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 HELLS ANGELS MOTORCYCLE  
 6 CORPORATION

7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **EASTERN DISTRICT OF CALIFORNIA**  
 10 **SACRAMENTO DIVISION**

13 **HELLS ANGELS MOTORCYCLE**  
 14 **CORPORATION**, a Nevada corporation,

15 Plaintiff,

16 v.

17 **ECKO UNLTD. and FEDERATED**  
 18 **RETAIL HOLDINGS, INC.**,

19 Defendants.  
 20

Case No. \_\_\_\_\_

**COMPLAINT FOR TRADEMARK  
 INFRINGEMENT AND DILUTION;  
 DEMAND FOR JURY TRIAL**

21  
 22  
 23 Plaintiff, HELLS ANGELS MOTORCYCLE CORPORATION, by and through its  
 24 undersigned attorney, complains and alleges as follows:

25 **JURISDICTION**

26 1. This action arises under the trademark laws of the United States, 15 U.S.C.  
 27 §1051 et seq. (Lanham Act). This court has federal question jurisdiction pursuant to 15  
 28 U.S.C. §1121(a), 28 U.S.C. §1331 and 28 U.S.C. §1338(a).

1 **PARTIES AND VENUE**

2 2. Plaintiff HELLS ANGELS MOTORCYCLE CORPORATION (“HAMC”)  
3 is now, and at all relevant times was, a non-profit corporation organized and existing under  
4 the laws of the State of Nevada. HAMC is the owner of the trademarks described herein.

5 3. Defendant ECKO UNLTD. (“ECKO”) is a business entity of unknown form,  
6 with offices located at 40 West 23<sup>rd</sup> Street, New York, New York 10010. Defendant  
7 ECKO is found and transacts business within this district in Sacramento County.

8 4. Defendant FEDERATED RETAIL HOLDINGS, INC. (“FEDERATED”) is  
9 now, and at all times mentioned was, a corporation with offices located at 151 West 34<sup>th</sup>  
10 Street, New York, New York 10001. Defendant FEDERATED is found and transacts  
11 business within this district in Sacramento County.

12 5. Venue as to each defendant is proper under 28 U.S.C. §1391.

13 **PLAINTIFF’S MARK**

14 6. For over half a century, members of the Hells Angels Motorcycle Club have  
15 continuously employed a design mark depicting the side view of a helmeted, horned and  
16 feathered human skull (“the death head mark”) as a collective membership mark, service  
17 mark and trademark. The death head mark is used on patches, jewelry and other personal  
18 property for the exclusive purpose of indicating active membership in the elite  
19 organization of motorcycle enthusiasts.

20 7. Through continuous and conspicuous usage, the death head mark is famous.  
21 Plaintiff HAMC and its predecessors in interest have exercised legitimate control over the  
22 uses of the death head mark by the duly authorized affiliates and licensees, namely, the  
23 chapters and members of Hells Angels Motorcycle Club, and have been diligent in abating  
24 the use of the death head mark by unauthorized persons.

25 8. Plaintiff HAMC is the owner of United States trademark registration number  
26 2,588,116 for the death head mark, a copy of which is attached hereto as Exhibit A and  
27 incorporated by reference. The death head mark was previously the subject of registration  
28 number 1,582,050, issued on February 6, 1990.

1           9.       The death head mark is also a component of U.S. Registrations 1,136,494  
2 and 1,301,050, in combination with the word mark HELLS ANGELS, which registrations  
3 are incontestible and currently in full force and effect.

4                   **DEFENDANTS' UNAUTHORIZED USAGE OF PLAINTIFF'S MARK**

5           10.       Within a year prior to the filing of this complaint, Defendants ECKO and  
6 FEDERATED have caused to be manufactured, distributed and sold, certain shirts bearing  
7 a design incorporating the death head mark. The design employed by Defendants on shirts  
8 and the registered mark of Plaintiff are shown in Exhibit B to this complaint, incorporated  
9 by reference.

10           11.       Plaintiff HAMC has never approved Defendants' use of the death head mark,  
11 and Defendants have never sought permission for use of the death head mark.

12           12.       Since Defendants' use as complained herein, public confusion has arisen,  
13 and is likely to continue, as to the source, origin or sponsorship of the shirts incorporating  
14 Plaintiff's death head mark.

15           13.       Plaintiff is informed and believes, and upon such information and belief  
16 alleges, that Defendants had constructive and actual knowledge of Plaintiff's ownership of  
17 the death head mark, prior to their first use of the death head mark on shirts.

18           14.       On or about July 19, 2006, Plaintiff put Defendants on actual notice of  
19 Plaintiff's rights and claims, and demanded that Defendants cease their unauthorized and  
20 improper use of the death head mark, recall and sequester the infringing items, and account  
21 for the infringing items manufactured, sold and on hand.

22           15.       Despite Plaintiff's notice and demand, Defendants have continued to  
23 distribute and sell the infringing items, have failed to sequester the unsold items, and have  
24 failed to account for the infringing items.

25           16.       Unless restrained and enjoined, Defendants will continue the acts  
26 complained of herein.

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1 **FIRST CAUSE OF ACTION**

2 **(Lanham Act §43(a) – 15 U.S.C. §1125(a) – Trademark Infringement)**

3 17. Plaintiff incorporates by reference paragraphs 1 through 16 above.

4 18. Defendants' use of the death head mark and similar designs is likely to cause  
5 confusion, mistake, or deception at common law and within the meaning of 15 U.S.C.  
6 §1114, thereby infringing Plaintiff's registered mark to Plaintiff's immediate and  
7 irreparable damage.

8 19. The conduct of Defendants continues to damage Plaintiff and unless enjoined  
9 will further impair the value of Plaintiff's mark and the goodwill which Plaintiff has  
10 acquired in the mark.

11 **SECOND CAUSE OF ACTION**

12 **(Lanham Act §43(c) – 15 U.S.C. §1125(c) – Trademark Dilution)**

13 20. Plaintiff incorporates by reference paragraphs 1 through 16 above.

14 21. Defendants' commercial use of Plaintiff's death head mark has and will cause  
15 dilution of the mark by "blurring."

16 22. By their acts as herein alleged, Defendants willfully intended to trade on  
17 Plaintiff HAMC's reputation and to cause dilution of Plaintiff's famous death head mark.

18 23. As a consequence of Defendants' violations, Plaintiff HAMC is entitled to  
19 injunctive and other relief as prayed.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff HAMC prays that this court order and adjudge that:

- 22 A. Defendants shall be preliminarily and permanently enjoined from directly or  
23 indirectly using Plaintiff's death head mark, or any design similar thereto,  
24 pursuant to 15 U.S.C. §1116(a);
- 25 B. All infringing articles bearing Plaintiff's death head mark, or any mark  
26 similar thereto, in Defendants' possession be delivered up and destroyed as  
27 the Court may direct;
- 28 C. Defendants be required to account to Plaintiff for any and all revenues

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derived from the use of Plaintiff's death head mark;

- D. Defendants be required to pay to Plaintiff damages and profits under 15 U.S.C. §1117(a);
- E. Plaintiff be awarded treble damages pursuant to 15 U.S.C. §1117(b);
- F. The costs of this action be awarded to Plaintiff;
- G. Plaintiff be awarded its reasonable attorney's fees pursuant to 15 U.S.C. §1117(a); and
- H. Such other and further relief be granted as the court deems just.

Dated: June 7, 2007

  
 \_\_\_\_\_  
 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: June 7, 2007

  
 \_\_\_\_\_  
 FRITZ CLAPP  
 Attorney for Plaintiff HELLS ANGELS  
 MOTORCYCLE CORPORATION

# **Exhibit A**

7056323



# THE UNITED STATES OF AMERICA

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

**UNITED STATES DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**March 12, 2007**

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,588,116 IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.**

**REGISTERED FOR A TERM OF 10 YEARS FROM *July 02, 2002***

**SAID RECORDS SHOW TITLE TO BE IN:**

***HELLS ANGELS MOTORCYCLE CORP.***

***A NEVADA CORP***

**By Authority of the**

**Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark Office**

**M. K. CARTER**

**Certifying Officer**



Prior U.S. Cl.: 200

United States Patent and Trademark Office

Reg. No. 2,588,116

Registered July 2, 2002

COLLECTIVE MEMBERSHIP  
PRINCIPAL REGISTER



HELL'S ANGELS MOTORCYCLE CORPORATION  
(CALIFORNIA CORPORATION)  
4019 FOOTHILL BLVD.  
OAKLAND, CA 94601

FOR: INDICATING MEMBERSHIP IN A MOTORCYCLE CLUB, IN CLASS 200 (U.S. CL. 200).

FIRST USE 0-0-1948; IN COMMERCE 11-0-1966.

THE STIPLING IS FOR SHADING PURPOSES ONLY.

SER. NO. 76-263,437, FILED 5-30-2001.

MARGERY A. TIERNEY, EXAMINING ATTORNEY



# **Exhibit B**



MARC ECKÖ  
Style 99321



HELLS ANGELS MOTORCYCLE CORPORATION  
U.S. Reg. No. 2,588,116 (prior 1,582,050)