

ESTTA Tracking number: **ESTTA746736**

Filing date: **05/16/2016**

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

| | |
|------------------------|--|
| Proceeding | 91227264 |
| Party | Defendant WeMash, Inc. |
| Correspondence Address | MICHELLE A. COOKE Manatt Phelps & Phillips Llp 11355 W Olympic Blvd Los Angeles, CA 90064-1631 mcooke@manatt.com;patrademarks@manatt.c |
| Submission | Motion to Suspend for Civil Action |
| Filer's Name | Jessica A. Wood |
| Filer's e-mail | JWood@manatt.com, SWollman@Manatt.com, EEmbray@manatt.com, IP-Docket@manatt.com |
| Signature | /Jessica A. Wood/ |
| Date | 05/16/2016 |
| Attachments | 2016-05-16 WEMES - Motion to Suspend Opposition.pdf(104473 bytes) 2016-05-16 WEMES - Exhibits A-D to Mtn to Suspend.pdf(2662178 bytes) |

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

In the matter of Application No. 86/654,939

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| WEMESH, INC. Opposer, v. WEMASH, INC., Applicant. | Opposition No.: 91227264 Mark: WEMES Application No.: 86/654,939 Filed on: June 8, 2015 |
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**APPLICANT’S MOTION TO SUSPEND PENDING OUTCOME OF ANOTHER CIVIL
ACTION BETWEEN THE PARTIES OR, ALTERNATIVELY, REQUEST FOR
EXTENSION OF TIME TO ANSWER**

Pursuant to 37 C.F.R. § 2.117(a), TBMP §§ 510.02, *et seq.*, and any other applicable rules, Applicant WeMash, Inc. (“WeMash” or “Applicant”), by and through its counsel of record, hereby moves to suspend Opposition No. 91227264, filed by Opposer WeMesh, Inc. (“Opposer” or “WeMesh”) on April 6, 2016, before the Trademark Trial and Appeal Board, against WeMash’s WEMES Mark depicted in Application No. 86/654,939, pending the outcome of a concurrent federal district court proceeding, *WeMash, Inc. v. WeMesh, Inc.*, Case No. 2:15-cv-08719-JFW-JPR in the U.S. District Court for the Central District of California (“Civil Action”). In the alternative, if the Board requires Applicant to answer or respond to Opposer’s Notice of Opposition, Applicant respectfully requests a short extension of time to prepare and file an answer or response.

On December 18, 2015, Applicant filed with the Trademark Trial and Appeal Board a Petition to Cancel Opposer’s Registration No. 4,757,374 for WEMESH, Cancellation No.

92062794. *Opposer moved to suspend the Cancellation proceedings*, which the Board suspended on March 3, 2016, pending the disposition of the Civil Action. A true and correct copy of the Petition for Cancellation and the Board's Order Suspending the Cancellation proceedings are attached hereto as Exhibits A and B, respectively.

In light of Opposer's own motion to suspend the related Cancellation proceedings, Applicant contacted counsel for Opposer on May 12, 2016 to inquire as to whether Opposer would consent to suspend the Opposition. However, Opposer's counsel told us to proceed with filing this Motion. Accordingly, Applicant respectfully submits this Motion.

A. Applicant's Motion to Suspend the Opposition Pending Disposition of a Related Civil Action

Applicant filed the Civil Action on November 6, 2015, and filed the First Amended Complaint on January 12, 2016 (the operative Complaint), against Opposer and its founder, Michael Pazaratz, alleging federal, California state and common law claims, including unfair competition and false designation of origin, federal cybersquatting, cancellation of Opposer's U.S. Trademark Registration No. 4,757,374 for WEMESH (the "WEMESH" Mark), and declaratory judgment that Applicant is not infringing any rights of Opposer. Pursuant to TBMP §510.02, a true and correct copy of the First Amended Complaint is attached hereto as Exhibit C. Applicant's claims in the Civil Action arise out of Opposer's creation, marketing and distribution of multimedia and entertainment software bearing colorable imitations of Applicant's distinctive WEMES (App. No. 86/654,939) and WEMASH (App. No. 86/320,744) marks (collectively, the "WEMASH Marks"), including on or in connection with Opposer's "WeMesh App," and otherwise using the term "WeMesh," in connection with Opposer's goods/services.

Opposer moved to dismiss the First Amended Complaint in the Civil Action, but its motion was denied. On April 8, 2016, Opposer filed an Answer and Counterclaims in the Civil Action alleging that Applicant's use of its WEMASH Marks, including its WEMES Mark,

constitute trademark infringement and unfair competition, and seeking a declaration that Opposer has not infringed Applicant's trademark rights ("Counterclaims"). Pursuant to TBMP §510.02, a true and correct copy of Opposer's Answer and Counterclaims is attached hereto as Exhibit D. Applicant contends it has seniority in the WEMASH Marks and denies all the claims asserted against it in the Counterclaims.

Undoubtedly, the Civil Action involves the same parties as these proceedings, *i.e.*, Applicant WeMash and Opposer WeMesh.¹ Further, there is overlap in issues between the Civil Action and the instant Opposition, particularly given Opposer's admission that its WEMESH Mark creates a likelihood of confusion with the WEMASH Marks. *See* TBMP §§ 510.02(a) ("Unless there are unusual circumstances, the Board will suspend proceedings in the case before it if the final determination of the other proceeding may have a bearing on the issues before the Board."). Further, Opposer's Notice of Opposition appears derived from the Answer and Counterclaims in the Civil Action. *See* Exhibit D.

Thus, in light of the foregoing, good cause exists to suspend the Opposition proceedings pending the disposition of the Civil Action.

B. In the Alternative, Applicant Requests an Extension of Time to Answer or Respond to the Notice of Opposition

Pursuant to TBMP §510.02(a), "The Board does not usually require that an issue be joined (that an answer be filed) in one or both proceedings before the Board will consider suspending a Board proceeding pending the outcome of another proceeding." Accordingly, Applicant does not believe that it is required to file a response or answer to the Notice of Opposition prior to the Board's ruling on Applicant's Motion to Suspend. However, to the extent that the Board requires Applicant to file an answer or response to the Notice of

¹ Dr. Pazaratz was dismissed without prejudice from the Civil Action on May 3, 2016 pursuant to an Agreement between the parties.

Opposition, or in the event that the Board denies Applicant's Motion to Suspend, Applicant hereby moves to extend its time to file a response or answer. See TBMP §502.04 ("...a party may incorporate a motion to extend as part of another motion.") In particular, Applicant requests an extension of at least fourteen (14) days following any Board ruling either denying Applicant's Motion to Suspend or requiring Applicant to file an answer or response to the Notice of Opposition.

C. Conclusion

For the foregoing reasons, Applicant respectfully requests that the Board suspend the Opposition until the Civil Action is concluded. Alternatively, if the Board requires an answer or response to the Notice of Opposition, Applicant requests a brief extension of time to prepare and file an answer or response.

Respectfully submitted,

Dated: May 16, 2016

By: /Jessica A. Wood/
Shari Mulrooney Wollman, Esq.
Jessica A. Wood, Esq.
MANATT, PHELPS & PHILLIPS, LLP
11355 W. Olympic Boulevard
Los Angeles, California 90064
Telephone (310) 312-4000
Facsimile (310) 312-4224
Email: SWollman@manatt.com
Email: JWood@manatt.com

Attorneys for Applicant WeMash, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I served a true and complete copy of the foregoing **APPLICANT’S MOTION TO SUSPEND PENDING OUTCOME OF ANOTHER CIVIL ACTION BETWEEN THE PARTIES OR, ALTERNATIVELY, REQUEST FOR EXTENSION OF TIME TO ANSWER** upon counsel of record for Opposer, by depositing one copy thereof via first class mail, postage prepaid, on May 16, 2016, addressed as follows:

Bobby Ghajar
Pillsbury Winthrop Shaw Pittman LLP
725 S. Figueroa St., Suite 2800
Los Angeles, CA 90017

/Jessica A. Wood/

Jessica A. Wood

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trial and Appeals (ESTTA) on May 16, 2016.

/Jessica A. Wood/

Jessica A. Wood

316973288.1

EXHIBIT A

ESTTA Tracking number: **ESTTA713263**

Filing date: **12/08/2015**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

| | | | |
|---------|--|-------------|----------|
| Name | WeMash, Inc. | | |
| Entity | Corporation | Citizenship | Delaware |
| Address | 12777 W Jefferson Blvd Suite D-200 Los Angeles, CA 90066 UNITED STATES | | |

| | | | |
|----------------------|--|--|--|
| Attorney information | Jessica A. Wood Manatt, Phelps & Phillips LLP 11355 West Olympic Boulevard Los Angeles, CA 90064 UNITED STATES JWood@manatt.com, SWollman@manatt.com, IPDocket@manatt.com Phone:(310) 312-4246 | | |
|----------------------|--|--|--|

Registration Subject to Cancellation

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 4757374 | Registration date | 06/16/2015 |
| Registrant | WEMESH Inc. 340 Brookview Court Ancaster, L9G4C2 CANADA | | |

Goods/Services Subject to Cancellation

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|---|
| Class 009. First Use: 2015/01/10 First Use In Commerce: 2015/01/10 All goods and services in the class are cancelled, namely: Downloadable mobile software applications for synchronizing multimedia content with audio and text communication; Computer software for synchronizing content between mobile devices |
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Grounds for Cancellation

| | |
|--------------------------------------|----------------------------|
| False suggestion of a connection | Trademark Act section 2(a) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |

Marks Cited by Petitioner as Basis for Cancellation

| | | | |
|----------------------|----------|-----------------------|------------|
| U.S. Application No. | 86320744 | Application Date | 06/25/2014 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | WEMASH | | |

| | |
|---------------------|--|
| Design Mark | <h1>WEMASH</h1> |
| Description of Mark | NONE |
| Goods/Services | Class 041. First use: First Use: 0 First Use In Commerce: 0 Entertainment services, namely, providing webcasts and online videos in the field of music, sports and entertainment; Providing a website featuring information in the field of music, sports and entertainment; Entertainment services, namely, providing information about music, sports and entertainment via an on-line network |

| | | | |
|----------------------|----------|-----------------------|------------|
| U.S. Application No. | 86654939 | Application Date | 06/08/2015 |
| Registration Date | NONE | Foreign Priority Date | NONE |

| | |
|-------------|----------------|
| Word Mark | WEMES |
| Design Mark | <h1>WEMES</h1> |

| | |
|---------------------|---|
| Description of Mark | NONE |
| Goods/Services | Class 009. First use: First Use: 0 First Use In Commerce: 0 Software and downloadable software to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content for posting, linking and sharing through electronic messaging and transmission via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Software and downloadable software to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content that can be stored on and accessed from cloud based systems or remote network servers via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Downloadable software for the integration of text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content into an interactive delivery for multimedia applications; Software and downloadable software for mobile phones, tablet computers, mobile telecommunications devices, mobile digital devices, portable devices, per- |

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| | <p>sonal communications devices, portable media players, handheld computers and hand-held electronic devices, to send and receive electronic messages, text, graphics, images, photos, moving pictures, music, audio, video, audio-video materials and other multimedia content via global communication networks, portable and wireless networks, and various platforms across multiple forms of media</p> <p>Class 041. First use: First Use: 0 First Use In Commerce: 0 Providing an online non-downloadable searchable database of text, graphics, still images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content in the fields of celebrities, news, film, politics, television, political events and affairs, sports, music, history, drama, nature and wildlife, fashion, artistic performances, beauty, science fiction and fantasy for embedding digital content into websites, social media, electronic communications, downloadable and non-downloadable digital content, electronic downloadable publications, and other digital media and design elements of others</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0 Providing online non-downloadable software, applications and tools to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content for posting, linking and sharing through electronic messaging and transmission via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Providing online non-downloadable software, applications and tools to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content that can be stored on and accessed from cloud based systems or remote network servers via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Providing online non-downloadable software for the integration of text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content into an interactive delivery for multimedia applications</p> |
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|-------------|---|
| Attachments | 86320744#TMSN.png(bytes) 86654939#TMSN.png(bytes) 2015-12-08 Petition to Cancel - WEMESH (final).pdf(317942 bytes) 2015-12-07 Petition to Cancel Exhibits 1-3 (final).pdf(72771 bytes) |
|-------------|---|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

| | |
|-----------|-------------------|
| Signature | /Jessica A. Wood/ |
| Name | Jessica A. Wood |
| Date | 12/08/2015 |

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

In the matter of Registration No. 4,757,374

| | |
|---|---|
| <p>WEMASH, INC.</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>WEMESH INC.,</p> <p style="text-align: center;">Registrant.</p> | <p>Cancellation No.:</p> <p>Mark: WEMESH</p> <p>Registration No. 4,757,374</p> <p>Registered: June 16, 2015</p> |
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PETITION FOR CANCELLATION

Petitioner WeMash, Inc. (“WeMash” or “Petitioner”) believes that it is being damaged and will be damaged by U.S. Registration No. 4,757,374 for the mark WEMESH for “Downloadable mobile software applications for synchronizing multimedia content with audio and text communication; Computer software for synchronizing content between mobile devices” in Class 9 (“Registration”). As grounds for cancellation, Petitioner WeMash, upon actual knowledge with respect to itself and its own acts, and information and belief as to other matters, except as stated otherwise, alleges as follows:

1. Petitioner WeMash is a Delaware corporation with its principal place of business at 12777 W Jefferson Blvd, Suite D-300, Los Angeles, California, 90066.
2. Petitioner WeMash is informed and believes, and on that basis alleges that WEMESH Inc. (“Registrant” or “WeMesh”), an Ontario, Canada corporation, having an address of record of 340 Brookview Court, Ancaster L9G4C2 Canada, filed with the U.S. Patent and

Trademark Office (“USPTO”) on or about May 5, 2014 Application No. 86/271,330, on the basis of intent to use under Section 1(b). WeMash is further informed and believes, and on that basis alleges that Application No. 86/271,330 is the underlying application for the Registration, which the USPTO granted on June 16, 2015.

WeMash’s Proprietary Goods, Services and Intellectual Property

3. Among other goods and services, Petitioner WeMash designs, creates, develops, manufactures, promotes, provides and/or distributes innovative software, web-based platforms and applications (“apps”) related to multimedia, videos, entertainment, sports, music, popular culture and more, as well as related services (the “WeMash Goods/Services”).

4. In particular, WeMash is the creator, owner and provider of an app that allows users to access premium video content, which can be edited and integrated with text, graphics and other multimedia content for posting, linking and sharing online and across various social media and communications platforms (the “Wemes App”). The Wemes App supplies users with a collection of video content, including but not limited to a variety of celebrity interviews and performances featuring pop culture icons, much of which is rare, exclusive and never-before-seen footage. Users can customize video clips and other media using various tools provided via the Wemes App to add text, audio recordings, graphics, and more. Users’ resulting multimedia projects, sometimes called video memes or mashups, can be posted on social networks, transmitted directly to others via text message or email, and easily shared in a variety of other ways. The Wemes App has been well-received by the public: it currently has a rating of 4.5 out of 5 stars on Apple, Inc.’s (“Apple”) App Store (*see* <https://itunes.apple.com/us/app/wemes-create-share-video-memes/id1023485444?mt=8>).

5. WeMash’s Wemes App is available for download on, and has been downloaded from at least Apple’s App Store.

6. In addition, WeMash promotes, advertises and markets the Wemes App on a variety of websites and social media networks nationwide, including but not limited to Instagram, LinkedIn, Facebook, Twitter, and Vine. WeMash encourages users to share their own video memes, mashups and other multimedia content created with the Wemes App by using the hashtags #WEMES and #GotWEMES on social media.

WeMash's Selection and Use of Its Trademarks

7. WeMash is the owner of trademarks which it uses in connection with the WeMash Goods/Services and/or Wemes App including, but not limited to WEMASH™, WEMES™ and WeMash's proprietary W & Design (crown)™ logo (collectively, the "WEMASH Marks").

8. WeMash has owned and operated the domain www.wemash.com (the "WeMash Domain") since at least November 20, 2005. WeMash uses the WeMash Domain to communicate with its customers and advertise positions available with the company.

9. Further, since at least as early as 2009, and continuously to the present, WeMash has used the distinctive WEMASH mark in connection with its business, including but not limited to its innovative and high-quality WeMash Goods/Services.

10. By way of example and without limitation, beginning as early as 2009, the principals of WeMash have actively engaged in developing, advertising and marketing the WeMash Goods/Services in connection with the WEMASH mark, including but not limited to meetings with investors and others to develop WeMash Goods/Services that are marketed, offered and/or distributed under the WEMASH mark. As just one example, WeMash used the WEMASH mark in connection with the development and promotion of an extensive library collection of video content owned and controlled by the WeMash principals, for use on or in

connection with web platforms, apps, software and/or related multimedia and entertainment products and services.

11. From early 2009 and continuing to the present, WeMash has continued to expand the products and services offered under the WEMASH mark, expanding its portfolio to include, without limitation, various entertainment services, videos and information in the fields of music, sports and entertainment over the Internet, and via apps and other distribution platforms.

12. In addition, WeMash has continued to expand its family of “WEMASH” marks used on or in connection with WeMash Goods/Services by creating and using a family of marks derived from its WEMASH mark, including but not limited to WEMES and the W & Design (crown) logo. By way of example and without limitation, WeMash uses its WEMES and/or W & Design (crown) marks in connection with WeMash’s proprietary Wemes App, as well as related goods and services.

13. By virtue of WeMash’s longstanding, prominent and continuous use, as well as the extensive promotion and advertising of the WEMASH Marks, the WEMASH Marks have come to be recognized by the relevant public as identifying the WeMash Goods/Services and WeMash, and have become strong and distinctive in the United States within the meaning of the Lanham Act. Further, WeMash also has developed valuable goodwill in the WEMASH Marks.

14. Moreover, favorable public acceptance and recognition has further established that WeMash’s WEMASH Marks have become assets of substantial value to WeMash, and symbols of the high-quality and associated goodwill of the WeMash Goods/Services.

15. In addition to the common law rights that WeMash has acquired in and to WeMash’s WEMASH Marks due to its longstanding, continuous and extensive use of those marks, WeMash is also the owner of two (2) pending federal trademark applications for its

WEMASH and WEMES marks. Printouts from the USPTO website evidencing these applications are attached as Exhibits 1 and 2, respectively, the particulars of which are summarized below:

| Mark and Application No. | Filing Date | Goods/Services |
|--------------------------------------|------------------------|--|
| WEMASH App. No. 86/320,744 | Filed June 25, 2014 | <u>Class 41</u> : Entertainment services, namely, providing webcasts and online videos in the field of music, sports and entertainment; Providing a website featuring information in the field of music, sports and entertainment; Entertainment services, namely, providing information about music, sports and entertainment via an online network (the “WEMASH Application”). |

| Mark and Application No. | Filing Date | Goods/Services |
|---|-------------------------------|--|
| <p>WEMES</p> <p>App. No. 86/654,939</p> | <p>Filed June 8, 2015</p> | <p><u>Class 9:</u> Software and downloadable software to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content for posting, linking and sharing through electronic messaging and transmission via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Software and downloadable software to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content that can be stored on and accessed from cloud based systems or remote network servers via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Downloadable software for the integration of text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content into an interactive delivery for multimedia applications; Software and downloadable software for mobile phones, tablet computers, mobile telecommunications devices, mobile digital devices, portable devices, personal communications devices, portable media players, handheld computers and handheld electronic devices, to send and receive electronic messages, text, graphics, images, photos, moving pictures, music, audio, video, audio-video materials and other multimedia content via global communication networks, portable and wireless networks, and various platforms across multiple forms of media;</p> |

| Mark and Application No. | Filing Date | Goods/Services |
|---------------------------------|--------------------|---|
| | | <p><u>Class 41</u>: Providing an online non-downloadable searchable database of text, graphics, still images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content in the fields of celebrities, news, film, politics, television, political events and affairs, sports, music, history, drama, nature and wildlife, fashion, artistic performances, beauty, science fiction and fantasy for embedding digital content into websites, social media, electronic communications, downloadable and non-downloadable digital content, electronic downloadable publications, and other digital media and design elements of others; and</p> <p><u>Class 42</u>: Providing online non-downloadable software, applications and tools to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content for posting, linking and sharing through electronic messaging and transmission via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Providing online non-downloadable software, applications and tools to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content that can be stored on and accessed from cloud based systems or remote network servers via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Providing online non-downloadable software for the integration of text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content into an interactive delivery for multimedia applications” (the “WEMES Application”).</p> |

16. WeMash owns the common law trademarks WEMASH and WEMES, which are valid and subsisting, as well as the WEMASH Application and the WEMES Application (together, “the Applications”). WeMash’s WEMASH and WEMES marks are inherently distinctive and/or have acquired distinctiveness through secondary meaning, and are uniquely associated with WeMash in the minds of consumers.

Registrant’s Wrongful and Infringing Conduct

17. WeMash is informed and believes, and on that basis alleges that Registrant WeMesh creates, develops, manufactures, markets, distributes, displays, uses and/or sells multimedia and entertainment software and/or apps for the Apple iPhone and/or iPad, including but not limited to its WeMesh App (the “WeMesh App”) that allows users to synchronize their mobile devices in order to watch videos together, while simultaneously communicating with each other either via text messaging or VoIP (the “WeMesh Goods/Services”).

18. WeMash is informed and believes, and on that basis alleges that Registrant WeMesh markets, distributes and/or sells the WeMesh App through its website, <http://weme.sh/>, and through Apple’s App Store, among other sources, including Facebook, Twitter, Pinterest, Instagram and LinkedIn.

Registrant Does Not Own A Valid Trademark

19. WeMash is informed and believes, and on that basis alleges that on or about May 5, 2014, over four years after WeMash’s first use of any of the WEMASH Mark(s), Registrant WeMesh filed an intent-to-use application with the USPTO for WEMESH, Application No. 86/271,330 (the “WEMESH Application”), for the same or related goods/and or services already offered by WeMash.

20. According to the USPTO records, Registrant WeMesh filed a statement of use with respect to the WEMESH Application on or about March 12, 2015, alleging a first use date

of January 10, 2015, and the Registration, U.S. Trademark Registration No. 4,757,374, was issued on June 16, 2015. A printout from the USPTO website evidencing the Registration is attached as Exhibit 3, the particulars of which are summarized below:

| Mark, Application No. & Registration No. | Filing Date | Goods/Services & Alleged First Use Date |
|--|---|--|
| WEMESH App. No. 86/271,330 Reg. No. 4,757,374 | Filed May 5, 2014 Registered June 16, 2015 | <u>Class 9</u> : Downloadable mobile software applications for synchronizing multimedia content with audio and text communication; Computer software for synchronizing content between mobile devices First use: January 10, 2015 |

21. The goods that Registrant WeMesh intended to provide, and/or has provided under the WEMESH mark, including but not limited to those goods listed in the Registration, appear to be commercially related to, confusingly similar to, and compete with the goods and services already offered by WeMash under the WEMASH Marks. In addition, it appears that the goods and/or services that Registrant WeMesh intended to provide, and/or has provided under the WEMESH mark, including but not limited to those goods listed in the Registration are, or potentially will be, offered broadly to the same class of consumers as the consumers of WeMash's Goods/Services under the WEMASH Marks, through the same and/or overlapping channels of trade.

22. Further, Registrant WeMesh's WEMESH mark is confusingly similar to WeMash's WEMASH and WEMES marks. First, WeMash's WEMASH Mark only differs from WEMESH by one letter, namely the letter "A" is replaced by an "E." Likewise, WeMash's WEMES mark only differs from WEMESH by one letter, namely the "H." Not only are "WEMASH" and "WEMES" completely arbitrary as applied to the WeMash Goods/Services,

but “WEMASH” and “WEMES” are fanciful words, entitled to the strongest and most broad protection.

23. Registrant WeMesh has admitted that its WEMESH mark and Petitioner’s WEMASH Marks are similar and there is a likelihood of confusion, as well as instances of actual confusion:

Our client has recently become aware of WeMesh, Inc.'s ("WMI") use of the "WEMASH" and "WEMES" marks. Given the similarity in the marks themselves, the use of the marks, and the types of goods and services offered, there is confusion as to the source and origin of the goods and services that WMI provides. In fact, WeMesh first became aware of your use of the "WEMASH" and "WEMES" marks because of recent instances of actual confusion between the entities, in social media, which underscores the importance to resolve this matter for both parties.

24. Registrant WeMesh also admitted that the parties’ goods and services are offered to the same class of consumers and through the same channels of trade:

WeMesh also has serious concerns in respect of the pending U.S. trademark applications applied for by WMI. These applications clearly illustrate the overlap in the goods proposed to be offered by WMI and our client’s goods and services in the United States. Finally, your company’s proposed video messenger system is in direct competition with our client’s software and mobile technology application. As such, it is clear that your company is or will be targeting the same or similar consumer base as WeMesh, with the same offering of goods in the software and Internet space.

25. Registrant WeMesh is not licensed or authorized by Petitioner WeMesh to use the WEMASH Marks, its WEMESH mark, or any colorable imitations thereof, in connection with the manufacture, marketing, distribution, display and/or sale of multimedia and/or entertainment software and/or apps, or otherwise.

26. WeMesh has been using its WEMASH mark in connection with the WeMesh Goods/Services since at least 2009, well before the May 5, 2014 filing date of Registrant WeMesh’s WEMESH Application or Registrant WeMesh’s alleged first use date of January 10, 2015 for WEMESH, and thus WeMesh has priority of use.

27. Registrant WeMesh’s marketing, distribution and/or sale of products bearing colorable imitations of marks used on and in connection with the WeMesh Goods/Services, is

likely to deceive, confuse and mislead consumers and prospective consumers into believing that the WeMesh Goods/Services distributed by Registrant WeMesh are manufactured by, authorized by, or in some manner associated with WeMesh, when they are not. The likelihood of confusion, mistake and deception engendered by Registrant WeMesh's misappropriation of WeMesh's trademarks is causing irreparable harm to the goodwill symbolized by these marks and the reputation for quality that they embody. On information and belief, Registrant WeMesh continues to market, distribute and/or sell WeMesh Goods/Services that compete with the multimedia and/or entertainment software and/or apps created, manufactured and distributed by WeMesh.

28. WeMesh is informed and believes, and on that basis alleges that Registrant WeMesh willfully, intentionally and maliciously adopted and used colorable imitations of WeMesh's WEMASH Marks, in connection with its WeMesh Goods/Services, that are likely to cause confusion, to cause mistake or to deceive.

29. WeMesh is informed and believes, and on that basis alleges that Registrant WeMesh is aware of WeMesh's business activities in the music, entertainment, multimedia and technology industries.

FIRST CLAIM FOR RELIEF

(Petition to Cancel Based On Likelihood of Confusion, 15 U.S.C. §§ 1052(d), 1064(1))

30. Petitioner WeMesh realleges and incorporates each and every allegation contained in the above paragraphs, by reference as though fully set forth herein.

31. The mark shown in the Registration so resembles Petitioner WeMesh's WEMASH mark previously used by Petitioner WeMesh, and not abandoned, as to be likely, when used on or in connection with the goods identified in the Registration, to cause confusion or mistake, or to deceive. As Petitioner WeMesh has priority of use, Registrant's mark should be

cancelled under §2(d) and §14(1) of the United States Trademark Act, 15 U.S.C. §§ 1052(d), 1064(1).

32. Petitioner WeMash has been damaged, and will be damaged by the continued registration of the mark shown in the Registration because such Registration gives, and will give Registrant prima facie evidence of ownership of and the exclusive right to use a mark that so resembles Petitioner WeMash's previously-used and not-abandoned marks, in derogation of Petitioner WeMash's rights in its marks.

SECOND CLAIM FOR RELIEF
(Petition to Cancel Based On False Suggestion of a Connection,
15 U.S.C. §§ 1052(a), 1064(1))

33. Petitioner WeMash realleges and incorporates each and every allegation contained in the above paragraphs, by reference as though fully set forth herein.

34. The mark shown in the Registration falsely suggests a connection between Petitioner WeMash and Registrant, and Registrant's mark is thus unregistrable and subject to cancellation under §2(a) and §14(1) of the United States Trademark Act, 15 U.S.C. §§ 1052(a), 1064(1).

35. Petitioner WeMash's first use of the WEMASH mark predates the filing date of Registrant's Registration for WEMESH and, Petitioner is informed and believes any date of first use that may be alleged by Registrant.

36. Petitioner WeMash has been damaged, and will be damaged by the continued registration of the mark shown in the Registration because such registration gives, and will give Registrant prima facie evidence of ownership of and the exclusive right to use a mark that falsely associates Registrant's goods with Petitioner WeMash.

//

//

WHEREFORE, Petitioner WeMash believes that it is being damaged, and will be damaged, by the continued registration of the mark shown in the Registration, and requests that this petition be sustained, and that Registration be cancelled.

Respectfully submitted,

Dated: December 8, 2015

By: /Jessica A. Wood/
Shari Mulrooney Wollman, Esq.
Jessica A. Wood, Esq.
Manatt, Phelps & Phillips LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064
Telephone: (310) 312-4000
Facsimile: (310) 312-4224

Attorneys for Petitioner
WEMASH, INC.

CERTIFICATE OF SERVICE

I hereby certify that I served a true and complete copy of the foregoing **PETITION FOR CANCELLATION** upon owner of record for the Registration by depositing one copy thereof via overnight courier, postage prepaid, on December 8, 2015, addressed as follows:

WEMESH Inc.
340 Brookview Court
Ancaster CANADA L9G4C2

With a copy to counsel of record for Registrant, by depositing one copy thereof via overnight courier, postage prepaid, on December 8, 2015, addressed as follows:

Lorelei G. Graham
Norton Rose Fulbright Canada LLP
Research Park Centre, 150 Research Lane
Suite 205
Guelph Canada N1G4T2
Phone: (416) 202-6739
Fax: (416) 216-3930
Counsel of record for Registrant
WEMESH Inc.

/Jessica A. Wood/

Jessica A. Wood

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trial and Appeals (ESTTA) on December 8, 2015.

/Jessica A. Wood/

Jessica A. Wood

Exhibit 1

Generated on:

This page was generated by TSDR on 2015-12-07 23:02:49 EST

Mark: WEMASH

WEMASH

US Serial Number: 86320744

Application Filing Date:

Jun. 25, 2014

Register:

Principal

Mark Type:

Service Mark

Status:

A first request for extension of time to file a Statement of Use has been granted.

Status Date:

Jun. 29, 2015

Publication Date: Nov. 25, 2014

Notice of Allowance Date:

Jan. 20, 2015

Mark Information

Mark Literal Elements:

WEMASH

Standard Character Claim:

Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type:

4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For:

Entertainment services, namely, providing webcasts and online videos in the field of music, sports and entertainment; Providing a website featuring information in the field of music, sports and entertainment; Entertainment services, namely, providing information about music, sports and entertainment via an online network

International Class(es): 041 - Primary Class

U.S Class(es):

100, 101, 107

Class Status:

ACTIVE

Basis:

1(b)

Basis Information (Case Level)

| | | |
|---------------------------|-------------------------------|------------------------|
| Filed Use: No | Currently Use: No | Amended Use: No |
| Filed ITU: Yes | Currently ITU: Yes | Amended ITU: No |
| Filed 44D: No | Currently 44D: No | Amended 44D: No |
| Filed 44E: No | Currently 44E: No | Amended 44E: No |
| Filed 66A: No | Currently 66A: No | |
| Filed No Basis: No | Currently No Basis: No | |

Current Owner(s) Information

Owner Name:

WeMash, Inc.

Owner Address:

11271 Ventura Blvd.
602
Studio City, CALIFORNIA UNITED STATES 91604

Legal Entity Type: CORPORATION

**State or Country Where
Organized:**

DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Elizabeth M. Seltzer

**Attorney Primary Email
Address:** eseltzer@driscollseltzer.com

**Attorney Email
Authorized:**

Yes

Correspondent

**Correspondent
Name/Address:**

ELIZABETH M. SELTZER
DRISCOLL & SELTZER, PLLC
300 N WASHINGTON ST STE 304
ALEXANDRIA, VIRGINIA UNITED STATES 22314-2530

Phone: 703-822-5001

Fax:

703-997-4892

Correspondent e-mail: eseltzer@driscollseltzer.com

**Correspondent e-mail
Authorized:**

Yes

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|--|-------------------|
| Jul. 01, 2015 | NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED | |
| Jun. 29, 2015 | EXTENSION 1 GRANTED | 98765 |
| Jun. 29, 2015 | EXTENSION 1 FILED | 98765 |
| Jun. 29, 2015 | TEAS EXTENSION RECEIVED | |
| Jan. 20, 2015 | NOA E-MAILED - SOU REQUIRED FROM APPLICANT | |
| Nov. 25, 2014 | OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED | |
| Nov. 25, 2014 | PUBLISHED FOR OPPOSITION | |
| Nov. 05, 2014 | NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED | |
| Oct. 23, 2014 | LAW OFFICE PUBLICATION REVIEW COMPLETED | 69712 |
| Oct. 22, 2014 | ASSIGNED TO LIE | 69712 |
| Oct. 01, 2014 | APPROVED FOR PUB - PRINCIPAL REGISTER | |
| Oct. 01, 2014 | EXAMINER'S AMENDMENT ENTERED | 88888 |
| Oct. 01, 2014 | NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED | 6328 |
| Oct. 01, 2014 | EXAMINERS AMENDMENT E-MAILED | 6328 |
| Oct. 01, 2014 | EXAMINERS AMENDMENT -WRITTEN | 91237 |
| Oct. 01, 2014 | ASSIGNED TO EXAMINER | 91237 |
| Jul. 02, 2014 | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | |
| Jun. 28, 2014 | NEW APPLICATION ENTERED IN TRAM | |

TM Staff and Location Information

TM Staff Information

TM Attorney: COGAN, BRITTNEY LORRAI

Law Office Assigned:

LAW OFFICE 114

File Location

Current Location: INTENT TO USE SECTION

Date in Location:

Jan. 20, 2015

Exhibit 2

Generated on:

This page was generated by TSDR on 2015-12-07 23:04:07 EST

Mark: WEMES

WEMES

US Serial Number: 86654939

Application Filing Date:

Jun. 08, 2015

Filed as TEAS RF: Yes

Currently TEAS RF:

Yes

Register:

Principal

Mark Type:

Trademark, Service Mark

Status:

Review prior to publication completed.

Status Date:

Nov. 02, 2015

Publication Date: Dec. 08, 2015

Mark Information

Mark Literal Elements:

WEMES

Standard Character Claim:

Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type:

4 - STANDARD CHARACTER MARK

Translation:

The wording "WEMES" has no meaning in a foreign language.

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For:

Software and downloadable software to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content for posting, linking and sharing through electronic messaging and transmission via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Software and downloadable software to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content that can be stored on and accessed from cloud based systems or remote network servers via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Downloadable software for the integration of text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content into an interactive delivery for multimedia applications; Software and downloadable software for mobile phones, tablet computers, mobile telecommunications devices, mobile digital devices, portable devices, personal communications devices, portable media players, handheld computers and hand-held electronic devices, to send and receive electronic messages, text, graphics, images, photos, moving pictures, music, audio, video, audio-video materials and other multimedia content via global communication networks, portable and wireless networks, and various platforms across multiple forms of media

International Class(es): 009 - Primary Class

U.S Class(es):

021, 023, 026, 036, 038

Class Status:

ACTIVE

Basis:

1(b)

For:

Providing an online non-downloadable searchable database of text, graphics, still images, photos, moving pictures, music, audio,

video, audio-visual materials, and other multimedia content in the fields of celebrities, news, film, politics, television, political events and affairs, sports, music, history, drama, nature and wildlife, fashion, artistic performances, beauty, science fiction and fantasy for embedding digital content into websites, social media, electronic communications, downloadable and non-downloadable digital content, electronic downloadable publications, and other digital media and design elements of others

International Class(es): 041 - Primary Class

U.S Class(es):

100, 101, 107

Class Status:

ACTIVE

Basis:

1(b)

For:

Providing online non-downloadable software, applications and tools to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content for posting, linking and sharing through electronic messaging and transmission via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Providing online non-downloadable software, applications and tools to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content that can be stored on and accessed from cloud based systems or remote network servers via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Providing online non-downloadable software for the integration of text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content into an interactive delivery for multimedia applications

International Class(es): 042 - Primary Class

U.S Class(es):

100, 101

Class Status:

ACTIVE

Basis:

1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: Yes

Currently ITU: Yes

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name:

WeMash, Inc.

Owner Address:

#602
11271 Ventura Blvd.
Studio City, CALIFORNIA 91604
UNITED STATES

Legal Entity Type: CORPORATION

**State or Country Where
Organized:**

DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Michelle A. Cooke

Docket Number:

48455-030

**Attorney Primary Email
Address:** mcooke@manatt.com

**Attorney Email
Authorized:**

Yes

Correspondent

**Correspondent
Name/Address:**

MICHELLE A. COOKE
Manatt Phelps & Phillips Llp
11355 W Olympic Blvd
Los Angeles, CALIFORNIA 90064-1631

UNITED STATES

Phone: (310) 312-4208

Fax:

(310) 996-6942

Correspondent e-mail: mcooke@manatt.com
patrademarks@manatt.com

Correspondent e-mail
Authorized:

Yes

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|--|-------------------|
| Nov. 18, 2015 | NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED | |
| Nov. 02, 2015 | LAW OFFICE PUBLICATION REVIEW COMPLETED | 77312 |
| Oct. 30, 2015 | ASSIGNED TO LIE | 77312 |
| Sep. 24, 2015 | APPROVED FOR PUB - PRINCIPAL REGISTER | |
| Sep. 23, 2015 | EXAMINER'S AMENDMENT ENTERED | 88888 |
| Sep. 23, 2015 | NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED | 6328 |
| Sep. 23, 2015 | EXAMINERS AMENDMENT E-MAILED | 6328 |
| Sep. 23, 2015 | EXAMINERS AMENDMENT -WRITTEN | 91162 |
| Sep. 17, 2015 | ASSIGNED TO EXAMINER | 91162 |
| Jun. 11, 2015 | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | |
| Jun. 11, 2015 | NEW APPLICATION ENTERED IN TRAM | |

TM Staff and Location Information

TM Staff Information

TM Attorney: CUCCIAS, MATTHEW JAMES

Law Office Assigned:

LAW OFFICE 116

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location:

Nov. 02, 2015

Exhibit 3

Generated on:

This page was generated by TSDR on 2015-12-07 23:04:42 EST

Mark: WEMESH

WEMESH

US Serial Number: 86271330

Application Filing Date:

May 05, 2014

US Registration Number: 4757374

Registration Date:

Jun. 16, 2015

Register:

Principal

Mark Type:

Trademark

Status:

Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date:

Jun. 16, 2015

Publication Date: Sep. 23, 2014

Notice of Allowance Date:

Nov. 18, 2014

Mark Information

Mark Literal Elements:

WEMESH

Standard Character Claim:

Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type:

4 - STANDARD CHARACTER MARK

Related Properties Information

**International Registration
Number:**

1254981

**International
Application(s)
/Registration(s) Based on
this Property:**

A0047792/1254981

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For:

Downloadable mobile software applications for synchronizing multimedia content with audio and text communication; Computer software for synchronizing content between mobile devices

International Class(es): 009 - Primary Class

U.S Class(es):

021, 023, 026, 036, 038

Class Status:

ACTIVE

Basis:

1(a)

First Use: Jan. 10, 2015

Use in Commerce:

Jan. 10, 2015

Basis Information (Case Level)

| | | |
|---------------------------|-------------------------------|------------------------|
| Filed Use: No | Currently Use: Yes | Amended Use: No |
| Filed ITU: Yes | Currently ITU: No | Amended ITU: No |
| Filed 44D: No | Currently 44D: No | Amended 44D: No |
| Filed 44E: No | Currently 44E: No | Amended 44E: No |
| Filed 66A: No | Currently 66A: No | |
| Filed No Basis: No | Currently No Basis: No | |

Current Owner(s) Information

Owner Name:

WEMESH Inc.

Owner Address:

340 Brookview Court
Ancaster L9G4C2
CANADA

Legal Entity Type: CORPORATION

**State or Country Where
Organized:**

CANADA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Lorelei G. Graham

Docket Number:

55911262-3US

**Attorney Primary Email
Address:** lorelei.graham@nortonrosefulbright.com

**Attorney Email
Authorized:**

Yes

Correspondent

**Correspondent
Name/Address:**

LORELEI G. GRAHAM
NORTON ROSE FULBRIGHT CANADA LLP
RESEARCH PARK CENTRE, 150 RESEARCH LANE
SUITE 205
GUELPH N1G4T2
CANADA

Phone: 416-202-6739

Fax:

416-216-3930

Correspondent e-mail: lorelei.graham@nortonrosefulbright.com devon.pe.tenuzzo@nortonrosefulbright.com

**Correspondent e-mail
Authorized:**

Yes

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|--|-------------------|
| Jun. 16, 2015 | REGISTERED-PRINCIPAL REGISTER | |
| May 12, 2015 | NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED | |
| May 11, 2015 | ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED | |
| Apr. 17, 2015 | STATEMENT OF USE PROCESSING COMPLETE | 66530 |
| Mar. 12, 2015 | USE AMENDMENT FILED | 66530 |
| Apr. 14, 2015 | CASE ASSIGNED TO INTENT TO USE PARALEGAL | 66530 |
| Mar. 12, 2015 | TEAS STATEMENT OF USE RECEIVED | |
| Mar. 12, 2015 | TEAS CHANGE OF CORRESPONDENCE RECEIVED | |
| Nov. 18, 2014 | NOA E-MAILED - SOU REQUIRED FROM APPLICANT | |
| Sep. 23, 2014 | OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED | |
| Sep. 23, 2014 | PUBLISHED FOR OPPOSITION | |
| Sep. 03, 2014 | NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED | |
| Aug. 19, 2014 | APPROVED FOR PUB - PRINCIPAL REGISTER | |

Aug. 19, 2014 ASSIGNED TO EXAMINER
May 16, 2014 NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM

81853

TM Staff and Location Information

TM Staff Information - None
File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location:

May 11, 2015

EXHIBIT B

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: March 3, 2016

Cancellation No. 92062794

WeMash, Inc.

v.

WEMESH Inc.

**M. Catherine Faint,
Interlocutory Attorney:**

This case comes up on Respondent's motion (filed January 15, 2016) to suspend this proceeding pending final determination of Civil Action No. 2:15-cv-08719-JFW-JPR filed in the U.S. District Court for the Central District of California. Petitioner agrees that the civil action may have a bearing on this Board proceeding, but argues that only a sixty-day suspension is necessary because of a pending motion to dismiss in the civil action.

It is the policy of the Board to suspend proceedings when the parties are involved in a civil action, which may be dispositive of or have a bearing on the Board case. *See* Trademark Rule 2.117(a). 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. *Whopper-Burger, Inc. v. Burger*

King Corp., 171 USPQ 805, 807 (TTAB 1971). 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 La. Saints LLC v. Who Dat?*, 99 USPQ2d 1550, 1552 (TTAB 2011); Trademark Rule 2.117(a).

The Board considers a civil proceeding to have been finally determined when a decision on the merits of the case (i.e., a dispositive ruling that ends litigation on the merits) has been rendered, and no appeal has been filed, or all appeals filed have been decided. *See* TBMP § 510.02(b). Despite Petitioner's argument regarding the short time required to render a decision on the pending motion to dismiss, that may not be the end of the matter.

Accordingly, respondent's motion is granted and proceedings are suspended pending final disposition of the civil action.

Within twenty days after the final determination of the civil action, the parties shall so notify the Board so that this proceeding may be called up for appropriate action. Such notification to the Board should include a copy of any final order or final judgment which issued in the civil action.

During the suspension period, the parties must notify the Board of any address changes for the parties or their attorneys. In addition, the parties are to promptly inform the Board of any other related cases, even if they become aware of such cases during the suspension period. Upon resumption, if appropriate, the Board may consolidate related Board cases.

EXHIBIT C

1 Manatt, Phelps & Phillips, LLP
 SHARI MULROONEY WOLLMAN (Bar No. CA 137142)
 2 E-mail: SWollman@manatt.com
 JESSICA A. WOOD (Bar No. CA 269562)
 3 E-mail: JWood@manatt.com
 11355 West Olympic Boulevard
 4 Los Angeles, CA 90064-1614
 Telephone: (310) 312-4000
 5 Facsimile: (310) 312-4224

6 *Attorneys for Plaintiff*
 WeMash, Inc.

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 10 WESTERN DIVISION

12 WEMASH, INC., a Delaware
 13 corporation,

14 Plaintiff,

15 vs.

16 WEMESH INC., an Ontario, Canada
 corporation; and Michael Pazaratz, an
 17 individual,

18 Defendants.

No. 2:15-cv-08719-JFW (JPRx)

**FIRST AMENDED COMPLAINT
 FOR:**

1. FEDERAL UNFAIR
 COMPETITION AND FALSE
 DESIGNATION OF ORIGIN, 15
 U.S.C. § 1125(A)
2. FEDERAL CYBERSQUATTING,
 15 U.S.C. § 1125(d)
3. CANCELLATION OF FEDERAL
 TRADEMARK REGISTRATION,
 15 U.S.C. §§ 1119, 1052(d) AND
 1064
4. DECLARATORY JUDGMENT OF
 NO TRADEMARK
 INFRINGEMENT, 28 U.S.C. §§
 2201 AND 2202
5. CALIFORNIA STATUTORY
 UNFAIR COMPETITION, CAL.
 BUS. PROF. CODE §17200
6. CALIFORNIA COMMON LAW
 UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

1 Plaintiff WeMash, Inc. (“WeMash” or “Plaintiff”) states the following for its
2 First Amended Complaint against Defendants WeMesh Inc. (“WeMesh”) and
3 Michael Pazaratz (“Pazaratz”) (collectively, “Defendants”), upon actual knowledge
4 with respect to itself and its own acts, and information and belief as to other
5 matters.

6 **PARTIES**

7 1. Plaintiff WeMash is a Delaware corporation having a principal place of
8 business located at 312 Venice Way, Venice, California, 90291.

9 2. WeMash is informed and believes, and on that basis alleges that
10 Defendant WeMesh is an Ontario, Canada corporation having a principal place of
11 business located at 340 Brookview Court, Ancaster L9G4C2 Canada and/or 130
12 Weber Street West, #200, Kitchener, Ontario N2H Canada.

13 3. WeMash is informed and believes, and on that basis alleges that
14 Defendant Pazaratz is a citizen of Canada, who resides in Ontario, Canada.

15 **JURISDICTION AND VENUE**

16 4. This Complaint arises under the laws of the United States, specifically the
17 Declaratory Judgments Act, 28 U.S.C. §§2201 and 2202, and the trademark laws of
18 the United States, 15 U.S.C. §§ 1114 *et seq.* and 1125, and is based on the actual
19 justiciable controversy between WeMash and Defendant WeMesh. This Court has
20 original jurisdiction of this action under 15 U.S.C. §1121 and 28 U.S.C. §§ 1331
21 and 1338. This Court has supplemental jurisdiction under 28 U.S.C. § 1367
22 because the claims are so related as to form part of the same case or controversy.

23 5. This Court has personal jurisdiction over Defendants because Defendants
24 solicit, transact and do business in California and this District, and a substantial part
25 of the wrongful acts or omissions complained of occurred in this District.
26 Defendants purposefully directed their activities toward WeMash in this District
27 when they engaged in the acts complained of herein, and a substantial part of the
28 harm was felt in this District.

1 6. Venue is proper in the United States District Court for the Central District
2 of California under 28 U.S.C. §§ 1391(b) and (c).

3 **FACTUAL BACKGROUND**

4 **WeMash’s Proprietary Goods, Services and Intellectual Property**

5 7. WeMash is an innovative multimedia platform created by well-known
6 entrepreneur and multi-platinum composer, music producer, film producer, and
7 author Quincy Jones, III (son of legendary record producer, conductor, arranger,
8 composer, musician, television producer, film producer, instrumentalist, magazine
9 founder, entertainment company executive, and humanitarian Quincy Jones, Jr.).
10 Mr. Jones was very active in the entertainment and music industries starting in the
11 late 1980’s and continuing through the 1990’s, during which time he produced
12 music for some of the most famous artists of the day, including but not limited to:
13 Dr. Dre, Tupac Shakur, Ice Cube, Kanye West, Lionel Richie, Will.I.Am, and
14 Prince. Following the Internet “bubble” in the late 1990’s and early 2000’s that
15 popularized the Internet, Mr. Jones was inspired by music sampling and audio
16 mashups (*i.e.* recordings created by combining data from two or more different
17 sources), which had just begun to permeate the Internet. For example, one popular
18 music mashup website, WeMix, was founded in 2007, and was part of the
19 inspiration for the name WeMash. Mr. Jones saw an opportunity to translate the
20 audio mashup concept to the burgeoning online video space as well, and invented
21 the WeMash platform to respond to this demand.

22 8. Shortly thereafter, on May 21, 2008, WeMash acquired the
23 www.wemash.com domain name (the “WeMash Domain”). According to public
24 WhoIs records, the WeMash Domain was created on November 20, 2005. WeMash
25 has owned and operated the WeMash Domain since May 21, 2008, and uses the
26 domain to communicate with its customers, advertise its products and services, and
27 provide a WeMash blog showcasing WeMash mashup videos and more.

1 9. The WeMash platform is essentially a suite of entertainment-related
2 products and services (the “WeMash Goods/Services”). At the core of the WeMash
3 Goods/Services is one of the world’s premier collections of premium, high-quality
4 video content, which features rare and unique celebrity clips, rap, hip-hop, R&B,
5 and pop music footage, pop-culture phenomena, urban culture, and more (the
6 “WeMash Content”). As early as 2008, WeMash began developing the WeMash
7 Goods/Services, including but not limited to the WeMash Content. Since its
8 inception, and continuing to the present, the WeMash Goods/Services have
9 combined the premium WeMash Content with various related software and
10 application (“app”) development services, production services, and other
11 entertainment and technology products and services, which have evolved over time
12 in response to major technological developments over the last decade.

13 10. WeMash often utilizes the WeMash Content in connection with the
14 WeMash Goods/Services in a number of ways. For example, WeMash partners
15 with content owners, including but not limited to movie studios, news
16 organizations, sports entities, music labels/publishers, and documentarians, and
17 utilizes the best and latest frameworks and tools, to ensure that the WeMash
18 Goods/Services delivered to customers are of the highest quality and best value.

19 11. As part of the WeMash Goods/Services, since at least as early as 2010,
20 WeMash has created, developed, manufactured, promoted, provided, distributed,
21 and/or licensed the WeMash Content to celebrities, content producers, editors,
22 artists and developers, among others. As just one example, in 2010 WeMash used a
23 portion of the WeMash Content to create a repository which was distributed to
24 and/or accessed by celebrities, film producers, editors, and others who used the
25 WeMash Content in the repository to create audio/visual “mashup” videos. Some
26 of the resulting mashup videos were posted on social media websites such as
27 Vimeo and YouTube, and/or were used for other purposes.

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1 12. Further, since at least as early as 2013, WeMash has been actively
2 soliciting content owners in the entertainment industry to contribute additional
3 premium video and audio content to the WeMash Content. WeMash has also been
4 developing cutting-edge technology to provide users with the best tools to search,
5 identify, preview, access, and utilize the WeMash Content. During this period,
6 certain of the WeMash Content has been distributed to and/or accessed by
7 additional well-known content creators, producers, editors and others, and used to
8 create audio/visual mashup videos. As just one example, in April 2014, a popular
9 content creator accessed certain of the WeMash Content and used a video featuring
10 an interview with Grammy-award winning artist Kanye West (who has sold more
11 than 32 million albums and has over 100 million digital downloads, and has been
12 named as one of *Time* magazine's 100 most influential people in the world) to make
13 a video mashup. Some additional examples of mashup videos made using the
14 WeMash Content, which have been strategically rolled out to the public, may
15 currently be found online at <http://blog.wemash.com/>, and on popular social media
16 websites such as YouTube.

17 13. Among other WeMash Goods/Services, WeMash designs, creates,
18 develops, manufactures, promotes, provides, and/or distributes innovative software,
19 web-based platforms and apps related to multimedia, videos, entertainment, sports,
20 music, popular culture, and more. For example, WeMash is the creator, owner and
21 provider of an app that allows users to access premium video content, which can be
22 edited and integrated with text, graphics and other multimedia content for posting,
23 linking and sharing online and across various social media and communications
24 platforms (the "Wemes App"). The Wemes App supplies users with a collection of
25 video content from the WeMash Content, including but not limited to a variety of
26 celebrity interviews and performances featuring pop culture icons. Users can
27 customize video clips and other media using various tools provided via the Wemes
28 App to add text, audio recordings, graphics, and more. Users' resulting multimedia

1 projects, sometimes called video memes or mashups, can be posted on social
2 networks, transmitted directly to others via text message or email, and easily shared
3 in a variety of other ways. The Wemes App has been well-received by the public: it
4 currently has a rating of 4.5 out of 5 stars on Apple, Inc.'s ("Apple") App Store (*see*
5 [https://itunes.apple.com/us/app/wemes-create-share-video-](https://itunes.apple.com/us/app/wemes-create-share-video-memes/id1023485444?mt=8)
6 [memes/id1023485444?mt=8](https://itunes.apple.com/us/app/wemes-create-share-video-memes/id1023485444?mt=8)).

7 14. WeMash's Wemes App is available for download on, and has been
8 downloaded from at least Apple's App Store.

9 15. In addition, WeMash promotes, advertises and markets the Wemes App
10 on a variety of websites and social media networks nationwide, including but not
11 limited to Instagram, LinkedIn, Facebook, Twitter, and Vine. WeMash encourages
12 users to share their own video memes, mashups and other multimedia content
13 created with the Wemes App by using the hashtags #WEMES and #GotWEMES on
14 social media.

15 **WeMash's Selection and Use of Its Trademarks**

16 16. WeMash is the owner of trademarks which it uses in connection with the
17 WeMash Goods/Services and/or Wemes App including, but not limited to
18 WEMASH™, WEMES™ and WeMash's proprietary W & Design (crown)™ logo
19 (collectively, the "WEMASH Marks").

20 17. Since at least as early as 2009, and continuously to the present, WeMash
21 has used the distinctive WEMASH mark in connection with its business, including
22 but not limited to its innovative and high-quality WeMash Goods/Services.

23 18. By way of example and without limitation, beginning as early as 2009,
24 and continuously to the present, the principals of WeMash have actively engaged in
25 developing, advertising and marketing the WeMash Goods/Services in connection
26 with the WEMASH mark. For example, beginning at least as early as 2009, and
27 continuously to the present, the WeMash principals met with third-party investors,
28 premium content owners, well-known content creators, producers, developers,

1 celebrities, artists, advertising agencies, well-known consumer product brands,
2 high-level executives at movie studios, and others in the entertainment industry, to
3 promote, develop and/or distribute WeMash Goods/Services that are marketed,
4 offered and/or distributed under the WEMASH mark. These extensive contacts
5 created an association between the WEMASH mark and the WeMash
6 Goods/Services in the minds of an appropriate segment of the entertainment
7 industry and the relevant consumer market for the WeMash Goods/Services.

8 19. Further, prior to May 2014, WeMash was in contact regarding
9 exploitation and use of the WeMash Goods/Services with individuals and entities
10 that were located in, operating from, and/or headquartered in some of the largest
11 entertainment markets in the world, including Los Angeles, New York, San
12 Francisco, Chicago, Nashville, the United Kingdom, and Spain. Since that time,
13 the WeMash Goods/Services have expanded their reach to Sweden, other locations
14 in the United States, and elsewhere, including Australia, France and Japan. As a
15 result of these contacts, WeMash's WEMASH Marks have achieved market
16 penetration within an appropriate segment of the entertainment industry in the
17 relevant markets, including the United States.

18 20. From early 2009 and continuing to the present, WeMash has continued to
19 expand the products and services offered under the WEMASH Marks, expanding
20 its portfolio to include, without limitation, various entertainment services, videos
21 and information in the fields of music, sports and entertainment over the Internet,
22 and via apps and other distribution platforms.

23 21. In addition, WeMash has continued to expand its family of WEMASH
24 Marks used on or in connection with WeMash Goods/Services by creating and
25 using a family of marks derived from its WEMASH mark, including but not limited
26 to WEMES and the W & Design (crown) logo. By way of example and without
27 limitation, WeMash uses its WEMES and/or W & Design (crown) marks in
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1 connection with WeMash’s proprietary Wemes App, as well as related goods and
 2 services.

3 22. By virtue of WeMash’s longstanding, prominent and continuous use, as
 4 well as the extensive promotion and advertising of the WEMASH Marks, the
 5 WEMASH Marks have come to be recognized by the relevant public as identifying
 6 the WeMash Goods/Services and WeMash, and have become strong and distinctive
 7 in the United States within the meaning of the Lanham Act. Further, WeMash also
 8 has developed valuable goodwill in the WEMASH Marks.

9 23. Moreover, favorable public acceptance and recognition has further
 10 established that WeMash’s WEMASH Marks have become assets of substantial
 11 value to WeMash, and symbols of the high-quality and associated goodwill of the
 12 WeMash Goods/Services.

13 24. In addition to the common law rights that WeMash has acquired in and to
 14 WeMash’s WEMASH Marks due to its longstanding, continuous and extensive use
 15 of those marks, WeMash is also the owner of two (2) pending federal trademark
 16 applications for its WEMASH and WEMES marks. Printouts from the United
 17 States Patent and Trademark Office (“USPTO”) website evidencing these
 18 applications are attached as Exhibits 1 and 2, respectively, the particulars of which
 19 are summarized below:

| Mark and Application No. | Filing Date | Goods/Services |
|-----------------------------------|------------------------|--|
| WEMASH App. No. 86/320,744 | Filed June 25, 2014 | Class 41: Entertainment services, namely, providing webcasts and online videos in the field of music, sports and entertainment; Providing a website featuring information in the field of music, sports and entertainment; Entertainment services, namely, providing information about music, sports and entertainment via an online network (the “WEMASH Application”). |

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| Mark and Application No. | Filing Date | Goods/Services |
|---|-------------------------------|---|
| <p>WEMES App. No. 86/654,939</p> | <p>Filed June 8, 2015</p> | <p>Class 9: Software and downloadable software to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content for posting, linking and sharing through electronic messaging and transmission via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Software and downloadable software to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content that can be stored on and accessed from cloud based systems or remote network servers via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Downloadable software for the integration of text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content into an interactive delivery for multimedia applications; Software and downloadable software for mobile phones, tablet computers, mobile telecommunications devices, mobile digital devices, portable devices, personal communications devices, portable media players, handheld computers and handheld electronic devices, to send and receive electronic messages, text, graphics, images, photos, moving pictures, music, audio, video, audio-video materials and other multimedia content via global communication networks, portable and wireless networks, and various platforms across multiple forms of media;</p> |

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| Mark and Application No. | Filing Date | Goods/Services |
|--------------------------|-------------|---|
| | | <p>Class 41: Providing an online non-downloadable searchable database of text, graphics, still images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content in the fields of celebrities, news, film, politics, television, political events and affairs, sports, music, history, drama, nature and wildlife, fashion, artistic performances, beauty, science fiction and fantasy for embedding digital content into websites, social media, electronic communications, downloadable and non-downloadable digital content, electronic downloadable publications, and other digital media and design elements of others; and</p> <p>Class 42: Providing online non-downloadable software, applications and tools to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content for posting, linking and sharing through electronic messaging and transmission via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Providing online non-downloadable software, applications and tools to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content that can be stored on and accessed from cloud based systems or remote network servers via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Providing online non-downloadable software for the integration of text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content into an interactive delivery for multimedia applications” (the “WEMES Application”).</p> |
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Defendants’ Wrongful and Infringing Conduct

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2 25. WeMash is informed and believes, and on that basis alleges that
3 Defendant Pazaratz is one of the co-founders of Defendant WeMesh.

4 26. WeMash is informed and believes, and on that basis alleges that
5 Defendant WeMesh creates, develops, manufactures, markets, distributes, displays,
6 uses and/or sells multimedia and entertainment software and/or apps for the Apple
7 iPhone and/or iPad, and other platforms, including but not limited to its WeMesh
8 App (the “WeMesh App”) that allows users to synchronize their mobile devices in
9 order to watch videos together, while simultaneously communicating with each
10 other either via text messaging or VoIP (the “WeMesh Goods”).

11 27. WeMash is informed and believes, and on that basis alleges that
12 Defendant WeMesh markets, distributes and/or sells the WeMesh App at least
13 through Apple’s App Store and on Google Play.

14 28. WeMash is informed and believes, and on that basis alleges that
15 Defendant WeMesh advertises the WeMesh App for distribution in California and
16 nationwide.

17 29. WeMash is informed and believes, and on that basis alleges that the
18 WeMesh App is accessible by consumers in California, and that Defendant
19 WeMesh has distributed and/or offered to distribute the WeMesh App in California
20 and nationwide.

21 30. WeMash is informed and believes, and on that basis alleges that
22 Defendant WeMesh executed an “Apple Developer Agreement” with Apple,
23 subjecting itself to the laws of the State of California and to personal jurisdiction
24 and venue in California.

25 31. WeMash is informed and believes, and on that basis alleges that
26 Defendant WeMesh executed an “Google Play Developer Distribution Agreement”
27 with Google Inc. (“Google”), subjecting itself to the laws of the State of California
28 and to personal jurisdiction and venue in California.

1 32. In addition, WeMash is informed and believes, and on that basis alleges
2 that according to public WhoIs records, Defendant Pazaratz and Defendant
3 WeMesh, and each of them, are identified as the “owner” of the domain name
4 weme.sh, and the “owner” address identified is 250 Pall Mall, London Ontario,
5 Canada, which is believed to be Defendant Pazaratz’s personal address (“Defendant
6 Pazaratz’s Address”). WeMash is informed and believes, and on that basis alleges
7 that Defendants, and each of them, own and operate the website at <http://weme.sh>,
8 where Defendants market, distribute and/or sell the WeMesh Goods nationwide, in
9 this District, and to California residents. WeMash is further informed and believes,
10 and on that basis alleges that the domains www.wemesh.com, www.wemesh.me
11 and www.wemesh.video automatically redirect to <http://weme.sh>.

12 33. WeMash is further informed and believes, and on that basis alleges that
13 public WhoIs records for www.wemesh.com, www.wemesh.co, and
14 www.wemesh.video, and each of them, identify Defendant Pazaratz as the
15 Registrant, list Defendant Pazaratz’s Address, and identify MikePaz@gmail.com as
16 the “Registrant Email.”

17 34. WeMash is further informed and believes, and on that basis alleges that
18 public WhoIs records for www.wemesh.me and www.wemesh.tv, and each of
19 them, identify Defendant Pazaratz as the “Registrant Name,” and Defendant
20 WeMesh as the “Registrant Organization.”

21 35. WeMash is further informed and believes, and on that basis alleges that
22 in an October 16, 2015 correspondence to Plaintiff WeMash (“WeMesh Demand
23 Letter”), Defendant WeMesh’s counsel represented that “the following domain
24 names are also owned by WeMesh, all of which feature WEMESH as the primary
25 brand: www.wemesh.com; www.wemesh.ca; www.wemesh.me; www.wemesh.tv;
26 www.wemesh.co; www.wemesh.video; weme.sh; and mesh.video.”

1 36. WeMash is further informed and believes, and on that basis alleges that
2 the above domain names contain the word “WeMesh,” which is confusingly similar
3 to the WEMASH Marks.

4 37. WeMash is further informed and believes, and on that basis alleges that
5 Defendant WeMesh and/or Defendant Pazaratz registered and/or used the domains
6 www.weme.sh, www.wemesh.me, www.wemesh.tv, www.wemesh.co,
7 www.wemesh.video and www.wemesh.ca as described herein in order to divert the
8 attention of web users who are interested in Plaintiff WeMash, and drive traffic to
9 Defendants’ own site, which Defendants use to market, distribute and/or sell the
10 WeMesh Goods, by creating a likelihood of confusion as to the source,
11 sponsorship, affiliation, or endorsement of Defendants’ site;

12 38. WeMash is further informed and believes, and on that basis alleges that
13 Defendant WeMesh also markets, distributes and/or sells the WeMesh Goods
14 and/or related services nationwide, and to California residents, on a variety of
15 websites and social media networks, including but not limited to several popular
16 national websites run by California based companies such as Facebook (*see, e.g.*
17 <https://www.facebook.com/WeMeshInc>), Twitter (*see, e.g.*
18 <https://twitter.com/WeMesh>), Pinterest (*see, e.g.*
19 <https://www.pinterest.com/wemesh/>), Instagram (*see, e.g.*
20 <https://instagram.com/WeMesh/>), LinkedIn (*see, e.g.*
21 <https://www.linkedin.com/company/wemesh>) and YouTube (*see, e.g.*
22 https://www.youtube.com/channel/UChA-gNp_xl4Ni-vEnuK8dw). In addition,
23 WeMash is informed and believes, and on that basis alleges that Defendant
24 WeMesh encourages Internet users to follow Defendant WeMesh on Twitter using
25 the handle “@WeMeshInc”.

26 39. WeMash is informed and believes, and on that basis alleges that
27 promotional materials for the WeMesh App appear to feature, promote, affiliate
28 and/or incorporate entertainment content and music videos featuring artists and

1 musicians who live, work or own homes in the greater Los Angeles area in this
2 District, including but not limited to Kanye West (Hidden Hills, California), Daft
3 Punk (Beverly Hills, California), Ariana Grande (Hollywood, California), and Katy
4 Perry (Hollywood, California), just to name a few. *See, e.g.*

5 <https://www.youtube.com/watch?v=MYHnv7Eluow>.

6 40. WeMash is further informed and believes, and on that basis alleges that
7 the WeMesh App features popular music videos and other celebrity entertainment
8 content focusing on the California-centered celebrity and entertainment industries.

9 41. WeMash is further informed and believes, and on that basis alleges that
10 Defendant Pazaratz specifically promotes that the WeMesh App is used to view “a
11 lot of 90s music,” listen to songs by “Kanye West,” and watch videos on YouTube
12 (see [http://news.slashdot.org/story/15/02/18/2054258/watch-videos-in-synch-with-](http://news.slashdot.org/story/15/02/18/2054258/watch-videos-in-synch-with-fellow-ios-users-video?continuous_video=1)
13 [fellow-ios-users-video?continuous_video=1](http://news.slashdot.org/story/15/02/18/2054258/watch-videos-in-synch-with-fellow-ios-users-video?continuous_video=1)).

14 42. WeMash is informed and believes, and on that basis alleges that WeMash
15 and Defendant Pazaratz traveled to California to in or around September 2015 to
16 market, promote and/or distribute the WeMesh App. WeMash is further informed
17 and believes, and on that basis alleges that during this trip to California, Defendant
18 WeMesh, including specifically Defendant Pazaratz, met with Los Angeles-based
19 entrepreneur, photographer, videographer, and social media pioneer, Joe Venuto,
20 who created a promotional video for WeMesh featuring Defendant Pazaratz and the
21 WeMesh App, which can be viewed on YouTube at
22 <https://www.youtube.com/watch?v=td-dV8gUvfo>.

23 **Defendant WeMesh Does Not Own A Valid Trademark**

24 43. WeMash is informed and believes, and on that basis alleges that on or
25 about May 5, 2014, over four years after WeMash’s first use of any of the
26 WEMASH Mark(s), Defendant WeMesh filed an intent-to-use application with the
27 USPTO for WEMESH, Application No. 86/271,330 (the “WEMESH
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1 Application”), for the same or related goods/and or services already offered by
2 WeMash.

3 44. According to the USPTO records, Defendant WeMesh filed a statement
4 of use with respect to the WEMESH Application on or about March 12, 2015,
5 alleging a first use date of January 10, 2015, and U.S. Trademark Registration No.
6 4,757,374 was issued on June 16, 2015 (the “WEMESH Registration”), as follows:
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| Mark, Application No. & Registration No. | Filing Date | Goods/Services & Alleged First Use Date |
|---|---|--|
| WEMESH App. No. 86/271,330 Reg. No. 4,757,374 | Filed May 5, 2014 Registered June 16, 2015 | Class 9: Downloadable mobile software applications for synchronizing multimedia content with audio and text communication; Computer software for synchronizing content between mobile devices First use: January 10, 2015 |

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15 45. The goods that Defendant WeMesh intended to provide, and/or has
16 provided under the WEMESH mark, including but not limited to those goods listed
17 in the WEMESH Registration, appear to be commercially related to, confusingly
18 similar to, and compete with the goods and services already offered by WeMash
19 under the WEMASH Marks. In addition, it appears that the goods that Defendant
20 WeMesh intended to provide, and/or has provided under the WEMESH mark,
21 including but not limited to those goods listed in the WEMESH Registration are, or
22 potentially will be, offered broadly to the same class of consumers as the consumers
23 of WeMash’s Goods/Services under the WEMASH Marks, through the same and/or
24 overlapping channels of trade.

25 46. Further, Defendant WeMesh’s WEMESH mark is confusingly similar to
26 WeMash’s WEMASH and WEMES marks. First, WeMash’s WEMASH Mark
27 only differs from WEMESH by one letter, namely the letter “A” is replaced by an
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1 “E.” Likewise, WeMash’s WEMES mark only differs from WEMESH by one
2 letter, namely the “H.” Not only are “WEMASH” and “WEMES” completely
3 arbitrary as applied to the WeMash Goods/Services, but “WEMASH” and
4 “WEMES” are fanciful words, entitled to the strongest and most broad protection.

5 47. Defendant WeMesh is not licensed or authorized in any way to use the
6 WEMASH Marks, its WEMESH mark, or any colorable imitations thereof, in
7 connection with the manufacture, marketing, distribution, display and/or sale of
8 multimedia and/or entertainment software and/or apps, or otherwise.

9 48. WeMash has been using its WEMASH mark in connection with the
10 WeMash Goods/Services since at least 2009, well before Defendant WeMesh’s
11 alleged first use date of January 10, 2015 for WEMESH. WeMash has been using
12 its WEMASH mark in commerce in connection with certain of the WeMash
13 Goods/Services since at least 2010, which predates the filing of Defendant
14 WeMash’s WEMESH Application, and is well before Defendant WeMesh’s alleged
15 first use date of January 10, 2015 for WEMESH.

16 49. On December 8, 2015, WeMash filed a Petition to Cancel the WEMESH
17 Registration with the United States Patent and Trademark Office .

18 50. Defendant WeMesh’s marketing, distribution and/or sale of products
19 bearing colorable imitations of the WeMash Marks used on and in connection with
20 the WeMash Goods/Services, is likely to deceive, confuse and mislead consumers
21 and prospective consumers into believing that the WeMesh Goods distributed by
22 Defendant WeMesh are manufactured by, authorized by, or in some manner
23 associated with WeMash, when they are not. The likelihood of confusion, mistake
24 and deception engendered by Defendant WeMesh’s misappropriation of WeMash’s
25 trademarks is causing irreparable harm to the goodwill symbolized by these marks
26 and the reputation for quality that they embody, in California and in this District.
27 On information and belief, Defendant WeMesh continues to market, distribute
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1 and/or sell WeMesh Goods that compete with the multimedia and/or entertainment
2 software and/or apps created, manufactured and distributed by WeMesh.

3 51. WeMesh is informed and believes, and on that basis alleges that
4 Defendant WeMesh willfully, intentionally and maliciously adopted and used
5 colorable imitations of WeMesh's WEMASH Marks, in connection with its
6 WeMesh Goods, that are likely to cause confusion.

7 52. WeMesh is informed and believes, and on that basis alleges that
8 Defendant WeMesh and Defendant Pazaratz are and were aware of WeMesh's
9 business activities in California and this District in the music, entertainment,
10 multimedia and technology industries.

11 **Defendant WeMesh's False Accusations to Social Media Providers**

12 53. WeMesh is informed and believes, and on that basis alleges that on or
13 about October 16, 2015 Defendant WeMesh caused the WeMesh Demand Letter to
14 be hand-delivered to a former address for Plaintiff WeMesh in Studio City,
15 California, demanding that Plaintiff WeMesh "change its branding," abandon the
16 WEMASH Application and WEMES Application and "immediately cease and
17 desist from using these trademarks." WeMesh did not receive this WeMesh
18 Demand Letter at the time, as it was sent to its former address.

19 54. On or about October 16, 2015, WeMesh received notice from Instagram,
20 Report No. 414553342088713, that WeMesh's Instagram page, @wemesapp, was
21 removed or access was disabled thereto, based on a complaint by Defendant
22 WeMesh that @wemesapp allegedly infringed its trademark rights in the
23 WEMESH mark ("the Instagram Complaint").

24 55. On or about October 14, 2015 WeMesh received notice from Apple,
25 Reference No. APP52056 ("the Apple Complaint"), that Defendant WeMesh had
26 requested that "the Wemes app owned by WeMesh, Inc. be removed from the
27 Apple App store," based on allegations that "WeMesh's use of the WeMesh and
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1 Wemes marks is infringing upon WeMesh Inc.’s trademark rights.” Further, in the
2 Apple Complaint, counsel for Defendant WeMesh admitted that “[g]iven the
3 similarity in the marks themselves, the use of the marks, and the types of services
4 offered through the parties’ respective applications, there is significant confusion as
5 to the source and origin of the services that WeMesh Inc. provides,” and that “the
6 names of the apps are confusing.”

7 56. On October 16, 2015 WeMash received notification from LinkedIn, Case
8 No. 151016-005735 (“the LinkedIn Complaint”), requesting that WeMash
9 “immediately remove the infringing content, identified as: the trademark WeMash,”
10 from its LinkedIn webpage. While the LinkedIn Complaint did not provide any
11 information regarding the complainant or the basis for the LinkedIn Complaint,
12 WeMash is informed and believes, and on that basis alleges that the LinkedIn
13 Complaint was filed by Defendant WeMesh with respect to its alleged rights in the
14 mark WEMESH.

15 57. WeMash is informed and believes, and on that basis alleges that
16 Defendant WeMesh had no good faith basis for filing the Instagram Complaint,
17 Apple Complaint and/or LinkedIn Complaint. Instead, WeMash is informed and
18 believes, and on that basis alleges that Defendant WeMesh’s Instagram Complaint,
19 Apple Complaint and/or LinkedIn Complaint are based on unfounded accusations
20 aimed at wrongfully interfering with WeMash’s use of its WEMASH Marks,
21 disrupting WeMash’s business and reputation, and the Instagram Complaint, Apple
22 Complaint and/or LinkedIn Complaint were calculated to harm, and have in fact
23 harmed WeMash’s business interests, including but not limited to its ability to
24 advertise its Wemes App.

25 58. On or about October 20, 2015, WeMash’s counsel responded to
26 Instagram, Apple and LinkedIn, informing each of them that WeMash is the
27 exclusive owner of the WEMASH Marks.
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1 59. On or about October 21, 2015, Instagram notified counsel for WeMash
2 that “Based on the information you’ve provided, we’ve restored the content that
3 was removed.”

4 60. In addition, WeMash’s counsel sent a letter to counsel for Defendant
5 WeMesh on or about October 20, 2015, asserting that WeMash is the exclusive
6 owner of rights in and to the WEMASH Marks, and that Defendant WeMesh’s
7 actions in filing the Instagram Complaint, Apple Complaint and LinkedIn
8 Complaint were calculated to harm, and have in fact harmed WeMash’s business
9 interests, including but not limited to its ability to advertise its Wemes App.

10 61. On or about October 27, 2015, WeMash’s counsel received a notification
11 from Apple that the Apple Complaint remains unresolved. To date, the LinkedIn
12 Complaint remains unresolved.

13 62. WeMash is informed and believes, and on that basis alleges that
14 Defendant WeMesh targeted Plaintiff WeMash in California by delivering the
15 WeMesh Demand Letter to Studio City, California, and selecting three California
16 companies with which to lodge its complaints: (a) Instagram Complaint (Instagram
17 is headquartered in Menlo Park, California); (b) Apple Complaint (Apple is
18 headquartered in Cupertino, California); and (c) LinkedIn Complaint (LinkedIn is
19 headquartered in Mountain View, California).

20 **FIRST CLAIM FOR RELIEF**

21 **(Federal Unfair Competition and False Designation of Origin,**

22 **15 U.S.C. § 1125(a))**

23 **(As to Defendant WeMesh)**

24 63. WeMash hereby realleges and incorporates each and every allegation
25 contained in the above paragraphs, by reference as though fully set forth herein.

26 64. WeMash owns the common law trademarks WEMASH and WEMES,
27 which are valid and subsisting, as well as the WEMASH Application and the
28 WEMES Application (together, “the Applications”). WeMash’s WEMASH and

1 WEMES marks are inherently distinctive and are uniquely associated with WeMash
2 in the minds of consumers.

3 65. Defendant WeMesh’s use, distribution, offer for sale and/or sale of
4 colorable imitations of WeMash’s WEMASH and WEMES marks, as described in
5 this Complaint, including but not limited to in connection with the
6 www.wemesh.com domain name, has caused and is likely to cause confusion,
7 deception, and mistake by creating the false and misleading impression that the
8 WeMesh Goods are manufactured or distributed by WeMash, that Defendant
9 WeMesh is affiliated, connected, or associated with WeMash, and/or that WeMash
10 has sponsored, endorsed or approved of Defendant WeMesh.

11 66. Defendant WeMesh has made false representations, false descriptions,
12 and/or false designations of WeMash’s goods in violation of 15 U.S.C. § 1125(a).
13 WeMash is informed and believes, and on that basis alleges that Defendant
14 WeMesh’s activities have caused and, unless enjoined by this Court, will continue
15 to cause a likelihood of confusion and deception of members of the trade and
16 public, as well as injury to WeMash’s goodwill and reputation as symbolized by the
17 WEMASH and WEMES common law trademarks, for which WeMash has no
18 adequate remedy at law.

19 67. Defendant WeMesh’s actions demonstrate an intentional, willful and
20 malicious intent to trade on the goodwill associated with WeMash’s WEMASH and
21 WEMES marks, to the great and irreparable injury of WeMash.

22 68. Defendant WeMesh’s conduct has caused, and is likely to continue
23 causing, substantial injury to the public and to WeMash. WeMash is entitled to
24 injunctive relief and to recover Defendant WeMesh’s profits, actual damages,
25 enhanced profits and damages, costs and reasonable attorneys’ fees under 15 U.S.C.
26 §§ 1125(a), 1116 and 1117.

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SECOND CLAIM FOR RELIEF
(Cybersquatting, 15 U.S.C. § 1125(d))
(As to All Defendants)

69. WeMash hereby realleges and incorporates each and every allegation contained in the above paragraphs by reference as though fully set forth herein.

70. WeMash’s WEMASH mark was distinctive at the time Defendant WeMesh and/or Defendant Pazaratz registered, trafficked in and/or used the www.weme.sh, www.wemesh.me, www.wemesh.tv, www.wemesh.co, www.wemesh.video and www.wemesh.ca domains (the “WeMesh Domains”) as described herein. The WeMesh Domains presently used and/or controlled by Defendant WeMesh and/or Defendant Pazaratz, as described herein, incorporate a colorable imitation of WeMash’s WEMASH mark.

71. WeMash is informed and believes, and on that basis alleges that Defendant WeMesh and/or Defendant Pazaratz registered, trafficked in and/or used the WeMesh Domains as described herein with a bad faith intent to profit from the WEMASH mark.

72. Defendants’ cyberpiracy has caused and, unless and until enjoined and restrained by order of this Court, threatens to and will continue to cause great and irreparable harm to WeMash.

73. WeMash has no adequate remedy at law, and it is entitled to injunctive relief cancelling the WeMesh Domains.

74. As a direct and proximate result of Defendants’ wrongful actions as described herein, WeMash has been damaged in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Cancellation of Federal Trademark Registration,
15 U.S.C. §§ 1119, 1052(d) and 1064)
(As to Defendant WeMesh)

75. WeMash hereby realleges and incorporates each and every allegation contained in the above paragraphs by reference as though fully set forth herein.

1 81. Defendant WeMesh maintains that WeMash's use of its WEMASH
2 and/or WEMES marks infringes trademarks or other intellectual property rights
3 owned by Defendant WeMesh.

4 82. Accordingly, there exists an immediate, real and substantial controversy
5 as to whether WeMash's use of the WEMASH Marks infringes trademarks or other
6 intellectual property rights owned by Defendant WeMesh.

7 83. WeMash has a reasonable apprehension of suit because Defendant
8 WeMesh sent letters accusing WeMash of infringement of the WEMESH and/or W
9 & Design (ribbon) marks to WeMash and to social media providers and/or other
10 internet service providers which asserted false and/or misleading statements that
11 WeMash is allegedly infringing the trademark rights of Defendant WeMesh.

12 84. WeMash denies that Defendant WeMesh has any rights in or to the
13 WEMESH mark, and denies that any rights in the WEMESH mark and/or W &
14 Design (ribbon) are infringed.

15 85. Pursuant to 28 U.S.C. §§2201 and 2202, WeMash seeks a declaratory
16 judgment that WeMash has not and does not infringe the trademarks or other
17 intellectual property rights owned by Defendant WeMesh either directly,
18 contributorily or by inducement.

19 **FIFTH CLAIM FOR RELIEF**
20 **(Statutory Unfair Competition, Cal. Bus. Prof. Code § 17200)**
21 **(As to All Defendants)**

22 86. WeMash hereby realleges and incorporates each and every allegation
23 contained in the above paragraphs by reference as though fully set forth herein.

24 87. Defendants' acts and practices, as alleged above, constitute unfair
25 competition in violation of Cal. Bus. & Prof. Code § 17200.

26 88. For example, WeMash is informed and believes, and on that basis alleges
27 that by virtue of the misconduct described herein, including but not limited to
28 contacting social media providers or other internet service providers and asserting

1 false and/or misleading statements that WeMash is infringing the trademark rights
2 of Defendant WeMesh, when such is not true in fact, Defendant WeMesh has
3 engaged in unlawful, unfair and/or fraudulent business acts and practices in
4 violation of Cal. Bus. & Prof. Code §17200

5 89. WeMash is further informed and believes, and on that basis alleges that
6 Defendants engaged in the misconduct described herein, including but not limited
7 to marketing, distributing and/or selling products bearing colorable imitations of the
8 WeMash Marks and acquiring and/or registering www.wemesh.com and/or the
9 WeMesh Domains in order to purposefully trade off the goodwill and reputation of
10 WeMash and to confuse and deceive consumers by creating the false and
11 misleading impression that Defendant WeMesh's products are manufactured,
12 produced, distributed, endorsed, sponsored, approved and/or licensed by WeMash,
13 or are associated or connected with WeMash.

14 90. WeMash is informed and believes, and on that basis alleges Defendants
15 performed the acts alleged herein for the purpose of injuring WeMash. The acts
16 alleged herein continue to this day and present a threat to WeMash, the general
17 public, the trade and consumers.

18 91. As a result of Defendants' wrongful acts, WeMash has suffered and will
19 continue to suffer loss of income, profits and valuable business opportunities and if
20 not preliminarily and permanently enjoined, Defendants will have unfairly derived
21 and will continue to unfairly derive income, profits and business opportunities as a
22 result of their wrongful acts.

23 92. Pursuant to Cal. Bus. & Prof. Code § 17200, WeMash seeks an order of
24 this Court preliminarily and permanently enjoining Defendants from continuing to
25 engage in the unlawful, unfair or fraudulent acts or practices set forth herein, as
26 well as restitution and/or disgorgement of any monies received by Defendants
27 through such acts or practices.

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SIXTH CLAIM FOR RELIEF
(Unfair Competition Under California Common Law)
(As to All Defendants)

93. WeMash hereby realleges and incorporates each and every allegation contained in the above paragraphs by reference as though fully set forth herein.

94. WeMash is informed and believes, and on that basis alleges that Defendants intended to use WeMash’s WEMASH and/or WEMES marks, or colorable imitations thereof, in a manner which is likely to confuse and mislead members of the relevant public as to the origin, sponsorship, approval or license of Defendant WeMesh’s products and as to the false association of WeMesh with WeMash. WeMash is informed and believes, and on that basis alleges that Defendants’ conduct as alleged herein was intended to confuse and mislead members of the public, and members of the public will believe that WeMash sponsored, approved or is affiliated with Defendant WeMesh and that WeMash originated, approved or licensed Defendant WeMesh’s products and/or services.

95. Defendants’ conduct alleged herein infringes WeMash’s WEMASH and WEMES trademark rights and constitutes passing off and common law unfair competition with WeMash, all of which has damaged and will continue to irreparably damage WeMash’s goodwill and reputation unless restrained by this Court. WeMash has no adequate remedy at law.

96. WeMash is informed and believes, and on that basis alleges that WeMash has suffered and continues to suffer direct and actual damages as a result of Defendants’ conduct, including but not limited to lost sales and business opportunities and damage to WeMash’s reputation and the WEMASH and WEMES marks. WeMash is entitled to recover its actual damages as well as Defendants’ profits generated from the promotion, distribution, sale and offer for sale of Defendant WeMesh’s products that bear WeMash’s WEMASH and/or WEMES marks, or colorable imitations thereof.

1 97. Because Defendants' conduct alleged herein has been intentional,
2 oppressive, malicious, fraudulent and in willful disregard of WeMash's rights,
3 WeMash is also entitled to recover punitive and exemplary damages.

4 98. WeMash has suffered, and if Defendants are not enjoined from their
5 wrongful acts of common law trademark infringement, passing off and unfair
6 competition, will continue to suffer great and irreparable injury, loss and damage to
7 its rights in and to its WEMASH and WEMES marks and the goodwill associated
8 therewith for which it has no adequate remedy at law.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, WeMash prays as follows:

11 1. Cancellation of U.S. Trademark Registration No. 4,757,374 for the mark
12 WEMESH pursuant to 15 U.S.C. § 1119;

13 2. For a declaration that:

- 14 a. Defendant WeMesh does not own valid trademark rights in the
15 WEMESH mark;
- 16 b. WeMash does not infringe and has not infringed any trademark or
17 other intellectual property allegedly owned by Defendant WeMesh
18 either directly, contributorily or by inducement; and
- 19 c. Defendants have engaged in cyberpiracy in violation of 15 USC
20 §1125(d) and the WeMesh Domains should be ordered cancelled;

21 3. Defendant WeMesh and all of its respective agents, officers, employees,
22 representatives, successors, assigns, attorneys, and all other persons acting for,
23 with, by, through or under authority from Defendant WeMesh, and all those in
24 active concert or participation with them, and each of them, be enjoined
25 preliminarily and permanently, from directly or indirectly infringing WeMash's
26 trademarks in any manner including but not limited to:

- 27 a. Making statements to social media and/or other internet service
28 providers regarding any of the WEMASH Marks or any variation

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- thereof and/or any of the WeMash Goods/Services;
- b. Using, displaying, advertising, promoting, registering, transferring, or assigning, including on or in connection with any goods or services, including but not limited to the WeMesh App, WeMesh Goods, services, promotional items, domain names and web sites, the WEMASH, WEMES and/or W & Design (crown) marks, the WEMESH Mark, or any colorable imitations thereof;
- c. Using, offering for sale, or selling, any trademark, logo, design, or source designation of any kind on or in connection with Defendant WeMesh’s goods and/or services that is likely to cause confusion, mistake, deception, or public misunderstanding that such goods are produced or provided by WeMash, are sponsored or authorized by WeMash, or are in any way connected or related to WeMash;
- d. Using, offering for sale, or selling, any trademark, logo, design, or source designation of any kind on or in connection with Defendant WeMesh’s goods that dilutes or is likely to dilute the distinctiveness of the trademarks or logos of WeMash;
- e. Passing off, palming off, or assisting in passing off or palming off Defendant WeMesh’s goods as those of WeMash, or otherwise continuing any and all acts of unfair competition as alleged in this Complaint;
- f. Engaging in acts of Federal or California statutory or common law trademark infringement, passing off or unfair competition that would damage or injure WeMash and/or the WEMASH Marks, logos, proprietary designs and/or other intellectual property.

3. Defendant WeMesh be ordered to cease offering for sale, marketing, promoting, and selling, to remove from stores and websites all products bearing Defendant WeMesh’s WEMESH mark, or any other colorable imitation, which are

1 in Defendant WeMesh's possession or have been supplied by Defendant WeMesh
2 or under its authority, to any store or customer, including, but not limited to, any
3 wholesaler, distributor, distribution center, retail store, consignor, or marketer, and
4 also to deliver to each such store or customer a copy of this Court's order as it
5 relates to said injunctive relief against Defendant WeMesh;

6 4. Defendant WeMesh be ordered to deliver up for impoundment and for
7 destruction, all games, apps, bags, boxes, labels, tags, signs, packages, advertising,
8 sample books, promotional material, stationary, software, source code or other
9 materials in the possession, custody, or under the control of Defendant WeMesh
10 and/or Defendant WeMesh' downstream distributors, bearing the WEMESH mark;

11 5. Defendant WeMesh be compelled to account to WeMesh for any and
12 all profits derived by Defendant WeMesh from the sale or distribution of infringing
13 goods as described in this Complaint;

14 6. That WeMesh be awarded restitution of any money or property
15 resulting from Defendant WeMesh's unfair and/or illegal acts as described in this
16 Complaint;

17 7. That the Court find Defendant WeMesh's acts of trademark
18 infringement and unfair competition to be knowing and willful, and exceptional
19 within the meaning of 15 U.S.C. §1117;

20 8. That, as to all claims, WeMesh be awarded damages, including its
21 actual damages, Defendant WeMesh and/or Defendant Pazaratz's profits, treble and
22 punitive damages, pre- and post-judgment interest, enhanced damages and costs, as
23 well as its attorneys' fees and costs, in an amount to be ascertained pursuant to
24 applicable laws, including, without limitation, 15 U.S.C. §1117, California law and
25 the common law;

26 9. That, pursuant to 15 U.S.C. § 1117, Defendants be ordered to pay over
27 to WeMesh statutory damages for Defendants' violation of 15 U.S.C. § 1125(d);
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10. WeMash have such other and further relief as the Court may deem just and appropriate.

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Dated: January 12, 2016

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Shari Mulrooney Wollman
Shari Mulrooney Wollman
Jessica A. Wood
Attorneys for Plaintiff
WeMash, Inc.

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JURY TRIAL DEMAND

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 38(b) and L.R. 38-1, Plaintiff WeMash, Inc. hereby demands a trial by jury on all issues triable by a right to a jury trial in the above-captioned action.

Dated: January 12, 2016

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Shari Mulrooney Wollman

Shari Mulrooney Wollman
Jessica A. Wood
Attorneys for Plaintiff
WeMash, Inc.

Exhibit 1

Generated on:

This page was generated by TSDR on 2016-01-12 15:49:13 EST

Mark: WEMASH

WEMASH

US Serial Number: 86320744

Application Filing Date:

Jun. 25, 2014

Register:

Principal

Mark Type:

Service Mark

Status:

A first request for extension of time to file a Statement of Use has been granted.

Status Date:

Jun. 29, 2015

Publication Date: Nov. 25, 2014

Notice of Allowance Date:

Jan. 20, 2015

Mark Information

Mark Literal Elements:

WEMASH

Standard Character Claim:

Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type:

4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For:

Entertainment services, namely, providing webcasts and online videos in the field of music, sports and entertainment; Providing a website featuring information in the field of music, sports and entertainment; Entertainment services, namely, providing information about music, sports and entertainment via an online network

International Class(es): 041 - Primary Class

U.S Class(es):

100, 101, 107

Class Status:

ACTIVE

Basis:

1(b)

Basis Information (Case Level)

| | | |
|---------------------------|-------------------------------|------------------------|
| Filed Use: No | Currently Use: No | Amended Use: No |
| Filed ITU: Yes | Currently ITU: Yes | Amended ITU: No |
| Filed 44D: No | Currently 44D: No | Amended 44D: No |
| Filed 44E: No | Currently 44E: No | Amended 44E: No |
| Filed 66A: No | Currently 66A: No | |
| Filed No Basis: No | Currently No Basis: No | |

Current Owner(s) Information

Owner Name:

WeMash, Inc.

Owner Address:

11271 Ventura Blvd.
602
Studio City, CALIFORNIA 91604
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized:

DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Michelle A. Cooke **Docket Number:**
48455-030

Attorney Primary Email Address: MCooke@manatt.com **Attorney Email Authorized:**

Yes

Correspondent

Correspondent Name/Address:

Michelle A. Cooke
Manatt, Phelps & Phillips, LLP
11355 W. Olympic Blvd.
Los Angeles, CALIFORNIA 90064
UNITED STATES

Phone: 310-312-4208

Fax:

310-996-6942

Correspondent e-mail: MCooke@manatt.com **Correspondent e-mail Authorized:**

Yes

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|--|-------------------|
| Dec. 28, 2015 | TEAS EXTENSION RECEIVED | |
| Dec. 22, 2015 | ATTORNEY REVOKED AND/OR APPOINTED | |
| Dec. 22, 2015 | TEAS REVOKE/APPOINT ATTORNEY RECEIVED | |
| Jul. 01, 2015 | NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED | |
| Jun. 29, 2015 | EXTENSION 1 GRANTED | 98765 |
| Jun. 29, 2015 | EXTENSION 1 FILED | 98765 |
| Jun. 29, 2015 | TEAS EXTENSION RECEIVED | |
| Jan. 20, 2015 | NOA E-MAILED - SOU REQUIRED FROM APPLICANT | |
| Nov. 25, 2014 | OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED | |
| Nov. 25, 2014 | PUBLISHED FOR OPPOSITION | |
| Nov. 05, 2014 | NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED | |
| Oct. 23, 2014 | LAW OFFICE PUBLICATION REVIEW COMPLETED | 69712 |
| Oct. 22, 2014 | ASSIGNED TO LIE | 69712 |
| Oct. 01, 2014 | APPROVED FOR PUB - PRINCIPAL REGISTER | |
| Oct. 01, 2014 | EXAMINER'S AMENDMENT ENTERED | 88888 |
| Oct. 01, 2014 | NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED | 6328 |
| Oct. 01, 2014 | EXAMINERS AMENDMENT E-MAILED | 6328 |
| Oct. 01, 2014 | EXAMINERS AMENDMENT -WRITTEN | 91237 |
| Oct. 01, 2014 | ASSIGNED TO EXAMINER | 91237 |
| Jul. 02, 2014 | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | |
| Jun. 28, 2014 | NEW APPLICATION ENTERED IN TRAM | |

TM Staff and Location Information

TM Staff Information

TM Attorney: COGAN, BRITTNEY LORRAI

Law Office Assigned:

LAW OFFICE 114

| File Location | |
|---|-------------------|
| Current Location: INTENT TO USE SECTION | Date in Location: |
| Jan. 20, 2015 | |

Proceedings

Summary

Number of Proceedings:

1

Type of Proceeding: Cancellation

| | |
|--|--------------|
| Proceeding Number: 92062794 | Filing Date: |
| Dec 08, 2015 | |
| Status: Pending | Status Date: |
| Dec 08, 2015 | |
| Interlocutory Attorney: MARY CATHERINE FAINT | |

Defendant

Name:

WEMESH Inc.

Correspondent Address:

WEMESH INC
340 BROOKVIEW COURT
ANCASTER ON , L9G4C2
CANADA

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|--------|----------------------|--------------------------|-------------------------|
| WEMESH | Cancellation Pending | 86271330 | 4757374 |

Plaintiff(s)

Name:

WeMash, Inc.

Correspondent Address:

JESSICA A WOOD
MANATT PHELPS & PHILLIPS LLP
11355 WEST OLYMPIC BLVD
LOS ANGELES CA , 90064
UNITED STATES

Correspondent e-mail:

JWood@manatt.com , SWollman@manatt.com , IPDocket@manatt.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|--------|--|--------------------------|---------------------|
| WEMASH | First Extension - Granted | 86320744 | |
| WEMES | Request For Extension of Time to File Opposition | 86654939 | |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|--|--------------|--------------|
| 1 | FILED AND FEE | Dec 08, 2015 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Dec 09, 2015 | Jan 18, 2016 |
| 3 | PENDING, INSTITUTED | Dec 09, 2015 | |

Exhibit 2

Generated on:

This page was generated by TSDR on 2016-01-12 15:50:02 EST

Mark: WEMES

WEMES

US Serial Number: 86654939

Application Filing Date:

Jun. 08, 2015

Filed as TEAS RF: Yes

Currently TEAS RF:

Yes

Register:

Principal

Mark Type:

Trademark, Service Mark

Status:

A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date:

Dec. 29, 2015

Publication Date: Dec. 08, 2015

Mark Information

Mark Literal Elements:

WEMES

Standard Character Claim:

Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type:

4 - STANDARD CHARACTER MARK

Translation:

The wording "WEMES" has no meaning in a foreign language.

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For:

Software and downloadable software to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content for posting, linking and sharing through electronic messaging and transmission via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Software and downloadable software to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content that can be stored on and accessed from cloud based systems or remote network servers via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Downloadable software for the integration of text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content into an interactive delivery for multimedia applications; Software and downloadable software for mobile phones, tablet computers, mobile telecommunications devices, mobile digital devices, portable devices, personal communications devices, portable media players, handheld computers and hand-held electronic devices, to send and receive electronic messages, text, graphics, images, photos, moving pictures, music, audio, video, audio-video materials and other multimedia content via global communication networks, portable and wireless networks, and various platforms across multiple forms of media

International Class(es): 009 - Primary Class

U.S Class(es):

021, 023, 026, 036, 038

Class Status:

ACTIVE

Basis:

1(b)

For:

Providing an online non-downloadable searchable database of text, graphics, still images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content in the fields of celebrities, news, film, politics, television, political events and affairs, sports, music, history, drama, nature and wildlife, fashion, artistic performances, beauty, science fiction and fantasy for embedding digital content into websites, social media, electronic communications, downloadable and non-downloadable digital content, electronic downloadable publications, and other digital media and design elements of others

International Class(es): 041 - Primary Class

U.S Class(es):

100, 101, 107

Class Status:

ACTIVE

Basis:

1(b)

For:

Providing online non-downloadable software, applications and tools to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content for posting, linking and sharing through electronic messaging and transmission via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Providing online non-downloadable software, applications and tools to enable users to integrate, edit, combine, modify, enhance, create and display text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content that can be stored on and accessed from cloud based systems or remote network servers via a global computer network, portable and wireless networks and various platforms across multiple forms of media; Providing online non-downloadable software for the integration of text, graphics, images, photos, moving pictures, music, audio, video, audio-visual materials, and other multimedia content into an interactive delivery for multimedia applications

International Class(es): 042 - Primary Class

U.S Class(es):

100, 101

Class Status:

ACTIVE

Basis:

1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: Yes

Currently ITU: Yes

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name:

WeMash, Inc.

Owner Address:

#602
11271 Ventura Blvd.
Studio City, CALIFORNIA UNITED STATES 91604

Legal Entity Type: CORPORATION

State or Country Where Organized:

DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Michelle A. Cooke

Docket Number:

48455-030

Attorney Primary Email Address: mcooke@manatt.com

Attorney Email Authorized:

Yes

Correspondent

Correspondent Name/Address:

MICHELLE A. COOKE
Manatt Phelps & Phillips Llp
11355 W Olympic Blvd
Los Angeles, CALIFORNIA UNITED STATES 90064-1631

Phone: (310) 312-4208

Fax:

(310) 996-6942

Correspondent e-mail: mcooke@manatt.com
patrademarks@manatt.com

Correspondent e-mail
 Authorized:

Yes

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|--|-------------------|
| Dec. 29, 2015 | EXTENSION OF TIME TO OPPOSE RECEIVED | |
| Dec. 08, 2015 | OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED | |
| Dec. 08, 2015 | PUBLISHED FOR OPPOSITION | |
| Nov. 18, 2015 | NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED | |
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| Sep. 24, 2015 | APPROVED FOR PUB - PRINCIPAL REGISTER | |
| Sep. 23, 2015 | EXAMINER'S AMENDMENT ENTERED | 88888 |
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| Sep. 23, 2015 | EXAMINERS AMENDMENT E-MAILED | 6328 |
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| Jun. 11, 2015 | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | |
| Jun. 11, 2015 | NEW APPLICATION ENTERED IN TRAM | |

TM Staff and Location Information

TM Staff Information

TM Attorney: CUCCIAS, MATTHEW JAMES

Law Office Assigned:

LAW OFFICE 116

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location:

Nov. 02, 2015

Proceedings

Summary

Number of Proceedings:

2

Type of Proceeding: Extension of Time

Proceeding Number: [86654939](#)

Filing Date:

Dec 29, 2015

Status: Not Instituted

Status Date:

Dec 29, 2015

Interlocutory Attorney:

Defendant

Name:

WeMash, Inc.

Correspondent Address:

MICHELLE A. COOKE
 Manatt Phelps & Phillips Llp
 11355 W Olympic Blvd
 Los Angeles CA , 90064-1631

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|-------|--|--------------------------|---------------------|
| WEMES | Request For Extension of Time to File Opposition | 86654939 | |

Potential Opposer(s)

Name:

WeMesh, Inc.

Correspondent Address:

Bobby Ghajar
 PILLSBURY WINTHROP SHAW PITTMAN LLP
 725 S. Figueroa St., Suite 2800
 Los Angeles CA UNITED STATES , 90017

Correspondent e-mail:

bobby.ghajar@pillsburylaw.com , marcus.peterson@pillsburylaw.com , patrick.jennings@pillsburylaw.com , docket_ip@pillsburylaw.com

| Prosecution History | | | |
|---------------------|-------------------------------------|--------------|----------|
| Entry Number | History Text | Date | Due Date |
| 1 | INCOMING - EXT TIME TO OPPOSE FILED | Dec 29, 2015 | |
| 2 | EXTENSION OF TIME GRANTED | Dec 29, 2015 | |

Type of Proceeding: Cancellation

Proceeding Number: [92062794](#) **Filing Date:**
 Dec 08, 2015
Status: Pending **Status Date:**
 Dec 08, 2015
Interlocutory Attorney: MARY CATHERINE FAINT

Defendant

Name:

WEMESH Inc.

Correspondent Address:

WEMESH INC
 340 BROOKVIEW COURT
 ANCASTER ON CANADA , L9G4C2

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|--------|----------------------|--------------------------|-------------------------|
| WEMESH | Cancellation Pending | 86271330 | 4757374 |

Plaintiff(s)

Name:

WeMash, Inc.

Correspondent Address:

JESSICA A WOOD
 MANATT PHELPS & PHILLIPS LLP
 11355 WEST OLYMPIC BLVD
 LOS ANGELES CA UNITED STATES , 90064

Correspondent e-mail:

JWood@manatt.com , SWollman@manatt.com , IPDocket@manatt.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|--------|--|--------------------------|---------------------|
| WEMASH | First Extension - Granted | 86320744 | |
| WEMES | Request For Extension of Time to File Opposition | 86654939 | |

| Prosecution History | | | |
|---------------------|--|--------------|--------------|
| Entry Number | History Text | Date | Due Date |
| 1 | FILED AND FEE | Dec 08, 2015 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Dec 09, 2015 | Jan 18, 2016 |
| 3 | PENDING, INSTITUTED | Dec 09, 2015 | |

EXHIBIT D

1 BOBBY GHAJAR #198719
bobby.ghajar@pillsburylaw.com
2 MARCUS D. PETERSON #265339
marcus.peterson@pillsburylaw.com
3 PILLSBURY WINTHROP SHAW PITTMAN LLP
725 South Figueroa Street, Suite 2800
4 Los Angeles, CA 90017-5406
Telephone: 213.488.7100
5 Facsimile: 213.629.1033

6 Attorneys for Defendants
7 WEMESH INC. and MICHAEL PAZARATZ

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 WEMESH INC, an Ontario Canada
12 corporation,

13 Counter-Claimant,

14 vs.

15 WEMASH, INC., a Delaware
16 corporation.

17 Counter-Defendant.

Case No. 2:15-cv-08719 JFW(JPRx)

**DEFENDANT WEMESH INC.'S
ANSWER, AFFIRMATIVE
DEFENSES, AND
COUNTERCLAIMS FOR
TRADEMARK INFRINGEMENT,
UNFAIR COMPETITION, AND
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

Judge: Hon. John F. Walter
Crt Rm: 16

20 WEMESH INC, an Ontario Canada
21 corporation,

22 Counter-Claimant,

23 vs.

24 WEMASH, INC., a Delaware
25 corporation.

26 Counter-Defendant.

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INTRODUCTORY STATEMENT

Defendant WeMesh Inc. is a startup technology firm based in Ontario, Canada that develops mobile applications to enhance the delivery and utilization of synchronous mobile media experiences. WeMesh has developed proprietary technology that is able to synchronize media playback across multiple mobile devices, such that the differences in playback across devices is below the level of human perception (less than 10 milliseconds). This allows users to watch videos simultaneously with other people, irrespective of geographic distance, while engaging in voice and text communication. With an “app” called “WeMesh[®],” it has combined two popular mobile activities – watching videos and messaging – into one innovative platform for social viewing. That app has been available since early 2015 on the Google Play Store and the Apple App Store. These two app stores are the official distribution platforms for Google and Apple respectively, and represent the largest distribution channels for mobile applications, with an estimated 4 million apps listed and 150 billion app downloads between them. WeMesh’s mobile app “WeMesh” has been downloaded over 150,000 times and has been featured in major national and international publications such as Slashdot, TechCrunch, iMore and Product Hunt that have monthly circulating viewerships that exceed 15 million people.

Plaintiff WeMash, Inc. (“Plaintiff”) filed this lawsuit in Los Angeles in retaliation for WeMesh’s efforts to enforce its trademark rights in the federally-registered mark WEMESH[®] on the various “app” stores against Plaintiff’s newly-launched app, which it called “Wemes.”

Plaintiff’s First Amended Complaint hinges on the allegation that Plaintiff – rather than WeMesh – was first to acquire trademark rights in its name. This allegation was made despite the fact that Defendant, WeMesh, was *first* to place an app in any app store; *first* to commercialize an app; *first* to sell its app to

1 consumers; and – significantly – *first* to register its mark with the U.S. Patent and
2 Trademark Office. Pressed for details on its alleged trademark priority in the terms
3 “WeMash” or “Wemes,” Plaintiff’s First Amended Complaint resorts to vague and
4 irrelevant descriptions of activity that do not demonstrate that Plaintiff developed
5 any trademark rights, let alone rights superior to WeMesh’s use. None of
6 Plaintiff’s alleged rights would prevent WeMesh from continuing to promote and
7 use its WEMESH app.

8 WeMesh hereby answers the First Amended Complaint, and files its
9 Counterclaims against WeMash, Inc., to hold it liable for infringing WeMesh’s
10 trademark rights, for declaratory relief that WeMesh owns and may use the
11 WEMESH mark, and for other relief.

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ANSWER TO FIRST AMENDED COMPLAINT

Defendant WeMesh Inc. (“WeMesh” or Defendant”), by and through its counsel, answers the First Amended Complaint (“FAC”) of plaintiff WeMesh, Inc. (“Plaintiff”), as follows. Unless specifically admitted herein, Defendant denies each of the allegations of the FAC and specifically denies that Plaintiff is entitled to any relief whatsoever. WeMesh’s answer here is not intended to waive or limit any of Defendant Pazaratz’s rights or objections.¹

PARTIES

- 1. Defendant admits the allegations contained in Paragraph 1 of the FAC.
- 2. Defendant admits the allegations contained in Paragraph 2 of the FAC relating to WeMesh’s place of business of 340 Brookview Court, Ancaster L9G4C2 Ontario, Canada.
- 3. Defendant admits the allegations contained in Paragraph 3 of the FAC as to Defendant Pazaratz.

JURISDICTION AND VENUE

- 4. Defendant admits that the Court has subject matter jurisdiction over the allegations in the FAC, but otherwise denies the remaining allegations in Paragraph 4 of the FAC. Defendant specifically denies that Plaintiff properly invoked the Court’s ability to exercise declaratory judgment.
- 5. Defendant denies the allegations contained in Paragraph 5 of the FAC.
- 6. Defendant denies that venue is proper in this district, as neither WeMesh nor Dr. Pazaratz are located in this district.

¹ Defendant Pazaratz – a Canadian resident – has objected to the attempt by Plaintiff to assert personal jurisdiction over him, and intends to seek dismissal of the claims against him as permitted by the Court’s February 29, 2016 Order (Dkt. 50).

1 information sufficient to form a belief about the truth of the remaining allegations
2 contained in Paragraph 14 of the FAC and thus denies those remaining allegations.

3 15. Defendant admits that Plaintiff’s app named “WEMES” is currently
4 promoted on various social media. Defendant lacks knowledge or information
5 sufficient to form a belief about the truth of the remaining allegations contained in
6 Paragraph 15 of the FAC and thus denies those remaining allegations.

7 16. Defendant lacks knowledge or information sufficient to form a belief
8 about the truth of the allegations contained in Paragraph 16 of the FAC and thus
9 denies such allegations. Defendant further denies that any such allegations are
10 sufficient to evidence trademark use.

11 17. Defendant lacks knowledge or information sufficient to form a belief
12 about the truth of the allegations contained in Paragraph 17 of the FAC and thus
13 denies such allegations. Defendant further denies that any such allegations are
14 sufficient to evidence trademark use.

15 18. Defendant lacks knowledge or information sufficient to form a belief
16 about the truth of the allegations contained in Paragraph 18 of the FAC and thus
17 denies such allegations. Defendant further denies that any such allegations are
18 sufficient to evidence trademark use.

19 19. Defendant lacks knowledge or information sufficient to form a belief
20 about the truth of the allegations contained in Paragraph 19 of the FAC and thus
21 denies such allegations. Defendant further denies that any such allegations are
22 sufficient to evidence trademark use.

23 20. Defendant lacks knowledge or information sufficient to form a belief
24 about the truth of the allegations contained in Paragraph 20 of the FAC and thus
25 denies such allegations. Defendant further denies that any such allegations are
26 sufficient to evidence trademark use.
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1 21. Defendant lacks knowledge or information sufficient to form a belief
2 about the truth of the allegations contained in Paragraph 21 of the FAC and thus
3 denies such allegations. Defendant further denies that any such allegations are
4 sufficient to evidence trademark use.

5 22. Defendant lacks knowledge or information sufficient to form a belief
6 about the truth of the allegations contained in Paragraph 22 of the FAC and thus
7 denies such allegations.

8 23. Defendant lacks knowledge or information sufficient to form a belief
9 about the truth of the allegations contained in Paragraph 23 of the FAC and thus
10 denies such allegations.

11 24. Defendant admits that Plaintiff has filed for the two U.S. trademark
12 applications referenced in Paragraph 24 of the FAC, and that neither of Plaintiff's
13 trademark applications has matured to registration. Defendant further admits that
14 Exhibits 1 and 2 purport to be printouts from the USPTO. Defendant otherwise
15 lacks knowledge or information sufficient to form a belief about the truth of the
16 remaining allegations contained in Paragraph 24 of the FAC and thus denies such
17 allegations.

18 25. Defendant admits that Dr. Michael Pazaratz is one of the founders of
19 WeMesh Inc.

20 26. Defendant admits that WeMesh develops mobile applications to
21 enhance the delivery and utilization of synchronous mobile media experiences, and
22 that its WEMESH app is available for use on various platforms. Defendant admits
23 that the WEMESH app allows users to watch YouTube videos at the same time as
24 others while exchanging messages. Defendant otherwise denies Plaintiff's
25 remaining characterizations and allegations in Paragraph 26 of the FAC.

26 27. Defendant admits that its WEMESH app is available for download on
27 at least through Apple's App Store and on Google Play.

1 28. Defendant admits that it “advertises the WeMesh App” and that it is
2 available for download nationwide, but otherwise denies Plaintiff’s
3 characterizations and remaining allegations in Paragraph 28.

4 29. Defendant admits that the WEMESH app is accessible by consumers
5 in California. Defendant otherwise denies the remaining allegations in Paragraph
6 29.

7 30. Defendant denies the relevance of its purported agreement with a third
8 party (in Paragraph 30, alleged to be Apple) to Plaintiff’s claims in the FAC, and
9 further objects to this allegation as requiring legal interpretation of a third party
10 agreement, and on that basis, does not believe that any answer is necessary.

11 31. Defendant denies the relevance of its purported agreement with a third
12 party (in Paragraph 31, alleged to be Google) to Plaintiff’s claims in the FAC, and
13 further objects to this allegation as requiring legal interpretation of a third party
14 agreement, and on that basis, does not believe that any answer is necessary.

15 32. Defendant admits that it is the owner of record on certain registrars of
16 certain of the domain names alleged in Paragraph 32 of the FAC, and that it
17 operates such domain names as part of its business. Defendant further admits that
18 it operates the website www.weme.sh.

19 33. Defendant admits that Dr. Pazaratz registered certain domain names
20 on behalf of Defendant. Defendant otherwise denies the allegations in Paragraph
21 33 of the FAC.

22 34. Defendant admits that Dr. Pazaratz registered certain domain names
23 on behalf of Defendant. Defendant otherwise denies the allegations in Paragraph
24 34 of the FAC.

25 35. No letter is attached to the FAC; therefore, Defendant is unable to
26 confirm the statements referenced in Paragraph 35 of the FAC. Defendant admits
27 that its owns or operates the domain names recited in Paragraph 35. To the extent
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1 any further response is required, Defendant denies the remaining allegations in
2 Paragraph 35 of the FAC.

3 36. Defendant admits that Plaintiff’s use of WEMASH is confusingly
4 similar to Defendant’s rights to the WEMESH mark.

5 37. Defendant denies the allegations in Paragraph 37 of the FAC, namely,
6 that it “registered and/or used” its domain names to “[create] a likelihood of
7 confusion”

8 38. Defendant admits that it markets its WEMESH product through social
9 media, including the social media platforms referenced in Paragraph 38.
10 Defendant otherwise denies Plaintiff’s characterizations.

11 39. Defendant denies the allegations in Paragraph 39 as to how Defendant
12 purportedly promotes its WEMESH app, or that certain purported Californian
13 artists are “featured.”

14 40. Defendant denies the allegations in Paragraph 40 as to the
15 characterization of Defendant’s WEMESH app, and that it “features popular music
16 videos and other celebrity entertainment content....”

17 41. To the extent that Defendant must respond to the allegations in
18 Paragraph 41 of the FAC, Defendant denies such allegations.

19 42. Defendant admits that its principals, in connection with the company
20 and as part of the company’s business, were in California on company business.
21 Defendant denies the remaining allegations in Paragraph 42 of the FAC.

22 43. Defendant admits that on May 5, 2014, it filed an intent-to-use
23 application for the WEMESH mark in the United States, which later matured to
24 registration. Defendant admits that some of Plaintiff’s later-filed applications, and
25 in particular, Plaintiff’s WEMES trademark application, cover similar or relief
26 goods and/or services – and in the case of the WEMES trademark application – the
27 exact same goods (software) – as Defendant’s prior-filed WEMESH trademark
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1 application. Defendant otherwise denies the remaining allegations and
2 characterizations in Paragraph 43 of the FAC.

3 44. Defendant admits that it filed a Statement of Use in connection with
4 its WEMESH trademark application, and that the WEMESH mark matured to
5 registration. The USPTO file records are the best evidence of those filings, and the
6 allegations therein. Defendant denies the implication that the first use date
7 provided to the USPTO is, in fact, the earliest date on which Defendant used its
8 WEMESH trademark. To the extent a further response is required, Defendant
9 denies the remaining allegations in Paragraph 44.

10 45. Defendant notes Plaintiff's admission that its goods and services are
11 confusingly similar to those offered by Defendant, and covered in Defendant's
12 federal registration. Defendant further admits that Plaintiff's use of the WEMASH
13 and WEMES marks in connection with mobile apps is likely to cause confusion.
14 Defendant further admits that the parties' respective software apps are offered to
15 the same class of consumers and that they are both available on various app stores.

16 46. Defendant notes Plaintiff's admission that its WEMASH and
17 WEMES marks are confusingly similar to Defendant's prior-filed and registered
18 WEMESH mark. Defendant admits that the respective marks, in typed form, are
19 only one-letter different from the other. Defendant denies that "WEMASH" and
20 "WEMES" are "completely arbitrary." To the extent any further response is
21 required, Defendant denies the remaining allegations in Paragraph 46 of the FAC.

22 47. Defendant denies that it requires any license or authority from
23 Plaintiff to use the WEMESH mark. To the extent any further response is
24 required, Defendant denies the remaining allegations in Paragraph 47 of the FAC.

25 48. Defendant denies that Plaintiff has common law trademark priority
26 with respect to the WEMESH mark. Defendant otherwise lacks knowledge or
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1 information sufficient to form a belief about the truth of the allegations contained
2 in Paragraph 48 of the FAC and thus denies such allegations.

3 49. Defendant admits that Plaintiff filed a petition to cancel the
4 WEMESH registration after the lawsuit was filed. Defendant denies that the
5 petition is valid or meritorious. That cancellation proceeding has been suspended.

6 50. Defendant denies any characterization or allegation that *its* conduct is
7 causing confusion or deception in the marketplace. Defendant notes Plaintiff's
8 admission that it contends that its use of the WEMASH and WEMES marks is
9 likely to be confused with Defendant's use of the WEMESH mark. Defendant
10 further denies that it has misappropriated any perceived "goodwill" of Plaintiff's
11 purported trademarks. Defendant denies the remaining allegations in Paragraph 50
12 of the FAC.

13 51. Defendant denies the allegations in Paragraph 51 of the FAC.

14 52. Answering for itself, Defendant denies the allegations in Paragraph 52
15 of the FAC.

16 53. No letter is attached to the FAC, so Defendant cannot verify the
17 allegations referenced in Paragraph 53. However, Defendant admits generally that
18 its counsel in Canada sent a letter to WeMash advising it of concern over and
19 objection to the use of the WEMASH and WEMES marks in connection with
20 Plaintiff's then-recently launched app. Defendant otherwise lacks knowledge or
21 information sufficient to form a belief about the truth of the remaining allegations
22 contained in Paragraph 53 of the FAC and thus denies such allegations.

23 54. The allegations in Paragraph 54 relate to an alleged communication
24 between a third party and Plaintiff. Defendant lacks knowledge or information
25 sufficient to form a belief about the truth of the allegations contained in Paragraph
26 54 of the FAC and thus denies such allegations.

1 55. The allegations in Paragraph 55 relate to an alleged communication
2 between a third party and Plaintiff. To the extent that the allegations refer to
3 statements made in a letter from Defendant's Canadian counsel, that letter is the
4 best evidence of such statements. Defendant lacks knowledge or information
5 sufficient to form a belief about the truth of the remaining allegations contained in
6 Paragraph 55 of the FAC and thus denies such allegations.

7 56. The allegations in Paragraph 56 relate to an alleged communication
8 between a third party and Plaintiff. Defendant lacks knowledge or information
9 sufficient to form a belief about the truth of the allegations contained in Paragraph
10 56 of the FAC and thus denies such allegations.

11 57. Defendant denies the allegations in Paragraph 57 of the FAC.

12 58. As no letters or notices are attached to the FAC, Defendant lacks
13 knowledge or information sufficient to form a belief about the truth of the
14 allegations contained in Paragraph 58 of the FAC and thus denies such allegations.

15 59. The allegations in Paragraph 59 relate to an alleged communication
16 between a third party and Plaintiff. Defendant lacks knowledge or information
17 sufficient to form a belief about the truth of the allegations contained in Paragraph
18 59 of the FAC and thus denies such allegations.

19 60. Defendant admits that Plaintiff's counsel sent a letter to Defendant's
20 Canadian counsel, and that letter made certain claims. That letter is the best
21 evidence of Plaintiff's counsel's statements as referenced in Paragraph 60.
22 Defendant lacks knowledge or information sufficient to form a belief about the
23 truth of the remaining allegations contained in Paragraph 60 of the FAC and thus
24 denies such allegations.

25 61. The allegations in Paragraph 61 relate to an alleged communication
26 between a third party and Plaintiff. Defendant lacks knowledge or information
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1 sufficient to form a belief about the truth of the allegations contained in Paragraph
2 61 of the FAC and thus denies such allegations.

3 62. Defendant denies the allegations in Paragraph 62 of the FAC, namely,
4 that it “targeted” Plaintiff in California.

5 **ANSWER TO FIRST CLAIM OF RELIEF**

6 63. No response is necessary to Paragraph 63 of the FAC.

7 64. Defendant lacks knowledge or information sufficient to form a belief
8 about the truth of the allegations contained in Paragraph 64 of the FAC and thus
9 denies such allegations.

10 65. Defendant notes Plaintiff’s admission that its use of the marks
11 WEMASH and WEMES is likely to cause confusion with Defendant’s prior
12 WEMESH mark. Defendant further notes that Plaintiff has no claim for relief
13 against the domain name wemesh.com. Defendant denies that *it* is causing any
14 consumer confusion with respect to *its* use of its federally-registered WEMESH
15 mark in connection with its products. Defendant admits that Plaintiff’s use of
16 WEMES and WEMASH in connection with an app is likely to cause confusion.
17 To the extent any further response is necessary, Defendant denies any remaining
18 allegation in Paragraph 65 of the FAC that implies that Defendant has committed
19 any wrongdoing.

20 66. Defendant denies the allegations in Paragraph 66 of the FAC.

21 67. Defendant denies the allegations in Paragraph 67 of the FAC.

22 68. Defendant denies the allegations in Paragraph 68 of the FAC.

23 **ANSWER TO SECOND CLAIM FOR RELIEF**

24 69. No response is necessary to Paragraph 69 of the FAC.

25 70. Defendant denies the allegations in Paragraph 70 of the FAC.

26 71. Defendant denies the allegations in Paragraph 71 of the FAC.

27 72. Defendant denies the allegations in Paragraph 72 of the FAC.

1 73. Defendant denies the allegations in Paragraph 73 of the FAC.

2 74. Defendant denies the allegations in Paragraph 74 of the FAC.

3 **ANSWER TO THIRD CLAIM FOR RELIEF**

4 75. No response is necessary to Paragraph 75 of the FAC.

5 76. Defendant admits that it is the owner of a federal registration for the
6 WEMESH mark. The USPTO records are the best evidence of the particulars of
7 that registration.

8 77. Defendant notes Plaintiff's admission that the WEMES and
9 WEMASH marks "so resemble[]" Defendant's WEMESH mark, and admits that
10 Plaintiff's use of those marks on apps and related goods is likely to cause
11 confusion. Defendant denies the remaining allegations in Paragraph 77 of the
12 FAC, including, specifically, any allegation that Defendant has engaged in any
13 wrongdoing.

14 78. Defendant denies the allegations in Paragraph 78 of the FAC.

15 79. Defendant denies the allegations in Paragraph 79 of the FAC.

16 **ANSWER TO FOURTH CLAIM FOR RELIEF**

17 80. No response is necessary to Paragraph 80 of the FAC.

18 81. Defendant admits that it has challenged Plaintiff's use of the
19 WEMASH and WEMES marks in connection with an app and related goods.

20 82. Defendant admits that there is a controversy between the parties, but
21 denies that Plaintiff acted in good faith or that it properly invoked jurisdiction
22 under the Declaratory Judgment Act.

23 83. Defendant denies the characterizations set forth in Paragraph 83 of the
24 FAC, and is otherwise without knowledge or information sufficient to form a belief
25 about the truth of the allegations contained in Paragraph 83 of the FAC and thus
26 denies such allegations.
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1 84. Defendant is without knowledge or information sufficient to form a
2 belief about the truth of the allegations contained in Paragraph 84 of the FAC and
3 thus denies such allegations.

4 85. Defendant does not believe that any response to Paragraph 85 is
5 required, but to the extent one is required, Defendant denies the allegations therein.

6 **ANSWER TO FIFTH CLAIM FOR RELIEF**

7 86. No response is necessary to Paragraph 86 of the FAC.

8 87. Defendant denies the allegations in Paragraph 87 of the FAC.

9 88. Defendant denies the allegations in Paragraph 88 of the FAC.

10 89. Defendant denies the allegations in Paragraph 89 of the FAC.

11 90. Defendant denies the allegations in Paragraph 90 of the FAC.

12 91. Defendant denies the allegations in Paragraph 91 of the FAC.

13 92. Defendant denies the allegations in Paragraph 92 of the FAC.

14 **ANSWER TO SIXTH CLAIM FOR RELIEF**

15 93. No response is necessary to Paragraph 93 of the FAC.

16 94. Defendant denies the allegations in Paragraph 94 of the FAC.

17 95. Defendant denies the allegations in Paragraph 95 of the FAC.

18 96. Defendant denies the allegations in Paragraph 96 of the FAC.

19 97. Defendant denies the allegations in Paragraph 97 of the FAC.

20 98. Defendant denies the allegations in Paragraph 98 of the FAC.

21 **RESPONSE TO PRAYER FOR RELIEF**

22 Defendant denies that Plaintiff is entitled to any of its prayer for relief.
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AFFIRMATIVE DEFENSES

Defendant alleges the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

For the reasons explained in Defendants’ Motion to Dismiss, Plaintiff’s FAC fails to state a claim upon which relief may be granted as to WeMesh and, separately, Dr. Pazaratz.

SECOND AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert rights in the alleged mark WEMASH that it does not own.

THIRD AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred in whole or in part because it does not own valid trademark rights in the WEMASH and WEMES marks that are prior to WeMesh’s actual and/or constructive use of its WEMESH mark.

FOURTH AFFIRMATIVE DEFENSE

The Court has no personal jurisdiction over Defendant Pazaratz.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff lacks any claim for damages.

1 related as to form the same case or controversy.

2 5. Venue is proper in this district under 28 U.S.C. §1391(b)(1) because
3 WeMash resides in this district.

4 6. Through its filing of the initial Complaint, WeMash has admitted that
5 jurisdiction and venue are proper in this District.

6 **FACTUAL BACKGROUND**

7 **Defendant/Counterclaimant WeMesh and its WEMESH[®] Trademark**

8 7. WeMesh was formed in or around August 21, 2013 by Dr. Michael
9 Pazaratz (“Dr. Pazaratz”) and Dr. Saeed Darvish-Kazem (“Dr. Darvish-Kazem”).
10 WeMesh continued the development of a mobile application (“app”) for
11 smartphones and tablets that had initially begun prior to the incorporation of
12 PazKaz Enterprises.

13 8. WeMesh’s WEMESH app allows users to synchronize videos to
14 watch them simultaneously across mobile devices while at the same time
15 communicating via text and voice. WeMesh combined two popular mobile
16 activities – watching videos and chatting – into its innovative app.

17 9. “WeMesh” is an invented term first coined by Dr. Pazaratz and Dr.
18 Darvish-Kazem, co-founders of WeMesh, at least as early as July 2013 as a
19 company and product name for an application that would bring groups of people
20 together to take part in a communal activity of watching videos simultaneously.
21 The mark WeMesh is highly distinctive and original.

22 10. WeMesh put out early versions of the WEMESH app at least as early
23 as Summer 2013 to investors and potential customers, soliciting feedback on the
24 product from them. During that time, WeMesh communicated with potential
25 customers and also shared documents with consumers relating to the development
26 of the WEMESH app.

27 11. At least as early as October 2013, WeMesh operated a Facebook page
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1 at www.facebook.com/wemesh through which it made public posts promoting the
2 WEMESH app.

3 12. WeMesh continued the development of the WEMESH app through
4 the remainder of 2013 and throughout 2014. For example, in 2014, WeMesh
5 contracted with developers to continue building out features of the WEMESH app.
6 It also made additional public demonstrations of the app in 2014.

7 13. In or around March 2014, WeMesh purchased the www.wemesh.com
8 domain name, and in April 2014, registered the www.wemesh.me,
9 www.wemesh.ca, and www.wemesh.tv domain names.

10 14. The WEMESH app was officially launched on the Apple iTunes App
11 Store on or about January 9, 2015. The app was launched on the Google Play store
12 later in 2015, and it is estimated that the app has been downloaded over 150,000
13 times, and has garnered over 1900 customer reviews with an average score of 4.0
14 (including over 1100 5-star reviews).

15 15. WeMesh promotes its app on the domain name “weme.sh” website.
16 Its other domain names – all comprised of the “WeMesh” name – automatically
17 redirect to that website. WeMesh has long promoted its app through that website,
18 and also promotes its app on Facebook at www.facebook.com/wemeshinc (where
19 it posted content at least as early as November 2014), on Twitter at
20 www.twitter.com/wemesh (where it posted content at least as early as December
21 2014), on Instagram at www.instagram.com/wemesh (where it fposted content at
22 [least as early as January 2015](http://www.instagram.com/wemesh)), on Pinterest at www.pinterest.com/wemesh, and
23 [on Vine at https://vine.co/u/1171654831669129217](https://vine.co/u/1171654831669129217) (where it posted content at
24 [least as early as January 2015](https://vine.co/u/1171654831669129217)).

25 16. On May 5, 2014, WeMesh applied to register the WEMESH mark in
26 connection with “[d]ownloadable mobile software applications for synchronizing
27 multimedia content with audio and text communication; Computer software for
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1 synchronizing content between mobile devices,” in International Class 9. The
2 application matured into Registration No. 4757374 on June 16, 2015.

3 17. Under the law, WeMesh’s constructive trademark priority date is May
4 5, 2014.

5 **WeMash and its Purported WEMASH and WEMES Trademarks**

6 18. Upon information and belief, and according to Counter-defendant’s
7 allegations, the name “WEMASH” was initially conceived of by Quincy Jones III
8 (“Jones”) prior to the incorporation of WeMash. He worked, through a company
9 called QD3 Entertainment, to develop services. In 2015, Jones and WeMash began
10 to develop a mobile application called “Wemes” that is now offered by Counter-
11 Defendant WeMash.

12 19. Upon information and belief, the “Wemes” app allows users to create
13 videos with text, graphic, or other multimedia overlays (called video memes or
14 “vemes”) and share them with others.

15 20. Upon information and belief, the Wemes app is the only product that
16 Jones and/or WeMash have actually offered to consumers under the WEMASH or
17 WEMES trademarks.

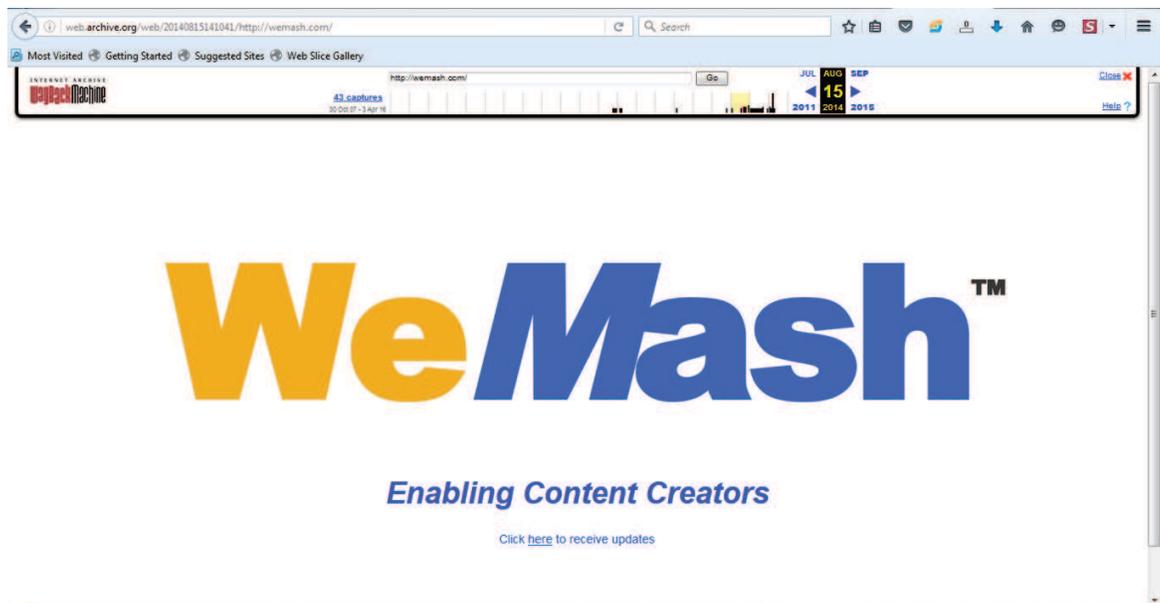
18 21. Upon information and belief, Jones is currently the CEO of WeMash
19 and is one of two officers of the company. Upon information and belief, Jones has
20 directed all aspects of the company, and continues to do so.

21 22. For example, upon information and belief, Jones conceived of the
22 WEMES name and directed Counter-defendant to adopt it in connection with a
23 mobile application. Jones also directed the development of the infringing Wemes
24 app, made the decision to release the app on the iTunes App Store, and directed
25 marketing and promotion of the Wemes App.

26 23. Today, WeMash markets its goods and services on its websites
27 www.wemash.com and www.wemesapp.com. WeMash does not conduct, and has
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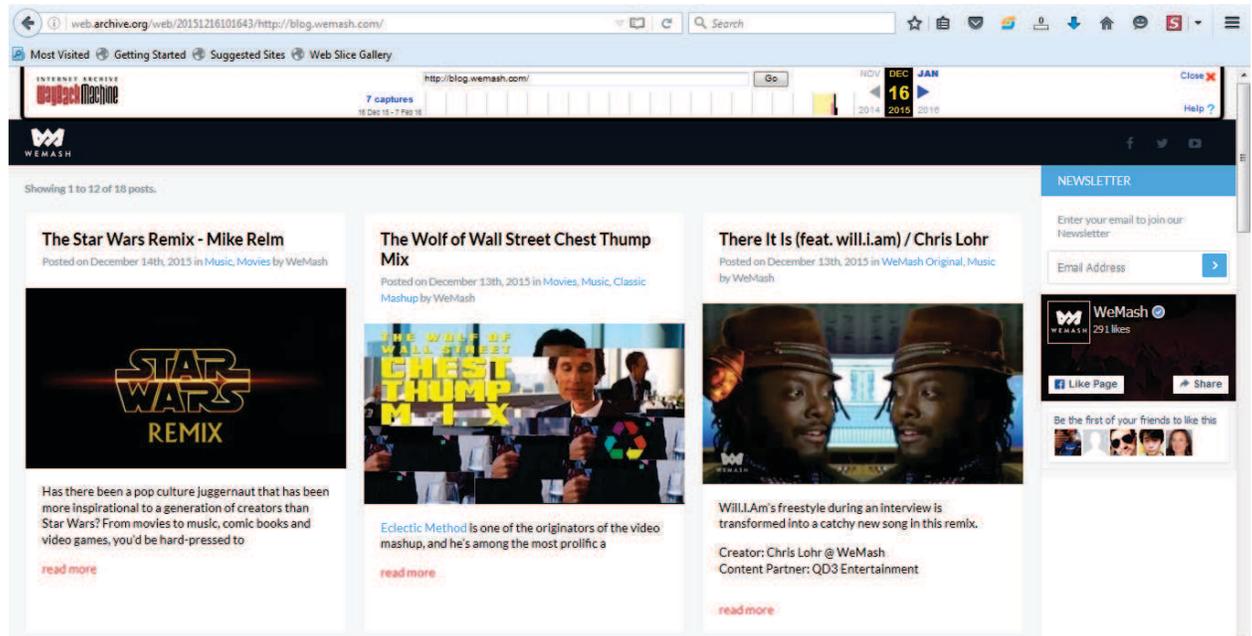
1 never conducted, any print, radio, or television advertising for its products or
2 services. Upon information and belief, Jones first purchased the
3 www.wemash.com domain in 2008 through his company QD3 Entertainment.
4 Upon information and belief, QD3 Entertainment owned the domain until early
5 2015.

6 24. Upon information and belief, the www.wemash.com website had no
7 content posted to it until August 2014, at which point a landing page was put up
8 with the “WeMash” name and a link to contact the company. At that time (August
9 2014), the wemash.com website did not mention, describe, market, or offer for sale
10 any goods or services. A true and correct copy of the website as it appeared on
11 August 15, 2014 is below.



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22 **Figure 1 – www.wemash.com as it appeared in August 2014**

1 25. Upon information and belief, the www.wemash.com website
 2 remained largely unchanged from August 2014 until November 2015, which is
 3 after WeMesh filed this lawsuit. It was not until November 2015 that WeMesh
 4 began to post information about any products or services. A true and correct copy
 5 of the website as of December 16, 2015 appears below.



17 **Figure 2 – www.wemash.com as it appeared in December 2015**

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19 26. Upon information and belief, WeMesh registered the domain name
 20 www.wemesapp.com in May 2015, and first posted content on that website in
 21 August 2015. A true and correct copy of the website as it appeared on September
 22 5, 2016 is below.

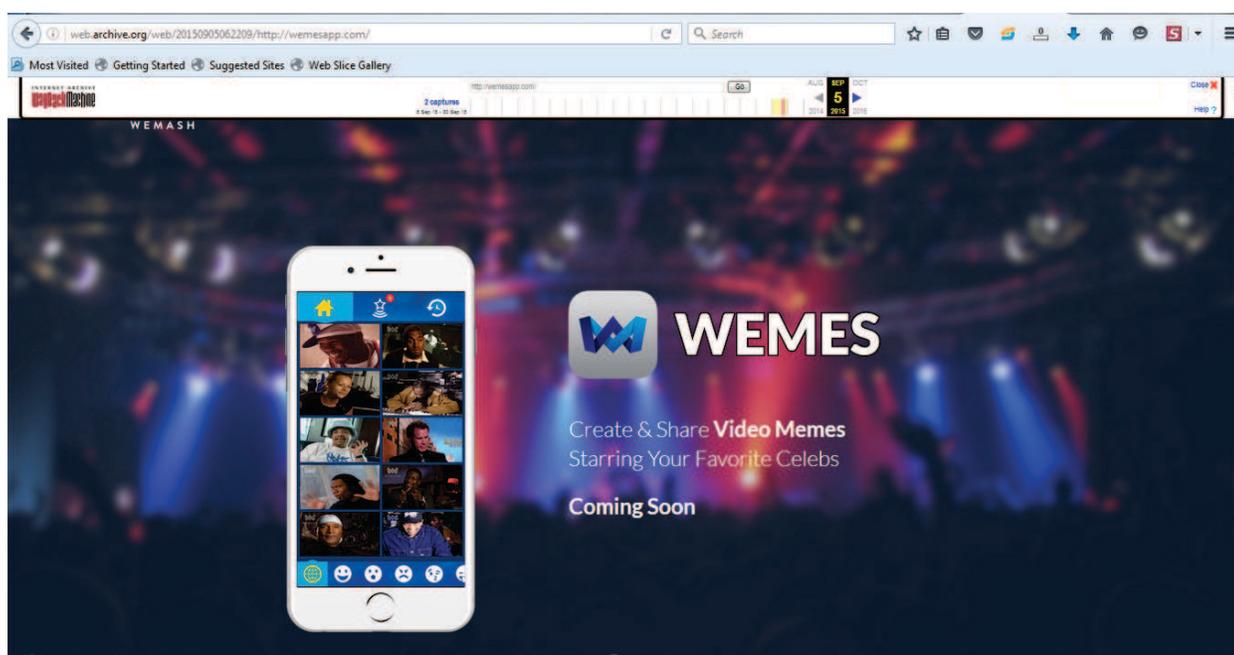


Figure 3 – www.wemesapp.com website as it appeared in September 2015

27. Upon information and belief, WeMash promotes the Wemes app on social networking sites. For example, WeMash promotes its Wemes app at www.facebook.com/wemesapp and www.facebook.com/wemash (on which it first posted in June 2015), www.twitter.com/wemesapp and www.twitter.com/wemashvids (on which it first Tweeted in June 2015), www.instagram.com/wemesapp (on which it first posted content in November 2015), and <https://vine.co/u/1253885947930681344> (on which it first posted a video in September 2015) All of these dates are well after WeMesh’s actual use of, and constructive priority date for, its federally registered WEMESH trademark.

28. WeMash did not promote or market any “WeMash” or “Wemes” app on social networking sites prior to June 2015.

29. On June 25, 2014, which is after WeMesh filed its application to register the mark WEMESH, Counter-defendant WeMash applied to register the WEMASH trademark on an “intent-to-use” basis in connection with

1 “Entertainment services, namely, providing webcasts and online videos in the field
2 of music, sports and entertainment; Providing a website featuring information in
3 the field of music, sports and entertainment; Entertainment services, namely,
4 providing information about music, sports and entertainment via an online
5 network” in International Class 41.

6 30. Upon information and belief, prior to filing the trademark application,
7 on June 19, 2014, WeMash conducted a trademark clearance search for any marks
8 similar to WEMASH. The very first result in the search report was WeMesh’s
9 WEMESH application.

10 31. Accordingly, in addition to constructive notice provided by
11 WeMesh’s federal trademark filing, WeMash was actually aware of the WEMESH
12 application at the time it applied to register the WEMASH mark on June 19, 2014.

13 32. Upon information and belief, WeMash elected to apply to register its
14 mark for entertainment services in Class 41, instead of for software in Class 9
15 (which is the proper class for software apps). Thus, WeMash’s trademark filing
16 indicated no intent to develop any products under the WEMASH mark.

17 33. The United States Patent and Trademark Office issued a Notice of
18 Allowance in connection with the WEMASH application on January 10, 2015,
19 which meant that WeMash’s mark could proceed to registration after WeMash was
20 able to demonstrate use of the WEMASH mark. WeMash filed for extensions of
21 time to prove its use of the WEMASH mark on June 29, 2015 and December 28,
22 2015.

23 34. Upon information and belief, WeMash took an extension of time in
24 June 2015 because it had not yet made use of its mark. Although the reasons why
25 WeMash took a second extension of time in December 2015 are unknown,
26 WeMash has yet to file a Statement of Use in connection with its WEMASH
27 trademark application. The WEMASH mark remains unregistered.

1 35. On June 8, 2015, WeMash applied to register the WEMES app on an
2 “intent-to-use basis” in connection with downloadable software in Class 9,
3 database services in Class 41, and non-downloadable software in Class 42.

4 36. Upon information and belief, WeMash applied to register the
5 WEMES mark on an “intent-to-use” basis because it had not made trademark use
6 of the term WEMES.

7 37. As between the parties to this lawsuit, WeMesh is the only one with a
8 federal trademark registration; WeMash does not own any trademark registration
9 for the WEMASH or WEMES marks.

10 38. WeMash does not own any trademark application or registration for
11 the WEMASH or WEMES marks in Canada, which is where WeMesh is
12 headquartered.

13 39. WeMash does not conduct any business in Canada, other than that its
14 software app is available to download by Canadian customers.

15 40. WeMesh has actual and constructive priority of trademark use of the
16 mark WEMESH prior to WeMash’s purported trademark use of the terms
17 WEMASH or WEMES.

18 41. Upon information and belief, WeMash did not consummate any sales
19 of a product branded “WeMash” prior to May 2014.

20 42. Upon information and belief, WeMash did not consummate any sale
21 of a service branded “WeMash” prior to May 2014.

22 43. Upon information and belief, WeMash did not consummate any sale
23 of a product branded “Wemes” prior to May 2014.

24 44. Upon information and belief, WeMash was incorporated in April
25 2014, eight months after WeMesh was incorporated.

26 45. Upon information and belief, WeMash first launched its app in
27 September 2015, over eight months after WeMesh launched its WEMESH app.
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1 International Class 9. WeMesh applied to register the mark on May 5, 2014 on an
2 intent-to-use basis.

3 54. Pursuant to 15 U.S.C. §1057(c), WeMesh has a constructive priority
4 date of May 5, 2014 for the WEMESH trademark.

5 55. Upon information and belief, WeMash's first use of the WEMASH
6 and WEMES mark in connection with an app was September 2015, which is
7 approximately 16 months after WeMesh's constructive priority date.

8 56. Upon information and belief, WeMash and Jones have not made
9 trademark use of WEMASH or WEMES in connection with any other good or
10 service and WeMash's use of the WEMASH and WEMES marks in connection
11 with its software app is likely to cause confusion with WeMesh's use of its
12 WEMESH mark in connection with its own software app.

13 57. In the alternative, WeMash claims to have used its WEMASH mark
14 in connection with video library services. WeMesh's use of the WEMESH mark
15 in connection with a software app does not infringe any rights WeMash claims to
16 have in WEMASH in connection with a video library. If WeMash began using its
17 WEMASH mark in connection with video library service relating to its software
18 app after WeMesh's date of first use of WEMESH, such use would be infringing
19 upon WeMesh's trademark rights.

20 58. WeMash applied to register the WEMASH mark on June 24, 2014,
21 and the WEMES mark on June 8, 2015, which is over a year after WeMesh's
22 constructive priority date for the WEMESH trademark application.

23 59. WeMash is using the WEMASH and WEMES marks in connection
24 with the offering of its goods and services without WeMesh's consent, and with
25 knowledge of WeMesh's rights. The WEMASH and WEMES marks are highly
26 similar to the WEMESH mark, as each is only one letter off – WEMASH replaces
27 the "e" in "Mesh" with an "a," and WEMES is "WeMesh" without the "h."
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1 60. Although WeMash has alleged trademark use of WEMASH dating
2 back to 2008 and trademark use of WEMES dating back to 2013, upon information
3 and belief, use of WEMASH and WEMES did not begin until approximately
4 September 2015.

5 61. WeMash's unauthorized use of the WEMASH and WEMES marks in
6 connection with the Wemes App indicates to consumers that WeMash's goods are
7 in some manner connected with, sponsored by, affiliated with, or related to
8 WeMesh, its licensees, or its goods and services.

9 62. At least WeMash's recent use of the WEMASH and WEMES marks
10 in connection with a software app is also likely to cause consumers to be confused
11 as to source, nature and quality of the goods WeMash is promoting or selling.

12 63. WeMash admits likelihood of confusion between the parties'
13 respective products, as it states in its FAC, ¶65, "Defendant WeMesh's use,
14 distribution, offer for sale and/or sale of colorable imitations of WeMash's
15 WEMASH and WEMES marks, as described in this Complaint, including but not
16 limited to in connection with the www.wemesh.com domain name, has caused and
17 is likely to cause confusion, deception, and mistake by creating the false and
18 misleading impression that the WeMesh Goods are manufactured or distributed by
19 WeMash, that Defendant WeMesh is affiliated, connected, or associated with
20 WeMash, and/or that WeMash has sponsored, endorsed or approved of Defendant
21 WeMesh."

22 64. Indeed, WeMash claims use of the highly similar WEMASH and
23 WEMES marks on the same or very similar product (mobile application).

24 65. WeMash sells its WEMES app in the exact same retail channel as
25 both parties' apps appear in the iTunes App Store.

26 66. WeMash's unauthorized use of the WEMASH and WEMES marks in
27 connection with the offering of its goods and/or services deprives WeMesh of the
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1 ability to control the consumer perception of the nature and quality of the goods
2 and services marketed under the WEMESH mark, and places WeMesh's valuable
3 reputation and goodwill in the hands of WeMash, over which WeMesh has no
4 control.

5 67. WeMash's unauthorized use of the WEMASH and WEMES marks in
6 connection with its software app falsely suggests to consumers that WeMesh's
7 goods and services are in some manner connected with, sponsored by, affiliated
8 with, or related to WeMash and its products or services.

9 68. The aforementioned acts of WeMash constitute trademark
10 infringement in violation of 15 U.S.C. § 1114.

11 69. The willful and intentional nature of the aforementioned acts of
12 WeMash makes this an exceptional case pursuant to 15 U.S.C. § 1117(a).

13 70. As a result of the foregoing alleged actions, WeMash has been
14 unjustly enriched, and WeMesh has been injured and damaged. Unless enjoined
15 by the Court, WeMash's actions will further impair the value of WeMesh's name,
16 reputation, and goodwill and cause injury and damages to WeMesh.

17 **SECOND CAUSE OF ACTION**

18 **(Trademark Infringement under 15 U.S.C. §1125)**

19 71. WeMesh incorporates by reference and re-allege allegations 1-70
20 above, as if set forth fully herein.

21 72. WeMesh owns a valid, protectable right in the WEMESH mark
22 because it used the mark in commerce, in connection with mobile applications, as
23 early as 2013, which is prior to use of that mark on such products by any other
24 entity.

25 73. WeMesh owns valid common-law rights in the WEMESH mark that
26 predate its federal constructive priority date.

27 74. Upon information and belief, WeMash and Jones did not make
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1 trademark use of the WEMASH or WEMES marks in connection with mobile apps
2 until September 2015, approximately nine months after WeMesh's application was
3 formally launched, and nearly two years after WeMesh's first use of the WEMESH
4 mark.

5 75. WeMesh's conduct complained of above constitutes infringement of
6 WeMesh's common law trademark rights under 15 U.S.C. §1125(A) and
7 California common law.

8 76. The willful and intentional nature of the aforementioned acts of
9 WeMesh makes this an exceptional case pursuant to 15 U.S.C. § 1117(a).

10 77. As a result of the foregoing alleged actions, WeMesh has been
11 unjustly enriched, and WeMesh has been injured and damaged. Unless enjoined
12 by the Court, WeMesh's actions will further impair the value of WeMesh's name,
13 reputation, and goodwill and cause injury and damages to WeMesh.

14 **THIRD CAUSE OF ACTION**

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

16 78. WeMesh incorporates by reference and re-allege allegations 1-77
17 above, as if set forth fully herein.

18 79. WeMesh's unauthorized use of the WEMASH and WEMES marks in
19 connection with its software app falsely suggests that its goods and/or services are
20 connected with, sponsored by, affiliated with, or related to WeMesh, and
21 constitutes a false designation of origin in violation of 15 U.S.C. §1125(a).

22 80. The willful and intentional nature of the aforementioned acts of
23 WeMesh makes this an exceptional case pursuant to 15 U.S.C. § 1117(a).

24 81. As a result of the foregoing alleged actions, WeMesh has been
25 unjustly enriched, and WeMesh has been injured and damaged. Unless enjoined
26 by the Court, WeMesh's actions will further impair the value of WeMesh's name,
27 reputation, and goodwill and cause injury and damages to WeMesh.

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FOURTH CAUSE OF ACTION

(Common Law Trademark Infringement and Unfair Competition)

82. WeMesh incorporates by reference and re-allege allegations 1-81 above, as if set forth fully herein.

83. WeMesh’s acts described above constitute common law trademark infringement and unfair competition under common law.

84. Upon information and belief, WeMesh’s acts have been willful and wanton and in reckless disregard of WeMesh’s rights.

85. As a result of the foregoing alleged actions, WeMesh has been unjustly enriched, and WeMesh has been injured and damaged. Unless enjoined by the Court, WeMesh’s actions will further impair the value of WeMesh’s name, reputation, and goodwill and cause injury and damages to WeMesh.

FIFTH CAUSE OF ACTION

(Unfair Competition under Cal. Bus. & Prof. Code §17200)

86. WeMesh incorporates by reference and re-allege allegations 1-85 above, as if set forth fully herein.

87. WeMesh’s acts described above constitute unfair competition in violation of California Business and Professional Code §17200 *et seq.*, as they are unlawful, unfair, and fraudulent business practices, and are likely to deceive the public.

SIXTH CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement)

88. WeMesh incorporates by reference and re-alleged allegations 1-87 above, as if set forth fully herein.

89. WeMesh is the senior user of the WEMESH mark and owns all rights in the WEMESH mark.

90. WeMesh does not have any valid or protectable trademark rights in

1 WEMASH or WEMES that are prior in time to WeMesh’s actual or constructive
2 priority dates of its WEMESH mark, and any purported trademark rights held by
3 WeMesh have not been infringed by WeMesh.

4 91. Accordingly, WeMesh is entitled to entry of judgment pursuant to 28
5 U.S.C. §§ 2201 and 2202 declaring that WeMesh has not infringed any trademark
6 rights owned by WeMesh.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, WeMesh prays for the following:

9 A. Entry of an order and judgment finding that WeMesh has infringed
10 WeMesh’s rights in the WEMESH mark in connection with a software app though
11 use of the marks WEMASH and/or WEMES in connection with a software app and
12 in connection with a video library that is used in connection with the software app,
13 and requiring that WeMesh, including its agents, servants, employees, owners and
14 representatives, and all other persons, firms or corporations in active concert or
15 participation with it, be enjoined and restrained from (a) using in any manner the
16 WEMASH and WEMES trade names and trademark, or any name or mark that is
17 confusingly similar to or a colorable imitation of this mark, in connection with a
18 software app or marketing of any software product; (b) doing any act or thing
19 calculated or likely to cause confusion or mistake in the minds of members of the
20 public, or prospective customers of WeMesh’s products or services, as to the
21 source of the products or services offered for sale, distributed, or sold, or likely to
22 deceive members of the public, or prospective customers, into believing that there
23 is some connection between WeMesh and WeMesh; and (c) to remove the
24 “Wemes” app from all app stores (including but not limited to the iTunes App
25 Store), and remove all content from the www.wemash.com and
26 www.wemesapp.com domains.
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1 B. A judgment ordering WeMash, pursuant to 15 U.S.C. § 1116(a), to
2 file with this Court and serve upon WeMesh within thirty (30) days after entry of
3 the injunction, a report in writing under oath setting forth in detail the manner and
4 form in which it has complied with the injunction, ceased all sales of app products
5 and services under the WEMASH and WEMES names and marks;

6 C. A judgment ordering WeMash, pursuant to 15 U.S.C. § 1118, to
7 deliver up for destruction, or to show proof of said destruction or sufficient
8 modification to eliminate the infringing matter, all articles, packages, wrappers,
9 products, displays, labels, signs, vehicle displays or signs, circulars, kits,
10 packaging, letterhead, business cards, promotional items, clothing, literature, sales
11 aids, receptacles or other matter in the possession, custody, or under the control of
12 WeMash or its agents bearing the trademarks WEMASH or WEMES in any
13 manner, or any mark that is confusingly similar to or a colorable imitation of these
14 marks, and which relate to the use of those marks in connection with an app
15 product or service;

16 D. A judgment ordering WeMash to take all steps necessary to cancel or
17 transfer to WeMesh, in WeMesh's sole discretion, any domain names that include
18 the WEMASH or WEMES trademarks that are in WeMash's possession or control,
19 and to remove all references to WEMASH and WEMES from all of its other
20 websites;

21 E. A judgment ordering WeMash to take all steps necessary to remove
22 any app offered under the WEMASH and/or WEMES names from the various app
23 stores;

24 F. A judgment declaring that WeMesh is the senior user of the
25 WEMESH mark, that WeMash has no prior rights in WEMASH or WEMES, and
26 that WeMesh has not infringed any trademark rights of WeMash.
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G. For the recovery of all damages sustained by WeMesh due to the wrongs of WeMesh and Jones, for an amount to be proved;

H. For disgorgement of all gains, profits, and advantages derived by WeMesh from its acts of trademark infringement, unfair competition, and other violations of law;

I. A Declaration that Counter-Claim Defendant's revenues be held in a constructive trust for the benefit of Counter-Claimants;

J. For exemplary and treble damages, as provided by the law;

K. For punitive damages in connection with WeMesh's common law unfair competition claims;

L. For all costs and expenses;

M. For prejudgment interest at the maximum legal rate; and

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DEMAND FOR JURY TRIAL

Defendant and Counter-Claimant WeMesh Inc. hereby demands trial by jury of all issues so triable.

Respectfully submitted,

Dated: April 8, 2016

BOBBY GHAJAR
MARCUS D. PETERSON
PILLSBURY WINTHROP SHAW PITTMAN LLP

By: /s/ Bobby Ghajar
Bobby Ghajar
Marcus D. Peterson

Attorneys for Defendants
WEMESH INC. and MICHAEL PAZARATZ