

JURISDICTION AND VENUE

2. This action arises under the Lanham Trademark Act of 1946, 15 U.S.C. §§ 1051 et seq. (the "Lanham Act"); the anti-dilution law of the State of New York New York General Business Law § 360-1; the unfair competition law of the State of New York; New York General Business Law § 133; and the common law of the State of New York. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and 1338 and 15 U.S.C. § 1121. This Court has supplemental jurisdiction over the State law claims pursuant to 28 U.S.C. § 1367.

3. Venue of this action is properly laid in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c), 1392(a) and 1400(a).

4. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.

THE PARTIES

5. At all relevant times, plaintiff, Zinnia has been a domestic corporation duly organized and existing under the laws of the State of New York with its principal place of business located in the County of Queens and State of New York.

6. Plaintiff is informed and believes and thereupon alleges that at all times relevant hereto, Cloz Company, Inc. (Cloz ör Defendant)'is and has been a corporation duly organized and existing under the laws of the State of Chicago, authorized to do business in, and having a place of business in, the County of Westchester and State of New York.

THE ZINNIA MARKS

7. (a) Zinnia is a well know manufacture of tie-dyed clothing articles and fabrics including, *inter alia*, children s 'tie-dye t-shirts, dresses, sportswear, comforters, jackets, pants, underwear, socks and tote bags (Products). Zinnia is also known for its manufacture of tie-dye bedding, sheets, pillowcases, duvet covers, towels and robes (collectively the Goods).

(b) Zinnia is the owner of the trademark Sorbet which is the name of a particular tie-dye fabric color (the Sorbet Fabric) used in the manufacture and sale of the Goods. Zinnia has been using in interstate commerce and the sole and exclusive owner of the Sorbet trademark since 1988.

(b) Zinnia is the owner of the trademark Starburst which is the name of a certain tie-dye fabric color (the Starburst Fabric) used in the manufacture and sale of the Goods. Zinnia has been using in interstate commerce and is the sole and exclusive owner of the Starburst trademark since 1988.

(c) Zinnia is the owner of the trademark Venus which is the name of a certain tie-dye fabric color (the Venus Fabric) used in the manufacture and sale of the Goods. Zinnia has been using in interstate commerce and is the sole and exclusive owner of the Venus trademark since 1998.

(d) Zinnia is the owner of the trademark Darian which is the name of a certain tie-dye fabric color (the Darian Fabric) used in the manufacture and sale of Goods. Zinnia has been using in interstate commerce and is the sole and exclusive owner of the Darian trademark since 1998.

(c) The Zinnia owned trademarks *Sorbet, Venus, Starburst and Darian* shall be collectively referred to hereinafter as the Zinnia Marks. ”

(c) The Venus Fabric, Starburst Fabric, Sorbet Fabric and Darian Fabric shall be collectively referred to as the Fabric. ”

ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF

8. Plaintiff is in the business of manufacturing, distributing and selling Products and Goods bearing the Zinnia Marks in the County and State of New York, throughout the United States and the rest of the world.

9. Plaintiff establishes and maintains quality standards for the Products and Goods identified by the Zinnia Marks, with respect to the style and quality of products sold or offered to, under or in connection with the Zinnia Marks.

10. Plaintiff manufactures, markets, sells and distributes in the United States, both directly and through licensees, Goods and Products including diverse articles of clothing products, bedding, bags and apparel manufactured from the Fabric; and its products are famous throughout the United States for its leadership in quality, including in the market segment of children s clothing and related products.

11. Consumers of Goods manufactured by Plaintiff purchase the Goods offered by Plaintiff, *inter alia*, on the basis of the Fabric and the tie-dye color represented by the particular Zinnia Mark.

12. The Zinnia Marks are inherently distinctive.

13. When consumers receive Goods from Plaintiff, the Goods specific and chosen Fabric is identified by the Zinnia Mark on its packaging.

14. The Zinnia Marks have come to be identified by purchasers of Plaintiff's Fabric and Goods as having a certain style, aesthetic and distinctive quality originating from Plaintiff.

15. Plaintiff intends to continue to use the Zinnia Marks.

16. The Zinnia Marks and Goods have been widely advertised to the purchasing public, wholesalers, retailers, including the Defendant, and to the trade throughout the United States by all means and all types of advertising media, including newspapers, magazines, trade publications, trade shows and the like.

17. By reason of their style and excellence, Goods and Fabric sold under the Zinnia Marks have come to be known by the trade and purchasing public throughout the United States as representing a product of the highest quality, which is sold under the best merchandising and customer service conditions. As a result thereof, the Zinnia Marks and the goodwill associated therewith are of inestimable value to Plaintiff.

18. Zinnias' business policy with regard to the Zinnia Marks is to protect and maintain its reputation for use only in connection with merchandise of the highest quality, and to ensure that any goods associated in any manner, shape or form with the Zinnia Marks, will be identified by purchasers as goods or services emanating from, licensed by, sponsored or authorized by Plaintiff.

19. Plaintiff has expended substantial sums of money in promoting the Zinnia Marks and Goods and other distinctive creative elements in connection therewith. As a result of such activities, both the trade and the public at large have come to identify the Plaintiff's Goods, the Zinnia Marks, and the trademarks, trade names, trade dress, artwork, formats and other distinctive elements associated therewith, with the Plaintiff and Plaintiff's business, and the Zinnia Marks, and the trademarks, trade names, trade dress, and its associated artwork, formats and distinctive creative

elements, have developed a secondary meaning associating them with Plaintiff and its Products, Goods and services.

20. From a marketing and promotional standpoint, the Zinnia Marks, are highly successful, distinctive and have created instant recognition and association with Plaintiff.

21. Zinnias expenditures for advertising and promotion of its Goods and Products bearing the Zinnia have been, and continues to be, substantial.

22. In addition to its expenditures on advertising, Plaintiff has also participated in various other forms of promotion of its Goods and Products bearing one of more of the Zinnia Marks, including trade shows throughout the United States.

Defendant Uses Plaintiff s Tie Dying Services

23. In or about March, 2003, for a little over a year, under agreement, Defendant began providing Plaintiff with products essentially identical in style to the Plaintiff s Goods for Plaintiff to tie-dye in the same color schemes as represented by the Zinnia Marks, *Sorbet*, *Darian*, *Venus* and *Starburst* However, it was Plaintiff s understanding that these products being tye-died for Defendant by Plaintiff would be sold by Defendant using only Defendant s name and using only Defendant s trademarks.

Defendant Sells Infringing Goods and Stops Using Plaintiff s Services

24. On or about June, 2004 Defendant ceased using Plaintiff s services and upon information and belief, began tie-dying the Defendant s products through third parties.

25. Upon information and belief, the tie-dying processes of the third parties used by

Defendant were and are of lesser quality than Plaintiff's process.

26. Upon information and belief, the Defendant's products tie-dyed by the third parties were, and are, of lesser quality than the Goods tie-dyed by Plaintiff.

27. Contrary to Plaintiff's understanding that Defendant would only be using its own name and trademarks, and without any authorization by Plaintiff, upon information and belief, Defendant has been advertising, marketing and selling throughout the United States both (i) Defendant's products tie-dyed by Plaintiff; and (ii) Defendant's products tie-dyed by third parties; each deceptively bearing the Zinnia Marks (hereinafter collectively, "Infringing Goods")."

Plaintiff's Customers Confusion Regarding Infringing Goods

28. In or about January, 2007 Plaintiff became aware of the Infringing Goods deceptively bearing the Zinnia Marks by way of the first inquiry from a customer, confused as to the origin of Infringing Goods.

29. In or about February of 2007, after receiving several other inquiries from customers confused as to the origin of the Infringing Goods bearing the Zinnia Marks, including one customer located in New York City, New York, Plaintiff began an investigation into Defendant's use of the Zinnia Marks on Infringing Goods. Plaintiff, determined that, upon information and belief, Defendant was unlawfully, and without Plaintiff permission, affixing the Zinnia Marks to Infringing Goods and that Defendant was advertising, marketing and selling the Infringing Goods with the Zinnia Marks through Defendant's website (the "Website") and in Defendant's retail stores, including in its store in New York. Promptly after learning of Defendant's actions, on or about March 22, 2007, Plaintiff, through its counsel, notified Defendant in writing that it must cease and desist using the Zinnia Marks.

30. Defendant s' counsel has acknowledged that Defendant has been selling and advertising Infringing Goods bearing the Zinnia Marks on its Website and in its retail stores throughout the United States for no less than four (4) years.

31. Upon information and belief, Defendant has manufactured large quantities of Infringing Goods and other products bearing the Zinnia Marks and has sold and intends to sell such Infringing Goods and products throughout its stores in the United States indefinitely.

32. Subsequent to Defendant s' distribution of their infringing products, Plaintiff s' attorneys have communicated orally and in writing with Defendant s' attorney, and notwithstanding Defendant s' counsel s' express representations that references to the Zinnia Marks have been removed from the Website, such infringing references remain on the Website.

33. Defendant s' counsel has acknowledged that certain Infringing Goods specifically, bedding, bears the Zinnia Marks directly on the Infringing Goods.

34. Notwithstanding Plaintiff s' counsel s' consistently articulated position that use of the Zinnia Marks by Plaintiff violates Federal and State statutes and is actionable under common law and the repeated demand that such unlawful use cease, Plaintiff nevertheless continues manufacturing, selling and distributing Infringing Goods bearing the Zinnia Marks, thus knowingly assuming all the financial risks associated with their conduct.

FIRST CLAIM FOR RELIEF
(Federal False Designation of Origin)

35. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1

through 35 above as if fully set forth herein.

36. This claim arises under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

37. Plaintiff owns all of the right, title and interest in and to, and holds the exclusive right to market and sell Goods and Products bearing the Zinnia Marks throughout the world.

38. The Zinnia Marks are non-descriptive, fanciful and inherently distinctive.

39. Plaintiff has expended considerable sums of money in promoting the Zinnia Marks in connection with the Goods and Products. As a result of such activities, both the trade and the public at large have come to identify the Zinnia Marks with Plaintiff and Plaintiff's business, and the Zinnia Marks' distinctive creative elements have developed a secondary meaning associating them with Plaintiff and with its Goods and Products.

40. Plaintiff commenced the marketing, sale and distribution of Goods bearing the Zinnia Marks in 1998 and has consistently been using the Zinnia Marks since that time in connection with the Goods and their sale in interstate commerce.

41. The Zinnia Marks are inherently distinctive, have acquired secondary meaning and are valid trademarks worthy of protection under Section 43(a) of the Lanham Act, 15 USC § 1125(a).

42. Defendant has affixed, applied or used in connection with their sale of Infringing Goods, false designations of origin and false descriptions and representations, including words or other symbols which tend falsely to describe or represent such goods and have caused such goods to enter into commerce with full knowledge of the falsity of such designations of origin and such descriptions and representations, all to the detriment of Plaintiff. In particular, the sale by Defendant of the Infringing Goods, which, other than their quality, appear to be identical to the Goods, incorporating Plaintiff's identical Zinnia Marks, constitutes a false description and representation

tending falsely to describe or represent such Infringing Goods sold by Defendant.

43. Defendant's conduct as hereinabove alleged has confused, and is likely to confuse, the public and constitutes a false designation of origin and a false description or representation.

44. Defendant's acts as alleged herein are calculated and intended to deceive and are likely to deceive consumers into believing that they are purchasing genuine, authorized products of Plaintiff, when in fact they are not. Defendant's products do not originate from or have the approval or authorization of Plaintiff or of any other person or entity that has the right to reproduce, copy or utilize Plaintiff's Zinnia Marks.

45. Plaintiff is informed and believes, and on that basis alleges, that the continued promotion, marketing and sale of Defendant's products and other unauthorized, misleading use of the Plaintiff's Zinnia Marks will damage and dilute the goodwill and reputation of Plaintiff, further impair the value of the Plaintiff's Zinnia Marks, and dilute the sales of Plaintiff's Goods and Products.

46. Upon information and belief, as a result Defendant's unlawful use of the Plaintiff's Zinnia Marks, the public and trade may develop the further false impression that Plaintiff's lawful use of its own trademarks is an infringement of the Defendant's falsely perceived rights in the Plaintiff's Zinnia Marks. Unless Defendant is preliminarily and permanently enjoined from such activity, the public and trade will come to associate Plaintiff's Zinnia Marks only with Defendant. The goodwill Plaintiff has built up in the Plaintiff's Zinnia Marks will be destroyed. Plaintiff will be precluded from further marketing its Goods, Products and services under or in connection with the Plaintiff's Zinnia Marks, since individuals who encounter Plaintiff or its trademarks will falsely believe they are infringing on Defendant, if not actually believe falsely that Plaintiff's Goods and Products are the Defendant's. It is impossible to quantify the immense damage this has done and will continue to do to

Plaintiff's reputation.

47. Upon information and belief, as a result of Defendant's unlawful use of Plaintiff's Zinnia Marks on products of inferior quality to those normally associated with Plaintiff, Plaintiff's Zinnia Marks have been tarnished and Plaintiff's goodwill has been severely damaged. Unless Defendant is preliminarily and permanently enjoined from such activity, the public and trade will continue to associate Plaintiff's Zinnia Marks with inferior products. It is impossible to quantify the immense damage this has done and will continue to do to Plaintiff's reputation.

48. Plaintiff has suffered and continues to suffer serious, irreparable harm and injury as a result of the aforesaid infringing acts of Defendant and Plaintiff is without an adequate remedy at law, in that damages are extremely difficult to ascertain and, unless injunctive relief is granted as prayed for herein, Plaintiff will be required to pursue a multiplicity of actions.

49. Plaintiff has sustained damage as a result of Defendant's wrongful acts as hereinabove alleged. Plaintiff is presently unable to ascertain the full extent of the money damages it has suffered and will suffer by reason of said acts of unfair competition, but upon information and belief, such damages exceed One Million Dollars (\$1,000,000).

50. Plaintiff is informed and believes, and on that basis alleges, that Defendant has obtained gains, profits, and advantages as a result of their acts as hereinabove alleged. Plaintiff is presently unable to ascertain the full extent of the gains, profits, and advantages Defendant has obtained by reason of their aforesaid wrongful acts, but upon information and belief, such gains, profits, and advantages exceed One Million Dollars (\$1,000,000).

51. Inasmuch as Defendant has committed the acts alleged herein intentionally, fraudulently, maliciously, willfully, wantonly and oppressively, the damages awarded to Plaintiff

therefor should be trebled or enhanced as provided by 15 U.S.C. § 1117.

SECOND CLAIM FOR RELIEF
(State Unfair Competition)

52. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 51 above as if fully set forth herein.

53. This claim arises under the New York law of unfair competition.

54. Plaintiff is informed and believes, that at no cost to Defendant, Defendant, with full knowledge of the notoriety and popularity of the Plaintiff s Zinnia Marks, unlawfully utilized and exploited Plaintiff s Zinnia Marks, resulting in benefit to Defendants by reason of Defendant arrogating to themselves the economic benefit of the goodwill associated with the Plaintiff s Zinnia Marks, and obtaining sales therefrom, and also causing confusion among Plaintiff s customers and otherwise, all to the detriment of Plaintiff.

55. Defendant s acts as alleged above constitute unfair competition and will, unless enjoined by the Court, result in the destruction and/or diversion of Plaintiff s goodwill in Plaintiff s Zinnia Marks (including the valuable property rights therein).

56. By reason of the aforesaid, the continued passing off by Defendant of their Infringing Goods as if the same originated with or were authorized by Plaintiff has caused, and unless restrained will continue to cause, serious and irreparable injury to Plaintiff.

57. Plaintiff is informed and believes and on that basis alleges that Defendant has committed the acts alleged herein intentionally, fraudulently, maliciously, willfully, wantonly and oppressively, with the express intent to injure Plaintiff in its business.

58. Plaintiff has suffered and continues to suffer irreparable harm and injury as a result of

the aforesaid infringing acts of Defendant and Plaintiff is without an adequate remedy at law, in that damages are extremely difficult to ascertain and, unless injunctive relief is granted as prayed for herein, Plaintiff will be required to pursue a multiplicity of actions.

59. Plaintiff has sustained damage as a result of Defendant's wrongful acts as hereinabove alleged. Plaintiff is presently unable to ascertain the full extent of the money damages it has suffered and will suffer by reason of said acts of unfair competition, but upon information and belief, such damages exceed One Million Dollars (\$1,000,000.00).

60. Plaintiff is informed and believes, and on that basis alleges, that Defendant has obtained gains, profits, and advantages as a result of their acts of unfair competition as hereinabove alleged. Plaintiff is presently unable to ascertain the full extent of the gains, profits, and advantages Defendant has obtained by reason of their aforesaid wrongful acts, but upon information and belief, such gains, profits, and advantages exceed One Million Dollars (\$1,000,000.00).

61. Inasmuch as Defendant has committed the acts alleged herein intentionally, fraudulently, maliciously, willfully, wantonly and oppressively, Plaintiff is also entitled to punitive damages of not less than Three Million Dollars (\$3,000,000.00).

THIRD CLAIM FOR RELIEF
(New York General Business Law § 133)

62. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 61 above as if fully set forth herein.

63. Upon information and belief, Defendant assumed and adopted the Zinnia Marks for advertising purposes and for the purposes of trade with the intent to deceive and mislead the public in

violation of New York General Business Law § 133.

64. Plaintiff has no adequate remedy at law and is suffering irreparable harm and damage as a result of Defendant's acts, and will continue to suffer such irreparable harm and damage by virtue of the dilution of its Zinnia Marks, unless such use is enjoined.

FOURTH CLAIM FOR RELIEF
(Violation of the New York Anti-Dilution Statute)

65. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 64 above as if fully set forth herein.

66. The infringing, unauthorized and unlawful acts of Defendant as alleged above have had and will continue to have the effect of diluting the distinctive quality of the Zinnia Marks. Said acts constitute an unlawful dilution of Plaintiff's rights at common law and under the New York Anti-Dilution Statute, N.Y. General Business Law § 360-1.

67. Defendant's manufacture, distribution and/or sale of their Infringing Goods constitute dilution by blurring in that they will cause a lessening of the capacity of the Zinnia Marks to identify and distinguish the Goods and Products of Plaintiff in the marketplace.

68. Plaintiff manufactures Goods using a specialized technique and with the highest quality fabrics and dyes. Plaintiff is informed and believes that Defendant manufactures the Infringing Goods overseas and Defendant's product is substantially below the high quality of Plaintiff's products. Defendant's manufacture, advertisement, marketing, distribution and/or sale of their Infringing Goods and products bearing the Zinnia Marks therefore constitute dilution by tarnishment.

69. Plaintiff has no adequate remedy at law and is suffering irreparable harm and damage

as a result of Defendant s' acts, and will continue to suffer such irreparable harm and damage by virtue of the dilution of its Zinnia Marks, unless such use is enjoined.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

70. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 69 of the Complaint as if fully set forth herein.

71. Plaintiff is informed and believes that by unlawfully using the Zinnia Marks, Defendant has secured sales of the Infringing Goods, diminished sales of Plaintiff s' Goods and confused Plaintiff s' customers, and thus, Defendants have been unjustly enriched at Plaintiff s' expense, and unless such unjust enrichment is enjoined, Plaintiff shall be irreparably harmed.

72. The circumstances of Defendant s' conduct are such that in equity and good conscience, Defendant should be required to disgorge all revenue derived from Defendant s' unlawful and exploitation of the Zinnia Marks.

73. Plaintiff is informed and believes, and on that basis alleges, that Defendant has obtained gains, profits, and advantages as a result of their acts as hereinabove alleged. Plaintiff is presently unable to ascertain the full extent of the gains, profits, and advantages Defendant has obtained by reason of their unjust enrichment, but upon information and belief, such gains, profits, and advantages exceed One Million Dollars (\$1,000,000.00).

74. Inasmuch as Defendant has committed the acts alleged herein intentionally, fraudulently, maliciously, willfully, wantonly and oppressively, Plaintiff is also entitled to punitive

damages of not less than Three Million Dollars (\$3,000,000.00).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

1. On all of its Claims, permanently enjoining and restraining Defendant, their respective officers, agents, servants, employees and attorneys, and predecessors and successors, by whatever name, and all those in active concert or participation with them from:
 - (a) Manufacturing, distributing, importing, advertising, promoting, holding out for sale and/or selling any products or services bearing or in connection with the Plaintiff s' Zinnia Marks or any colorable imitations thereof, including without limitation the words *Starburst*, *Venus*, *Sorbet* or *Darian*;
 - (b) Directly or indirectly applying or using on products or services or using in connection with the manufacture, importation, sale, distribution, marketing or promoting thereof the Plaintiff s Zinnia Marks, or any marks, emblems, logos, decals or terms which in any way imitate or simulate the Plaintiff s' Zinnia Marks, including without limitation the exact words *Starburst*, *Venus*, *Sorbet* or *Darian*;
 - (c) Using any simulation, reproduction, counterfeit, copy or colorable imitation of the Plaintiff s' Zinnia Marks in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production,

importation, circulation or distribution of any infringing products or services in such fashion as to relate or connect, or tend to relate or connect such products or services in any way to Plaintiff, or to any goods or services sold, manufactured, sponsored or approved by, or connected with Plaintiff;

(d) Making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any products or services manufactured, imported, distributed, offered for sale or sold by Defendant are in any manner associated or connected with Plaintiff or are sold, manufactured, licensed, sponsored, approved or authorized by Plaintiff;

(e) Engaging in any other activity constituting unfair competition with Plaintiff, or constituting an infringement of any of Plaintiff's trademarks, or of Plaintiffs' rights in, or rights to use or to exploit, said trademarks, or constituting any dilution or tarnishment of Plaintiff's names, reputations or goodwill;

(f) Engaging in any acts or activities directly or indirectly calculated to trade upon or injure the reputation or the goodwill of Plaintiff or in any manner to compete unfairly with Plaintiff by appropriating the distinctive features of the Plaintiff's Zinnia Marks or associated artwork, formats, trade dress and other distinctive creative elements;

(g) Effecting assignments or transfers, forming new entities or associations

or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs 1(a) through (f) hereinabove; and

(h) Secreting, destroying, altering, removing or otherwise dealing with infringing products or services or any books or records which contain any information relating to the importation, manufacture, production, distribution, circulation, sale, marketing, offering for sale, advertising, promoting or displaying of any infringing products or services by Defendant.

2. Directing that Defendant deliver for impoundment:

(a) All infringing products or materials associated with their infringing products, including labels, boxes, signs, packages, advertisements, promotional materials, novelty items, prints, dyes, wrappers, receptacles and any other such goods or merchandise in Defendant s possession, custody or control bearing any counterfeit, copy or substantially similar designations or representations of Plaintiff s Zinnia Marks, including without limitation any such items bearing the words *Sorbet*, *Venus Starburst* or *Darian*, and

(b) All plates, molds, matrices, heat transfers, printing or silk-screening apparatus utilized in making said infringing products and packaging therefor, and all material associated with the infringing products, and all other means of making any counterfeits or infringing marks, copies of, or substantially indistinguishable designations or representations associated with any of the items set forth in subparagraph 2(a) hereinabove.

3. Directing such other relief as the Court may deem appropriate to prevent the trade and public from deriving any erroneous impression that any products or services manufactured, imported, distributed, offered for sale, sold or otherwise circulated or promoted by Defendant are authorized by Plaintiff or related in any way to Plaintiff's products.
4. On its First, Claim, directing that an accounting of and judgment be rendered against Defendant for all profits received by the Defendant and all damages sustained by Plaintiff on account of Defendant's trademark infringement and unfair competition; and furthermore, that such profits and damages as found herein be trebled or enhanced, as provided by 15 U.S.C. § 1117 and costs in this action, including reasonable attorneys' and investigative fees, as provided by 15 U.S.C. § 1117..
5. On its Second Claim, awarding Plaintiff punitive damages of not less than \$3,000,000.00.
6. On its Fifth Claim, awarding Plaintiff punitive damages of not less than \$3,000,000.00..
8. Directing that the Court retains jurisdiction of this action for the purpose of enabling Plaintiff to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance therewith, and for the punishment of any violations thereof.

9. Awarding to Plaintiff such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 15, 2007

Respectfully submitted,

**LAW OFFICES OF
JONATHAN S. POLLACK**

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