

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION**

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OUTLAWLESSNESS PRODUCTIONS INC., and  
BAND OF OUTLAWS TOURING, INC.

*Plaintiffs*

v.

HENRY PAUL, MONTE YOHO, CHRIS ANDERSON,  
BILLY CRAIN, RANDY THREET, JOHN COLEMAN,  
JOHN GELLMAN, BLACKHAWK, INC., HENRY  
PAUL BAND, and THE LAST OUTLAWS, INC.

*Defendants*

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Civil Action No. 8:10-cv-24-T-26TBM

**PLAINTIFF'S AMENDED COMPLAINT FOR  
BREACH OF CONTRACT, TRADEMARK INFRINGEMENT,  
UNFAIR COMPETITION, DILUTION, AND CYBERPIRACY**

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BILLY GRAIN, RANDY THREET, JOHN COLEMAN,  
JOHN GELLMAN, BLACKHAWK, HENRY PAUL  
BAND, THE LAST OUTLAWS, INC., and  
RICHARDS & SOUTHERN, INC.

*Defendants*

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UNFAIR COMPETITION, DILUTION, AND CYBERPIRACY**

Plaintiffs, by and through their counsel, allege upon knowledge to themselves, and upon information and belief as to all other matters, as follows:

**I NATURE OF THE ACTION**

1. This is an action for breach of contract, trademark infringement, unfair competition, dilution, and cyberpiracy, brought on behalf of plaintiff Outlawlessness Productions, Inc. (hereinafter "Outlawlessness") owner of the "OUTLAWS" trademark

(hereinafter the “Mark,” or “Marks” if including the word and graphic Mark), and the “LONE OUTLAW” mark, and plaintiff Band of Outlaws Touring, Inc. (hereinafter, “Band of Outlaws”) that originally created and licensed the www.outlawsmusic.com domain name (hereinafter, the “Domain Name”). (The receipt for the Domain Name registration is attached hereto as Exhibit A.)

2. The lawsuit is brought against defendants Henry Paul, Monte Yoho, Chris Anderson, Billy Crain, Randy Threet, and John Coleman (hereinafter, the “Licensee Defendants”), musicians in the Outlaws, a musical group principally known for playing what is called southern rock.

3. Licensee Defendants entered into an agreement with Plaintiff Outlawlessness titled “Outlaws Trademark Touring License” (known hereinafter as the “License” and attached hereto as Exhibit B) that permitted Licensee Defendants to use Plaintiff’s Marks for live performances and merchandise sales during those performances. (Exhibit B, Sections 2 and 11.1.)

4. Licensee Defendants are not permitted under the License to enter into third party agreements using Plaintiff’s Marks without Plaintiff’s prior consent (Exhibit B, Section 6).

5. The License further denies any use of Plaintiff’s Marks without Plaintiff’s prior, written consent (Exhibit B, Section 11.1).

6. Licensee Defendants engaged Richards & Southern, Inc. to supply Outlaws’ branded clothing, and K-tel and Deadline Music to produce Outlaws’ branded phonorecords, all without Plaintiff’s knowledge or consent.

7. Defendant, The Last Outlaws, Inc. (hereinafter “The Last Outlaws”), likely confuses consumers with its corporate name and thus infringes Plaintiff’s “OUTLAWS” and “LONE OUTLAW” (hereinafter, the “LONE OUTLAW Mark”) Marks.

8. Licensee Defendants, and upon information and belief, Defendant Gellman, are liable for acts of cyberpiracy for registering and using a domain name that is identical or confusingly similar to Plaintiff’s Mark and thus infringing Plaintiff’s trademark.

9. Licensee Defendants, and upon information and belief Defendant Gellman, are liable for dilution for using a domain name that is identical or confusingly similar to Plaintiff’s famous Mark.

10. Licensee Defendants have unfairly competed with Plaintiff by the use of hyperlinks to merchandise pages on the Website and eventually by completely eliminating all Website references to Plaintiff’s merchandise.

11. Defendants Blackhawk, Henry Paul Band, and Defendant Paul have unfairly competed by employing the same musicians as in the Outlaws and using some of the same advertising devices as the Outlaws, thus likely confusing consumers.

12. Defendant Henry Paul Band is liable for acts of cyberpiracy for using Plaintiff’s Domain Name to lead consumers to Plaintiff’s Website, renamed the “Official Home of the Henry Paul Band” by Licensee Defendants.

13. Defendant Henry Paul Band has infringed Plaintiff’s Mark by using Plaintiff’s Domain Name and Mark on the renamed Henry Paul Band website.

## II PARTIES

14. Plaintiff Outlawlessness Productions, Inc. (hereinafter "Outlawlessness") is a corporation duly organized under the laws of the State of Florida, with its place of business in Florida and in this District, and is duly qualified to transact business in Florida.

15. Plaintiff Band of Outlaws Touring, Inc. (hereinafter "Band of Outlaws") is a subsidiary corporation of Outlawlessness and is similarly organized under the laws of the State of Florida, with its place of business in Florida and in this District, and is duly qualified to transact business in Florida.

16. Licensee Defendant Henry Paul is an individual whose residence is unknown.

17. Licensee Defendant Monte Yoho is an individual believed to reside in the State of Florida.

18. Licensee Defendant Chris Anderson is an individual whose residence is unknown.

19. Licensee Defendant Billy Crain is an individual whose residence is unknown.

20. Licensee Defendant Randy Threet is an individual whose residence is unknown.

21. Licensee Defendant John Coleman is an individual whose residence is unknown.

22. Defendant John Gellman is an individual whose residence is believed to be in Hickory, North Carolina. Defendant Gellman is believed to be a software developer and part-time photographer.

23. Defendant Blackhawk, Inc. (hereinafter, "Blackhawk") is believed to be a corporation organized under the laws of the State of Tennessee with its place of business in Tennessee.

24. Defendant Henry Paul Band is believed to be a sole proprietorship, owned by Licensee Defendant Henry Paul, with an unknown residence.

25. Defendant The Last Outlaws, Inc. (hereinafter, "Last Outlaws") is believed to be a corporation organized under the laws of the State of Tennessee with its place of business in Tennessee.

26. Each of the Defendants are and at all times have been a party to the unlawful activities complained of herein, and/or acted in concert or combination with the other named Defendant(s) and/or have aided and abetted the other Defendant(s) and/or have acted as an agent for the other Defendant(s) with respect to the actions and matters described in this Complaint.

27. At all times herein mentioned, each of the Defendants has engaged in a conspiracy, common enterprise, and common course of conduct with the other Defendant(s). The purpose of the conspiracy, common enterprise, and common course of conduct has been, among other things, to serve the Defendant(s)' own economic benefit by intentionally, purposefully, and willfully contributing to and benefiting from the infringement of Plaintiffs' trademarks and other rights under the Lanham Act, and state statutory and common law throughout the United States and the world. Each of the

Defendants knowingly and intentionally has committed acts in furtherance of the conspiracy, common enterprise, and common course of conduct, and each is liable for the acts and conduct of the others.

### III JURISDICTION

28. The Court has jurisdiction under 15 U.S.C.A. § 1121 and 28 U.S.C.A. §§ 1331 and 1338(a) in that this case arises under the Trademark Act of the United States 15 U.S.C.A. §§ 1051 et seq.

29. The Court has jurisdiction of the unfair competition claims under the provisions of 28 U.S.C.A. § 1338(b) in that the claims are joined with a substantial and related claim under the Trademark Act of the United States, 15 U.S.C.A. §§ 1051 et seq.

30. This Court has jurisdiction pursuant to the supplemental jurisdiction provisions of 28 U.S.C. § 1367.

31. This Court has personal jurisdiction over Defendants in that Defendants solicit, transact, and conduct business in the State of Florida and in this District, have committed tortious acts both within and outside Florida causing injury in Florida, and are regularly doing or soliciting business or engaging in a persistent course of conduct in this State. Defendants expect or reasonably should expect their conduct to have consequences in Florida, and derive substantial revenue from interstate commerce. Among other things, Defendants have facilitated and encouraged the infringement of Plaintiffs' trademarks and unfair competition in Florida. In addition, Licensee Defendants, Blackhawk, and the Henry Paul Band operate interactive websites that encourage and allow Florida residents

to upload comments, and to order music, products, and so on. Defendants have caused and are causing harm to Plaintiffs in Florida, where Plaintiffs are located, and where many potential customers of Plaintiffs' products are thereby diverted from legitimate transactions. Plaintiffs' claims arise out of the conduct that gives rise to personal jurisdiction over Defendants.

#### **IV VENUE**

32. The Court has jurisdiction under 28 U.S.C. §§ 1391(b) and (c), including that the Plaintiff and Licensee Defendants entered into the License stipulating that in the event of litigation the "Agreement shall be subject, construed, and interpreted in accordance with the laws of the State of Florida." Further, "the Parties mutually agree that personal jurisdiction and venue shall be proper in the state and (sic) federal courts situated in Pinellas County, Florida, and agree that any litigated dispute will be conducted solely in the courts in St. Petersburg, Florida, or the nearest federal court." (Exhibit B, Sec. 9.)

#### **V BACKGROUND FACTS COMMON TO ALL COUNTS**

##### **The Parties**

33. The musical group known as the Outlaws was formed in Tampa, Florida, in 1968 with the late guitarist–vocalist Hugh E. (Hughie) Thomasson and five other musician/vocalists—none of whom are parties to this action. The Outlaws have recorded

fifteen albums, and arguably their best known musical works are “*There Goes Another Love Song*,” “*Green Grass and High Tides*,” and ““(Ghost) Riders in the Sky.”

34. Plaintiff Outlawlessness was incorporated in 1999 to handle the day-to-day affairs of the Outlaws including trademark registration and merchandise sales.

35. Plaintiff Band of Outlaws was incorporated in 2005 in Tennessee to administer the touring and related affairs of the Outlaws and incorporated in Florida in 2009.

36. Plaintiff corporations were formed by Hughie Thomasson and his wife, Mary Thomasson, and are now owned and operated by Ms. Thomasson.

37. Plaintiffs, as well as Hughie and Mary Thomasson, have invested and continue to invest substantial sums of money, time, effort, and creative talent to discover and develop, create, manufacture, advertise, sell, and license high quality products, including recordings, that embody Outlaws’ performances, lifestyle, and experience.

38. As with many contemporary musical groups, the Outlaws experienced numerous changes in musicians over the years.

39. The one constant was Hughie Thomasson who was the acknowledged leader of the band and guardian of the “OUTLAWS” name, which remained with Hughie no matter what musician changes occurred.

40. Licensee Defendant Monte Yoho briefly substituted in 1969 for the original Outlaws drummer but didn’t become a full-time Outlaws member until 1970 through 1975. He returned when Hughie Thomasson reformed the band in 2005.

41. Licensee Defendant and guitarist/vocalist Henry Paul’s Outlaws career began in 1972, and he left in 1977. He returned in 1983 and departed three years later in

1986. Paul returned nineteen years later in 2005 but in 2006 again departed to return to Defendant Blackhawk. After Thomasson's death, Paul rejoined the Outlaws in 2008.

42. Licensee Defendant Chris Anderson, guitarist and vocalist, was with the Outlaws from 1986 to 1989, and he rejoined when the band was reformed in 2005.

43. Licensee Defendant Randy Threet, bass player and vocalist, has been with the Outlaws since the 2005 reorganization.

44. Licensee Defendants Billy Crain, guitar and vocals, and Jon Coleman, keyboard and vocals, joined the Outlaws in 2008.

45. By 1996 Hughie was the remaining original member of the Outlaws, and the group was largely confined to working smaller club dates. Hughie accepted a position with the Lynard Skynard band until early 2005 when he left to re-establish the Outlaws.

46. After returning home from a series of concerts in September 2007, Hughie Thomasson unexpectedly passed away from a heart attack.

47. Wherever he was, Hughie Thomasson promoted the Outlaws by word and deed, often wearing "OUTLAWS" T-shirts while playing Skynard concerts. As the keeper of the Outlaws' flame, Hughie was nicknamed "Mr. Outlaw" and "The Lone Outlaw."

48. Plaintiff Outlawlessness applied for a federal registration of the "OUTLAWS" mark with the U.S. Patent and Trademark Office on July 26, 2000.<sup>1</sup> (The U.S. Patent and Trademark Office TESS report of Plaintiff's Outlaws' trademark application is attached hereto as Exhibit C.)

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<sup>1</sup> The application has been suspended since that time due to applications for "Outlawz" and "Outlaw Records" marks by another party that were made a few months prior to the OUTLAWS' Mark application. Plaintiff Outlawlessness is currently engaged in a cancellation proceeding before the Trademark Trial and Appeal Board against the owner of the "Outlawz" and "Outlaw Records" mark registrations.

49. Plaintiff's Outlaws Mark consists of two parts: an icon and word. The U.S. Trademark Office describes Plaintiff's trademark as "consist(ing) of a Cow skull surrounded by a rope and entangled by two Rattle Snakes [the graphic icon], (the word) "OUTLAWS" (is) at the top."

50. Plaintiff Outlawlessness also applied for a registration in the trademark "LONE OUTLAW" on July 18, 2000.<sup>2</sup>

### **2005 Outlaws Reorganization**

51. When Hughie Thomasson re-established the Outlaws musical group in 2005, musicians were hired who signed agreements that included a provision waiving rights in the "OUTLAWS" Marks. (Plaintiff Band of Outlaws' agreements with Licensee Defendants Paul and Yoho are attached hereto as Exhibit D.)

52. During the Outlaws reorganization, upon information and belief, Licensee Defendant Paul worked in some capacity on acquiring and creating an Outlaws' Domain Name, Website, and MySpace page.

53. Upon information and belief, Licensee Defendant Paul enlisted Defendant John Gellman to help with or actually accomplish the matters related in the preceding paragraph.

54. Hughie Thomasson registered the [www.outlawsmusic.com](http://www.outlawsmusic.com) Domain Name with registrar Network Solutions, LLC, in the name of Plaintiff Band of Outlaws, on March 1, 2006. (Exhibit A.)

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<sup>2</sup> The same history applies to the "Lone Outlaw" trademark application as explained in the prior footnote.

55. When Hughie Thomasson passed away in September 2007, the band quit performing. In late 2007 or early 2008, Licensee Defendant Paul began asking Ms. Thomasson to again revive the Outlaws.

56. After negotiations, Plaintiff Outlawlessness and Licensee Defendants entered into the trademark licensing agreement known herein as the License. (Exhibit B.)

57. Rights granted in the License include the use of Plaintiff's "Mark(s) for (i) live performances featuring the Licensees (*i.e.*, Licensee Defendants), and (ii) the advertising, promotion, and sale of Products to third party consumers."

58. Licensee Defendants may not enter into any sublicense agreement (Exhibit B, Sec. 6) or use the Mark(s) in any way without Plaintiff's prior written authorization (Exhibit B, Sec. 11.1).

59. Licensee Defendants are obligated to inform Plaintiff of the identity and address of each sublicensee and supply a copy of each concluded agreement. (Exhibit B, Sec. 6)

60. In the event of License termination, Licensee Defendants "shall immediately cease using any of the Marks, and all rights licensed to the Licensee (*i.e.*, Licensee Defendants) revert to the Owner (*i.e.*, Plaintiff)." (Exhibit B, Sec. 7.5.)

### **Merchandise**

61. When Hughie Thomasson reformed the Outlaws in 2005, upon information and belief he had Licensee Defendant Paul and Defendant Gellman contact Choice Merchandise of North Carolina on behalf of Plaintiff Outlawlessness.

62. Choice Merchandise began to advertise and sell “OUTLAWS” branded merchandise including T-shirts, baseball caps, key chains, insulated can holders, and the like on the Website.

63. Outlawlessness regularly received payments from the licensing of its Marks with Choice Merchandise until some time in 2008 or early 2009 when payments stopped.

64. Upon information and belief, Licensee Defendant Yoho and/or Defendant Gellman told Choice Merchandise to begin directing payments to Licensee Defendants and to stop paying Plaintiff Outlawlessness.

65. In late 2007 or early 2008, Licensee Defendant’s agent, George Cappellini, presented Outlawlessness with various shirt designs. Plaintiff approved only one design that included the use of Plaintiff’s “Outlaws” word mark and a photograph of the Licensee Defendants on the front of the shirt for sales at concerts.

66. Upon information and belief, Licensee Defendants entered into an agreement with Richards & Southern, Inc. to produce merchandise similar to that of Plaintiff’s goods bearing Plaintiff’s word Mark and confusingly similar derivatives of Plaintiff’s graphic Mark.

67. Upon information and belief, Licensee Defendants and Richards & Southern created and maintain a web page on the Richards & Southern website, located at [www.richardsandsouthern.com](http://www.richardsandsouthern.com), from which unauthorized Outlaws merchandise is sold.

### **Domain Name and Website**

68. The Domain Name registered by Hughie Thomasson contains the “OUTLAWS” word Mark.

69. Upon information and belief, Defendant Gellman worked on the Website and had knowledge of the original Website and Domain Name access information.<sup>3</sup>

70. Upon information and belief, Defendant Gellman gave the Domain Name and Website access information to Licensee Defendants or assisted them in accessing these accounts.

71. Upon information and belief, Licensee Defendants, with the possible assistance of Defendant Gellman, changed the Domain Name and Website account access information.

72. In the account information, the account owner was no longer listed as Band of Outlaws, but as “1400 18th Avenue South,” the address of Defendant Last Outlaws.

73. After the Outlaws reorganization in 2008 with Licensee Defendants, Plaintiff has been unable to access either the Domain Name account or the Website using the original User IDs and Passwords.

74. After the Outlaws 2008 reorganization, Plaintiff stopped receiving automatic e-mail notifications from the Domain Name registrar regarding registration payment due dates.

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<sup>3</sup> Hereinafter, the term “access information” refers to the data required to gain access to a domain name account or website account and operating software. Access information typically consists of a user identification and password.

75. On or around early March 2009, Plaintiff checked registrar Network Solutions and discovered that Licensee Defendants had apparently paid the registration fee.

76. On or around September 19, 2009, Licensee Defendants transferred the Domain Name registration from Network Solutions to registrar GoDaddy.com.

### **Website Store**

77. Up to late 2008 or early 2009, Plaintiff's Website "Store" displayed Plaintiff's branded products supplied by Choice Merchandise.

78. After that time and without Plaintiff's consent, Licensee Defendants removed the "Store" page and inserted a web page containing two links: One link led to a page containing Licensee Defendants' merchandise that was written as "New Outlaws Merchandise" while the other link to Plaintiff's merchandise page was merely written as "Outlaws Merchandise."

79. After Plaintiff sent an e-mail of complaint, the link page was deleted and a Website "Store" page was again inserted, but this time only Licensee Defendants' merchandise was displayed. All references to Plaintiff's merchandise were deleted from the Website.

### **MySpace Page**

80. Upon information and belief, shortly after the 2005 Outlaws reorganization, Defendant Gellman created a MySpace Outlaws page for Plaintiff located at [www.myspace.com/outlawsmusic](http://www.myspace.com/outlawsmusic).

81. Upon information and belief, around the time of the 2008 reorganization, Defendant Gellman or Licensee Defendants changed the administration information because Plaintiff can no longer access the Outlaws MySpace account using the original administration information.

82. The Outlaws' MySpace page presents concert information, fan comments, and the like.

83. The MySpace Outlaws page carries the "OUTLAWS" Mark.

### **Recordings**

84. Upon information and belief, Licensee Defendants established agreements with one or more third parties to record Outlaws' live performances and to provide digital files for purchase by downloading and possibly CD-ROMS for purchase.

85. Upon information and belief, the phonorecords include:

85.1 "*Wanted The Outlaws Live*," that iTunes lists as released March 3, 2009, by K-tel, and

85.2 "*The Outlaws, Green Grass and High Tides Forever, Live*" that iTunes shows was released March 1, 2009, by Deadline Music.

86. The agreements were made and Marks used, including the use of confusingly similar graphic marks, without Plaintiffs' knowledge or consent.

### **Blackhawk**

87. In late 2008 or 2009, Plaintiff discovered that Defendant Blackhawk was employing the same musicians as the Outlaws.

88. Upon information and belief, Licensee Defendant Paul is the owner of Blackhawk.

89. The same and similar devices have been used to promote the Outlaws and Blackhawk, and Blackhawk has advertised and performed concerts in close time, date, and geographic proximity to the Outlaws.

90. The musicians of Blackhawk have played Outlaws musical works.

### **Henry Paul Band**

91. On or around January 1, 2009, anyone using the Domain Name was automatically directed to a splash page before they could see any Website page.

92. The splash page contained a message from Licensee Defendants Paul and Yoho explaining that Licensee Defendants were henceforth going to be called the Henry Paul Band, and upon clicking "enter" the Outlaws fan was automatically redirected to the Henry Paul Band website.

93. The "Henry Paul Band" Website appeared virtually unchanged from the Outlaws Website, except for the title "Official Home of the Henry Paul Band."

94. Upon information and belief, the Henry Paul Band employs the same musicians that are in the Outlaws.

## **VI CAUSES OF ACTION**

### **COUNT ONE**

#### **Breach of Contract**

95. Paragraphs 1 through 94 above are realleged and incorporated herein by reference insofar as applicable to this claim.

96. Licensee Defendants have failed to obtain written approval from Plaintiff prior to entering into sublicensing agreements. (Exhibit B, Section 6.)

97. Licensee Defendants are not permitted to use Plaintiff's Marks "in any way" without Plaintiff's prior written authorization. (Exhibit B, Section 11.1.)

#### **Merchandise Sales**

98. By the actions alleged above, Licensee Defendants have breached and are breaching the License with Plaintiff Outlawlessness by entering into a sublicense with Richards & Southern to produce "OUTLAWS" branded merchandise without Plaintiff's consent. (Exhibit B, Sections 6 and 11.1.)

99. By the actions alleged above, Licensee Defendants have breached and will continue to breach the License by selling unauthorized "OUTLAWS" branded merchandise without Plaintiff's consent (a) on the Website, (b) during Outlaws performances, and (c) on the Richards & Southern website. (Exhibit B, Sections 2 and 11.1.)

100. These material breaches of the License by Licensee Defendants have caused and continue to cause serious loss and harm to Plaintiff.

## **Recordings**

101. By the actions alleged above, Licensee Defendants have breached the License by entering into sublicenses with third parties K-tel and Deadline Music to use Plaintiff's Mark without authorization on the phonorecords (digital or otherwise) "*Wanted, The Outlaws, Live*" and "*The Outlaws, Green Grass and High Tides Forever*," failing to notify Plaintiff about the agreements or send a copy of the finalized agreements to Plaintiff, and selling or having the products sold in venues or through sources other than during Outlaws' live performances. (Exhibit B, Sections 2, 6 and 11.1.)

102. Licensee Defendants' material breaches have caused and are causing Plaintiff serious loss and harm.

## **GoDaddy Domain Name Registration**

103. By the actions alleged above, License Defendants have breached the License by contracting with registrar GoDaddy to register Plaintiff's Domain Name that contains Plaintiff's word Mark without Plaintiff's consent, failing to notify Plaintiff, and failing to send a copy of the final agreement. (Exhibit B, Sections 6 and 11.1.)

104. As a result of Licensee Defendants' breaches, Plaintiff has suffered and continues to suffer serious loss and harm.

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105. By Defendants' actions alleged above and Plaintiff's resultant loss and harm, Plaintiff is entitled to recover from Licensee Defendants the damages Plaintiff has sustained and will sustain.

**COUNT TWO**

**Trademark Infringement, Unfair Competition, and Dilution**

**15 U.S.C. § 1125**

106. Paragraphs 1 through 105 are incorporated herein by reference insofar as applicable to this claim.

**Licensee Defendants**

107. By the actions alleged above, Licensee Defendants have infringed and will continue to infringe Plaintiff's rights by using the "Outlaws" Mark on merchandise (created by Richards and Southern) that is identical or confusingly similar to Plaintiff's products.

108. By the actions alleged above, Licensee Defendants have infringed and are infringing Plaintiff's rights by creating graphic marks or having graphic marks created by other parties, that are identical or confusingly similar to Plaintiff's graphic Mark and placing those derivative marks on goods that are identical or confusingly similar to Plaintiffs' products and selling those goods that likely confuse consumers.

109. By the actions alleged above, Plaintiff's rights have been infringed and will continue to be infringed by (a) Licensee Defendants' unauthorized use of Plaintiff's word Mark and outlawsmusic.com Mark, and (b) Licensee Defendants' use of confusingly similar graphic marks in the promotion and sale, including the downloading of digital files of music, of the mini-phonorecords entitled "*Wanted, The Outlaws, Live,*" and "*Outlaws, Green Grass and High Tides Forever, Live.*"

110. By the actions alleged above, Licensee Defendants have engaged in and will continue to engage in unfair trade practice and unfair competition by (a) replacing Plaintiff's Website Store with a page containing only links that utilized Plaintiff's Mark and characterizing Licensee Defendant's merchandise with the word "New" on Licensee Defendants' link, (b) removing all indication or links containing Plaintiff's Mark to Plaintiff's merchandise from the Website, and (c) and establishing an Outlaws page on the Richards & Southern website from which Outlaws branded merchandise is sold.

**Licensee Defendants Paul and Yoho and Defendant Henry Paul Band**

111. As used by the Plaintiff, the Domain Name became a valid trademark, signifying to consumers a specific source of Outlaws music and information.

112. Licensee Defendants Paul and Yoho used the Domain Name as a gateway to a splash page that in turn led to the Website that was renamed the "Official Home of the Henry Paul Band." This use of the Domain Name and Plaintiff Outlawlessness' former Outlaws Website has likely confused consumers and thus infringed Plaintiffs Outlawlessness' "OUTLAWS" and Band of Outlaws' "OUTLAWSMUSIC.COM" Marks.

113. As used by the Defendants, the Domain Name is confusingly similar to Plaintiff's "OUTLAWS" Mark, and because the Mark was famous at the time of Domain Name registration, and remains so today, the Domain Name as used by Licensee Defendants dilutes the "OUTLAWS" Mark.

**Defendant Blackhawk**

114. By the actions alleged above, Defendant Blackhawk and Licensee Defendant Paul have engaged in and will continue to engage in unfair trade practices and competition with Plaintiff by (a) knowingly hiring and promoting the same musicians as in the Outlaws, and (b) advertising performances in close geographic proximity and in close periods of time to Outlaws' performances, (c) upon information and belief, performing Outlaws' musical works, (d) using some of the same promotional devices that have been used by the Outlaws.

**Defendant Last Outlaws**

115. By the actions alleged above, use of a confusingly similar corporate name, The Last Outlaws, has infringed and will continue to infringe Plaintiff Outlawlessness' "LONE OUTLAW" trademark and "OUTLAWS" word Mark by creating a likelihood of confusion in consumers.

**COUNT THREE**

**Cyberpiracy**

**15 U.S.C. § 1125 (d)**

116. Paragraphs 1 through 115 are incorporated herein by reference insofar as applicable to this claim.

**Licensee Defendants**

117. By the actions alleged above, Licensee Defendants gained control of, reregistered, and have used and will continue to use the outlawsmusic.com and myspace.com/outlawsmusic Domain Names in a bad faith effort to profit from Plaintiffs Outlawlessness' "OUTLAWS" and Band of Outlaws' "OUTLAWSMUSIC.COM" Marks.

118. The Domain Names are identical or confusingly similar to Plaintiffs' Marks, and the Marks are and were distinctive at the time of Domain Name registration and use by Licensee Defendants and Licensee Defendants thus constitutes cyberpiracy.

**Defendants Henry Paul Band, Last Outlaws, and Gellman**

119. By the actions alleged above, Defendants Henry Paul Band, Last Outlaws, and Gellman have engaged in and will continue to engage in cyberpiracy by acting singly and in concert in bad faith to profit from Plaintiffs' "OUTLAWS" and "OUTLAWSMUSIC.COM" Marks.

120. By the actions alleged above, Defendant Henry Paul Band wrongly used Plaintiff Band of Outlaws' OUTLAWSMUSIC.COM Domain Name to lead consumers to the Website that was re-titled the "Official Home of the Henry Paul Band."

121. By the actions alleged above, the Last Outlaws had a bad faith intent to profit from Plaintiffs' Marks by participating in the registration of Plaintiff's Outlawsmusic.com Domain Name with GoDaddy by the use of its corporate street address as the Domain Name registrant.

122. By the actions alleged above, Defendant Gellman had a bad faith intent to profit from Plaintiffs' Marks that led to assisting Licensee Defendants so that registration

and use of the “outlawsmusic.com” and “myspace.com/outlawsmusic” Domain Names by Licensee Defendants became possible.

123. Defendants’ actions above constitute cyberpiracy.

## VII PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Outlawlessness Productions, Inc. and Band of Outlaws Touring, Inc. request that this Court:

- A. Declare that Plaintiff Outlawlessness is the rightful owner of the “OUTLAWS” trademark;
- B. Uphold the terms of the License finding that the Licensee Defendants are in breach of Sections 6 and 11.1 of the License;
- C. Order the termination of the License effective December 31, 2009;
- D. In consequence of Licensee Defendants’ contractual breaches, order judgment against Licensee Defendants in a sum yet to be determined;
- E. Pursuant to 15 U.S.C. § 1118, order the seizure and destruction of
  - 1 Licensee Defendants’ merchandise—clothing or otherwise, packaging, advertising, labels, and the like branded with the “OUTLAWS” word Mark, or any identical or similar graphic Mark;
  - 2 Licensee Defendant’s “OUTLAWS” branded phonorecords titled “*WANTED, THE OUTLAWS, LIVE*” and “OUTLAWS, GREEN GRASS AND HIGH TIDES FOREVER, LIVE,” including the erasure or deletion of any that exist in digital form only, and any supporting “OUTLAWS” branded merchandise,

packaging, advertising, labels, and the like, and order Licensee Defendants to terminate production of these or any other titles of musical works;

F. Find that Licensee Defendants and Defendant Gellman have violated 15 U.S.C. § 1125 (d) and order these Defendants to re-register the Domain Name in the name of “Outlawlessness Productions, Inc.” as registrant and reveal to Plaintiff the User Identification and Password, or other information required to access the GoDaddy Domain Name account, and further order these Defendants to abstain from any future involvement with any of Plaintiff’s Domain Name registrations;

G. Find that Licensee Defendants and Defendant Gellman have violated 15 U.S.C. § 1125 (d) and order these Defendants to re-register the Outlaws’ MySpace account (*i.e.*, [www.myspace.com/outlawsmusic](http://www.myspace.com/outlawsmusic)) in the name of “Outlawlessness Productions, Inc.” as registrant and reveal to Plaintiff the User Identification and Password, or other information required to access the account, and further order these Defendants to abstain from future interference with Plaintiff’s Internet registrations;

H. Order Licensee Defendants and Defendant Gellman to reveal the User Identification and Password, or other information, required to access the [www.outlawsmusic.com](http://www.outlawsmusic.com) Website operating software, and order these Defendants to abstain from any future involvement with any of Plaintiff’s Websites;

I. Find that Licensee Defendants, and Defendants Blackhawk, Henry Paul Band, and Gellman have infringed Plaintiff Outlawlessness’ “OUTLAWS” word and graphic Marks;

J. Find that Defendant The Last Outlaws has infringed Plaintiff Outlawlessness’ “OUTLAWS” Mark and “LONE OUTLAW” trademarks;

K. Find that Licensee Defendants, and Defendants Gellman, The Last Outlaws, and Henry Paul Band have engaged in cyberpiracy against Plaintiffs Outlawlessness and Band of Outlaws;

L. In consequence of Defendants' infringement of Plaintiff's trademarks, unfair trade practices, and unfair competition, require Defendants to pay to Plaintiff (i) as much as triple the actual damages as Plaintiffs have sustained, (ii) Defendants' profits, and (iii) costs of this action.

M. In consequence of the violation of 15 U.S.C. § 1125 (d)(1) cyberpiracy statute, the court may order judgment against Licensee Defendants and Defendant Gellman and the Plaintiffs may elect (a) actual damages and profits, or (b) statutory damages of not less than \$1000 and not more than \$100,000 per domain name, as the court considers just;

N. Issue a temporary restraining order and injunction enjoining Defendants Paul, Yoho, Anderson, Crain, Threet, and Coleman (the "Licensee Defendants") and Defendants Blackhawk, Henry Paul Band, and The Last Outlaws during the pendency of this action and permanently from use of Plaintiff's "OUTLAWS" word and graphic or iconic trademarks in any manner, and from selling, marketing, or otherwise disposing or ordering the disposal of any merchandise bearing the Plaintiff's "OUTLAWS" trademarks or derivative graphic trademarks.

O. Order all Defendants to abstain from in any way discussing, commenting upon, or mentioning Plaintiffs in this action in public, in performances, or in any other public venue;

P. Order Licensee Defendants to pay Plaintiffs interest on the damages in an amount the Court deems appropriate;

Q. Order Licensee Defendants to pay an award of Plaintiffs' costs and disbursements of this action, including reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117;

R. Order that Defendants pay to Plaintiffs the costs of this action and reasonable attorney's fees to be allowed to Plaintiffs by the Court.

S. Order that Plaintiffs have such other and further relief as is just.

Respectfully submitted,

April 7, 2010

*Date*

*/David MacTavish*

*David MacTavish*

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