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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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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

10 JAZAN WILD, an individual, dba  
11 CARNIVAL COMICS

12 Plaintiffs,

13 v.

14 HARPERCOLLINS PUBLISHERS,  
15 LLC and

16 MELISSA MARR

17 Defendants.  
18  
19

CASE NO. 8:12-cv-01191-JST-ANx

**FIRST AMENDED COMPLAINT  
FOR TRADEMARK  
INFRINGEMENT;  
DILUTION; UNJUST  
ENRICHMENT;  
UNFAIR COMPETITION;  
FALSE DESCRIPTION; INJURY  
TO BUSINESS REPUTATION, AND  
COMMON LAW TRADEMARK  
INFRINGEMENT**

20  
21 Plaintiff, Jazan Wild, dba Carnival Comics (hereinafter “Plaintiff” or  
22 “Wild”), by his attorneys, as and for his complaint against Defendant  
23 HarperCollins Publishers LLC (hereinafter "HarperCollins") and Defendant  
24 Melissa Marr (“Marr”) (collectively, “Defendants”) alleges, upon knowledge as to  
25 himself and otherwise upon information and belief, as follows:  
26  
27  
28

## **I. SUBJECT MATTER JURISDICTION**

1  
2 1. This is an action for Trademark Infringement, Unfair Competition,  
3 False Description, Reverse Confusion and Dilution, arising under §§ 32, 43 of the  
4 Lanham Act, 15 U.S.C. §§ 1114(1) (Trademark Infringement) and 1125(a) (Unfair  
5 Competition and False Description) 1125(c) (Dilution), and for Unjust Enrichment  
6 and Injury to Business Reputation, and Common Law Trademark Infringement,  
7 arising under California State law..  
8  
9

10 2. This Court has original subject matter jurisdiction over this action  
11 pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121. This Court has  
12 related claim jurisdiction over the state law tort claims pursuant to 28 U.S.C. §  
13 1338(b) and 28 U.S.C. § 1367.  
14

## **II. THE PARTIES**

15  
16  
17 3. Plaintiff Wild is a resident of the city of Encino, California, in this  
18 District. Wild does business under the name Carnival Comics and is the owner of  
19 the trademarks CARNIVAL OF SOULS, ENTER THE CARNIVAL, and ENTER  
20 THE CARNIVAL OF SOULS, which are used in connection with Wild's  
21 publishing business.  
22

23 4. Upon information and belief, Defendant HarperCollins LLC is a  
24 limited liability company organized and existing under the laws of the State of  
25 Delaware, with its principal place of business located at 10 East 53<sup>rd</sup> Street, New  
26  
27  
28

1 York, New York. HarperCollins also has offices in San Francisco at 353  
2 Sacramento Street, STE 500 San Francisco, CA 94111-3653. Upon information  
3 and belief, HarperCollins is the third largest English language publishing company  
4 in the world. Upon information and belief, HarperCollins is wholly owned by  
5 News Corporation, with an office at 1211 Avenue of Americas, New York, New  
6 York 10036.  
7

8  
9 5. Upon information and belief, Defendant Melissa Marr (Marr) is an  
10 individual residing in Washington, D.C. Upon information and belief, Melissa  
11 Marr is the author of a novel that is the debut of a new series of novels with the  
12 designation "CARNIVAL OF SOULS," that is being published by HarperCollins  
13 ("Defendants' CARNIVAL OF SOULS series debut novel").  
14

### 15 **III. PERSONAL JURISDICTION AND VENUE**

16  
17 6. This Court has personal jurisdiction over HarperCollins on the basis  
18 of principles of general jurisdiction in that HarperCollins conducts business  
19 systematically and continuously in this state and this District. This Court further  
20 has personal jurisdiction over HarperCollins on the basis of principles of specific  
21 jurisdiction in that HarperCollins has committed acts of infringement in this state  
22 and this District that have caused harm in this state and this District, and because a  
23 substantial part of the events or omissions giving rise to the claim occurred in this  
24 state and this District. Plaintiff Wild is a resident of this state and District.  
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1           7.     This Court has personal jurisdiction over Marr on the basis of  
 2 principles of specific jurisdiction in that Marr has committed acts of infringement  
 3 in this state and this District that have caused harm in this state and this District,  
 4 and because a substantial part of the events or omissions giving rise to the claim  
 5 occurred in this state and this District. Plaintiff Wild is a resident of this state and  
 6 District.  
 7

8           8.     HarperCollins and Marr are referred to herein as “Defendants.”  
 9

10          9.     Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391  
 11 (a), in that the Defendants are subject to personal jurisdiction in this District  
 12 presently and at the time the action was commenced, and under 28 U.S.C. § 1391  
 13 (b) and (c).  
 14

#### 15                   **IV. FACTS COMMON TO ALL CAUSES OF ACTION**

##### 16                   **Wild’s Registered Trademark CARNIVAL OF SOULS**

17           10. Beginning at least as early as 2004, Wild has published and sold a series  
 18 of comic books, graphic novels, novels and multimedia publications under the  
 19 trademark CARNIVAL OF SOULS. The phrase “carnival of souls” has no  
 20 uniform meaning to the public and is arbitrary as applied to use in connection with  
 21 sales in commerce of a series of novels, graphic novels and multimedia  
 22 publications. Wild’s CARNIVAL OF SOULS trademark is inherently distinctive  
 23 for use in connection with comic books, graphic novels, novels and multimedia  
 24 publications.  
 25  
 26  
 27  
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1 publications. Further, since at least as early as 2004, Wild's CARNIVAL OF  
2 SOULS trademark has become distinctive through exclusive use by Wild in  
3 connection with sales of a series of comic books, graphic novels, novels and  
4 multimedia publications. Through extensive promotion and use of Wild's  
5 CARNIVAL OF SOULS trademark, recognition through the granting of many  
6 awards and by other means, the public has come to know Wild as the exclusive  
7 source of his series of comic books, graphic novels, novels and multimedia  
8 publications. Wild is the owner of United States Trademark Registration No.  
9 3,921,658, granted February 22, 2011, in International Class 16 for "Comic books;  
10 Graphic novels; Novels" and in International Class 41 for "Multimedia publishing  
11 of books, magazines, journals, software, games, and electronic publications" ("the  
12 recited goods"). The application for Wild's United States Trademark Registration  
13 No. 3,921,658 was filed on August 19, 2009, citing a date of first use at least as  
14 early as October 31, 2004 and a date of first use in commerce at least as early as  
15 June 22, 2005. The owner of the CARNIVAL OF SOULS Trademark Registration  
16 is Jason Barnes, aka Jazan Wild. Jason Barnes is Jazan Wild's prior name. A copy  
17 of Wild's CARNIVAL OF SOULS Trademark Registration No. 3,921,658 is  
18 attached hereto as **Exhibit 1**.

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25 11. Wild's CARNIVAL OF SOULS Trademark Registration is the only  
26 live United States Trademark Registration using CARNIVAL OF SOULS in any  
27  
28

1 International Class. Wild's CARNIVAL OF SOULS Trademark Registration is  
2 the only "CARNIVAL OF SOULS" mark in International Class 16, ever, for as far  
3 back as records are maintained on the United States Patent and Trademark Office  
4 "Trademark Electronic Search System" (TESS).  
5

6 12. One of Wild's earlier issues of his CARNIVAL OF SOULS series,  
7 dated in 2005, is attached hereto as Exhibit 2.  
8

9 **Wild's Common Law Trademark ENTER THE CARNIVAL**

10 13. Beginning at least as early as December 31, 2006, Wild has adopted  
11 and used the trademark ENTER THE CARNIVAL in connection with the sale and  
12 offering for sale of a series of comic books, graphic novels and novels and  
13 multimedia publishing of books, magazines, journals, software, games, and  
14 electronic publications, including those sold under the CARNIVAL OF SOULS  
15 trademark. The phrase "enter the carnival" has no uniform meaning to the public  
16 (except for walking into a carnival) and is arbitrary as applied to use in connection  
17 with sales in commerce of a series of novels, graphic novels and multimedia  
18 publications. Wild's ENTER THE CARNIVAL trademark is inherently distinctive  
19 for use in connection with the sale and offering for sale of his series of comic  
20 books, graphic novels, novels and multimedia publications. Further, since at least  
21 as early as December 31, 2006, Wild's ENTER THE CARNIVAL trademark has  
22 become distinctive through exclusive use by Wild in connection with sale and  
23  
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1 offering for sale of his series of comic books, graphic novels, novels and  
 2 multimedia publications. Through extensive promotion and use of Wild's ENTER  
 3 THE CARNIVAL trademark, recognition through the granting of many awards  
 4 and by other means, the public has come to know Wild as the exclusive source of  
 5 his series of comic books, graphic novels, novels and multimedia publications sold  
 6 under the ENTER THE CARNIVAL trademark.  
 7

8  
 9 14. Exhibits 40B, 40C, 40D, 40E, 40F, 40H and 40I show some examples  
 10 of Wild's use of his trademark ENTER THE CARNIVAL in connection with the  
 11 sale in commerce of his series of comic books, graphic novels, novels and  
 12 multimedia publications.  
 13

14 **Wild's Common Law Trademark**  
 15 **ENTER THE CARNIVAL OF SOULS.**

16 15. Beginning at least as early as December 31, 2006, Wild has adopted  
 17 and used the trademark ENTER THE CARNIVAL OF SOULS in connection with  
 18 the sale and offering for sale of a series of comic books, graphic novels and novels  
 19 and multimedia publishing of books, magazines, journals, software, games, and  
 20 electronic publications, including those sold under the CARNIVAL OF SOULS  
 21 trademark. The phrase "enter the carnival of souls" has no uniform meaning to the  
 22 public and is arbitrary as applied to use in connection with sales in commerce of  
 23 series of novels, graphic novels and multimedia publications. Wild's ENTER THE  
 24 CARNIVAL OF SOULS trademark is inherently distinctive for use in connection  
 25  
 26  
 27  
 28



1 with the sale and offering for sale of his series of comic books, graphic novels,  
2 novels and multimedia publications. Further, since at least as early as December  
3 31, 2006, Wild's ENTER THE CARNIVAL OF SOULS trademark has become  
4 distinctive through exclusive use by Wild in connection with the sale and offering  
5 for sale of his series of comic books, graphic novels, novels and multimedia  
6 publications. Through extensive promotion and use of Wild's ENTER THE  
7 CARNIVAL OF SOULS trademark, recognition through the granting of many  
8 awards and by other means, the public has come to know Wild as the exclusive  
9 source of his series of comic books, graphic novels, novels and multimedia  
10 publications sold under the ENTER THE CARNIVAL OF SOULS trademark.  
11  
12  
13

14 16. Exhibits 40H and 40I show examples of Wild's use of his trademark  
15 ENTER THE CARNIVAL OF SOULS in connection with the sale in commerce of  
16 his series of comic books, graphic novels, novels and multimedia publications.  
17

18 17. Wild continues to use his Registered Trademark CARNIVAL OF  
19 SOULS in connection with sales of the recited goods of Wild's Trademark  
20 Registration. Wild continues to use his common law trademarks ENTER THE  
21 CARNIVAL and ENTER THE CARNIVAL OF SOULS trademarks in connection  
22 with sales of Wild's series of comic books, graphic novels, novels and multimedia  
23 publications, including Wild's CARNIVAL OF SOULS series of comic books,  
24 graphic novels, novels and multimedia publications.  
25  
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1 18. Wild's trademarks CARNIVAL OF SOULS, ENTER THE  
2 CARNIVAL and ENTER THE CARNIVAL OF SOULS are sometimes referred to  
3 herein as "Wild's Trademarks."  
4

5 **Fame of Wild's Trademarks**

6 19. Wild's Carnival Comics was the first company to offer graphic novels  
7 on Blackberry and Nokia phones. As shown in Exhibits 14 and 15, Wild's  
8 CARNIVAL OF SOULS graphic novel series was the #1 ebook on Blackberry  
9 phones for over a year, as well as being featured in the Los Angeles Times, for  
10 being the first comic book on Blackberry.  
11  
12

13 20. Wild's Carnival Comics now has over 1 million books downloaded on  
14 Nokia, Blackberry, Android, iPhone and iPad devices, most of which were  
15 published and sold by Carnival Comics under the trademark CARNIVAL OF  
16 SOULS.  
17

18 21. As shown in Exhibit 20, Carnival Comics was honored with being  
19 named a Nokia's 2009 Success Story. Wild was brought in to the San Diego CES  
20 conference to receive this prestigious award, as well as being featured as a speaker.  
21 Wild has had several number one graphic novel apps on Amazon's App Store with  
22 6 titles sold under the CARNIVAL OF SOULS Trademarks. The CARNIVAL OF  
23 SOULS graphic novel apps in their various forms have not left the top ten since  
24 entering well over a year ago.  
25  
26  
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1           22. Wild's series of comic books, graphic novels and multimedia  
2 publications sold under the Wild Trademarks has been downloaded in over 200  
3 countries all over the globe, and is internationally known.  
4

5           23. On the Amazon Kindle Store, Wild has had 11 number 1 titles and at  
6 least 8 #1 titles sold under the CARNIVAL OF SOULS Trademarks, on the comics  
7 and graphic novels list, including the titles "CARNIVAL OF SOULS –Welcome  
8 To The Show", "CARNIVAL OF SOULS – Special Edition", "CARNIVAL OF  
9 SOULS – Everyone Loves A Clown", "CARNIVAL OF SOULS – All Hell's  
10 Breaking Loose", "CARNIVAL OF SOULS – Alive in 3D" and "CARNIVAL OF  
11 SOULS – Graphic Novel Volume One", as well as the APPBOOK versions of  
12 "CARNIVAL OF SOULS APPBOOK –Welcome To The Show", "CARNIVAL  
13 OF SOULS – APPBOOK Everyone Loves A Clown", "CARNIVAL OF SOULS  
14 APPBOOK – All Hell's Breaking Loose" and "CARNIVAL OF SOULS 3D  
15 APPBOOK. See Exhibit 30.  
16  
17  
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19           24. Exhibit 3 shows several of Wild's CARNIVAL OF SOULS titles  
20 listed from the Comics Price Guide website, in which 7 different issues from the  
21 CARNIVAL OF SOULS series are valued and graded. The highest value, GEM  
22 Mint CSG Value for Jazan Wild's CARNIVAL OF SOULS 2005 San Diego  
23 Edition is \$240.00. The highest value, GEM Mint CSG Value for Jazan Wild's  
24  
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1 CARNIVAL OF SOULS Brighton Expo Edition is \$240.00. These values are  
2 many times the original selling price.

3 25. Exhibit 4 shows various comic book online stores selling used issues  
4 of Wild's various CARNIVAL OF SOULS titles, including The Lone Star Comics,  
5 the largest retailer in Texas of comics.  
6

7 26. Exhibit 5 shows an example of advertisement from June 2006  
8 Midpoint Trade Books for my graphic novel by Markosia with the use of the mark,  
9 CARNIVAL OF SOULS, in the fiction category and stating that is has "been a  
10 major indie hit worldwide."  
11

12 27. Exhibit 6 shows two ads for Jazan Wild's Melrose Ave. book signings  
13 at the largest comic book retailer in Los Angeles, Golden Apple. Large and out  
14 front is Wild's CARNIVAL OF SOULS Registered Trademark in this hand out  
15 flyer which went into thousands of purchases throughout the month leading to the  
16 signing on Halloween weekend. Wild's CARNIVAL OF SOULS Registered  
17 Trademark is also used in the 2005 Los Angeles Times ad for this event.  
18

19 28. Exhibit 7 shows a news article for another Los Angeles book signing  
20 for the release of CARNIVAL OF SOULS in which Wild is referred to as "Author  
21 of CARNIVAL OF SOULS". This event was held on Sunset Blvd. at Meltdown  
22 Comics with CARNIVAL OF SOULS posters in the window.  
23  
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1           29. Exhibit 8 shows a news article for Jazan Wild and Steve Niles book  
2 signings at Dark Delicacies in Burbank, California. Dark Delicacies is a world  
3 famous book store. This news article states “Jazan Wild signing CARNIVAL OF  
4 SOULS Graphic Novel”.

5  
6           30. Exhibit 9 Jazan Wild, creator of CARNIVAL OF SOULS for  
7 Markosia Comics, is listed as a special guest for the Brighton, UK 2005 Comic  
8 Expo.  
9

10           31. Exhibit 10 shows CARNIVAL OF SOULS featured on the cover of  
11 Comics International Magazine from the UK, alongside Stephen King and Shaun  
12 Of The Dead. Exhibit 10 also shows an article titled “CARNIVAL OF SOULS  
13 pulls into Markosia.” This magazine was purchased at the largest comic book  
14 retailer in London, “Forbidden Planet”.  
15  
16

17           32. Exhibit 11 shows the Wild CARNIVAL OF SOULS Registered  
18 Trademark being promoted on the official Kiss rock and roll band website. This  
19 news article is advertising Wild’s book and CD signings at the upcoming 20<sup>th</sup>  
20 Anniversary Kiss Expo in New York City. At this event, the first 50 people  
21 through the door received a free copy of one of the CARNIVAL OF SOULS series  
22 of books.  
23  
24

25           33. Exhibit 12 shows Wild working with Gene Simmons of Kiss fame.  
26 This page is from Gene Simmons autobiography, “Sex, Money, Kiss”, along with a  
27  
28

1 pin-up featuring Wild's name alongside Simmons. The story speaks of Wild doing  
2 his own series at Simmons Comics. Clearly Simmons did not regard Wild as  
3 having "stolen" the CARNIVAL OF SOULS name, since Simmons is working  
4 with Wild after the CARNIVAL OF SOULS books were published. In fact, it was  
5 the CARNIVAL OF SOULS series that led Simmons to contact Wild.  
6

7 34. Exhibit 13 shows Carnival Comics being a featured publisher on  
8 Wowio's book site. All four titles that are featured are from the CARNIVAL OF  
9 SOULS series. Above the featured publisher is the X-Files classics of which  
10 Stefan Petrucha worked on the CARNIVAL OF SOULS series as a scripter.  
11 Stefan Petrucha was the first person to ever have a comic book featured in the TV  
12 Guide.  
13

14 35. Exhibit 14 shows CARNIVAL OF SOULS as the first comic book to  
15 be on the Blackberry phones. It would remain the number one ebook for a year  
16 straight. In fact, it has never left the top 10 since entering it in 2009.  
17

18 36. Exhibit 15 shows CARNIVAL OF SOULS and its achievement of  
19 being the first comic book on Blackberry phones, making the LA Times on May  
20 24<sup>th</sup>, 2009. Featured is the cover of the CARNIVAL OF SOULS app from the  
21 Blackberry App World.  
22

23 37. Exhibit 16 shows Wild's CARNIVAL OF SOULS being featured on  
24 Nokia Fanboy in an October 22<sup>nd</sup>, 2009 article talking about comic books coming  
25  
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28

1 to Nokia phones. Wild's CARNIVAL OF SOULS and Wild's Atomic Dreams  
2 titles were the first comic books on the Nokia phone platform and were the only  
3 comic books on that platform for over a year. This achievement would eventually  
4 earn Carnival Comics, Wild's company, a Nokia 2009 Success Story honor.  
5

6 38. Exhibit 17 shows CARNIVAL OF SOULS graphic novels featured in  
7 a news article from Comics Bulletin on February 24<sup>th</sup>, 2009, in which CARNIVAL  
8 OF SOULS as a motion comic becomes the first motion comic on the Android  
9 platform from Google.  
10

11 39. Exhibit 18 shows CARNIVAL OF SOULS books featured on the  
12 official website of Gene Roddenberry of Star Trek fame for the CARNIVAL OF  
13 SOULS comic book apps and motion comic apps on various smartphone  
14 platforms. Roddenberry's site took notice of Wild's groundbreaking new manner  
15 of bringing comic books to the public.  
16  
17

18 40. Exhibit 19 shows shown CARNIVAL OF SOULS books featured in a  
19 case study by the largest smartphone maker in the world at that time, Nokia. At  
20 CES, the largest consumer electronics show in the world, Nokia presented a Power  
21 Point presentation featuring CARNIVAL OF SOULS books and Carnival Comics  
22 achievements. Of these achievements, reaching over 300,000 downloads was  
23 mentioned as well as having had these downloads in 182 countries. The current  
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1 downloads on Nokia alone number over 800,000 and are now in over 200  
2 countries.

3 41. The CARNIVAL OF SOULS series is globally known in commerce  
4 by Wild's efforts in advancing and promoting the mark.  
5

6 42. Exhibit 20 the CARNIVAL OF SOULS series being featured in the  
7 announcement of Carnival Comics receiving the Nokia's 2009 Success Story. In  
8 addition, CARNIVAL OF SOULS books are featured in a Halloween take over by  
9 the Carnival Comics characters of the entire Ovi Daily App store blog.  
10

11 43. Exhibit 21 shows Carnival Comics and their apps of which the  
12 CARNIVAL OF SOULS series is their most popular, making the Entertainment  
13 Weekly Must List, coming in at #4 for the Halloween 2009 issue. This was two  
14 spots above the rock band U2, showing the high levels of fame and public  
15 popularity of Wild's CARNIVAL OF SOULS series.  
16  
17

18 44. Exhibit 22 shows CARNIVAL OF SOULS in this July 2010 article  
19 becoming the first 3-D comic on the iPad as well as any smartphone platform.  
20

21 45. Exhibit 23 shows CARNIVAL OF SOULS titles in the series featured  
22 several times on the Apple App store in the iPhone section. Also featured is the  
23 CARNIVAL OF SOULS series 3D app, Everyone Loves A Clown app, All Hell's  
24 Breaking Loose app and the CARNIVAL OF SOULS Motion Comic app, for 99  
25 cents a download, featured in the iTunes store from Apple. There is also a review  
26  
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1 from “Know Your Mobile”, of the CARNIVAL OF SOULS 3D app from July  
2 2010. Within the “Know Your Mobile” review, the very first line of the review  
3 states, “We review Jazan Wild’s popular Carnival Of Souls series on iPhone.” The  
4 review further states that I, Wild and my Carnival Of Souls series innovated the  
5 format for bringing comic books to digital mediums, such as online comic videos,  
6 and now the iPhone. To quote...“Of course reaching beyond the printed page is  
7 something Jazan Wild has been doing for quite some time.” and “The whole series  
8 is available on the App Store, and thanks to the shape of the original the individual  
9 frames actually fit the screen more comfortably than even Marvel’s clever app  
10 manages.” And “So if you’re like me and massively excited about the potential  
11 rebirth of the comic book from the digital fires, then Carnival Of Souls 3D should  
12 be very near the top of your list.”

13 “Of course reaching beyond the printed page is something Jazan Wild has  
14 been doing for quite some time.”

15 46. Exhibit 24 shows CARNIVAL OF SOULS titles in the series featured  
16 several times on the Apple App store in the iPad section.

17 47. Exhibit 25 shows CARNIVAL OF SOULS -- again -- at the #1 spot  
18 on Blackberry’s Paid Ebook List. Wild’s CARNIVAL OF SOULS stayed at this  
19 #1 spot for a year straight in 2009. CARNIVAL OF SOULS by Jazan Wild has  
20 never left the Top 10 since it entered onto Blackberry in 2009.

1           48. Exhibit 26 shows the 3D CARNIVAL OF SOULS app featured on  
2 Google's Android Marketplace alongside Oprah's App and Major League  
3 Baseball. This shows 247 ratings by users, and that 3D CARNIVAL OF SOULS  
4 has a 4 and half star rating out of 5; demonstrating that it is clearly a popular app.  
5 This also shows the CARNIVAL OF SOULS "Welcome to the Show" app with a  
6 4.4 rating out of 5 stars and 165 ratings. The final image in this Exhibit is of all the  
7 titles in the series that use the CARNIVAL OF SOULS mark on the Android  
8 Platform.  
9

10           49. Exhibit 27 shows Wild's CARNIVAL OF SOULS series and its  
11 various titles in the series featured several times on the Nokia Ovi Store, as well as  
12 the 3D CARNIVAL OF SOULS app being featured as the World's 1<sup>ST</sup> Mobile  
13 Comic in 3D.  
14

15           50. Exhibit 28 shows CARNIVAL OF SOULS and its various titles in the  
16 series featured several times on the new Window's App Store. Wild's  
17 CARNIVAL OF SOULS apps just launched on this platform, and feature Wild's  
18 CARNIVAL OF SOULS books in Chinese. Almost immediately, Wild's  
19 CARNIVAL OF SOULS books have reached number 1 in 14 countries and made  
20 the top 10 in countless others.  
21

22           51. Exhibit 128 shows a list of the countries where Wild's CARNIVAL  
23 OF SOULS books are in the top 20 on the Windows Fiction Book List.  
24  
25  
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52. Exhibit 29 shows CARNIVAL OF SOULS and its various titles in the series featured several times on the Amazon App Store. CARNIVAL OF SOULS has reached the #1 spot and has not left the top ten since entering it. The Amazon's App Store app shows a high degree of popularity and recognition of the CARNIVAL OF SOULS mark by the public. Wild's CARNIVAL OF SOULS series has become a staple on one of the biggest companies in the world's website and app store. In fact Amazon personally asked Wild to bring his titles to Amazon's App Store for their launch. Amazon representatives have flown into Los Angeles to meet with Wild to discuss his Carnival Comics titles of which the Amazon representatives were highly excited when seeing the CARNIVAL OF SOULS 3D pages for the first time.

53. Exhibit 30, shows that I have had several #1 titles on Amazon's Kindle Book Store. Amazon's Best Seller's list has had CARNIVAL OF SOULS' various issues all reach the #1 spot. This is a remarkable achievement for any writer and any series. The screenshots of this Exhibit plainly show the registered trademark symbol on the CARNIVAL OF SOULS covers as well. The last screenshot in this Exhibit shows a gaming shop selling a new copy of Wild's CARNIVAL OF SOULS from 2005 for 9.99 on Amazon.com

54. Exhibit 31 shows CARNIVAL OF SOULS (The Novel Preview) on a website that featured a preview chapter of Wild's latest one of his CARNIVAL OF

1 SOULS series, entitled CARNIVAL OF SOULS Novel, which was launched on  
 2 July 4<sup>th</sup> 2012. The chapter clearly shows the mark in use with the registered  
 3 trademark symbol. Also seen is the advertisement for the 4<sup>th</sup> of July CARNIVAL  
 4 OF SOULS Novel Launch.  
 5

6 55. Exhibit 33 shows Carnival Comics reaching 287,850 downloads on  
 7 Blackberry in almost 200 countries.  
 8

9 56. Exhibit 34 shows Carnival Comics reaching 806,809 downloads on  
 10 Nokia's Ovi Store in over 200 countries.  
 11

12 57. Exhibit 37 shows listings on Amazon.com of the latest entry in Wild's  
 13 CARNIVAL OF SOULS series. Wild first posted a chapter on myEbook.com,  
 14 leading up to the 4<sup>th</sup> of July launch on Amazon.com. On July 4<sup>th</sup> 2012 after having  
 15 spent years building his "CARNIVAL OF SOULS" mark in commerce for his  
 16 series, Wild launched this latest novel in his series, which plainly shows the mark  
 17 and the ® symbol for registered trademark. On July 5<sup>th</sup> 2012 CARNIVAL OF  
 18 SOULS The Novel by Jazan Wild went to #1 on Amazon.com. This is Wild's 11<sup>th</sup>  
 19 number one title on Amazon.com. The "CARNIVAL OF SOULS" novel stayed at  
 20 #1 for 5 straight days on Amazon in the USA, as well as being released in Italy and  
 21 the U.K. on Amazon's sites respectively.  
 22  
 23  
 24

25 58. Wild's CARNIVAL OF SOULS Registered Trademark is famous.

26 59. Wild's ENTER THE CARNIVAL common law trademark is famous.  
 27  
 28

1           60. Wild's ENTER THE CARNIVAL OF SOULS common law  
2 trademark is famous.

3           **Defendants' Knowing, Intentional Infringement of Wild's Trademarks**  
4

5           61. Wild has built CARNIVAL OF SOULS into a globally recognized  
6 brand through hard work and years of sacrifice. Defendants are knowingly and  
7 willfully seeking to take what Wild legally and properly built through hard work,  
8 substantial financial investment and years of sacrifice by taking actions that  
9 mislead the public as to the source of Defendants' goods.  
10

11           62. HarperCollins has touted itself as being "consistently at the forefront  
12 of innovation and technological advancement [and as] was one of the first  
13 publishers to digitize its content and create a global digital warehouse of that  
14 content."  
15

16           63. The United States Patent and Trademark office routinely grants  
17 trademark registrations for series of books, novels, graphic novels and multimedia  
18 publications, as it does for other goods sold in commerce. As shown in Exhibit  
19 123, which are official records of the United States Patent and Trademark Office  
20 maintained on the Trademark Electronic Search System (TESS), there are over  
21 6000 live, issued trademark registrations for series of books or novels, in  
22 International Class 16. (attached as Exhibit 123). These registrations date back  
23 over 50 years including, for example, the "HOW AND WHY" series of books,  
24  
25  
26  
27  
28

1 United States Trademark Registration No. 716,882, issued on August 10, 1960  
2 (attached as Exhibit 124).

3 64. HarperCollins has personal knowledge that the name of a series of  
4 books is a trademark that can be legally protected by the United States Trademark  
5 Registrations to protect against infringement and that many thousands of such  
6 registrations have been granted. HarperCollins is itself the holder of several  
7 United States Trademark registrations for series of books in International Class 16,  
8 including "I CAN READ!" (attached as Exhibit 125); United States Registration  
9 No. 4,163,122; "PONY SCOUTS", United States Trademark Registration No.  
10 3,697,216 (attached as Exhibit 126); and many others, in International Class 16, a  
11 TESS listing of which is attached as Exhibit 127.  
12

13 65. Upon information and belief, HarperCollins is represented by  
14 experienced trademark attorneys. Upon information and belief, HarperCollins'  
15 trademark attorneys also represent Marr in trademark matters relating to her  
16 publications, directly or indirectly.  
17

18 66. The United States Patent and Trademark Office (USPTO) Trademark  
19 Electronic Search System (TESS) enables any member of the public with an  
20 internet connection to make a search of the records of trademark applications and  
21 registrations maintained by the USPTO, for free.  
22  
23  
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1           67. A search on TESS on uspto.gov for CARNIVAL OF SOULS returns  
2 only one existing United States Trademark Registration in any class, Wild's United  
3 States Trademark Registration for CARNIVAL OF SOULS, in International  
4 Classes 16 and 41. The time required to conduct such a search is approximately 15  
5 to 45 seconds.  
6

7           68. Prior to the time HarperCollins adopted the name for Defendants  
8 CARNIVAL OF SOULS series debut novel, it was aware that public records  
9 showing United States Trademark Registrations are publically available on  
10 uspto.gov and can be accessed from the Internet for free by means of conducting a  
11 simple (TESS) Trademark Electronic Search on the United States Patent and  
12 Trademark website uspto.gov.  
13  
14

15           69. Upon information and belief, at relevant times, it was standard  
16 operating procedure for HarperCollins, Marr or their counsel to conduct at least a  
17 search on the uspto.gov TESS system, prior to choosing a name for a major  
18 introduction of a novel, particularly one contemplated to be a series.  
19  
20

21           70. Upon information and belief, prior to choosing the name CARNIVAL  
22 OF SOULS for the first novel of their new series of novels, HarperCollins, Marr or  
23 their trademark counsel conducted at least a search on the uspto.gov TESS system  
24 for CARNIVAL OF SOULS.  
25  
26  
27  
28

1           71. Upon information and belief, by means of one or more trademarks  
2 searches conducted by HarperCollins and/or Marr prior to adopting the name  
3 CARNIVAL OF SOULS, HarperCollins and Marr became actually aware of  
4 Wild's United States Trademark Registration for CARNIVAL OF SOULS, in  
5 International Classes 16 and 41.  
6

7           72. Upon information and belief, following obtaining actual knowledge of  
8 Wild's CARNIVAL OF SOULS Trademark Registration, HarperCollins, Marr or  
9 their trademark counsel conducted a search on the internet employing at least the  
10 search terms "CARNIVAL OF SOULS" and "JAZAN WILD," and communicated  
11 the results of that search amongst themselves.  
12  
13

14           73. A search using an internet search engine, such as "Bing.com,"  
15 employing the search terms "CARNIVAL OF SOULS" and "JAZAN WILD,"  
16 returns a search page having several entries relating to Wild's CARNIVAL OF  
17 SOULS series of books.  
18

19           74. The first entry of a current "Bing.com" search on the internet is the  
20 "jazanwild.com" official website, the search summary showing "WILD NEWS!  
21 CARNIVAL OF SOULS (The Novel) stays at #1 for five days in a row on  
22 Amazon! Thank you to everyone who has made this #1 run possible." This is  
23 shown in Exhibit 106, which is a search result on "bing.com" for "carnival of  
24 souls" and "jazan wild" dated August 6, 2012.  
25  
26  
27  
28



1           75. Upon information and belief, prior to adopting the name CARNIVAL  
2 OF SOULS for their debut novel of their new series, Defendants were actually  
3 aware that Wild's CARNIVAL OF SOULS series of graphic novels was being  
4 offered for sale on "amazon.com."  
5

6           76. Upon information and belief, prior to adopting the name CARNIVAL  
7 OF SOULS for its first novel of their new series, Defendants were actually aware  
8 that Wild's CARNIVAL OF SOULS series of books has achieved a number 1  
9 rating on "amazon.com", as well as being in the top ten as an ebook on  
10 Blackberry's App World.  
11  
12

13           77. Despite having actual knowledge of Wild's CARNIVAL OF SOULS  
14 Trademark Registration, Defendants intentionally and willfully adopted the name  
15 CARNIVAL OF SOULS for the debut novel of their new series of novels, using  
16 Wild's Registered Trademark CARNIVAL OF SOULS, and taking other actions to  
17 explicitly mislead the public as to the source of Defendants' goods.  
18  
19

20           78. Upon information and belief, prior to HarperCollins adopting the  
21 name "enterthecarnival.com" for its website address to promote Defendants'  
22 CARNIVAL OF SOULS novel, and prior to Defendants' other infringing uses of  
23 Wild's ENTER THE CARNIVAL common law trademark, Defendants were  
24 actually aware that Wild's ENTER THE CARNIVAL trademark was being used in  
25 connection with the sale of Wild's CARNIVAL OF SOULS series of comic books,  
26  
27  
28

1 graphic novels, novels and multimedia publications and that it was distinctive for  
2 such use.

3 79 Upon information and belief, prior to commencing its infringing uses  
4 of Wild's ENTER THE CARNIVAL OF SOULS common law trademark,  
5 Defendants were actually aware that Wild's ENTER THE CARNIVAL OF  
6 SOULS trademark was being used in connection with the sale of Wild's  
7 CARNIVAL OF SOULS series of comic books, graphic novels, novels and  
8 multimedia publications and that it was distinctive for such use.

9 80. Exhibit 39 shows HarperCollins posting a chapter of Defendants'  
10 CARNIVAL OF SOULS novel on Facebook, after Wild's CARNIVAL OF  
11 SOULS novel had reached a No. 1 rank on Amazon, and after Wild has contacted  
12 HarperCollins and made HarperCollins aware of Wild's trademark. Also on  
13 Facebook are links to several digital publishing sites such as Amazon and iTunes.

14 81. Exhibit 39J shows the promotional edition of the Defendants'  
15 CARNIVAL OF SOULS novel, showing infringement of Wild's Registered  
16 Trademark CARNIVAL OF SOULS on the front cover and ENTER THE  
17 CARNIVAL, prominently, twice, on the back cover of the book.

18 82. Exhibit 39M shows the promotional display for Defendants'  
19 CARNIVAL OF SOULS series debut novel, showing infringing use in commerce  
20 of three of Wild's trademarks, "CARNIVAL OF SOULS", "ENTER THE  
21  
22  
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1 CARNIVAL” and “ENTER THE CARNIVAL OF SOULS,” in connection with  
2 the promotion and sale of Defendants’ goods in commerce.

3 83. Exhibit 39N shows the HarperCollins’ ordering catalogue’s  
4 description for the Defendants’ CARNIVAL OF SOULS series debut novel,  
5 showing infringing use in commerce of three of Wild’s trademarks, “CARNIVAL  
6 OF SOULS”, “ENTER THE CARNIVAL” and “ENTER THE CARNIVAL OF  
7 SOULS,” in connection with the promotion and sale of HarperCollins goods.  
8

9  
10 84. Exhibit 39O shows a HarperCollins promotional write up featured on  
11 “Waiting for Wednesdays” website, showing infringing use in commerce of three  
12 of Wild’s trademarks, “CARNIVAL OF SOULS”, “ENTER THE CARNIVAL”  
13 and “ENTER THE CARNIVAL OF SOULS,” in connection with the promotion  
14 and sale of HarperCollins goods. Exhibit 39O also shows Defendants’  
15 CARNIVAL OF SOULS novel being referred to as a “series”.  
16

17  
18 85. Exhibit 39P shows the front cover of Defendants’ CARNIVAL OF  
19 SOULS series debut novel. The name of the author, Melissa Marr, is shown but  
20 the name of the publisher, HarperCollins, is not.  
21

22 86. Exhibit 121 shows another Facebook advertisement for Defendants’  
23 CARNIVAL OF SOULS novel. The name of Melissa Marr is barely visible in a  
24 diagonal view of a thumbnail image of the book. On a smartphone, iPad, other  
25 tablet or Kindle, the name of Melissa Marr would probably not be discernible at  
26  
27  
28

1 all. The name of the publisher, HarperCollins is not shown anywhere.

2 87. Exhibit 129 shows an advertisement by Defendants prominently using  
3 both Wild's CARNIVAL OF SOULS Registered Trademark and Wild's ENTER  
4 THE CARNIVAL common law trademark. Exhibit 129 also offers a "pre-order"  
5 on a number of on-line booksellers, including, among others, Amazon.com, Barnes  
6 & Noble, and Google Marketplace, which represent some of the main markets for  
7 Wild's CARNIVAL OF SOULS series.  
8  
9

10 88. Defendants knew their use of CARNIVAL OF SOULS, ENTER THE  
11 CARNIVAL and ENTER THE CARNIVAL OF SOULS was likely to cause  
12 confusion by the public with Wild's series of graphic novels and novels sold under  
13 Wild's CARNIVAL OF SOULS Trademark Registration and Wild's ENTER THE  
14 CARNIVAL, and ENTER THE CARNIVAL OF SOULS common law  
15 trademarks. Despite this, Defendants' willfully embarked on a massive marketing  
16 campaign promoting their series debut novel using Wild's Registered Trademark  
17 CARNIVAL OF SOULS prominently on the cover of HarperCollins' novel, and  
18 by using Wild's common law trademark ENTER THE CARNIVAL, in its domain  
19 name "enterthecarnival.com," on the opening page of its Official Website for  
20 CARNIVAL OF SOULS and in other infringing manners, and by using Wild's  
21 ENTER THE CARNIVAL OF SOULS common law trademark, in connection  
22 with and leading to a then-planned September 4, 2012 release date for sales of  
23  
24  
25  
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28

1 Defendants' CARNIVAL OF SOULS series debut novel.

2 89. Defendants' adoption and use of CARNIVAL OF SOULS as the  
3 name for the first novel of their new series of novels was in bad faith, to  
4 knowingly, intentionally and wrongfully mislead the public as to the source or  
5 content of the work so that Defendants could benefit from the high ratings, good  
6 reputation and fame of Wild's CARNIVAL OF SOULS series of comic books,  
7 novels and graphic novels, sold under Wild's CARNIVAL OF SOULS Registered  
8 Trademark.  
9

10  
11 90. Defendants' adoption and use of Wild's CARNIVAL OF SOULS  
12 Registered Trademark and the context and manner in which it is used is explicitly  
13 misleading to the public as to the source or sponsorship of Defendant's goods  
14 constitutes willful and intentional infringement.  
15

16  
17 91. Defendants' adoption and use of Wild's common law trademark  
18 ENTER THE CARNIVAL, in its domain name "enterthecarnival.com," on the  
19 opening page of its Official Website for CARNIVAL OF SOULS and in other  
20 infringing manners, on posters, on website advertisements, and on the back cover  
21 of Defendants' CARNIVAL OF SOULS series debut novel was in bad faith, to  
22 knowingly, intentionally and wrongfully mislead the public as to the source or  
23 content of the work so that Defendants could benefit from the high ratings, good  
24 reputation and fame of Wild's common law trademark ENTER THE CARNIVAL.  
25  
26  
27  
28

1           92. Defendants' adoption and use of Wild's ENTER THE CARNIVAL  
2 common law trademark is explicitly misleading to the public as to the source or  
3 sponsorship of Defendant's goods and is willful and intentional infringement.  
4

5           93. Defendants' adoption and use of the designation ENTER THE  
6 CARNIVAL OF SOULS in connection with promotion of sales of Defendants'  
7 CARNIVAL OF SOULS series debut novel was in bad faith, to knowingly,  
8 intentionally and wrongfully mislead the public as to the source or content of the  
9 Defendants' goods so that Defendants could benefit from the high ratings, good  
10 reputation and fame of Wild's common law trademark ENTER THE CARNIVAL  
11 OF SOULS.  
12  
13

14           94. Defendants' adoption and use of Wild's ENTER THE CARNIVAL  
15 OF SOULS common law trademark is explicitly misleading to the public as to the  
16 source or sponsorship of Defendant's goods and is willful and intentional  
17 infringement.  
18

19           **Wild's Actual Notice of Infringement to HarperCollins Prior to**  
20           **HarperCollins' Release of CARNIVAL OF SOULS.**

21           95. Wild, upon learning about the infringement of his registered mark,  
22 contacted HarperCollins on June 18<sup>th</sup> 2012 by email. A copy of this email is  
23 attached as Exhibit 130. Wild stated: "I wanted to kindly make you aware of the  
24 fact that I "Jazan Wild" and Carnival Comics have a trademark "CARNIVAL OF  
25 SOULS" in the following categories: [International Classes 16 and 41]." Attached  
26  
27  
28

1 to the email was Wild's Trademark certificate for CARNIVAL OF SOULS and  
2 also a link to HarperCollins "enterthecarnival.com" official website for  
3 Defendants' CARNIVAL OF SOULS novel, using Wild's ENTER THE  
4 CARNIVAL common law trademark.  
5

6 96. On June 19<sup>th</sup> 2012, Fabio Bertoni (Assistant General Counsel) for  
7 HarperCollins replied to Wild's email making HarperCollins aware of the  
8 infringement. A copy of this email is attached as Exhibit 131. Mr. Bertoni did not  
9 assert that Defendants were previously unaware of Wild's CARNIVAL OF  
10 SOULS Trademark Registration at the time HarperCollins adopted the name  
11 CARNIVAL OF SOULS. Instead, Mr. Bertoni asserted, without justification or  
12 belief as to the truth of his assertion, that Wild was not entitled to his CARNIVAL  
13 OF SOULS Trademark Registration because there were other uses of CARNIVAL  
14 OF SOULS on various other goods and services. However, the other uses of  
15 CARNIVAL OF SOULS were single-work uses in connection with different goods  
16 or services, in different classes and/or were abandoned by the prior users prior to  
17 adoption, use and registration by Wild of his CARNIVAL OF SOULS mark for the  
18 goods and services recited in Wild's CARNIVAL OF SOULS Trademark  
19 Registration, or were after Wild's adoption and use of CARNIVAL OF SOULS for  
20 the goods and services recited in Wild's Trademark Registration, or were  
21 otherwise not material to the scope of validity of Wild's Trademark Registration.  
22  
23  
24  
25  
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1 Such other prior uses do not reduce or eliminate Wild's right to enforce his  
2 Trademark Registration against infringement.

3 97. At the time Defendants adopted the name CARNIVAL OF SOULS,  
4 Defendants were aware that other uses of CARNIVAL OF SOULS were single-  
5 work uses in connection with different goods or services, in different classes and/or  
6 were abandoned by the prior users prior to adoption, use and registration by Wild  
7 of his CARNIVAL OF SOULS mark for the goods and services recited in Wild's  
8 CARNIVAL OF SOULS Trademark Registration, or were after Wild's adoption  
9 and use of CARNIVAL OF SOULS for the goods and services recited in Wild's  
10 Trademark Registration, or were otherwise not material to the scope of validity of  
11 Wild's Trademark Registration, and that such other prior uses did not reduce or  
12 eliminate Wild's right to enforce his Trademark Registration against infringement.  
13 Defendants were aware that none of such uses invalidates or reduced the scope of  
14 enforceability of Wild's CARNIVAL OF SOULS Registered Trademark in  
15 International Classes 16 or 41 for the recited goods and services. On information  
16 and belief, Mr. Bertoni's assertions to Mr. Wild were made in bad faith, with the  
17 intent of attempting to mislead Mr. Wild and to attempt to intimidate him into not  
18 enforcing his valid trademark rights.  
19  
20  
21  
22  
23  
24

25 98. In an email dated, June 19<sup>th</sup>, 2012 Wild advised Bertoni:  
26  
27  
28



1 “I, Jazan Wild in good faith ask you to respect my registered trademark  
 2 which clearly falls in the same trademark categories as the CARNIVAL OF  
 3 SOULS title you are attempting to publish... in classes 16 and 41, both of which  
 4 protect novels and books. If you try to trademark CARNIVAL OF SOULS in  
 5 relation to publishing a book, you would be refused by the Patent and Trademark  
 6 Office, because I own the trademark exclusively.” Wild concludes the email by  
 7 stating, “just to be clear, this is a cease and desist.” In addition to the email, Wild  
 8 attached once again his trademark certificate, as well as legal definitions of  
 9 trademark law and usage. A copy of this email is attached as Exhibit 132.

10 99. In an email on June 20<sup>th</sup>, 2012 Wild once again sends a cease and  
 11 desist with further clarification of his trademark stating:

12  
 13 *1. "CARNIVAL OF SOULS" is a series and not just a title. I do not have one*  
 14 *work titled "CARNIVAL OF SOULS" but a series that started in 2004 and has been*  
 15 *downloaded in over 200 countries and well over a million times and featured in the*  
 16 *LA Times as well as making #4 on Entertainment Weekly's Must List. Recently I*  
 17 *have had several #1 titles at Amazon.com, including "CARNIVAL OF SOULS" the*  
 18 *graphic novel and several of the CARNIVAL OF SOULS issues.*

19  
 20 *2. I passed all qualifications to receive my "CARNIVAL OF SOULS"*  
 21 *trademark in classes 16 and 41. Novels, Comic Books and Novels are in those*  
 22 *categories.*

23 *3. I have the exclusive right in the USA to use "CARNIVAL OF SOULS" in*  
 24 *classes 16 and 41.*

25 *I hope this puts to rest our dispute. If you go forward with infringing on my*  
 26 *"CARNIVAL OF SOULS" trademark in classes 16 and 41, you will be doing so*  
 27 *willfully, maliciously and in bad faith. This action will clearly dilute my trademark*  
 28 *and cause great confusion. We have alerted Barnes and Noble, Amazon and*

1 *YouTube's legal teams about our trademark. If we are not able to resolve this*  
 2 *matter, we will file by next week our lawsuit against your use of the title. I would*  
 3 *prefer not to have to do this, but it's your choice.*

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

7 *All the best, Jazan"*

8 A copy of this email is attached as Exhibit 133.

9 100. The above email clearly shows that Wild only wishes the author of  
 10 Defendants' CARNIVAL OF SOULS novel, Melissa Marr, the best and in no way  
 11 is attempting to stifle her creative endeavors. Defendants are free to choose any  
 12 other title for its goods in class 16 and 41, other than Wild's CARNIVAL OF  
 13 SOULS, ENTER THE CARNIVAL or ENTER THE CARNIVAL OF SOULS  
 14 trademarks, or confusingly similar variations thereof.

15 101. In an email on June 21, 2012, after the refusal by Mr. Bertoni to  
 16 respect Wild's Trademark Registration, Wild wrote the CEO of HarperCollins, Mr.  
 17 Brian Murray and stated:

18 *"I wanted write you because your legal department, "Fabio" to be specific,*  
 19 *is acting in a manner that is going to lead HarperCollins into a Federal Lawsuit,*  
 20 *in-which it has no legal basis to stand on. My "CARNIVAL OF SOULS" trademark*  
 21 *began in February 2011 and my first use began in 2004, with my CARNIVAL OF*  
 22 *SOULS series, of which the first book was the #1 ebook on Blackberry for over a*  
 23 *year, and was the very first comic to ever be on Blackberry. As well as the first of*  
 24 *the comics to be on Nokia, of which my company "Carnival Comics" was named a*  
 25 *2009 success story.*

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

7 *This email is my last hope and effort to stop my trademark's infringement*  
 8 *and the last effort before filing a lawsuit in Federal Court. I do not believe a*  
 9 *President and CEO would agree with the rogue business actions of a legal*  
 10 *assistant, that failed to do his job, and simply conduct a TESS (Trademark Search)*  
 11 *before beginning the printing and promotion of a novel. I run my own company*  
 12 *"Carnival Comics" and I have several teams on several continents working for me.*  
 13 *I would not want this kind of action to go unreported to me. Fabio clearly, tried to*  
 14 *act as if my registered trademark meant nothing and he is wrong. He was very*  
 15 *deceptive in trying to say I simply had a title and not a series, as well as listing*  
 16 *CARNIVAL OF SOULS usages in other categories and its usage in works before*  
 17 *my trademark went live. All of which have no bearing on the current situation. I*  
 18 *have a series titled " CARNIVAL OF SOULS" and it is very well known and will be*  
 19 *defended to my last breath. I sincerely hope writing you this email will avoid any*  
 20 *future legal action.*

21 *Best, Jazan"*

22 A copy of this email is attached as Exhibit 134.

23 102. In an email dated June 22, 2012 the very next morning, Wild received  
 24 an email from Erin Gorham that read... *"Hello Jazan, I received this note from*  
 25 *Annie last night, please let me know what you need from us to resolve the issue.*  
 26 *Thanks! Erin."* A copy of this email is attached as Exhibit 135. This email led  
 27 Wild to believe that this issue would be resolved amicably.

28 103. Below Erin's email was a note from Apple's iBook Store stating that  
 Apple had received a trademark notice regarding CARNIVAL OF SOULS. Apple

1 had requested for HarperCollins to directly resolve this issue with Wild. In an  
 2 email dated June 22<sup>nd</sup>, 2012:

3 *"Hello Erin,*

4  
 5 *Please remove all infringement of the "CARNIVAL OF SOULS" mark in*  
 6 *classes 16 and 41. Here are just a few...*

7 *Ms. Marr's (HarperCollins) Trademark Infringement Exhibits:*  
 8 *[http://www.jazanwild.com/MARR\\_EXHIBITS\\_FOR\\_TRADEMARK\\_LAWSUIT/](http://www.jazanwild.com/MARR_EXHIBITS_FOR_TRADEMARK_LAWSUIT/)*

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

14 A copy of this email is attached as Exhibit 136.

15  
 16 104. Just hours after this email, Wild learned that he had been misled into  
 17 believing that the matter would be resolved amicably. At that time, Wild received  
 18 a letter by email from Ms. Dale Cendali of Kirkland and Ellis LLP. A copy of this  
 19 email is attached as Exhibit 118. Upon information and belief, Ms. Cendali is  
 20 trademark counsel to HarperCollins.  
 21

22 105. In her letter, Ms. Cendali listed various single-work uses of  
 23 CARNIVAL OF SOULS in connection with different goods or services, in  
 24 different classes, that were abandoned by the prior users prior to adoption, use and  
 25 registration by Wild of his CARNIVAL OF SOULS mark for the goods and  
 26  
 27  
 28

1 services recited in Wild's CARNIVAL OF SOULS Trademark Registration, were  
2 uses commenced after Wild's adoption and use of CARNIVAL OF SOULS for the  
3 goods and services recited in Wild's Trademark Registration, and/or were alleged  
4 uses otherwise not material to the scope of validity of Wild's Trademark  
5 Registration. None of such alleged uses invalidates or reduces the scope of  
6 enforceability of Wild's CARNIVAL OF SOULS Registered Trademark in  
7 International Classes 16 or 41 for the recited goods and services. Defendants' use  
8 of Wild's trademark CARNIVAL OF SOULS as the designation of Defendants'  
9 CARNIVAL OF SOULS series debut novel is clearly a use in commerce in  
10 connection with the sale of the goods recited in Wild's Trademark Registration, not  
11 a merely descriptive use. Nevertheless, Ms. Cendali threatened legal action against  
12 Wild if he attempted to enforce his trademark rights. Upon information and belief,  
13 Ms. Cendali's assertions were made without good faith belief in their truthfulness,  
14 in an attempt to mislead Mr. Wild and to intimidate him into not enforcing his  
15 valid trademark rights. Upon information and belief, Ms. Cendali was aware at the  
16 time she made the statements that Defendants were using the name CARNIVAL  
17 OF SOULS in commerce in connection with the sale of its goods, which are  
18 novels. Upon information and belief, Ms. Cendali was also aware at the time she  
19 made the statements that HarperCollins and/or the author, Ms. Melissa Marr had  
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1 admitted that the Defendants' CARNIVAL OF SOULS novel was the first novel of  
2 a series of novels, not a stand-alone novel.

3 106. In a telephone conversation following receipt of this letter, Ms.  
4 Cendali told Wild that Wild had "stolen" the CARNIVAL OF SOULS name from  
5 a CD by the band KISS. The statement was also heard by Wild's wife, while on  
6 speakerphone. Cendali further stated that HarperCollins would not discontinue use  
7 of CARNIVAL OF SOULS, dismissing Wild's claims of infringement of his  
8 trademark by HarperCollins' use of an identical trademark on identical goods sold  
9 in the same channels of trade by the dismissive statement: "you are not an  
10 attorney, are you?"  
11

12 107. On information and belief, HarperCollins's willful refusal to respect  
13 Wild's trademark rights, and bad faith attempts to mislead and to intimidate Wild,  
14 despite prior actual notice, is because HarperCollins plans to use its vastly superior  
15 financial resources to employ lawyers to drive up legal fees with frivolous  
16 arguments to an extent that it will render effective enforcement of Wild's  
17 trademark against HarperCollins or Marr financially impossible.  
18

19 108. On information and belief, Defendants plan to continue infringement  
20 while frivolously driving up the cost of litigation in bad faith is willfully calculated  
21 to permit Defendants to continue its infringement for as long as possible, despite  
22 its prior notice of Wild's trademark rights, to wrongfully gain advantage from  
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1 Wild's hard work in building a positive reputation, high rating and fame for Wild's  
 2 series of comic books, graphic novels and novels sold under the registered  
 3 trademark CARNIVAL OF SOULS and common law trademarks ENTER THE  
 4 CARNIVAL and ENTER THE CARNIVAL OF SOULS, all to Wild's detriment.  
 5

6 **Defendants Use of Wild's CARNIVAL OF SOULS Mark**  
 7 **as a Trademark to Sell its Goods in Commerce.**

8 109. Ms. Cendali's assertion in her email that HarperCollins did not use  
 9 CARNIVAL OF SOULS as a trademark was deceptive and in bad faith.  
 10

11 110. Contrary to Ms. Cendali's assertions, the front cover of Defendants'  
 12 CARNIVAL OF SOULS novel prominently uses Wild's CARNIVAL OF SOULS  
 13 Registered Trademark in, by far, the largest and most prominent printing font,  
 14 without even identification of HarperCollins as the publisher. This is shown in  
 15 Exhibit 117, which is a true and correct copy of an Amazon.com webpage  
 16 Amazon.com: Carnival of Souls (9780061659287): Marr, showing the cover of the  
 17 Defendants' CARNIVAL OF SOULS novel. Defendants have also heavily  
 18 promoted sales under the name CARNIVAL OF SOULS on the internet, live  
 19 events and by printing promotional material. Such uses are uses in commerce in  
 20 connection with the sale of goods that are likely to create a likelihood of confusion  
 21 with Wild's CARNIVAL OF SOULS Registered Trademark and to mislead the  
 22 public as to the source of Defendants' goods.  
 23  
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 26

27 111. Available excerpts of Defendants' CARNIVAL OF SOULS novel  
 28



1 show that, in the text of the novel, the phrase “the carnival” (which is non-  
2 infringing) is sometimes used alone, in all small letters, to refer to the same  
3 fictitious place where supernatural beings hold a competition comprising fights  
4 among themselves to the death that is referred to as “The Carnival of Souls”  
5 (which infringes Wild’s Registered Trademark). This is shown in Exhibit 42,  
6 which includes the first two pages of a Chapter 4 of the Defendants’ CARNIVAL  
7 OF SOULS novel, showing the use of the term “the carnival” (which is non-  
8 infringing) interchangeably with the term “The Carnival of Souls” (which is  
9 infringing) to refer to the same fictitious place where supernatural beings hold the  
10 competition. Defendants’ have also used the non-infringing term “the carnival” in  
11 their advertisements, along with infringing use of Wild’s CARNIVAL OF SOULS  
12 Registered Trademark, as shown in Exhibit 107, which is a true and correct copy  
13 of a HarperCollins’ advertisement of their new CARNIVAL OF SOULS novel and  
14 series. On her Twitter account, Exhibit 119, Marr alternately uses the name  
15 “CARNIVAL” or “CARNIVAL OF SOULS” for the name of the book being  
16 written, in different entries, demonstrating that Marr was aware that either name  
17 was a viable equivalent alternative. On August 2, 2011, Marr states that “Today’s  
18 inbox held the mock-up of the CARNIVAL cover. I am Verrrry pleased.” See  
19 Exhibit 119.  
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112. HarperCollins and Marr could have chosen any other name that did not use Wild's CARNIVAL OF SOULS Registered Trademark as the name for its series debut novel, including simply "The Carnival," since that term is used synonymously in the text of the story to refer to the same fictitious site for the supernatural competition as the term "Carnival of Souls," or any other name. Upon information and belief, Defendants chose Wild's CARNIVAL OF SOULS Registered Trademark as the name for its series debut novel, instead of the synonym "The Carnival," or another name, in bad faith, to mislead the public and to wrongfully benefit from the goodwill and high ranking associated with Wild's CARNIVAL OF SOULS Registered Trademark in connection with Wild's series of stories. Furthermore, though it would have been a very simple matter for Defendants to avoid infringement by doing a simple word processing "search and replace" of "Carnival of Souls" with "Carnival," since the final version of Defendants' book has not yet been released, particularly after Defendants were given actual notice of Defendants' infringement of Wild's trademark rights, Defendants pressed ahead with massive and infringing marketing using Wild's CARNIVAL OF SOULS Registered Trademark, Wild's common law trademark ENTER THE CARNIVAL and Wild's common law trademark ENTER THE CARNIVAL OF SOULS.

1           113. HarperCollins makes infringing use in commerce of Wild's ENTER  
2 THE CARNIVAL common law trademark in the name of its official website,  
3 "enterthecarnival.com," in conjunction with a prominent use of "ENTER THE  
4 CARNIVAL" on its official website, on the back cover of Defendants'  
5 CARNIVAL OF SOULS series debut novel and in other ways in connection with  
6 sales of Defendants' CARNIVAL OF SOULS series debut novel. These uses are  
7 uses in commerce of a reproduction, counterfeit, copy or colorable imitation of  
8 Wild's registered trademark in connection with the sale, offering for sale,  
9 distribution and advertising of Defendants' CARNIVAL OF SOULS infringing  
10 goods, not descriptive uses that will explicitly mislead the public as to the source  
11 of Defendants' goods. Such uses are likely to create a likelihood of confusion,  
12 mistake or to deceive the public with Wild's ENTER THE CARNIVAL common  
13 law trademark.

14           114. Defendants also use Wild's ENTER THE CARNIVAL OF SOULS in  
15 connection with sales of Defendants' CARNIVAL OF SOULS series debut novel.  
16 These uses are uses in commerce of a reproduction, counterfeit, copy or colorable  
17 imitation of Wild's registered trademark in connection with the sale, offering for  
18 sale, distribution and advertising of Defendants' CARNIVAL OF SOULS  
19 infringing goods, not descriptive uses, that will explicitly mislead the public as to  
20 the source of Defendants' goods. Such uses are likely to create a likelihood of  
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1 confusion, mistake or to deceive the public with Wild's ENTER THE CARNIVAL  
2 OF SOULS common law trademark.

3 115. Exhibit 39B shows pictures from the June 5, 2012, CARNIVAL OF  
4 SOULS signing by Marr. Wild's mark is displayed and used extensively to  
5 promote and sell Defendants' CARNIVAL OF SOULS novel, and clearly the  
6 designation being used by Defendants' in commerce in connection with the sale of  
7 books. Exhibit 39B also shows Marr's twitter account stating that she signed 800  
8 copies of Defendants' infringing novel.  
9

10 116. Exhibit 39C shows a promotional mask bearing Wild's Registered  
11 Trademark CARNIVAL OF SOULS that was given out as part of Defendants'  
12 CARNIVAL OF SOULS novel's promotion. Also the side binding of the  
13 "CARNIVAL OF SOULS" novel by Marr can be seen. Wild's "CARNIVAL OF  
14 SOULS" Registered Trademark is used by HarperCollins in all capital letters.  
15

16 117. Exhibit 39D shows promotional tee-shirts bearing Wild's Registered  
17 Trademark CARNIVAL OF SOULS that were given out as part of the novel's  
18 promotion. The production of tee-shirts and masks show Marr's and  
19 HarperCollins' intention to build a trademark brand around its infringing use of  
20 Wild's CARNIVAL OF SOULS Registered Trademark as the designation for  
21 Defendants' new CARNIVAL OF SOULS series.  
22

23 **Defendants Use Wild's CARNIVAL OF SOULS Registered Trademark**  
24 **In Commerce as a Trademark, in Connection with the Debut of a Series**  
25

**of Novels, Not as a Title of a Stand-alone Novel.**

118. Upon information and belief, Ms. Cendali was aware at the time she made the misleading and false assertion that Defendants were not making a trademark use of CARNIVAL OF SOULS that Defendants' CARNIVAL OF SOULS novel is the first novel of a series of novels, not the title of a standalone novel.

119. Marr has admitted that Defendants' CARNIVAL OF SOULS novel "is NOT a stand-alone" novel because she "couldn't fit the whole story in one book." This is shown in Exhibit 101, which is a true and correct copy of a webpage from Marr's official website, Melissa-marr.com, December 2011 newsletter. Marr has also admitted that "right now it's a 2 book series." This is shown in Exhibit 102, which is a true and correct copy of a webpage from Marr's blog, Melissa-writing.livejournal.com, Mar. 1<sup>st</sup> 2012 03:29 (UTC) entry. On her Twitter account, relevant entries of which are attached as Exhibit 119, Marr admitted on January 5, 2012 that Defendants' CARNIVAL OF SOULS series debut novel was "not stand-alone" and that it was a "new series." In her May 26, 2012 entry, attached as Exhibit 138, she admits that "YES, I'm writing a sequel."

120. Exhibit 39A shows Marr's Tumblr account posting from May 11<sup>th</sup> and May 14<sup>th</sup> 2012. Above the posting is an image from the already-printed Defendants' CARNIVAL OF SOULS novel. The May 11<sup>th</sup> posting states that

1 Marr will be signing copies of the Novel at BEA on June 5<sup>th</sup> 2012, and that a  
 2 Facebook page has been started for her new SERIES “CARNIVAL OF SOULS”,  
 3 again in both posts HarperCollins and Marr call “CARNIVAL OF SOULS” a  
 4 “series debut.” Marr states...

6 *"Just saw the BEA bio which includes this about Carnival:*

7  
 8 *"Her highly anticipated September release, CARNIVAL OF SOULS*  
 9 *(HarperCollins) breaks fresh ground for the next wave of fantastical teen*  
 10 *adventure with a series debut that reads like Game of Thrones for teens, combining*  
 11 *intriguing interwoven story arcs, compelling characters, and high-stakes action*  
 12 *together in a captivating world that is positively unique."*

13 *Also, as a FYI, there will be a small mountain of arcs (with the ACTUAL*  
 14 *cover which I'll get to share in the next 2 weeks!) at BEA, a few hundred of which*  
 15 *I'll be signing on Tuesday June 5th at 2:30 PM in the Harper booth." (Emphasis*  
 16 *added.)*

17 Also in Exhibit 39A, Marr posts...

18 *"Carnival of Souls facebook page*

19 *HarperCollins' Facebook page for the Carnival of Souls series..."*

20 121. On Marr's and HarperCollins' official Wicked Lovely Official Fan  
 21 Page, Marr links to an article entitled "Marr announces James Marsters to narrate  
 22 (Emphasis added.), 'Carnival of Souls.'" (Emphasis added.) This is shown in  
 23 Exhibit 38, which is a true and correct copy of the webpage  
 24 <http://www.facebook.com/WickedLovelyOfficial> dated July 17, 2012.

25 122. HarperCollins knew as early as May 9, 2011 that Defendants'  
 26 CARNIVAL OF SOULS series debut novel was "not a stand-alone novel" and  
 27  
 28

1 agreed with Marr regarding this. On her Twitter account, Exhibit 119, May 9,  
 2 2011, Marr admitted that Defendants' CARNIVAL OF SOULS series debut novel  
 3 "isn't really a stand-alone either. My YA editor & I agreed on that." The "YA  
 4 editor" referred to is the "Young Adults" book editor at HarperCollins.  
 5

6 123. Exhibit 39Q shows a HarperCollins' listing showing Marr's  
 7 CARNIVAL OF SOULS novel on Amazon.com as a series, despite HarperCollins'  
 8 actual knowledge that Wild's CARNIVAL OF SOULS series has had comic  
 9 books, a graphic novel and a novel place at #1 on Amazon.com. The description in  
 10 Wild's various CARNIVAL OF SOULS titles on Amazon states: "*CARNIVAL OF*  
 11 *SOULS*" *Trademarked by Carnival Comics and Jazan Wild*, giving notice to  
 12 Defendants of Wild's trademark rights.  
 13

14 124. A promotional photograph of a "masked flash mob" organized by  
 15 HarperCollins "to celebrate the 'Carnival of Souls' launch" states that "[t]he book  
 16 launches a new series ...". This is shown in Exhibit 104, which is a true and  
 17 correct copy of a webpage from www.publishersweekly.com dated July 18, 2012.  
 18 A review by "Publishers Weekly" attached as Exhibit 116 also refers to  
 19 HarperCollins' and Marr as "kicking off a new series" with the new Defendants'  
 20 new CARNIVAL OF SOULS novel. Upon information and belief, the statement  
 21 in www.publishersweekly.com that "[t]he book launches a new series ..." and the  
 22 statement in the Publishers Weekly review that Marr was "kicking off a new  
 23  
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 28

1 series” were based upon statements by HarperCollins, HarperCollins’ agents, or  
 2 Marr herself to www.publishersweekly.com that Defendants’ CARNIVAL OF  
 3 SOULS novel is part of a “new series.” (Emphasis added.) Exhibit 38 shows  
 4 CARNIVAL OF SOULS (The Novel) by Marr, on July 9<sup>th</sup>, being called officially a  
 5 “CARNIVAL OF SOULS” Series and a new release date of August 4<sup>th</sup>, one month  
 6 sooner than the September 4<sup>th</sup> release date. (Emphasis added.) Upon information  
 7 and belief, HarperCollins’ was the source of the statements in Exhibit 38 that  
 8 CARNIVAL OF SOULS was a series. This announcement comes while Wild has  
 9 a #1 “CARNIVAL OF SOULS” novel on Amazon.com, and after Wild has  
 10 contacted HarperCollins and made HarperCollins aware of Wild’s trademark, and  
 11 after HarperCollins and its attorneys falsely told Wild that it was only a “title” of a  
 12 book.

13 125. Upon information and belief, Ms. Cendali was aware of these  
 14 admissions by Ms. Marr and/or HarperCollins’ that Defendants’ CARNIVAL OF  
 15 SOULS novel was the debut of a series by that name, and not the title of a stand-  
 16 alone novel, and nevertheless made false assertions that HarperCollins was not  
 17 making use of Wild’s trademark CARNIVAL OF SOULS in a trademark sense to  
 18 Wild, in bad faith to mislead him and to intimidate him into not enforcing his valid  
 19 trademark rights.

## 20 **Defendants Intentionally Chose Wild’s CARNIVAL OF SOULS**

**Registered Trademark Mark as a Trademark for The Debut of its New Series of Novels, in Bad Faith, to Mislead and  
Not Because of Any Artistic Relevance to the Work.**

126. Marr has asserted that she chose the name CARNIVAL OF SOULS for Defendants' series debut novel because she happened to be listening to a song entitled "Far From Home" by the band "Five Finger Death Punch," which includes the line "another day in this carnival of souls" in the lyrics (among many other lines), when she wrote the "first half" of the novel. On the "Acknowledgements" page of Defendants' CARNIVAL OF SOULS book, Marr includes a statement of gratitude to Five Finger Death Punch for the phrase "carnival of souls", asserting that this phrase was the "spark" that started her "dive into this book." Exhibit 39L. Marr fails to acknowledge in that "Acknowledgements" page that the name CARNIVAL OF SOULS is, in fact, Wild's Registered Trademark for novels, graphic novels and multimedia publications, in the International Classes 16 and 41 that encompasses Defendants' novel.

127. The phrase "carnival of souls" in the "Far From Home" song appears to be used to loosely refer to the world and the people in it, and is most certainly not used as reference to carnivals, supernatural beings at a carnival, witches, demons, competitions between supernatural beings, caste hierarchies or any of the other themes of Defendants' CARNIVAL OF SOULS debut novel promoted by Defendants. As such, the phrase "carnival of souls" from the "Far From Home"



1 song has no artistic relevance to Defendants' CARNIVAL OF SOULS novel.

2 128. Defendants use the designation CARNIVAL OF SOULS in  
3 conjunction with one or more of Wild's common law trademarks ENTER THE  
4 CARNIVAL and ENTER THE CARNIVAL OF SOULS on the cover of  
5 Defendants' book, in other places in Defendants' book, and in promotional  
6 material for Defendants' book. Defendants' combined use of Wild's common law  
7 trademarks ENTER THE CARNIVAL and ENTER THE CARNIVAL OF SOULS  
8 in conjunction with Wild's CARNIVAL OF SOULS Registered Trademark in the  
9 title explicitly misleads the public as to the source or content of the work.  
10  
11

12 129. In addition, at least some of Defendants' promotional material for  
13 Defendants' CARNIVAL OF SOULS does not identify either the name of  
14 HarperCollins as the publisher or Marr as the author. This is evident from Exhibit  
15 63, which is a webpage from the website "epicreads.com," which is owned by  
16 HarperCollins, which makes infringing use of Wild's CARNIVAL OF SOULS  
17 trademark four times, without any mention of either the name of HarperCollins as  
18 the publisher or Marr as the author. Upon information and belief, Defendants'  
19 failure to identify either the name of HarperCollins as the publisher or Marr as the  
20 author on at least some of its promotional material is intentional and in bad faith, to  
21 further mislead the public as to the source or content of the work. As another  
22 example, Exhibit 139 shows the opening shot of a YouTube video entitled  
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1 “Melissa Marr on Carnival of Souls” that prominently displays Wild’s CARNIAL  
 2 OF SOULS Registered Trademark, without mention of Marr or HarperCollins.  
 3 The YouTube page further makes infringing use of Wild’s ENTER THE  
 4 CARNIVAL common law trademark. The name of HarperCollins is not found  
 5 anywhere on the YouTube page.  
 6

7 **Defendants’ Misleading Use of Identical Copies of Wild’s Trademarks**  
 8 **to Sell Identical Goods to the Same Class of Customers**  
 9 **Using the Same Channels of Trade.**

10 130. Defendants are wrongfully using trademarks that are identical copies  
 11 of Wild’s trademarks to sell identical goods to the same class of customers in the  
 12 same channels of trade to mislead the public.  
 13

14 131. The subject matter of the stories sold under Wild’s CARNIVAL OF  
 15 SOULS Registered Trademark usually includes a supernatural carnival,  
 16 supernatural beings such as witches, and includes both love story elements and  
 17 violence. The comic books, graphic novels and novels sold by Wild under his  
 18 CARNIVAL OF SOULS trademark are targeted primarily at a young adult  
 19 audience, comprised of members of both genders.  
 20  
 21

22 132. The subject matter of the Defendants’ CARNIVAL OF SOULS debut  
 23 series novel also includes a supernatural carnival, supernatural beings such as  
 24 witches, includes both love story elements and violence, and is targeted primarily  
 25 at a young adult audience, comprised of members of both genders.  
 26  
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 28

1           133. There is identity of or at least substantial overlap of the target markets  
2 for the stories sold under Wild's CARNIVAL OF SOULS trademark and the  
3 Defendants' CARNIVAL OF SOULS infringing trademark for its series debut  
4 novel.  
5

6           134. HarperCollins' company profile of its "HarperTeen" subsidiary  
7 (which publishes HarperCollins' CARNIVAL OF SOULS new novel and series)  
8 states that "HarperTeen features books for all teens." This is shown in Exhibit  
9 114, which is a true and correct copy of a webpage  
10 <http://harperteen.com/footer/companyprofile.aspx> dated August 5, 2012. The  
11 category of "[a]ll teens" is a primary market for Wild's CARNIVAL OF SOULS  
12 series.  
13  
14

15           135. In addition to using an identical copy of Wild's trademarks to sell the  
16 same type of infringing goods to the same class of customers as Wild, Defendants  
17 are doing so using the same channels of trade, and are copying Wild's marketing  
18 methodology.  
19  
20

21           136. Wild's CARNIVAL OF SOULS novel had a promotional give away  
22 and its exclusive launch on Amazon.com on July 4, 2012. Wild's CARNIVAL OF  
23 SOULS Novel placed at #1 for five days in a row. (See Exhibit 37D and 37E)  
24

25           137. Defendants are also explicitly misleading the public by duplicating  
26 Wild's mode of promotion of Wild's CARNIVAL OF SOULS series. This is  
27  
28

1 shown in Exhibit 39R, which is a HarperCollins' listing Marr's CARNIVAL OF  
2 SOULS novel on Amazon.com as a "SNEAK PEEK", promoting a free give away  
3 of the first chapter of Marr's Novel, on July 31st 2012, just a few days after Wild  
4 did so for one of Wild's CARNIVAL OF SOULS series of novels.  
5

6 138 Exhibit 39G shows book signings for the CARNIVAL OF SOULS  
7 novel by Marr, on the Barnes and Noble website. Barnes and Noble also sells  
8 novels, comic books and graphic novels, including Wild's CARNIVAL OF  
9 SOULS graphic novels. This is shown by Exhibit 111, which is a webpage on  
10 Barnesandnoble.com showing Wild's CARNIVAL OF SOULS graphic novel for  
11 sale, and further stating that it has been "a major indie hit worldwide" and has a  
12 five star rating.  
13  
14

15 139. Exhibit 39I shows a book signing and launch party for the  
16 CARNIVAL OF SOULS novel by Marr in the Los Angeles area, where Wild lives,  
17 even though Marr is a Washington D.C. resident.  
18

19 140. Exhibit 39H shows book signings for the Defendants' CARNIVAL  
20 OF SOULS novel by Marr in the Los Angeles area, including at Dark Delicacies, a  
21 book store in Burbank, California, on September 5, 2012. Dark Delicacies  
22 previously held a book signing for Jazan Wild along with Steve Niles of 30 Days  
23 of Night fame, in 2005, for Wild's CARNIVAL OF SOULS series. (See Exhibit  
24 8)  
25  
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1           141. On July 13, 2012, HarperCollins promoted Defendants' CARNIVAL  
2 OF SOULS novel at the 2012 "Comic Con" convention, a mecca for comic book  
3 fanatics and young adult consumers of comic books, graphic novels and novels,  
4 recently held in San Diego, California, and gave away copies of Defendants'  
5 CARNIVAL OF SOULS novel at the HarperCollins Booth (#1017, 1019, 1021).  
6 This is shown in Exhibit 102, which is a true and correct copy of a webpage from  
7 "epicreads.com/blog/harperteen-at-san-diego-comic-con." As shown in Exhibit  
8 105, "epicreads.com," which is a "whois" page, showing that the owner of  
9 "epicreads.com" is HarperCollins. The customers at Comic Con are the same class  
10 of customers that purchase Wild's CARNIVAL OF SOULS series of comic books  
11 and graphic novels, and Comic Con is a prime location for reaching these  
12 customers. Wild has regularly promoted his CARNIVAL OF SOULS series at  
13 Comic Con events.

14           142. Exhibit 39E shows promotional CARNIVAL OF SOULS tee-shirts  
15 and masks being worn by a team of HarperCollins employees, whose job was to  
16 hand out the promotional items with Wild's CARNIVAL OF SOULS trademark  
17 upon the items, to several attendees at the June 5<sup>th</sup> book convention as they  
18 repeated at the Comic Con in July 2012. Defendants are advertising and  
19 promoting the Defendants' CARNIVAL OF SOULS new novel and new series by  
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1 giving out CARNIVAL OF SOULS marketing and promotional items to the same  
2 customers and through the same channels of trade as Wild.

3 143. Exhibit 39F shows promotional tee-shirts and masks bearing Wild's  
4 Registered Trademark CARNIVAL OF SOULS being worn by a team of  
5 HarperCollins employees and several other images. One such image shows that  
6 the masks had CARNIVAL OF SOULS stickers placed on the inside of the masks,  
7 as well as barcodes that if scanned by a smart phone would lead the scanner to the  
8 Defendants' CARNIVAL OF SOULS series debut novel promoted on a website.

9 144. The foregoing demonstrates that HarperCollins and Marr are selling  
10 their identical infringing goods using a mark identical to Wild's CARNIVAL OF  
11 SOULS Registered Trademark, in the same manner, in the same channels of trades,  
12 and to the same customers as Wild, conducting promotional book signings in the  
13 same stores Wild has held promotional book signing, and Defendants are otherwise  
14 copying Wild's methodology for promotion of Wild's legitimate goods.  
15 Defendants' combined use of Wild's CARNIVAL OF SOULS Registered  
16 Trademark in the title and its use of the same marketing channels explicitly  
17 misleads the public as to the source or content of the work.

18 145. By such actions, Marr and HarperCollins have willfully and  
19 intentionally targeted Wild's mark, and his market, to unfairly compete with Wild  
20 and to destroy Wild's business.

1           146. The presence of Marr's name on the cover does not reduce or  
2 eliminate the likelihood of confusion. Marr has admitted that she has multiple  
3 publishers, including at least Little Brown and Company, in addition to  
4 HarperCollins. This is shown in Exhibit 101, which is a true and correct copy of a  
5 webpage from Marr's official website, Melissa-marr.com, December 2011  
6 newsletter. Marr has also published a graphic novel version of her "Wicked  
7 Lovely" series of novels with the publisher TokyoPop Manga, and with other co-  
8 authors Xian Nu Studio: Irene Diaz & Laura Moreno. This is shown in Exhibit  
9 112, which shows the cover, title page and one page of Marrs' "Wicked Lovely:  
10 Desert Tales, Volume 3: Resolve" graphic novel. Marr has also previously written  
11 for the publication "Aoife's Kiss," which is "a magazine of fantasy, science fiction,  
12 horror, sword & sorcery, and slipstream." This is shown in Exhibit 129, which is a  
13 webpage "<http://sdpboodstor.com/aoifeskiss.htm> Aoife's Kiss," which shows Marr  
14 as a listed author for Aoife's Kiss. As shown in Exhibit 141, Marr has also  
15 recently stated that one of her goals is to do a "comic" book.  
16  
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21           147. Wild engages various writers, scripters, artists and others, crediting  
22 their names upon the cover, for different ones of his CARNIVAL OF SOULS  
23 series, which vary among the different ones of Wild's CARNIVAL OF SOULS  
24 series. This is shown, for example, in Exhibit 120, which includes the covers of  
25 book 1, 2 and 3 of Wild's CARNIVAL OF SOULS series, In addition to me, book  
26  
27  
28

1 lists, Petrucha, Conrad and Kemp; book 2 lists Petrucha, Conrad, Yackey,  
Romano and Glapion; and book 3 lists Petrucha, Conrad, Kemp, and Crain. As  
shown in Exhibit 5, Wild's CARNIVAL OF SOULS series was also previously  
published by a different publisher, Markosia. In view of the non-exclusivity of  
authorship and publisher relationships in the past and the present between and  
among me, Marr, and HarperCollins, the identification of Marr as the author of  
Defendants' CARNIVAL OF SOULS series debut novel and/or use of  
HarperCollins' name as publisher (which is not used on the Defendants' cover in  
any event) does not identify any particular source and does not and cannot reduce  
or avoid the likelihood of confusion.

148. The Defendants' CARNIVAL OF SOULS novel does not include  
HarperCollins' name on the front cover, increasing the likelihood of confusion.  
This is shown in Exhibit 117, which is a true and correct copy of an Amazon.com  
webpage Amazon.com: Carnival of Souls (9780061659287); Marr, showing the  
cover of the Defendants' CARNIVAL OF SOULS novel. Though one of  
HarperCollins' many trademarks, "Harper," is included in small print on the edge  
of the cover, marketing of the book rarely, if ever, shows the edge of the book. In  
any event, because of the demonstrated non-exclusivity of authorship and publisher  
relationships between HarperCollins, Marr and Wild, including the name of  
HarperCollins on the cover would not reduce or eliminate likelihood of confusion.



**HarperCollins' Misleading Website Links to  
HarperCollins and Wild's Common Author, Petrucha's, Webpage.**

149. Stefan Petrucha is a globally known as the writer of the comic book series for the X-Files and who has had an X-Files comic book featured in the TV Guide. Petrucha is a named scripter for the first three issues of Wild's "CARNIVAL OF SOULS" comic book series and edited the first two chapters of Wild's "CARNIVAL OF SOULS Novel" first printing, and has edited the entire novel for my second printing. This is shown in Exhibit 108, which is a true and correct copy of Stefan Petrucha's website, [www.petrucha.com/comicb.html](http://www.petrucha.com/comicb.html), showing "Carnival of Souls – with Jazan Wild (Markosia Publishing)".

150. Stefan Petrucha is also an author for Defendant HarperCollins, as shown in Exhibit 43, which is an Author's Page for Stefan Petrucha on HarperCollins website, "harpercollins.com." Petrucha has written or co-written several titles for HarperCollins, including a series of books. This is shown in Exhibit 109, which is a true and correct copy of Stefan Petrucha's website, [www.petrucha.com/Books.html](http://www.petrucha.com/Books.html), showing his authorship of "'Wicked Dead' — ongoing Series (HarperCollins)," among others. As seen in Exhibit 43, HarperCollins put together a biography for Petrucha.

151. HarperCollins includes a direct link from its "harpercollins.com" website to Stefan Petrucha's "petrucha.com" website. This is shown in Exhibit 110, which is a true and correct copy of a webpage

1 [http://www.harpercollins.com/authors/31165/stefan\\_Petrucha/ind...](http://www.harpercollins.com/authors/31165/stefan_Petrucha/ind...) dated August 5,  
2 2012. HarperCollins' direct link from its website to the website of Petrucha, one  
3 of the named scripters of Wild's CARNIVAL OF SOULS series, is further explicit  
4 conduct by Defendants that will further mislead the public.  
5

6 152. Exhibit 44, Petrucha's website, plainly shows that Petrucha worked  
7 with Wild on the CARNIVAL OF SOULS series in 2005. Petrucha's website  
8 includes links that, when clicked, display Wild's CARNIVAL OF SOULS series.  
9

10 153. Exhibit 45, Petrucha's website, dedicates an entire page to  
11 "CARNIVAL OF SOULS" by Wild, including links to the "CARNIVAL OF  
12 SOULS" graphic novel on Barnes and Noble's and Amazon's websites.  
13

14 154. HarperCollins arranged Petrucha's bio and set up a link directly  
15 extending from HarperCollins own site to Petrucha's website, which in turn has  
16 direct links to Wild's CARNIVAL OF SOULS series and showing its availability  
17 for sale on Amazon or Barnes & Noble. HarperCollins would have had to have  
18 been willfully blind to have avoided actual knowledge of Wild's CARNIVAL OF  
19 SOULS series at the time it chose the name CARNIVAL OF SOULS. Such willful  
20 blindness constitutes legal knowledge.  
21  
22

23 155. In view of the HarperCollins' links to Petrucha's website, even if  
24 HarperCollins had failed to perform a simple search of the TESS (Trademark  
25 Electronic Search Service) for "CARNIVAL OF SOULS" or even a search on  
26  
27  
28

1 Amazon.com, Barnesandnobel.com; Google or Amazon’s Kindle Store, in which  
 2 Wild’s Mark would have been displayed within the first page of results, it is  
 3 inconceivable that HarperCollins lacked actual knowledge of Wild’s CARNIVAL  
 4 OF SOULS series prior to embarking on its infringing use of Wild’s CARNIVAL  
 5 OF SOULS Registered Trademark. HarperCollins infringement is willful,  
 6 intentional and in bad faith, with the intention to wrongfully take advantage of the  
 7 goodwill built up by Wild over many years, through illegally using Wild’s  
 8 trademarks.  
 9 trademarks.

10  
 11 156. Defendants willfully and intentionally chose Wild’s Registered  
 12 Trademark CARNIVAL OF SOULS as a designation for HarperCollins’ series  
 13 debut novel, and used Wild’s common law trademarks ENTER THE CARNIVAL  
 14 and ENTER THE CARNIVAL OF SOULS to promote the Defendants’  
 15 CARNIVAL OF SOULS series debut novel in bad faith, to wrongly and unfairly  
 16 benefit from the goodwill of Wild’s Registered Trademark CARNIVAL OF  
 17 SOULS and Wild’s common law trademarks ENTER THE CARNIVAL and  
 18 ENTER THE CARNIVAL OF SOULS.  
 19  
 20  
 21

22 **Bad Faith By Marr – Marr’s Actual Knowledge of Wild’s Trademarks**

23 157. Exhibit 39L shows an Acknowledgement page from inside the  
 24 promotional edition of the CARNIVAL OF SOULS novel by Marr. Marr states...  
 25

26 *“to my agent, Merrilee Heifetz, who barely blinked when I called and said,*  
 27  
 28

1 *"I have a confession: I accidentally wrote half a novel," and to the folks at*  
2 *HarperCollins US and UK who adjusted quickly to the sudden surprise of an*  
3 *unscheduled novel in a year I didn't have one due."*  
4

5 158. The foregoing admission shows that Marr did not write the  
6 Defendants' CARNIVAL OF SOULS novel until last year, 2011, and even then  
7 wrote only "half a novel." Wild wrote his first book using this trademark  
8 CARNIVAL OF SOULS in 2004, and has extensively used this designation as a  
9 trademark for a series of comic books, graphic novels and novels in commerce  
10 since at least as early as June 22, 2005, filed for a United States Trademark  
11 Registration on August 19, 2009 (and, at this time, the application for this  
12 registration could be viewed by the general public on the TESS) which was  
13 allowed and published for opposition on March 2, 2010, before Marr even wrote  
14 Defendants' CARNIVAL of SOULS novel. Wild's registration was granted as a  
15 United States Trademark Registration on February 22, 2011, well prior to  
16 HarperCollins' or Marr's institution of any promotional activities for Defendants'  
17 CARNIVAL OF SOULS series debut novel.  
18  
19  
20  
21

22 159. Exhibit 39K shows a thank you page from inside the promotional  
23 edition of the CARNIVAL OF SOULS novel by Marr. Marr states...  
24

25 *"To Loch, this one would'nt have happened if I hadn't married a Marine /*  
26 *comic book addict / film junkie."*  
27  
28

1 160. Prior to the time Marr wrote Defendants' CARNIVAL OF SOULS  
2 series debut novel, Wild's CARNIVAL OF SOULS series had been the first comic  
3 book on Blackberry and Nokia phones and was the first Motion Comic on Android  
4 phones. Wild's CARNIVAL OF SOULS was well-known to the public by means  
5 of articles and features published in the Los Angeles Times, Wired Magazine,  
6 Roddenberry.com and Entertainment Weekly, as well as a result of Wild's  
7 company, Carnival Comics being named a Nokia 2009 Success Story. Wild also  
8 had 11 number one titles on Amazon.com, as well as the number one graphic novel  
9 app for six months running.  
10  
11

12 161. Upon information and belief, as a result of Marr being married to a  
13 "comic book addict," and as a result of all of the foregoing publicity regarding  
14 Wild and his series of comic books and graphic novels sold under the CARNIVAL  
15 OF SOULS Registered Trademark and Wild's common law trademarks ENTER  
16 THE CARNIVAL and ENTER THE CARNIVAL OF SOULS, on information and  
17 belief, Marr had actual knowledge of Wild's use of CARNIVAL OF SOULS,  
18 ENTER THE CARNIVAL and ENTER THE CARNIVAL OF SOULS as  
19 trademarks for his series of comic books, graphic novels and novels, and was  
20 actually aware of the popularity and reputation of Wild's CARNIVAL OF SOULS  
21 series of comic books, graphic novels and novels.  
22  
23  
24  
25

26 162. Despite this knowledge, Marr willfully and intentionally chose  
27  
28

1 Wild's Registered Trademark CARNIVAL OF SOULS as a designation for  
2 Defendants' series debut novel, and used Wild's common law trademark ENTER  
3 THE CARNIVAL to promote the infringing Defendants' CARNIVAL OF SOULS  
4 series debut novel in bad faith, to mislead the public and to wrongly and unfairly  
5 benefit from the goodwill of Wild's Registered Trademark CARNIVAL OF  
6 SOULS and Wild's common law trademarks ENTER THE CARNIVAL and  
7 ENTER THE CARNIVAL OF SOULS.  
8  
9

10 163. Marr states on July 19th 2012, from her Twitter account that the title  
11 "Carnival Of Souls" came from the "Far From Home" song by the rock band Five  
12 Finger Death Punch ("FFDP"). (See Exhibit 42) That statement was made after  
13 Wild had objected to her and HarperCollins' infringing use of Wild's Registered  
14 Trademark CARNIVAL OF SOULS on June 18, 2012.  
15  
16

17 164. The song "Far From Home" from the band "Five Finger Death  
18 Punch", which Marr claims is the "inspiration" for her adoption of the name  
19 CARNIVAL OF SOULS for her new novel and series, was a single released by the  
20 band on September 16, 2010. (See Exhibit 41) Thus, September 16, 2010 was the  
21 earliest possible date Marr could have heard the song "Far From Home." The  
22 September 16, 2010 date of release of the single "Far From Home" is well after  
23 Wild's 2004 first use of "Carnival Of Souls," well after Wild's first use in  
24 commerce of his CARNIVAL OF SOULS trademark in connection with sales of  
25  
26  
27  
28

1 comic books, graphic novels and novels, at least as early as June 22, 2005, well  
2 after the filing of Wild's application for a United States Trademark Registration for  
3 CARNIVAL OF SOULS on August 19, 2009 and well after the allowance and  
4 publication of Wild's application for opposition on March 2, 2010.  
5

6 165. Whether or not Marr was aware of or was "inspired" by the song "Far  
7 From Home" in adopting the name "CARNIVAL OF SOULS" is irrelevant; Wild  
8 himself was inspired by a record album entitled "Carnival of Souls" by the rock  
9 band KISS in adopting the trademark CARNIVAL OF SOULS for his series in  
10 2004, and began use in commerce of it at least as early as June 22, 2005, many  
11 years before Marr's alleged "inspiration" to choose the same designation for her  
12 new series of novels.  
13  
14

15 166. Defendants' CARNIVAL OF SOULS novel has received negative  
16 initial reviews, including a review from "Kirkus Reviews" that states: "Festive  
17 title notwithstanding, traversing the complicated, shallowly rendered world of this  
18 exposition-heavy fantasy is dreary slog, like reading a gaming manual cover to  
19 cover." This is shown in in Exhibit 115, which is a true and correct copy of a  
20 webpage [http://www.barnesandnoble.com /w/ carnival-of-souls-melissa-marr...](http://www.barnesandnoble.com/w/carnival-of-souls-melissa-marr...)  
21 Dated August 5, 2012. Such negative reviews for Defendants' CARNIVAL OF  
22 SOULS novel will harm the positive goodwill that Wild has built up for almost ten  
23 years with his CARNIVAL OF SOULS series.  
24  
25  
26  
27  
28

**Actual Confusion Induced by Defendants.**

167. Even though Defendants' CARNIVAL OF SOULS novel has not yet even been released, the pre-release marketing by Defendants' has already misled the public, including one of Wild's main customers, Amazon.com, and is causing direct solicitation and diversion of customers from Wild to Defendants. As one example of such diversion of customers, Exhibits 57, 58, 59 and 60 show emails dated August 1, 12, 17 and 22, respectively, recently received by Wild's wife, Sharon Barnes, from Amazon.com, promoting Defendants' CARNIVAL OF SOULS book to her. As shown in Exhibit 60-B, which is a copy of Sharon Barnes list of purchases on Amazon.com, Sharon Barnes has purchased *only* Wild's CARNIVAL OF SOULS novels and others of Wild's novels, from Amazon.com.

168. Since Sharon Barnes has never purchased any books from Amazon.com other than Wild's books, the only basis for Amazon.com to send her directly targeted emails promoting Defendants' CARNIVAL OF SOULS novel is because she had previously purchased Wild's CARNIVAL OF SOULS novels of the identical name.

169. Upon information and belief, Amazon.com is sending similar emails promoting Defendants' CARNIVAL OF SOULS novels to Wild's other customers for Wild's CARNIVAL OF SOULS, which number in the hundreds of thousands. This marketing for Defendant's CARNIVAL OF SOULS series is aimed directly



1 and specifically at Wild's customers.

2 170. Defendants' infringing use of Wild's CARNIVAL OF SOULS  
3 Registered Trademark actually misled Amazon.com into sending targeted emails to  
4 Wild's customers, including those who have never purchased any books from  
5 Amazon.com *except* Wild's books.  
6

7 171. On August 21, 2012, Wild recently received a listing on  
8 "youtube.com" represented as "videos for jazan wild," entitled "Carnival of Souls  
9 and Smashed – Pick of the Week – You Tube." In fact, however, instead of being  
10 a "video for jazan wild," the video is a review of *Defendants'* CARNIVAL OF  
11 SOULS debut novel. This is shown in Exhibit 62, which is a copy of a listing of  
12 Youtube.com videos identified as "videos for jazan wild," two of which refer to  
13 Wild's CARNIVAL OF SOULS and one of which refers only to Defendants'  
14 CARNIVAL OF SOULS.  
15  
16  
17

18 172. Upon information and belief, Youtube.com was misled by  
19 Defendants' infringing use of Wild's CARNIVAL OF SOULS Registered  
20 Trademark into erroneously including Defendants' CARNIVAL OF SOULS on a  
21 listing of Youtube.com videos identified as "videos for jazan wild."  
22

23 173. Upon information and belief, Defendants' misleading and infringing  
24 use of Wild's CARNIVAL OF SOULS Registered Trademark is also causing  
25 Youtube.com to erroneously include Defendants' CARNIVAL OF SOULS on a  
26  
27  
28

1 listing of Youtube.com videos for others of Wild's customers as "Wild's" videos.

2 174. By the foregoing actions, Defendants have intentionally sought to, and  
3 have, misled the public and wrongfully capitalized on the fame and goodwill of  
4 Wild's CARNIVAL OF SOULS Registered Trademark, to grab more attention and  
5 to cause Defendants' competing CARNIVAL OF SOULS series, by virtue of its  
6 identical name and Defendants' use of identical marketing channels, to displace  
7 Wild's legitimate CARNIVAL OF SOULS series on the same lists where the  
8 goods are promoted to and offered for sale to members of the public, the equivalent  
9 of having Wild's CARNIVAL OF SOULS series of novels removed from store  
10 shelf space and replaced by Defendants' infringing CARNIVAL OF SOULS  
11 series. By these actions and by other means described herein, Defendants have  
12 unjustly profited and been unjustly enriched, to Wild's detriment and the detriment  
13 of the public.

14 175. Defendants' infringing goods, if not stopped by injunction, will be  
15 sold in the same types of retail and digital distribution channels, such as on devices  
16 like the iPad and iPhones, Android Marketplace and Google Tablets, in wrongful  
17 competition with Wild's legitimate goods. In addition the goods will be sold in the  
18 same digital distribution channels Wild uses, such as Amazon.com, Barnes and  
19 Noble.com and other online book and ebook stores.

176. Defendants' wrongful actions as alleged herein are overwhelmingly likely to cause confusion and mistake by members of the public, and have caused, and will continue to cause, irreparable and substantial harm to Wild.

177. Defendants' will not discontinue infringement of Wild's CARNIVAL OF SOULS Registered Trademark and Wild's ENTER THE CARNIVAL and ENTER THE CARNIVAL OF SOULS common law trademarks unless enjoined by this Court.

## FIRST CLAIM

### TRADEMARK INFRINGEMENT UNDER LANHAM ACT § 32

178. Wild repeats and hereby incorporates herein by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 177.

179. Defendants' use of Wild's Registered Trademark CARNIVAL OF SOULS in connection with sales of Defendants' CARNIVAL OF SOULS series debut novel is a use in commerce of a reproduction, counterfeit, copy or colorable imitation of Wild's registered trademark in connection with the sale, offering for sale, distribution and advertising of Defendants' CARNIVAL OF SOULS infringing goods. Defendants' wrongful use of the designation CARNIVAL OF SOULS for Defendants' series debut is an infringement of Wild's registered trademark CARNIVAL OF SOULS, and its further use of Wild's common law trademarks ENTER THE CARNIVAL and ENTER THE CARNIVAL OF SOULS

1 in connection with its marketing, and its other wrongful actions described herein, is  
2 explicitly misleading and likely to cause confusion, mistake and deception of the  
3 public, causing irreparable harm to Wild for which there is no adequate remedy at  
4 law.  
5

6 180 By reason of the foregoing acts, Defendants, HarperCollins are liable  
7 to Wild for Trademark Infringement under 15 U.S.C. § 1114.  
8

## 9 **SECOND CLAIM**

### 10 **UNFAIR COMPETITION UNDER LANHAM ACT § 43**

11 181. Wild repeats and hereby incorporates herein by reference, as though  
12 specifically pleaded herein, the allegations of paragraphs 1 through 180.  
13

14 182. Defendants' use of Wild's Registered trademark CARNIVAL OF  
15 SOULS and his common law trademarks ENTER THE CARNIVAL and ENTER  
16 THE CARNIVAL OF SOULS to promote, market or sell Defendants' products,  
17 goods, and services in direct competition with Wild's products, goods, and  
18 services, constitutes Unfair Competition pursuant to 15 U.S.C. § 1125(a).  
19

20 Defendants' unfair competition has misled the public, and has caused and will  
21 continue to cause damage to Wild, and is causing irreparable harm to Wild for  
22 which there is no adequate remedy at law.  
23

## 24 **THIRD CLAIM**

### 25 **FALSE DESCRIPTION**

1 183. Wild repeats and hereby incorporates herein by reference, as though  
2 specifically pleaded herein, the allegations of paragraphs 1 through 182.

3 184. Defendants' uses of Wild's CARNIVAL OF SOULS, ENTER THE  
4 CARNIVAL and ENTER THE CARNIVAL OF SOULS trademarks comprise  
5 false descriptions or representations of origin under 15 U.S.C. § 1125(a) (Section  
6 43(a) of the Lanham Act).  
7

#### 8 **FOURTH CLAIM**

##### 9 **COMMON LAW INJURY TO BUSINESS REPUTATION**

10 185. Wild repeats and hereby incorporates herein by reference, as though  
11 specifically pleaded herein, the allegations of paragraphs 1 through 184.  
12

13 186. Defendants' wrongful, malicious and willful use of Wild's  
14 CARNIVAL OF SOULS, ENTER THE CARNIVAL and ENTER THE  
15 CARNIVAL OF SOULS trademarks creates a likelihood of injury to Wild's  
16 business reputation because persons encountering Marr's and HarperCollins' use  
17 of Wild's trademark "CARNIVAL OF SOULS" on its products and services will  
18 believe that Wild is affiliated with, or related to, or has given his approval to the  
19 unfair and unlawful use of Wild's trademarks and/or that Wild is infringing  
20 Defendants' trademark rights. Any adverse reaction by the public to Defendants'  
21 quality of goods and products, and the nature of their business, will injure the  
22 business reputation of Wild and the goodwill that Wild enjoys in connection with  
23  
24  
25  
26  
27  
28

1 his CARNIVAL OF SOULS, ENTER THE CARNIVAL and ENTER THE  
2 CARNIVAL OF SOULS trademarks.

3  
4 **FIFTH CLAIM**

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

6 187. Wild repeats and hereby incorporates herein by reference, as though  
7 specifically pleaded herein, the allegations of paragraphs 1 through 186.

8  
9 188. Defendants' wrongful acts alleged herein have caused and will  
10 continue to cause actual dilution of Wild's CARNIVAL OF SOULS Registered  
11 Trademark, in violation of 15 U.S.C. 1125 (c).

12  
13 **SIXTH CLAIM**

14 **REVERSE CONFUSION UNDER THE LANHAM ACT**

15 189. Wild repeats and hereby incorporates herein by reference, as though  
16 specifically pleaded herein, the allegations of paragraphs 1 through 188.

17  
18 190. Defendants' marketing campaign is so massive as to overwhelm  
19 Wild's ability to promote its legitimate goods sold under Wild's CARNIVAL OF  
20 SOULS, ENTER THE CARNIVAL and ENTER THE CARNIVAL OF SOULS  
21 Trademarks, thereby to wrongfully cause the public to incorrectly believe that  
22 Defendants' infringing CARNIVAL OF SOULS debut series novel and  
23 Defendants' infringing uses of CARNIVAL OF SOULS, ENTER THE  
24  
25 CARNIVAL and ENTER THE CARNIVAL OF SOULS Trademarks are  
26  
27  
28

1 legitimate and that Wild is an illegitimate newcomer infringing Defendants'  
2 trademark rights.

3 191. Defendants' acts alleged herein constitute reverse confusion, in  
4 violation of 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act) and 15 U.S.C.  
5 §1114(1) (Section 32(1) of the Lanham Act).  
6

7  
8 **SEVENTH CLAIM**

9 **COMMON LAW TRADEMARK INFRINGEMENT**

10 192. Wild repeats and hereby incorporates herein by reference, as though  
11 specifically pleaded herein, the allegations of paragraphs 1 through 191.  
12

13 193. Defendants' use of Wild's CARNIVAL OF SOULS, ENTER THE  
14 CARNIVAL and ENTER THE CARNIVAL OF SOULS Trademarks in  
15 connection with sales of Defendants' CARNIVAL OF SOULS novel in connection  
16 with its advertising and marketing of its new series of novels is a use in commerce  
17 of a reproduction, counterfeit, copy or colorable imitation of Wild's CARNIVAL  
18 OF SOULS, ENTER THE CARNIVAL and ENTER THE CARNIVAL OF  
19 SOULS Trademarks in connection with the sale, offering for sale, distribution and  
20 advertising of Defendants' CARNIVAL OF SOULS infringing goods in a manner  
21 likely to cause confusion, mistake and deception of the public, causing irreparable  
22 harm to Wild for which there is no adequate remedy at law.  
23  
24  
25  
26  
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194. Defendants' use of Wild's Registered Trademark CARNIVAL OF SOULS as the name of Defendants' series debut novel is an infringement of Wild's CARNIVAL OF SOULS, ENTER THE CARNIVAL and ENTER THE CARNIVAL OF SOULS Trademarks for use in connection series of novels, graphic novels and multimedia publications and is likely to cause confusion, mistake and deception of the public, causing irreparable harm to Wild for which there is no adequate remedy at law.

195. By reason of the foregoing acts, Defendants, Defendants are jointly and severally liable to Wild for common law trademark infringement.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Wild prays judgment against Defendants as follows:

1. That Defendants, their employees, promoters, partners, authors and all others in privity with them shall be preliminarily and permanently enjoined from:

(a) Using Wild's CARNIVAL OF SOULS Registered Trademark or Wild's ENTER THE CARNIVAL and ENTER THE CARNIVAL OF SOULS common law trademarks, or any colorable imitation thereof, in any manner;

(b) using any trademark that imitates or is confusingly similar to or in any way similar to Wild's CARNIVAL OF SOULS Registered Trademark or Wild's ENTER THE CARNIVAL and ENTER THE CARNIVAL OF SOULS common



1 law trademarks, or that is likely to cause confusion, mistake, deception, or public  
2 misunderstanding as to the origin of Wild's product or their connectedness to  
3 Defendants;

4  
5 (c) that Defendants be prohibited for suing any form of advertising and  
6 promotion, physical or electronic, that makes reference to Wild's CARNIVAL OF  
7 SOULS Registered Trademark or Wild's ENTER THE CARNIVAL and ENTER  
8 THE CARNIVAL OF SOULS common law trademarks, including prohibition of  
9 physical or electronic references to Defendants' prior use of Wild's Trademarks,  
10 after Defendants have discontinued use of Wild's Trademarks,  
11  
12

13 3. That Defendants be required to transfer Defendants'  
14 "enterthecarnival.com" and "enterthecarnivalofsouls.com" websites and domain  
15 names to Wild;  
16

17 4. That Defendants be prohibited from using any means to divert web  
18 searches for or attempted visits to "enterthecarnival.com" and  
19 "enterthecarnivalofsouls.com" websites to any website offering for sale or  
20 promoting any of Defendants' goods or services;  
21

22 5. That Defendants be required to file with the Court and serve within thirty  
23 (30) days after entry of the Injunction, a report in writing under oath setting forth  
24 in detail the manner in which Defendants complied with the Injunction;  
25  
26  
27  
28

1           6. That Defendants be required to engage in a corrective advertising  
2 campaign to at least partially mitigate the damage caused by infringement, the  
3 amount of such corrective advertising being at least equal to twice the cost that  
4 Defendants' spent up to the date of the order to commence corrective advertising;  
5

6           7. That Defendants be prohibited from using the internet or smartphone apps  
7 to promote or market any form of Defendants' book presently named  
8 "CARNIVAL OF SOULS," under any name, for a period of time equal to the  
9 period of the infringement;  
10

11           8. That, pursuant to 15 U.S.C. § 1117, Defendants be required to pay to Wild  
12 damages sufficient for Wild to conduct his own corrective advertising campaign to  
13 at least partially mitigate the damage caused by infringement, in an amount equal  
14 to at least twice the cost that Defendants spent up to the date of the order to  
15 commence corrective advertising, and that such damages be trebled on account of  
16 the willful infringement by Defendants;  
17

18           9. That, pursuant to 15 U.S.C. § 1117, Defendants be held liable for all other  
19 damages suffered by Wild resulting from the acts alleged herein, and that such  
20 damages be trebled on account of the willful infringement by Defendants;  
21

22           10. That, pursuant to 15 U.S.C. § 1117, Defendants be compelled to account  
23 to Wild for any and all profits derived by them from their illegal acts complained  
24  
25  
26  
27  
28

1 of herein and that such damages be trebled on account of the willful infringement  
2 by Defendants;

3 11. That Defendants be ordered pursuant to buy back from its customers and  
4 distributors, other than direct end users, all copies of novels, books, promotional  
5 materials or the like in possession, custody or under the control of Defendants  
6 bearing a trademark found to infringe on Wild's trademark rights;  
7

8 12. That Defendants be ordered pursuant to 15 U.S.C. § 1118 to deliver up  
9 for destruction all novels, books, promotional materials or the like in possession,  
10 custody or under the control of Defendants bearing a trademark found to infringe  
11 on Wild's trademark rights, as well as remove all usages and promotions from the  
12 various internet book stores and websites displaying any of Wild's trademark and  
13 discontinue use of and transfer to Wild any domain names infringing any of Wild's  
14 trademarks.  
15

16 13. For damages to the extent permitted by law;  
17

18 14. That the Court declare this to be an exceptional case and award Wild his  
19 full costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.  
20

21 15. That the Court grant Wild any other remedy to which it may be entitled  
22 as provided for in 15 U.S.C. § § 1116 and 1117 or under state law; and,  
23

24 16. For such other and further relief as the Court deems just and proper.  
25

26 **JURY DEMAND**  
27

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

2  
3 Dated: August 28, 2012.

/s/ Theodore F. Shiells

4 THEODORE F. SHIELLS

5 SHIELLS LAW FIRM P.C.

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7 *tfshiells@shiellslaw.com*

8 Dallas, Texas 75202

9 Telephone (214) 979-7312

10 Fax: (214) 979-7301

**Certificate of Service**

The undersigned counsel for Plaintiff Jazan Wild, hereby certifies that he caused a copy of the foregoing document to be served by means of the Court's ECF system on counsel of record for Defendant HarperCollins Publishing, LLC and that a copy of the foregoing document will be served upon Defendant Melissa Marr by personal service.

Date: August 28, 2012

/s/ Theodore F. Shiells  
Theodore F. Shiells