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

Proceeding no.	91272523
Party	Defendant AddShoppers, Inc. DBA Minty.com
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Date	02/11/2022
Attachments	AddShoppers Motion to Stay.pdf(518991 bytes )

Attorney Docket No.: 37494-146677

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

In re the Applications of:

AddSoppers, Inc. DBA Minty.com  
Application Serial No.: 90/550,708  
Filed: February 27, 2021  
Mark: MINTY  
Published in the Official Gazette  
of October 26, 2021

MByte Tech Hongkong Limited,	)	
	)	
Opposer,	)	
	)	Opposition No. 91272523
v.	)	
	)	
AddShoppers, Inc.	)	
	)	
Applicant.	)	
	)	

Trademark Trial and Appeal Board  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**APPLICANT ADDSHOPPERS, INC.’S NOTICE OF CIVIL ACTION AND REQUEST**  
**TO SUSPEND**

Pursuant to 37 C.F.R. § 2.117(a), Applicant, AddShoppers, Inc. (“Applicant”) hereby provides notice to the Trademark Trial and Appeal Board (“TTAB”) of the filing of a civil action in the United States District Court, Western District of North Carolina, which may have a bearing on this opposition proceeding. Opposer Mbyte Tech Hongkong Limited (“Opposer”) filed the civil action on September 28, 2021. The civil action case number is 3:21-cv-00515-FDW-DCK and a file-stamped copy of the complaint is attached hereto as **Exhibit 1** (the “Civil

Action”). In keeping with TTAB policy, and pursuant to 37 C.F.R. §2.117(a) and TBMP §510.02(a), Applicant hereby requests suspension of this proceedings until final determination of the Civil Action. *See Arcadia Grp. Brands Ltd. v. Studio Moderna Sa*, 99 U.S.P.Q.2d 1134 (T.T.A.B. 2011) (“[i]t is the policy of the Board to suspend proceedings when the parties are involved in a civil action which may be dispositive of or have a bearing on the Board case.”). In *Arcadia Grp. Brands, Ltd.*, the TTAB suspended the proceeding before it because “the court’s finding on trademark infringement may dispose of the likelihood of confusion claim before the Board.” *Id.* The policy of the TTAB to suspend proceedings when the parties are involved in a civil action which may have a bearing on the case has not changed and is presently reflected in the Trademark Trial and Appeal Board Manual of Procedure § 510.02(a) (“the Board’s policy to suspend in favor of a civil action has not changed. A civil action may involve other matters outside Board jurisdiction and may consider broader issues beyond right to registration and, therefore, judicial economy is usually served by suspension”).

Here, the Civil Action involves the same parties, the same marks, and the same services and activities as those at issue in this opposition proceeding. More specifically, this opposition proceeding and the Civil Action both involve: (1) whether a likelihood of confusion exists between Opposer’s asserted “MINTY” mark and Applicant’s “MINTY” mark identified in Serial No. 90/550,708 (the application subject to this proceeding); (2) alleged fraud on the U.S. Patent and Trademark Office; and (3) alleged misuse of the Registration symbol. In addition to these claims, the Civil Action also alleges claims involving unfair competition and cybersquatting that are not at issue in the present opposition proceeding.

Moreover, judicial economy is served by immediately suspending all activity in the opposition proceeding. *See Other Telephone Co. v. Connecticut National Telephone Co.*, 181

USPQ 125 (1974). The parties are currently engaging in initial discovery and the discovery period is not scheduled to close until July 3, 2022. Because the Civil Action involves not only the issues currently before the TTAB, but also issues of unfair competition and cybersquatting, discovery in the Civil Action will involve documents, depositions, and other information that is not being and will not be gathered or produced in this opposition proceeding. Thus, suspending the opposition proceeding as to all outstanding requests and deadlines would avoid wasted time and expenses for both parties and the TTAB. *See, e.g., Softbelly's Inc v. Ty, Inc.*, 2002 WL 1844210, \*3 (citing *Other Telephone*, 181 USPQ 126-27) (“It would be a waste of the Board’s and the parties’ time and resources to proceed to litigate this case at the Board when the same issues” are pending in court.). Given the foregoing, an immediate suspension of the proceedings, including all outstanding and pending discovery, is appropriate. Finally, the Board has reached this conclusion in similar circumstances. In *Other Telephone*, the TTAB stated that “it is clear” that a civil action alleging infringement and unfair competition would “directly affect the resolution” of a proceeding before it involving a likelihood of confusion claim, which is the very claim Opposer has alleged in this opposition proceeding. 181 USPQ 125, 126-27. In that proceeding, the moving party filed a motion to suspend with only 8 days left in its testimony period. Because suspension is standard practice when a civil action is pending, it did not take any testimony on reliance upon the TTAB’s eventual suspension of the proceeding. In granting the motion, over objection, the TTAB reasoned that judicial economy was served by avoiding the

time and expense of testimony in a TTAB proceeding when a pending civil action would impact, or even be dispositive of, the issues before the TTAB. *Id.*

For these reasons, Applicant requests that the TTAB issue an order suspending all activity relating to this opposition proceeding pending the resolution of the Civil Action.

Respectfully submitted,  
MORRIS, MANNING & MARTIN, LLP

Dated: February 11, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of February 2022, a true and correct copy of the foregoing document was served upon Opposer's attorney of record via electronic mail to:

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Dated: February 11, 2022

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# EXHIBIT 1

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21 **UNITED STATES DISTRICT COURT**  
22 **WESTERN DISTRICT OF NORTH CAROLINA**

23 MByte Tech Hongkong Limited, a Hong Kong  
24 Limited Company,

25 Plaintiff,

v.

AddShoppers, Inc. DBA Minty.com, a Delaware  
Corporation,

Defendant.

Case No.:

**COMPLAINT FOR**

- (1) **FEDERAL UNFAIR  
COMPETITION AND COMMON  
LAW TRADEMARK  
INFRINGEMENT**
- (2) **NORTH CAROLINA COMMON  
LAW TRADEMARK  
INFRINGEMENT**
- (3) **NORTH CAROLINA  
STATUTORY UNFAIR  
COMPETITION**
- (4) **UNJUST ENRICHMENT**

**JURY TRIAL DEMANDED**

PAGE 1 OF 18

COMPLAINT



1 Plaintiff, MByte Tech Hongkong Limited (“MByte” or “Plaintiff”), by and through its  
2 attorneys of record, appears and states by way of the Complaint and alleges the following against  
3 Defendant AddShoppers, Inc. DBA Minty.com (“AddShoppers” or “Defendant”), and alleges  
4 based on information and belief as follows:

5 **PARTIES**

- 6 1. Plaintiff has its principal place of business at Room 517, New City Centre, 2 Lei Yue Mun  
7 Road, Kwun Tong, Kowloon, Hong Kong 999077.  
8  
9 2. Defendant is a Delaware corporation with a principal place of business located at 15806  
10 Brookway Dr., Suite 200, Huntersville, NC 28078.

11 **JURISDICTION AND VENUE**

- 12 3. This action is brought under, and subject matter jurisdiction of this matter is vested in this  
13 Court through, 28 U.S.C. § 1331 (Federal Question Jurisdiction) and § 1338 (action arising  
14 under an Act of Congress relating to trademarks and copyrights). This action is also brought  
15 under the trademark laws of the United States, U.S. Trademark Act of 1946, as amended, (15  
16 U.S.C. § 1051 *et seq.*), Trademark Infringement under NC General Statutes § 80 *et seq.*),  
17 Federal Unfair Competition under Section 43 of the Lanham Act (15 U.S.C. § 1125), and  
18 Unfair Competition under North Carolina law (NC General Statutes § 75 *et seq.*).  
19  
20 4. The Court has supplemental jurisdiction over all state and common law claims pursuant to 28  
21 U.S.C. § 1367. The state law claims are integrally related to the federal claims and arise from  
22 a common nucleus of operative facts.  
23  
24 5. Venue is proper in this action under 28 U.S.C. § 1391 because Defendant is an entity with its  
25 principal place of business in this North Carolina district. Further, Defendants are subject to

1 personal jurisdiction over Defendant in that Defendant’s principal office is in this North  
2 Carolina district.

### 3 BACKGROUND FACTS

- 4 6. Plaintiff created a browser plug-in that is available for installation from the Google Chrome  
5 Webstore. Plaintiff’s browser plug-in allows users to find coupons when shopping online that  
6 are automatically applied upon checkout of the online purchase.
- 7 7. Plaintiff named its browser plug-in “Minty” and launched its browser plug-in in June of 2020.  
8 Plaintiff registered the domain “loveminty.net” in August of 2020, specifically for users in  
9 the United States to visit and install its browser plug-in. Plaintiff has used both its “Minty”  
10 trademark and “loveminty.net” domain continuously since their launch and registration,  
11 respectively.  
12
- 13 8. Plaintiff’s browser plug-in has obtained fast popularity in multiple countries and has tens of  
14 thousands of users. Attached as **Exhibit 1** is Plaintiff’s browser plug-in from the Google  
15 Chrome Webstore that shows over 90,000 users.  
16
- 17 9. Plaintiff recorded its first installation of its browser plug-in in the United States on June 7,  
18 2020. Since then, Plaintiff has recorded installations in approximately twenty-eight different  
19 states across the United States, including North Carolina.
- 20 10. Defendant created a browser plug-in that provides an identical function to Plaintiff’s browser  
21 plug-in, namely, providing online shoppers with coupons upon checkout.
- 22 11. The prior name of Defendant’s browser plug-in was “JoinMango.” Attached as **Exhibit 2** is  
23 Defendant’s prior advertisement for its browser plug-in and a comment on a review in which  
24 Defendant instructed a user to go to “gc@joinmango.co” to provide feedback.  
25

1 12. Defendant purchased the domain name “minty.com” on February 11, 2021. Attached as  
2 **Exhibit 3** shows the date of when the “minty.com” domain was purchased by Defendant.

3 13. Defendant changed the name of its browser plug-in to “minty” and began using “minty.com”  
4 on or about February 27, 2021.

5 14. Defendant’s browser plug-in has significantly less users than Plaintiff’s, only totaling a little  
6 over 5,000 users. Attached as **Exhibit 4** is Defendant’s browser plug-in from the Google  
7 Chrome Webstore that shows 5,000 users.

8 15. Plaintiff’s and Defendant’s browser plug-ins are two of the three extensions that appear when  
9 searching for “minty” on the Google Chrome Webstore. Attached as **Exhibit 5** are the results  
10 for the search of “minty” on the Google Chrome Webstore.

11 16. Plaintiff has experienced multiple instances of actual confusion where users believe  
12 Defendant’s “minty.com” is owned, operated, affiliated with, associated with, and/or  
13 connected to Plaintiff.

14 17. Intending to take Plaintiff’s consumer base and goodwill for its own, Defendant immediately  
15 filed an application for registration of the trademark “Minty” for its browser plug-in on  
16 February 27, 2021, identified as U.S. Trademark Application No. 90550708 (the “‘708  
17 Application”).

18 18. Defendant claimed in its ‘708 Application that Defendant’s first use anywhere in the world of  
19 the “Minty” mark was December 10, 1999, but the first use in United States commerce was  
20 on February 27, 2021, the date of the application.

21 19. In fact, the “minty.com” domain was largely not in use for any purpose from 1999 until  
22 Defendant’s purchase of the domain on February 27, 2021. During the time in between 1999  
23  
24  
25

1 and February 27, 2021, the “minty.com” domain was not used for the services claimed in the  
2 ‘708 Application.

3 20. Defendant’s representation of first use anywhere in the world being in 1999 was fraudulent  
4 as Defendant did not purchase the “minty.com” domain until February 11, 2021. The  
5 misrepresentation is material as it is a basis for registration of the ‘708 Application.

6 21. In its sworn Declaration for the ‘708 Application, Defendant’s CEO, Jon West, specifically  
7 avowed, under penalty of fine or imprisonment or both for willful false statements, that “[t]he  
8 signatory believes that the applicant is the owner of the trademark/service mark sought to be  
9 registered” and that “[t]o the best of the signatory’s knowledge and belief, no other persons,  
10 except, if applicable, concurrent users, have the right to use the mark in commerce, either in  
11 the identical form or in such near resemblance as to be likely, when used on or in connection  
12 with the goods/services of such other persons, to cause confusion or mistake, or to deceive.”  
13 Defendant, and Defendant’s CEO, Jon West, knew at the time of filing the ‘708 Application  
14 that these statements were false and that these statements were material in connection with  
15 the ‘708 Application.  
16  
17

18 22. Plaintiff is being specifically harmed by these fraudulent misrepresentations as Plaintiff’s own  
19 trademark applications, filed on July 13, 2021 (U.S. Trademark Application No. 90825927)  
20 and July 26, 2021 (U.S. Trademark Application No. 90848516) will likely be prevented from  
21 registering due to Defendant’s fraudulent conduct and representations to the United States  
22 Patent and Trademark Office (“USPTO”).  
23

24 23. Defendant is also fraudulently representing “Minty” as its registered trademark by using the  
25 ® symbol despite not having a valid registration. Attached as **Exhibit 6** is Defendant’s own

1 main website that has the ® symbol next to “Minty” at the bottom of the webpage next to the  
2 “minty.com” domain.

3 24. Defendant intentionally, deliberately, and fraudulently represents itself as the owner of the  
4 “Minty” trademark in order to confuse consumers and benefit from the reputation and  
5 goodwill that Plaintiff has worked hard to cultivate.

6 25. Defendant, as a direct competitor of Plaintiff, had prior knowledge of Plaintiff’s use of the  
7 trademark “Minty” and was keenly aware that Plaintiff’s popularity was significantly greater  
8 than Defendant’s. Therefore, Defendant’s actions can be nothing other than a willful and  
9 deliberate attempt to use Plaintiff’s hard-earned popularity and goodwill to try to poach  
10 potential users, and revenue, from Plaintiff and Plaintiff’s browser plug-in.  
11

12 26. Plaintiff attempted to reach out to Defendant on August 17, 2021 regarding Defendant’s  
13 infringement. However, Defendant refused to cease use of the “Minty” trademark and  
14 “minty.com” domain.  
15

16 **FIRST CLAIM**

17 **(Federal Unfair Competition and Common Law Trademark Infringement – Lanham Act**

18 **Section 43(a), 15 U.S.C § 1125(a))**

19 27. Plaintiff hereby re-alleges and incorporates each and every allegation set forth in paragraphs  
20 1-26 above as if the same was more fully set forth herein.

21 28. Defendant engaged in unfair competition in violation of Section 43(a) of the Lanham Act and  
22 15 U.S.C. § 1125(a)(1) by falsely and in bad faith using a confusingly similar mark to  
23 Plaintiff’s “Minty” trademark, providing an identical browser plug-in for providing online  
24 shoppers with coupons upon checkout, using identical channels of trade as Plaintiff’s  
25

1 trademark, and registering the identical word “minty” in the “minty.com” domain with a bad  
2 faith intent to profit from its infringing use.

3 29. Defendant’s use of the infringing “Minty” mark and “minty.com” domain in commerce in  
4 connection with identical goods and services, namely, advertising, promoting, and marketing  
5 the services of others, is likely to cause confusion, cause mistake, and/or deceive consumers  
6 and the purchasing public as to affiliation, connection, or association of Plaintiff and  
7 Defendant and as to origin, sponsorship, or approval of Defendant’s browser plug-in by  
8 Plaintiff. In addition, Defendant’s infringement is likely to cause, inter alia, subliminal and  
9 associational confusion, forward confusion, reverse confusion, initial interest confusion,  
10 point-of-sale confusion, and post-sale confusion.  
11

12 30. Defendant’s use of “Minty” and “minty.com” also attempts to confuse and deceive consumers  
13 into installing Defendant’s browser plug-in when the consumers were in fact looking for  
14 Plaintiff’s browser plug-in. Defendant is using Plaintiff’s hard-earned reputation and goodwill  
15 to trick consumers into installing Defendant’s browser plug-in, at the expense of Plaintiff.  
16

17 31. Defendant’s deliberate and intentional actions have caused and will continue to cause actual  
18 confusion amongst consumers.

19 32. Defendant’s aforesaid acts have caused and will continue to cause Plaintiff to suffer damages  
20 and irreparable injury, and unless such acts are restrained by this Court through a preliminary  
21 injunction and/or permanent injunction, such acts will be continued and Plaintiff will continue  
22 to suffer damages and irreparable injury.  
23

24 33. Plaintiff is also entitled to damages in accordance with 15 U.S.C. § 1117(a) to recover  
25 Defendant’s profits resulting from the infringement and actual damages sustained by Plaintiff,

1 both to be proven at trial, as well as costs of the case.

2 34. Defendant's willful, deliberate, and intentional infringement, even after Plaintiff attempted to  
3 contact Defendant regarding this issue, makes this case exceptional and entitles Plaintiff to  
4 reasonable attorney's fees.

5 **SECOND CLAIM**

6 **(North Carolina Common Law Trademark Infringement – N.C. Gen. Stat. § 80 *et seq.*)**

7 35. Plaintiff hereby re-alleges and incorporates each and every allegation set forth in paragraphs  
8 1-26 above as if the same was more fully set forth herein.

9 36. Plaintiff owns common law trademark rights in the "Minty" mark in connection with its  
10 browser plug-in providing online shoppers with coupons upon checkout.

11 37. Plaintiff's rights in the "Minty" mark predate any use of the word "Minty" or the "minty.com"  
12 domain by Defendant. Plaintiff's mark was used in connection with its browser plug-in and  
13 installed by nearly one hundred thousand users and is still growing, some of whom reside in  
14 North Carolina.

15 38. Defendant had actual knowledge of Plaintiff's use of its "Minty" trademark as a direct  
16 competitor of an identical browser plug-in utilizing identical trade channels.

17 39. Prior to Defendant changing from its prior "JoinMango" name to the infringing "Minty" name,  
18 Plaintiff was the only extension on the Google Chrome Webstore named "Minty" that  
19 provided a browser plug-in for providing online shoppers with coupons upon checkout.

20 40. Defendant's use of the identical word "Minty" and the "minty.com" domain is provided online  
21 and contains no geographic restrictions and is accessible and available to all consumers within  
22 North Carolina.  
23  
24  
25

1 41. Defendant's use of "Minty" and "minty.com" in North Carolina commerce in connection with  
2 an identical browser plug-in and identical services as Plaintiff is likely to cause confusion,  
3 cause mistake, and/or deceive consumers and the purchasing public as to affiliation,  
4 connection, or association of Plaintiff and Defendant and as to the origin, sponsorship, or  
5 approval of Defendant's browser plug-in by Plaintiff. In addition, Defendant's infringement  
6 is likely to cause, inter alia, subliminal and associational confusion, forward confusion,  
7 reverse confusion, initial interest confusion, point-of-sale confusion, and post-sale confusion.  
8

9 42. Defendant does not have Plaintiff's authorization to use the word "Minty" as its name nor  
10 within Defendant's "minty.com" domain.

11 43. Defendant's use of "Minty" and "minty.com" also attempts to confuse and deceive consumers  
12 into installing Defendant's browser plug-in when the consumers were in fact looking for  
13 Plaintiff's browser plug-in. Defendant is using Plaintiff's hard-earned reputation and goodwill  
14 to trick consumers into installing Defendant's browser plug-in, at the expense of Plaintiff.  
15

16 44. Defendant's use of the identical word "Minty" for providing an identical browser plug-in  
17 function through identical channels of trade has caused multiple instances of actual confusion.

18 45. Defendant's conduct has infringed and continues to infringe Plaintiff's trademark rights under  
19 North Carolina common law.

20 46. Defendant's aforesaid acts have caused and will continue to cause Plaintiff to suffer damages  
21 and irreparable injury, and unless such acts are restrained by this Court through a preliminary  
22 injunction and/or permanent injunction, such acts will be continued and Plaintiff will continue  
23 to suffer damages and irreparable injury.  
24

25 47. Plaintiff is also entitled to damages to recover Defendant's profits resulting from the



1 infringement and actual damages sustained by Plaintiff, both to be proven at trial, as well as  
2 treble damages and attorney's fees.

### 3 **THIRD CLAIM**

#### 4 **(North Carolina Unfair Competition – N.C. Gen. Stat. § 75 *et seq.*)**

5 48. Plaintiff hereby re-alleges and incorporates each and every allegation set forth in paragraphs  
6 1-26 above as if the same was more fully set forth herein.

7  
8 49. As detailed throughout this Complaint, Defendant has infringed Plaintiff's common law  
9 trademark rights by using the identical word "Minty" and the "minty.com" domain in  
10 connection with an identical browser plug-in, which uses an identical title, identical channels  
11 of trade, and provides an identical function to reach an identical set of consumers.

12 50. Defendant previously used the name "JoinMango" for its browser plug-in and only purchased  
13 "minty.com" domain and started using the name "Minty" in February of 2021.

14 51. Plaintiff began using the "Minty" name with its browser plug-in in June of 2020 and registered  
15 the domain "loveminty.net" in August of 2020 specifically for its users in the United States  
16 to visit and install its browser plug-in.

17  
18 52. Plaintiff's users number close to one hundred thousand and growing, while Defendant's users  
19 are only slightly above five thousand users.

20 53. Plaintiff's and Defendant's browser plug-ins are two of the three extensions that appear when  
21 searching for "minty" on the Google Chrome Webstore.

22 54. Intending to take Plaintiff's consumer base and goodwill for its own, Defendant filed the '708  
23 Application with the USPTO.  
24  
25

1 55. Defendant fraudulently claimed in its '708 Application that Defendant's first use anywhere in  
2 the world of the "Minty" mark was in 1999, declaring to the USPTO and available to the  
3 public that Defendant has specifically used "Minty" since 1999, which is a false statement  
4 intended to deceive the USPTO and the public.

5 56. In fact, the "minty.com" domain was largely not in use for any purpose from 1999 until  
6 Defendant's purchase of the domain on February 27, 2021. During the time in between 1999  
7 and February 27, 2021, the "minty.com" domain was not used for the services claimed in the  
8 '708 Application.  
9

10 57. In addition, Defendant knowingly and fraudulently claimed in the '708 Application that it is  
11 the owner of the "Minty" trademark when, in fact, Defendant was aware of Plaintiff's prior  
12 rights in and to the "Minty" trademark.

13 58. Plaintiff is being specifically harmed by these misrepresentations as Plaintiff's own trademark  
14 applications will likely be prevented from registering due to Defendant's fraudulent conduct  
15 and representations to the USPTO.  
16

17 59. Defendant is also fraudulently representing "Minty" as its registered trademark by using the  
18 ® symbol despite not having a valid registration.

19 60. Defendant's misrepresentations are intended to confuse and deceive the public into believing  
20 Defendant has rights in the "Minty" trademark that it does not actually possess.

21 61. Defendant intentionally, deliberately, and fraudulently represents itself as the owner of the  
22 "Minty" trademark in order to confuse consumers and benefit from the reputation and  
23 goodwill that Plaintiff has worked hard to cultivate.  
24  
25

1 62. Defendant, as a direct competitor of Plaintiff, had prior knowledge of Plaintiff's use of the  
2 trademark "Minty" and was keenly aware that Plaintiff's popularity was significantly greater  
3 than Defendant's. Therefore, Defendant's actions can be nothing else than a willful and  
4 deliberate attempt to use Plaintiff's hard-earned popularity and goodwill to try to poach  
5 potential users, and revenue, from Plaintiff and Plaintiff's browser plug-in.

6 63. As a direct and/or proximate result of Defendant's actions, Plaintiff has experienced multiple  
7 instances of actual confusion where users believe Defendant's "minty.com" domain and  
8 "Minty" browser plug-in are owned, operated, affiliated with, associated with, and/or  
9 connected to Plaintiff.  
10

11 64. Defendant's actions are related to business activities such that they are "commerce" under  
12 N.C. Gen. Stat. § 75-1.1.

13 65. Defendant's actions are both in commerce and affecting commerce as contemplated by N.C.  
14 Gen. Stat. § 75-1.1.

15 66. Defendant's acts and conduct constitute "unfair methods of competition" and/or "unfair or  
16 deceptive acts" within the meaning of N.C. Gen. Stat. § 75-1.1.  
17

18 67. Additionally, Defendant's violation of N.C. Gen. Stat. § 80, *et seq.* is, by statute, a violation  
19 of N.C. Gen. Stat. § 75-1.1.

20 68. Defendant's aforesaid acts have caused and will continue to cause Plaintiff to suffer damages  
21 and irreparable injury, and unless such acts are restrained by this Court through a preliminary  
22 injunction and/or permanent injunction, such acts will be continued and Plaintiff will continue  
23 to suffer damages and irreparable injury.  
24  
25

1 69. Plaintiff is also entitled to damages to recover Defendant's profits resulting from the  
2 infringement and actual damages sustained by Plaintiff, both to be proven at trial, as well as  
3 treble damages and attorney's fees.

4 **FOURTH CLAIM**

5 **(Violation of the Anti-Cybersquatting Piracy Act – Lanham Act Section 43(d), 15**

6 **U.S.C § 1125(d))**

7  
8 70. Plaintiff hereby re-alleges and incorporates each and every allegation set forth in paragraphs  
9 1-26 above as if the same was more fully set forth herein.

10 71. Defendant is in violation of Section 43(d) of the Lanham Act and 15 U.S.C. § 1125(d) by  
11 registering and using with a bad faith intent to profit from its infringing use a confusingly  
12 similar domain to Plaintiff's "Minty" trademark that provides an identical browser plug-in for  
13 providing online shoppers with coupons upon checkout.

14 72. Plaintiff's trademark for "Minty" for a browser plug-in that provides online shoppers with  
15 coupons upon checkout is a fanciful mark that is inherently distinctive.

16  
17 73. Plaintiff's rapid popularity in its browser plug-in utilizing Plaintiff's "Minty" trademark has  
18 made Plaintiff's "Minty" trademark distinctive for browser plug-ins that provide online  
19 shoppers with coupons upon checkout.

20 74. Consumers recognize Plaintiff's "Minty" trademark as being specifically and uniquely  
21 associated with and connected to Plaintiff.

22 75. Plaintiff's "Minty" trademark was distinctive when Defendant registered the "minty.com"  
23 domain in February 2021.

24  
25 76. Defendant's use of "Minty" for the "minty.com" domain is identical to Plaintiff's "Minty"

1 trademark and confusingly similar to Plaintiff's "loveminty.net" domain.

2 77. Defendant's use of the "minty.com" domain is in bad faith and intentionally attempts to  
3 confuse and deceive consumers into installing Defendant's browser plug-in when the  
4 consumers were in fact looking for Plaintiff's browser plug-in.

5 78. Defendant is intending to profit from Plaintiff's hard-earned reputation and goodwill by  
6 confusing and deceiving consumers into installing Defendant's browser plug-in, at the direct  
7 expense of Plaintiff.

8  
9 79. Defendant's deliberate and intentional actions have caused and will continue to cause actual  
10 confusion amongst consumers.

11 80. Defendant's aforesaid acts have caused and will continue to cause Plaintiff to suffer damages  
12 and irreparable injury, and unless such acts are restrained by this Court through a preliminary  
13 injunction and/or permanent injunction, such acts will be continued and Plaintiff will continue  
14 to suffer damages and irreparable injury.

15  
16 81. Plaintiff is also entitled to damages in accordance with 15 U.S.C. 1117(d) to recover  
17 Defendant's profits resulting from the infringement, actual damages sustained by Plaintiff,  
18 both to be proven at trial, or alternatively seek statutory damages.

19 82. Plaintiff is also entitled to Defendant's forfeiture, cancellation, or transfer of the "minty.com"  
20 domain.

21 **FIFTH CLAIM**

22 **(Unjust Enrichment)**

23  
24 83. Plaintiff hereby re-alleges and incorporates each and every allegation set forth in paragraphs  
25 1-26 above as if the same was more fully set forth herein.

1 84. As a result of Defendant's actions as stated herein, Defendant has been unjustly enriched and,  
2 at the same time, is causing a loss of revenue to Plaintiff to Plaintiff's detriment.

3 85. Defendant has accepted and retained the benefit of the unjust enrichment from its wrongful  
4 conduct.

5 86. There is no express, written contract between Plaintiff and Defendant that would allow for  
6 Defendant to retain the benefit of the unjust enrichment from its wrongful conduct as  
7 described herein.

8  
9 87. Plaintiff is entitled to recover from the Defendant its unjust enrichment including gains, profits,  
10 and advantages they have obtained as a result of its wrongful conduct. Plaintiff is, at present,  
11 unable to ascertain the full extent of the gains, profits, and advantages Defendant has obtained  
12 by reason of their wrongful conduct.

13 88. By reason of the foregoing, Plaintiff seeks damages based on Defendant's unjust enrichment  
14 in an amount to be proven at trial.

15  
16 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 17 1. For judgment in favor of Plaintiff against Defendant on all claims.
- 18 2. That pursuant to 15 U.S.C. § 1116 and its inherent equitable powers,  
19 the Court issue a preliminary injunction and permanent injunction  
20 restraining and enjoining Defendant from using the "Minty" mark and the  
21 "minty.com" domain, as well as any names, marks, or domains that are  
22 confusingly similar to Plaintiff's "Minty" mark and "loveminty.net"  
23 domain.  
24  
25

1           3.       That Defendant be preliminarily and permanently enjoined from  
2           applying or registering for the word “Minty”, or anything substantially  
3           similar, either on the principal or supplemental registers with the USPTO.

4           4.       That the USPTO be ordered to deny registration to Trademark  
5           Application Serial No. 90550708.

6           5.       That Defendant be ordered to forfeit, cancel, and/or transfer the  
7           “minty.com” domain to Plaintiff.

8           6.       That pursuant to 15 U.S.C. § 1117(a), Plaintiff recover Defendant’s  
9           profits, such sums in addition thereto as the Court shall find just, and the  
10          costs of this action.

11          7.       Judgment that this case is exceptional, and that the Defendant be  
12          ordered to pay all of Plaintiff’s attorney fees associated with this action  
13          pursuant to 15 U.S.C. 1117(a).

14          8.       That pursuant to N.C. Gen. Stat. § 80 *et seq.*, Plaintiff is entitled to  
15          damages to recover Defendant’s profits resulting from the infringement and  
16          actual damages sustained by Plaintiff, both to be proven at trial, as well as  
17          treble damages and attorney’s fees.

18          9.       That pursuant to N.C. Gen. Stat. § 75 *et seq.*, Plaintiff is entitled to  
19          damages to recover Defendant’s profits resulting from the infringement and  
20          actual damages sustained by Plaintiff, both to be proven at trial, as well as  
21          treble damages and attorney’s fees.  
22  
23  
24  
25

1 10. Awarding to Plaintiff compensatory, general and special,  
2 consequential and incidental damages in any additional, yet currently  
3 unknown, amount to be determined at trial.

4 11. Awarding pre- and post- judgment interest.

5 121. Awarding Plaintiff such other and further relief as this Court deems  
6 just and proper.

7 **Jury Trial Demand**

8 Plaintiff hereby demands a jury trial on all issues so triable.

9 Dated this 28th day of September 2021

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