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8  
 9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE

11 BRIDGET BROWN and BELLA  
 BRIDESMAID, LLC.

12 Plaintiffs,

13 vs.

14 YVONNE YOUNG,

15 Defendant.

Case No.: C11-02517 HRL

**NOTICE OF MOTION AND MOTION  
 FOR PRELIMINARY INJUNCTION;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT**

**JURY TRIAL DEMANDED**

Date: July 19, 2011  
 Time: 10:00 a.m.  
 Dept. Courtroom 2, 5<sup>th</sup> Floor

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**NOTICE OF MOTION AND MOTION**

Please take notice than on July 19, 2011, at 10:00 a.m., in Courtroom 2 of the United States District Court for the Northern District of California located at 280 S. 1<sup>st</sup> St., in San Jose, California, Plaintiffs Bridget Brown (“Brown”) and Bella Bridesmaid, LLC (“Bella Bridesmaid” or, together with Brown, “Plaintiffs”) will move the Court for a preliminary injunction against Defendant Yvonne Young (“Defendant”), pursuant to 15 U.S.C. §§ 1116, Federal Rule of Civil Procedure 65, and Local Rule 65-2.

**RELIEF REQUESTED**

Plaintiffs seek a narrowly tailored preliminary injunction as follows:

- (a) prohibiting Defendant from using, for any purpose, the “The Bella Bride” mark given its resemblance to Plaintiffs’ federally registered BELLA BRIDESMAID mark; a mark Plaintiffs have continuously used in commerce since 2000;
- (b) requiring Defendant to change her trademark and branding name to eliminate any incorporation of the phrase “Bella Bride”;
- (c) requiring Defendant to deliver up to Plaintiffs’ counsel for destruction any materials that contain imitations of the trade name or that contain marks that are confusingly similar to the Plaintiffs’ trademark, logo, or advertising, including any that incorporate the term “Bella Bride”; or
- (d) in the alternative, requiring Defendant to operate exclusively as “Yve’s Bella Bride” and never as “The Bella Bride”; and
- (e) ordering expedited discovery to determine the extent and breadth of Defendant's infringing activities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiffs respectfully submit this Memorandum of Points and Authorities in support of their Motion for a Preliminary Injunction.

///

1 **I. INTRODUCTION**

2 This is a cut and dried matter of trademark infringement by a new bridal salon trading  
3 on the highly recognizable BELLA BRIDESMAID name which has become a San Francisco  
4 institution in the wedding industry and grown from local roots into a nationally recognized  
5 brand for high-end wedding attire. In the eleventh hour, Defendant has tried to slightly reduce  
6 her infringement, in a transparent attempt to avoid this motion.

7 Judicial intervention is now urgently required to avoid imminent harm and to ensure  
8 that the public does not continue to confuse Defendant's business for that of Plaintiffs. Pending  
9 the determination of the requests for permanent relief set forth in the Complaint, Plaintiffs seek  
10 a narrowly tailored preliminary injunction, as set forth above.

11 **II. BACKGROUND FACTS**

12 **A. Founding and Expansion of Bella Bridesmaid**

13 In 2000, Bridget Brown founded a luxury boutique carrying high-end bridesmaid attire,  
14 and operated it under the brand name Bella Bridesmaid. (Brown Decl., ¶ 2.) Bella Bridesmaid  
15 is a luxury, appointment-only boutique for bridesmaid dresses that today offers a wide variety  
16 of bridesmaid attire as well as wedding gowns. (*Id.*, ¶¶ 4-5.) From its start as a single location  
17 on Union Street in 2000, Brown has developed it into a nationwide franchise with over 40  
18 locations from coast to coast. (*Id.*, ¶ 3.) Bella Bridesmaid boutiques continue to carry high-end  
19 gowns, and they have a number of exclusive arrangements with designers whose dresses are  
20 not carried in any other stores. (*Id.*, ¶ 4.)

21 While Brown was expanding the Bella Bridesmaid name across the nation, she  
22 continued to operate the original Bella Bridesmaid storefront location in San Francisco, as the  
23 flagship store of the chain. (*Id.*, ¶ 6.) The Bella Bridesmaid flagship boutique is well known  
24 and mentioned in numerous magazines and blogs. (*Id.*, ¶ 8.) For two years running, it has won  
25 2<sup>nd</sup> place in the San Francisco Baylist's Best of the Bay contest for "Best Wedding Dresses"  
26 and it has received mention in practically every well-known San Francisco magazine. (*Id.*,  
27 ¶ 8-9.) Other vendors in the wedding industry in San Francisco describe it as the only

1 recognizable name in bridesmaid attire and attest to its broad appeal among brides and their  
2 wedding parties. (Jones Decl., ¶ 4; Kuschel Decl., ¶¶ 4-5; Silvy Decl., ¶¶ 3-4; N. Chin Decl., ¶  
3 3; K. Chin Decl., ¶ 3.) Brown continues to stoke this recognition through constant advertising  
4 both in San Francisco and in popular, nationally circulated wedding magazines including  
5 *Martha Stewart Weddings*. (Brown Decl., ¶ 7.)

6 Plaintiffs have invested substantial sums in advertising and promotional efforts for the  
7 boutique’s high-end services. (*Id.*) As a result of these branding efforts, Bella Bridesmaid’s  
8 marks are widely and favorable recognized both in the Bay Area and nationally, and are relied  
9 upon by the consuming public as indicating luxury services originating exclusively from Bella  
10 Bridesmaid. (*Id.*, ¶ 8.) In addition, Bella Bridesmaid is a name recognized by direct consumers  
11 -- brides seeking to purchase high-end bridesmaid attire and accessories. (Silvy Decl., ¶ 3;  
12 Weeks Decl., ¶ 3.)

13 In order to protect the extensive goodwill symbolized by the mark, Brown sought and  
14 obtained a federal registration for the mark, BELLA BRIDESMAID + Design, for retail store  
15 services featuring bridal clothing and accessories on the Principal Register of the United States  
16 Patent and Trademark Office Registration Number 3,114,088, with a registration dated July 11,  
17 2006 (the “Mark”). (Brown Decl., ¶ 10 & Ex. C.) Brown first used the Mark in commerce no  
18 later than March 1, 2000. (*Id.*)

19 **B. Plaintiffs Learn of “The Bella Bride” and Defendant Agrees to**  
20 **Change the Salon’s Name**

21 In or about November 2009, Brown first became aware that Defendant had opened a  
22 new bridal boutique in San Francisco, located at 1821 Steiner Street, and that its signage  
23 advertised it as “The Bella Bride.” (Brown Decl., ¶ 11.) “The Bella Bride” storefront was  
24 located a mere 0.8 miles away from Bella Bridesmaid’s location on Union Street. (*Id.*, Ex. D.)  
25 Before this location opened as “The Bella Bride,” the storefront at 1821 Steiner Street had  
26 operated as a bridal salon called L’Ezu Atelier, a business that never had any negative  
27 interaction with Bella Bridesmaid. (*Id.*)



1           Subsequently, Brown discovered that on June 1, 2009, Yvonne Young registered the  
2 domain name “thebellabride.com” as the URL for her Internet website. (*Id.*, ¶ 12.) The  
3 domain name for Bella Bridesmaid is “bellabridesmaid.com,” a domain name that Brown has  
4 owned and used in commerce in connection with the Bella Bridesmaid federally registered  
5 trademark since 2000. (*Id.*)

6           In response to these discoveries, Brown contacted Defendant and notified her of the  
7 infringement on Bella Bridesmaid’s Mark, and asked her to change the name of her salon. (*Id.*,  
8 ¶ 13) In addition, counsel to Plaintiffs sent a cease and desist letter to Defendant on November  
9 12, 2009. (Newton Decl., Ex. A.)

10           After a personal meeting between Brown and her husband and Defendant and her  
11 husband, Defendant told Brown that she would change her name to “Yve’s .” (*Id.*, ¶ 13.) She  
12 indicated that she would use “Yve’s Bella Brides” as a transitional name, and asked for enough  
13 time to complete a change paperwork in connection with her business name. Plaintiffs agreed.  
14 (*Id.* and Exs. D-L.) Beginning in 2009 and continuing to 2011, Defendant assured Brown that  
15 she intends to change her signage. (Brown Decl., ¶ 14.)

16           Defendant did not make any change to her business name within the time frame to  
17 which she had originally agreed, but explained her lapse to Plaintiffs as unanticipated  
18 complications in the process of changing her name. (*Id.*) Plaintiffs agreed to give her  
19 additional time in which to complete the name change. During this time, *Defendant herself*  
20 *admitted that she was aware of customers confusing the two stores.* (*Id.*, Ex. J.) She continued  
21 to represent to Plaintiffs that she was working toward the name change, and told Brown that  
22 she was doing everything she could to diminish confusion between the businesses, including  
23 always answering her phones as “Yve’s Bella Bride” rather than “The Bella Bride.” (*Id.*, ¶ 16.)

24           **C. Plaintiffs Receive Complaints About Confusion Between Bella**  
25           **Bridesmaid and “The Bella Bride”**

26           Almost immediately after “The Bella Bride” opened in November 2009, Plaintiffs  
27 began receiving comments and complaints from customers and vendors in the industry, who  
28

1 were confused about the apparent connection between Bella Bridesmaid and “The Bella Bride.”  
2 Brown was contacted by wedding industry vendors who believed that Bella Bridesmaid might  
3 be expanding into traditional bridal gowns, as well as by customers who confused the two  
4 stores. (Brown Decl., ¶ 19; N. Chin Decl., ¶¶ 4-5.) Brown also received numerous comments  
5 and inquiries from individuals who believe that “The Bella Bride” is related to Bella  
6 Bridesmaid. (*Id.*) Brown has also received complaints from customers who have assumed that  
7 there is a relationship between the two businesses. (*Id.*) In emails exchanged with Defendant,  
8 Brown repeatedly documented the confusion she was seeing and asked when Defendant would  
9 change her name.

10 We’ve had many, many brides showing up the last month thinking we are The  
11 Bella Bride who have appts with you or are just stopping in. In addition, we’ve  
12 had lots of phone calls for the same. We had several brides the past few  
weekends who were VERY annoyed, given they had driven down, found  
parking, only to talk in and see we are a bridesmaid store.

13 (Brown Decl., Ex. J.) “The SF store managers have had many brides the past 3 weeks calling  
14 thinking we are you, so just wanted to check in again re: the official name change.” (*Id.*,  
15 Ex. L.)

16 For example, one bridal customer initially contacted “The Bella Bride” in an attempt to  
17 arrange an appointment to try on gowns, but had a series of very negative interactions with the  
18 store, feeling they were rude and dismissive. (Slatkin Decl., ¶ 3.) Given these negative  
19 interactions with “The Bella Bride,” the customer was disinclined to go to Bella Bridesmaid,  
20 which she believed was a sister store to “The Bella Bride.” (Slatkin Decl., ¶ 4.) She stopped in  
21 at Bella Bridesmaid only because she happened to be going to the neighborhood already, and  
22 was surprised to have a good experience with the store. (Slatkin Decl., ¶ 4.) On April 3, 2011,  
23 the customer wrote a Yelp! review of Bella Bridesmaid recounting her experience, and  
24 mentioning Bella Bridesmaid’s other boutique, Bella Bride. (Slatkin Decl., ¶ 5 & Ex. A.) The  
25 customer was surprised to learn that in fact “The Bella Bride” was not affiliated with Bella  
26 Bridesmaid, given what seemed to her an obvious connection because of the similarity of both  
27 stores’ names. (Slatkin Decl., ¶ 6.) But for her fortunate visit to the neighborhood, this

1 customer's negative experience with "The Bella Bride" and her belief that the two stores were  
2 part of the same business would have made her unwilling to even try Bella Bridesmaid.  
3 (Slatkin Decl., ¶ 7.)

4 In another example, a groom whose fiancée was having trouble getting Defendant to  
5 return her calls decided to intervene by calling Defendant's store himself. (Tofanelli Decl.,  
6 ¶ 3.) His Google search for "Bella Bride San Francisco" led him to call Bella Bridesmaid  
7 instead. (*Id.*, ¶¶ 4-5.)

8 Nor is this a problem isolated to bridal party customers. Vendors working in the  
9 wedding industry likewise find the names confusing, and recognize that because Bella  
10 Bridesmaid is very well known in the Bay Area wedding industry among both customers and  
11 vendors, it is clearly to Defendant's advantage to use this confusingly similar name. (N. Chin  
12 Decl., ¶ 4; K. Chin Decl., ¶¶ 4-5; Silvy Decl., ¶ 5; Weeks Decl., ¶¶ 405; Jones Decl., ¶5-6;  
13 Kuschel Decl., ¶¶ 6-7.)

14 Plaintiffs' willingness to work cooperatively with Defendant ended abruptly in late  
15 April 2011, when they learned for the first time, after fielding a call from an angry bride  
16 accusing them of having not returned her phone messages, that despite Defendant's assurances  
17 to Brown that she always answers the phones at her business as "Yve's Bella Bride," her  
18 outgoing voicemail message referred to the store exclusively as "The Bella Bride." (Brown  
19 Decl., ¶ 16 & Ex. M.) In response, on April 25, 2011, Plaintiffs sent a second cease and desist  
20 letter to Defendant, drawing her attention to the ongoing infringement on the registered mark  
21 BELLA BRIDESMAID, and again requesting that "The Bella Bride" cease its infringing  
22 activities. (Newton Decl., Ex. B.) They noted that despite Defendant's ongoing promises, her  
23 signage currently continues to reference "The Bella Bride," and her business website remained  
24 at the URL "thebellabride.com." (Brown Decl., ¶ 18, Newton Decl. ¶ 5.)

25 Given the ongoing confusion of Bella Bridesmaid with "The Bella Bride," Brown is  
26 concerned that Bella Bridesmaid's goodwill and profits are being and will continue to be  
27 negatively impacted. (Brown Decl., ¶ 20.) Brown has invested a great deal of time and money  
28

1 in building up Bella Bridesmaid’s goodwill and recognition, and she is concerned that customer  
2 and vendor confusion with “The Bella Bride” will undermine those efforts. (*Id.*, ¶ 20-22.)

3 **D. Plaintiffs File Suit and Defendant Makes Minor Changes**

4 Without regard for Plaintiffs’ registered trademark, their first use of the trademark  
5 BELLA BRIDESMAID in 2000, and their demands to Defendant to cease and desist from the  
6 use of the confusingly similar mark “The Bella Bride,” Defendant continues to utilize “The  
7 Bella Bride” in connection with its marketing of bridal attire and accessories in the identical  
8 business industry. By this conduct, Defendant is actively infringing upon the goodwill and  
9 established branding of Plaintiffs’ established BELLA BRIDESMAID mark. In addition to  
10 nearly identical marks, other similarities abound:

- 11 • Defendant operates in the same industry as Plaintiff: the wedding industry;
- 12 • Defendant is engaged in the same business as Plaintiff: the sale of bridal attire  
13 and accessories suitable for bridal parties;
- 14 • Defendant’s store operates in San Francisco, California, just .8 miles away from  
15 Plaintiffs’ flagship store in San Francisco, California; and
- 16 • Defendant markets its bridal products on the world wide web (as does Plaintiff).

17 As a result of Defendant's conduct, Plaintiff initiated this lawsuit alleging Defendant's  
18 infringement of the BELLA BRIDESMAID registered mark pursuant to Section 43(a) of the  
19 Lanham Act (15 U.S.C. §1125).

20 On June 10<sup>th</sup>, Plaintiffs saw that Defendant had begun populating the domain  
21 www.yvesbellabrides.com with her “The Bella Bride” website. Portions of the website still  
22 reference “The Bella Bride.” (Brown Decl., ¶ 18; Newton Decl., Ex. C.) In addition,  
23 Defendant has not actually disabled the infringing thebellabride.com website. While the home  
24 page is no longer functional, other pages remain up and every page except the home page  
25 functions as it previously did. (Newton Decl., ¶ 5.)

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1 **III. LEGAL ARGUMENT**

2 The objectives of trademark law are: “(1) to protect consumers from being misled as to  
3 the source of the products, (2) to prevent impairment of the trademark's value to its owner, and  
4 (3) to achieve both of the preceding two objectives consistent with free competition.” *E-*  
5 *Systems, Inc. v. Monitek, Inc.*, 720 F.2d 604, 607 (9<sup>th</sup> Cir. 1983).

6 **A. Plaintiff’s Mark Is Protected as a Federally Registered Trademark**

7 First, Brown obtained a federal registration for the mark, BELLA BRIDESMAID +  
8 Design, for retail store services featuring bridal clothing and accessories on the Principal  
9 Register of the United States Patent and Trademark Office Registration Number 3,114,088,  
10 with a registration dated July 11, 2006 (the “Mark”).

11 Plaintiff’s registry of the Mark constitutes, among other things:

- 12 • Prima facie evidence of the validity of Brown’s registered Mark and registration,  
13 Brown’s ownership of the mark, and Brown’s exclusive right to use the mark in  
14 commerce in connection with the specified goods or services. 15 U.S.C. §  
15 1057(b).
- 16 • Prima facie evidence of Plaintiffs’ continued use of the Mark since the filing  
17 date of the application. *Rolley, Inc. v. Younghusband*, 204 F.2d 209, 211 (9<sup>th</sup>  
18 Cir. 1953); 15 U.S.C. § 1057(c).
- 19 • Constructive notice of Brown’s claim of ownership of the Mark. 15 U.S.C.  
20 § 1072.

21 Moreover, Plaintiffs’ registered Mark is protected pursuant to Section 32 of the Lanham  
22 Act, which provides a cause of action for use of a mark likely to cause confusion, mistake, or  
23 deception with a registered mark. 15 U.S.C. § 1114(1). The federal registration supplies a  
24 basis for federal court jurisdiction. 15 U.S.C. § 1121.

25 **B. Plaintiff’s Mark Is Protected By Common Law**

26 Plaintiffs anticipate that Defendant may attempt to excuse her conduct by pointing out  
27 that the registered Mark is a composite trademark, consisting of both the word element,  
28

1 BELLA BRIDESMAID, and a design element, an outlined dress on a hanger. Given the  
2 demonstrated strength of the mark and the tremendous evidence of actual confusion in the  
3 marketplace between the word portion of the mark and Defendant’s trade name, Plaintiffs are  
4 not required to establish that Defendant borrowed the design element of the Mark in order to  
5 establish clear and actionable infringement. The word portion of Plaintiffs’ mark is the  
6 dominant portion of the mark, conveying the suggestive trademark. *See, e.g., Worthington*  
7 *Foods, Inc. v. Kellogg Co.*, 732 F. Supp. 1417 (S.D. Ohio 1990). Where the dominant portion  
8 of a mark is infringed, the infringement is actionable. *Id.*

9           Nevertheless, to the extent that this court is concerned by such an argument, it is  
10 undisputable that Plaintiffs have continuously used the Mark since 2000. (Brown Decl., ¶ 6.)  
11 Accordingly, Plaintiffs have also established a common law right to the trademark and name  
12 BELLA BRIDESMAID and the evidence clearly establishes the strength of that name alone as  
13 a trademark. A party who uses a trademark on an unregistered basis has a common law right to  
14 that mark. *North Carolina Dairy Foundation, Inc. v. Foremost-McKesson, Inc.*, 92 Cal.App.3d  
15 98, 106 (1979). In other words, trademark rights are acquired through *use* of a trademark, and  
16 not simply through registration. *Paul Sachs Originals Co. v. John Sacs and Leo Hirsch*, 217 F.  
17 Supp. 407, 411 (1963 C.D. Ca.). Accordingly, the standard test of ownership of a trademark is  
18 the priority of use: “It is not enough to have invented the mark first or even to have registered it  
19 first; the party claiming ownership must have been the first to actually use the mark in the sale  
20 of goods or services.” *Sengoku Works Ltd. V. RMC Intern., Ltd.*, 96 F.3d 1217, 1219 (9<sup>th</sup> Cir.  
21 1996).

22           Here, Plaintiffs’ first use of the trade name predates Defendant’s use by approximately  
23 9 years. Plaintiffs have therefore acquired a trademark right to the trade name BELLA  
24 BRIDESMAID, even without the design element, through their use. *Paul Sachs Originals Co.*,  
25 217 F. Supp. at 411. Section 43(a) of the Lanham Act (15 U.S.C. §1125(a)) provides that the  
26 infringement of an unregistered mark may be pursued in federal court. *See Two Pesos, Inc. v.*  
27 *Taco Cabana, Inc.*, 505 U.S. 763, 767-69 (1992).

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**C. Plaintiffs Are Entitled To Preliminary Injunctive Relief**

To enjoin an infringement on its federal trademark, the moving party must show either:  
(1) a combination of probable success on the merits and the possibility of irreparable harm, or  
(2) the existence of serious questions going to the merits and the balance of hardships tipping in its favor. *Owner-Operator Independent Drivers Ass'n, Inc. v. Swift Transportation Co., Inc.*, 367 F.3d 1108, 1111 (9<sup>th</sup> Cir. 2004). Plaintiffs can readily establish a combination of probable success on the merits and the possibility of irreparable harm.

**1. Plaintiffs Are Likely to Succeed on Their Infringement Claim**

The test to determine likelihood of success in the context of trademark infringement claims focuses on the “likelihood of confusion” between the plaintiff’s mark and the allegedly infringing mark. *Dr. Seuss Enterprises, L.P. v. Penguin Books*, 109 F.3d 1394, 1396, n.1 (9<sup>th</sup> Cir. 1997). *See also*, 15 U.S.C. §1125(1)(1)(A) (defining infringement as a use which is “likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association” of the user with the senior user). “Likelihood of confusion” equates to the inquiry of whether “the similarity of the marks is likely to confuse customers about the source of the products.” *American Circuit Breaker Corp. v. Oregon Breakers Inc.*, 406 F.3d 577, 584 (9<sup>th</sup> Cir. 2005). A showing of actual confusion is not required. *Electropix v. Liberty Livewire Corp.*, 178 F. Supp. 2d 1125, 1132 (C.D. Cal. 2001).

The Ninth Circuit has adopted an eight-factor test to analyze the likelihood of confusion in all trademark cases. *Dr. Seuss Enterprises*, 109 F.3d at 1404. The factors include:

- strength of the mark;
- proximity of the goods or services;
- similarity of the marks;
- evidence of actual confusion;
- marketing channels used;
- type of goods and the degree of care likely to be exercised by the purchaser;
- defendant's intent in selecting the mark; and





1 storks.”). A suggestive mark, such as [the trademark] 360° for  
2 sneakers, requires imagination to make a connection between the  
mark and an attribute of the product.

3 *Official Airline Guides*, 6 F.3d at 1390-91.

4 In contrast, weak marks that simply describe the attributes or quality of a good or  
5 service are deemed “descriptive,” and therefore warrant less protection from infringement (*e.g.*,  
6 “Park 'N Fly” was deemed descriptive as applied to airport parking and shuttle bus service, *see*  
7 *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189,194 (1985)). Nevertheless, even  
8 descriptive marks warrant protection if a “secondary meaning” is established.<sup>1</sup>

9 Plaintiffs’ BELLA BRIDESMAID mark is suggestive in that it requires some  
10 imagination on the part of a consumer to make a connection between the mark and the  
11 attributes of the wedding industry products sold by Plaintiffs. By this measure, Plaintiffs’  
12 BELLA BRIDESMAID mark is inherently distinctive and warrants protection against  
13 infringement.

14 In addition, the BELLA BRIDESMAID mark is strong commercially. The substantial  
15 marketing and promotion that Plaintiffs have done over the last 11 years has resulted in  
16 noteworthy name recognition by the consuming public. Bella Bridesmaid is frequently  
17 mentioned in magazines and blogs, and recommended by vendors. Its status as a national chain  
18 of stores and its advertising in national publications increases its popularity, since brides can  
19 have members of their wedding party who live in other parts of the country try on dresses in  
20 local Bella Bridesmaid boutiques, and has cemented its status as a highly recognizable dress  
21 store in the wedding industry.

22 **(b) Proximity of Goods and Markets**

23 Where the goods of a plaintiff and defendant appear related, “the danger presented is  
24 that the public will mistakenly assume there is an association between the producers of the  
25 related goods, though no such association exists.” *Sleekcraft*, at 350. Thus, related goods “are

26 \_\_\_\_\_  
27 <sup>1</sup> A mark acquires secondary meaning if customers associate the mark with a particular source.  
*Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1391 (9<sup>th</sup> Cir. 1993).

1 more likely than non-related goods to confuse the public as to the producers of the goods.”  
2 *Official Airline Guides*, at 1392. Similarly, “[c]onvergent marketing channels increase the  
3 likelihood of confusion.” *Nutri-System*, 809 F.2d, at 606. Therefore, where the marketing  
4 efforts of Plaintiffs and Defendant to solicit consumers are the same, confusion is inevitable.

5 Here, the goods and the industry are identical. Bella Bridesmaid is a luxury bridal  
6 boutique, and while it distinguishes itself from other bridal salons by focusing on bridesmaid  
7 attire and accessories, it also carries wedding gowns and sells dresses that designers designate  
8 as “bridesmaid dresses” to brides who wear them as wedding gowns. (Brown Decl., at ¶4.)

9 Defendant’s “The Bella Bride” is also a bridal boutique, which sells bridal clothing and  
10 accessories. The products sold under the BELLA BRIDESMAID mark and those marketed  
11 under the “The Bella Bride” name both center on the sale of clothing and accessories for  
12 weddings and their principle customers are women planning their weddings. Consequently, the  
13 commonality between these products is undeniable. The evidence submitted herein establishes  
14 that confusion between the two business names is not a mere likelihood but an ongoing reality.

15 To summarize: Defendant and Plaintiffs compete: (1) in the same industry; (2) for the  
16 same customers; and are (3) marketing the same types of services to the consuming public.  
17 The two parties are competitors in the same marketplace. Accordingly, the likelihood that “that  
18 one or both parties will enter the other's submarket with a competing model” is not only  
19 “strong,” but a certainty -- indeed, it is occurring now. *Sleekcraft*, at 354. The evidence of  
20 actual confusion is overwhelming and will continue if not enjoined by this Court.

21 **(c) Similarity of Marks**

22 Courts assess the similarity of marks in terms of “sight, sound, and meaning” in their  
23 entirety, and as they appear in the marketplace. *Official Airline Guides*, at 1392. The similarity  
24 of marks are weighed more heavily than any differences between them. *Id.*

25 There can be little dispute but that Defendant’s name “The Bella Bride” is extremely  
26 similar to Plaintiff's mark BELLA BRIDESMAID. In both acoustical or written use, a listener  
27 or reader could easily mistake “The Bella Bride” for “Bella Bridesmaid” or, at a minimum  
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1 believe them to be related. The declarations of Ms. Brown, Ms. Slatkin, Mr. Tofanelli and Ms.  
2 Chin, as well as Defendant's own admission, demonstrate that both confusion and association  
3 have already happened numerous times among members of the public.

4 Plaintiff's mark, cultivated through continuous use and marketing efforts over the past  
5 11 years -- and 9 years before Defendant *ever* started using the "The Bella Bride" mark -- has  
6 garnered a specific meaning in the wedding industry. Defendant's infringing mark, on its face,  
7 seeks to piggyback on the success and goodwill generated by Plaintiff through use of the  
8 offending "The Bella Bride" mark.

9 Based on the above, the sight, sound, and meaning of Defendant's mark as compared to  
10 Plaintiffs', is without doubt, significantly similar, particularly as the similarities outweigh  
11 minor differences. *Official Airline Guides*, at 1392.

12 **(d) Evidence of Actual Confusion**

13 "Evidence of actual confusion constitutes persuasive proof that future confusion is  
14 likely ... If enough people have been actually confused, then a likelihood that people are  
15 confused is established." *Thane Intern., Inc. v. Trek Bicycle Corp.*, 305 F.3d 894, 902 (9<sup>th</sup> Cir.  
16 2002).

17 As noted above, Plaintiffs present powerful, unequivocal evidence of actual confusion  
18 among consumers. In emails between the parties, Defendant herself acknowledged the  
19 confusion between the two businesses: "i had a bride on sunday that ended up at your store so i  
20 very much understand that this will be best for all." (Brown Decl., Ex. I.) In addition, other  
21 consumers and vendors have reported their own confusion between the two businesses. (*See*  
22 Slatkin Decl.; Tofanelli Decl.; N. Chin Decl.; Kuschel Decl.)

23 Plaintiffs have also presented evidence through Brown of the large volume of reported  
24 confusion she has seen since "The Bella Bride" opened for business. (Brown Decl., Exs. J, L.)  
25 This evidence does not constitute hearsay and is admissible on the issue of actual confusion.  
26 *Sinhdarella, Inc. v. Vu*, 85 U.S.P.Q.2d 2007, 2008 WL 410246 (N.D. Cal. 2008). For a  
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1 business operating on an appointment-only basis, this volume of evidence of actual confusion is  
2 more than sufficient to establish that confusion is present.

3 **(e) Defendant's Intent**

4 The *Sleekcraft* factor relating to Defendant's intent evaluates whether the alleged  
5 infringer "knowingly adopts a mark similar to another's." *Official Airline Guides*, at 1394. If  
6 so, courts will *presume* an intent to deceive the public. *Id.*

7 Prior to her infringement of Plaintiffs' mark, it is virtually certain that Defendant was  
8 aware of Bella Bridesmaid. The universe of bridal salons in San Francisco is limited, and Bella  
9 Bridesmaid is widely known within the industry. (K. Chin Decl., ¶ 3; Kuschel Decl., ¶ 4; N.  
10 Chin Decl., ¶ 3; Weeks Decl., ¶ 3; Jones Decl., ¶ 4.) Any internet search for "bella bride" in  
11 San Francisco or the Bay Area retrieves Bella Bridesmaid's website on the first page of organic  
12 search results, and Bella Bridesmaid is listed on Yelp! and other sites. (Newton Decl., ¶ 6.)  
13 Any claim by Defendant that she conducted no research whatsoever regarding her preferred  
14 bridal salon name is suspect.

15 Defendant's intent to deceive the public is also strongly indicated by her agreement to  
16 change the name of her business and subsequent delays, excuses and finally refusal to do so.  
17 The most recent ploy by which she disabled the home page of her offending website  
18 (thebellabride.com) but maintained all the other pages as active, also suggests intent to deceive.  
19 On the one hand, her move to a new domain (yvesbellabrides.com) indicates another  
20 acknowledgment that "The Bella Bride" infringes, but her extraordinary reluctance to stop  
21 infringing indicates the benefits she has seen from the infringement and her intent to continue  
22 her infringement so long as permitted. Defendant is profiting from her infringement and  
23 intends to continue it for as long as she can find the means to do so.

24 **2. Defendants' Trademark Infringement Has Caused Plaintiffs**  
25 **to Lose Control of Their Brand**

26 Prior to the Supreme Court's ruling in *Winter v. Natural Resources Defense Council,*  
27 *Inc.*, 129 S. Ct. 365 (2008), a case involving Naval sonar's effect on marine mammals, courts

1 granted trademark owning plaintiffs a presumption of irreparable injury when evidence of  
2 trademark infringement was presented. *See, e.g., Goto.com, Inc. v. The Walt Disney Co.*, 202  
3 F.3d 1199, 1205, n.4 (9th Cir. 2000); *Church of Scientology Int’l. v. The Elmira Mission of the*  
4 *Church of Scientology, supra*, 794 F.2d at 43, (“The unauthorized use by a former licensee  
5 invariably threatens injury to the economic value of the good will and reputation associated  
6 with a licensor’s mark...control of the trademark is crucial in the licensing context because a  
7 licensor who fails to monitor its mark risks a later determination that it has been abandoned”).

8         Since *Winter*, courts now require plaintiffs to demonstrate that “irreparable injury is  
9 *likely* in the absence of an injunction.” *Id.* at 375 (emphasis original). In the context of  
10 trademark infringement actions, federal courts within the Northern District of California have  
11 required plaintiffs to establish “by the introduction of admissible evidence and with a clear  
12 likelihood of success that the harm is real, imminent, and significant, not just speculative or  
13 potential...” *Volkswagen v. Verdier Microbus and Camper, Inc.*, 2009 WL 928130 (N.D. Cal.  
14 2009); *see also CytoSport, Inc. v. Vital Pharm. Inc.*, 617 F. Supp. 2d 1051, 1080 (E.D. Cal.  
15 2009). Courts have issued injunctive relief where plaintiffs have demonstrated that “continuing  
16 infringement will result in loss of control over plaintiff’s reputation and good will.” *Maxim*  
17 *Integrated Products v. Quintana*, 654 F. Supp. 2d 1024, 1032 (N.D. Cal. 2009); *see also*  
18 *Mortgage Electric Registration Systems, Inc. v. Brosnan*, 2009 WL 3647125 (N.D. Cal. 2009).

19         The evidence presented in this motion amply demonstrates Plaintiffs’ loss of control  
20 over the BELLA BRIDESMAID brand. Customers are routinely mistaking one store for the  
21 other, calling or showing up at the wrong store. Even among those who recognize a difference  
22 between the stores, some assume a common ownership because of the similarity of name,  
23 goods, market and geographical location, as Ms. Slatkin and Ms. Chin did.

### 24                   **3. Plaintiffs Have Acted Promptly**

25         Plaintiffs filed their Complaint within one month of learning that Defendant’s promises  
26 to change the name of her business as agreed between the parties were false, and filed this  
27 motion for injunctive relief promptly thereafter. While Plaintiffs anticipate that Defendant may  
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1 argue, despite the overwhelming evidence of her infringement, that their willingness to allow  
2 her time to change her business name is evidence that this matter is not urgent, this is not the  
3 case. Brown has prided herself on having a positive relationship with other wedding businesses  
4 in the Bay Area and she attempted a friendly and cooperative resolution of this issue. She acted  
5 quickly upon first learning of “The Bella Bride” and her only delay has been in trying to honor  
6 an amicable agreement to which she thought Defendant was equally committed. Plaintiffs  
7 should not be penalized for attempting to resolve this dispute out of court or for believing  
8 Defendant’s deceitful assurances. For the Court to hold otherwise would create a strong  
9 disincentive to pre-litigation dispute resolution efforts.

10 **D. The Relief Sought**

11 Plaintiffs have applied for an order enjoining Defendant from using the phrase “Bella  
12 Bride” as part of her business name, including in marketing and advertising and in her domain  
13 name. While Plaintiffs were initially willing to allow Defendant to continue using “Bella  
14 Bride” as long as she included the differentiating prefix “Yve’s”, in light of Defendant’s deceit  
15 and refusal to honor the agreement, Plaintiffs can no longer trust Defendant to operate in good  
16 faith and take reasonable steps to help ensure that “Yve’s Bella Bride” is not confused with  
17 “Bella Bridesmaid.” (Brown Decl., ¶ 21.) It has also become increasingly evident over the  
18 course of the parties’ dealings with one another that the degree of confusion between these two  
19 businesses, less than one mile apart, is great and enduring. The only way Plaintiff will be  
20 adequately protected is if Defendant uses a different mark that is not so easily confused with  
21 the BELLA BRIDESMAID brand.

22 If this Court is unwilling to enjoin Defendant’s use of “Bella Bride” entirely, Plaintiffs  
23 respectfully urge the Court to at least require Defendant to move immediately to the trade  
24 name, “Yve’s Bella Bride.” Plaintiffs further urge the Court to be clear in its order that the  
25 approved name is “Bride” in the singular, rather than “Yve’s Bella Brides” which is closer in  
26 sound to BELLA BRIDESMAID. (Brown Decl., ¶ 22.)

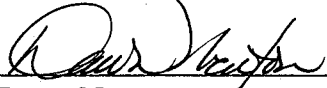
1 **IV. CONCLUSION**

2 For all of the foregoing reasons, Plaintiffs respectfully requests this Court to enter an  
3 order granting Plaintiffs' motion for a preliminary injunction and granting to Plaintiffs such  
4 other and further relief as the Court may deem just and proper.

5 Dated: June 10, 2011

FITZGERALD ABBOTT & BEARDSLEY LLP

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7 By 

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Dawn Newton  
Attorneys for Plaintiffs Bridget Brown and  
Bella Bridesmaid LLC

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