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7 Attorneys for Plaintiff,
 CHRISTOPHER GORDON

8
 9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11
 12 CHRISTOPHER GORDON, an
 individual,

13 Plaintiff,

14 vs.

15 DRAPE CREATIVE, INC., a
 Missouri corporation;
 16 PAPYRUS-RECYCLED
 GREETINGS, INC., an Illinois
 17 corporation; and DOES 1 to 10,
 18 inclusive,

19 Defendants.

CASE NO.

COMPLAINT FOR:

1. **TRADEMARK INFRINGEMENT** [15 U.S.C. §1114 *et seq.*];
2. **TRADEMARK INFRINGEMENT** [California law];
3. **FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN** [15 U.S.C. §1125(a)]; and
4. **UNFAIR COMPETITION** [California law]

DEMAND FOR JURY TRIAL

1 Plaintiff CHRISTOPHER GORDON (“Plaintiff”) alleges as follows:

2 **INTRODUCTION**

3 Plaintiff is a comedic narrator who, on January 18, 2011, published a video
4 on YouTube that consisted of his original narration humorously describing the
5 traits of a honey badger. The video went “viral” and has generated more than 74
6 *million* views on YouTube. In the video, Plaintiff’s original expressions and jokes
7 include the phrases “Honey Badger Don’t Care,” and “Honey Badger Don’t Give a
8 Shit”, among others. Plaintiff’s original expressions have gained a tremendous
9 amount of notoriety, and his expressions have been referred to in commercials,
10 television shows, magazines, and throughout the internet, and by numerous
11 celebrities. Plaintiff copyrighted his narration and trademarked “HONEY
12 BADGER DON’T CARE” under four separate registration numbers for various
13 classes of goods, including, *inter alia*, t-shirts, audio books, computer application
14 software and plush toys. Plaintiff has also produced, advertised, and sold
15 merchandise, including greeting cards, bearing his expressions and trademarks of
16 “Honey Badger Don’t Care” and “Honey Badger Don’t Give a Shit” since soon
17 after the video was published, and he continues to sell and license greeting cards
18 bearing his expressions and marks today.

19 Upon information and belief, Defendant Drape Creative, Inc. and Defendant
20 Papyrus-Recycled Greetings, Inc. collaborated to manufacture, distribute, sell and
21 advertise several different greeting cards that copied Plaintiff’s expression and
22 trademark, “Honey Badger Don’t Give a Shit.” Defendants’ unauthorized sales of
23 greeting cards bearing Plaintiff’s trademark and expressions, coupled with their
24 intentional deceptive business practices to create customer confusion, which
25 actually happened here, constitute, *inter alia*, willful trademark infringement and
26 unfair competition.

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JURISDICTION AND VENUE

1. This is a civil action arising under the Trademark Laws of the United States, 15 U.S.C. §§1051, *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338.

2. This Court has supplemental jurisdiction over the claims in this Complaint that arise under California law pursuant to 28 U.S.C. §1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b) and 1400(a). At all times relevant hereto, Plaintiff has been a resident of Los Angeles, California. The infringing products which are the subject of this litigation have been distributed and offered for distribution in the Central District of California, and the Defendants transact business in the Central District of California. Defendants have extensive contacts with, and conduct business within, this District; have placed products into the stream of commerce in this District; and have caused tortious injury to Plaintiff in this District.

PARTIES

4. Plaintiff is an individual residing in Los Angeles, California.

5. Plaintiff is informed and believes, and thereon alleges, that Defendant Drape Creative, Inc. (“DCI”) is a Missouri corporation that is subject to the jurisdiction of this Court. DCI, which does business as Tomato Cards, designs greeting cards and conducts its business on the internet at dcistudios.com.

6. Plaintiff is informed and believes, and thereon alleges, that Defendant Papyrus-Recycled Greetings, Inc. (“Recycled Greetings”) is an Illinois corporation that is subject to the jurisdiction of this Court. Recycled Greetings produces and sells greeting cards and conducts its business on the internet at prgreetings.com.

1 phenomenon have been covered by internet blogs such as the *Huffington Post*
2 (which proclaimed “Honey Badger Don’t Care [as] the best nature video of all
3 time”) as well as by entertainment and news outlets from *Forbes* to the *New York*
4 *Observer* to *TMZ*.

5 11. In the Video, among Plaintiff’s original expressions and jokes are that
6 the “HONEY BADGER DON’T CARE” and the “HONEY BADGER DON’T
7 GIVE A SHIT.” Plaintiff’s original expressions (and others contained in the
8 Video) have gained a tremendous amount of notoriety, and his expressions have
9 been referred to in commercials, television shows, magazines, and throughout the
10 internet.

11 12. Plaintiff is the owner of trademark registrations for HONEY
12 BADGER DON’T CARE (the “Mark”). Plaintiff registered the Mark with the
13 United States Patent and Trademark Office for various classes of goods under the
14 following Registration Numbers: 4,505,781; 4,419,079; 4,419,081; and
15 4,281,472. Attached hereto as **Exhibit A** are true and correct copies of the
16 Trademark Registrations.

17 13. After the Video was published, Plaintiff produced and sold goods,
18 including, *inter alia*, t-shirts, sweatshirts, bumper stickers, hats, mugs and plush
19 dolls that displayed his Mark and expressions. Plaintiff has also selectively
20 licensed his intellectual property rights to third parties in order to monetize the
21 profitability of his Marks.

22 14. Specifically, Plaintiff also produced and sold greeting cards and
23 postcards that displayed both his trademarks and expressions of “Honey Badger
24 Don’t Care” and “Honey Badger Don’t Give a Shit,” and Plaintiff continues to sell
25 such greeting cards and postcards today.

1 15. Plaintiff primarily advertises his goods bearing his Mark, including
2 greeting cards, on the internet. Sales of Plaintiff's merchandise bearing his Mark
3 have been substantial, with a majority of the sales occurring via the internet.

4 16. Plaintiff's trademark is inherently distinctive and/or has acquired
5 secondary meaning as to the source of all products advertised, marketed, sold, or
6 used in connection with his trademark and derivations thereof. The Mark and its
7 derivations are instantly recognizable as being associated with Plaintiff (i.e.
8 Randall). The Mark and/or its derivations have appeared in Plaintiff's Video, and
9 have since been displayed on numerous advertisements and goods that Plaintiff
10 promotes. Plaintiff even authored a book titled *Honey Badger Don't Care:
11 Randall's Guide to Crazy Nastyass Animals*, and launched a mobile "app" titled
12 *The Honey Badger Don't Care*.

13 17. Plaintiff has expended a significant amount of time and effort in
14 making his Mark well-known to the public. Plaintiff has promoted his Mark by,
15 *inter alia*, advertising it in connection with his products, making guest
16 appearances in media outlets, and publicizing the Mark through social media
17 platforms.

18 18. As a result of the foregoing, including, but not limited to, the
19 extensive advertisements, promotions, sales, and enormous popularity of the
20 Mark, the public has come to exclusively identify the Mark and its derivations
21 with Plaintiff. Among other things, Plaintiff, his expressions, and/or his Mark
22 have appeared or been alluded to in a Wonderful Pistachios commercial during
23 *Dancing with the Stars*, in an episode of the popular television show *America's
24 Got Talent*, in an episode of the hit television series *Glee* by the show's famous
25 cheerleading coach Sue Sylvester (Jane Lynch), in a *Vogue* profile of celebrity
26 recording artist Taylor Swift, and on the *Howard Stern* radio show (Baba Boeey).

1 Plaintiff's expressions and Mark are famous and distinctive under applicable law,
2 including within the meaning of 15 U.S.C. §§ 1125(c)(1) and 1127.

3 ***Defendants' Unlawful Activities and Willful Infringement***

4 19. Defendants are competitors of Plaintiff, as they also produce and sell
5 greeting cards.

6 20. Defendants created, produced, distributed and sold greeting cards that
7 bore: Plaintiff's expressions that were copied verbatim from Plaintiff's Video;
8 derivations of Plaintiff's Mark; and phrases confusingly similar to Plaintiff's
9 Mark. For instance, Defendants sold multiple variations of greeting cards that
10 stated, "Honey Badger don't give a shit," a clear reference to, and improper use
11 and trading off of, Plaintiff's Mark. Defendants produced and sold these greeting
12 cards throughout the United States, including California.

13 21. Defendants' unlawful use of Plaintiff's trademark and their unfair
14 competition enabled them to reap financial success, as Defendants produced and
15 sold greeting cards in various formats, all with derivations of Plaintiff's trademark.
16 On information and belief, Defendants' sales of the infringing cards were
17 substantial, as the cards were sold in numerous retail stores throughout the
18 country.

19 22. In producing and selling the infringing cards, Defendants intended to
20 capitalize on Plaintiff's Mark, trample upon his intellectual property rights, and
21 cause customer confusion in the process. Actual customer confusion occurred, as
22 Plaintiff (i.e., Randall) received inquiries from his admirers who asked Plaintiff
23 whether the greeting cards were his own. The cards were not authorized by
24 Plaintiff, though they misleadingly appeared to be.

25 23. Defendants' intentional and deceitful acts of unfair competition and
26 use of the Mark have caused confusion, and are likely to do so in the future, and
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1 have caused mistake and deception as to the affiliation or association of the
2 Defendants with Plaintiff, and as to the origin, sponsorship, or approval of the
3 Defendants' goods by Plaintiff. Plaintiff has neither authorized nor consented to
4 the use by Defendants of the Mark, any colorable imitation of it, or any mark
5 confusingly similar to it.

6 24. Plaintiff is informed and believes, and thereon alleges, the
7 Defendants' purpose in utilizing the Mark is an attempt to benefit unfairly from the
8 valuable goodwill and extreme popularity of the Mark, which was established at
9 great expense and effort by Plaintiff.

10 **FIRST CLAIM**

11 **(Trademark Infringement under 15 U.S.C. §1114 *et seq.* Against All**
12 **Defendants)**

13 25. Plaintiff repeats, repleads and realleges the allegations contained in
14 Paragraphs 1 through 24, as though fully set forth herein.

15 26. The aforesaid acts of Defendants constitute infringement of the Mark
16 under 15 U.S.C. §1114 *et seq.*

17 27. As a direct and proximate result of Defendants' wrongful acts,
18 Plaintiff has suffered and continues to suffer and/or is likely to suffer damage to
19 his trademark, reputation, and goodwill. Defendants will continue to use the Mark
20 and will cause irreparable damage to Plaintiff. Plaintiff has no adequate remedy at
21 law and is entitled to an injunction restraining Defendants and their officers,
22 agents, employees, and all persons acting in concert with them, from engaging in
23 further acts of infringement.

24 28. Plaintiff is further entitled to recover from Defendants the actual
25 damages that he sustained and/or is likely to sustain as a result of Defendants'
26 wrongful acts. Plaintiff is presently unable to ascertain the full extent of the
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1 monetary damages that he has sustained and/or is likely to sustain by reason of
2 Defendants' acts of trademark infringement.

3 29. Plaintiff is further entitled to recover from Defendants the gains,
4 profits, and advantages that Defendants have obtained as a result of their wrongful
5 acts. Plaintiff is presently unable to ascertain the extent of the gains, profits, and
6 advantages that Defendants have realized by reason of their acts of trademark
7 infringement.

8 30. Because of the willful nature of the wrongful acts of Defendants,
9 Plaintiff is entitled to all remedies available under 15 U.S.C. §§1117 and 1118,
10 including but not limited to an award of treble damages and increased profits
11 pursuant to 15 U.S.C. §1117.

12 31. Plaintiff also is entitled to recover his attorneys' fees and costs of suit
13 pursuant to 15 U.S.C. §1117.

14 **SECOND CLAIM**

15 **(Trademark Infringement under California Business and Professions Code**
16 **section 14245 *et seq.* and California Common Law Against All Defendants)**

17 32. Plaintiff repeats, repleads and realleges paragraphs 1 through 31,
18 inclusive, of this Complaint and incorporates the same herein by the reference as
19 though set forth in full.

20 33. Defendants' use of the Mark without Plaintiff's consent constitutes
21 trademark infringement and unfair competition in violation of California common
22 law in that, among other things, such use is likely to cause confusion, deception,
23 and mistake among the consuming public as to the source, approval or sponsorship
24 of the goods offered by Defendants.

25 34. The acts and conduct of Defendants complained of herein constitute
26 trademark infringement and unfair competition in violation of the statutory law of
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1 California, including California Business and Professions Code section 14245 *et*
2 *seq.*, in that, among other things, Defendants' acts and conduct are likely to cause
3 confusion, deception, and mistake among the consuming public as to the source,
4 approval or sponsorship of the goods offered by Defendants. Defendants' acts are
5 designed to trade upon Plaintiff's reputation and goodwill by causing confusion
6 and mistake among consumers and the public. Plaintiff is entitled to preliminary
7 and permanent injunctions restraining and enjoining Defendants and their officers,
8 agents, affiliates, vendors, partners and employees, and all persons acting in
9 concert with Defendants, from using in commerce Plaintiff's federally registered
10 Mark and its derivations and his common law rights in same.

11 35. As a direct and proximate result of Defendants' willful and
12 intentional actions, Plaintiff has suffered damages in an amount to be determined
13 at trial. Plaintiff is entitled to all remedies provided by California Business and
14 Professions Code section 14247 *et seq.*, including injunctive relief and recovery of
15 three times Defendants' profits and damages suffered by reason of their wrongful
16 conduct. Because of the willful nature of Defendants' wrongful acts, Plaintiff is
17 entitled to an award of punitive damages.

18 **THIRD CLAIM**

19 **(Federal Unfair Competition and False Designation of Origin in Violation of**
20 **15 U.S.C. §1125(a) Against All Defendants)**

21 36. Plaintiff repeats, repleads and realleges the allegations contained in
22 Paragraphs 1 through 35, as though fully set forth herein.

23 37. Defendants' acts as alleged above constitute unfair competition and a
24 false designation of origin which have caused confusion, mistake, deception as to
25 the affiliation, connection or association of Defendants with Plaintiff and as to the
26 origin, sponsorship, or approval of Defendants' goods, services and/or activities
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1 by Plaintiff and are likely to do so in the future, in violation of the Lanham Act, 15
2 U.S.C. §1125(a).

3 38. As a direct and proximate result of Defendants' wrongful acts,
4 Plaintiff has suffered and continues to suffer and is likely to suffer damage to his
5 reputation, goodwill, and to the Mark. Defendants will continue the activities
6 alleged herein and will cause irreparable damage to Plaintiff. Plaintiff has no
7 adequate remedy at law and is entitled to an injunction restraining Defendants,
8 their officers, agents, affiliates, vendors, partners and employees, and all persons
9 acting in concert with Defendants, from engaging in further acts of unfair
10 competition, deceitful acts using the Mark, and false designation of origin and
11 false affiliation and association.

12 39. Plaintiff is further entitled to recover from Defendants the actual
13 damages that he sustained and/or is likely to sustain as a result of Defendants'
14 wrongful and devious acts. Plaintiff is presently unable to ascertain the full extent
15 of the monetary damages that he has suffered and/or is likely to sustain by reason
16 of Defendants' acts of unfair competition and false designation of origin and false
17 affiliation and association.

18 40. Plaintiff is further entitled to recover from Defendants the gains,
19 profits, and advantages they have obtained as a result of their wrongful and
20 malicious acts. Plaintiff is presently unable to ascertain the extent of the gains,
21 profits, and advantages that Defendants have realized by reason of their acts of
22 unfair competition and false designation of origin and false affiliation and
23 association.

24 41. Because of the willful nature of the wrongful acts of Defendants,
25 Plaintiff is entitled to an award of treble damages and increased profits pursuant to
26 15 U.S.C. §1117.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. That Defendants have (i) infringed the Mark under 15 U.S.C. §1114 *et seq.*; (ii) infringed the Mark under California law; and (iii) engaged in unfair competition, and violated California Business and Professions Code section 17200 *et seq.*

2. That each of the above acts were willful.

3. That Plaintiff be awarded (i) all profits of Defendants, (ii) all of his damages, (iii) statutory damages available under the law including 15 U.S.C. §1117, if elected, (iv) treble damages, (v) punitive damages, (vi) disgorgement and restitution of all benefits received by Defendants arising from their infringement as provided by law, and/or (vii) enhanced damages for Defendants' willful infringement as provided in 15 U.S.C. §1117, the sum of which will be proven at the time of trial.

4. That Defendants, their officers, agents, servants, affiliates, partners, vendors, employees and attorneys, and those persons in active concert or participation with them, be preliminarily and permanently enjoined from:

- a. Using Plaintiff's expression and mark "HONEY BADGER DON'T CARE" or any colorable imitation thereof, or any other expression or mark likely to cause confusion, mistake, or deception, in connection with the sale, offering for sale, distribution, manufacturing, advertising, or promotion of their goods or services;
- b. Using any false designation of origin or false description that can, or is likely to, lead the public to believe that any product

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manufactured, distributed, sold, offered for sale, or advertised by Defendant are in any manner associated or connected with Plaintiff is sold, manufactured, licensed, sponsored, or approved or authorized by Plaintiff; and

c. Engaging in any other activity constituting an infringement of Plaintiff's trademark rights or otherwise unfairly competing with Plaintiff.

5. That Defendants be directed to deliver up to Plaintiff all products bearing the Mark, any copy, simulation, variation or colorable imitations of the Mark, and any documents or tangible things that discuss, describe, mention or relate to such products.

6. That Defendants file with the Court and serve upon Plaintiff's counsel within thirty (30) days after entry of judgment a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the requirements of the injunction.

7. That Defendants be required to pay to Plaintiff all of his costs, disbursements, and attorney's fees in this action.

8. For prejudgment interest.

9. For such other relief as the Court deems proper.

DATED: June 29, 2015

KRANE & SMITH, APC

By: 
DANIEL L. REBACK
Attorneys for Plaintiff,
CHRISTOPHER GORDON

United States of America

United States Patent and Trademark Office

HONEY BADGER DON'T CARE

Reg. No. 4,505,781

Registered Apr. 1, 2014

Int. Cl.: 25

TRADEMARK

PRINCIPAL REGISTER

CHRISTOPHER Z. GORDON (UNITED STATES INDIVIDUAL)
C/O SANA HAKIM OF K&L GATES
P.O. BOX 1135
CHICAGO, IL 606901135

FOR: CLOTHING, NAMELY, T-SHIRTS, TANK TOPS, ONE PIECE GARMENT FOR INFANTS AND TODDLERS, LONG-SLEEVE SHIRTS, CAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 2-24-2011; IN COMMERCE 2-24-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-447,667, FILED 10-14-2011.

SCOTT BIBB, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

EXHIBIT A

United States of America

United States Patent and Trademark Office

HONEY BADGER DON'T CARE

Reg. No. 4,281,472

Registered Jan. 29, 2013

Int. Cl.: 21

TRADEMARK

PRINCIPAL REGISTER

CHRISTOPHER Z. GORDON (UNITED STATES INDIVIDUAL)
C/O SANA IIAKIM OF K&I GATES
P.O. BOX 1135
CHICAGO, IL 606901135

FOR MUGS, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 10-7-2011; IN COMMERCE 10-7-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-449,921, FILED 10-18-2011.

SCOTT BIBB, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

HONEY BADGER DON'T CARE

Reg. No. 4,419,081

Registered Oct. 15, 2013

Int. Cl.: 28

TRADEMARK

PRINCIPAL REGISTER

CHRISTOPHER Z. GORDON (UNITED STATES INDIVIDUAL)
C/O SANA HAKIM OF K&L GATES
P.O. BOX 1135
CHICAGO, IL 606901135

FOR: (BASED ON USE) CHRISTMAS TREE ORNAMENTS AND DECORATIONS, TALKING DOLLS AND PLUSH TOYS, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 10-8-2011; IN COMMERCE 10-8-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-449,924, FILED 10-18-2011.

SCOTT BIBB, EXAMINING ATTORNEY



Lisa Stuart Liu
Deputy Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

HONEY BADGER DON'T CARE

Reg. No. 4,419,079

Registered Oct. 15, 2013

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

CHRISTOPHER Z. GORDON (UNITED STATES INDIVIDUAL)
C/O SANA HAKIM OF K&L GATES
P.O. BOX 1135
CHICAGO, IL 606901135

FOR: AUDIO BOOKS IN THE FIELD OF COMEDY, PARODY AND SATIRE; COMPUTER APPLICATION SOFTWARE FOR MOBILE PHONES, PORTABLE MEDIA PLAYERS, HANDHELD COMPUTERS, NAMELY, SOFTWARE FOR PLAYING GAMES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 12-0-2011; IN COMM. 12-0-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-447,668, FILED 10-14-2011.

SCOTT BIBB, EXAMINING ATTORNEY



Lisa Stuart Liu
Deputy Director of the United States Patent and Trademark Office

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DEMAND FOR JURY TRIAL

Plaintiff CHRISTOPHER GORDON hereby demands a jury trial in this action.

DATED: June 29, 2015

KRANE & SMITH, APC

By: 

DANIEL L. REBACK
Attorneys for Plaintiff,
CHRISTOPHER GORDON