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6 BRANDSTETTER

7
8 THE UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10
11 JOSEPH A. BRANDSTETTER, an
12 individual,

13 Plaintiff,

14 v.

15 CLAVIA DMI AB, a Swedish
16 corporation; AMERICAN MUSIC
& SOUND, LLC, a Delaware
17 corporation; and DOES 1 through
200, inclusive,

18 Defendants.

CASE NO. 2:18-CV-00633

COMPLAINT FOR:

1. **INFRINGEMENT OF
FEDERALLY REGISTERED
TRADEMARK IN VIOLATION
OF THE LANHAM ACT;**
 2. **FALSE DESIGNATION OF
ORIGIN AND FALSE
ADVERTISING IN
VIOLATION OF THE
LANHAM ACT;**
 3. **UNFAIR COMPETITION IN
VIOLATION OF THE
LANHAM ACT;**
 4. **DILUTION IN VIOLATION OF
THE LANHAM ACT;**
 5. **COMMON LAW
TRADEMARK
INFRINGEMENT UNDER
CALIFORNIA LAW;**
 6. **VIOLATION OF CALIFORNIA
BUSINESS AND
PROFESSIONS CODE §§ 14245,
14247 and 14250;**
 7. **VIOLATION OF CALIFORNIA
BUSINESS AND
PROFESSIONS CODE §17200;
AND**
 8. **INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE UNDER
CALIFORNIA LAW**
- DEMAND FOR JURY TRIAL**

1 Plaintiff JOSEPH A. BRANDSTETTER (“BRANDSTETTER” or
2 “Plaintiff”) alleges as follows:

3 **JURISDICTION**

4 1. This is an action for trademark infringement, false designation of origin,
5 dilution and unfair competition under the Trademark Act of 1946, as amended
6 (The Lanham Act, 15 U.S.C. §1051 et seq.) and related causes of action under
7 the laws of the State of California arising from the use by Defendants of the
8 name and mark "Rhodes" and confusingly similar variants and imitations
9 thereof in violation of Plaintiff's rights in their famous "Rhodes" family of
10 registered and common law marks and trade names, as hereinafter set forth.

11 This Court has jurisdiction over this action pursuant to 15 U.S.C. §1121 (actions
12 arising under the Federal Trademark Act), 28 U.S.C. §1338(a) (acts of Congress
13 relating to trademarks), and 28 U.S.C. §1332(a) (diversity of citizenship). The
14 amount in controversy herein exceeds \$75,000, exclusive of interest and costs.
15 Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and (c).

16 2. Plaintiff BRANDSTETTER is and at all times herein mentioned was an
17 individual residing in the County of Los Angeles, State of California.

18 3. Defendant CLAVIA DMI AB is and at all times herein mentioned was a
19 corporation formed under the laws of Sweden and with its principal office and
20 place of business in Sweden. Defendant CLAVIA DMI AB does business in
21 California and in this District and has sufficient contacts with the State of
22 California to justify this Court’s exercise of jurisdiction over Defendant
23 CLAVIA DMI AB. The tortious conduct of Defendant CLAVIA DMI AB
24 which is alleged herein includes intentional actions that were either taken by
25 Defendant CLAVIA DMI AB in the State of California or were purposely
26 directed at California residents.

27 4. Defendant AMERICAN MUSIC & SOUND, LLC, is and at all times
28 herein mentioned was a corporation formed under the laws of Delaware, and

1 with its principal office and place of business in the State of Mississippi.
2 Defendant AMERICAN MUSIC & SOUND, LLC does business in California
3 and in this District and has sufficient contacts with the State of California to
4 justify this Court's exercise of jurisdiction over Defendant AMERICAN
5 MUSIC & SOUND, LLC. The tortious conduct of Defendant AMERICAN
6 MUSIC & SOUND, LLC which is alleged herein includes intentional actions
7 that were either taken by Defendant AMERICAN MUSIC & SOUND, LLC in
8 the State of California or were purposely directed at California residents.

9 5. Plaintiff is ignorant of the true names and capacities, whether individual,
10 corporate or otherwise, of Defendants designated as DOES 1 through 200,
11 inclusive, because discovery from the named Defendants is required in order to
12 discern the identities of the DOE Defendants, who acted as employees, officers
13 or agents of the named Defendants in committing the wrongful acts alleged
14 herein, or who acted as distributors for Defendant CLAVIA DMI AB and
15 distributed products which infringed the trademarks of Plaintiff. Their identities
16 cannot be determined until such discovery is completed. Each DOE Defendant
17 was in some way responsible for, participated in, or contributed to the matters
18 and things complained of herein, and is legally responsible for the damages
19 complained of herein.

20 6. Plaintiff is informed and believes and based thereon alleges that at all
21 times herein mentioned, each of the Defendants sued herein ratified, acquiesced
22 in, consented to and approved each and all of the acts of each of the other
23 Defendants and, therefore, said acts are imputable to each of them.

24 **CLAIM 1**

25 (Against All Defendants for Infringement of Federally Registered Trademark)

26 7. Plaintiff incorporates herein by this reference each of the allegations
27 contained in paragraphs 1 through 6 hereinabove as though fully restated at this
28 point.

1 8. This Claim arises under §32 of The Lanham Act (15 U.S.C. §1114).

2 9. Plaintiff is the owner of the trademark “Rhodes” (the “Rhodes mark”).

3 The Rhodes mark has been registered with the United States Patent and
4 Trademark Office (“USPTO”), Trademark Registration Nos. 2,233,425 (for
5 musical instruments), 2,236,471 (for electronic pianos) and 3,010,911 (for
6 computer software, namely, software for processing digital music files, sound
7 cards in the nature of pre-recorded computer software for generating sounds,
8 and computer software for generating sounds). An Affidavit pursuant to
9 Sections 8 and 15 has been filed with the USPTO, rendering the Rhodes mark
10 incontestable. The Rhodes mark is also registered in over 35 foreign countries,
11 in all of which Plaintiff is the owner. All of the above registrations are valid and
12 subsisting and remain in full force and effect as evidence of the validity thereof
13 and of Plaintiff’s exclusive right to own and use the marks at issue in connection
14 with the goods and services specified in the registrations. The registration of the
15 Rhodes mark operates as constructive notice, to Defendants herein and to
16 anyone else, of Plaintiff’s claim of ownership of the Rhodes mark.

17 10. The Rhodes mark has been continuously used in commerce by Plaintiff
18 or Plaintiff’s predecessors in interest or Plaintiff’s licensees, or the licensees of
19 Plaintiff’s predecessors in interest, at all times since the early 1960s to identify
20 musical instruments, including without limitation the Rhodes piano. Products
21 bearing the Rhodes mark have been extensively advertised and sold throughout
22 the United States, including California, and the world. Since long prior to the
23 acts complained of herein, members of the musical instruments industry, as well
24 as consumers throughout the world, have recognized the name and mark
25 “Rhodes” as a trade name and trademark exclusively identifying products of the
26 highest quality originating exclusively from Plaintiff or Plaintiff’s predecessors
27 in interest or Plaintiff’s licensees, or the licensees of Plaintiff’s predecessors in
28 interest. By virtue of advertising and sales, together with consumer acceptance

1 and recognition, Plaintiff's mark identifies Plaintiff's and Plaintiff's licensees'
2 products only, and distinguishes them from products manufactured and sold by
3 others. Plaintiff's trademark has thus become a valuable asset symbolizing
4 Plaintiff and his licensees, their quality musical products, and their goodwill.
5 The Rhodes mark has become famous and distinctive, and signifies the premier
6 electric or electronic keyboard musical instrument.

7 11. Moreover, as a result of the above, members of the musical instruments
8 industry and members of the consuming public have come to recognize any
9 trademark or service mark beginning with "Rhod" or its phonetic equivalents
10 "Road" or "Rod" when used for a musical instrument or software for generating
11 music as a name extension of Plaintiff's world famous Rhodes mark designating
12 goods of the highest quality originating exclusively from Plaintiff or Plaintiff's
13 predecessors in interest or Plaintiff's licensees, or the licensees of Plaintiff's
14 predecessors in interest.

15 12. Plaintiff is informed and believes and on that basis alleges that, at all
16 times herein mentioned, Defendants, and each of them, have, without the
17 consent of Plaintiff, used the Rhodes mark and confusingly similar variants and
18 imitations thereof on products manufactured, advertised, marketed and sold by
19 said Defendants in California and elsewhere around the world. This use
20 includes, without limitation, the following:

21 13. Plaintiff is informed and believes and on that basis alleges that
22 Defendant CLAVIA DMI AB has manufactured, marketed, advertised,
23 promoted and sold within this District and in other locations, states and
24 countries and continues to manufacture, market, advertise, promote and sell
25 within this District and in other locations, states and countries, directly and/or
26 indirectly, electronic keyboards that purport to generate the sound of a Rhodes
27 electric piano, and such keyboards have displayed and do display the Rhodes
28 mark, such as "VibeyRhodes FS" and "Rubba Roads," and other confusingly

1 similar variants and uses and imitations of the mark, both on the exteriors of the
2 keyboards themselves, and in the LCD screens that are incorporated into the
3 keyboards. One example of a model in which these infringements of the Rhodes
4 mark are found is the Nord Electro 5D. Photographs of particular examples of
5 infringing uses on products manufactured, marketed, advertised, promoted and
6 sold by Defendant CLAVIA DMI AB are attached hereto as Exhibit "1."

7 Furthermore, Plaintiff is informed and believes and on that basis alleges that
8 Defendant CLAVIA DMI AB has used, and continues to use the Rhodes mark
9 in its advertising, publications, manuals, brochures and software. These uses of
10 the Rhodes mark and confusingly similar variants and imitations thereof began
11 after the adoption and use of the Rhodes mark by Plaintiff or Plaintiff's
12 predecessors in interest or Plaintiff's licensees, or the licensees of Plaintiff's
13 predecessors in interest. These uses of the Rhodes mark and confusingly similar
14 variants and imitations thereof are likely to cause confusion or mistake and to
15 deceive members of the public as to the source of origin of the products
16 manufactured and sold by Defendant CLAVIA DMI AB. Although Plaintiff has
17 previously demanded that Defendant CLAVIA DMI AB cease and desist from
18 this infringing conduct, and received assurances that such conduct would cease,
19 and observed that it did cease, Defendant CLAVIA DMI AB now has resumed
20 engaging in unauthorized use of the Rhodes mark and confusingly similar marks
21 on its products, in its brochures and in its advertising.

22 14. Plaintiff is informed and believes and on that basis alleges that
23 Defendant AMERICAN MUSIC & SOUND, LLC is the United States
24 distributor for products manufactured by Defendant CLAVIA DMI AB.
25 Plaintiff is informed and believes and on that basis alleges that Defendant
26 AMERICAN MUSIC & SOUND, LLC has marketed, advertised, promoted and
27 sold within this District and in other locations, states and/or countries and
28 continues to market, advertise, promote and sell within this District and in other

1 locations, states and/or countries electronic keyboards that purport to generate
2 the sound of a Rhodes electric piano, and such keyboards have displayed and do
3 display the Rhodes mark, “VibeyRhodes FS” and “Rubba Roads,” and other
4 confusingly similar variants and uses and imitations of the mark, both on the
5 exteriors of the keyboards themselves, and in the LCD screens that are
6 incorporated into the keyboards. Furthermore, Defendant AMERICAN MUSIC
7 & SOUND, LLC has used, and continues to use the Rhodes mark in its
8 advertising, publications, manuals, brochures and software. These uses of the
9 Rhodes mark and confusingly similar variants and imitations thereof began after
10 the adoption and use of the Rhodes mark by Plaintiff or Plaintiff’s predecessors
11 in interest or Plaintiff’s licensees, or the licensees of Plaintiff’s predecessors in
12 interest. These uses of the Rhodes mark and confusingly similar variants and
13 imitations thereof are likely to cause confusion or mistake and to deceive
14 members of the public as to the source of origin of the products sold by
15 Defendant AMERICAN MUSIC & SOUND, LLC.

16 15. The foregoing actions by Defendants, and each of them, constitute
17 trademark infringement pursuant to California law and United States federal
18 law.

19 16. Plaintiff is informed and believes and based thereon alleges that
20 Defendants, and each of them, committed the foregoing acts with full
21 knowledge of Plaintiff’s rights to the “Rhodes” name and mark and with the
22 intention of exploiting the goodwill built up by Plaintiff and Plaintiff’s
23 predecessors in interest therein.

24 17. Plaintiff is informed and believes and on that basis alleges that
25 Plaintiff’s licensees’ and Defendants’ products are similar and move through
26 similar channels of trade to similar classes of consumers and Plaintiff’s
27 licensees and Defendants are in competition with respect to those products.

28 18. The names and marks used by Defendants are so similar to Plaintiff’s

1 name and mark as to be likely to cause confusion, mistake or deception as to the
2 source or origin of Defendants' products in that members of the general public,
3 musicians and others in the music industry are likely to believe that Defendants'
4 products are provided by, or sponsored by, or approved by, or licensed by, or
5 affiliated with or in some other way legitimately connected with Plaintiff or
6 Plaintiff's licensees, all to Plaintiff's irreparable harm. Moreover, Plaintiff is
7 informed and believes and on that basis alleges that actual confusion has
8 occurred among members of the class of consumers that purchase Plaintiff's
9 licensees' products, resulting in irreparable harm to Plaintiff. Plaintiff is
10 informed and believes and on that basis alleges that members of the general
11 public, musicians and others in the music industry are likely to purchase, and
12 have purchased, the goods manufactured, distributed and/or sold by Defendants,
13 and each of them, because of the confusion, mistake or deception as alleged
14 hereinabove, thereby resulting in a loss of sales and profits to Plaintiff. Plaintiff
15 has no control over the quality of the goods sold by the Defendants, and because
16 of the confusion as to the source engendered by the Defendants, Plaintiff's
17 valuable goodwill in respect to his aforesaid trademark is at the mercy of
18 Defendants. The use by Defendants, and each of them, of the Rhodes mark and
19 confusingly similar variants and imitations of the Rhodes mark has resulted in
20 the dilution of the exclusive rights which Plaintiff and Plaintiff's licensees
21 formerly enjoyed in connection with said trademarks, to the great detriment of
22 Plaintiff. Defendants, and each of them, are direct competitors of Plaintiff
23 through Plaintiff's licensees. By their unauthorized and infringing use of the
24 Rhodes mark and confusingly similar variants and imitations thereof,
25 Defendants, and each of them, have been unjustly enriched.

26 19. Plaintiff is informed and believes and on that basis alleges that as a
27 direct and proximate result of Defendants' wrongful manufacture, use, display,
28 marketing, promotion, advertising and sale of products bearing the Rhodes mark

1 and marks that are confusingly similar to the Rhodes mark and substantially
2 indistinguishable from the Rhodes mark, Defendants have derived profits in the
3 millions of dollars. Plaintiff is entitled to recover up to three times these profits,
4 pursuant to 15 U.S.C. §1117(a) and (b), and other applicable law.

5 20. Plaintiff is informed and believes and on that basis alleges that as a
6 direct and proximate result of Defendants' infringement of the Rhodes marks,
7 Plaintiff has sustained damages in an amount which cannot presently be
8 precisely ascertained, but that is believed to be in the millions of dollars and is
9 in any event above the minimum jurisdictional limit of this Court. Plaintiff is
10 entitled to recover up to three times these damages, pursuant to 15 U.S.C.
11 §1117(a) and (b), and other applicable law.

12 21. Plaintiff is informed and believes and on that basis alleges that
13 Defendants, by their above enumerated acts, have willfully and knowingly
14 violated and infringed and threaten to further infringe the rights of Plaintiff in
15 the federally registered mark "Rhodes," in violation of §32 of the Lanham Act
16 (15 U.S.C. §1114) with the intention of deceiving and misleading those in the
17 music business and the public at large, and of wrongfully trading on the
18 goodwill and reputation of Plaintiff. The actions of Defendants, and each of
19 them, as alleged herein, have been willful, intentional, deliberate, malicious,
20 fraudulent and designed specifically to trade upon the goodwill associated with
21 Plaintiff's trademark. Plaintiff's goodwill in this trademark is of enormous
22 value, and Plaintiff will suffer irreparable harm if Defendants' infringement is
23 allowed to continue, to the detriment of Plaintiff's trade reputation and
24 goodwill.

25 22. Plaintiff is informed and believes and on that basis alleges that, by their
26 tortious acts, Defendants have caused, and unless restrained by the Court, will
27 continue to cause serious and irreparable injury and damage to Plaintiff and to
28 the goodwill associated with Plaintiff's registered mark.

1 23. Defendants' wrongful conduct as herein alleged was done intentionally
2 and was malicious, oppressive and fraudulent in nature. Said Defendants
3 engaged in the above-described wrongful conduct with the intent to cause injury
4 to Plaintiff, and with a conscious disregard of the rights of Plaintiff, subjecting
5 Plaintiff to cruel and unjust hardship, all with the intention of depriving Plaintiff
6 of property and legal rights, and with the intention of causing Plaintiff injury,
7 such as to constitute malice, oppression and fraud. Said Defendants acted with
8 an evil and fraudulent motive and with the intent to vex, injure or annoy
9 Plaintiff. The actions of said Defendants were reprehensible, despicable,
10 fraudulent and in blatant violation of law. Said Defendants furthermore acted
11 with extreme indifference to Plaintiff's rights. Plaintiff is therefore entitled to
12 recover punitive and exemplary damages from said Defendants, and each of
13 them. Plaintiff has no adequate remedy at law.

14 **CLAIM 2**

15 (Against All Defendants for False Designation of Origin and False Advertising
16 Under Section 43(a) of the Lanham Act)

17 24. Plaintiff incorporates herein by this reference each of the allegations
18 contained in paragraphs 1 through 23 hereinabove as though fully restated at this
19 point.

20 25. This Claim arises under §43(a) of The Lanham Act (15 U.S.C.
21 §1125(a)).

22 26. The use and threatened use of the name and mark "Rhodes" and
23 confusingly similar variations and imitations thereof by Defendants, as alleged
24 hereinabove, is a false designation of origin as to goods made available by
25 Defendants and a false and misleading representation in violation of §43(a) of
26 The Lanham Act (15 U.S.C. §1125(a)).

27 27. Defendants, and each of them, in connection with goods and services,
28 have used in interstate commerce a word, term, name, symbol or device, or a

1 combination thereof, or a false designation of origin, false or misleading
2 description of fact, or false or misleading representation of fact, which, in
3 commercial advertising or promotion, misrepresents the nature, characteristics,
4 or qualities of Defendants' goods, services or commercial activities.

5 This use is likely to cause confusion, or to cause mistake, or to deceive as to the
6 affiliation, connection, or association of Defendants with Plaintiff, or as to the
7 origin, sponsorship, or approval of Defendants' goods, services, or commercial
8 activities by Plaintiff. This use by Defendants, and each of them, has a tendency
9 to deceive a substantial portion of the intended audience. Furthermore, this use
10 by Defendants, and each of them, has resulted and continues to result in actual
11 deception of a substantial portion of the intended audience, including without
12 limitation customers and prospective customers of Plaintiff. Said deception is
13 material in that it influences purchasing decisions. This use by Defendants, and
14 each of them, is likely to cause, and has caused Plaintiff to incur damage in an
15 amount which cannot presently be precisely ascertained, but that is believed to
16 be in the millions of dollars and is in any event above the minimum
17 jurisdictional limit of this Court.

18 28. Plaintiff has no control over the nature and quality of the products
19 manufactured, distributed and/or sold by Defendants, and each of them. Any
20 failure, neglect or default by Defendants in providing such products will reflect
21 adversely on Plaintiff as the believed source of origin thereof, hampering efforts
22 by Plaintiff to continue to protect the outstanding reputation of high quality
23 products originating from Plaintiff or Plaintiff's predecessors in interest or
24 Plaintiff's licensees, or the licensees of Plaintiff's predecessors in interest, and
25 resulting in loss of sales and profits, all to the irreparable harm of Plaintiff.

26 29. Plaintiff is informed and believes and on that basis alleges that
27 Defendants, by their above enumerated acts, have willfully and knowingly
28 violated and infringed and threaten to further infringe the rights of Plaintiff in

1 the federally registered mark "Rhodes," in violation of §43(a) of the Lanham
2 Act (15 U.S.C. §1125(a)) with the intention of deceiving and misleading those
3 in the music business and the public at large, and of wrongfully trading on the
4 goodwill and reputation of Plaintiff. The actions of Defendants, and each of
5 them, as alleged herein, have been willful, intentional, deliberate, malicious,
6 fraudulent and designed specifically to trade upon the goodwill associated with
7 Plaintiff's trademark. Plaintiff's goodwill in this trademark is of enormous
8 value, and Plaintiff will suffer irreparable harm if Defendants' infringement is
9 allowed to continue, to the detriment of Plaintiff's trade reputation and
10 goodwill.

11 30. Plaintiff is informed and believes and on that basis alleges that, by their
12 tortious acts, Defendants have caused, and unless restrained by the Court, will
13 continue to cause serious and irreparable injury and damage to Plaintiff and to
14 the goodwill associated with Plaintiff's registered marks.

15 31. Plaintiff is informed and believes and on that basis alleges that as a
16 direct and proximate result of Defendants' actions alleged hereinabove,
17 Defendants have derived profits in the millions of dollars. Plaintiff is entitled to
18 recover up to three times these profits, pursuant to 15 U.S.C. §1125(a), 15
19 U.S.C. §1117(a) and (b), and other applicable law.

20 32. Plaintiff is informed and believes and on that basis alleges that as a
21 direct and proximate result of Defendants' actions alleged hereinabove, Plaintiff
22 has sustained damages in an amount which cannot presently be precisely
23 ascertained, but that is believed to be in the millions of dollars and is in any
24 event above the minimum jurisdictional limit of this Court. Plaintiff is entitled
25 to recover up to three times these damages, pursuant to 15 U.S.C. §1125(a), 15
26 U.S.C. §1117(a) and (b), and other applicable law.

27 33. Defendants' wrongful conduct as herein alleged was done intentionally
28 and was malicious, oppressive and fraudulent in nature. Said Defendants

1 engaged in the above-described wrongful conduct with the intent to cause injury
2 to Plaintiff, and with a conscious disregard of the rights of Plaintiff, subjecting
3 Plaintiff to cruel and unjust hardship, all with the intention of depriving Plaintiff
4 of property and legal rights, and with the intention of causing Plaintiff injury,
5 such as to constitute malice, oppression and fraud. Said Defendants acted with
6 an evil and fraudulent motive and with the intent to vex, injure or annoy
7 Plaintiff. The actions of said Defendants were reprehensible, despicable,
8 fraudulent and in blatant violation of law. Said Defendants furthermore acted
9 with extreme indifference to Plaintiff’s rights. Plaintiff is therefore entitled to
10 recover punitive and exemplary damages from said Defendants, and each of
11 them. Plaintiff has no adequate remedy at law.

12 **CLAIM 3**

13 (Against All Defendants for Unfair Competition in violation of
14 Section 43 of the Lanham Act)

15 34. Plaintiff incorporates herein by this reference each of the allegations
16 contained in paragraphs 1 through 33 hereinabove as though fully restated at this
17 point.

18 35. This Claim arises under §43 of The Lanham Act (15 U.S.C. §1125).

19 36. In the alternative, Plaintiff is informed and believes and based thereon
20 alleges that the public associates the term ‘Rhodes’ with musical instruments
21 manufactured or licensed by Plaintiff and Plaintiff’s predecessors in interest,
22 and the current use of that term and/or confusingly similar terms by Defendants,
23 and each of them, is likely to cause, and does cause, the public to believe that
24 Plaintiff or Plaintiff’s licensees are the source of Defendants’ products, or that
25 Plaintiff or Plaintiff’s licensees have somehow endorsed or sponsored
26 Defendants’ products. Consequently, Defendants, and each of them, have
27 violated Section 43 of the Lanham Act by committing the unfair competition of
28 “passing off” their products as genuine, when in fact they are unauthorized

1 imitations.

2 37. Plaintiff is informed and believes and on that basis alleges that, by their
3 tortious acts, Defendants have caused, and unless restrained by the Court, will
4 continue to cause serious and irreparable injury and damage to Plaintiff and to
5 the goodwill associated with Plaintiff's registered marks.

6 38. Plaintiff is informed and believes and on that basis alleges that as a
7 direct and proximate result of Defendants' actions alleged hereinabove,
8 Defendants have derived profits in the millions of dollars. Plaintiff is entitled to
9 recover up to three times these profits, pursuant to 15 U.S.C. §1125(a), 15
10 U.S.C. §1117(a) and (b), and other applicable law.

11 39. Plaintiff is informed and believes and on that basis alleges that as a
12 direct and proximate result of Defendants' actions alleged hereinabove, Plaintiff
13 has sustained damages in an amount which cannot presently be precisely
14 ascertained, but that is believed to be in the millions of dollars and is in any
15 event above the minimum jurisdictional limit of this Court. Plaintiff is entitled
16 to recover up to three times these damages, pursuant to 15 U.S.C. §1125(a), 15
17 U.S.C. §1117(a) and (b), and other applicable law.

18 40. Defendants' wrongful conduct as herein alleged was done intentionally
19 and was malicious, oppressive and fraudulent in nature. Said Defendants
20 engaged in the above-described wrongful conduct with the intent to cause injury
21 to Plaintiff, and with a conscious disregard of the rights of Plaintiff, subjecting
22 Plaintiff to cruel and unjust hardship, all with the intention of depriving Plaintiff
23 of property and legal rights, and with the intention of causing Plaintiff injury,
24 such as to constitute malice, oppression and fraud. Said Defendants acted with
25 an evil and fraudulent motive and with the intent to vex, injure or annoy
26 Plaintiff. The actions of said Defendants were reprehensible, despicable,
27 fraudulent and in blatant violation of law. Said Defendants furthermore acted
28 with extreme indifference to Plaintiff's rights. Plaintiff is therefore entitled to

1 recover punitive and exemplary damages from said Defendants, and each of
2 them. Plaintiff has no adequate remedy at law.

3 **CLAIM 4**

4 (Against all Defendants for Dilution in violation of
5 Section 43 of the Lanham Act)

6 41. Plaintiff incorporates herein by this reference each of the allegations
7 contained in paragraphs 1 through 33 hereinabove as though fully restated at this
8 point.

9 42. This Claim arises under §43(c), et seq. of The Lanham Act (15 U.S.C.
10 §1125(c)).

11 43. The Rhodes mark, owned by Plaintiff BRANDSTETTER, is famous
12 and distinctive.

13 44. Defendants, and each of them, are making commercial use in interstate
14 commerce of marks or trade names identical to or confusing similar to the
15 Rhodes mark.

16 45. Defendants' use began after the Rhodes mark became famous.

17 46. Defendants' use is likely to cause, and does cause actual dilution by
18 blurring or tarnishment of the Rhodes mark, lessening the capacity of the
19 Rhodes mark to identify and distinguish goods or services.

20 47. Plaintiff is informed and believes and on that basis alleges that, by their
21 tortious acts, Defendants have caused, and unless restrained by the Court, will
22 continue to cause serious and irreparable injury and damage to Plaintiff and to
23 the goodwill associated with Plaintiff's registered mark.

24 48. Plaintiff is informed and believes and on that basis alleges that as a
25 direct and proximate result of Defendants' actions alleged hereinabove,
26 Defendants have derived profits in the millions of dollars. Plaintiff is entitled to
27 recover up to three times these profits, pursuant to 15 U.S.C. §1125(a), 15
28 U.S.C. §1117(a) and (b), and other applicable law.

1 49. Plaintiff is informed and believes and on that basis alleges that as a
2 direct and proximate result of Defendants' actions alleged hereinabove, Plaintiff
3 has sustained damages in an amount which cannot presently be precisely
4 ascertained, but that is believed to be in the millions of dollars and is in any
5 event above the minimum jurisdictional limit of this Court. Plaintiff is entitled
6 to recover up to three times these damages, pursuant to 15 U.S.C. §1125(a), 15
7 U.S.C. §1117(a) and (b), and other applicable law.

8 50. Defendants' actions in diluting the Rhodes mark have been willful.
9 Defendants willfully intended to trade on the recognition of the Rhodes mark.
10 Defendants' wrongful conduct as herein alleged was done intentionally and was
11 malicious, oppressive and fraudulent in nature. Said Defendants engaged in the
12 above-described wrongful conduct with the intent to cause injury to Plaintiff,
13 and with a conscious disregard of the rights of Plaintiff, subjecting Plaintiff to
14 cruel and unjust hardship, all with the intention of depriving Plaintiff of property
15 and legal rights, and with the intention of causing Plaintiff injury, such as to
16 constitute malice, oppression and fraud. Said Defendants acted with an evil and
17 fraudulent motive and with the intent to vex, injure or annoy Plaintiff. The
18 actions of said Defendants were reprehensible, despicable, fraudulent and in
19 blatant violation of law. Said Defendants furthermore acted with extreme
20 indifference to Plaintiff's rights. Plaintiff is therefore entitled to recover
21 punitive and exemplary damages from said Defendants, and each of them.
22 Plaintiff has no adequate remedy at law.

23 **CLAIM 5**

24 (Against all Defendants for Common Law Trademark Infringement Under
25 California Law)

26 51. Plaintiff incorporates herein by this reference each of the allegations
27 contained in paragraphs 1 through 33 and 42 through 50 hereinabove as though
28 fully restated at this point.

1 52. This Claim arises under the common law of trademarks of the State of
2 California.

3 53. This Court has jurisdiction over this action under 28 U.S.C. 1332, as
4 there is diversity of citizenship between the parties, and the amount in
5 controversy exceeds the sum of \$75,000, exclusive of interest and costs. This
6 Court also has supplemental jurisdiction over this Claim pursuant to 28 U.S.C.
7 1367 because the claims arising under federal law and state law are factually
8 interdependent and transactionally related. Venue is proper in this District
9 under 28 U.S.C. 1391.

10 54. In addition to the federal registrations owned by Plaintiff as set forth
11 hereinabove, Plaintiff has common law rights in the Rhodes mark, in that
12 Plaintiff owns and uses the Rhodes mark and has licensed the Rhodes mark to
13 others to use, and those licensees use the Rhodes mark in the manufacture,
14 marketing and sale of musical instruments. Plaintiff owns and enjoys common
15 law rights in California and throughout the United States and many other
16 countries in the Rhodes mark, which rights are superior to any rights which
17 Defendants may claim in and to said trademark in any form or style.

18 55. Defendants' use of the trademark "Rhodes" and confusingly similar
19 variants and imitations thereof, as alleged hereinabove, constitute an
20 infringement of Plaintiff's common law trade name and trademark rights in the
21 name and mark "Rhodes." Such infringement has caused and unless enjoined
22 will continue to cause Plaintiff irreparable harm unless enjoined by this Court.

23 56. Defendants' wrongful conduct as herein alleged was done intentionally
24 and was malicious, oppressive and fraudulent in nature. Said Defendants
25 engaged in the above-described wrongful conduct with the intent to cause injury
26 to Plaintiff, and with a conscious disregard of the rights of Plaintiff, subjecting
27 Plaintiff to cruel and unjust hardship, all with the intention of depriving Plaintiff
28 of property and legal rights, and with the intention of causing Plaintiff injury,

1 such as to constitute malice, oppression and fraud. Said Defendants acted with
2 an evil and fraudulent motive and with the intent to vex, injure or annoy
3 Plaintiff. The actions of said Defendants were reprehensible, despicable,
4 fraudulent and in blatant violation of law. Said Defendants furthermore acted
5 with extreme indifference to Plaintiff's rights. Plaintiff is therefore entitled to
6 recover punitive and exemplary damages from said Defendants, and each of
7 them. Plaintiff has no adequate remedy at law.

8 **CLAIM 6**

9 (Against all Defendants for violation of
10 California Business and Professions Code §14245, §14247 and §14250)
11 57. Plaintiff incorporates herein by this reference each of the allegations
12 contained in paragraphs 1 through 33, 42 through 50 and 52 through 56
13 hereinabove as though fully restated at this point.

14 58. This Claim arises under the law of the State of California, particularly
15 California Business and Professions Code §14245, §14247 and §14250.

16 59. This Court has jurisdiction over this action under 28 U.S.C. 1332, as
17 there is diversity of citizenship between the parties, and the amount in
18 controversy exceeds the sum of \$75,000, exclusive of interest and costs. This
19 Court also has supplemental jurisdiction over this Claim pursuant to 28 U.S.C.
20 1367 because the claims arising under federal law and state law are factually
21 interdependent and transactionally related. Venue is proper in this District
22 under 28 U.S.C. 1391.

23 60. The Rhodes mark is famous and distinctive.

24 61. Defendants, and each of them, have made commercial use of the Rhodes
25 mark after it became famous. Defendants, and each of them, without consent of
26 Plaintiff, have used reproductions, counterfeits, copies and/or colorable
27 imitations of the Rhodes mark in connection with the sale, distribution, offering
28 for sale, and/or advertising of goods and/or services on or in connection with

1 which the use by Defendants is likely to cause confusion or mistake, or to
2 deceive as to the source or origin of such goods and services.

3 62. Plaintiff is informed and believes and on that basis alleges that
4 Defendants, and each of them, have reproduced, counterfeited, copied, or
5 colorably imitated the Rhodes mark and applied the reproduction, counterfeit,
6 copy, or colorable imitation to labels, signs, prints, packages, wrappers,
7 receptacles, or advertisements intended to be used upon or in connection with
8 the sale or other distribution in California of goods or services. Defendants, and
9 each of them, have committed these acts with the intent to cause confusion or
10 mistake, or to deceive purchasers and prospective purchasers.

11 63. Defendants, and each of them, have knowingly facilitated, enabled, or
12 otherwise assisted persons to manufacture, use, distribute, display, or sell goods
13 or services bearing reproductions, counterfeits, copies, or colorable imitations
14 of the Rhodes mark, without the consent of Plaintiff.

15 64. Defendants' use is likely to cause dilution of the mark. Furthermore,
16 Plaintiff is informed and believes and on that basis alleges that Defendants, and
17 each of them, willfully intended to cause dilution of the Rhodes mark.

18 65. Plaintiff is informed and believes and on that basis alleges that as a
19 direct and proximate result of Defendants' actions alleged hereinabove,
20 Defendants have derived profits in the millions of dollars. Plaintiff is entitled to
21 recover up to three times these profits, pursuant to California Business and
22 Professions Code §14245, §14247 and §14250.

23 66. Plaintiff is informed and believes and on that basis alleges that as a
24 direct and proximate result of Defendants' actions alleged hereinabove, Plaintiff
25 has sustained damages in an amount which cannot presently be precisely
26 ascertained, but that is believed to be in the millions of dollars and is in any
27 event above the minimum jurisdictional limit of this Court. Plaintiff is entitled
28 to recover up to three times these damages, pursuant to California Business and

1 Professions Code §14245, §14247 and §14250, and other applicable law.

2 67. Plaintiff has no adequate remedy at law.

3 **CLAIM 7**

4 (Against all Defendants for violation of

5 California Business and Professions Code §17200, *et seq.*)

6 68. Plaintiff incorporates herein by this reference each of the allegations
7 contained in paragraphs 1 through 33, 42 through 50 and 52 through 67
8 hereinabove as though fully restated at this point.

9 69. This Court has jurisdiction over this action under 28 U.S.C. 1332, as
10 there is diversity of citizenship between the parties, and the amount in
11 controversy exceeds the sum of \$75,000, exclusive of interest and costs. This
12 Court also has supplemental jurisdiction over this Claim pursuant to 28 U.S.C.
13 1367 because the claims arising under federal law and state law are factually
14 interdependent and transactionally related. Venue is proper in this District
15 under 28 U.S.C. 1391.

16 70. The actions of Defendants, and each of them, alleged hereinabove,
17 constitute unfair and unlawful competition and conduct in violation of
18 California Business and Professions Code §17200, *et seq.*

19 71. Said unfair and unlawful competition and conduct threatens to and will
20 cause great and irreparable injury to Plaintiff. These injuries cannot be
21 adequately compensated by money damages.

22 72. The exact amount of damages that have been and will be sustained by
23 Plaintiff as a result thereof cannot readily be ascertained or calculated. Plaintiff
24 has no adequate remedy at law for such acts and threatened acts. Accordingly,
25 Plaintiff is entitled to permanent injunctive relief as prayed for herein. In
26 addition, Plaintiff is entitled to disgorgement by Defendants of all wrongfully
27 obtained money, property and profits acquired by Defendants, as well as
28 restitution to Plaintiff of all money and property in which Plaintiff has an

1 ownership interest of which Defendants deprived them.

2 73. Plaintiff has retained attorneys duly licensed to practice law in this
3 Court to pursue this action. Plaintiff is also entitled to recover Plaintiff's
4 attorneys' fees incurred in pursuing this action.

5 **CLAIM 8**

6 (Against all Defendants for Intentional Interference With Prospective
7 Economic Advantage Under California Law)

8 74. Plaintiff incorporates herein by this reference each of the allegations
9 contained in paragraphs 1 through 33, 42 through 50 and 52 through 73
10 hereinabove as though fully restated at this point.

11 75. This Court has jurisdiction over this action under 28 U.S.C. 1332, as
12 there is diversity of citizenship between the parties, and the amount in
13 controversy exceeds the sum of \$75,000, exclusive of interest and costs. This
14 Court also has supplemental jurisdiction over this Claim pursuant to 28 U.S.C.
15 1367 because the claims arising under federal law and state law are factually
16 interdependent and transactionally related. Venue is proper in this District
17 under 28 U.S.C. 1391.

18 76. Prior to the interference by Defendants, and each of them, Plaintiff and
19 Plaintiff's licensees had the exclusive right to market and sell to the general
20 public, musicians and others in the music industry (1) musical instruments; (2)
21 electronic pianos; and (3) computer software for processing digital music files,
22 sound cards in the nature of pre-recorded computer software for generating
23 sounds, and computer software for generating sounds. Plaintiff, either directly
24 or indirectly through Plaintiff's licensees, had viable prospects to sell products
25 featuring the Rhodes trademark to the general public, musicians and others in
26 the music industry. Plaintiff economically benefited from this relationship.

27 77. Defendants, and each of them, were aware of this economic
28 relationship.

1 78. Defendants, and each of them, conspired to and did intentionally
2 disrupt the relationship between Plaintiff and the general public, musicians and
3 others in the music industry by engaging in the unlawful, fraudulent and unfair
4 actions alleged hereinabove, with the intent to harm Plaintiff financially.

5 79. As a direct and proximate result of the actions of Defendants, and each
6 of them, Plaintiff has been damaged in an amount that is presently not capable
7 of being precisely determined.

8 80. Defendants' wrongful conduct as herein alleged was done intentionally
9 and was malicious, oppressive and fraudulent in nature. Said Defendants
10 engaged in the above-described wrongful conduct with the intent to cause injury
11 to Plaintiff, and with a conscious disregard of the rights of Plaintiff, subjecting
12 Plaintiff to cruel and unjust hardship, all with the intention of depriving Plaintiff
13 of property and legal rights, and with the intention of causing Plaintiff injury,
14 such as to constitute malice, oppression and fraud. Said Defendants acted with
15 an evil and fraudulent motive and with the intent to vex, injure or annoy
16 Plaintiff. The actions of said Defendants were reprehensible, despicable,
17 fraudulent and in blatant violation of law. Said Defendants furthermore acted
18 with extreme indifference to Plaintiff's right. Plaintiff is therefore entitled to
19 recover punitive and exemplary damages from said Defendants, and each of
20 them.

21 **PRAYER FOR RELIEF**

22 **As to Claim One**

23 1. That Defendants, their agents, servants, employees, attorneys,
24 representatives, successors and assigns and all persons, firms, partnerships,
25 limited liability companies or corporations in active concert or participation with
26 Defendants be enjoined and restrained permanently from:

27 (a) directly or indirectly infringing the Rhodes mark in any manner,
28 including but not limited to engaging in services or distributing, advertising,

1 selling or offering for sale or distribution any goods or services which infringe
2 the Rhodes mark, and specifically:

3 (i) using in any way the Rhodes mark or any name or mark similar
4 thereto, or any reproduction, counterfeit, copy or colorable imitation of the
5 Rhodes mark, alone or in combination with other words, names, styles, titles or
6 marks, in connection with Defendants' goods or services, or the advertisement,
7 sale, offer for sale or distribution of any goods or services which infringe the
8 Rhodes mark;

9 (ii) applying the Rhodes mark or any name or mark similar thereto, or
10 any reproduction, counterfeit, copy or colorable imitation of the Rhodes mark to
11 any product, advertisement, packaging, document or thing used in connection
12 with Defendants' goods or services;

13 (b) using any mark, trade name, logo or design that tends falsely to
14 represent, or is likely to confuse, mislead, or deceive purchasers, Defendants'
15 customers, or members of the public, that goods or services offered by
16 Defendants originate from Plaintiff, or that said goods or services have been
17 sponsored, approved, or licensed by or associated with Plaintiff or are in some
18 way connected or affiliated with Plaintiff or sponsored or licensed by Plaintiff;

19 (c) engaging in any conduct that tends falsely to represent that, or is likely
20 to confuse, mislead, or deceive purchasers, customers or members of the public
21 to believe that the actions of Defendants have been sponsored, approved, or
22 licensed by or associated with Plaintiff or are in some way connected or
23 affiliated with Plaintiff or sponsored or licensed by Plaintiff;

24 (d) affixing, applying, annexing or using in connection with Defendants'
25 goods or services, a false description or representation, including words or other
26 symbols, tending to falsely describe or represent such goods and services as
27 being those offered or sold by Plaintiff;

28 (e) holding themselves out as the owners of, or otherwise authorized to use

1 the name and mark “Rhodes” or any similar mark in commerce;

2 (f) performing any actions or using any words, names, styles, titles or marks
3 which are likely to cause confusion, to cause mistake or to deceive, or to
4 otherwise mislead the trade or public into believing that Plaintiff and
5 Defendants are one and the same or are in some way connected, or that Plaintiff
6 are a sponsor of Defendants, or that Defendants are in some manner affiliated or
7 associated with or under the supervision or control of Plaintiff, or that the
8 services of Defendants originate with Plaintiff or are conducted or offered with
9 the approval, consent or authorization, or under the supervision of Plaintiff, or
10 are likely in any way to lead the trade or the public to associate Defendants with
11 Plaintiff;

12 (g) using any words, names, styles, titles or marks which create a likelihood
13 of injury to the business reputation of Plaintiff, or a likelihood of dilution of
14 Plaintiff's mark “Rhodes” and the goodwill associated therewith;

15 (h) otherwise competing unfairly with Plaintiff in any manner; and

16 (i) diluting and infringing the aforementioned trademarks and damaging
17 Plaintiff's goodwill, reputation and business.

18 2. That Defendants be required to deliver for destruction to Plaintiff's
19 counsel all copies and reproductions in Defendants' possession or under their
20 control of any goods or promotional or advertising material, and any other
21 unauthorized items which reproduce, copy, counterfeit, imitate, bear or use the
22 Rhodes mark;

23 3. That Defendants be required to pay to Plaintiff compensatory damages
24 (including without limitation loss of earnings, damage to business reputation,
25 diminishment of value of trademark, lost royalties and license fees, and costs
26 and expenses incurred) for the injuries sustained by Plaintiff in consequence of
27 the acts herein complained of, in the amount of \$10 million or such other
28 amount as the Court may award, and that such damages be trebled pursuant to

1 15 U.S.C. §1117(a) and (b), and other applicable law;

2 4. That Defendants, and each of them, be required to account for and to pay
3 to Plaintiff all of Defendants' gains, profits and advantages derived by them
4 from the activities herein complained of, and that such award of profits be
5 trebled pursuant to 15 U.S.C. §1117(a) and (b), and other applicable law;

6 5. That Plaintiff recover from Defendants, and each of them, damages
7 and/or profits calculated at the baseline rate of a reasonable royalty, and that
8 such amounts be trebled pursuant to 15 U.S.C. §1117(a) and (b), and other
9 applicable law;

10 6. That Plaintiff recover from Defendants, and each of them, Plaintiff's
11 costs of this action and reasonable attorneys' fees; and

12 7. That Plaintiff recover from Defendants, and each of them, punitive and
13 exemplary damages in the amount of \$10 million or such other amount as the
14 Court may award.

15 **As to Claim Two**

16 1. That Defendants, their agents, servants, employees, attorneys,
17 representatives, successors and assigns and all persons, firms, partnerships,
18 limited liability companies or corporations in active concert or participation with
19 Defendants be enjoined and restrained permanently from:

20 (a) directly or indirectly infringing the Rhodes mark in any manner,
21 including but not limited to engaging in services or distributing, advertising,
22 selling or offering for sale or distribution any goods or services which infringe
23 the Rhodes mark, and specifically:

24 (i) using in any way the Rhodes mark or any name or mark similar
25 thereto, or any reproduction, counterfeit, copy or colorable imitation of the
26 Rhodes mark, alone or in combination with other words, names, styles, titles or
27 marks, in connection with Defendants' goods or services, or the advertisement,
28 sale, offer for sale or distribution of any goods or services which infringe the

1 Rhodes mark;

2 (ii) applying the Rhodes mark or any name or mark similar thereto, or
3 any reproduction, counterfeit, copy or colorable imitation of the Rhodes mark to
4 any product, advertisement, packaging, document or thing used in connection
5 with Defendants' goods or services;

6 (b) using any mark, trade name, logo or design that tends falsely to
7 represent, or is likely to confuse, mislead, or deceive purchasers, Defendants'
8 customers, or members of the public, that goods or services offered by
9 Defendants originate from Plaintiff, or that said goods or services have been
10 sponsored, approved, or licensed by or associated with Plaintiff or are in some
11 way connected or affiliated with Plaintiff or sponsored or licensed by Plaintiff;

12 (c) engaging in any conduct that tends falsely to represent that, or is likely
13 to confuse, mislead, or deceive purchasers, customers or members of the public
14 to believe that the actions of Defendants have been sponsored, approved, or
15 licensed by or associated with Plaintiff or are in some way connected or
16 affiliated with Plaintiff or sponsored or licensed by Plaintiff;

17 (d) affixing, applying, annexing or using in connection with Defendants'
18 goods or services, a false description or representation, including words or other
19 symbols, tending to falsely describe or represent such goods and services as
20 being those offered or sold by Plaintiff;

21 (e) holding themselves out as the owners of, or otherwise authorized to use
22 the name and mark "Rhodes" or any similar mark in commerce;

23 (f) performing any actions or using any words, names, styles, titles or marks
24 which are likely to cause confusion, to cause mistake or to deceive, or to
25 otherwise mislead the trade or public into believing that Plaintiff and
26 Defendants are one and the same or are in some way connected, or that Plaintiff
27 is a sponsor of Defendants, or that Defendants are in some manner affiliated or
28 associated with or under the supervision or control of Plaintiff, or that the

1 services of Defendants originate with Plaintiff or are conducted or offered with
2 the approval, consent or authorization, or under the supervision of Plaintiff, or
3 are likely in any way to lead the trade or the public to associate Defendants with
4 Plaintiff;

5 (g) using any words, names, styles, titles or marks which create a likelihood
6 of injury to the business reputation of Plaintiff, or a likelihood of dilution of
7 Plaintiff's mark "Rhodes" and the goodwill associated therewith;

8 (h) otherwise competing unfairly with Plaintiff in any manner; and

9 (i) diluting and infringing the aforementioned trademarks and damaging
10 Plaintiff's goodwill, reputation and business.

11 2. That Defendants be required to deliver for destruction to Plaintiff's
12 counsel all copies and reproductions in Defendants' possession or under their
13 control of any goods or promotional or advertising material, and any other
14 unauthorized items which reproduce, copy, counterfeit, imitate, bear or use the
15 Rhodes mark;

16 3. That Defendants be required to pay to Plaintiff compensatory damages
17 (including without limitation loss of earnings, damage to business reputation,
18 diminishment of value of trademark, lost royalties and license fees, and costs
19 and expenses incurred) for the injuries sustained by Plaintiff in consequence of
20 the acts herein complained of in the amount of \$10 million or such other amount
21 as the Court may award, and that such damages be trebled pursuant to 15 U.S.C.
22 §1117(a) and (b), and other applicable law;

23 4. That Defendants, and each of them, be required to account for and to pay
24 to Plaintiff all of Defendants' gains, profits and advantages derived by them
25 from the activities herein complained of, and that such award of profits be
26 trebled pursuant to 15 U.S.C. §1117(a) and (b), and other applicable law;

27 5. That Plaintiff recover from Defendants, and each of them, damages
28 and/or profits calculated at the baseline rate of a reasonable royalty, and that

1 such amounts be trebled pursuant to 15 U.S.C. §1117(a) and (b), and other
2 applicable law;

3 6. That Plaintiff recover from Defendants, and each of them, Plaintiff's
4 costs of this action and reasonable attorneys' fees; and

5 7. That Plaintiff recover from Defendants, and each of them, punitive and
6 exemplary damages in the amount of \$10 million or such other amount as the
7 Court may award.

8 **As to Claim Three**

9 1. That Defendants, their agents, servants, employees, attorneys,
10 representatives, successors and assigns and all persons, firms, partnerships,
11 limited liability companies or corporations in active concert or participation with
12 Defendants be enjoined and restrained permanently from:

13 (a) directly or indirectly infringing the Rhodes mark in any manner,
14 including but not limited to engaging in services or distributing, advertising,
15 selling or offering for sale or distribution any goods or services which infringe
16 the Rhodes mark, and specifically:

17 (i) using in any way the Rhodes mark or any name or mark similar
18 thereto, or any reproduction, counterfeit, copy or colorable imitation of the
19 Rhodes mark, alone or in combination with other words, names, styles, titles or
20 marks, in connection with Defendants' goods or services, or the advertisement,
21 sale, offer for sale or distribution of any goods or services which infringe the
22 Rhodes mark;

23 (ii) applying the Rhodes mark or any name or mark similar thereto, or
24 any reproduction, counterfeit, copy or colorable imitation of the Rhodes mark to
25 any product, advertisement, packaging, document or thing used in connection
26 with Defendants' goods or services;

27 (b) using any mark, trade name, logo or design that tends falsely to
28 represent, or is likely to confuse, mislead, or deceive purchasers, Defendants'

1 customers, or members of the public, that goods or services offered by
2 Defendants originate from Plaintiff, or that said goods or services have been
3 sponsored, approved, or licensed by or associated with Plaintiff or are in some
4 way connected or affiliated with Plaintiff or sponsored or licensed by Plaintiff;

5 (c) engaging in any conduct that tends falsely to represent that, or is likely
6 to confuse, mislead, or deceive purchasers, customers or members of the public
7 to believe that the actions of Defendants have been sponsored, approved, or
8 licensed by or associated with Plaintiff or are in some way connected or
9 affiliated with Plaintiff or sponsored or licensed by Plaintiff;

10 (d) affixing, applying, annexing or using in connection with Defendants'
11 goods or services, a false description or representation, including words or other
12 symbols, tending to falsely describe or represent such goods and services as
13 being those offered or sold by Plaintiff;

14 (e) holding themselves out as the owners of, or otherwise authorized to use
15 the name and mark "Rhodes" or any similar mark in commerce;

16 (f) performing any actions or using any words, names, styles, titles or marks
17 which are likely to cause confusion, to cause mistake or to deceive, or to
18 otherwise mislead the trade or public into believing that Plaintiff and
19 Defendants are one and the same or are in some way connected, or that Plaintiff
20 are a sponsor of Defendants, or that Defendants are in some manner affiliated or
21 associated with or under the supervision or control of Plaintiff, or that the
22 services of Defendants originate with Plaintiff or are conducted or offered with
23 the approval, consent or authorization, or under the supervision of Plaintiff, or
24 are likely in any way to lead the trade or the public to associate Defendants with
25 Plaintiff;

26 (g) using any words, names, styles, titles or marks which create a likelihood
27 of injury to the business reputation of Plaintiff, or a likelihood of dilution of
28 Plaintiff's mark "Rhodes" and the goodwill associated therewith;

1 (h) otherwise competing unfairly with Plaintiff in any manner; and
2 (i) diluting and infringing the aforementioned trademarks and damaging
3 Plaintiff's goodwill, reputation and business.

4 2. That Defendants be required to deliver for destruction to Plaintiff's
5 counsel all copies and reproductions in Defendants' possession or under their
6 control of any goods or promotional or advertising material, and any other
7 unauthorized items which reproduce, copy, counterfeit, imitate, bear or use the
8 Rhodes mark;

9 3. That Defendants be required to pay to Plaintiff compensatory damages
10 (including without limitation loss of earnings, damage to business reputation,
11 diminishment of value of trademark, lost royalties and license fees, and costs
12 and expenses incurred) for the injuries sustained by Plaintiff in consequence of
13 the acts herein complained of in the amount of \$10 million or such other amount
14 as the Court may award, and that such damages be trebled pursuant to 15 U.S.C.
15 §1117(a) and (b), and other applicable law;

16 4. That Defendants, and each of them, be required to account for and to pay
17 to Plaintiff all of Defendants' gains, profits and advantages derived by them
18 from the activities herein complained of, and that such award of profits be
19 trebled pursuant to 15 U.S.C. §1117(a) and (b), and other applicable law;

20 5. That Plaintiff recover from Defendants, and each of them, damages
21 and/or profits calculated at the baseline rate of a reasonable royalty, and that
22 such amounts be trebled pursuant to 15 U.S.C. §1117(a) and (b), and other
23 applicable law.

24 6. That Plaintiff recover from Defendants, and each of them, their costs of
25 this action and reasonable attorneys' fees; and

26 7. That Plaintiff recover from Defendants, and each of them, punitive and
27 exemplary damages in the amount of \$10 million or such other amount as the
28 Court may award.

1 **As to Claim Four**

2 1. That Defendants, their agents, servants, employees, attorneys,
3 representatives, successors and assigns and all persons, firms, partnerships,
4 limited liability companies or corporations in active concert or participation with
5 Defendants be enjoined and restrained permanently from:

6 (a) directly or indirectly infringing the Rhodes mark in any manner,
7 including but not limited to engaging in services or distributing, advertising,
8 selling or offering for sale or distribution any goods or services which infringe
9 the Rhodes mark, and specifically:

10 (i) using in any way the Rhodes mark or any name or mark similar
11 thereto, or any reproduction, counterfeit, copy or colorable imitation of the
12 Rhodes mark, alone or in combination with other words, names, styles, titles or
13 marks, in connection with Defendants' goods or services, or the advertisement,
14 sale, offer for sale or distribution of any goods or services which infringe the
15 Rhodes mark;

16 (ii) applying the Rhodes mark or any name or mark similar thereto, or
17 any reproduction, counterfeit, copy or colorable imitation of the Rhodes mark to
18 any product, advertisement, packaging, document or thing used in connection
19 with Defendants' goods or services;

20 (b) using any mark, trade name, logo or design that tends falsely to
21 represent, or is likely to confuse, mislead, or deceive purchasers, Defendants'
22 customers, or members of the public, that goods or services offered by
23 Defendants originate from Plaintiff, or that said goods or services have been
24 sponsored, approved, or licensed by or associated with Plaintiff or are in some
25 way connected or affiliated with Plaintiff or sponsored or licensed by Plaintiff;

26 (c) engaging in any conduct that tends falsely to represent that, or is likely
27 to confuse, mislead, or deceive purchasers, customers or members of the public
28 to believe that the actions of Defendants have been sponsored, approved, or

1 licensed by or associated with Plaintiff or are in some way connected or
2 affiliated with Plaintiff or sponsored or licensed by Plaintiff;

3 (d) affixing, applying, annexing or using in connection with Defendants'
4 goods or services, a false description or representation, including words or other
5 symbols, tending to falsely describe or represent such goods and services as
6 being those offered or sold by Plaintiff;

7 (e) holding themselves out as the owners of, or otherwise authorized to use
8 the name and mark "Rhodes" or any similar mark in commerce;

9 (f) performing any actions or using any words, names, styles, titles or marks
10 which are likely to cause confusion, to cause mistake or to deceive, or to
11 otherwise mislead the trade or public into believing that Plaintiff and
12 Defendants are one and the same or are in some way connected, or that Plaintiff
13 are a sponsor of Defendants, or that Defendants are in some manner affiliated or
14 associated with or under the supervision or control of Plaintiff, or that the
15 services of Defendants originate with Plaintiff or are conducted or offered with
16 the approval, consent or authorization, or under the supervision of Plaintiff, or
17 are likely in any way to lead the trade or the public to associate Defendants with
18 Plaintiff;

19 (g) using any words, names, styles, titles or marks which create a likelihood
20 of injury to the business reputation of Plaintiff, or a likelihood of dilution of
21 Plaintiff's mark "Rhodes" and the goodwill associated therewith;

22 (h) otherwise competing unfairly with Plaintiff in any manner; and

23 (i) diluting and infringing the aforementioned trademarks and damaging
24 Plaintiff's goodwill, reputation and business.

25 2. That Defendants be required to deliver for destruction to Plaintiff's
26 counsel all copies and reproductions in Defendants' possession or under their
27 control of any goods or promotional or advertising material, and any other
28 unauthorized items which reproduce, copy, counterfeit, imitate, bear or use the

1 Rhodes mark;

2 3. That Defendants be required to pay to Plaintiff compensatory damages
3 (including without limitation loss of earnings, damage to business reputation,
4 diminishment of value of trademark, lost royalties and license fees, and costs
5 and expenses incurred) for the injuries sustained by Plaintiff in consequence of
6 the acts herein complained of in the amount of \$10 million or such other amount
7 as the Court may award, and that such damages be trebled pursuant to 15 U.S.C.
8 §1117(a) and (b), and other applicable law;

9 4. That Defendants, and each of them, be required to account for and to pay
10 to Plaintiff all of Defendants' gains, profits and advantages derived by them
11 from the activities herein complained of, and that such award of profits be
12 trebled pursuant to 15 U.S.C. §1117(a) and (b), and other applicable law;

13 5. That Plaintiff recover from Defendants, and each of them, damages
14 and/or profits calculated at the baseline rate of a reasonable royalty, and that
15 such amounts be trebled pursuant to 15 U.S.C. §1117(a) and (b), and other
16 applicable law.

17 6. That Plaintiff recover from Defendants, and each of them, Plaintiff's
18 costs of this action and reasonable attorneys' fees; and

19 7. That Plaintiff recovers from Defendants, and each of them, punitive and
20 exemplary damages in the amount of \$10 million or such other amount as the
21 Court may award.

22 **As to Claim Five**

23 1. For compensatory damages (including without limitation loss of
24 earnings, damage to business reputation, diminishment of value of trademark,
25 lost royalties and license fees, and costs and expenses incurred) in the amount of
26 \$10 million or such other amount as the Court may award, including general and
27 special damages;

28 2. For punitive and exemplary damages in the amount of \$10 million or

1 such other amount as the Court may award; and

2 3. For costs of this action and any attorneys' fees to which Plaintiff may be
3 entitled.

4 **As to Claim Six**

5 1. That Defendants, their agents, servants, employees, attorneys,
6 representatives, successors and assigns and all persons, firms, partnerships,
7 limited liability companies or corporations in active concert or participation with
8 Defendants be enjoined and restrained permanently from:

9 (a) directly or indirectly infringing the Rhodes mark in any manner,
10 including but not limited to engaging in services or distributing, advertising,
11 selling or offering for sale or distribution any goods or services which infringe
12 the Rhodes mark, and specifically:

13 (i) using in any way the Rhodes mark or any name or mark similar
14 thereto, or any reproduction, counterfeit, copy or colorable imitation of the
15 Rhodes mark, alone or in combination with other words, names, styles, titles or
16 marks, in connection with Defendants' goods or services, or the advertisement,
17 sale, offer for sale or distribution of any goods or services which infringe the
18 Rhodes mark;

19 (ii) applying the Rhodes mark or any name or mark similar thereto, or
20 any reproduction, counterfeit, copy or colorable imitation of the Rhodes mark to
21 any product, advertisement, packaging, document or thing used in connection
22 with Defendants' goods or services;

23 (b) using any mark, trade name, logo or design that tends falsely to
24 represent, or is likely to confuse, mislead, or deceive purchasers, Defendants'
25 customers, or members of the public, that goods or services offered by
26 Defendants originate from Plaintiff, or that said goods or services have been
27 sponsored, approved, or licensed by or associated with Plaintiff or are in some
28 way connected or affiliated with Plaintiff or sponsored or licensed by Plaintiff;

1 (c) engaging in any conduct that tends falsely to represent that, or is likely
2 to confuse, mislead, or deceive purchasers, customers or members of the public
3 to believe that the actions of Defendants have been sponsored, approved, or
4 licensed by or associated with Plaintiff or are in some way connected or
5 affiliated with Plaintiff or sponsored or licensed by Plaintiff;

6 (d) affixing, applying, annexing or using in connection with Defendants'
7 goods or services, a false description or representation, including words or other
8 symbols, tending to falsely describe or represent such goods and services as
9 being those offered or sold by Plaintiff;

10 (e) holding themselves out as the owners of, or otherwise authorized to use
11 the name and mark "Rhodes" or any similar mark in commerce;

12 (f) performing any actions or using any words, names, styles, titles or marks
13 which are likely to cause confusion, to cause mistake or to deceive, or to
14 otherwise mislead the trade or public into believing that Plaintiff and
15 Defendants are one and the same or are in some way connected, or that Plaintiff
16 are a sponsor of Defendants, or that Defendants are in some manner affiliated or
17 associated with or under the supervision or control of Plaintiff, or that the
18 services of Defendants originate with Plaintiff or are conducted or offered with
19 the approval, consent or authorization, or under the supervision of Plaintiff, or
20 are likely in any way to lead the trade or the public to associate Defendants with
21 Plaintiff;

22 (g) using any words, names, styles, titles or marks which create a likelihood
23 of injury to the business reputation of Plaintiff, or a likelihood of dilution of
24 Plaintiff's mark "Rhodes" and the goodwill associated therewith;

25 (h) otherwise competing unfairly with Plaintiff in any manner; and

26 (i) diluting and infringing the aforementioned trademarks and damaging
27 Plaintiff's goodwill, reputation and business.

28 2. That Defendants be required to deliver for destruction to Plaintiff's

1 counsel all copies and reproductions in Defendants' possession or under their
2 control of any goods or promotional or advertising material, and any other
3 unauthorized items which reproduce, copy, counterfeit, imitate, bear or use the
4 Rhodes mark;

5 3. That Defendants be required to pay to Plaintiff compensatory damages
6 (including without limitation loss of earnings, damage to business reputation,
7 diminishment of value of trademark, lost royalties and license fees, and costs
8 and expenses incurred) for the injuries sustained by Plaintiff in consequence of
9 the acts herein complained of in the amount of \$10 million or such other amount
10 as the Court may award, and that such damages be trebled pursuant to California
11 Business and Professions Code §14245, §14247 and §14250, and other
12 applicable law;

13 4. That Defendants, and each of them, be required to account for and to pay
14 to Plaintiff all of Defendants' gains, profits and advantages derived by them
15 from the activities herein complained of, and that such award of profits be
16 trebled pursuant to California Business and Professions Code §14245, §14247
17 and §14250, and other applicable law;

18 5. That Plaintiff recover from Defendants, and each of them, damages
19 and/or profits calculated at the baseline rate of a reasonable royalty, and that
20 such amounts be trebled pursuant to California Business and Professions Code
21 §14245, §14247 and §14250, and other applicable law.

22 6. That Plaintiff recover from Defendants, and each of them, their costs of
23 this action and reasonable attorneys' fees; and

24 7. That Plaintiff recover from Defendants, and each of them, punitive and
25 exemplary damages in the amount of \$10 million or such other amount as the
26 Court may award.

27 **As to Claim Seven**

28 1. That Defendants, their agents, servants, employees, attorneys,

1 representatives, successors and assigns and all persons, firms, partnerships,
2 limited liability companies or corporations in active concert or participation with
3 Defendants be enjoined and restrained permanently from:

4 (a) directly or indirectly infringing the Rhodes mark in any manner,
5 including but not limited to engaging in services or distributing, advertising,
6 selling or offering for sale or distribution any goods or services which infringe
7 the Rhodes mark, and specifically:

8 (i) using in any way the Rhodes mark or any name or mark similar
9 thereto, or any reproduction, counterfeit, copy or colorable imitation of the
10 Rhodes mark, alone or in combination with other words, names, styles, titles or
11 marks, in connection with Defendants' goods or services, or the advertisement,
12 sale, offer for sale or distribution of any goods or services which infringe the
13 Rhodes mark;

14 (ii) applying the Rhodes mark or any name or mark similar thereto, or
15 any reproduction, counterfeit, copy or colorable imitation of the Rhodes mark to
16 any product, advertisement, packaging, document or thing used in connection
17 with Defendants' goods or services;

18 (b) using any mark, trade name, logo or design that tends falsely to
19 represent, or is likely to confuse, mislead, or deceive purchasers, Defendants'
20 customers, or members of the public, that goods or services offered by
21 Defendants originate from Plaintiff, or that said goods or services have been
22 sponsored, approved, or licensed by or associated with Plaintiff or are in some
23 way connected or affiliated with Plaintiff or sponsored or licensed by Plaintiff;

24 (c) engaging in any conduct that tends falsely to represent that, or is likely
25 to confuse, mislead, or deceive purchasers, customers or members of the public
26 to believe that the actions of Defendants have been sponsored, approved, or
27 licensed by or associated with Plaintiff or are in some way connected or
28 affiliated with Plaintiff or sponsored or licensed by Plaintiff;

1 (d) affixing, applying, annexing or using in connection with Defendants’
2 goods or services, a false description or representation, including words or other
3 symbols, tending to falsely describe or represent such goods and services as
4 being those offered or sold by Plaintiff;

5 (e) holding themselves out as the owners of, or otherwise authorized to use
6 the name and mark “Rhodes” or any similar mark in commerce;

7 (f) performing any actions or using any words, names, styles, titles or marks
8 which are likely to cause confusion, to cause mistake or to deceive, or to
9 otherwise mislead the trade or public into believing that Plaintiff and
10 Defendants are one and the same or are in some way connected, or that Plaintiff
11 are a sponsor of Defendants, or that Defendants are in some manner affiliated or
12 associated with or under the supervision or control of Plaintiff, or that the
13 services of Defendants originate with Plaintiff or are conducted or offered with
14 the approval, consent or authorization, or under the supervision of Plaintiff, or
15 are likely in any way to lead the trade or the public to associate Defendants with
16 Plaintiff;

17 (g) using any words, names, styles, titles or marks which create a likelihood
18 of injury to the business reputation of Plaintiff, or a likelihood of dilution of
19 Plaintiff's mark “Rhodes” and the goodwill associated therewith;

20 (h) otherwise competing unfairly with Plaintiff in any manner; and

21 (i) diluting and infringing the aforementioned trademarks and damaging
22 Plaintiff’s goodwill, reputation and business.

23 2. That Defendants be required to deliver for destruction to Plaintiff’s
24 counsel all copies and reproductions in Defendants’ possession or under their
25 control of any goods or promotional or advertising material, and any other
26 unauthorized items which reproduce, copy, counterfeit, imitate, bear or use the
27 Rhodes mark;

28 3. That Defendants be required to disgorge to Plaintiff all wrongfully

1 obtained money, property and profits acquired by Defendants, as well as to
2 provide full restitution to Plaintiff of all money and property in which Plaintiff
3 have an ownership interest of which Defendants deprived them; and

4 4. That Plaintiff recover from Defendants, and each of them, their costs of
5 this action and reasonable attorneys' fees.

6 **As to Claim Eight**

7 1. For compensatory damages (including without limitation loss of
8 earnings, damage to business reputation, diminishment of value of trademark,
9 lost royalties and license fees, and costs and expenses incurred) in the amount of
10 \$10 million or such other amount as the Court may award, including general and
11 special damages;

12 2. For punitive and exemplary damages in the amount of \$10 million or
13 such other amount as the Court may award; and

14 3. For costs of this action and any attorneys' fees to which Plaintiff may be
15 entitled.

16 **As to All Causes of Action**

17 1. For interest, including without limitation prejudgment interest, as
18 provided by law; and

19 2. For such other and further relief as the Court may deem just and proper.

20 Dated: January 24, 2018

STRECKER LAW OFFICES

21
22 By: 

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DEMAND FOR JURY TRIAL

Plaintiff JOSEPH A. BRANDSTETTER hereby demands trial by jury.

Dated: January 24, 2018

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