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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 BALL & CHAIN LLC, a Washington limited liability)
company,)

9)
10 Plaintiff,)

11 v.)

12 TUTM ENTERTAINMENT, INC., a New Jersey)
corporation,)

13)
14 Defendant.)

Civil Action No.

**COMPLAINT FOR TRADEMARK
INFRINGEMENT AND RELATED
CAUSES OF ACTION**

JURY TRIAL DEMANDED

15
16 Plaintiff, Ball & Chain LLC (“Ball & Chain”), alleges the following as its Complaint against
17 Defendant, TUTM Entertainment, Inc. (“TUTM”).

18 **I. PARTIES**

19 1. Ball & Chain is a Washington limited liability company with its principal place of
20 business located in Auburn, Washington. Ball & Chain is the owner of the trademarks and federal
21 trademark registrations from which this action arises, including but not limited to HOW WELL DO
22 YOU KNOW THE BACHELORETTE, HOW WELL DO YOU KNOW THE BRIDE, and IOU (the
23 “Marks”) for party games.

24 2. TUTM is a New Jersey corporation with its principal place of business located in Edison
25 New Jersey. Upon information and belief, TUTM conducts business in the State of Washington through

1 at minimum online sales and advertising activities.

2 3. On information and belief, TUTM and/or its distributors/retail customers, or both, offers
3 for sale and sells the infringing products that are the subject of this action in the State of Washington
4 under the infringing trademarks HOW WELL DO YOU KNOW THE BACHELORETTE and IOU for
5 party games that compete directly with Ball & Chain's Marks.

6 **II. JURISDICTION AND VENUE**

7 4. This action arises under the Trademark Act of July 5, 1946 (the "Lanham Act"), as
8 amended (15 U.S.C. § 1051 et seq.). This Court has jurisdiction over the subject matter of this action
9 pursuant to 15 U.S.C. §§ 1053, 1121(a), and 1125(a) and (c), and 28 U.S.C. § 1331 (*federal question*).

10 5. TUTM is subject to personal jurisdiction of this Court because it has offered to sell
11 and/or sold, either by itself and/or through established distribution channels, adult novelty games and
12 party games within the State of Washington, including specifically the infringing HOW WELL DO
13 YOU KNOW THE BACHELORETTE and IOU party games.

14 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

15 **III. FIRST CLAIM FOR RELIEF**

16 **(Statutory Trademark Infringement Under 15 U.S.C. § 1114)**

17 7. Ball & Chain incorporates by reference paragraphs 1 through 6 set forth above.

18 8. Ball & Chain is the owner of various IOU trademark registrations. In the United States,
19 Ball & Chain's marks were registered on the principal register of the United States Patent and
20 Trademark Office on September 9, 2008 and June 16, 2009, bearing Registration Numbers 3498101,
21 3498123, and 3640775, respectively. The mark IOU was first used in interstate commerce at least as
22 early as November 11, 2003 on games.

23 9. On information and belief, TUTM recently began using the mark IOU on a party game.

24 10. TUTM's use of the identical and confusingly similar mark IOU was intended to trade on
25

1 the goodwill established by Ball & Chain through years of use of the mark IOU.

2 11. Upon information and belief, TUTM had knowledge of Ball & Chain's senior and
3 superior rights in the IOU mark. TUTM has knowingly sold the infringing party game using the IOU
4 mark for no less than eight months.

5 12. TUTM's IOU mark is nearly identical to and, at minimum is, confusingly similar to Ball
6 & Chain's IOU trademark. TUTM's use of the IOU mark on a party game is likely to create and, upon
7 information and belief, has created actual confusion in the market place and continues to create a
8 likelihood of confusion. Indeed, TUTM and Ball & Chain sell their respective IOU games through the
9 same distributors/retailers.

10 13. TUTM's unauthorized use of an identical and confusingly similar mark in connection
11 with selling party games is likely to cause confusion, mistake, or deception of others, as to the
12 affiliation, connection, or association of TUTM with Ball & Chain, and also causes, and is likely to
13 cause, confusion, mistake, or deception as to the origin, sponsorship, or approval of the goods and
14 commercial activities of TUTM.

15 14. The use of Ball & Chain's registered marks constitutes trademark infringement in
16 violation of 15 U.S.C. § 1114.

17 15. TUTM knew, or should have known, of Ball & Chain's rights, and TUTM's trademark
18 infringement is knowing, willful, and deliberate, making this an exceptional case within the meaning of
19 15 U.S.C. § 1117.

20 16. Ball & Chain has been damaged by such trademark infringement in an amount that will
21 be proved at trial.

22 17. The harm to Ball & Chain arising from TUTM's trademark infringement cannot be fully
23 measured or compensated in economic terms. TUTM's actions have irreparably damaged, and will
24 continue to irreparably damage, Ball & Chain's market, reputation, and goodwill, and may discourage
25 current and potential customers from dealing with Ball & Chain. Such irreparable harm will continue
unless TUTM's acts are enjoined during the pendency of this action and thereafter.

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IV. SECOND CLAIM FOR RELIEF

(False Designation of Origin under 15 U.S.C. § 1125(a))

18. Ball & Chain incorporates by reference paragraphs 1 through 17 set forth above.

19. In addition to its registered IOU marks, Ball & Chain owns the marks HOW WELL DO YOU KNOW THE BACHELORETTE and HOW WELL DO YOU KNOW THE BRIDE for use with a party game marketed to, in large part, people planning, holding, and attending a party for a bride to be.

20. Ball & Chain has used its HOW WELL DO YOU KNOW THE BACHELORETTE mark in interstate commerce since as early as December 2003 for party games—many years before TUTM started using its HOW WELL DO YOU KNOW THE BACHELORETTE mark on its directly competing party game for a party game marketed to, in large part, people planning, holding, and attending a party for a bride to be.

21. TUTM's unauthorized use of the HOW WELL DO YOU KNOW THE BACHELORETTE and IOU marks, as described above, in connection with party games constitutes a false designation of origin, false or misleading description, and/or false or misleading representation. Such unauthorized use causes, has caused, and is likely to continue to cause, confusion, mistake, or deception of others, as to the affiliation, connection, or association of TUTM and/or its HOW WELL DO YOU KNOW THE BACHELORETTE and IOU party games with Ball & Chain and/or its HOW WELL DO YOU KNOW THE BACHELORETTE and IOU party games, and also has caused, and is likely to continue to cause, confusion, mistake, or deception as to the origin, sponsorship, or approval of the services and commercial activities of Ball & Chain.

22. Such false designation, description, and/or representation constitutes unfair competition and is an infringement of Ball & Chain's rights in its Marks in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

23. TUTM knew, should have known, and knows of Ball & Chain's rights. Nevertheless, TUTM continues to sell its infringing party games through the same distribution and retail chains as Ball & Chain. TUTM's false description, false representation, and false designation of origin are knowing,

1 willful, and deliberate making this an exceptional case within the meaning of 15 U.S.C. § 1117.

2 24. Ball & Chain has been, and will continue to be, damaged by such false description, false
3 representation, and false designation of origin in an amount to be proved at trial.

4 25. Ball & Chain has been, and will continue to be, damaged in a manner and amount that
5 cannot be fully measured or compensated in economic terms. TUTM's actions have damaged, and will
6 continue to damage, Ball & Chain's market, reputation, and goodwill, and may discourage current and
7 potential customers from dealing with Ball & Chain. Such irreparable harm will continue unless
8 TUTM's acts are enjoined during the pendency of this action and thereafter.

9 **V. THIRD CLAIM FOR RELIEF**

10 **(Washington Consumer Protection Act RCW 19.86.020)**

11 26. Ball & Chain incorporates by reference paragraphs 1 through 25 set forth above.

12 27. TUTM's unauthorized use of the HOW WELL DO YOU KNOW THE
13 BACHELORETTE and IOU marks in connection with party games has caused, and is likely to continue
14 to cause, confusion and mistake with Ball & Chain's Marks used in association with party games.
15 TUTM's use of the HOW WELL DO YOU KNOW THE BACHELORETTE and IOU marks deceives,
16 has deceived and is likely to continue to deceive, others into believing that TUTM's HOW WELL DO
17 YOU KNOW THE BACHELORETTE and IOU party games are sponsored by, approved by, or
18 affiliated with Ball & Chain.

19 28. TUTM's acts constitute infringement of Ball & Chain's Marks.

20 29. TUTM knew, should have known, and knows of Ball & Chain's rights in and to the
21 HOW WELL DO YOU KNOW THE BACHELORETTE and IOU trademarks, and that the use of the
22 HOW WELL DO YOU KNOW THE BACHELORETTE and IOU marks for party games would create
23 a likelihood of confusion. TUTM's unauthorized use of the confusingly similar HOW WELL DO YOU
24 KNOW THE BACHELORETTE and IOU marks has been knowing, willful, and deliberate.

25 30. TUTM's trademark infringement constitutes unfair competition, which is injurious to the

1 public interest, in violation of the Washington State Unfair Business Practices and Consumer Protection
2 Act, RCW 19.86.010 *et seq.*

3 31. Ball & Chain has been, and will continue to be, damaged by TUTM's willful trademark
4 infringement in a manner and amount that will be proved at trial.

5 32. Ball & Chain has been, and will continue to be, damaged by TUTM's willful trademark
6 infringement in a manner and amount that cannot be fully measured or compensated in economic terms.
7 TUTM's actions have damaged, and will continue to damage, Ball & Chain's market, reputation, and
8 goodwill, and may discourage current and potential customers from dealing with Ball & Chain. Such
9 irreparable harm will continue unless TUTM's acts are restrained and/or enjoined during the pendency
10 of this action and thereafter.

11 **VI. FOURTH CLAIM FOR RELIEF**

12 **(Common-Law Unfair Competition)**

13 33. Ball & Chain incorporates by reference paragraphs 1 through 32 set forth above.

14 34. Ball & Chain has been using the IOU trademark in the State of Washington and in
15 interstate commerce on, and in close association with, its party games and sales and services relating to
16 party games since at least as early as 2003.

17 35. Ball & Chain has been using the HOW WELL DO YOU KNOW THE
18 BACHELORETTE trademark in the State of Washington and in interstate commerce on, and in close
19 association with, its party games and sales and services relating to party games since at least as early as
20 2003.

21 36. TUTM's unauthorized use of the identical and confusingly similar HOW WELL DO
22 YOU KNOW THE BACHELORETTE and IOU marks on directly competitive party games constitutes
23 an attempt to palm off its products as those of Ball & Chain and to compete unfairly with Ball & Chain.
24 This conduct constitutes common-law unfair competition.

25 37. Ball & Chain has been, and will continue to be, damaged as a result of TUTM's unfair

1 competition in a manner and amount that cannot be fully measured or compensated in economic terms.
2 TUTM's actions have damaged, and will continue to damage, Ball & Chain's market, reputation, and
3 goodwill, and may discourage current and potential customers from dealing with Ball & Chain. Such
4 irreparable harm will continue unless TUTM's acts are restrained and/or enjoined during the pendency
5 of this action and thereafter.

6 **VII. REQUEST FOR RELIEF**

7 Ball & Chain requests that judgment be entered in its favor and against TUTM as follows:

8 A. Determining that TUTM has infringed Ball & Chain's federally registered trademarks
9 (U.S. Trademark Registration Nos. 3498101, 3498123, and 3640775);

10 B. Determining that TUTM had knowledge of Ball & Chain's ownership and use of the IOU
11 and HOW WELL DO YOU KNOW THE BACHELORETTE trademarks and, therefore, TUTM's
12 actions constitute willful infringement;

13 C. Permanently enjoining TUTM, its officers, agents, servants, employees and attorneys,
14 and all other persons in active concert or participation with TUTM from using in any way the trademark
15 HOW WELL DO YOU KNOW THE BACHELORETTE or IOU, or confusingly similar marks, in
16 association with party games, or any confusingly similar games, and any other mark or designation that
17 is confusingly similar to Ball & Chain's IOU and HOW WELL DO YOU KNOW THE
18 BACHELORETTE trademarks, and from otherwise infringing any Ball & Chain trademark rights, and
19 from diluting Ball & Chain's trademark rights, and from otherwise competing unfairly with Ball &
20 Chain;

21 D. Ordering TUTM to deliver to Ball & Chain for destruction all games, labels, signs,
22 posters, prints, emblems, devices, literature, video or audio recordings, advertising and any other
23 marketing materials in its possession, custody or control bearing the trademarks IOU or HOW WELL
24 DO YOU KNOW THE BACHELORETTE or any other trademark or designation confusingly similar to
25 Ball & Chain's IOU and HOW WELL DO YOU KNOW THE BACHELORETTE trademarks, or which

1 benefits from TUTM's use of the confusingly similar IOU and HOW WELL DO YOU KNOW THE
2 BACHELORETTE marks, pursuant to 15 U.S.C. § 1118;

3 E. Ordering TUTM to cancel any registration or application to register HOW WELL DO
4 YOU KNOW THE BACHELORETTE, IOU, or any other mark that is confusingly similar to Ball &
5 Chain's Marks, or which benefits from TUTM's use of the identical and confusingly similar IOU and
6 HOW WELL DO YOU KNOW THE BACHELORETTE marks;

7 F. Awarding Ball & Chain the damages it has sustained as a result TUTM's infringements
8 of Ball & Chain's Marks and/or TUTM's use of the confusingly similar IOU and HOW WELL DO
9 YOU KNOW THE BACHELORETTE marks, including but not limited to Ball & Chain's lost profits
10 on its IOU, HOW WELL DO YOU KNOW THE BACHELORETTE, and HOW WELL DO YOU
11 KNOW THE BRIDE party games as well as TUTM's profits for the sale of its products marketed under
12 the confusingly similar HOW WELL DO YOU KNOW THE BACHELORETTE and IOU marks;

13 G. Determining that this is an exceptional case under 15 U.S.C. § 1117;

14 H. Awarding Ball & Chain reasonable attorneys' fees, costs, and interest, pursuant to 15
15 U.S.C. § 1117, RCW 19.86.010, or as otherwise provided by law;

16 I. Awarding Ball & Chain treble damages under the Washington Consumer Protection Act,
17 19.86.010, *et seq* and 15 U.S.C. § 1117;

18 J. Ordering TUTM to file with this Court and serve on Ball & Chain within 30 days after
19 the entry of a permanent injunction a report in writing, under oath, setting forth in detail the manner and
20 form in which TUTM has complied with the Court's injunction and orders;

21 K. Awarding Ball & Chain pre-judgment interest; and

22 L. Awarding Ball & Chain such other and further relief as the Court deems just and
23 equitable.

24 **VIII. JURY DEMAND**

25 Pursuant to FED. R. CIV. P. 38(b)(1), Ball & Chain demands a trial by jury.

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DATED this 25th day of May, 2011.

JMR LAW GROUP PLLC

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