

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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BOSTON DUCK TOURS, Limited Partnership,))	
))	
Plaintiff,))	
))	
v.))	Civil Action No. _____
))	
SUPER DUCK TOURS, LLC,))	Jury Trial Requested
))	
Defendant.))	
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COMPLAINT

INTRODUCTION

Defendant Super Duck Tours intentionally designed its business model to misappropriate, trade on, and profit from the goodwill and reputation of Boston’s world famous sightseeing company, Boston Duck Tours. Plaintiff Boston Duck Tours is known throughout the country and the world for its unique sightseeing services through Boston and the Charles River on amphibious World War II vehicles that are painted in bright colors and driven by friendly and funny “ConDUCKtors” drivers who summarize the history of Boston throughout the tour. The Boston Duck Tours federally registered marks, including the cartoon duck and the BOSTON DUCK TOURS mark, have become famous and have come to be strongly associated with Boston Duck Tours.

Beginning in the late Spring of 2007, Defendant Super Duck Tours began offering sightseeing tours of Boston and the Boston Harbor on yellow painted amphibious vehicles and began using the mark SUPER DUCK TOURS and a cartoon duck logo in connection with these services. Super Duck Tours’ use of confusingly similar marks in

connection with similar services has caused and continues to cause significant consumer and other confusion and to divert sales away from Boston Duck Tours. Such unlawful conduct also causes dilution of Boston Duck Tours' famous marks. In addition to the intentional misappropriation of Boston Duck Tours' marks, Super Duck Tours intentionally and wrongfully interferes with Boston Duck Tours' business, harassing potential Boston Duck Tours customers and making material false representations to these prospective customers relating to Boston Duck Tours' services, purporting to sell tickets for Boston Duck Tours, and engaging in other unfair acts, all in an effort to divert customers away from Boston Duck Tours to Super Duck Tours.

Super Duck Tours' unlawful acts are causing serious and irreparable harm to Boston Duck Tours. Boston Duck Tours seeks injunctive relief and damages for acts of trademark infringement, trademark dilution, unfair competition, and intentional interference with prospective business relationships by Super Duck Tours in violation of the laws of the United States and the Commonwealth of Massachusetts.

PARTIES

1. Plaintiff Boston Duck Tours, Limited Partnership is a Domestic Limited Partnership, organized under the laws of Massachusetts, with a principal place of business located at 3 Copley Place, Suite 310, Boston, Massachusetts, 02116.
2. Defendant Super Duck Tours, LLC is a foreign limited liability company, organized under the laws of Maine, with its principal place of business at 100 Terminal Street, Charlestown, Massachusetts, 02129.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question) and 1338 (patent, trademark and unfair competition claims). The federal claims include infringement, trademark dilution, and unfair competition under the Lanham Act.

4. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1332 because the suit is between parties of different states and the amount in controversy exceeds seventy-five thousand dollars (\$75,000).

5. This Court has jurisdiction over the state law and common law claims under the doctrine of supplemental jurisdiction under 28 U.S.C. § 1367. The state and common law claims arise from or are substantially related to the same acts giving rise to the federal claims.

6. This Court has personal jurisdiction over Defendant Super Duck Tours because Super Duck Tours has its principal place of business in the Commonwealth of Massachusetts. This Court also has personal jurisdiction over Super Duck Tours under Mass. Gen. Laws Ch. 223A, § 3, for the reason that, Super Duck Tours conducted and continues to conduct business in the state of Massachusetts when it sells tours of the Boston area; Super Duck Tours commits acts of trademark infringement, trademark dilution, and unfair competition while using trademarks confusingly similar to Boston Duck Tours' marks to conduct or solicit business through advertising, offering for sale, and selling of confusingly similar tour services.

7. Venue in this district is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the infringing activity and unfair competition occurred and continues to occur in

the Eastern District of Massachusetts; and 28 U.S.C. §§ 1391(c) because Super Duck Tours has its principal place of business in Charlestown, Massachusetts.

FACTUAL BACKGROUND

Boston Duck Tours

8. Plaintiff Boston Duck Tours has provided sightseeing tours since 1994. Over the past thirteen years, Boston Duck Tours has become famous nationwide as a unique, informative and fun way to tour the historical landmarks of Boston's downtown area and Charles River on a World War II amphibious landing vehicle that can travel on land as well as through the water. Specifically, the tour (which has departure locations at the Prudential Center and the Museum of Science) takes the customer to a number of Boston landmarks, such as Charles Street, the State House, the North End, Quincy Market, Newbury Street, and the Charles River. These vehicles can be seen all over Boston, painted in a rainbow of colors, such as yellow or green, with a knowledgeable and funny driver describing the area and recounting Boston's history. These vehicles are marked with the Boston Duck Tours logo, a cartoon duck with an orange beak, splashing in water, as shown below, in Paragraph 14. The Boston Duck Tours even carried the victorious Boston Red Sox after their 2004 World Series Victory and the New England Patriots after their 2002, 2004, and 2005 Super Bowl wins in nationally televised parades.

9. Boston Duck Tours provides services from approximately April 1 through November 30th of each year. The peak summer season, June through August, is the most profitable time of the season.

10. Boston Duck Tours has invested considerable time, money, and effort in designing its services and in ensuring strong customer service, including a considerate sales team, as well as polite, friendly, funny, and informative tour guides.

11. As a result of these efforts, Boston Duck Tours has become famous.

12. Boston Duck Tours has also invested considerable time, money, and effort in promoting its service marks and in building up the goodwill associated with its marks. By virtue of these efforts, Boston Duck Tours has developed substantial recognition and goodwill in its service marks. Boston Duck Tours has been featured in a variety of national publications, such as Offshore Magazine, Latitude, U.S. Airways Attaché, Family Traveler Vacation Guide, American Way, W Magazine, Atlantica, Business Week Enterprise, Cosmopolitan UK, The Meeting Professional, as well as local papers in national and international locations, such as the Winnipeg Sun, the Richmond Times Dispatch, the Calgary Sun, and the Berlin Daily Sun.

13. Boston Duck Tours has become so well known that it now provides reservation services for other Boston businesses. In fact, in 2006, Boston Duck Tours directed \$1.5 million to other Boston businesses through its reservation service.

14. Since at least as early as 1993 and continuing without interruption, Boston Duck Tours has used its marks BOSTON DUCK TOURS and BOSTON DUCK TOURS (plus design)(shown below) in connection with sightseeing tours and clothing.



15. Boston Duck Tours owns a number of federal trademark registrations for the mark BOSTON DUCK TOURS and the company's logo (referred to collectively as "BOSTON DUCK TOURS Marks"). These registrations include the following:

- a. U.S. Reg. No. 2576934 for registration of the word mark BOSTON DUCK TOURS in connection with "conducting sightseeing tours," registered on June 11, 2002. This mark was first used in 1993.
- b. U.S. Reg. No. 2576943 (Word plus design, as shown below) for use in connection with "conducting sightseeing tours," registered June 11, 2002. This mark was first used on July 1, 1993.



- c. U.S. Reg. No. 2066849 for registration of the word mark BOSTON DUCK TOURS in connection with "clothing, namely, sweatshirts, T-shirt, golf

shirts, sweaters, visors, and hats,” registered June 3, 1997. This mark was first used on May 1, 1995.

d. U.S. Reg. No. 2535387 (Word plus design, as shown below) for use in connection with “clothing, namely, sweatshirts, T-shirt, golf shirts, sweaters, visors, and hats,” registered February 5, 2002. This mark was first used on July 1, 1993.



16. Boston Duck Tours also owns a number of state trademark registrations, including the following,

a. Massachusetts trademark, Reg. No. 51373, for BOSTON DUCK TOURS for use in connection with “conduct combined land and water sightseeing tours on vintage, amphibious vehicles.”

b. Massachusetts trademark, Reg. No. 51385, for A YELLOW DUCK WEARING A MILITARY CAMOUFLAGE HAT IN BLUE SPLASHING WATER HAVING A PURPLE BACKGROUND WITHIN A BLACK CIRCLE WITH SOME WATER SPLASHING OUT OF THE CIRCLE for use in connection with “conduct combined land and water sightseeing tours on vintage, amphibious vehicles.”

c. Massachusetts trademark, Reg. No. 55308, for BOSTON DUCKS for use in connection with “conduct combined land and water sightseeing tours on vintage, amphibious vehicles.”

d. Massachusetts trademark, Reg. No. 51377, for DUCK TOURS for use in connection with “conduct combined land and water sightseeing tours on vintage, amphibious vehicles.”

e. Massachusetts trademark, Reg. No. 55307, for DUCKS for use in connection with “conduct combined land and water sightseeing tours on vintage, amphibious vehicles.”

17. Combined Declarations of Use & Incontestability under 15. U.S.C. Sections 1058 and 1065 (Sections 8 & 15 of the Lanham Act) for all registrations have been filed.¹

18. As a result of Boston Duck Tours’ continuous use, the BOSTON DUCK TOURS Marks have become famous.

19. Plaintiff’s BOSTON DUCK TOURS trademark registrations constitute constructive notice to Defendant of Plaintiff’s ownership of the BOSTON DUCK TOURS Marks in connection with the goods and services identified in its registrations.

20. On information and belief, Super Duck Tours had actual notice of the Boston Duck Tours’ trademarks because Boston Duck Tours regularly use the TM symbol.

21. Super Duck Tours also received actual notice of Boston Duck Tours’ trademark registrations from Boston Duck Tours by letter dated February 2007 in connection with a separate dispute relating to Super Duck Tours’ web-site.

¹ The declarations for Reg. Nos. 2576934, 2576943, and 2535387 were filed on Thursday, June 28, 2007; the § 8 & 15 Declarations for Reg. No. 2066849 were filed on April 24, 2003.

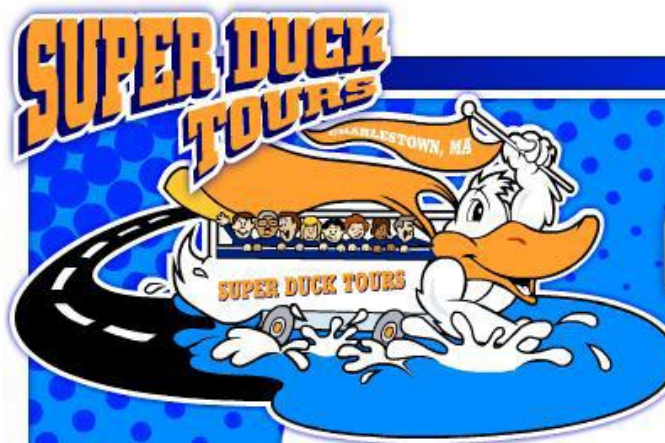
Defendant's Unlawful Conduct

22. On information and belief, Defendant began providing touring services in Boston on May 21, 2007 under the name “Super Duck Tours,” nearly 14 years after Boston Duck Tours’ first commercial use of the BOSTON DUCK TOURS mark.

23. Defendant Super Duck Tours offers sightseeing tours on an amphibious vehicle that look similar to Plaintiff’s World War II amphibious sightseeing vehicles.

24. Super Duck Tours purports to give sightseeing tours of “Boston points of interest.” *See* print out of Super Duck Tours web-site at Exhibit **.

25. Super Duck Tours uses a cartoon duck logo in connection with these touring services, as shown below.



26. The Super Duck Tours service mark and cartoon duck logo are confusingly similar to Boston Duck Tours’ BOSTON DUCK TOURS Marks. The dominant portions of the mark, “Duck Tours,” are identical. Use of the merely descriptive term “Super” to modify Duck Tours does not distinguish the mark “Super Duck Tours” from “Boston

Duck Tours.” The confusion is exacerbated by the similarity in the services, including the amphibious nature of the vehicles used to conduct the sightseeing tours.

27. Super Duck Tours aggressively markets its services in Boston and sells tickets in Boston. Once a customer has purchased a ticket, Super Duck Tours shuttles the customer to Charlestown, Massachusetts, where the customer then boards the amphibious vehicle.

28. Super Duck Tours’ use of a confusingly similar name and a confusingly similar logo to Plaintiff’s famous BOSTON DUCK TOURS in connection with providing the same services in a confusingly similar vehicle has caused many incidents of actual confusion amongst customers. For example,

- a. On May 21, 2007, a customer called Boston Duck Tours looking for Super Duck Tours due to an incident/accident involving a Super Duck Tours vehicle;
- b. On May 21, 2007, two customers arrived at Boston Duck Tours’ departure location at the Museum of Science at approximately 2:00 PM with Super Duck Tours tickets, believing that the tickets were for a Boston Duck Tours sightseeing tour;
- c. On June 3, 2007, several customers complained about being misinformed and confused by Super Duck Tours in the Prudential Center T stop (very near to Boston Duck Tours’ Prudential center departure location);
- d. On June 5, 2007, a customer approached Boston Duck Tours to say he took a Super Duck Tours sightseeing tour under the impression it was a Boston Duck Tours sightseeing tour and didn’t find out until halfway through that it was a different tour;

- e. On June 6, 2007, a customer called and wanted to speak to someone about Super Duck Tours. When a Boston Duck Tours representative explained the differences between the two companies, the customer said she thought it was the same company but with a special 'super' tour route;
- f. On June 7, 2007, a customer presented two Super Duck Tours tickets to Boston Duck Tours for admission to a 10:00 AM Boston Duck Tours sightseeing tour. The customers bought the tickets from a booth at the Prudential Center T-Station;
- g. On June 7, 2007, two other guests presented Super Duck Tours Tickets for a Boston Duck Tours sightseeing tour;
- h. On June 8, 2007, two customers asked if Boston Duck Tours was affiliated with Super Duck Tours because the customers saw their booth at an MBTA station;
- i. On June 8, 2007, at approximately 3:00 PM, two customers attempted to use Super Duck Tours tickets to board a Boston Duck Tours sightseeing tour. The customers purchased tickets at the Prudential Center T Stop;
- j. On June 10, 2007, a woman called Boston Duck Tours at 11:00 AM very upset, complaining that she had purchased Super Duck Tours tickets and was waiting at the State House to be picked up;
- k. On June 12, 2007, two customers arrived for a tour with Super Duck Tours tickets, believing they had purchased tickets for a Boston Duck Tours sightseeing tour;

- l. On June 15, 2007, two customers arrived at the Boston Duck Tours ticket booth at the Museum of Science and said they had internet tickets for 10:30 AM. However, Boston Duck Tours had no 10:30 tours from that location;
- m. On June 16, 2007, customers arrived for a 2:00 PM tour with Super Duck Tours tickets. Boston Duck Tours honored the tickets and placed them on the next available tour at 3:00 PM;
- n. On June 18, 2007 a party of five arrived for a tour with Super Duck Tours. Boston Duck Tours honored the tickets and placed them on the next available tour;
- o. On June 18, 2007, a party of nine arrived for a Boston Duck Tours sightseeing tour seeking will-call tickets purchased in advance. After much confusion, one of the customers called the office from which the tickets were ordered and learned that they had ordered tickets from Super Duck Tours instead. The ticket office believed that the two companies were affiliated;
- p. On June 19, 2007, a prospective customer called Boston Duck Tours to confirm ticket price. The prospective customer had spoken to a woman selling tickets at Park Street claiming she was from Boston Duck Tours. This saleswoman stated that tickets were \$40 for adults and \$20 for children. The prospective customer thought this was strange that the prices were so high so she called Boston Duck Tours' office;
- q. Following this telephone call, Cindy Brown, Boston Duck Tours' Manager went to Park Street on June 19. The saleswoman had a booth on the sidewalk. When Ms. Brown asked if she could purchase tickets for Boston Duck Tours, the saleswoman responded "yes." When Ms. Brown asked if the tours left

from the Prudential Center, the saleswoman responded “yes”. When Ms. Brown asked again if the woman was selling tickets for Boston Duck Tours, if it departed from the Prudential Center and if the tour ended at the Prudential Center, the saleswoman responded “yes.” When Ms. Brown asked about the tour route and the prices, the saleswoman said the cost was \$40. When Ms. Brown asked why the Boston Duck Tours website said it was \$27, the saleswoman said the rest of the cost was for trolley transportation to the Prudential Center for the tour. When Ms. Brown asked again, for the third time, if the woman was selling tickets for Boston Duck Tours, the saleswoman responded that she’d never heard of that company;

r. On June 22, 2007, guests mistakenly arrived at Boston Duck Tours with Super Duck Tours tickets. Boston Duck Tours then sold the guests Boston Duck Tours tickets in response to their request for same;

s. On June 24, 2007, a woman arrived at the Boston Duck Tours ticket booth very upset that she had “walked all this distance to find that we are sold out.” She stated that when she called in the morning she was told to “Just come down we have plenty of tickets”. Because this is not Boston Duck Tours policy, Boston Duck Tours became suspicious. When the customer was asked how she heard about the tour, she pulled out a brochure with a display of Super Duck Tours;

t. On June 26, 2007, a party of four arrived for a Boston Duck Tours sightseeing tour with Super Duck Tours tickets because a friend told them this is where they depart. The group did not realize Boston Duck Tours and Super Duck Tours were separate companies; and

- u. On June 26, 2007, a man arrived at Boston Duck Tours with a Super Duck Tours ticket asking where the Boston Duck Tours sightseeing tour began.
29. There have also been incidents where City and Coast Guard officials (who have direct regulatory authority with respect to Boston DuckTours and Super Duck Tours) have been confused. For example,
- a. On May 26, 2007, a Hackney police officer came to a Boston Duck Tours Duck Stop at Prudential Center looking for Super Duck Tours.
 - b. On May 26, 2007, the US Coast Guard called Boston Duck Tours to lodge a complaint about the wake that a Super Duck Tours vehicle created that caused two boats to be thrown into the rocks in Boston Harbor. Boston Duck Tours explained that the company involved was Super Duck Tours and not Boston Duck Tours.
 - c. On June 16, 2007, the US Coast Guard called to inquire about a fuel tank following a Super Duck Tours tour. Boston Duck Tours explained that the company involved was Super Duck Tours and not Boston Duck Tours.
30. Immediately following the onset of these incidents of actual confusion, Plaintiff Boston Duck Tours began investigating Defendant's incidents of confusion.
31. Super Duck Tours' infringement of Boston Duck Tours' mark and its cartoon duck logo in providing the same exact services—land and water sightseeing tours in Boston in an amphibious vehicle— causes confusion as to source, sponsorship, and affiliation. The above-listed examples of incidents of confusion are only those incidents in which customers eventually approached Boston Duck Tours and notified Boston Duck Tours of their confusion. There are undoubtedly many more customers who both

purchased tickets and took the Super Duck Tours sightseeing tour with the mistaken understanding that they were on a Boston Duck Tours sightseeing tour. For example, one Super Duck Tours customer posted the following review on a Google Earth Community page,

<http://bbs.keyhole.com/ubb/printthread.php/Board/EarthTravel/main/914886/type/post:>

We had heard about the famous Duck Tour from Boston in Minnesota from many people so on Memorial day Weekend when we were in town, we saw a Duck Tour booth at the Waterfront by the Marriott Long Wharf where we were staying. Unbeknownst to us there is a second Duck Tour company in Boston now. We bought tickets and had to take a water shuttle across the harbor to Charlestown where we boarded these so called "DUCKs" which in all actuality are not DUCK's [*sic*] at all but these monstrous [*sic*] vehicles that are very ugly. Since we had already bought the tickets and didn't know any better we boarded this vehicle and had the worst time ever ... We didn't realize that Super Duck Tours is not the tour company that we were looking for which is Boston Duck Tours and saw several of the Boston Duck Tours vehicles drive by filled and with people laughing and having fun. Our DUCK had about 15 people on it and did not seem to have the same vibe as the other Boston Duck Tours that passed us the Boston Duck Tour!

32. This confusion diverts sales away from Boston Duck Tours and tarnishes its carefully crafted reputation.

33. For those consumers and prospective customers who learn that the companies are not affiliated, Super Duck Tours knowingly, intentionally, and wrongfully interferes with customers' purchasing decisions to divert sales away from Boston Duck Tours, either by harassing potential customers, misstating the ticket price of the Boston Duck Tours sightseeing tours, or misstating that the Boston Duck Tours sightseeing tours were sold out. For example,

a. On June 1, 2007, guests arrived at the Prudential Center Boston Duck Tours ticket booth claiming that they were "cornered" by a Super Duck Tours

employee who made an attempt to sell them Super Duck Tours tickets as opposed to buying Boston Duck Tours tickets.

b. On June 1, 2007, a guest complained that he was intercepted inside the Prudential Center by someone trying to get him to take a Super Duck Tours sightseeing tour instead of a Boston Duck Tours sightseeing tour. Two more guests complained about the same type of incident later that day.

c. On or about June 1, 2007, guests complained that Super Duck Tours incorrectly told them Boston Duck Tours was sold out (Boston Duck Tours was not). Guests also said their salespeople were hostile and aggressive towards the guests.

d. On June 6, 2007, a guest at Faneuil Hall said that Super Duck Tours told the guest that Boston Duck Tours tickets cost \$50 when, in fact, the tickets only cost \$27.

e. On June 7, 2007, a guest asked a Boston Duck Tours customer service representative about Boston Duck Tours "Harbor Cruise". The customer confused Boston Duck Tours and Super Duck Tours. The guest then claimed that that Super Duck Tours had told her that Boston Duck Tours' tickets cost \$50 when, in fact, the tickets only cost \$27.

f. See June 19th events described in Paragraph 17, subparts o. and p.

34. Super Duck Tours has used a confusingly similar mark to Boston Duck Tours' marks in connection with the exact same services as those offered by Boston Duck Tours although it knew or should have known of Boston Duck Tours' use of the BOSTON DUCK TOURS Marks. Boston Duck Tours' prior use of the BOSTON DUCK TOURS

Marks for a service that competed directly with Defendant's service demonstrates that Defendant Super Duck Tours had constructive notice of Boston Duck Tours' BOSTON DUCK TOURS service marks when it started using the SUPER DUCK TOURS marks.

35. Super Duck Tours' unauthorized use of the Boston Duck Tours' marks irreparably injures Boston Duck Tours by falsely associating Super Duck Tours with Boston Duck Tours and depriving Boston Duck Tours of the rights in its marks, harming Boston Duck Tours' reputation and creating confusion among the public.

FIRST CAUSE OF ACTION

Federal Trademark Infringement in Violation of Section 32(1) of the Lanham Act (15 U.S.C. §1114)

36. Plaintiff Boston Duck Tours repeats and re-alleges each allegation contained in the preceding paragraphs.

37. Defendant Super Duck Tours uses the unauthorized SUPER DUCK TOURS marks in connection with sale, offer for sale, and advertising of sightseeing services in commerce.

38. Defendant Super Duck Tours' unauthorized use of the SUPER DUCK TOURS marks, as described above, constitutes trademark infringement in violation of Section 32(1) of the Lanham Act, codified at 15 U.S.C. §1114 (1).

39. Defendant Super Duck Tours' unauthorized use of the SUPER DUCK TOURS marks was intended to cause, has caused, is causing, and is likely to continue to cause confusion, or to cause mistake or to deceive.

40. Upon information and belief, Defendant Super Duck Tours' infringement of the SUPER DUCK TOURS marks has been willful, wanton, reckless, and in total disregard of Boston Duck Tours' rights.

41. Defendant Super Duck Tours' unauthorized use of the SUPER DUCK TOURS marks caused and is likely to continue to cause substantial and irreparable injury to Boston Duck Tours, which injury cannot be accurately computed at this time, and will continue to cause substantial and irreparable injury unless Super Duck Tours' use of the SUPER DUCK TOURS mark is immediately enjoined by this Court.

42. By reason of the foregoing, Boston Duck Tours has been damaged and Plaintiff is entitled to injunctive relief and damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION

Federal Unfair Competition in Violation of the Lanham Act **(15 U.S.C. §1125)**

43. Plaintiff Boston Duck Tours repeats and re-alleges each allegation contained in the preceding paragraphs.

44. Defendant Super Duck Tours' unlawful acts constitute use in commerce.

45. Defendant Super Duck Tours' unlawful acts are likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection, or association of Defendant Super Duck Tours with Plaintiff Boston Duck Tours as to the origin, sponsorship, or approval of Defendant's services.

46. Defendant Super Duck Tours has engaged in unlawful acts that constitute unfair competition and false designation of origin in violation of § 43(a) of the Lanham Act, codified at 15 U.S.C. 1125(a).

47. Defendant Super Duck Tours' acts are causing irreparable injury to Boston Duck Tours, for which there is no adequate remedy at law, and will continue to do so unless Super Duck Tours' use of the SUPER DUCK TOURS marks and company name is enjoined by this Court.

48. By reason of the foregoing, Boston Duck Tours has suffered monetary damages and loss of goodwill.

49. Upon information and belief, Super Duck Tours' conduct as described above has been willful, wanton, reckless, and in total disregard for Boston Duck Tours' rights.

THIRD CAUSE OF ACTION

Product Disparagement in Violation of the Lanham Act **(15 U.S.C. §1125(a)(1)(B))**

50. Plaintiff Boston Duck Tours repeats and re-alleges each allegation contained in the preceding paragraphs.

51. Defendant Super Duck Tours and/or its agents or representatives made material misrepresentations or misdescriptions of fact about the nature or character of Plaintiff Boston Duck Tours' services including the capacity and price of those services.

52. Defendant Super Duck Tours and/or its agents or representatives used the false or misleading statements in commerce.

53. Defendant Super Duck Tours and/or its agents or representatives made the representations in the context of commercial advertising or promotion.

54. By reason of the foregoing, Boston Duck Tours has suffered monetary damages and loss of goodwill.

55. Upon information and belief, Super Duck Tours' conduct as described above has been willful, wanton, reckless, and in total disregard for Boston Duck Tours' rights.

FOURTH CAUSE OF ACTION

Trademark Dilution in Violation of the Lanham Act **(15 U.S.C. §1125(c))**

56. Plaintiff's BOSTON DUCK TOURS Marks are famous and well known and recognized in the United States, and were famous before the inception of Defendant's infringing conduct. As such, Plaintiff's BOSTON DUCK TOURS Marks have achieved the degree of fame entitling them to protection under 15 U.S.C. §1125(c).

57. Defendant's use of marks which are confusingly similar to Plaintiff's BOSTON DUCK TOURS Marks in connection with confusingly similar services as well as Defendant's acts of interference have diluted the distinctive quality, strength and reputation of Plaintiff's BOSTON DUCK TOURS Marks, and violates Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

58. Defendant's conduct has demonstrated a willful intent to trade on Plaintiff's reputation and to cause dilution of its famous marks.

59. Plaintiff is entitled to injunctive relief to enjoin Defendant's further use of Plaintiff's trademarks under 15 U.S.C. §1125(c)(1), and damages under 15 U.S.C. §1117 and 1125(c)(2).

FIFTH CAUSE OF ACTION

Trademark Infringement in Violation of Massachusetts Law **(Massachusetts General Law 110H § 12)**

60. Plaintiff Boston Duck Tours repeats and re-alleges each allegation contained in the preceding paragraphs.

61. Defendant Super Duck Tours uses the unauthorized SUPER DUCK TOURS marks without the consent of Boston Duck Tours in connection with the sale, distribution, offering for sale, or advertising of its sightseeing services.

62. Such use is likely to cause confusion or mistake or to deceive as to the source of origin of such services.

63. Defendant Super Duck Tours' unauthorized use of the SUPER DUCK TOURS marks, as described above, constitutes trademark infringement in violation of Massachusetts General Law 110H § 12.

64. Defendant Super Duck Tours' unauthorized use of the SUPER DUCK TOURS marks was intended to cause confusion or mistake or to deceive.

65. Defendant Super Duck Tours' unauthorized use of the SUPER DUCK TOURS marks caused and is likely to continue to cause substantial and irreparable injury to Boston Duck Tours, which injury cannot be accurately computed at this time, and will continue to cause substantial and irreparable injury unless Super Duck Tours' use of the SUPER DUCK TOURS mark is immediately enjoined by this Court.

66. Defendant's conduct as described above has been willful, wanton, reckless, and in violation of the rights of Plaintiff.

67. By reason of the foregoing, Boston Duck Tours has been damaged and Plaintiff is entitled to injunctive relief and damages in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

Unfair Competition and Trademark Infringement in Violation of Massachusetts Common Law

68. Plaintiff Boston Duck Tours repeats and re-alleges each allegation contained in the preceding paragraphs.

69. Plaintiff owns and enjoys common law rights in its BOSTON DUCK TOURS Marks which are superior to any rights which Defendants may claim to any similar mark.

70. Defendant Super Duck Tours' unauthorized use of the SUPER DUCK TOURS marks in connection with the sale, distribution, offering for sale, or advertising of its sightseeing services is, and has been, committed knowingly in order to capitalize on and misappropriate Boston Duck Tours' valuable goodwill in its Marks that it created through continuous usage of its marks over the past fourteen years.

71. Defendant Super Duck Tours' unauthorized use of the SUPER DUCK TOURS marks has and is likely to continue to cause confusion or mistake or to deceive consumers as to the source of origin of such services.

72. Defendant's acts and conduct as set forth herein constitute trademark infringement in violation of Massachusetts common law.

73. Defendant's acts and conduct as set forth herein constitute unfair competition, willful, unfair and deceptive acts or practices within the Commonwealth of Massachusetts and in violation of Massachusetts common law.

74. Both Defendant and Plaintiff are engaged in trade and commerce in the Commonwealth of Massachusetts.

75. Defendant's wrongful and infringing activities have intended to cause, have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Plaintiff's business, reputation, and goodwill.

76. Defendant's conduct as described above has been willful, wanton, reckless, and in violation of the rights of Plaintiff.

77. As a result of Defendant's acts alleged above, Plaintiff is entitled to damages in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION

Unfair Competition in Violation of M.G.L. Ch. 93A

78. Plaintiff Boston Duck Tours repeats and re-alleges each allegation contained in the preceding paragraphs.

79. Both Plaintiff and Defendant are engaged in interstate trade or commerce.

80. The acts complained of herein occurred primarily and substantially in the Commonwealth of Massachusetts because Defendant actively does business in Massachusetts.

81. Defendant's unauthorized use of the BOSTON DUCK TOURS Marks is, and has been, committed knowingly in order to capitalize on and misappropriate Plaintiff's valuable goodwill in the BOSTON DUCK TOURS Marks that it created through long and continuous usage of the BOSTON DUCK TOURS Marks over many years. The acts alleged herein constitute unfair and deceptive practices within the meaning of M.G.L. Ch. 93A, § 11.

82. Defendant and/or its agents or representatives engaged in additional unfair and deceptive business practices when it misstated to Plaintiff's potential customers that Plaintiff was sold out or that its ticket prices were substantially higher than the actual price.

83. Defendant and/or its agents or representatives' unfair and deceptive trade practices were knowing and willful.

84. As a result of Defendant's actions as alleged herein, Plaintiff has suffered and will continue to suffer a loss of money.

85. As a result of Defendant's violations of Chapter 93A as alleged above, Plaintiff is entitled to damages in an amount to be proven at trial, such amount to be doubled or trebled, and an award of reasonable attorneys' fees and costs as provided by statute.

EIGHTH CAUSE OF ACTION

***Trademark Dilution in Violation of Massachusetts Law* (Massachusetts General Law 110H §13)**

86. Plaintiff Boston Duck Tours repeats and re-alleges each allegation contained in the preceding paragraphs.

87. Defendant Super Duck Tours' unauthorized use of the SUPER DUCK TOURS marks was intended to cause, has caused, is causing, and is likely to continue to cause dilution of the distinctive quality of a mark.

88. Such unauthorized use of the SUPER DUCK TOURS marks caused and is likely to continue to cause substantial and irreparable injury to Boston Duck Tours, which injury cannot be accurately computed at this time, and will continue to cause substantial and irreparable injury unless Super Duck Tours' use of the SUPER DUCK TOURS mark is immediately enjoined by this Court.

89. Defendant's conduct as described above has been willful, wanton, reckless, and in violation of the rights of Plaintiff.

90. By reason of the foregoing, Boston Duck Tours has been damaged and Plaintiff is entitled to immediate injunctive relief.

NINTH CAUSE OF ACTION

Intentional Interference with Prospective Business Relationships

91. Plaintiff Boston Duck Tours repeats and re-alleges each allegation contained in the preceding paragraphs.

92. Boston Duck Tours has established business relationships with potential sightseeing tour consumers.

93. Super Duck Tours and/or its agents or representatives were aware of Boston Duck Tours' prospective business relationships.

94. On information and belief, Super Duck Tours and/or its agents or representatives have approached prospective Boston Duck Tours customers. In attempts to divert sales away from Boston Duck Tours, Super Duck Tours has misstated ticket prices and availability of Boston Duck Tours tickets to prospective customers.

95. By making material misrepresentations to prospective customers, Super Duck Tours and/or its agents or representatives have interfered with Boston Duck Tours' prospective business relationships with consumers.

96. Super Duck Tours and/or its agents or representatives' interference with Boston Duck Tours' existing and prospective business relationships was improper in motive and means.

97. By reason of the foregoing, Super Duck Tours and/or its agents or representatives' improper actions have harmed and threaten future harm to Boston Duck Tours and Boston Duck Tours is entitled to damages in an amount to be proven at trial and injunctive relief.

TENTH CAUSE OF ACTION

Defamation of Boston Duck Tours by Super Duck Tours

98. Plaintiff Boston Duck Tours repeats and re-alleges each allegation contained in the preceding paragraphs.

99. Super Duck Tours statements, and/or the statements of its agents or representatives, that Boston Duck Tours charges \$50 for tickets and that certain Boston Duck Tours events were sold out are false and untrue and defame Boston Duck Tours.

100. On information and belief, defendant Super Duck Tours and/or its agents have a pattern or practice of approaching a wide range of prospective Boston Duck Tours customers and making such statements at locations where numerous potential tour customers make purchasing decisions, thereby publishing the statements to numerous persons.

101. Defendant Super Duck Tours and/or its agents negligently published the false and defamatory statements about Boston Duck Tours, causing Boston Duck Tours to suffer damages, including the monetary loss of prospective clients and injury to Boston Duck Tours' business reputation.

102. Defendant Super Duck Tours and/or its agents published the false and defamatory statements with the knowledge that the statements were false, or with reckless disregard as to the falsity of the statements.

103. Defendant Super Duck Tour's and/or its agents' defamatory statements injured the reputation of Boston Duck Tours.

ELEVENTH CAUSE OF ACTION

Commercial Disparagement of Boston Duck Tours by Super Duck Tours

104. Plaintiff Boston Duck Tours repeats and re-alleges each allegation contained in the preceding paragraphs.

105. Super Duck Tours statements, and/or the statements of its agents or representatives, that Boston Duck Tours charges \$50 for tickets and that certain Boston Duck Tours events were sold out are false and untrue and disparaged the Boston Duck Tours services.

106. On information and belief, defendant Super Duck Tours and/or its agents have a pattern or practice of approaching a wide range of prospective Boston Duck Tours customers and making such false and untrue statements at locations where numerous potential tour customers make purchasing decisions, thereby publishing the statements to numerous persons.

107. Defendant Super Duck Tours and/or its agents published the false and disparaging statements about Boston Duck Tours, causing potential customers of Boston Duck Tours to regard Boston Duck Tours as overpriced, overcapacity, and unreliable, and imputing reprehensible conduct to Boston Duck Tours.

108. Defendant Super Duck Tours and/or its agents published the false and disparaging statements about Boston Duck Tours, causing Boston Duck Tours to suffer special and general damages, including the monetary loss of prospective clients and injury to the reputation of Boston Duck Tours.

109. Defendant Super Duck Tours and/or its agents published the false and defamatory statements with the knowledge that the statements were false, or with reckless disregard as to the falsity of the statements.

110. Defendant Super Duck Tour's and/or its agents' defamatory statements injured the reputation of Boston Duck Tours.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Boston Duck Tours respectfully asks this Court to enter judgment for Boston Duck Tours, Limited Partnership, on all counts against Super Duck Tours and to grant Boston Duck Tours, Limited Partnership, the following relief:

1. A temporary restraining order and preliminary injunction preventing:
 - a. Defendant and its officers, directors, employees, agents, affiliates, successors, assigns, and all those in privity or acting in concert with them from using the trademark SUPER DUCK TOURS or a logo containing a cartoon duck or any other trademarks or service marks that may be considered confusing similar to Boston Duck Tours' trademarks in connection with goods or services relating to sightseeing tours in or around Boston or clothing.
 - b. Super Duck Tours, and its officers, directors, employees, agents, affiliates, successors, assigns, and all those in privity or acting in concert with them, from unfairly competing with Boston Duck Tours by making false and misleading statements to prospective Boston Duck Tours customers regarding the pricing or availability of Boston Duck Tours tickets.

2. A permanent injunction restraining Defendant and its officers, directors, employees, agents, affiliates, successors, assigns, and all those in privity or acting in concert with them:
 - a. From in any way using, displaying, advertising, copying, imitating, or infringing upon the BOSTON DUCK TOURS trademarks;
 - b. From using or displaying the BOSTON DUCK TOURS trademarks or confusingly similar variations thereof, in any written or oral advertisements, displays, signs, sales promotions, reservations, Internet or in any other public communication in connection with the sale of Defendant's products or services;
 - c. From otherwise infringing upon Plaintiff's federally registered BOSTON DUCK TOURS trademarks; and
 - d. From otherwise unfairly competing with Plaintiff.
3. Order Defendant to account and pay over to Plaintiff all gains, profits, and advantages derived from the use of the SUPER DUCK TOURS marks pursuant to 15 U.S.C. §1117, M. G. L. 110H § 12 and other applicable law;
4. Order Defendant to pay Plaintiff the damages which Plaintiff has sustained by reason of the conduct alleged herein;
5. Order Defendant to pay damages totaling three times the compensatory damages for its willful and intentional misconduct as provided for in 15 U.S.C. §1117, M.G.L. Ch. 93A and other applicable law;

6. Allow Plaintiff permission to elect, prior to final judgment, statutory damages as its recovery rather than actual damages and profits as provided in 15 U.S.C. §1117;
7. Order Defendant to pay pre-judgment interest on Plaintiff's damages as provided in 15 U.S.C. §1117 and other applicable law;
8. Order Defendant to pay the cost of this action as provided in 15 U.S.C. §1117 and other applicable law;
9. Order Defendant to pay Plaintiff's attorneys' fees as provided by 15 U.S.C. §1117, M. G. L. Ch. 93A and other applicable law; and
10. Grant such other and further relief as is just and proper.

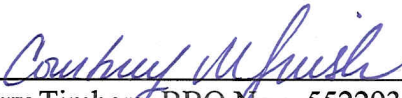
DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a jury trial of any issues in this action so triable.

Dated: July 2, 2007

Respectfully submitted,

Boston Duck Tours, Limited Partnership,
By its Attorneys,

/s/ 

Kerry Timbers, BBO No.: 552293

Julia Huston, BBO No.: 562160

Peter J. Karol, BBO No.: 660338

Courtney M. Quish, BBO No.: 662288

BROMBERG SUNSTEIN, LLP

125 Summer Street - 11th floor

Boston, Massachusetts 02110-1618

617.443.9292

617.443.0004 Fax