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9 TI Beverage Group, Ltd
10 And Michael Machat

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

<p>15 TI BEVERAGE GROUP, LTD and) 16 MICHAEL MACHAT,) 17 Plaintiffs,) 18 vs.) 19 YARD HOUSE USA, INC.,) 20 Defendant.)</p>	<p>CASE NO. COMPLAINT FOR TRADEMARK INFRINGEMENT; UNFAIR COMPETITION and DILUTION DEMAND FOR JURY TRIAL</p>
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21 For their Complaint, Plaintiffs TI BEVERAGE GROUP, LTD and
22 MICHAEL MACHAT hereby allege and asserts as follows:

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24 **I. JURISDICTION AND VENUE**
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26 1. Plaintiffs bring this action for injunctive relief and damages arising out
27 of the unauthorized, unfair, and deceptive competitive practices of Defendants, and
28 each of them, in connection with the commercial use and exploitation of trademarks

1 in violation of the Lanham Act.

2 2. This action arises under the Trademark Laws of the United States,
3 including particularly, Section 43 of the Lanham Act, 15 U.S.C. §1125.
4 Jurisdiction is conferred on this Court by 15 U.S.C. Section 1121(a), by 28 U.S.C.
5 Section 1338(a), in that this case arises under the Trademark Laws of the United
6 States, 15 U.S.C. Sections 1051, *et seq.*, and by principles of pendent jurisdiction.
7 Venue is proper in this District under 28 U.S.C. §§ 1391(b) by virtue of the fact that
8 a substantial part of the events or omissions giving rise to the claim occurred within
9 this District.

10 **II. THE PARTIES**

11
12 3. Plaintiff TI Beverage Group, Ltd. (“TI BEVERAGE GROUP”) is a
13 Delaware Corporation with its main business office located in Los Angeles County,
14 California.

15 4. Plaintiff Michael Machat is a US Citizen residing in Los Angeles
16 County, California.

17 5. Defendant Yard House USA, Inc., is, upon information and belief, a
18 Delaware Corporation, headquartered in Florida and doing business as, and
19 operating bars and restaurants under the name YARD HOUSE (hereinafter referred
20 to by its dba “YARD HOUSE”) in approximately 20 States in the United States,
21 including California. Within California, YARD HOUSE has many locations,
22 including Los Angeles, Marina Del Rey and Pasadena within this District.

23
24 **III. FACTS GIVING RISE TO THIS ACTION**

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26 6. Plaintiff TI BEVERAGE GROUP has been marketing food and
27 beverages under the following brand names for many years, including:
28 VAMPIRE (for wines – US Trademark Registration No. 2263907); CHATEAU

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1 DU VAMPIRE (for wines – US Trademark Registration No. 3502158);
2 DRACULA (for wine – US Trademark Registration No. 3319536); VAMPYRE
3 (for Spirits – US Trademark Registration No. 3082097); VAMPIRE (for Beers –
4 US Trademark Registration No. 4242359); VAMP H20 (for Water – US Trademark
5 Registration No. 3895288); VAMPIRE LOUNGE & TASTING ROOM (for Bar
6 and Wine Bar Services – US Registration No. 4079879); VAMPIRE (for
7 Restaurant and Bar Services – US Registration No. 3978444); and VAMPIRE (for
8 Glass beverage-ware -- US Trademark Registration No. 3290011).

9 7. TI BEVERAGE GROUP is the exclusive licensee of Michael
10 Machat, who, along with his law firm, Machat & Associates, PC, is the Registrant
11 for all of these aforementioned brands. By virtue of its extended use in commerce,
12 several of the aforementioned VAMPIRE registrations have become incontestable,
13 including its registration numbers 2263907, 3290011, 3082097 for wines, glassware
14 and spirits, respectively.

15 a) TI BEVERAGE GROUP also is the exclusive licensee of the
16 slogans TASTE OF IMMORTALITY and SIP THE BLOOD OF THE VINE, (TM
17 Registrations 3167606 and 3079403, respectfully, also registered in Machat’s
18 name.) Both of these marks have become incontestable.

19 b) The origin of Vampire wine, and TI BEVERAGE GROUP’s
20 claim of right goes back to 1988, when Machat released a French bottled Algerian
21 Syrah under the brand name Vampire. The first sale was to MCA Records and
22 Alice Cooper, and Machat promoted the wine under the slogan, “Sip the Blood of
23 the Vine” and explained on the back label that the reason no one hears stories about
24 vampires attacking humans anymore is because Vampires have been drinking
25 Vampire wine instead. The label went on to state that “A trickle of this full bodied
26 Vampire Wine will satiate and prolong the life of any normal blood sucking human
27 predator.” Although the labels have changed over the years, and the explanation
28 has been condensed, the slogan “Sip the Blood of the Vine” has remained ever

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1 since. Machat began to use the slogan “Taste of Immortality” by at least 1995, if
2 not earlier.

3 8. The marketing for Vampire wine has playfully suggested that the
4 Vampire Vineyards are run by a group of Vampires and that Machat, a mere mortal
5 and attorney, is the front for a circle of Vampires.

6 9. Towards the end of 2001, Plaintiffs expanded its line of beverages to
7 include an energy drink called VAMP. The marketing for VAMP also playfully
8 suggested a connection to vampires. Plaintiffs have expanded its VAMP brand to
9 water and more recently electronic cigarettes [US Trademark Registration No.
10 4318651.

11 10. Approximately one year later in 2002, Plaintiffs began selling a red
12 colored vodka under the name VAMPYRE. Like the marketing behind Vampire
13 wine, the marketing material created for VAMPYRE vodka back in 2002 explained
14 that Vampires have been drinking VAMPYRE vodka for years.

15 11. Similarly, TI BEVERAGE GROUP, either by itself or through its
16 predecessors in interest, has been selling a red colored energy drink under the brand
17 name VAMP (which is an abbreviation for Vampire.) Also, TI BEVERAGE
18 GROUP, either by itself or through its predecessors in interest, has also been selling
19 DRACOLA, a red soda with a cola flavor.

20 12. In addition to the aforementioned beverages with a Vampire twist to its
21 name, TI BEVERAGE GROUP also sells Vampire Fine Belgian Chocolate and
22 Vampire Gourmet Coffee. On August 18, 2009, the USPTO issued a trademark
23 registration [US Trademark Registration No. 3669827] in Machat’s name for
24 Vampire for Chocolate and Coffee. That Trademark registration has since become
25 incontestable. Machat has licensed the rights to sell Vampire branded chocolates
26 and coffee to TI BEVERAGE GROUP.

27 13. In 2011, Plaintiffs expanded into the restaurant space when it opened
28 its VAMPIRE LOUNGE & TASTING ROOM in Beverly Hills, California. The

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1 VAMPIRE LOUNGE & TASTING ROOM offers a selection of cheeses,
2 charcuterie, dips, bread, olive oil, balsamic vinegar, coffee and chocolate along
3 with its family of Vampire branded wines.

4 14. Plaintiffs' natural zone of expansion includes other foods, such as
5 tomato sauce, barbecue sauce, hamburgers, and other restaurant venues. Plaintiffs
6 have plans for each of these.

7 15. Plaintiffs' VAMPIRE family of brands are available for the world to
8 see on its website VAMPIRE.COM, and Plaintiffs' family of VAMPIRE Brands
9 have received coverage in various national magazines and newspapers, including
10 Maxim, InStyle, Elle, Shape, Star Magazine, the New York Times, the LA Times,
11 the Houston Chronicle, The Star Tribune, The Chicago Sun Times, and many more.
12 In addition Plaintiffs' VAMPIRE family of brands have been shown on various
13 national television shows, such as The View with Oprah Winfrey, Anderson
14 Cooper for approximately five minutes with Ashley Greene from Twilight fame,
15 CNN Headline News, MTV's Viva La Bam, Food TV, and many more.

16 16. Unbeknownst to Plaintiffs until recently, defendant has begun to
17 market food in its restaurants using Plaintiffs' Vampire mark. Specifically,
18 defendant's menus market tacos as a "VAMPIRE TACO" and defendant uses the
19 mark "VAMPIRE STYLE" to excite potential customers about its food and/or
20 beverage offerings.

21 17. Indeed the fact that defendant is not just attempting to use the
22 VAMPIRE mark as a descriptive term but is instead knowing and intentionally
23 using it as a trademark is evidenced by the fact that defendant has trademark
24 applications pending for both VAMPIRE TACO (US Trademark pending
25 application no. 86331348) and VAMPIRE STYLE (US Trademark pending
26 applications nos. 86112084 and 86486440.)

27 18. If defendant is not stopped from marketing food products and
28 restaurants using Plaintiffs' Vampire Mark or a mark confusingly similar to

1 Vampire, then consumers will likely be confused about the source and origin of
2 defendant's products and services and mistakenly conclude that defendant's
3 products or services are produced by, or associated with Plaintiffs.

4 19. Alternatively, if defendant is not stopped from marketing food
5 products and restaurant services using Plaintiffs' Vampire mark or a mark
6 confusingly similar to Vampire, then consumers will likely be confused about the
7 source and origin of Plaintiffs' products and services and mistakenly conclude that
8 Plaintiffs' products or services are produced by, or associated with defendant.

9
10 **COUNT I**

11 **VIOLATION OF LANHAM ACT 15 U.S.C. §1125(a)**

12 20. Plaintiffs reallege the allegations in paragraphs 1 through 19.

13 21. Defendant has large resources with which to market and advertise its
14 goods and services. Defendant's resources vastly exceed those of Plaintiffs.
15 Consequently, marketing and advertising efforts by Defendants are likely to
16 mislead consumers to believe that Plaintiffs' goods and services may be
17 unauthorized use of trademarks that YARDHOUSE owns. Consumers are likely to
18 be misled to believe that Plaintiffs are misusing the *VAMPIRE* mark. As a result,
19 Plaintiffs' reputation and goodwill will be impaired.

20 22. Also, Defendant's uses of the word *VAMPIRE* as a branded taco and
21 service so closely resembles Plaintiffs' products and services that the public is
22 likely to be confused and deceived, and to assume erroneously that defendants'
23 goods and services are those of Plaintiffs, or that defendants are in some way
24 connected with, sponsored by, or affiliated with Plaintiffs, all to Plaintiffs'
25 detriment and irreparable damage.

26 23. Defendant is not affiliated with, connected with, endorsed by, or
27 sponsored by Plaintiffs, nor have Plaintiffs approved or authorized any of the goods
28 or services offered or sold by defendants.

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1 24. Plaintiffs have no control over the nature and quality of the goods and
2 services offered and sold by defendants or its licensees. Any failure, neglect, or
3 default by defendants or its licensees in providing such products or services will
4 reflect adversely on Plaintiffs as being the believed source of said failure, neglect,
5 or default, thereby hampering Plaintiffs' efforts to continue to protect its
6 outstanding reputation and preventing Plaintiffs from further building its reputation.
7 Said failure, neglect, or default will result in loss of sales by Plaintiffs, and loss of
8 value of Plaintiffs' considerable expenditures to promote its goods and services
9 under the VAMPIRE mark, all to the irreparable harm of Plaintiffs.

10 25. Without the knowledge or consent of Plaintiffs, Defendant has
11 marketed and sold in interstate commerce, and in commerce substantially affecting
12 interstate commerce, products and services branded under the name VAMPIRE and
13 continue to do so. Defendant has promoted, advertised, offered for sale, and/or
14 sold, products and services using the VAMPIRE mark through persons not
15 authorized, employed by, or associated in any way with Plaintiff and have used the
16 aforementioned trade name and trademark as false designation and false
17 representation for beverage products.

18 26. None of the activities alleged in this complaint have been
19 authorized by Plaintiffs, and such unauthorized use by Defendant of Plaintiffs'
20 trademarks and/or trade names in interstate commerce, commerce substantially
21 affecting interstate commerce in this district, and elsewhere throughout the United
22 States, constitutes infringement and an inducement to infringe Plaintiffs'
23 trademarks and/or trade names, and such activities are likely to cause confusion,
24 mistakes, and to deceive the public at large.

25 27. Upon information and belief, Defendant has acted with the
26 unlawful purpose of:

- 27 a. Improperly taking advantage of the valuable goodwill belonging to
28 Plaintiffs;

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- 1 b. Soliciting Plaintiffs' customers and/or potential customers,
- 2 attempting to sell, and selling to such customers and potential
- 3 customers, goods and services marketed under the VAMPIRE mark
- 4 through persons not authorized by, employed by, or associated in
- 5 any way with Plaintiffs;
- 6 c. Inducing others to infringe Plaintiffs' trademarks and trade names;
- 7 and
- 8 d. Causing the goods of persons not authorized by, employed by, or
- 9 associated in any way with Plaintiffs to be falsely represented as if
- 10 they were rendered, authorized, sponsored by, endorsed by, or
- 11 otherwise connected with Plaintiffs and its licensed trademarks and
- 12 trade names.

13 28. Defendant's conduct, as alleged in this complaint, constitutes a
14 violation of 15 U.S.C. § 1125(a).

15 29. If Defendant is allowed to continue marketing and selling the
16 accused goods and services, Plaintiffs will be damaged as alleged in this complaint,
17 and the Defendant will profit thereby. Furthermore, unless the Court permanently
18 enjoins Defendant's conduct as alleged in this complaint, Plaintiffs' business,
19 goodwill, and reputation will suffer irreparable injury of an insidious and
20 continuing sort that cannot be adequately calculated and compensated in monetary
21 damages.

22 30. Defendant's aforementioned acts and conduct is being done
23 willfully and with an intent to ride on, and/or step on and demolish, the goodwill
24 Plaintiffs have worked hard to develop. Plaintiffs are therefore entitled to treble
25 damages arising therefore, as well as reimbursement of Plaintiff's attorneys' fees
26 and costs.

27 31. The intentional nature of defendant's acts makes this an exceptional
28 case under 15 U.S.C. §1117(a).

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COUNT III

VIOLATION OF LANHAM ACT 15 U.S.C. §1125c

(Against All Defendants)

38. Plaintiffs repeat each allegation contained in paragraphs 1 through 37 as though set forth herein at length.

39. Plaintiffs' Vampire family of brands have appeared on The View, Anderson Cooper, CNN Headline News, Entertainment tonight, MTV's Viva La Bam, The Food Channel, A & E, and have been written up in widely circulated magazines such as Star Magazine, Shape, Maxim, InStyle, Elle, Spin, Rolling Stone, Marie Claire, Cosmo Girl, The Wine Enthusiast, and in regional newspapers such as the LA Times, the NY Times, the Houston Chronicle, and others, and as such have developed a fame all of their own catapulting the Vampire brand into the category of a famous mark.

40. Plaintiffs fear that defendant's marketing excursions into the world of vampires using the word Vampire as a mark for goods and services will cause consumers to believe that Plaintiffs' Vampire branded wines (and other goods and services) are not of as high quality as they actually are and will tarnish, dilute and otherwise damage the reputation of Plaintiffs' goods and services. This will lead to irreparable harm to Plaintiffs' goodwill, reputation, and sales.

COUNT IV

UNFAIR COMPETITION – COMMON LAW, AND CALIFORNIA

BUSINESS & PROFESSIONS CODE §§ 17200 et seq.

41. Plaintiffs repeat each allegation contained in paragraphs 1 through 40 as though set forth herein at length.

42. Defendant has engaged in unfair competition perpetrated against Plaintiffs by reason of the conduct alleged herein.

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1 43. The unlawful and unfair conduct is injuring the goodwill of Plaintiffs.

2 44. Defendant is liable for the unfair competition, and/or is
3 liable for aiding and abetting such conduct.

4 45. By this conduct, Plaintiffs have directly suffered injuries and each
5 Defendant has been unjustly enriched.

6 46. Plaintiffs are entitled to restitution, the recovery of damages, and the
7 recovery of the profits earned by Defendant by virtue of their conduct.

8 47. As a consequence of the unfair competition by Defendant, Plaintiffs
9 are suffering irreparable injury, by reason of which such conduct should be
10 enjoined.

11 48. Plaintiffs are entitled to reasonable attorneys' fees.

12 49. Plaintiffs are informed and believe, and on that basis alleges, that the
13 aforementioned conduct of Defendant is willful, oppressive, fraudulent, and
14 malicious, and Plaintiffs are therefore entitled to punitive damages.

15

16 **COUNT V**

17 **UNFAIR COMPETITION – COMMON LAW, CALIFORNIA BUSINESS &**
18 **PROFESSIONS CODE §§ 17500 et seq.**

19

20 50. Plaintiff repeats each allegation contained in paragraphs 1 through 49
21 as though set forth here at length.

22 51. Defendant's use of Plaintiffs' family of VAMPIRE brands and
23 trademarks misrepresents the nature, characteristics, identity, and source or
24 sponsorship of Defendant's goods and services, constitutes aiding and abetting
25 liability for deceptive, untrue, and misleading advertising and therefore constitutes
26 a violation of, inter alia, California Business and Professions Code §§17500 et seq.
27 and California common law.

28 52. Defendant's use of Plaintiffs' family of VAMPIRE brands and

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1 trademarks is likely to deceive and will continue to deceive the consuming public.
2 Defendant knew, recklessly disregarded, or reasonably should have known that
3 such packaging, advertising, marketing, and promotion was untrue and/or
4 misleading.

5 53. As a result of the conduct described above, Defendant has been
6 and/or will be unjustly enriched at the expense of Plaintiffs and the general public.
7 The interests of the general public and Plaintiffs are, therefore, closely related.

8 54. Defendant has been unjustly enriched, among other things, by the
9 receipt of sales revenues from consumers who mistakenly thought that they were
10 purchasing Plaintiffs' VAMPIRE goods and services, but instead were purchasing
11 Defendant's goods and services which are promoted and sold through
12 advertisements that affirmatively misrepresent, either directly or by implication, the
13 nature, characteristics, identity, and source or sponsorship of the goods.

14 75. Pursuant to Business and Professions Code §§ 17203 and 17535,
15 Plaintiffs, on behalf of itself and the general public, which is unable effectively to
16 assert its interests, seeks an order of this Court ordering Defendant immediately to
17 cease such acts of unfair competition and false advertising, and enjoining
18 Defendant from continuing to market, promote, advertise, offer for sale, and sell,
19 and advertises goods or services using the Vampire mark. Plaintiffs additionally
20 requests an order disgorging Defendant's ill-gotten gains and restitution of all
21 monies wrongfully acquired by Defendant by means of its acts of unfair
22 competition and false advertising. Plaintiffs further request they be paid interest and
23 attorneys' fees.

24
25 WHEREFORE, Plaintiffs pray for judgment as follows:
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27 1. That the Court adjudge and decree that Defendant has falsely
28 designated the origin of certain goods and services as those of Plaintiffs, have made

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1 and used false representations in connection with the sale, offering for sale,
2 promotion and advertising of such goods and services, and have unfairly competed
3 with Plaintiffs at common law.

4 2. That the Court adjudge and decree that Defendants have infringed
5 Plaintiffs' registered VAMPIRE trademarks.

6 3. That the Court adjudge and decree that Defendants unlawfully diluted
7 and diminished Plaintiffs' rights in its VAMPIRE family of trademarks.

8 4. That the Court permanently enjoin Defendants, its agents, servants,
9 employees, attorneys, and all persons acting in concert or participation with them,
10 or with any of them from:

- 11 a. Using VAMPIRE, or any other word or words which are similar to,
12 or a colorable imitation of, Plaintiffs' trade names and marks, either
13 alone, as part of, or together with, any other word or words,
14 trademark, service mark, trade name, or other business or
15 commercial designation in connection with the sale, offering for
16 sale, advertising, and/or promotion of beverage products and
17 beverage accessories;
- 18 b. Selling, offering to sell, marketing, distributing, advertising and/or
19 promoting any FOOD or BEVERAGE product, goods or service
20 with the word VAMPIRE displayed on any product, packaging,
21 advertising or promotional materials;
- 22 c. Representing directly or indirectly by words or conduct that any
23 food or beverage product, goods or services offered for sale, sold,
24 promoted, or advertised by Defendant, is authorized, sponsored by,
25 endorsed by, or otherwise connected with Plaintiffs;
- 26 d. Aiding or abetting in unfair competition against Plaintiffs;
- 27 e. Aiding or abetting in false advertising; and
- 28 f. Inducing others to engage in any of these aforementioned acts.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby request a trial by jury on all issues raised by the Complaint.

Respectfully submitted,
MACHAT & ASSOCIATES, P.C.

Dated: April 7, 2015 By: Michael Machat

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