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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THOIP (a Chorion Limited Company),

Plaintiff,

-against-

David and Goliath, Inc.,

Defendant.

Case No.

JUDGE STEIN

08 CV 000963

**COMPLAINT**

Jury Trial Demanded

Plaintiff THOIP (a Chorion Limited Company) ("THOIP"), by its attorneys Baker & McKenzie LLP, for its complaint against defendant David & Goliath, Inc. ("DG Inc."), alleges as follows:

#### **NATURE OF THE ACTION**

This is an action for preliminary and permanent injunctive relief and compensatory or statutory damages by reason of Defendant's intentional acts in first appropriating, copying, and then attempting to capitalize on THOIP's longstanding, well-known and beloved children's figures featured in the "MR. MEN and LITTLE MISS" storybooks and brand of products. Defendant has launched a line of products under the "LITTLE LOSERS" name and is selling other infringing products in the same retail outlets as Plaintiff that deliberately rip-off THOIP's carefully cultivated image in the MR. MEN and LITTLE MISS books and products.

In this matter, Plaintiff brings causes of action for copyright infringement, in violation of 17 U.S.C. §§ 101, *et seq.*, trademark infringement in violation of 15 U.S.C. § 1114, trade dress infringement in violation of 15 U.S.C. § 1125(a), unfair competition and false designation of origin in violation of 15 U.S.C. § 1125(a), trademark dilution in violation of 15 U.S.C. § 1125(c), trademark infringement and unfair competition in violation of the common law of the state of New York, and trademark dilution in violation of New York General Business Law § 360-1. Plaintiff seeks equitable relief and damages.

### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121, and pursuant to 28 U.S.C. §§ 1331 and 1338, and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

2. This Court has personal jurisdiction over DG Inc. DG Inc. sells its LITTLE LOSERS line of products in numerous retail outlets in this judicial district, including some of the same retail outlets that carry THOIP's MR. MEN and LITTLE MISS products. DG Inc. has shipped infringing products to customers in New York. DG Inc. has also advertised infringing products for purchase on an interactive retail website that can be reached from New York.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) because DG Inc. is subject to personal jurisdiction in this district, and a substantial part of the events giving rise to THOIP's claims occurred in this district.

## **THE PARTIES**

4. THOIP (a Chorion Limited Company) is a company incorporated under the laws of England & Wales under company number 01610133, and has a registered address and principal place of business at Aldwych House, 81 Aldwych 4th Floor, London, WC2B 4HN, United Kingdom.

5. Defendant DAVID & GOLIATH, INC. is a Florida corporation with its principal place of business at 1230 South Myrtle Avenue, #401, Clearwater, Florida 33756.

## **FACTS**

### **Plaintiff and its Copyrights and Trademarks**

6. Roger Hargreaves ("Hargreaves") began writing and illustrating children's books featuring his original creations, the MR. MEN and LITTLE MISS characters, as early as 1971.

7. The MR. MEN and LITTLE MISS characters are cartoon figures illustrated with common physical features such as the lack of a torso, and a rounded or geometric body/head with a singular characteristic assigned to the figure, *i.e.*, LITTLE MISS STUBBORN, a girl figure with a determined look on her face or MR. MISCHIEF, a boy figure with a goofy look on his face. A schedule of the MR. MEN and LITTLE MISS characters' images and names is attached as Exhibit 1. In addition, the characters are sometimes drawn in different positions when they are doing different actions.

8. Over the past 3 ½ decades, the MR. MEN and LITTLE MISS books have become enormously popular worldwide, and in the United States, selling millions of copies. The books have been translated into multiple languages.

9. Hargreaves' MR. MEN and LITTLE MISS storybooks, as well as the

books' stories, characters, images, names, and locations, have grown into a well known, popular and profitable brand, with loyalty among not only children who read the books, but people of all ages.

10. As a result, the MR. MEN and LITTLE MISS copyrights, trademarks and the MR. MEN and LITTLE MISS characters are famous in the United States and around the world.

11. THOIP owns the intellectual property related to the MR. MEN and LITTLE MISS characters, including 136 U.S. copyright registrations, a registered U.S. trademark, the inherently distinctive trade dress and common law trademark rights. Copies of details of THOIP's United States copyright registrations are attached as Exhibit 2.

12. The MR. MEN and LITTLE MISS trademark, U.S. Registration No. 2,233,157, is valid and subsisting and is incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065.

13. A copy of THOIP's United States trademark registration as well as a current printout from the U.S. Patent and Trademark Office database evidencing the current goods, namely, "books for children" in International Class 16, covered under the registration are attached as Exhibit 3.

14. THOIP possesses common law trademark rights throughout the United States in its MR. MEN and LITTLE MISS trademarks by virtue of its use of said mark in interstate commerce.

15. THOIP possesses common law rights throughout the United States in its inherently distinctive trade dress for its characters on products in addition to the storybooks as described below as it has consistently used such trade dress in interstate commerce.

### **Distribution of THOIP's Marks on Goods**

16. In addition to the sale of millions of children's books worldwide, THOIP licenses the MR. MEN and LITTLE MISS characters to be used on a variety of products including, but not limited to, t-shirts, pajamas, shoes, office supplies, cosmetics, underwear, accessories, tote bags, slippers, pet clothing and jewelry.

17. The MR. MEN and LITTLE MISS licensed products are sold at well known retailers including The Container Store, Urban Outfitters, Delia\*s, Wal-Mart, Kohl's, J.C. Penny, Mervyn's, Sears, and Target.

18. The MR. MEN and LITTLE MISS licensed products target a variety of consumer groups, including children, teenagers, and adults.

19. For example, the LITTLE MISS GIGGLES character, among others, is licensed to be featured on products including, but not limited to, jewelry and underwear. Likewise, the LITTLE MISS NAUGHTY character is licensed to be featured on products including, but not limited to, dog clothing and socks. The MR. MESSY character is licensed to be featured on products including, but not limited to, lip balm. Representative photos of some of Plaintiff's licensed products are attached as Exhibit 4.

20. THOIP has a number of licensees producing t-shirts with the MR. MEN and LITTLE MISS characters including MR. HAPPY, LITTLE MISS BOSSY, LITTLE MISS SUNSHINE, MR. FUNNY and others, accompanied with the characters' names in fonts specific to the character or licensee. Photos of the licensees' t-shirts are attached as Exhibit 5.

21. In each book and throughout the merchandising of the MR. MEN and LITTLE MISS products, the figures are laid out in a colorful grid spread out in rows on one page, so that the consumer may view the entire family of characters all together.

22. In 2007, sales of legitimate licensed goods featuring the MR. MEN and LITTLE MISS marks amounted to millions of dollars.

23. THOIP has also spent millions of dollars developing a television series featuring the MR. MEN and LITTLE MISS characters which will soon be broadcast in the United States, European Union, as well as other countries worldwide.

### **Defendant's Infringements**

24. Based on Plaintiff's research, Defendant DG Inc. has a history of appropriating the intellectual property of others without permission, often with little or no change to the property and using others' intellectual property to its own benefit and profit.


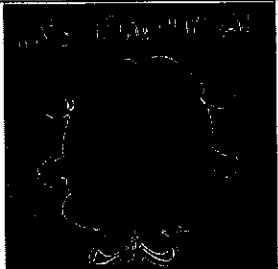




25. Upon information and belief, DG Inc. released a line of merchandise called LITTLE LOSERS in 2007.


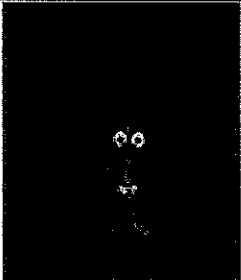


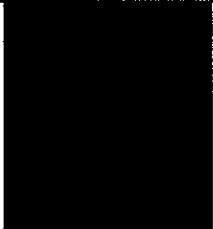


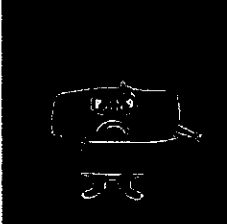
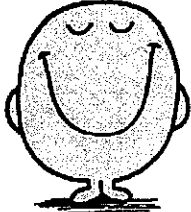
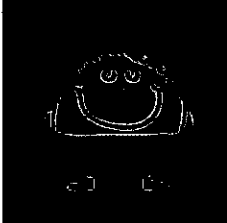
26. Upon information and belief, the LITTLE LOSERS line consists of at least 25 t-shirts depicting characters drawn and named in a manner similar to the MR. MEN and LITTLE MISS characters, as well as infant's and children's clothing and other products depicting characters drawn and named in a manner substantially and confusingly similar to the MR. MEN and LITTLE MISS characters.

27. The LITTLE LOSERS characters feature figures with a rounded body/head, no torso, and a singular personality trait displayed through the character.


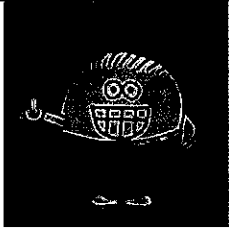

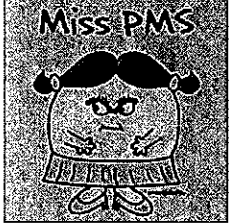



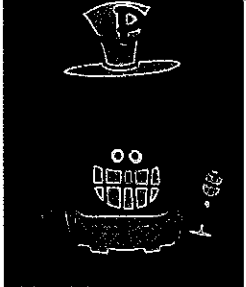
28. Many but not all of the LITTLE LOSERS characters push the envelope, use foul language, encourage infidelity, and espouse illegal drug use, including MR. SHITHEAD, MISS BITCH, MR. CHEATER and MR. STONER. Images of DG Inc. LITTLE LOSERS characters are attached as Exhibit 6.

29. Other LITTLE LOSERS characters have names that are so close to the MR. MEN and LITTLE MISS characters, they could be lifted straight from the MR. MEN and LITTLE MISS books. For example, where THOIP's characters include LITTLE MISS BOSSY, DG Inc. has now attempted to capitalize on THOIP's success by selling MISS KNOW IT ALL shirts with a character drawn nearly identically to LITTLE MISS BOSSY. A comparison of certain of THOIP's characters and certain of DG Inc.'s similar and infringing characters is depicted below.

THOIP's Character	DG Inc.'s Character
 Little Miss Bossy	
 Little Miss Chatterbox	
 Little Miss Sunshine	

THOIP's Character	DG Inc.'s Character
 <p data-bbox="435 510 544 594">Mr Skinny</p>	
	
	
 <p data-bbox="380 1507 610 1535">Little Miss Stubborn</p>	
 <p data-bbox="420 1814 566 1854">Mr. Happy</p>	

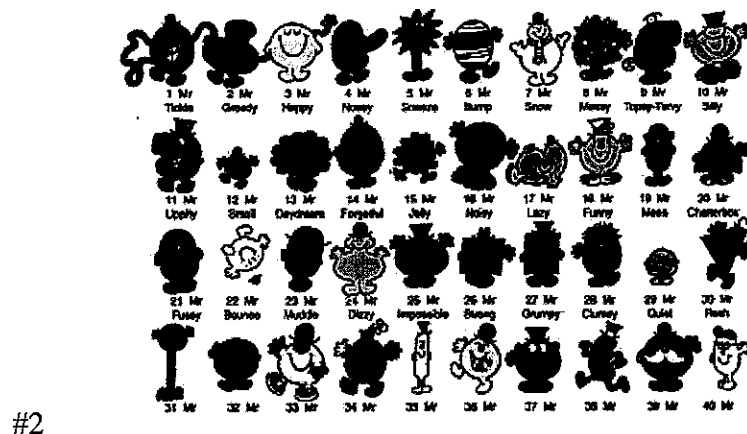
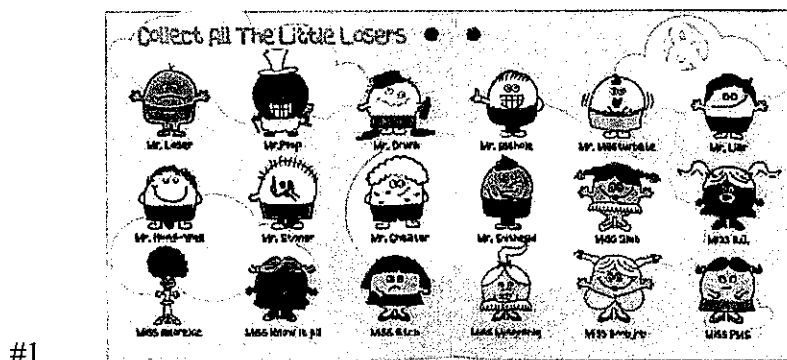


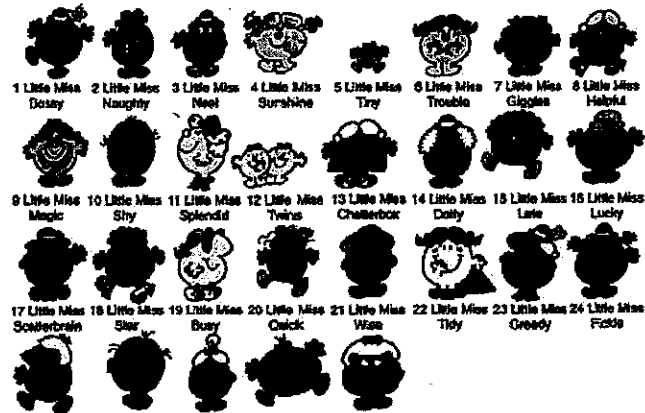
THOIP's Character	DG Inc.'s Character
 <p data-bbox="393 493 597 529">Mr. Impossible</p>	
 <p data-bbox="393 760 597 793">Little Miss Bad</p>	
 <p data-bbox="360 1066 630 1102">Little Miss Sunshine</p>	
 <p data-bbox="457 1348 548 1423">Mr Uppity</p>	

30. Upon information and belief, DG Inc. has recently expanded the LITTLE LOSERS line into apparel for infants and children, featuring similarly drawn characters on items such as baby “onesies” and children’s t-shirts.



31. As shown below, DG Inc.’s hang tag (#1 below) virtually copies the layout of THOIP’s MR. MEN and LITTLE MISS characters used on merchandise (#2 and #3 below):





#3

32. Upon information and belief, DG Inc. targets its LITTLE LOSERS lines to the same groups of consumers that THOIP markets its MR. MEN and LITTLE MISS licensed products. The LITTLE LOSERS line intentionally attempts to confuse consumers and capitalize on THOIP's MR. MEN and LITTLE MISS characters.

33. Upon information and belief, DG Inc. has offered its items for sale at the identical retailers to THOIP. For example, both DG Inc.'s LITTLE LOSERS t-shirts *and* THOIP's LITTLE MISS t-shirts are sold at a Urban Outfitters retail location in this district. A photo of Plaintiff's and Defendant's products as displayed at a local Urban Outfitters is attached as Exhibit 7.

#### **DG Inc.'s Refusal to Cease Selling Infringing Goods**

34. THOIP wrote to DG Inc. via counsel, contending that the LITTLE LOSERS t-shirts infringed THOIP's intellectual property.

35. DG Inc. counsel responded, *inter alia*, that the LITTLE LOSERS t-shirts did not infringe and they could "see no resemblance" between the products.

36. THOIP responded, listing specific similarities between the characters, reiterating THOIP's intellectual property claims, and demanding that DG Inc. cease any further use of the infringing products.

37. DG Inc. has refused to cease distributing the alleged infringing merchandise.

**DG Inc.'s Continued Willful Infringement of THOIP's Property**

38. DG Inc. has continued to willfully make and distribute LITTLE LOSERS merchandise, and has continued to expand the brand by creating additional infringing characters beyond the 18 characters which THOIP initially opposed in writing to DG Inc.

39. DG Inc.'s infringing LITTLE LOSERS products are still available on its website, and at retailers within this district, including Urban Outfitters, Yellow Rat Bastard, and Sloppy Joe Dirty Jane.

40. DG Inc.'s infringing LITTLE LOSERS products have deprived and will continue to deprive THOIP of sales and profits it would otherwise receive but for DG Inc.'s infringing products, because of the substantial similarity and a high likelihood of confusion between the MR. MEN and LITTLE MISS merchandise and that of the LITTLE LOSERS products.

41. DG Inc.'s infringing LITTLE LOSERS products have harmed and will continue to harm THOIP's brand equity and goodwill in the MR. MEN and LITTLE MISS characters, because of the substantial similarity and the high likelihood of consumer confusion regarding the origins of the MR. MEN and LITTLE MISS merchandise and that of the LITTLE LOSERS products.

42. Upon information and belief, DG Inc.'s infringing LITTLE LOSERS products have harmed and will continue to harm THOIP's brand equity and goodwill in the MR. MEN and LITTLE MISS characters, because consumers will no longer think of THOIP as the exclusive origin of products or services bearing the MR. MEN and LITTLE MISS characters.

43. DG Inc.'s infringing LITTLE LOSERS products have harmed and will continue to harm THOIP's brand equity and goodwill in the MR. MEN and LITTLE MISS characters, because consumers' concept of the MR. MEN and LITTLE MISS characters will be tarnished, blurred and diluted by the association with DG Inc.'s sexually explicit, negative, distasteful products which encourage illegal activity.

44. Upon information and belief, DG Inc.'s unlawful and infringing actions will continue unless enjoined by this Court.

45. As a result of the foregoing unlawful acts of DG Inc., THOIP is suffering irreparable harm for which it has no adequate remedy at law.

46. Unless DG Inc. is restrained by the Court from continuing its improper conduct, these injuries will continue to occur.

**FIRST CLAIM FOR RELIEF:  
COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. §§ 101 *et seq.***

47. Plaintiff THOIP repeats and realleges the foregoing allegations in the complaint.

48. THOIP's MR. MEN and LITTLE MISS characters are original works of visual art containing copyrightable subject matter for which copyright protection exists under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*

49. THOIP is, and for all times relevant to this complaint, has been, the sole owner of all rights, titles and interests in and to the copyrights to the MR. MEN and LITTLE MISS works. Copies of details of the U.S. copyright registrations for these works are attached as Exhibit 2.

50. THOIP has conveyed no copyright interest in any of the MR. MEN and LITTLE MISS copyrighted works to DG Inc.

51. DG Inc. had access to THOIP's MR. MEN and LITTLE MISS copyrighted works because of their worldwide distribution.

52. DG Inc. incorporated the original creative expression of the copyrighted MR. MEN and LITTLE MISS works into the infringing LITTLE LOSERS products.

53. As a result of DG Inc.'s infringement of THOIP's copyright, the infringing LITTLE LOSERS characters are substantially similar to THOIP's copyrighted MR. MEN and LITTLE MISS works.

54. DG Inc. has designed, manufactured, or caused to be manufactured, imported, or caused to be imported, distributed, or caused to be distributed and/or sold the infringing LITTLE LOSERS without authority or consent from THOIP, as alleged above, thereby infringing THOIP's exclusive rights under copyright in violation of Section 501 of the Copyright Act, 17 U.S.C. § 501.

55. DG Inc., with knowledge of THOIP's ownership of the copyrights in the MR. MEN and LITTLE MISS works, knowingly and willfully infringed THOIP's rights by producing, promoting, distributing, and otherwise exploiting the infringing LITTLE LOSERS products.

56. DG Inc. has profited from producing, promoting, distributing, and otherwise exploiting the infringing LITTLE LOSERS products.

57. DG Inc.'s copyright infringement has caused, and will continue to cause, THOIP to suffer injuries, loss, and damage to its proprietary and exclusive rights to, and copyrights in the MR. MEN and LITTLE MISS works, and further, has damaged THOIP's business reputation and goodwill, diverted its trade, and caused a loss of profits, all in an amount not yet ascertained.

58. DG Inc.'s copyright infringement, and the threat of continuing copyright infringement, has caused, and will continue to cause, THOIP repeated and irreparable injury. THOIP has been and will continue to be irreparably harmed unless DG Inc. is enjoined from its unlawful conduct.

59. THOIP has no adequate remedy at law. Therefore, DG Inc. should be restrained and enjoined pursuant to the Copyright Act, 17 U.S.C. Sections 101, *et seq.*

60. In addition, pursuant to the Copyright Act, 17 U.S.C. Sections 101, *et seq.*, THOIP is entitled to recover from DG Inc. costs, attorneys fees, and at THOIP's option, either all of THOIP's actual damages plus all profits obtained by DG Inc. as a result of its infringing acts alleged above in an amount not yet known, or statutory damages.

**SECOND CLAIM FOR RELIEF:  
TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114**

61. Plaintiff THOIP repeats and realleges the foregoing allegations of the complaint.

62. THOIP has marketed, advertised, and promoted the MR. MEN and LITTLE MISS products under its registered trademark, and as a result of this marketing, advertising and promotion, THOIP's trademark has come to mean and is understood to signify THOIP's products, and is the means by which THOIP's products are distinguished from those of others in the same and related fields.

63. Because of the long, continuous, and exclusive use of the MR. MEN and LITTLE MISS mark, the registered MR. MEN and LITTLE MISS trademark is fanciful and has come to signify the MR. MEN and LITTLE MISS mark in the public's mind as deriving from a single source.

64. As alleged herein, DG Inc.'s activities constitute use in interstate commerce of copies, variations, simulations, and colorable imitations of THOIP's MR. MEN and LITTLE MISS trademark.

65. DG Inc.'s activities are likely to cause consumer confusion, mistake, or deception and are likely to cause consumers and the public to believe that THOIP is the source of the LITTLE LOSERS products, or that THOIP has sponsored, authorized or licensed the infringing LITTLE LOSERS products for sale in the United States.

66. DG Inc.'s activities are likely to lead the public to conclude, incorrectly, that the products, which are or have been distributed and sold by DG Inc., originate with, are sponsored by, or are authorized by THOIP, which has and will continue to damage THOIP and the public.

67. DG Inc.'s activities constitute willful and deliberate infringement of THOIP's registered MR. MEN and LITTLE MISS trademark in violation of 15 U.S.C. § 1114.

68. DG Inc.'s infringing actions will continue unless enjoined by the Court.

69. THOIP has no adequate remedy at law, and has suffered and will suffer irreparable harm to its business, reputation, and goodwill unless DG Inc.'s unlawful conduct is enjoined by this Court.

70. In light of the foregoing, THOIP is entitled to a preliminary and permanent injunction prohibiting DG Inc. from selling or distributing the infringing LITTLE LOSERS products.

71. THOIP is also entitled to recover from DG Inc. all damages that THOIP has and will sustain, and all gains, profits, and advantages obtained by DG Inc. as a result of its infringing acts alleged above in an amount not yet known, the lost goodwill to THOIP's MR.



MEN and LITTLE MISS trademark and brand equity in that mark, and the costs of this action pursuant to 15 U.S.C. § 1117(a), enhanced damages, or, at THOIP's option, statutory damages pursuant to 15 U.S.C. § 1117(c).

**THIRD CLAIM FOR RELIEF:**  
**TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(A)**

72. Plaintiff THOIP repeats and realleges the foregoing allegations of the complaint.

73. THOIP utilizes inherently distinctive trade dress in conjunction with its MR. MEN and LITTLE MISS t-shirts, books, and other merchandise, as well as the identification cards.

74. DG Inc. adopted the trade dress of its LITTLE LOSERS t-shirts and their identification cards with knowledge of the trade dress of THOIP's MR. MEN and LITTLE MISS t-shirts, books, and other merchandise, as well as the identification cards.

75. DG Inc. deceptively used, and continues to use, confusingly similar trade dress to THOIP's trade dress, which is likely to cause confusion, mistake, and deception as to DG Inc.'s association, affiliation, or connection with THOIP.

76. DG Inc.'s acts are calculated to deceive, or are likely to deceive, the public, which recognizes and associates the MR. MEN and LITTLE MISS trade dress with THOIP. Moreover, this conduct is likely to cause confusion, mistake, and deception as to the source of DG Inc.'s products, or as to a possible association, affiliation, or connection with THOIP.

77. DG Inc.'s infringing actions will continue unless enjoined by the Court.

78. THOIP has no adequate remedy at law, and has suffered and will suffer irreparable harm to its business, reputation, and goodwill unless DG Inc.'s unlawful conduct is enjoined by this Court.

79. In light of the foregoing, THOIP is entitled to a preliminary and permanent injunction prohibiting DG Inc. from selling or distributing the infringing LITTLE LOSERS products, and to recover from DG Inc. all damages that THOIP has and will sustain, and all gains, profits, and advantages obtained by DG Inc. as a result of its infringing acts alleged above in an amount not yet known, the lost goodwill to THOIP's MR. MEN and LITTLE MISS trademark and character marks and brand equity in those marks, and the costs of this action pursuant to 15 U.S.C. § 1117(a) or, at THOIP's option, statutory damages pursuant to 15 U.S.C. § 1117(c).

80. As this is an exceptional case given DG Inc.'s willful acts, pursuant to 15 U.S.C. § 1117(a), THOIP is further entitled to three times the amount of the above profits or damages, whichever is greater, and attorney's fees, costs, or at THOIP's election, enhanced statutory damages pursuant to 15 U.S.C. § 1117(c).

**FOURTH CLAIM FOR RELIEF:**  
**UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN**  
**UNDER 15 U.S.C. § 1125(A)**

81. Plaintiff THOIP repeats and realleges the foregoing allegations of the complaint.

82. THOIP utilizes the inherently distinctive MR. MEN and LITTLE MISS characters as common law trademarks which identify THOIP's goods to the public.

83. DG Inc.'s use of the MR. MEN and LITTLE MISS characters, and the resulting distribution and sale of the LITTLE LOSERS products constitutes false designation of origin in violation of Section 43(a)(1) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

84. In addition, it is a false and misleading description and representation of fact which is likely to cause confusion or mistake, or to deceive the relevant purchasing public as to the origin or sponsorship of the LITTLE LOSERS products.

85. DG Inc.'s infringing actions will continue unless enjoined by the Court.

86. THOIP has no adequate remedy at law, and has suffered and will suffer irreparable harm to its business, reputation, and goodwill unless DG Inc.'s unlawful conduct is enjoined by this Court.

87. In light of the foregoing, THOIP is entitled to a preliminary and permanent injunction prohibiting DG Inc. from selling or distributing the infringing LITTLE LOSERS products, and to recover from DG Inc. all damages that THOIP has and will sustain, and all gains, profits, and advantages obtained by DG Inc. as a result of its infringing acts alleged above in an amount not yet known, the lost goodwill to THOIP's MR. MEN and LITTLE MISS trademark, common law character marks, and brand equity in those marks, and the costs of this action pursuant to 15 U.S.C. § 1117(a) or, at THOIP's option, statutory damages pursuant to 15 U.S.C. § 1117(c).

88. As this is an exceptional case given DG Inc.'s willful acts, pursuant to 15 U.S.C. § 1117(a), THOIP is further entitled to three times the amount of the above profits or damages, whichever is greater, and attorney's fees, costs, or at THOIP's election, enhanced statutory damages pursuant to 15 U.S.C. § 1117(c).

**FIFTH CLAIM FOR RELIEF:  
TRADEMARK DILUTION UNDER 15 U.S.C. § 1125(C)**

89. Plaintiff THOIP repeats and realleges the foregoing allegations of the complaint.

90. THOIP's MR. MEN and LITTLE MISS marks are famous within the meaning of 15 U.S.C. § 1125(c) because of the long, continuous, and exclusive use of both THOIP's common law and registered MR. MEN and LITTLE MISS trademarks.

91. THOIP's MR. MEN and LITTLE MISS marks acquired their fame prior to DG Inc.'s use of the infringing marks and works which constitute the LITTLE LOSERS merchandise.

92. DG Inc.'s distribution and sale of the infringing LITTLE LOSERS merchandise is likely to dilute and has diluted the distinctive quality of THOIP's MR. MEN and LITTLE MISS marks by blurring and tarnishing the trademarks' ability to act as a distinctive identifier of source or origin, and by circumventing THOIP's efforts to maintain the integrity of the products with which their trademarks are associated, and has, among other things, reduced the selling power of THOIP's marks and diminished its ability to serve as a source and product identifier.

93. DG Inc.'s distribution and sale of the infringing LITTLE LOSERS merchandise is likely to dilute and has diluted the distinctive quality of THOIP's MR. MEN and LITTLE MISS marks by blurring and tarnishing the reputation of THOIP's marks by associating them with criminal, distasteful, and unethical behavior.

94. DG Inc.'s acts have been willful and in disregard of THOIP's rights. DG Inc. knew or should have known that their actions constituted trademark dilution, or they proceeded in disregard of THOIP's rights.

95. As a direct and proximate result of DG Inc.'s willful and wanton dilution of THOIP's marks and misconduct, THOIP's business reputation, the goodwill associated with the MR. MEN and LITTLE MISS marks, and the favorable associations that consumers and the public make with the marks have been impaired and diminished, and the MR. MEN and LITTLE MISS marks have been and are likely to be diluted.

96. DG Inc.'s acts have caused THOIP irreparable harm for which it has no adequate remedy at law.

97. THOIP is entitled to a preliminary and permanent injunction prohibiting DG Inc. from using the MR. MEN and LITTLE MISS marks, or any mark confusingly similar thereto, including but not limited to the LITTLE LOSERS marks; to recover from DG Inc. all damages that THOIP has sustained and will sustain, and all gains, profits, and advantages that DG Inc. has obtained as a result of the foregoing infringing actions.

98. As this is an exceptional case given DG Inc.'s willful acts, pursuant to 15 U.S.C. § 1117(a), THOIP is further entitled to three times the amount of the above profits or damages, whichever is greater, and attorney's fees, costs, or at THOIP's election, enhanced statutory damages pursuant to 15 U.S.C. § 1117(c).

**SIXTH CLAIM FOR RELIEF:**  
**COMMON LAW TRADEMARK INFRINGEMENT**  
**AND UNFAIR COMPETITION**

99. Plaintiff THOIP repeats and realleges the foregoing allegations of the complaint.

100. THOIP possesses common law rights in the MR. MEN and LITTLE MISS characters, which are inherently distinctive and act as common law trademarks signifying THOIP's goods.

101. DG Inc.'s adoption and use of the LITTLE LOSERS mark constitutes

trademark infringement and unfair competition in violation of the common law of the State of New York.

102. DG Inc.'s activities are designed with the intent to mislead and/or deceive the public into believing that DG Inc. is affiliated with, authorized, endorsed, sponsored, and/or sanctioned by THOIP, or is connected or associated in some way with THOIP, which it is not.

103. DG Inc.'s acts complained of herein have damaged THOIP, and will, unless restrained, further impair if not destroy, the value of the MR. MEN and LITTLE MISS marks and the goodwill associated therewith.

104. DG Inc. has engaged and continues to engage in this activity knowingly and willfully.

105. DG Inc.'s acts of common law trademark infringement and unfair competition, unless enjoined by this Court, will continue to cause THOIP to sustain irreparable damage, loss and injury for which THOIP has no adequate remedy at law.

106. As a result of the foregoing, THOIP is entitled to recover from DG Inc. all damages that THOIP has and will sustain, and all gains, profits, and advantages obtained by DG Inc. as a result of its infringing acts alleged above in an amount not yet known, the lost goodwill to THOIP's MR. MEN and LITTLE MISS trademark, common law trademarks in the Mr. MEN and LITTLE MISS characters, and brand equity in those mark, and the costs of this action.

**SEVENTH CLAIM FOR RELIEF:**  
**TRADEMARK DILUTION UNDER N.Y. GEN. BUS. LAW § 360-L**

107. Plaintiff THOIP repeats and realleges the foregoing allegations of the complaint.

108. THOIP's marks are distinctive.

109. DG Inc.'s distribution and sale of the infringing LITTLE LOSERS

merchandise is likely to dilute the distinctive quality of THOIP's marks, and has, among other things, reduced the selling power of THOIP's marks and diminished its ability to serve as a source and product identifier.

110. DG Inc.'s conduct described above constitutes, among other things, trademark dilution in violation of Section 360-1 of the New York General Business Law.

111. As a direct and proximate result of DG Inc.'s willful and wanton dilution of THOIP's marks and misconduct, THOIP's business reputation, the goodwill associated with THOIP's marks, and the favorable associations that consumers and the public make with the marks have been impaired and diminished, and THOIP's marks have been and are likely to be diluted.

112. DG Inc.'s acts have caused THOIP irreparable harm for which it has no adequate remedy at law.

113. As a result of the foregoing, THOIP is entitled to an injunction and to recover from DG Inc. all damages that THOIP has and will sustain, and all gains, profits, and advantages obtained by DG Inc. as a result of its infringing acts alleged above in an amount not yet known, the lost goodwill to THOIP's MR. MEN and LITTLE MISS marks and brand equity in those mark, and the costs of this action.

#### **PRAYER FOR RELIEF**

WHEREFORE, THOIP respectfully requests that judgment be entered:

A. Preliminarily and permanently enjoining DG Inc., its affiliates, subsidiaries, parents and their respective officers, agents, servants and employees, and all persons in active concert or participation with them, and mandating that DG Inc. forever cease and desist in the future, anywhere in the world:

i. from further trademark infringement, trade dress infringement, false designation of origin, dilution and unfair competition with respect to the MR. MEN and LITTLE MISS marks pursuant to the Lanham Act, 15 U.S.C. §1051 *et seq.* or otherwise;

ii. from further copyright infringement with respect to the MR. MEN and LITTLE MISS copyrights pursuant to the Copyright Act, 17 U.S.C. §101 *et seq.* or otherwise; and

iii. from attempting, causing, or assisting any of the above-described acts, including but not limited to, enabling others to conduct the infringement scheme for them, or by passing along information to others to allow them to manufacture, distribute, sell or offer for sale products that infringe the MR. MEN and LITTLE MISS marks, including LITTLE LOSERS; and

B. Directing the Defendant to pay to Plaintiff actual damages, additional profits and the costs of this action under 15 U.S.C. §1117(a) or otherwise;

C. Directing the Defendant to pay to Plaintiff actual damages, additional profits and the costs of this action under the Copyright Act 17 U.S.C. § 101 *et. seq.*;

D. Entering judgment that Defendant's trademark and copyright infringement have been willful;

E. Awarding Plaintiff enhanced damages, actual damages, Defendant's profits, or in the alternative statutory damages under 15 U.S.C. § 1117(c);

F. Awarding Plaintiff damages for the loss of brand equity in the goodwill of its MR. MEN and LITTLE MISS marks;



- G. Awarding Plaintiff statutory damages under the Copyright Act pursuant to 17 U.S.C. § 504(c);
- H. Ordering that all infringing products be recalled, impounded and destroyed under the Trademark and Copyright Acts;
- I. Awarding Plaintiff damages, punitive or enhanced damages and an injunction under New York common law and statutory law;
- J. Awarding Plaintiff its reasonable attorneys' fees and costs; and
- K. Awarding such other relief as the Court deems just and proper.

**JURY DEMAND**

THOIP demands a trial by jury of all claims.

Dated: New York, New York.  
January 29, 2008

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