

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

ROLLING THUNDER MOTORCYCLE)	
RALLY, WASHINGTON, D.C., INC.,)	
34597 Harry Byrd Highway)	Civil Action No. _____
Suite 1)	
Round Hill, VA 20141)	
)	
Plaintiff,)	
)	
v.)	
)	
JOHN DOES 1-100, JANE DOES 1-100,)	
and ABC COMPANIES 1-100, individuals)	
and business entities,)	
)	
Defendants.)	

**VERIFIED COMPLAINT
FOR COPYRIGHT INFRINGEMENT**

Plaintiff, ROLLING THUNDER MOTORCYCLE RALLY, WASHINGTON, D.C., INC., as and for its Complaint against Defendants, JOHN DOES 1-100, JANE DOES 1-100, and ABC COMPANIES 1-100, allege as follows:

Parties

1. Plaintiff, ROLLING THUNDER MOTORCYCLE RALLY, WASHINGTON, D.C., INC. ("Rolling Thunder-DC"), is a non-profit Washington, D.C. corporation, with a business address at 34597 Harry Byrd Highway, Suite 1, Round Hill, VA 20141.

2. On information and belief, Defendants John Does 1-100, Jane Does 1-100 and ABC Companies 1-100 are either residents of, or are present in this judicial district, are transacting and doing business at premises in this judicial district, and are subject to the jurisdiction of this Court. Defendants, alone or through their agents, servants, or employees, are manufacturing, distributing, selling and/or offering for sale goods and merchandise that infringe

upon the copyrighted work of Plaintiff Rolling Thunder-DC. The identities of the various John Does, Jane Does and ABC Companies are unknown to Plaintiff at this time, but the Defendants are expected to be seen engaged in their illegal activities in or around Washington, D.C. during Memorial Day 2012. This Complaint will be amended to include the names of the Defendants when they are identified.

3. John Does 1-100, Jane Does 1-100 and ABC Companies 1-100 inclusive, are hereinafter collectively referred to as “Defendants.”

4. Upon information and belief, Defendants are individuals or business entities that are acting alone or in concert and active participation with each other in committing the wrongful acts alleged herein.

Jurisdiction and Venue

5. This is a civil action arising under the copyright laws of the United States. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1400(a).

The ROLLING THUNDER Motorcycle Rally

7. In 1987, the founders of what is today Rolling Thunder-DC conceived of the idea to host a motorcycle rally in the Nation’s Capitol on Memorial Day to raise the public’s awareness that American servicemen had been abandoned in Southeast Asia at the end of the Vietnam War. This public demonstration of unity and solidarity was intended show that our Nation’s Prisoner’s of War and Missing in Action (“POWs/MIAs”) still mattered to their fellow servicemen and the country for which they sacrificed their freedom.

8. On Memorial Day in 1988, in response to numerous letters, flyers, and by word-of-mouth, thousands of motorcycles poured onto the streets of Washington, D.C. for the first ROLLING THUNDER motorcycle rally.

9. The first ROLLING THUNDER rally struck a chord in the hearts of veterans everywhere and from all walks of life. Ever more veteran motorcyclists came and returned to ROLLING THUNDER rallies year after year – and as a result it continued to grow.

10. Now celebrating its 25th Anniversary, ROLLING THUNDER has grown into the world's largest single-day motorcycle event, with riders from around the nation, and from around the world. The rally continues to achieve its initial mission of greater POW/MIA awareness, and each year encourages the public's support of veterans from all wars. Rolling Thunder-DC is proud to proclaim that POW/MIA numbers from wars following the Vietnam War have greatly diminished, and the treatment of returning veterans has greatly improved.

11. The next ROLLING THUNDER rally is scheduled to take place in Washington, D.C. on Monday, May 28, 2012. Rolling Thunder-DC expects tens of thousands of veteran motorcyclists to participate.

12. Each year, Rolling Thunder-DC creates unique artwork to symbolize and commemorate the ROLLING THUNDER rally, and the POW/MIA awareness causes associated with it. This artwork is prominently displayed on clothing, posters, flyers and other items. Unfortunately, with near regularity and ever-greater frequency, hundreds of illicit merchants promote and sell unauthorized clothing items and merchandise bearing piratical imitations of the ROLLING THUNDER artwork.

13. Rolling Thunder-DC owns all right, title and interest in and to the work that is the subject of the following valid, existing and uncanceled copyright registration in the United States Copyright Office:



See copies of the copyright registration and artwork deposit with the Register of Copyrights collectively attached as Exhibit A.

14. The ROLLING THUNDER artwork has considerable value, is uniquely associated with Plaintiff, and is a work of authorship whose copyright ownership therein vests solely in Rolling Thunder-DC.

15. Rolling Thunder-DC has authorized certain contributors and suppliers of goods to use the copyrighted ROLLING THUNDER artwork in advertising or on goods or merchandise. Permitted use of the copyrighted ROLLING THUNDER artwork in advertising, or on goods or merchandise, is intended to signify to the public that the goods, apparel, merchandise or products bearing this artwork were supplied, furnished, approved, selected or used by Rolling

Thunder-DC. Accordingly, Plaintiff has established a policy and practice of restricting use of the ROLLING THUNDER artwork to goods, merchandise and products of high quality.

16. Each year during the ROLLING THUNDER motorcycle rally, Rolling Thunder-DC has distributed within this District authorized and licensed goods and merchandise bearing prior versions of the ROLLING THUNDER artwork. There is a substantial public demand for such goods during the rally, and as a result of this public demand, genuine goods and merchandise bearing the ROLLING THUNDER artwork have become valuable commercial properties.

17. Each year during the ROLLING THUNDER motorcycle rally, genuine goods and merchandise bearing the ROLLING THUNDER artwork have been advertised to the purchasing public throughout this District. At the upcoming rally, genuine goods bearing the ROLLING THUNDER artwork will be sold only at Thunder Alley, which is located at 22nd Street, NW, between C Street & Constitution Avenue, NW, Washington, D.C.

18. Genuine goods and merchandise bearing the ROLLING THUNDER artwork, by reason of their style, design, excellence and quality of workmanship, and by reason of their approval by Plaintiff, have come to be well and favorably known to the purchasing public during the ROLLING THUNDER motorcycle rally, including this District, as representing goods and merchandise of quality in workmanship.

19. Unfortunately, during ROLLING THUNDER motorcycle rallies in years past, at hastily erected booths and folding tables throughout the District of Columbia, persons and companies not authorized by Rolling Thunder-DC have sold, marketed and distributed apparel and other items that infringe Plaintiffs' copyright in prior versions of ROLLING THUNDER artwork. These unauthorized items include or bear emblems, symbols, designs, terminology

and/or designations identical to, substantially similar to, or virtually indistinguishable from the ROLLING THUNDER artwork. Typically, this merchandise is of inferior quality and is made available for public purchase within a few hours after Rolling Thunder-DC's genuine merchandise bearing the ROLLING THUNDER artwork has been placed on display.

20. When Rolling Thunder-DC discovered this unauthorized and infringing merchandise at past ROLLING THUNDER motorcycle rallies, it attempted to secure the assistance of law enforcement authorities to stop the sales of these goods. However, without a court order, law enforcement would not get involved. Before Rolling Thunder-DC would ever have time to secure a court order, the ROLLING THUNDER RALLY would be over and the street-sellers of this infringing merchandise would be long-gone.

21. From past experience, Rolling Thunder-DC has learned that, in the absence of an injunction and impoundment order (*without* prior notice to the infringers), there is a strong possibility that, at the upcoming ROLLING THUNDER XXV rally, the sellers of the unauthorized and infringing merchandise will attempt to conceal, dispose of, destroy, remove, or hide their infringing merchandise or other evidence of their unlawful conduct.

22. Further, because the infringers' merchandise typically is of poor quality, every year this inferior merchandise is sold, Rolling Thunder-DC suffers substantial reputational and financial harm as a result of the infringers' wrongdoing.

Defendants' Unlawful Conduct

23. On information and belief, Defendants manufacture, sell, market or distribute apparel and other items that infringe Plaintiffs' copyright in the ROLLING THUNDER artwork in that they either include or bear emblems, symbols, designs, terminology and/or designations

identical to, substantially similar to, or virtually indistinguishable from the ROLLING THUNDER artwork.

24. On information and belief, Defendants are manufacturing or trafficking in such piratical and infringing goods and merchandise, in that they have caused such goods and merchandise to enter into commerce and/or be transported or used in commerce.

25. Defendants are not licensed or authorized by Plaintiff or any authorized agent of Plaintiff to use, reproduce or otherwise make use of copyrighted works, emblems, symbols, terminology and/or designations identical to, substantially similar to, or virtually indistinguishable from the ROLLING THUNDER artwork in connection with the manufacture, distribution, advertisement, sale or offering for sale of any goods or merchandise.

26. Defendants are blatantly attempting to confuse and mislead the public as to the source of the goods and merchandise they are offering.

27. Defendants are being unjustly enriched by their actions in appropriating unfairly the benefits of Plaintiff's own use, advertising and licensing of the ROLLING THUNDER artwork.

28. Defendants' conduct constitutes copyright infringement.

29. Defendant's conduct is willful and in knowing violation of law.

30. The harm caused by Defendants' conduct is immediate, continuing and irreparable by law.

FIRST CLAIM
(Infringement of Copyright)

31. Plaintiff restates and incorporates by reference each and every allegation set forth in the prior paragraphs.

32. Plaintiff is the sole owner of the copyright in the ROLLING THUNDER artwork.

33. Defendants have infringed, and will continue to infringe, Plaintiff's exclusive right to reproduce and to authorize the reproduction of its copyrighted ROLLING THUNDER artwork, in violation of the Copyright Act, 17 U.S.C. §§ 101, *et seq.*

34. Defendants have infringed, and will continue to infringe, Plaintiff's exclusive right to distribute and to authorize distribution of its copyrighted ROLLING THUNDER artwork.

35. Defendants have infringed, and will continue to infringe, Plaintiff's exclusive right to prepare derivative works based on its copyrighted ROLLING THUNDER artwork.

36. Defendants' conduct is knowing, willful and intentional.

37. The harm caused by Defendants' conduct is immediate, continuing and irreparable at law.

38. By reason of the foregoing, Plaintiff hereby asserts a claim against Defendants for injunctive and monetary relief pursuant to 17 U.S.C. §§ 502 through 505.

PRAYER

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants, jointly and severally, as follows:

(a) as provided by 17 U.S.C. § 502, enjoining Defendants, their agents, servants, employees, attorneys, representatives, successors and assigns and all persons, firms or corporations in active concert or participation with any of Defendants during the pendency of this action and permanently from:

(1) directly or indirectly infringing the above described copyrighted ROLLING THUNDER artwork in any manner, including, but not limited to using, reproducing, manufacturing, advertising, selling, offering for sale or distributing any

goods or merchandise which picture, reproduce, or utilize the copyrighted ROLLING THUNDER artwork, or any other artwork that is identical to, substantially similar to, or virtually indistinguishable therefrom;

(2) applying the copyrighted ROLLING THUNDER artwork, or any reproduction, piratical copy or colorable imitation of the same to any label, sign, print, package, wrapper, receptacle or advertisement used in connection with the manufacture, distribution, sale or offering for sale of any goods, apparel, merchandise or products;

(3) using any simulation, reproduction, piratical copy or colorable imitation of the copyrighted ROLLING THUNDER artwork in connection with the promotion, advertisement, display, marketing sale, offering for sale, manufacture, production, importation, exportation or distribution of any goods, apparel, merchandise or products in the United States; or which relate, connect, associate or tend to relate, connect or associate such goods, apparel, merchandise or products in any way to Plaintiff, the ROLLING THUNDER motorcycle rally, or any supplier or distributor of authentic goods, apparel, merchandise or products bearing the ROLLING THUNDER artwork that is authorized or licensed by Plaintiff, or to any goods, apparel, merchandise or products sold, manufactured, sponsored, approved by or connected with Plaintiff;

(4) using any logo or design that tends to falsely to represent, or is likely to confuse, mislead or deceive purchasers, Defendants' customers or members of the public that the unauthorized goods, apparel, merchandise or products manufactured, distributed, advertised, sold or offered for sale by Defendants originate from Plaintiff, or that said goods, apparel, merchandise or products are sponsored, approved, licensed, associated, connected or affiliated with Plaintiff or the ROLLING THUNDER motorcycle rally;

(5) engaging in any conduct that tends falsely to represent, or is likely to confuse, mislead or deceive purchasers, Defendants' customers or members of the public that the actions of Defendants or Defendants themselves are sponsored, approved, licensed, connected or affiliated with Plaintiff or the ROLLING THUNDER motorcycle rally;

(6) affixing, applying, annexing or using in connection with the manufacture, distribution, advertising, sale, offering for sale or other use of any goods, apparel, merchandise or products, any works, emblems, symbols, terminology and/or designations identical to, substantially similar to, or virtually indistinguishable from the copyrighted ROLLING THUNDER artwork that would tend to falsely describe or represent such goods, apparel, merchandise or products as being those of Plaintiff or authorized by Plaintiff; and

(7) communicating about this action, directly or indirectly, with any person or persons from whom they purchased, to whom they sold, or whom they know to possess, control or have access to goods, apparel, merchandise or products, or parts or components thereof, bearing any piratical copy, reproduction, imitation, or simulation of, or likeness to the copyrighted ROLLING THUNDER artwork;

(b) as provided by 17 U.S.C. § 503(b), and within thirty (30) days of entry of judgment for Plaintiff, requiring Defendants, their agents, servants, employees, attorneys, representatives, successors and assigns and all persons, firms or corporations in active concert or participation with any of Defendants to deliver up for destruction or distribution to Plaintiff:

(1) any and all goods, apparel, merchandise, products, labels, signs, packaging, wrappers, containers, advertising materials, letterhead, business cards, and

any other writings or materials used in their business(es), which falsely display, reproduce, copy, imitate or bear the copyrighted ROLLING THUNDER artwork or any other works, emblems, symbols, terminology and/or designations identical to, substantially similar to, or virtually indistinguishable therefrom;

(2) any screens, patterns, plates or negatives used specifically for making or manufacturing goods, apparel, merchandise or products bearing the copyrighted ROLLING THUNDER artwork or any other works, emblems, symbols, terminology and/or designations identical to, substantially similar to, or virtually indistinguishable therefrom; and

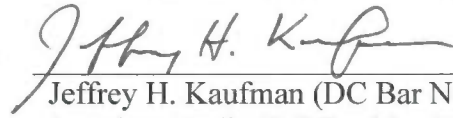
(c) as provided by 17 U.S.C. § 504, awarding to Plaintiff and against Defendants, jointly and severally, Plaintiff's actual damages and Defendants' profits or, as elected, those damages provided by 17 U.S.C. § 504(c), plus Plaintiff's attorneys' fees and expenses pursuant to 17 U.S.C. § 501; and

(d) awarding Plaintiff its attorneys' fees, allowable costs and such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, L.L.P.

By:



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Counsel for Plaintiff

ROLLING THUNDER MOTORCYCLE

RALLY, WASHINGTON, D.C., INC.

Dated: May 4, 2012

JHK/JH/klb {6793683_1.DOC}

Verification

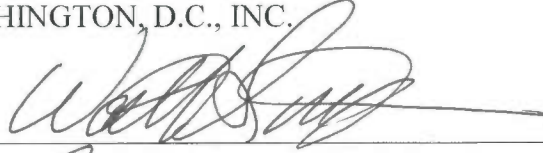
I DECLARE, under the penalty of perjury as an authorized agent and representative of
ROLLING THUNDER MOTORCYCLE RALLY, WASHINGTON, D.C., INC., that the matters
and facts contained in this Complaint are true and correct.

ROLLING THUNDER MOTORCYCLE RALLY,
WASHINGTON, D.C., INC.

By: _____

Title: _____

Executed on: _____



Ex. Dir.

5/3/12

Exhibit A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VAu 1-095-559

**Effective date of
registration:**

April 20, 2012

Title

Title of Work: ROLLING THUNDER XXV Memorial Day - May 2012 Washington D.C. Artwork

Completion/Publication

Year of Completion: 2012

Author

■ **Author:** Hot Action Sportswear, Inc.

Author Created: 2-dimensional artwork

Work made for hire: Yes

Domiciled in: United States

■ **Author:** Rolling Thunder Motorcycle Rally, Washington D.C., Inc.

Author Created: 2-dimensional artwork

Work made for hire: Yes

Citizen of: United States

Copyright claimant

Copyright Claimant: Rolling Thunder Motorcycle Rally, Washington D.C., Inc.

P.O. Box 1873, Winchester, VIRGINIA 22604, United States

Transfer Statement: Written agreement

Limitation of copyright claim

Material excluded from this claim: artwork, 2-dimensional artwork of Vietnam Memorial Statue (three soldiers), Washington, D.C.

New material included in claim: 2-dimensional artwork

Certification

Name: Walt Sides

Date: April 19, 2012

Applicant's Tracking Number: 398097US-312620

Correspondence: Yes



Registration #: VAU001095559

Service Request #: 1-757038903

0000VAU0010955590202



Oblon, Spivak, McClelland, Maier & Neustadt, L.L.P.
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