

ESTTA Tracking number: **ESTTA302140**

Filing date: **08/20/2009**

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

Proceeding	91191425
Party	Plaintiff TI Beverage Group, Ltd.
Correspondence Address	Michael Machat Machat & Associates 9107 Wilshire Blvd., Ste. 425 Beverly Hills, CA 90210 UNITED STATES michael@machatlaw.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Michael Machat
Filer's e-mail	michael@machatlaw.com
Signature	/MM/
Date	08/20/2009
Attachments	motiontosuspend_TI_Opposer.pdf (3 pages)(106347 bytes) Doc_1_Complaint.pdf (17 pages)(1119904 bytes)

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

In the matter of trademark Application Serial No. 77531683
For the mark TRU BLOOD
Date published in the Official Gazette: July 7, 2009

TI BEVERAGE GROUP, LTD.,)	
)	
Opposer,)	Opposition No. 91191425
)	
v.)	MOTION TO SUSPEND
)	
HOME BOX OFFICE, INC)	
)	
Applicant.)	
)	

TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

MOTION TO SUSPEND

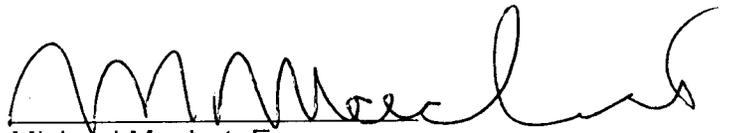
TI Beverage Group, Ltd. ("Opposer") hereby moves the Board to suspend this proceeding pursuant to 37 C.F.R. § 2.117(a). As grounds for this motion, Applicant states that on August 14, 2009, Applicant TI BEVERAGE GROUPS, LTD filed a complaint against HOME BOX OFFICE, INC ("Applicant") and other defendants, for claims including trademark infringement and unfair competition, in the United States District Court for the Central District of California. TI Beverage Group, Ltd., v. Omni Consumer Products, LLC, Home Box Office, Inc., et al. CV09-05936 JFW (RCx) (C.D. Cal. Filed Aug. 14, 2009).

Opposer submits that this civil case will be dispositive of this opposition proceeding. For example, the civil case may demonstrate that Applicant has infringed upon Opposer's wine brand TRUEBLOOD and that Applicant has no ownership rights in any TRU BLOOD sounding mark in International classes 32 or 33; this would be dispositive of the claims in the notice of opposition, and of any affirmative defenses thereto. Therefore, for reasons of judicial economy and as required by 37 C.F.R. § 2.117(a), Applicant requests the Board to suspend proceedings until termination of the civil action.

A copy of the aforementioned Complaint is attached hereto.

Respectfully submitted for Opposer,
MACHAT & ASSOCIATES, P.C.

DATED: August 20, 2009 By:



Michael Machat, Esq.
9107 Wilshire Blvd., Suite 425
Beverly Hills, CA 90210
Tel: (310) 860-1833
Fax: (310) 860-1837
Email: michael@machatlaw.com

PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: 9107 Wilshire Blvd., Ste. 425, Beverly Hills, CA 90210.

I am readily familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service the same day that it is collected and processed; such correspondence would be deposited with the United States Postal Service that same day in the ordinary course of the firm's business.

On August 20, 2009, I served the foregoing documents described as:

MOTION TO SUSPEND

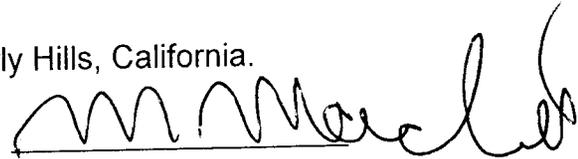
on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

**Douglas N. Masters, Esq
Sharon Ceresnie
Loeb & Loeb
321 North Clark Street
Chicago, Illinois 60654**

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail the same day as this declaration.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 20, 2009, at Beverly Hills, California.



1 Michael Machat, Esq.
2 MACHAT & ASSOCIATES, P.C.
3 9107 Wilshire Blvd., Suite 425
4 Beverly Hills, California 90210
5 Telephone: (310) 860-1833
6 Telefax: (310) 860-1837
7 Email: info@machatlaw.com

8 Attorneys for Plaintiff
9 TI Beverage Group, Ltd

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV09-05936 JFW (RCX)

TI BEVERAGE GROUP, LTD,

Plaintiff,

vs.

OMNI CONSUMER PRODUCTS,
LLC, HOME BOX OFFICE, INC.,
and DOES 1-10, inclusive,

Defendants.

CASE NO.

COMPLAINT FOR TRADEMARK
INFRINGEMENT

DEMAND FOR JURY TRIAL

For its Complaint, Plaintiff TI BEVERAGE GROUP, LTD hereby alleges
and asserts as follows:

I. JURISDICTION AND VENUE

1. Plaintiff bring this action for injunctive relief and damages arising out
of the unauthorized, unfair, and deceptive competitive practices of Defendants,
and each of them, in connection with the commercial use and exploitation of

Given
T
Form

1 trademarks in violation of the Lanham Act.

2 2. This action arises under the Trademark Laws of the United States,
3 including particularly, Section 43 of the Lanham Act, 15 U.S.C. §1125.
4 Jurisdiction is conferred on this Court by 15 U.S.C. Section 1121(a), by 28
5 U.S.C. Section 1338(a), in that this case arises under the Trademark Laws of the
6 United States, 15 U.S.C. Sections 1051, *et seq.*, and by principles of pendent
7 jurisdiction. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c)
8 by virtue of the fact that Defendant Home Box Office has a major presence in Los
9 Angeles County, and transact business out of their offices in Los Angeles County,
10 California.

11
12 **II. THE PARTIES**

13
14 3. Plaintiff TI Beverage Group, Ltd. (“TI BEVERAGE GROUP”) is a
15 Delaware Corporation with its main business office located in Beverly Hills,
16 California.

17 4. Defendant Home Box Office, Inc. (“HBO”) is a Delaware
18 Corporation doing extensive business in Los Angeles County, California.

19 5. Defendant Omni Consumer Products, LLC (“OMNI”) is upon
20 information and belief a Delaware Company with its principal place of business in
21 Oakland, California.

22 6. The true names and capacities, whether individual, corporate or
23 otherwise of Doe Defendants 1 through 10 inclusive, are unknown to Plaintiff,
24 who therefore sue them by such fictitious names. Plaintiff will seek leave to
25 amend this complaint to allege their true names and capacities when they have
26 been ascertained. Plaintiff is informed and believes and thereon alleges that each
27 of the fictitiously named Defendants is responsible in some manner for the
28 occurrences herein alleged and that Plaintiff’s damages as herein alleged were

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 proximately caused by those Defendants. At all times herein mentioned, Doe
2 Defendants 1 through 10, inclusive, were the agents, servants, employees or
3 attorneys of their co-Defendants, and in doing the things hereinafter alleged were
4 acting within the course and scope of their authority as those agents, servants,
5 employees or attorneys, and with the permission and consent of their
6 co-Defendants.

7
8 **III. FACTS GIVING RISE TO THIS ACTION**

9
10 7. Plaintiff TI BEVERAGE GROUP has been marketing both alcoholic
11 and non-alcoholic beverages under the following brand names for many years,
12 including: VAMPIRE (for wines – US Trademark Registration No. 2263907);
13 DRACULA (for wines --US Trademark Registration No. 78464714); CHATEAU
14 DU VAMPIRE (for wines – US Trademark Registration No. 3502158);
15 VAMPIRE VINEYARDS (for wines – US Trademark Registration No.
16 3418138); VAMPYRE (for vodka – US Trademark Registration No. 3082097);
17 VAMP (energy drink --- US Trademark Registration No. 2681906); and
18 DRACOLA (a red colored cola – US Trademark Registration No. 2051160)
19 amongst other brands.

20 8. TI BEVERAGE GROUP is the exclusive licensee of Michael
21 Machat, who is the Registrant for all of these aforementioned brands. By virtue
22 of its extended use in commerce, the aforementioned VAMPIRE registration has
23 become incontestable.

24 9. TI BEVERAGE GROUP also is the exclusive licensee of the slogans
25 TASTE OF IMMORTALITY and SIP THE BLOOD OF THE VINE, (TM
26 Registrations 3167606 and 3079403, respectfully, also registered in Machat's
27 name.)

28 10. The origin of Vampire wine, and TI BEVERAGE GROUP's

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 claim of right goes back to 1988, when Machat released a French bottled Algerian
2 Syrah under the brand name Vampire. The first sale was to MCA Records and
3 Alice Cooper, and Machat promoted the wine under the slogan, “Sip the Blood of
4 the Vine” and explained on the back label that the reason no one hears stories
5 about vampires attacking humans anymore is because Vampires have been
6 drinking Vampire wine instead. The label went on to state that “A trickle of this
7 full bodied Vampire Wine will satiate and prolong the life of any normal blood
8 sucking human predator.” Although the labels have changed over the years, and
9 the explanation has been condensed, the slogan “Sip the Blood of the Vine” has
10 remained ever since. Machat began to use the slogan “Taste of Immortality” by
11 at least 1995, if not earlier.

12 11. The website marketing for Vampire wine has consistently stressed that
13 the Vampire Vineyards are run by a group of Vampires and that Machat, a mere
14 mortal and attorney, is the front for a circle of Vampires.

15 12. In or around 2003, Hope Trueblood Goldie and her husband Stuart
16 Goldie formed a company called Trueblood Winery, LLC, and began making and
17 marketing ultra premium Napa Valley wine under Hope’s maiden name,
18 TRUEBLOOD. They decided to use Hope’s maiden name for the additional
19 purpose of calling attention to the bloodlike quality of wine produced from red
20 grapes.

21 13. Beginning in or around 2003, the Trueblood Winery offered the
22 Trueblood wine brand for sale nationally via the website Truebloodwines.com.
23 The Trueblood Wine has been sold in various states, counties and cities
24 throughout the US, including California, New York and other markets. The
25 Trueblood Cabernet Sauvignon retails at a price of approximately \$40 per 750
26 ML Bottle. The Trueblood Syrah retails for approximately \$30 per 750 ML
27 Bottle.

28 14. On or about July 31st, 2009, Plaintiff TI BEVERAGE GROUP

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 acquired the TRUEBLOOD brand of wine, including all intellectual property
2 rights associated with the brand, including the common law trademark and
3 copyrights, as well as the good will associated with the brand.

4 15. In or around September of 2008, HBO began to televise a show
5 titled TRUE BLOOD in which some of the fictional characters (those that profess
6 to be vampires) drink a fictional drink called Tru Blood which is supposed to be a
7 synthetic blood that prolongs the life of vampires. The series is based upon a
8 book written by Charlene Harris, which upon information and belief, was first
9 published in 1998, ten years after Machat began marketing his wine as the cure
10 for Vampires seeking to live amongst humans in society without having to drink
11 human blood.

12 16. TI BEVERAGE GROUP, either by itself or through its predecessors
13 in interest has been selling Vampire wine, Trueblood Wine and other related
14 wines, such as Dracula and Chateau du Vampire, prior to the date of release of
15 defendant HBO's TV show True Blood which, upon information and belief was
16 released in September of 2008.

17 17. Similarly, TI BEVERAGE GROUP, either by itself or through its
18 predecessors in interest, has been selling a red colored vodka under the name
19 VAMPYRE since approximately 2002. Like the marketing behind Vampire wine,
20 the marketing material created for VAMPYRE vodka back in 2002 explained that
21 Vampires have been drinking VAMPYRE vodka for years.

22 18. Similarly, TI BEVERAGE GROUP, either by itself or through its
23 predecessors in interest, has been selling a red colored energy drink under the
24 brand name VAMP (which is an abbreviation for Vampire.) Also, TI
25 BEVERAGE GROUP, either by itself or through its predecessors in interest, has
26 also been selling DRACOLA, a red soda with a cola flavor.

27 19. In addition to beverages with a Vampire twist to its name, TI
28 BEVERAGE GROUP also sells Vampire Fine Belgian Chocolate and Vampire

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 Gourmet Coffee. A trademark application is pending for Vampire Chocolates
2 and Coffee in Machat's name, who also has licensed the rights to sell Vampire
3 branded chocolates and coffee to TI BEVERAGE GROUP.

4 20. Upon information and belief, TI BEVERAGE GROUP's
5 predecessors in interest in the TRUEBLOOD wine, first began selling Trueblood
6 wine in the United States in 2003. Upon information and belief, Plaintiff's
7 predecessors in interest in the TRUEBLOOD brand of wine, first began
8 marketing its TRUEBLOOD family wine on-line at www.truebloodwines.com in
9 2003, approximately 5 years before the HBO TV show of the same name.

10 21. TI BEVERAGE GROUP has spent substantial amounts of time and
11 money building up, advertising, and promoting its beverage brands. By virtue of
12 the popularity of its beverage brands, its advertising, promotion, and sales, plus
13 the popularity of its website, vampire.com, TI BEVERAGE GROUP has built up
14 and owns an extremely valuable goodwill which is symbolized by TI BEVERAGE
15 GROUP's various marks.

16 22. Upon information and belief defendant Omni Consumer Products
17 entered into a licensing agreement with defendant HBO pursuant to which they
18 intend to release to the public for sale a blood orange drink labeled with the name
19 Tru Blood. In fact, defendant HBO has already been accepting pre-orders of the
20 product, accepting money for their infringing product prior to their release date in
21 September 2009. The price of the drink as advertised on defendants'
22 trubeverage.com website is \$4.00 per bottle. The bottle appears to be
23 approximately 14 ounces.

24 23. Upon information and belief, Plaintiff alleges that prior to defendant
25 HBO and defendant Omni entering into this agreement to market a beverage
26 under the TRU BLOOD name, defendant HBO knew of the pre-existing
27 TRUEBLOOD wine brand, but decided to go ahead with their plans to market
28 beverages under a similar Trueblood name anyway, because they believed that

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 due to their size they could get away with and stomp on the rights of the small
2 wine brand.

3 23. If defendants are not stopped from marketing a beverage with a
4 Trueblood sounding name, then consumers will be confused as to the source of
5 origin of defendants' beverage.

6 24. Also, if defendants are not stopped from marketing a beverage with a
7 Trueblood sounding name, it is likely that consumers will become confused about
8 the source and origin of Plaintiff TI BEVERAGE GROUP's products, and
9 mistakenly conclude that Plaintiff TI BEVERAGE GROUP's products are
10 produced by Defendants.

11
12 **COUNT I - LIKELIHOOD OF CONFUSION**

13 25. PLAINTIFF TI BEVERAGE GROUP realleges the allegations in
14 paragraphs 1 though 24.

15 26. Tru Blood, Trueblood and True Blood are all pronounced the same.
16 If Defendants are permitted to continue marketing beverages with a Trueblood
17 sounding name, then consumers will be confused as to the source of origin of
18 defendants and TI BEVERAGE GROUP's beverages.

19 27. More specifically, if defendants are permitted to market a beverage
20 with a Trueblood sounding name, it is likely that consumers will become confused
21 about the source and origin of TI BEVERAGE GROUP's products, and
22 mistakenly conclude that TI BEVERAGE GROUP's products are produced by
23 Defendants.

24 28. Comparatively speaking, soft drinks are generally relatively
25 inexpensive, unsophisticated, and unrefined. By contrast, wines are more
26 expensive and can be incredibly complex, with nuances of flavors and changing
27 aromas; consequently, wines are generally perceived as more upscale than a soft
28 drink. Defendants, if allowed to sell and distribute beverage products with a

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 TRUEBLOOD sounding name, will cause consumers to believe that TI
2 BEVERAGE GROUP's wine products are inexpensive, unsophisticated, and
3 unrefined. This is particularly true for TI BEVERAGE GROUP'S VAMPIRE
4 brand which sells for approximately \$10.00 per bottle. Also, if Defendants are
5 permitted to continue selling their infringing product, their doing so will hinder
6 development of TI BEVERAGE GROUP'S *TRUEBLOOD* wine brand, which
7 currently sells for between \$30 and \$40 per bottle, and interfere with, if not
8 make it impossible, for TI BEVERAGE GROUP to market its *TRUEBLOOD*
9 wine brand as a super premium wine.

10 29. Defendants, if allowed to continue in the distribution, marketing,
11 promotion, advertisement, offering for sale, and sale of the infringing product,
12 will cause consumers to believe that their TRU BLOOD beverage originates from
13 the same source as TRUEBLOOD WINE and/or TI BEVERAGE GROUP'S
14 other products. This will lead to further irreparable harm to TI BEVERAGE
15 GROUP's goodwill, reputation, and sales.

16 30. Defendants have large resources with which to market and advertise
17 its intended Tru Blood soft drink. Defendants' resources vastly exceed those of
18 TI BEVERAGE GROUP. Consequently, marketing and advertising efforts by
19 Defendants are likely to mislead consumers to believe that TI BEVERAGE
20 GROUP's Trueblood wines are making unauthorized use of trademarks that
21 defendants own. Consumers are likely to be misled to believe that TI
22 BEVERAGE GROUP is misusing the *TRUEBLOOD* mark. As a result, TI
23 BEVERAGE GROUP's reputation and goodwill will be impaired.

24 31. Defendants' TRU BLOOD brand so closely resembles TI
25 BEVERAGE GROUP's products that the public is likely to be confused and
26 deceived, and to assume erroneously that defendants' TRU BLOOD beverages are
27 those of TI BEVERAGE GROUP, or that defendants are in some way connected
28 with, sponsored by, or affiliated with TI BEVERAGE GROUP, all to TI

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 BEVERAGE GROUP's detriment and irreparable damage.

2 32. Defendants are not affiliated with, connected with, endorsed by, or
3 sponsored by TI BEVERAGE GROUP, nor has TI BEVERAGE GROUP
4 approved or authorized any of the goods or services offered or sold by
5 defendants.

6 33. TI BEVERAGE GROUP has no control over the nature and quality
7 of the goods and services offered and sold by defendants or its licensees. Any
8 failure, neglect, or default by defendants or its licensees in providing such
9 products will reflect adversely on TI BEVERAGE GROUP as being the believed
10 source of said failure, neglect, or default, thereby hampering TI BEVERAGE
11 GROUP's efforts to continue to protect its outstanding reputation and preventing
12 TI BEVERAGE GROUP from further building its reputation. Said failure,
13 neglect, or default will result in loss of sales by TI BEVERAGE GROUP, and
14 loss of value of TI BEVERAGE GROUP's considerable expenditures to promote
15 its goods and services under the TRUEBLOOD mark, all to the irreparable harm
16 of TI BEVERAGE GROUP.

17 34. Defendants have committed trademark infringement of Plaintiff's
18 common law trademarks in their deceptive marketing of a soft drink with a
19 Trueblood sounding name.

20
21 35. Defendants have induced others or, upon information and belief, are
22 about to induce others to infringe Plaintiff's trademarks and trade names.

23
24 36. Each Defendant has acted carelessly, recklessly, and otherwise
25 culpably in selecting, using, and/or approving of the use of Plaintiff's trademarks
26 in the distribution, marketing, promotion, advertisement, offering for sale, and/or
27 sale of Defendants' *TRU BLOOD beverage(s)*.

28

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 37. Without the knowledge or consent of Plaintiff, Defendants have
2 proclaimed their unlawful intent to market and sell, and have actually begun to
3 market and sell in interstate commerce, and in commerce substantially affecting
4 interstate commerce, beverage products branded under the name TRU BLOOD.
5 Defendants have promoted, advertised, offered for sale, and/or sold, beverage
6 products using the TRU BLOOD mark through persons not authorized, employed
7 by, or associated in any way with Plaintiff and have used the aforementioned
8 trade name and trademark as false designation and false representation for
9 beverage products.

10 38. None of the activities alleged in this complaint have been
11 authorized by Plaintiff, and such unauthorized intended use by Defendants of
12 Plaintiff's trademarks and/or trade names in interstate commerce, commerce
13 substantially affecting interstate commerce in this district, and elsewhere
14 throughout the United States, will constitute infringement and an inducement to
15 infringe Plaintiff's trademarks and/or trade names, and such activities are likely to
16 cause confusion, mistakes, and to deceive the public at large.

17 39. Upon information and belief, Defendants have acted with the
18 unlawful purpose of:

- 19 a. Improperly taking advantage of the valuable goodwill belonging to
20 Plaintiff;
- 21 b. Soliciting Plaintiff's customers and/or potential customers,
22 attempting to sell, and selling to such customers and potential
23 customers, beverage products marketed under the TRU BLOOD
24 mark through persons not authorized by, employed by, or
25 associated in any way with Plaintiff;
- 26 c. Inducing others to infringe Plaintiff's trademarks and trade names;
27 and
- 28 d. Causing the goods of persons not authorized by, employed by, or

1 associated in any way with Plaintiff to be falsely represented as if
2 they were rendered, authorized, sponsored by, endorsed by, or
3 otherwise connected with Plaintiff and its licensed trademarks and
4 trade names.

5 40. Defendants' conduct, as alleged in this complaint, constitutes a
6 violation of 15 U.S.C. § 1125(a).

7 41. If Defendants are allowed to march forward with their plans,
8 Plaintiff will be damaged as alleged in this complaint, and the Defendants will
9 profit thereby. Furthermore, unless the Court permanently enjoins Defendants'
10 conduct as alleged in this complaint, Plaintiff's business, goodwill, and reputation
11 will suffer irreparable injury of an insidious and continuing sort that cannot be
12 adequately calculated and compensated in monetary damages.

13 42. Defendants' aforementioned acts and conduct is being done
14 willfully and with an intent to ride on, and/or step on and demolish, the goodwill
15 Plaintiff has worked hard to develop. Plaintiff is therefore entitled to treble
16 damages arising therefore, as well as reimbursement of Plaintiff's attorneys' fees
17 and costs.

18
19 **COUNT II**

20 **VIOLATION OF LANHAM ACT 15 U.S.C. §1114**

21 **(Against All Defendants)**

22 43. Plaintiff repeats each allegation contained in paragraphs 1 through 42
23 as though set forth here at length.

24 44. Defendants have engaged in, and continue to engage in, the wrongful
25 exploitation of the registered marks licensed to Plaintiff.

26 45. Defendants' goods are so closely related to Plaintiff's goods that the
27 public is likely to be confused, to be deceived, and to erroneously assume that
28 Defendants' marketing and sale of their TRU BLOOD soft drink, as packaged,

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 advertised and promoted, are those of Plaintiff, or that Defendants are in some
2 way connected with, sponsored by, or affiliated with Plaintiff, all to Plaintiff's
3 detriment and irreparable damage.

4 46. Defendants are not affiliated with, connected with, endorsed by, or
5 sponsored by Plaintiff. Furthermore, Plaintiff has not approved any of the goods
6 or services offered or sold by the Defendants.

7 47. Defendants' conduct has disparaged and tarnished Plaintiff's
8 VAMPIRE family of beverage brands.

9 48. Defendants' aforesaid infringing conduct has been willful and with an
10 intent to ride on, and/or step on and demolish, the goodwill Plaintiff has worked
11 hard to develop. Defendants' aforesaid infringing conduct has been willful and
12 with knowledge that the sale, marketing, advertisement, and promotion of their
13 beverages will doom the prospects of future commercial success of Plaintiff's
14 VAMPIRE family of brands, including its TRUEBLOOD brand. Plaintiff is
15 therefore entitled to treble damages arising therefore, as well as reimbursement of
16 Plaintiff's attorneys' fees and costs.

17
18 **COUNT III**

19 **UNFAIR COMPETITION - COMMON LAW, AND CALIFORNIA**

20 **BUSINESS & PROFESSIONS CODE §§ 17200 et seq.**

21
22 49. Plaintiff repeats each allegation contained in paragraphs 1 through 48
23 as though set forth herein at length.

24 50. Defendants have engaged in unfair competition perpetrated against
25 Plaintiff by reason of the conduct alleged herein.

26 51. The unlawful and unfair conduct is injuring the goodwill of Plaintiff.

27 52. Defendants are each liable for the unfair competition, and/or are
28 liable for aiding and abetting such conduct.

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 53. By this conduct, Plaintiff has directly suffered injuries and each
2 Defendant has been unjustly enriched.

3 54. Plaintiff is entitled to restitution, the recovery of damages, and the
4 recovery of the profits earned by Defendants by virtue of their conduct.

5 55. As a consequence of the unfair competition by Defendants, Plaintiff
6 is suffering irreparable injury, by reason of which such conduct should be
7 enjoined.

8 56. Plaintiff is entitled to reasonable attorneys' fees.

9 57. Plaintiff is informed and believes, and on that basis alleges, that the
10 aforementioned conduct of Defendants is willful, oppressive, fraudulent, and
11 malicious, and Plaintiff is therefore entitled to punitive damages.

12
13 **COUNT IV**
14 **UNFAIR COMPETITION – COMMON LAW, CALIFORNIA BUSINESS &**
15 **PROFESSIONS CODE §§ 17500 et seq.**
16

17 58. Plaintiff repeats each allegation contained in paragraphs 1 through 57
18 as though set forth here at length.

19 59. Defendants' use of the trade name and trademark TRU BLOOD or
20 TRUEBLOOD, which misrepresents the nature, characteristics, identity, and
21 source or sponsorship of Defendants' goods, constitutes aiding and abetting
22 liability for deceptive, untrue, and misleading advertising and therefore constitutes
23 a violation of, inter alia, California Business and Professions Code §§17500 et
24 seq. and California common law.

25 60. Defendants' use of the trade name and trademark TRU BLOOD or
26 TRUEBLOOD and related trade dress and trademarks are likely to deceive and
27 will continue to deceive the consuming public. Defendants knew, recklessly
28 disregarded, or reasonably should have known that such packaging, advertising,

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 marketing, and promotion was untrue and/or misleading.

2 61. As a result of the conduct described above, Defendants have been
3 and/or will be unjustly enriched at the expense of Plaintiff and the general public.
4 The interests of the general public and Plaintiff are, therefore, closely related.

5
6 62. Defendants have been unjustly enriched, among other things, by the
7 receipt of sales revenues from consumers who mistakenly thought that they were
8 purchasing Plaintiff's TRUBLOOD beverage-alcohol products, both in California
9 and throughout the world, but instead were purchasing Defendants' goods which
10 are promoted and sold through advertisements that affirmatively misrepresent,
11 either directly or by implication, the nature, characteristics, identity, and source
12 or sponsorship of the goods.

13 63. Pursuant to Business and Professions Code §§ 17203 and 17535,
14 Plaintiff, on behalf of itself and the general public, which is unable effectively to
15 assert its interests, seeks an order of this Court ordering Defendants immediately
16 to cease such support for acts of unfair competition and false advertising, and
17 enjoining Defendants from continuing to import or export, distribute, market,
18 promote, advertise, offer for sale, and sell, Defendants' TRU BLOOD and/or
19 TRUEBLOOD beverage products which falsely advertise or conduct business via
20 the unlawful, deceptive, unfair or fraudulent business acts and practices, and the
21 untrue and misleading advertising complained of herein. Plaintiff additionally
22 requests an order disgorging Defendants' ill-gotten gains and restitution of all
23 monies wrongfully acquired by Defendants by means of their support of such acts
24 of unfair competition and false advertising, damages, interest and attorneys' fees.

25
26 WHEREFORE, Plaintiff prays for judgment as follows:

27
28 1. That the Court adjudge and decree that Defendants have falsely

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

1 designated the origin of certain beverage products as those of Plaintiff, have made
2 and used false representations in connection with the sale, offering for sale,
3 promotion and advertising of such products, and have unfairly competed with
4 Plaintiff at common law.

5

6 2. That the Court adjudge and decree that Defendants have infringed
7 Plaintiff's unregistered trademark, TRUEBLOOD.

8

9 3. That the Court adjudge and decree that Defendants have infringed
10 Plaintiff's registered trademarks, including SIP THE BLOOD OF THE VINE,
11 TASTE OF IMMORTALITY, VAMPIRE, VAMPIRE VINEYARDS and others.

12

13 4. That the Court adjudge and decree that Defendants unlawfully diluted
14 and diminished Plaintiff's rights in the TRUEBLOOD and VAMPIRE family of
15 trademarks.

16

17 5. That the Court permanently enjoin Defendants, its agents, servants,
18 employees, attorneys, and all persons acting in concert or participation with them,
19 or with any of them from:

20

21

22

23

24

25

26

27

28

a. Using TRU BLOOD or TRUEBLOOD, or any other word or words which are similar to, or a colorable imitation of, Plaintiff's trade names and marks, either alone, as part of, or together with, any other word or words, trademark, service mark, trade name, or other business or commercial designation in connection with the sale, offering for sale, advertising, and/or promotion of beverage products and beverage accessories;

b. Selling, offering to sell, marketing, distributing, advertising and/or promoting any BEVERAGE product with the words TRU

MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833

- 1 BLOOD or TRUEBLOOD displayed on the product, its
- 2 packaging, advertising or promotional materials;
- 3 c. Representing directly or indirectly by words or conduct that any
- 4 beverage product or beverage accessory offered for sale, sold,
- 5 promoted, or advertised by Defendants, is authorized, sponsored
- 6 by, endorsed by, or otherwise connected with Plaintiff;
- 7 d. Aiding or abetting in unfair competition against Plaintiff;
- 8 e. Aiding or abetting in false advertising; and
- 9 f. Inducing others to engage in any of these aforementioned acts.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. That the Court award an amount to be determined at trial but at least an amount equivalent to treble the amount of Defendants' illicit profits or Plaintiff's lost profits, whichever is greater.

7. That the Court award an amount to be determined at trial but at least an amount equal to the cost of prospective corrective advertising.

8. That the Court award Judgment against Defendants for the full costs of this action, including the attorney's fees reasonably incurred by Plaintiff.

9. That the Court Order such other, further and different relief as the nature of this action may require and as the Court may deem just and proper.

10. That the Court retain jurisdiction of this action for the purpose of enabling Plaintiff, in its discretion, to apply to this 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 of compliance therewith,

1 and/or for the punishment of any violation thereof.

2
3 Respectfully submitted,
4 MACHAT & ASSOCIATES, P.C.

5
6 Dated: August 13, 2009

7 By: 
8 Michael Machat, Esq.

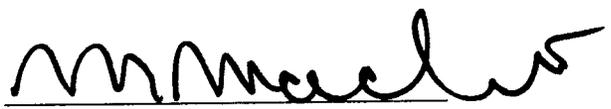
9 Attorneys for Plaintiff TI BEVERAGE
10 GROUP, LTD.

11
12 DEMAND FOR JURY TRIAL

13
14 Plaintiff hereby requests a trial by jury on all issues raised by the
15 Complaint.

16 Respectfully submitted,
17 MACHAT & ASSOCIATES, P.C.

18
19 Dated: August 13, 2009

20 By: 
21 Michael Machat, Esq.

22
23 Attorneys for Plaintiff TI BEVERAGE
24 GROUP, LTD.

25
26
27
28
MACHAT & ASSOCIATES, P.C.
9107 Wilshire Blvd., Ste. 425
Beverly Hills, California 90210
Telephone: (310) 860-1833