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10 **BOOTLEGGERS BREWERY, LLC**

11 **UNITED STATES DISTRICT COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

13 **BOOTLEGGERS BREWERY, LLC,**
14 Plaintiff,

Case No. 8:16-cv-1390

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

15 v.

16 **ABITA BREWING COMPANY, INC.;**
17 and DOES 1 through 10, inclusive,
18 Defendants.

19 Plaintiff **BOOTLEGGERS BREWERY LLC** (“Bootlegger’s”) alleges as
20 follows for its complaint against **ABITA BREWING COMPANY, INC.** (“Abita”):

21 **I. JURISDICTION**

22 1. This is a Complaint for trademark infringement under the Lanham Act (15
23 U.S.C. § 1114); unfair competition and false designation of origin under the Lanham
24 Act (15 U.S.C. § 1125(a)); and trademark infringement under the common law of the
25 State of California.

26 2. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
27 question), 28 U.S.C. § 1332 (diversity), and 15 U.S.C. § 1121/28 U.S.C. § 1338
28 (original jurisdiction over Lanham Act actions). The Court has supplemental
jurisdiction over the state-law claim under 28 U.S.C. § 1367 because it derives from a

1 common nucleus of operative facts and forms part of the same case or controversy as
2 the federal-question claims.

3 3. The Court has personal jurisdiction over Abita because Abita has engaged
4 in continuous and systematic contact with California by conducting business and
5 selling products in California and/or because Abita has sufficient minimum contacts
6 with California such that the exercise of personal jurisdiction over Abita comports with
7 traditional notions of fair play and substantial justice.

8 **II. VENUE**

9 4. Venue is proper in this judicial district under 28 U.S.C. § 1391 because
10 Abita conducts business within this district and sells its infringing products to
11 consumers located in this judicial district; thus, it is likely that Bootlegger's customers
12 in this judicial district have been or will be confused by Abita's use of the infringing
13 mark.

14 **III. PARTIES**

15 5. Bootlegger's is a California corporation with its principal place of
16 business in Fullerton, California.

17 6. Abita is a Louisiana corporation with its principal place of business
18 located in Abita Springs, Louisiana.

19 **IV. FACTUAL BACKGROUND**

20 7. Bootlegger's is a craft brewery that has been manufacturing, marketing
21 and selling award-winning beer under various trademarks since 2008. Bootlegger's
22 currently sells its beer at more than 2,000 locations throughout Central and Southern
23 California. Bootlegger's has spent substantial money, time, energy, and resources to
24 ensure that the general public associates its trademarks exclusively with Bootlegger's
25 and its beer. The Bootlegger's mark and logo appear prominently on every keg and
26 bottle of beer sold by Bootlegger's.

27 8. Bootlegger's owns the trademark BOOTLEGGERS BREWERY which
28 was registered on the Principal Register of the United States Patent and Trademark

1 Office on March 19, 2013 under registration number 4,305,157 for beer. A true and
2 correct copy of the registration certificate is attached as Exhibit A. Bootlegger's has
3 also applied to register the BOOTLEGGERS BREWERY mark for taproom services.

4 9. Bootlegger's has used BOOTLEGGERS BREWERY in commerce since
5 at least September 17, 2008. Using the BOOTLEGGERS BREWERY mark,
6 Bootlegger's sells a variety of craft beers in over 2,000 bottle shops, liquor stores,
7 supermarkets, and bars. Bootlegger's packages its beers for sale in typical packaging
8 such as cases of six-pack bottles and kegs.

9 10. Abita, like Bootlegger's, is in the business of selling craft beer. Abita is
10 one of the top 25 craft breweries in the United States based on sales volume. Abita has
11 recently produced a new "hard root beer" called Bayou Bootlegger. Abita markets and
12 describes its Bayou Bootlegger product as "beer with natural flavors and caramel color
13 added." Abita packages Bayou Bootlegger in cases of six-pack bottles. Attached as
14 Exhibit B is a true and correct image of Abita's Bayou Bootlegger packed in six-pack
15 bottles.

16 11. Abita sells Bayou Bootlegger through the same marketing channels
17 through which Bootlegger's sell its craft beers namely bottle shops, liquor stores,
18 supermarkets, and bars located in this judicial district. Bayou Bootlegger is sold in the
19 same area of stores as other craft beer, not other root beer or soda drinks.

20 12. Abita's use of the term Bayou Bootlegger in connection with the sale,
21 offering for sale, distribution, or advertising of its beverage is likely to cause consumer
22 confusion as to the origin of Abita's beer with Bootlegger's beers sold under the
23 BOOTLEGGERS BREWERY mark.

24 13. Abita is therefore liable for mark infringement under 15 U.S.C. § 1114,
25 unfair competition/false designation of origin under 15 U.S.C. § 1125(a), and mark
26 infringement under California common law.

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FIRST CAUSE OF ACTION

(Trademark Infringement – 15 U.S.C. § 1114)

14. Bootlegger’s incorporates by reference the foregoing allegations as though set forth herein.

15. Bootlegger’s federal registration is conclusive evidence of Bootlegger’s exclusive right to use BOOTLEGGERS BREWERY in commerce under 15 U.S.C. §1115.

16. Abita’s use of Bootlegger in connection with the sale, offering for sale, distribution, or advertising of its Bayou Bootlegger beer is likely to cause confusion or mistake or is likely to deceive the public, thereby constituting infringement of BOOTLEGGERS BREWERY in violation of 15 U.S.C. §1114.

17. As a result of Abita’s infringement, Bootlegger’s has suffered, and will continue to suffer, ongoing and irreparable injury for which Bootlegger’s has no adequate remedy at law.

18. Abita’s infringement has been and continues to be deliberate, willful, and wanton, making this an exceptional case within the meaning of 15 U.S.C § 1117.

19. Bootlegger’s is entitled to preliminary and permanent injunctions, as well as all other remedies under the Lanham Act, including: compensatory damages, treble damages, disgorgement of profits, costs, and reasonable attorneys’ fees.

SECOND CAUSE OF ACTION

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

20. Bootlegger’s incorporates by reference the foregoing allegations as though set forth herein.

21. BOOTLEGGERS BREWERY, as used by Bootlegger’s in connection with its beers, is distinctive and has become associated with Bootlegger’s such that it exclusively identifies Bootlegger’s and its beers.

22. Abita’s use in commerce of Bayou Bootlegger is likely to cause confusion or mistake, or to deceive members of the public into believing that Abita’s Bayou

1 Bootlegger is affiliated, connected, sponsored, originating from, or otherwise
2 associated with Bootlegger's, thereby constituting false designation of origin, passing
3 off, false advertising, and unfair competition under 15 U.S.C. § 1125(a).

4 23. As a result of Abita's false designation of origin, passing off, false
5 advertising, and unfair competition, Bootlegger's has suffered, and will continue to
6 suffer, ongoing and irreparable injury for which Bootlegger's has no adequate remedy
7 at law.

8 24. Abita's false designation of origin, passing off, false advertising, and
9 unfair competition has been and continues to be deliberate, willful, and wanton,
10 making this an exceptional case within the meaning of 15 U.S.C § 1117.

11 25. Bootlegger's is entitled to preliminary and permanent injunctions, as well
12 as all other remedies under the Lanham Act, including: compensatory damages, treble
13 damages, disgorgement of profits, costs, and reasonable attorneys' fees.

14 **THIRD CAUSE OF ACTION**

15 **(California Common Law Trademark Infringement)**

16 26. Bootlegger's incorporates by reference the foregoing allegations as
17 though set forth herein.

18 27. Bootlegger's' use of BOOTLEGGERS BREWERY precedes Abita's use
19 of Bayou Bootlegger.

20 28. Abita's use of Bayou Bootlegger is likely to cause confusion as to
21 Bootlegger's association, affiliation, sponsorship, or endorsement of Abita and its
22 Bayou Bootlegger beer.

23 29. As a result of Abita's infringement of the BOOTLEGGERS Mark,
24 Bootlegger's has suffered and will continue to suffer loss of income, profits, and
25 goodwill and Abita has and will continue to be unjustly enriched by acquiring income,
26 profits, and goodwill to which it is not entitled.

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1 30. As a result of Abita's infringement, Bootlegger's has suffered and will
2 continue to suffer ongoing and irreparable injury for which Bootlegger's has no
3 adequate remedy at law.

4 31. Abita committed its infringement willfully and after actual and
5 constructive notice of Bootlegger's rights. Abita's conduct justifies an award of
6 exemplary damages.

7 **V. PRAYER**

8 WHEREFORE, Bootlegger's prays for judgment as follows:

9 1) That Abita and its agents, officers, employees, representatives, successors,
10 assigns, attorneys and all other persons acting for, with, by, through, or under authority
11 from Abita, and each of them, be preliminarily and permanently enjoined from:

12 a) Using Bayou Bootlegger or any colorable imitation thereof; and

13 b) Using any mark that imitates or is confusingly similar to or in any
14 way similar to the BOOTLEGGERS BREWERY mark, or that is likely to cause
15 confusion, mistake, deception, or public misunderstanding as to the origin of
16 Bootlegger's beer or its connection to Abita;

17 2) That Abita be required to file with the Court and serve on Bootlegger's
18 within thirty days after entry of injunctive relief, a report in writing and under oath
19 setting forth in detail the manner and form in which Abita has complied with the
20 injunctive relief;

21 3) That, under 15 U.S.C. § 1117, Abita be held liable for all damages
22 suffered by Bootlegger's resulting from the acts alleged herein;

23 4) That, under 15 U.S.C. § 1117, Abita be compelled to account to
24 Bootlegger's for any and all profits derived by Abita from the acts complained of
25 herein;

26 5) That Abita be ordered under 15 U.S.C. § 1118 to deliver up for
27 destruction all containers, labels, signs, prints, packages, wrappers, receptacles,
28 advertising, promotional material or the like in Abita's possession, custody, or control

1 bearing a trademark found to infringe the BOOTLEGGER'S BREWERY mark, as
2 well as all plates, matrices, and other means of making the same;

3 6) That the Court declare this to be an exceptional case and award
4 Bootlegger's its full costs and reasonable attorneys' fees under 15 U.S.C. § 1117;

5 7) That the Court grant Bootlegger's any other remedy to which it may be
6 entitled under the Lanham Act (15 U.S.C. §§ 1116-17) or under state law; and

7 8) For any other relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Bootlegger's
10 demands trial by jury in this action of all issues so triable.

11 Dated: July 26, 2016

CALDARELLI HEJMANOWSKI PAGE & LEER LLP

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13 By: /s/Ben West
14 Jack R. Leer
15 Ben West
16 Attorneys for Plaintiff
17 BOOTLEGGER'S BREWERY LLC
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EXHIBIT A

United States of America

United States Patent and Trademark Office

Bootlegger's Brewery

Reg. No. 4,305,157

BOOTLEGGERS BREWERY LLC (CALIFORNIA LIMITED LIABILITY COMPANY)
401 S. RICHMAN AVE.

Registered Mar. 19, 2013

FULLERTON, CA 92832

Int. Cl.: 32

FOR: BEER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

TRADEMARK

FIRST USE 4-15-2008; IN COMMERCE 9-17-2008.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BREWERY", APART FROM THE MARK AS SHOWN.

SER. NO. 85-687,407, FILED 7-26-2012.

ROBIN MITTLER, EXAMINING ATTORNEY



Sean Street

Acting Director of the United States Patent and Trademark Office

EXHIBIT B

