

ORIGINAL

VIA FAX

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08 JUL 23 PM 2:19

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

'08 CV 1331 WQH NLS

12 **LIGHTS OUT HOLDINGS, LLC, a**
13 **California limited liability corporation,**

14 **Plaintiff,**

15 **vs.**

16 **LIGHTS OUT SPORTSWEAR, LLC, a**
17 **Florida limited liability corporation;**
18 **WILLIAM MEDINA, an individual;**
19 **CHET PELLETIER, an individual; and**
20 **DOES 1 through 10, inclusive,**

21 **Defendants.**

CASE NO.

COMPLAINT FOR:

1. **TRADEMARK INFRINGEMENT – FEDERAL;**
 2. **TRADEMARK INFRINGEMENT – COMMON LAW;**
 3. **TRADEMARK DILUTION, 15 U.S.C. § 1125(c);**
 4. **VIOLATION OF ANTICYBERSQUATTING ACT Act, 15 U.S.C. § 1125(d); and**
 5. **UNFAIR COMPETITION**
- DEMAND FOR JURY TRIAL**

22
23
24 **Plaintiff, LIGHTS OUT HOLDINGS, LLC ("Plaintiff"), for its complaint**
25 **against defendants, LIGHTS OUT SPORTSWEAR, LLC ("Sportswear"),**
26 **WILLIAM MEDINA ("Medina"), CHET PELLETIER ("Pelletier") (Sportswear,**
27 **Medina and Pelletier are collectively referred to herein as "Defendants") and Does**
28 **1-10, allege:**

FIRST CAUSE OF ACTION**(Federal Trademark Infringement)**

1
2
3 1. Plaintiff is a limited liability company duly organized and existing
4 under the laws of the State of California, with its principal place of business in the
5 County of San Diego and doing business both intrastate and in interstate commerce.

6 2. Plaintiff is informed and believes and, based thereon, alleges that: (i)
7 defendant Sportswear is a limited liability company formed and existing under the
8 laws of the State of Florida with its principal place of business in Brandon, FL; (ii)
9 defendant Medina is an individual and is a citizen of and resides in the State of
10 Florida; and (iii) defendant Pelletier is an individual and is a citizen of and resides in
11 the State of Florida. The matter in controversy, exclusive of interest and costs,
12 exceeds \$75,000.

13 3. Plaintiff is informed and believes and, based thereon, alleges that
14 Defendants adopted the name "Lights Out Sportswear" in or around January 2008.
15 Plaintiff is informed and believes that Defendants are engaged in interstate
16 commerce through, *inter alia*, their website "www.lightsoutsportswear.com",
17 wherein they sell "Lights Out" and "Lights Out Sportswear" branded apparel items
18 including t-shirts, tank tops, sweatshirts, shorts and hats; and that they advertise and
19 solicit customers through the domain name "lightsoutsportswear.com" in all states
20 and counties in the United States, including within this District. Defendants'
21 "Lights Out" and "Lights Out Sportswear" apparel is sold in connection with the
22 sport of mixed martial arts. Attached hereto as exhibit A is a copy of Defendants'
23 homepage of their website.

24 4. The true names or capacities, whether individual, corporate, associate
25 or otherwise of the defendants sued herein as DOES 1 through 10, inclusive are
26 unknown to Plaintiff who, therefore, sues such defendants by such fictitious names.
27 Plaintiff will ask for leave to amend this pleading to show their true names or
28 capacities when the same have been ascertained. Plaintiff is informed and believes

1 and, based thereon, alleges that each of the DOE defendants conspired with and
2 aided and abetted the other Defendants to do the things complained hereof.

3 5. Plaintiff is informed and believes and, based thereon, alleges that each
4 of the Defendants was the agent and/or employee of each of the remaining
5 Defendants and, in doing the things alleged herein, was acting as a conspirator,
6 agent, partner, or joint venturer with Medina and Pelletier.

7 6. This action is for infringement of Plaintiff's trademarks in violation of
8 the laws of the United States and for related state law violations. This Court has
9 subject matter jurisdiction pursuant to 15 U.S.C. §1121(a) (trademark actions), 28
10 U.S.C. §1331 and § 1338 (federal question) and 28 U.S.C. §1367(a) (supplemental
11 jurisdiction). Jurisdiction is also founded upon diversity of citizenship under 28
12 U.S.C. § 1332.

13 7. Plaintiff is informed and believes and, based thereon, alleges that
14 Defendants have engaged in interstate and intrastate commerce with citizens of this
15 and other States and utilized and profited from activities conducted on worldwide
16 websites directed to consumers internationally and in every state and county in the
17 United States.

18 8. Plaintiff is informed and believes and, based thereon, alleges that venue
19 is proper in this judicial district under 28 U.S.C. § 1391 in that Defendants have
20 done and are doing business in this district, and a substantial part of the events
21 complained of by Plaintiff occurred here.

22 9. Plaintiff's principal is Shawne Merriman ("Merriman"). Merriman is a
23 prominent football player in the National Football League. For the past three years,
24 Merriman has played outside linebacker for the San Diego Chargers.

25 10. Merriman is known throughout the United States and worldwide as
26 "Lights Out," a nickname granted in high school befitting his vicious hitting style.
27 Seeking to develop a unique off-the-field business, in or about 2002, Merriman
28 launched an apparel line bearing the name and trademark "LIGHTS OUT" and

1 commenced sales of apparel goods intrastate and in interstate commerce, which
2 sales and use of the mark in commerce continue today.

3 11. In order to further bolster his common law rights in his mark, for a
4 substantial sum, Merriman purchased all right, title and interest to the federally
5 registered trademark "LIGHTS OUT" (US Reg. No. 2885212) in International Class
6 25 (apparel) as formerly owned by Loomworks Apparel, Inc., including US
7 trademark registration No. 2,885,212, as well as all goodwill appertaining thereto.
8 A copy of the trademark registration is attached hereto as exhibit B. Thereafter, on
9 or about October 22, 2007, Merriman assigned the rights to the "LIGHTS OUT"
10 trademarks to Plaintiff. Attached hereto as exhibit C is a copy of the USPTO
11 Trademark Assignment Abstract of Title memorializing such assignment to
12 Plaintiff.

13 12. In addition to its common law rights and the trademark registration
14 detailed above, Plaintiff is also the owner of a pending application for US trademark
15 registration in International class 25 (clothing) for a stylized logo featuring the
16 "Lights Out" mark (Serial No. 78725829, filed October 5, 2005). A copy of said
17 trademark application is attached hereto as exhibit D.

18 13. Plaintiff and its assignor Merriman have owned and/or consistently
19 used the "LIGHTS OUT" trademarks listed above (the "Marks") in connection with
20 apparel in interstate commerce since at least 2002. The "LIGHTS OUT" trademarks
21 have gained secondary meaning identifiable with Plaintiff.

22 14. Plaintiff is informed and believes that Defendants began a pattern of
23 infringement upon its Marks by forming their company using the dominant words
24 "LIGHTS OUT" and using that name in business, on its website, and on apparel
25 goods. Said adoption and use by Defendants was long after Plaintiff adopted and
26 first used its trademarks, and done with knowledge, constructive or actual, of
27 Plaintiff's trademarks.

1 15. Plaintiff has devoted substantial resources in the establishment of the
2 goodwill, consumer recognition and nationwide reputation of the Marks, and the
3 Marks and its associated goodwill, consumer recognition and reputation are valuable
4 property rights of Plaintiff.

5 16. Defendants' name and mark are substantially identical in appearance,
6 sound, and connotation to Plaintiff's Marks; and, in particular, the dominant words
7 "LIGHTS OUT" are identical to Plaintiff's Marks. Defendants' marks so resemble
8 Plaintiff's Marks as to be likely to cause confusion, to cause mistake, or to deceive
9 the consuming public.

10 17. Plaintiff is informed and believes that customers and consumers are
11 likely to consider the items offered under Defendants' name and mark as emanating
12 from Plaintiff and are likely to patronize the same believing the source is Plaintiff.
13 Concurrent use of Plaintiff's Marks and Defendants' mark may result in irreparable
14 damage to Plaintiff's reputation and goodwill since customers, consumers and the
15 trade are likely to be confused about whether Plaintiff is the source of the product
16 offered by Defendants, or that Defendants have been licensed or authorized to use
17 Plaintiff's Mark when that is not the case.

18 18. Plaintiff is informed and believes and upon such information and belief
19 alleges that Defendants threaten to and, unless restrained will, continue the acts
20 complained of herein, all to Plaintiff's irreparable damage in that it will be
21 extremely difficult to ascertain the amount of compensation that would afford
22 Plaintiff adequate relief therefor, and unless this Court grants an injunction
23 preventing Defendants from using Plaintiff's Marks and preventing Defendants
24 from using trademarks and domain names that are confusingly similar to Plaintiff's
25 Marks, Plaintiff will not be able to prevent infringement of its Marks and will be
26 irreparably damaged.

27 19. Defendants' said conduct has caused, continues to cause, and is likely
28 in the future to cause confusion, mistake and deception in the minds of the public

1 and the trade and to injure and damage Plaintiff's goodwill for which there is no
2 adequate remedy at law. By reason of the foregoing, Plaintiff has suffered and
3 continues to suffer damages and injury to its business, goodwill, and profits, the
4 precise amount to be determined at trial, and Plaintiff is entitled to the remedies
5 provided in 15 U.S.C. §1116 et. seq.

6 **SECOND CAUSE OF ACTION**

7 **(Common Law Trademark Infringement)**

8 20. Plaintiff hereby alleges, repeats and incorporates paragraphs 1-15
9 above as though set forth in full.

10 21. Plaintiff is the senior user of the trademark "LIGHTS OUT" in
11 connection with apparel. At all times herein concerned, Plaintiff consistently used
12 said mark in intrastate and interstate commerce, and this mark has become
13 associated with Plaintiff in the minds of the public.

14 22. Plaintiff has devoted substantial resources in the establishment of the
15 goodwill, consumer recognition and nationwide reputation of the "LIGHTS OUT"
16 mark, and the goodwill, consumer recognition and reputation are valuable property
17 rights.

18 23. Plaintiff is informed and believes that Defendants have infringed upon
19 the "LIGHTS OUT" mark by using the names "LIGHTS OUT" and "Lights Out
20 Sportswear" on apparel without authority or consent from Plaintiff.

21 24. Plaintiff is informed and believes and, based thereon, alleges that
22 customers and consumers are likely to consider the products offered and sold by
23 Defendants bearing the "LIGHTS OUT" and "Lights Out Sportswear" names as
24 emanating from or being associated with Plaintiff and are likely to seek said
25 products from Defendants believing the source is Plaintiff.

26 25. Plaintiff is informed and believes and, based thereon, alleges that
27 Defendants use of the Marks has resulted in irreparable damage to Plaintiff's
28 reputation and goodwill since customers, consumers and the trade are likely to be

1 confused about the source of the products offered by Defendants or believe
2 erroneously that Defendants have been licensed or authorized to use said mark on
3 apparel products.

4 26. Plaintiff is informed and believes, and, based thereon, alleges that
5 Defendants threaten to and, unless restrained, will continue the acts complained of
6 herein, all to Plaintiff's irreparable damage in that it will be extremely difficult to
7 ascertain the amount of compensation that would afford adequate relief therefor, and
8 unless this Court grants an injunction preventing cross-defendants from using said
9 confusingly similar trademark, Plaintiff will not be able to prevent infringement
10 thereof and will be irreparably damaged.

11 27. Plaintiff is informed and believes and upon such information and belief
12 alleges that Defendants' conduct has caused, continues to cause, and is likely in the
13 future to cause confusion, mistake, and deception in the minds of the public and the
14 trade and to injure and damage Plaintiff's goodwill for which there is no adequate
15 remedy at law. By reason of the foregoing, Plaintiff has have suffered and continues
16 to suffer damages and injury to its business, goodwill and profits, the precise
17 amount to be determined at trial, and Plaintiff is entitled to the remedies provided
18 for in 15 U.S.C. §1116 et seq.

19 **THIRD CAUSE OF ACTION**

20 **(Trademark Dilution under State and Federal Law)**

21 28. Plaintiff hereby re-alleges, and incorporates paragraphs 1 through 20
22 above as though set forth in full.

23 29. Plaintiff's Marks are unique, fanciful, highly distinctive and famous
24 within the meaning of 15 U.S.C. §1125(c).

25 30. Defendants have used and are continuing to use Plaintiff's Marks in
26 international, interstate and intrastate commerce in this State and elsewhere.

27 31. Defendant's use of the Marks began and continued after the Marks
28 became famous and were well known to the public and the trade.

1 32. Defendants' commercial use in commerce of Plaintiff's Marks causes
2 dilution of the distinctive quality of the Marks and threatens to debase and cheapen
3 it.

4 33. Plaintiff is informed and believes and, based thereon, alleges that
5 Defendants willfully intended to trade on Plaintiff's reputation and willfully
6 intended to cause dilution of Plaintiff's famous Marks.

7 34. By reason of the foregoing, Defendants have violated and are
8 continuing to
9 violate 15 U.S.C. § 1125(c) and the law of this state relative to dilution.

10 35. Defendants' unauthorized use of the above-identified Marks causes
11 irreparable injury to Plaintiff, including injury to its business reputation and dilution
12 of the distinctive quality of its Marks.

13 36. Plaintiff is informed and believes that the Defendants threaten to
14 continue to infringe and dilute Plaintiff's Marks unless restrained and enjoined, and
15 Plaintiff will continue to be damaged as it will have no adequate remedy at law.

16 37. Plaintiff is entitled to recover damages from Defendants, including
17 attorney fees, and any gains, profits and advantages obtained by Defendants as a
18 result of Defendants' willful acts causing the dilution alleged above.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of Anticybersquatting Act, 15 U.S.C. §1125(d))**

21 38. Plaintiff hereby re-alleges, and incorporates paragraphs 1 through 20
22 above as though set forth in full.

23 39. Plaintiff is informed and believes and, based thereon, alleges that
24 Defendants registered and are using the domain name "lightsoutsportswear.com" in
25 commerce in bad faith and with the intent to profit therefrom in violation of the
26 provisions of the Anticybersquatting Consumer Protection Act, 15 U.S.C. §1125(d).

27 40. As a direct and proximate cause of such violation, Plaintiff is entitled to
28 injunctive relief, statutory damages of \$100,000 per violation or actual damages

1 according to proof, forfeiture, cancellation or transfer of each such domain name to
2 Plaintiff, and attorney fees.

3 **FIFTH CAUSE OF ACTION**

4 **(Unfair Competition)**

5 41. Plaintiff hereby re-alleges, and incorporates paragraphs 1 through 20
6 above as though set forth in full.

7 42. Defendants' actions alleged above constitute unlawful and unfair
8 business practices in violation of common law and the laws of this State.

9 43. As a direct, proximate and foreseeable result of Defendants' unlawful
10 and unfair business practices, Defendants have been unjustly enriched at Plaintiff's
11 expense in an amount not yet ascertained. Accordingly, Plaintiff is entitled to obtain
12 an accounting and restitution from Defendants in an amount to be determined at
13 trial.

14 44. As a direct, proximate and foreseeable result of Defendants' unlawful
15 and unfair business practices, Plaintiff has suffered and will continue to suffer great
16 and irreparable harm, including, but not limited to, harm to its business, reputation
17 and goodwill. Plaintiff is informed and believes that defendants will continue to
18 further compete unlawfully and unfairly with Plaintiff unless restrained and
19 enjoined, and Plaintiff does not have an adequate remedy at law. Therefore,
20 Plaintiff is entitled to injunctive relief.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, Lights Out Holdings, LLC prays for the following
23 relief:

24 1. Preliminary and permanent injunctive relief enjoining Defendants, and
25 Defendants' officers, agents, servants, employees, and all persons acting in concert
26 with them, from directly or indirectly:

27 (a) using or engaging in acts that infringe or dilute Plaintiff's
28 "LIGHTS OUT" Marks or any other trademark, business name or trade name

1 confusingly similar to Plaintiff's "LIGHTS OUT" Marks;

2 (b) injuring the reputation of Plaintiff or its Marks; and

3 2. For actual, compensatory, and statutory damages;

4 3. For an accounting of all sales and profits of garments using the
5 "LIGHTS OUT" and "Lights Out Sportswear" names;

6 4. For restitution;

7 5. For an order for destruction or elimination of all Defendants' products,
8 advertising and promotional material bearing the names "LIGHTS OUT" and
9 "Lights Out Sportswear";

10 6. For forfeiture, cancellation or transfer to Plaintiff of Defendants'
11 domain name "lightsoutsportswear.com" and all other domain names utilizing the
12 Marks;

13 7. For an award of punitive and exemplary damages;

14 8. For treble damages for trademark infringement;

15 9. For an award of prejudgment interest, costs of suit, and reasonable
16 attorney fees as allowed by law; and

17 10. For such other and further relief as the court deems just.

18
19 July 23, 2008

SILVER & FREEDMAN
A Professional Law Corporation

20
21
22 By: 

23 **GREGORY N. WEISMAN,**
24 Attorneys for Lights Out Holdings, LLC
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff, Lights Out Holdings, LLC hereby demands a trial by jury on all claims.

July 23, 2008

SILVER & FREEDMAN
A Professional Law Corporation

By: 

GREGORY N. WEISMAN,
Attorneys for Lights Out Holdings, LLC

Exhibit A

LIGHTSOUT SPORTSWEAR.COM



FIGHTGEAR

<h3 style="margin: 0;">fightwear</h3> <p>Lightsoutsportswear.com exclusive fightwear is for both men and women. Fightwear includes t-shirts, tanks, sweatshirts, hats and accessories. To see the complete fightwear line, Click Here.</p> <div style="text-align: center;">  <p>ULTIMATE FIGHTGEAR</p> </div>	<h3 style="margin: 0;">fighters</h3> <p>We are committed and proud to feature fighters including their stats, rankings, general facts and upcoming bouts. To learn more about our featured fighters, Click Here.</p> <div style="text-align: center;">  </div>	<h3 style="margin: 0;">photo gallery</h3> <p>Lightsoutsportswear.com exclusive fightwear is sold nationwide. Be part of the attitude that is Lightsoutsportswear.com. Check out our most recent photo shoot from Tampa Florida. Click Here.</p> <div style="text-align: center;">  </div>	<h3 style="margin: 0;">events / bouts</h3> <p>To get a listing of upcoming events both locally and nationally and links to the UFC, WFC, XFC, & IFL and other venues as well as a listing of specific fighters' challenges, see links below. Click Here.</p> <div style="text-align: center;"> <p>UP COMING EVENTS</p> <p>XFC - June 28 Tampa</p> <p>UFC - July 5 Las Vegas</p> <p>IFL - Aug. 15 Marylandlands</p>  </div>
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Exhibit B

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Typed Drawing

Word Mark LIGHTS OUT
Goods and Services IC 025, US 022 039, G & S: Clothing and shoes for men, women and children, namely, anklets, anoraks, athletic footwear, athletic shoes, athletic uniforms, beachwear, belts, blouses, boots, bottoms, boxer shorts, brassieres, briefs, bustiers, caps, cardigans, coats, footwear, gloves, golf shirts, hats, headbands, headwear, intimate apparel, jackets, jeans, jerseys, jogging suits, jumpers, knit shirts, night wear, overalls, overcoats, pajamas, pants, polo shirts, pullovers, quilted vests, raincoats, robes, shirts, shoes, shorts, sleepwear, sport coats, sport shirts, sweaters, sweatpants, sweatshirts, skirts, socks, sweatsuits, tank tops, tops, tracksuits, trousers, T-shirts, underwear, V-neck sweaters, vests, waistcoats. FIRST USE: 20040611. FIRST USE IN COMMERCE: 20040611

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78213141

Filing Date February 10, 2003

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition September 23, 2003

Registration Number 2885212

Registration Date September 14, 2004

Owner (REGISTRANT) Loomworks Apparel, Inc. CORPORATION CALIFORNIA 2102 Alton Parkway Suite A Irvine CALIFORNIA 92606

(LAST LISTED OWNER) LIGHTS OUT HOLDINGS, LLC LTD LIAB CO CALIFORNIA 10617 BIRCH BLUFF AVENUE SAN DIEGO CALIFORNIA 92131

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Neill A. Levy

Type of Mark TRADEMARK

<http://tcss2.uspto.gov/bin/showfield?f=doc&state=c5694m.2.2>

7/22/2008

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Indicator LIVE

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Exhibit C

USPTO Assignments on the Web

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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 3

Serial #: 78213141

Filing Dt: 02/10/2003

Reg #: 2885212

Reg. Dt: 09/14/2004

Registrant: Loomworks Apparel, Inc.

Mark: LIGHTS OUT

Assignment: 1

Reel/Frame: 3591/0723

Received: 07/31/2007

Recorded: 07/31/2007

Pages: 6

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: LOOMWORKS APPAREL, INC.

Exec Dt: 07/27/2007

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Assignee: MERRIMAN, SHAWNE D.

1744 POINCIANA DRIVE

EL CAJOHN, CALIFORNIA 92021

Correspondent: MELISSA WOO

655 WEST BROADWAY

15TH FLOOR

SAN DIEGO, CA 92101

Assignment: 2

Reel/Frame: 3591/0796

Received: 07/31/2007

Recorded: 07/31/2007

Pages: 6

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: LOOMWORKS APPAREL, INC.

Exec Dt: 07/27/2007

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Assignee: MERRIMAN, SHAWNE D.

1744 POINCIANNA DRIVE

EL CAJON, CALIFORNIA 92021

Correspondent: MELISSA W. WOO

655 WEST BROADWAY

15TH FLOOR

SAN DIEGO, CA 92101

Assignment: 3

Reel/Frame: 3706/0221

Received: 01/29/2008

Recorded: 01/29/2008

Pages: 5

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: MERRIMAN, SHAWNE, MR.

Exec Dt: 10/22/2007

Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: CALIFORNIA

Assignee: LIGHTS OUT HOLDINGS, LLC

10617 BIRCH BLUFF AVENUE

SAN DIEGO, CALIFORNIA 92131

Correspondent: KATHRYN A. TYLER

2029 CENTURY PARK EAST

19TH FLOOR

LOS ANGELES, CA 90067

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Lights Out

Word Mark	LIGHTS OUT
Goods and Services	IC 025. US 022 039. G & S: Replica football jerseys, replica uniform shirts, replica uniform pants
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	02.11.07 - Arms; Fingers; Hands; Human hands, fingers, arms 15.09.03 - Outlets, electrical; Power outlets; Switches, electrical wall
Serial Number	78725829
Filing Date	October 4, 2005
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	October 23, 2007
Owner	(APPLICANT) LIGHTS OUT HOLDINGS, LLC LTD LIAB CO CALIFORNIA 10617 BIRCH BLUFF AVENUE SAN DIEGO CALIFORNIA 92131
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Gregory N. Weisman
Prior Registrations	2885212
Description of Mark	Color is not claimed as a feature of the mark.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

153279 - TC

**July 23, 2008
14:20:54**

Civ Fil Non-Pris

USAO #: 08CV1331

Judge.: WILLIAM Q HAYES

Amount.: \$350.00 CK

Check#: BC64173

Total-> \$350.00

FROM: LIGHTS OUT HOLDINGS, LLC
VS.
LIGHTS OUT SPORTSWEAR

ORIGINAL CIVIL COVER SHEET

VIA FAX

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

LIGHTS OUT HOLDINGS, LLC

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Silver & Freedman, APLC, 2029 Century Park East, 19th Floor,
Los Angeles, California 90067 Tel. (310) 282-9400

DEFENDANTS

LIGHTS OUT SPORTSWEAR, LLC, WPHAM MEDINA; and
CHET PELLETIER

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

BY: DEPUTY
Attorneys (If Known)

08 CV 1331 WQH NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. Section 1125 (a) and (d)

Brief description of cause:

Trademark Infringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION

DEMAND \$ Not less than CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23

\$75k, Injunctive Relief, forfeiture or cancellation of domain name JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

JULY 23, 2008

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

153279

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

LHC 7/23/08

JS 44 Reverse (Rev. 12/07)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

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I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.