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Attorneys for Plaintiff,
STREET PLAYERS HOLDING CORPORATION

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 09-01091 FMC (CWx)
Case No.

10 STREET PLAYERS HOLDING CORPORATION, a California Corporation,

CIVIL COMPLAINT FOR:

13 Plaintiff,

1. Trademark Infringement Under Lanham Act § 32(1) (15 U.S.C. § 1114(1));
2. "Passing Off" Under Lanham Act § 43(a) (15 U.S.C. § 1125(a));
3. Cybersquatting Under Lanham Act § 43(d) (15 U.S.C. § 1125(d));
4. Unfair Competition-Cal. Bus. & Prof. §§ 17200, 17500 et seq;
5. Intentional Interference With Prospective Economic Relations;
6. Negligent Interference With Prospective Economic Relations;
7. Unjust Enrichment;
8. Demand for Accounting;
9. Constructive Trust;
10. Permanent Injunction

15 vs.

17 GUMMYBEAR INTERNATIONAL, INC., a New Jersey Corporation; and
18 DOES 1 through 10 inclusive,

19 Defendants.

[DEMAND FOR JURY TRIAL]

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1 Plaintiff, STREET PLAYERS HOLDING CORPORATION, by and through
2 its attorneys Freund & Brackey LLP, hereby complains and alleges as follows:
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4 INTRODUCTION

5 1. This Complaint is brought to redress the willful violation of STREET
6 PLAYERS HOLDING CORPORATION's (referred to alternatively as "Plaintiff"
7 and "STREET PLAYERS" hereinafter) trademark rights in the phrase "GUMMY
8 BEARS" by a direct competitor, GUMMYBEAR INTERNATIONAL, INC.
9 (referred to as "Defendant" hereinafter). With full knowledge of Plaintiff's prior
10 rights in the trademark "GUMMY BEARS," Defendant has used and continues to
11 use the terms "GUMMY BEAR" and "GUMMIBÄR," the German equivalent of
12 "GUMMY BEAR" in connection with animated music videos, short animations and
13 cartoon stills, mp3 digital music files, mobile phone ringtones and games, posters,
14 and stickers, among other goods. Such use in commerce occurs primarily through
15 websites located at www.gummibar.net, www.gummy-bear.com and
16 www.gummybearinternational.com. Defendant's actions are intended and
17 calculated to exploit the goodwill that STREET PLAYERS has built into its
18 trademark, "GUMMY BEARS" for toys and related products for almost five
19 continuous years of extensive use and promotion, and obstruct its efforts to expand
20 its business opportunities.

21 THE PARTIES

22 2. Plaintiff STREET PLAYERS HOLDING CORPORATION is a California
23 corporation and is the legal and beneficial owner of the trademarks "GUMMY
24 BEARS" and "GUMMY BEARS YUMMY'S," which it has registered under
25 United States Trademark Registration Numbers 3015335 and 3028169, and for
26 which it has applied for further trademark registrations under Serial Nos. 77547687,
27 77547410, 77547595, 77551625, 77552042, 77556269, 77557275, 77557058,
28 77558299, and 77561692.

1 3. Plaintiff is informed and believes, and based thereon alleges, that Defendant
2 GUMMYBEAR INTERNATIONAL, INC. is a New Jersey Corporation with its
3 principal place of business in Bergen County, New Jersey.

4 4. Plaintiff is unaware of the names and true capacities of Defendants, whether
5 individual, corporate, partnership and/or other entity, named herein as DOES 1
6 through 10, inclusive, and therefore sues them by their fictitious names. Plaintiff
7 will seek leave to amend this Complaint when their true names and capacities are
8 ascertained.

9 5. Plaintiff is informed and believes, and based thereon alleges, that Defendant
10 and DOES 1 through 10, inclusive, are in some manner responsible for the wrongs
11 alleged herein, and that at all times referenced each was the agent and servant of the
12 other Defendants, each of whom obtained financial benefit from the Defendants'
13 acts and omissions, and each of whom was acting within the course and scope of
14 said agency and employment.

15 6. Plaintiff is informed and believes, and based thereon alleges, that at all
16 relevant times herein, Defendant and DOES 1 through 10, inclusive, did aid, abet,
17 participate in, contribute to, or benefit from the acts and behavior alleged herein and
18 the damages caused thereby, and by their inaction ratified and encouraged such acts
19 and behavior.

20 7. Plaintiff further alleges that Defendant and DOES 1 through 10, inclusive,
21 had a non-delegable duty to prevent or cure such acts and the behavior described
22 herein, which duty Defendant and DOES 1 through 10, inclusive, failed and/or
23 refused to perform.

24 **JURISDICTION AND VENUE**

25 8. This is a civil action pertaining to intellectual property rights arising under
26 the trademark laws of the United States. This court has federal question jurisdiction
27 over this action pursuant to 15 U.S.C. Section 1121(a), 28 U.S.C. Section 1331, and
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1 28 U.S.C. Section 1338(a) and (b), as well as pendent jurisdiction over any state law
2 claims asserted herein pursuant to 28 U.S.C. Section 1367(a).

3 9. Exercise of specific personal jurisdiction over Defendant GUMMYBEAR
4 INTERNATIONAL, INC. is consistent with the principles of due process as
5 enumerated in the California and U.S. constitutions, as Defendant has minimum
6 contacts with California such that maintenance of this suit does not offend
7 traditional notions of fair play and substantial justice. Upon information and belief,

- 8 a. Defendant operates extensive, interactive websites,
9 www.gummibar.net, www.gummy-bear.com,
10 www.gummybearinternational.com, through which Defendant has
11 specifically targeted Californians, and has entered and continues to
12 purposefully enter into a significant number of contracts with
13 California residents that involve the knowing and repeated transmission
14 of computer files over the Internet;
- 15 b. Defendant has intentionally infringed STREET PLAYERS' registered
16 trademarks, unfairly competed with it, and interfered with its
17 contractual relations, which acts are expressly aimed at STREET
18 PLAYERS' business activities in California, and has harmed STREET
19 PLAYERS, the brunt of which it has suffered, and which Defendant
20 knows is likely to be suffered, in California; and
- 21 c. Plaintiff's claims arise out of or result from the Defendant's activities
22 in California.

23 10. Venue is proper in this district under 28 U.S.C. Sections 1391(b) and (c).

24 **FACTUAL BACKGROUND**

25 11. Plaintiff STREET PLAYERS and its authorized licensees and affiliates are in
26 the business of designing, manufacturing, marketing and distributing a wide variety
27 of toys and related products.

1 12. In or around August of 2004, STREET PLAYERS first adopted and used the
2 mark, "GUMMY BEARS" (the "Gummy Bears Mark") to identify and distinguish
3 various plush toys and jewelry accessories inspired by the miniature candies.
4 STREET PLAYERS began using the Gummy Bears Mark in commerce, conducting
5 substantial pre-sales publicity directed at potential consumers and negotiating sales
6 to major toy manufacturers.

7 13. Shortly after developing its unique Gummy Bears concept, STREET
8 PLAYERS applied for U.S. trademark protection on an actual use basis for the
9 stylized "GUMMY BEARS" mark in two International Classes of goods and
10 services ("IC"): IC 014 (bracelets, charm dangles, general jewelry) and IC 028
11 (toys and playthings, namely board games, stuffed animals, infant toys, and music
12 toys). It received registrations for both, Reg. Nos. 3015335 on November 15, 2005
13 and 3028169 on December 13, 2005, respectively (The "Registered Marks").

14 14. After several years of using the Registered Marks to identify their Gummy
15 Bears toy and jewelry products, STREET PLAYERS recently began embarking on
16 an extensive intellectual property campaign of expansion to related goods, including
17 bath products, clothing and bedding, books and stationery, candies and snack food,
18 and multimedia entertainment.

19 15. On August 14, 2008, STREET PLAYERS applied for additional U.S.
20 trademark protection on the words "GUMMY BEARS" in relation to IC 041
21 (animated entertainment) (Serial No. 77547410), IC 016 (stationery related
22 products) (Serial No. 77547595), and the words "GUMMY BEAR YUMMY'S" in
23 relation to IC 030 (candies and snack food) (Serial No. 77547687).

24 16. On August 20, 2008, STREET PLAYERS applied for U.S. trademark
25 protection for the word mark "GUMMY BEAR YUMMY'S" in IC 029 (fruit-based
26 candies and snack foods) (Serial No. 77551625), and the word mark "GUMMY
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1 BEARS” in IC 009 (audio entertainment, computer games, and other digital media)
2 (Serial No. 77552042).

3 17. On August 26, 2008, STREET PLAYERS applied for U.S. trademark
4 protection for the word mark “GUMMY BEARS” in IC 028 (toys and playthings)
5 (Serial No. 77556269).

6 18. On August 27, 2008, STREET PLAYERS applied for U.S. trademark
7 protection for the word mark “GUMMY BEARS” in IC 025 (clothes, sleepwear and
8 shoes) (Serial No. 7757275) and IC 024 (bedding, bath towels, cloths, and blankets)
9 (Serial No. 77557058).

10 19. On August 28, 2008, STREET PLAYERS applied for U.S. trademark
11 protection for the word mark “GUMMY BEARS” in IC 014 (jewelry, bracelets,
12 watches and clocks) (Serial No. 77558299).

13 20. On September 3, 2008, STREET PLAYERS applied for U.S. trademark
14 protection for the word mark “GUMMY BEARS” in IC 018 (bags, cases, luggage,
15 and pet accessories) (Serial No. 77561692).

16 21. Upon information and belief, on or around August 15, 2008, Defendant
17 GUMMYBEAR INTERNATIONAL, INC., with full knowledge of the Registered
18 Marks and, at that time, the three pending “GUMMY BEARS” applications, applied
19 for a U.S. trademark registration for the stylized text “GUMMY BEAR” and a
20 cartoon bear image in IC 009 (video, DVDs, and digital media), IC 016 (books,
21 cards and paper), IC 028 (toys), and IC 030 (candy and chocolate) (the “GUMMY
22 BEAR Application”).

23 22. On the same date, Defendant GUMMYBEAR INTERNATIONAL, INC.,
24 also applied for registration of the stylized text “GUMMIBÄR” and identical
25 cartoon bear image in IC 009 (video, DVDs, and digital media), IC 016 (books,
26 cards and paper), IC 025 (clothes, shoes and socks), IC 028 (toys), and IC 030
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1 (candy and chocolate) (the "GUMMIBÄR Application" and together with the
2 "GUMMY BEAR Application", the "Interceding Applications").

3 23. The following table charts in sequence, Plaintiff's prior registrations and
4 applications as well as Defendant's Interceding Applications (shaded in grey):

Filing Date	Reg/Serial Number	Mark	Class	Basis	Goods or Services	Registrant
8/4/04	78496998/ 3028169	GUMMY BEARS	028	1A	Toys and playthings, board games, stuffed animals...	Street Players
10/8/04	78461792/ 3015335	GUMMY BEARS	014	1A	Bracelets, Charms, Jewelry	Street Players
8/14/08	77547687	GUMMY BEARS YUMMY'S	030	1A	Food, Sweets	Street Players
8/14/08	77547410	GUMMY BEARS	041	1B	Animation, Video, Entertainment	Street Players
8/14/08	77547595	GUMMY BEARS	016	1B	Books, Pens, Paper, Envelopes, Cards	Street Players
8/15/08	77548034	GUMMIBÄR	009		Video, DVDs, Digital Media	Gummybear International
			016		Books, Cards, Paper	
			025		Clothes, Shoes, Socks	
			028		Toys	
			030		Candy, Chocolate	
8/15/08	77548079	GUMMY BEAR	009		Video, DVDs, Digital Media	Gummybear International
			016		Books, Cards, Paper	
			028		Toys	
			030		Candy, Chocolate	
8/20/08	77551625	GUMMY BEARS YUMMY'S	029	1A	Fruits based food and beverages	Street Players
8/20/08	77552042	GUMMY BEARS	009	1B	Audio / Video equipment, Video Games, CDs / DVDs	Street Players
8/26/08	77556269	GUMMY BEARS	028	1A	Toys and Playthings	Street Players
8/27/08	77557275	GUMMY BEARS	025	1B	Clothes, Sleepwear, Shoes	Street Players
8/27/08	77557058	GUMMY BEARS	024	1B	Beddings, Bath towels, Cloths, Blankets	Street Players
8/28/08	77558299	GUMMY BEARS	014	1A	Jewelry, Bracelets, Watches, Clocks	Street Players
9/3/08	77561692	GUMMY BEARS	018	1B	Bags, Cases, etc.	Street Players

1 24. On November 26, 2008, the U.S. Trademark Examining Attorney assigned to
2 review the Interceding Applications issued two Office Action Refusals to register,
3 on the ground of likelihood of confusion with the Registered Marks.

4 25. The Interceding Applications also caused the U.S. Trademark Examining
5 Attorney to suspend each of Plaintiff's subsequently filed "GUMMY BEARS"
6 applications, pending disposition of the refusals.

7 26. The U.S. Trademark Office's official suspension of STREET PLAYERS
8 pending "GUMMY BEARS" applications has disrupted several ongoing
9 negotiations between Plaintiff and major U.S. toy manufacturers, who have
10 expressed interest in purchasing a comprehensive "Gummy Bears" product that
11 encompasses a wide variety of related areas of goods, including the classes such as
12 multimedia entertainment, foods and beverages, and clothing, for which STREET
13 PLAYERS is currently seeking trademark applications. The suspensions, arising
14 directly from Defendant's willful Interceding Applications, are causing sufficient
15 misgivings in STREET PLAYERS' potential business partners that they are
16 threatening to back out from further negotiations.

17 27. The U.S. Trademark Office's suspensions have also hindered Plaintiff's
18 ability to enter licensing agreements crucial for any wide-scale distribution of
19 "GUMMY BEARS" products to U.S. and international markets.

20 28. On information and belief, since November of 2007, Defendant has
21 knowingly used the term "GUMMY BEAR" and "GUMMIBÄR" (the German
22 equivalent of "GUMMY BEAR"), in conjunction with animated music videos
23 featuring a dancing green cartoon bear, also resembling the familiar candy product,
24 singing various dance songs. With knowledge of Plaintiff's ownership of the
25 Gummy Bear Mark, and a bad faith intent to profit from that mark, Defendant has
26 registered, and traffics in, several domain names, including www.gummy-bear.com
27 www.gummybearinternational.com and www.gummibar.net, which promote and
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1 offer for sale single mp3s, mp3 albums, mobile-phone games, ringtones and
2 wallpapers, posters and stickers, all featuring the colorful “Gummy Bear” (the
3 “Infringing Domain Names”). Defendant has also announced plans to release a line
4 of merchandise, including toys, plushies, apparel, and games.

5 29. Upon information and belief, Defendant’s “GUMMY BEAR” and
6 “GUMMIBÄR” marks so resemble Plaintiff’s “GUMMY BEARS” Registered
7 Marks that consumers are confused, mistaken or deceived as to the source of the
8 goods, because:

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- 10 a. The dominant features of Defendant’s “GUMMY BEAR” and
11 “GUMMIBÄR” marks and of Plaintiff’s “GUMMY BEARS”
12 Registered Marks are identical or nearly identical in appearance and
13 sound, and precisely identical in meaning;
 - 14 b. The goods with which Defendant associates its “GUMMY BEAR” and
15 “GUMMIBÄR” applications (music, animated videos, mobile phone
16 games, ringtones, and wallpaper, posters and stickers) are so closely
17 related to the goods that Plaintiff uses for the “GUMMY BEARS”
18 Registered Marks (for example toys and jewelry), that they would
19 likely be encountered by the same purchasers under circumstances that
20 would give rise to the mistaken belief that these goods come from a
21 common source; and
 - 22 c. The goods for which Plaintiff is expanding its “GUMMY BEARS”
23 registered marks (multimedia entertainment, books and stationery,
24 candies and snack food, bath products, clothing and bedding), as
25 reflected in its August 14, 2008 applications, are closely related to or
26 identical to goods that Defendant is wrongfully using, or planning to
27 use.
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1 30. On January 28, 2009, counsel for Plaintiff sent a cease and desist letter via
2 Electronic mail, Facsimile and Certified Mail to Defendant, advising that its
3 activities were in violation of Plaintiff's exclusive rights in the Registered Marks
4 and requesting withdrawal of the Interceding Applications.

5 31. At this time, Defendant has failed to respond to Plaintiff's correspondence
6 and continues to engage in the aforementioned infringing activity.

7 **FIRST CAUSE OF ACTION**

8 **[Trademark Infringement in violation of Lanham Act § 32(1) (15 U.S.C. §**
9 **1114(1))]**

10 **(Against All Defendants)**

11 32. Plaintiff realleges and incorporates by reference each and every allegation set
12 forth in paragraphs 1 through 31, inclusive.

13 33. By conducting business and selling merchandise through its websites,
14 Defendant has intentionally and knowingly infringed the Registered Marks without
15 the consent or authorization of Plaintiff. The infringement arises from its use in
16 commerce of a reproduction, counterfeit, copy, and/or colorable imitation of the
17 Registered Marks in connection with the sale, offering for sale, distribution and
18 advertising of goods and services which is likely to cause confusion, or to cause
19 mistake, or to deceive consumers.

20 34. As a direct result of Defendant's willful acts of trademark infringement as
21 described herein, Plaintiff has suffered substantial damage, in an amount to be
22 proven at trial.

23 35. Since Defendant's acts have also caused Plaintiff irreparable, ongoing injury
24 of a nature that cannot be adequately compensated or measured in damages, Plaintiff
25 has no adequate remedy at law and will suffer immediate and irreparable loss,
26 damage and injury unless Defendant are restrained and enjoined from continuing to
27 engage in such wrongful conduct.

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SECOND CAUSE OF ACTION

**["Passing Off" in violation of the Lanham Act § 43(a), 15 U.S.C. § 1125(a)]
(Against All Defendants)**

36. Plaintiff realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 35, inclusive.

37. By using "GUMMY BEAR" and "GUMMIBÄR," which for all intents and purposes are identical in terms of sight, sound, and meaning to the Gummy Bears Mark, to sell goods and services in marketing channels identical or highly related to Plaintiff's, Defendant is passing off its products to the public as if they were Plaintiff's.

38. As a result, members of the public will reasonably be deceived and/or confused into believing that by purchasing products with the "GUMMY BEAR" or "GUMMIBÄR" words, they are actually purchasing products from Plaintiff.

39. Plaintiff is seriously injured by such deception, in that it negatively impacts its ability to distribute, market, license and otherwise exploit its products and subjects them to consumer confusion insofar as Defendant's products and services are of inferior quality.

40. As a direct result of Defendant's actions, Plaintiff has suffered substantial damage, in an amount to be proven at trial.

41. Since Defendant also caused Plaintiff irreparable, ongoing injury of a nature that cannot be adequately compensated or measured in damages, Plaintiff has no adequate remedy at law and will suffer immediate and irreparable loss, damage and injury unless Defendant is restrained and enjoined from continuing to engage in such wrongful conduct.

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THIRD CAUSE OF ACTION

**[Cybersquatting in violation of the Lanham Act § 43(d), 15 U.S.C. § 1125(d)]
(Against All Defendants)**

42. Plaintiff realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 41, inclusive.

43. Plaintiff is the legal and beneficial owner of the Gummy Bears Mark.

44. Defendant GUMMYBEARS INTERNATIONAL is the registrant of the Infringing Domain Names, www.gummibar.net, www.gummy-bear.com and www.gummybearinternational.com.

45. Defendant traffics and uses the Infringing Domain Names, which are identical and/or confusingly similar to the Gummy Bears Mark, with the bad faith intent to profit from the Gummy Bears Mark in commerce.

46. As a direct result of Defendant's actions, Plaintiff has suffered substantial damage, in an amount to be proven at trial.

47. Since Defendant's acts have also caused Plaintiff irreparable, ongoing injury of a nature that cannot be adequately compensated or measured in damages, Plaintiff has no adequate remedy at law and will suffer immediate and irreparable loss, damage and injury unless Defendants are restrained and enjoined from continuing to engage in such wrongful conduct.

FOURTH CAUSE OF ACTION

**[Unfair Competition in violation of Cal. Bus. & Prof. Code
§§ 17200 and 17500 et seq.]
(Against All Defendants)**

48. Plaintiff realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 47, inclusive.

49. As described above, by its wrongful acts of distributing, marketing and otherwise exploiting Plaintiff's trademark in interstate commerce, Defendant has

1 created consumer confusion by causing the public to believe that the products
 2 viewed, ordered and/or purchased with the "GUMMY BEAR" or "GUMMIBÄR"
 3 name are associated with, endorsed by or are in fact Plaintiff's "GUMMY BEARS"
 4 products. Furthermore, Defendant's willful Interceding Applications have seriously
 5 disrupted Plaintiff's ability to consummate negotiations with manufacturers seeking
 6 to obtain the rights to its products. These acts constitute violations of both state and
 7 federal statutes. Accordingly, Defendant has violated California Business and
 8 Professions Code Sections 17200 and 17500, et seq., which prohibit acts of unfair
 9 competition and unfair business practices.

10 50. Defendant's acts and conduct in violation of California Business and
 11 Professions Code Sections 17200 and 17500, et seq., have caused and will continue
 12 to cause Plaintiff great and irreparable injury.

13 51. As a direct result of Defendant's willful acts of unfair competition as
 14 described herein, Plaintiff has suffered substantial damage, in an amount to be
 15 proven at trial.

16 52. Since Defendant also caused Plaintiff irreparable, ongoing injury of a nature
 17 that cannot be adequately compensated or measured in damages, Plaintiff has no
 18 adequate remedy at law and will suffer immediate and irreparable loss, damage and
 19 injury unless Defendant is restrained and enjoined from continuing to engage in
 20 such wrongful conduct.

21 **FIFTH CAUSE OF ACTION**

22 **[Intentional Interference With Prospective Economic Relations]**

23 **(Against All Defendants)**

24 53. Plaintiff realleges and incorporates by reference each and every allegation set
 25 forth in paragraphs 1 through 52, inclusive.

1 54. Plaintiff has several ongoing negotiations with several U.S. manufacturers
2 regarding the purchase of a wide variety of goods and clothing under the registered
3 mark "GUMMY BEARS," potentially resulting in significant benefit to Plaintiff.

4 55. Plaintiff is also in the process of negotiating licensing agreements with third
5 parties that would be crucial for any wide-scale distribution of "GUMMY BEARS"
6 products to U.S. and international markets.

7 56. Defendant GUMMYBEAR INTERNATIONAL knows of STREET
8 PLAYERS' efforts to further expand business opportunities for its products, and is
9 deliberately using the infringing GUMMIBÄR and GUMMY BEAR marks and
10 maintaining the Interceding Applications, in order to disrupt the Plaintiff's
11 negotiations with potential business partners.

12 57. GUMMYBEAR INTERNATIONAL's wrongful conduct towards STREET
13 PLAYERS is based on its infringing use of the Gummy Bears Mark in violation of
14 Lanham Act Sections 32(1) and 43(a), and its Interceding Applications.

15 58. Defendant's wrongful conduct has prevented the consummation of STREET
16 PLAYERS' negotiations and its prospective business partners are now relenting
17 from finalizing negotiations.

18 59. As a direct result of Defendant's willful acts as described herein, Plaintiff has
19 suffered substantial damage, in an amount to be proven at trial.

20 60. Since Defendant's acts have also caused Plaintiff irreparable, ongoing injury
21 of a nature that cannot be adequately compensated or measured in damages, Plaintiff
22 has no adequate remedy at law and will suffer immediate and irreparable loss,
23 damage and injury unless Defendant are restrained and enjoined from continuing to
24 engage in such wrongful conduct.

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SIXTH CAUSE OF ACTION

[Negligent Interference With Prospective Economic Relations]

(Against All Defendants)

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4 61. Plaintiff realleges and incorporates by reference each and every allegation set
5 forth in paragraphs 1 through 60, inclusive.

6 62. Plaintiff has several ongoing negotiations with several U.S. manufacturers
7 regarding the purchase of a wide variety of goods and clothing under the registered
8 mark "GUMMY BEARS," potentially resulting in significant benefit to Plaintiff.

9 63. Plaintiff is also in the process of negotiating licensing agreements with third
10 parties that would be crucial for any wide-scale distribution of "GUMMY BEARS"
11 products to U.S. and international markets.

12 64. Defendant knew or should have known of the Plaintiff's ongoing
13 negotiations and expansion of the Gummy Bears line of products and services.

14 65. GUMMYBEAR INTERNATIONAL's wrongful conduct towards STREET
15 PLAYERS is based on its infringing use of the Gummy Bears Mark in violation of
16 Lanham Act Sections 32(1) and 43(a), and its Interceding Applications.

17 66. Defendant's wrongful conduct has prevented the consummation of STREET
18 PLAYERS' negotiations and its prospective business partners are relenting from
19 finalizing negotiations.

20 67. As a direct result of Defendant's willful acts as described herein, Plaintiff has
21 suffered substantial damage, in an amount to be proven at trial.

22 68. Since Defendant also caused Plaintiff irreparable, ongoing injury of a nature
23 that cannot be adequately compensated or measured in damages, Plaintiff has no
24 adequate remedy at law and will suffer immediate and irreparable loss, damage and
25 injury unless Defendant is restrained and enjoined from continuing to engage in
26 such wrongful conduct.

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SEVENTH CAUSE OF ACTION

[Unjust Enrichment]

(Against All Defendants)

69. Plaintiff realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 68, inclusive.

70. By reason of the foregoing facts, Defendants, and each of them, have become unjustly enriched at the expense of Plaintiff by profiting from the use of Plaintiff's trademark, the infringing "GUMMY BEARS" and "GUMMIBÄR" marks, and the Infringing Domain Names, and by realizing monetary gain from their unauthorized use of said marks.

71. Defendants, and each of them, have been unjustly enriched in an amount that cannot be precisely ascertained at this time, but will be ascertained according to proof at trial.

EIGHTH CAUSE OF ACTION

[Demand for Accounting]

(Against All Defendants)

72. Plaintiff realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 71, inclusive.

73. As seen above, Plaintiff has an interest in all of the money that is generated from the exploitation of the Gummy Bears Mark and its associated goodwill, the infringing "GUMMY BEARS" and "GUMMIBÄR" marks, and the Infringing Domain Names.

74. Plaintiff is informed and believes that Defendant has generated an undetermined, yet substantial amount of money, due to the commercial exploitation of the Gummy Bears Mark and its associated goodwill, the infringing "GUMMY BEARS" and "GUMMIBÄR" marks, and the Infringing Domain Names.

1 75. The amount of money due from Defendant is unknown to Plaintiff and
2 cannot be ascertained without an accounting of Defendant's financial records related
3 to the sales generated through their infringing activities.

4 76. As a result of Defendant's actions, or lack thereof, Plaintiff has been
5 damaged in an amount to be proven after an accounting has been conducted.
6 Accordingly, Plaintiff hereby requests that the Court order an accounting of all of
7 Defendant's financial records related to the infringing activities in order to
8 determine the sums rightfully due to Plaintiff. Furthermore, Plaintiff demands that
9 those sums be paid to it.

10 **NINTH CAUSE OF ACTION**

11 **[Constructive Trust]**

12 **(Against All Defendants)**

13 77. Plaintiff realleges and incorporates by reference each and every allegation set
14 forth in paragraphs 1 through 76, inclusive.

15 78. Plaintiff is informed and believes Defendant has generated an undetermined,
16 yet substantial amount of money due to the infringing activities.

17 79. As seen above, Plaintiff is entitled to all of the money that is generated from
18 the infringing activities. Plaintiff has not given its consent for Defendant to utilize
19 its trademark. Such monies should be placed in a constructive trust until such time
20 as this matter is resolved.

21 **TENTH CAUSE OF ACTION**

22 **[Permanent Injunction]**

23 **(Against All Defendants)**

24 80. Plaintiff realleges and incorporates by reference each and every allegation set
25 forth in paragraphs 1 through 79, inclusive.

26 81. Plaintiff contends that likelihood of confusion exists between the "GUMMY
27 BEARS" Registered Marks and "GUMMY BEAR" and/or "GUMMIBÄR," insofar
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1 as consumers are apt to assume that a products or services offered by Defendant are
2 associated with Plaintiff, due to similarities between the words, the identity of goods
3 and services and marketing channels used by both parties.

4 82. Cease and desist letters have been sent to Defendant GUMMYBEAR
5 INTERNATIONAL, INC. advising of the infringement and mounting damages from
6 said infringement.

7 83. At this time Defendant continue to engage in the aforementioned infringing
8 activity.

9 84. Defendant’s utilization of the “GUMMY BEARS” and “GUMMIBAR”
10 marks and the Infringing Domain Names is wrongful and should be enjoined in that
11 it has caused, and continues to cause, Plaintiff great and irreparable injury.

12 85. Plaintiff has no other plain, speedy or adequate remedy at law, and the
13 injunctive relief prayed for below is necessary and appropriate at this time to
14 prevent irreparable loss to Plaintiff’s interests.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff STREET PLAYERS prays for judgment against
17 Defendants, and each of them, as follows:

18 **ON THE FIRST CAUSE OF ACTION**

19 1. That the Court adjudge and decree that the Defendant has willfully infringed
20 Plaintiff’s exclusive rights under trademark law;

21 2. That the Defendant, and those acting in concert with it, be permanently
22 enjoined from engaging in further acts of infringing the “GUMMY BEARS”
23 Registered Marks;

24 3. That Defendant, and those acting in concert with it, be permanently enjoined
25 from exploiting any products carrying any designation confusingly similar to the
26 “GUMMY BEARS” Registered Marks;

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- 1 4. That Plaintiff be awarded, at Plaintiff's election, statutory damages and/or
- 2 actual damages in an amount to be proven at trial;
- 3 5. That Defendant disgorge all profits derived from its wrongful conduct;
- 4 6. Interest at the maximum legal rate;
- 5 7. All reasonable attorney's fees and costs incurred herein;
- 6 8. For treble damages according to proof at trial;
- 7 9. That the Court grants such other, further, and different relief as the Court
- 8 deems just and proper under the circumstances.

ON THE SECOND CAUSE OF ACTION

- 10 1. That the Court adjudge and decree that Defendant willfully engaged in
- 11 passing off its products as Plaintiff's and infringed Plaintiff's exclusive rights under
- 12 trademark law;
- 13 2. That Defendant, and those acting in concert with it, be permanently enjoined
- 14 from engaging in further acts of passing off their goods and services as Plaintiff's;
- 15 3. That Defendant, and those acting in concert with it, be permanently enjoined
- 16 from exploiting any products carrying any designation confusingly similar to the
- 17 Gummy Bears Marks;
- 18 4. That Plaintiff be awarded, at Plaintiff's election, statutory damages and/or
- 19 actual damages in an amount to be proven at trial;
- 20 5. That Defendant disgorge all profits derived from its wrongful conduct;
- 21 6. Interest at the maximum legal rate;
- 22 7. All reasonable attorney's fees and costs incurred herein;
- 23 8. For treble damages according to proof at trial;
- 24 9. That the Court grants such other, further, and different relief as the Court
- 25 deems just and proper under the circumstances.

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ON THE THIRD CAUSE OF ACTION

- 1. That the Court adjudge and decree that the Defendant has willfully registered, trafficked in, and used domain names which are identical with, confusingly similar to the Gummy Bears Mark, with the bad-faith intent to profit therefrom;
- 2. That the Defendant, and those acting in concert with it, be permanently enjoined from engaging in further acts of registering, trafficking in, or using domain names which are identical with, confusingly similar to the Gummy Bears Mark;
- 3. That the Defendant, and those acting in concert with it, be ordered to transfer the Infringing Domain Names to Plaintiff;
- 4. That Plaintiff be awarded, at Plaintiff's election, statutory damages and/or actual damages in an amount to be proven at trial;
- 5. That Defendant disgorges all profits derived from its wrongful conduct;
- 6. Interest at the maximum legal rate;
- 7. All reasonable attorney's fees and costs incurred herein;
- 8. For treble damages according to proof at trial;
- 9. That the Court grants such other, further, and different relief as the Court deems just and proper under the circumstances.

ON THE FOURTH CAUSE OF ACTION

- 1. That the Court issue a permanent injunction prohibiting Defendant from engaging in the unfair business practices and unfair competition described herein;
- 2. That Defendant, and those acting in concert with it, be permanently enjoined from selling any goods or services carrying any designation resembling the Gummy Bears Mark;
- 3. That Defendant, and those acting in concert with it, be ordered to abandon the Interceding Applications;
- 4. That Plaintiff be awarded, at Plaintiff's election, statutory damages and/or actual damages in an amount to be proven at trial;

- 1 5. That Defendant disgorge all profits derived from its wrongful conduct;
- 2 6. Interest at the maximum legal rate;
- 3 7. All reasonable attorney's fees and costs incurred herein;
- 4 8. For exemplary or punitive damages in an amount appropriate to punish or
- 5 make an example of Defendant, according to proof at trial;
- 6 9. That the Court grants such other, further, and different relief as the Court
- 7 deems just and proper under the circumstances.

ON THE FIFTH CAUSE OF ACTION

- 9 1. That the Court issue a permanent injunction prohibiting Defendant from
- 10 interfering with Plaintiff's prospective business relations described herein;
- 11 2. That Defendant, and those acting in concert with it, be permanently enjoined
- 12 from selling any goods or services carrying any designation resembling the Gummy
- 13 Bears Mark;
- 14 3. That Defendant, and those acting in concert with it, be ordered to abandon the
- 15 Interceding Applications;
- 16 4. That Defendant disgorge all profits derived from its wrongful conduct;
- 17 5. For compensatory damages;
- 18 6. Interest at the maximum legal rate;
- 19 7. All reasonable attorney's fees and costs incurred herein;
- 20 8. For exemplary or punitive damages in an amount appropriate to punish or
- 21 make an example of Defendant, according to proof at trial;
- 22 9. That the Court grants such other, further, and different relief as the Court
- 23 deems just and proper under the circumstances.

ON THE SIXTH CAUSE OF ACTION

- 25 1. That the Court issue a permanent injunction prohibiting Defendant from
- 26 engaging in the unfair business practices and unfair competition described herein;
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1 2. That Defendant, and those acting in concert with it, be permanently enjoined
2 from selling any goods or services carrying any designation resembling the Gummy
3 Bears Mark;

4 3. That Defendant, and those acting in concert with it, be ordered to abandon the
5 Interceding Applications;

6 4. That Defendant disgorge all profits derived from its wrongful conduct;

7 5. For compensatory damages;

8 6. Interest at the maximum legal rate;

9 7. All reasonable attorney's fees and costs incurred herein;

10 8. That the Court grants such other, further, and different relief as the Court
11 deems just and proper under the circumstances.

12 **ON THE SEVENTH CAUSE OF ACTION**

13 1. That Plaintiff be awarded any and all monies gained by Defendant through
14 Defendant' unauthorized exploitation of the Gummy Bear Mark and its associated
15 goodwill, the infringing "GUMMY BEARS" and "GUMMIBÄR" marks, and the
16 Infringing Domain Names;

17 2. That Defendant, and those acting in concert with it, be permanently enjoined
18 from engaging in further acts of infringement of the Gummy Bears Mark;

19 3. That Defendant, and those acting in concert with it, be permanently enjoined
20 from selling any goods or services carrying any designation resembling the Gummy
21 Bears Mark;

22 4. Interest at the maximum legal rate;

23 5. All reasonable attorney's fees and costs incurred herein;

24 6. For exemplary or punitive damages in an amount appropriate to punish or
25 make an example of Defendant, according to proof at trial;

26 7. That the Court grants such other, further, and different relief as the Court
27 deems just and proper under the circumstances.

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ON THE EIGHTH CAUSE OF ACTION

1. That the Court order an independent accountant to conduct an accounting of all Defendant' financial records relating to the sales obtained through use of the Gummy Bears Mark, the infringing "GUMMY BEARS" and "GUMMIBÄR" mark, and the Infringing Domain Names, in order to determine the sums of money owed to Plaintiff;

2. Upon a determination of sums due to Plaintiff, demand is made that those sums be paid to Plaintiff;

3. Interest at the maximum legal rate from the date said sums were due;

4. All reasonable attorney's fees and costs incurred herein; and

5. Any other relief deemed by the Court to be just and reasonable.

ON THE NINTH CAUSE OF ACTION

1. That the Court imposes an actual or constructive trust upon Defendant in favor of Plaintiff with respect to all income received by its infringing activities;

2. An award of restitution in an amount greater than or equal to Defendant' unjust enrichment, the value of which is to be determined by proof at trial;

3. Interest at the maximum legal rate;

4. All reasonable attorney's fees and costs incurred herein; and

5. That the Court grants such other, further, and different relief as the Court deems just and proper under the circumstances.

ON THE TENTH CAUSE OF ACTION

1. That the Court issues a permanent injunction enjoining Defendant from engaging in the infringing activities described herein;

2. That the Court awards the ownership of the Infringing Domain Names to Plaintiff;

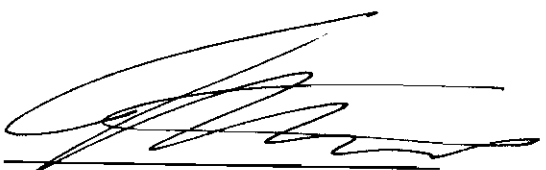
3. All reasonable attorney's fees and costs incurred herein;

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4. That the Court grants such other, further, and different relief as the Court deems just and proper under the circumstances.

February 13, 2009

FREUND & BRACKEY, LLP

By: 
Thomas A. Brackey II,
Stephen P. Crump
Attorneys for Plaintiff,
STREET PLAYERS HOLDING
CORPORATION

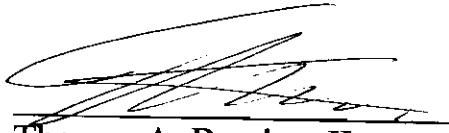
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

February 13, 2009

FREUND & BRACKEY, LLP

By: 
Thomas A. Brackey II,
Stephen P. Crump
Attorneys for Plaintiff,
STREET PLAYERS HOLDING
CORPORATION