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

Proceeding	91220765
Party	Defendant Bangle Jangle, LLC.
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Date	04/03/2015
Attachments	Motion to Stay Opposition Proceedings.pdf(14810 bytes ) Exhibit A to Motion.pdf(951822 bytes ) Exhibit B to motion.pdf(1274140 bytes )

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

FD9 GROUP, INC.,

Opposer,

vs.

BANGLE JANGLE, LLC, an  
individual,

Applicant.

Opposition No. 91220765

Serial No. 86352420

**MOTION TO STAY OPPOSITION PROCEEDINGS**

Applicant Bangle Jangle, LLC (“Bangle”) hereby moves for a stay of Opposer’s Opposition Proceeding to Trademark Serial No. 86/352420 pending the outcome of a related United States District Court action on the following grounds:

On January 22, 2015, Opposer filed a complaint against Bangle in the United States District Court for the Central District of California captioned *FD9 Group, Inc. v. Bangle Jangle, LLC*, Case No. 2:15-cv-00512-BRO (ASx) (the “District Court Case”). In its complaint, Opposer asserted claims for statutory and common law trademark infringement, trade dress infringement, unfair competition, false designation of origin, and copyright infringement arising out of Bangle’s manufacture and sale of jewelry under the mark LAT & LO, for which Bangle is seeking registration and which Opposer is opposing. On February 17, 2015, Opposer filed a first amended complaint. A true and correct copy of the first

amended complaint is attached hereto as Exhibit A.

On March 20, 2015, Bangle filed an answer to the first amended complaint and counterclaims in the District Court Case. Among Bangle's counterclaims in the District Court Case are claims for a declaration of non-infringement, cancellation of Opposer's trademark registrations, procurement of registrations of marks by false representations in violation of 15 U.S.C. § 1120, copyright infringement, intentional interference with prospective business advantage, and unfair competition in violation of the California Business & Professions Code § 17200, *et seq.* A true and correct copy of Bangle's answer and counterclaims is attached hereto as Exhibit B.

The issues raised by the parties in the District Court Case subsume the issues raised in the present Opposition. Specifically, Opposer contends in the District Court Case, among other things, that consumers are likely to confuse Bangle's LAT & LO mark with Opposer's registered COORDINATES trademarks (Reg. Nos. 4,680,090, 4,541,700, 4,482,636, 4,668,121, 4,668,122, and 4,668,123) and its WHAT ARE YOURS? trademark (Reg. No. 4,675,909). *See* Exhibit A. In its Opposition filed with the TTAB on February 23, 2015, Opposer opposes Bangle's registration of LAT & LO on the alleged ground that LAT & LO is "nearly identical" to its COORDINATES marks and is "likely to cause consumer confusion and and/or [sic] to cause mistake as to source sponsorship or affiliation or to deceive."

Bangle contends in the District Court Case and in its Counterclaim filed with the Trademark Trial and Appeal Board (the "Board") contemporaneously with this Motion that it is the prior user of the term COORDINATE for jewelry bearing latitude and longitude coordinates, that Opposer made no bona fide use of the COORDINATES marks prior to its filing of use-based applications for registration, that COORDINATES is descriptive, generic, has no secondary meaning, and is not

distinctive, and that Opposer is attempting to use its COORDINATES marks to obtain a monopoly on the use of latitude and longitude coordinates on jewelry and to inhibit lawful competition. *See* Exhibit B.

Given that some of the issues in the District Court Case are virtually identical to the issues in the Opposition and Counterclaim before the Board, the District Court's determination of these issues will have a bearing on the issues before the Board. This warrants a stay of the Opposition proceeding. As the Board has explained:

If the parties to an opposition are involved in a district court action involving the same mark or the opposed application, the Board will scrutinize the pleadings in the civil action to determine if the issues before the court may have a bearing on the Board's decision in the opposition... A decision by the district court may be binding on the Board whereas a determination by the Board as to a defendant's right to obtain or retain a registration would not be binding or res judicata in respect to the proceeding pending before the court... Thus, the civil action does not have to be dispositive of the Board proceeding to warrant suspension, it need only have a bearing on the issues before the Board.

*New Orleans Louisiana Saints LLC v. Who Dat?, Inc.*, 99 U.S.P.Q.2d 1550, 2011 WL 3381380, \*2 (2011) (citations omitted). In that case, the applicant had filed suit in District Court for trademark infringement by the opposers. *Id.* at \*3. Concluding that the decision by the District Court to enjoin use of the mark by the opposers would have a bearing on the opposition proceedings, the Board suspended the proceedings pending final disposition of the civil action. *Id.*; *see also* 6 *McCarthy on Trademarks and Unfair Competition* §32:47 (4th Ed. 2015) ("It is standard procedure for the Trademark Board to stay administrative

proceedings pending the outcome of court litigation between the same parties involving related issues.”).

A decision in the present District Court Case is similarly likely to have a bearing on these proceedings. Were both to proceed contemporaneously, there is a risk of inconsistent rulings. Furthermore, the District Court Case also involves additional issues of alleged copyright infringement and state law claims, which could not be resolved by the Board.

For all of these reasons, Bangle respectfully requests that the Board stay the present Opposition proceedings pending the outcome of the District Court Case.

Dated: April 3, 2015

Respectfully submitted,  
BANGLE JANGLE, LLC

By its Attorneys,  
SEDGWICK LLP

/Caroline H. Mankey/

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**Certificate of Service**

I hereby certify that a true and complete copy of the foregoing Motion to Stay Opposition Proceedings has been served on counsel for Opposer FD9 Group, Inc. by mailing said copy on April 3, 2015, via First Class Mail, postage prepaid to:

Michael N. Cohen  
Cohen IP Law Group PC  
9025 Wilshire Blvd. Suite 301  
Beverly Hills, CA 90211

Dated: April 3, 2015

/Caroline H. Mankey/  
Caroline H. Mankey

# Exhibit A

to Motion to Stay Opposition Proceedings

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10 Attorneys for Plaintiff,  
11 FD9 GROUP INC.

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 FD9 GROUP INC., a Delaware  
15 Corporation,

16 Plaintiff,

17 vs.

18 BANGLE JANGLE, LLC

19 A Florida limited liability company;

20 And DOES 1-10 inclusive,

21 Defendants.

CASE NO.: 2:15-cv-00512-BRO  
(ASx)

FIRST AMENDED COMPLAINT  
FOR:

1. **FEDERAL TRADEMARK INFRINGEMENT [LANHAM ACT]**
2. **FEDERAL TRADE DRESS INFRINGEMENT [LANHAM ACT]**
3. **COMMON LAW TRADEMARK INFRINGEMENT**
4. **COMMON LAW TRADE DRESS INFRINGEMENT**
5. **UNFAIR COMPETITION Cal. Bus. & Prof. Code §17200**
6. **FALSE DESIGNATION OF ORIGIN 15 U.S.C. §1125(a)**
7. **COPYRIGHT INFRINGEMENT 17 U.S.C. §§101 et seq.**

22 DEMAND FOR JURY TRIAL

1 Plaintiff FD9 GROUP, INC., (“FD9”) for its Complaint against defendants  
2 Bangle Jangle, LLC (“Bangle”), and Does 1-10 inclusive alleges as follows:

3 **NATURE OF THE ACTION**

4  
5 1. This lawsuit arises out of Bangle’s infringement of FD9’s intellectual  
6 property, specifically its trademarked, copyrighted, and highly successful line of  
7 COORDINATES<sup>o</sup> engraved jewelry. This is an action for trademark infringement,  
8 trade dress infringement, unfair competition, and false designation of origin under  
9 the Trademark Act of 1946, 15 U.S.C. §§ 1051, *et seq.* (the “Lanham Act”) and  
10 California State law, as well as copyright infringement under the copyright laws of  
11 the United States, 17 U.S.C. § 101, *et seq.* Because Bangle’s infringement has  
12 caused and is causing FD9 harm, FD9 is seeking actual and statutory damages,  
13 attorneys’ fees, and such other relief as deemed appropriate.

14  
15 **JURISDICTION AND VENUE**

16 2. Personal jurisdiction exists over Defendants because on information and  
17 belief, and, as alleged herein, Defendants conduct business in California and in this  
18 judicial district, or otherwise avail themselves of the privileges and protections of  
19 the laws of the State of California, such that they do not offend traditional notions  
20 of fair play and due process to Defendants in the jurisdiction herein.

21 3. This action arises under §43(a) of the Lanham Act, 15 U.S.C. §§ 1114,  
22 1125(a), as well copyright laws of the United States, 17 U.S.C. § 101 *et seq.* This  
23 Court has original subject matter jurisdiction over these federal claims pursuant to  
24 15 U.S.C. §1121, and 28 U.S.C. §§1331, and 1338.

25 4. This court also has jurisdiction for all of the state law claims on the basis  
26 of supplemental jurisdiction under 28 U.S.C. §1367(a) in that the federal and state  
27 law claims alleged herein are based on the same operative facts, and the Court’s  
28

1 exercise of jurisdiction over the pendent state law claims will promote judicial  
2 economy, convenience, and fairness to the parties.

3 5. Venue is proper in this district under 28 U.S.C. §1400(a) and §1391(b)  
4 and (c) because on information and belief a substantial part of the events and  
5 omissions giving rise to the claims asserted herein occurred within this judicial  
6 district, substantial injury occurred in this district, and certain Defendants are  
7 subject to personal jurisdiction in this district.

8  
9 **PARTIES**

10 6. Plaintiff, FD9 GROUP, INC., (“FD9” or “Plaintiff”), is now, and was at  
11 the time of the filing of this Complaint and at all intervening times, a corporation  
12 organized under the laws of Delaware, with its principal place of business in  
13 California.

14 7. Plaintiff is informed and believes that Defendant Bangle Jangle, LLC  
15 (“Bangle”) is a Florida corporation with a registered address of 97 Levy Road  
16 #173 Atlantic Beach, FL 32233, and as well as a mailing address of P.O. Box  
17 330379 Atlantic Beach, FL 32233. Plaintiff is further informed and believes that  
18 Defendant Bangle is utilizing an internet website with a URL of  
19 <http://www.banglejangle.com>.

20 8. The true names and capacities, whether individual, corporate, associate of  
21 otherwise, of Defendants herein designated by fictitious names Does 1-10,  
22 inclusive, are unknown to Plaintiff. Plaintiff therefore sues said Defendants by  
23 such fictitious names. When the true names and capacities of said Defendants  
24 have been ascertained, Plaintiff will amend this pleading accordingly.

25 9. Plaintiff further alleges that Does 1-10, inclusive, sued herein by  
26 fictitious names are jointly, severally, and concurrently liable and responsible with  
27 the named Defendants upon the causes of action hereinafter set forth.

28 10. Plaintiff is informed and believes and thereon alleges that at all times

1 mentioned herein that Defendants Bangle and Does 1-10, inclusive, and each of  
2 them (collectively, “Defendants”), were the agents, servants and employees of  
3 every other Defendant and the acts of each Defendant, as alleged herein, were  
4 performed within the course and scope of that agency, service or employment.

5  
6 **FACTUAL BACKGROUND**

7  
8 11. This controversy involves two competing jewelry merchants, Plaintiff  
9 FD9 Group, Inc. (“FD9”) and Defendant Bangle Jangle, LLC (“Bangle”). FD9 and  
10 Bangle sell and promote products targeted to the same customers, offering  
11 suspiciously similar looking bracelets, rings, necklaces, and related accessories, at  
12 comparable prices, and distribute their goods on their respective websites, third  
13 party websites, through social media channels, in online press and publications,  
14 and other directly overlapping channels of trade.

15 12. Plaintiff, FD9 Group, Inc., manufactures and sells jewelry products with  
16 latitude and longitude coordinates engravings. Original trademarks and logos, as  
17 well as copyrighted website elements are connected with the products (“the  
18 Property”).

19 13. As early as December 1<sup>st</sup> 2012 FD9 adopted and began the use in  
20 commerce of the distinctive trademark COORDINATES° to identify its line of  
21 jewelry goods and related accessories (hereafter FD9’s Umbrella Mark) U.S. Reg.  
22 No. 4,541,700. Since December 2012, FD9 has invested substantial sums of  
23 money building brands under FD9’s Umbrella Mark, using and registering marks  
24 to promote it’s jewelry line that all incorporate similar distinctive elements shared  
25 with FD9’s Umbrella Mark. A list of FD9’s trademarks registered to the principal  
26 register is below:

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Registration Number	Trademark	Goods
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4,541,700	COORDINATES°	Bracelets; Jewelry; Necklaces; Rings
4,482,636	C°	Bracelets; earrings; jewelry; necklaces; rings
4,668,121	COORDINATES° RINGS	Bracelets; earrings; jewelry; necklaces; rings
4,668,122	COORDINATES° NECKLACES	Jewelry; Necklaces
4,668,123	COORDINATES° BRACELETS	Bracelets; Jewelry
4,675,909	WHAT ARE YOURS?	Bracelets; jewelry; necklaces; rings.

14. The following list of FD9’s trademarks have received a Notice Of Allowance from the United States Patent and Trademark Office and will be registered pending additional administrative compliance or processing by the USPTO.

<b>Serial Number</b>	<b>Trademark</b>	<b>Goods</b>
85/861171	COORDINATES°	Footwear; Headgear, namely, hats, caps, beanies; Leather belts; Shirts
85/861152	COORDINATES° COLLECTION	Bracelets; Jewelry; Necklaces; Rings

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85/897021	COORDINATES° COLLECTION	-Balls for games; Stress relief balls for hand exercise; -Lighters for smokers; Lighters not of precious metal; -Dissemination of advertising for others via public and private wireless networks for display on mobile devices; On-line retail store services featuring a wide variety of consumer goods of others; -Delivery of digital music by electronic transmission; -Educational and entertainment services, namely, a continuing program about travel and jewelry accessories accessible by radio, television, satellite, audio, video and
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		computer networks - Peer-to-browser photo sharing services
86/337610	ION <sup>°</sup> COLLECTION	Bracelets; Jewelry; Necklaces; Rings
86/377747	MOMENTS <sup>°</sup> BY COORDINATES <sup>°</sup>	Bracelets; Jewelry; Necklaces; Rings

15. Since 2012, Plaintiff’s well known and unique jewelry designs are subject to copyright, including the original jewelry design titled “Coordinates Bracelet.”

16. Furthermore, Plaintiff’s well known and unique website design is subject to copyright, including the original layout, graphics, color scheme, and placement of products.

**B: Plaintiff’s Reputation and Goodwill in the Relevant Industry**

17. Plaintiff’s original coordinates engraved jewelry is unique in the large community of jewelry manufactures and distributors. Defendants have been long aware of Plaintiff’s rights in and to the Property due to the widespread recognition and respect for Plaintiff’s product line. During all times alleged herein, Defendants have willfully engaged in widespread copying and promotion of jewelry products using substantially similar and confusing designs.

18. Plaintiff has distinguished itself as the international leader in its famous line of engraved jewelry, contributing significantly to the wide interest of this design throughout the world. Plaintiff is courted and hailed due to its famous name recognition and distinguished quality, original, and unique packaging.

19. Because of Plaintiff’s extensive use of the Mark and its Copyrighted

1 Designs, plaintiff has built up significant goodwill therein and its product line has  
2 been praised and recognized in numerous articles appears in both trade  
3 publications and those directed to the general public, and on popular and  
4 widespread internet blog sites.

5 20. The success of Plaintiff's marketing efforts is evidenced by, among  
6 other things, unsolicited media attention and multitude of consumer blog sites with  
7 unsolicited testimonials which praise Plaintiff's company, the Property, and  
8 products represented.

9 **C. Defendant's Past and Current Acts of Trademark Infringement**

10 21. Sometime in June 2013, after Bangle was on notice of FD9's trademark  
11 interests in the above referenced marks, Defendants registered the top level domain  
12 name www.thecoordinateline.com, which it still owns and operates.

13 22. From June 2013 through December 2013 Bangle operated a website  
14 under the top level domain name, www.thecoordinateline.com, and sold substantial  
15 volumes of jewelry and related accessories under the moniker THE  
16 COORDINATE LINE competing directly with and infringing FD9's trademark  
17 rights by selling similar looking products at similar price points to the same  
18 customer demographics in overlapping channels of trade. During this time Bangle  
19 also promoted its goods on social media websites including Facebook® where it  
20 promoted its products as THE COORDINATE LINE.

21 23. Starting on or about November 20, 2013, Bangle launched a new  
22 branding campaign that at best tip-toes around, and at times flat out stomps on the  
23 FD9 Trademarks rights. Since November 20, 2013 Bangle's marketing materials  
24 have been littered with terms that in fact have resulted in confusion and a  
25 likelihood of confusion.

26 24. At some point, Defendants being aware of their wrongful use of "The  
27 Coordinate Line" continued their assault on FD9's marks by switching their  
28 wrongful mark from "The Coordinate Line" to "Lat & Lo." Lat & Lo is simply

1 just another way of describing latitude and longitude coordinates. Plaintiff has  
2 become aware that Defendant, Bangle Jangle filed with the USPTO an application  
3 for the trademark “Lat & Lo” and oppose its registration.

4 25. Further, Defendants have further infringed on Plaintiff’s federally  
5 registered trademark “WHAT ARE YOURS?” (reg. no: 4,675,909) by using a  
6 confusing similar catchphrase “WHERE ARE YOU ANCHORED?” At various  
7 times relevant to the allegations made herein, Defendants have piggybacked on  
8 Plaintiff’s success by imitating and copying its protected marks, the product’s trade  
9 dress of the product, website, and overall commercial impression.

10 26. An image of Plaintiff’s Trademarked Coordinates<sup>o</sup> product appear as  
11 follows:



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22 27. As depicted below, Defendants’ LAT & LO product slavishly copies the  
23 trademark and trade dress of Plaintiff’s product:  
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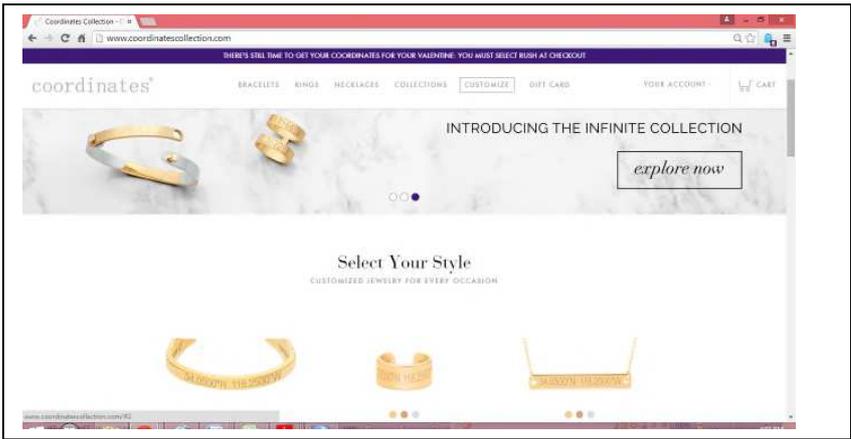
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28. Like Plaintiff’s competing product, the markings on Defendants’ product includes the following: similar font for numerals, similar proportions of the engraved characters, similar geographic coordinates shown in latitude and longitude numerals, similar use of the coordinates symbol: °, similar markings on the front and back of the bracelet, similar placement of numerals, as well as the same color and general shape.

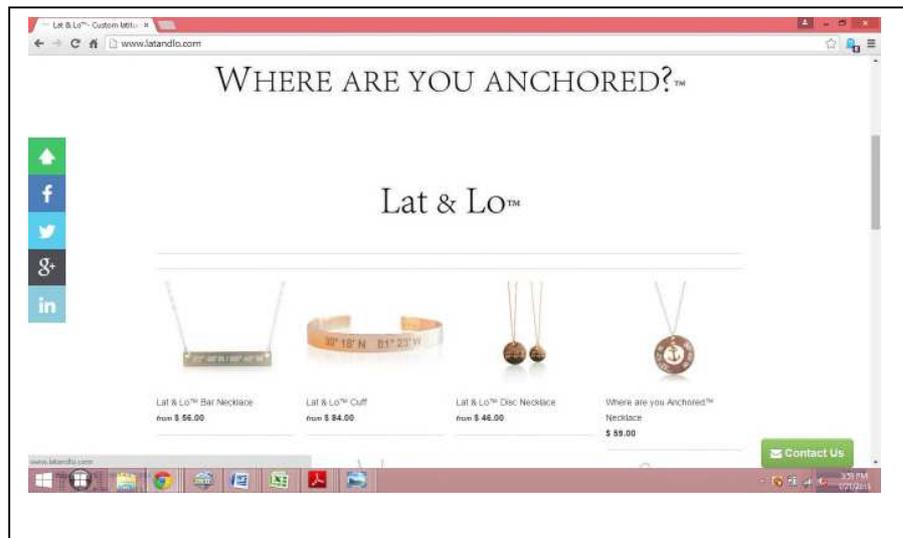
29. Additionally Plaintiff’s website, [www.coordinatescollection.com](http://www.coordinatescollection.com) encompasses original stylistic choices to create a unique look and feel, which is protectable under trade dress.

30. An image of Plaintiff’s website appears as follows:



31. As depicted below, Defendants’ website, [www.latandlo.com](http://www.latandlo.com) (“Defendants’ Website) intentionally copies Plaintiff’s website:

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32. Defendant’s website, latandlo.com purposely imitates and copies the design and elements of Plaintiff’s site by the following: similar placement of products, similar images, similar light color scheme, similar size of images, similar styles of products. Further, the phrase “WHERE ARE YOU ANCHORED?” is displayed prominently on the website is confusingly similar to Plaintiff’s federally protected mark, “WHAT ARE YOURS?”

33. Actual confusion has been caused by Defendants’ deceptive practices. In November 2014 the editors of “People Magazine” confused Bangle’s website and products as if they were FD9’s website and product, and used a portion of Bangle’s website to promote FD9’s goods. Attached hereto is a true a correct copy of the “People Magazine” article as Exhibit “A”.

34. Upon information and belief, Defendants’ willfully and intentionally manufactured and/or sold inferior products bearing confusingly similar marks to Plaintiff and copyrighted Web Designs with the intent to confuse and trade on and benefit from the goodwill established by Plaintiff in its protected and well known Property.

35. At the time of the Complaint, Defendants have continuously and

1 systematically distributed throughout California and the United States inferior and  
2 infringing products, misled and confused consumers, affected widespread negative  
3 publicity regarding Plaintiff's Property, negatively affected the market price of  
4 Plaintiff's goods by selling at below-market prices, and diverted millions of dollars  
5 in business away from Plaintiff.

6  
7 **D: Defendant's Wrongful Conduct Infringing Plaintiff's Copyrights**

8 **1: Coordinates Bracelet**

9 36. Since 2012, Plaintiff's well known and unique jewelry designs have  
10 been original, fixed, and subject to copyright, including the original jewelry design  
11 entitled "Coordinates Bracelet."

12 37. Plaintiff has complied with the U.S. Copyright Act of 1976, 28  
13 U.S.C. §101 *et seq.*, and has applied for copyright registration for the jewelry  
14 design entitled "Coordinates Bracelet" with an application case number of 1-  
15 2079902981. A true and correct copy of the application receipt is attached hereto  
16 as Exhibit B.

17 38. Defendants had access to which they knowingly and willfully copied  
18 and distributed the FD9 work through, without limitation, the production, sale, and  
19 distribution of Defendants products. Defendants' products are direct copies and/or  
20 unauthorized derivative works of Plaintiff's copyrighted works.

21 39. Upon information and belief, Defendants continue to sell infringing  
22 products.

23 40. Defendants infringing products are derived from and copy the  
24 distinctive designs of FD9 Group Inc., thereby infringing upon Plaintiff's  
25 copyrights in those works.

26 41. Defendants offer infringing products for sale within California and to  
27 customers in other states through the website latandlo.com.

28 42. Upon information and belief Plaintiff has lost and will continue to lose

1 substantial revenues on the sale of FD9 Works and their products, and has  
2 sustained damages as a result of Defendant's wrongful conduct.

3 43. Defendants' production and sale of the infringing products, and other  
4 wrongful conduct, also has deprived and continues to deprive Plaintiff of an  
5 opportunity of expanding its goodwill.

6 44. Unless enjoined by this Court, Defendants will continue their course of  
7 unlawful conduct and will continue wrongfully to use, infringe upon, sell and  
8 otherwise profit from its infringement of the Coordinates Bracelet, and will  
9 continue to deprive Plaintiff of its rights.

10 45. As a direct and proximate result of the acts of Defendants alleged  
11 above, Plaintiff has already suffered irreparable injury and sustained lost profits.  
12 Plaintiff has no adequate remedy at law to address all of the injuries that  
13 Defendants have caused and have intended to cause by their unlawful conduct.

14 **2: Plaintiff's Website**

15 46. Plaintiff's website, [www.coordinatescollection.com](http://www.coordinatescollection.com) is an original and  
16 fixed work subject to federal copyright protection.

17 47. Plaintiff has complied with the U.S. Copyright Act of 1976, 28  
18 U.S.C. §101 *et seq.*, and has applied for copyright registration for the website as  
19 entitled in "Coordinates Website" with an application case number of 1-  
20 2079903555. A true and correct copy of the application receipt is attached hereto  
21 as Exhibit C.

22 48. Defendants had access, to which they knowingly and willfully copied  
23 Coordinates Website. Defendants' Website is a direct copy and/or unauthorized  
24 derivative works of Plaintiff's copyrighted works.

25 49. Upon information and belief, Defendants continue to operate infringing  
26 website to confuse consumers.

27 50. Defendants Website bears striking similarities to Plaintiff's.

28 51. Upon information and belief Plaintiff has lost and will continue to lose

1 substantial revenues on through the operation of Defendants website, and has  
2 sustained damages as a result of Defendant's wrongful conduct.

3 52. Defendants' use of the infringing website, and other wrongful conduct,  
4 also has deprived and continues to deprive Plaintiff of an opportunity of expanding  
5 its goodwill.

6 53. Unless enjoined by this Court, Defendants will continue their course of  
7 unlawful conduct and will continue wrongfully to use, infringe upon, sell and  
8 otherwise profit from its infringement of the Coordinates Bracelet, and will  
9 continue to deprive Plaintiff of its rights.

10 54. As a direct and proximate result of the acts of Defendants alleged  
11 above, Plaintiff has already suffered irreparable injury and sustained lost profits.  
12 Plaintiff has no adequate remedy at law to address all of the injuries that  
13 Defendants have cause and have intended to cause by their unlawful conduct.

14 **FIRST CAUSE OF ACTION**

15 **Federal Trademark Infringement Against Defendants**

16  
17 55. Plaintiff repeats and realleges each and every allegation set forth in  
18 Paragraphs 1-54.

19 56. Since at least 2013, Defendants have infringed on Plaintiff's federally  
20 registered marks: "COORDINATES°", 4,541,700; "C°", 4,482,636;  
21 "COORDINATES° RINGS", 4,668,121; "COORDINATES° NECKLACES",  
22 4,668,122; "COORDINATES° BRACELETS", 4,668,123; and "WHAT ARE  
23 YOURS?", 4,675,909, by among other things, promoting distributing, and selling  
24 manufacturing jewelry with coordinates engraved using the term "Lat & Lo" as  
25 well as "The Coordinate Line" in interstate commerce.

26 57. Plaintiff is informed and believed, and on that basis alleges that  
27 Defendants' promotion, distribution, and sale of manufacturing jewelry under the  
28 infringing marks has a substantial effect on interstate commerce, and has caused

1 confusion and mistake and is likely to continue to cause confusion and mistake,  
2 and to deceive the public into believing that Defendants' goods and services  
3 originate with, or are associated with and/or authorized by Plaintiff.

4 58. Defendants' unlawful use of the infringing mark in interstate commerce  
5 constitutes trademark and service mark infringement in violation of Section 32(a)  
6 of the Lanham Act, 15 U.S.C. §1114(1).

7 59. Plaintiff is informed and believes and on that basis alleges, that  
8 Defendants, in engaging in the conduct described herein, willfully intended to trade  
9 on the reputation of Plaintiff and/or the Plaintiff's marks, and to cause injury to  
10 plaintiff.

11 60. As a direct and proximate result of Defendants' unlawful acts as set  
12 forth above, including the unauthorized use of the Infringing marks, Plaintiff has  
13 suffered and will continue to suffer injury to its business, goodwill, and property.

14 61. Plaintiff is entitled to recovery from Defendants the damages it has  
15 sustained and will sustain as a result of Defendants' wrongful conduct as alleged  
16 herein. Plaintiff is further entitled to recover from Defendants the gains, profits,  
17 and advantages that Defendants have obtained as a result of the wrongful conduct  
18 alleged herein. Plaintiff at present is unable to ascertain the full extent of its  
19 damages, or the gains, profits, and advantages that Defendants have obtained by  
20 reason of their wrongful conduct described herein.

21 62. Plaintiff has no adequate remedy at law. Unless Defendants are  
22 preliminarily and permanently enjoined from committing these unlawful acts as set  
23 forth above, including the unauthorized use of the infringing marks in commerce,  
24 Plaintiff will continue to suffer irreparable harm.

25 63. Plaintiff is entitled pursuant to 15 U.S.C. § 1116, to an injunction  
26 restraining Defendants, their officers, agents and employees, and all persons acting  
27 in concert with them, from engaging in any further such acts of infringement in  
28 violation of the Lanham Act.

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**SECOND CAUSE OF ACTION**

**Federal Trade Dress Infringement Against Defendants**

64. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1-63.

65. This claim arises under 43(a) of the Lanham act, U.S.C. § 1125 (a).

66. Defendants have engaged in unfair competition by copying, imitating and infringing Plaintiff's trade dress and trade style of its Marks and website for its Coordinates jewelry line.

67. Defendants have caused and are continuing to cause to be distributed into interstate commerce their Coordinates Line/Lat & Lo products which copy, imitate and infringe upon Plaintiff's trade dress and trade style. Through such use and through such association, Plaintiff's trade dress is non-functional, has acquired a strong consumer awareness.

68. Without permission, Defendants' manufacture, importation, distribution, advertising, promotion and sale of their infringing products has created and continues to create a likelihood of confusion, mistake and/or deception as to the affiliation, connection, association, origin, sponsorship, approval, commercial activities, nature, characteristics, qualities and/or geographic origin of defendants' infringing products relative to Plaintiff's marks.

69. The conduct of Defendants, as alleged in the foregoing paragraphs constitutes trade dress infringement in violation of Section 43(a) of the Lanham Act (15 U.S.C. §1125(a)), which prohibits the use in commerce in connection with the sale of goods or rendering of any services of any word, term, name, symbol, or device, or any combination thereof which is likely to cause confusion, or to cause mistake, or to deceive as to the source of the goods or services.

70. As a direct and proximate result of Defendants' unlawful acts as set forth

1 above, is likely to deceive and divert and has deceived and diverted customers  
2 away from the Plaintiff's products. Plaintiff has suffered and will continue to  
3 suffer injury to its business, goodwill, and property.

4 71. Plaintiff has no adequate remedy at law and is entitled to injunctive  
5 relief pursuant to 15 U.S.C. § 1116(d).

6 72. Plaintiff is entitled to recovery from Defendants the damages it has  
7 sustained and will sustain as a result of Defendants' wrongful conduct as alleged  
8 herein. Plaintiff is further entitled to recover from Defendants the gains, profits,  
9 and advantages that Defendants have obtained as a result of the wrongful conduct  
10 alleged herein. Plaintiff at present is unable to ascertain the full extent of its  
11 damages, or the gains, profits, and advantages that Defendants have obtained by  
12 reason of their wrongful conduct described herein.

13 73. Plaintiff is entitled to recover its actual damages and Defendants' profits  
14 pursuant to 15 U.S.C. § 1117(a); damages pursuant to 15 U.S.C. § 1117(a) and (b);  
15 and that attorneys' fees and costs pursuant to 15 U.S.C. § 1117(a); seizer of all  
16 infringing goods pursuant to 15 U.S.C. §1116(d); and impoundment and  
17 destruction of all infringing goods pursuant to 15 U.S.C. §1118.

18 **THIRD CAUSE OF ACTION**

19 **Common Law Trademark Infringement**

20 74. Plaintiff repeats and realleges each and every allegation set forth in  
21 Paragraphs 1-73.

22 75. This cause of action for infringement arises under the common law of  
23 the State of California.

24 76. Defendants' past use of THE COORDINATES LINE,  
25 www.thecoordinateline.com was likely to and actually did cause confusion,  
26 mistake or deception as the source, origin, sponsorship or approval of Defendant's  
27 services and constitutes infringement of Plaintiff's Marks under the common law  
28 of the State of California.

1 77. Defendants' current use of LAT & LO along with [www.latandlo.com](http://www.latandlo.com) is  
2 likely to cause confusion, mistake or deception as the source, origin, sponsorship  
3 or approval of Defendants' services and constitutes infringement of Plaintiff's  
4 Marks under the common law of the State of California.

5 78. By its actions, Defendants have infringed Plaintiff's Marks deliberately  
6 and with the intention of wrongfully trading on the goodwill and reputation  
7 symbolized by Plaintiff's marks.

8 79. Plaintiff is entitled to an award of damages from Defendants for the loss  
9 of business and other monetary losses that Plaintiff has suffered and will continue  
10 to suffer in the future as a proximate result of Defendants' misappropriation and  
11 infringement of Plaintiff's Marks. Alternatively, plaintiff is entitled to recover  
12 damages in an amount equivalent to the amount of profits that Defendants have  
13 derived and may continue to derive as a result of their unlawful misappropriation  
14 and infringement of Plaintiff's Marks.

15 80. Defendants' conduct as described above has been willful, deliberate,  
16 malicious, and intended to injure Plaintiff. Therefore, Plaintiff is also entitled to  
17 recovery exemplary damages from Defendants to punish Defendants and to deter  
18 Defendants and others similarly situated from engaging in similar wrongful  
19 conduct in the future.

20 81. Defendants should upon final hearing also be permanently enjoined from  
21 using THE COORDINATES LINES, and LAT & LO and their respective domain  
22 names.

23 **FOURTH CAUSE OF ACTION**

24 **Common Law Trade Dress Infringement**

25 82. Plaintiff repeats and realleges each and every allegation set forth in  
26 Paragraphs 1-81.

27 83. The conduct of Defendants, as alleged in the foregoing paragraphs  
28 constitutes trade dress infringement in violation of common law protections.

1 84. As a direct and proximate result of the willful and wanton conduct of  
2 Defendants, Plaintiff has been injured and will continue to suffer irreparable injury  
3 to its business and reputation unless Defendants are restrained by the Court from  
4 infringing the PLAINTIFF's trade dress.

5 85. Plaintiff has no adequate remedy at law.

6 86. Defendants should upon final hearing also be permanently enjoined from  
7 using THE COORDINATES LINES, and LAT & LO and their respective domain  
8 names.

9  
10 **FIFTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **Cal. Bus. & Prof. Code §17200**

13  
14 87. Plaintiff repeats and realleges each and every allegation set forth in  
15 Paragraphs 1-86.

16 88. The above described use by Defendants of trademark infringement,  
17 trade dress infringement and references confusingly similar to the Plaintiff's  
18 product and Defendants' other conduct set out above falsely suggests an  
19 association with, sponsorship by, licensing by or authorization by Plaintiff.

20 89. Upon information and believe, the above described use by Defendants  
21 of trade dress, confusingly similar trademarks to the Plaintiff's for a line of  
22 products similar to those sold and/or licensed by Plaintiff, and its other conduct as  
23 set out above was calculated to deceive or confuse the public and to profit unjustly  
24 from the goodwill and reputation of Plaintiff.

25 90. The wrongful conduct alleged herein constitutes unlawful, unfair and/or  
26 fraudulent business acts or practices under the Business and Professions Code  
27 §17200 *et seq.*

28 91. Plaintiff is informed and believes and thereon alleges that Defendants

1 undertook the acts alleged above willfully, for the purpose of enriching themselves  
2 to Plaintiff's detriment.

3 92. Plaintiff is entitled to disgorgement of profits earned by Defendants as a  
4 direct and proximate result their unlawful and/or unfair business acts or practices.

5 93. Defendants threaten to continue to do the acts complained of herein, and  
6 unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable  
7 damage. It would be difficult to ascertain the amount of compensation that could  
8 afford Plaintiff relief for such continuing acts, and multiplicity of judicial  
9 proceedings would be required. Plaintiff's remedy at law is not adequate to  
10 compensate it for past and continuing injuries.

11 94. Defendants should upon final hearing also be permanently enjoined  
12 from using THE COORDINATES LINES, and LAT & LO and their respective  
13 domain names.

14 **SIXTH CAUSE OF ACTION**

15 **(False Designation of Origin)**

16 **[15 U.S.C. §1125(a)]**

17 95. Plaintiff repeats and realleges each and every allegation set forth in  
18 Paragraphs 1-94.

19 96. The Plaintiff's trademark and trade dress is nonfunctional and its  
20 inherently distinctive quality has achieved a high degree of consumer recognition  
21 and serves to identify Plaintiff as the source of this exact goods.

22 97. As evidenced by the trademark registrations listed in this Complaint, all  
23 times relevant herein, Plaintiff, as the exclusive U.S. licensee, held and continues  
24 to hold the exclusive rights under United States Trademark Law, 15 USC §1125  
25 ("The Lanham Act") to affix its distinctive trademark ("the Mark") to its products  
26 and materials connected with advertising and sale of its products throughout the  
27 United States. Defendants' wrongful use of the confusingly similar marks violates  
28 the Lanham Act, has unfairly competed with and injured Plaintiff, and, unless

1 immediately restrained, will continue to injure Plaintiff, causing damage to  
2 Plaintiff in an amount to be determined at trial, and will cause irreparable injury to  
3 Plaintiff's goodwill and reputation associated with the value of Plaintiff's Mark.

4 98. Defendants have the legal obligation and responsibility to conduct a  
5 search before utilizing a trademark so as not to confuse or deceive consumers as to  
6 the origin of its name and Mark. Defendants have been on notice of Plaintiff's  
7 registration, pending registrations, and long-time use of its Mark in commerce.

8 99. Plaintiff's Mark is distinctive by virtue of its substantial inherent and  
9 acquired distinctiveness, extensive use, and the extensive advertising and publicity  
10 of the Mark.

11 100. Defendants' egregious and intentional use and sale and of inferior  
12 coordinate jewelry products bearing confusingly similar marks with plaintiff  
13 unfairly competes with Plaintiff and is likely to cause confusion, mistake, or to  
14 deceive, mislead, betray, and defraud consumers to believe that the Defendants'  
15 products are affiliated with Plaintiff.

16 101. Defendants infringing acts is without Plaintiff's permission or  
17 authority and is in total disregard of Plaintiff's rights.

18 102. In light of the foregoing, Plaintiff is entitled to injunctive relief  
19 prohibited Defendants from infringing Plaintiff's trademarks, trade dress, or any  
20 trade dress confusingly similar thereto, and to recover all damages, including  
21 attorney's fees, that Plaintiff has sustained and will sustain, and all gains, profits  
22 and advantages obtained by Defendants as a result of their infringing acts alleged  
23 above in an amount not yet known, as well as costs of this action.

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**SEVENTH CAUSE OF ACTION**  
**(COPYRIGHT INFRINGEMENT)**  
**17 U.S.C. §§ 101 et seq.**

103. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1-102.

104. Plaintiff is currently and at all relevant times has been the sole proprietor of all right, title, and interest in and to the copyright in the Coordinates Bracelet and Coordinates Website (“Plaintiff’s Work”).

105. The Plaintiff’s Work was created as a work for hire for Plaintiff, and is copyrightable subject matter under the laws of the United States.

106. Upon information and belief, Plaintiff Work was an original fixed work predating the Defendants’ infringing conduct.

107. Defendants had access and have copied and/or created derivative works from Plaintiff’s Work, and have distributed infringing copies of those works, without Plaintiff’s authorization. Each act of infringement has damaged Plaintiff and adversely affected the market for and value of Plaintiff’s copyrighted works.

108. Plaintiff has not given any permission, license or any other authorization to Defendants for the creation of copies or derivatives works, or distribution of Plaintiff’s Work.

109. Plaintiff has suffered damages as a direct and proximate result of the foregoing acts and conduct of Defendants. Plaintiff is entitled to actual damages. Alternatively, upon the US Copyright office registering Plaintiff’s work, Plaintiff will be entitled to statutory damages pursuant 17 U.S.C. §504(c), in an amount not less than \$150,000 with respect to each work involved in this action from that date forward.

1           110. As a direct and proximate result of Defendants' violations of the  
2 Copyright Act, all copies made or used in violation of Plaintiff's rights, and all  
3 plates, molds, matrices, models, or other articles by means of which such copies  
4 may be reproduced, must be impounded and destroyed in accordance with 17  
5 U.S.C. § 503.

6           111. On information and belief, Defendants' infringing conduct is willful,  
7 wanton, and calculated to deceive, and was undertaken in bad faith. As a result  
8 and upon the US Copyright office registering Plaintiff's work, this Court should  
9 award full costs to Plaintiff, including an award of attorneys' fees, pursuant to 17  
10 U.S.C. § 505.

11  
12 **WHEREFORE**, Plaintiff FD9 GROUP, INC., prays for judgment against  
13 Defendants, as follows:

- 14           A. For damages in an amount to be proven at trial for past and current  
15           trademark infringement under the Lanham Act and common law;  
16           B. For damages in an amount to be proven at trial for past and current trade  
17           dress infringement under the Lanham Act and common law;  
18           C. For damages in an amount to be proven at trial for false designation of  
19           origin and unfair competition under the Lanham Act;  
20           D. For damages in an amount to proven at trial for Copyright Infringement  
21           E. For disgorgement of Defendants' profits under 15 *U.S.C.* §1117(a);  
22           F. For an injunction by this Court prohibiting Defendants from engaging or  
23           continuing to engage in the unlawful, unfair, or fraudulent business acts  
24           or practices described herein;  
25           G. For an order from the Court requiring that Defendants provide complete  
26           accountings and fort equitable relief, including that Defendants disgorge  
27           and return or pay their ill-gotten gains obtained from the illegal  
28           transactions entered into and or pay restitution, including the amount of

1 monies that should have been paid if Defendants' complied with their  
2 legal obligations, or as equity requires;

3 H. For an order from the Court that an asset freeze or constructive trust be  
4 imposed over all monies and profits in Defendants' possession which  
5 rightfully belong to Plaintiff;

6 I. A judgment that Plaintiff be awarded its costs and disbursement incurred  
7 in connection with action, including Plaintiff's reasonable attorneys' fees  
8 and investigative expenses;

9 J. Temporarily, preliminarily and permanently restraining and enjoining  
10 Defendants from : (1) selling any products and offering any services  
11 under "THE COORDINATE LINE," "LAT & LO," "WHERE ARE  
12 YOU ANCHORED?" and their respective domain names  
13 www.thecoordinateline.com, and latandlo.com, or any variations thereof  
14 in or as part of the title or name of any business or service or commercial  
15 activity. (2) using the above infringing marks and their domain names or  
16 any variations thereof in or as part of the title or name of any business or  
17 service or commercial activity or as a key word, search word, or as any  
18 part of the description of a website or in any submission for registration  
19 of any website with a search engine or index; (3) using the infringing  
20 marks in any manner likely to cause confusion, mistake or deception; or  
21 (4) filing or pursuing any application for registration of "THE  
22 COORDINATE LINE," "LAT & LO," "WHERE ARE YOU  
23 ANCHORED?" as a trademark or service mark, or trade name or internet  
24 domain name in any jurisdiction the U.S.

25 K. Directing Defendants to: (1) notify all customers, distributors, advertisers  
26 and other persons, involved in Defendants' offer of, or attempt to offer,  
27 services of "THE COORDINATE LINE," "LAT & LO," and "WHERE  
28 ARE YOU ANCHORED?" that these marks are owned and controlled

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exclusively by and for the benefit of Plaintiff.

L. Adjudge that all such other relief be awarded to Plaintiff as this Court deems just and proper.

Dated: February 17, 2015

Michael N. Cohen,  
COHEN IP LAW GROUP, P.C.

By: /s/Michael N. Cohen/  
Michael N. Cohen  
Joshua H. Eichenstein  
Attorneys for Plaintiff

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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, FD9 Group Inc. respectfully requests a trial by jury of any and all issues on which a trial by jury is available under applicable law.

Dated: February 17, 2015

Michael N. Cohen,  
COHEN IP LAW GROUP, P.C.

By: /s/Michael N. Cohen/  
Michael N. Cohen  
Joshua H. Eichenstein  
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8 Attorneys for Defendant and  
9 Counterclaimant Bangle Jangle, LLC

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 FD9 GROUP INC., a Delaware  
13 Corporation,  
14 Plaintiff,  
15 v.  
16 BANGLE JANGLE, LLC, a Florida  
17 Limited Liability Company; and  
18 DOES 1-10 inclusive,  
19 Defendants.

CASE NO. 2:15-cv-00512 BRO (ASx)

**ANSWER BY DEFENDANT  
BANGLE JANGLE, LLC, TO FIRST  
AMENDED COMPLAINT AND  
COUNTERCLAIM BY BANGLE  
JANGLE, LLC AGAINST FD9  
GROUP INC.;**

**DEMAND FOR JURY TRIAL**

20 BANGLE JANGLE, LLC, a Florida  
21 Limited Liability Company,  
22 Counterclaimant,  
23 v.  
24 FD9 GROUP INC., a Delaware  
25 Corporation,,  
26 Counterdefendant.

27 Defendant Bangle Jangle, LLC (“Defendant” or “Bangle”) hereby answers  
28 the allegations contained in the First Amended Complaint (“FAC”) filed by  
Plaintiff FD9 Group, Inc. (“Plaintiff” of “FD9”) as follows:



1 other allegations contained in paragraph 12.

2 13. Defendant lacks the requisite knowledge to admit or deny the  
3 allegations contained in paragraph 13.

4 14. Defendant lacks the requisite knowledge to admit or deny the  
5 allegations contained in paragraph 14.

6 15. Defendant lacks the requisite knowledge to admit or deny the  
7 allegations contained in paragraph 15.

8 16. Defendant lacks the requisite knowledge to admit or deny the  
9 allegations contained in paragraph 16.

10 17. Defendant denies the allegations contained in paragraph 17.

11 18. Defendant denies the allegations contained in paragraph 18.

12 19. Defendant lacks the requisite knowledge to admit or deny the  
13 allegations contained in paragraph 19.

14 20. Defendant denies the allegations contained in paragraph 20.

15 21. Defendant admits that it registered and owns the top level domain  
16 name [www.thecoordinate.com](http://www.thecoordinate.com), but denies all other allegations contained in  
17 paragraph 21.

18 22. Defendant admits that it sold jewelry under the name The Coordinate  
19 Line starting in April 2013 and admits that it promoted its goods on social media  
20 websites under the name The Coordinate Line. Defendant denies all other  
21 allegations contained in paragraph 22.

22 23. Defendant admits that starting on or about November 20, 2013, it  
23 rebranded its products and stopped using the name The Coordinate Line.

24 Defendant denies all other allegations contained in paragraph 23.

25 24. Defendant admits that it has stopped using the name The Coordinate  
26 Line, that it now uses the name Lat & Lo, and that it filed an application with the  
27 USPTO for the trademark Lat & Lo. Defendant denies all other allegations  
28 contained in paragraph 24.

1           25. Defendant admits that it uses the tag line “Where are you anchored?”  
2 Defendant denies all other allegations contained in paragraph 25.

3           26. Defendant lacks the requisite knowledge to admit or deny the  
4 allegations contained in paragraph 26.

5           27. Defendant admits that the bracelet shown in the photograph below  
6 paragraph 27 is a bracelet manufactured by it. Defendant denies all other  
7 allegations contained in paragraph 27.

8           28. Defendant admits that both its bracelet and Plaintiff’s bracelet contain  
9 geographic coordinates shown in latitude and longitude numerals, both use the  
10 degree symbol , both have numerals in the center front of the bracelet, and that  
11 their respective cuff bracelets are of the same general shape. Defendant denies all  
12 other allegations contained in paragraph 28.

13           29. Defendant denies all of the allegations contained in paragraph 29.

14           30. Defendant lacks the requisite knowledge to admit or deny the  
15 allegations contained in paragraph 30.

16           31. Defendant admits that the image is a screen shot of its website  
17 [www.latandlo.com](http://www.latandlo.com), but denies all other allegations contained in paragraph 31.

18           32. Defendant admits that the tag line “Where are you anchored?”  
19 appears on its website. Defendant denies all other allegations contained in  
20 paragraph 32.

21           33. Defendant denies that actual confusion has been caused and denies  
22 that it has engaged in deceptive practices. Defendant lacks the requisite  
23 knowledge to admit or deny the remainder of the allegations contained in  
24 paragraph 33.

25           34. Defendant denies the allegations contained in paragraph 34.

26           35. Defendant denies the allegations contained in paragraph 35.

27           36. Defendant denies the allegations contained in paragraph 36.

28           37. Defendant lacks the requisite knowledge to admit or deny the

1 allegations contained in paragraph 37.

2 38. Defendant denies the allegations contained in paragraph 38.

3 39. Defendant denies the allegations contained in paragraph 39.

4 40. Defendant denies the allegations contained in paragraph 40.

5 41. Defendant admits that it offers products for sale in California and to  
6 customers in other states through the website [www.latandlo.com](http://www.latandlo.com). Defendant

7 denies all other allegations contained in paragraph 41.

8 42. Defendant denies the allegations contained in paragraph 42.

9 43. Defendant denies the allegations contained in paragraph 43.

10 44. Defendant denies the allegations contained in paragraph 44.

11 45. Defendant denies the allegations contained in paragraph 45.

12 46. Defendant denies the allegations contained in paragraph 46.

13 47. Defendant lacks the requisite knowledge to admit or deny the  
14 allegations contained in paragraph 47.

15 48. Defendant denies the allegations contained in paragraph 48.

16 49. Defendant denies the allegations contained in paragraph 49.

17 50. Defendant denies the allegations contained in paragraph 50.

18 51. Defendant denies the allegations contained in paragraph 51.

19 52. Defendant denies the allegations contained in paragraph 52.

20 53. Defendant denies the allegations contained in paragraph 53.

21 54. Defendant denies the allegations contained in paragraph 54.

22 **FIRST CAUSE OF ACTION**

23 **Federal Trademark Infringement Against Defendants**

24 55. Defendant repeats and incorporates by reference its responses to  
25 paragraphs 1 through 54.

26 56. Defendant admits that it has promoted, distributed, and sold  
27 manufactured jewelry engraved with geographic coordinates under the names  
28 “Lat & Lo” and “The Coordinate Line” in interstate commerce. Defendant denies

1 all other allegations contained in paragraph 56.

2 57. Defendant denies the allegations contained in paragraph 57.

3 58. Defendant denies the allegations contained in paragraph 58.

4 59. Defendant denies the allegations contained in paragraph 59.

5 60. Defendant denies the allegations contained in paragraph 60.

6 61. Defendant denies the allegations contained in paragraph 61.

7 62. Defendant denies the allegations contained in paragraph 62.

8 63. Defendant denies the allegations contained in paragraph 63.

9 **SECOND CAUSE OF ACTION**

10 **Federal Trade Dress Infringement Against Defendants**

11 64. Defendant repeats and incorporates by reference its responses to  
12 paragraphs 1 through 63.

13 65. Defendant denies that Plaintiff has any legitimate claim arising under  
14 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

15 66. Defendant denies the allegations contained in paragraph 66.

16 67. Defendant admits that it continues to distribute Lat & Lo products in  
17 interstate commerce. Defendant denies all other allegations contained in paragraph  
18 67.

19 68. Defendant denies the allegations contained in paragraph 68.

20 69. Defendant denies the allegations contained in paragraph 69.

21 70. Defendant denies the allegations contained in paragraph 70.

22 71. Defendant denies the allegations contained in paragraph 71.

23 72. Defendant denies the allegations contained in paragraph 72.

24 73. Defendant denies the allegations contained in paragraph 73.

25 **THIRD CAUSE OF ACTION**

26 **Common Law Trademark Infringement**

27 74. Defendant repeats and incorporates by reference its responses to  
28 paragraphs 1 through 73.

1 75. Defendant denies that Plaintiff has any legitimate claim arising under  
2 the common law of the State of California.

3 76. Defendant denies the allegations contained in paragraph 76.

4 77. Defendant denies the allegations contained in paragraph 77.

5 78. Defendant denies the allegations contained in paragraph 78.

6 79. Defendant denies the allegations contained in paragraph 79.

7 80. Defendant denies the allegations contained in paragraph 80.

8 81. Defendant denies the allegations contained in paragraph 81.

9 **FOURTH CAUSE OF ACTION**

10 **Common Law trade Dress Infringement**

11 82. Defendant repeats and incorporates by reference its responses to  
12 paragraphs 1 through 81.

13 83. Defendant denies the allegations contained in paragraph 83.

14 84. Defendant denies the allegations contained in paragraph 84.

15 85. Defendant denies the allegations contained in paragraph 85.

16 86. Defendant denies the allegations contained in paragraph 86.

17 **FIFTH CAUSE OF ACTION**

18 **Unfair Competition, Cal. Bus. & Prof. Code § 17200**

19 87. Defendant repeats and incorporates by reference its responses to  
20 paragraphs 1 through 86.

21 88. Defendant denies the allegations contained in paragraph 88.

22 89. Defendant denies the allegations contained in paragraph 89.

23 90. Defendant denies the allegations contained in paragraph 90.

24 91. Defendant denies the allegations contained in paragraph 91.

25 92. Defendant denies the allegations contained in paragraph 92.

26 93. Defendant denies the allegations contained in paragraph 93.

27 94. Defendant denies the allegations contained in paragraph 94.

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**SIXTH CAUSE OF ACTION**

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

- 95. Defendant repeats and incorporates by reference its responses to paragraphs 1 through 94.
- 96. Defendant denies the allegations contained in paragraph 96.
- 97. Defendant denies the allegations contained in paragraph 97.
- 98. Defendant denies the allegations contained in paragraph 98.
- 99. Defendant denies the allegations contained in paragraph 99.
- 100. Defendant denies the allegations contained in paragraph 100.
- 101. Defendant denies the allegations contained in paragraph 101.
- 102. Defendant denies the allegations contained in paragraph 102.

**SEVENTH CAUSE OF ACTION**

**Copyright Infringement, 17 U.S.C. §§, *et seq.***

- 103. Defendant repeats and incorporates by reference its responses to paragraphs 1 through 102.
- 104. Defendant lacks the requisite knowledge to admit or deny the allegations contained in paragraph 104.
- 105. Defendant lacks the requisite knowledge to admit or deny the allegations contained in paragraph 105.
- 106. Defendant denies the allegations contained in paragraph 106.
- 107. Defendant denies the allegations contained in paragraph 107.
- 108. Defendant admits that Plaintiff has not given Defendant any express permission, license or authorization. Defendant denies that it has created any copies of Plaintiff’s work or made any derivative works from Plaintiff’s work. Defendant further denies that it has done anything that required any permission, license or authorization from Plaintiff.
- 109. Defendant denies the allegations contained in paragraph 109.
- 110. Defendant denies the allegations contained in paragraph 110.

1 111. Defendant denies the allegations contained in paragraph 111.

2 **AFFIRMATIVE DEFENSES**

3 The following affirmative defenses are asserted by Defendant.

4 **FIRST AFFIRMATIVE DEFENSE**

5 **(Failure to State a Cause of Action)**

6 1. The FAC, and each and every purported cause of action alleged  
7 therein, fails to state a claim upon which relief can be granted against Defendant.

8 **SECOND AFFIRMATIVE DEFENSE**

9 **(Contributory Fault)**

10 2. Any damages Plaintiff may have sustained were caused, in whole or  
11 in part, or were substantially contributed to, by the culpable conduct and want of  
12 care on the part of Plaintiff or third parties. Defendant will seek apportionment of  
13 responsibility for all injuries, damages, or loss, if any, allocable to the comparative  
14 fault of Plaintiff or third parties.

15 **THIRD AFFIRMATIVE DEFENSE**

16 **(Failure to Mitigate)**

17 3. Plaintiff is not entitled to any relief because it failed to mitigate or  
18 attempt to mitigate any purported damages as to any and all purported claims.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 **(Lack of Standing)**

21 4. Plaintiff is not entitled to any relief because it lacks standing to assert  
22 the claims asserted in the FAC.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 **(Unclean Hands)**

25 5. Each of Plaintiff's claims is barred by the doctrine of unclean hands.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 **(Waiver)**

28 6. Each of Plaintiff's claims is barred by the doctrine of waiver.

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**SEVENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

7. Each of Plaintiff’s claims is barred by the doctrine of estoppel.

**EIGHTH AFFIRMATIVE DEFENSE**

**(No Injury)**

8. The FAC, and each purported cause of action alleged therein, is barred because Plaintiff has not sustained any damages or injury caused by Defendant’s acts.

**NINTH AFFIRMATIVE DEFENSE**

**(Unjust Enrichment)**

9. Plaintiff is not entitled to any relief because Plaintiff’s claims for relief would unjustly enrich Plaintiff at the expense of Defendant.

**TENTH AFFIRMATIVE DEFENSE**

**(Good Faith)**

10. Plaintiff is not entitled to any relief because Defendant’s conduct was in reasonable, in good faith, and/or innocent.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(No Irreparable Injury)**

11. Plaintiff is not entitled to any injunctive relief because any injury to Plaintiff is not irreparable and Plaintiff would have an adequate remedy at law.

**TWELFTH AFFIRMATIVE DEFENSE**

**(No Valid, Enforceable or Registered Trademark)**

12. Plaintiff is not entitled to any relief because Plaintiff’s alleged trademark, trade dress, and/or slogan is invalid, unenforceable and/or unregistered.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Abandonment of Trademarks)**

13. Plaintiff’s claims are barred, in whole or in part, by Plaintiff’s abandonment of the alleged trademarks on which it relies as the basis for the

1 claims asserted in the FAC.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 **(Invalid Trademarks)**

4 14. Plaintiff's claims are barred because its purported trademarks are  
5 invalid and should be cancelled and Plaintiff cannot claim common law trademark  
6 rights because Plaintiff is the infringing junior user of the marks.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 **(Priority of Use)**

9 15. Plaintiff is not entitled to any relief because Defendant's use of "The  
10 Coordinate Line" predated Plaintiff's purported use of its alleged COORDINATES  
11 marks, establishing priority of use.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 **(Trademark Misuse)**

14 16. Plaintiff is not entitled to any relief because it has engaged in  
15 trademark misuse to stifle competition.

16 **SEVENTEENTH AFFIRMATIVE DEFENSE**

17 **(No Likelihood of Confusion)**

18 17. Plaintiff is not entitled to any relief because there is no likelihood of  
19 confusion among consumers over the source of any of Defendant's goods.

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**

21 **(Consent or Acquiescence)**

22 18. Plaintiff's claims are barred, in whole or in part, by Plaintiff's consent  
23 or acquiescence.

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 **(Right to Assert Additional Affirmative Defenses)**

26 19. Defendant reserves the rights to assert additional affirmative defenses  
27 in the event that discovery and/or further investigation of Plaintiff's claims  
28 indicates that additional affirmative defenses are available to Defendant.

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**COUNTERCLAIM**

Bangle Jangle, LLC (“Bangle”) hereby counterclaims against FD9 Group Inc. (“FD9”) as follows:

**PARTIES**

1. Bangle is a limited liability company organized and existing under the laws of the State of Florida, with its principal place of business at 97 Levy Road, #182, Atlantic Beach, Florida 32233.

2. Bangle is informed and believes, and based thereon alleges, that FD9 is a corporation organized under the laws of Delaware, with its principal place of business in California.

**JURISDICTION AND VENUE**

3. The Court has subject matter jurisdiction over Bangle’s counterclaims because they arise under 15 U.S.C. §§ 1051, *et seq.*, 17 U.S.C. §§ 101, *et seq.*, and 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court also has supplemental jurisdiction over Bangle’s counterclaims, including the state law claims, under 28 U.S.C. § 1367 because they arise out of the same matters and transactions alleged in the FAC.

4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because FD9 has its principal place of business in this district and resides in this district.

**FACTS COMMON TO ALL CLAIMS**

5. Bangle is a small, privately owned, multi-line jewelry manufacturer and distributor. Its name recognition and popularity has grown solely through word of mouth and grass roots marketing, including on social media.

6. In approximately January or February 2013, Bangle began developing, designing and manufacturing a new line of jewelry that it called “The Coordinate Line by Bangle Jangle.” The pieces of jewelry in THE COORDINATE LINE BY BANGLE JANGLE are hand-crafted and bear the latitude and longitude

1 coordinates of a location selected by the customer on the front, as well as optional  
2 customized engravings on the back.

3 7. On April 3, 2013, Bangle launched the line by posting a photograph of  
4 its cuff-style bracelet bearing latitude and longitude coordinates (the “Bangle  
5 Cuff”) on Facebook. At that time, Bangle began marketing and selling the line  
6 publicly on social media and directly to stores using the trade name THE  
7 COORDINATE LINE BY BANGLE JANGLE.

8 8. Prior to the debut of THE COORDINATE LINE BY BANGLE  
9 JANGLE, Bangle performed various internet searches to determine whether  
10 anyone else was using a similar name to identify jewelry products. When Bangle  
11 launched THE COORDINATE LINE BY BANGLE JANGLE and started selling  
12 the Bangle Cuff in April 2013, FD9 was not marketing or selling online any  
13 products under the trade name COORDINATES.

14 9. In May 2013, Bangle began marketing and selling online its “Anchor  
15 Me” necklace, which had an anchor shaped charm, as well as a round disc bearing  
16 latitude and longitude coordinates. Bangle also released necklaces with discs (the  
17 “Disc Necklace”) and mini dog tags (the “Mini Dog Tag Necklace”) bearing  
18 latitude and longitude coordinates in mid 2013 and bar style necklaces bearing  
19 coordinates (the “Bar Necklace”) in February 2014.

20 10. Bangle is informed and believes, and based thereon alleges, that it  
21 was not until at least June 2013, several months after the public debut and sales  
22 launch of THE COORDINATE LINE BY BANGLE JANGLE, that FD9  
23 launched a line of metal jewelry called COORDINATES that also bears latitude  
24 and longitude coordinates, and began selling it on its website  
25 [www.coordinatescollection.com](http://www.coordinatescollection.com). Among the items that FD9 began selling in or  
26 after June 2013 was a cuff bracelet that is a copy of the Bangle Cuff that Bangle  
27 had been selling since April 3, 2013. In April 2014, FD9 began selling necklaces  
28 that were copies of the Disc Necklaces and Mini Dog Tag Necklaces that Bangle

1 had been selling since mid 2013, and the Bar Necklaces that Bangle had been  
2 selling since February 2014.

3 11. Despite Bangle's priority of use of THE COORDINATE LINE BY  
4 BANGLE JANGLE for jewelry bearing latitude and longitude coordinates, on or  
5 about September 29, 2013, Bangle received a cease and desist letter from counsel  
6 for FD9, claiming that THE COORDINATE LINE BY BANGLE JANGLE  
7 infringed on FD9's alleged trademark rights in the name "Coordinates Collection."  
8 FD9, without any basis in light of Bangle's priority of use, demanded that Bangle  
9 immediately cease all use of THE COORDINATE LINE BY BANGLE JANGLE,  
10 cease selling, purchasing and distributing allegedly infringing merchandise, and  
11 provide inventories and sales records.

12 12. After receipt of FD9's September 29 cease and desist letter, Bangle  
13 contacted the USPTO to investigate FD9's claims. A USPTO staff attorney  
14 informed Bangle that FD9 did not have a registered trademark and that the term  
15 that FD9 claimed as its mark, "Coordinates Collection," was considered  
16 descriptive and was commonly used in the marketplace and could not be  
17 trademarked.

18 13. Bangle responded to FD9's September 29 cease and desist letter by  
19 denying FD9's claims and demands and informing FD9 of the USPTO's response.  
20 Bangle nonetheless informed FD9 that it would consider re-marketing THE  
21 COORDINATE LINE BY BANGLE JANGLE to avoid any potential for  
22 consumer confusion.

23 14. On or about October 18, 2013, Bangle received further  
24 correspondence from counsel for FD9, which continued to assert FD9's alleged  
25 trademark rights and enclosed a proposed settlement agreement. Bangle declined  
26 to execute FD9's proposed settlement agreement, but nonetheless responded that it  
27 would agree to, among other things, cease its use of THE COORDINATE LINE  
28 and refrain from further use of the term "coordinate," except as a descriptive term

1 to identify an attribute of its jewelry.

2 15. On November 20, 2013, Bangle announced publicly on social media  
3 that it was transitioning from the name THE COORDINATE LINE BY BANGLE  
4 JANGLE to LAT & LO. Since November 20, 2013, Bangle has sold its jewelry  
5 line bearing latitude and longitude coordinates under the mark LAT & LO. In  
6 addition to the marked differences between the marks LAT & LO and  
7 COORDINATES, Bangle further distinguished its LAT & LO line by using an  
8 image of an anchor in its logo and the tag line “Where are you anchored?,” which  
9 FD9 does not.

10 16. On January 14, 2014, FD9’s counsel send a further letter to Bangle,  
11 acknowledging that Bangle had removed virtually all of the allegedly infringing  
12 uses of the term “coordinate,” but reiterating its demand that Bangle execute the  
13 one-sided settlement agreement proffered by FD9. Bangle did not execute the  
14 agreement, but FD9 ceased its demands on Bangle, signaling its acknowledgement  
15 that Bangle was not infringing on any of FD9’s alleged trademark rights.

16 17. Bangle is informed and believes, and based thereon alleges, that  
17 FD9’s COORDINATES marks were not registered by the PTO until February 11,  
18 2014 (Reg. No. 4,482,636), June 3, 2014 (Reg. No. 4,541,700), January 6, 2015  
19 (Reg. Nos. 4,668,121, 4,668,122 and 4,668,123), and January 27, 2015 (Reg. No.  
20 4,680,090).

21 18. On or about July 30, 2014, Bangle filed an application with the United  
22 States Patent & Trademark Office for registration of its mark LAT & LO, Serial  
23 No. 86/352420.

24 19. On October 6, 2014, nearly eleven months after its correspondence  
25 acknowledging Bangle’s non-infringement, counsel for FD9 sent a new cease and  
26 desist letter to Bangle, asserting that the Bangle Cuff – the very bracelet that  
27 Bangle was marketing and selling online long before FD9 launched its own line of  
28 coordinates jewelry, including a copy of the Bangle Cuff -- infringed on FD9’s

1 alleged design patent rights. In that letter, FD9 demanded that Bangle cease selling  
2 the Bangle Cuff and even cease using the mark LAT & LO. FD9's counsel also  
3 threatened to contact a list of Bangle's customers and inform them that Bangle was  
4 infringing on FD9's alleged patent rights.

5 20. Counsel for Bangle responded on October 31, 2014, denying both  
6 FD9's claims and its demands on various grounds, including the defects in FD9's  
7 alleged notice to Bangle of its pending design patent application, the existence of  
8 ample prior art pre-dating FD9's design, and the ridiculousness of FD9's demands  
9 that Bangle cease using LAT & LO and common English language words.

10 21. Bangle is informed and believes, and based thereon alleges, that on or  
11 about January 22, 2015, FD9 submitted an application to the U.S. Copyright Office  
12 for registration of its "Coordinate Bracelet," which is substantially similar to, and  
13 is a copy of, the Bangle Cuff that Bangle has been selling publicly online and to  
14 stores since April 3, 2013. FD9 did not release its Coordinate Bracelet publicly  
15 until at least June 2013.

16 22. Also on January 22, 2015, FD9 filed its Complaint against Bangle,  
17 asserting claims for statutory and common law trademark infringement, trade dress  
18 infringement, unfair competition, false designation of origin, and copyright  
19 infringement arising out of Bangle's manufacture and sale of its LAT & LO line of  
20 jewelry.

21 23. On or about February 23, 2015, FD9 filed an opposition to Bangle's  
22 application to the United States Patent & Trademark Office for registration of its  
23 trademark LAT & LO.

24 24. All of the pieces of jewelry manufactured by Bangle are high quality,  
25 14-carat gold filled, hand-crafted pieces. By contrast, upon information and belief  
26 based on Bangle's review of extensive customer complaints posted online, the  
27 pieces manufactured by FD9 are made from molds and are gold-plated, which  
28 causes them to tarnish quickly. FD9 also uses a decimal degree format for its

1 coordinates that looks like a bar code and is less aesthetically appealing than the  
2 format used by Bangle. Further, despite the inferior quality of FD9's jewelry, it is  
3 priced at a significantly higher price point than Bangle's.

4 25. Given Bangle's priority of use in commerce of the term "coordinate,"  
5 the fact that it was FD9 who copied designs that Bangle was selling in the  
6 marketplace before FD9, and the fact that there is no likelihood of confusion  
7 between LAT & LO and COORDINATES, Bangle is informed and believes, and  
8 based thereon alleges, that FD9's complaint against Bangle is a sham lawsuit  
9 intended solely for the purpose of inhibiting competition.

10 **FIRST CLAIM FOR RELIEF**

11 **(Declaration of Non-Infringement and Non-Unfair Competition)**

12 26. Bangle hereby repeats and incorporates by reference its allegations in  
13 paragraphs 1 through 25 of this Counterclaim as if fully set forth herein.

14 27. This is an action for declaratory judgment of no state or federal,  
15 statutory or common law trademark infringement, trade dress infringement, or  
16 unfair competition under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, California  
17 Business & Professions Code § 17200, *et seq.*, or any other legal authority.

18 28. An actual and justiciable controversy exists between Bangle and FD9  
19 regarding FD9's claims that Bangle's use of the marks THE COORDINATE LINE  
20 BY BANGLE JANGLE and LAT & LO in connection with the manufacture and  
21 sale of jewelry bearing latitude and longitude coordinates constitutes trademark  
22 infringement, trade dress infringement, and unfair competition.

23 29. Bangle claims, and seeks this Court's declaration, that any use by  
24 Bangle of the marks THE COORDINATE LINE BY BANGLE JANGLE and LAT  
25 & LO, and Bangle's use of the word "coordinates" as a descriptive term in  
26 marketing, advertising and social media, do not constitute trademark infringement  
27 or unfair competition because COORDINATES is descriptive or generic and there  
28 is no likelihood of consumer confusion between Bangle's marks and FD9's marks.

1 30. Bangle further claims, and seeks the Court's declaration, that FD9's  
2 trade dress is purely functional and does not have any secondary meaning and that  
3 Bangle's website and jewelry manufactured and sold under the marks THE  
4 COORDINATE LINE BY BANGLE JANGLE and LAT & LO are dissimilar from  
5 FD9's website and jewelry and have not created, and do not create, any likelihood  
6 of confusion as to the affiliation, connection, association, origin, sponsorship,  
7 approval, commercial activities, nature, characteristics, qualities and/or geographic  
8 origin of Bangle's website and jewelry.

9 **SECOND CLAIM FOR RELIEF**

10 **(Cancellation of Counter-Defendant FD9's Registered Marks**

11 **Pursuant to 15 U.S.C. §§ 1119, 1051(a), 1052(d), and 1052(e))**

12 31. Bangle hereby repeats and incorporates by reference its allegations in  
13 paragraphs 1 through 25 and 27 through 30 of this Counterclaim as if fully set forth  
14 herein.

15 32. Bangle believes that it is being damaged by FD9's COORDINATES  
16 trademark registrations (Reg. Nos. 4,680,090, 4,541,700, 4,482,636, 4,668,121,  
17 4,668,122, and 4668,123) and its mark WHAT ARE YOURS? (Reg. No.  
18 4,675,909) in that FD9 is attempting to use the marks to obtain a monopoly on the  
19 use of latitude and longitude coordinates on jewelry and to inhibit lawful  
20 competition. On January 22, 2015, just over two weeks after three of its  
21 COORDINATES marks were registered on January 6, 2015, FD9 sued Bangle in  
22 this action. On February 23, 2015, FD9 opposed Bangle's registration of LAT &  
23 LO on the alleged ground that LAT & LO is "nearly identical" to FD9's  
24 COORDINATES marks and is "likely to cause consumer confusion and and/or  
25 [sic] to cause mistake as to source sponsorship or affiliation or to deceive."

26 33. FD9's COORDINATES marks and WHAT ARE YOURS? mark were  
27 registered less than five years ago.

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1           34. Bangle is informed and believes, and based thereon alleges, that it is  
2 the prior and senior user of the trade name or mark THE COORDINATE LINE BY  
3 BANGLE JANGLE in connection with the manufacture and sale of jewelry  
4 bearing latitude and longitude coordinates in intrastate and interstate commerce,  
5 and that FD9's use of the COORDINATES marks on jewelry bearing latitude and  
6 longitude coordinates creates a likelihood of consumer confusion as to the source  
7 of the jewelry.

8           35. Bangle is informed and believes, and based thereon alleges, that FD9  
9 made no bona fide use of the COORDINATES marks prior to its filing of use-  
10 based applications for registration under Trademark Act § 1(a), 15 U.S.C. §  
11 1051(a).

12           36. Bangle is further informed and believes, and based thereon alleges,  
13 that COORDINATES, when used in connection with goods bearing latitude and  
14 longitude coordinates, is and was at the time of registration merely descriptive,  
15 generic, has no secondary meaning, and is not distinctive.

16           37. Cancellation of Registration Nos. 4,680,090, 4,541,700, 4,482,636,  
17 4,668,121, 4,668,122, 4668,123 and 4,675,909 is the proper remedy because the  
18 foregoing facts negate FD9's right to registration of its COORDINATES marks  
19 and WHAT ARE YOURS? mark pursuant to 15 U.S.C. §§ 1051(a), 1052(d), and  
20 1052(e).

21           38. Cancellation of Registration Nos. 4,680,090, 4,541,700, 4,482,636,  
22 4,668,121, 4,668,122, 4668,123 and 4,675,909 is also proper because of the  
23 inaccurate and/or untruthful nature of the representations by FD9 in its applications  
24 that resulted in the subject registrations and/or in other papers filed with the  
25 USPTO during the prosecution of said applications. 15 U.S.C. § 1120.

26           39. Bangle has no adequate remedy at law.

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**THIRD CLAIM FOR RELIEF**

**(Procurement of Registration in USPTO of a Mark  
by False Representation in Violation of 15 U.S.C. § 1120)**

40. Bangle hereby repeats and incorporates by reference its allegations in paragraphs 1 through 25, 27 through 30, and 32 through 39 of this Counterclaim as if fully set forth herein.

41. Bangle is informed and believes, and based thereon alleges, that FD9 procured its registrations of its COORDINATES marks and WHAT ARE YOURS? mark (Registration Nos. 4,680,090, 4,541,700, 4,482,636, 4,668,121, 4,668,122, 4,668,123 and 4,675,909) by making false representations or declarations to the USPTO regarding the dates of first use and/or other material facts.

42. Bangle has been injured by FD9’s COORDINATES trademark registrations (Reg. Nos. 4,680,090, 4,541,700, 4,482,636, 4,668,121, 4,668,122, and 4,668,123) and its mark WHAT ARE YOURS? (Reg. No. 4,675,909) in that FD9 is attempting to use the marks to obtain a monopoly on the use of latitude and longitude coordinates on jewelry and to inhibit lawful competition. Not only did FD9 bully and harass Bangle into rebranding its product line even though Bangle was the prior use of the word “Coordinates” for jewelry bearing latitude and longitude coordinates, but it has threatened to contact Bangle’s customers with its false accusations of infringement, sued Bangle for trademark infringement, trade dress infringement, and unfair competition, and opposed Bangle’s efforts to register its LAT & LO mark, all on the basis of its alleged trademark rights. As a direct result of FD9’s actions, Bangle has suffered significant economic damages in the form of lost sales, time and money spent to rebrand its product line, and time and resources to defend itself against FD9’s threats, litigation, and opposition to its trademark registration, among other losses.

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1 43. Bangle is entitled to recover all of its damages from FD9 pursuant to  
2 15 U.S.C. § 1120, in an amount to be determined at trial.

3 **FOURTH CLAIM FOR RELIEF**

4 **(Copyright Infringement)**

5 44. Bangle hereby repeats and incorporates by reference its allegations in  
6 paragraphs 1 through 25, 27 through 30, 32 through 39, and 41 through 43 of this  
7 Counterclaim as if fully set forth herein.

8 45. Bangle is the original designer of the Bangle Cuff, the Disc Necklace,  
9 Mini Dog Tag Necklace, and Bar Necklace. Bangle has complied in all respects  
10 with the Copyright Act, 17 U.S.C. §§ 101, *et seq.* and has applied for registration  
11 of the copyrights associated with the Bangle Cuff, the Disc Necklace, Mini Dog  
12 Tag Necklace, and Bar Necklace, which have been assigned Case Nos. 1-  
13 2234553741, 1-2234553928, 1-2234553994, and 1-2234554160. True and correct  
14 copies of the application receipts are attached hereto as Exhibit A.

15 46. Bangle is informed and believes, and based thereon alleges, that FD9  
16 had access to photographs of the Bangle Cuff since April 3, 2013, online and in  
17 marketing channels where FD9 markets its own products, and that FD9 copied the  
18 Bangle Cuff and began marketing and selling its copies of the Bangle Cuff in or  
19 after June 2013.

20 47. Bangle is informed and believes, and based thereon alleges, that FD9  
21 had access to photographs of Bangle's Disc Necklace and Mini Dog Tag Necklace  
22 since mid-2013, and had access to photographs of Bangle's Bar Necklace since  
23 February 2014, online and in marketing channels where FD9 markets its own  
24 products, and that FD9 copied the Disc Necklace and Mini Dog Tag Necklace and  
25 began marketing and selling its copies of those necklaces in or after April 2014.

26 48. FD9's acts constitute infringement of Bangle's copyrights in the  
27 Bangle Cuff, Disc Necklace, Mini Dog Tag Necklace, and Bar Necklace in  
28 violation of the Copyright Act, 17 U.S.C. §§ 101, *et seq.*



1 paragraphs 1 through 25, 27 through 30, 32 through 39, 41 through 43, and 45  
2 through 52 of this Counterclaim as if fully set forth herein.

3 54. From the time that Bangle debuted and began selling its line of  
4 jewelry under the mark THE COORDINATES LINE BY BANGLE JANGLE in  
5 April 2013, Bangle had economic relationships with stores and individual  
6 customers, with the probability of future economic benefit to Bangle.

7 55. FD9 knew of Bangle's relationships with such stores and customers,  
8 as evidenced by its threat to contact Bangle's customers and falsely inform them  
9 that Bangle was infringing on FD9's purported patent rights.

10 56. FD9 acted intentionally in a manner designed to disrupt the  
11 relationship, such as by threatening Bangle's relationship with its clients,  
12 wrongfully demanding that Bangle cease its lawful business activities, and making  
13 false representations to the USPTO in order to obtain trademark registrations.  
14 FD9's conduct, including, without limitation, making false representations to the  
15 USPTO, was independently wrongful.

16 57. FD9 succeeded in actually disrupting Bangle's relationship with some  
17 of its customers and clients when it was bullied into halting its use of THE  
18 COORDINATES LINE BY BANGLE JANGLE and rebranding its line as LAT &  
19 LO.

20 58. As a proximate result of FD9's conduct, Bangle suffered substantial  
21 economic harm, in an as yet undetermined amount.

22 **SIXTH CLAIM FOR RELIEF**

23 **(Unfair Competition in Violation of**  
24 **Cal. Bus. & Prof. Code § 17200, et seq.)**

25 59. Bangle hereby repeats and incorporates by reference its allegations in  
26 paragraphs 1 through 25, 27 through 30, 32 through 39, 41 through 43, 45 through  
27 52, and 54 through 58 of this Counterclaim as if fully set forth herein.

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1           2.     On the second Counterclaim, an order that Trademark Registration  
2 Nos. 4,680,090, 4,541,700, 4,482,636, 4,668,121, 4,668,122, 4668,123 and  
3 4,675,909 be cancelled.

4           3.     On the third Counterclaim, for economic damages in an amount to be  
5 determined at trial.

6           4.     On the fourth Counterclaim, for economic damages in an amount to  
7 be determined at trial, injunctive relief, and attorneys' fees and costs of suit.

8           5.     On the fifth Counterclaim, for economic damages in an amount to be  
9 determined at trial.

10          6.     On the sixth Counterclaim, for permanent injunctive relief and  
11 disgorgement pursuant to California Business and Professions Code § 17200.

12          7.     On all Counterclaims, that Bangle be awarded its attorneys' fees and  
13 costs and such other and further relief as the Court may deem just and proper.

14

15 Dated: March 20, 2015

SEDGWICK LLP

16

17 By:           /s/ Caroline H. Mankey          

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Caroline H. Mankey  
Attorneys for Defendant  
BANGLE JANGLE, LLC

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EXHIBIT A  
to  
COUNTERCLAIM BY BANGLE JANGLE,  
LLC AGAINST FD9 GROUP INC.

**Mankey, Caroline**

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**From:** Kellie Ivey [kellie.m.ivey@gmail.com]  
**Sent:** Friday, March 20, 2015 11:32 AM  
**To:** Mankey, Caroline  
**Subject:** Fwd: Confirmation of Receipt

----- Forwarded message -----

From: **Copyright Office** <noreply@loc.gov>  
Date: Fri, Mar 20, 2015 at 2:30 PM  
Subject: Confirmation of Receipt  
To: [kellie.m.ivey@gmail.com](mailto:kellie.m.ivey@gmail.com)

THIS IS AN AUTOMATED EMAIL - PLEASE DO NOT REPLY.

Your Application and payment for the work Lat & Lo Cuff were received by the U.S.Copyright Office on 3/20/2015.

PLEASE NOTE: Your submission is not complete until you upload or mail the material you are registering. To do so, logon to [https://eco.copyright.gov/eService\\_enu/](https://eco.copyright.gov/eService_enu/) and click on case number 1-2234553741 in the Open Cases table. Follow the instructions to either upload a digital copy or mail a physical copy (with shipping slip attached) of the work being registered. Additional instructions and requirements for submitting the material being registered can be found at <http://www.copyright.gov/eco/tips/>.

SHIPPING SLIPS: If you mail physical copies of the material being registered, the effective date of registration will be based on the date on which we receive the copies WITH CORRESPONDING SHIPPING SLIPS ATTACHED.

A printable copy of the application will be available within 24 hours by clicking the My Applications link in the left top most navigation menu of the Home screen.

You may check the status of this claim via eCO using this number 1-2234553741. If you have questions or need assistance, Copyright Office contact information can be found at <http://www.copyright.gov/help/index.html#general>.

United States Copyright Office

**Mankey, Caroline**

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**From:** Kellie Ivey [kellie.m.ivey@gmail.com]  
**Sent:** Friday, March 20, 2015 11:52 AM  
**To:** Mankey, Caroline  
**Subject:** Fwd: Acknowledgement of Uploaded Deposit

----- Forwarded message -----

**From:** **Copyright Office** <cop-rc@loc.gov>  
**Date:** Fri, Mar 20, 2015 at 2:34 PM  
**Subject:** Acknowledgement of Uploaded Deposit  
**To:** [kellie.m.ivey@gmail.com](mailto:kellie.m.ivey@gmail.com)

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File Size :239571 KB  
Date/Time :3/20/2015 2:31:16 PM

[THREAD ID: 1-10YF2ZY]

United States Copyright Office

**Mankey, Caroline**

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**From:** Kellie Ivey [kellie.m.ivey@gmail.com]  
**Sent:** Friday, March 20, 2015 11:52 AM  
**To:** Mankey, Caroline  
**Subject:** Fwd: Confirmation of Receipt

----- Forwarded message -----

**From:** Copyright Office <noreply@loc.gov>  
**Date:** Fri, Mar 20, 2015 at 2:50 PM  
**Subject:** Confirmation of Receipt  
**To:** [kellie.m.ivey@gmail.com](mailto:kellie.m.ivey@gmail.com)

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Your Application and payment for the work Lat & Lo Bar Neckalce were received by the U.S.Copyright Office on 3/20/2015.

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A printable copy of the application will be available within 24 hours by clicking the My Applications link in the left top most navigation menu of the Home screen.

You may check the status of this claim via eCO using this number 1-2234553994. If you have questions or need assistance, Copyright Office contact information can be found at <http://www.copyright.gov/help/index.html#general>.

United States Copyright Office

**Mankey, Caroline**

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**From:** Kellie Ivey [kellie.m.ivey@gmail.com]  
**Sent:** Friday, March 20, 2015 11:59 AM  
**To:** Mankey, Caroline  
**Subject:** Fwd: Acknowledgement of Uploaded Deposit

----- Forwarded message -----

**From:** **Copyright Office** <cop-rc@loc.gov>  
**Date:** Fri, Mar 20, 2015 at 2:54 PM  
**Subject:** Acknowledgement of Uploaded Deposit  
**To:** [kellie.m.ivey@gmail.com](mailto:kellie.m.ivey@gmail.com)

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The following files were successfully uploaded for service request 1-2234553994

File Name :screenshot\_2015-03-20\_at\_1.04.42\_am.png  
File Size :222607 KB  
Date/Time :3/20/2015 2:51:16 PM

File Name :screenshot\_2015-03-20\_at\_2.51.00\_pm.png  
File Size :211997 KB  
Date/Time :3/20/2015 2:51:15 PM

File Name :screenshot\_2015-03-20\_at\_2.50.52\_pm.png  
File Size :206215 KB  
Date/Time :3/20/2015 2:51:16 PM

[THREAD ID: 1-10YFHPJ]

United States Copyright Office

**Mankey, Caroline**

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**From:** Kellie Ivey [kellie.m.ivey@gmail.com]  
**Sent:** Friday, March 20, 2015 12:18 PM  
**To:** Mankey, Caroline  
**Subject:** Fwd: Confirmation of Receipt

----- Forwarded message -----

**From:** Copyright Office <noreply@loc.gov>  
**Date:** Fri, Mar 20, 2015 at 2:41 PM  
**Subject:** Confirmation of Receipt  
**To:** [kellie.m.ivey@gmail.com](mailto:kellie.m.ivey@gmail.com)

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You may check the status of this claim via eCO using this number 1-2234553928. If you have questions or need assistance, Copyright Office contact information can be found at <http://www.copyright.gov/help/index.html#general>.

United States Copyright Office

**Mankey, Caroline**

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**From:** Kellie Ivey [kellie.m.ivey@gmail.com]  
**Sent:** Friday, March 20, 2015 11:52 AM  
**To:** Mankey, Caroline  
**Subject:** Fwd: Acknowledgement of Uploaded Deposit

----- Forwarded message -----

From: **Copyright Office** <cop-rc@loc.gov>  
Date: Fri, Mar 20, 2015 at 2:46 PM  
Subject: Acknowledgement of Uploaded Deposit  
To: [kellie.m.ivey@gmail.com](mailto:kellie.m.ivey@gmail.com)

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The following files were successfully uploaded for service request 1-2234553928

File Name :screenshot\_2015-03-20\_at\_1.05.15\_am.png  
File Size :281983 KB  
Date/Time :3/20/2015 2:42:04 PM

[THREAD ID: 1-10YFCA7]

United States Copyright Office

**Mankey, Caroline**

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**From:** Kellie Ivey [kellie.m.ivey@gmail.com]  
**Sent:** Friday, March 20, 2015 11:59 AM  
**To:** Mankey, Caroline  
**Subject:** Fwd: Confirmation of Receipt

----- Forwarded message -----

From: **Copyright Office** <noreply@loc.gov>  
Date: Fri, Mar 20, 2015 at 2:57 PM  
Subject: Confirmation of Receipt  
To: [kellie.m.ivey@gmail.com](mailto:kellie.m.ivey@gmail.com)

THIS IS AN AUTOMATED EMAIL - PLEASE DO NOT REPLY.

Your Application and payment for the work Lat & Lo Mini Dog Tag Necklace were received by the U.S.Copyright Office on 3/20/2015.

PLEASE NOTE: Your submission is not complete until you upload or mail the material you are registering. To do so, logon to [https://eco.copyright.gov/eService\\_enu/](https://eco.copyright.gov/eService_enu/) and click on case number 1-2234554160 in the Open Cases table. Follow the instructions to either upload a digital copy or mail a physical copy (with shipping slip attached) of the work being registered. Additional instructions and requirements for submitting the material being registered can be found at <http://www.copyright.gov/eco/tips/>.

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United States Copyright Office

**Mankey, Caroline**

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**From:** Kellie Ivey [kellie.m.ivey@gmail.com]  
**Sent:** Friday, March 20, 2015 12:17 PM  
**To:** Mankey, Caroline  
**Subject:** Fwd: Acknowledgement of Uploaded Deposit

----- Forwarded message -----

**From:** **Copyright Office** <cop-rc@loc.gov>  
**Date:** Fri, Mar 20, 2015 at 3:02 PM  
**Subject:** Acknowledgement of Uploaded Deposit  
**To:** [kellie.m.ivey@gmail.com](mailto:kellie.m.ivey@gmail.com)

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Thank you for submitting your registration claim using the Electronic Copyright Office (ECO) System.

The following files were successfully uploaded for service request 1-2234554160

File Name :screenshot\_2015-03-20\_at\_1.05.45\_am.png  
File Size :156697 KB  
Date/Time :3/20/2015 2:58:35 PM

File Name :screenshot\_2015-03-20\_at\_2.58.23\_pm.png  
File Size :167794 KB  
Date/Time :3/20/2015 2:58:35 PM

[THREAD ID: 1-10YFHZU]

United States Copyright Office