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Filing date: **12/08/2011**

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

Proceeding.	92054737
Applicant	Defendant Voodoo Tiki Tequila Corporation
Other Party	Plaintiff Three-D Spirits, Inc.

### **Motion for Suspension in View of Civil Proceeding With Consent**

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Voodoo Tiki Tequila Corporation hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Voodoo Tiki Tequila Corporation has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein.

Voodoo Tiki Tequila Corporation has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Respectfully submitted,  
/s/ Jason M. Booth  
Marina Maynez  
mmaynez@dlflawyers.com  
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12/08/2011

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

In the matter of trademark Registration Numbers 3701053 and 3501419  
For the marks VOODOO TIKI and VOODOO TIKI TEQUILA and design, respectively  
Dates registered October 27, 2009, and September 16, 2008, respectively

THREE-D SPIRITS, INC.,

Petitioner,

v.

VOODOO TIKI TEQUILA  
CORPORATION,

Respondent.

Cancellation No. 92054737

**CONSENT MOTION TO SUSPEND FOR CIVIL ACTION**

Petitioner THREE-D SPIRITS, INC. and Respondent VOODOO TIKI  
TEQUILA CORPORATION, by and through their counsel and pursuant to TBMP  
510.02(a), hereby stipulate that the parties are currently involved in a civil action in the  
United States District Court for the Central District of California, namely Three-D  
Spirits, Inc. v. Voodoo Tiki Tequila Corporation, Case No. CV11-09255-JHN-AJW,  
which may have a bearing on this case. Accordingly, the parties request that this matter

be suspending pending the outcome of the civil action. A true and correct copy of the Complaint in that action is attached hereto as Exhibit "A."

DATED: December 8, 2011

DONGELL LAWRENCE FINNEY LLP

By: /s/ Jason M. Booth  
Jason M. Booth  
Attorneys for Respondent VOODOO TIKI  
TEQUILA CORPORATION  
707 Wilshire Blvd., 45th Floor  
Los Angeles, CA 90017  
(213) 943-6100

DATED: December 8, 2011

MACHAT & ASSOCIATES

By: /s/ Michael Machat  
Michael Machat  
Attorneys for Petitioner THREE-D  
SPIRITS, INC.  
9107 Wilshire Blvd., Suite 425  
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## **Exhibit A**

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8 Attorneys for Plaintiff  
9 THREE-D SPIRITS, INC

FILED  
11 NOV - 8 AM 10:10  
CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 THREE-D SPIRITS, INC.

13 Plaintiff,

14 vs.

15 VOODOO TIKI TEQUILA  
16 CORPORATION, DONNA  
17 DECUNZO-TADDEO, and DOES 1-  
18 10, inclusive,

19 Defendants.

CASE NO.  
CV 11-09255 JHN(AJW)

COMPLAINT FOR TRADEMARK  
INFRINGEMENT

DEMAND FOR JURY TRIAL

20  
21 For its Complaint, Plaintiff THREE-D SPIRITS, INC. alleges and asserts as  
22 follows:

23  
24 I. JURISDICTION AND VENUE

25  
26 1. Plaintiff brings this action for injunctive relief and damages arising  
27 out of the unauthorized, unfair, and deceptive competitive practices of Defendants,  
28 and each of them, in connection with the commercial use and exploitation of

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trademarks in violation of the Lanham Act.

2. This action arises under the Trademark Laws of the United States, including particularly, Sections 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114 and 1125. Jurisdiction is conferred on this Court by 15 U.S.C. Section 1121(a), by 28 U.S.C. Section 1338(a), in that this case arises under the Trademark Laws of the United States, 15 U.S.C. Sections 1051, et seq., and by principles of pendent jurisdiction. Venue is proper in this District under 28 U.S.C. §§ 1391 (b) and (c) as Defendants transact business in Los Angeles County, California, and a substantial part of the events or omissions giving rise to the claim occurred within this District.

**II. THE PARTIES**

3. Plaintiff THREE-D SPIRITS, INC. (“THREE-D SPIRITS”) is a California Corporation with its main business office located in Sonoma County, California.

4. Defendant VOODOO TIKI TEQUILA CORPORATION (“VOODOO TIKI”) is, upon information and belief, a Floridian Corporation doing business throughout the United States, including business in California and within Los Angeles County. Upon information and belief, Defendant VOODOO TIKI via its distributors warehouses some of its products within the Central District of California.

5. Defendant Donna DeCunzo-Taddeo (“DeCunzo-Taddeo”) is, upon information and belief, the Chief Executive Officer and face behind Defendant VOODOO TIKI.

6. The true names and capacities, whether individual, corporate or otherwise of Doe Defendants 1 through 10 inclusive, are unknown to Plaintiff, who therefore

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1 sue them by such fictitious names. Plaintiff will seek leave to amend this complaint  
2 to allege their true names and capacities when they have been ascertained. Plaintiff  
3 is informed and believes and thereon alleges that each of the fictitiously named  
4 Defendants is responsible in some manner for the occurrences herein alleged and  
5 that Plaintiff's damages as herein alleged were proximately caused by those  
6 Defendants. At all times herein mentioned, Doe Defendants 1 through 10,  
7 inclusive, were the agents, servants, employees or attorneys of their co-Defendants,  
8 and in doing the things hereinafter alleged were acting within the course and scope  
9 of their authority as those agents, servants, employees or attorneys, and with the  
10 permission and consent of their co-Defendants.

#### 11 12 **4. FACTS GIVING RISE TO THIS ACTION**

13  
14 7. Plaintiff THREE-D SPIRITS has been marketing rum under the brand  
15 name REDRUM in a proprietary bottle painted red since approximately 1997.

16 8. In or around early 2002, Plaintiff THREE-D SPIRITS expanded its range  
17 of rum offerings and began selling VOODOO SPICED RUM.

18 9. VOODOO SPICED RUM is marketed in the same proprietary bottle  
19 owned by Plaintiff THREE-D SPRITS. The proprietary bottle is painted red when  
20 filled with REDRUM. When filled with VOODOO SPICED RUM, the bottle is  
21 not painted.

22 10. Since the bottle was originally engraved with the words Redrum on the  
23 side of the bottle, a US Trademark Registration (No. 2703243) was subsequently  
24 issued to Plaintiff in Plaintiff's name with the consolidated word mark REDRUM  
25 VOODOO SPICED RUM. However, the word VOODOO is clearly the prominent  
26 mark on the beverage package and accordingly, the brand has become known  
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1 simply as VOODOO RUM or VOODOO SPICED RUM, since it is a spiced rum.

2  
3 11. The trade dress for Plaintiff's VOODOO also features a Tiki symbol  
4 referred to as the TIKI DUDE. The combination of the VOODOO brand name and  
5 the TIKI image comprise the essential elements of the trade dress of VOODOO  
6 SPICED RUM.

7 12. Plaintiffs sells, markets, promotes and distributes its VOODOO  
8 SPICED RUM in various markets throughout the country, including within the  
9 Central District of California.

10 13. Subsequent to the commercial release of PLAINTIFF THREE-D  
11 SPIRITS' VOODOO SPICED RUM with the Tiki design logo, defendants decided  
12 to market a tequila and call it VOODOO TIKI TEQUILA.

13 14. Thereafter, Plaintiff discovered defendants plans and sent defendants a  
14 letter warning them of the consequences of continuing with their unlawful behavior  
15 and demanding that they cease and desist from the unlawful conduct.

16 15. Defendants refused to abide by the terms of the letter. Shortly after  
17 receiving the first of three cease and desist letters, defendant DeCunzo-Taddeo  
18 phoned Dan DaDalt, the President of Plaintiff Three-D Spirits, and requested  
19 permission to work together so that she could carry on using her infringing name  
20 and design. Mr. DaDalt told her he would discuss it with his board of directors.  
21 Shortly thereafter, defendant DeCunzo-Taddeo was notified that her request was  
22 denied, and she was instructed to cease and desist from using Plaintiff's brand  
23 name.

24 16. Rather than ceasing and desisting, defendants persisted in marketing  
25 their tequila with a confusingly similar name and design. Upon information and  
26 belief, Defendants' even filed fraudulent trademark applications for the marks  
27 VOODOO TIKI and VOODOO TIKI TEQUILA and design, lying about their date  
28 of first use as well as their assertion "to the best of her knowledge, no other person,

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1 firm, corporation or association has the right to use the mark in commerce, either in  
2 the identical form thereof or in such near resemblance thereto as to be likely, when  
3 used on or in connection with the goods/services of such other person, to cause  
4 confusion, or to cause mistake, or to deceive.” Registration numbers 3701053 (for  
5 VOODOO TIKI) and 3501419 (for VOODOO TIKI TEQUILA and design)  
6 subsequently issued in defendants’ name.  
7

8 17. On or about October 26, 2011, Plaintiff THREE-D SPRITS filed a  
9 petition with the Trademark Trial and Appeal Board to cancel these two fraudulent  
10 registrations.

11 18. THREE-D SPIRITS has spent substantial amounts of time and money  
12 building up, advertising, and promoting its VOODOO SPICED RUM brand. By  
13 virtue of the popularity of its beverage brands, its advertising, promotion, and sales,  
14 THREE-D SPIRITS has built up and owns an extremely valuable goodwill which is  
15 symbolized by the VOODOO mark and the TIKI design.

16 19. Defendants have entered into distribution agreements with various  
17 distributors to market, sell and distribute beverage products bearing the name  
18 VOODOO TIKI with the TIKI design throughout the United States, including Los  
19 Angeles County, despite receiving the warnings from Plaintiff not to do so.

20 20. Plaintiff alleges that each of the defendants knew of Plaintiff’s  
21 VOODOO brand and TIKI logos, but decided to go ahead with their plans to  
22 market and sell products under a VOODOO TIKI name and TIKI design anyway,  
23 because they believed that they could get away with it and they wanted to make  
24 easy money capitalizing on the goodwill built up by Plaintiff over time.

25 21. If defendants are not stopped from marketing a beverage with the  
26 VOODOO TIKI name and TIKI logo, then consumers will continue to be confused  
27 as to the source of origin of defendants’ tequila.  
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22. Also, if defendants are not stopped from marketing products with the VOODOO TIKI name and TIKI Logo, it is likely that consumers will continue to become confused about the source and origin of Plaintiff THREE-D SPIRITS' products, and mistakenly conclude that Plaintiff THREE-D SPIRITS products are produced by Defendants.

COUNT II – VIOLATION OF LANHAM ACT 15 U.S.C. §1125a

(Against All Defendants)

23. PLAINTIFF THREE-D SPIRITS realleges the allegations in paragraphs 1 through 22.

24. Not only is defendants' VOODOO TIKI a knock-off of Plaintiff's VOODOO brand and trademark, the use of the word TIKI and their use of Tiki images is also so similar to the trade design used by Plaintiff in its packaging and marketing of its VOODOO SPICED RUM with its TIKI DUDE that if defendants are not stopped from marketing and selling VOODOO TIKI Tequila and related VOODOO TIKI products, the public will naturally assume it is a spin-off of Plaintiff's family of Brands, and consumers have been and will be confused as to the source of origin of defendants and Plaintiff THREE-D SPIRIT's products.

25. Defendants, are causing consumers to believe that their VOODOO TIKI products originate from the same source as Plaintiff's VOODOO SPICED RUM, which is causing irreparable harm to THREE-D SPIRITS goodwill, reputation, and sales.

26. Defendants' VOODOO TIKI brands so closely resemble THREE-D SPIRIT's VOODOO brand that the public is likely to be confused and deceived, and to assume erroneously that defendants' VOODOO TIKI beverages are those of Plaintiff THREE-D SPIRITS, or that defendants are in some way connected with,

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1 sponsored by, or affiliated with THREE-D SPIRITS, all to THREE-D SPIRITS'  
2 detriment and irreparable damage.

3 27. Defendants are not affiliated with, connected with, endorsed by, or  
4 sponsored by THREE-D SPIRITS, nor has THREE-D SPIRITS approved or  
5 authorized any of the goods or services offered or sold by defendants.

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

16 29. Defendants have committed trademark infringement of Plaintiff's  
17 trademarks in their deceptive marketing of beverages with the VOODOO TIKI  
18 name.

19 30. Defendants have induced others to infringe Plaintiff's trademarks and  
20 trade names.

21 31. Defendants have acted with bad intent and culpably in selecting, using,  
22 and/or approving of the use of Plaintiff's VOODOO mark and TIKI DUDE design  
23 in the distribution, marketing, promotion, advertisement, offering for sale, and/or  
24 sale of VOODOO TIKI products.

25 32. Defendants have marketed and sold in interstate commerce, and in  
26 commerce substantially affecting interstate commerce, beverage products branded  
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1 under the VOODOO TIKI name with the TIKI design mark. Defendants have  
2 promoted, advertised, offered for sale, and/or sold, beverage products using the  
3 VOODOO TIKI mark and TIKI design through persons not authorized, employed  
4 by, or associated in any way with Plaintiff and have used the aforementioned trade  
5 name and trademark as a false designation and a false representation for beverage  
6 products.

7  
8 33. None of the activities alleged in this complaint have been  
9 authorized by Plaintiff, and such unauthorized use by Defendants of Plaintiff's  
10 trademarks and/or trade names in interstate commerce, commerce substantially  
11 affecting interstate commerce in this district, and elsewhere throughout the United  
12 States, constitutes infringement and an inducement to infringe Plaintiff's  
13 trademarks and/or trade names and dress, and such activities are likely to cause  
14 confusion, mistakes, and to deceive the public at large.

15 34. Upon information and belief, Defendants have acted with the unlawful  
16 purpose of:

- 17 a. Improperly taking advantage of the valuable goodwill belonging to  
18 Plaintiff;
- 19 b. Soliciting Plaintiff's customers and/or potential customers,  
20 attempting to sell, and selling to such customers and potential  
21 customers, beverage products marketed under the VOODOO TIKI  
22 mark and TIKI design through persons not authorized by, employed  
23 by, or associated in any way with Plaintiff;
- 24 c. Inducing others to infringe Plaintiff's trademarks and trade names;  
25 and
- 26 d. Causing the goods of persons not authorized by, employed by, or  
27 associated in any way with Plaintiff to be falsely represented as if  
28 they were rendered, authorized, sponsored by, endorsed by, or

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otherwise connected with Plaintiff's trademarks, trade names and trade dress.

35. Defendants' conduct, as alleged in this complaint, constitutes a violation of 15 U.S.C. § 1125.

36. If Defendants are allowed to continue marketing and selling the accused products, Plaintiff will continue to be damaged as alleged in this complaint, and the Defendants will profit thereby. Furthermore, unless the Court permanently enjoins Defendants' conduct as alleged in this complaint, Plaintiff's business, goodwill, and reputation will suffer irreparable injury of an insidious and continuing sort that cannot be adequately calculated and compensated in monetary damages.

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

38. The intentional nature of defendants' acts makes this an exceptional case under 15 U.S.C. §1117(a).

39. The intentional nature of defendants' acts and conduct makes this a case suitable for an award of Three Times Defendants' profits. The Egregious conduct of Defendants' warrants a further award of Defendants' entire business to Plaintiff.

**COUNT II**  
**VIOLATION OF LANHAM ACT 15 U.S.C. §1114**  
**(Against All Defendants)**

40. Plaintiff repeats each allegation contained in paragraphs 1 through 39 as though set forth here at length.

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41. Defendants have engaged in, and continue to engage in, the wrongful exploitation of the Plaintiff's registered mark.

42. Defendants' goods are so closely related to Plaintiff's goods that the public is likely to be confused, to be deceived, and to erroneously assume that Defendants' marketing and sale of their VOODOO TIKI products as packaged, advertised and promoted, are those of Plaintiff, or that Defendants are in some way connected with, sponsored by, or affiliated with Plaintiff, all to Plaintiff's detriment and irreparable damage.

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

44. Defendants conduct as alleged herein is likely to cause confusion, mistake and deceive the public as to the affiliation, connection, or association of defendants with Plaintiff, and/or as to the origin, sponsorship or approval of Defendants' VOODOO TIKI beverages by Plaintiff.

45. Defendants' aforesaid infringing conduct has been willful and has been committed with the intent to ride on, and/or step on and demolish, the goodwill Plaintiff has worked hard to develop. Defendants' aforesaid infringing conduct has been willful and done with knowledge that the sale, marketing, advertisement, and promotion of their beverages will damage the goodwill of and hurt the prospects of future commercial success of Plaintiff's VOODOO brand. Plaintiff is therefore entitled to treble damages arising therefrom, as well as reimbursement of Plaintiff's attorneys' fees and costs.

46. The intentional nature of defendants' acts makes this an exceptional case under 15 U.S.C. §1117(a).

47. The intentional nature of defendants' acts and conduct makes this a case suitable for an award of Three Times Defendants' profits. The Egregious

1 conduct of Defendants’ warrants a further award of Defendants’ entire business to  
2 Plaintiff.

3  
4 **COUNT III**

5 **UNFAIR COMPETITION – COMMON LAW, AND CALIFORNIA**  
6 **BUSINESS & PROFESSIONS CODE §§ 17200 et seq.**

7  
8 48. Plaintiff repeats each allegation contained in paragraphs 1 through 47  
9 as though set forth herein at length.

10 49. Defendants have engaged in unfair competition perpetrated against  
11 Plaintiff by reason of the conduct alleged herein.

12 50. The unlawful and unfair conduct is injuring the goodwill of Plaintiff.

13 51. Defendants are each liable for the unfair competition, and/or are liable  
14 for aiding and abetting such conduct.

15 52. By this conduct, Plaintiff has directly suffered injuries and each  
16 Defendant has been unjustly enriched.

17 53. Plaintiff is entitled to restitution, the recovery of damages, and the  
18 recovery of the profits earned by Defendants by virtue of their conduct.

19 54. As a consequence of the unfair competition by Defendants, Plaintiff is  
20 suffering irreparable injury, by reason of which such conduct should be enjoined.

21 55. Plaintiff is entitled to reasonable attorneys’ fees.

22 56. Plaintiff is informed and believes, and on that basis alleges, that the  
23 aforementioned conduct of Defendants is willful, oppressive, fraudulent, and  
24 malicious, and Plaintiff is therefore entitled to punitive damages.

25  
26 **COUNT IV**

27 **UNFAIR COMPETITION – COMMON LAW, CALIFORNIA BUSINESS &**  
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PROFESSIONS CODE §§ 17500 et seq.

57. Plaintiff repeats each allegation contained in paragraphs 1 through 56 as though set forth here at length.

58. Defendants' use of the trade name and trademark VOODOO TIKI which misrepresents the nature, characteristics, identity, and source or sponsorship of Defendants' goods, constitutes aiding and abetting liability for deceptive, untrue, and misleading advertising and therefore constitutes a violation of, inter alia, California Business and Professions Code §§17500 et seq. and California common law.

59. Defendants' use of the trade name and trademark VOODOO TIKI and related trade dress and trademarks are likely to deceive and will continue to deceive the consuming public. Defendants knew, recklessly disregarded, or reasonably should have known that such packaging, advertising, marketing, and promotion was untrue and/or misleading.

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

61. Defendants have been unjustly enriched, among other things, by the receipt of sales revenues from consumers who mistakenly thought that they were purchasing Plaintiff's VOODOO branded products, both in California and throughout the world, but instead were purchasing Defendants' goods which are promoted and sold through advertisements that affirmatively misrepresent, either directly or by implication, the nature, characteristics, identity, and source or sponsorship of the goods.

62. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiff, Plaintiff on behalf of itself and the general public, which is unable

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effectively to assert its interests, seeks an order of this Court ordering Defendants immediately to cease such support for acts of unfair competition and false advertising, and enjoining Defendants from continuing to import or export, distribute, market, promote, advertise, offer for sale, and sell, Defendants' VOODOO TIKI products which falsely advertise or conduct business via the unlawful, deceptive, unfair or fraudulent business acts and practices, and the untrue and misleading advertising complained of herein. Plaintiff additionally requests an order disgorging Defendants' ill-gotten gains and restitution of all monies wrongfully acquired by Defendants by means of their support of such acts of unfair competition and false advertising, damages, interest and attorneys' fees.

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court adjudge and decree that Defendants have falsely designated the origin of certain beverage products as those of Plaintiff, have made and used false representations in connection with the sale, offering for sale, promotion and advertising of such products, and have unfairly competed with Plaintiff at common law.
2. That the Court adjudge and decree that Defendants have infringed Plaintiff's registered trademarks including REDRUM VOODOO SPICED RUM.
3. That the Court permanently enjoin Defendants, their agents, servants, employees, attorneys, and all persons acting in concert or participation with them, or with any of them from:

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- a. Using VOODOO or TIKI or any other word or words which are similar to, or a colorable imitation of, Plaintiff's trade names and marks, either alone, as part of, or together with, any other word or words, trademark, service mark, trade name, or other business or commercial designation in connection with the sale, offering for sale, advertising, and/or promotion of beverage products and beverage accessories;
- b. Selling, offering to sell, marketing, distributing, advertising and/or promoting any product with the words VOODOO or TIKI displayed on the product, its packaging, advertising or promotional materials;
- c. Representing directly or indirectly by words or conduct that any beverage product or beverage accessory offered for sale, sold, promoted, or advertised by Defendants, is authorized, sponsored by, endorsed by, or otherwise connected with Plaintiff;
- d. Aiding or abetting in unfair competition against Plaintiff;
- e. Aiding or abetting in false advertising; and
- f. Inducing others to engage in any of these aforementioned acts.

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

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5. That the Court exercise its powers in equity and order that Defendants' entire infringing business be turned over to Plaintiff for Plaintiff's benefit to keep and hold and do what it pleases.

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

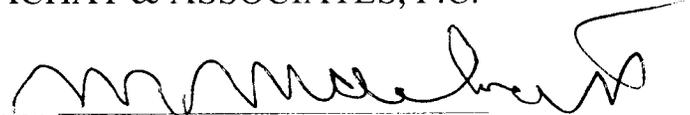
7. That the Court award Judgment against Defendants for the full costs of this action, including the attorney's fees reasonably incurred by Plaintiff.

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

9. That the Court retain jurisdiction of this action for the purpose of enabling Plaintiff, in its discretion, to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the interpretation or execution of any Order entered in this action, for the modification of any such Order, for the enforcement of compliance therewith, and/or for the punishment of any violation thereof.

Respectfully submitted,  
MACHAT & ASSOCIATES, P.C.

Dated: November 7, 2011

By:   
Michael Machat, Esq.  
Attorneys for Plaintiff  
THREE-D SPIRITS, INC.

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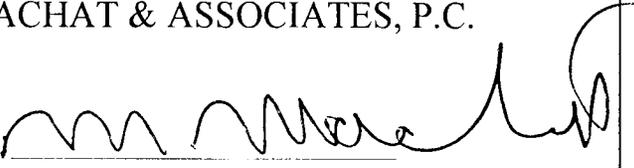
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**DEMAND FOR JURY TRIAL**

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

Respectfully submitted,  
MACHAT & ASSOCIATES, P.C.

Dated: November 7, 2011

By:   
Michael Machat, Esq.  
Attorneys for Plaintiff  
THREE-D SPIRITS, INC.

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

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

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Jacqueline Nguyen and the assigned discovery Magistrate Judge is Andrew J. Wistrich.

The case number on all documents filed with the Court should read as follows:

**CV11- 9255 JHN (AJWx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

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

THREE-D SPIRITS, INC.	CASE NUMBER <b>CV11-09255 JHN(AJW)</b>
<p style="text-align: center;">v.</p> <p>VOODOO TIKI TEQUILA CORPORATION, DONNA DECUNZO-TADDEO, and DOES 1-10, inclusive</p>	<b>SUMMONS</b>

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  \_\_\_\_\_ amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael Machat, whose address is 9107 Wilshire Blvd., Ste. 425, Beverly Hills, CA 90210. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

NOV - 8 2011

Clerk, U.S. District Court

Dated: \_\_\_\_\_

By: JULIE PRADO  
Deputy Clerk  
*(Seal of the Court)*

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) THREE-D SPIRITS, INC.	<b>DEFENDANTS</b> VOODOO TIKI TEQUILA CORPORATION, DONNA DECUNZO-TADDEO and DOES 1 - 10, inclusive
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Michael Machat, Machat & Associates, P.C. 9107 Wilshire Blvd., Ste. 425 Beverly Hills, CA 90210 Tel: (310) 860-1833	Attorneys (If Known)

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:40%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
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Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

**IV. ORIGIN** (Place an X in one box only.)

1 Original Proceeding    
  2 Removed from State Court    
  3 Remanded from Appellate Court    
  4 Reinstated or Reopened    
  5 Transferred from another district (specify): \_\_\_\_\_    
  6 Multi-District Litigation    
  7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT:**     **JURY DEMAND:**  Yes      No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION under F.R.C.P. 23:**  Yes      No     **MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 USC Section 1125, Trademark Infringement and Unlawful Competition

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 535 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE / PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV 11 09255

**FOR OFFICE USE ONLY:** Case Number: \_\_\_\_\_

**AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.**

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

VIII(a). **IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

VIII(b). **RELATED CASES:** Have any cases been previously filed in this court that are related to the present case?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	SONOMA

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

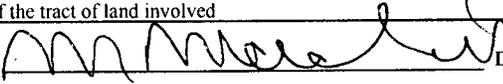
County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	FLORIDA

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date November 7, 2011

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**CERTIFICATE OF SERVICE**

I hereby certify that, on December 8, 2012, a true and complete copy of the foregoing **CONSENT MOTION TO SUSPEND FOR CIVIL ACTION** has been served on Petitioner's counsel via e-mail, as the parties have agreed, as follows:

Michael Machat, Esq.  
MACHAT & ASSOCIATES  
9107 Wilshire Blvd., Suite 425  
Beverly Hills, CA 90210  
[michael@machatlaw.com](mailto:michael@machatlaw.com)

DATED: December 8, 2011

/s/ *Marina Maynez*