

1 MONICA CRUZ THORNTON (SBN 131446)
 2 MARK D. SHIELDS (SBN 220428)
 3 SELMAN BREITMAN LLP
 4 550 West C Street, Suite 1950
 San Diego, California 92101
 Telephone: (619) 564-3600
 Facsimile: (619) 564-3636

5 Attorneys for Plaintiff
 6 TOUGH GUY LIMITED

7
 8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

10
 11 TOUGH GUY LIMITED, a foreign limited
 liability company,

12 Plaintiff,

13 v.

14 TOUGH MUDDER LLC, a Delaware limited
 15 liability company; WILL DEAN, an individual;
 16 GUY LIVINGSTONE, an individual; and
 DOES 1 to 100, inclusive,

17 Defendants.

CASE NO.
 COMPLAINT FOR:

- (1) BREACH OF VERBAL CONTRACT
- (2) BREACH OF WRITTEN CONTRACT
- (3) FRAUD
- (4) NEGLIGENT MISREPRESENTATION
- (5) BREACH OF CONFIDENCE
- (6) INTENTIONAL INTERFERENCE
WITH PERSPECTIVE ECONOMIC
ADVANTAGE
- (7) NEGLIGENT INTERFERENCE WITH
PERSPECTIVE ECONOMIC
ADVANTAGE
- (8) VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE
SECTION 17200, ET SEQ.
- (9) VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE
SECTION 17500, ET SEQ.
- (10) NEGLIGENCE
- (11) VIOLATION OF 15 U.S.C. SECTION
1125(a), ET SEQ. (UNFAIR
COMPETITION)
- (12) VIOLATION OF 15 U.S.C. SECTION
1125(c), ET SEQ. (TRADEMARK
DILUTION)
- (13) VIOLATION OF UNIFORM TRADE
SECRETS ACT (CALIFORNIA CIVIL
CODE § 3426, ET SEQ.)

JURY TRIAL DEMANDED

Selman Breitman LLP
 ATTORNEYS AT LAW

1 Plaintiff TOUGH GUY LIMITED (hereinafter "Plaintiff") by and through its attorneys of
2 record hereby files its complaint and alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has original subject matter jurisdiction over this action pursuant to 28
5 U.S.C. sections 1331 and 1338. This Court has related claim jurisdiction over the state law claims
6 pursuant to 28 U.S.C. sections 1338(b) and 1367. This Court has federal diversity jurisdiction
7 pursuant to 28 U.S.C. sections 1332. The amount in controversy is in excess of \$75,000.

8 2. Venue is proper in this district under 28 U.S.C. section 1391(a)(2) because many of
9 the acts and transactions giving rise to the violations of law complained of herein occurred in this
10 district and because Defendants conduct business themselves or through an agent in this district.

11 **IDENTITY OF THE PARTIES**

12 3. Plaintiff is a limited liability company formed and existing under the laws of the
13 United Kingdom with its principal place of business located in South Staffordshire, United
14 Kingdom.

15 4. Plaintiff is informed and believes, and on that basis alleges, that Defendant
16 TOUGH MUDDER LLC (hereinafter "Tough Mudder") is a Delaware limited liability company
17 having its principal place of business at 228 Park Avenue South, New York, New York.

18 5. Plaintiff is informed and believes, and on that basis alleges, that Defendant WILL
19 DEAN (hereinafter "Dean") is an individual who resides in New York. Plaintiff is further
20 informed and believes, and on that basis alleges, that Dean is the President or Chief Executive
21 Officer of Tough Mudder, and caused and directed those other defendants to engage in the
22 unlawful acts more fully set forth herein, knowing that such actions were unlawful.

23 6. Plaintiff is informed and believes, and on that basis alleges, that Defendant GUY
24 LIVINGSTONE (hereinafter "Livingstone") is an individual who resides in New York. Plaintiff
25 is further informed and believes, and on that basis alleges, that Livingstone is the Chief Operating
26 Officer of Tough Mudder, and caused and directed those other defendants to engage in the
27 unlawful acts more fully set forth herein, knowing that such actions were unlawful.

28 7. Defendants, DOES 1 through 100, inclusive, are sued herein under fictitious names.

1 Their true names and capacities are unknown to Plaintiff. When their true names and capacities
2 are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities
3 herein. Plaintiff is informed and believes and thereon alleges that each fictitiously named
4 Defendant is responsible in some manner for the occurrences herein alleged, and that Plaintiff's
5 damages as herein alleged were proximately caused by each such Defendant.

6 8. Plaintiff is informed and believes, and on that basis alleges, that at all times herein
7 mentioned, all Defendants herein, whether named or fictitiously designated (hereinafter
8 collectively referred to as "Defendants"), were the agents, servants, employees, joint ventures,
9 and/or the alter egos of the remaining Defendants, and the acts of each Defendant were within the
10 course and scope of their agency, service, employment, and with permission, consent, and
11 ratification of each other Defendant.

12 **FACTUAL ALLEGATIONS**

13 9. Over twenty years ago, William Wilson, the founder of Tough Guy Limited, started
14 a foot race in the English countryside, which later became known as Tough Guy. Tough Guy is
15 held annually on the last Sunday of January in Wolverhampton, United Kingdom. Tough Guy
16 considers itself "the safest most dangerous taste of fear in the world."

17 10. Tough Guy is held on a 150-acre dedicated venue. Tough Guy is a cross-county
18 obstacle course, approximately eight miles in length, that contains numerous obstacles including,
19 but not limited to, mud pits covered with barbed wire, stream crossings in near freezing
20 temperatures, three-story high wooden structures covered in cargo netting, electrically charged
21 prods, steep hill climbs in a muddy forest, underground and underwater tunnels, rope crossings
22 that traverse ponds, fire pits and other challenging obstacles. Each year, approximately 5,000
23 participants compete in Tough Guy and the summer version of the race known as Nettle Warrior.
24 Tough Guy, a unique blend of mud, freezing lakes, acrophobia, claustrophobia, barbed wire, fire
25 and electrical shocks, is the only event of its type in the world and is one of the toughest
26 challenges to be undertaken.

27 11. Plaintiff is informed and believes and alleges thereon that in or about 2008 Dean
28 concocted a scheme during his tenure as a Harvard Business School student in which he contacted

1 the organizers of various adventure and multi-sport races held across the world including Plaintiff,
2 boasted of his status as a Harvard Business School graduate student and thereby induced the race
3 organizers to disclose confidential information about their races to Dean purportedly to assist in
4 the preparation of a report required for his Harvard Business School curriculum. Plaintiff is
5 informed and believes, and alleges thereon, that at all relevant times herein, Dean's true intention
6 was to utilize the confidential information obtained from the various race organizers to design,
7 develop, advertise and implement a multi-sport event. Plaintiff was a victim of Dean's scheme as
8 described herein and has filed this action seeking the recovery of damages caused by Dean's
9 wrongful, immoral and despicable conduct.

10 12. Plaintiff is informed and believes, and on that basis alleges, that in or about June
11 2008, Dean first contacted and informed Plaintiff that he was a graduate MBA student at Harvard
12 Business School and that he was conducting a field study for course credit during the fall semester
13 regarding various races conducted around the world. He further advised Plaintiff that he was
14 interested in obtaining information regarding Plaintiff's Tough Guy race. Plaintiff agreed to assist
15 in Dean's endeavors and to provide requested information if and only if such information was not
16 disclosed to parties unrelated to his Harvard field study or utilized for any commercial purpose
17 whatsoever.

18 13. Plaintiff is informed and believes, and on that basis alleges, that on or about
19 September 7, 2008, Dean clarified the purpose of the Harvard field study and informed Plaintiff
20 via email that he intended to analyze the feasibility and logistics of establishing a Tough Guy
21 event in the U.S. Dean informed Plaintiff that he intended to focus on the identity of target
22 customers in the U.S, cost-effective marketing to U.S. competitors, applicable legal restrictions
23 and regulations in the U.S., possible locations for a U.S. Tough Guy event, financial accounting of
24 the cost of conducting Tough Guy and the identification of potential U.S. sponsors. Dean also
25 indicated his intention to examine the likelihood of others attempting to copy Tough Guy, methods
26 to prevent competitors from copying Tough Guy and how to respond if such attempts were made.
27 Plaintiff agreed to provide information to Dean to further his endeavors so long as the information
28 provided was not disclosed or utilized for commercial purposes. Dean agreed that he would not

1 disclose the trusted information provided by Plaintiff to parties unrelated to his Harvard field
2 study or use the information for economic gain.

3 14. On October 1, 2008, Dean advised Plaintiff via email of his plans to travel to the
4 U.K. to meet William Wilson whose Tough Guy pseudonym is Mr. Mouse. Dean also stated that
5 his aim was to assist Plaintiff in establishing a Tough Guy event in the U.S. To accomplish this,
6 Dean requested Plaintiff's permission to conduct an online survey, which was sent to past Tough
7 Guy competitors to identify the various groups of persons that participate in Tough Guy. Dean
8 further advised Plaintiff that he intended to determine whether similar groups of people in the U.S.
9 would be interested in Tough Guy and, if so, how best to advertise to these groups. In this regard,
10 Dean requested that Plaintiff provide information regarding Plaintiff's marketing and advertising
11 plans including the role of media coverage in promoting Tough Guy. Dean also requested that
12 Plaintiff divulge the U.S. locations where Plaintiff contemplated conducting a Tough Guy event.
13 Dean further requested historical data from Plaintiff regarding the annual number of Tough Guy
14 competitors and the range of entry fees paid. Dean requested information regarding Tough Guy's
15 accounting so that he could prepare a draft budget of the funds necessary to launch Tough Guy in
16 the U.S. Indeed, Dean advised Plaintiff that he wanted to understand exactly the cost of setting up
17 the Tough Guy race "obstacle by obstacle" and how much the event generated in terms of revenue
18 and profit. Dean advised Plaintiff that he would prepare a written report for Plaintiff that
19 identified the size of the opportunity in the U.S. in terms of revenues and participants and
20 provided a blue-print of how to launch Tough Guy in the U.S. including, but not limited to, the
21 cost of exporting Tough Guy to the U.S., possible U.S. locations and the identity of U.S. partners.

22 15. Plaintiff is informed and believes, and alleges thereon, that on or about October 2,
23 2008, Dean traveled to the U.K. to meet Mr. Wilson in person. Mr. Wilson presented Dean with a
24 written confidentiality agreement documenting Dean's agreement not to use for any commercial
25 end whatsoever, or disclose to any person not connected with Dean's Harvard field study, the
26 information regarding Tough Guy disclosed to him by Plaintiff. Dean signed the confidentiality
27 agreement on or about October 2, 2008.

28 16. Plaintiff is informed and believes, and alleges thereon, that on or about October 14,

1 2008, Dean apprized Plaintiff of the status of his Harvard field study via email and advised
2 Plaintiff that he was in the process of preparing an online survey, which was remitted to previous
3 Tough Guy competitors. Dean also advised Plaintiff that he scheduled a teleconference with
4 Plaintiff's accountant to obtain financial information regarding Plaintiff's operations. Dean
5 further advised that he would conduct focus groups to identify potential target groups in the U.S.
6 using video footage of Tough Guy. Based on information provided by Plaintiff, Dean also stated
7 he would prepare detailed cash flow forecasts, balance sheets with estimates of capital
8 requirements and profit and loss statements for possible operations in the U.S., identify target
9 markets for licensing operations and profile possible U.S. partners. He also advised that he would
10 prepare a report that provides a series of recommendations as to how Plaintiff might license its
11 Tough Guy, where to conduct U.S. events, and provide an estimate as to how profitable a U.S.
12 venture would be for Plaintiff and its potential partners. Plaintiff disclosed information to Dean
13 per his requests subject to and conditioned expressly upon Dean's agreement not to disclose the
14 information or use it for commercial purposes.

15 17. On or about October 14, 2008, Dean remitted to Plaintiff an email requesting
16 detailed information regarding Plaintiff's customers including, but not limited to, the number of
17 Tough Guy competitors by city, county and country, the gender of competitors, the number of
18 individual competitors and teams, the average size of the teams, the names of all teams, historical
19 breakdown of the number of competitors at each race, historical entry fees for each race,
20 breakdown of when entries were received, number of competitors completing more than one
21 Tough Guy event, average age of competitors, number of people that failed to complete the course
22 and data regarding the type of employment of Tough Guy competitors. Thereafter, Plaintiff
23 disclosed information to Dean per his requests and his representation that such information would
24 not be disclosed or used for economic gain.

25 18. Plaintiff is informed and believes, and alleges thereon, that on or about November
26 5, 2008, Dean advised Plaintiff via email that he was conducting meetings with personnel from
27 other races in the U.S. Dean stated that these entities agreed to meet with him and give "up their
28 time and information for free for no other reason than I am a Harvard MBA." Dean further

1 advised that he received responses to the surveys remitted to Plaintiff's competitors yielding
2 useful information as to which obstacles were the most popular and, thus, which obstacles should
3 be the focus of a U.S. Tough Guy event.

4 19. On or about November 20, 2008, Dean acknowledged via email Plaintiff's
5 concerns regarding the possibility that Dean or a third party could use the information provided by
6 Plaintiff for economic gain. In his email, Dean reaffirmed his representation that he would not use
7 the information provided for any commercial purposes and acknowledged that he had contracted
8 with Plaintiff to that end.

9 20. Plaintiff is informed and believes, and alleges thereon, that in or about January
10 2009, Dean presented to Plaintiff a copy of the purported Harvard Business School field study
11 report entitled "Tough Guy – Evaluating the US/International Opportunity."

12 21. Plaintiff is informed and believes, and alleges thereon, that following the
13 completion of his report, Dean ceased communications with Plaintiff. Plaintiff is informed and
14 believes and alleges thereon that in or about February 2009, Dean began marketing, promoting and
15 advertising a series of races called Tough Mudder via a retail website available on the World Wide
16 Web with an Internet address resolving at the URL www.toughmudder.com. In addition,
17 Defendants maintain pages on popular social networking site including, but not limited to,
18 Facebook and YouTube..

19 22. Plaintiff is informed and believes, and on that basis alleges, that Defendants' Tough
20 Mudder race is an attempt to replicate Tough Guy. Plaintiff is informed and believes, and alleges
21 thereon, that based on information disclosed by Plaintiff, Defendants designed, developed,
22 advertised, marketed, promoted and implemented the Tough Mudder race. Defendants' Facebook
23 page and website include a course description of the Tough Mudder race, which depicts multiple
24 obstacles based on obstacles present in Tough Guy. Furthermore, Defendants' website and
25 Facebook and YouTube pages utilized photographs and videos of Tough Guy as representative
26 depictions of the Tough Mudder race. Defendants also utilized posters, which contained
27 photographs of Tough Guy to advertise, market and promote the Tough Mudder race.

28 23. Tough Mudder currently has thirteen (13) races scheduled in twelve (12) states

1 throughout the U.S. California is the only state where two (2) Tough Mudder races are scheduled
2 to be held. The Northern California race is scheduled for October 9, 2010, and will be held in
3 Bear Valley, California. The Southern California Race will be held in 2011 at a specific location
4 yet to be disclosed, but which Tough Mudder represents is approximately two (2) hours drive from
5 Los Angeles and San Diego.

6 **FIRST CAUSE OF ACTION**

7 **Breach of Verbal Contract**

8 **(Against Dean and Does 1 through 100)**

9 24. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this
10 complaint as though fully and completely set forth herein.

11 25. Plaintiff is informed and believes, and alleges thereon, that in or about June 2008,
12 Dean verbally agreed not to disclose to any parties unrelated to Dean's Harvard Business School
13 field study any information provided to Dean by Plaintiff pertaining to Tough Guy. Dean further
14 verbally agreed that he would not use for any commercial purpose whatsoever the information
15 provided by Plaintiff.

16 26. Plaintiff performed all obligations required pursuant to the verbal contract.

17 27. All conditions required for Dean's performance occurred.

18 28. Dean materially breached the contract in a number of ways, including, but not
19 limited to, disclosing to others and by using for commercial and economic purposes the
20 information provided by Plaintiff to Dean regarding Tough Guy. Indeed, Dean used the
21 information to develop, implement, advertise and market the Tough Mudder race series. In
22 addition, Dean materially breached the contract by utilizing photographs and videos of Tough Guy
23 to advertise, promote and market the Tough Mudder race.

24 29. The material breaches of the verbal contract by Dean caused damages to Plaintiff.
25 Said damages are ongoing and will be according to proof at trial.

26 30. In addition to the recovery of damages, Plaintiff requests any such other relief as
27 the court may deem appropriate pursuant to this cause of action.

28 ///

SECOND CAUSE OF ACTION

Breach of Written Contract

(Against Dean and Does 1 through 100)

31. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this complaint as though fully and completely set forth herein.

32. On or about October 2, 2008, Dean entered into a written contract with Plaintiff, which in pertinent part stated as follows:

The undersigned, Will Dean, is a business student, and is using Tough Guy and its related businesses and charity for a business planning study. As part of this, Will requires information on the operation and financial accounts of Tough Guy and its related operations. The following information will be available:

- Competitor demographics
- Financial breakdowns of income and expenditure
- History of expressed media interest and actual media exposure
- Web and media statistics created between Tough Guy and competitors
- Tough Guy site layouts and costs
- Unfettered access to Mr. Mouse

The undersigned, Will Dean, recognize the commercial importance of the above information to the continued success of Tough Guy. In recognition of this they agree that this information may not be used to any commercial end whatsoever, nor may any person not connected to Will's research project have access to this information, including the final business plan or report. In addition, in payment for this access Mr. Mouse requires a copy of the final business plan.

33. Plaintiff performed all obligations required pursuant to the contract.

34. All conditions required for Dean's performance occurred.

35. Dean materially breached the contract in a number of ways, including, but not limited to, disclosing to others and by using for commercial and economic purposes the information provided by Plaintiff to Dean regarding Tough Guy. Indeed, Dean used the information to develop, advertise, promote, market and implement the Tough Mudder race. In addition, Dean materially breached the contract by utilizing photographs and videos of the Tough Guy race to advertise, promote and market the Tough Mudder race.

36. The material breaches of the contract by Dean caused damages to Plaintiff. Said damages are ongoing and will be according to proof at trial.

1 **FOURTH CAUSE OF ACTION**

2 **Negligent Misrepresentation**

3 **(Against All Defendants)**

4 48. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this
5 complaint as though fully and completely set forth herein.

6 49. Defendants repeatedly represented to Plaintiff that Defendants would not disclose
7 or use for commercial purposes information provided by Plaintiff to Defendants regarding Tough
8 Guy.

9 50. Defendants' representations that Defendants would not disclose or use for
10 commercial purposes information provided by Plaintiff were false.

11 51. Defendants had no reasonable grounds to believe that the representations were true
12 when Defendants made the representations.

13 52. Defendants intended that Plaintiff rely on the representations.

14 53. Plaintiff reasonably relied on Defendants' representations.

15 54. As a proximate result of Defendants' misrepresentations, Plaintiff suffered
16 damages.

17 55. Plaintiff's reliance on Defendants' representations was a substantial factor in
18 causing Plaintiff's harm.

19 56. Plaintiff is entitled to recover damages according to proof and such other relief as
20 the court deems appropriate pursuant to this cause of action.

21 **FIFTH CAUSE OF ACTION**

22 **Breach of Confidence**

23 **(Against All Defendants)**

24 57. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this
25 complaint as though fully and completely set forth herein.

26 58. Plaintiff conveyed confidential and novel information to Defendants.

27 59. Defendants had knowledge that the information was disclosed in confidence.

28 60. There was an understanding between Defendants and Plaintiff that the confidence

1 be maintained.

2 61. Defendants disclosed and used the information in violation of the understanding.

3 62. As a proximate result of Defendants' disclosure and use of the confidential
4 information, Plaintiff sustained harm.

5 63. Plaintiff is entitled to recover damages according to proof and such other relief as
6 the court deems appropriate pursuant to this cause of action.

7 **SIXTH CAUSE OF ACTION**

8 **Intentional Interference with Prospective Economic Advantage**

9 **(Against All Defendants)**

10 64. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this
11 complaint as though fully and completely set forth herein.

12 65. Plaintiff is informed and believes, and alleges thereon, that Plaintiff and Devon
13 Anderson, a Utah-based entrepreneur, were engaged in an economic relationship that likely would
14 have resulted in economic benefit to Plaintiff.

15 66. Defendants knew of the economic relationship engaged in between Plaintiff and
16 Devon Anderson.

17 67. Defendants intended to disrupt the economic relationship of Plaintiff and Devon
18 Anderson.

19 68. Defendants engaged in wrongful, tortious conduct including, but not limited to,
20 intentionally misrepresenting to Plaintiff that Defendants would not disclose to third parties or
21 utilize information provided by Plaintiff to Defendants for commercial purposes. Defendants
22 engaged in further tortious conduct including, but not limited to, advertising, promoting and
23 marketing Defendants' Tough Mudder race through the improper use of videos and photographs
24 of Tough Guy in violation of Business & Professions Code sections 17200 and 17500, *et seq.*, and
25 engaging in unethical and wrongful business practices.

26 69. Defendants' wrongful conduct disrupted the economic relationship of Plaintiff and
27 Devon Anderson and caused Plaintiff harm.

28 70. Defendants' wrongful conduct was a substantial factor in causing Plaintiff's harm.

EIGHTH CAUSE OF ACTION

Violation of Business & Professions Code Section 17200, *et seq.*

(Against All Defendants)

1
2
3
4 81. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this
5 complaint as though fully and completely set forth herein.

6 82. Defendants' actions discussed herein constitute unfair competition within the
7 meaning of California Business and Professions Code section 17200.

8 83. Defendants' illegal, unfair and fraudulent business acts and practices as described
9 herein include, but are not limited to, misrepresenting to Plaintiff that Defendants would not
10 disclose to third parties or utilize information provided by Plaintiff to Defendants for commercial
11 purposes, advertising and marketing Defendants' Tough Mudder race through the improper use of
12 videos and photographs of Tough Guy, attempting to conceal from Plaintiff Defendants'
13 unauthorized use of Tough Guy video and photographs, engaging in unethical business practices,
14 retaining the profits derived therefrom and failing to compensate Plaintiff after Defendants'
15 misconduct was brought to light. Plaintiff has sustained injury due to Defendants' advertising
16 activities including, but is not limited to, the unauthorized use of photographs and videos of Tough
17 Guy to advertise, market and promote Tough Mudder.

18 84. Defendants engaged in a pattern and practice of unfair business practices and
19 untoward acts, of the type described above, with Plaintiff and members of the public. Defendants'
20 unfair business practices pose a continued threat to the public. Injunctive relief is necessary to
21 compel an end to Defendants' unfair business practices. Any other legal remedy is insufficient to
22 address the threat posed by Defendants' unfair business practices.

23 85. Plaintiff is entitled to equitable relief including an order of this court requiring that
24 Defendants immediately cease all acts of unfair competition and be enjoined from continuing to
25 conduct business through business practices determined to be unlawful, unfair, misleading and/or
26 deceptive. Plaintiff is further entitled to full and complete restitution for all Defendants' illegal,
27 unfair and fraudulent business acts and disgorgement of all improper revenue derived from
28 Defendants' wrongful conduct.

NINTH CAUSE OF ACTION

Violation of Business & Professions Code Section 17500, *et seq.*

(Against All Defendants)

86. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this complaint as though fully and completely set forth herein.

87. Business and Professions Code section 17500, *et seq.* (“False Advertising Law”) prohibits a person from making or disseminating either to the public in California or from this State to the public in another state any advertisements or marketing statements or representations which the issuer knows, or which through the exercise of reasonable care should have been known, to be untrue, misleading or confusing.

88. As more fully described above, Defendants’ conduct constitutes, unfair, unlawful and anticompetitive business acts or practices within the meaning of the False Advertising Law. Defendants knew, or reasonably should have known, that the unlawful, unfair and improper use of photographs and videos of Tough Guy to advertise, promote and market Tough Mudder would likely deceive members of the public.

89. Defendants’ illegal, unfair and fraudulent business acts and practices as described herein include, but are not limited to, advertising, promoting and marketing Defendants’ Tough Mudder races through the improper use of videos and photographs of Tough Guy in violation of Business & Professions Code sections 17500, *et seq.* Plaintiff sustained injury due to Defendants’ advertising activities including, but not limited to, the unauthorized use of photographs and videos of Tough Guy to advertise, market and promote Tough Mudder.

90. Defendants have each engaged in a pattern and practice of unfair business practices and untoward acts of the type described above. Injunctive relief is necessary to compel an end to Defendants’ unfair business practices. Any other legal remedy is insufficient to address the threat posed of Defendants’ unfair business practices.

91. Plaintiff is entitled to equitable relief including an order of this court requiring that Defendants immediately cease all acts of unfair competition and be enjoined from continuing to conduct business through business practices determined to be unlawful, unfair, misleading and/or

1 deceptive in conjunction therewith. Plaintiff is further entitled to full and complete restitution for
2 all Defendants' illegal, unfair and fraudulent business acts and disgorgement of all revenue
3 derived from Defendants' wrongful conduct.

4 **TENTH CAUSE OF ACTION**

5 **Negligence**

6 **(Against All Defendants)**

7 92. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this
8 complaint as though fully and completely set forth herein.

9 93. Defendants had a legal duty to conform to a standard of conduct to protect Plaintiff.

10 94. Defendants failed to meet the legal duty to conform to a standard of conduct to
11 protect Plaintiff.

12 95. Plaintiff sustained damages as a proximate result of Defendants' failure to meet the
13 legal duty to conform to a standard to conduct to protect Plaintiff.

14 96. Plaintiff is entitled to recover damages according to proof and such other relief as
15 the court deems appropriate pursuant to this cause of action.

16 **ELEVENTH CAUSE OF ACTION**

17 **Violation of 15 U.S.C. Section 1125(a), et seq. (Unfair Competition)**

18 **(Against All Defendants)**

19 97. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this
20 complaint as though fully and completely set forth herein.

21 98. Plaintiff is the owner of trademarks associated with Tough Guy whose trademarks
22 Defendants have infringed and are infringing. Each of these trademarks is inherently distinctive.
23 Plaintiff, moreover, has developed and maintained substantial secondary meaning in each of these
24 trademarks.

25 99. Defendants used and are using Plaintiff's unregistered trademarks in commerce
26 without the authorization of Plaintiff in a way that has caused consumer confusion as to Plaintiff's
27 association with, affiliation with, or sponsorship of Defendants' Tough Mudder race and the
28 services provided thereby. These actions constitute unfair competition in violation of 15 U.S.C.

1 section 1125(a). Such actions were intended to cause confusion, have caused confusion, and will
2 continue to cause confusion unless enjoined.

3 100. Defendants' use of the Tough Mudder brand name and use of photographs and
4 videos of Tough Guy to advertise, promote, market and sell products or services in direct
5 competition with Plaintiff's products and services constitutes Unfair Competition pursuant to 15
6 U.S.C. section 1125(a). Defendant's use of the Tough Mudder brand name and use of
7 photographs and videos of Tough Guy is likely to cause confusion, mistake and deception among
8 consumers. Defendants' unfair competition has caused and will continue to cause damage to
9 Plaintiff, and is causing irreparable harm to Plaintiff for which there is no adequate remedy at law.

10 101. Defendants' aforesaid acts are in violation of section 43(a) of the Lanham Act, 15
11 U.S.C. section 1125(a), in that Defendants' use of Plaintiff's trademarks and use of photographs
12 and videos of Tough Guy in connection with Defendants' infringing Tough Mudder race in
13 interstate commerce constitute unfair competition

14 102. At all material times, Defendants acted in bad faith, oppressively and maliciously
15 toward Plaintiff, with intent to injure Plaintiff, thereby entitling Plaintiff to treble damages against
16 Defendants, and each of them, in an unascertained amount. Plaintiff will seek leave to amend this
17 Complaint when such damages have been ascertained.

18 103. Plaintiff has no adequate remedy at law. If Defendants' activities are not enjoined,
19 Plaintiff will continue to suffer irreparable harm and injury to its goodwill and reputation.

20 104. As a result of Defendants' activities, Plaintiff has been damaged in an amount to be
21 ascertained at trial.

22 105. Plaintiff is entitled to injunctive relief as well as all other remedies available under
23 the Lanham Act.

24 **TWELFTH CAUSE OF ACTION**

25 **Violation of 15 U.S.C. Section 1125(c), et seq. (Dilution of Famous Mark)**

26 **(Against All Defendants)**

27 106. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 of this
28 complaint as though fully and completely set forth herein.

1 of competitors by city, county and country, breakdown of competitors by gender,
2 breakdown of individual and team competitors, list of all team names, entry fees for
3 each race, breakdown of dates when entries were received by month, number of
4 competitors completing more than one Tough Guy race, number of competitors
5 completing multiple Tough Guy races, average age of competitors, percentage of
6 competitors that failed to complete the course, percentage breakdown of
7 employment status of prior competitors;

- 8 • Financial data including the costs to construct the Tough Guy obstacles, course
9 maintenance, man hours for course maintenance and various overhead costs;
- 10 • The number of employees and volunteers necessary to conduct Tough Guy both
11 prior to and on the day of the event;
- 12 • The role and functions performed by Tough Guy employees and numerous
13 volunteers;
- 14 • Manner and method of solicitation of Tough Guy volunteers;
- 15 • The manner of method of communication among Tough Guy employees,
16 volunteers, emergency personnel and others on the day of the event;
- 17 • The manner and method of communications between Tough Guy and its
18 competitors prior to the day of the event;
- 19 • The use and deployment of onsite emergency personnel;
- 20 • Competitor accommodations including, but not limited to, shower and changing
21 facilities;
- 22 • Parking logistics;
- 23 • Intricate course details including, but not limited to, the cost of course construction,
24 use of surveyor architects and testing methods;
- 25 • Race day registration protocol for competitors;
- 26 • The method, use and deployment of aid stations during and after the event;
- 27 • Costs for finisher awards, certificates and t-shirts;
- 28 • Financial analysis of income received and direct costs for Tough Guy from 2004 –

1 2007.

2 112. Defendants acquired Plaintiff's trade secrets through improper means by
3 misrepresenting to Plaintiff that the trade secrets would not be disclosed to others or used for
4 commercial purposes.

5 113. Defendants willfully and maliciously misappropriated Plaintiff's trade secrets by
6 repeatedly assuring Plaintiff that the trade secrets would not be disclosed or used for commercial
7 purposes when at the time of such false representations Defendants intended to use the information
8 to establish a competing race in the U.S.

9 114. Plaintiff's trade secrets were obtained over the course of more than 20 years as
10 Plaintiff developed, refined and improved upon Tough Guy. The trade secrets derived
11 independent economic value, actual and potential, to Plaintiff by not being generally known to the
12 public or to other persons that could obtain economic value from its disclosure or use.

13 115. Defendants knew or had reason to know that Dean acquired Plaintiff's trade secrets
14 through improper means including, but not limited to, false misrepresentations by Dean that the
15 trade secrets would not be disclosed or used for commercial purposes.

16 116. Plaintiff made reasonable efforts to maintain the secrecy of the disclosed trade
17 secrets by repeatedly requiring verbal and written assurances from Defendants that the trade
18 secrets would not be disclosed to others or used for commercial purposes.

19 117. Defendants willfully and maliciously misappropriated the trade secrets by using the
20 trade secrets to design, develop, advertise, market and implement the competing Tough Mudder
21 race series.

22 118. As a proximate result of Defendants' misappropriation of Plaintiff's trade secrets,
23 Plaintiff suffered damages in an amount to be determined at trial, according to proof.

24 119. Plaintiff requests injunctive relief including an order of this court requiring that
25 Defendants immediately cease all use of Plaintiff's trade secrets.

26 120. Plaintiff seeks to recover all profits and revenues garnered by Defendants for the
27 unjust enrichment caused by Defendants' misappropriation of Plaintiff's trade secrets.

28 121. Plaintiff requests the court award exemplary damages and reasonable attorney's

1 fees and costs based on Defendants' willful and malicious misappropriation.

2 122. Plaintiff is entitled to the recovery of damages, unjust enrichment, restitution,
3 attorney's fees and costs pursuant to proof at trial, royalties, injunctive and equitable relief and
4 such further relief deemed appropriate by the court pursuant to this cause of action.

5 **JURY TRIAL DEMAND**

6 Pursuant to Federal Rules of Civil Procedure sections 38(b) and 5(d) and Local Rule 3-6,
7 Plaintiff demands a jury trial of all issues triable by jury.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff respectfully requests entry of judgment in its favor and against
10 Defendants on all of the above causes of action as follows:

11 1. A temporary, preliminary and/or permanent order providing for equitable and
12 injunctive relief;

13 2. An order enjoining Defendants from continuing or allowing continuation of the acts
14 and practices complained of herein;

15 3. An order requiring Defendants to provide restitution to Plaintiff to the full extent
16 permitted by law;

17 4. That Defendants be required to account for all gains, profits and advantages derived
18 from their acts alleged herein;

19 5. An order requiring Defendants to disgorge all ill-gotten profits derived from its
20 conduct as alleged herein;

21 6. That Plaintiff recover all compensatory, incidental, consequential and statutory
22 damages in an amount according to proof at trial;

23 7. That this court enter a judgment finding that Defendants have infringed, and
24 willfully infringed, Plaintiff's trademarks;

25 8. That this court enter a judgment finding that Defendants have diluted, and willfully
26 diluted, Plaintiff's trademarks;

27 9. That this court order Defendants to show proof of destruction of any and all
28 marketing, advertisements, publications or other materials in their possession, custody or control

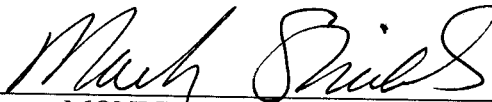
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

that depict or reference Plaintiff's trademarks;

10. That Plaintiff recover punitive damages;
11. That Plaintiff recover attorneys' fees and costs of suit incurred in this action;
12. That Plaintiff recover expert fees and costs incurred in this action;
13. That Plaintiff recover pre-judgment interest;
14. That Plaintiff recover royalties; and,
15. Such other and further relief that the Court deems just, necessary or proper.

DATED: June 10, 2010

SELMAN BREITMAN LLP

By: 
MONICA CRUZ THORNTON
MARK D. SHIELDS
Attorneys for Plaintiff
TOUGH GUY LIMITED