

SONNENSCHN NATH & ROSENTHAL LLP
2398 E. CAMELBACK ROAD, SUITE 1100
PHOENIX, AZ 85016
(602) 508-3900

1 SONNENSCHN NATH & ROSENTHAL LLP
2 Joshua S. Akbar (AZ State Bar No. 025339)
3 *jakbar@sonnenschein.com*
4 2398 E. Camelback Road
5 Suite 1100
6 Phoenix, AZ 85016-9016
7 Tel.: 602.508.3900
8 Fax: 602.508.3914

9 Michael M. Godsy
10 (*pro hac vice application to be filed*)
11 *mgodsy@sonnenschein.com*
12 One Metropolitan Square
13 211 North Broadway, Suite 3000
14 St. Louis, MO 63102-2741
15 Telephone: (314) 259-5923
16 Facsimile: (314)259-5959

17 *Attorneys for Plaintiffs*

18 **UNITED STATES DISTRICT COURT**
19 **FOR THE DISTRICT OF ARIZONA**

20 THETANCO, INC. and
21 TODD J. BECKMAN,

22 Plaintiffs,

23 vs.

24 DIRTY WORLD ENTERTAINMENT, LLC,
25 and HOOMAN KARAMIAN a/k/a
26 CORBIN GRIMES a/k/a NIK RICHIE,

27 Defendants.

Case No. _____

COMPLAINT

Hon. _____

28 COME NOW Plaintiffs THETANCO, Inc. (“TANCO”), and Todd J. Beckman (“Beckman”), and for their Complaint against Defendants Dirty World Entertainment, LLC (“DWE”) and Hooman Karamian, a/k/a Corbin Grimes, a/k/a Nik Richie (“Richie”), state as follows:

1 **The Parties**

2 1. TANCO is a franchisor and operator of tanning salons, incorporated under the
3 laws of the State of Missouri with its principal place of business in St. Louis County,
4 Missouri.

5 2. Beckman is the founder and sole owner of TANCO. He is a resident of St.
6 Louis County, Missouri.

7 3. DWE is a limited liability company organized under the laws of the State of
8 Arizona, with its principal place of business in Scottsdale, Arizona.

9 4. Richie is the multi-pseudonymous author of comments and features appearing
10 on a website operated by DWE entitled *thedirty.com*.

11 **Jurisdiction and Venue**

12 5. This Court has jurisdiction over the service mark claims in this matter under 15
13 U.S.C. § 1121(a), 28 U.S.C. §§ 1331 and 1338(a).

14 6. This Court has supplemental jurisdiction over Plaintiffs' other claims pursuant
15 to 28 U.S.C. § 1367 in that they form part of the same case or controversy under Article
16 III of the United States Constitution.

17 7. This Court has personal jurisdiction over Defendants in that they are residents
18 of the State of Arizona.

19 8. This Court is a proper venue for this action under 28 U.S.C. § 1391(b).

20 **Background: TANCO And Its Business**

21 9. TANCO is a nationally-operating franchisor of tanning salons, operating under
22 the storefront name of "The Tan Company." TANCO's franchisees are located in 13
23 states. TANCO was founded by Beckman in 1994.

24 10. TANCO is a recognized leader in the tanning industry and in the franchising
25 industry because of its continued success and growth in providing a relaxing, safe tanning
26 experience through an ever-expanding network of franchisees.

27 11. TANCO derives substantial revenue from licensing fees paid by its
28 franchisees. These licensing fees are based, in part, on the goodwill and positive

1 reputation associated with TANCO, “The Tan Company” and Beckman, in the public
2 eye, within the industry and among franchisees and prospective franchisees. TANCO
3 and Beckman have made significant financial and human resource investments in
4 marketing “The Tan Company” to maintain, enhance and expand upon that goodwill and
5 positive reputation.

6 12. TANCO holds valid service marks for “The Tan Company” and “Where
7 America Tans,” as used in connection with tanning salons. TANCO has used the mark
8 “The Tan Company” since November 1, 2000, and the mark “Where America Tans”
9 since at least as early as February 1, 2007. TANCO is authorized to take all necessary
10 and timely action, including legal action, to protect and preserve the property of TANCO,
11 including the use of its service marks, to protect against improper, illegal or unlawful use
12 or abuse thereof.

13 13. A true and accurate copy of USPTO Trademark Registration Number 3272018,
14 demonstrating TANCO’s valid service mark for “The Tan Company” is attached hereto
15 as **Exhibit A**.

16 **Content Appearing At *thedirty.com***

17 14. Defendants’ website, *thedirty.com*, professes to be “all about gossip and
18 satire.” The website actively solicits its viewers to “submit dirt!” which it then publishes,
19 without verification. Such “dirt” is categorized by (among other things) city of
20 origination. The “dirt” thus published includes photographs—which may or may not be
21 altered—and text as edited by Defendants. The content posted to *thedirty.com* may
22 generally be characterized as ranging from the merely puerile to the egregiously
23 salacious. The website’s animating purpose is to provide a forum for the anonymous,
24 public posting of humiliating, embarrassing or malicious photographs, text or comments.

25 15. Defendants unapologetically proclaim that *thedirty.com*’s content consists of
26 “rumors, speculation, assumptions, opinions, and factual information.” They readily
27 acknowledge that “Postings may contain erroneous or inaccurate information.”

28 16. Within the “FAQ” section of the website, Defendant DWE purports to provide

1 a procedure for having offensive material taken down. Specifically, they state as follows:

2 **5.) OMG! There's a really embarrassing pic of me that I want removed! How**
3 **can I get it taken down?**

4 Assuming you are the person shown in a photo (and are not the photographer),
5 you are welcome to submit a courtesy removal request via email to:
6 REMOVE@THEDIRTY.COM. Removal is done at the discretion of Dirty World
7 LLC and may take up to 72 hours or more to process. Each request must
8 include:

- 9 1. Your Name: _____
10 2. Your Email: _____
11 3. Link (URL) to post: _____

12 NOTE: Because we do not know who you are, we cannot consider requests such
13 as "please remove the pic of me on page 3." We need to know the exact URL of
14 the page you want removed. You can get the URL by clicking on the title of the
15 post and then looking at the address (URL) on the top of that page.

16 **Defendants' Defamatory and Unauthorized Postings**

17 17. On August 12, 2009, Defendants accepted and posted a submission of "dirt"
18 from a St. Louis submitter. Defendants entitled the posting "Where America Tans." The
19 posting (appearing at <http://thedirty.com/2009/08/12/where-america-tans/>) does not
20 identify the original submitter.

21 18. The posting consists in its entirety of defamatory content concerning Beckman.
22 It includes a contextually inaccurate photograph of Beckman, and text that accuses
23 Beckman of :

- 24 • illegal drug use;
25 • pedophilia;
26 • illegal or unethical business practices;
27 • insurance fraud;
28 • arson;
• philandering; and
• being infected with AIDS.

Specifically, the post states verbatim as follows:

THE DIRTY ARMY: Nik, This is the President/Owner of one of the
largest tanning chains in the country, The Tan Company. He uses his
money to buy c*caine and big boats to drive underage girls around. I guess
The Tan Company wasn't screwing people out of enough money to
support his dr*g and pedofile habit, so he caused an explosion and burnt

1 his house down for insurance money. The entire corporate staff got
2 pregant within the last couple of years most likely by him (luckily none of
3 the kids turned out retarded considering how many lines they snorted on
4 lunch breaks), including his wife but he was too busy having sex with the
5 VP down at the Osage Beach store opening while his wife frantically
6 called his cell because she was in labor. Where was your wife when you
7 were kissing this young girl, Todd? Tan away St. Louis, just try not to get
8 aids. And another hint for the successful businessman, maybe you should
9 tell your fat Rask employees not to post inappropriate pictures of you on
10 their Myspace just so they feel “cool” that they are part of your minimum
11 wage corporate cult. TAN WITH THE BEST!

12 19. Defendant Richie adopted, endorsed and repeated some of this defamatory
13 content by adding this editorial comment: “**Typical trout, I give him 3 months before**
14 **he files for Chapter 11.- nik.**” (“Trout,” according to the site’s “WTF Dictionary,”
15 refers to “an older man who dates younger women in trying to be younger or ‘swim
16 upstream.’”)

17 20. None of the defamatory statements or accusations are true.

18 21. By using the name “The Tan Company” and the phrase “Where America Tans”
19 in the posting, Defendants displayed and continues to display TANCO’s service marks
20 without permission in a confusing and misleading manner.

21 Attempts To Remove The Posting

22 22. On August 12, 2009, Plaintiff Beckman was alerted to the existence of the
23 “Where America Tans” posting identified above. The posting bears the same date.

24 23. A true and accurate copy of the unauthorized Internet posting from August
25 12, 2009, is attached hereto as **Exhibit B**.

26 24. On August 13, 2009, Plaintiffs attempted through their legal counsel,
27 Sonnenschein, Nath & Rosenthal, LLP, to have the offending posting and related
28 content removed from the website. In accordance with the instructions quoted above,
Plaintiffs emailed a demand that the content be taken down, and that Defendants
immediately discontinue all use of the service marks. In addition, copies of the
demand letter were sent via Federal Express to a number of addresses listed for
Defendant Karamian as well as to the registered agent of Dirty World Entertainment,

1 LLC, John Webber. A true and accurate copy of the demand letter is attached hereto
2 as **Exhibit C**.

3 25. All except one of the letters sent via FedEx were returned. FedEx reported
4 multiple attempts to deliver the letters but an inability to do so because the addressees
5 had changed addresses without leaving forwarding information.

6 26. On August 13, 2009, however, Plaintiffs' counsel received an email
7 acknowledging receipt of the demand letter and claiming that the offending content
8 was "in the process of removal." A true and accurate copy of the email received from
9 Defendants is attached hereto as **Exhibit D**.

10 27. Furthermore, on August 19, 2009, Beckman sent a second email request
11 conforming to the removal procedures posted on the site and quoted above.

12 28. As of the date of this filing, however, the offending posting has not been
13 removed from *thedirty.com*. In addition, comments to the posting have continued to
14 be accepted for posting by Defendants, compounding the defamatory effect of the
15 posting and editorial addition, further damaging the reputation of Plaintiffs, and
16 multiplying the unauthorized usage of TANCO's service marks.

17 **COUNT I**

18 **FEDERAL TRADEMARK INFRINGEMENT (TANCO v. DWE)**

19 29. Plaintiffs reallege and incorporate by reference herein Paragraphs 1 through
20 28 above.

21 30. Defendant DWE has engaged in service mark infringement under § 32 of
22 the Federal Trademark Act, 15 U.S.C. § 1114.

23 31. TANCO's federal registration on the Principal Register of the "The Tan
24 Company" is conclusive evidence of TANCO's exclusive right to use that mark under
25 15 U.S.C. § 1115. Moreover, TANCO's registration is incontestable, thereby
26 providing conclusive evidence of the validity of TANCO's marks, TANCO's
27 ownership of the marks, and TANCO's exclusive right to use the marks pursuant to
28 15 U.S.C. § 1065.

1 45. DWE's use of the marks to promote and distribute salacious content on the
2 internet has created a likelihood of confusion, mistake or deception, and therefore
3 infringes on TANCO's marks in violation of the common law of Arizona and of
4 Missouri.

5 46. DWE's actions damage the value of TANCO's marks, the goodwill and the
6 business associated with TANCO's marks.

7 47. DWE's actions also threaten further irreparable damage against the marks
8 for which no remedy exists at law unless temporarily, preliminarily and permanently
9 enjoined.

10 48. As a proximate result of DWE's common law infringement and/or dilution,
11 TANCO has suffered and will continue to suffer substantial damage to its business,
12 goodwill, reputation, profits, franchisee recruitment efforts, franchisee retention, and
13 the strength and respect earned by its long-term use of its marks.

14 **COUNT IV**

15 **PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF (TANCO vs. DWE)**

16 49. TANCO realleges and incorporates by reference herein Paragraphs 1
17 through 48 above.

18 50. TANCO has sustained or will sustain irreparable harm as a result of
19 Defendants' conduct described above. There is no adequate remedy at law for
20 Defendants' unauthorized use of TANCO's service mark. Once the content located at
21 *<http://thedirty.com//2009/08/12//where-america-tans/>* is viewed, circulated,
22 commented on and archived in various places on the World Wide Web — as has
23 occurred and continues to occur — it will irreparably harm, injury and damage
24 TANCO. Further, damages are an inadequate remedy because it would be difficult, if
25 not impossible, to quantify the extent to which such unauthorized use has or will
26 destroy future business interests of TANCO's.

27 51. As shown from the facts contained herein, TANCO will suffer immediate
28 and irreparable injury unless Defendants are temporarily, preliminarily and

1 permanently enjoined from any further use of TANCO's service mark.

2 **COUNT V**

3 **DEFAMATION (Beckman vs. Richie)**

4 52. Plaintiff Beckman realleges and incorporates by reference herein
5 Paragraphs 1 through 51 above.

6 53. The posting at <http://thedirty.com/2009/08/12/where-america-tans/>, as
7 quoted verbatim above, which Defendant Richie adopted, republished and elaborated
8 upon, publishes false and defamatory statements concerning Beckman that impeach
9 his honesty, integrity and reputation, by alleging that he has used and continues to use
10 illegal drugs and that he has committed acts of pedophilia, illegal/unethical business
11 conduct, arson and insurance fraud.

12 54. The posting at <http://thedirty.com/2009/08/12/where-america-tans/>, as
13 quoted verbatim above, which Defendant Richie adopted, republished and elaborated
14 upon, publishes false and defamatory statements concerning Beckman alleging that he
15 is a philanderer and is infected with HIV/AIDS.

16 55. The posting at <http://thedirty.com/2009/08/12/where-america-tans/>, as
17 quoted verbatim above, which Defendant Richie adopted, republished and elaborated
18 upon, was published via the internet to all users of the World Wide Web.

19 56. Defendant Richie knew, or recklessly disregarded whether the false and
20 defamatory statements quoted above were true, and acted negligently in failing to
21 determine the truth of the matter.

22 57. As a result of Defendant Richie's adoption, elaboration upon, and re-
23 publication of those false and defamatory statements, Beckman has been damaged.

24 **COUNT VI**

25 **DEFAMATION PER SE (Beckman vs. Richie)**

26 58. Beckman realleges and incorporates by reference herein Paragraphs 1
27 through 57 above.

28 59. The posting at <http://thedirty.com/2009/08/12/where-america-tans/>, as

1 quoted verbatim above, which Defendant Richie adopted, republished and elaborated
2 upon, publishes false and defamatory statements concerning Beckman and allege that
3 he has committed crimes of moral turpitude, specifically (as previously stated), illegal
4 drug use, pedophilia, illegal/unethical business conduct, arson and insurance fraud.

5 60. The posting at <http://thedirty.com/2009/08/12/where-america-tans/>, as
6 quoted verbatim above, which Defendant Richie adopted, republished and elaborated
7 upon, publishes false and defamatory statements concerning Beckman that ascribe to
8 Beckermen conduct, characteristics or a condition that would disparage him,
9 specifically (as previously stated) philandering and infection with HIV/AIDS.

10 61. The posting at <http://thedirty.com/2009/08/12/where-america-tans/>, as
11 quoted verbatim above, which Defendant Richie adopted, republished and elaborated
12 upon, was published via the internet to all users of the World Wide Web.

13 62. Richie knew, or recklessly disregarded whether the false and defamatory
14 statements quoted above were true, and acted negligently in failing to determine the
15 truth of the matter.

16 63. As a result of Richie's publication of those false and defamatory
17 statements, Beckman has been damaged, which damages are presumed under the law
18 of the State of Arizona.

19 **WHEREFORE**, Plaintiffs respectfully pray that the Court grant the
20 following relief:

21 A. Judgment in Plaintiffs' favor on all counts of this Complaint.

22 B. Requiring Defendants to remove and/or block all access to the website
23 content located at <http://thedirty.com/2009/08/12/where-america-tans/>.

24 C. Temporarily, preliminarily and permanently enjoining Defendants and its
25 officers, agents, servants, employees, representatives, attorneys, successors, licensees
26 and assigns, and all others in active concert or participation with them, pursuant to
27 U.S.C. § 1116 and the equity jurisdiction of this Court, from using the marks "The
28 Tan Company" or "Where America Tans" or any other service mark in combination

1 with other words or symbols, or any other marks or symbols which are confusingly or
2 deceptively similar to, or colorably imitative of Plaintiff's service mark, on or in
3 connection with Defendants' web site at *thedirty.com*.

4 D. Requiring Defendants to pay damages to Plaintiffs in the amount of
5 Plaintiffs' actual, presumed and consequential damages and any profits of Defendant
6 resulting from Defendants' service mark infringement pursuant to 15 U.S.C. §
7 1117(a), 15 U.S.C. § 1120, and the common law of the State of Arizona.

8 E. Finding this an exceptional case and requiring Defendants to pay TANCO
9 additional damages equal to three times the actual damages awarded TANCO
10 pursuant to 15 U.S.C. § 1117(a).

11 F. Requiring Defendant DWE to divulge the identity or identities of any
12 person submitting the photograph, posting text or comments at
13 <http://thedirty.com/2009/08/12/where-america-tans/>.

14 G.. Awarding Plaintiff Beckman exemplary damages in an amount adequate to
15 punish Defendant Richie and deter him from further similar conduct.

16 H. Requiring Defendants to pay all of Plaintiffs' reasonable attorneys' fees,
17 costs and expenses, including those available under 15 U.S.C. § 1117(a), and any
18 other applicable law;

19 I. Such other and further relief as the Court may deem just and equitable.

20 **DEMAND FOR JURY TRIAL**

21 Pursuant to *Fed. R. Civ. P.* 38(b), Plaintiffs hereby demand a trial by jury to
22 the fullest extent permitted by law.
23
24
25
26
27
28

1 Dated: August 21, 2009
2 Phoenix, Arizona

3 Respectfully submitted,
4 SONNENSCHN NATH & ROSENTHAL LLP

5 By: /s/ Joshua S. Akbar
6 Joshua S. Akbar (AZ State Bar No. 025339)
7 *jakbar@sonnenschein.com*
8 2398 East Camelback Road, Suite 1100
9 Phoenix, Arizona 85016-9016

10 Michael M. Godsy
11 (*pro hac vice application to be filed*)
12 *mgodsy@sonnenschein.com*
13 One Metropolitan Square
14 211 North Broadway, Suite 3000
15 St. Louis, MO 63102-2741
16 Telephone: (314) 259-5923
17 Facsimile: (314)259-5959

18 *Counsel for Plaintiffs*

19
20
21
22
23
24
25
26
27
28
23294267