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FILED
 2011 AUG 23 P 3:10
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

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 HELLS ANGELS MOTORCYCLE CORPORATION

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8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN FRANCISCO DIVISION**

PSG

12 **HELLS ANGELS MOTORCYCLE CORPORATION,**

Case No. 11 4141

13 Plaintiff,

COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION AND DILUTION

14 v.

(INJUNCTIVE RELIEF SOUGHT)

15 **WILDFOX COUTURE, LLC,**
 16 **AMAZON.COM, INC.,**
 17 **NASTY GAL, INC.,**
 18 **GOSI ENTERPRISES, LTD.,**
 19 **JCL STYLE, INC.,**
 20 **and DOES 1 through 20,**

DEMAND FOR JURY TRIAL

19 Defendants.

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

23 **JURISDICTION**

24 1. This action arises under the Trademark Act of 1946 (the Lanham Act), as
 25 amended by the Federal Trademark Dilution Act of 1995 (15 U.S.C. §§ 1051 *et seq.*). This
 26 court has jurisdiction over such claims pursuant to 28 U.S.C. § 1331 (federal question), 28
 27 U.S.C. §§ 1338(a) and 1338(b) (trademark and unfair competition), and 15 U.S.C. § 1121(a)
 28 (Lanham Act).

ORIGINAL BY FACSIMILE

1 **VENUE**

2 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a
3 substantial part of the events giving rise to the claims herein occurred in this District, and
4 because the Defendants are found and conduct business within this District.

5 **INTRADISTRICT ASSIGNMENT**

6 3. This is an intellectual property action subject to district-wide assignment
7 pursuant to Civil Local Rule 3-2(c).

8 **PARTIES**

9 4. Plaintiff HELLS ANGELS MOTORCYCLE CORPORATION (“HAMC”) is
10 now, and at all relevant times was, a non-profit mutual benefit corporation organized and
11 existing under the laws of the State of California. Plaintiff HAMC is the owner of the
12 trademarks described herein, which it administers on behalf of, and for the benefit of, the
13 Hells Angels Motorcycle Club.

14 5. Defendant WILDFOX COUTURE, LLC (“WILDFOX”) is, on information
15 and belief, a limited liability company organized and existing under the laws of the State of
16 California. Defendant WILDFOX is a designer fashion house which manufactures,
17 distributes and sells apparel directly to the public and through other retailers. Defendant
18 WILDFOX is located at 7095 Hollywood Blvd, Suite 833, Hollywood, CA 90028.
19 Defendant WILDFOX and its affiliates conduct business within this District and throughout
20 the United States via the Internet website <wildfoxcouture.com>.

21 6. Defendant AMAZON.COM (“AMAZON”) is, on information and belief, a
22 corporation organized and existing under the laws of the State of Delaware. Defendant
23 AMAZON is the world’s largest online retail outlet, conducting its business within this
24 District and throughout the United States and abroad by various Internet-based enterprises,
25 including the website <shopbop.com> which offers and sells designer merchandise
26 including the products of Defendant WILDFOX.

27 7. Defendant NASTY GAL, INC. (“NASTY GAL”) is, on information and
28 belief, a corporation organized and existing under the laws of the State of California.

1 Defendant NASTY GAL is an online retailer of specialty apparel and accessories, located at
2 1309 – 66th Street, Emeryville, CA 94608. Defendant NASTY GAL conducts business
3 within this District and throughout the United States via the Internet website
4 <shopnastygal.com>.

5 8. Defendant GOSI ENTERPRISES, LTD. (“GOSI”) is, on information and
6 belief, a corporation organized and existing under the laws of the State of New York,
7 located at 7 Old Westbury Road, East Hills, NY 11577. Defendant GOSI conducts business
8 within this District and throughout the United States via the Internet website
9 <singer22.com>.

10 9. Defendant JCL STYLE, INC. (“JCL”) is, on information and belief, a
11 corporation organized and existing under the laws of the State of Delaware. Defendant JCL
12 is a distributor and retail seller of designer fashion apparel, with offices at 2949 Randolph
13 Avenue, Suite C, Costa Mesa, CA 92626. Defendant JCL conducts business within this
14 District and throughout the United States via the Internet website <pinkmascara.com>.

15 10. On information and belief, DOES 1 through 20, inclusive, are entities of
16 unknown form which offer and sell the infringing products of Defendant WILDFOX
17 complained of herein, and are legally responsible for injuries and damages to Plaintiff as
18 herein alleged. Plaintiff will amend this complaint when the true names and capacities of
19 said defendants have been ascertained.

20 **PLAINTIFF’S MARKS**

21 11. At least as early as 1948, Plaintiff HAMC and its predecessor in interest, an
22 unincorporated association known as the Hells Angels Motorcycle Club, have continuously
23 employed the word mark HELLS ANGELS and design mark depicting a skull with wings
24 (the “HAMC Death Head”) as collective membership marks, trademarks and service marks
25 used in connection with the promotion, advertising, conduct and expansion of a motorcycle
26 club, including indicia of membership; on authorized items such as patches, jewelry and
27 apparel; and in connection with authorized services such as promotional and entertainment
28 services.

1 12. From more than half a century of continuous and conspicuous usage, both the
2 HELLS ANGELS word mark and the HAMC Death Head design mark (the “HAMC
3 Marks”) are famous. The HAMC Marks are widely known and recognized by the public as
4 indicating the Hells Angels Motorcycle Club. Plaintiff HAMC and its predecessors in
5 interest have exercised legitimate control over the membership, trade and service uses of the
6 HAMC Marks by the duly authorized affiliates and licensees, and have been diligent and
7 successful in abating the use of the HAMC Marks by unauthorized third parties.

8 13. Plaintiff HAMC is the owner of the following United States trademark
9 registrations for the HAMC Marks, further described in Exhibit A attached hereto:

- 10 a. Reg. Nos. 1,214,476, 1,301,050, and 2,588,116 – for HELLS ANGELS and
11 HAMC Death Head as collective membership marks;
12 b. Reg. Nos. 1,294,586, 1,943,341, 3,338,837, and 3,666,915 – for HELLS
13 ANGELS word mark as trademark and service mark;
14 c. Reg. Nos. 3,311,549, 3,311,550, and 3,666,916 – for HAMC Death Head
15 design as trademark and service mark.

16 14. Plaintiff’s registrations for the HAMC Marks have become incontestible under
17 15 U.S.C. §1065. These registrations are, therefore, conclusive evidence of Plaintiff’s
18 exclusive right to use the HAMC Marks.

19 15. From decades of notoriety, the HAMC Marks have acquired very widespread
20 public recognition; consequently they evoke strong and immediate reactions whenever used.
21 The impact of these marks is virtually incomparable, and as a result they have great
22 commercial value. Defendants seek to exploit that value for their own gain.

23 **DEFENDANTS’ INFRINGING PRODUCTS**

24 16. Plaintiff HAMC is informed and believes that Defendants, and each of them,
25 have in the past and continue to manufacture, source, market and/or sell items of apparel
26 that infringe and dilute the HAMC Marks (hereinafter the “infringing products”).

27 17. In particular, Plaintiff HAMC is informed and believes that Defendant
28 WILDFOX manufactures, sources, markets and/or sells t-shirts bearing the text “MY

1 BOYFRIEND'S A HELLS ANGEL" on the front with a wing design on the back.
2 Defendant WILDFOX identifies these items as "Hells Angel Hippie Crewneck T" on its
3 own website. The infringing product of Defendant WILDFOX is shown in Exhibit B,
4 attached hereto and incorporated by this reference.

5 18. Defendants AMAZON, NASTY GAL, GOSI, and JCL, have offered and sold
6 the infringing products to the public, identifying them as "Hells Angel Tee" shirts as shown
7 in Exhibit C, attached hereto and incorporated by this reference.

8 19. Defendants WILDFOX, AMAZON, NASTY GAL, GOSI, JCL, DOES 1
9 through 20, and each of them, have produced, manufactured, designed, marketed, offered for
10 sale and sold substantial quantities of products infringing the HAMC Marks, and have
11 obtained and continue to obtain substantial profits from such sales.

12 20. The actions of Defendants, and each of them, have caused and will cause
13 Plaintiff HAMC irreparable harm for which money damages and other remedies are
14 inadequate. Unless Defendants, and each of them, are restrained by this Court, they will
15 continue and/or expand the illegal activities alleged in this Complaint and otherwise
16 continue to cause great and irreparable damage and injury to Plaintiff. Accordingly, in
17 addition to other relief sought, Plaintiff HAMC is entitled to preliminary and permanent
18 injunctive relief against Defendants WILDFOX, AMAZON, NASTY GAL, GOSI, JCL, and
19 DOES 1 through 20, and all persons acting in concert with them.

20 **FIRST CLAIM**

21 **Federal Trademark Infringement**
22 **(Lanham Act § 32 – 15 U.S.C. §§ 1114-1117)**

23 21. Plaintiff HAMC realleges and incorporates by reference each of the
24 allegations contained in paragraphs 1 through 20 of this Complaint.

25 22. Without consent of Plaintiff HAMC, Defendants WILDFOX, AMAZON,
26 NASTY GAL, GOSI, JCL, and DOES 1 through 20, and each of them, have used, in
27 connection with the sale, offering for sale, distribution or advertising of the infringing
28 products, designs that infringe upon the HAMC Marks.

23. These acts of infringement have been committed with the intent to cause

1 confusion, mistake or deception, and are in violation of 15 U.S.C. § 1114.

2 24. As a direct and proximate result of the infringing activities of Defendants
3 WILDFOX, AMAZON, NASTY GAL, GOSI, JCL, and DOES 1 through 20, and each of
4 them, Plaintiff HAMC has suffered substantial damage.

5 25. Defendants' infringement of the HAMC Marks as alleged herein is an
6 exceptional case and was intentional, entitling Plaintiff HAMC to treble the actual damages
7 and to an award of attorneys' fees under 15 U.S.C. §§ 1117(a) and 1117(b).

8 **SECOND CLAIM**

9 **Federal Unfair Competition
(Lanham Act § 43(a) – 15 U.S.C. § 1125(a))**

10 26. Plaintiff HAMC realleges and incorporates by reference each of the
11 allegations contained in paragraphs 1 through 25 of this Complaint.

12 27. Defendants' conduct constitutes the use of words, symbols or devices tending
13 falsely to describe the infringing products, within the meaning of 15 U.S.C. § 1125(a)(1).
14 Defendants' conduct is likely to cause confusion, mistake, or deception by or in the public as
15 to the affiliation, connection, association, origin, sponsorship or approval of the infringing
16 products to the detriment of Plaintiff HAMC and in violation of 15 U.S.C. § 1125(a)(1).

17 28. As a direct and proximate result of the infringing activities of Defendants
18 WILDFOX, AMAZON, NASTY GAL, GOSI, JCL, and DOES 1 through 20, and each of
19 them, Plaintiff HAMC has suffered substantial damage.

20 **THIRD CLAIM**

21 **Federal Dilution of Famous Mark
(Federal Trademark Dilution Act of 1995)
(Lanham Act § 43(c) – 15 U.S.C. § 1125(c))**

22
23 29. Plaintiff HAMC realleges and incorporates by reference each of the
24 allegations contained in paragraphs 1 through 28 of this Complaint.

25 30. The HAMC Marks are distinctive and famous within the meaning of the
26 Federal Trademark Dilution Act of 1995, 15 U.S.C. § 1125(c), as amended.

27 31. Defendants' activities have diluted or are likely to dilute the distinctive quality
28 of the HAMC Marks in violation of 15 U.S.C. § 1125(c), as amended.

1 32. Plaintiff HAMC is entitled to injunctive relief pursuant to 15 U.S.C. § 1125(c).

2 33. Because Defendants willfully intended to trade on Plaintiff HAMC's
3 reputation or to cause dilution of the HAMC Marks, Plaintiff HAMC is entitled to damages,
4 extraordinary damages, fees and costs pursuant to 15 U.S.C. § 1125(c)(2).

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff HAMC prays that this Court grant it the following relief:

7 a.) Adjudge that the HAMC Marks have been infringed by Defendants in
8 violation of the rights of Plaintiff HAMC under 15 U.S.C. § 1114;

9 b.) Adjudge that Defendants have competed unfairly with Plaintiff HAMC in
10 violation of its rights under 15 U.S.C. § 1125(a);

11 c.) Adjudge that Defendants' activities are likely to, or have, diluted the famous
12 HAMC Marks in violation of the rights of Plaintiff HAMC under 15 U.S.C. § 1125(c);

13 d.) Adjudge that Defendants, their subsidiaries, parent and affiliated companies,
14 successors, assigns, agents, and employees, and all others acting for, with, by, through or in
15 concert with Defendants, shall be enjoined and restrained at first during the pendency of
16 this action and thereafter permanently from using the HELLS ANGELS word mark, the
17 HAMC Death Head design mark, and any other mark, word, name or symbol that is likely to
18 cause confusion with, or cause dilution of, the HAMC Marks;

19 e.) Adjudge that Defendants be required immediately to recall and sequester their
20 inventories of the infringing products, and to supply an accounting of such inventories to
21 Plaintiff HAMC's counsel;

22 f.) Adjudge that Defendants be required to deliver their entire inventories of the
23 infringing products to a mutually selected third party for supervised destruction;

24 g.) Adjudge that Defendants, within thirty (30) days after service of the judgment
25 demanded herein, be required to file with this Court and serve upon counsel for Plaintiff
26 HAMC a written report under oath setting forth in detail the manner in which they have
27 complied with the judgment;

28 h.) Adjudge that Plaintiff HAMC recover from Defendants its damages in an

1 amount to be proven at trial;

2 i.) Adjudge that Defendants be required to account for any profits that are
3 attributable to its illegal acts, and that Plaintiff HAMC be awarded three times Defendants'
4 profits under 15 U.S.C. § 1117, plus prejudgment interest;

5 j.) Order an accounting of and impose a constructive trust on all of Defendants'
6 funds and assets that arise out of Defendants' infringing activities;

7 k.) Adjudge that Defendants be required to pay exemplary damages for fraud,
8 malice and gross negligence, whether grounded on proof of actual damages or on proof of
9 unjust enrichment;

10 l.) Adjudge that Plaintiff HAMC be awarded the costs of this action, together
11 with reasonable attorney's fees and disbursements; and

12 m.) Adjudge that all such other and further relief be awarded to Plaintiff HAMC as
13 the Court deems just and equitable.

14 Dated: August 22, 2011

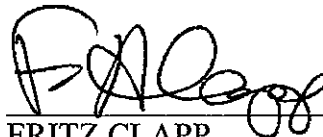
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17 FRITZ CLAPP
18 Attorney for Plaintiff HELLS ANGELS
19 MOTORCYCLE CORPORATION

20 **JURY DEMAND**

21 Plaintiff hereby demands trial by jury of all issues triable herein, pursuant to Fed. R.
22 Civ. P. §38(b).

23 Dated: August 22, 2011

24 

25 _____
26 FRITZ CLAPP
27 Attorney for Plaintiff HELLS ANGELS
28 MOTORCYCLE CORPORATION