



3.

Upon information and belief, defendant LogoAthletics, Inc. is a corporation organized and existing under the laws of the State of Indiana and having a principal place of business located at 8677 Logo Athletic Court, Indianapolis, Indiana, 46219. Service is proper upon its registered agent, Corporate Service Company, at 251 East Ohio Street, Suite 500, Indianapolis, Indiana, 46204.

## II. JURISDICTION

4.

This is an action for common and state law trademark infringement, federal claims for false designation of origin and for false description, unfair competition arising under the Federal Trademark Act of 1946, as amended, 60 Stat. 427, 15 U.S.C. § 1051, *et seq.*, and state law claims of trademark dilution, injury to business reputation, deceptive trade practices, false advertising, violation of the Fair Business Practices Act of Georgia, and state common law trademark infringement.

5.

This Court has subject matter jurisdiction of this action under 28 U.S.C. § 1338(a) as it involves federal trademark law, under 28 U.S.C. § 1338(b) as it involves unfair competition relating to a claim under trademark laws, under 28 U.S.C. § 1331 as it involves a federal question, and under 28 U.S.C. § 1332 as the action is between citizens of different states, the amount in controversy in this action, exclusive of interests and costs, exceeds the sum of \$75,000.00.

6.

The claims arising under the laws of the State of Georgia and the common law claims are so related to claims arising under the laws of the United States that they form the same case or controversy under Article III of the United States Constitution so that exercise of supplemental jurisdiction by this Court is proper under 28 U.S.C. § 1367.

7.

Venue is proper in this district under 28 U.S.C. § 1391, and O.C.G.A. § 14-2-510, and Georgia Constitution Article IV, Sec. II, Para. III, IV, and VI.

### III. CONTROVERSY

8.

On September 3, 1995, plaintiff Alan Weiss (hereinafter "plaintiff"), prominently displayed a large banner bearing the mark DIRTYBIRD™ in the end zone of the Georgia Dome during a National Football League football game between the Atlanta Falcons and the .

9.

This large banner bearing the mark DIRTYBIRD™ has been prominently displayed at each and every Falcons' home game at the Georgia Dome since September, 1995.

10.

On September 10, 1995, plaintiff undertook advertising to sell the products bearing the DIRTYBIRD™ mark.

11.

Continuously since the time plaintiff first began using the trademark DIRTYBIRD™, plaintiff has advertised, promoted, distributed, offered for sale and sold T-shirts, baseball caps,

flags and/or towels bearing the DIRTYBIRD™ mark, and other products and merchandise to the public.

12.

All of the goods that plaintiff has sold have conspicuously borne the DIRTYBIRD™ mark as well as a similar emblem indicating that the mark is a proper trademark.

13.

At the time plaintiff commenced exploiting his mark DIRTYBIRD™, no other person, business, or entity was similarly using the mark DIRTYBIRD™ in the State of Georgia.

14.

At the time plaintiff commenced exploiting the trademark DIRTYBIRD™ on the sale of T-shirts, baseball caps, and other goods, no other person, business or entity was similarly exploiting the mark DIRTYBIRD™ in a similar context.

15.

Plaintiff's banner and products and merchandise have been prominently displayed at the Georgia Dome at all home Atlanta Falcons' games, have appeared in pictures in the local daily newspapers, including the Atlanta Journal and Constitution, and have appeared on numerous telecasts, including ESPN.

16.

Through plaintiff's significant advertising, marketing and promotion efforts, and the quality of plaintiff's products and merchandise, the plaintiff's DIRTYBIRD™ trademark has gained widespread and favorable acceptance and recognition from his customers, and has become an asset

of substantial value by association in the minds of plaintiff's customers as a symbol of plaintiff, his goodwill and the quality of plaintiff's products.

17.

During the 1998-99 football season, the Atlanta Falcons won the NFC Western Division title with a regular season record of 13-3 and defeated the San Francisco Forty-Niners and the Minnesota Vikings in the playoffs before losing to the Denver Broncos in the Super Bowl.

18.

During this very successful 1998-99 NFL season, the Atlanta Falcons were often referred to by the media, the fans, and its players as the DIRTYBIRD™. This association was the sole result of plaintiff's exploitation of his trademark DIRTYBIRD™.

19.

With the success of the Atlanta Falcons and the association by the fans of plaintiff's trademark DIRTYBIRD™ with the Atlanta Falcons, sales of plaintiff's products and merchandise increased substantially.

20.

On November 19, 1998, plaintiff became the owner of a state trademark registration number T-17494 for DIRTYBIRD™ used in connection with clothing, registered in the Georgia State Trademark and Servicemark Register on November 19, 1998, plaintiff's first use of the mark occurring on September 10, 1995. Plaintiff continues to own the registered trademark from its issuance to the present time.

21.

From the time plaintiff first began manufacturing his products and merchandise under the DIRTYBIRD™ trademark until the present time, he has produced the products and merchandise under the DIRTYBIRD™ trademark with care and skill from high grade materials and printing.

22.

Plaintiff has and continues to expend substantial amounts of money in resources for marketing and otherwise promoting plaintiff's products under and in association with plaintiff's DIRTYBIRD™ trademark in interstate commerce throughout the United States of America, including this district in the State of Georgia. Plaintiff has thus invested substantially in the DIRTYBIRD™ trademark so that his customers associate plaintiff's DIRTYBIRD™ trademark with plaintiff's quality products and merchandise.

23.

Since plaintiff began manufacturing and selling his products and merchandise under the DIRTYBIRD™ trademark, plaintiff has engaged in interstate commerce and has continuously advertised, promoted, distributed, offered for sale and sold his products to the public under the DIRTYBIRD™ trademark.

24.

By reason of plaintiff's long, continuous and widespread exclusive use, advertising and promotion of his goods and services under plaintiff's trademark DIRTYBIRD™ throughout the United States, plaintiff's DIRTYBIRD™ trademark has come to mean, identify and distinguish plaintiff and his goods and products to the industry and the purchasing public and has thus acquired secondary meaning.

25.

By the time playoffs approached the 1998 and 1999 National Football League Season, plaintiff's goods and products were sold in over nine hundred stores both in and out of the State of Georgia and plaintiff was in the midst of negotiating other contracts, including one whereby his products and merchandise would be distributed in over eighty stores in Alabama.

26.

During the 1998-99 National Football League Season, other businesses interested in producing DIRTYBIRD™ merchandise contacted plaintiff and entered into licensing agreements whereby these other businesses could market plaintiff's trademark DIRTYBIRD™ in a limited fashion.

27.

Up until January 17, 1999, neither the National Football League, National Football League Properties, Inc. or the Atlanta Falcons contacted plaintiff to dispute plaintiff's right to exploit the trademark DIRTYBIRD™.

28.

Prior to January 17, 1999, no other individual, business, or entity engaged in the sale of a similar context of DIRTYBIRD™ merchandise.

29.

On January 17, 1999, the Atlanta Falcons defeated the Minnesota Vikings in the NFC Championship Game and advanced to the Super Bowl to face the Denver Broncos.

30.

Upon information and belief, a representative of defendant National Football League Properties discovered the federal trademark "DIRTY BIRD" had been registered to a Douglas Patterson of Omaha, Nebraska. Mr. Patterson had registered "DIRTY BIRD," registration number 1940075, with the United States Patent and Trademark Office on December 5, 1995.

31.

Upon information and belief, Mr. Patterson registered the federal trademark "DIRTY BIRD" in connection with selling clothing associated with a motorcycle gang.

32.

Upon information and belief, immediately following the Atlanta Falcons' victory over the Minnesota Vikings in the NFC Championship Game, a representative of the National League Football Properties or the National Football League traveled to Nebraska to purchase the federal trademark "DIRTY BIRD" from Mr. Patterson.<sup>1</sup>

33.

Following the purported purchase of the federally registered trademark "DIRTY BIRD" from Mr. Patterson, a representative of The National Football League and defendant National

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<sup>1</sup> Before this Complaint was filed, plaintiff inquired as to the details of the trademark that National Football League Properties, Inc. purportedly acquired. At the time of the filing of this Complaint, the U.S. Patent and Trademark Office had informed plaintiff that this trademark information could not be found in the office and consequently, plaintiff must wait until receiving discovery responses from defendants before informing the Court as to the details of defendants' trademark.



Football League Properties contacted several of plaintiff's retailers and distributors and informed them that the National Football League and/or National Football League Properties and their licensee, LogoAthletics, Inc., were now the owners of the "DIRTY BIRD" trademark, that plaintiff was not the rightful owner of the mark, and that all "DIRTY BIRD" merchandise should be purchased from National Football League, National Football League Properties or Logo Athletics. Defendant NFL Properties also threatened to seize property that the Plaintiff had sold to the various retailers and distributors.

34.

Upon information and belief, prior to January 17, 1999, neither defendants had ever sold in interstate commerce any products or merchandise bearing the DIRTYBIRD™ or "DIRTY BIRD" trademarks.

35.

Prior to January 17, 1999, neither defendant ever attempted to license the DIRTYBIRD™ trademark from plaintiff or the trademark "DIRTY BIRD" from Mr. Patterson.

36.

Prior to January 17, 1999, neither defendant has ever informed plaintiff that he was not entitled to exploit and use the trademark DIRTYBIRD™.

37.

At the time of the filing of this Complaint, neither defendant has produced any goods that were similar to the goods produced by Douglas Patterson, the owner of the federally registered trademark, "DIRTY BIRD."

38.

At the time of the filing of this Complaint, neither defendant has produced or sold any goods or products that the purchasing public can associate with a motorcycle or biker's club.

39.

Neither defendant purchased the good will associated with Mr. Patterson's federally registered trademark "DIRTY BIRD" from Mr. Patterson.

40.

As a result of being threatened/contacted by representatives from one or both of the defendants, many retailers and distributors of plaintiff's DIRTYBIRD™ merchandise immediately stopped selling and ordering additional DIRTYBIRD™ merchandise from plaintiff, thereby causing plaintiff substantial damages.

41.

Defendants have produced their own merchandise bearing the DIRTYBIRD™ and/or "DIRTY BIRD" trademark, including but not limited to, T-shirts and handkerchiefs which were sold, among other places, in the Atlanta, Georgia metropolitan area, as well as in Miami, Florida during the Super Bowl.

42.

Upon being notified by plaintiff, through a "cease and desist" letter, that defendants' use and exploitation of the DIRTYBIRD™ trademark was violative of plaintiff's state and common law trademark rights, defendants have continued to sell DIRTYBIRD™ and/or "DIRTY BIRD" merchandise, thereby costing plaintiff substantial and significant profits.

43.

Defendants have contacted large numbers of retailers that plaintiff had contractual agreements with to sell plaintiff's DIRTYBIRD™ and/or "DIRTY BIRD" products and merchandise and have threatened and prevented these retailers from selling or ordering more DIRTYBIRD™ merchandise from plaintiff by asserting that Plaintiff has no legal rights to be producing, marketing, and selling such goods and products.

44.

In view of plaintiff's long, continued, widespread, notorious and exclusive of his DIRTYBIRD™ trademark, defendants knew and had notice of plaintiff's exclusive rights in the DIRTYBIRD™ trademark and adopted and used plaintiff's trademark to play upon the goodwill of plaintiff symbolized by his trademark.

45.

Plaintiff has at no time, past or present, given defendants consent, permission or authorization whatsoever to use the DIRTYBIRD™ trademark and is under no obligation to grant defendants any such consent.

COUNT ONE

CLAIM FOR COMMON LAW TRADEMARK INFRINGEMENT

46.

Paragraphs One through Forty-Five are realleged and incorporated herein by reference.

47.

Defendants had actual notice of plaintiff's state registered and common law trademark DIRTYBIRD™ at all times pertinent to this claim.

48.

Plaintiff has marketed, and continues to market, his merchandise DIRTYBIRD™.

49.

Plaintiff has continuously and uninterruptedly used the trademark DIRTYBIRD™ in trade and commerce before defendants ever used their purported trademark "DIRTY BIRD" in trade.

50.

Through plaintiff's extensive and continued use of plaintiff's DIRTYBIRD™ trademark, this trademark has become distinctive of plaintiff's merchandise and products and is associated by the public with plaintiff.

51.

Defendants, without consent of plaintiff, have used and are continually using in commerce a reproduction, counterfeit, copy, and/or fraudulent imitation of plaintiff's common law trademark DIRTYBIRD™ in connection with the sale, offer for sale, distribution or advertising of products of merchandise of which such use is likely to cause confusion or to cause a mistake, or deceive the public.

52.

Plaintiff alleges that defendants have advertised, promoted, distributed, offered for sale their goods in association with marks which are confusingly similar to plaintiff's trademark, with full knowledge of plaintiff's trademark, that defendants' sale of their goods were and are for the wilful and calculated purpose of infringing upon plaintiff's good will and business reputation.

53.

Defendants' use of the "DIRTY BIRD" trademark is an infringement of plaintiff's common law trademark DIRTYBIRD™.

54.

The infringement by defendants of plaintiff's DIRTYBIRD™ trademark has caused, and is causing, irreparable harm and damage to plaintiff in an amount thus far not determined, for which plaintiff has no adequate remedy under law.

55.

Upon information and belief, plaintiff avers that defendants have and continue to commit the acts alleged hereinabove in Paragraphs One through Fifty-Four with the intent and desire to cause confusion, mistakes and confusion to the public. Defendants' aforementioned acts are therefore, intentional, wilful, and maliciously calculated to cause confusion, mistakes or to deceive the public.

56.

The aforesaid conduct of defendants constitutes infringement of plaintiff's common law rights of plaintiff's trademark and further constitutes improper and unfair advantage over plaintiff, all of which have damaged and will continue to damage plaintiff's goodwill and reputation to the irreparable harm and injury thereof, for which plaintiff has no adequate remedy at law.

57.

Defendants have and will continue to infringe plaintiff's common law trademark rights and plaintiff's right to be free from unfair deceptive competition unless enjoined by the Court.

58.

Upon information and belief, plaintiff avers that defendants' conduct with respect to its infringement upon plaintiff's trademark has been such to render this case "exceptional" under § 35(a) of the Trademark Act of 1946, as amended, 15 U.S.C. 1117(a), entitling plaintiff to recovery of costs and attorney's fees from defendants, as well as injunctive relief.

COUNT TWO

FEDERAL CLAIM FOR FALSE DESIGNATION OF ORIGIN  
AND FALSE DESCRIPTION

59.

Paragraphs One through Fifty-Eight are realleged and incorporated herein by reference.

60.

Defendants, on or in connection with the merchandise and products, having continued to use in commerce the trademark "DIRTY BIRD" and/or DIRTYBIRD™, have produced products and merchandise that are a false designation of origin, false or misleading description of facts, or false and misleading representation of facts, which are likely to cause confusion, or cause mistakes, or to deceive as to the affiliation, connection, or association of defendants with plaintiff, or as to origin, sponsorship, or approval of defendants' merchandise and products by plaintiff, by using plaintiff's DIRTYBIRD™ and/or the confusingly similar "DIRTY BIRD" trademark on defendants' merchandise or other products.

61.

Defendants, in connection with merchandise and products, have and continue to use in commerce a word, term, name, symbol or device, or a combination thereof, or a false designation

of origin, false or misleading description of fact, or false or misleading misrepresentation in commercial advertising or promotion, and misrepresents the nature, characteristics and qualities of defendants' or plaintiff or other's person's merchandise or products by using the trademark "DIRTY BIRD" in connection with defendant's merchandise and products.

62.

Defendants' acts, as set forth above, constitute a violation of § 43(a) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1125(a).

63.

The aforesaid defendants' acts have caused and are causing irreparable harm and damage to plaintiff in an amount not yet determined, for which plaintiff has no adequate remedy at law.

64.

Defendants will continue to cause harm and damage to plaintiff unless enjoined by the Court.

### COUNT THREE

#### INFRINGEMENT OF STATE TRADEMARK

65.

Paragraphs One through Sixty-Four are realleged and incorporated herein by reference.

66.

Defendants are using the same or similar trademark, tradename, label or form of advertising as that of the plaintiff's DIRTYBIRD™ mark, which was registered with the State of Georgia on November 19, 1998. registration number T-17494.

67.

Plaintiff has continuously used the DIRTYBIRD™ mark from a time starting well before defendants' use of the "DIRTY BIRD" mark.

68.

Defendants' use of the same or a similar trademark, tradename, label or form of advertisement as that of plaintiff has caused, and continues to cause a likelihood of injury to business reputation or of dilution to the distinctive quality of plaintiff's DIRTYBIRD™ trademark, tradename, label, or form of advertisement in violation of O.C.G.A. § 10-1-450, *et. seq.*

69.

Plaintiff has suffered irreparable injury and damage as a result of defendants' aforementioned said acts in an amount not thus far determined, for which plaintiff has no adequate remedy at law.

70.

Plaintiff has, and will continue to suffer damage unless defendants are enjoined by this Court.

COUNT FOUR

DECEPTIVE TRADE PRACTICES

71.

Paragraphs One through Seventy are realleged and incorporated herein by reference.



Defendants have engaged in deceptive trade practices within the meaning of the Uniform Deceptive Trade Practices Act in Georgia, O.C.G.A. § 10-1-370 *et seq.*, by performing some or all of the following:

- (a) by passing off their merchandise and products as those of the plaintiff;
- (b) by causing a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of the defendants' goods and merchandise;
- (c) by causing a likelihood of confusion and misunderstanding as to the affiliation, connection or association with or certification by the plaintiff;
- (d) by representing that their merchandise and products have the sponsorship, approval, characteristics that they do not have by using plaintiff's DIRTYBIRD™ mark and/or the confusingly similar mark "DIRTY BIRD" in connection with defendants' merchandise and products;
- (e) by representing that defendants have sponsorship, approval, status, affiliation, connection of or with the plaintiff that they do not have;
- (f) by representing that defendants' products and merchandise or of a particular standard, quality or grade, or that the merchandise and products or of a particular style and model when they are actually of another; and
- (g) by disparaging the products and business reputation of plaintiff by false and misleading representation of fact by using plaintiff's DIRTYBIRD™ and/or the confusingly similar "DIRTY BIRD" mark on defendants' merchandise and products.

COUNT FIVE  
FALSE ADVERTISING

73.

Paragraphs One through Seventy-Two are realleged and incorporated herein by reference.

74.

Defendants aforesaid acts and omissions regarding defendants' use of plaintiff's DIRTYBIRD™ and/or the confusingly similar mark "DIRTY BIRD" trademark constitutes false and fraudulent advertising under the meaning of O.C.G.A. § 10-1-421, *et seq.* as the same misleads the public as to who is the rightful owner of the mark DIRTYBIRD™.

75.

Defendants' false advertising is injurious to plaintiff and the public.

76.

Plaintiff has, as a result of defendants' false advertising, suffered irreparable injury and damages in an amount thus far not determined for which there is no adequate remedy at law.

77.

Plaintiff, therefore, is entitled to injunctive relief pursuant to O.C.G.A. § 10-1-423.

COUNT SIX  
FAIR BUSINESS PRACTICES ACT OF GEORGIA

78.

Paragraphs One through Seventy-Seven are realleged and incorporated herein by reference.

79.

Defendants' aforementioned unfair and deceptive practices in connection with defendants' use of plaintiff's DIRTYBIRD™ and/or the confusingly similar mark "DIRTY BIRD" trademark are in violation of the Fair Business Practices Act of Georgia, O.C.G.A. § 10-1-390, *et seq.* as the consuming public has been misled as to the possible affiliation with or sponsorship of defendants' goods with Plaintiff.

80.

Plaintiff has suffered irreparable harm and injury and damage as a result of defendants' violation of the Fair Business Practices Act, O.C.G.A. § 10-1-390, *et seq.* in an amount not thus far determined, for which plaintiff has no adequate remedy at law.

81.

As a result of the aforementioned acts and omissions by defendants, plaintiff is entitled to relief pursuant to the aforesaid Act, including injunctive relief, costs and attorney's fees.

COUNT SEVEN

GEORGIA COMMON LAW INFRINGEMENT AND UNFAIR COMPETITION

82.

Paragraphs One through Eighty-One are realleged and incorporated herein by reference.

83.

Defendant's adoption and use in Georgia of plaintiff's trademark DIRTYBIRD™ and/or the confusingly similar mark "DIRTY BIRD" is likely to cause confusion, or cause mistake, or to deceive as to the affiliation, connection or association of defendants with plaintiff, which these

acts constitute infringement and unfair competition in violation of Georgia Common Law for which plaintiff has no adequate remedy at law.

84.

Defendants have, and will continue to infringe plaintiff's Georgia common law trademark rights and plaintiff's right to be free from defendants' unfair and deceptive competition unless defendants are enjoined and restrained by this Court.

**COUNT EIGHT**

**FRAUDULENT PROCUREMENT OF TRADEMARK REGISTRATION**

85.

Paragraphs One through Eighty-Four are realleged and incorporated herein by reference.

86.

At all times pertinent, before attempting to acquire from Mr. Patterson the trademark DIRTYBIRD™, defendants knew that Mr. Patterson's use of the trademark was dissimilar and different from plaintiff's use of his trademark DIRTYBIRD™.

87.

At all times pertinent, defendants had no intention to acquire and purchase and use the goodwill of Mr. Patterson's trademark "DIRTY BIRD" with defendants' use of the trademark.

88.

At all times pertinent, defendants had no intention to target bikers' gangs or clubs with products and merchandise displaying the trademark DIRTYBIRD™.

89.

Defendants' attempted purchase of Mr. Patterson's trademark "DIRTY BIRD" constitutes an acquisition in gross, and is therefore not legally valid.

90.

Defendant's procurement of the trademark "DIRTY BIRD" was obtained through a false or fraudulent declaration or representation by defendants as they did not acquire the goodwill of a prior federally registered trademark. Such actions are a violation of § 30 of the Trademark Act of 1946, as amended, 15 U.S.C. § 1120.

COUNT NINE

STATE LAW CLAIMS FOR TORTIOUS INTERFERENCE  
WITH CONTRACTUAL RELATIONS

91.

Paragraphs One through Ninety are realleged and incorporated herein by reference.

92.

The acts of defendants and/or their agents in contacting those persons and parties that had contracted with plaintiff to sell and distribute plaintiff's merchandise and products constitutes wrongful interference with contractual relations of both plaintiff and those with whom plaintiff had contracted.

93.

Defendants had actual notice as to plaintiff's prior use of the trademark DIRTYBIRD™ and of plaintiff's common law rights to the trademark DIRTYBIRD™, and defendants' acts in contacting those who had contracted with plaintiff were wilful, malicious and purposeful.

94.

The acts of defendants and/or their agents and/or representatives have caused and are causing irreparable harm and damage to plaintiff in an amount thus far not determined for which plaintiff has no adequate remedy at law.

95.

Defendants will continue to cause harm and damage to plaintiff unless enjoined by the Court.

COUNT TEN

STATE LAW CLAIM FOR TORTIOUS  
INTERFERENCE WITH BUSINESS RELATIONS

96.

Paragraphs One through Ninety-Five are realleged and incorporated herein by reference.

97.

The acts of defendants and/or their agents in contacting those persons and parties that had contracted with plaintiff to sell and distribute plaintiff's merchandise and products constitutes the wrongful interference with business relations of both plaintiff and those with whom plaintiff had contracted.

98.

Defendants had actual notice as to plaintiff's prior use of the trademark DIRTYBIRD™ and of plaintiff's common law rights to the trademark DIRTYBIRD™, so defendants acts in contacting those who had contracted with plaintiff were wilful, malicious and purposeful.

99.

The acts of defendants and/or their agents and/or representatives have caused and are causing irreparable harm and damage to plaintiff in an amount thus far not determined for which plaintiff has no adequate remedy at law.

100.

Defendants will continue to cause harm and damage to plaintiff unless enjoined by the Court.

COUNT ELEVEN

STATE LAW CLAIM FOR DEFAMATION

101.

Paragraphs One through One Hundred are realleged and incorporated herein by reference.

102.

Upon information and belief, plaintiff avers that defendants contacted persons and/or entities that had contracted with plaintiff to sell and distribute plaintiff's products and merchandise.

103.

Upon information and belief, plaintiff avers that defendants and/or their representatives and/or agents informed those persons and/or business entities that contracted with plaintiff to sell and distribute plaintiff's merchandise and products that plaintiff did not have the proper right to distribute merchandise and products with the trademark DIRTYBIRD™ and/or the confusingly similar mark "DIRTY BIRD."

104.

Upon information and belief, plaintiff avers that defendants at all times had actual notice of plaintiff's prior use of the trademark DIRTYBIRD™ and knowledge of prior exploitation of the trademark DIRTYBIRD™ so that all communications that defendants and/or their representatives and/or agents made to those contracted to sell and distribute plaintiff's merchandise were wilful, malicious, and purposeful.

105.

The communications made by defendants and/or their representatives and/or agents to those who plaintiff had contracted to sell and distribute plaintiff's merchandise and goods constitute defamation as the communications to these persons and/or entities damaged plaintiff's business reputation.

WHEREFORE, plaintiff demands:

- (1) That defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them be permanently enjoined and restrained from using the trademark DIRTYBIRD™ or any other designation that is confusingly similar to plaintiff's trademark, and from otherwise infringing upon plaintiff's trademark, and from otherwise unfairly competing with plaintiff in any manner whatsoever;
- (2) That defendants deliver up for destruction, all their documents, signs, packages, advertisements, promotions and other representations and means for reproducing the same, or any other printed material bearing plaintiff's trademark or any other



designation confusingly similar to plaintiff's trademark, and to obliterate, destroy or remove all other uses of plaintiff's trademark by defendants;

- (3) That defendants be directed to file with this Court, and serve upon plaintiff, no later than thirty (30) days after the issuance of an injunction, a report in writing under oath setting forth in detail the manner and form in which defendants have complied with the injunction;
- (4) That an accounting and judgment be rendered against defendants for:
  - (a) all profits received by defendants for advertising, distribution, offering for sale and sale of goods in which the trademark used by defendants directly or indirectly are confusingly similar to plaintiff's trademark;
  - (b) all damages sustained by plaintiff on account of defendant's trademark infringement, false designation of origin and false description, trademark dilution and injury to business reputation, unfair deceptive trade practices, false advertising, unfair business practices and competition, tortious interference with contractual relations, tortious interference with business relations, defamation, and furthermore, as to such damages and profits as found herein, be trebled as provided by § 35 of the Trademark Act of 1946, as amended, 15 U.S.C. § 1117; and
  - (c) actual, compensatory, and punitive damages as the court sees is equitable and just.
- (4) That plaintiff have and recover from defendant the costs of this suit, including reasonable attorney's fees and expenses;

- (5) That plaintiff have and recover pre and post-judgment interest from defendants; and
- (6) That plaintiff have such other and further relief as the Court may deem just and proper.

**PLAINTIFF DEMANDS A TRIAL BY A JURY OF TWELVE PERSONS.**

Respectfully submitted,

**HALL, BOOTH, SMITH & SLOVER, P.C.**



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ROGER S. SUMRALL  
Georgia Bar Number 004490



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JONATHAN MARIGLIANO  
Georgia Bar Number 125514  
230 Peachtree Street, N.W.  
Suite 2500  
Atlanta, Georgia 30303  
(404) 954-5000

Attorneys for Plaintiff