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 RASCAL VIDEO, LLC

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

RASCAL VIDEO, LLC, a California  
 limited liability company,

Plaintiff,

vs.

WSM INVESTMENT, LLC D/B/A  
 TOPCO SALES, a Delaware limited  
 liability company; WSM SALES, LLC, a  
 California limited liability company; and  
 DOES 1-10, inclusive,

Defendants.

Case No.

**COMPLAINT FOR:**

- 1. BREACH OF CONTRACT**
- 2. FALSE DESIGNATION OF  
ORIGIN (15 U.S.C. § 1125(A))**
- 3. TRADEMARK INFRINGEMENT**

**JURY TRIAL DEMANDED**

Plaintiff Rascal Video, LLC (“Rascal”) files this action against defendants  
 WSM Investment, LLC, WSM Sales, LLC, and DOES 1-10, inclusive (collectively  
 “Defendants”), and alleges as follows:

**THE PARTIES**

1. Plaintiff Rascal is a limited liability corporation organized under the  
 laws of the State of California with its principal place of business in Los Angeles,  
 California. Rascal is in the business of producing and distributing original adult  
 entertainment for a gay male audience, including the well-known series CHI CHI

1 LARUE'S BLACK BALLED.

2 2. Rascal is informed and believes, and on that basis alleges, that defendant  
 3 WSM Investments, LLC is a Delaware limited liability company that does business in  
 4 the State of California, County of Los Angeles as Topco Sales ("New Topco"), and  
 5 under that name is engaged in the business of manufacturing, distributing, selling,  
 6 and marketing adult novelty products and sexual aids.

7 3. Rascal is informed and believes, and on that basis alleges, that defendant  
 8 Defendant WSM Sales, LLC is a California limited liability company doing business  
 9 in California at the same address as New Topco ("WSM Sales," or collectively with  
 10 New Topco, "WSM"). Rascal is informed and believes, and on that basis alleges,  
 11 that WSM sales is the alter-ego of New Topco.

12 4. Plaintiff does not know the true names and capacities of defendants  
 13 DOES 1-10, inclusive, and sues these Defendants by such fictitious names. Plaintiff  
 14 is informed and believes and on that basis alleges that each of the defendants  
 15 fictitiously named as DOES 1-10 is responsible in some manner for and caused the  
 16 damages herein alleged. When Plaintiff ascertains the true names and capacities of  
 17 DOES 1-10, it will amend this Complaint accordingly.

18 5. On information and belief, each defendant aided and abetted the actions  
 19 of one or more of the other defendants as set forth below, in that each defendant had  
 20 knowledge of the actions or omissions of the other defendants and encouraged,  
 21 assisted or facilitated those acts or omissions. Each of the defendants was the agent of  
 22 each of the remaining defendants, and in doing the things hereinafter alleged, was  
 23 acting within the course and scope of such agency and with the permission and  
 24 consent of the other defendants.

## 25 JURISDICTION AND VENUE

26 6. Jurisdiction is proper in this Court because this litigation arises under  
 27 federal law, namely 15 U.S.C. § 1125(A) *et seq.* (Lanham Act). The Court has  
 28 jurisdiction over this action under 28 U.S.C. § 1331 (federal question) and 28 U.S.C.

§ 1338(a), (b) (trademark). This Court has supplemental jurisdiction over Rascal’s state law claims under 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over defendants New Topco and WSM Sales because those defendants do business in this judicial district and can be found in this judicial district.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1391(c).

### FACTUAL BACKGROUND

9. Rascal is a renowned producer of adult entertainment for gay men. In May 2004, Rascal entered a license agreement with (now-defunct) Vast Resources, Inc., which did business as “Topco Sales” (“Old Topco”). Pursuant to the license agreement, Rascal authorized Old Topco to manufacture and distribute certain goods under Rascal’s marks RASCAL and CHI CHI LARUE, including dildos.

10. Among the products that Old Topco manufactured and distributed for Rascal was a dildo sold under the mark CHI CHI LARUE’S BLACK BALLED (the “BLACK BALLED” dildo), named after Rascal’s well-known movie series of the same name. There are currently eight (8) full-length movies in the BLACK BALLED series.

11. In or about June, 2012, Old Topco made, or purported to make, a general assignment for the benefit of creditors (“ABC”). The assignee under the ABC sold all of the assets of Old Topco to New Topco, including products in inventory and molds for products to be distributed under the Rascal Marks (including the molds for the BLACK BALLED dildo).

12. After acquiring Old Topco’s assets, New Topco commenced manufacturing and distributing goods under the Rascal marks. Rascal disputed New Topco’s authority to do so, and in November 2012 filed suit against Old Topco, New Topco, and WSM Sales (among others) in the United States District Court for the Central District of California, thereby commencing the action styled *Rascal Video, LLC v. WSM Investment, LLC et al.*, Civ. No. 12-cv-09675 SVW (JCx) (the “Original

1 Action”).

2 13. In or about February 2013, Rascal entered into a settlement agreement  
3 with WSM resolving the matters asserted in the Original Action (the “Settlement  
4 Agreement”), and the Original Action was dismissed with prejudice on February 4,  
5 2013.

6 14. In the Settlement Agreement, WSM represented that it had provided  
7 Rascal with a detailed inventory of all Rascal products in its inventory (the  
8 “Products”), and all molds in its inventory used to manufacture such Products  
9 (the “Molds”), and agreed to transfer all Products and Molds to Rascal.

10 15. WSM’s representation was false. WSM did not list on the inventory,  
11 and did not return to Rascal, the mold(s) for Rascal’s BLACK BALLED dildo.

12 16. Since the Original Action was dismissed, WSM has manufactured dildos  
13 using the molds it wrongfully retained, in particular the mold for Rascal’s BLACK  
14 BALLED product. WSM has, without authorization, distributed and sold the dildo  
15 made from Rascal’s mold under Rascal’s BLACK BALLED mark. The packaging  
16 for WSM’s spurious BLACK BALLED product directly copies the logo from  
17 Rascal’s authentic BLACK BALLED packaging.

18 17. Rascal has demanded that WSM cease all further manufacture, sale and  
19 distribution of products under Rascal’s BLACK BALLED mark, and account to  
20 Rascal for the profits made from WSM’s unauthorized sale of such products.

21 Although WSM has agreed not to manufacture additional products from Rascal’s  
22 molds, it has refused to provide the molds or products in inventory to Rascal or to  
23 account to Rascal for the profits it has earned from its infringement of Rascal’s  
24 BLACK BALLED mark. Further, WSM has denied that its use of Rascal’s BLACK  
25 BALLED mark is in any manner wrongful.

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**FIRST CAUSE OF ACTION**

**BREACH OF CONTRACT**

(Against all Defendants)

18. Rascal hereby repeats and realleges paragraphs 1-17 above as though fully set forth herein.

19. The Settlement Agreement is a valid and binding contract between the Parties.

20. Rascal has fully performed its obligations under the Settlement Agreement.

21. In the Settlement Agreement, WSM represented that it had provided Rascal with a detailed inventory of Rascal products and molds in its possession and agreed to convey such products and molds to Rascal.

22. WSM's representation was false. WSM did not identify or convey to Rascal the mold for Rascal's BLACK BALLED dildo.

23. WSM's conduct as alleged herein constitutes a breach of the Settlement Agreement.

24. As a result of the foregoing conduct, Rascal has been damaged in an amount to be proven at trial.

**SECOND CAUSE OF ACTION**

**FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITON**

(15 U.S.C. § 1125(a); Lanham Act § 43(a))

(Against all Defendants)

25. Rascal hereby repeats and realleges paragraphs 1-24 above as though fully set forth herein.

26. Since at least 1996, Rascal has been using its BLACK BALLED mark in commerce. Consumers recognize the BLACK BALLED mark as originating from Rascal. Rascal has established significant common law trademark rights in its BLACK BALLED series of movies and the BLACK BALLED dildo.

1 27. By virtue of its longstanding use of its BLACK BALLED mark, Rascal  
2 has developed a valuable reputation for quality and goodwill associated with its mark.

3 28. Defendants' use of the BLACK BALLED mark in connection with the  
4 manufacture, distribution, sale, and promotion of dildos is not authorized by Rascal  
5 and is likely to cause, and has caused, confusion among members of the public  
6 regarding the origin, sponsorship, and endorsement of goods sold or offered by  
7 Defendants.

8 29. As a direct and proximate result of Defendants unlawful conduct, Rascal  
9 has suffered and will continue to suffer substantial harm and injury to its business,  
10 goodwill, and reputation.

11 30. By engaging in the conduct alleged herein, Defendants intended to trade  
12 and did trade on Rascal's reputation and goodwill, thereby entitling Rascal to  
13 Defendants' profits, Rascal's damages, and the costs of the action.

14  
15 **THIRD CAUSE OF ACTION**  
16 **TRADEMARK INFRINGEMENT**

17 (Against all Defendants)

18 31. Rascal hereby repeats and realleges paragraphs 1-31 above as though  
19 fully set forth herein.

20 32. Rascal is the senior user of its BLACK BALLED mark.

21 33. The general public has come to associate the BLACK BALLED mark  
22 with Rascal and with goods and services endorsed by Rascal.

23 34. Rascal has built up considerable goodwill in its BLACK BALLED mark.

24 35. On information and belief, since at least October 2013, WSM has been  
25 using the BLACK BALLED mark without Rascal's permission or consent, in  
26 competition with Rascal on identical or similar goods.

27 36. Defendants' unlawful acts violate Rascal's trademark rights under  
28 California common law and are likely to cause consumer confusion as to the origin or

1 sponsorship of the goods sold or offered by Defendants.

2 37. Defendants' acts of trademark infringement have been committed with  
 3 the intent to, and have caused, confusion, mistake, or deception.

4 38. As a direct and proximate result of Defendants' unlawful conduct,  
 5 Rascal has suffered and will continue to suffer substantial harm and injury to its  
 6 business, goodwill, and reputation. Unless enjoined, Defendants' conduct will  
 7 continue to cause Rascal irreparable injury.

8 39. Defendants' acts of trademark infringement are willful, intentional, and  
 9 committed with malice to harm Rascal's business. Rascal therefore seeks to recover  
 10 enhanced damages and attorneys' fees.

## 11 12 PRAYER FOR RELIEF

13 WHEREFORE, Rascal respectfully prays the following relief:

- 14 1. An order permanently enjoining New Topco, its subsidiaries, officers,  
 15 affiliates, agents, directors, shareholders, parent corporations,  
 16 employees, partners, representatives, licensees, related companies,  
 17 assigns, attorneys and any and all persons, entities, or agents in active  
 18 concert or participation with Defendant, to refrain from manufacturing,  
 19 distributing, selling, or marketing goods under the BLACK BALLED  
 20 mark, or in any other way exploiting the BLACK BALLED mark, and  
 21 from competing unfairly with Rascal in any manner and from otherwise  
 22 damaging Rascal's goodwill or business reputation:
- 23 2. An order requiring Defendants to convey to Rascal the molds for the  
 24 BLACK BALLED dildo and all BLACK BALLED products and  
 25 packaging in its possession, custody or control;
- 26 3. An accounting identifying all sales of products under the BLACK  
 27 BALLED mark and all profits earned as a result of such sales;
- 28 4. Damages and lost profits in amount to be proven at trial;



5. Punitive damages for the willful and wanton nature of Defendant's infringement of Rascal's intellectual property in an amount sufficient to make an example of Defendants and to deter such conduct in the future;
6. Rascal's costs, expenses, and reasonable attorneys' fees in this action;
7. Such other and further relief as to which Rascal may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

### DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38 Rascal hereby demands a jury trial on all issues so triable.

Dated: January 3, 2014

DYKEMA GOSSETT LLP  
S. Christopher Winter  
Jeffrey Ilouliau

By: /s/ S. Christopher Winter  
S. Christopher Winter  
Attorneys for Plaintiff  
RASCAL VIDEO, LLC