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8 Attorneys for Plaintiff
9 Adorian Deck; Marylou Deck, as Legal Guardian
10 of Adorian Deck

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 ADORIAN DECK; MARYLOU DECK, as
14 Legal Guardian of ADORIAN DECK, a minor

15 Plaintiffs,

16 vs.

17 SPARTZ, INC., A Delaware Corporation; and
18 DOES 1 through 10, inclusive,

19 Defendants.

) Case No.

) **COMPLAINT FOR LANHAM ACT**
) **VIOLATIONS, RESCISSION OF**
) **WRITTEN CONTRACT AND RELATED**
) **CLAIMS**

) _____
) **JURY DEMAND**
)

20 Plaintiffs, Adorian Deck and Marylou Deck, as Legal Guardian of Adorian Deck by and
21 through their undersigned counsel, hereby file this Complaint with Jury Demand against the above-
22 named Defendants, and Does 1 through 10, inclusive, and complain and allege as follows:

23 **JURISDICTION AND VENUE**

24 1. This is an action for trademark infringement and false designation of origin/false
25 advertising under the Lanham Act, 15 U.S.C. §1125, and pendent claims under state law. This Court
26 has subject matter jurisdiction over the matters complained of under 28 U.S.C. §1331, §1338(a) and
27 §1367. Additionally, diversity jurisdiction also exists pursuant to 28 U.S.C. § 1332(a)(1), since this
28 action involves citizens of different states and Plaintiff's claims for relief herein exceed the sum or
value of \$75,000.

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1 what Spartz would later present as a joint venture agreement turned out to be nothing more than an
2 artifice of self-dealing.

3 11. On or about April 27, 2010, Plaintiff was induced to sign, and did sign a written
4 contract with defendant Spartz, Inc., entitled “Contractor Agreement” (“Contract”), which Plaintiff
5 understood represented the aforementioned joint venture agreement. However, the Contract is in
6 fact a predatory instrument, quite obviously designed to misappropriate Plaintiff’s intellectual
7 property and the fruits of his creative efforts, and pay him little or nothing in return. For example,
8 the Contract purports to retain Plaintiff “to perform certain services to further Internet-related
9 project work in exchange for compensation.” The so-called “compensation” was to come from
10 sharing of revenues generated by the OMG Facts YouTube channel. Plaintiff was to receive 30% of
11 those revenues. To date, nearly a year later, Plaintiff has received less than \$100 in compensation
12 from Spartz, and has received no accounting or other disclosure of the revenues associated with the
13 YouTube channel. A true copy of the Contract is attached hereto as Exhibit “A.” The Contract
14 expires on April 27, 2011.

15 12. The Contract also provided that Plaintiff receive 100% of revenues from the sale of
16 his T-shirts on the OMG Facts website. What the Contract did not address, however, was the fact
17 that Spartz would have complete control of the OMG Facts website and retain 100% of its revenues,
18 and not be obligated to share or disclose those revenues to Plaintiff.

19 13. Even more disturbing than what the Contract omitted to state, is what it purports to
20 state. For example, in Section 3.B, the Contract purports to state that Plaintiff assigned to Spartz
21 “any copyright in any existing or future works. . . ,” including those that he made prior to execution
22 of the Contract, and including those that he thereafter made during its term. Thus, apparently for
23 less than \$100, the Contract purports that Plaintiff conveyed all of his preexisting intellectual
24 property to Spartz, and any corresponding rights Plaintiff had or may now have in OMG Facts. On
25 that basis alone, the Contract is unconscionable and unenforceable under applicable law.

26 14. The Contract further calls for litigation remedies to be pursued exclusively in courts
27 located within the State of Indiana, another provision which is unfairly burdensome upon Plaintiff,

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1 and intended to be. This provision was designed to discourage, if not economically bar Plaintiff
2 from pursuing his rights against Spartz.

3 15. Plaintiff recently discovered that Spartz now claims exclusive rights to the service
4 mark “OMG Facts” dating back to February 1, 2010, a claim that is both legally and factually
5 incorrect, but nonetheless injurious to Plaintiff’s rights, and further indicative of Spartz’s predatory
6 intent.

7
8 **FIRST CAUSE OF ACTION**
9 **(Rescission of Contract Under California Law)**

10 16. Plaintiff incorporates by this reference each and every allegation contained in
11 Paragraphs 1 through 15 as if set forth fully herein.

12 17. The Contract, because Plaintiff was a minor when it was executed, is subject to
13 California Family Code section 6710, which permits Plaintiff to now disaffirm it as a matter of law.
14 Plaintiff has opted to disaffirm the Contract, and has earlier provided notice of his intent to disaffirm
15 in writing to Spartz. Plaintiff intends the filing of this action to be further notice of his intent to
16 disaffirm.

17 18. Plaintiff seeks a judicial declaration sufficient to rescind the Contract, and sufficient
18 to restore the benefits received by Spartz and to return Plaintiff to his situation as it existed
19 immediately prior to the making of the Contract. Such restoration includes, without limitation,
20 restoring the revenues received by Spartz during the Contract term and returning to Plaintiff all of
21 the intellectual property that Plaintiff possessed prior to its execution, including all trademarks,
22 copyrights, domain names, and other intellectual properties. It further includes such preliminary and
23 permanent injunctive relief as may be necessary or appropriate to ensure full restoration of Plaintiff’s
24 rights and properties.

25 **SECOND CAUSE OF ACTION**
26 **(False Designation Of Origin, 15 U.S.C. § 1125(a)(1)(A))**

27 19. Plaintiff incorporates by this reference each and every allegation contained in
28 Paragraphs 1 through 15 as if set forth fully herein.

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or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

30. By engaging in the foregoing activities, Defendants have engaged in unfair competition as defined by California Bus. & Prof. Code §§17200, et seq. and Defendants' wrongful use of Plaintiff's Mark and violation of the aforementioned laws and regulations represents unfair, deceptive, and misleading advertising in violation of California Bus. & Prof. Code §§17500, et seq.

31. Plaintiff has suffered actual injury, including loss of revenue and good will, as a result of Defendants' unfair business practices and acts of unfair competition. Plaintiff has suffered, and continues to suffer, irreparable harm that has no adequate remedy at law and that will continue unless Defendants' conduct is preliminarily and permanently enjoined.

WHEREFORE, Plaintiff prays judgment as follows:

- a. That the Court enter a judgment sufficient to rescind the Contract, and sufficient to restore the benefits received by Spartz and to return Plaintiff to his situation as it existed immediately prior to the making of the Contract. Such restoration includes, without limitation, restoring the revenues received by Spartz during the Contract term and returning to Plaintiff all of the intellectual property that Plaintiff possessed prior to its execution. It further includes such preliminary and permanent injunctive relief as may be necessary or appropriate to ensure full restoration of Plaintiff's rights and properties associated with Plaintiff's Mark;
- b. That the Court enter judgment that Defendants have falsely designated an origin, affiliation or sponsorship by or with Plaintiff's trademarks and trade dress under the Lanham Act, 15 U.S.C. §1125(c);
- c. That the Court enter judgment that Defendants have competed unfairly pursuant to the Lanham Act, 15 U.S.C. §1125(a), and the common law, and be permanently enjoined from continuing such conduct;
- d. That the Court enter judgment that Defendants have competed unfairly under Cal. Bus. & Prof. Code §§17200, et seq. and advertised falsely under §§ 17500,

1 et seq., and be permanently enjoined from continuing such conduct and required
2 to return to Plaintiff all money and property they received from him;

3 e. That the Court preliminarily and permanently enjoin Defendants from using the
4 Plaintiff's trademarks, designations of origin, and any other mark, dress, word,
5 term, name, symbol, or device that is confusingly similar to the Plaintiff's
6 trademarks or trade dress;

7 f. That Defendants be ordered to pay damages to Plaintiff as a result of Defendants'
8 unlawful acts complained of herein, including without limitation reasonable
9 royalties, in an amount to be determined by this Court, and that said damages be
10 trebled insofar as Defendants' unlawful acts constitute willful infringement;

11 g. That Defendants be ordered to account for and pay over to Plaintiff all profits
12 realized by Defendants from the unlawful acts complained of herein;

13 h. That Defendants be ordered to pay Plaintiff's attorneys' fees and costs for this
14 action pursuant to the Lanham Act;

15 i. That Defendants be required to pay prejudgment and post-judgment interest until
16 such awards are paid; and

17 j. That Plaintiff be granted such other and further relief as shall seem just and
18 proper to the Court.

19 **DEMAND FOR JURY**: Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby
20 demands a jury trial on all claims and issues so triable.

21 DATED: April 26, 2011

MILLSTONE PETERSON & WATTS, LLP
Attorneys at Law

22
23 By: _____ /s/ GLENN W. PETERSON _____
GLENN W. PETERSON
24 Attorneys for Plaintiff
25 Adorian Deck; Marylou Deck, as Legal Guardian
of Adorian Deck

26 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
27 "conformed" signature (/s/) within this e-filed document.

28 **MILLSTONE PETERSON & WATTS, LLP**
Attorneys at Law /s/ Glenn W. Peterson