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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 SEAN MOORMAN,

12 Plaintiff,

13 v.

14 SPENCER GIFTS LLC, a Delaware limited
liability company,

15 Defendant.
16

) Case No.

) **COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND FALSE
DESIGNATION OF ORIGIN**

) **DEMAND FOR JURY TRIAL**

17 Plaintiff Sean Moorman brings this action against defendant Spencer Gifts LLC for
18 injunctive relief and damages under the Copyright and Trademark laws of the United States as follows:

19 **THE PARTIES**

20 1. Plaintiff Sean Moorman ("Plaintiff") is an individual who resides in Little Rock,
21 Arkansas.

22 2. On information and belief, Spencer Gifts LLC ("Defendant") is a limited
23 liability company organized under the laws of the state of Delaware and having its principle place of
24 business at 6826 Black Horse Pike, Egg Harbor Township, New Jersey 08234. With retail stores
25 located in Sacramento and Roseville, California, Defendant conducts substantial business in this
26 District.

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1 **JURISDICTION**

2 3. This is a civil action arising, *inter alia*, under the Copyright and Trademark laws
3 of the United States. This Court has jurisdiction over the subject matter of the First and Second Claims
4 for Relief pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, 28 U.S.C. § 1331, and 28 U.S.C. § 1338.
5 Defendant conducts business in this District, and therefore the Court has personal jurisdiction over
6 Defendant.

7 **VENUE**

8 4. Venue in this District is proper under 28 U.S.C. § 1400(a) in that Defendant may
9 be found in this District.

10 **ALLEGATIONS COMMON TO BOTH CLAIMS FOR RELIEF**

11 5. Plaintiff is a nationally recognized and acclaimed professional photographer. He
12 has had a distinguished career in music, commercial, and portrait photography.

13 6. As a music photographer, Plaintiff has been granted all-access and photo passes
14 to photograph musical acts such as Disturbed, Bush, Chevelle, Saliva, Slipknot, Slayer, Frank Black,
15 Emmy Lou Harris, Allison Krauss, Rodney Crowell, Willie Nelson, Jane's Addiction, Damageplan,
16 The Donnas, Queens of the Stone Age, Hed PE, Evanescence, Seether, Shinedown, Sally Taylor, James
17 Brown, Blue October, Paul McCoy, Puddle of Mud, Flyleaf, Linkin Park, Velvet Revolver, Earshot,
18 Theory of a Dead Man, Audio Slave, Eve 6, Trapt, Incubus, Stained, Live, Vince Neil, Our Lady Peace,
19 Poison, Revis, Ringo Starr, and Bonnie Raitt. Plaintiff has also toured with the multi-platinum band
20 Saliva, and produced photographs for a nationally released album from Island Def Jam Music Group.

21 7. Plaintiff has also been a successful commercial photographer. He has shot
22 numerous national, regional, and local advertising campaigns, including for Munro Shoes and Beverly
23 Health Systems. For two years, Plaintiff was the official campaign photographer for Senior U.S.
24 Senator Tim Hutchinson.

25 8. Plaintiff has also worked as a privately commissioned portrait photographer for
26 prominent families in London, Switzerland, Brussels, and Copenhagen.

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1 9. Willie Nelson is one of the most accomplished, famous, and recognizable
2 country music artists of our time. Over the course of his nearly fifty-year career, Mr. Nelson has been a
3 successful vocalist, songwriter, bandleader, and movie actor.

4 10. Over his career, Mr. Nelson has produced at least twenty Number One hits and
5 114 chart singles. He was inducted into the Country Music Hall of Fame in 1993.

6 11. On or about July 26, 2002, Plaintiff was invited on Willie Nelson's tour bus.
7 "Willie Nelson Sending Jim Marshall Regards" (the "copyrighted work") is a photograph that Plaintiff
8 took of Mr. Nelson on that occasion. A true and correct copy of the copyrighted work is attached
9 hereto and marked Exhibit "A."

10 12. Because of the unique and provocative nature of the copyrighted work, Plaintiff
11 is particularly protective of the use of that image.

12 13. The copyrighted work is the subject of United States Copyright Office
13 Certificate of Registration No. VAu737-739, issued to plaintiff on or about March 2, 2007. A true and
14 correct copy of the Certificate of Copyright is attached hereto and marked Exhibit "B."

15 14. Since the creation of the copyrighted work, plaintiff has continued to comply
16 with provisions of the Copyright Act with respect to the copyright.

17 15. Plaintiff continues to be the sole proprietor of all right, title and interest in and to
18 the copyrighted work.

19 16. Plaintiff has never conveyed any right, title or interest in or to the copyrighted
20 work to any other person.

21 17. Plaintiff has never released the copyrighted work into the public domain.

22 18. Plaintiff has learned that Defendant has nevertheless publicly exhibited, offered
23 for sale and sold articles, including t-shirts, that infringe the copyright that Plaintiff owns.

24 19. Defendant's website, accessed on September 21, 2007, offers for sale a t-shirt
25 labeled "Willie Nelson Middle Finger Black T," identified as Item # 00027177. A true and correct
26 copy of that webpage is attached hereto as Exhibit "C."

27 20. The infringing and piratical t-shirt bears an image identical to plaintiff's
28 copyrighted work.

1 conduct. Plaintiff will continue to suffer irreparable damage until Defendant's actions alleged above
2 are enjoined by this Court.

3 **SECOND CLAIM FOR RELIEF**

4 **(False Designation of Origin)**

5 29. Plaintiff incorporates by this reference and realleges each and every allegation
6 set forth in paragraphs 1 through 28.

7 30. Defendant, while doing business in interstate commerce, has intentionally or
8 negligently misrepresented the source of Defendant's products to actual and potential customers of
9 Defendant and to other third parties.

10 31. Defendant's wrongful conduct constitutes a violation of Section 43(a) of the
11 Lanham Act, 15 U.S.C. § 1125(a).

12 32. As a result of the foregoing, Plaintiff has been damaged in an amount which is
13 not precisely ascertainable, but which will be inserted herein by amendment at such time as it is
14 precisely ascertained.

15 33. Plaintiff has no adequate remedy at law for Defendant's wrongful conduct in that
16 (i) if Defendant's wrongful conduct continues, consumers are likely to become further confused as to
17 the source of the copyrighted work, (ii) Defendant's use constitutes an interference with Plaintiff's
18 goodwill and reputation, and (iii) Defendant's conduct, and the resultant damages to Plaintiff, are
19 continuing.

20 34. Accordingly, Plaintiff is entitled to preliminary and permanent injunctive relief
21 pursuant to 15 U.S.C. § 1116(a).

22 35. Defendant has been guilty of oppression, fraud and malice in doing the things
23 herein, by reason of which Plaintiff is entitled to damages for the sake of example and by way of
24 punishing Defendant.

25 36. Plaintiff is also entitled to recover his attorney's fees and costs of suit pursuant
26 to 15 U.S.C. § 1117(a).

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment as follows:

3 **A. On the First Claim For Relief, Judgment in Favor of Plaintiff:**

4 1. Preliminarily and permanently enjoining Defendant from engaging in any
5 conduct constituting an infringement of Plaintiff's copyright identified above;

6 2. Directing the destruction of all goods infringing Plaintiff's copyright in the
7 possession, custody or control of Defendant;

8 3. Awarding Plaintiff either his actual damages and Defendant's profits from their
9 infringing activities or, at Plaintiff's subsequent election, statutory damages, together with his costs of
10 this action, including his reasonable attorneys' fees; and

11 4. That Defendant, within thirty days after service of judgment, with notice of entry
12 thereof upon Defendant, be required to file with the Court and serve upon Plaintiff a written report
13 under oath, setting forth in detail the manner in which Defendant has complied with the injunctive
14 relief requested herein.

15 **B. On the Second Claim For Relief, Judgment in Favor of Plaintiff:**

16 1. That Defendant account for and pay over to Plaintiff all damages sustained by
17 them and all profits realized by Defendant by reason of Defendant's unlawful acts alleged herein
18 pursuant to 15 U.S.C. §1117(a) and that Plaintiff be awarded recovery of the full costs of this action
19 against Defendant; and

20 2. That Plaintiff be awarded three times the amount of his damages or Defendant's
21 profits, whichever is greater, together with a reasonable attorney's fee pursuant to 15 U.S.C. §1117(b).

22 **C. On All Claims For Relief:**

23 1. For such other and further relief as the Court may deem just and proper.

24 Dated: September 24, 2007

MENNEMEIER, GLASSMAN & STROUD LLP
ANDREW W. STROUD
STEPHEN LAU

26 /s/ ANDREW W. STROUD
27 Andrew W. Stroud
28 Attorneys for Plaintiff Sean Moorman

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DEMAND FOR JURY TRIAL [FRCP Rule 38(b)]

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby
demands a jury trial herein.

Dated: September 24, 2007

MENNEMEIER, GLASSMAN & STROUD LLP
ANDREW W. STROUD
STEPHEN LAU

/s/ ANDREW W. STROUD
Andrew W. Stroud
Attorneys for Plaintiff Sean Moorman