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4 Attorney for Plaintiff
 5 HELLS ANGELS MOTORCYCLE
 CORPORATION

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

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

13 Plaintiff,

14 v.

16 **DALE SHIPMAN**, an individual engaged in
 17 business as A-1Americanflags.com,

18 Defendant.

CASE NO. _____

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

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

22 **JURISDICTION AND VENUE**

23 1. This action arises under the trademark laws of the United States, 15 U.S.C.
 24 §1151 et seq. (Lanham Act). This court has federal question jurisdiction pursuant to 15
 25 U.S.C. §1121(a) and 28 U.S.C. §§1331, 1338(a).

26 2. Venue is proper in this District pursuant to 28 U.S.C. §1391 because a
 27 substantial part of the events or omissions giving rise to the claims herein occurred in this
 28 District, and because the Defendant conducts business within this District. On or about

1 October 26, 2006, Defendant delivered to a customer located within the Sacramento
2 Division of this District the goods claimed herein to be infringing of Plaintiff's Mark.

3 **PARTIES**

4 3. Plaintiff HELLS ANGELS MOTORCYCLE CORPORATION ("HAMC")
5 is now, and at all relevant times was, a non-profit corporation organized and existing under
6 the laws of the State of Nevada. Plaintiff HAMC is the owner of the trademark described
7 herein by assignment from its predecessor, a California corporation of the same name.

8 4. Defendant DALE SHIPMAN ("SHIPMAN") is now, and at all times
9 mentioned was, an individual engaged in business under the fictitious name
10 "A1AmericanFlags.com" located at 4512 - 13th Ave. S.E., Lacey, Washington 98503.
11 Defendant SHIPMAN's business consists of online direct sales of leather jackets, vests,
12 hats and embroidered patches.

13 **PLAINTIFF'S MARK**

14 5. For over half a century, members of the Hell's Angels Motorcycle Club have
15 continuously employed a design mark depicting the front view of a helmeted, horned and
16 feathered skull ("the Mark") as a collective membership mark. The Mark is used on
17 patches and jewelry for the exclusive purpose of indicating active membership in the elite
18 organization of motorcycle enthusiasts, and is referred to as the "front view death head."

19 6. Plaintiff HAMC is the owner of Reg. No. 1,243,951 dated June 28, 1983 in
20 the United States Patent and Trademark Office for the Mark. A recent certificate of title to
21 this registration is attached hereto as Exhibit A.

22 7. Through continuous and conspicuous usage, the Mark is famous. Plaintiff
23 HAMC and its predecessors in interest have exercised legitimate control over the uses of
24 the Mark by the duly authorized affiliates and licensees, and have been diligent and
25 generally successful in abating the use of the Mark by unauthorized third parties.

26 8. One instance in which unauthorized usage of the Mark was not immediately
27 abated arose in the motion picture "The Warriors (1983)" wherein the costume vests for a
28 group of characters featured a design confusingly similar to the front view death head.

1 HAMC was unaware of this infringing use prior to the theatrical release of the motion
2 picture and was therefore unable to avoid repeated displays of the infringing costume
3 design element, but it did put the producer and distributor of the motion picture
4 (Paramount) on notice of its infringement claim. Within the past few years, anticipating a
5 remake of the 1983 motion picture, Paramount and its parent Viacom have revised the
6 infringing design element (changing the feathered skull design to a flaming serpent design)
7 for the videogame adaptation of The Warriors, for action figures based on the characters of
8 The Warriors, and they grant no licenses for use of the original design for any purpose.

9 **DEFENDANT’S UNAUTHORIZED USAGE OF THE MARK**

10 9. Defendant SHIPMAN fabricates and sells patches and vests bearing patches
11 through his online store at the web address <a-1americanflags.com>. Among Defendant
12 SHIPMAN’s goods are certain designs offered in different sizes and called by Defendant
13 SHIPMAN “Warriors Patches” as shown in Exhibits B and C. Defendant SHIPMAN’s
14 Warriors Patches are confusingly similar to Plaintiff HAMC’s front view death head mark.

15 10. Plaintiff HAMC has never approved of Defendant SHIPMAN’s use of the
16 Mark, and Defendant SHIPMAN has never sought permission for use of the Mark.

17 11. Defendant SHIPMAN has expressly denied and disclaimed that he has been
18 granted any right to use the design from Paramount or Viacom, by posting the following
19 disclaimer on his web store:

20 A-1Americanflags.com is in no way affiliated with, representing,
21 associated, sponsored or endorsed by, "Paramount", "Paramount Pictures
22 Cooperation" or Paramount Pictures Cooperation's movie "The Warriors"
23 and or Trademarks, service marks, logos, and/or domain names of
"Paramount", Paramount Pictures Cooperation or Paramount Pictures
Cooperation's "The Warriors" movie. [sic]

24 Contrary to this disclaimer, Defendant SHIPMAN advertises his goods as “Warriors
25 Vests,” “Warriors Badges,” and “Warriors Patches” as shown on Exhibit C.

26 12. Plaintiff HAMC has demanded that Defendant SHIPMAN cease his
27 calculated efforts to exploit the Mark, but Defendant SHIPMAN has refused to do so.

28 13. Defendant SHIPMAN was notified in writing of Plaintiff HAMC’s

1 objections to his fabrication and sale of patches with the design infringing the Mark, on or
2 about July 17, 2006, a copy of which is attached as Exhibit D. Defendant SHIPMAN
3 temporarily and partially complied, but resumed sales within a short time.

4 14. On or about September 22, 2006, Plaintiff HAMC made a further and
5 specific written demand that Defendant SHIPMAN cease his infringement of the Mark
6 under peril of litigation, a copy of which is attached as Exhibit E.

7 15. Defendant SHIPMAN continues to wilfully defy Plaintiff HAMC's notices
8 and warnings, by selling and delivering the infringing patches which infringe and dilute the
9 Mark. On or about October 25, 2006, Defendant SHIPMAN sold and delivered to this
10 District a patch as shown by the receipt attached as Exhibit F.

11 16. Unless restrained and enjoined, Defendant SHIPMAN will continue the acts
12 complained of herein.

13 **FIRST CAUSE OF ACTION**

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

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

16 18. Defendant SHIPMAN's use of the Mark and similar designs is likely to
17 cause confusion, mistake, or deception at common law and within the meaning of 15
18 U.S.C. §1114, thereby infringing the Mark to Plaintiff's immediate and irreparable
19 damage. The conduct of Defendant SHIPMAN continues to damage Plaintiff and unless
20 enjoined will further impair the value of Plaintiff's Mark and the goodwill which Plaintiff
21 has acquired in the Mark.

22 **SECOND CAUSE OF ACTION**

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

24 19. Plaintiff incorporates by reference paragraphs 1 through 16 above.

25 20. Defendant SHIPMAN's commercial use of Plaintiff's Mark has and will
26 cause dilution of the Mark by "blurring." By his acts as herein alleged, Defendant
27 SHIPMAN willfully intended to trade on Plaintiff's reputation and to cause dilution of
28 Plaintiff's famous Mark. As a consequence of Defendant SHIPMAN's violations, Plaintiff

1 HAMC is entitled to injunctive and other relief as prayed.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff HAMC prays for judgment that:

- 4 A. Defendant SHIPMAN be preliminarily and permanently enjoined from
- 5 directly or indirectly using Plaintiff HAMC's Mark, or any design similar
- 6 thereto, pursuant to 15 U.S.C. §1116(a);
- 7 B. All articles bearing Plaintiff HAMC's Mark, or any mark similar thereto, in
- 8 Defendant SHIPMAN's possession be seized and destroyed as the Court may
- 9 direct;
- 10 C. Defendant SHIPMAN be required to account to Plaintiff HAMC for any and
- 11 all revenues derived from the use of Plaintiff HAMC's Mark;
- 12 D. Defendant SHIPMAN be required to pay to Plaintiff HAMC damages and
- 13 profits under 15 U.S.C. §1117(a);
- 14 E. Plaintiff HAMC be awarded treble damages pursuant to 15 U.S.C. §1117(b);
- 15 F. Plaintiff HAMC be awarded its reasonable attorney's fees pursuant to 15
- 16 U.S.C. §1117(a);
- 17 G. The costs of this action be awarded to Plaintiff HAMC; and that
- 18 H. Such other and further relief be granted as the court shall deem just.

19 Dated: September 7, 2007

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 22 FRITZ CLAPP
 23 Attorney for Plaintiff HELLS ANGELS
 24 MOTORCYCLE CORPORATION

23 **JURY DEMAND**

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

25 Dated: September 7, 2007

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 28 FRITZ CLAPP
 Attorney for Plaintiff HELLS ANGELS
 MOTORCYCLE CORPORATION