

1 FRITZ CLAPP (CA Bar No. 99197)
 Attorney at Law
 2 P.O. Box 340458
 Sacramento, CA 95834-0458
 3 Telephone: (916) 548-1014
 Facsimile: (888) 467-2341
 4 E-mail: <mail@fritzclapp.com>

5 Attorney for Plaintiff
 HELLS ANGELS MOTORCYCLE CORPORATION

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 8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**

12 **HELLS ANGELS MOTORCYCLE**
CORPORATION, a California corporation,

13 Plaintiff,

14 v.

15
 16 **FAWN MYERS, GODADDY.COM, INC.**,
 and Does 1 through 10, inclusive,

17 Defendants.
 18

Case No.

**COMPLAINT FOR CYBERPIRACY;
 TRADEMARK INFRINGEMENT;
 FALSE DESIGNATION OF ORIGIN;
 DILUTION; AND UNFAIR
 COMPETITION**

JURY DEMANDED

19
 20 Plaintiff, HELLS ANGELS MOTORCYCLE CORPORATION, by and through its
 21 undersigned attorney, complains and alleges as follows:

22 **JURISDICTION AND VENUE**

23 1. This is an action for cyberpiracy under 15 U.S.C. § 1125(d); for trademark
 24 infringement under 15 U.S.C. § 1114(1) and California Business & Professions Code §
 25 14320; for false designation of origin under 15 U.S.C. § 1125(c); and for unfair
 26 competition under California Business & Professions Code § 17200 and California
 27 common law. This Court has subject matter jurisdiction over the claims pursuant to 15
 28 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338.

1 2. This Court has supplemental jurisdiction over the claims in this Complaint
2 that arise under state statutory and common law of the State of California pursuant to 28
3 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they
4 form part of the same case or controversy and derive from a common nucleus of operative
5 facts.

6 3. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) as a
7 substantial part of the events or omissions giving rise to the claim and the threatened and
8 actual harm to Plaintiff occurred in this District by reason of Defendants' conduct as
9 alleged below. Venue is also proper in this Judicial District pursuant to because Defendant
10 FAWN MYERS resides and does business within this District.

11 4. Intra-district venue is proper in the Fresno session pursuant to L.R. 3-120
12 because, on information and belief, Defendant FAWN MYERS resides and does business
13 in the County of Tulare.

PARTIES

14 5. Plaintiff HELLS ANGELS MOTORCYCLE CORPORATION ("HAMC")
15 is now, and at all relevant times was, a non-profit mutual benefit corporation organized
16 and existing under the laws of the State of California. HAMC is the owner of the
17 trademarks described herein.
18

19 6. Defendant FAWN MYERS ("MYERS"), on information and belief, is an
20 individual residing in Visalia, California, in the County of Tulare. Defendant MYERS is
21 engaged in business of buying and selling collectible items and domain name registrations,
22 primarily through the Internet auction site eBay.com ("eBay").

23 7. Defendant GODADDY.COM, INC. ("GODADDY") is now, and at all times
24 mentioned was, an Arizona corporation with offices at 14455 N. Hayden Rd., Scottsdale,
25 Arizona 85260. Defendant GODADDY is an Internet service provider and domain name
26 registrar.

27 8. The true names and capacities, whether individual, corporate, associate or
28 otherwise of Does 1 through 10, inclusive, and each of them, are unknown to Plaintiff,

1 who therefore sues said defendants by such fictitious names, and will seek leave of this
2 Court to amend this Complaint to show the true names and capacities when they have been
3 ascertained. Plaintiff is informed and believes, and on that basis alleges, that each
4 defendant designated herein as a Doe was responsible, intentionally, negligently,
5 contributorily, vicariously or in some other actionable manner, for the events and
6 happenings referred to herein which proximately and legally caused the damages to
7 Plaintiff as hereinafter alleged.

8 9. Plaintiff is informed and believes and thereon alleges that at all times herein
9 mentioned each of the Defendants, including all Defendants sued under fictitious names,
10 and those agents, employees, and/or independent contractors identified herein, was the
11 agent and/or employee of each of the remaining Defendants, and in doing the things herein
12 alleged, was acting within the course and scope of this agency or employment.

13 **PLAINTIFF'S MARKS**

14 10. For over sixty years, the Hells Angels Motorcycle Club has continuously
15 employed the word mark HELLS ANGELS as a collective membership mark, trademark
16 and service mark. The HELLS ANGELS mark is used in connection with the activities
17 and enterprises of a motorcycle club, and as indicia of active membership in that club; on
18 authorized goods such as posters, adhesive labels, motion pictures, and sound recordings;
19 and in connection with promotional and entertainment services.

20 11. Plaintiff HAMC is the owner of U.S. Trademark Registration Nos.
21 1,136,494, 1,214,476, 1,294,586, 1,301,050, and 1,943,341 for the HELLS ANGELS word
22 mark. Each of the aforesaid registrations has become incontestable under 15 U.S.C. §
23 1065. These registrations are, therefore, conclusive evidence of Plaintiff's exclusive right
24 to use the HELLS ANGELS mark.

25 12. Plaintiff HAMC and licensees (the authorized charters of the Hells Angels
26 Motorcycle Club), have used the mark "81" in commerce for over twenty years as a source
27 identifier and pseudonym for HELLS ANGELS on goods and services. Plaintiff's "81"
28 mark is a numeric metonym for the initials "H" and "A" which are the 8th and 1st letters of

1 the English alphabet, thereby signifying Hells Angels.

2 13. Plaintiff HAMC and its licensees have used the “81” Mark as source
3 identifier on various types of merchandise including at least the following: hats, beanies,
4 shirts, sweatshirts, pullovers, jackets, vests, pants, bikinis, patches, pins, stickers, belt
5 buckles and key fobs, and in connection with special events and entertainment services.
6 Plaintiff HAMC and its licensees exercise legitimate control over the use of the “81”
7 Mark to indicate the Hells Angels as the source of goods and services.

8 14. Through many years of continuous use by Plaintiff HAMC and its licensees,
9 the “81” Mark has come to be widely recognized by the public as signifying the Hells
10 Angels Motorcycle Club. The “81” mark is commonly used to identify Plaintiff HAMC
11 and its licensees. As a result, Plaintiff HAMC is the owner of substantial secondary
12 meaning and goodwill in connection therewith.

13 15. Plaintiff HAMC is the owner of U.S. Trademark Registration No. 2813590
14 for the “81” mark, and pending applications 77623272, 77605755, 77620273 to register
15 the “81” mark.

16 16. Plaintiff HAMC and its licensed charters are commonly identified as
17 “HAMC” by the public, press and government agencies, and the “HAMC” mark is used by
18 Plaintiff and its licensed charters in connection with various goods and services, including
19 use as a component in authorized domain names operated by Hells Angels charters, such
20 as <hamcli.com> (Hells Angels MC Long Island), <hamccc.com> (Hells Angels MC Cave
21 Creek) , <hamcsfv> (Hells Angels MC San Fernando Valley), and <hamcsj> (Hells Angels
22 MC San Jose).

23 17. Through continuous and conspicuous usage by Plaintiff HAMC and its
24 authorized licensees, “HELLS ANGELS” “81” and “HAMC” (“Plaintiff’s Marks”) are
25 famous. Plaintiff’s Marks are widely known and recognized by the public as indicating the
26 membership and organization of motorcycle enthusiasts. Plaintiff HAMC has exercised
27 legitimate control over the uses of the Marks by its duly authorized licensees, and has been
28 diligent in abating the use of the Marks by unauthorized third parties.

1 18. Through publicity, fact and legend, Plaintiff's Marks have acquired
2 widespread public recognition, and they evokes strong and immediate reactions whenever
3 they are uttered or used. The impact of Plaintiff's Marks is significant, and as a result they
4 have great commercial value. Defendants seek to exploit that value for their own gain.

5 **DEFENDANTS' INFRINGING ACTIVITIES**

6 19. Within a year prior to the filing of this complaint, Defendants MYERS and
7 Does 1 through 10, inclusive, registered the following Internet top-level domain names
8 (the "Infringing Domain Names") employing Defendant GODADDY as the registrar:

9 HA-MC.COM	81CT.COM
HA-MC.INFO	81EU.COM
10 ALL81.COM	81FL.COM
USA81.COM	81HI.COM
11 81USA.COM	81NJ.COM
81-MC.COM	81NV.COM
12 81USA.INFO	81NY.COM
81-MC.INFO	81OC.COM
13 81MC.INFO	81TX.COM
81AZ.COM	81UT.COM
14 81CA.COM	81WA.COM

15 20. On or about February 7, 2009, Defendants MYERS and Does 1 through 10,
16 inclusive, offered the Infringing Domain Names for sale on eBay, with titles and
17 descriptions emphasizing that the domain names signified HELLS ANGELS and were
18 valuable by reason of that association. True copies of the web pages for Defendants' eBay
19 "buy it now" auctions are shown in Exhibit A attached hereto and incorporated by this
20 reference.

21 21. Plaintiff HAMC has never approved Defendants' use of the Marks as
22 Internet domain names or for any other purpose, and Defendants have never sought
23 permission for use of the Marks.

24 22. Plaintiff is informed and believes, and upon such information and belief
25 alleges, that Defendants had actual knowledge of Plaintiff's Marks, prior to Defendants'
26 registering the Infringing Domain Names and prior to offering the Infringing Domain
27 Names for sale.

28 23. On or about February 8, 2009, Plaintiff gave actual notice to eBay and to

1 Defendant MYERS, through the Verified Rights Owner reporting system of eBay, that the
2 Infringing Domain Names are infringing of Plaintiff's rights. Based on Plaintiff's notice
3 and its own investigation, eBay terminated Defendants' auctions.

4 24. Despite actual notice of infringement, and termination by eBay of the
5 auctions of the Infringing Domain Names, Defendant MYERS and Does 1 through 10,
6 inclusive, have willfully re-listed and continued to offer them for sale and threaten to
7 auction them through Defendant GODADDY.

8 25. Defendants' unauthorized registration and use of the Infringing Domain
9 Names is likely to cause confusion, mistake, and deception as to the source or origin of the
10 Infringing Domain Names, and is likely to falsely suggest a sponsorship, connection,
11 license, or association with Plaintiff or its licensees.

12 26. Defendants' activities have irreparably harmed and, if not enjoined, will
13 continue to irreparably harm Plaintiff and its long-used and federally registered marks.

14 27. Defendants' activities have irreparably harmed and, if not enjoined, will
15 continue to irreparably harm the general public who has an inherent interest in being free
16 from confusion, mistake and deception.

17 **FIRST CAUSE OF ACTION**

18 ***(Cyberpiracy – 15 U.S.C. § 1125(d))***

19 28. Plaintiff realleges and incorporates by reference paragraphs 1 through 27 as
20 though fully set forth here.

21 29. Plaintiff is informed and believes and on that basis alleges that Defendants
22 registered, used and attempted to sell the Infringing Domain Names.

23 30. Plaintiff's Marks were distinctive at the time Defendants registered, used and
24 attempted to sell the Infringing Domain Names.

25 31. The Infringing Domain Names are confusingly similar to Plaintiff's Marks.

26 32. Plaintiff is informed and believes and on that basis alleges that Defendants
27 registered, trafficked in, or used the Infringing Domain Names in a bad faith attempt to
28 profit from the goodwill long established by Plaintiff in its Marks.

1 33. Defendants do not have any intellectual property rights or any other rights in
2 Plaintiff's Marks.

3 34. Plaintiff is informed and believes and on that basis alleges that none of the
4 Infringing Domain Names consist of the legal name of any Defendants, nor a name that is
5 otherwise commonly used to identify any Defendants.

6 35. Plaintiff is informed and believes and on that basis alleges that Defendants
7 have not made any prior use of any of the Infringing Domain Names in connection with
8 the *bona fide* offering of any goods or services.

9 36. Plaintiff is informed and believes and on that basis alleges that Defendants
10 have not made any *bona fide* use of Plaintiff's Marks on a website accessible under any of
11 the Infringing Domain Names.

12 37. Plaintiff is informed and believes and on that basis alleges that Defendants
13 registered, trafficked in, or used the Infringing Domain Names to exploit their value for
14 commercial gain by creating a likelihood of confusion as to source, sponsorship,
15 affiliation, or endorsement.

16 38. Defendants' registration, use, or trafficking in the Infringing Domain Names
17 constitutes cyberpiracy in violation of 15 U.S.C. § 1125(d), entitling Plaintiff to relief.

18 39. By reason of Defendants' acts alleged herein, Plaintiff's remedy at law is not
19 adequate to compensate for the damages caused by Defendants. Accordingly, Plaintiff is
20 entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

21 40. By reason of Defendants' acts alleged herein, Plaintiff is entitled to recover
22 Defendants' profits, actual damages and the costs of the action, or statutory damages under
23 15 U.S.C. § 1117(d), on election of Plaintiff, in an amount of One Hundred Thousand
24 Dollars (\$100,000) per domain name infringement.

25 41. This is an exceptional case making Plaintiff eligible for an award of
26 attorneys' fees under 15 U.S.C. § 1117.

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1 **SECOND CAUSE OF ACTION**

2 ***(Trademark Infringement – 15 U.S.C. § 1114(1))***

3 42. Plaintiff realleges and incorporates by reference paragraphs 1 through 41 as
4 though fully set forth here.

5 43. Defendants’ use in commerce of the Infringing Domain Names and the
6 websites and advertisements displayed at the Infringing Domain Names, is likely to cause
7 confusion, mistake, and to deceive.

8 44. Defendants’ use of the Infringing Domain Names is likely to cause initial
9 interest confusion among the general public.

10 45. The acts of Defendants as alleged herein constitute trademark infringement
11 in violation of 15 U.S.C. § 1114(1), entitling Plaintiff to relief.

12 46. Defendants have unfairly profited from the infringing actions alleged.

13 47. By reason of Defendants’ acts, Plaintiff has suffered damage to the goodwill
14 associated with its Marks.

15 48. Defendants’ activities have irreparably harmed and, if not enjoined, will
16 continue to irreparably harm Plaintiff and its long-used federally registered and common
17 law marks.

18 49. Defendants’ activities have irreparably harmed and, if not enjoined, will
19 continue to irreparably harm the general public who has an interest in being free from
20 confusion, mistake, and deception.

21 50. By reason of Defendants’ acts alleged herein, Plaintiff’s remedy at law is not
22 adequate to compensate for the damages caused by Defendants. Accordingly, Plaintiff is
23 entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

24 51. By reason of Defendants’ willful acts, Plaintiff is entitled to damages, and
25 that those damages be trebled under 15 U.S.C. § 1117.

26 52. This is an exceptional case making Plaintiff eligible for an award of
27 attorneys’ fees under 15 U.S.C. § 1117.

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1 **THIRD CAUSE OF ACTION**

2 ***(False Designation of Origin – 15 U.S.C. § 1125(a))***

3 53. Plaintiff realleges and incorporates by reference paragraphs 1 through 52 as
4 though fully set forth here.

5 54. Defendants' use in commerce of the Infringing Domain Names and the
6 websites and advertisements displayed at the Infringing Domain Names, is likely to cause
7 confusion, mistake, and to deceive.

8 55. Defendants' use of the Infringing Domain Names is likely to cause initial
9 interest confusion among the general public.

10 56. The acts of Defendants as alleged herein constitute trademark infringement
11 of Plaintiff's Marks and false designation of origin in violation of 15 U.S.C. § 1125(a),
12 entitling Plaintiff to relief.

13 57. Defendants have unfairly profited from the infringing actions alleged.

14 58. By reason of Defendants' acts, Plaintiff has suffered damage to the goodwill
15 associated with its Marks.

16 59. Defendants' activities have irreparably harmed and, if not enjoined, will
17 continue to irreparably harm Plaintiff and its long-used federally registered and common
18 law marks.

19 60. Defendants' activities have irreparably harmed and, if not enjoined, will
20 continue to irreparably harm the general public who has an interest in being free from
21 confusion, mistake, and deception.

22 61. By reason of Defendants' acts alleged herein, Plaintiff's remedy at law is not
23 adequate to compensate for the damages caused by Defendants. Accordingly, Plaintiff is
24 entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

25 62. By reason of Defendants' willful acts, Plaintiff is entitled to damages, and
26 that those damages be trebled under 15 U.S.C. § 1117.

27 63. This is an exceptional case making Plaintiff eligible for an award of
28 attorneys' fees under 15 U.S.C. § 1117.

1 **FOURTH CAUSE OF ACTION**

2 ***(Dilution – 15 U.S.C. § 1125(c))***

3 64. Plaintiff realleges and incorporates by reference paragraphs 1 through 63 as
4 though fully set forth here.

5 65. Plaintiff's Marks are famous, as that term is used in 15 U.S.C. § 1125(c), and
6 were famous before Defendants' adoption and use of the Infringing Domain Names as
7 alleged herein, based on, among other things, the Marks' inherent distinctiveness, federal
8 registrations, and exclusive nationwide use, advertising, promotion and recognition.

9 66. Defendants' use in commerce of the Infringing Domain Names is likely to
10 cause dilution by blurring and dilution by tarnishment in violation of 15 U.S.C. § 1125(c),
11 entitling Plaintiff to relief.

12 67. Defendants have unfairly profited from the infringing actions alleged.

13 68. By reason of Defendants' acts, Plaintiff has suffered damage to the goodwill
14 associated with its Marks and has been irreparably harmed.

15 69. By reason of Defendants' acts, Plaintiff's remedy at law is not adequate to
16 compensate for the damages caused by Defendants. Accordingly, Plaintiff is entitled to
17 preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

18 70. By reason of Defendants' willful acts, Plaintiff is entitled to damages, and
19 that those damages be trebled under 15 U.S.C. § 1117.

20 71. This is an exceptional case making Plaintiff eligible for an award of
21 attorneys' fees under 15 U.S.C. § 1117.

22 **FIFTH CAUSE OF ACTION**

23 ***(Trademark Infringement – Cal. Bus. & Prof. § 14320 and California Common Law)***

24 72. Plaintiff realleges and incorporates by reference paragraphs 1 through 72 as
25 though fully set forth here.

26 73. Defendants have used in commerce Plaintiff's Marks and the Infringing
27 Domain Names in connection with their business.

28 74. Defendants' use in commerce of Plaintiff's Marks and the Infringing Domain

1 Names is likely to cause confusion or mistake or to deceive as to the source of origin in
2 violation of California Business & Professions Code § 14320 and under the common law
3 of the State of California, entitling Plaintiff to relief.

4 75. Defendants have unfairly profited from the infringing actions alleged.

5 76. By reason of Defendants' acts, Plaintiff has suffered damage to the goodwill
6 associated with its Marks and has been irreparably harmed.

7 77. By reason of Defendants' acts, Plaintiff's remedy at law is not adequate to
8 compensate for the damages caused by Defendants. Accordingly, Plaintiff is entitled to
9 preliminary and permanent injunctive relief pursuant to California Business & Professions
10 Code § 14335.

11 **SIXTH CAUSE OF ACTION**

12 ***(Unfair Competition – Cal. Bus. & Prof. § 17200)***

13 78. Plaintiff realleges and incorporates by reference paragraphs 1 through 77 as
14 though fully set forth here.

15 79. Defendants have infringed Plaintiff's Marks in violation of Plaintiff's
16 proprietary rights. Such acts constitute unfair trade practices and unfair competition under
17 California Business & Professions Code §§ 17200 *et seq.*, and under the common law of
18 the State of California, entitling Plaintiff to relief.

19 80. Defendants have unfairly profited from the infringing actions alleged.

20 81. Pursuant to California Business & Professions Code § 17203, Defendants are
21 required to disgorge and restore to Plaintiff all profits and property acquired by means of
22 Defendants' unfair competition.

23 82. Due to the conduct of Defendants, Plaintiff has suffered irreparable harm,
24 has suffered injury in fact and has lost money or property as a result of Defendants' acts of
25 unfair business practices as alleged herein. It would be difficult to ascertain the amount of
26 money damages that would afford Plaintiff adequate relief at law for Defendants' acts.
27 Plaintiff's remedy at law is not adequate to compensate Plaintiff for the damages caused by
28 Defendants. Accordingly, Plaintiff is entitled to preliminary and permanent injunctive

1 relief pursuant to California Business & Professions Code § 17203.

2 83. Plaintiff is informed and believes and on that basis alleges that Defendants'
3 conduct has been intentional and willful and in conscious disregard of Plaintiff's rights
4 and, therefore, Plaintiff is entitled to its attorneys' fees.

5 **REQUEST FOR RELIEF**

6 Therefore, Plaintiff HAMC respectfully requests judgment as follows:

7 A. That the Court enter a judgment that Defendants have:

- 8 i.) violated the rights of Plaintiff in the Marks in violation of 15 U.S.C. §
9 1125(d);
- 10 ii.) violated the rights of Plaintiff in the Marks in violation of 15 U.S.C. §
11 1114(1);
- 12 iii.) violated the rights of Plaintiff in the Marks in violation of 15 U.S.C. §
13 1125(a);
- 14 iv.) violated the rights of Plaintiff in the Marks in violation of 15 U.S.C. §
15 1125(c);
- 16 v.) infringed the rights of Plaintiff in the Marks in violation of California
17 Business & Professions Code § 14320; and
- 18 vi.) infringed the rights of Plaintiff in the Marks in violation of California
19 Business & Professions Code § 17200 and the common law;

20 B. That Defendants be ordered to transfer to Plaintiff the Infringing Domain
21 Names, and any other domain names they own which are identical or
22 confusingly similar to Plaintiff's Marks;

23 C. That Defendants, their agents, representatives, employees, assigns and
24 suppliers, and all persons acting in concert or privity with Defendants be
25 preliminarily and permanently enjoined from the following activities:

- 26 i.) Registering or using, in any manner, any Internet domain name that
27 incorporates, in whole or part, Plaintiff's Marks or any name, mark or
28 designation confusingly similar thereto;

- 1 ii.) Using any of Plaintiff's Marks or any other name, mark, designation
2 or depiction in a manner that is likely to cause confusion regarding
3 whether Defendants are affiliated or associated with or sponsored by
4 Plaintiff;
- 5 iii.) Registering any Internet domain name that incorporates, in whole or
6 in part, Plaintiff's Marks or any name, mark or designation
7 confusingly similar thereto;
- 8 iv.) Practicing trademark infringement, trademark dilution, unfair
9 competition, false designation of origin, passing off, or false
10 advertising, against Plaintiff or misappropriation of Plaintiff's
11 trademark rights; and
- 12 v.) Assisting, aiding or abetting any other person or business entity in
13 engaging in or performing any of the activities referred to in
14 subparagraphs (i) through (iv) above;
- 15 D. That Defendants be ordered to account to Plaintiff for, and disgorge, all
16 profits they have derived by reason of the unlawful acts complained of
17 above;
- 18 E. That Defendants be required to pay to Plaintiff damages, and that those
19 damages be trebled, under 15 U.S.C. §1117(a);
- 20 F. That Defendants be ordered to pay statutory damages under 15 U.S.C. §
21 1117, on election of Plaintiff, in an amount of One Hundred Thousand
22 Dollars (\$100,000) per domain name infringement;
- 23 G. That Defendants be ordered to pay Plaintiff's reasonable attorney fees,
24 prejudgment interest, and costs of this action under 15 U.S.C. § 1117 and
25 under California Business & Professions Code § 17200;
- 26 H. That Defendants be ordered to file with the Court and serve upon Plaintiff a
27 written report under oath setting forth in detail the manner and form in which
28 Defendants have complied with the injunction and judgment upon

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Defendants; and

I. That Plaintiff be granted such other relief as may be appropriate.

Dated: February 10, 2009


FRITZ CLAPP
Attorney for Plaintiff HELLS ANGELS
MOTORCYCLE CORPORATION

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all issues triable herein.

Dated: February 10, 2009


FRITZ CLAPP
Attorney for Plaintiff HELLS ANGELS
MOTORCYCLE CORPORATION