks in and to the Licensed Properties” remain
27 the exclusive property of Plaintiff. Moreover, Plaintiff is deemed to be
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1 the exclusive owner of any and all copyright and trademark rights in
2 and to any derivative works created by Grenade in connection with its
3 use of the Licensed Properties. In other words, if Grenade creates its
4 own graphical and/or otherwise derivative depictions of Grumpy Cat,
5 Plaintiff is the owner of all copyrights and trademarks in and to those
6 depictions pursuant to Section 4(b).

- 7 • Pursuant to Section 6(d), Grenade was required to form a **California**
8 Limited Liability Company called “Grumpy Beverage LLC,” which
9 would maintain and manage Grenade’s rights in and to the Licensed
10 Properties, and in which Plaintiff would be granted a 10% equity
11 interest.
- 12 • Pursuant to Section 6(d), Grenade and Plaintiff were required to
13 “negotiate in good faith the terms of [Grumpy Beverage LLC]’s
14 Operating Agreement, which terms shall not conflict with the terms [of
15 the License Agreement].”
- 16 • Pursuant to Section 7(a), Grenade was required to provide detailed
17 monthly accountings to Plaintiff reflecting Grenade’s sale of the
18 Product and/or exploitation of the Licensed Properties.

19 ***Defendants’ Wrongful Conduct***

20 23. In late 2015, Plaintiff learned of Defendants’ intent to create and exploit a
21 line of “Grumpy Cat” branded roasted coffee ground products, which would be
22 separate and apart from the “Grumpy Cat Grumppuccino” product line contemplated
23 by the License Agreement.

24 24. Although, as required by the License Agreement, Defendants sought
25 Plaintiff’s approval of use of the Licensed Properties in connection with the proposed
26 roasted coffee ground product, Plaintiff never approved such use. Rather, Defendants
27 were repeatedly told by Plaintiff (both in writing and verbally) that the Licensed
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1 Properties could *not* be used in connection with a roasted coffee ground product,
2 including on the following occasions:

- 3 • By email exchange on October 21, 2015, in which Paul Sandford was
4 told: “Approval is still required. ***Hold off until you hear back from***
5 ***us.***”
- 6 • Verbally, during a November 2, 2015 conference call between Paul
7 Sandford, on the one hand, and two of Plaintiff’s attorneys and
8 Plaintiff’s brand manager, on the other hand.
- 9 • By email exchange on November 2, 2015, in which Paul Sandford was
10 told: “***Per our conversation of today, our client does not approve***
11 ***this. Do not proceed.***”
- 12 • By email exchange on November 24, 2015, in which Paul Sandford
13 was told “***You are not authorized to proceed with the ground coffee***
14 ***product, and your posting of these products for sale will constitute a***
15 ***clear breach of the subject licensing agreement...Do NOT proceed***
16 ***with the posting of the ground coffee products.***”
- 17 • By email exchange on November 24, 2015, in which Paul Sandford
18 was told: “***You are not authorized to proceed with a “Grumpy Line”***
19 ***line of ground coffee products.***”

20 25. Despite Plaintiff’s repeated and clear refusal to allow and approve
21 Defendants’ use of the Licensed Properties in connection with the proposed roasted
22 coffee ground product, Defendants have nevertheless proceeded to advertise, publicly
23 disseminate, offer for sale and sell an unauthorized line of Grumpy Cat roasted coffee
24 ground products, marketed as “Grumpy Cat Roasted Coffee” (the “Infringing
25 Product”).

26 26. Not only was the Infringing Product never approved by Plaintiff under the
27 License Agreement, but the packaging and marketing materials for the Infringing
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1 Product, as depicted in the example below, primarily and exclusively incorporate
2 Plaintiff’s exclusive intellectual property, including the Grumpy Cat Copyrights and
3 the Grumpy Cat Trademarks – a use which Plaintiff has never approved.



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16 27. Without authorization, Defendants (both Nick Sandford and Paul
17 Sandford in their individual capacity as well as on behalf of Grenade) have extensively
18 and repeatedly exploited the Grumpy Cat Copyrights and the Grumpy Cat Trademarks,
19 including confusingly similar derivative depictions thereof, in connection with the sale
20 and advertisement of the Infringing Product, including without limitation on widely
21 popular social media websites such as Twitter, Facebook, and Instagram. For instance,
22 Plaintiff is informed and believes that Nick Sandford and Paul Sandford caused the
23 following unauthorized advertisement to be posted on Instagram on or around
24 December 4, 2015:

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28. The www.drinkgrumpycat.com website, which Plaintiff is informed and believes is owned and operated by Defendants, and through which Defendants are currently selling and distributing the Infringing Product direct to consumers, is also replete with unauthorized uses of the Grumpy Cat Copyrights and Grumpy Cat Trademarks. Among other unauthorized uses, Defendants have been selling and continue to sell “Grumppuccinno” t-shirts which blatantly infringe on the Grumpy Cat Copyrights and Grumpy Cat Trademarks

29. Without Plaintiff’s authorization, Defendants have also obtained the rights and ownership to the internet domain www.grumpycat.com (the “Infringing Website”), and have been operating the Infringing Website for the purpose of furthering their unauthorized use and exploitation of the Grumpy Cat Copyrights and Grumpy Cat Trademarks. Despite repeated demands from Plaintiff to transfer and turn over the rights to the Infringing Website, Defendants have refused.

1 30. Separate and apart from Defendants’ unauthorized use and
2 misappropriation of the Grumpy Cat Copyrights and Grumpy Cat Trademarks, in
3 connection with the Infringing Product (which also constitutes a breach by Grenade of
4 the express approval requirements set forth in the License Agreement), Grenade has
5 also breached its contractual obligations to Plaintiff under the License Agreement by,
6 *inter alia*:

- 7 a. Failing to provide Plaintiff with detailed monthly accountings,
8 much less any accountings, despite repeated requests from Plaintiff.
9 Even after Plaintiff demanded a formal audit (as allowed by the
10 License Agreement), Grenade only provided an incomplete and
11 questionable set of purported sales documents.
- 12 b. Failing to pay Plaintiff the royalty payments to which Plaintiff is
13 informed and believes it is entitled based upon existing sales of the
14 “Grumpy Cat Grumppuccino” product line.
- 15 c. Selling “Grumppuccinno” t-shirts that exceed the limited scope of
16 the iced-coffee product line authorized by the License Agreement,
17 and then failing to account to Plaintiff for these sales.
- 18 d. Failing to form a California limited liability company called
19 “Grumpy Beverage LLC” pursuant to Section 6(d) of the License
20 Agreement, and instead forming a Texas limited liability company
21 with the same name.
- 22 e. Failing to “negotiate in good faith” the terms of the Operating
23 Agreement for “Grumpy Beverage LLC” with Plaintiff, as required
24 by Section 6(d) of the License Agreement. In fact, despite repeated
25 requests, Plaintiff has not even been provided with a copy of the
26 Operating Agreement. As a result, Plaintiff has been kept
27 completely in the dark regarding the operations of the very
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1 company that was purportedly formed to maintain and manage
2 Grenade’s use of the Licensed Property, and in which Plaintiff is
3 purportedly a 10% owner.

4 31. As a result of Defendants’ willful and intentional disregard of Plaintiff’s
5 intellectual property and contractual rights, Plaintiff has, *inter alia*, (1) been deprived
6 of substantial monies to which it would otherwise be entitled in connection with
7 Defendants’ commercial use of the “Grumpy Cat” copyrights and trademarks, (2) been
8 denied and deprived of the exclusive and valuable right to control and approve the use
9 and exploitation of the “Grumpy Cat” copyrights and trademarks. Accordingly,
10 because Plaintiff’s repeated attempts to notify Defendants of their misconduct and
11 obtain an amicable resolution have been unsuccessful, Plaintiff has now been forced to
12 seek legal recourse through this action.

13 **FIRST CLAIM FOR RELIEF**

14 **(Copyright Infringement, 17 U.S.C. §101 *et seq.*)**

15 **(Against All Defendants)**

16 32. Plaintiff incorporates by reference each and every allegation contained in
17 Paragraphs 1 through 31, inclusive, of this Complaint as if fully set forth herein.

18 33. As alleged, Plaintiff is the exclusive owner of the Grumpy Cat
19 Copyrights, and has registered its copyright interests therein with the United States
20 Copyright Office.

21 34. By engaging in the conduct described herein, including by reproducing,
22 and/or otherwise exploiting the Grumpy Cat Copyrights in connection with the
23 Infringing Product and by advertising, distributing, and/or selling the Infringing
24 Product to unwary consumers both in the State of California and throughout the United
25 States, Defendants have infringed Plaintiff’s exclusive rights under the Copyright Act
26 in and to the Grumpy Cat Copyrights.

1 35. At no time has Plaintiff authorized or consented to Defendants' infringing
2 conduct described herein.

3 36. Defendants' infringement of Plaintiff's rights in and to the Grumpy Cat
4 Copyrights has been and continues to be intentional, willful, and with full knowledge
5 of Plaintiff's rights.

6 37. Each reproduction, advertisement, distribution, dissemination, and/or
7 other unauthorized exploitation of the Grumpy Cat Copyrights by Defendants
8 constitutes a separate and distinct and continuing act of infringement.

9 38. As a direct and proximate result of Defendants' infringement of Plaintiff's
10 copyrights and exclusive rights under the Copyright Act, Plaintiff is entitled to
11 damages as well as Defendants' profits pursuant to 17 U.S.C. § 504(b) for each
12 infringement. Alternatively, Plaintiff is entitled to the maximum statutory damages,
13 pursuant to 17 U.S.C. § 504(c), in the amount of One Hundred Fifty Thousand Dollars
14 (\$150,000) for each of the individual infringements forming the basis of this action, or
15 for such other amount as may be proper pursuant to 17 U.S.C. § 504(c).

16 39. Plaintiff is further entitled to its attorneys' fees and full costs pursuant to
17 17 U.S.C. § 505.

18 40. Defendants' conduct threatens to cause, is causing, and unless enjoined
19 and restrained by this Court will continue to cause Plaintiff great and irreparable injury
20 that cannot fully be compensated for or measured in monetary damages alone.
21 Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is
22 entitled to preliminary and permanent injunction prohibiting further infringements of
23 its exclusive copyrights.

SECOND CLAIM FOR RELIEF

(Trademark Infringement, 15 U.S.C. § 1114)

(Against All Defendants)

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4 41. Plaintiff incorporates by reference each and every allegation contained in
5 Paragraphs 1 through 31, inclusive, of this Complaint as if fully set forth herein.

6 42. As alleged, Plaintiff is the exclusive owner of the Federal Word Marks
7 and the Federal Design Marks, which marks are registered with the USPTO.

8 43. Through their above-described actions, Defendants have used and
9 continue to use in commerce a reproduction or copy of the Federal Word Marks and
10 Federal Design Marks and/or colorable imitations thereof that are confusingly similar
11 to those marks in connection with the sale, offering for sale, distribution, or advertising
12 of goods, including the Infringing Product and the “Grumppuccinno” t-shirts, which
13 use is likely to cause consumer confusion, or to cause mistake, or to deceive.

14 44. The aforesaid conduct of Defendants is without the consent or permission
15 of Plaintiff.

16 45. As a result of Defendants’ infringement, Plaintiff has suffered and
17 continues to suffer monetary damages, and Defendants have unlawfully profited, in an
18 amount which cannot be accurately computed at this time but will be proven at trial.

19 46. Plaintiff is also entitled to the disgorgement of Defendants’ profits under
20 15 U.S.C. § 1117(a).

21 47. Plaintiff is further entitled to recover treble damages pursuant to 15
22 U.S.C. § 1117(a).

23 48. Plaintiff is further entitled to injunctive relief because the conduct of
24 Defendants has caused and will continue to cause Plaintiff irreparable harm for which
25 there is no adequate remedy at law.

26 49. This case qualifies as an “exceptional case” within the meaning of 15
27 U.S.C. § 1117(a) in that Defendants’ actions have been malicious, fraudulent,
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1 deliberate, willful, and taken in bad faith with full knowledge and in conscious
2 disregard of Plaintiff's rights. As such, Plaintiff is entitled to recover its attorneys'
3 fees pursuant to 15 U.S.C. § 1117(a).

4 **THIRD CLAIM FOR RELIEF**

5 **(Trademark Infringement and False Designation of Origin, 15 U.S.C. § 1125(a))**

6 **(Against All Defendants)**

7 50. Plaintiff incorporates by reference each and every allegation contained in
8 Paragraphs 1 through 31, inclusive, of this Complaint as if fully set forth herein.

9 51. Plaintiff's Grumpy Cat Trademarks have tremendous good will, are
10 distinctive, have been used throughout the United States and worldwide, and are well
11 known to the trade and members of the purchasing public. The public associates and
12 identifies the Grumpy Cat Trademarks with Plaintiff.

13 52. Without Plaintiff's authorization or consent, Defendants have used the
14 Grumpy Cat Trademarks to advertise and sell, without limitation, the Infringing
15 Product.

16 53. Defendants' distribution, advertisement, sale, offer for sale, and/or other
17 sale of the Infringing Product bearing Plaintiff's Grumpy Cat Trademarks constitutes
18 false designation of origin or sponsorship of said product and tends falsely to represent
19 that the product originates from Plaintiff or has been sponsored, approved, or licensed
20 by Plaintiff or is in some way affiliated or connected with Plaintiff. Such conduct of
21 Defendants is likely to confuse, mislead, and deceive Defendants' customers,
22 purchasers, and members of the public as to the origin of the the Infringing Product or
23 cause said persons to believe that the Infringing Product and/or Defendants' infringing
24 conduct have been sponsored, approved, authorized, or licensed by Plaintiff or are in
25 some way affiliated or connected with Plaintiff, all in violation of 15 U.S.C. § 1125(a).

1 54. Defendants' actions were done willfully with full knowledge of the falsity
2 of such designations of origin and false descriptions or representations, and with the
3 express intent to cause confusion, and to mislead and deceive the purchasing public.

4 55. This case qualifies as an "exceptional case" within the meaning of 15
5 U.S.C. § 1117(a) in that Defendants' actions have been malicious, fraudulent,
6 deliberate, willful, and taken in bad faith with full knowledge and in conscious
7 disregard of Plaintiff's rights. As such, Plaintiff is entitled to recover its attorneys' fees
8 pursuant to 15 U.S.C. § 1117(a).

9 56. Plaintiff is also entitled to the disgorgement of Defendants' profits
10 pursuant to 15 U.S.C. § 1117(a).

11 57. Plaintiff is further entitled to recover treble damages pursuant to 15
12 U.S.C. § 1117(a).

13 58. Plaintiff has no adequate remedy at law. Plaintiff is entitled to injunctive
14 relief because the conduct of Defendants described above, has caused and, if not
15 enjoined, will continue to cause irreparable damage to the rights of Plaintiff in its
16 trademarks, and to the business, reputation, and goodwill of Plaintiff.

17 59. Plaintiff has been damaged by, and Defendants have profited from,
18 Defendants' wrongful conduct in an amount to be proven at trial.

19 **FOURTH CLAIM FOR RELIEF**

20 **(Trademark Dilution, 15 U.S.C. § 1125(c))**

21 **(Against All Defendants)**

22 60. Plaintiff incorporates by reference each and every allegation contained in
23 Paragraphs 1 through 31, inclusive, of this Complaint as if fully set forth herein.

24 61. The Grumpy Cat Trademarks are each distinctive and famous within the
25 meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and were
26 distinctive and famous prior to the date of Defendants' conduct alleged herein.

1 62. Defendants’ conduct in connection with the Infringing Product is likely to
2 dilute and is diluting the distinctive quality of the famous Grumpy Cat Trademarks, in
3 that Defendants’ conduct is likely to create and has created an association between the
4 Infringing Product and the Grumpy Cat Trademarks, which impairs the distinctiveness
5 of those famous marks and lessens the capacity of those famous marks to identify and
6 distinguish products marketed and sold by Plaintiff and/or its authorized licensees
7 under those marks.

8 63. On information and belief, Defendants’ acts of trademark dilution have
9 been done willfully and deliberately and Defendants have profited and been unjustly
10 enriched by sales that Defendants would not otherwise have made but for their
11 unlawful conduct. As such, Plaintiff is entitled to the disgorgement of Defendants’
12 profits under 15 U.S.C. § 1117(a).

13 64. Plaintiff is further entitled to recover treble damages pursuant to 15
14 U.S.C. § 1117(a).

15 65. Plaintiff has no adequate remedy at law. Plaintiff is entitled to injunctive
16 relief because the conduct of Defendants described above has caused and, if not
17 enjoined, will continue to cause irreparable damage to the rights of Plaintiff in its
18 trademarks, and to the business, reputation, and goodwill of Plaintiff.

19 66. Plaintiff has been damaged by, and Defendants have profited from,
20 Defendants’ wrongful conduct in an amount to be proven at trial.

21 67. This case qualifies as an “exceptional case” within the meaning of 15
22 U.S.C. § 1117(a) in that Defendants’ actions have been malicious, fraudulent,
23 deliberate, willful, and taken in bad faith with full knowledge and in conscious
24 disregard of Plaintiff’s rights. As such, Plaintiff is entitled to recover its attorneys’ fees
25 pursuant to 15 U.S.C. § 1117(a).

FIFTH CLAIM FOR RELIEF

(Cybersquatting, 15 U.S.C. § 1125(d))

(Against All Defendants)

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4 68. Plaintiff incorporates by reference each and every allegation contained in
5 Paragraphs 1 through 31, inclusive, of this Complaint as if fully set forth

6 69. As owners, registrants, and/or operators of the Infringing Website, which
7 has a domain name - www.grumpycat.com (the “Domain Name”) - comprised entirely
8 of the Grumpy Cat Trademarks, Defendants have engaged in a false designation of
9 origin and/or had a bad-faith intent to profit and obtain other benefits from the
10 registration, trafficking and/or use of the Domain Name, pursuant to the Anti-
11 Cybersquatting Consumer Protection Act of 1999, 15 U.S.C. § 1125(d) (hereinafter the
12 “Anti-Cybersquatting Act”).

13 70. The Grumpy Cat Trademarks are and have been continuously used in
14 commerce to identify Plaintiff’s unique brand, business and products associated with
15 the mark.

16 71. The Grumpy Cat Trademarks, as used and incorporated by Defendants in
17 the Domain Name, were distinctive and famous, and were used by Plaintiff in
18 commerce prior to and at the time the Domain Name was registered and/or otherwise
19 obtained by Defendants, and at all other times relevant hereto.

20 72. The Defendants’ bad-faith intent is to use the Domain Name to direct and
21 divert consumers to the Infringing Website, thus confusing consumers into believing
22 that Plaintiff authorizes, sponsors or somehow is affiliated with Defendants’
23 unauthorized use of the Grumpy Cat Trademarks, which is not the case. Plaintiff is
24 informed and believes and based thereon alleges that Defendants, and each of them,
25 are trading on Plaintiff’s good reputation and recognizable trademarks for a
26 commercial purpose via the Infringing Website and Domain Name, thus converting the
27 potential economic value in the Grumpy Cat Trademarks to their own commercial
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1 advantage or in an effort to harm Plaintiff. Defendants' registration and use of the
2 Infringing Website and Domain Name also dilutes the distinctiveness of the Grumpy
3 Cat Trademarks.

4 73. Plaintiff is informed and believes and based thereon alleges that
5 Defendants, and each of them, have had, and continue to have, a bad faith intent to
6 profit from the Domain Name. Specifically, Defendants registered and/or purchased
7 the Domain Name without the prior knowledge, permission or consent of Plaintiff, and
8 have undertaken efforts to obtain a profit and other benefits from exploitation and use
9 of the Domain Name and Infringing Website, even after Plaintiff demanded that
10 Defendants discontinue the use of the Domain Name incorporating Plaintiff's Grumpy
11 Cat Trademarks. Such actions constitute a violation of the Anti-Cybersquatting Act.

12 74. Plaintiff is therefore entitled to a judgment from this Court compelling
13 Defendants, and each of them, to transfer all ownership in the Domain Name to
14 Plaintiff pursuant to 15 U.S.C. § 1125(d)(1)(c).

15 75. Plaintiff is further entitled to a Preliminary and Permanent Injunction
16 enjoining Defendants, and each of them, and their agents and employees and
17 representative, from any use of the Domain Name, or any other variations thereof,
18 pursuant to 15 U.S.C. § 1116(a).

19 76. Plaintiff is further entitled to a judgment from this Court awarding
20 Plaintiff all actual damages proximately caused by Defendants, and each of them, or,
21 in the alternative, statutory damages in the amount of \$100,000, pursuant to 15 U.S.C.
22 § 1117 (a) and (d).

23 77. Plaintiff is further entitled to a judgment from this Court awarding it
24 recovery of all costs of the action, including an award of reimbursement of reasonable
25 attorneys' fees, pursuant to 15 U.S.C. § 1117 (a)(3).

SIXTH CLAIM FOR RELIEF

(Breach of Contract)

(Against Grenade)

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4 78. Plaintiff incorporates by reference each and every allegation contained in
5 Paragraphs 1 through 31, inclusive, of this Complaint as if fully set forth herein.

6 79. As alleged, Plaintiff and Grenade entered into the written License
7 Agreement.

8 80. In addition to the express provisions of the License Agreement set forth
9 above, an implied covenant of good faith and fair dealing also existed which precluded
10 Grenade from doing anything that would injure Plaintiff's right to receive the benefits
11 of the License Agreement.

12 81. Plaintiff has performed the obligations, promises and covenants required
13 of it under the License Agreement, except to the extent that such performance has been
14 prevented or excused by the acts or omissions of Grenade.

15 82. Grenade has breached his obligations under the License Agreement by the
16 conduct set forth in Paragraphs 21-30.

17 83. To the extent any of Grenade's above-described conduct did not constitute
18 a breach of the express provisions of the License Agreement, it nevertheless
19 constituted a breach of the implied covenant of good faith and fair dealing.

20 84. As an actual and proximate result of Grenade's express and/or implied
21 breaches of the License Agreement, Plaintiff has suffered and incurred, and will
22 continue to suffer and incur, substantial damages, monetary harm and injury in an
23 amount to be proven at trial.

24 85. Pursuant to Section 14(b) of the License Agreement, Plaintiff is also
25 entitled to the recovery of its attorneys' fees and costs.

1 **SEVENTH CLAIM FOR RELIEF**

2 (Accounting)

3 (Against All Defendants)

4 86. Plaintiff incorporates by reference each and every allegation contained in
5 Paragraphs 1 through 31, inclusive, of this Complaint as if fully set forth herein.

6 87. As alleged, there are substantial monies due and owing to Plaintiff under
7 the License Agreement, and Plaintiff is further owed monies stemming from
8 Defendants' unauthorized use and exploitation of the Grumpy Cat Copyrights and
9 Grumpy Cat Trademarks.

10 88. Defendants are exclusively in control over the financial information
11 necessary to ascertain the exact amounts owed to Plaintiff, and Defendants have
12 refused to account to Plaintiff for these amounts.

13 89. Accordingly, to fully ascertain the complete sum that is currently owed to
14 Plaintiff by Defendants, Plaintiff demands the right to conduct a full and accurate
15 accounting of Defendants' relevant books and records.

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17 **PRAAYER FOR RELIEF**

18 WHEREFORE, Plaintiff demands relief and judgment against Defendants,
19 jointly and severally, as follows:

20 1. That Defendants, their agents, servants, employees, representatives,
21 successors, and assigns, and all persons, firms, or corporations in active concert or
22 participation with Defendants, be preliminarily and permanently enjoined from:

- 23 a. distributing, advertising, offering for sale, or selling the Infringing
24 Product;
- 25 b. directly or indirectly infringing and/or contributing to the infringement
26 of any of the Grumpy Cat Copyrights and the Grumpy Cat Trademarks
27 in any manner, including generally, but not limited to manufacturing,
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1 distributing, advertising, selling, and/or offering for sale any
2 merchandise, including the Infringing Product, which infringe the
3 Grumpy Cat Copyrights and Grumpy Cat Trademarks, and
4 specifically:

- 5 i. manufacturing, advertising, distributing, selling, and/or offering
6 for sale said products or any other unauthorized items, which
7 picture, reproduce, or utilize the likenesses of or which copy or
8 bear a substantial similarity to the Grumpy Cat Copyrights and
9 Grumpy Cat Trademarks; or
- 10 ii. manufacturing, advertising, distributing, selling, or offering for
11 sale or in connection thereto any unauthorized promotional
12 materials, which picture, reproduce, or utilize the likenesses of, or
13 which bear substantial similarity to Grumpy Cat Copyrights and
14 Grumpy Cat Trademarks; or
- 15 iii. engaging in any conduct and/or contributing to any conduct that
16 tends falsely to represent that, or is likely to confuse, mislead, or
17 deceive purchasers, Defendants' customers, and/or members of
18 the public to believe that the actions of Defendants, the products
19 sold by Defendants, or Defendants themselves are connected with
20 Plaintiff, are sponsored, approved, or licensed by Plaintiff, or are
21 in some way connected or affiliated with Plaintiff (other than as
22 authorized by the License Agreement);
- 23 iv. affixing, applying, annexing and using in connection with the
24 manufacture, distribution, advertisement, sale, and/or offer for
25 sale or other use of any goods or services, a false description or
26 representation, including words or other symbols, tending to
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1 falsely describe or represent such goods as being those of
2 Plaintiff; and

3 c. otherwise competing unfairly with Plaintiff in any manner;

4 2. That Plaintiff be awarded damages for Defendants’ copyright
5 infringement in the amount of: (i) Defendants’ profits derived from their unlawful
6 infringement of the Grumpy Cat Copyrights; or (ii) statutory damages for each act of
7 infringement in an amount provided by law, as set forth in 17 U.S.C. § 504, at
8 Plaintiff’s election before the entry of a final judgment;

9 3. That Plaintiff be awarded damages and Defendants be ordered to account
10 for and pay over to Plaintiff all profits realized by Defendants by reason of
11 Defendants’ unlawful acts herein alleged, and that these damages and profits be
12 increased as provided by law;

13 4. That this case be deemed an “exceptional” case pursuant to 15 U.S.C. §
14 1117, because of the willful and deliberate nature of Defendants’ act of trademark and
15 infringement, trademark dilution, and false designation of origin;

16 5. That Plaintiff recover reasonable attorneys’ fees in accordance with 17
17 U.S.C. §505;

18 6. That Plaintiff recover reasonable attorneys’ fees and costs in accordance
19 with 15 U.S.C. § 1117;

20 7. That Plaintiff recover treble damages pursuant to 15 U.S.C. § 1117(a);

21 8. That Defendants be ordered to transfer all ownership in the Domain Name
22 to Plaintiff, pursuant to the Anti-Cybersquatting Act, 15 U.S.C. § 1125(d)(1)(C);

23 9. That Defendants, their agents, servants, employees, representatives,
24 successors, and assigns, and all persons, firms, or corporations in active concert or
25 participation with Defendants, be immediately and permanently enjoined from any
26 use of the Domain Name and any other variations thereof, pursuant to the Anti-
27 Cybersquatting Act, 15 U.S.C. § 1116(a);

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1 10. That Plaintiff recovers its actual damages proximately caused by the
2 Defendants' unlawful use of the Domain Name, or, in the alternative, statutory
3 damages of \$100,000, pursuant to the Anti-Cybersquatting Act, 15 U.S.C. § 1117 (a)
4 and (d);

5 11. That Plaintiff recover its costs of the action, including an award of
6 reimbursement of reasonable attorneys' fees, pursuant to the Anti-Cybersquatting Act,
7 15 U.S.C. § 1117 (a)(3).

8 12. That Plaintiff be awarded damages stemming from Grenade's breach of
9 the License Agreement in an amount subject to proof at trial;

10 13. That Plaintiff recover attorneys' fees and costs pursuant to Section 14(b)
11 of the License Agreement;

12 14. That Plaintiff be granted the right to conduct a full and accurate
13 accounting of Defendants' relevant books and records in order to determine the full
14 sum owed by Defendants to Plaintiff on account of Defendants' misconduct;

15 15. That Defendants, within thirty days after the service of the judgment
16 herein, be required to file with this Court and serve upon Plaintiff's attorneys, a
17 written report under oath setting forth in detail the manner in which they have
18 complied with the judgment;

19 16. That Plaintiff be awarded pre-judgment and post-judgment interest; and

20 17. That the Court grant Plaintiff such other and further relief as it deems just
21 and equitable to make Plaintiff whole for the damage caused by Defendants.

22 Dated: December 11, 2015

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
DAVID B. JONELIS
LINDSAY D. MOLNAR

23 By: /s/ David B. Jonelis
24 DAVID B. JONELIS

25
26
27 Attorneys for Plaintiff GRUMPY CAT
LIMITED

JURY DEMAND

Plaintiff GRUMPY CAT LIMITED respectfully requests a jury trial on all triable issues set forth in this Complaint.

Dated: December 11, 2015

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
DAVID B. JONELIS
LINDSAY D. MOLNAR

By: /s/ David B. Jonelis
 DAVID B. JONELIS

Attorneys for Plaintiff GRUMPY CAT
LIMITED

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