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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PD PRODUCTS, LLC, a Delaware  
limited liability company

Plaintiff,

v.

ELECTRIC EEL, INC., a New York  
corporation; DOES 1 through 10,  
inclusive

Defendants.

**CASE NO.:**

**COMPLAINT FOR:**

- 1. TRADEMARK INFRINGEMENT**
- 2. UNFAIR COMPETITION UNDER  
FEDERAL LAW**
- 3. UNFAIR COMPETITION UNDER  
CALIFORNIA LAW**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff PD Products, LLC ("Plaintiff"), hereby prays for relief and alleges as  
2 follows:

### 3 JURISDICTION AND VENUE

4 1. This Court has jurisdiction over the subject matter of Plaintiff's claims  
5 for trademark infringement and unfair competition asserted in this action pursuant to  
6 15 U.S.C. §1121, 28 U.S.C. §§ 1331 and 1338. This Court has supplemental  
7 jurisdiction over Plaintiff's claims arising under the laws of California pursuant to 28  
8 U.S.C. § 1367, because these claims are so related to Plaintiff's claims under federal  
9 law that they form part of the same case or controversy and derive from a common  
10 nucleus of operative fact. Venue is proper in this Court pursuant to 28 U.S.C.  
11 §§1391(b) and (c) since, among other things, the Defendant transacts business within  
12 this judicial district and is subject to personal jurisdiction by this Court, and the  
13 Defendant owns and operates a website that appears to sell products, including the  
14 infringing products, in this judicial district.

### 15 THE PARTIES

16 2. Plaintiff is a limited liability company organized and existing under and  
17 by virtue of the laws of the State of Delaware, in good standing, and authorized to do  
18 business in the State of California, with its principal place of business in the County of  
19 Los Angeles, California. Plaintiff is the assignee of and successor-in-interest to  
20 Pipedream Products, Inc., a California corporation ("Pipedream"). Among other  
21 things, Plaintiff markets, manufactures, and distributes "paper goods" products in the  
22 United States and elsewhere.

23 3. Plaintiff is the owner of a Federal trademark duly and legally registered  
24 with the United States Patent and Trademark Office ("USPTO") for the mark  
25 "BACHELORETTE PARTY FAVORS" for paper goods, namely, napkins, party  
26 bags, party favors, party hats, pennants, party decorations, table cloths, gift bags, place  
27 mats, flags, banners, bags, boxes, bunting, emblems, flags, wrapping paper, name  
28

1 badges and printed invitations, in International Class 016, bearing United States  
2 Trademark Registration No. 3,189,458 ("TRADEMARK"), which was registered on  
3 the Principal Register on December 26, 2006.

4 4. Plaintiff is informed and believes, and based thereon alleges, that at all  
5 times herein mentioned, Defendant Electric Eel, Inc., ("Defendant") was and is a New  
6 York corporation, that is qualified by the California Secretary of State to transact  
7 business in California, and that transacts business in California and in interstate  
8 commerce, and manufactures and sells certain paper goods merchandise and other  
9 goods within this judicial district.

10 5. Plaintiff is unaware of the true names and capacities, whether individual,  
11 corporate, or otherwise, of the Defendants sued as DOES 1 through 10, and therefore  
12 sues them by fictitious names. Plaintiff will amend this complaint to allege their true  
13 names and capacities when they become known to Plaintiff. Plaintiff is informed and  
14 believes and thereon alleges that DOES 1 through 10, inclusive, are in some manner  
15 responsible for the events and happenings herein referred to and caused Plaintiff's  
16 damages hereinafter alleged.

17 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18 6. In or about 2000, Pipedream adopted and commenced selling products  
19 consisting of paper goods, namely, napkins, party bags, party favors, party hats,  
20 pennants, party decorations, table cloths, gift bags, place mats, flags, banners, bags,  
21 boxes, bunting, emblems, flags, wrapping paper, name badges and printed invitations,  
22 in International Class 016, utilizing the TRADEMARK ("Plaintiff's Goods").

23 7. Plaintiff and its predecessor-in-interest, Pipedream, have continually sold  
24 Plaintiff's Goods bearing the TRADEMARK since at least as early as March 21,  
25 2000. Plaintiff and Pipedream have conducted substantial advertising, marketing, and  
26 sales of Plaintiff's Goods in the United States and elsewhere.

27 8. On December 26, 2006, the TRADEMARK was registered and issued to  
28 Pipedream. A true and correct copy of the Certificate of Registration is attached

1 hereto as Exhibit "1."

2 9. On or about May 10, 2013, Pipedream filed with the USPTO a  
3 "Declaration of Use of Mark" under Section 8 of the Lanham Act, 15 U.S.C. 1058, for  
4 the TRADEMARK. A "Notice of Acceptance" of such Declaration was issued by the  
5 USPTO on or about June 11, 2013.

6 10. On or about September 18, 2013, Pipedream assigned all rights, title and  
7 interest in and to the TRADEMARK to Plaintiff including the goodwill of the  
8 business connected with the TRADEMARK, in a duly executed writing. This  
9 assignment was recorded with the USPTO on or about September 27, 2013, a true and  
10 correct copy of which is attached hereto as Exhibit "2" and incorporated herein by this  
11 reference.

12 11. In or about August of 2007, Pipedream informed Defendant that it was  
13 the owner of the TRADEMARK and Defendant, who at that time had been selling  
14 paper goods products under the name "Bachelorette Party Favors," agreed that it  
15 would cease manufacturing, selling, and promoting goods that Pipedream alleged  
16 were infringing the TRADEMARK.

17 12. In or about April of 2014, Plaintiff learned that Defendant had apparently  
18 resumed manufacturing and distributing for sale paper goods under the name,  
19 "Bachelorette Party Favors" ("Defendant's Goods"). Defendant's use of  
20 "Bachelorette Party Favors" on Defendant's Goods infringes Plaintiff's  
21 TRADEMARK. Defendant's use of the TRADEMARK on Defendant's Goods is  
22 without the consent of Plaintiff in a manner that is likely to cause confusion among  
23 ordinary consumers as to the source, sponsorship, affiliation, or approval of  
24 Defendant's Goods. The packaging of the Defendant's Goods containing Plaintiff's  
25 TRADEMARK, includes, but is not limited to, the samples, true and correct copies of  
26 which are attached hereto as Exhibit "3" and incorporated herein by this reference.  
27 Further, the mark used by Defendant is displayed in a remarkably similar font and  
28 color as Plaintiff displays its TRADEMARK, causing further confusion as to the

1 source of Defendant's Goods.

2 13. In spite of Defendant's knowledge of Plaintiff's TRADEMARK, and  
3 prior agreement to cease its infringing activity, Plaintiff is informed and believes and  
4 based thereon alleges that Defendant has and continues to manufacture, market and  
5 otherwise offer for sale Defendant's Goods using Plaintiff's TRADEMARK.

6 **FIRST CAUSE OF ACTION**

7 **Against All Defendants For**

8 **Trademark Infringement [15 U.S.C. §1114]**

9 14. Plaintiff realleges and incorporates herein by this reference each and  
10 every allegation set forth in Paragraphs 1-13, inclusive, with the same force and effect  
11 as though fully set forth herein.

12 15. Plaintiff owns the TRADEMARK, which is a valid and protectable  
13 trademark, subsisting and in full force and effect.

14 16. Under Section 7(b) of the Lanham Act, 15 U.S.C. § 1057(b), the Federal  
15 Trademark Registration constitutes prima facie evidence of the validity of the  
16 TRADEMARK, of Plaintiff's ownership of the TRADEMARK, and of Plaintiff's  
17 exclusive right to use the TRADEMARK in commerce on or in connection with the  
18 goods and services specified in the Certificate of Registration. In addition, under  
19 Section 22 of the Lanham Act, 15 U.S.C. § 1072, the Federal Trademark Registration  
20 places Defendant on constructive notice of the registrant's claim of ownership of the  
21 TRADEMARK.

22 17. In blatant disregard of Plaintiff's rights in the TRADEMARK, Defendant  
23 has used the TRADEMARK in the advertising, marketing and sales of the  
24 Defendant's Goods, which feature and incorporate the TRADEMARK without the  
25 consent of Plaintiff in a manner that is likely to cause confusion among ordinary  
26 consumers as to the source, sponsorship, affiliation, or approval of Defendant's  
27 Goods. Such activities by Defendant have taken place in the State of California, and  
28 in interstate commerce.

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1 licenses its paper goods products using the TRADEMARK, this distinguishes  
2 Plaintiff's goods in the marketplace. As a result, Plaintiff's retail customers and  
3 consumers have come to understand that use of the TRADEMARK on paper goods  
4 signifies that the product comes from Plaintiff.

5 27. Defendant's use of "Bachelorette Party Favors" on Defendant's Goods  
6 constitutes false designation of origin and infringement pursuant to 15 U.S.C. §  
7 1125(A).

8 28. Defendant's use of "Bachelorette Party Favors" on Defendant's Goods is  
9 likely to cause confusion in the relevant marketplace as to the origin, sponsorship, or  
10 approval of the products.

11 29. Defendant committed the wrongful acts alleged herein with actual or  
12 constructive knowledge of Plaintiff's rights, such that its conduct was, and continues  
13 to be, willful, intentional, and malicious.

14 30. Due to Defendant's false designation of origin and infringement alleged  
15 herein, Plaintiff has suffered damages to its business in an amount to be determined at  
16 trial. In addition, Defendant has obtained profits it would not otherwise have realized  
17 but for its wrongful acts. As such, Plaintiff is entitled to disgorgement of all of  
18 Defendant's profits from sales of products bearing the infringing mark in an amount to  
19 be determined at trial.

20 31. Plaintiff has no adequate remedy at law and will be irreparably injured by  
21 the continued acts of Defendant unless such acts are enjoined.

### 22 **THIRD CAUSE OF ACTION**

#### 23 **Against All Defendants For Unfair Competition,**

#### 24 **[California Business and Professions Code §17200 et seq.]**

25 32. Plaintiff realleges and incorporates herein by this reference each and  
26 every allegation set forth in Paragraphs 1 through 13, inclusive, and Paragraphs 15-24,  
27 inclusive, with the same force and effect as though fully set forth herein.

33. In utilizing the TRADEMARK, which infringes Plaintiff's exclusive trademark rights, and distributing Defendant's Goods using the TRADEMARK, Defendant has wilfully and without authorization appropriated the exclusive property of Plaintiff. As such, Defendant has taken advantage of and usurped the investment and goodwill of Plaintiff and has capitalized on the market created by Plaintiff for the TRADEMARK.

34. As a result of Defendant's exploitation of the TRADEMARK in a manner such that Defendant's Goods are commercially indistinguishable from Plaintiff's Goods, Defendant has been and will continue to be able to pass off and sell Defendant's Goods of inferior quality as substitutes for Plaintiff's Goods.

35. Defendant's unauthorized and unlawful use of the TRADEMARK which infringes Plaintiff's trademark rights constitutes unfair competition in violation of the California Business and Professions Code §17200, et seq., for which Plaintiff is entitled to an injunction.

36. Plaintiff has no adequate remedy at law and will be irreparably injured by the continued acts of Defendant unless such acts are enjoined.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant as follows:

1. That Defendant has infringed Plaintiff's rights in the TRADEMARK, in violation of 15 U.S.C. § 1114;
2. That Defendant has infringed Plaintiff's rights in the TRADEMARK willfully, intentionally, and/or maliciously;
3. That Defendant has committed unfair competition against Plaintiff in violation of 15 U.S.C. § 1125(a);
4. That Defendant has committed unfair competition against Plaintiff in violation of California Business and Professions Code, §17200, et seq.,
5. That the Court issue injunctive relief against Defendant, to preliminarily and permanently enjoin Defendants and their agents and employees from infringing



1 Plaintiff's rights in the TRADEMARK;

2 6. That Plaintiff be awarded recovery of its actual damages, in an amount to  
3 be determined at trial, as available under the Lanham Act;

4 7. That Plaintiff be awarded the disgorgement of Defendants' profits, in an  
5 amount to be determined at trial, as available under the Lanham Act and California  
6 Business and Professions Code, §17200, et seq.;

7 8. That Plaintiff be awarded treble damages California Business and  
8 Professions Code, §17082;

9 9. That Plaintiff be awarded recovery of its reasonable attorneys' fees as  
10 available under the Lanham Act, Federal law, and California Business and Professions  
11 Code, §17082;

12 10. That Plaintiff be awarded the costs of this action;

13 11. That Plaintiff be awarded pre-judgment interest as allowed by law; and

14 12. That Plaintiff be awarded such further legal and equitable relief as the  
15 Court deems proper.

16 DATED: April 14, 2014

17 GERSH | DERBY, LLP  
Attorneys at Law

18  
19 By



20 JEFFREY F. GERSH  
COURTNEY E. CURTIS  
21 JAMES A. SEDIVY

22 Attorneys for Plaintiff PD PRODUCTS, LLC  
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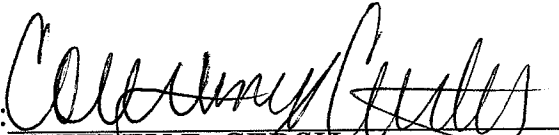
**Demand for Jury Trial**

Plaintiff hereby demands trial by jury as provided by Rule 38(a) of the Federal Rules of Civil Procedure on all issues raised by its Complaint that are triable by jury.

DATED: April 14, 2014

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By:



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