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

| | |
|------------------------|---|
| Proceeding | 91205827 |
| Party | Defendant Charles Nucci |
| Correspondence Address | IAN K. BOYD HARVEY SISKIND LLP FOUR EMBARCADERO CENTER, 39TH FLOOR SAN FRANCISCO, CA 94111 UNITED STATES iboyd@harveysiskind.com, mstratton@harveysiskind.com, clee@harveysiskind.com |
| Submission | Motion to Suspend for Civil Action |
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| Signature | /Ian K. Boyd/ |
| Date | 05/16/2013 |
| Attachments | Motion to Suspend.130516.FINAL + Exhibits (00015092-2).pdf(3672288 bytes) |

CERTIFICATE OF TRANSMISSION

I hereby certify that this **MOTION TO SUSPEND**, (Opposition No. 91205827), dated May 16, 2013, is being electronically transmitted to the Trademark Trial and Appeal Board on May 16, 2013.

/Ian K. Boyd/

Ian K. Boyd

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **MOTION TO SUSPEND**, dated May 16, 2013 (Opposition No. 91205827), was served on Opposer by sending a copy thereof via U.S. Mail, postage prepaid, on May 16, 2013 addressed to:

Jason M. Sneed
Sneed PLLC
610 Jetton Street, Suite 120-107
Davidson, NC 28036

 /Cynthia Lee/
Cynthia Lee

**Exhibit A to
Applicant Charles Nucci's
Motion To Suspend**

Offered by Applicant Charles Nucci

Sturgis Motorcycle Rally, Inc. v. Charles Nucci

Opposition No. 91205827

FILED

JUN 22 2011


CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

STURGIS MOTORCYCLE RALLY, INC.,)
)
Plaintiff,)
)
v.)
)
RUSHMORE PHOTO & GIFTS, INC.,)
JRE, INC., CAROL NIEMANN,)
PAUL A. NIEMANN, and)
BRIAN M. NIEMANN,)
)
Defendants.)
_____)

Civil No. 11-5052

COMPLAINT

Plaintiff Sturgis Motorcycle Rally, Inc. ("SMRi" or "Plaintiff"), for its Complaint against Rushmore Photo & Gifts, Inc. ("RPG"), JRE, Inc. ("JRE"), Carol Niemann, Paul A. Niemann, and Brian M. Niemann (collectively, "Defendants"), alleges as follows:

Jurisdiction and Venue

1. This Complaint is an action for trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §§ 1114 and 1125, for false advertising under The Lanham Act, 15 U.S.C. § 1125(a)(1)(B), for trademark dilution under the Federal Trademark Dilution Revision Act, 15 U.S.C. § 1125(c), for violation of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), for unfair competition and trademark infringement under the common law of South Dakota, for trademark infringement in violation of SDCL Ch. 37-6 and related provisions, and for deceptive trade practices in violation of SDCL Ch. 37-24 and related provisions.

2. This Court has subject matter jurisdiction over this action upon the following grounds:

a. 28 U.S.C. § 1331, this being a civil action arising under the laws of the United States;

b. 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce;

c. 28 U.S.C. § 1338(a), this being a civil action arising under the trademark laws of the United States, namely, the Lanham Act, 15 U.S.C. § 1051 *et seq.*;

d. 28 U.S.C. § 1338(b), this being a civil action asserting a claim of unfair competition joined with a substantial and related claim under the trademark laws; and

e. 28 U.S.C. § 1367(a), this being a civil action including claims that are so related to claims that are within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

3. Venue is proper in this Court under the provisions of 28 U.S.C. § 1391(b) and (c).

The Parties

4. Plaintiff Sturgis Motorcycle Rally, Inc. ("SMRi") is a South Dakota not-for-profit corporation with a principal place of business at 1612 Junction Avenue, Suite 4, Sturgis, SD 57785.

5. Upon information and belief, Defendant Rushmore Photo & Gifts, Inc. (“RPG”) is a South Dakota corporation with a principal place of business at 11993 US Hwy 16, Custer, SD 57730-2009. RPG may be served through its registered agent, Paul Niemann, at 11993 US Hwy 16, Custer, SD 57730.

6. Upon information and belief, JRE, Inc. (“JRE”) is a South Dakota corporation having a principal place of business of 11993 US Hwy 16, Custer, SD 57730-7114. JRE may be served through its registered agent, Paul Niemann, at 11993 US Hwy 16, Custer, SD 57730.

7. Upon information and belief, Carol Niemann is an individual and resident of South Dakota, with an address of 11993 US Hwy 16, Custer, SD 57730.

8. Upon information and belief, Paul A. Niemann is an individual and resident of South Dakota, with an address of 11993 US Hwy 16, Custer, SD 57730.

9. Upon information and belief, Brian M. Niemann is an individual and resident of South Dakota, with an address of 4101 Troon Ct., Rapid City, SD 57702.

Background Facts Regarding Plaintiff

10. Since 1938, SMRi and its predecessors-in-interest have organized, sponsored, marketed and promoted a motorcycle rally known in recent decades as the “Sturgis Motorcycle Rally,” which takes place annually in and near the city of Sturgis, South Dakota and the Black Hills area of South Dakota and Wyoming. SMRi, together with its licensee, the City of Sturgis, South Dakota, has been the official sponsor of the Sturgis Motorcycle Rally for many years. A principal purpose of this annual event is to promote economic development in the City of Sturgis and the surrounding Black Hills area of South Dakota and Wyoming.

11. The Sturgis Motorcycle Rally, which officially begins on the first Monday following the first full weekend each August, is the premier motorcycle-related event in the world and brings hundreds of thousands of visitors to the City of Sturgis, South Dakota and the Black Hills region each year. The Sturgis Motorcycle Rally is the most famous, well-attended motorcycle enthusiast event in the world. As a result of the fame of the Sturgis Motorcycle Rally and the hundreds of thousands of visitors who attend the event each year, the event has become a destination for some of the country's best-known musical groups and entertainers, celebrities and even Presidential candidates.

12. In promoting and otherwise supporting the Sturgis Motorcycle Rally, SMRi and its predecessors-in-interest have used, and permitted others to use, certain proprietary trademarks and service marks to identify the activities comprising this annual event and the goods sold in conjunction therewith. Those proprietary designations have included the terms STURGIS®, STURGIS MOTORCYCLE RALLY™, STURGIS RALLY & RACES™, TAKE THE RIDE TO STURGIS®, STURGIS BIKE WEEK® and a composite design mark which includes at its center and as the largest and most prominent textual component thereof the term STURGIS (the "STURGIS Composite Design Mark") (collectively, the foregoing shall be referred to herein as the "STURGIS Marks").

13. The success of the Sturgis Motorcycle Rally is due in large part to the longstanding, continuous and extensive sponsorship, promotion and support by SMRi and its predecessors-in-interest, including the Sturgis Area Chamber of Commerce, with respect to the offering, sale and distribution of goods and services related to the Sturgis Motorcycle Rally and sold under and in conjunction with the STURGIS Marks, and due

to the related activities of SMRi, its predecessors and their licensee, the City of Sturgis, in related sponsorship activities under the STURGIS Marks and pertaining to the Sturgis Motorcycle Rally.

14. Over the last two decades, for example, SMRi, its predecessors and their respective licensees have sold tens of millions of dollars in licensed goods in conjunction with the STURGIS Marks. Sponsors of the Sturgis Rally have included Harley-Davidson, R.J. Reynolds, Coca-Cola of the Black Hills, GEICO and Jack Daniels.

15. As a result of royalties generated from the sale of licensed goods and sponsorships of the Sturgis Motorcycle Rally, SMRi and its predecessors have made substantial contributions to the betterment of the Sturgis community, such as by making contributions to over 90 different causes and organizations, including the Meade County summer school program, Salvation Army's food cupboard, Sturgis Arts Council, Sturgis Jaycees, Sturgis Little League, Sturgis Police Department D.A.R.E. program, Sturgis Volunteer Fire Department, Black Hills Area Habitat for Humanity, Crisis Intervention Shelter, special projects of the City of Sturgis, and Girl Scouts of the USA. These activities have engendered a great deal of goodwill for SMRi, its predecessors, their respective sponsorship and promotion of the Sturgis Motorcycle Rally and for the STURGIS Marks.

16. Further strengthening the STURGIS Marks to connote and promote goods and services in conjunction with the Sturgis Motorcycle Rally, SMRi and its predecessors have obtained and/or acquired, and SMRi owns, a number of U.S. registrations for several of the STURGIS Marks. These registrations provide nationwide notice to others of the rights of SMRi and further strengthen the Sturgis Motorcycle Rally and the

goodwill of SMRi associated with the STURGIS Marks. Such registrations are comprised of or include:

- STURGIS®, U.S. Reg. No. 3,923,284, for use in connection with an extensive array of goods and services;
- TAKE THE RIDE TO STURGIS®, U.S. Reg. No. 2,698,677, for use in connection with clothing, namely, t-shirts and sweatshirts and caps;
- STURGIS BIKE WEEK®, U.S. Reg. Nos. 2,070,955; 3,825,398; 3,818,703; 3,838,171; 3,911,270; 3,923,236 for use in connection with a wide variety of merchandise; and
- The STURGIS Composite Design Mark, U.S. Reg. No. 1,948,097, for use in connection with, *inter alia*, “promoting sports competitions and/or events of others, namely motorcycle rallies, exhibits and competitions” (shown below);



(The foregoing registrations shall be referred to hereinafter as the “STURGIS Registrations”).

17. Attached at Exhibit A hereto are true and correct copies of the U.S. trademark registration certificates for the STURGIS Registrations, which STURGIS Registrations are owned by Plaintiff, are live and subsisting, and constitute evidence of the validity of each of the respective registered marks, Plaintiff’s ownership of each of the registered marks, and Plaintiff’s exclusive right to use each of the registered marks in commerce on or in connection with the goods and services set forth in each of the respective STURGIS Registrations (See Exhibit A).

18. As a result of the longstanding use by SMRi and its predecessors of the STURGIS Marks, and the tremendous goodwill derived from such ownership and use of the STURGIS Marks and the ownership of the STURGIS Registrations, the STURGIS®

mark is distinctive and has become a famous mark within the meaning of the U.S.

Trademark Dilution Revision Act.

Defendants and Their Illegal Activities

19. Without authorization, license or consent from Plaintiff, the Defendants have been using reproductions, counterfeits, copies and colorable imitations of Plaintiff's registered STURGIS® mark, in connection with the sale, offering for sale, distribution and advertising of Defendants' goods, and in a manner which is likely to cause confusion, to cause mistake and to deceive consumers and potential consumers.

20. Defendants also have applied unauthorized reproductions, counterfeits, copies, and colorable imitations of Plaintiff's STURGIS® mark to the labels, signs, prints, packages, wrappers, receptacles and advertisements used and intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, and advertising of goods sold in this country, and which use is likely to cause confusion, to cause mistake and to deceive consumers and potential consumers.

21. Attached at Exhibit B hereto is a 2011 merchandise order book issued by Defendant RPG, displaying goods offered for sale, sold and advertised by each of Defendants. As set forth in Exhibit B and otherwise, Defendants' counterfeit and infringing goods are sold under the false and misleading designations "Officially Licensed Sturgis™ Products," "Legendary Sturgis™", "Licensed Sturgis™", "Authentic Sturgis™", "Sturgis Authentic Apparel™", "The Only True Original," "Oldest~Biggest~Best™" "Sturgis Motor Classic™", "SMCT™", "STURGIS™" and "STURGIS 71st Annual 2011 Motor Classic™" (the foregoing designations shall be referred to herein as "Defendants' Infringing Designations") (See Exhibit B).

22. Defendants have offered for sale, sold and distributed products bearing the Defendants' Infringing Designations, some examples of which are shown at Exhibit C hereto (See Exhibit C).

23. By offering for sale, selling, distributing, marketing and advertising goods sold under the Defendants' Infringing Designations, Defendants intentionally have violated the Plaintiff's rights in and to the STURGIS Marks and the STURGIS Registrations, and with the knowledge and intention that the use in commerce of Defendants' Infringing Designations were and are intended to cause confusion, to cause mistake, and to deceive consumers and potential consumers.

24. Defendants also, in connection with the offering for sale, sale, distribution, advertising and promotion of goods bearing and in conjunction with Defendants' Infringing Designations, have caused, are causing and are likely to cause confusion and mistake, and have deceived, are deceiving and are likely to deceive, as to the affiliation, connection, and association of Defendants with SMRi, and as to the origin, sponsorship, and approval of Defendants' goods and commercial activities.

25. Further, Defendants, by their offering for sale, distribution, marketing and advertising of goods bearing and in conjunction with Defendants' Infringing Designations, in commercial advertising and promotion, have misrepresented the nature, characteristics, qualities, and origin of their goods and their commercial activities, to the harm of Plaintiff.

26. Still further, Defendants have applied to register with the U.S. Patent & Trademark Office ("PTO") at least two trademark applications in unfair competition with Plaintiff, and made unfair, deceptive and fraudulent representations to the PTO in the

furtherance of those applications. RPG filed an application to register the confusingly similar and deceptive designation “Officially Licensed Sturgis” with the PTO pursuant to U.S. Appl. Serial No. 78/936,215, for use in conjunction with “Hats; Shirts” in International Class 25, which application has not attained registration but which remains pending and suspended. JRE filed an application to register the confusingly similar designation “Sturgis Motor Classic” with the PTO pursuant to Appl. Serial No. 78/872,267 in conjunction with goods described in International Classes 16, 21 and 25, which application has not attained registration but remains pending (the “Defendants’ U.S. Trademark Applications”).

27. Defendants’ activities already have caused and are causing confusion in the marketplace. RPG and its representatives have communicated to retailers that Defendants’ U.S. Trademark Applications convey to Defendants rights not owned by Defendants, such as by representing to retailers that the Defendants’ U.S. Trademark Applications are “good” and “official” and convey rights to Defendants that are, to the contrary, owned by Plaintiff.

28. After the Plaintiff’s STURGIS® mark became famous and distinctive, Defendants commenced use of Defendants’ Infringing Designations in commerce, which use is likely to cause dilution by blurring and/or by tarnishment of the famous STURGIS® mark. In fact, Defendants, by using the Defendants’ Infringing Designations, have intended to infringe and dilute the Plaintiff’s STURGIS® mark. Defendants’ acts entitle Plaintiff to an injunction and other remedies, including monetary remedies.

29. Defendants also have obtained and used domain name registrations in violation of Plaintiff's rights. Defendant JRE registered, and Defendants use, the domain names AuthenticSturgis.com, Legendary-Sturgis.com, LicensedSturgis.com, Official-Sturgis.com, SturgisCentral.com, SturgisMotorClassic.com, and SturgisRallyOnline.com (collectively, "Defendants' Domain Names"), all with bad faith intent to profit from the unlawful use of Plaintiff's STURGIS Marks, including Plaintiff's famous STURGIS® mark. Plaintiff's marks were distinctive and the STURGIS® mark was famous at the time of the registration of Defendants' Domain Names, Defendants' Domain Names are confusingly similar or identical to Plaintiff's STURGIS Marks and dilutive of Plaintiff's STURGIS® mark, and Plaintiff's STURGIS Marks are protected by reason of section 706 of title 18, U.S. Code, or section 220506 of title 36, U.S. Code. Plaintiff is entitled to a forfeiture and cancellation or transfer of the domain names, plus actual or statutory damages of up to \$100,000 per each of the Defendants' Domain Names, pursuant to Section 43(d) of the Lanham Act and 15 U.S.C. § 1117(d).

30. Defendants' use of the Defendants' Domain Names also constitutes trademark infringement and unfair competition in violation of Plaintiff's rights, all in connection with the offering, marketing, distribution and sale of goods related to the Sturgis Motorcycle Rally.

31. Defendants' acts complained of herein have been willful, with the intent to harm the rights of Plaintiff.

32. Defendants' acts have caused actual confusion among consumers who purchase and are likely to purchase goods bearing Plaintiff's STURGIS Marks.

33. Defendants also, on information and belief, have obtained South Dakota state trademark registrations in violation of SDCL 37-6 *et seq.*, which registrations should be cancelled, and Defendants have violated the rights of Plaintiff under South Dakota law by using Defendants' Infringing Designations, which violations arise under SDCL 37-6-3, which provides:

Every person who, with intent to defraud, affixes to any goods, or to any container of goods, any label, stamp, brand, imprint, printed wrapper, ticket, or mark, which designates such goods by any word or token which is wholly or in part the same to the eye or to the ear as the word or any of the words or tokens used by any other person as his trade-mark, and every person who knowingly sells or keeps or offers for sale any such goods or containers with any such label, stamp, brand, imprint, printed wrapper, ticket, or mark affixed to or upon it, in case the person affixing such mark, or so selling, exposing, or offering for sale such goods or containers, was not the first to employ or use such words as his trade-mark, is guilty of a Class 1 misdemeanor, and in addition to the punishment prescribed therefor is liable to the party aggrieved in the penal sum of one hundred dollars for each and every offense, to be recovered by him in a civil action.

Defendants are liable to Plaintiff pursuant to the provisions of SDCL 37-6-3.

34. The acts of Defendants complained of herein are likely to confuse consumers within the meaning of South Dakota common law prohibiting unfair competition and trademark infringement.

35. The acts of Defendants complained of herein constitute the knowing and intentional use and employment of deceptive acts, false pretenses, false promises and/or misrepresentations, and the concealment, suppression and omission of material facts in connection with the sale and advertisement of merchandise by Defendants. Plaintiff has been adversely affected by the acts of Defendants and has incurred damages and other harm as a result of Defendants' acts.

Count I: Infringement of Registered Marks, 15 U.S.C. § 1114

36. Plaintiff incorporates by reference paragraphs 1-35 above as if fully set out herein.

37. The acts of Defendants complained of herein constitute trademark infringement of a registered mark under the Lanham Act, 15 U.S.C. § 1114.

38. Plaintiff has been damaged by the acts of Defendants complained of herein.

Count II: Unfair Competition, 15 U.S.C. § 1125(a)(1)(A)

39. Plaintiff incorporates by reference paragraphs 1-38 above as if fully set out herein.

40. The acts of Defendants complained of herein constitute unfair competition under the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

41. Plaintiff has been damaged by the acts of Defendants complained of herein.

Count III: False Advertising, 15 U.S.C. § 1125(a)(1)(B)

42. Plaintiff incorporates by reference paragraphs 1-41 above as if fully set out herein.

43. The acts of Defendants complained of herein constitute false advertising under the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

44. Plaintiff has been damaged by the acts of Defendants complained of herein.

**Count IV: Dilution of Famous Mark,
Federal Trademark Dilution Revision Act Violation, 15 U.S.C. § 1125(c)**

45. Plaintiff incorporates by reference paragraphs 1-44 above as if fully set out herein.

46. The acts of Defendants complained of herein constitute dilution of a famous mark under the Trademark Dilution Revision Act, 15 U.S.C. § 1125(c).

47. Plaintiff has been damaged by the acts of Defendants complained of herein.

Count V: Violation of Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)

48. Plaintiff incorporates by reference paragraphs 1-47 above as if fully set out herein.

49. The acts of Defendants complained of herein constitute violation of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

50. Plaintiff has been damaged by the acts of Defendants complained of herein.

**Count VI: Unfair Competition and Trademark Infringement, South Dakota
Common Law**

51. Plaintiff incorporates by reference paragraphs 1-50 above as if fully set out herein.

52. The acts of Defendants complained of herein constitute unfair competition and trademark infringement under the common law of the State of South Dakota.

53. Plaintiff has been damaged by the acts of Defendants complained of herein.

Count VII: Trademark Infringement, SDCL 37-6 and Related Provisions

54. Plaintiff incorporates by reference paragraphs 1-53 above as if fully set out herein.

55. The acts of Defendants complained of herein constitute trademark infringement under SDCL 37-6 *et seq.*

56. Plaintiff has been damaged by the acts of Defendants complained of herein.

Count VIII: Deceptive Trade Practices, SDCL 37-24-6 and Related Provisions

57. Plaintiff incorporates by reference paragraphs 1-56 above as if fully set out herein.

58. The acts of Defendants complained of herein constitute deceptive trade practices and a violation of SDCL 37-24-6 *et seq.*, including 37-24-31 and related provisions.

59. Plaintiff has been damaged by the acts of Defendants complained of herein.

60. The harm to Plaintiff incurred by virtue of Defendants' unlawful activities is not fully compensable via monetary remedies, but also requires injunctive relief against Defendants.

WHEREFORE, Plaintiff Sturgis Motorcycle Rally, Inc. requests that the Court:

- (a) Preliminarily and permanently enjoin Defendants from infringing Plaintiff's STURGIS Marks;
- (b) Preliminarily and permanently enjoin Defendants from unfairly competing against Plaintiff;

- (c) Preliminarily and permanently enjoin Defendants from falsely representing the nature, characteristics, qualities and origin of their or SMRI's goods, services and commercial activities;
- (d) Preliminarily and permanently enjoin Defendants from diluting the distinctiveness of Plaintiff's famous STURGIS® Mark, or from tarnishing the Plaintiff's mark;
- (e) Preliminarily and permanently enjoin Defendants from profiting in bad faith from, or maintaining the registration of, Defendants' Domain Names, and ordering that Defendants transfer the Defendants' Domain Names to Plaintiff;
- (f) Preliminarily and permanently enjoin Defendants from infringing Plaintiff's rights under South Dakota common law and from committing trademark infringement under South Dakota statutory law, and from committing unfair and deceptive trade practices under the South Dakota Deceptive Trade Practices and Consumer Protection Act, SDCL § 37-24-6 et seq.
- (g) Preliminarily and permanently enjoin Defendants from maintaining state trademark registrations violative of Plaintiff's rights;
- (h) Award Plaintiff all monetary remedies to which it is entitled under the common law and the particular statutes referenced herein, including, without limitation, any and all profits realized by Defendants from the unlawful activities made the subjects of Plaintiff's claims, any damages sustained by Plaintiff as a result of Defendants' unlawful activities, and the costs of this action, pursuant to 15 U.S.C. § 1117 and otherwise as just and appropriate under the law;

- (i) Award enhanced monetary remedies pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, and SDCL 37-24-31;
- (j) Order the destruction of all infringing articles sold on or in conjunction with Defendants' Infringing Designations, pursuant to 15 U.S.C. § 1118.
- (k) Direct the U.S. Patent & Trademark Office to refuse registration to Defendants' U.S. Trademark Applications, pursuant to 15 U.S.C. § 1119;
- (l) Award Plaintiff its reasonable attorneys' fees; and
- (m) For such other and further relief as the Court deems just;

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted this 22nd day of June 2011.



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EXHIBIT A

United States of America

United States Patent and Trademark Office

STURGIS

Reg. No. 3,923,284

Registered Feb. 22, 2011

Int. Cls.: 6, 8, 9, 13, 16,
20, 21, 24, 25, 26, 28, 32,
33, 35, and 41

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

STURGIS MOTORCYCLE RALLY, INC. (SOUTH DAKOTA NON-PROFIT ECONOMIC DEVELOPMENT CORPORATION)

1612 JUNCTION AVE, SUITE 4
STURGIS, SD 57785

FOR: METAL KEY RINGS, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 6 (U.S. CLS. 2, 12, 13, 14, 23, 25 AND 50).

FIRST USE 8-31-2006; IN COMMERCE 8-31-2006.

FOR: HAND-OPERATED HAND TOOLS, NAMELY, HUNTING KNIVES, POCKET KNIVES, SIDEARM KNIVES, FOLDING KNIVES, SPORT KNIVES, KNIVES MADE OF PRECIOUS METAL, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 8 (U.S. CLS. 23, 28 AND 44).

FIRST USE 5-31-1985; IN COMMERCE 5-31-1985.

FOR: SUNGLASSES, MAGNETS AND MOTORCYCLE HELMETS, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 8-31-1995; IN COMMERCE 8-31-1995.

FOR: FIREARMS, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 13 (U.S. CLS. 2 AND 9).

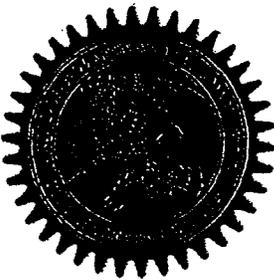
FIRST USE 6-30-1998; IN COMMERCE 6-30-1998.

FOR: PENS; AND PAPER GOODS AND PRINTED MATTER, NAMELY, POSTERS; BUMPER STICKERS; DECALS; IRON-ON AND PLASTIC TRANSFERS; WINDOW STICKERS; NOTE PADS; MOUNTED PHOTOGRAPHS, AND UNMOUNTED PHOTOGRAPHS; PRINTS, NAMELY, COLOR PRINTS, PHOTOGRAPHIC PRINTS, AND PICTORIAL PRINTS; PAPER AND PLASTIC BAGS FOR PACKAGING; AND POSTCARDS; ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 8-31-1987; IN COMMERCE 8-31-1987.

FOR: NON-METAL KEY RINGS AND JEWELRY BOXES NOT OF METAL, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 20 (U.S. CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 8-31-2002; IN COMMERCE 8-31-2002.



David J. Kybas

Director of the United States Patent and Trademark Office

Reg. No. 3,923,284 FOR: GLASSWARE, NAMELY, SHOT GLASSES, DRINKING GLASSES, DRINKING CUPS, AND DRINKING MUGS; INSULATING SLEEVE HOLDERS MADE OF RUBBER, PLASTIC OR FOAM FOR BEVERAGE CANS; INSULATING SLEEVE HOLDERS MADE OF RUBBER, PLASTIC OR FOAM FOR BEVERAGE BOTTLES; COASTERS NOT OF PAPER AND NOT BEING TABLE LINEN; BOTTLE OPENERS; AND BEER STEINS; ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 8-31-1995; IN COMMERCE 8-31-1995.

FOR: CLOTH FLAGS, CLOTH BANNERS, AND QUILTS, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 24 (U.S. CLS. 42 AND 50).

FIRST USE 8-31-2004; IN COMMERCE 8-31-2004.

FOR: CLOTHING, NAMELY, SHIRTS, T-SHIRTS, LONG SLEEVE T-SHIRTS, SLEEVELESS T-SHIRTS, DENIM SHIRTS, GOLF SHIRTS, JACKETS, COATS, TANK TOPS, POLO SHIRTS, SWEATSHIRTS, PULLOVERS, WOMEN'S TOPS, CHEMISES, CLOTH WRAPS, HEAD WEAR, BANDANNAS, CAPS, CLOTH HEADWRAPS, HATS, SCARVES, BELTS, CHAPS, GLOVES, AND SUN VISORS, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 8-31-1984; IN COMMERCE 8-31-1984.

FOR: CLOTH AND EMBROIDERED PATCHES FOR CLOTHING, ORNAMENTAL CLOTH PATCHES, HAT PINS FOR SECURING HATS, BELT BUCKLES NOT OF PRECIOUS METAL, AND NOVELTY ORNAMENTAL PINS, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 26 (U.S. CLS. 37, 39, 40, 42 AND 50).

FIRST USE 8-31-1986; IN COMMERCE 8-31-1986.

FOR: CHRISTMAS TREE ORNAMENTS AND GAMING CHIPS, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 6-30-2001; IN COMMERCE 6-30-2001.

FOR: BOTTLED SPRING WATER AND BEER, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 6-30-2005; IN COMMERCE 6-30-2005.

FOR: DISTILLED LIQUOR, ALL OF THE AFOREMENTIONED GOODS RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 6-30-2002; IN COMMERCE 6-30-2002.

FOR: PROMOTING SPORTS COMPETITIONS OF OTHERS, NAMELY, MOTORCYCLE AND VEHICLE RALLIES, EXHIBITS, AND COMPETITIONS; PROMOTING THE GOODS AND SERVICES OF OTHERS BY ARRANGING FOR SPONSORS TO AFFILIATE THEIR GOODS AND SERVICES WITH THE STURGIS MOTORCYCLE RALLY; PROMOTING ECONOMIC DEVELOPMENT IN THE CITY OF STURGIS AND THE BLACK HILLS AREA OF SOUTH DAKOTA AND WYOMING; AND ON-LINE RETAIL STORE SERVICES RELATING TO THE STURGIS MOTORCYCLE RALLY, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

Reg. No. 3,923,284 FIRST USE 6-30-2002; IN COMMERCE 6-30-2002.

FOR: ENTERTAINMENT SERVICES IN THE NATURE OF ORGANIZING AND CONDUCTING MOTORCYCLE AND VEHICLE EXHIBITIONS AND RALLIES; ORGANIZING AND CONDUCTING THE ENTERTAINMENT EVENTS OF OTHERS, NAMELY, MOTORCYCLE AND VEHICLE EXHIBITIONS, RALLIES, AND COMPETITIONS; AND ENTERTAINMENT SERVICES IN THE NATURE OF LIVE CIVIC PRODUCTIONS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-30-2002; IN COMMERCE 6-30-2002.

OWNER OF U.S. REG. NO. 1,948,097.

SEC. 2(F).

SN 76-979,104, FILED 1-30-2001.

BARBARA GAYNOR, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,698,677

Registered Mar. 18, 2003

**TRADEMARK
PRINCIPAL REGISTER**

TAKE THE RIDE TO STURGIS

**MONAHAN, THOMAS, L. (UNITED STATES IN-
DIVIDUAL)
1105 MAIN STREET
STURGIS, SD 57785**

OWNER OF U.S. REG. NO. 1,948,097.

SEC. 2(F).

**FOR: CLOTHING - NAMELY, T-SHIRTS AND
SWEATSHIRTS AND CAPS, IN CLASS 25 (U.S. CLS.
22 AND 39).**

SN 78-010,763, FILED 6-1-2000.

FIRST USE 8-5-1996; IN COMMERCE 8-5-1996.

KIMBERLY PERRY, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 1,948,097
Registered Jan. 16, 1996

**SERVICE MARK
PRINCIPAL REGISTER**



STURGIS AREA CHAMBER OF COMMERCE
(SOUTH DAKOTA NON-INCORPORATED,
NON-PROFIT ASSOCIATION)
P.O. BOX 504
STURGIS, SD 57785

FOR: PROMOTING SPORTS COMPETITIONS
AND/OR EVENTS OF OTHERS, NAMELY MO-
TORCYCLE RALLIES, EXHIBITS AND COM-
PETITIONS; AND PROMOTING ECONOMIC
DEVELOPMENT IN THE CITY OF STURGIS
AND THE BLACK HILLS AREA OF SOUTH
DAKOTA AND WYOMING, IN CLASS 35 (U.S.
CLS. 100, 101 AND 102).

FIRST USE 7-1-1986; IN COMMERCE
7-1-1986.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MOTOR CLASSIC" OR
"RALLY & RACES BLACK HILLS S.D.",
APART FROM THE MARK AS SHOWN.

SEC. 2(F) AS TO "BLACK HILLS MOTOR
CLASSIC".

SER. NO. 74-533,873, FILED 6-6-1994.

CHRIS DONINGER, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,070,955

United States Patent and Trademark Office

Registered June 17, 1997

**TRADEMARK
PRINCIPAL REGISTER**

STURGIS BIKE WEEK

**RHODES, VIRGINIA (UNITED STATES CITI-
ZEN), DBA CYCLE SHIRTS
601 40TH STREET
FAIRFIELD, AL 35064**

**FIRST USE 1-0-1984; IN COMMERCE
1-0-1984.
SEC. 2(F).**

SER. NO. 74-540,253, FILED 6-20-1994.

**FOR: CLOTHING, NAMELY, T-SHIRTS AND
CAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).**

**GEORGE POLOGEORGIS, EXAMINING AT-
TORNEY**

United States of America

United States Patent and Trademark Office

STURGIS BIKE WEEK

Reg. No. 3,825,398

Registered July 27, 2010

Int. Cl.: 16

TRADEMARK

PRINCIPAL REGISTER

STURGIS AREA CHAMBER OF COMMERCE AND VISITORS BUREAU (SOUTH DAKOTA
NON-INCORPORATED NON-PROFIT ASSOCIATION)
2040 JUNCTION AVE.
STURGIS, SD 57785

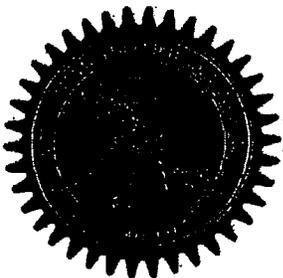
FOR: PAPER GOODS, NAMELY, POSTCARDS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37,
38 AND 50).

FIRST USE 4-0-2010; IN COMMERCE 4-0-2010.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BIKE", APART FROM THE
MARK AS SHOWN.

SN 76-012,840, FILED 3-29-2000.

LOURDES AYALA, EXAMINING ATTORNEY



David J. Kyllas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

STURGIS BIKE WEEK

Reg. No. 3,818,703

Registered July 13, 2010

Int. Cl.: 25

TRADEMARK

PRINCIPAL REGISTER

STURGIS AREA CHAMBER OF COMMERCE AND VISITORS BUREAU (SOUTH DAKOTA
NON-INCORPORATED NON-PROFIT ASSOCIATION)
2040 JUNCTION AVE.
P.O. BOX 504
STURGIS, SD 57785

FOR: CLOTHING, NAMELY, SHIRTS, SWEATSHIRTS, BANDANAS, EMBROIDERED
CLOTHING, NAMELY, SHIRTS, SWEATSHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 9-0-2000; IN COMMERCE 9-0-2000.

OWNER OF U.S. REG. NO. 2,070,955.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STURGIS", APART FROM THE
MARK AS SHOWN.

SN 76-012,841, FILED 3-29-2000.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY



David J. Kypos

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

STURGIS BIKE WEEK

Reg. No. 3,838,171

Registered Aug. 24, 2010

Int. Cl.: 26

TRADEMARK

PRINCIPAL REGISTER

STURGIS AREA CHAMBER OF COMMERCE AND VISITORS BUREAU (SOUTH DAKOTA
NON-INCORPORATED NON-PROFIT ASSOCIATION)
2040 JUNCTION AVE.
STURGIS, SD 57785

FOR: EMBROIDERED GOODS, NAMELY, PATCHES AND EMBLEMS, IN CLASS 26 (U.S.
CLS. 37, 39, 40, 42 AND 50).

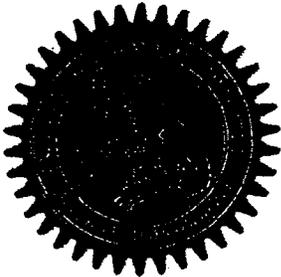
FIRST USE 9-0-2005; IN COMMERCE 9-0-2005.

OWNER OF U.S. REG. NO. 2,070,955.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STURGIS", APART FROM THE
MARK AS SHOWN.

SN 76-012,877, FILED 3-29-2000.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

STURGIS BIKE WEEK

Reg. No. 3,911,270

Registered Jan. 25, 2011

Int. Cl.: 34

TRADEMARK

PRINCIPAL REGISTER

STURGIS MOTORCYCLE RALLY, INC. (SOUTH DAKOTA NON-PROFIT ECONOMIC
DEVELOPMENT CORPORATION)
909 ST. JOSEPH STREET
RAPID CITY, SD 577013301

FOR: SMOKERS' ARTICLES, NAMELY, CIGARETTE LIGHTERS NOT OF PRECIOUS
METAL, IN CLASS 34 (U.S. CLS. 2, 8, 9 AND 17).

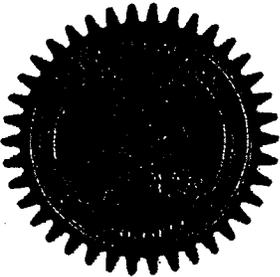
FIRST USE 8-1-2010; IN COMMERCE 8-1-2010.

OWNER OF U.S. REG. NO. 2,070,955.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STURGIS", APART FROM THE
MARK AS SHOWN.

SN 76-012,800, FILED 3-29-2000.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY



David J. Kyffes

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

STURGIS BIKE WEEK

Reg. No. 3,923,236

Registered Feb. 22, 2011

Int. Cl.: 21

TRADEMARK

PRINCIPAL REGISTER

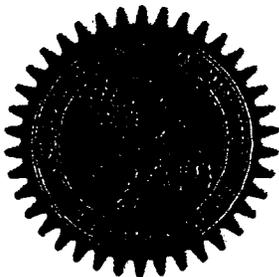
STURGIS MOTORCYCLE RALLY, INC. (SOUTH DAKOTA NON-PROFIT ECONOMIC DEVELOPMENT CORPORATION)
909 ST. JOSEPH STREET
RAPID CITY, SD 577013301

FOR: GIFTWARES AND HOUSEWARES, NAMELY, BEVERAGeware GLASSES, DRINKING GLASSES, MUGS, SHOT GLASSES, AND BEER STEINS, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 9-0-2003; IN COMMERCE 9-0-2003.

SN 76-012,893, FILED 3-29-2000.

LOURDES AYALA, EXAMINING ATTORNEY



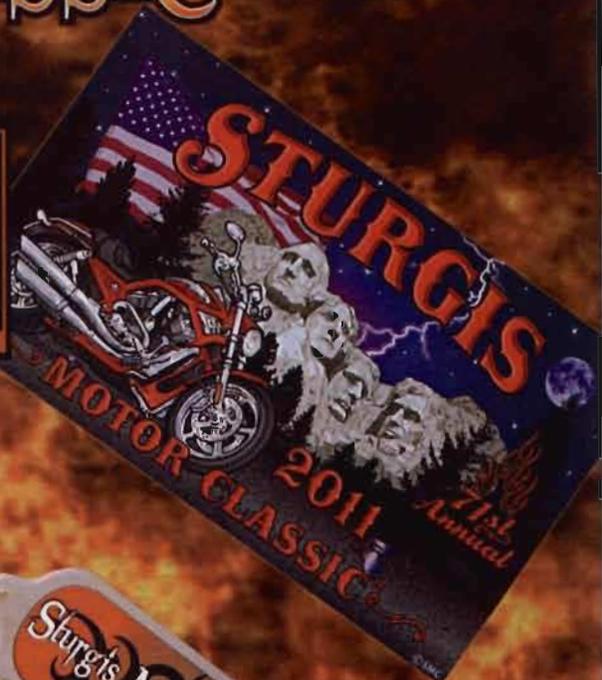
David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT B

STURGIS

MOTOR CLASSIC™



**RUSHMORE
PHOTO & GIFTS, INC.**

**3305 CAMBELL ST.
RAPID CITY, SD 57701
605-342-0821 • 1-800-568-5321
WWW.RUSHMOREPHOTO.COM**



POKER



315020



315015-19



315024

COOZIES



125006



125007

PLAYING CARDS



435000



435001

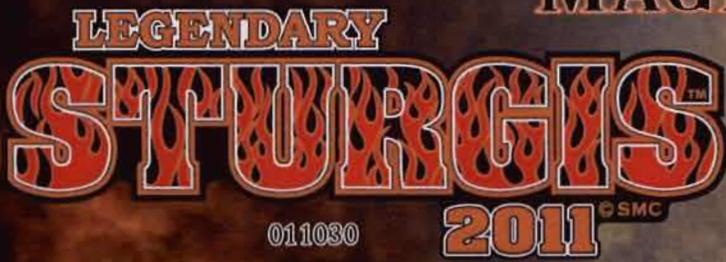
FLAG



3'
X
5'

315031

MAGNETS



011030



1 5/8" x 5"

017041



2.5" x 3.5"

017043



2.5" x 2.5"

017042

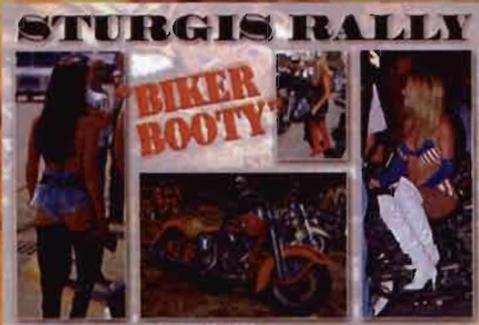


2.5" x 3.5"

017045

POSTCARDS

4" x 6"



622016



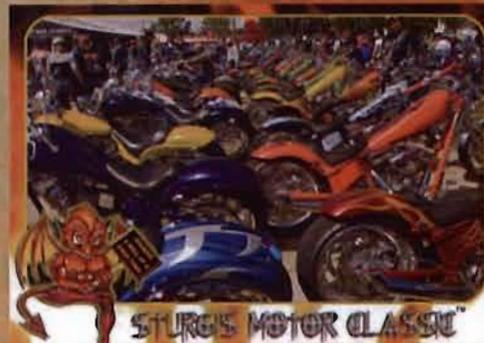
622069



623015



624005



624032

PATCHES



365002



365001

TACS



230004



230022



235004



235005



www.rushmorephoto.com



www.rushmorephoto.com



www.rushmorephoto.com



www.rushmorephoto.com

NOVELTIES



315009



225001



315002



285000



190013



315013



315012



310066



4" X 6"

310062



12" X 18"

310063

SUNGLASSES



550069-79



550082



CLEAR LENS
550081



550080



600031



600003



315000



311005



315011



600006



310060

SHOT GLASSES & GLASS WARE



525001



525000



525007



525018



525026



525014



525025



525035



525009



525003



525020



525024



525005



520015



525006

PINT GLASS



325001

THERMAL MUGS



335006

CUT GRAPHIC



101009

WATERBALL



655000

KEYCHAINS



275001



275002



275006



275007



275008



275026



275020



275018



275027



275025



270087



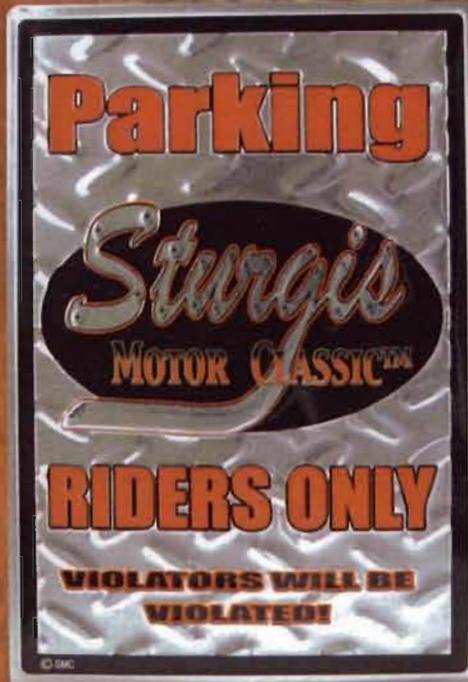
275000

TIN SIGNS

18" X 12"



8 1/2" X 11" 065002



065000

BANDANNAS

24" X 24"



595000



590004



590002



065001



590005

HEADWEAR



135012



135038



130032



130038



135039



135037



130031



135027



130034



130002



135031



135030



135008



130033



135006



135007



135000



135001



135032



135033



135002



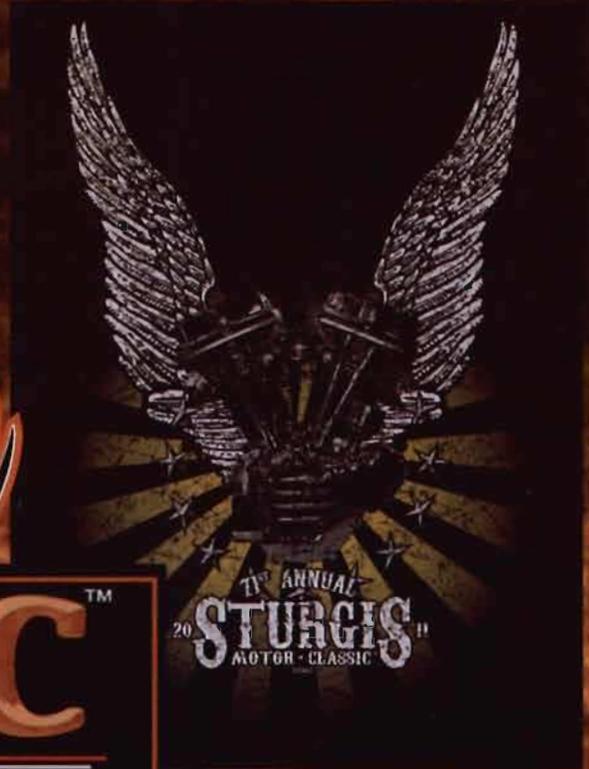
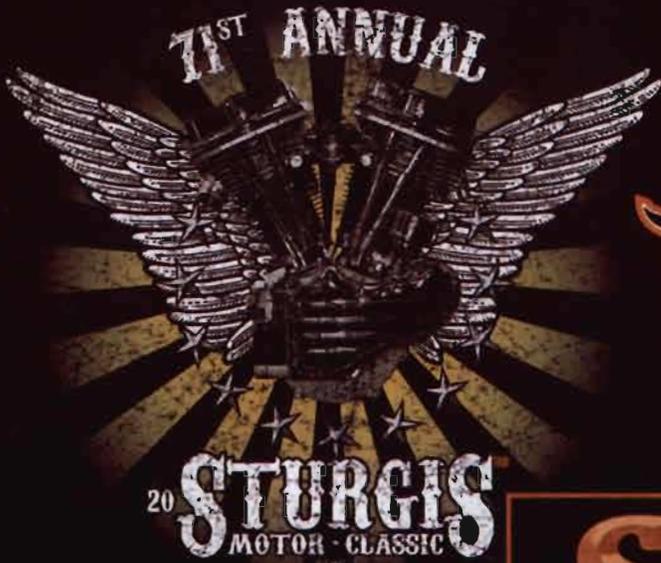
590050

COOLDANNAS



595001

RUSHMORE
PHOTO & GIFTS, INC.



SMCTM

STURGIS MOTOR CLASSICTM

*Legendary*TM

OLDEST - BIGGEST - BESTTM

OFFICIALLY LICENSED STURGISTM PRODUCTS

**RUSHMORE
PHOTO & GIFTS, INC.**

**3305 CABELL ST.
RAPID CITY, SD 57701
605-342-0821 • 1-800-568-5321
WWW.RUSHMOREPHOTO.COM**



STURGIS MOTOR CLASSIC 2011

| QTY | Stock # | Description | Disc | Price | MSRP | Specific UPC |
|-----|---------|-------------------------------------|------|---------|----------|--------------|
| | 011030 | STURGIS 2011 FLAME PVC MAG | ** | \$ 2.00 | \$ 3.99 | 053822011303 |
| | 017041 | STURGIS PANORAMIC METAL MAG | | \$ 1.50 | \$ 2.99 | 053822017411 |
| | 017042 | 2.5" x 2.5" DEAD END STURGIS MAG | | \$ 1.50 | \$ 2.99 | 053822017428 |
| | 017043 | STURGIS BIKE MTL 2.5X3.5 MAG | | \$ 1.50 | \$ 2.99 | 053822017435 |
| | 017045 | STURGIS MAIN ST MTL 2.5X3.5 MAG | | \$ 1.50 | \$ 2.99 | 053822017459 |
| | 065000 | STURGIS TIN SIGN 18"x12" | * | \$ 7.50 | \$ 14.99 | 053822065009 |
| | 065001 | STURGIS T 8 1/2 X 11 TIN SIGN #9738 | ** | \$ 5.00 | \$ 9.99 | 053822065016 |
| | 065002 | STURGIS T 8 1/2 X 11 TIN SIGN #9763 | ** | \$ 5.00 | \$ 9.99 | 053822065023 |
| | 101009 | STURGIS CUT EAGLE DCL | | \$ 1.50 | \$ 2.99 | 053822101097 |
| | 125006 | STURGIS CAN COOZIE 2011 #9750 | ** | \$ 2.00 | \$ 3.99 | 053822125062 |
| | 125007 | STURGIS CAN COOZIE 2011 #9044 | ** | \$ 2.00 | \$ 3.99 | 053822125079 |
| | 130002 | HEADWRAP USA FLAG | * | \$ 3.50 | \$ 6.99 | 053822130028 |
| | 130031 | LEATHER HDWRP W/ ORNG FLAME | * | \$ 7.50 | \$ 14.99 | 053822130318 |
| | 130032 | LEATHER HDWRP W/ RED FLAME | * | \$ 7.50 | \$ 14.99 | 053822130325 |
| | 130033 | LEATHER HDWRP/BLACK | * | \$ 6.50 | \$ 12.99 | 053822130332 |
| | 130034 | LEATHER HDWRAP/VENTED | * | \$ 7.50 | \$ 14.99 | 053822130349 |
| | 130038 | LEATHER HDWRAP BLU FLAME | * | \$ 7.50 | \$ 14.99 | 053822130387 |
| | 135000 | STURGIS 2011 EMB. HEADWRAP | ** | \$ 5.00 | \$ 9.99 | 053822135009 |
| | 135001 | STURGIS 2011 PRINTED HEADWRAP | ** | \$ 3.50 | \$ 6.99 | 053822135016 |
| | 135002 | STURGIS 2011 LADIES EMB. HEADWRAP | ** | \$ 5.00 | \$ 9.99 | 053822135023 |
| | 135006 | STURGIS TRIBAL BEANIE HAT | * | \$ 6.50 | \$ 12.99 | 053822135061 |
| | 135007 | STURGIS FLAME BEANIE HAT | * | \$ 6.50 | \$ 12.99 | 053822135078 |
| | 135008 | STURGIS SMC CROSS BEANIE HAT | * | \$ 5.00 | \$ 9.99 | 053822135085 |
| | 135012 | STURGIS 2011 STONWASH HAT | ** | \$ 7.50 | \$ 14.99 | 053822135122 |
| | 135027 | STURGIS LEATHERET HDWRP | * | \$ 6.50 | \$ 12.99 | 053822135276 |
| | 135030 | STURGIS REVERSABLE BEANIE | * | \$ 2.50 | \$ 4.99 | 053822135306 |
| | 135031 | STURGIS PNK HARTBREAK KNIT CAP | * | \$ 5.00 | \$ 9.99 | 053822135313 |
| | 135032 | STURGIS ESCAPEE KNIT CAP | * | \$ 5.00 | \$ 9.99 | 053822135320 |
| | 135033 | STURGIS BLK HARTBREAK KNIT CAP | * | \$ 5.00 | \$ 9.99 | 053822135337 |
| | 135037 | STURGIS 2011 GHOST PRINT CAP | ** | \$ 7.50 | \$ 14.99 | 053822135375 |
| | 135038 | STURGIS 2011 MOTORCYCLE CAP | ** | \$ 7.50 | \$ 14.99 | 053822135382 |
| | 135039 | STURGIS 2011 V-TWIN ENGINE CAP | ** | \$ 7.50 | \$ 14.99 | 053822135399 |
| | 190013 | POCKET SHOT W/FLASH CAM | | \$ 6.25 | \$ 9.50 | 053822190138 |
| | 225001 | STURGIS GOLFBALL KIT | * | \$ 3.00 | \$ 5.99 | 053822225014 |
| | 230004 | SM AMERICAN FLAG TAC | | \$ 1.00 | \$ 1.99 | 053822230049 |
| | 230022 | GOLD EAGLE TAC | | \$ 1.50 | \$ 2.99 | 053822230223 |
| | 235004 | STURGIS 2011 ROAD SIGN TAC | ** | \$ 2.00 | \$ 3.99 | 053822235044 |
| | 235005 | STURGIS 2011 LEG SCRIPT TAC | ** | \$ 2.00 | \$ 3.99 | 053822235051 |
| | 270087 | METAL PISTOL W/KNIFE KC | * | \$ 1.00 | \$ 1.99 | 053822270878 |
| | 275000 | STURGIS NICKEL BIKE KC | * | \$ 3.50 | \$ 6.99 | 053822275002 |
| | 275001 | STURGIS PWTR CHOPR ENG KC | * | \$ 3.50 | \$ 6.99 | 053822275019 |
| | 275002 | STURGIS PWTR ORNG CRS KC | * | \$ 1.00 | \$ 1.99 | 053822275026 |
| | 275006 | STURGIS BIKE SPIN KC | * | \$ 2.50 | \$ 4.99 | 053822275064 |
| | 275007 | STURGIS SKULL BOTL OPEN KC | * | \$ 2.50 | \$ 4.99 | 053822275071 |
| | 275008 | STURGIS RALLY BLK KC | * | \$ 1.00 | \$ 1.99 | 053822275088 |
| | 275018 | STURGIS TPICK KC | * | \$ 1.00 | \$ 1.99 | 053822275187 |
| | 275020 | STURGIS EASY CLIP KC | * | \$ 2.00 | \$ 3.99 | 053822275200 |
| | 275025 | CYCLE POPTOPPER KC | * | \$ 1.50 | \$ 2.99 | 053822275255 |
| | 275026 | STURGIS TRANS PULL-A-PART KC | * | \$ 2.00 | \$ 3.99 | 053822275262 |
| | 275027 | STURGIS 2011 ACRYLIC KC | ** | \$ 1.50 | \$ 2.99 | 053822275279 |
| | 285000 | STURGIS BOTTLE OPENER | | \$ 3.00 | \$ 5.99 | 053822285001 |
| | 310060 | ASST RABBIT HIDES | | \$ 2.50 | \$ 4.99 | 053822310604 |

All Discounts are taken at a no guarantee basis and will be given on a net 30 basis. Any invoice not paid within terms given will result in a loss of all discounts.

STURGIS MOTOR CLASSIC 2011

| QTY | Stock # | Description | Disc | Price | MSRP | Specific UPC |
|-----|---------|---------------------------------------|------|----------|-----------|--------------|
| | 310062 | 4" X 6" U.S. FLAG | | \$ 1.00 | \$ 1.99 | 053822310628 |
| | 310063 | 12" X 18" U.S. FLAG | | \$ 1.50 | \$ 2.99 | 053822310635 |
| | 310066 | BLINKING SKULLS | | \$ 4.50 | \$ 8.99 | 053822310666 |
| | 311005 | RUSSIAN FLASK | * | \$ 15.00 | \$ 29.99 | 053822311052 |
| | 315000 | STURGIS FLSK MALTESE CRS | * | \$ 5.00 | \$ 9.99 | 053822315005 |
| | 315002 | STURGIS RAIN PONCHO | * | \$ 1.00 | \$ 1.99 | 053822315029 |
| | 315009 | STURGIS PIPE-LIGHTER | * | \$ 5.00 | \$ 9.99 | 053822315098 |
| | 315011 | STURGIS VELCO WALLET | * | \$ 1.50 | \$ 2.99 | 053822315111 |
| | 315012 | STURGIS BELLY BAG | * | \$ 3.00 | \$ 5.99 | 053822315128 |
| | 315013 | STURGIS WOOD KNIFE 3PT | * | \$ 2.00 | \$ 3.99 | 053822315135 |
| | 315015 | STURGIS POKER CHIPS GREY(20 PK) | * | \$ 5.00 | \$ 9.99 | 053822315159 |
| | 315016 | STURGIS POKER CHIPS RED (20 PK) | * | \$ 5.00 | \$ 9.99 | 053822315166 |
| | 315017 | STURGIS POKER CHIPS GRN (20 PK) | * | \$ 5.00 | \$ 9.99 | 053822315173 |
| | 315018 | STURGIS POKER CHIPS BLU (20 PK) | * | \$ 5.00 | \$ 9.99 | 053822315180 |
| | 315019 | STURGIS POKER CHIPS BLK (20 PK) | * | \$ 5.00 | \$ 9.99 | 053822315197 |
| | 315020 | STURGIS POKER SET/WOOD CS 300PC | * | \$ 65.00 | \$ 129.99 | 053822315203 |
| | 315024 | 100 PC STURGIS POKER SET IN ALLUMINUM | * | \$ 30.00 | \$ 49.99 | 053822315241 |
| | 315031 | STURGIS W/MR 2011 FLAG | ** | \$ 7.50 | \$ 14.99 | 053822315319 |
| | 325001 | STURGIS ORANGE PINT GLASS | * | \$ 2.50 | \$ 8.99 | 053822325011 |
| | 335006 | STURGIS 2011 THERMAL MUG | ** | \$ 5.00 | \$ 9.99 | 053822335065 |
| | 365001 | STURGIS LEG SCRIPT 2011 PATCH | ** | \$ 2.00 | \$ 3.99 | 053822365017 |
| | 365002 | STURGIS 2011 ROAD SIGN PATCH | ** | \$ 2.00 | \$ 3.99 | 053822365024 |
| | 435000 | STURGIS RALLY PLAYCARD | * | \$ 1.50 | \$ 2.99 | 053822435000 |
| | 435001 | STURGIS METAL BOX PLAYCARD | * | \$ 2.50 | \$ 4.99 | 053822435017 |
| | 520015 | VACATION RD RAGE SHOT | * | \$ 2.00 | \$ 3.99 | 053822520157 |
| | 525000 | STURGIS 2011 BLK TULIP | ** | \$ 3.50 | \$ 6.99 | 053822525008 |
| | 525001 | STURGIS 2011 FROSTED SHOOTER | ** | \$ 3.00 | \$ 5.99 | 053822525015 |
| | 525003 | STURGIS BEER GLASS SHOT | * | \$ 1.50 | \$ 2.99 | 053822525039 |
| | 525005 | STURGIS SODA GLASS MUG | * | \$ 2.50 | \$ 4.99 | 053822525053 |
| | 525006 | STURGIS FRSTD MINI STEIN MUG | * | \$ 2.00 | \$ 3.99 | 053822525060 |
| | 525007 | STURGIS BLUE 2011 SHOT | ** | \$ 2.50 | \$ 4.99 | 053822525077 |
| | 525009 | STURGIS FRSTD BLK SHOT | * | \$ 1.50 | \$ 2.99 | 053822525091 |
| | 525014 | STURGIS CLEAR 2011 SHOT | ** | \$ 2.00 | \$ 3.99 | 053822525145 |
| | 525018 | STURGIS HEAVY 2011 SHOT | ** | \$ 3.00 | \$ 5.99 | 053822525183 |
| | 525020 | STURGIS WHT CERAMIC SHOT | * | \$ 1.50 | \$ 2.99 | 053822525206 |
| | 525024 | STURGIS MINI PAPER CUP SHOT | * | \$ 1.50 | \$ 2.99 | 053822525244 |
| | 525025 | STURGIS LABEL ART SHOT | * | \$ 2.50 | \$ 4.99 | 053822525251 |
| | 525026 | STURGIS PRISONER 2011 SHOT | ** | \$ 3.50 | \$ 6.99 | 053822525268 |
| | 525035 | STURGIS POLY 1 TOO MANY BIKER SHOT | * | \$ 4.00 | \$ 7.99 | 053822525350 |
| | 550069 | CHILDS \$5.99 SUNGLASSES | | \$ 2.40 | \$ 5.99 | 053822550697 |
| | 550070 | \$5.99 SUNGLASSES | | \$ 2.40 | \$ 5.99 | 053822550703 |
| | 550071 | \$7.99 SUNGLASSES | | \$ 3.20 | \$ 7.99 | 053822550710 |
| | 550072 | \$5.99 SUN CLIP ON | | \$ 2.40 | \$ 5.99 | 053822550727 |
| | 550073 | \$7.99 SUN CLIP ON | | \$ 3.20 | \$ 7.99 | 053822550734 |
| | 550076 | \$9.99 SUNGLASSES | | \$ 4.00 | \$ 9.99 | 053822550765 |
| | 550077 | \$12.99 SUNGLASSES | | \$ 5.20 | \$ 12.99 | 053822550772 |
| | 550078 | \$14.99 SUNGLASSES | | \$ 6.00 | \$ 14.99 | 053822550789 |
| | 550079 | \$16.99 SUNGLASSES | | \$ 6.80 | \$ 16.99 | 053822550796 |
| | 550080 | ASSORTED SUNGOOGLES | | \$ 5.00 | \$ 9.99 | 053822550802 |
| | 550081 | SUNGOOGLES CLEAR LENS | | \$ 5.00 | \$ 9.99 | 053822550802 |
| | 550082 | \$16.99 CLEAR SUNGLASSES | | \$ 6.80 | \$ 16.99 | 053822550796 |
| | 590002 | BANDANNA USA FLAG | * | \$ 2.00 | \$ 3.99 | 053822590020 |

All Discounts are taken at a no guarantee basis and will be given on a net 30 basis. Any invoice not paid within terms given will result in a loss of all discounts.

STURGIS MOTOR CLASSIC 2011

| QTY | Stock # | Description | Disc | Price | MSRP | Specific UPC |
|-----|---------|----------------------------|------|---------|---------|--------------|
| | 590004 | BANDANNA- MOUNT RUSHMORE | * | \$ 2.00 | \$ 3.99 | 053822590044 |
| | 590005 | BANDANNA- HUNTING | * | \$ 2.00 | \$ 3.99 | 053822590051 |
| | 590050 | COOL DANNA-WAVY FLAG | * | \$ 2.50 | \$ 4.99 | 053822590501 |
| | 595000 | STURGIS DATED BANDANNA | ** | \$ 2.00 | \$ 3.99 | 053822595001 |
| | 595001 | STURGIS DATED COOLDANNA | ** | \$ 2.50 | \$ 4.99 | 053822595018 |
| | 600003 | SHOCK LIGHTER | | \$ 2.50 | \$ 4.99 | 053822600033 |
| | 600006 | SHOCK PEN | | \$ 2.50 | \$ 4.99 | 053822600064 |
| | 600031 | 3" MINI SHOCK CELL PHONE | | \$ 2.50 | \$ 4.99 | 053822600316 |
| | 622016 | PC STURGIS BOOTY | | \$ 0.15 | \$ 0.35 | 053822622165 |
| | 622069 | PC STURGIS BIKES | | \$ 0.15 | \$ 0.35 | 053822622691 |
| | 623015 | PC STURGIS MAIN ST | | \$ 0.15 | \$ 0.35 | 053822623155 |
| | 624005 | PC MR BIKES | | \$ 0.15 | \$ 0.35 | 053822624053 |
| | 624032 | PC STURGIS W/ DEVIL | | \$ 0.15 | \$ 0.35 | 053822624329 |
| | 655000 | STURGIS IRON CRS WATERBALL | * | \$ 2.50 | \$ 4.99 | 053822655002 |

* This item will receive a 5% discount at an order qty above 48pcs and a 10% discount at an order qty above 144pcs

** This item will receive a 10% discount at an order qty above 48pcs and a 15% discount at an order qty above 144pcs

Contract must be signed to be valid. Due to the probability of high demand and special pricing, products may be out of stock at the time of ordering. Every attempt will be made to meet requested delivery date, all items will be backordered if out of stock. Customer will be contacted for delivery approval for backorders to be delivered beyond July 15th 2011. Customer has the right to refuse backorders to be delivered later than July 15th 2011.

All products are unconditionally guaranteed against defects, and will be replaced if such defects occur.

Items are taken at a no guarantee (No Consignment) basis and will be given on a net 30 basis, any invoices not paid within terms given will result in a void of all price reductions and all costs will revert to standard cost plus any applicable fees and charges.

Company Name: _____

Requested delivery by: ____/____/____

Address: _____

Printed Name: _____

Title: _____

Authorized Signature: _____

FREE SHIPPING ON ALL ORDERS OVER \$250.00

Notes:

All Discounts are taken at a no guarantee basis and will be given on a net 30 basis. Any invoice not paid within terms given will result in a loss of all discounts.

Confidential



Rushmore Photo & Gifts, Inc.



2011 Sturgis Motor Classic™ Shirt Pricing Contract

Prices below reflect the negotiated price of each Sturgis shirt bought with the 2011 year printed on them. This contract will stay in effect from date signed until 08/31/2011 and will reflect the price paid per shirt ordered in sizes XS – XL, sizes 2X – 3X will be \$2.00 more for Shirts and \$3.00 more for Fleece than negotiated customer price.

| Men's Style | Standard Cost | Negotiated Price | Estimated Quantity | Women's Style | Standard Cost | Negotiated Price | Estimated Quantity |
|----------------------|---------------|------------------|--------------------|-------------------------------------|---------------|------------------|--------------------|
| Men's Short Sleeve | \$10.50 | \$ | Pcs | Women's Short Sleeve | \$10.00 | \$ | Pcs |
| Shooter Sleeveless T | \$13.50 | \$ | Pcs | Women's V-Neck | \$11.00 | \$ | Pcs |
| Men's Tank Top | \$13.50 | \$ | Pcs | Spaghetti Strap | \$13.50 | \$ | Pcs |
| Men's Long Sleeve | \$18.00 | \$ | Pcs | Cap Sleeve | \$12.50 | \$ | Pcs |
| Ripped Denim | \$20.00 | \$ | Pcs | Burnout V-neck T | \$13.50 | \$ | Pcs |
| Pullover Hoody | \$22.50 | \$ | Pcs | Women's Long Sleeve | \$18.00 | \$ | Pcs |
| Zippered Hoody | \$30.00 | \$ | Pcs | Boy Beater Ribbed Tank | \$11.50 | \$ | Pcs |
| Shop Shirt | \$30.00 | \$ | Pcs | Extra Long Junior Cut T | \$10.50 | \$ | Pcs |
| Childs T | \$11.50 | \$ | Pcs | Rhinestone Shirts ADD \$2.00 | | | |

Order minimums: 18 pieces per design, color, style, and 72 pieces per order total. Any orders of lower than 72 pieces will automatically be at our Standard Cost. Free Freight will be given to all Sturgis Shirt Deliveries of 288pcs or more or being sent with a Sturgis Hard goods order of \$250 or more. All T'shirt orders that are prepaid will receive a 5% discount.

Contract must be signed to be valid. Shirts will only be printed once signature is received in the office. All orders are to be placed by March 25th 2011. Any orders received after this date will be cancelled. Earliest delivery is May 16th 2011. Every attempt will be made to meet requested delivery date, as long as date is agreed upon by management.

All shirts and products are unconditionally guaranteed against defects and will be replaced if such defects occur.

Shirts are taken at a no guarantee (No consignment) basis and will be given on a net 30 basis, any invoices not paid within terms given will result in void of contract and all negotiated prices will revert to standard cost plus any applicable fees.

Company Name: _____ Requested delivery by: ___ / ___ / _____

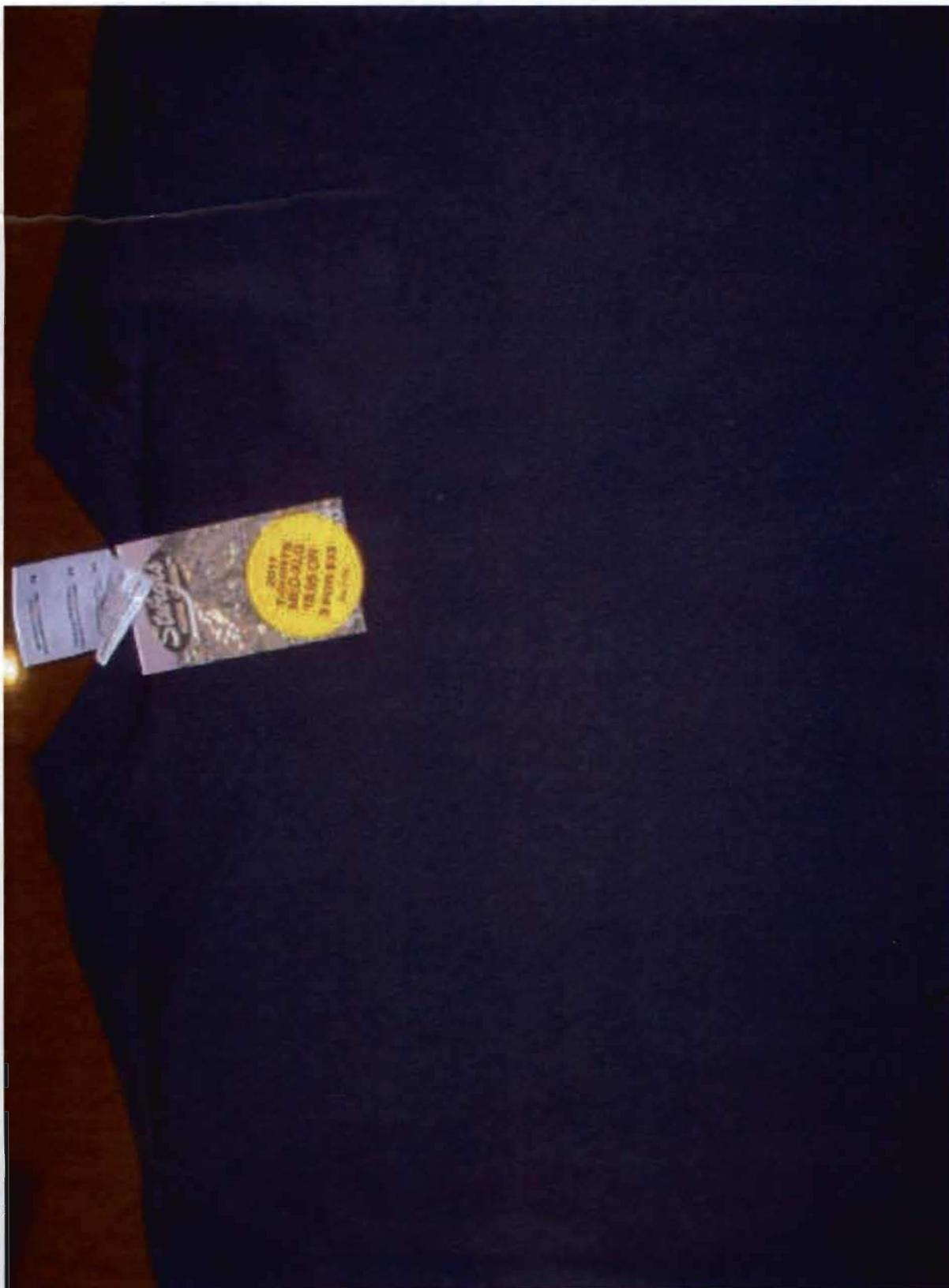
Address: _____ Authorized Signature: _____

Printed Name: _____

Sales representative Signature: _____ date: ___ / ___ / _____

EXHIBIT C

















The Only True Original

Look For **The Tag!**



Legendary
THE ORIGINAL SINCE 1938

Officially Licensed Sturgis™
 Legendary Sturgis™
 Licensed Sturgis™
 Authentic Sturgis™
 Sturgis Authentic Apparel



www.sturgismotorclassic.com
www.rushmorephoto.com

Oldest ~ Biggest ~ Best™

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

STURGIS MOTORCYCLE RALLY, INC.,

Civil File No.: 11-cv-5052-JLV

Plaintiff,

v.

RUSHMORE PHOTO & GIFTS, INC.,
JRE, INC., CAROL NIEMANN,
PAUL A. NIEMANN, and BRIAN M.
NIEMANN,

**DEFENDANTS' ANSWER AND
COUNTERCLAIMS AND DEMAND
FOR JURY TRIAL**

Defendants and Counterclaim Plaintiffs,

v.

STURGIS MOTORCYCLE RALLY, INC.,

Counterclaim-Defendant.

Defendants Rushmore Photo & Gifts, Inc., JRE, Inc., Carol Niemann, Paul A. Niemann, and Brian M. Niemann (collectively, "Defendants"), for their Answer to Plaintiff's Complaint, state as follows:

ANSWER TO COMPLAINT

1. Defendants admit that the Complaint asserts the identified claims, but Defendants specifically deny the merits of all of Plaintiff's claims.
2. Defendants admit that this Court has subject matter jurisdiction over at least a portion of the parties' dispute, but Defendants specifically deny the merits of all of Plaintiff's claims.

3. Defendants admit the allegations contained in paragraph 3 of Plaintiff's Complaint.

4. Defendants are without sufficient knowledge and information to form a belief as to the allegations contained in paragraph 4 of Plaintiff's Complaint, and therefore deny the same.

5. Defendants admit the allegations contained in paragraph 5 of Plaintiff's Complaint.

6. Defendants admit the allegations contained in paragraph 6 of Plaintiff's Complaint.

7. Defendants admit the allegations contained in paragraph 7 of Plaintiff's Complaint.

8. Defendants admit the allegations contained in paragraph 8 of Plaintiff's Complaint.

9. Defendants admit the allegations contained in paragraph 9 of Plaintiff's Complaint.

10. Defendants deny the allegations contained in paragraph 10 of Plaintiff's Complaint.

11. Defendants admit the allegations contained in paragraph 11 of Plaintiff's Complaint, except that Defendants specifically deny any implication contained in the allegations that Plaintiff had anything to do with the creation or the success of the Sturgis Motorcycle Rally.

12. Defendants deny the allegations contained in paragraph 12 of Plaintiff's Complaint.

13. Defendants deny the allegations contained in paragraph 13 of Plaintiff's Complaint.

14. Defendants are without sufficient knowledge and information to form a belief as to the allegations contained in paragraph 14 of Plaintiff's Complaint, and therefore deny the same.

15. Defendants are without sufficient knowledge and information to form a belief as to the allegations contained in paragraph 15 of Plaintiff's Complaint, and therefore deny the same.

16. Defendants deny that Plaintiff has any legitimate right to the "STURGIS Registrations" (as defined in Plaintiff's Complaint), and therefore deny the allegations contained in paragraph 16 of Plaintiff's Complaint.

17. Defendants deny that Plaintiff has any legitimate right to the "STURGIS Registrations," and therefore deny the allegations contained in paragraph 17 of Plaintiff's Complaint.

18. Defendants deny the allegations contained in paragraph 18 of Plaintiff's Complaint.

19. Defendants deny the allegations contained in paragraph 19 of Plaintiff's Complaint.

20. Defendants deny the allegations contained in paragraph 20 of Plaintiff's Complaint.

21. Defendants admit that Rushmore Photo & Gifts, Inc. and JRE, Inc. offered for sale, sold, and advertised the goods set forth in Exhibit B to Plaintiff's Complaint. Defendants deny that Carol Niemann, Paul A. Niemann, and Brian M. Niemann individually offered for sale, sold, or advertised the goods set forth in Exhibit B to Plaintiff's Complaint. Defendants deny the remaining allegations contained in paragraph 21 of Plaintiff's Complaint.

22. Defendants admit that Rushmore Photo & Gifts, Inc. and JRE, Inc. offered for sale, sold, and advertised the goods set forth in Exhibit C to Plaintiff's Complaint. Defendants deny the remaining allegations contained in paragraph 22 of Plaintiff's Complaint.

23. Defendants deny the allegations contained in paragraph 23 of Plaintiff's Complaint.

24. Defendants deny the allegations contained in paragraph 24 of Plaintiff's Complaint.

25. Defendants deny the allegations contained in paragraph 25 of Plaintiff's Complaint.

26. Defendants deny the allegations contained in paragraph 26 of Plaintiff's Complaint, except that Defendants specifically admit that certain lawful trademark applications were filed with the United States Patent and Trademark Office.

27. Defendants deny the allegations contained in paragraph 27 of Plaintiff's Complaint.

28. Defendants deny the allegations contained in paragraph 28 of Plaintiff's Complaint.

29. Defendants deny the allegations contained in paragraph 29 of Plaintiff's Complaint, except that Defendants specifically admit that Defendant JRE, Inc. registered certain domain names.

30. Defendants deny the allegations contained in paragraph 30 of Plaintiff's Complaint.

31. Defendants deny the allegations contained in paragraph 31 of Plaintiff's Complaint.

32. Defendants deny the allegations contained in paragraph 32 of Plaintiff's Complaint.

33. Defendants deny the allegations contained in paragraph 33 of Plaintiff's Complaint.

34. Defendants deny the allegations contained in paragraph 34 of Plaintiff's Complaint.

35. Defendants deny the allegations contained in paragraph 35 of Plaintiff's Complaint.

36. Defendants restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 35 above.

37. Defendants deny the allegations contained in paragraph 37 of Plaintiff's Complaint.

38. Defendants deny the allegations contained in paragraph 38 of Plaintiff's Complaint.

39. Defendants restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 38 above.

40. Defendants deny the allegations contained in paragraph 40 of Plaintiff's Complaint.

41. Defendants deny the allegations contained in paragraph 41 of Plaintiff's Complaint.

42. Defendants restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 41 above.

43. Defendants deny the allegations contained in paragraph 43 of Plaintiff's Complaint.

44. Defendants deny the allegations contained in paragraph 44 of Plaintiff's Complaint.

45. Defendants restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 44 above.

46. Defendants deny the allegations contained in paragraph 46 of Plaintiff's Complaint.

47. Defendants deny the allegations contained in paragraph 47 of Plaintiff's Complaint.

48. Defendants restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 47 above.

49. Defendants deny the allegations contained in paragraph 49 of Plaintiff's Complaint.

50. Defendants deny the allegations contained in paragraph 50 of Plaintiff's Complaint.

51. Defendants restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 50 above.

52. Defendants deny the allegations contained in paragraph 52 of Plaintiff's Complaint.

53. Defendants deny the allegations contained in paragraph 53 of Plaintiff's Complaint.

54. Defendants restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 53 above.

55. Defendants deny the allegations contained in paragraph 55 of Plaintiff's Complaint.

56. Defendants deny the allegations contained in paragraph 56 of Plaintiff's Complaint.

57. Defendants restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 56 above.

58. Defendants deny the allegations contained in paragraph 58 of Plaintiff's Complaint.

59. Defendants deny the allegations contained in paragraph 59 of Plaintiff's Complaint.

60. Defendants deny the allegations contained in paragraph 60 of Plaintiff's Complaint.

61. Defendants deny that Plaintiff is entitled to any of the relief requested by Plaintiff in its Complaint.

62. Specific responses corresponding to Plaintiff's averments are set forth above, but except as otherwise specifically admitted or qualified, all averments of Plaintiff's Complaint are denied.

DEFENSES AND AFFIRMATIVE DEFENSES

Defendants assert the following defenses and affirmative defenses:

63. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

64. Plaintiff's claims are barred in whole or in part by the doctrines of acquiescence, license, abandonment, waiver, estoppel, consent, and/or laches.

65. Plaintiff's claims are barred in whole or in part because of Plaintiff's unclean hands.

66. Plaintiff's claims are barred in whole or in part because of Plaintiff's failure to mitigate its damages.

67. Plaintiff's claims are barred in whole or in part based on a lack of standing.

68. Plaintiff's claims are barred in whole or in part based on a lack of subject matter jurisdiction.

69. Plaintiff's claims are barred in whole or in part based upon the alleged "STURGIS Registrations" being geographically descriptive names in that the alleged "STURGIS Registrations" are not "trademarks" but are geographically descriptive of the goods or services.

70. Plaintiff's claims are barred in whole or in part based upon the alleged "STURGIS Registrations" being merely geographically descriptive.

71. Plaintiff's claims are barred in whole or in part based upon the alleged "STURGIS Registrations" being merely descriptive.

72. Plaintiff's state law claims are barred in whole or in part under federal preemption.

73. Plaintiff's claims are barred in whole or in part based upon the alleged "STURGIS Registrations" not being inherently distinctive and not having become distinctive in that the relevant consumer does not associate the mark with Plaintiff alone.

74. Plaintiff's claims are barred in whole or in part based upon the alleged "STURGIS Registrations" lacking secondary meaning.

75. Plaintiff's claims are barred in whole or in part based upon the lack of any likelihood of confusion.

76. Plaintiff's claims are barred in whole or in part based upon abandonment as a result of Plaintiff's failure to enforce the "STURGIS Registrations," and as a result of Plaintiff's uncontrolled licensing and lack of quality control of said "STURGIS Registrations."

77. Plaintiff's claims are barred in whole or in part pursuant to 15 U.S.C. § 1115(b)(1) inasmuch as the registrations and/or any alleged incontestable rights of the alleged "STURGIS Registrations" were fraudulently obtained.

78. Plaintiff's claims are barred in whole or in part pursuant to 15 U.S.C. § 1115(b)(7) inasmuch as the "STURGIS Registrations" alleged by Plaintiff are being used to violate the antitrust laws of the United States.

79. Plaintiff's claims are barred in whole or in part pursuant to 15 U.S.C. § 1115(b)(9) inasmuch as equitable principles, including laches, estoppel, and acquiescence, are applicable.

80. Plaintiff's claims are barred in whole or in part based upon the alleged "STURGIS Registrations" not being famous.

81. Plaintiff's claims are barred in whole or in part based upon the doctrine of fair use.

82. Plaintiff's claims are barred in whole or in part based upon the lack of any dilution.

83. Plaintiff's claims are barred in whole or in part based upon the applicable statutes of limitation.

84. Plaintiff's claims are barred in whole or in part by the doctrine of innocent infringement.

85. Plaintiff's claims are barred in whole or in part based upon Plaintiff lacking a protectable trademark.

86. Plaintiff's claims are barred in whole or in part based upon the lack of any use in commerce by Defendants of any of Plaintiff's "STURGIS Registrations."

87. Plaintiff's claims are barred in whole or in part based upon the lack of Defendants in the course of business, vocation, or occupation passing off its goods or services as those of Plaintiff.

88. Plaintiff's claims are barred in whole or in part based upon the lack of Defendants in the course of business, vocation, or occupation causing a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification between Defendants' products and services and Plaintiff's products and services.

89. Plaintiff's claims are barred in whole or in part based upon the lack of Defendants in the course of business, vocation, or occupation causing a likelihood of confusion or of misunderstanding as to the affiliation, connection, or association between Defendants' products and services and Plaintiff's products and services.

90. Plaintiff's claims are barred in whole or in part based upon the lack of Defendants in the course of business, vocation, or occupation engaging in conduct that generally creates a likelihood of confusion or of misunderstanding between Defendants' products and services and Plaintiff's products and services.

91. Plaintiff's claims are barred in whole or in part based upon the lack of Defendants engaging in any unfair competition under South Dakota common law.

92. Plaintiff's claims are barred in whole or in part based upon the lack of Plaintiff suffering any actual injury.

93. Plaintiff's claims are barred in whole or in part based upon the alleged "STURGIS Registrations" being generic names in that the alleged "STURGIS Registrations" are not "trademarks" but are generic of the goods or services.

94. Plaintiff's claims are barred in whole or in part based upon the lack of individual liability of Carol Niemann, Paul A. Niemann, and Brian M. Niemann.

95. Defendants reserve the right to rely on additional defenses to the extent that such defenses are supported by information developed through discovery or at trial.

JURY DEMAND

96. Pursuant to FED. R. CIV. P. 38(b), Defendants request a trial by jury of all issues so triable.

COUNTERCLAIMS AGAINST SMRI

For their Counterclaims against Counterclaim-Defendant Sturgis Motorcycle Rally, Inc. (“SMRI”), Counterclaim-Plaintiffs Rushmore Photo & Gifts, Inc., JRE, Inc., Carol Niemann, Paul A. Niemann, and Brian M. Niemann (collectively, “Counterclaim-Plaintiffs”), through their attorneys, hereby state and allege:

PARTIES

1. Rushmore Photo & Gifts, Inc. is a South Dakota corporation with a principal place of business in Custer, South Dakota.

2. JRE, Inc. is a South Dakota corporation with a principal place of business in Custer, South Dakota.

3. Carol Niemann is an individual and resident of South Dakota.

4. Paul A. Niemann is an individual and resident of South Dakota.

5. Brian M. Niemann is an individual and resident of South Dakota.

6. Upon information and belief and according to its Complaint, SMRI is a South Dakota “not-for-profit” corporation with a “principal place of business” in Sturgis, South Dakota.

JURISDICTION AND VENUE

7. This court has supplemental jurisdiction with regard to Counterclaim-Plaintiffs’ claims under 28 U.S.C. § 1367. This Court has subject matter jurisdiction with regard to SMRI’s registered marks pursuant section 37 of the Lanham Act, 15 U.S.C. § 1119 and 28 U.S.C. § 1338. Counterclaim-Plaintiffs’ Counterclaims are being brought pursuant to FED. R. CIV. P. 13.

8. Upon information and belief, SMRI resides in this District, has alleged claims against Counterclaim-Plaintiffs in this district, and is subject to personal jurisdiction pursuant to

S.D.C.L. § 15-7-2.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) as SMRI is subject to personal jurisdiction, conducts business, and has asserted claims against Counterclaim-Plaintiffs in this District.

COMMON FACTS

10. Upon information and belief, SMRI is the alleged owner of nine federally registered marks (collectively “Sturgis Registrations”), attached to Plaintiff/SMRI’s Complaint as Exhibit A (Court Doc. No. 1-1).

11. SMRI is also the alleged owner of two unregistered terms, “Sturgis Motorcycle Rally” and “Sturgis Rally & Races” (collectively “Unregistered Terms”), under which SMRI evidently claims some type of trademark rights.

12. As SMRI well knows, the term “Sturgis” is a designator of a geographic place, namely, the town of Sturgis, South Dakota.

13. The geographic descriptiveness of the term “Sturgis” was recognized and cited as a reason for refusal of registration by the U.S. Patent & Trademark Office reviewing the application that resulted in Registration No. 3,923,284 for the term “Sturgis.”

14. In response to this Section 2(e) refusal, SMRI (then Sturgis Area Chamber of Commerce) filed a Section 2(f) affidavit of acquired distinctiveness claiming “substantially exclusive and continuous use” of the term “Sturgis” as a mark for five years before the filing of the 2(f) claim.

15. The acquired distinctiveness claim overcame the geographic descriptiveness refusal of Registration No. 3,923,284 for the term “Sturgis,” and the registration was subsequently allowed to issue.

16. The Section 2(f) affidavit filing, which was material to the examination and issuance of Registration No. 3,923,284 for the term “Sturgis,” was fraudulent.

17. SMRI, and its predecessor in interest the Sturgis Area Chamber of Commerce, are not now and have never been the “substantially exclusive” user of the term “Sturgis.”

18. Non-licensed vendors, including but not limited to Rushmore Photo & Gifts, Inc., have sold goods bearing the term “Sturgis” for decades, certainly for well over the five years before the filing of the 2(f) claim made by SMRI and during any time during which SMRI (and/or Sturgis Area Chamber of Commerce) alleged substantially exclusive use.

19. Considering the open and notorious use of the term “Sturgis” on products sold throughout the Black Hills, and the active involvement of SMRI and/or the Sturgis Area Chamber of Commerce during the Rally, it surely made the misrepresentation of “substantially exclusive and continuous use” of the term “Sturgis” as a mark for five years before the filing of the 2(f) claim knowingly and with the intent to defraud the U.S. Patent & Trademark Office.

COUNT ONE:

**DECLARATORY JUDGMENT ACTION DETERMINATION THAT SMRI’S
REGISTRATION NO. 3,923,284 FOR THE TERM “STURGIS” IS INVALID AND
UNENFORCEABLE FOR FRAUD ON THE U.S. PATENT & TRADEMARK OFFICE**

20. Counterclaim-Plaintiffs restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 19 of their Counterclaims.

21. In order to obtain Registration No. 3,923,284 for the term “Sturgis” under Section 2(f) of the Lanham Act, SMRI (and/or the Sturgis Area Chamber of Commerce) was required to show that its descriptive term had obtained acquired distinctiveness. SMRI (and/or the Sturgis Area Chamber of Commerce) did this by claiming that it has “substantially exclusive and continuous use” of the term “Sturgis” as a mark in commerce for five years before the filing of the 2(f) claim.

22. SMRI (and/or the Sturgis Area Chamber of Commerce) knew that it did not have “substantially exclusive and continuous use” of the term “Sturgis” in commerce for at least the five years before the filing of the 2(f) claim, and thus, knowingly made and submitted a false claim and declaration to this effect in order to achieve registration for the term “Sturgis” under Section 2(f) of the Act. SMRI (and/or the Sturgis Area Chamber of Commerce) thereby willfully and deliberately committed fraud on the U.S. Patent & Trademark Office.

23. Because Registration No. 3,923,284 for the term “Sturgis” is invalid and unenforceable due to fraud on the U.S. Patent & Trademark Office, SMRI’s Registration No. 3,923,284 for the term “Sturgis” should be cancelled pursuant to 15 U.S.C. §§ 1052(e), 1064(3), and 1119.

**COUNT TWO:
DECLARATORY JUDGMENT ACTION DETERMINATION THAT SMRI’S STURGIS
REGISTRATIONS ARE GENERIC, INVALID, AND UNENFORCEABLE**

24. Counterclaim-Plaintiffs restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 23 of their Counterclaims.

25. The relevant public does not perceive any trademark or service mark significance with SMRI’s Sturgis Registrations or Unregistered Terms; rather, the Sturgis Registrations and Unregistered Terms have become known to the relevant public and adopted by consumers as the name of the products and service rather than a brand identifier of such products or service.

26. Because SMRI’s Sturgis Registrations and Unregistered Terms have become known to the relevant public and adopted by consumers as the name of the products and service rather than a brand identifier of such products or service, the Sturgis Registrations and Unregistered Terms are generic, invalid, and unenforceable as a trademark or service mark.

27. In particular, the terms “Sturgis,” “Sturgis Bike Week,” “Sturgis Motorcycle Rally,” and “Sturgis Rally & Races” do not function as a trademark because they are now and have been for decades used by numerous non-licensed entities and vendors. Consumers do not associate the term or phrase with any one source, rendering the terms generic.

28. As a consequence of the above facts, the Sturgis Registrations and Unregistered Terms, in particular “Sturgis,” “Sturgis Bike Week,” “Sturgis Motorcycle Rally,” and “Sturgis Rally & Races,” should be cancelled and otherwise found to be invalid and unenforceable pursuant to 15 U.S.C. §§ 1052(e), 1064(3), and 1119 and common law.

**COUNT THREE:
DECLARATORY JUDGMENT ACTION DETERMINATION THAT SMRI’S
REGISTRATION NO. 3,923,284 FOR THE TERM “STURGIS” IS INVALID AND
UNENFORCEABLE AS PRIMARILY GEOGRAPHICALLY DESCRIPTIVE**

29. Counterclaim-Plaintiffs restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 28 of their Counterclaims.

30. The term “Sturgis” is primarily a designator of a geographic place, namely, the town of Sturgis, South Dakota.

31. The term “Sturgis” is geographically descriptive of the goods and services of SMRI, as being related to or being associated with the town of Sturgis, South Dakota.

32. Because the term “Sturgis” is primarily geographically descriptive, SMRI’s Registration No. 3,923,284 for the term “Sturgis” should be cancelled pursuant to 15 U.S.C. §§ 1052(e), 1064(3), and 1119.

**COUNT FOUR:
DECLARATORY JUDGMENT ACTION – NON-INFRINGEMENT OF
SMRI’S STURGIS REGISTRATIONS AND UNREGISTERED TERMS**

33. Counterclaim-Plaintiffs restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 32 of their Counterclaims.

34. With the exception of the term “Sturgis,” Counterclaim-Plaintiffs do not use and have not in the past used in commerce the words, terms, names, or symbols of the Sturgis Registrations or Unregistered Terms, in connection with any of Counterclaim-Plaintiffs’ goods or services.

35. SMRI’s Registration No. 3,923,284 for the term “Sturgis” is invalid and unenforceable for a number of reasons, as outlined above.

36. Accordingly, Counterclaim-Plaintiffs seek judgment from the Court that they do not and have not infringed the Sturgis Registrations or Unregistered Terms.

**COUNT FIVE:
CIVIL LIABILITY FOR FALSE OR FRAUDULENT REGISTRATION
UNDER 15 U.S.C. § 1120**

37. Counterclaim-Plaintiffs restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 36 of their Counterclaims.

38. As set forth above, Registration No. 3,923,284 for the term “Sturgis” is invalid and unenforceable due to fraud on the U.S. Patent & Trademark Office.

39. Under 15 U.S.C. § 1120, SMRI is liable, as successor-in-interest to the Sturgis Chamber of Commerce, for damages that Counterclaim-Plaintiffs have sustained as a consequence of the false and fraudulent Registration No. 3,923,284 for the term “Sturgis.”

40. Rushmore Photo & Gifts, Inc. and JRE, Inc. have lost business and product orders based on SMRI’s letters that it has sent to vendors, as well as Counterclaim-Plaintiffs’ customers, threatening to enforce SMRI’s falsely and fraudulently obtained Registration No. 3,923,284 for the term “Sturgis” against numerous vendors and customers.

41. Upon information and belief, SMRI has also been threatening vendors that SMRI and/or law enforcement will be conducting seizures at and around the upcoming Rally of any

“non-licensed” goods that use or incorporate the term “Sturgis.”

42. SMRI’s threats, which all use as a weapon SMRI’s falsely and fraudulently obtained Registration No. 3,923,284 for the term “Sturgis,” have wrongfully created an environment of fear amongst Rally vendors, including those that are Rushmore Photo & Gifts, Inc. and JRE, Inc.’s customers.

43. SMRI’s threats, which all use as a weapon SMRI’s falsely and fraudulently obtained Registration No. 3,923,284 for the term “Sturgis,” evidence a pattern of bullying and unfair competition by SMRI.

44. Based on SMRI’s wrongful conduct, Counterclaim-Plaintiffs have been damaged in an amount to be determined at trial. This damage includes but is not limited to Counterclaim-Plaintiffs’ attorney’s fees and costs in having to litigate against SMRI’s falsely and fraudulently obtained Registration No. 3,923,284 for the term “Sturgis.”

**COUNT SIX:
TORTIOUS INTERFERENCE WITH CONTRACT
AND/OR BUSINESS RELATIONSHIP**

45. Counterclaim-Plaintiffs restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 44 of their Counterclaims.

46. Rushmore Photo & Gifts, Inc. and JRE, Inc. distribute, offer for sale, and sell goods that incorporate the term “Sturgis” to various customers and vendors, primarily for sale at and around the Rally.

47. SMRI is well aware of the fact that Rushmore Photo & Gifts, Inc. and JRE, Inc. distribute, offer for sale, and sell goods that incorporate the term “Sturgis” to various customers and vendors, primarily for sale at and around the Rally.

48. As outlined above, SMRI has intentionally and unjustifiably interfered with

Rushmore Photo & Gifts, Inc. and JRE, Inc.'s contracts and business relationships with their customers and vendors.

49. Customers and vendors have refrained from making or cancelled orders for Rushmore Photo & Gifts, Inc. and JRE, Inc.'s goods that incorporate the term "Sturgis" based on the environment of intimidation and bullying that SMRI has cultivated using its falsely and fraudulently obtained Registration No. 3,923,284 for the term "Sturgis."

50. As a result of SMRI's wrongful conduct, Rushmore Photo & Gifts, Inc. and JRE, Inc. have been damaged in an amount to be determined at trial.

**COUNT SEVEN:
COMMON LAW UNFAIR COMPETITION**

51. Counterclaim-Plaintiffs restate, reallege, and incorporate by reference the allegations set forth in paragraphs 1 through 50 of their Counterclaims.

52. The above-described acts by SMRI constitute unfair competition under common law.

53. As a result of SMRI's unfair competition, Rushmore Photo & Gifts, Inc. and JRE, Inc. have been damaged in an amount to be determined at trial.

JURY TRIAL

54. Pursuant to FED. R. CIV. P. 38(b), Counterclaim-Plaintiffs request a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Defendants/Counterclaim-Plaintiffs Rushmore Photo & Gifts, Inc., JRE, Inc., Carol Niemann, Paul A. Niemann, and Brian M. Niemann respectfully request that this Court:

(a) Enter judgment dismissing Plaintiff's Complaint with prejudice and on the merits.

- (b) Enter judgment sustaining Defendants' defenses and affirmative defenses.
- (c) Enter judgment sustaining Counterclaim-Plaintiffs' declaratory judgment action that SMRI's Sturgis Registrations and Unregistered Terms are generic, invalid, and unenforceable.
- (d) Enter judgment ordering the Director of the United States Patent and Trademark Office to cancel SMRI's Sturgis Registrations.
- (e) Enter judgment preliminarily and permanently enjoining and restraining SMRI and its subsidiaries, parents, officers, directors, agents, servants, employees, agents, affiliates, attorneys and all other persons in active concert or participation with SMRI from enforcing or threatening to enforce SMRI's Sturgis Registrations or Unregistered Terms, or from threatening that SMRI and/or its agents will be conducting seizures at and around the upcoming Rally of any "non-licensed" goods that use or incorporate the term "Sturgis."
- (f) Enter judgment sustaining Counterclaim-Plaintiffs' declaratory judgment action of non-infringement.
- (g) Enter judgment awarding Counterclaim-Plaintiffs damages, in an amount to be determined at trial, for SMRI's various acts of wrongful conduct, including under 15 U.S.C. § 1120.
- (h) Enter judgment awarding Counterclaim-Plaintiffs their costs and attorney fees, in accordance with Section 35 of the Lanham Act, 15 U.S.C. §§ 1117(a) and 1120, and otherwise according to law.
- (i) Enter judgment awarding damages to Counterclaim-Plaintiffs of pre-judgment and post-judgment interest on Counterclaim-Plaintiffs' damages as allowed by law.

(j) Grant Defendants/Counterclaim-Plaintiffs such other relief as the Court may deem just and equitable.

Respectfully Submitted,

Dated: July 6, 2011

By: /s/ J. Crisman Palmer

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CERTIFICATE OF SERVICE

I hereby certify on July 6, 2011, a true and correct copy of **DEFENDANTS' ANSWER AND COUNTERCLAIMS AND DEMAND FOR JURY TRIAL** was served electronically through the CM/ECF system upon the following individuals:

Michael C. Loos, Esq.
2834 Jackson Blvd., Suite 201
P.O. Box 9129
Rapid City, SD 57702-3809

By: /s/ J. Crisman Palmer
J. Crisman Palmer

**Exhibit B to
Applicant Charles Nucci's
Motion To Suspend**

Offered by Applicant Charles Nucci

Sturgis Motorcycle Rally, Inc. v. Charles Nucci

Opposition No. 91205827

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

MBA

Mailed: August 3, 2012

Cancellation No. 92054714

Concerned Citizens for
Sturgis, Inc.

v.

Sturgis Motorcycle Rally
Inc.

Michael B. Adlin, Interlocutory Attorney:

It has come to the Board's attention that respondent is involved in a civil action, in which there is a counterclaim to cancel respondent's involved Registration No. 3923284 (Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc. et al., Case No. 5:11-cv-05052-JLV, pending in the U.S. District Court for the District of South Dakota) (the "Federal Case"). As a result of the Federal Case, in which the validity of one of respondent's here-involved registrations is at issue, the basis for the suspension of this proceeding is hereby changed. Specifically, proceedings herein remain suspended, pending final determination of the Federal Case. Trademark Rule 2.117(a).

Within **TWENTY DAYS** after the final determination of the Federal Case, the parties are ordered to notify the

Cancellation No. 92054714

Board so that this case may be called up for appropriate action. Upon resumption, respondent's fully-briefed motion for summary judgment will be addressed, to the extent necessary. During the suspension period, the Board should be notified of any address changes for the parties or their attorneys.
