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8 Attorneys for Plaintiff
9 Adorian Deck; Marylou Deck, as Legal Guardian
10 of Adorian Deck

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 ADORIAN DECK; MARYLOU DECK, as
14 Legal Guardian of ADORIAN DECK, a minor

15 Plaintiffs,

16 vs.

17 SPARTZ, INC., A Delaware Corporation; and
18 DOES 1 through 10, inclusive,

19 Defendants.

) Case No.

) **COMPLAINT FOR LANHAM ACT**
) **VIOLATIONS, RESCISSION OF**
) **WRITTEN CONTRACT AND RELATED**
) **CLAIMS**

) _____
) **JURY DEMAND**
)

20 Plaintiffs, Adorian Deck and Marylou Deck, as Legal Guardian of Adorian Deck by and
21 through their undersigned counsel, hereby file this Complaint with Jury Demand against the above-
22 named Defendants, and Does 1 through 10, inclusive, and complain and allege as follows:

23 **JURISDICTION AND VENUE**

24 1. This is an action for trademark infringement and false designation of origin/false
25 advertising under the Lanham Act, 15 U.S.C. §1125, and pendent claims under state law. This Court
26 has subject matter jurisdiction over the matters complained of under 28 U.S.C. §1331, §1338(a) and
27 §1367. Additionally, diversity jurisdiction also exists pursuant to 28 U.S.C. § 1332(a)(1), since this
28 action involves citizens of different states and Plaintiff's claims for relief herein exceed the sum or
value of \$75,000.

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1 what Spartz would later present as a joint venture agreement turned out to be nothing more than an
2 artifice of self-dealing.

3 11. On or about April 27, 2010, Plaintiff was induced to sign, and did sign a written
4 contract with defendant Spartz, Inc., entitled “Contractor Agreement” (“Contract”), which Plaintiff
5 understood represented the aforementioned joint venture agreement. However, the Contract is in
6 fact a predatory instrument, quite obviously designed to misappropriate Plaintiff’s intellectual
7 property and the fruits of his creative efforts, and pay him little or nothing in return. For example,
8 the Contract purports to retain Plaintiff “to perform certain services to further Internet-related
9 project work in exchange for compensation.” The so-called “compensation” was to come from
10 sharing of revenues generated by the OMG Facts YouTube channel. Plaintiff was to receive 30% of
11 those revenues. To date, nearly a year later, Plaintiff has received less than \$100 in compensation
12 from Spartz, and has received no accounting or other disclosure of the revenues associated with the
13 YouTube channel. A true copy of the Contract is attached hereto as Exhibit “A.” The Contract
14 expires on April 27, 2011.

15 12. The Contract also provided that Plaintiff receive 100% of revenues from the sale of
16 his T-shirts on the OMG Facts website. What the Contract did not address, however, was the fact
17 that Spartz would have complete control of the OMG Facts website and retain 100% of its revenues,
18 and not be obligated to share or disclose those revenues to Plaintiff.

19 13. Even more disturbing than what the Contract omitted to state, is what it purports to
20 state. For example, in Section 3.B, the Contract purports to state that Plaintiff assigned to Spartz
21 “any copyright in any existing or future works. . . ,” including those that he made prior to execution
22 of the Contract, and including those that he thereafter made during its term. Thus, apparently for
23 less than \$100, the Contract purports that Plaintiff conveyed all of his preexisting intellectual
24 property to Spartz, and any corresponding rights Plaintiff had or may now have in OMG Facts. On
25 that basis alone, the Contract is unconscionable and unenforceable under applicable law.

26 14. The Contract further calls for litigation remedies to be pursued exclusively in courts
27 located within the State of Indiana, another provision which is unfairly burdensome upon Plaintiff,

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1 and intended to be. This provision was designed to discourage, if not economically bar Plaintiff
2 from pursuing his rights against Spartz.

3 15. Plaintiff recently discovered that Spartz now claims exclusive rights to the service
4 mark “OMG Facts” dating back to February 1, 2010, a claim that is both legally and factually
5 incorrect, but nonetheless injurious to Plaintiff’s rights, and further indicative of Spartz’s predatory
6 intent.

7
8 **FIRST CAUSE OF ACTION**
9 **(Rescission of Contract Under California Law)**

10 16. Plaintiff incorporates by this reference each and every allegation contained in
11 Paragraphs 1 through 15 as if set forth fully herein.

12 17. The Contract, because Plaintiff was a minor when it was executed, is subject to
13 California Family Code section 6710, which permits Plaintiff to now disaffirm it as a matter of law.
14 Plaintiff has opted to disaffirm the Contract, and has earlier provided notice of his intent to disaffirm
15 in writing to Spartz. Plaintiff intends the filing of this action to be further notice of his intent to
16 disaffirm.

17 18. Plaintiff seeks a judicial declaration sufficient to rescind the Contract, and sufficient
18 to restore the benefits received by Spartz and to return Plaintiff to his situation as it existed
19 immediately prior to the making of the Contract. Such restoration includes, without limitation,
20 restoring the revenues received by Spartz during the Contract term and returning to Plaintiff all of
21 the intellectual property that Plaintiff possessed prior to its execution, including all trademarks,
22 copyrights, domain names, and other intellectual properties. It further includes such preliminary and
23 permanent injunctive relief as may be necessary or appropriate to ensure full restoration of Plaintiff’s
24 rights and properties.

25 **SECOND CAUSE OF ACTION**
26 **(False Designation Of Origin, 15 U.S.C. § 1125(a)(1)(A))**

27 19. Plaintiff incorporates by this reference each and every allegation contained in
28 Paragraphs 1 through 15 as if set forth fully herein.

1 20. Because Plaintiff's explicit or implied permission has now been revoked,
2 Defendants no longer have any right to use Plaintiff's Mark, and no longer have the right to operate
3 the website and YouTube channel. By Defendants' continuing unauthorized use, claim of
4 ownership, and/or offers for sale under Plaintiff's Mark, and similar derivations thereof, Defendants
5 have used and will continue to use a false designation of origin that is likely to cause confusion,
6 mistake, or deception as to affiliation, connection, or association of Defendants with Plaintiff and is
7 also likely to cause confusion as to the origin, sponsorship, or approval of Defendants' products,
8 services or commercial activities by Plaintiff, all in violation of Section 43(a) of the Lanham Act, 15
9 U.S.C. § 1125(a).

10 21. Because of Defendants' aforementioned conduct, Plaintiff has been irreparably
11 harmed in his business enterprises. Moreover, Plaintiff will continue to suffer irreparable harm
12 unless Defendants are restrained from making false designations of origin, false descriptions, or
13 misrepresentations regarding the Defendants' products and/or services.

14 22. Since Defendants' continuing infringement is willful and intentional, Plaintiff is
15 entitled to recover the actual damages it has sustained, according to proof at trial, and is further
16 entitled to an award of enhanced damages for willful infringement, in addition to an award of costs
17 and attorneys fees pursuant to section 35(a) of the Lanham Act. In addition, Plaintiff is entitled to
18 recover Defendants' profits and reasonable royalties as damages.

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20 **THIRD CAUSE OF ACTION**
21 **(False Advertising, 15 U.S.C. §1125(a)(1)(B))**

22 23. Plaintiff hereby incorporates by this reference each and every allegation contained in
23 paragraphs 1 through 22 as if set forth fully herein.

24 24. Plaintiff alleges on information and belief that Defendants have falsely stated and
25 advertised the source/origin of their products and services in a manner intended to pass off their
26 products/services as those of Plaintiff, or to otherwise benefit from deception or mistake among
27 consumers whereby consumers would identify Defendants' products as those manufactured, sold,
28 licensed, or otherwise endorsed by Plaintiff.

1 25. By engaging in these activities, Defendants have engaged in false advertising under
2 15 U.S.C. §1125(a)(1)(B) and Defendants' conduct has created deception among consumers and
3 members of the general public as to nature, characteristics, or qualities of their products/services.

4 26. Plaintiff has suffered actual damages as a result of Defendants' false statements in an
5 amount to be proven at trial. Additionally, the harm to Plaintiff arising from Defendants' acts is not
6 fully compensable by money damages. Plaintiff has suffered, and continues to suffer, irreparable
7 harm that has no adequate remedy at law and that will continue unless Defendants' conduct is
8 preliminarily and permanently enjoined.

9 27. Defendants' conduct as described above was willful and intentional. As a result,
10 Plaintiff is further entitled to enhanced damages and an award of costs and attorneys fees under
11 section 35(a) of the Lanham Act. In addition, Plaintiff is entitled to recover Defendants' profits and
12 reasonable royalties as damages.

13 **FOURTH CAUSE OF ACTION**

14 **(Unfair Competition, False Advertising; Cal. Bus. & Prof. Code §§ 17200, et seq.)**

15 28. Plaintiff hereby incorporates by this reference each and every allegation contained in
16 paragraphs 1 through 25 as if set forth fully herein.

17 29. Defendants' aforementioned conduct is a further violation of California law, namely,
18 California Business and Professions Code section 17500, which provides:

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20 **17500.** It is unlawful for any person, firm, corporation or association, or any
21 employee thereof with intent directly or indirectly to dispose of real or personal
22 property or to perform services, professional or otherwise, or anything of any
23 nature whatsoever or to induce the public to enter into any obligation relating
24 thereto, to make or disseminate or cause to be made or disseminated before the
25 public in this state, or to make or disseminate or cause to be made or disseminated
26 from this state before the public in any state, in any newspaper or other
27 publication, or any advertising device, or by public outcry or proclamation, or in
28 any other manner or means whatever, including over the Internet, any statement,
concerning that real or personal property or those services, professional or
otherwise, or concerning any circumstance or matter of fact connected with the
proposed performance or disposition thereof, which is untrue or misleading,
and which is known, or which by the exercise of reasonable care should be
known, to be untrue or misleading, or for any person, firm, or corporation to so
make or disseminate or cause to be so made or disseminated any such statement
as part of a plan or scheme with the intent not to sell that personal property or
those services, professional or otherwise, so advertised at the price stated therein,

1 or as so advertised. Any violation of the provisions of this section is a
2 misdemeanor punishable by imprisonment in the county jail not exceeding six
3 months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or
by both that imprisonment and fine.

4 30. By engaging in the foregoing activities, Defendants have engaged in unfair
5 competition as defined by California Bus. & Prof. Code §§17200, et seq. and Defendants' wrongful
6 use of Plaintiff's Mark and violation of the aforementioned laws and regulations represents unfair,
7 deceptive, and misleading advertising in violation of California Bus. & Prof. Code §§17500, et seq.

8 31. Plaintiff has suffered actual injury, including loss of revenue and good will, as a result
9 of Defendants' unfair business practices and acts of unfair competition. Plaintiff has suffered, and
10 continues to suffer, irreparable harm that has no adequate remedy at law and that will continue
11 unless Defendants' conduct is preliminarily and permanently enjoined.

12 **WHEREFORE**, Plaintiff prays judgment as follows:

- 13 a. That the Court enter a judgment sufficient to rescind the Contract, and sufficient
14 to restore the benefits received by Spartz and to return Plaintiff to his situation as
15 it existed immediately prior to the making of the Contract. Such restoration
16 includes, without limitation, restoring the revenues received by Spartz during the
17 Contract term and returning to Plaintiff all of the intellectual property that
18 Plaintiff possessed prior to its execution. It further includes such preliminary
19 and permanent injunctive relief as may be necessary or appropriate to ensure full
20 restoration of Plaintiff's rights and properties associated with Plaintiff's Mark;
- 21 b. That the Court enter judgment that Defendants have falsely designated an origin,
22 affiliation or sponsorship by or with Plaintiff's trademarks and trade dress under
23 the Lanham Act, 15 U.S.C. §1125(c);
- 24 c. That the Court enter judgment that Defendants have competed unfairly pursuant
25 to the Lanham Act, 15 U.S.C. §1125(a), and the common law, and be
26 permanently enjoined from continuing such conduct;
- 27 d. That the Court enter judgment that Defendants have competed unfairly under
28 Cal. Bus. & Prof. Code §§17200, et seq. and advertised falsely under §§ 17500,

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et seq., and be permanently enjoined from continuing such conduct and required to return to Plaintiff all money and property they received from him;

e. That the Court preliminarily and permanently enjoin Defendants from using the Plaintiff's trademarks, designations of origin, and any other mark, dress, word, term, name, symbol, or device that is confusingly similar to the Plaintiff's trademarks or trade dress;

f. That Defendants be ordered to pay damages to Plaintiff as a result of Defendants' unlawful acts complained of herein, including without limitation reasonable royalties, in an amount to be determined by this Court, and that said damages be trebled insofar as Defendants' unlawful acts constitute willful infringement;

g. That Defendants be ordered to account for and pay over to Plaintiff all profits realized by Defendants from the unlawful acts complained of herein;

h. That Defendants be ordered to pay Plaintiff's attorneys' fees and costs for this action pursuant to the Lanham Act;

i. That Defendants be required to pay prejudgment and post-judgment interest until such awards are paid; and

j. That Plaintiff be granted such other and further relief as shall seem just and proper to the Court.

DEMAND FOR JURY: Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial on all claims and issues so triable.

DATED: April 26, 2011

MILLSTONE PETERSON & WATTS, LLP
Attorneys at Law

By: _____ /s/ GLENN W. PETERSON
GLENN W. PETERSON
Attorneys for Plaintiff
Adorian Deck; Marylou Deck, as Legal Guardian
of Adorian Deck

I hereby attest that I have on file all holograph signatures for any signatures indicated by a "conformed" signature (/s/) within this e-filed document.

MILLSTONE PETERSON & WATTS, LLP
Attorneys at Law /s/ Glenn W. Peterson