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

Proceeding	92056169
Party	Defendant Jason P. Barnes aka Jazan Wild
Correspondence Address	JASON P BARNES 13418 MOORPARK STREET SHERMAN OAK, CA 91423 UNITED STATES jazanwild@yahoo.com
Submission	Motion to Suspend for Civil Action
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Attachments	2012-11-08 WILD Motion to Suspend - Ex 1 - 2012-07-23 Dkt 001 Wild Harper Complaint.pdf (28 pages)(1327380 bytes)

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5 **UNITED STATES DISTRICT COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
7

8 JAZAN WILD, an individual, dba
9 CARNIVAL COMICS

10 Plaintiffs,

11 v.

12 HARPERCOLLINS PUBLISHERS,
13 LLC

14 Defendants.
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CASE NO.

SACV12 1191 JST(ANx)

**COMPLAINT FOR
TRADEMARK INFRINGEMENT;
DILUTION; UNJUST
ENRICHMENT;
UNFAIR COMPETITION;
FALSE DESCRIPTION; AND
INJURY TO BUSINESS
REPUTATION**

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19 Plaintiff, Jazan Wild, dba Carnival Comics (hereinafter "Plaintiff" or "Wild"),
20 by his attorneys, as and for their complaint against Defendant HarperCollins
21 Publishers LLC (hereinafter "HarperCollins" or "Defendant"), alleges, upon
22 knowledge as to himself and otherwise upon information and belief, as follows:
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I. SUBJECT MATTER JURISDICTION

1. This is an action for a Trademark Infringement, Unfair Competition, False Description, Reverse Confusion and Dilution, arising under §§ 32, 43 of the Lanham Act, 15 U.S.C. §§ 1114(1) (Trademark Infringement) and 1125(a) (Unfair Competition and False Description) 1125(c) (Dilution), and for Unjust Enrichment and Injury to Business Reputation, arising under California State law..

2. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121. This Court has related claim jurisdiction over the state law tort claims pursuant to 28 U.S.C. § 1338 (b) and 28 U.S.C. § 1367.

II. THE PARTIES

3. Plaintiff Wild is a resident of the city of Encino, California, in this District. Wild does business under the name Carnival Comics and is the owner of the trademarks CARNIVAL OF SOULS and ENTER THE CARNIVAL, which are used in connection with Wild’s publishing business.

4. Upon information and belief, Defendant HarperCollins LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 10 East 53rd Street, New York, New York. Harper Collin also has offices in San Francisco at 353 Sacramento Street, STE 500 San Francisco, CA 94111-3653. HarperCollins is one of the largest English language publishing companies in the world. Upon information and belief, HarperCollins is a publishing company and and is wholly owned by News Corporation, with an office at 1211 Avenue of Americas, New York, New York 10036.

III. PERSONAL JURISDICTION AND VENUE

5. This Court has personal jurisdiction over HarperCollins on the basis of principles of general jurisdiction in that HarperCollins conducts business

1 systematically and continuously in this state and this District. This Court further has
2 personal jurisdiction over HarperCollins on the basis of principles of specific
3 jurisdiction in that HarperCollins had committed acts of infringement in this state
4 and this District that have caused harm in this state and this District, and because a
5 substantial part of the events or omissions giving rise to the claim occurred in this
6 state and this District. Plaintiff Wild is a resident of this state and District.

7 6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a),
8 in that the Defendant is subject to personal jurisdiction in this District at the time the
9 action is commenced, and under 28 U.S.C. § 1391 (b) and (c).

10 IV. FACTS COMMON TO ALL CAUSES OF ACTION

11 A. Wilds's CARNIVAL OF SOULS Trademark

12 7. Beginning at least as early as 2004, Wild has published and sold a series of
13 comic books, graphic novels and novels under the trademark mark CARNIVAL OF
14 SOULS, both in print and in electronic and multimedia versions. United States
15 Trademark Registration No. 3,921,658, granted February 22, 2011, in International
16 Class 16 for "Comic books; Graphic novels; Novels" and in International Class 41
17 for "Multimedia publishing of books, magazines, journals, software, games, and
18 electronic publications." The owner of the CARNIVAL OF SOULS Trademark
19 Registration is Jason Barnes, aka Jazan Wild. Jason Barnes is Jazan Wild's prior
20 name. A copy of Wild's CARNIVAL OF SOULS Trademark Registration No.
21 3,921,658 attached hereto as Exhibit 1.

22 8. Wild's CARNIVAL OF SOULS Trademark Registration is the only
23 live United States Trademark Registration in any International Class. Wild's
24 CARNIVAL OF SOULS Trademark Registration is the only "CARNIVAL OF
25 SOULS" mark in International Class 16, ever, for as far back as records are
26 maintained on the United States Patent and Trademark Office "Trademark
27 Electronic Search System" (TESS).

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1 Wild's Common Law Trademark ENTER THE CARNIVAL

2 9. Beginning at least as early as 2009, Wild has adopted and used the
3 trademark ENTER THE CARNIVAL in connection with the sale and offering for
4 sale of his series of comic books, graphic novels and novels and multimedia
5 publishing of books, magazines, journals, software, games, and electronic
6 publications, especially those sold under the CARNIVAL OF SOULS trademark.
7 Exhibit 2 shows one example of Wild's use of his trademark ENTER THE
8 CARNIVAL.

9 10. Wild's trademarks CARNIVAL OF SOULS and ENTER THE
10 CARNIVAL are sometimes referred to herein as "Wild's Trademarks."

11 Fame of Wild's Trademarks

12 11. Carnival Comics was the first company to offer graphic novels on
13 Blackberry and Nokia phones and as a result now has over 1 million books
14 downloaded on Nokia, Blackberry, Android, iPhone and iPad devices. Those
15 graphic novels were published and sold by Carnival Comics under the trademark
16 CARNIVAL OF SOULS. Wild's CARNIVAL OF SOULS graphic novel was the
17 #1 ebook on Blackberry phones for over a year, as well as being featured in the Los
18 Angeles Times, for being the first comic book on Blackberry.

19 12. Wild's CARNIVAL OF SOULS was on Entertainment Weekly's Must
20 List coming in at #4, two spots above the rock band U2. Carnival Comics was then
21 honored with being named a Nokia's 2009 Success Story. Wild was brought in to
22 the San Diego CES conference to receive this prestigious award, as well as being
23 featured as a speaker. Wild has had 6 number one titles on Amazon's Graphic
24 Novels and Comic Books List sold under the CARNIVAL OF SOULS Trademarks.

25 13. Wild's series of comic books, graphic novels and multimedia works
26 sold under the Wild Trademarks has been downloaded in over 200 countries all over
27 the globe, and is internationally known.

1 14. On the Amazon Kindle Store, Wild has had at least 4 #1 titles, on the
2 comics and graphic novels list, including the titles "CARNIVAL OF SOULS –
3 Welcome To The Show", "CARNIVAL OF SOULS – Special Edition",
4 "CARNIVAL OF SOULS – Everyone Loves The Clown", "CARNIVAL OF
5 SOULS – All Hell's Breaking Loose", "CARNIVAL OF SOULS – Alive in 3D"
6 and "CARNIVAL OF SOULS – Graphic Novel Volume One."

7 15. In Exhibit 3, there are several of Wild's CARNIVAL OF SOULS titles
8 listed from the Comics Price Guide website, in which 7 different issues from the
9 CARNIVAL OF SOULS series are valued and graded. The highest value, GEM
10 Mint CSG Value for Jazan Wild's CARNIVAL OF SOULS 2005 San Diego Edition
11 is \$240.00. The highest value, GEM Mint CSG Value for Jazan Wild's CARNIVAL
12 OF SOULS Brighton Expo Edition is \$240.00. These values are many times the
13 original selling price.

14 16. In Exhibit 4, there are various comic book online stores selling used
15 issues of Wild's various CARNIVAL OF SOULS titles, including The Lone Star
16 Comics, the largest retailer in Texas of comics.

17 17. In Exhibit 5, there are Wild's first Graphic Novel by Markosia with the
18 use of the mark, CARNIVAL OF SOULS in the fiction category.

19 18. In Exhibit 6, there are two ads for Jazan Wild's Melrose Ave. book
20 signings at the largest comic book retailer in Los Angeles, Golden Apple. Large and
21 out front is Wild's CARNIVAL OF SOULS Registered Trademark in this hand out
22 flyer which went into thousands of purchases throughout the month leading to the
23 signing on Halloween weekend. Wild's CARNIVAL OF SOULS Registered
24 Trademark is also used in the 2005 Los Angeles Times ad for this event.

25 19. In Exhibit 7, there is a news article for another Los Angeles book
26 signing for the release of CARNIVAL OF SOULS in which Wild is referred to as
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1 "Author of CARNIVAL OF SOULS". This event was held on Sunset Blvd. at
2 Meltdown Comics with CARNIVAL OF SOULS posters in the window.

3 20. In Exhibit 8, there is a news article for Jazan Wild and Steve Niles
4 book signing at Dark Delicacies in Burbank, California. Dark Delicacies is a world
5 famous book store. This news article states "Jazan Wild signing CARNIVAL OF
6 SOULS Graphic Novel".

7 21. In Exhibit 9 shows Jazan Wild, creator of CARNIVAL OF SOULS for
8 Markosia Comics listed as a special guest for the Brighton, UK 2005 Comic Expo.

9 22. In Exhibit 10, CARNIVAL OF SOULS featured on the cover of
10 Comics International Magazine from the UK, alongside Stephen King and Shaun Of
11 The Dead. Exhibit 10, also shows an article titled "CARNIVAL OF SOULS pulls
12 into Markosia". This magazine was purchased at the largest comic book retailer in
13 London, "Forbidden Planet".
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15 23. In Exhibit 11, the Wild CARNIVAL OF SOULS Registered
16 Trademark is promoted on the official Kiss rock and roll band website. This news
17 article is advertising Wild's book and CD signings at the upcoming 20th Anniversary
18 Kiss Expo in New York City. At this event, the first 50 people through the door
19 received a free copy of one of the CARNIVAL OF SOULS series of graphic novels.

20 24. In Exhibit 12, Wild is shown working with Gene Simmons of Kiss
21 fame. This page is from Gene Simmons autobiography, "Sex, Money, Kiss", along
22 with a pin-up featuring Wild's name alongside Simmons. The story speaks of Wild
23 doing his own series at Simmons Comics. Clearly Simmons did not regard Wild as
24 having "stolen" the CARNIVAL OF SOULS name, since Simmons is working with
25 Wild after the CARNIVAL OF SOULS books were published.

26 25. In Exhibit 13, Carnival Comics is a featured publisher on Wowio's
27 book site. All four titles that are featured are from the CARNIVAL OF SOULS
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1 series. Above the featured publisher is the X-Files classics of which Stefan Petrucha
2 worked on the CARNIVAL OF SOULS series as a scripter. Stefan was the first
3 person to ever have a comic book featured in the TV Guide.

4 26. Exhibit 14 shows CARNIVAL OF SOULS as the first comic book to
5 be on the Blackberry phones. It would remain the number one ebook for a year
6 straight. In fact, it has never left the top 10 since entering it in 2009.

7 27. Exhibit 15 shows CARNIVAL OF SOULS and its achievement of
8 being the first comic book on Blackberry phones, making the LA Times on May
9 24th, 2009. Featured is the cover of the CARNIVAL OF SOULS app from the
10 Blackberry App World.

11 28. In Exhibit 16, Wild's CARNIVAL OF SOULS is featured on Nokia
12 Fanboy in a October 22nd, 2009 article talking about comic books coming to Nokia
13 phones. Wild's CARNIVAL OF SOULS and Wild's Atomic Dreams title were the
14 first comic books on the Nokia phone platform and were the only comic books on
15 that platform for over a year. This achievement would eventually earn Carnival
16 Comics, Wild's company, a Nokia 2009 Success Story honor.

17 29. In Exhibit 17, there are CARNIVAL OF SOULS graphic novels
18 featured in a news article from Comics Bulletin on February 24th, 2009, in which
19 CARNIVAL OF SOULS as a motion comic becomes the first motion comic on the
20 Android platform from Google.

21 30. In Exhibit 18, there are CARNIVAL OF SOULS graphic novels
22 featured on the official website of Gene Roddenberry of Star Trek fame for the
23 CARNIVAL OF SOULS comic book apps and motion comic apps on various
24 smartphone platforms. Roddenberry's site took notice of this groundbreaking new
25 manner of bringing comic books to the masses.
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1 31. In Exhibit 19, there are CARNIVAL OF SOULS graphic novels
2 featured in the largest smartphone maker in the world at that time, Nokia's case
3 study. At CES, the largest consumer electronics show in the world, Nokia saw fit to
4 run a Power Point presentation featuring CARNIVAL OF SOULS graphic novels
5 and Carnival Comics achievements. Of these achievements, reaching over 300,000
6 downloads was mentioned as well as having had these downloads in 182 countries.
7 The current downloads on Nokia alone is over 800,000 and now over 200 countries.

8 32. The CARNIVAL OF SOULS series is globally known in commerce by
9 Wild's efforts in advancing and promoting the mark. Nokia saw fit to take notice,
10 and again awarded Carnival Comics a 2009 Success Story.

11 33. In Exhibit 20, the CARNIVAL OF SOULS series is featured in the
12 announcement of Carnival Comics receiving the Nokia's 2009 Success Story. As
13 well as CARNIVAL OF SOULS graphic novels featured in a Halloween take over
14 by the Carnival Comics characters of the entire Ovi Daily App store blog.

15 34. Exhibit 21, shows Carnival Comics and their apps of which the
16 CARNIVAL OF SOULS series is their most popular making the Entertainment
17 Weekly Must List, coming in at #4 for the Halloween 2009 issue. This was two
18 spots above the rock band U2. Clearly, Wild has taken the CARNIVAL OF SOULS
19 series to high levels of fame and public popularity.
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21 35. Exhibit 22 shows CARNIVAL OF SOULS in this July 2010 article
22 becoming the first 3-D comic on the iPad as well as any smartphone platform.

23 36. In Exhibit 23, there are CARNIVAL OF SOULS titles in the series
24 featured several times on the Apple App store in the iPhone section. Also featured is
25 the CARNIVAL OF SOULS series 3-D app, Everyone Loves A Clown app, All
26 Hell's Breaking Loose app and the CARNIVAL OF SOULS Motion Comic app, for
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1 99 cents a download, featured in the iTunes store from Apple. Also a review from
2 "Know Your Mobile", of the CARNIVAL OF SOULS 3D app from July 2010.

3 37. In Exhibit 24, there are CARNIVAL OF SOULS titles in the series
4 featured several times on the Apple App store in the iPad section.

5 38. Wild has built CARNIVAL OF SOULS into a globally recognized
6 brand through hard work and years of sacrifice. Harper Collins' are seeking to take
7 what Wild legally and properly built through hard work and years of sacrifice.

8 39. In Exhibit 25, CARNIVAL OF SOULS is shown -- again -- at the #1
9 spot on Blackberry's Paid Ebook List. CARNIVAL OF SOULS by Jazan Wild
10 stayed at this #1 spot for a year straight in 2009. CARNIVAL OF SOULS by Jazan
11 Wild has never left the Top 10 since it entered onto Blackberry, in 2009.

12 40. In Exhibit 26, there is shown the 3D CARNIVAL OF SOULS app
13 featured on Google's Android Marketplace alongside Oprah's App and Major
14 League Baseball. Also you can see the 247 ratings by users, showing that 3D
15 CARNIVAL OF SOULS has a 4 and half star rating out of 5; clearly a popular app.
16 Clearly showing wide use of the "CARNIVAL OF SOULS" mark in commerce. As
17 well, the Carnival Of Soul CARNIVAL OF SOULS s "Welcome to the Show" app
18 with a 4.4 rating out of 5 stars and 165 ratings. The final image in this exhibit is of
19 all the titles in the series that use the CARNIVAL OF SOULS mark on the Android
20 Platform.

21 41. In Exhibit 27, there are shown CARNIVAL OF SOULS and it's
22 various titles in the series featured several times on the Nokia Ovi Store, as well as
23 the 3D CARNIVAL OF SOULS app being featured as the World's 1ST Mobile
24 Comic in 3D.

25 42. In Exhibit 28, there are shown CARNIVAL OF SOULS and it's
26 various titles in the series featured several times on the new Window's App Store.
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1 Wild's CARNIVAL OF SOULS apps just launched on this platform, and feature
2 CARNIVAL OF SOULS books in Chinese.

3 43. In Exhibit 29, there are shown CARNIVAL OF SOULS and it's
4 various titles in the series featured several times on the Amazon App Store. Wild
5 has had the #1 graphic novel app for 4 months straight with the Funhouse Of
6 Horrors story. CARNIVAL OF SOULS has also reached the #1 spot and has not left
7 the top ten since entering it. On Amazon's app store you can see just how promoted
8 and popular the CARNIVAL OF SOULS mark has become. It is a staple on one the
9 biggest companies in the world's website and app store. In fact Amazon personally
10 asked Wild to bring his titles to Amazon's App Store for their launch.

11 44. In Exhibit 30, it is shown that Wild has had several #1 titles on
12 Amazon's Kindle Book Store. Amazon's Best Seller's list has had CARNIVAL OF
13 SOULS' various issues all reach the #1 spot. A remarkable achievement, for any
14 writer and any series. The screenshots of this Exhibit plainly show the registered
15 trademark symbol on the CARNIVAL OF SOULS covers as well. In the last
16 screenshot in this exhibit, you can see a Gaming shop selling a new copy of Wild's
17 CARNIVAL OF SOULS from 2005 for 9.99 on Amazon.com

18 45. In Exhibit 31, there is shown CARNIVAL OF SOULS (The Novel
19 Preview), which is a website that featured a preview chapter of the CARNIVAL OF
20 SOULS Novel which was launched on July 4th 2012. The chapter clearly shows the
21 mark in use and with the registered trademark symbol. Also seen is the
22 advertisement for the 4th of July CARNIVAL OF SOULS Novel Launch.

23 46. In Exhibit 33, there is shown Carnival Comics reaching 287,850
24 downloads on Blackberry in almost 200 countries.

25 47. In Exhibit 34, there is shown Carnival Comics reaching 806,809
26 downloads on Nokia's Ovi Store in over 200 countries.
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1 48. In Exhibit 37, there is shown CARNIVAL OF SOULS (The Novel).
2 Wild first posted a chapter on myEbook.com, leading up to the 4th of July launch on
3 Amazon.com. On July 4th 2012 after having spent years building his “CARNIVAL
4 OF SOULS” mark in commerce, Wild launched this novel, which plainly shows the
5 mark and the ® symbol for registered trademark. On July 5th 2012 CARNIVAL OF
6 SOULS The Novel by Jazan Wild went to #1 on Amazon.com. This is Wild’s 11th
7 number one title on Amazon.com. The “CARNIVAL OF SOULS” novel stayed at
8 #1 for 5 straight days on Amazon in the USA, as well as being released in Italy and
9 the U.K. on Amazon’s sites respectively.

10 49. Wild’s CARNIVAL OF SOULS Registered Trademark is famous.

11 50. Wild’s ENTER THE CARNIVAL common law trademark is famous.

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13 HarperCollins Prior Knowledge of Wild’s CARNIVAL OF SOULS
14 Registered Trademark and Wild’s ENTER THE CARNIVAL Common Law
15 Trademark

16 51. HarperCollins has touted itself as being “consistently at the forefront of
17 innovation and technological advancement, HarperCollins was one of the first
18 publishers to digitize its content and create a global digital warehouse of that
19 content.”

20 52. HarperCollins is the holder of several United States Trademark
21 registrations for series of books, including PONY SCOUTS, United States
22 Trademark Registration No. 3,697,216; BROADSIDE BOOKS, United Sates
23 Trademark Registration No. 4,081,012, and many others, in International Class 16.

24 53. Upon information and belief, HarperCollins is represented by
25 experienced trademark attorneys.

26 54. The United States Patent and Trademark Office (USPTO) maintains a
27 publically available website, “uspto.gov,” which includes the Trademark Electronic
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1 Search System (TESS). TESS enables any member of the public with an internet
2 connection to make a search of the records of trademark applications and
3 registrations maintained by the USPTO, for free.

4 55. A search on TESS on uspto.gov for CARNIVAL OF SOULS returns
5 only one existing United States Trademark Registration in any class, Wild's United
6 States Trademark Registration for CARNIVAL OF SOULS, in International Classes
7 16 and 41. The time required to conduct such a search is approximately 15 to 45
8 seconds.

9 56. Prior to the time HarperCollins adopted the name for its CARNIVAL
10 OF SOULS novel, it was aware that public records showing United States
11 Trademark Registrations are publically available on uspto.gov and can be accessed
12 from the Internet for free by means of conducting a simple (TESS) Trademark
13 Electronic Search on the United States Patent and Trademark website uspto.gov.

14 57. Upon information and belief, at relevant times, it was standard
15 operating procedure for HarperCollins or its trademark attorneys to conduct at least
16 a search on the uspto.gov TESS system , prior to choosing a name for a major
17 introduction of a novel, particularly one contemplated to be a series.

18 58. Upon information and belief, prior to choosing the name CARNIVAL
19 OF SOULS for the first novel of its new series of novels, either HarperCollins or its
20 trademark counsel conducted at least a search on the uspto.gov TESS system for
21 CARNIVAL OF SOULS.

22 59. Upon information and belief, by means of one or more trademarks
23 searches conducted by HarperCollins prior to adopting the name CARNIVAL OF
24 SOULS, HarperCollins became actually aware of Wild's United States Trademark
25 Registration for CARNIVAL OF SOULS, in International Classes 16 and 41.

26 60. Upon information and belief, following obtaining actual knowledge of
27 Wild's CARNIVAL OF SOULS Trademark Registration, either HarperCollins or its
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1 counsel conducted a search on the internet employing at least the search terms
2 "CARNIVAL OF SOULS" and "JAZAN WILD."

3 61. A search using an internet search engine, such as "Bing.com,"
4 employing the search terms "CARNIVAL OF SOULS" and "JAZAN WILD,"
5 returns a search page having several entries relating to Wild's CARNIVAL OF
6 SOULS series of graphic novels.

7 62. The first entry of a current "Bing.com" search on the internet is the
8 "jazanwild.com" official website, the search summary showing "WILD NEWS!
9 CARNIVAL OF SOULS (The Novel) stays at #1 for five days in a row on Amazon!
10 Thank you to everyone who has made this #1 run possible."

11 63. Upon information and belief, prior to adopting the name CARNIVAL
12 OF SOULS for its first novel of its new series, HarperCollins was actually aware of
13 that Wild's CARNIVAL OF SOULS series of graphic novels were being offered for
14 sale on "amazon.com."

15 64. Upon information and belief, prior to adopting the name CARNIVAL
16 OF SOULS for its first novel of its new series, HarperCollins was actually aware of
17 that Wild's CARNIVAL OF SOULS series of graphic novels has achieve a number
18 1 rating on "amazon.com."

19 65. Upon information and belief, prior to adopting the name CARNIVAL
20 OF SOULS for its first novel of its new series, HarperCollins was actually aware of
21 that Wild's CARNIVAL OF SOULS series of graphic novels has achieve a number
22 1 rating on "amazon.com."

23 66. Upon information and belief, prior to adopting the name
24 "enterthecarnival.com" for its website address to promote HarperCollins'
25 CARNIVAL OF SOULS novel, HarperCollins was actually aware of that Wild's
26 ENTER THE CARNIVAL trademark used in connection with the sale of Wild's
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1 CARNIVAL OF SOULS series of comic books, graphic novels, novels and
2 multimedia works.

3 67. Despite having actual knowledge of Wild's CARNIVAL OF SOULS
4 Trademark Registration and Wild's common law trademark ENTER THE
5 CARNIVAL, HarperCollins intentionally adopted the name CARNIVAL OF
6 SOULS for the first novel of its new series of novels, using Wild's Registered
7 Trademark CARNIVAL OF SOULS, and Wild's common law trademark ENTER
8 THE CARNIVAL, in its domain name "enterthecarnival.com" and displayed in
9 large font on the opening page of "enterthecarnival.com," which is HarperCollins'
10 Official Website" for its CARNIVAL OF SOULS novel.

11 68. HarperCollins knew itsd use of CARNIVAL OF SOULS and ENTER
12 THE CARNIVAL was likely to cause confusion with Wild's series of graphic
13 novels and novels sold under Wild's CARNIVAL OF SOULS Trademark
14 Registration and Wild's ENTER THE CARNIVAL common law trademark.
15 Despite this, HarperCollins then willfully embarked on a massive marketing
16 campaign promoting its new novel, as the first novel of a new series, using Wild's
17 Registered Trademark CARNIVAL OF SOULS prominently on the cover of
18 HarperCollins' novel, and by using Wild's common law trademark ENTER THE
19 CARNIVAL, in its domain name "enterthecarnival.com" and on the opening page
20 of its Official Website for CARNIVAL OF SOULS, leading to a then-planned
21 September 4, 2012 release date for HarperCollins' CARNIVAL OF SOULS novel.

22 69. HarperCollins' adoption and use of CARNIVAL OF SOULS as the
23 name for the first novel of its new series of novels was in bad faith, to knowingly,
24 intentionally and wrongfully benefit from the high ratings, good reputation and fame
25 of Wild's CARNIVAL OF SOULS series of comic books, novels and graphic
26 novels, sold under Wild's CARNIVAL OF SOULS Registered Trademark .

1 70. HarperCollins adoption and use of Wild's CARNIVAL OF SOULS
2 Registered Trademark is willful and intentional.

3 71. HarperCollins adoption and use of "enterthecarnival.com" for the
4 domain name used as the official website for promoting HarperCollins'
5 CARNIVAL OF SOULS first novel of its series of novels was in bad faith, to
6 knowingly, intentionally and wrongfully benefit from the high ratings, good
7 reputation and fame of Wild's CARNIVAL OF SOULS series of novels and graphic
8 novels, sold under Wild's common law trademark ENTER THE CARNIVAL.

9 72. HarperCollins adoption and use of Wild's ENTER THE CARNIVAL
10 common law trademark is willful and intentional.

11
12 Wild's Actual Notice of Infringement to HarperCollins Prior to
13 HarperCollins' Release of CARNIVAL OF SOULS.

14 73. Wild, upon learning about the infringement of his registered mark,
15 contacted Harper Collins on June 18th 2012 by email. Wild stated: "I wanted to
16 kindly make you aware of the fact that I "Jazan Wild" and Carnival Comics have a
17 trademark "CARNIVAL OF SOULS" in the following categories: [International
18 Classes 16 and 41]." Attached to the email was Wild's Trademark certificate for
19 CARNIVAL OF SOULS and also a link to HarperCollins "enterthecarnival.com"
20 official website for HarperCollins' CARNIVAL OF SOULS novel, using Wild's
21 ENTER THE CARNIVAL common law trademark.

22 74. On June 19th 2012, Fabio Bertoni (Assistant General Counsel) for
23 Harper Collins replied to Wild's email making HarperCollins' aware of the
24 infringement. Mr. Bertoni did state that HarperCollins was unaware of Wild's
25 CARNIVAL OF SOULS Trademark Registration at the time Harper Collins adopted
26 the name CARNIVAL OF SOULS. Instead, Mr. Bertoni asserted that Wild was not
27 entitled to his CARNIVAL OF SOULS Trademark Registration because there were
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1 other uses of CARNIVAL OF SOULS on various goods and services. However,
2 such prior uses of CARNIVAL OF SOULS were in connection with different goods
3 or services, in different classes and/or were abandoned by the prior users prior to
4 adoption, use and registration by Wild of his CARNIVAL OF SOULS mark for the
5 goods and services recited Wild's CARNIVAL OF SOULS Trademark Registration,
6 or were after Wild's adoption and use of CARNIVAL OF SOULS for the goods and
7 services recited in Wild's Trademark Registration.

8 75. At the time Harper Collins adopted the name CARNIVAL OF SOULS,
9 Harper Collins was aware that prior uses of CARNIVAL OF SOULS were on
10 different goods or services, in different classes and/or such prior uses were
11 abandoned by the prior users, prior to adoption, use and registration by Wild of his
12 CARNIVAL OF SOULS mark for the goods and services recited Wild's
13 CARNIVAL OF SOULS Trademark Registration, or were after Wild's adoption and
14 use of CARNIVAL OF SOULS for the goods and services recited in Wild's
15 Trademark Registration.

16 76. In an email dated, June 19th, 2012 Wild advised Bertoli:

17 "I, Jazan Wild in good faith ask you to respect my registered trademark which
18 clearly falls in the same trademark categories as the CARNIVAL OF SOULS title
19 you are attempting to publish... in classes 16 and 41, both of which protect novels
20 and books. If you try to trademark CARNIVAL OF SOULS in relation to publishing
21 a book, you would be refused by the Patent and Trademark Office, because I own
22 the trademark exclusively." Wild concludes the email by stating, "just to be clear,
23 this is a cease and desist." In addition to the email, Wild attached once again his
24 trademark certificate, as well as legal definitions of trademark law and usage.

25 77. In an email on June 20th, 2012 Wild once again sends a cease and desist
26 with further clarification of his trademark stating...

1 1. "CARNIVAL OF SOULS" is a series and not just a title. I do not
2 have one work titled "CARNIVAL OF SOULS" but a series that started
3 in 2004 and has been downloaded in over 200 countries and well over
4 a million times and featured in the LA Times as well as making #4 on
5 Entertainment Weekly's Must List. Recently I have had several #1 titles
6 at Amazon.com, including "CARNIVAL OF SOULS" the graphic novel
7 and several of the CARNIVAL OF SOULS issues.

8
9 2. I passed all qualifications to receive my "CARNIVAL OF SOULS"
10 trademark in classes 16 and 41. Novels, Comic Books and Novels are
11 in those categories.

12
13 3. I have the exclusive right in the USA to use "CARNIVAL OF
14 SOULS" in classes 16 and 41.

15
16 I hope this puts to rest our dispute. If you go forward with infringing on my
17 "CARNIVAL OF SOULS" trademark in classes 16 and 41, you will be doing so
18 willfully, maliciously and in bad faith. This action will clearly dilute my trademark
19 and cause great confusion. We have alerted Barnes and Noble, Amazon and
20 YouTube's legal teams about our trademark. If we are not able to resolve this
21 matter, we will file by next week our lawsuit against your use of the title. I would
22 prefer not to have to do this, but it's your choice.

23 I personally wish Ms. Marr the best. A simple check of the TESS (Trademark
24 Search) by Fabio, which is his job, would have avoided all of this. And personally
25 "Wicked Carnival" kinda has a ring to it. But that is none of my business.

26
27 All the best, Jazan "

1
2 78. The above email clearly shows that Wild only wishes the author of
3 HarperCollins' CARNIVAL OF SOULS novel, Melissa Marr, the best and in no
4 way is attempting to stifle her creative endeavors. HarperCollins is free to choose
5 any other title for its goods in class 16 and 41, other than Wild's CARNIVAL OF
6 SOULS and ENTER THE CARNIVAL trademarks, or confusingly similar
7 variations thereof.

8 79. In an email on June 21st, 2012, after the refusal by Mr. Bertoni to
9 respect Wild's Trademark Registration, Wild wrote the CEO of Harper Collins, Mr.
10 Brian Murray and stated:

11 *"I wanted write you because your legal department, "Fabio" to be specific, is*
12 *acting in a manner that is going to lead Harper Collins into a Federal Lawsuit, in-*
13 *which it has no legal basis to stand on. My "CARNIVAL OF SOULS" trademark*
14 *began in February 2011 and my first use began in 2004, with my CARNIVAL OF*
15 *SOULS series, of which the first book was the #1 ebook on Blackberry for over a*
16 *year, and was the very first comic to ever be on Blackberry. As well as the first of*
17 *the comics to be on Nokia, of which my company "Carnival Comics" was named a*
18 *2009 success story.*

19 *I have invested years building my "CARNIVAL OF SOULS" series and brand,*
20 *of which I was granted a mark in categories 16 and 41, which include Novel,*
21 *Graphic Novel and Comic. All of which I have in my CARNIVAL OF SOULS series.*
22 *There is no reason for Ms. Marr to have to name her new novel / series "CARNIVAL*
23 *OF SOULS". This action dilutes my trademark and will cause great damage to the*
24 *brand I have spent a decade building.*

25 *This email is my last hope and effort to stop my trademark's infringement and*
26 *the last effort before filing a lawsuit in Federal Court. I do not believe a President*
27 *and CEO would agree with the rogue business actions of a legal assistant, that*
28

1 failed to do his job, and simply conduct a TESS (Trademark Search) before
2 beginning the printing and promotion of a novel. I run my own company "Carnival
3 Comics" and I have several teams on several continents working for me. I would not
4 want this kind of action to go unreported to me. Fabio clearly, tried to act as if my
5 registered trademark meant nothing and he is wrong. He was very deceptive in
6 trying to say I simply had a title and not a series, as well as listing CARNIVAL OF
7 SOULS usages in other categories and its usage in works before my trademark went
8 live. All of which have no bearing on the current situation. I have a series titled "
9 CARNIVAL OF SOULS" and it is very well known and will be defended to my last
10 breath. I sincerely hope writing you this email will avoid any future legal action.

11 Best, Jazan"
12

13 80. In an email dated June 22nd, 2012 the very next morning, Wild
14 received an email from Erin Gorham that read... "Hello Jazan, I received this note
15 from Annie last night, please let me know what you need from us to resolve the
16 issue. Thanks! Erin." This email led Wild to believe that is issue would be resolved
17 amicably.

18 81. Below Erin's email was a note from Apple's iBook Store stating that
19 Apple had received a trademark notice regarding CARNIVAL OF SOULS. Apple
20 had requested for Harper Collins to directly resolve this issue with Wild. In an email
21 dated June 22nd, 2012:

22 "Hello Erin,
23

24 Please remove all infringement of the "CARNIVAL OF SOULS" mark in
25 classes 16 and 41. Here are just a few...

26 Ms. Marr's (Harper Collins) Trademark Infringement Exhibits:

27 http://www.jazanwild.com/MARR_EXHIBITS_FOR_TRADEMARK_LAWSUIT/
28

1 *As well, as a gesture of good faith, being this has clearly damaged and*
2 *diluted the "CARNIVAL OF SOULS" mark, please remove "CARNIVAL OF*
3 *SOULS" from Ms. Marr's goods entirely. Nowhere should "CARNIVAL OF SOULS"*
4 *appear in her goods, as to not create confusion and another legal situation. It is*
5 *very sad that this has occurred. Fabio should truly perform a search of the TEAS*
6 *database. Already I, and those around me, have spent a lot of time on this matter.*
7 *The sooner it comes to a close the better for all. Best, Jazan Wild"*

8 82. Just hours after this email, Wild learned that he had been misled into
9 believing that matter would be resolved amicably. At that time, Wild received a
10 letter was received by email from Ms. Dale Cendali of Kirkland and Ellis LLP.
11 Upon information and belief, Ms. Cendali is trademark counsel to HarperCollins.

12 83. In her letter, Ms. Cendali's letter listed various uses of CARNIVAL OF
13 SOULS on different goods and services, in different statutory classes and/or uses that
14 had been abandoned prior to the adoption, use and registration of CARNIVAL OF
15 SOULS by Wild, and various use of CARNIVAL OF SOULS after Wild's adoption
16 and use of CARNIVAL OF SOULS. None of such uses invalidates Wild's
17 CARNIVAL OF SOULS Registered Trademark in International Classes 16 or 41 for
18 the recited goods and services. Nevertheless, Ms. Cendali threatened legal action
19 against Wild if he attempted to enforce his trademark rights.

20 84. In a telephone conversation following receipt of this letter, Ms. Cendali
21 told Wild that Wild had "stolen" the CARNIVAL OF SOULS name from CD
22 by the band KISS. Cendali further stated that Harper Collins would not discontinue
23 use of CARNIVAL OF SOULS, dismissing Wild's claims of infringement of his
24 trademark by Harper Collins use an identical trademark on identical goods sold in
25 the same channels of trade by : "you are not an attorney, are you?"
26
27
28

1 85. On information and belief, Harper Collins's willful refusal to respect
2 Wild's trademark rights, and attempts to intimidate Wild, despite prior actual notice,
3 is because Harper Collins plans to use its vastly superior financial resources to
4 employ lawyers to drive up legal fees with frivolous arguments to an extent that it
5 will render effective enforcement of Wild's trademark against Harper Collins
6 financially impossible.

7 86. On information and belief, Harper Collins plan to continue
8 infringement while planning to drive up the cost of litigation in bad faith for is
9 willfully calculated to permit Harper Collins to continue its infringement for as long
10 as possible, despite its prior notice of Wild's trademark rights, to wrongfully gain
11 advantage from Wild's hard work in building a positive reputation, high rating and
12 fame for Wild's series of graphic novels and novels sold under the registered
13 trademark CARNIVAL OF SOULS and common law trademark ENTER THE
14 CARNIVAL, all to Wild's detriment.

15 87. Ms. Cendali's assertion in her email that HarperCollins did not use
16 CARNIVAL OF SOULS as a trademark was deceptive and in bad faith.

17 88. Harper Collins and/or its author, Melissa Marr, have admitted that
18 HarperCollins CARNIVAL OF SOULS is the first novel of a new series of novels.
19

20 89. Contrary to Ms. Cendali's assertions, the cover of HarperCollins'
21 CARNIVAL OF SOULS novel prominently uses Wild's CARNIVAL OF SOULS
22 Registered Trademark using, by far, the largest and most prominent printing font.
23 The front cover does not include any mention of the Harper Collins name. This use
24 is not a descriptive use. To the contrary, such use is likely to create a likelihood of
25 confusion with Wild's CARNIVAL OF SOULS Registered Trademark.

26 90. Available excerpts of HarperCollins' CARNIVAL OF SOULS novel
27 show that Wild's trademark CARNIVAL OF SOULS is used as a proper noun,
28

1 using initial capital letters, not descriptively. This use is not a descriptive use. To
2 the contrary, such use is likely to create a likelihood of confusion with Wild's
3 CARNIVAL OF SOULS Registered Trademark. By contrast, in the text, the single
4 word "carnival" alone, is used in all small letters, without initial capital letters.

5 91. HarperCollins uses "enterthecarnival.com" in conjunction with a
6 prominent use of "Enter the Carnival" on its official website. This use is not a
7 descriptive use. Such use is likely to create a likelihood of confusion with Wild's
8 ENTER THE CARNIVAL common law trademark.

9 92. The subject matter of stories sold under Wild's CARNIVAL OF
10 SOULS trademark usually include a supernatural carnival, supernatural beings such
11 as witches, and include both love story elements and violence. The comic books,
12 graphic novels and novels sold by Wild under his CARNIVAL OF SOULS
13 trademark are targeted primarily at a young adult audience, comprised of members
14 of both genders.

15 93. The subject matter of the Harper Collins CARNIVAL OF SOULS
16 novel also includes a supernatural carnival, supernatural beings such as witches,
17 includes both love story elements and violence, and is targeted at a young adult
18 audience are targeted primarily at a young adult audience, comprised of members of
19 both genders.

20 94. There is substantial overlap of the target markets for the stories sold
21 under Wild's CARNIVAL OF SOULS trademark and the Harper Collins
22 CARNIVAL OF SOULS novel.

23 95. Exhibit 38 shows CARNIVAL OF SOULS (The Novel) by Marr, on
24 July 9th, being called officially a "CARNIVAL OF SOULS" Series and a new
25 release date of August 4th, one month sooner than the September 4th release date.
26 This announcement comes while Wild has a #1 "CARNIVAL OF SOULS" novel on
27

28

1 Amazon.com, and after Wild has contacted HarperCollins and made HarperCollins
2 aware of Wild's trademark. Upon information and belief, the acceleration of the
3 release date from September 4 to August 4 was done in bad faith, for the purpose of
4 impeding Wild's legitimate efforts to protect his trademark rights.

5 96. Exhibit 39 shows there are CARNIVAL OF SOULS (The Novel) by
6 Marr, now posting a chapter on Facebook after Wild's #1 CARNIVAL OF SOULS
7 novel on Amazon, and after Wild has contacted Harper Collins and made Harper
8 aware of Wild's trademark. Also on Facebook are links to several digital publishing
9 sites such as Amazon and iTunes.

10 97. HarperCollins' wrongful actions as alleged herein have caused
11 irreparable and substantial harm to Wild.

12 98. HarperCollins' has unjustly profited and been unjustly enriched by its
13 wrongful actions, to the detriment of Wild.

14 99. HarperCollins will not discontinue infringement of Wild's CARNIVAL
15 OF SOULS Registered Trademark and Wild's ENTER THE CARNIVAL common
16 law trademark unless enjoined by this Court.

17 100. Harper Collins' and Marr's product and goods if not stopped by
18 injunction, will be sold in the same types of retail and digital distribution channels,
19 such as on device's like the iPad and iPhones, Android Marketplace and Google
20 Tablets. In addition the goods will be sold in the same digital distribution channels
21 such as Amazon.com, Barnes and Noble.com and other online book and ebook
22 stores.

23 **FIRST CLAIM**

24 **TRADEMARK INFRINGEMENT UNDER LANHAM ACT § 32**

25 101. Wild repeats and hereby incorporates herein by reference, as though
26 specifically pleaded herein, the allegations of paragraphs 1 through 100.
27

102 Harper Collins' "Defendants", wrongful use of the name "CARNIVAL OF SOULS" for the title of Marr's forth coming Novel and series is an infringement of Wild's registered trademark "CARNIVAL OF SOULS" and is likely to cause confusion, mistake and deception of the public as to the identity and origin of Wild's goods, causing irreparable harm to Wild for which there is no adequate remedy at law.

103 By reason of the foregoing acts, Defendants, Harper Collins are liable to Wild for Trademark Infringement under 15 U.S.C. § 1114.

SECOND CLAIM

UNFAIR COMPETITION UNDER LANHAM ACT § 43

104. Wild "Plaintiff" repeats and hereby incorporates herein by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 103.

105. Harper Collins' "Defendants", use of Wild's mark to promote, market or sell its products, goods, and services in direct competition with Wild's products, goods, and services, both of which are novels and in Wild's case a comic book series, graphic novel series and novel, that have stories that are based on a mysterious place / carnival called "The CARNIVAL OF SOULS", constitutes Unfair Competition pursuant to 15 U.S.C. § 1125(a). Harper Collins' "Defendants'" unfair competition has caused and will continue to cause damage to Wild, and is causing irreparable harm to Wild for which there is no adequate remedy at law.

THIRD CLAIM

FALSE DESCRIPTION

106. Wild repeats and herby incorporates herein by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 105.

1 107. Harper Collins' "Defendants'" use of the mark "CARNIVAL OF
2 SOULS" comprises a false description or representation of Wild's business, series,
3 and or products under 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act).
4

5 **FOURTH CLAIM**

6 **COMMON LAW INJURY TO BUSINESS REPUTATION**

7
8 108. Wild repeats and herby incorporates herein by reference, as though
9 specifically pleaded herein, the allegations of paragraphs 1 through 107.

10 109. Wild alleges that Harper Collins' "Defendants'" wrongful, malicious
11 and willful use of Wild's "CARNIVAL OF SOULS" trademark inures to and
12 creates a likelihood of injury to Wild's business reputation because persons
13 encountering Marr's and Harper Collins' use of Wild's trademark "CARNIVAL OF
14 SOULS" on its products and services will believe that Wild is affiliated with, or
15 related to, or has given his approval to the unfair and unlawful use of his, Wild's
16 trademark. Any adverse reaction by the public to Harper Collins' "Defendants'
17 quality of its goods and products, and the nature of its business will injure the
18 business reputation of Wild and the goodwill that it enjoys in connection with its
19 mark "CARNIVAL OF SOULS."

20 **FIFTH CLAIM**

21 **TRADEMARK DILUTION - 15 U.S.C. 1125 (c)**

22
23 110. Wild repeats and herby incorporates herein by reference, as though
24 specifically pleaded herein, the allegations of paragraphs 1 through 109.

25 111. HarperCollins' wrongful acts alleged herein have caused and will
26 continue to cause actual dilution of Wild's CARNIVAL OF SOULS and ENTER
27 THE CARNIVAL Trademarks, in violation of 15 U.S.C. 1125 (c).
28

1 **SIXTH CLAIM**

2 **REVERSE CONFUSION UNDER THE LANHAM ACT**

3
4 112. Wild repeats and hereby incorporates herein by reference, as though
5 specifically pleaded herein, the allegations of paragraphs 1 through 111.

6 113. HarperCollins marketing campaign is so massive as to overwhelm
7 Wild's ability to promote its legitimate goods sold under Wild's CARNIVAL OF
8 SOULS and ENTER THE CARNIVAL Trademarks so as to wrongfully cause the
9 public to incorrectly believe that HarperCollins infringing CARNIVAL OF SOULS
10 novel and HarperCollins infringing use of ENTER THE CARNIVAL are legitimate
11 and that Wild is an illegitimate newcomer infringing HarperCollins' trademark
12 rights.

13 114. HarperCollins' acts alleged herein constitute reverse confusion, in
14 violation of 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act).

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff Wild prays judgment against Defendants "Harper
18 Collins", and each of them, as follows:

19 1. Harper Collins, or any of its employees, or promoters, or its partners, and
20 authors, will and shall be preliminarily and permanently enjoined from:

21 (a) Using Wild's CARNIVAL OF SOULS Registered Trademark or Wild's
22 ENTER THE CARNIVAL common law trademark, or any colorable imitation
23 thereof;

24 (b) using any trademark that imitates or is confusingly similar to or in any
25 way similar to Wild's CARNIVAL OF SOULS Registered Trademark or Wild's
26 ENTER THE CARNIVAL common law trademark, or that is likely to cause
27
28

1 confusion, mistake, deception, or public misunderstanding as to the origin of Wild's
2 product or their connectedness to HarperCollins.

3
4 2. Defendant Harper Collins be required to file with the Court and serve
5 within thirty (30) days after entry of the Injunction, a report in writing under oath
6 setting forth in detail the manner in which Defendant HarperCollins complied with
7 the Injunction;

8
9 3. That, pursuant to 15 U.S.C. § 1117, that HarperCollins be held liable for all
10 damages suffered by Wild resulting from the acts alleged herein, and that such
11 damages be trebled on account of the willful infringement by HarperCollins;

12
13 4. That, pursuant to 15 U.S.C. § 1117, HarperCollins be compelled to account
14 to Wild for any and all profits derived by it from its illegal acts complained of herein
15 and that such damages be trebled on account of the willful infringement by
16 HarperCollins;

17
18 5. That HarperCollins be ordered pursuant to 15 U.S.C. § 1118 to deliver up
19 for destruction all novels, books, promotional materials or the like in possession,
20 custody or under the control of HarperCollins bearing a trademark found to infringe
21 on Wild's trademark rights, as well as remove all usages and promotions from the
22 various internet book stores and websites displaying any of Wild's trademark and
23 discontinue use of and transfer to Wild any domain names infringing any of Wild's
24 trademarks.

25
26 6. For damages to the extent permitted by law;

7. That the Court declare this to be an exceptional case and award Wild its full costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.


8. That the Court grant Wild any other remedy to which it may be entitled as provided for in 15 U.S.C. § § 1116 and 1117 or under state law; and,

9. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues triable before a jury.

Dated: July 23^d 2012.


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