

1 JOHN NEUKOM (SBN 275887)
john.neukom@skadden.com
2 PATRICK HAMMON (255047)
patrick.hammon@skadden.com
3 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue
4 Palo Alto, California 94301
Telephone: (650) 470-4500
5 Facsimile: (650) 470-4570

6 Attorney for Plaintiff
TELEGRAM MESSENGER INC

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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TELEGRAM MESSENGER INC,

CASE NO. 18-cv-2811

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Plaintiff,

**PLAINTIFF TELEGRAM MESSENGER
INC'S COMPLAINT FOR:**

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vs.

- 1. **FALSE DESIGNATION OF ORIGIN;**
- 2. **TRADEMARK INFRINGEMENT;**
- AND**
- 3. **UNFAIR COMPETITION**

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LANTAH, LLC,

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Defendant.

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JURY TRIAL DEMANDED

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1 Plaintiff Telegram Messenger Inc (“Telegram Messenger”) by its attorneys, for its
2 Complaint against Defendant Lantah LLC (“Defendant” or “Lantah”), upon personal knowledge
3 as to its own facts and conduct and on information and belief as to all other matters, states and
4 alleges as follows:

5 **INTRODUCTION**

6 1. This is an action alleging false designation of origin under 15 U.S.C. § 1125,
7 common law trademark infringement, and unfair competition under Cal. Bus. & Prof. Code
8 § 17200.

9 2. This action concerns service mark rights used in connection with cryptocurrencies,
10 digital assets designed to work as a medium of exchange that use cryptography to secure
11 transactions, control the creation of additional units, and verify the transfer of assets.

12 3. Cryptocurrencies allow users to transact business from anywhere in the world with
13 an internet connection, without requiring a centralized third party such as a bank or government to
14 verify or clear transactions.

15 4. Telegram Messenger, including with affiliated companies (collectively,
16 “Telegram”) previously adopted the service mark GRAM, and has used that mark in connection
17 with financial products and services it intends to offer to customers, namely providing a
18 cryptocurrency (or virtual currency) for use by members of the Telegram Open Network (“TON”),
19 which network Telegram is working to launch in the fourth quarter of 2018.

20 5. As a consequence of its extensive activities in commerce in support of its
21 cryptocurrency and TON, including successfully executing purchase agreements for GRAMs (the
22 “Purchase Agreements”), Telegram has established service mark rights in the mark GRAM for
23 financial products and services relating to cryptocurrency. The named plaintiff Telegram
24 Messenger is the owner and/or assignee of all rights to the GRAM mark, and other companies
25 affiliated with Telegram Messenger (such as Telegram Messenger’s parent corporation, Telegram
26 Group Inc.) use the GRAM mark with the permission of Telegram Messenger.

27 6. Defendant Lantah has indicated in a recent governmental filing that it intends to use
28 the mark GRAM at some point in the future for a virtual currency for use by members of an on-

1 line community it apparently wants to create.

2 7. While Lantah has recently indicated that it intends to use the GRAM mark at some
3 point in the future in relation to cryptocurrency, Telegram has already been doing so in the past, in
4 commerce, with substantial success, and with priority over Lantah. Telegram Messenger thus has
5 prior rights in the mark GRAM as used in connection with cryptocurrency and related financial
6 products and services, and brings this lawsuit seeking preliminary and permanent injunctive relief
7 to ensure that Lantah does not deceive or confuse consumers, or potential consumers, or otherwise
8 cause harm to Telegram.

9 8. If Lantah's infringing activities are not enjoined, such actions will cause significant
10 confusion among consumers and cause significant harm to Telegram.

11 **PARTIES**

12 9. Plaintiff Telegram Messenger Inc is an entity organized under the laws of the
13 British Virgin Islands with registered offices at Vistra Corporate Services Centre, Wickhams Cay
14 II, Road Town, Tortola, British Virgin Islands, VG 1110 and is a wholly owned subsidiary of
15 Telegram Group Inc. Telegram Group Inc. is an entity organized under the laws of the British
16 Virgin Islands with its registered office at Vistra Corporate Services Centre, Wickhams Cay II,
17 Road Town, Tortola, British Virgin Islands, VG 1110.

18 10. Defendant Lantah is a limited liability company organized under the laws of
19 Florida, maintaining its principal place of business at 7010 Potomac Drive, Port Richey, Florida
20 34668.

21 **JURISDICTION AND VENUE**

22 11. This Court has subject matter jurisdiction over the Lanham Act claims asserted
23 herein pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has subject matter jurisdiction over
24 the related state law claims raised in this action pursuant to 28 U.S.C. §§ 1338(b) and 1367.

25 12. This Court also has subject matter jurisdiction under 28 U.S.C. § 1332(b), as this
26 dispute is between a party (Lantah) incorporated and having its principal place of business in
27 Florida and a subject (Telegram Messenger) of a foreign state, and the amount in controversy
28 exceeds \$75,000, exclusive of interest and costs.

1 13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1), (2) and/or (3).
2 As to § 1391(b)(1), this is a District “in which any defendant [Lantah] resides” and “all defendants
3 [Lantah] are residents of the State in which the district is located.” That is the case because Lantah
4 is subject to this Court’s personal jurisdiction with respect to this action. *See* 28 U.S.C.
5 § 1391(c)(2).

6 14. As to § 1391(b)(2), a “substantial part of the events . . . giving rise to the claim[s]
7 occurred” in this District given that, *inter alia*, Telegram has successfully executed numerous
8 Purchase Agreements with purchasers in this District using the GRAM service mark, establishing
9 Telegram Messenger’s priority in the mark, and Lantah’s recent trademark filing (claiming an
10 intent to use the mark) would undermine and damage Telegram Messenger’s mark, including by
11 giving rise to confusion among consumers (including those purchasers in this District with whom
12 Telegram has successfully executed Purchase Agreements using the GRAM mark).

13 15. Personal jurisdiction is proper for numerous reasons. First, Lantah has been
14 attempting and/or is planning to transact business in the State of California, has engaged in or
15 plans to engage in tortious acts within the State of California, and has other contacts with the State
16 of California, as evidenced by Lantah’s recent actions to register the mark. Second, Lantah has
17 unlawfully claimed Telegram Messenger’s service mark while knowing (actually or
18 constructively) that Telegram has been using the mark to successfully execute Purchase
19 Agreements with purchasers inside California. (By way of example, publicly available news
20 reports published before Lantah’s trademark registration filing disclosed that Telegram executed
21 Purchase Agreements with notable venture capital firms located in Silicon Valley.) Third,
22 Lantah’s improper use of Telegram Messenger’s mark is likely to confuse consumers located
23 inside this District, which is especially important given that Telegram has already executed
24 Purchase Agreements using the GRAM service mark with purchasers located in this District.

25 **BACKGROUND FACTS**

26 **History of Telegram**

27 16. The “Telegram Group” was founded in 2013 with the primary mission of
28 developing online products and services using encrypted technology.

1 17. Telegram’s first project was a messaging application with a particular focus on
2 speed and security (“Telegram Messenger App”).

3 18. Within a few months after its launch, the Telegram Messenger App had attracted
4 millions of users, and received positive reviews from both users and the press.

5 19. In early 2018, the Telegram Messenger App had 200 million monthly users
6 worldwide, with 500,000 new users joining daily, and was delivering 70 billion messages every
7 day.

8 **The Telegram Open Network and the Gram Cryptocurrency**

9 20. The architecture of existing “general distributed ledgers,” also known as
10 “blockchains,” that support the development and exchange of most cryptocurrencies today
11 presents a number of limitations that prevent these cryptocurrencies from gaining widespread use
12 and adoption.

13 21. Most significantly, such blockchains are not fully scalable, resulting in slow
14 transaction speeds as the network grows. This means that cryptocurrencies built on such networks
15 cannot realistically be used as a medium of exchange in lieu of fiat currencies or credit cards.

16 22. As a result, the current market of goods and services that can be purchased using
17 cryptocurrencies is limited.

18 23. The user interfaces associated with existing blockchain networks and
19 cryptocurrencies also tend to be confusing or overwhelming for the average consumer.

20 24. Most cryptocurrencies also need to develop a large network of users to be viable.

21 25. Telegram’s core development team recognized these limitations, and given its
22 strong experience in cryptography and distributed computing, embarked in 2017 to develop the
23 Telegram Open Network (“TON”), a new blockchain that will be fully scalable, and able to
24 support a robust cryptocurrency.

25 26. The over 200 million member Telegram Messenger App user base would also
26 facilitate the network effect that is important for the adoption of a new cryptocurrency.

27 27. In developing TON, Telegram recognized that it could take advantage of the
28 significant goodwill in its existing brand, and large customer base, to create a widely adopted

1 blockchain network and cryptocurrency.

2 **TON Purchase Agreements**

3 28. Telegram is, in part, funding the development and creation of TON through the
4 offering of Purchase Agreements to certain individuals and entities, including those in the United
5 States and those specifically in this District.

6 29. Although GRAMs will not be released to purchasers until such time that the
7 development team determines that TON is ready to be launched, purchasers will receive a set
8 amount of GRAMs (determined based on a pricing formula) from TON Issuer Inc. (a wholly
9 owned subsidiary of Telegram Group Inc.) when the GRAMs are released, subject to satisfaction
10 of the conditions set forth in their respective Purchase Agreements with Telegram and TON Issuer
11 Inc.

12 30. Throughout December 2017, Telegram's offering of Purchase Agreements was
13 widely reported on by many financial and industry publications. Attached hereto as **Exhibit A** are
14 examples of such articles, including:

15 (a) a December 22, 2017, article from cryptocurrency publication
16 *Cointelegraph*;

17 (b) a December 22, 2017, article in the *International Business Times*
18 *News*; and

19 (c) a December 27, 2017, article from ICO publication *ICO Watch List*.

20 31. On or around January 29, 2018, the first Purchase Agreement was executed by
21 Telegram and TON Issuer Inc.

22 32. By February 25, 2018, Telegram had executed Purchase Agreements with 35
23 purchasers in the U.S., including 30 California-based purchasers, many of whom are based inside
24 this District.

25 33. As a consequence of Telegram's widely reported on and highly successful offering
26 of Purchase Agreements, it has used the mark GRAM in interstate commerce in the United States,
27 and in this District, and has established common law service mark rights in the mark GRAM in
28 connection with the offering of virtual currency to be used with TON.

1 41. By virtue of having used and continuing to use the GRAM mark in commerce,
2 including in California, Telegram Messenger has acquired common law trademark rights in the
3 GRAM mark.

4 42. Lantah has used and continues to use a service mark that is confusingly similar to
5 Telegram's GRAM mark without Telegram Messenger's consent.

6 43. Lantah's unauthorized use in commerce of a service mark that is confusingly
7 similar to Telegram Messenger's GRAM mark has caused and is likely to continue to cause
8 confusion or mistake, or to deceive consumers and potential consumers, the public, and the trade
9 concerning an affiliation, connection, or association between Lantah and Telegram when there is
10 no such affiliation, connection, or association.

11 44. Lantah's activities, alleged herein, have a substantial economic effect on interstate
12 commerce.

13 45. Lantah's activities, alleged herein, constitute false designation of origin within the
14 meaning of 15 U.S.C. § 1125(a).

15 46. Telegram Messenger has been irreparably injured by Lantah's false and misleading
16 conduct in violation of 15 U.S.C. § 1125(a).

17 47. Lantah acted willfully, with knowledge of Telegram Messenger's rights in the
18 GRAM mark, and those acts constitute a willful violation of the Lanham Act.

19 48. As a result of this false designation of origin, Telegram Messenger has suffered
20 irreparable injury and, unless Lantah's infringement is enjoined by the Court, Telegram Messenger
21 will continue to suffer irreparable harm. There is no adequate remedy at law for the harm caused
22 by Lantah's infringing conduct.

23 **SECOND CLAIM**

24 **(Common Law Trademark Infringement)**

25 49. Telegram Messenger incorporates by reference the allegations in the preceding
26 paragraphs of the Complaint.

27 50. By virtue of having used and continuing to use the GRAM mark in commerce,
28 including in California, Telegram Messenger has acquired common law trademark rights in the

1 GRAM mark.

2 51. Lantah's stated intent to use and use of a mark that is confusingly similar to the
3 GRAM mark infringes Telegram Messenger's common law trademark rights in the GRAM mark
4 and is likely to cause confusion, mistake, or deception among consumers, who will believe that
5 Lantah's services originate from, or are affiliated with, or are endorsed by Telegram, including
6 Telegram Messenger, when, in fact, they are not.

7 52. By virtue of acts complained of herein, Lantah has intentionally caused a likelihood
8 of confusion among the public and has unfairly competed with Telegram Messenger in violation
9 of the common law of the State of California.

10 53. As a direct and proximate result of Lantah's common law trademark infringement
11 and unfair competition, Telegram Messenger has suffered, and unless Lantah is enjoined by this
12 Court will continue to suffer, irreparable injury to Telegram Messenger's business, reputation, and
13 goodwill in the GRAM mark for which Telegram Messenger has no adequate remedy at law.

14 54. As a direct and proximate result of Lantah's common law trademark infringement
15 and unfair competition, Telegram Messenger has been forced to retain counsel to prosecute this
16 claim and is entitled to recover its attorneys' fees and costs incurred herein.

17 **THIRD CLAIM**

18 **(Unfair Competition Under Cal. Bus. & Prof. Code § 17200)**

19 55. Telegram Messenger incorporates by reference the allegations in the preceding
20 paragraphs of the Complaint.

21 56. In the course of conducting its business, Lantah's conduct—specifically, its use of
22 a service mark confusingly similar to Telegram Messenger's GRAM mark in a manner that is
23 likely to cause consumer confusion—constitutes unfair competition and unfair business practice in
24 violation of California Business and Professions Code § 17200.

25 57. As a result of this unfair competition and unfair business practice, Telegram
26 Messenger has suffered irreparable injury to its business, reputation, and goodwill in its GRAM
27 mark. Telegram Messenger will continue to suffer irreparable injury unless Lantah's misconduct
28 is enjoined.

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PRAYER FOR RELIEF

WHEREFORE, Telegram Messenger respectfully requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to an Order:

1. Finding that: (i) Lantah has violated Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)); (ii) Lantah has committed trademark infringement under California common law; and (iii) Lantah has committed unfair competition under California state law;

2. Entering a preliminary and permanent injunction enjoining and restraining Lantah from using in commerce or in connection with any goods or services any mark, name, or design that creates a likelihood of confusion with Telegram’s GRAM service mark and from engaging in any other acts of unfair competition and in engaging in false designation of origin;

3. Awarding Telegram Messenger its actual costs and attorneys’ fees incurred in bringing this action pursuant to 15 U.S.C. § 1125(c) and California Business and Professions Code § 17200; and

4. Granting such other relief the Court deems just and proper.

Dated: May 11, 2018

SKADDEN, ARPS, SLATE MEAGHER & FLOM LLP

/s/ John M. Neukom

Attorney for Plaintiff
TELEGRAM MESSENGER INC

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JURY TRIAL DEMANDED

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury of all issues properly triable of right by a jury.

Dated: May 11, 2018

SKADDEN, ARPS, SLATE MEAGHER & FLOM LLP

/s/ John M. Neukom

Attorney for Plaintiff
TELEGRAM MESSENGER INC