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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 DERRY PRODUCTS INC.,

12 Plaintiff,

13 vs.
14

15 THE INDIVIDUALS, PARTNERSHIPS
16 AND UNINCORPORATED
17 ASSOCIATIONS IDENTIFIED ON
18 SCHEDULE "A"

19 Defendant(s)
20
21
22

) Case No.:

) **PLAINTIFF'S COMPLAINT FOR**
) **DAMAGES AND EQUITABLE**
) **RELIEF:**

) **1. TRADEMARK COUNTERFEITING**
) **AND INFRINGEMENT (15 U.S.C.**
) **§1114)**

) **2. FALSE DESIGNATION OF**
) **ORIGIN (15 U.S.C. § 1125(a))**

) **3. COMMON LAW**
) **TRADEMARK**
) **INFRINGEMENT**

) **4. COMMON LAW UNFAIR**
) **COMPETITION**

) **[JURY TRIAL DEMANDED]**

1 committing tortious acts in California, is engaging in interstate commerce, and has
2 wrongfully caused DERRY substantial injury in the State of California.

3 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 since
4 Defendants are, upon information and belief, engaged in infringing activities and
5 causing harm within this district by advertising, offering to sell, and selling infringing
6 products to consumers in California.
7
8

9 **THE PARTIES**

10 4. Plaintiff Derry Products Inc. is incorporated under the laws of State of
11 Colorado with a principal place of business located at 9888 W Belleview Ave, Ste.
12 2290, Denver, CO 80123.
13
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15 5. Defendants are individuals and/or business entities of unknown makeup,
16 each of whom, upon information and belief, either reside in foreign jurisdictions with
17 lax trademark enforcement systems or redistribute products from sources in those
18 locations. Defendants have the capacity to be sued pursuant to Federal Rule of Civil
19 Procedure 17(b). Defendants conduct pervasive business throughout the United States,
20 including within this district through the operation of, at least, one fully interactive
21 commercial Internet based e-commerce store via the Internet marketplace Amazon
22 (www.amazon.com) under the Storefronts identified on Schedule A hereto.
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26 6. DERRY is presently unaware of the true names of Defendants,
27 although they are generally identified as the managing agents and/or co-conspirators
28

1 of Defendants operating under the Storefronts. DERRY will amend this Complaint
2 upon discovery of the identities of such fictitious Defendants.

3 7. Defendants are the past and present controlling forces behind the sale of
4 counterfeit products bearing DERRY's trademarks as described herein using at least
5 the Storefronts.
6

7 8. Upon information and belief, Defendants directly engage in unfair
8 competition with DERRY by advertising, offering for sale, and selling goods bearing
9 counterfeits of one or more of DERRY's trademarks to consumers within the United
10 States and this district through Internet based e-commerce stores using, at least, the
11 Storefronts, Seller IDs and additional names or seller identification aliases not yet
12 known to DERRY. Defendants have purposefully directed some portion of their illegal
13 activities towards consumers in the State of California through the advertisement, offer
14 to sell, sale, and/or shipment of counterfeit DERRY branded goods into California.
15

16 9. Upon information and belief, Defendants will continue to register or
17 acquire new seller identification aliases for the purpose of selling and offering for sale
18 goods bearing counterfeit and confusingly similar imitations of DERRY's trademark
19 unless preliminarily and permanently enjoined.
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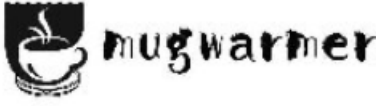
21 10. Defendants' Internet-based businesses amount to nothing more than
22 illegal operations established and operated in order to infringe the intellectual property
23 rights of DERRY and others.
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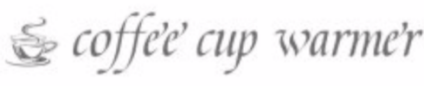
11. Defendants' business names, i.e., the Storefronts, Seller IDs, and any other alias seller identification names used in connection with the sale of counterfeit and infringing goods bearing DERRY's trademarks are essential components of Defendants' online activities and are one of the means by which Defendants further their counterfeiting and infringing scheme and cause harm to DERRY. Moreover, Defendants are using DERRY's name and trademarks to drive Internet consumer traffic to their ecommerce stores operating under the Storefronts, thereby increasing the value of the Storefronts and decreasing the size and value of DERRY's legitimate common marketplace at DERRY's expense.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. DERRY (Brand and its Trademark)

12. DERRY is and has been engaged in the extensive development, advertising, and marketing of coffee cups, under the following word marks and design marks (collectively "Derry Marks")

Trademark	U.S. Reg. No.	Reg. Date	Goods and Services
 mugwarmer	6,128,897	08/18/2020	IC 011. US 013 021 023 031 034. G & S: Electric apparatus for making coffee; Electric beverage warmers. FIRST USE: 20190601. FIRST USE IN COMMERCE: 20190601

 coffee cup warmer	6,129,062	08/18/2020	IC 011. US 013 021 023 031 034. G & S: Electric apparatus for making coffee; Electric beverage warmers. FIRST USE: 20191201. FIRST USE IN COMMERCE: 20191201
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13. The U. S registrations for the above-listed Derry Marks are valid, subsisting, in full force and effect, and are incontestable pursuant to 15 U.S.C. § 1065. The registrations and assignments to assign whole interests to DERRY constitute prima facie evidence of their validity and of DERRY's exclusive right to use the Derry Marks. True and correct copies of U.S. registration and Assignments are attached hereto as Exhibit 1.

14. DERRY has continuously used the Derry Marks in interstate commerce in connection with the sale, distribution, promotion, and advertising since their respective dates of first use. The Derry Marks have never been abandoned.

15. Genuine DERRY products are marketed and sold to consumers through specialty retail stores, e-commerce stores, Amazon store https://www.amazon.com/dp/B07NQDWQXS/ref=twister_B07ZFK38ZF?_encoding=UTF8&psc=1 throughout the United States as well as on in its official website- <https://mug-warm.com>.

16. DERRY has expended substantial time, money, and other resources in developing, advertising, and otherwise promoting the Derry Marks. As a result, product bearing the Derry Marks are widely recognized and exclusively associated by

1 consumers, the public, and the trade as being high-quality products sourced from
2 DERRY.

3 17. As a result of the foregoing, the Derry Marks have achieved secondary
4 meaning as an identifier of high-quality coffee warmer products. The Derry Marks
5 have come to symbolize the enormous goodwill of DERRY's business throughout the
6 United States and the world. No other manufacturer lawfully uses the Derry Marks or
7 any substantially similar marks for similar types of goods.
8

9 18. The Derry Marks are vital to DERRY's business, as the marks represent
10 a significant value to its overall business and associated image. DERRY suffers
11 irreparable harm to its goodwill, as well as a direct monetary loss, any time any third
12 parties, including Defendants, sell counterfeit and infringing goods bearing identical or
13 substantially indistinguishable trademarks.
14

15 19. The success of the DERRY brand has resulted in its significant
16 counterfeiting. Consequently, DERRY actively polices and enforces its trademarks and
17 regularly investigates suspicious websites and online marketplace listings identified in
18 proactive Internet sweeps and reported by consumers.
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20 **B. Defendants' Infringing Activities**

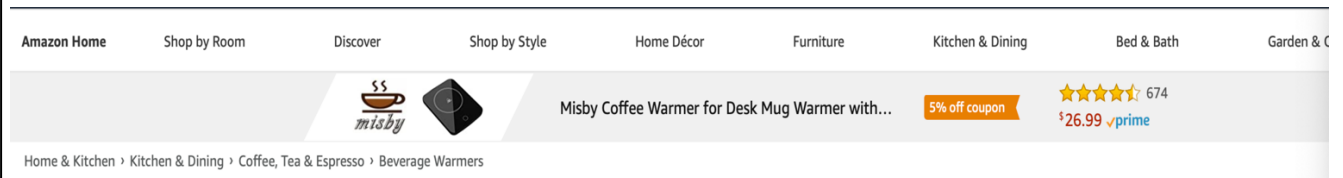
21 20. Upon information and belief, Defendants are promoting and advertising,
22 distributing, selling, and/or offering for sale coffee warmer in interstate commerce
23 bearing counterfeit and infringing trademarks that are exact copies of the Derry Marks
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1 (the “Counterfeit Products”) through at least the Internet based e-commerce stores
2 operating under the Storefronts. Specifically, upon information and belief, Defendants
3 are using identical copies of the Derry Marks for different quality goods. DERRY has
4 used the Derry Marks extensively and continuously before Defendants began offering
5 counterfeit and confusing similar imitations of DERRY’s merchandise.
6

7
8 21. Upon information and belief, Defendants’ Counterfeit Products are of a
9 quality substantially different than that of DERRY’s genuine goods. Defendants, upon
10 information and belief, are actively using, promoting and otherwise advertising,
11 distributing, selling and/or offering for sale substantial quantities of their Counterfeit
12 Products with the knowledge and intent that such goods will be mistaken for genuine
13 DERRY products, despite Defendants’ knowledge that they are without authority to
14 use the Derry Marks. The net effect of Defendants’ actions will cause confusion of
15 consumers who will believe Defendants’ Counterfeit Products are genuine goods
16 originating from, associated with, and approved by DERRY.
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20 22. Defendants advertise their Counterfeit Products for sale to the
21 consuming public via e-commerce stores on Internet marketplace websites using at
22 least the Storefronts. In so advertising these goods, Defendants use the Derry Marks
23 without DERRY’s permission. The misappropriation of DERRY advertising ideas in
24 the form of the Derry Marks is the proximate cause of damage to DERRY. As part of
25 their overall counterfeiting scheme, Defendants are, upon information and belief, all
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employing substantially similar, paid advertising and marketing strategies based, in large measure, upon an illegal use of counterfeit reproductions of the Derry Marks. Specifically, Defendants are using the federally registered “Coffee Warmer with marks” to attract consumers to their e-commerce stores on Amazon wherein they offer for sale and sell Counterfeit Products. For example:



[Defendant Misby’s Advertisement on Amazon]

By their actions, Defendants have created an illegal marketplace operating in parallel to the legitimate marketplace for DERRY genuine goods.

23. Upon information and belief, at all times relevant hereto, Defendants in this action had full knowledge of DERRY ownership of the Derry Marks, including its exclusive right to use and license such intellectual property and the goodwill associated therewith.

24. Defendants use of the Derry Marks, including the promotion and advertisement, reproduction, distribution, sale and offering for sale of their Counterfeit Products, is without DERRY consent or authorization.

25. Defendants are engaging in the above-described illegal counterfeiting and infringing activities knowingly and intentionally or with reckless disregard or willful blindness to DERRY rights for the purpose of trading on DERRY goodwill and

1 reputation. If Defendants intentional counterfeiting and infringing activities are not
2 preliminarily and permanently enjoined by this Court, DERRY and the consuming
3 public will continue to be harmed.
4

5 26. Defendants above identified infringing activities are likely to cause
6 confusion, deception, and mistake in the minds of consumers, the public, and the
7 trade before, during and after the time of purchase. Moreover, Defendants' wrongful
8 conduct is likely to create a false impression and deceive customers, the public, and
9 the trade into believing there is a connection or association between DERRY's
10 genuine goods and Defendants' Counterfeit Products, which there is not.
11

12 27. DERRY has no adequate remedy at law.
13

14 28. DERRY is suffering irreparable and indivisible injury and has suffered
15 substantial damages as a result of Defendants unauthorized and wrongful use of the
16 Derry Marks. If Defendants counterfeiting and infringing, and unfairly competitive
17 activities are not preliminarily and permanently enjoined by this Court, DERRY and
18 the consuming public will continue to be harmed.
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20 29. The harm and damages sustained by DERRY have been directly and
21 proximately caused by Defendants wrongful reproduction, use, advertisement,
22 promotion, offers to sell, and sale of their Counterfeit Products.
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FIRST CLAIM FOR RELIEF

Federal Trademark Infringement and Counterfeiting (15 U.S.C. § 1114)

30. DERRY herein by reference the averments of the preceding paragraphs as though fully set forth herein.

31. This is a trademark infringement action against Defendants based on their unauthorized use in commerce of counterfeit imitations of the federally registered Derry Marks in connection with the sale, offering for sale, distribution, and/or advertising o infringing goods. The Derry Marks are highly distinctive marks. Consumers have come to expect the highest quality from DERRY products offered, sold or marketed under the Derry Marks.

32. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products bearing counterfeit reproductions of the Derry Marks without DERRY's permission.

33. DERRY is the exclusive owner of the Derry Marks. DERRY United States Registrations for the Derry Marks are in full force and effect. Upon information defendants have knowledge of DERRY 's rights in the Derry Marks, and are willfully infringing and intentionally using counterfeits of the Derry Marks Defendants willful, intentional and unauthorized use of the Derry Marks is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of the Counterfeit

1 Products among the general public.

2 34. Defendants' activities constitute willful trademark infringement and
3 counterfeiting under Section 32 of the Lanham Act, 15.S.C. § 1114.
4

5 35. DERRY has no adequate remedy at law, and if Defendants actions are
6 not enjoined, DERRY will continue to suffer irreparable harm to its reputation and
7 the goodwill of its well-known Derry Marks.
8

9 36. The injuries and damages sustained by DERRY have been directly
10 and proximately caused by Defendants' wrongful reproduction, use, advertisement,
11 promotion, offering to sell, and sale of Counterfeit Products.
12

13 **SECOND CLAIM FOR RELIEF**
14

15 **False Designation of Origin (15 U.S.C. § 1125(a))**

16 37. DERRY company herein by reference the averments of the preceding
17 paragraphs as though fully set forth herein.
18

19 38. Defendants' promotion, marketing, offering for sale, and sale of
20 Counterfeit Products has created and is creating a likelihood of confusion, mistake,
21 and deception among the general public as to the affiliation, connection, or
22 association with DERRY or the origin, sponsorship, or approval of Defendants'
23 Counterfeit Products by DERRY.
24
25

26 39. By using the Derry Marks on the Counterfeit Products, Defendants
27 create a false designation of origin and a misleading representation of fact as to the
28

1 origin and sponsorship of the Counterfeit Products.

2 40. Defendants' false designation of origin and misrepresentation of fact
3 as to the origin and/or sponsorship of the Counterfeit Products to the general public
4 involves the use of counterfeit marks and is a willful violation of Section 43 of the
5 Lanham Act 5U.S.C. § 1125.
6

7 41. DERRY has no adequate remedy at law and, if Defendants' actions
8 are not enjoined, DERRY will continue to suffer irreparable harm to its reputation
9 and the goodwill of its brand.
10
11

12 **THIRD CLAIM FOR RELIEF**
13 **Common Law Trademark Infringement**

14 42. DERRY company herein by reference the averments of the preceding
15 paragraphs as though fully set forth herein.
16

17 43. DERRY owns and enjoys common law trademark rights to the Derry
18 Marks in California and throughout the United States.
19

20 44. Defendants, upon information and belief, are manufacturing, promoting,
21 and otherwise advertising, distributing, offering for sale, and selling goods bearing
22 counterfeit reproductions of the Derry Marks.
23

24 45. Defendants infringing activities are likely to cause and actually are
25 causing confusion, mistake and deception among members of the trade and the general
26 consuming public as to the origin and quality of Defendants, Counterfeit Products
27 bearing the Derry Marks.
28

46. DERRY has no adequate remedy at law and is suffering damages and irreparable injury as a result of Defendants, actions.

47. DERRY company herein by reference the averments of the preceding paragraphs as though fully set forth herein.

49. Defendants' infringing activities are likely to cause and actually are causing confusion, mistake and deception among members of the trade and the general consuming public as to the origin and quality of Defendants products by its use of the Derry Marks.

51. Defendants' acts are willful, deliberate, and intended to confuse the

1 public and to injure DERRY.

2 52. Defendants' acts constitute unfair competition under California common
3 law.
4

5 53. DERRY has no adequate remedy at law.

6 54. DERRY has been irreparably harmed and will continue to be irreparable
7 harmed as a result of Defendants' infringing activities unless Defendants are
8 permanently enjoined from their infringing conduct.
9

10 55. The conduct herein complained of was extreme, outrageous,
11 fraudulent and was inflicted on DERRY in reckless disregard of DERRY's rights.
12 Said conduct was despicable and harmful to DERRY and as such supports an award
13 of exemplary and punitive damages in an amount sufficient to punish and make an
14 example of Defendant and to deter them from similar such conduct in the future.
15
16

17 **PRAYER FOR RELIEF**
18

19 WHEREFORE, DERRY hereby demands judgment on all Counts of this
20 Complaint and an award of equitable relief, and monetary relief against Defendants
21 as follows:
22

- 23 1. That Defendants, their agents, representatives, servants, employees. And all
24 persons acting for, with, by, through, under, or in active concert with them be
25 temporarily, preliminarily, and permanently enjoined and restrained from:
26
27 a) using the DERRY or any reproductions, counterfeit copies, or colorable
28

1 imitations thereof in any manner in connection with the manufacture
2 distribution, promotion, marketing, advertising, offering for sale, or sale
3 of any product that is not a genuine DERRY product or is not authorized
4 by DERRY to be sold in connection with the Derry Marks;
5

6 b) passing off, inducing, or enabling others to sell or pass off any product as
7 a genuine DERRY product or any other product produced by DERRY
8 that is not DERRY or not produced under the authorization, control, or
9 supervision of DERRY and approved by DERRY for sale under the
10 Derry Marks;
11

12 c) committing any acts calculated to cause consumers to believe that
13 Defendants Counterfeit Products are those sold under the authorization,
14 control, or supervision of DERRY, or are sponsored by, approved by, or
15 otherwise connected with DERRY;
16

17 d) further infringing the Derry Marks and damaging DERRY's goodwill;
18

19 e) otherwise competing unfairly with DERRY in any manner; and
20

21 f) manufacturing, shipping, delivering, holding for sale, transferring or
22 otherwise moving, storing, distributing, returning, or otherwise disposing
23 of, in any manner, products or inventory not manufactured by or for
24 DERRY, nor authorized by DERRY to be sold or offered for sale, and
25 which bear any of the Derry Marks, or any reproductions, counterfeit
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copies, or colorable imitations thereof;

2. Entry of an Order requiring the Storefront or Seller IDs, and any other alias seller identification names being used by Defendants to engage in the business of marketing, offering to sell and/or selling goods bearing counterfeits and infringements of the Derry Marks be disabled by Amazon.
3. Entry of an Order that, upon DERRY's request, any Internet marketplace website operators and/or administrators, including but not limited to Amazon, who are provided with notice of the injunction, shall (a) disable and cease providing services being used by Defendants, currently or in the future, to engage in the sale of goods using the Derry Marks and (b) disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of Counterfeit Products.
4. Entry of an Order requiring Defendants to account to and pay DERRY for all profits and damages resulting from Defendants trademark counterfeiting and infringing and unfairly competitive activities and that the award to DERRY be trebled, as provided for under 15 U.S.C. § 1117, or, at DERRY election with respect to its trademark infringement claim, that DERRY be awarded statutory damages from each Defendant in the amount of two million dollars (\$2,000,000.00) per each counterfeit trademark used and product sold, as provided by 15 U.S. C. § 1117(c)(2) of the Lanham Act.

- 1 5. Entry of an award of DERRY costs and reasonable attorneys' fees and
2 investigative fees associated with bringing this action.
- 3 6. Entry of an Order requiring all funds, including any funds restrained, up o
4 and including the total amount of judgment, in payment accounts or money
5 transfer systems used in connection with the Storefronts, Seller IDs or other
6 domain names, alias seller identification or ecommerce store names used by
7 Defendants presently or in the future including PayPal, Inc, and any other
8 financial institution, bank, and/or payment Processing accounts, to be
9 surrendered to DERRY in partial satisfaction of the monetary judgment
10 entered herein.
- 11 7. Entry of an award of reasonable attorneys' fees and costs to DERRY.
- 12 8. Entry of an award of pre-judgment interest on the judgment amount.
- 13 9. Entry of an Order for any further relief as the Court may deem just and proper.

14 Dated this 8th day of March 2021.

15 Respectfully submitted,

16 By: /s/ Tianyu Ju
17 Tianyu Ju
18 Attorney for Plaintiff
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff
DERRY company hereby demands a trial by jury as to all claims in this
litigation.

Dated this 8th day of March 2021.

Respectfully submitted,

By: /s/ Tianyu Ju
Tianyu Ju
Attorney for Plaintiff