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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187309
Party	Defendant THE MUDTRUCK LLC
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Submission	Motion to Suspend for Civil Action
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Date	12/15/2008
Attachments	motion to suspend Mudtruck.pdf ( 2 pages )(43593 bytes ) Mudtruck Civ Act.pdf ( 18 pages )(622404 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X

Underground Beverage Brands LLC.

Opposer

**Opposition No. 91187309**

-against-

The Mudtruck LLC

Applicant

-----X

**MOTION TO SUSPENDED PROCEEDING**

Applicant The Mudtruck LLC. (“Applicant”), by and through its counsel requests that the Board suspend proceedings in the above-referenced Opposition pursuant to Trademark Rule 2.117(a).

Applicant and Opposer are currently engaged in litigation in Federal district court with respect to their trademarks (Civil Action No. 08 CV 7208). The parties would therefore like to conclude the pending litigation before resolving matters regarding the instant trademark application, and therefore, moving forward with this Opposition would be premature. Applicant attaches a copy of the Complaint, as evidence that the litigation and the Opposition involve the same issues.

This request is being made in good faith and not for the purposes of delay.

Dated: New York, New York  
December

Respectfully submitted,

GREENBERG TRAURIG LLP

  
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TO:

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*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing Motion to Suspend Proceeding was mailed by first class mail, postage pre-paid on:

Jason D. Firth, Esq.  
Brownstein Hyatt Farber Schreck LLP  
100 City Parkway, Suite 1600  
Las Vegas, NV 89106

December 15, 2008

  
\_\_\_\_\_  
Anna Dalla Val

JUDGE CROTTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FILE COPY

THE MUDTRUCK LLC,

Plaintiff,

v.

UNDERGROUND BEVERAGE BRANDS,  
LLC, MATTHEW A. MARINI

Defendants.

CIV. ACTION NO.:

COMPLAINT AND  
DEMAND FOR JURY TRIAL

'08 CIV 7208

Plaintiff The Mudtruck LLC ("Plaintiff"), by its attorneys, for its Complaint against defendants, Underground Beverage Brands and Matthew A. Marini ("Defendants"), alleges as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement, unfair competition, false designation of origin, false advertising, and related claims under the United States Trademark (Lanham) Act of 1946, 15 U.S.C. §§ 1051 et seq. (as amended), and New York statutory and common law, as well as copyright infringement in violation of the Copyright Act, 17 U.S.C. §§ 501, et. seq. The Complaint arises from Defendants' unauthorized adoption and use of designations and designs which are indistinguishable from Plaintiff's name and trademark, MUD and MUD & Design ("Plaintiff's MUD Marks") and copyright for the MUDSPOT logo ("MUDSPOT Design"). Defendants' collective use of imitations of Plaintiff's MUD Marks and MUDSPOT Design will inevitably confuse, mislead and deceive the general public into believing that Plaintiff manufactures, sells, sponsors, approves or licenses Defendants' coffee-related products and services. On information and belief, Defendants adopted and used Plaintiff's MUD Marks and MUDSPOT Design willfully, in order foster such confusion and thereby induce consumers to

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purchase Defendants' products as and for Plaintiff's products, all to Defendants' own financial gain.

### THE PARTIES

2. Plaintiff, The Mudtruck LLC, is a limited liability company, organized and existing under the laws of New York, located and doing business at 307 East 9<sup>th</sup> Street, Suite GRN, New York, New York 10003. Since 2000, Plaintiff is engaged in the business of producing or causing to be produced, distributing, selling and/or offering for sale, *inter alia*, its own blend of coffee and coffee drinks out of two step-van locations in New York City. Further, Plaintiff opened two restaurant locations in New York City called "MUDSPOT" in 2003. Plaintiff markets, advertises, promotes and offers for sale and sells its coffee beverages, coffee beans and other related products in New York City and throughout the United States and worldwide via the Internet and email.

3. On information and belief, defendant, Underground Beverage Brands, LLC (hereinafter "UBB") is a limited liability company, organized and existing under the laws of Delaware, located and doing business at 800 N. Rembrandt Avenue, Royal Oak, Michigan 48067. On information and belief, defendant, UBB, which was established in 2007, produces or causes to be produced ready-to-drink coffee and markets, advertises, promotes, distributes, offers for sale and/or sells, *inter alia*, such coffee products throughout the northeast, southeast, and midwest United States through retail stores and via the Internet.

4. On information and belief, defendant Matthew A. Marini (hereinafter "Marini") an individual, is the owner of UBB, and also has a business address of 800 N. Rembrandt Avenue, Royal Oak, Michigan 48067.

### **JURISDICTION AND VENUE**

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332 and 1338(a) and (b); and 15 U.S.C. §§ 1116, 1121 and 1125(a). This Court has supplemental jurisdiction over Plaintiff's claims under the laws of the State of New York pursuant to 28 U.S.C. § 1367.

6. On information and belief, this Court has personal jurisdiction over Defendants in that Defendants conduct business throughout the State of New York, including this District.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a) in that Defendants are transacting business within this District. Further, venue is appropriate since a substantial portion of the acts complained of herein was committed by Defendants within this District.

### **PLAINTIFF'S TRADEMARK RIGHTS**

8. Plaintiff, The Mudtruck LLC, which was started in 2000 by Greg Northrop and Nina Berott, is known for selling its own blends of coffee called "MUD" out of converted step-vans called the "Mudtruck." Plaintiff has two step-van locations in New York City - the first located at Astor Place in the East Village and the second located at Christopher Park in the West Village. In addition, Plaintiff has extended its business by establishing a restaurant called "Mudspot" as well as by opening a coffee and espresso bar located inside the flagship store of a bath and body company, Kiehl's, in 2003, and distributing coffee products to retail stores throughout the United States.

9. Plaintiff promotes, markets, distributes, offers for sale and sells its coffee products and related goods and services under the trademarks MUD, MUD & Design, and MUDTRUCK, and other marks that incorporate the literal element MUD, including but not limited to, MUD, MUD & Design, MUDTRUCK, MUDSPOT, MUDMUSIC and MUDSHOP, from its step-van

and retail locations as well as on the Internet on its websites at “themudtruck.com,” “mudcoffee.com,” and “mudnyc.com” since at least as early as 2000.

10. Plaintiff is the owner of the entire right, title and interest in and to United States Trademark Registration No. 2,892,090 for the mark, MUD & Design, covering “coffee,” which was registered on the Supplemental Register on October 5, 2004. Such registration is currently valid, subsisting and in full force and effect. A copy of the United States Patent and Trademark Office (“USPTO”) database printout evidencing Plaintiff’s registration for MUD & Design is attached hereto as Exhibit A and set forth below:



11. At least as early as March 6, 2001, Plaintiff created, adopted and commenced use of the trademark, MUD& Design, to identify and distinguish its coffee and related products. Plaintiff has made continuous and exclusive use of the mark, MUD & Design, from its date of first use to the present and no entities other than Plaintiff is authorized to provide coffee and related products or services to others in the United States under, or in connection with, the mark MUD & Design.

12. As a result of substantial time, effort and money invested in its business, Plaintiff has achieved a reputation for excellence in the production and sale of its coffee and coffee related products and in the rendering of its services. In fact, Plaintiff’s brand of coffee bearing the MUD Mark and Logo has been voted best cup of coffee in New York by *Time Out New York* and *Village Voice*, and has been featured in numerous local, national and international newspapers and publications such as *Time Magazine*, *Fortune Small Business*, *The New York*

*Times, New York Post, New York Magazine, and The Onion*, as well as on television, namely, on CNN, The Food Network and *The Oprah Winfrey Show*. Further, Plaintiff's MUD coffee retail products, namely, coffee beans and ground packaged 14 oz. retail bags, are distributed through leading food retailers such as Whole Foods Market, Inc. as well as nationwide and internationally through Plaintiff's websites.

13. As a result of its widespread recognition and reputation for excellence, Plaintiff enjoys a substantial demand for and consumer sales of its coffee products. Together with its reputation for excellence, Plaintiff enjoys valuable goodwill in its trademark which is used in its advertising and on its products.

#### **PLAINTIFF'S COPYRIGHTED DESIGN**

14. Nina Berott, one of Plaintiff's owners, is the owner of the entire right, title and interest in and to United States Copyright Registration No. VA126-0747 for the MUDSPOT logo, registered on May 19, 2004 ("MUDSPOT Design"). The MUDSPOT Design has been used in connection with MUDspot coffee shop/restaurant since its opening on September 14, 2003. A true and correct copy of the Certificate of Registration for U.S. Copyright Registration No. VA126-0747 is attached hereto as Exhibit B. The image of the MUDSPOT Design is set forth below:



### Defendants' Wrongful Actions

15. On information and belief, subsequent to Plaintiff's adoption and use of MUD & Design as described above, Marini adopted and commenced use in the United States, the design mark MUD & Design, on and in connection with Defendant's ready to drink coffee beverages.

16. On or about April 27, 2005, well after Plaintiff first adopted and used Plaintiff's MUD Mark in commerce, and subsequent to the federal registration thereof, Marini filed an intent-to-use Application Serial No. 78/604,264 in the USPTO for registration of the mark MUD & Design.

17. On or about March 11, 2008, the USPTO issued a Certificate of Registration No. 3,395,872 for MUD & Design for use in connection with "ready to drink coffee beverages" in Class 30 with an alleged first use date in commerce of September 24, 2007, approximately three years after Plaintiff obtained its federal registration for Plaintiff's MUD Mark. A copy of the USPTO database printout showing Marini's registration for MUD & Design is attached hereto as Exhibit B and set forth below:



18. On information and belief, Marini has knowingly made the false and fraudulent statement to the USPTO that no other party had the right to use the term in order to procure a federal registration granting it nationwide trademark rights.

19. On or about February 12, 2008, UBB filed an intent-to-use trademark Application Serial No. 77/395,121 for the mark MUUD & Design covering "hoods; jerseys; tops" in International Class 25, "beverages made of coffee; coffee; coffee; coffee based beverages; coffee

beans; coffee beverages with milk; coffee-based beverage containing milk; coffee-based beverages; ground coffee beans; prepared coffee and coffee-based beverages; roasted coffee beans" in International Class 30, "coffee-based liqueurs" in International Class 33 and "coffee shops; Coffee-house and snack-bar services" in International Class 43. A copy of the USPTO database printout showing UBB's application for MUUD & Design is attached hereto as Exhibit C and set forth below:



20. On information and belief, subsequent to Plaintiff's adoption and use of Plaintiff's MUD Mark, as described above, Marini and Defendant, UBB, adopted and used the virtually identical MUD & Design and MUUD & Design marks (collectively "Infringing Marks") on and in connection with Defendants' ready-to-drink coffee beverages and related products ("Infringing Products"), and marketed those goods on the Internet. A specimen showing Defendants' use of the Infringing Marks is attached hereto as Exhibit D.

**Plaintiff's Repeated Protests to Defendants**

21. Plaintiff became aware of Defendants' use of the virtually identical MUD & Design mark in early December 2007. In an effort to stop Defendants' blatant acts of trademark and copyright infringement, Plaintiff sent a cease and desist letter addressed to Defendants on December 14, 2007. Plaintiff thereby advised Defendants of Plaintiff's rights in Plaintiff's MUD Marks and demanded that Defendants cease use of its virtually identical and infringing mark.

22. On December 19, 2007, Plaintiff sent another letter to Defendants advising them that it discovered further facts about the Defendants, including the following: (i) that Defendants

were doing business as "Mud Coffee Co."; (ii) that Defendants' logo was virtually identical to the Plaintiff's MUD & Design mark and MUDSPOT Design; and (iii) that Defendants were using terms such as "MudMusic" and "MudShop" on their website at www.drinkmud.com, which terms Plaintiff has been using on its websites since 2000. Plaintiff again requested that Defendants change the name and logo design of their products, abandon Registration No. 3,395,872 for MUD & Design, and remove all websites from the Internet in connection with any "Mud"-related products Defendants were offering for sale.

23. Through an exchange of several emails on December 19, 2007, Defendants' representative, Sean P. Pierce (hereinafter "Pierce"), represented to Plaintiff that Plaintiff does indeed own rights to the term MUD, that Defendants will change their name and that they will never use the term and logo "MUDSPOTS" again. Further, Mr. Pierce indicated that UBB is coming to "NYC next month in a very large way, no matter what happens with this situation" and that Plaintiff and UBB should work together. Copies of emails on December 19, 2007 between the parties is attached hereto as Exhibit D.

24. On January 31, 2008, Plaintiff received an email from Pierce, in which he requested to license Plaintiff's logo for his new organic line of products. On February 4, 2008, Pierce sent an email to Plaintiff to seek a final decision regarding a possible license, to which Plaintiff did not agree.

25. Subsequently, on or about February 12, 2008, UBB filed an intent-to-use trademark Application Serial No. 77/395,121 for the mark MUUD & Design, as described above.

**FIRST CLAIM FOR RELIEF**  
**(Federal Trademark Infringement under 15 U.S.C. § 1114)**

26. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in the proceeding paragraphs of this Complaint.

27. Plaintiff's MUD Marks and the goodwill of the businesses associated with them in the United States are of great and significant value, are highly distinctive and arbitrary, and have become universally associated in the public mind with the products and services of the very highest quality and reputation finding their source in Plaintiff.

28. Without Plaintiff's authorization or consent, and having knowledge of Plaintiff's well-known and prior rights in Plaintiff's MUD Marks, and the fact that Defendants' goods bear marks which are virtually identical and/or confusingly similar to Plaintiff's MUD Marks, Defendants have distributed, advertised, offered for sale and/or sold the Infringing Products to the consuming public in direct competition with Plaintiff, in or affecting interstate commerce.

29. Defendants' use of marks which infringe upon Plaintiff's MUD Marks is likely to cause and is causing confusion, mistake and deception among the general purchasing public as to the origin of Defendants' Infringing Products, and is likely to deceive the public into believing that the Infringing Products sold by Defendants originate from, are associated with or are otherwise authorized by Plaintiff, all to the damage and detriment of Plaintiff's reputation, goodwill and sales.

30. Defendants' unauthorized use of Plaintiff's MUD Marks on or in connection with the Infringing Products was done with notice and full knowledge that such use was not authorized or licensed by Plaintiff. Defendants' actions constitute willful infringement of Plaintiff's exclusive rights in Plaintiff's MUD Marks in violation of 15 U.S.C. § 1114.

31. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damage to its valuable Plaintiff's MUD Marks, and other damages in an amount to be proved at trial.

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

**SECOND CLAIM FOR RELIEF**  
**(Copyright Infringement under 17 U.S.C. §§ 501, et. seq.)**

33. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

34. Plaintiff is the owner of all right, title and interest in and to the copyright of the MUDSPOT Design.

35. Plaintiff has never authorized, licensed or otherwise permitted Defendants to manufacture, distribute, sell or otherwise make any use of the MUDSPOT Design or any copies thereof.

36. Defendants have copied, distributed and displayed the MUDSPOT Design by manufacturing and/or arranging for manufacture of products, advertising, distribution materials, offering for sale and selling products, which bear print designs identical or nearly identical to the MUDSPOT Design.

37. Defendants' acts violate Plaintiff's exclusive rights in Plaintiff's MUDSPOT Design under Section 106 of the Copyright Act of 1976, 17 U.S.C. § 106, and constitute willful infringement of the MUDSPOT Design.

38. As a direct and proximate result of Defendants' unauthorized use of the MUDSPOT Design, Plaintiff has suffered damages to its valuable copyrighted MUDSPOT Design, and other damages in an amount to be proved at trial.

39. Defendants have realized unjust profits, gains and advantages as a proximate result of their infringement.

40. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' copyright infringement unless this Court enjoins Defendants from such infringing practices.

**THIRD CLAIM FOR RELIEF**

**(Unfair Competition and False Designation of Origin under 15. U.S.C. § 1125(a))**

41. Plaintiff re-alleges and incorporates by reference the allegations set forth in the proceeding paragraphs of this Complaint.

42. Infringing Products are of the same general nature and type as Plaintiff's goods, and as such, Defendants' sale of Infringing Products is likely to cause confusion to the general purchasing public.

43. Defendants' unauthorized use of Plaintiff's MUD Marks and the MUD Design or similar variation thereof, on or in connection with Infringing Products was done with notice and full knowledge that such use was not authorized or licensed by Plaintiff. Defendants have used and continue to willfully use Plaintiff's MUD Marks and the MUD Design with the intent to confuse, mislead, or deceive customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of the Infringing Products, and with the intent to trade on Plaintiff's reputation and goodwill.

44. Defendants' unlawful, unauthorized and unlicensed manufacturing, advertising, distributing, offering for sale and/or selling of Infringing Products creates express and implied misrepresentations that Infringing Products were created, authorized or approved by Plaintiff, all to Defendants' profit and Plaintiff's great damage and injury.

45. Defendants' aforesaid acts are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), in that Defendants' use of marks and designs which infringe upon Plaintiff's MUD Marks and the MUD Design, in connection with Defendants' goods and services, in interstate commerce constitutes false designation of origin and unfair competition.

46. Defendants' unauthorized use of the Plaintiff's MUD Marks and the MUD Design on or in connection with their Infringing Products was done with notice and full knowledge that such use was not authorized or licensed by Plaintiff. The Defendants have used and continue to

willfully use Plaintiff's MUD Marks and the MUD Design with the intent to confuse, mislead, or deceive customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of the Infringing Products, and with the intent to trade on Plaintiff's reputation and goodwill.

47. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damage to its valuable Plaintiff's MUD Marks, and other damages in an amount to be proved at trial.

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

**FOURTH CLAIM FOR RELIEF**  
**(Common Law Trademark Infringement)**

49. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

50. As a result of Plaintiff's hard work in producing and providing coffee products under Plaintiff's MUD Marks, Plaintiff has built-up valuable good will in Plaintiff's MUD Marks. As such, Plaintiff's MUD Marks have become associated with Plaintiff's products, and have come to symbolize the reputation for quality and excellence of Plaintiff's products.

51. With full knowledge of Plaintiff's property rights in Plaintiff's MUD Marks, and without Plaintiff's consent or knowledge, Defendants have advertised, promoted, produced, marketed and sold goods bearing and under marks virtually identical to, and in overall appearance, confusingly similar to, Plaintiff's MUD Marks.

52. Defendants have deliberately and willfully copied Plaintiff's MUD Marks for use in commerce without any authorization or commercial necessity, legitimate reason or satisfactory explanation, and have derived unlawful gains, profits and advantages from its infringement.

53. Defendants' infringing use as described above as impaired, is impairing and, unless enjoined by this Court, will continue to impair Plaintiff's reputation accrued under Plaintiff's MUD Marks and has caused, is causing and will continue to cause injury and damage to Plaintiff, which is presently indeterminate, but for which Plaintiff is entitled to relief under the common law of the state of New York.

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

**FIFTH CLAIM FOR RELIEF**  
**(Common Law Unfair Competition)**

55. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

56. As a result of Plaintiff's hard work in producing and providing Plaintiff's products, Plaintiff has built-up valuable good will in Plaintiff's products. As such, Plaintiff's products have become associated with Plaintiff's products, and have come to symbolize the reputation for quality and excellence of Plaintiff's products.

57. Defendants' wrongful use of colorable imitations of Plaintiff's MUD Marks as alleged herein is likely to deceive the public into believing falsely that Defendants' goods are associated therewith, originate from or are sold, sponsored or approved by Plaintiff, or that there is otherwise a connection between the two companies' goods and businesses. Defendants have unfairly competed with Plaintiff in violation of New York common law.

58. On information and belief, such actions were taken by Defendants in a deliberate attempt to misappropriate and trade off of the goodwill and valuable reputation of Plaintiff and Plaintiff's MUD Marks. Such action constitutes a willful attempt by Defendants to usurp the goodwill in Plaintiff's MUD Marks, and constitutes unfair competition in violation of New York common law.

59. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damage to its valuable Plaintiff's MUD Marks, and other damages in an amount to be proved at trial.

60. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' sale of Infringing Products unless this Court enjoins Defendants from such deceptive business practices.

**SIXTH CLAIM FOR RELIEF**  
**(New York General Business Law § 360(l))**

61. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

62. Defendants' illegal acts as set forth above have caused damage to Plaintiff by tarnishing Plaintiff's valuable reputation and diluting or blurring the distinctiveness of Plaintiff's MUD Marks and the MUD Design in violation of New York General Business Law § 360(l).

63. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' sale of Infringing Products unless this Court enjoins Defendants from such deceptive business practices.

**SEVENTH CLAIM FOR RELIEF**  
**(New York General Business Law § 349)**

64. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

65. Defendants, without Plaintiff's authorization or consent, and having knowledge of Plaintiff's prior rights in Plaintiff's MUD Marks, have distributed, advertised, offered for sale and/or sold Infringing Products employing Plaintiff's MUD Marks to the consuming public in violation of New York General Business Law § 349.

66. Defendants' use of Plaintiff's MUD Marks and the MUD Design is likely to cause and is causing confusion, mistake and deception among the general purchasing public as to the origin of Defendants' Infringing Products, and is likely to deceive the public into believing that the Infringing Products sold by Defendants originate from, are associated with or are otherwise authorized by Plaintiff, all to the damage and detriment of Plaintiff's reputation, goodwill and sales.

67. Defendants' deceptive acts and practices involve public sales activities of a recurring nature.

68. Plaintiff does not have an adequate remedy at law, and will continue to be damaged by Defendants' sale of Infringing Products unless this Court enjoins Defendants from such fraudulent business practices.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That Defendants, their officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under them be preliminarily enjoined and restrained, at first during the pendency of this action and, thereafter, permanently:
  - a) from using in any manner Plaintiff's MUD Marks, alone or in combination with any word or words which so resemble each said trademark as to be likely to cause confusion, deception, or mistake on or in connection with the advertising, offering for sale, or sale of any product not Plaintiff's, or not authorized by Plaintiff to be sold in connection with each of Plaintiff's MUD Marks;
  - b) from directly or indirectly infringing Plaintiff's MUDSPOT Design in any manner, including, but not limited to, reproducing, adapting, and/or displaying Plaintiff's MUDSPOT Design by distributing, advertising, selling, and/or offering for sale, or causing

others to do so, any product, including without limitation, products bearing designs substantially similar to Plaintiff's MUDSPOT Design;

c) from committing any acts that cause to cause purchasers to believe that Defendants' products are those sold under the control and supervision of Plaintiff, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiff;

e) from further infringing Plaintiff's MUD Marks and damaging Plaintiff's goodwill;

f) from shipping, delivering, distributing, returning or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which bear any of the Plaintiff's MUD Marks or MUDSPOT Design

g) from otherwise competing unfairly with Plaintiff or any of their authorized licensees in any manner; and

h) from assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in the above subparagraphs (a) through (g).

2. That, based on paragraphs 15-18 above, this Court declare that Defendant, Matthew A. Marini is not entitled to the continued ownership of Registration No. 3,395,872;

3. That, based on paragraphs 15-18 above, this Court order Defendant, Matthew A. Marini, to file a voluntary surrender of Registration No. 3,395,872;

4. That this Court declare that Defendant, Underground Beverage Brands, LLC is not entitled to registration on its Application Serial No. 77/395,121 with respect to goods and services covered under International Classes 30, 33 and 43;

5. That this Court order Defendant, Underground Beverage Brands, LLC, to file an express abandonment of Application Serial No. 77/395,121 with respect to goods and services covered under International Classes 30, 33 and 43;

6. That Defendants, within thirty (30) days after service of judgment with notice of entry thereof upon it, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth in detail the manner in which Defendants have complied with the injunction;

7. That Defendants account for and pay over to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged and that the amount of disgorgement for infringement of Plaintiff's registered trademarks and copyright be increased by a sum not exceeding three times the amount thereof as provided by law and that the Court impose whatever temporary, preliminary and final equitable relief is necessary to achieve the foregoing, including but not limited to, the imposition of a constructive trust;

8. That Plaintiff be awarded actual damages in an amount to be determined at trial and that the amount of damages for infringement of Plaintiff's registered trademarks and copyright be increased by a sum not exceeding three times the amount thereof as provided by law;

9. If elected by Plaintiff, for the maximum statutory damages as permitted under the Copyright Act;

10. For such other amounts as may be proper under 17 U.S.C. § 504;

11. That Plaintiff be awarded reasonable attorneys' fees and costs; and

12. That Plaintiff have such other and further relief as the Court may deem equitable including, but not limited to, any relief set forth under Sections 34-39 of the 1946 Trademark Act,

Copyright Act and/or state statutory law, including, exemplary damages under New York law for Defendants' willful and intentional acts.

**DEMAND FOR JURY TRIAL**

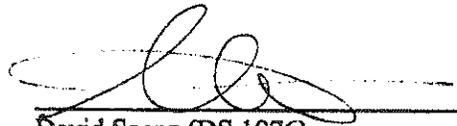
Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demand a jury trial on all triable issues that are raised by this Complaint.

Dated: August 12, 2008

Respectfully submitted,

**GREENBERG TRAUIG LLP**

By:



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