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10 16. In addition to her appearance, Rosamond is delineated by a number of other
11 distinct, consistent, and widely identifiable traits. Rosamond is always accompanied by
12 her four black cats¹: "Little Hex," "Big Hex," "Plain Hex," and "Super Hex."
13 Additionally, Rosamond is persistently described as "strange." By way of example only,
14 in the first book of the Nate the Great series, which is self-titled, Nate observes that, "I
15 could tell that Rosamond was a strange girl." In Nate the Great Goes Undercover,
16 published in 1974, Nate notes that, "Rosamond did not look hungry or sleepy. She looked
17 like she always looks. Strange." In Nate the Great and the Fishy Prize, published in 1985,
18 Nate indicates that "Rosamond's cats could win first prize for being strange." In Nate the
19 Great and the Pillowcase, published in 1993, Nate recounts that "Rosamond looked sleepy
20 and strange, but not in that order," and that, "Rosamond was strange in the daytime. But
21 she was even more strange at night." In Nate the Great on the Owl Express, published in
22 2003, Nate recalls, "Then I heard a strange voice. It belonged to Rosamond. She is the
23 only strange person I know." Rosamond is so strange that, according to Nate in Nate the
24 Great and the Crunchy Christmas, published in 1996, "I could tell that Rosamond was
25 going to have a very strange Christmas." Copies of the Nate the Great Books are attached
26 to this Complaint as Exhibit A.

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28 ¹ Unless one of the cats happens to be lost at the time, in which case it is usually Nate the Great's job to find it.

1 17. Rosamond is also delineated by various dark themes and settings. For
2 example, as Nate the Great notes in Nate the Great and the Snowy Trail, published in
3 1992, "Rosamond thinks scorpions, and spiders and bats are beautiful."

4 **B. Plaintiffs' Federally Registered Copyrights**

5 18. Plaintiff Sharmat is the owner of the U.S. Copyright Registrations listed on
6 Exhibit B, which were applied for and granted at various dates spanning the time period
7 from 1972 to present, over which the Nate the Great books were produced. Printouts from
8 the website of the U.S. Copyright Office indicating these registrations are attached to this
9 Complaint as Exhibit C. Plaintiff Simont is the owner of the U.S. Copyright Registrations
10 listed in Exhibit D, which were applied for and granted at various dates spanning the time
11 period from 1972 to present, over which the Nate the Great books were produced.
12 Printouts from the website of the U.S. Copyright Office indicating these registrations are
13 attached to this Complaint as Exhibit E. The copyright registrations attached to this
14 Complaint as Exhibits C and E cover the Nate the Great books, which include text and
15 illustrations that delineate the character of Rosamond as she appears throughout the Nate
16 the Great series.

17 19. Over the time period from 1972 to present, Plaintiffs have either published
18 or licensed for publication all copies of the Nate the Great books in compliance with the
19 copyright laws and have remained the owners of the copyrights referenced in this
20 Complaint.

21 20. By way of example, copyright registration No. RE0000864463, which
22 issued on May 16, 2002 as a renewal of copyright registration No. BB0000047268, which
23 issued on October 1, 1974, owned by Plaintiff Sharmat, is directed to Nate the Great Goes
24 Undercover, which includes the image and text below:

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21. Copyright registration Nos. TX0000700847 and VA0000074201 cover Nate the Great and the Missing Key, which includes the picture at right:



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22. Copyright registration Nos. TX0003666784 and VA0000591283 cover Nate the Great and the Pillow Case, which includes the picture and text at right:



“You read to your cats?”
“Fifteen minutes each day.”
“When did you get back to your laundry?”
“Just before I went to bed. I looked for the night things.”

23. Each of the above-referenced copyrighted works, as well as the works included in the other Nate the Great books, contain original expression in text, images, and in the combination of the two, that is entitled to copyright protection. Additionally, the character of Rosamond, who is delineated by distinctive, consistent, and widely identifiable traits, is entitled to copyright protection.

C. The Defendants' Unlawful Conduct

24. Upon information and belief, Defendant Nathan Carrico ("Carrico"), sometime in the early 1990s, appropriated original imagery and text created by Plaintiffs to create a character called "Emily the Strange." Emily the Strange, like Rosamond, is a young girl in a short dress, black tights, and "mary jane" shoes. Emily, like Rosamond, has long dark hair with square-cut bangs. Emily, like Rosamond, is typically attended by

1 four black cats. Emily, like Rosamond, is described as being strange and has a fascination
2 with dark themes.

3 25. One of the first known images of Emily the Strange was a sticker produced
4 by Carrico, apparently intended for use on skateboards. Side-by-side images of the
5 Carrico sticker and page 14 from Plaintiffs' *Nate the Great Goes Undercover* are included
6 below:



18 26. As is evident from a direct comparison of these works, the last two
19 sentences have been copied verbatim, and the first sentence is almost identical. Taken
20 together with the substantial similarity of the illustrations, the conclusion that the
21 Rosamond character and text have been infringed is inescapable.

22 27. Claiming he was "inspired" by Carrico's "design," defendant Robert Reger
23 ("Reger"), through his company Cosmic Debris Etc., Inc. ("Cosmic Debris"), took the
24 Emily the Strange image and pasted "Emily's" image (in fact, Rosamond's image) on other
25 products such as t-shirts. Prominent among Cosmic Debris' products, which it sells itself
26 or through third-party licensees, are Emily the Strange comic books which, upon
27 information and belief, have been contributed to by illustrator Buzz Parker ("Parker").
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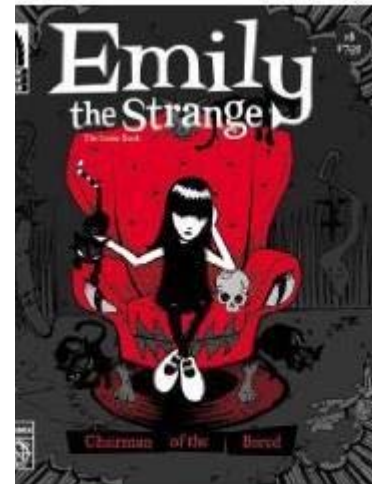
1 Upon information and belief, Parker is a Cosmic Debris employee who maintains the
2 website <http://www.emilystrange.com>.

3 28. In their efforts to profit from their infringing use of Plaintiffs' copyrighted
4 works, Reger and Cosmic Debris have relied on various parties to generate, publish,
5 market, and sell Emily-related written materials and merchandise. Defendant Chronicle
6 Books has published several Emily the Strange books including infringing Emily images.
7 Defendant Dark Horse has published numerous comic books including infringing Emily
8 images. Defendant NHS, Inc. ("NHS") has marketed and sold infringing Emily
9 merchandise including infringing Emily skateboard stickers and garments.

10 29. By way of example only, below is a side-by side comparison of an image of
11 Rosamond in a wing-back chair surrounded by her four cats, from Nate the Great and the
12 Pillow Case, compared with the cover of an Emily comic book produced by Cosmic
13 Debris and distributed by Dark Horse.



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21 "You read to your cats?"
22 "Fifteen minutes each day."
23 "When did you get back to
24 your laundry?"
25 "Just before I went to bed.
26 I looked for the night things."

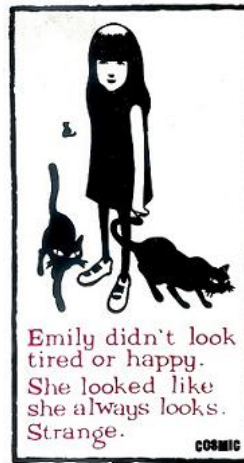


26 30. By way of further example only, below is a side-by side comparison of an
27 image of Rosamond having dinner with her four black cats, from Nate the Great and the
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1 Missing Key, with a poster produced by Cosmic Debris and available for sale through
2 various Internet retailers.



13 31. Moreover, Defendants continue to use, and re-use, the original Emily the
14 Strange image, apparently taken directly by Carrico from Nate the Great Goes
15 Undercover, in a variety of Emily the Strange merchandise. By way of further example
16 only, below is a side-by-side comparison showing how Defendants have propagated the
17 same copied image of Rosamond throughout their product line. The image on the far left
18 is a copyrighted image of Rosamond from Nate the Great Goes Undercover; the image in
19 the center is the original Carrico sticker; and the image on the far right is from a set of
20 trading cards available for sale at the time of the drafting of this Complaint at
21 http://www.emilystrange.com/Shop/Collectables/Stationery_Stickers/Trading_Cards/, the
22 Cosmic Debris website maintained by Defendant Buzz Parker. The image on the far right
23 also serves as the cover of the book "Emily the Strange" produced by Cosmic Debris and
24 published by Chronicle Books.



10 32. Attached to this Complaint as Exhibit F is a sampling of infringing material
11 produced by various defendants. Exhibit F includes a printout of the web page
12 http://www.emilystrange.com/Shop/Collectables/Books_Comics/Bored_Comic_Book/
13 displaying the comic book, Emily the Strange Chairman of the Bored, published by Dark
14 Horse, a printout of the web page
15 http://www.emilystrange.com/Shop/Collectables/Books_Comics/Emily_the_Strange/
16 displaying the cover of the book, Emily the Strange published by Chronicle Books, a
17 photograph of a t-shirt bearing the Carrico Emily image and text, apparently manufactured
18 by NHS and offered for sale recently at [http://cgi.ebay.com.sg/ORI-vtg-80s-SANTA-CRUZ-skateboard-shirt-POWELL-deck-](http://cgi.ebay.com.sg/ORI-vtg-80s-SANTA-CRUZ-skateboard-shirt-POWELL-deck-szM_W0QQitemZ150336802049QQcmdZViewItemQQptZVintage_Unisex_T_Shirts?hash=item150336802049&trksid=p3286.c0.m14&trkparms=66%3A2%7C65%3A3%7C39%3A1%7C240%3A1318)
19 [szM_W0QQitemZ150336802049QQcmdZViewItemQQptZVintage_Unisex_T_Shirts?ha-](http://cgi.ebay.com.sg/ORI-vtg-80s-SANTA-CRUZ-skateboard-shirt-POWELL-deck-szM_W0QQitemZ150336802049QQcmdZViewItemQQptZVintage_Unisex_T_Shirts?hash=item150336802049&trksid=p3286.c0.m14&trkparms=66%3A2%7C65%3A3%7C39%3A1%7C240%3A1318)
20 [sh=item150336802049&trksid=p3286.c0.m14&trkparms=66%3A2%7C65%3A3%7C3](http://cgi.ebay.com.sg/ORI-vtg-80s-SANTA-CRUZ-skateboard-shirt-POWELL-deck-szM_W0QQitemZ150336802049QQcmdZViewItemQQptZVintage_Unisex_T_Shirts?hash=item150336802049&trksid=p3286.c0.m14&trkparms=66%3A2%7C65%3A3%7C39%3A1%7C240%3A1318)
21 [9%3A1%7C240%3A1318](http://cgi.ebay.com.sg/ORI-vtg-80s-SANTA-CRUZ-skateboard-shirt-POWELL-deck-szM_W0QQitemZ150336802049QQcmdZViewItemQQptZVintage_Unisex_T_Shirts?hash=item150336802049&trksid=p3286.c0.m14&trkparms=66%3A2%7C65%3A3%7C39%3A1%7C240%3A1318), retrieved on or about May 29, 2009, a printout of the web page
22 [http://www.adamhershposters.com/storefrontprofiles/processfeed.aspx?sfid=43435&i=24](http://www.adamhershposters.com/storefrontprofiles/processfeed.aspx?sfid=43435&i=248307307&mpid=36&dfid=1)
23 [8307307&mpid=36&dfid=1](http://www.adamhershposters.com/storefrontprofiles/processfeed.aspx?sfid=43435&i=248307307&mpid=36&dfid=1) from an internet poster retailer displaying the Emily the
24 Strange Poster "We're all Strange Here." Unless otherwise noted, all the above web pages
25 were retrieved on or about June 4, 2009.

27 33. Every depiction of "Emily the Strange" includes copyrighted and protectable
28 elements from Plaintiffs' Rosamond character, including but not limited to, Emily's short

1 dress, dark hair with long square-cut bangs, "mary jane" shoes, "posse" of four black cats,
2 persistent strangeness, and fascination with dark themes. Moreover, Defendants have
3 copied numerous specific protectable copyrighted elements of Rosamond and the text of
4 the Nate the Great books, and have thereby infringed Plaintiffs' copyrights independent of
5 the copyrightability of the overall Rosamond character.

6 34. Upon information and belief, defendants Reger and Cosmic Debris
7 purportedly became aware of the similarity between Emily's character and Rosamond
8 several years after launching the Emily character. Despite that knowledge, those
9 defendants sought to hide their infringement by allegedly making insubstantial changes in
10 Emily's character in an unsuccessful effort to distinguish it from Rosamond. These
11 actions demonstrate willful infringement, which exposes those parties to liability for
12 enhanced damages.

13 35. Upon information and belief, the other defendants have had actual notice of
14 their infringing activity since at least late 2008 when word of the similarities between
15 Rosamond and Emily began circulating on the Internet.

16 36. Plaintiffs only became aware of Emily the Strange and Defendants'
17 infringement in late 2008.

18 37. Defendants' activities have caused and will continue to cause irreparable
19 harm to Plaintiffs, and such actions will continue unless restrained by this Court.

20
21 **COUNT I**
COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 501 ET SEQ.

22 38. The allegations of paragraphs 1-37 are incorporated by reference as if fully
23 set forth herein.

24 39. Plaintiffs are, and at all relevant times have been, the copyright holders
25 under United States copyright law of U.S. Copyright Registrations attached to this
26 complaint as Exhibits C and E. Plaintiffs have complied in all respects with 17 U.S.C. §§
27 101 *et seq.*, and secured the exclusive rights and privileges in and to the copyrights of the
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1 above-referenced works. Plaintiffs have been and still are the sole proprietors of all
2 rights, title, and interest in and to the copyrights in its respective works as referenced
3 above.

4 40. Defendants have had actual and constructive access to Plaintiffs'
5 copyrighted works, and have themselves generated works that are substantially similar, if
6 not identical to, Plaintiffs' copyrighted works.

7 41. Defendants have copied, and continue to copy, in whole or in substantial
8 part, copyrighted elements of the works listed in Exhibits B and D, and are the subject of
9 the copyright registrations listed in Exhibits C and E, and accordingly have infringed and
10 continue to infringe Plaintiffs' copyrights by continuing to publish and sell infringing
11 articles in violation of the copyright, and further have engaged in unfair trade practices
12 and unfair competition in connection with its publication and sale of the infringing
13 articles, thus causing irreparable damage.

14 42. Defendants' use of Plaintiffs' copyrighted material without approval or
15 authorization infringes Plaintiffs' exclusive copyrights pursuant to 17 U.S.C. § 501.

16 43. Defendants' conduct violates the exclusive rights belonging to Plaintiffs as
17 owners of the copyrights referenced in this Complaint, including, without limitation,
18 Plaintiffs' rights under 17 U.S.C. § 106.

19 44. As a direct and proximate result of their wrongful conduct, Defendants have
20 realized and continue to realize profits and other benefits. Accordingly, Plaintiffs seek an
21 award of damages pursuant to 17 U.S.C. § 504 in such amount as shown by appropriate
22 evidence upon the trial of this case.

23 45. Plaintiffs are also entitled to injunctive relief pursuant to 17 U.S.C. § 502.
24 Defendants' infringing conduct has caused and is causing substantial and irreparable
25 injury and damage to Plaintiffs in an amount not capable of determination and, unless
26 restrained, will cause further irreparable injury, leaving the Plaintiffs with no adequate
27 remedy at law. Plaintiffs have no adequate remedy of law for Defendants' wrongful
28 conduct because, among other things, (a) Plaintiffs' copyrights are unique and valuable

1 assets whose market value is impossible to assess; (b) Defendants' infringement harms
2 Plaintiffs such that Plaintiffs could not be made whole by any monetary award; and
3 (c) Defendants' wrongful conduct, and the resulting damage to Plaintiffs, is continuing. If
4 not enjoined by this Court, Defendants will continue to infringe Plaintiffs' copyrighted
5 material.

6 46. Defendants have willfully engaged in, and are willfully engaging in, the acts
7 complained of with oppression, fraud, and malice, and in conscious disregard of the rights
8 of Plaintiffs. Plaintiffs are, therefore, entitled to the maximum statutory damages
9 allowable.

10 47. Defendants have been unjustly enriched and have damaged Plaintiffs'
11 business and reputations through their wrongful use of Plaintiffs' copyrighted material.

12 48. Plaintiffs are also entitled to recover their attorneys' fees and costs of suit
13 pursuant to 17 U.S.C. § 505.

14 **WHEREFORE**, Plaintiffs demand judgment and relief against Defendants as
15 follows:

16 A. A declaration that Defendants have infringed Plaintiffs' registered
17 copyrights and must cease and desist using all elements of this copyrighted material;

18 B. Temporarily, preliminarily and permanently enjoining, restraining and
19 forbidding Defendants and their officers, directors, partners, agents, representatives,
20 shareholders, employees, affiliates and all others acting in concert with Defendants, from
21 copying and republishing any of Plaintiffs' copyrighted material without consent or
22 otherwise infringing Plaintiffs' copyrights or other rights in any manner;

23 C. Awarding financial remedies in actual and consequential damages incurred
24 as proved at trial, or in the alternative statutory damages as set forth in 17 U.S.C.
25 § 504(c);

26 D. Ordering an accounting by Defendants of any profits, gains, and advantages
27 derived in any way from its wrongful acts;

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1 E. Awarding Plaintiffs any amount by which Defendants have been unjustly
2 enriched as a result of its wrongful acts;

3 F. Awarding Plaintiffs their costs incurred herein and reasonable attorneys'
4 fees incurred in connection with this action;

5 G. Awarding Plaintiffs interest on the foregoing fees and costs at the highest
6 rate permitted by law from the date of judgment herein until paid; and

7 H. Awarding such other and further relief as is just and proper.

8 **JURY DEMAND**

9 Plaintiffs demand a Jury Trial on all issues so triable.

10 DATED this 4th day of June, 2009.

11 QUARLES & BRADY LLP
12 One South Church Avenue, Suite 1700
13 Tucson, AZ 85701

14 By s/Deanna Conn _____

15 Deanna Conn
16 Michael J. Curley

17 *Attorneys for Plaintiffs*
18 *Marjorie Weinman Sharmat and Marc Simont*

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