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10 **Attorneys for Plaintiff**

11 **IN THE UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 **VIP Products, LLC**, an Arizona limited
14 liability company,

15 Plaintiff,

16 v.

17 **Heineken USA Incorporated** , a New York
18 corporation, **Heineken Brouwerijen B.V.** a
19 Netherlands corporation,

20 Defendant.

No.

COMPLAINT

(Declaratory Judgment)

21 Plaintiff, VIP Products, LLC (“Plaintiff”) for its complaint against defendant Heineken
22 USA Incorporated and Heineken Brouwerijen B.V. (collectively, “Defendants”), by and
23 through its undersigned counsel, Mariscal, Weeks, McIntyre & Friedlander, P.A., hereby
24 alleges and states as follows:

25 **I.**

26 **THE PARTIES**

1. Plaintiff is an Arizona limited liability company corporation with its principal
place of business at 16515 S. 40th Street, Suite 121, Phoenix, Arizona 85048.

1 9. Plaintiff sells several lines of dog chew toys, including the “Tuffy’s” line
2 (durable sewn/soft toys), the “Mighty” line (durable toys made of a different material than the
3 Tuffy’s line), and the “Silly Squeakers” (durable rubber squeaky novelty dog toys).

4 10. In approximately September of 2007 VIP introduced its “HeinieSniff’n” durable
5 rubber squeaky novelty dog toy.

6 11. Plaintiff is the owner of all rights in its HeinieSniff’n trademark and trade dress
7 for its durable rubber squeaky novelty dog toy.

8 12. Upon information and belief, defendant Heineken USA Incorporated is the
9 United States licensee of several trademarks for beer owned by defendant Heineken
10 Brouwerijen B.V., including the mark “HEINEKEN”, United States Trademark Reg. No.
11 956,608.

12 13. VIP designed the HeinieSniff’n label to incorporate a few elements of the
13 Heineken trade dress; for example VIP included a red star on its label. On the other hand,
14 VIP included drastic differences from the Heineken marks and trade dress in the
15 HeinieSniff’n label to make it clear that it was a parody. For example, VIP selected the words
16 “HeinieSniff’n” because they are clearly not “Heineken”, included the humorous phrase
17 “Premium Sniffer” on the toy in two locations, and placed two large cartoon dogs on the front
18 label.

19 14. Upon information and belief, on or about April 17, 2009, attorneys for
20 Defendants contacted Scalawags of Kennebunkport, Maine, a retail customer of Plaintiff, and
21 demanded that Scalawags cease and desist all sales of Plaintiff’s HeinieSniff’n parody dog
22 toy.

23 15. Upon information and belief, Defendants’ attorneys contended that the
24 HeinieSniff’n novelty dog toy infringed and diluted Defendants’ trademarks and trade dress
25 and requested that Scalawags cease distribution of Plaintiff’s HeinieSniff’n parody dog toy
26 and remove all pictures of Plaintiff’s parody dog toy from their Web site.

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V.

CLAIM FOR RELIEF

(Declaratory Judgment)

16. Plaintiff incorporates and realleges herein by this reference Paragraphs 1 through 15, inclusive, as though set forth in full herein.

17. There is an actual and justiciable controversy between Plaintiff and Defendants regarding Plaintiff’s use of its HeinieSniff’n trademark and trade dress for its novelty dog toy.

18. As a matter of law, Plaintiff’s use of its HeinieSniff’n name and mark does not infringe or dilute any claimed trademark rights and/or trade dress rights that Defendants may claim in trademark and/or trade dress for their Heineken beer.

WHEREFORE Plaintiff respectfully requests that the Court:

A. Issue a judgment declaring that Plaintiff’s use of its HeinieSniff’n name and mark for its novelty dog toy does not infringe or dilute any trademark rights claimed by one or both Defendants in the name and mark “HEINEKEN.”

B. Issue a judgment declaring that Plaintiff’s use of its HeinieSniff’n trade dress for its novelty dog toy does not infringe or dilute any rights claimed by one or both Defendants in the trade dress for Heineken beer.

C. Grant such additional or other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 21st day of April, 2009.

**MARISCAL, WEEKS, McINTYRE
& FRIEDLANDER, P.A.**

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