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A PROFESSIONAL CORPORATION

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

FRAZETTA PROPERTIES, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
ALFONSO FRANK FRAZETTA)	
a/k/a FRANK FRAZETTA, JR., d/b/a)	
WWW.FRAZETTAARTGALLERY.COM,)	
)	
Defendant.)	

VERIFIED COMPLAINT AND JURY DEMAND

Introductory Statement

1. Plaintiff Frazetta Properties, LLC brings this action pursuant to the federal Lanham Act, Copyright Act, and state law against the Defendant, Alfonso Frank Frazetta, a/k/a Frank Frazetta, Jr., doing business as www.frazettaartgallery.com, to preliminarily and permanently enjoin him from improperly passing himself off as the authorized representative of Frank Frazetta

and from infringing on the well-known artistic works of Frank Frazetta, and to recover damages for his actions.

Parties

2. Plaintiff, Frazetta Properties, LLC ("Frazetta Properties"), is a Delaware limited liability company with a mailing address of 186 South Cortland Street, East Stroudsburg, Monroe County, Pennsylvania 18301. The current managers of Frazetta Properties are Heidi Grabin, Holly Frazetta Taylor, and William Frazetta.

3. Effective as of August 14, 2009, Frank Frazetta ("Mr. Frazetta"), a resident of the Commonwealth of Pennsylvania, transferred and assigned to Frazetta Properties all of the artwork created by him prior to that date and all attendant intellectual property rights in the artwork, including trademarks and copyrights, all claims or causes of action for infringement of those rights, and all rights to manage, license, and promote Mr. Frazetta's extensive body of artwork.

4. Alfonso Frank Frazetta, a/k/a Frank Frazetta, Jr., doing business as www.frazettaartgallery.com (hereinafter, "Frank Frazetta, Jr."), is an individual residing at Route 209 Business, East Stroudsburg, Monroe County, Pennsylvania 18335. Frank Frazetta, Jr. is one of four children of Mr. Frazetta.

Jurisdiction and Venue

5. This action arises under and pursuant to the Lanham Act, 15 U.S.C. § 1051, *et seq.*, the Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.*, and under the laws of the Commonwealth of Pennsylvania.

6. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because it arises under the trademark and copyright laws of the United States, and under 15 U.S.C. § 1121. The Court has subject matter jurisdiction over the pendant and ancillary state law claims under the laws of the Commonwealth of Pennsylvania, which are so related to the trademark and copyright claims that they form part of the same case and controversy and, therefore, fall within the Court's supplemental jurisdiction under 28 U.S.C. § 1367.

7. The Court has personal jurisdiction over the Defendant, Frank Frazetta, Jr., because he resides in the Commonwealth of Pennsylvania and has sufficient minimum contacts in Pennsylvania; he systematically and continuously transacts business in Pennsylvania; and the actions by Frank Frazetta, Jr. that gave rise to the various injuries suffered by Frazetta Properties occurred primarily and substantially in Pennsylvania.

8. Venue in this action lies in the Middle District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(a).

Factual Background

Frank Frazetta, the Artist

9. Frank Frazetta is a world famous artist.
10. In the mid-1940s, Mr. Frazetta began working on comic books. His career in comics included, among other things, several years working on the Li'l Abner comic strip. Mr. Frazetta also created artwork that appeared in numerous magazines, including Newsweek, Esquire, American Artist, National Lampoon, Combat, Creepy, Eerie, and Vampirella.
11. Among Mr. Frazetta's most well-known work is the art that he created for multiple Tarzan and Conan the Barbarian books. During the 1960s and early 1970s, Mr. Frazetta provided cover art and illustrations for more than 150 different books. Mr. Frazetta also created artwork for a number of movie posters, including for the films "What's New Pussycat?" and "Yours, Mine, and Ours."
12. While Mr. Frazetta's catalog of artwork includes a wide variety of styles, he is most well known for his fantasy and science fiction art. A DVD documentary about Mr. Frazetta describes him on its cover as follows: "For the last half century, Frank Frazetta has dominated the world of Fantasy Art with his images of fierce warriors, helpless princesses and fantastical creatures set in the most lavish landscapes." Mr. Frazetta is considered one of the most influential

artists in the field of fantasy art. Artists in this genre have been, and continue to be, inspired by Mr. Frazetta's unique art and style.

13. Many art books and other works have been published regarding Mr. Frazetta and his artwork.

14. The name "Frank Frazetta" has taken on secondary meaning. Mr. Frazetta's name is distinctive as the indication of the source or origin of his well known fantasy art.

Stylized Frazetta Signature

15. Mr. Frazetta's work is identifiable and distinguishable not only by his distinctive style and powerful images, but also by the stylized signature (see below) that he has used to sign his artwork (hereinafter, the "stylized Frazetta signature"):

16. Mr. Frazetta has used this stylized signature in commerce since at least 1950. The mark was registered on February 17, 2009, U.S. Trademark Registration No. 3,575,511.

Assignment of Frank Frazetta's Rights to Frazetta Properties, LLC

17. Effective as of August 14, 2009, Frank Frazetta transferred and assigned to Frazetta Properties all of the artwork created by him prior to that date

and all attendant intellectual property rights in the artwork, including all trademarks and copyrights, all claims or causes of action for infringement of those rights, and all rights to manage, license, and promote Mr. Frazetta's extensive body of artwork.

18. Upon information and belief, Frank Frazetta, Jr. has made unauthorized commercial uses of the stylized Frazetta signature in conjunction with creating, marketing, advertising and selling and/or offering for sale various works of art, merchandise and/or other goods on his commercial website, www.frazettaartgallery.com.

Mr. Frazetta's Death Dealer Character

19. Among one of the most well known and popular works of art created by Mr. Frazetta is his Death Dealer character. Mr. Frazetta painted the original Death Dealer in approximately 1973. Mr. Frazetta went on to paint at least five other Death Dealer paintings (Death Dealer II through Death Dealer VI).

20. As of December 24, 1996, Mr. Frazetta had a registered trademark in the words Death Dealer. This trademark was administratively cancelled as of September 29, 2007, although Mr. Frazetta and Frazetta Properties still have common law rights in the mark Death Dealer. As of the date of this complaint,

Frazetta Properties, as Mr. Frazetta's assignee, has a pending application for a registration on this trademark.

21. As of the date of this complaint, Frazetta Properties has copyright registrations on five of the Death Dealer paintings and a pending copyright application on one Death Dealer painting that Mr. Frazetta created between approximately 1973 and 1996. Attached hereto collectively as Exhibit 1 are copies of the six Death Dealer paintings (Death Dealer I through Death Dealer VI, in order).

22. Upon information and belief, Frank Frazetta, Jr. has made unauthorized commercial uses of the Death Dealer character in conjunction with creating, marketing, advertising and selling and/or offering for sale various works of art, merchandise and/or other goods on his commercial website, www.frazettaartgallery.com.

Death Dealer Statue at Fort Hood

23. Upon information and belief, in or around early 2009, Frank Frazetta, Jr. represented to the U.S. Army that he was the authorized representative of Mr. Frazetta for purposes of creating a large statue of Mr. Frazetta's Death Dealer image.

24. Upon information and belief, in May of 2009, Frank Frazetta, Jr. arranged for the production of a life-size Death Dealer statue. The Death Dealer statue was built for the U.S. Army to be permanently located at the U.S. Army's III Corps headquarters based at Ft. Hood, Texas. Attached hereto as Exhibit 2 is a photograph of the Death Dealer statute created for the U.S. Army.

25. On September 15, 2009, the Death Dealer statue was unveiled at a ceremony at Ft. Hood.

26. Upon information and belief, Frank Frazetta, Jr. has collected monies from the U.S. Army on Mr. Frazetta's behalf, which Frank Frazetta, Jr. has not turned over to either Mr. Frazetta or Frazetta Properties, the current holder of the intellectual property rights in the Death Dealer images created by Mr. Frazetta.

27. Upon information and belief, Frank Frazetta, Jr. has failed, neglected and/or otherwise refused to provide Frazetta Properties an accounting of any monies he has received from the U.S. Army in conjunction with creating the Death Dealer statue.

Mr. Frazetta's Paintings and Other Works of Art

28. Among Mr. Frazetta's artistic creations are his many paintings. One of his renowned paintings is known as Dark Kingdom, which he painted in approximately 1976. Authorized uses of Mr. Frazetta's Dark Kingdom painting

have included an album cover for Molly Hatchet. A copy of Mr. Frazetta's Dark Kingdom painting is attached hereto as Exhibit 3.

29. As of the date of this complaint, Frazetta Properties has a pending copyright application on the Dark Kingdom painting.

30. Other well known paintings by Mr. Frazetta include Carson of Venus, Kane on the Golden Sea, Silver Warrior, Wolves, Fire Demon, Swamp Demon, Dracula Meets Wolfman, The Moon Maid, Flash for Freedom, Neanderthal, The Sorcerer, The Bear; Nightstalker; Combat, Invaders, Headless Horseman (I and II), and Tyrannosaurus Rex. Attached hereto as Exhibit 4 is a copy of each of these artistic works.

31. Frazetta Properties has previously filed copyright applications on each of the paintings described in Paragraph 30.

Frank Frazetta, Jr.'s Commercial Website

32. Frank Frazetta, Jr. operates and maintains a commercial website at www.frazettaartgallery.com, which he claims, among other things, is the "exclusive website of Frank Frazetta." The website also describes itself as a "Genuine Frazetta Website." A true and accurate copy of the home page of www.frazettaartgallery.com containing these statements is attached hereto as Exhibit 5.

33. In the "Current News" section of www.frazettaartgallery.com, Frank Frazetta, Jr. variously describes the website as "the official Frazetta web pages" and states that "new products [are] sold exclusively on our authorized web-site."

34. Upon information and belief, since at least January 28, 2010, Frank Frazetta, Jr. has marketed, created, reproduced and/or sold identical, or nearly identical, copies of and/or derivative works based on the Death Dealer image without permission from Frazetta Properties through his commercial website, www.frazettaartgallery.com.

35. Among other things, Defendant is selling various derivative works of the Death Dealer character through www.frazettaartgallery.com, including, but not limited to, the following art and merchandise: lithographs, books, original drawings, jewelry, statues, t-shirts and sweatshirts, so-called "Masters Collection" reproductions, and Death Dealer replica helmets.

36. Upon information and belief, since at least January 28, 2010, Frank Frazetta, Jr. has marketed, created, reproduced and/or sold identical, or nearly identical, copies of and/or derivative works based on the artwork created by Mr. Frazetta without permission from Frazetta Properties through his commercial website, www.frazettaartgallery.com, including, but not limited to, the following paintings created by Mr. Frazetta: Dark Kingdom, Carson of Venus, Kane on the Golden Sea, Silver Warrior, Wolves, Fire Demon, Swamp Demon, Dracula Meets

Wolfman, The Moon Maid, Flash for Freedom, Neanderthal, The Sorcerer, The Bear, Nightstalker, Combat, Invaders, Headless Horseman (I and II), and, Tyrannosaurus Rex (the "Frazetta Paintings").

37. Among other things, Defendant is selling identical, or nearly identical, copies of and/or derivative works based on the Frazetta Paintings through www.frazettaartgallery.com, including, but not limited to: lithographs, books, original drawings, jewelry, statues, t-shirts and sweatshirts, and so-called "Masters Collection" reproductions.

38. Upon information and belief, Frank Frazetta, Jr. offers a "Get Your Stuff Signed" service through his commercial website, www.frazettaartgallery.com, which purportedly enables customers to have their items signed by Mr. Frazetta for a fee of \$250 per item.

39. Upon information and belief, Mr. Frazetta has not signed any such items for customers since at least July of 2009. To the extent Frank Frazetta, Jr. claims that such a service is available through www.frazettaartgallery.com, in fact, it is not.

40. Upon information and belief, Frank Frazetta, Jr. soon intends to commence auctioning various works of art and merchandise based on artwork created by Mr. Frazetta on his commercial website, www.frazettaartgallery.com.

Attached hereto as Exhibit 5 is a true and accurate copy of a page on Mr. Frazetta's website announcing the upcoming auctions.

41. Frank Frazetta, Jr. has no authority to market, create, reproduce and/or sell artwork created by Mr. Frazetta, whether through www.frazettaartgallery.com or otherwise. In fact, as of January 28, 2010, Frank Frazetta, Jr. was ordered by Frazetta Properties and Mr. Frazetta to cease and desist all such conduct.

42. Frank Frazetta, Jr. has no authority to hold himself out as the exclusive, authorized and/or genuine website or seller of artwork originally created by Mr. Frazetta.

43. Upon information and belief, since January 28, 2010, Frank Frazetta, Jr. has failed, neglected and/or otherwise refused to cease and desist marketing, creating, reproducing and/or selling artwork created by Mr. Frazetta through www.frazettaartgallery.com or otherwise.

The February 5, 2000 Document Regarding Frank Frazetta, Jr.'s Website

44. In or around the Fall of 2009, Frank Frazetta, Jr. provided counsel for Frazetta Properties and Mr. Frazetta a two page document dated February 5, 2000 (the "February 5, 2000 Document") which purports to be an agreement between Frank Frazetta, Jr., his father, Frank Frazetta, and his now-deceased mother, Eleanor "Ellie" Frazetta. A copy of the February 5th Document is attached hereto

as Exhibit 6. Frazetta Properties disputes the authenticity of the purported agreement set forth in the February 5, 2000 Document, and whether the purported agreement was entered into at all. The February 5, 2000 Document is purportedly signed by Frank Frazetta, Jr., Frank Frazetta, and Eleanor “Ellie” Frazetta.

45. The February 5, 2000 Document contains no specific language describing the duration of the purported agreement.

January 28, 2010 Cease and Desist Demand by Frazetta Properties and Mr. Frazetta

46. By letter dated January 28, 2010, counsel for Frazetta Properties and Mr. Frazetta sent counsel for Frank Frazetta, Jr. a cease and desist letter ("Cease and Desist"). A copy of the January 28, 2010 Cease and Desist letter is attached hereto as Exhibit 7.

47. The Cease and Desist letter clearly notified Frank Frazetta, Jr. that "he is not authorized to sell or license any Frank Frazetta original art, prints, limited editions, master collections, lithographs, sculptures, jewelry, statues, toys, mirrors, bookmarks, clothing or any of Frank Frazetta merchandise of any type."

48. The Cease and Desist letter also notified Frank Frazetta, Jr. that he “is not authorized to represent to any party that he has authority to sell or license” any art or merchandise created by Frank Frazetta, nor is he “authorized to hold himself

out as the ‘exclusive’ or ‘authorized’ website for Frank Frazetta or any other similar such designations.”

49. Even if the February 5, 2000 Document is a valid agreement, Frazetta Properties and Mr. Frazetta terminated that purported agreement by no later than January 28, 2010. The Cease and Desist letter stated, “this is to give notice that the Feb. 5th Document is hereby terminated and any purported authorizations given in it are withdrawn effective immediately.” (Exhibit 7).

50. To the extent the February 5, 2000 Document constituted a valid agreement, Frank Frazetta, Jr. breached the terms and conditions of that agreement by, among other things, since July of 2009, failing to: (a) pay to the Frank Frazetta or Frazetta Properties royalties based on Frank Frazetta, Jr.’s sales, including but not limited to website sales, of any art, merchandise and/or other goods based on artwork created by Mr. Frazetta; and (b) provide an accounting reflecting Frank Frazetta, Jr.’s sales, including but not limited to website sales, of any art, merchandise and/or other goods based on artwork created by Mr. Frazetta.

51. By letter dated February 12, 2010, Frank Frazetta, Jr., by and through counsel, responded to the Cease and Desist letter sent by Frazetta Properties. In his response, Frank Frazetta, Jr. asserted, among other things, that he could continue to run his website despite Mr. Frazetta's and Frazetta Properties' written demand that he stop.

52. Upon information and belief, Frank Frazetta, Jr. continues to create, market, publish, release and/or sell art, merchandise or other goods based on the artistic works created by his father, Frank Frazetta. His continued use of the website, www.frazettaartgallery.com, is in bad faith.

53. To the extent the February 5, 2000 Document ever constituted a valid agreement, that purported agreement was terminated by Mr. Frazetta and Frazetta Properties by no later than January 28, 2010.

54. As a result of Frank Frazetta, Jr.'s various and repeated acts of infringement, Frazetta Properties has suffered injury, loss, and damages. Frank Frazetta, Jr. has deprived Frazetta Properties of its exclusive rights and privileges in and to all of the intellectual property rights in the artwork created by Mr. Frazetta, including all trademarks and copyrights, and all rights to manage, license, and promote Mr. Frazetta's extensive body of artwork.

COUNT I

(Trademark Infringement Pursuant to 15 U.S.C. § 1114)

55. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 54 of the Complaint as if fully set forth herein.

56. Frazetta Properties is the owner of the registered trademark in the stylized Frazetta signature, U.S. Trademark Registration No. 3,575,511. The stylized Frazetta signature has been used by Mr. Frazetta in connection with his artwork in interstate commerce since at least 1950.

57. Frazetta Properties and/or its assignor, Mr. Frazetta, engages in interstate activities designed to promote Mr. Frazetta's artwork, and the goodwill associated with the stylized Frazetta signature, throughout the United States.

58. The stylized Frazetta signature is inherently distinctive and/or has acquired secondary meaning.

59. The stylized Frazetta signature relating to Mr. Frazetta's artwork has been, and will continue to be, known throughout the United States as identifying and distinguishing Mr. Frazetta's artwork.

60. Defendant did not use the stylized Frazetta signature prior to Mr. Frazetta's first use in or about 1950. As a result, Frazetta Properties had priority over Defendant's use of the trademark.

61. Defendant uses the stylized Frazetta signature in conjunction with advertising, marketing, creating and/or selling of various art, merchandise and other goods based on Mr. Frazetta's original artwork. As a result, Defendant's use of Frazetta Properties' registered trademark is in connection with the sale of substantially similar goods.

62. Without authorization or the consent of Frazetta Properties, Defendant has used, and continues to use, the trademarked stylized Frazetta signature. By using the stylized Frazetta signature, and by advertising, marketing, releasing, promoting, creating, offering for sale, and/or distributing art, merchandise and other goods based on the stylized Frazetta signature, Defendant is depriving Frazetta Properties of its exclusive right to control, and benefit from, its trademark. If permitted to continue, Defendant's actions will nullify Frazetta Properties' right to the exclusive use of its mark, free from infringement, and will have a substantial and adverse effect on Frazetta Properties' existing and projected future interstate business of marketing Mr. Frazetta's artwork identified by its mark.

63. Defendant's unauthorized use of the trademarked stylized Frazetta signature is likely to cause confusion, to cause mistake, and to deceive, to the detriment of Frazetta Properties and consumers, collectors, and fans of Mr. Frazetta's art.

64. Frazetta Properties has been, and continues to be, damaged by the Defendant's activities and conduct. Defendant has profited thereby and, unless his conduct is enjoined, Frazetta Properties will suffer irreparable injury as a result of the damage to Mr. Frazetta's reputation and goodwill; such irreparable injury cannot be adequately calculated or compensated by money damages. Accordingly, Frazetta Properties is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

65. On information and belief, Defendant's acts of trademark infringement have been committed willfully, deliberately, and maliciously with the intent to cause confusion and mistake and to deceive. Accordingly, Frazetta Properties is entitled to a judgment of three times its damages and Defendant's ill-gotten profits, together with reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(a).

COUNT II

(Trademark Infringement Pursuant To 15 U.S.C. § 1125)

66. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 65 of the Complaint as if fully set forth herein.

67. Without authorization or the consent of Frazetta Properties, Defendant has used, and continues to use, Frazetta Properties' various trademarks, including the stylized Frazetta signature and Mr. Frazetta's name (the "Marks"), and the mark Death Dealer ("Death Dealer Mark") in the promotion and sale of goods and services.

68. Mr. Frazetta has used the Marks in interstate commerce since at least 1950.

69. Mr. Frazetta has used the Death Dealer Mark in interstate commerce since at least 1995.

70. Frazetta Properties and/or its assignor, Mr. Frazetta, engages in interstate activities designed to promote Mr. Frazetta's artwork, and the goodwill associated with the Marks and the Death Dealer Mark.

71. The Marks and the Death Dealer Marks are inherently distinctive and/or have acquired secondary meaning.

72. The Marks have been, and will continue to be, known throughout the United States as identifying and distinguishing Mr. Frazetta's artwork.

73. The Death Dealer Mark has been, and will continue to be, known throughout the United States as a creation of Mr. Frazetta.

74. Defendant did not use the Marks prior to Mr. Frazetta's first use in or about 1950. As a result, Frazetta Properties has priority over Defendant's use of the Marks.

75. Defendant did not use the Death Dealer Mark prior to Mr. Frazetta's first use in or about 1995. As a result, Frazetta Properties has priority over Defendant's use of the Death Dealer Mark.

76. Defendant uses the Marks and the Death Dealer Mark in conjunction with advertising, marketing, releasing, promoting, creating, offering for sale, and/or distributing art, merchandise and other goods based on Mr. Frazetta's original artwork, including, but not limited to, the Marks and the Death Dealer

Mark. As a result, Defendant's use of the Marks is in connection with the sale of substantially similar goods.

77. Without authorization or the consent of Frazetta Properties, Defendant has used, and continues to use, the Marks and the Death Dealer Mark. By using the Marks and the Death Dealer Mark, and by advertising, marketing, releasing, promoting, creating, offering for sale, and/or distributing art, merchandise and other goods based on Mr. Frazetta's original artwork, including, but not limited to, the Marks and the Death Dealer Mark, Defendant is depriving Frazetta Properties of its exclusive right to control, and benefit from, its trademarks.

78. If permitted to continue, Defendant's infringing actions will nullify Frazetta Properties' right to the exclusive use of the Marks and the Death Dealer Mark, free from infringement, and will have a substantial and adverse effect on Frazetta Properties' existing and projected future interstate business of marketing Mr. Frazetta's artwork identified by the Marks and the Death Dealer Mark.

79. Defendant's unauthorized use of the Marks and the Death Dealer Mark is likely to cause confusion, to cause mistake, and to deceive, to the detriment of Frazetta Properties and consumers, collectors, and fans of Mr. Frazetta's art.

80. Frazetta Properties has been, and continues to be, damaged by Defendant's activities and conduct. Defendant has profited thereby and, unless his conduct is enjoined, Frazetta Properties will suffer irreparable injury as a result of

the damage to Mr. Frazetta's reputation and goodwill; such irreparable injury cannot be adequately calculated or compensated by money damages. Accordingly, Frazetta Properties is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

81. On information and belief, Defendant's acts of trademark infringement have been committed willfully, deliberately, and maliciously with the intent to cause confusion and mistake and to deceive. Accordingly, Frazetta Properties is entitled to a judgment of three times its damages and Defendant's ill-gotten profits, together with reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(a).

COUNT III

(False Designation of Origin Pursuant To 15 U.S.C. § 1125)

82. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 81 of the Complaint as if fully set forth herein.

83. Frazetta Properties has a legally protectable interest in all of Mr. Frazetta's extensive body of artwork created prior to August 14, 2009.

84. Frazetta Properties is authorized to promote its interest in Mr. Frazetta's artwork through the use of Mr. Frazetta's name and likeness.

85. As a world-renowned fantasy artist with a legion of loyal fans, Mr. Frazetta's name and likeness has commercial value. Mr. Frazetta's name and his likeness are well known among his many fans.

86. Defendant is using Mr. Frazetta's name and likeness for commercial and/or advertising purposes on his commercial website, www.frazettaartgallery.com. Defendant has created, marketed, advertised and sold art, merchandise and other goods based not only on Mr. Frazetta's original artwork, but also based on his name and likeness.

87. The art, merchandise and other goods that Defendant has created, marketed, advertised and/or sold incorporates and/or uses Mr. Frazetta's name, and Defendant specifically markets the art, merchandise and other goods that he sells under the distinctive "Frank Frazetta" name. Defendant uses Mr. Frazetta's name and likeness throughout his website.

88. Defendant's use of Mr. Frazetta's name and likeness throughout his commercial website, www.frazettaartgallery.com, is done by Defendant for the purpose of promoting the sale of art, merchandise and other goods.

89. The numerous photographs and images of Mr. Frazetta on Defendant's commercial website creates the distinct appearance that Mr. Frazetta endorses, sponsors and/or approves of Defendant's website and the art, merchandise and other goods sold through it. The first page of Defendant's website claims, "[y]ou have entered the exclusive website of Frank Frazetta, creative artist supreme." Numerous other statements on the website imply that it is fully authorized and endorsed by Mr. Frazetta.

90. Defendant's use of Mr. Frazetta's name and likeness on his commercial website to identify his goods and/or services is likely to create confusion concerning Mr. Frazetta's endorsement, sponsorship and/or approval of those good and/or services.

91. Defendant's unauthorized use of Mr. Frazetta's name and likeness on his commercial website is likely to cause confusion in the trade and among the general consuming public as to the origin, sponsorship and/or affiliation of the goods and/or services being sold on Defendant's website.

92. Defendant's unauthorized use of Mr. Frazetta's name and likeness in connection with his creation, marketing, advertising and sale of goods and/or services being sold on Defendant's website tends falsely to describe or represent the designation of origin of those goods and/or services, and such descriptions and representations are likely to create confusion among the consuming public, all to the detriment of Frazetta Properties.

93. Defendant's unauthorized use of Mr. Frazetta's name and likeness on his commercial website, which is viewed by members of the consuming public, has the effect of falsely representing and/or implying that Mr. Frazetta sponsors, endorses and/or approves of the goods and/or services on being offered on Defendant's website.

94. The above-alleged conduct by Defendant constitutes a false endorsement or false designation of origin of goods and/or services in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

95. Frazetta Properties has sustained injury, loss and damages caused by the Defendant's above-alleged conduct and, absent entry of a preliminary and permanent injunction by this Court, Frazetta Properties will continue to suffer irreparable injury to its goodwill and reputation, as well as monetary damages, in an amount to be proven at trial.

COUNT IV

(Counterfeiting Pursuant To 15 U.S.C. §§ 1114 and 1116)

96. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 95 of the Complaint as if fully set forth herein.

97. Frazetta Properties is the holder of all of the artwork created by Mr. Frazetta prior to August 14, 2009, and all attendant intellectual property rights in all such artwork, including, but not limited to, all trademarks and copyrights, all claims or causes of action for infringement of those rights, and all rights to manage, license, and promote Mr. Frazetta's extensive body of artwork.

98. Upon information and belief, Defendant has and continues to make unauthorized use of Frazetta Properties intellectual property rights in artwork created by Mr. Frazetta by creating, reproducing, marketing, advertising, selling and offering for sale works of art, merchandise and other goods based on Mr. Frazetta's original artwork.

99. Upon information and belief, the copies or colorable imitations of the stylized Frazetta signature and the Death Dealer marks created and used by the Defendant in connection with his commercial business constitute counterfeits as defined in 15 U.S.C. § 1116(d).

100. Frazetta Properties has been, and continues to be, damaged by the Defendant's activities and conduct, as alleged above. Defendant has profited thereby and, unless his conduct is enjoined, Frazetta Properties will suffer irreparable injury as a result of the damage to Mr. Frazetta's reputation and goodwill; such irreparable injury cannot be adequately calculated or compensated by money damages. Accordingly, Frazetta Properties is entitled to preliminary and permanent injunctive relief.

101. Upon information and belief, Defendant's acts of counterfeiting have been committed willfully, deliberately, and maliciously with the intent to cause confusion and mistake and to deceive. Accordingly, Frazetta Properties is entitled to a judgment of three times its damages and Defendant's ill-gotten profits, together

with reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(a), trebling of damages pursuant to § 1117(b), and an election of statutory damages (such election to be made at a later time) pursuant to § 1117(c).

COUNT V

(Copyright Infringement - 17 U.S.C. § 501)

102. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 101 of the Complaint as if fully set forth herein.

103. Frazetta Properties has filed copyright applications on the following paintings created by Mr. Frazetta: Death Dealer I-VI, Dark Kingdom, Carson of Venus, Kane on the Golden Sea; Silver Warrior, Wolves, Fire Demon, Swamp Demon, Dracula Meets Wolfman, The Mood Maid, Flash for Freedom, Neanderthal, The Sorcerer, Nightstalker, Combat, The Bear, Invaders, Tyrannosaurus Rex, Headless Horseman (I and II) (collectively, the "Works").

104. Neither Frazetta Properties nor its predecessor, Mr. Frazetta, relinquished its copyright rights in the Works.

105. Defendant has reproduced and sold identical, or nearly identical, copies of and/or derivative works based on, the Death Dealer images without permission from Frazetta Properties.

106. Upon information and belief, Defendant has reproduced and sold identical, or nearly identical, copies of and/or derivative works based on the Works without permission from Frazetta Properties.

107. Defendant's acts constitute copyright infringement of Mr. Frazetta's Death Dealer image and the Works under 17 U.S.C. §§ 106 and 501, *et seq.*

108. Defendant will continue to infringe Frazetta Properties' copyright in Death Dealer and the Works unless he is preliminary and permanently enjoined by this Court.

109. Frazetta Properties has been and continues to be damaged by Defendant's acts of infringement and is entitled to a preliminary and permanent injunction, and award of damages under 17 U.S.C. §§ 502, 504(a)(1), and 504(b), (c).

110. Frazetta Properties also is entitled to payment of the costs and fees, including its attorneys' fees, incurred in connection with pursuing this action under 17 U.S.C. § 505.

111. Upon information and belief, Defendant's infringing acts were undertaken and/or continued with knowledge of Frazetta Properties' rights and without any good faith basis in law or fact that Defendant's actions were legal, thus Defendant's infringing acts were committed willfully and with reckless disregard for Frazetta Properties' known rights.

COUNT VI

(Violation of 42 Pa. Cons. Stat. § 8316)

112. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 111 of the Complaint as if fully set forth herein.

113. Mr. Frazetta has authorized in writing Frazetta Properties to license the commercial or advertising purposes of Mr. Frazetta's name and likeness.

114. Mr. Frazetta's name and likeness has commercial value. Mr. Frazetta is a world-renowned fantasy and comic book artist. Mr. Frazetta has created, among other things, paintings, book covers, movie posters, and record album covers. Several books regarding Mr. Frazetta's artwork have been published. Mr. Frazetta's name and his likeness are well known among fans of these genres.

115. Defendant is using Mr. Frazetta's name and likeness for commercial and/or advertising purposes. Defendant has created, marketed, advertised and sold art, merchandise and other goods based not only on Mr. Frazetta's original artwork, but also based on his name and likeness.

116. The art, merchandise and other goods that Defendant has created, marketed, advertised and/or sold incorporates and/or uses Mr. Frazetta's name, and Defendant specifically markets the art, merchandise and other goods he sells under

the distinctive "Frank Frazetta" name. Defendant uses Mr. Frazetta's name and stylized signature on his website.

117. Defendant is using Mr. Frazetta's name and likeness throughout his commercial website, www.frazettaartgallery.com, in order to promote the sale of art, merchandise and other goods. There are numerous photographs and images of Mr. Frazetta on Defendant's website that creates the appearance of an endorsement of Defendant's website and the art, merchandise and other goods sold through it.

118. By letter dated January 28, 2010, Frazetta Properties and Mr. Frazetta terminated Defendant's ability to use Mr. Frazetta's name and likeness for any purpose.

119. Defendant has actual knowledge that he was, and is, using Mr. Frazetta's name and likeness without any right, license, or permission in connection with his creation, marketing, advertising and/or sale of unauthorized copies of art, merchandise and other goods based on the original art work of Frank Frazetta.

120. Pursuant to 42 Pa. Cons. Stat. § 8316(a), Defendant should be enjoined from continuing to make unauthorized use of Mr. Frazetta's name and likeness.

121. Frazetta Properties has suffered, and will continue to suffer, injury, loss and damages as a result of Defendant's unauthorized use of Mr. Frazetta's name and likeness. The Defendant has profited thereby and, unless his conduct is

enjoined, Frazetta Properties will suffer irreparable injury, which cannot adequately be calculated or compensated by money damages. Accordingly, Frazetta Properties is entitled to preliminary and permanent injunctive relief pursuant to 42 Pa. Cons. Stat. § 8316(a).

122. Frazetta Properties has suffered, and will continue to suffer, injury, loss and damages as a result of Defendant's unauthorized use of Mr. Frazetta's name and likeness. Pursuant to 42 Pa. Cons. Stat. § 8316(a), Frazetta Properties is entitled to recover damages suffered as a result of this loss in an amount to be proven at trial.

COUNT VII

(Declaratory Judgment - 28 U.S.C. § 2201)

123. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 122 of the Complaint as if fully set forth herein.

124. An actual, justiciable controversy exists within the meaning of 28 U.S.C. § 2201 between and among Frazetta Properties and Defendant concerning the parties' respective rights and legal obligations under a document dated February 5, 2000 (a copy of which is attached hereto as Exhibit 6), which Defendant alleges is a valid agreement.

125. Frazetta Properties disputes the authenticity of the purported agreement set forth in the February 5, 2000 Document, and whether the purported agreement was entered into at all. The February 5, 2000 Document is purportedly signed by Frank Frazetta, Jr., Frank Frazetta, and Eleanor “Ellie” Frazetta.

126. In the event the Court determines that the February 5, 2000 document constituted a valid agreement, Frazetta Properties seeks a declaration that any rights or legal obligations Defendant may have had were previously terminated, including, but not limited to, by Frazetta Properties on or about January 28, 2010 pursuant to the Cease and Desist letter. If the Court were to determine that any purported rights of Defendant were not terminated by Frazetta Properties, then Frazetta Properties seeks a declaration of any rights held by Defendant, if any.

COUNT VIII
(Breach of Contract)

127. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 126 of the Complaint as if fully set forth herein.

128. Defendant alleges that a February 5, 2000 document, a copy of which is attached hereto as Exhibit 6 (the “February 5, 2000 Document”), is a valid agreement between Frank Frazetta, Jr., his father, Frank Frazetta, and his now-deceased mother, Eleanor “Ellie” Frazetta.

129. Defendant alleges that the February 5, 2000 Document authorizes him to operate a website for the purpose of marketing, creating and selling art, merchandise and other goods based on the original art work of his father, Frank Frazetta.

130. In the event the Court determines that the February 5, 2000 Document is or was a valid agreement, Defendant has breached his obligations under that agreement, including, but not limited to, by failing to: (a) pay to the Mr. Frazetta and/or Frazetta Properties royalties based on Frank Frazetta, Jr.'s sales, including, but not limited to, sales through the frazettaartgallery.com website, of any art, merchandise and/or other goods based on art work created by Mr. Frazetta; and (b) provide an accounting reflecting Frank Frazetta, Jr.'s sales, including, but not limited to, sales through the frazettaartgallery.com website, of any art, merchandise and/or other goods based on art work created by Mr. Frazetta.

131. As a consequence of Defendant's breach of alleged contract, the alleged contract is terminated, and Frazetta Properties has suffered and will continue to suffer damages in an amount to be proven at trial.

COUNT IX

(Money Had and Received)

132. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 131 of the Complaint as if fully set forth herein.

133. Effective as of August 14, 2009, Mr. Frazetta transferred and assigned to Frazetta Properties all of the artwork created by him prior to that date and all attendant intellectual property rights in the artwork, including trademarks and copyrights, all claims or causes of action for infringement of those rights, and all rights to manage, license, and promote Mr. Frazetta's extensive body of artwork.

134. Upon information and belief, Defendant has sold and/or licensed art, merchandise and/or other goods based on artwork created by Mr. Frazetta for which Defendant has received revenue that he has failed to turn over to Frazetta Properties, or previously turned over to Frank Frazetta.

135. Defendant's actions or omissions has caused, and continues to cause, Frazetta Properties to suffer money damages in an amount to proven at trial.

COUNT X
(Accounting)

136. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 135 of the Complaint as if fully set forth herein.

137. Upon information and belief, Defendant has held himself out as an authorized representative of Mr. Frazetta in conjunction with the sale and/or licensing of art, merchandise and/or other goods based on artwork created by Mr. Frazetta.

138. Upon information and belief, Defendant has used his commercial website, www.frazettaartgallery.com, to sell art, merchandise and/or other goods based on artwork created by Mr. Frazetta.

139. Upon information and belief, Defendant has licensed others to create art, merchandise and/or other goods based on artwork created by Mr. Frazetta.

140. Upon information and belief, Defendant has artwork originally created by Mr. Frazetta in his possession, custody or control that Defendant claims is on consignment from Mr. Frazetta and/or his now-deceased mother, Eleanor “Ellie” Frazetta.

141. Upon information and belief, Defendant purported to license the use of the Death Dealer character in conjunction with the creation of a life-size statue of the Death Dealer character that was sold to the U.S. Army.

142. Defendant has a duty to keep and render accounts reflecting his sale and/or license of art, merchandise and/or any other goods based on artwork created by Mr. Frazetta.

143. By letter dated January 28, 2010, Frazetta Properties demanded that Defendant provide an accounting of any monies he had received on Mr. Frazetta's account or as a result of any sales or licensing of art, merchandise and/or any other goods based on artwork created by Mr. Frazetta.

144. Defendant has neglected, failed and/or refused, despite demand, to provide Frazetta Properties a full and complete accounting of any sales and/or licensing of art, merchandise and/or any other goods based on artwork created by Mr. Frazetta.

145. As a result of Defendant's failure to provide a full and complete accounting of any monies he has received from the sale or licensing of art, merchandise and/or any other goods based on artwork created by Mr. Frazetta, Frazetta Properties has suffered and continues to suffer damages in an amount to be proven at trial. Defendant should also be ordered to turn over any money, art, merchandise, or any other goods that he allegedly holds on behalf of Mr. Frazetta.

COUNT XI
(Unjust Enrichment)

146. Frazetta Properties repeats and re-alleges each of the preceding allegations set forth in paragraphs 1 to 145 of the Complaint as if fully set forth herein.

147. Defendant has received, and continues to receive, monetary benefits from his unauthorized use of original artwork created by Mr. Frazetta, the intellectual property rights to which are held by Frazetta Properties, including all trademarks and copyrights.

148. Defendant's unauthorized commercial use of original artwork created by Mr. Frazetta, as alleged in more detail above, has unjustly and improperly enriched the Defendant to the detriment of Frazetta Properties.

149. Equity and good conscience dictate that Defendant should not, under principles of equity and fairness, be unjustly enriched as a result of his unauthorized and improper use of original artwork created by Mr. Frazetta, the intellectual property rights to which are held by Frazetta Properties.

150. As a result of the unauthorized and improper actions and omissions of Defendant, Frazetta Properties has suffered, and continues to suffer, money damages.

151. Under the circumstances, Defendant's retention of any monetary benefits derived from his unauthorized use of original artwork created by Mr. Frazetta would be unjust.

JURY DEMAND

Frazetta Properties, LLC hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Frazetta Properties, LLC respectfully requests that this Honorable Court grant the following relief:

1. Enter a preliminary injunction against Defendant, Alfonso Frank Frazetta, a/k/a Frank Frazetta, Jr., doing business as www.frazettaartgallery.com, and all officers, agents, servants, employees, attorneys, or any person who is in concert or participation with any of the foregoing persons (hereinafter "Defendant"), enjoining and restraining Defendant from:

- (a) creating, reproducing, publishing, distributing, advertising, selling, or otherwise disseminating any art, merchandise or other goods, whether through www.frazettaartgallery.com or otherwise, that is based on artwork created by Frank Frazetta, the intellectual property rights to which are held by Frazetta Properties;

- (b) using Frazetta Properties' registered and unregistered trademarks, including, but not limited to, the stylized Frazetta signature and Frank Frazetta's name and likeness;
- (c) using the image of Death Dealer, or the image of any other image or character created by Frank Frazetta;
- (d) creating, reproducing, publishing, distributing, advertising, selling, or otherwise disseminating, and/or authorizing or licensing rights to reproduce, publish, distribute, advertise, sell, or otherwise disseminate, any publication, product, good or service of any kind that uses or reproduces, or that is based on, Frazetta Properties' registered and unregistered trademarks and/or the artwork of Frank Frazetta, the characters created by Frank Frazetta, or images of the characters created by Frank Frazetta; and,
- (e) advertising, representing, claiming or in any manner suggesting that www.frazettaartgallery.com is the "authorized" or "genuine" or "official" or "exclusive" website of Frank Frazetta artwork, merchandise and/or other goods or services.

2. As to Counts I through V, enter judgment in favor of Frazetta Properties, LLC and against the Alfonso Frank Frazetta, a/k/a Frank Frazetta, Jr., for infringement of its intellectual property rights and award Frazetta Properties its

damages, interest and costs, including attorneys' fees and any appropriate equitable relief;

3. As to Count VI, enter judgment in favor of Frazetta Properties, LLC and against Alfonso Frank Frazetta, a/k/a Frank Frazetta, Jr., for his improper commercial use of Frank Frazetta's name and likeness in violation of 42 Pa. Cons. Stat. § 8316, and award Frazetta Properties its damages, interest and costs, including attorneys' fees;

4. As to Count VII, enter judgment in favor of Frazetta Properties, LLC and against the Alfonso Frank Frazetta, a/k/a Frank Frazetta, Jr., declaring the rights and legal obligations of the parties under the February 5, 2000 document, and declaring that Frazetta Properties terminated any rights Defendant had, if any, by no later than January 28, 2010.

5. As to Counts VIII and IX, enter judgment in favor of Frazetta Properties, LLC and against the Alfonso Frank Frazetta, a/k/a Frank Frazetta, Jr., for breach of contract and award Frazetta Properties its damages, interest and costs, including attorneys' fees;

6. As to Count X, enter judgment in favor of Frazetta Properties, LLC and against the Alfonso Frank Frazetta, a/k/a Frank Frazetta, Jr., and order that Defendant provide Frazetta Properties a full and complete accounting of any and all revenues derived from the sale and/or licensing of art, merchandise and other

goods or services based on artwork created by Frank Frazetta, the intellectual property rights to which are held by Frazetta Properties, and enter judgment once an accounting has been provided that fully compensates Frazetta Properties for all damages, interest and costs, including attorneys' fees, resulting from Defendant's failure to properly render an accounting, and award any other or further equitable relief the Court deems appropriate and fair;

7. As to Count XI, enter judgment in favor of Frazetta Properties, LLC and against Alfonso Frank Frazetta, a/k/a Frank Frazetta, Jr., and award Frazetta Properties its damages, interest and costs, including attorneys' fees; and

8. Award such other and further relief in favor of Frazetta Properties, LLC and against Alfonso Frank Frazetta, a/k/a Frank Frazetta, Jr., as this Court deems reasonable and appropriate in the circumstances.

Respectfully submitted,

**NEWMAN, WILLIAMS, MISHKIN,
CORVELEYN, WOLFE & FARERI, P.C.**

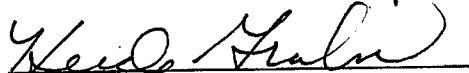
By: /s/ Gerard J. Geiger, Esq.
Attorney I.D. No. PA44099

Dated: March 10, 2010

VERIFICATION

I, Heidi Grabin, in my capacity as Manager for Frazetta Properties, LLC, hereby verify under the penalty of perjury that I have read the facts and allegations contained in the foregoing Verified Complaint and Jury Demand. With respect to the facts contained in the foregoing Verified Complaint and Jury Demand of which I have direct, personal knowledge, I hereby verify that such information is true and correct. With respect to the facts in the foregoing Verified Complaint and Jury Demand of which I do not have direct, personal knowledge, I verify, upon information and belief, that such information is true and accurate to the best of my knowledge and belief.

I verify under the penalty of perjury that the foregoing is true and correct. Executed on this 10th day of March, 2010.


Heidi Grabin

In her capacity as Manager of
Frazetta Properties, LLC