

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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CONAN PROPERTIES INTERNATIONAL :

LLC and ROBERT E HOWARD :

PROPERTIES INC., : Civil Action No. _____

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Plaintiffs, :

:

-against- : **COMPLAINT**

:

RICARDO JOVÉ SANCHEZ, :

:

Defendant. :

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Plaintiffs Conan Properties International LLC and Robert E Howard Properties Inc., by their attorneys Loeb & Loeb LLP, as and for their complaint against Defendant Ricardo Jové Sanchez, allege as follows:

NATURE OF THE ACTION

1. This action arises from Defendant’s unauthorized and willful infringement of Plaintiffs’ copyrights and trademarks associated with the *Conan the Barbarian* franchise and other works originally created by the late pulp fiction author Robert E. Howard (“Howard”).

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) and (b), and 15 U.S.C. § 1121.

3. The Court has personal jurisdiction over Defendant because, among other things, Defendant has expressly consented to jurisdiction in this District by signed letter (attached as **Exhibit A**) pursuant to 17 U.S.C. § 512(g)(3)(D) of the Digital Millennium Copyright Act

(“DMCA”), and because Defendant has performed acts directed at and causing injury in New York which give rise to this Complaint.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

THE PARTIES

5. Plaintiff Conan Properties International LLC (“CPI”) is a Delaware limited liability company, with its principal place of business in Beverly Hills, California.

6. Plaintiff Robert E Howard Properties Inc. (“REHP”) is a California corporation, with its principal place of business in Beverly Hills, California.

7. Upon information and belief, Defendant Ricardo Jové Sanchez is a citizen of Spain.

FACTS RELEVANT TO ALL CLAIMS

PLAINTIFFS’ COPYRIGHTS AND TRADEMARKS

8. Robert E. Howard was a prolific author of fantasy works published in popular “pulp fiction” magazines in the 1930s. Most famously, many of Howard’s stories were based upon his original fictional character “Conan the Barbarian” (the “Conan Character”). Other fictional characters created by Howard and first appearing in his works include “Almuric” a/k/a “Ironhand,” “Bran Mak Morn,” “Cormac Mac Art,” “Dark Agnes,” “El Borak,” “Kull” a/k/a/ “Kull of Atlantis” a/k/a “Kull the Conqueror,” “Sailor Steve Costigan,” “Solomon Kane,” “Sonya de Rogatino” a/k/a “Red Sonya,” and “Steve Harrison” (the “REH Characters”).

9. Plaintiffs are engaged in the business of film and television financing and production, as well as branding, merchandising and licensing trademarks and copyrights in, among other things, works and characters created by Howard. Affiliated through common

ownership, Plaintiffs collectively own the copyrights and trademarks associated with the Conan Character and the REH Characters, as described below.

10. CPI owns the copyrights to the “Conan” works listed in **Exhibit B** hereto (the “Original Conan Works”), which were authored by Howard and in which the Conan Character originally appeared.

11. In addition to the Original Conan Works, the Conan Character has been portrayed in numerous other works, including books, toys, comic books, video games, cover art, films and television series. These include the works listed in **Exhibit C** hereto (“Additional Conan Works,” and together with the “Original Conan Works,” the “Conan Works”), the copyrights to which are also owned by CPI.

12. REHP owns the copyrights to the works listed in **Exhibit D** hereto (the “REH Works”), in which one or more of the REH Characters are portrayed.

13. Plaintiffs and/or their predecessors-in-interest have complied with all relevant provisions of the Copyright Act with respect to the Conan Works and the REH Works, as to which the copyrights subsist and remain in full effect.

14. The Conan Character and REH Characters are independently copyrightable elements, respectively, of the Conan Works and the REH Works and warrant copyright protection apart from those works.

15. CPI also owns trademark registrations for the trademarks CONAN and CONAN THE BARBARIAN covering a wide range of goods and services, including, *inter alia*, the trademarks listed in **Exhibit E** hereto and elements of indicia associated with the Conan Character (the “Conan Marks”).

16. REHP also owns trademark registrations for the trademarks ROBERT E. HOWARD, ALMURIC, BRAN MAK MORN, EL BORAK, DARK AGNES, KULL, and SOLOMON KANE including, *inter alia*, the trademarks also listed in **Exhibit E** hereto and elements of indicia associated with the REHP Characters (collectively the “REH Marks”).

17. The Conan Marks and the Conan Character (collectively, the “Conan Properties”), and the REH Marks and REH Characters (collectively, the “REH Properties”), have been extensively and consistently used by Plaintiffs and their predecessors-in-interest in connection with products and works associated with, respectively, the Conan Character and REH Characters, including but not limited to toys, books, comic books, films, television series and video games.

18. Plaintiffs and their predecessors-in-interest have expended substantial amounts of time, effort and money to ensure that the public associates the Conan Marks and REH Marks with Plaintiffs, with goods authorized by Plaintiffs, and with the Conan Character and REH Characters owned by Plaintiffs.

19. Plaintiffs have been vigilant in protecting their respective interests in their respective intellectual properties. Both Plaintiffs maintain their own extensive and regulated licensing programs with respect to their brands’ products and productions, and each has taken action against third parties throughout the world for the unauthorized use of the Conan Properties and REH Properties, respectively.

20. As a result of the continuous use and enforcement of the Conan Marks and REH Marks by Plaintiffs and/or their predecessors-in-interest, these marks are recognized in the minds of the consuming public, and are now famous and serve to identify products created and/or

authorized by Plaintiffs. Through this widespread public recognition, the Conan Marks and REH Marks have garnered goodwill and have become valuable assets, respectively, to CPI and REHP.

DEFENDANT'S INFRINGEMENTS

21. Defendant is a sculptor who has manufactured, distributed and sold and/or offered to manufacture, distribute and sell unauthorized reproductions of statues depicting the Conan Character and the REH Characters (collectively the "Infringing Works") through Kickstarter, a popular crowd-funding Website headquartered in Brooklyn, New York.

22. Defendant has also publicly displayed images of the Infringing Works through his Kickstarter campaign and on the popular social media platform Facebook.

23. Defendant is not authorized by Plaintiffs to display or distribute the Infringing Works, nor have Plaintiffs authorized, licensed, or in any manner allowed Defendant to manufacture, distribute, sell, or offer for sale any products which depict the Conan Character or the REHP Characters.

24. Not only has Defendant infringed the copyrights to the Conan Character and the REH Characters, but his campaign has freely used the Conan Marks and REH Marks to advertise, market, promote and sell his Infringing Works on Kickstarter, without authorization, license or permission.

25. Examples of screenshots from Defendant's Kickstarter campaign and his Facebook page showing Defendant's infringing activities are attached hereto as **Exhibit F**.

26. Plaintiffs submitted a takedown notice to Kickstarter pursuant to the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 512, in order to prevent Defendant's display and sale of the Infringing Works on the Kickstarter crowdsourcing platform.

27. On or around November 2, 2016, Kickstarter informed Plaintiffs that Defendant had filed a counter-notification pursuant to Section 512(g)(3) of the DMCA, 17 U.S.C. § 512(g)(3), asserting: “I declare under penalty of perjury and a good faith belief that the material was removed or disabled as a result of mistake, since all the material displayed in the campaign are copyright of my property ... and the campaign has no names or trademarks of another company.” (*See* Ex. A).

28. That representation was false, as the material displayed in Defendant’s campaign infringed Plaintiffs’ copyrights and trademarks in the Conan Character and REH Characters and their trademarks in the Conan Properties and REH Properties. Indeed, in an attempt to conceal this infringing activity, Defendant removed the Plaintiffs’ respective character names and marks from his Kickstarter campaign. Defendant replaced most of Plaintiffs’ respective character names and properties with generic names, as shown through the screenshot comparisons set forth in **Exhibit G** hereto.

29. However, the underlying Infringing Works were left unchanged, and continue to infringe Plaintiffs’ copyrights. For example, Defendant’s sculpture of the Conan Character is a near exact replica of a depiction of the Conan Character that first appeared on a Conan book published in the 1970s. (*See* **Exhibit H**).

30. In addition to impermissibly displaying the Infringing Works themselves, Defendant has also displayed other pictorial representations of the Conan Character and REH Characters on his Kickstarter campaign and Facebook page, including, for example, a picture of the Conan Character substantially similar to the iconic poster for the 1980s film “Conan the Barbarian” featuring Arnold Schwarzenegger. (*Id.*).

31. Defendant is well aware of Plaintiffs' ownership of the Conan Properties and REH Properties, as he requested a license from Plaintiffs to exploit those properties. Despite Defendant's acknowledgement that a license was necessary, Defendant's infringing activities have continued without license or authorization as a result of Defendant's false counter-notification pursuant to the DMCA.

COUNT I
(Copyright Infringement)

32. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 31 of this Complaint as if fully set forth herein.

33. Plaintiffs are the owners of the exclusive rights under Section 106 of the Copyright Act in the Conan Works and REH Works.

34. In and during the three-year period preceding the filing of this action, Defendant has reproduced, publicly displayed, distributed and/or created derivative works of copyrighted elements of the Conan Works and REH Works, including the Conan Character and REH Characters appearing therein.

35. Defendant's exploitation of the Conan Works and REH Works is without Plaintiffs' consent or authorization.

36. By virtue of the foregoing, Defendant has infringed, and continues to infringe, Plaintiffs' valid and existing copyrights in the Conan Works and REH Works.

37. Defendant's acts of infringement have been and are willful, intentional and purposeful, in disregard of and indifferent to Plaintiffs' rights.

38. As a direct and proximate result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to the maximum statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17

U.S.C. § 504(b), Plaintiffs are entitled to their actual damages plus Defendant's profits from infringement in an amount to be proven at trial.

39. Plaintiffs are further entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

40. Plaintiffs have been and continue to be irreparably damaged by Defendant's infringing activities and conduct. Unless Defendant's infringing activities are enjoined, Plaintiffs will suffer irreparable injury which cannot be adequately calculated or compensated solely by money damages.

COUNT II
(Federal Unfair Competition, 15 U.S.C. § 1125(a))

41. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 40 of this Complaint as if fully set forth herein.

42. As a direct result of CPI's and REHP's longstanding use, sales, advertising, and marketing, the Conan Marks and REH Marks have each acquired secondary and distinctive meaning among the public who have come to identify such Conan Marks and REH Marks with CPI and REHP, respectively, and their products.

43. Defendant's unauthorized use of the Conan Marks and REH Marks to advertise, market, promote and sell his Infringing Works is likely to cause confusion, mistake or deception that Plaintiffs have approved, authorized or sponsored the Infringing Works and/or are the source of the Infringing Works.

44. By misappropriating and using the Conan Marks and REH Marks in connection with the advertising, marketing, promotion and sale of the Infringing Works, Defendant is unfairly competing with Plaintiffs' legitimate, licensed products in the marketplace bearing the Conan Marks and REH Marks.

45. Defendant has caused, or intends to cause, such products to enter into interstate commerce willfully and with full knowledge of the falsity of the designation of their origin and description and representation in an effort to mislead the purchasing public into believing that their products are authorized and sponsored by Plaintiffs.

46. Defendant has acted willfully and with knowledge of Plaintiffs' ownership of the Conan Marks and REH Marks and to unfairly benefit from the goodwill associated therewith.

47. Because of Defendant's unlawful actions, Plaintiffs have suffered and continue to suffer irreparable harm, including, but not limited to, detriment to and diminution in value of its Conan Marks and REH Marks, for which there is no adequate remedy at law. Accordingly, Plaintiffs are entitled to injunctive relief, including under 15 U.S.C. § 1116.

48. Plaintiff has suffered and continues to suffer injury and is entitled to recover all damages sustained by Defendant's actions, all profits realized by Defendant as a result of its infringement, and costs of suit, pursuant to 15 U.S.C. § 1117.

49. By reason of Defendant's acts, this is an exceptional case making Plaintiff eligible for an award of attorneys' fees under 15 U.S.C. § 1117.

COUNT III
(Common Law Trademark Infringement / Unfair Competition)

50. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 49 of this Complaint as if fully set forth herein.

51. Defendant's aforesaid activities constitute deliberate trademark infringement, unfair competition, misappropriation, unfair and fraudulent business practices, and misuse of the Conan Marks and REH Marks under the common law of the State of New York

52. Defendants' conduct is willful, deliberate, intentional, and in bad faith.

53. Plaintiffs have suffered and continue to suffer irreparable harm, including, but not limited to, detriment to and diminution in value of its Conan Marks and REH Marks, for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

- A. For preliminary and permanent injunctive relief restraining and enjoining Defendant and his agents, servants, officers, directors, employees, licensees, partners, successors and assigns, and all persons, firms, corporations or entities acting under his direction, authority or control, and all persons acting in concert or participation with any of them, from directly or indirectly:
- i. Reproducing, preparing derivative works of, publicly displaying, distributing or otherwise infringing in any manner the Conan Works and the REH Works, including, without limitation, the Conan Character and REH Characters therein, or causing, enabling, facilitating, encouraging, promoting, inducing or participating in any such infringements;
 - ii. Using or exploiting the Conan Marks and the REH Marks or any other mark, name, logo, or source designation of any kind that is a copy, reproduction, colorable imitation, or simulation of or confusingly similar to the Conan Mark or the REH Marks in connection with the marketing, promotion, advertising, sale or offering for sale of goods or services, or causing, enabling, facilitating, encouraging, promoting, inducing or participating in any such infringements;

- iii. Committing any other act likely to cause the public to believe that Defendant's goods or services are in any way connected, affiliated or associated with Plaintiffs, the Conan Properties and/or the REH Properties, or causing, enabling, facilitating, encouraging, promoting, inducing or participating in any such infringements; and
 - iv. Secreting, destroying, removing, or otherwise dealing with the Infringing Works, or any books or records that may contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, or displaying of the Infringing Works or any other works and materials portraying, depicting or bearing any of the Conan Properties or REH Properties.
- B. Directing that Defendant deliver for destruction all works and materials portraying, depicting or bearing any of the Conan Properties or REH Properties, including the Infringing Works and any other statues, molds, labels, signs, prints, packages, wrappers, advertisements and other materials relating thereto, in Defendant's possession, custody or control;
- C. Directing Defendant to report to this Court within thirty (30) days after a preliminary and/or permanent injunction is entered to show his compliance with paragraphs A and B above;
- D. For statutory damages pursuant to 17 U.S.C. § 504(c) for the Conan Works and REH Works that have been infringed;

- E. For actual damages, an accounting and disgorgement of profits resulting from Defendant's conduct, including pursuant to 17 U.S.C. § 504(b) and 15 U.S.C. § 1117, in an amount to be proven at trial;
- F. For an award of costs and reasonable attorneys' fees incurred in this action, including pursuant to 17 U.S.C. § 505 and 15 U.S.C. § 1117;
- G. For punitive damages;
- H. For prejudgment and post-judgment interest; and
- I. For such other and further relief as the Court deems just, proper, and equitable.

Dated: New York, New York
January 11, 2017

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