

FRITZ CLAPP (Cal. Bar No. 99197)
Attorney at Law
4010 Foothill Boulevard
Oakland, California 94601
Telephone: (916) 548-1014
Facsimile: (888) 467-2341
E-mail: <mail@fritzclapp.com>

Attorney for Plaintiff
HELLS ANGELS MOTORCYCLE CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HELLS ANGELS MOTORCYCLE CORPORATION, a Nevada corporation,

Plaintiff,

v.

HEADGEAR, INC., a Virginia corporation,
20/20 FASHIONS, INC., a California corporation, and Does 1 through 100, inclusive,

Defendants.

Case No. CV-08-2119-VRW

**FIRST AMENDED COMPLAINT FOR
TRADEMARK INFRINGEMENT AND
DILUTION; DEMAND FOR JURY
TRIAL**

Plaintiff, HELLS ANGELS MOTORCYCLE CORPORATION, by and through its undersigned attorney, complains and alleges as follows:

JURISDICTION

1. This action arises under the trademark laws of the United States, 15 U.S.C. §1051 et seq. (Lanham Act). This court has federal question jurisdiction pursuant to 15 U.S.C. §1121(a), 28 U.S.C. §1331 and 28 U.S.C. §1338(a).

1 2. This Court has personal jurisdiction over Defendants because each is either
2 found within this District or does business within this District.

3 **INTRA-DISTRICT ASSIGNMENT**

4 3. This intellectual property action is assigned on a district-wide basis pursuant
5 to Civil L.R. 302(c). The action arises in Alameda and Contra Costa Counties, and may be
6 assigned to the San Francisco Division pursuant to Civil L.R. 302(d).

7 **PARTIES AND VENUE**

8 4. Plaintiff HELLS ANGELS MOTORCYCLE CORPORATION (“HAMC”)
9 is now, and at all relevant times was, a non-profit corporation organized and existing under
10 the laws of the State of Nevada. HAMC is the owner of the trademarks described herein.

11 5. Defendant HEADGEAR, INC. (“HEADGEAR”) is a Virginia corporation
12 with offices at 3409 Chandler Creek Road, Virginia Beach, VA 23453. Defendant
13 HEADGEAR is a manufacturer of clothing items with the brand “Blac Label.”

14 6. Defendant 20/20 FASHIONS, INC. (“20/20”) is now, and at all times
15 mentioned was, a California corporation with offices at 660 Southland Mall, Ste. 660,
16 Hayward, CA 94545. Defendant 20/20 is a clothing retailer with outlets in Alameda and
17 Contra Costa Counties, California.

18 7. Venue as to each defendant is proper under 28 U.S.C. §1391(b). Defendant
19 20/20 resides within this district, and both Defendants have been selling within this district
20 the infringing items complained of herein.

21 8. The true names and capacities, whether individual, corporate, associate or
22 otherwise of Does 1 through 100, inclusive, and each of them, are unknown to Plaintiff,
23 who therefore sues said defendants by such fictitious names, and will seek leave of this
24 Court to amend this Complaint to show the true names and capacities when they have been
25 ascertained. Plaintiff is informed and believes, and on that basis alleges, that each
26 defendant designated herein as a Doe was responsible, intentionally, negligently,
27 contributorily, vicariously or in some other actionable manner, for the events and
28 happenings referred to herein which proximately and legally caused the damages to

1 Plaintiff as hereinafter alleged.

2 **PLAINTIFF'S MARK**

3 9. For over sixty years, the Hells Angels Motorcycle Club has continuously
4 employed the word mark HELLS ANGELS as a collective membership mark, trademark
5 and service mark. The HELLS ANGELS mark is used in connection with the promotion,
6 advertising, conduct and expansion of a motorcycle club, and as indicia of active
7 membership in a motorcycle club; on authorized goods such as posters, adhesive labels,
8 motion pictures, and sound recordings; and in connection with authorized services such as
9 promotional and entertainment services.

10 10. Plaintiff HAMC is the owner of U.S. Trademark Registration Nos.
11 1,136,494, 1,214,476, 1,294,586, 1,301,050, and 1,943,341 for the HELLS ANGELS word
12 mark. Attached to this complaint as Exhibit A and incorporated by this reference is a copy
13 of the certificate of ownership in Reg. No. 1,294,586 for HELLS ANGELS in International
14 Class 25 (for t-shirts).

15 11. Plaintiff's registrations have become incontestable under 15 U.S.C. §1065.
16 These registrations are, therefore, conclusive evidence of Plaintiff's exclusive right to use
17 the registered Mark.

18 12. Through continuous and conspicuous usage by Plaintiff HAMC and its
19 authorized licensees, the HELLS ANGELS word mark (the "Mark") is famous. The Mark
20 is widely known and recognized by the public as indicating the membership and
21 organization of motorcycle enthusiasts exclusively using the mark. Plaintiff HAMC has
22 exercised legitimate control over the uses of the Mark by its duly authorized licensees, and
23 has been diligent in abating the use of the Mark by unauthorized third parties.

24 13. Through publicity, fact and fiction, the word mark HELLS ANGELS has
25 acquired widespread public recognition, and it evokes strong and immediate reactions
26 whenever it is uttered or used. The impact of this mark is virtually incomparable, and as a
27 result it has great commercial value. Defendants seek to exploit that value for their own
28 gain.

DEFENDANTS' UNAUTHORIZED USAGE OF PLAINTIFF'S MARK

14. Within a year prior to the filing of this complaint, Defendant HEADGEAR caused to be manufactured, distributed and sold, certain shirts bearing the HELLS ANGELS Mark. Specimens of the designs employed by Defendant HEADGEAR on shirts are shown in Exhibit B to this complaint, incorporated by reference.

15. On information and belief, Defendant HEADGEAR has distributed and sold said infringing shirts nationwide to various clothing chain stores and retail outlets, including Defendant 20/20 and Does 1 through 100, inclusive.

16. Plaintiff HAMC has never approved Defendants' use of the HELLS ANGELS Mark, and Defendants have never sought permission for use of the Mark.

17. As a result of Defendants' use as complained herein, public confusion has arisen, and is likely to continue, as to the source, origin or sponsorship of the shirts incorporating Plaintiff's Mark.

18. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendants had actual knowledge of Plaintiff's ownership of the HELLS ANGELS Mark, prior to their first use of the Mark on shirts.

19. On or about March 10, 2008, Plaintiff put Defendant HEADGEAR on actual notice of Plaintiff's rights and claims, and demanded that Defendant HEADGEAR cease its unauthorized and improper use of the HELLS ANGELS Mark, recall and sequester the infringing items, and account for the infringing items manufactured, sold and on hand. A copy of said written notice is attached to this complaint as Exhibit C and incorporated by reference.

20. Despite Plaintiff's aforesaid notice and other repeated demands, Defendants have wilfully continued to distribute and sell the infringing items, have failed to sequester the unsold items, and have failed to account for the infringing items.

21. Unless restrained and enjoined, Defendants will continue the acts complained of herein.

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FIRST CAUSE OF ACTION

(Lanham Act §43(a) – 15 U.S.C. §1125(a) – Trademark Infringement)

22. Plaintiff incorporates by reference paragraphs 1 through 21 above.

23. Defendants' use of the HELLS ANGELS Mark is likely to cause confusion, mistake, or deception at common law and within the meaning of 15 U.S.C. §1114, thereby infringing Plaintiff's registered Mark to Plaintiff's immediate and irreparable damage.

24. The conduct of Defendants continues to damage Plaintiff and unless enjoined will further impair the value of Plaintiff's mark and the goodwill which Plaintiff has acquired in the Mark.

SECOND CAUSE OF ACTION

(Lanham Act §43(c) – 15 U.S.C. §1125(c) – Trademark Dilution)

20. Plaintiff incorporates by reference paragraphs 1 through 21 above.

21. Defendants' commercial use of Plaintiff's HELLS ANGELS Mark has and will cause dilution of the mark by "blurring."

22. By their acts as herein alleged, Defendants willfully intended to trade on the fame and reputation of Plaintiff HAMC and to cause dilution of Plaintiff's famous Mark.

23. As a consequence of Defendants' violations, Plaintiff HAMC is entitled to injunctive and other relief as prayed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff HAMC prays that this court order and adjudge that:

A. Defendants, and each of them, be preliminarily and permanently enjoined from directly or indirectly using Plaintiff's Mark, pursuant to 15 U.S.C. §1116(a);

B. All infringing articles bearing Plaintiff's Mark in Defendants' possession be delivered up and destroyed as the Court may direct;

C. Defendants be required to account to Plaintiff for any and all revenues derived from the use of Plaintiff's Mark;

D. Defendants be required to pay to Plaintiff damages and profits under 15

1 U.S.C. §1117(a);

2 E. Plaintiff be awarded treble damages pursuant to 15 U.S.C. §1117(b);

3 F. The costs of this action be awarded to Plaintiff;

4 G. Plaintiff be awarded its reasonable attorney's fees pursuant to 15 U.S.C.
5 §1117(a); and

6 H. Such other and further relief be granted as the court deems just.

7 Dated: April 24, 2008




8
9 FRITZ CLAPP
Attorney for Plaintiff HELLS ANGELS
MOTORCYCLE CORPORATION

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11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands trial by jury of all issues triable herein.

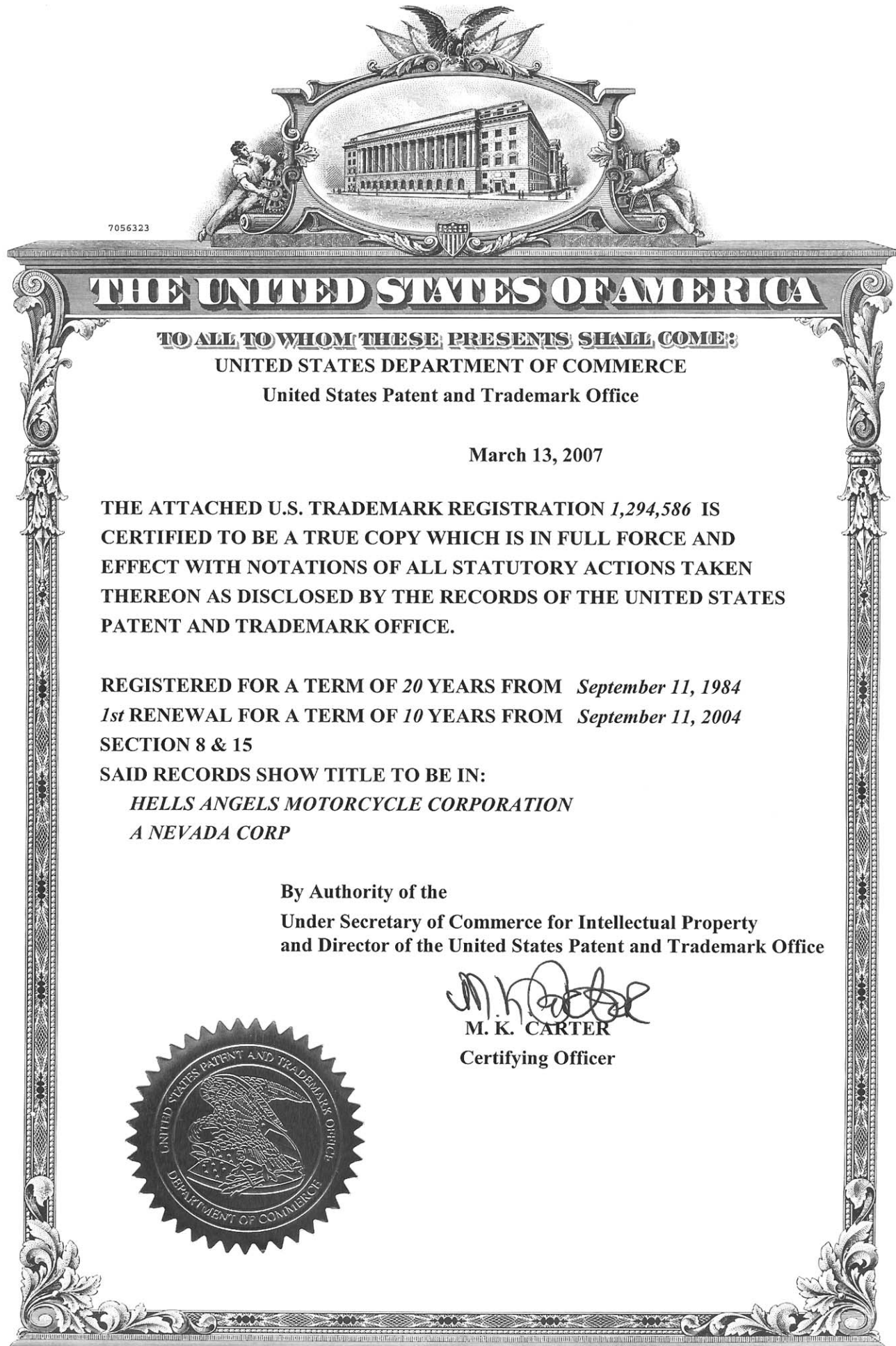
13 Dated: April 24, 2008



14
15 FRITZ CLAPP
Attorney for Plaintiff HELLS ANGELS
MOTORCYCLE CORPORATION

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Exhibit A



Int. Cls.: 25 and 41

Prior U.S. Cls.: 39 and 107

United States Patent and Trademark Office

Reg. No. 1,294,586

Registered Sep. 11, 1984

**TRADEMARK
SERVICE MARK
Principal Register**

HELLS ANGELS

Hells Angels Motorcycle Club (California
corporation), a.k.a. Hells Angels
9508 Golf Links Rd.
Oakland, Calif. 94605

For: T-SHIRTS, in CLASS 25 (U.S. Cl. 39).

First use Jun. 1983; in commerce Jun. 1983.

For: ENTERTAINMENT SERVICES—NAME-
LY, ARRANGING AND CONDUCTING CON-
CERTS FOR THE BENEFIT OF OTHERS, in

CLASS 41 (U.S. Cl. 107).

First use Jun. 1983; in commerce Jun. 1983.

Owner of U.S. Reg. Nos. 1,136,494 and 1,213,647.

Ser. No. 435,328, filed Jul. 20, 1983.

DOMINICK J. SALEMI, Examiner



Exhibit B

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Exhibit C

FRITZ CLAPP

Attorney at Law

544 Pawali Street
Kihei, Maui, HI 96753

ADMITTED TO PRACTICE IN CA

Telephone 916-548-1014
Facsimile 888-467-2341
<mail@FritzClapp.com>

10 March 2008

Jeff Watson, President
Headgear Blac Label
3409 Chandler Creek Road
Virginia Beach, VA 23453

VIA EXPRESS MAIL AND FACSIMILE TO 757-858-1204

Re: Hells Angels Motorcycle Corporation
Trademark infringement notice and demand

Dear Mr. Watson:

It is our privilege to represent Hells Angels Motorcycle Corporation ("HAMC") in trademark and related business matters. HAMC is the owner of collective membership marks, trademarks and service marks, including the word mark HELLS ANGELS which is used exclusively by the corporation's chartered clubs and their active members. HAMC has been diligent in the protection of its famous marks and is the owner of numerous federal and foreign registrations. We have been instructed to enforce our client's rights in its marks with all the remedies available under state and federal law.

Having been employed continuously and conspicuously for over fifty years as the indicia of membership in the chartered motorcycle clubs, HAMC's marks are very well known by the public and have been consistently recognized as "famous" marks by federal courts. Accordingly, HAMC's marks are accorded the highest level of protection against dilution from unauthorized use.

It has been brought to our attention that your company is distributing and selling shirts which infringe the membership indicia and mark of our client. We refer in particular to the word mark HELLS ANGELS used and registered by our client (U.S. Registration. Nos. 1,136,494, 1,214,476, 1,294,586, 1,301,050, and 1,943,341), and whose affixation on apparel is reserved exclusively for active members of the elite motorcycle clubs. Shirts fabricated by your company and bearing this word mark were displayed at last month's MAGIC trade show in Las Vegas, presumably for distribution and sale. An image of the infringing shirt is shown below.

On behalf of our client, we demand the immediate cessation of your company's unauthorized, improper and infringing use of our client's registered mark on shirts or apparel of any kind, and the recall of all such items.

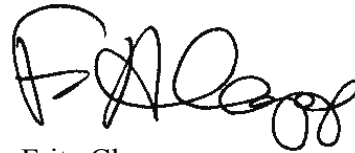
Your company's unauthorized use of HAMC's famous mark on shirts is obviously calculated to evoke and therefore trade on the reputation of the famous motorcycle club. Such usage is likely to cause confusion, constitutes false designation of origin and dilution under the trademark laws, and will not be tolerated.

Under relevant law, you are deemed to have had constructive notice of our HAMC's rights in the mark from its registration date. Through this letter, you are placed on actual notice of our client's registered rights and we shall consider any further use of the HELLS ANGELS mark as willful and deliberate. The Trademark Act of 1946, and the case law emanating therefrom, authorize courts to grant attorney fees and treble damages to registered trademark owners upon such showings of willful infringement.

Demand is hereby made that you reply by email or facsimile transmission no later than **Friday, 14 March 2008**, confirming exactly what steps you have taken to cease all commerce in the infringing shirts, and providing an accounting of all such shirts manufactured, distributed and sold, so that we may determine the measure of damages to be assessed. The timeliness and quality of your response, and your cooperation in recalling and sequestering the existing inventory, will be important factors in our determination whether judicial intervention is required.

Your immediate attention to this matter is therefore expected.

Very truly yours,

A handwritten signature in black ink, appearing to read 'F. Clapp', with a stylized, cursive script.

Fritz Clapp

FHC/hp

hamc_237

cc: Neal C. Schulwolf, Esq. (via facsimile to 757-491-1518)



1 BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP
2 Alan R. Plutzik (State Bar No. 77785)
3 Michael S. Strimling (State Bar No. 96135)
4 2125 Oak Grove Road, Suite 120
5 Walnut Creek, California 94598
6 925-945-0200

7 Of Counsel:
8 MENDELSON & ASSOCIATES, P.C.
9 Kevin M. Drucker
10 1500 John F. Kennedy Blvd., Suite 405
11 Philadelphia, Pennsylvania 19102
12 215-557-6659

13 Attorneys for Defendant Headgear, Inc.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 HELLS ANGELS MOTORCYCLE
17 CORPORATION, a Nevada corporation,

18 Plaintiff,

19 v.

20 HEADGEAR, INC., a Virginia corporation,
21 20/20 FASHIONS, INC., a California
22 corporation, and Does 1 through 100,
23 inclusive,

24 Defendant.

Case No. CV-08-2119 (VRW)

**ANSWER OF DEFENDANT
HEADGEAR, INC. TO FIRST
AMENDED COMPLAINT**

25 Now comes Defendant Headgear, Inc. ("Headgear") and Answers Plaintiff's First Amended
26 Complaint for Trademark Infringement and Dilution (the "Complaint"), as follows:

27 1. Headgear avers that paragraph 1 of the Complaint states a legal conclusion as to the
28 causes of action and the subject matter jurisdiction in this lawsuit, to which no response is required.
To the extent a response is deemed required, Headgear denies that any cause of action against it
exists.

1 2. Headgear avers that paragraph 2 of the Complaint states a legal conclusion as to the
2 personal jurisdiction in this lawsuit, to which no response is required. To the extent a response is
3 deemed required, Headgear admits that this Court has personal jurisdiction over Headgear.

4 3. Headgear avers that paragraph 3 of the Complaint states a legal conclusion as to the
5 intra-district assignment in this lawsuit, to which no response is required. To the extent a response
6 is deemed required, Headgear admits that this lawsuit may be assigned to the San Francisco
7 Division.
8

9 4. After reasonable investigation, Headgear is without information sufficient to form a
10 belief as to the allegation in paragraph 4 of the Complaint whether Plaintiff is now, and at all
11 relevant times was, a non-profit corporation organized and existing under the laws of the State of
12 Nevada and therefore denies this allegation. Headgear admits that Plaintiff appears to be the owner
13 of record of certain trademark registrations described in the Complaint but not all of the trademarks
14 described in the Complaint.
15

16 5. Headgear admits the allegations in paragraph 5 of the Complaint.

17 6. Headgear neither admits nor denies the allegations in paragraph 6 of the Complaint
18 and states that no answer is required of this Defendant.

19 7. Headgear avers that paragraph 7 of the Complaint states a legal conclusion as to the
20 propriety of venue in this lawsuit, to which no response is required. To the extent a response is
21 deemed required, Headgear admits that venue is proper in this judicial district and that it has sold
22 items in this judicial district but denies the allegations concerning that such items are “infringing.”
23

24 8. Headgear denies the allegations in paragraph 8 of the Complaint.

25 9. After reasonable investigation, Headgear is without information sufficient to form a
26 belief as to the allegations in paragraph 9 of the Complaint and therefore denies the allegations of
27 that paragraph.
28

1 10. Headgear admits that Plaintiff appears to be the record owner of the trademark
2 registrations recited in paragraph 10 of the Complaint and that Exhibit A referred to in paragraph
3 10 of the Complaint appears to be a copy of Certificate of Registration No. 1,294,586.

4 11. Headgear admits that Plaintiff's trademark registrations recited in paragraph 10 of
5 the Complaint have become incontestable but denies the remaining allegations of paragraph 11 of
6 the Complaint.

7 12. After reasonable investigation, Headgear is without information sufficient to form a
8 belief as to the allegations in paragraph 12 of the Complaint and therefore denies the allegations of
9 that paragraph.

10 13. Headgear denies the allegations of paragraph 13 that it seeks to exploit any value in
11 the alleged word mark for its own gain. After reasonable investigation, Headgear is without
12 information sufficient to form a belief as to the remaining allegations in paragraph 13 of the
13 Complaint and therefore denies the remaining allegations of that paragraph as well.

14 14. Headgear admits that, within a year prior to the filing of the Complaint, Headgear
15 caused shirts bearing the words "HELLS" and "ANGELS" to be manufactured, distributed, and
16 sold, including the shirt shown at the top of Exhibit B referred to in paragraph 14 of the Complaint,
17 and further admits that the design shown at the bottom of Exhibit B was employed by Headgear on
18 a shirt that was never distributed or sold, but denies the remaining allegations of paragraph 14.

19 15. Headgear admits that, within a year prior to the filing of the Complaint, Headgear
20 distributed and sold the shirt shown at the top of Exhibit B referred to in paragraph 14 of the
21 Complaint to various clothing chain stores and retail outlets, including Defendant 20/20, but denies
22 the remaining allegations of paragraph 15 of the Complaint.

23 16. Headgear admits the allegations in paragraph 16 of the Complaint.

24 17. Headgear denies the allegations in paragraph 17 of the Complaint.

1 18. Headgear denies the allegations in paragraph 18 of the Complaint.

2 19. Headgear admits that Plaintiff sent Headgear the letter of Exhibit C referred to in
3 paragraph 19 of the Complaint and states that Exhibit C speaks for itself.

4 20. Headgear denies the allegations in the paragraph numbered 20 under the heading
5 “Defendants’ Unauthorized Usage of Plaintiff’s Mark” in the Complaint.
6

7 21. Headgear denies the allegations in the paragraph numbered 21 under the heading
8 “Defendants’ Unauthorized Usage of Plaintiff’s Mark” in the Complaint.

9 22. With respect to the allegations incorporated in the paragraph numbered 22 in the
10 Complaint, Headgear hereby incorporates by reference its answers to paragraphs 1 through 21 as if
11 fully set forth herein.

12 23. Headgear denies the allegations in the paragraph numbered 23 under the heading
13 “First Cause of Action” in the Complaint.
14

15 24. Headgear denies the allegations in paragraph 24 of the Complaint.

16 25. With respect to the allegations incorporated in the paragraph misnumbered as “20”
17 under the heading “Second Cause of Action” in the Complaint, Headgear hereby incorporates by
18 reference its answers to paragraphs 1 through 21 as if fully set forth herein.

19 26. Headgear denies the allegations in the paragraph numbered 21 under the heading
20 “Second Cause of Action” in the Complaint.
21

22 27. Headgear denies the allegations in the paragraph numbered 22 under the heading
23 “Second Cause of Action” in the Complaint.

24 28. Headgear denies the allegations in the paragraph numbered 23 under the heading
25 “Second Cause of Action” in the Complaint.

26 Headgear denies that Plaintiff is entitled to any of the relief enumerated in and following its
27 WHEREFORE clause, or any relief or damages whatsoever, and respectfully requests that the
28

1 Court enter judgment on its behalf and award its attorneys' fees and costs and such other and
2 further relief as the Court deems just.

3 With respect to the entire Complaint, Headgear denies each and every allegation of the
4 Complaint not expressly admitted herein.
5

6 And by way of Affirmative Defenses, Headgear alleges as follows:

7 **FIRST AFFIRMATIVE DEFENSE**

8 The Complaint fails to state a claim upon which relief can be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred in whole or in part due to Plaintiff's lack of standing.

11 **THIRD AFFIRMATIVE DEFENSE**

12 Plaintiff's claims are barred in whole or in part because there is no likelihood of confusion
13 between any alleged trademark of Plaintiff and Headgear's use of the words "HELLS" and
14 "ANGELS" on its clothing.
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16 **FOURTH AFFIRMATIVE DEFENSE**

17 Plaintiff's claims are barred in whole or in part because Plaintiff cannot demonstrate any
18 likelihood that the public will be confused or misled as to the source of Headgear's goods or that
19 Headgear's goods are produced or endorsed by Plaintiff.
20

21 **FIFTH AFFIRMATIVE DEFENSE**

22 Plaintiff's claims are barred in whole or in part because Plaintiff has abandoned one or
23 more of its alleged trademarks.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred in whole or in part because Headgear has not used in
26 commerce within the meaning and scope of the Lanham Act the marks alleged by Plaintiff to be
27 used by Headgear.
28

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because Headgear has consistently identified itself and its goods as independent from and in no way associated with Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because Headgear does not manufacture or sell any goods in competition with goods manufactured and sold by Plaintiff, nor does Headgear otherwise compete with Plaintiff.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because Headgear's use of the words "HELLS" and "ANGELS" on shirts is not the use of those words as a source identifier.

TENTH AFFIRMATIVE DEFENSE

Headgear has not infringed any alleged trademark or other protectable rights of Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because any alleged use made by Headgear of the words in which Plaintiff claims trademark rights is a fair use.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because any alleged use made by Headgear of the words in which Plaintiff claims trademark rights is protected by the First Amendment of the United States Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's dilution claims are barred in whole or in part because Plaintiff's alleged trademarks are not sufficiently recognized or well-known among the public to be famous.

FOURTEENTH AFFIRMATIVE DEFENSE

Headgear has not acted with any intent to harm Plaintiff or any of Plaintiff's alleged trademarks.

FIFTEENTH AFFIRMATIVE DEFENSE

Headgear's claims are barred in whole or in part by the doctrine of laches.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because Plaintiff suffered no actual injury, harm, or damages as a result of any conduct of Headgear as alleged in the Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because, to the extent Plaintiff suffered any injury, harm, or damages, which Headgear expressly denies, said injury, harm, or damages were not proximately caused by any conduct of Headgear.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because, to the extent Plaintiff suffered any injury, harm, or damages, which Headgear expressly denies, Plaintiff failed to take the necessary steps to mitigate any damage or injury sustained.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to treble damages pursuant to 15 U.S.C. §1117 under the circumstances alleged in the Complaint.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to attorney's fees or costs under the circumstances alleged in the Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff is not entitled to injunctive relief under the circumstances alleged in the Complaint.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's demand for injunctive relief violates the First Amendment of the United States Constitution and Article I of the California Constitution.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff is not entitled to a jury trial because Plaintiff's prayer for relief includes requests for relief that is purely equitable and/or statutory and not cognizable as a common law claim.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because one or more Plaintiff's alleged trademark registrations are void, invalid, and unenforceable.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

If and as the evidence so warrants, Headgear will rely upon the doctrines of unclean hands, estoppel, waiver, abandonment, trademark misuse, and/or third-party use.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by applicable statutes of limitations and/or repose.

ADDITIONAL DEFENSES

As Headgear's investigation is ongoing and discovery has not yet been taken, and as many facts are likely in the possession of Plaintiff and third parties, Headgear alleges and avers that it intends to rely upon such other and further defenses as may become available or apparent from such investigation and discovery and hereby reserves the right to amend its Answer to assert such defenses.

1 WHEREFORE, Headgear respectfully asks this Court enter judgment in its favor and
2 against Plaintiff, dismiss Plaintiff's claims with prejudice, and award costs, attorney's fees, and
3 such other relief to Headgear as this Court deems appropriate.

4 Dated: May 22, 2008

5
6 Respectfully submitted,

7 BRAMSON, PLUTZIK, MAHLER &
8 BIRKHAEUSER, LLP

9
10 By /s/
Michael S. Strimling

11 Alan R. Plutzik (State Bar No. 77785)
12 Michael S. Strimling (State Bar No. 96135)
13 2125 Oak Grove Road, Suite 120
Walnut Creek, California 94598
925-945-0200

14 - and -

15 Of Counsel:

16 MENDELSON & ASSOCIATES, P.C.
17 Kevin M. Drucker
18 1500 John F. Kennedy Blvd., Suite 405
Philadelphia, Pennsylvania 19102
215-557-6659

19 Attorneys for Defendant Headgear, Inc.
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