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11 BLUE SPHERE, INC. doing business as LUCKY 13
12 and ROBERT A. KLOETZLY

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

13 BLUE SPHERE, INC., a California
14 Corporation doing business as
15 LUCKY 13, and ROBERT A.
KLOETZLY, an individual,

16 Plaintiffs,

17 vs.

18 TAYLOR A. SWIFT, an individual,
19 TAYLOR NATION, LLC, a
20 Tennessee Limited Liability
21 Company, TAYLOR SWIFT
22 PRODUCTIONS, INC., a
23 Tennessee Corporation, SWIFT
24 MERCHANDISING, INC., a
Tennessee Corporation, and TAS
RIGHTS MANAGEMENT, LLC, a
Tennessee Limited Liability
Company,

Defendants.

CASE NO.: 8:14-cv-00782

COMPLAINT FOR:

- 1. TRADEMARK INFRINGEMENT
UNDER 15 U.S.C. § 1114;**
- 2. UNFAIR COMPETITION IN
VIOLATION OF THE LANHAM
ACT, 15 U.S.C. § 1125(a);**
- 3. TRADEMARK DILUTION IN
VIOLATION OF THE LANHAM
ACT, 15 U.S.C. § 1125(c);**
- 4. UNFAIR COMPETITION UNDER
CALIFORNIA BUSINESS AND
PROFESSIONS CODE §17200;
and,**
- 5. COMMON LAW
MISAPPROPRIATION.**

JURY TRIAL DEMANDED

Plaintiffs, Blue Sphere, Inc. doing business as Lucky 13 and Robert A. Kloetzly (“Kloetzly” or “Bobby”) by and through their attorneys, hereby allege as follows:

PARTIES

1. Plaintiff Blue Sphere, Inc., doing business as Lucky 13 is, and at all times pertinent to this action has been, a corporation duly organized and existing under the laws of the State of California, and having its principal place of business at 215 Baker Street E, Costa Mesa, California 92626.

2. Plaintiff Kloetzly, who is the Chief Executive Officer of Lucky 13, is a resident of the State of California, who maintains a place of business at 215 Baker Street E, Costa Mesa, California 92626 (Blue Sphere, Inc., doing business as Lucky 13 and Kloetzly are collectively referred to herein as "Lucky 13" or "Plaintiffs").

3. On information and belief, Defendant Taylor A. Swift (“Taylor Swift”) is a resident of Tennessee, and maintains an address at 173 Inlet Drive, Hendersonville, Tennessee 37075-4388.

4. On information and belief, Taylor Nation, LLC (“Taylor Nation”) is a limited liability company duly organized and existing under the laws of the State of Tennessee, with its principal place of business at 2300 Charlotte Avenue, Nashville, Tennessee 37203-1859.

5. On information and belief, Taylor Swift Productions, Inc. (“Taylor Swift Productions”) is a corporation duly organized and existing under the laws of the State of Tennessee, with its principal place of business at 718 Thompson Lane, Suite 108256, Nashville, Tennessee 37204-3600.

6. On information and belief, Swift Merchandising, Inc. (“Swift Merchandising”) is a corporation duly organized and existing under the laws of the State of Tennessee, with its principal place of business at 718 Thompson Lane, Suite 108256, Nashville, Tennessee 37204-3600.

7. On information and belief, TAS Rights Management, LLC (“TAS Rights Management”; collectively, Taylor Swift, Taylor Nation, Taylor Swift Productions, Swift Merchandising, and TAS Rights Management shall be referred to as “Swift” or “Defendants”) is a limited liability company organized and existing under the laws of the State of Tennessee, with its principal place of business at 718 Thompson Lane, Suite 108256, Nashville, Tennessee 37204-3600.

JURISDICTION AND VENUE

8. This is a civil action arising under the laws of the United States relating to trademarks (15 U.S.C. §§ 1114(1), 1125(a) and 1125(c)). This Court has federal question jurisdiction over Counts I, II, and III pursuant to 28 U.S.C. §§ 1331 and 1338(a)-(b). This Court has supplemental jurisdiction over Counts IV and V pursuant to 28 U.S.C. § 1337.

9. This Court has personal jurisdiction over Taylor Swift because she has done and continues to do substantial business in this judicial district — including performing at STAPLES Center in Los Angeles on August 19, 2013 and August 20, 2013, as part of her RED Tour — and has committed acts of trademark infringement, and other acts complained of herein, in this judicial district.

10. This Court has personal jurisdiction over Taylor Nation because Taylor Nation has done and continues to do substantial business in this judicial district and has committed acts of trademark infringement, and other acts complained of herein, in this judicial district.

11. This Court has personal jurisdiction over Taylor Swift Productions because Taylor Swift Productions has done and continues to do substantial business in this judicial district and has committed acts of trademark infringement, and other acts complained of herein, in this judicial district.

12. This Court has personal jurisdiction over Swift Merchandising because Swift Merchandising has done and continues to do substantial business in

1 this judicial district and has committed acts of trademark infringement, and other
 2 acts complained of herein, in this judicial district.

3 13. This Court has personal jurisdiction over TAS Rights Management
 4 because TAS Rights Management has done and continues to do substantial
 5 business in this judicial district and has committed acts of trademark infringement,
 6 and other acts complained of herein, in this judicial district.

7 14. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391
 8 (b)-(c) and 1400(b). The acts and transactions complained of herein were
 9 conceived, carried out, made effective, and had an effect within the State of
 10 California and within this judicial district.

NATURE OF THE ACTION

12 15. In this action, Lucky 13 seeks injunctive relief, Swift's profits,
 13 Plaintiffs' lost profits and damages, punitive damages, and attorneys' fees, for
 14 Swift's acts of trademark infringement under 15 U.S.C. § 1114 *et seq.*, unfair
 15 competition and false designation of origin under 15 U.S.C. § 1125(a), trademark
 16 dilution under 15 U.S.C. § 1125(c), unfair competition under Cal. Bus. & Prof.
 17 Code § 17200 *et seq.*, and common law misappropriation.

FACTUAL ALLEGATIONS

19 16. Lucky 13's owner, Robert "Bobby" Kloetzly, grew up on the shores
 20 of Huntington Beach, California, surfing, riding motorcycles up and down Pacific
 21 Coast Highway, attending the Orange County Fair, and going to concerts given by
 22 such notable musicians as Mike Ness and Social Distortion, Black Flag, and Billy
 23 Zoom and John Doe's group, X. *See, generally, "Lucky 13's still rockin' after two*
 24 *decades," Orange County Register, August 30. 2011*, a copy of which is attached
 25 hereto as **Ex. A.**

26 17. In the late 1980s, Bobby worked under the tutelage of several
 27 successful entrepreneurs in the apparel industry, where he made multiple
 28

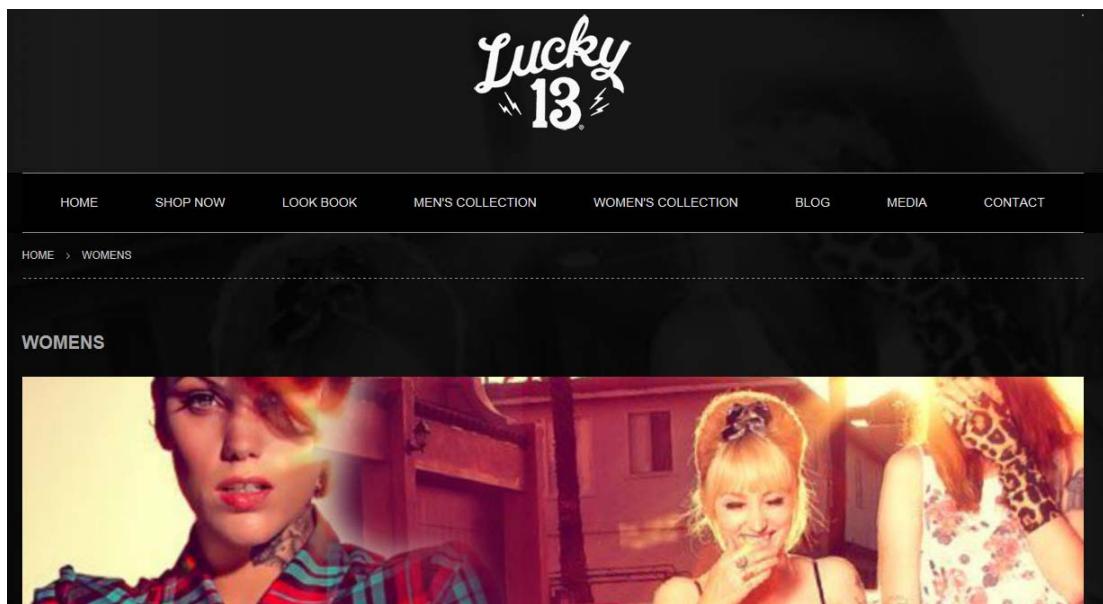
1 connections and gained detailed knowledge of the lifestyle brand scene, including
 2 how to own and operate a successful lifestyle business.

3 18. In 1991, with the blessing, encouragement and support of his myriad
 4 business connections, Bobby ventured out to form Lucky 13. In its twenty-three
 5 years of business operations, Lucky 13 has built up extensive and valuable
 6 business and goodwill in connection with the marketing and sale of its
 7 LUCKY 13® goods throughout the world.

8 **Lucky 13's Marketing and Sale of LUCKY 13® Goods**

9 19. Lucky 13 is the owner of the trademark LUCKY 13®, which has been
 10 used in connection with the marketing and sale of, *inter alia*, (1) clothing for men
 11 and women, namely, t-shirts, jackets, headwear and footwear; (2) jewelry;
 12 (3) body sprays and pomade; (4) license plates, license plate holders, key chains,
 13 and vehicle seat and steering wheel covers; (5) motorcycle helmets; and, (6) paper
 14 products, including desk calendars (collectively, the “LUCKY 13® Goods”).

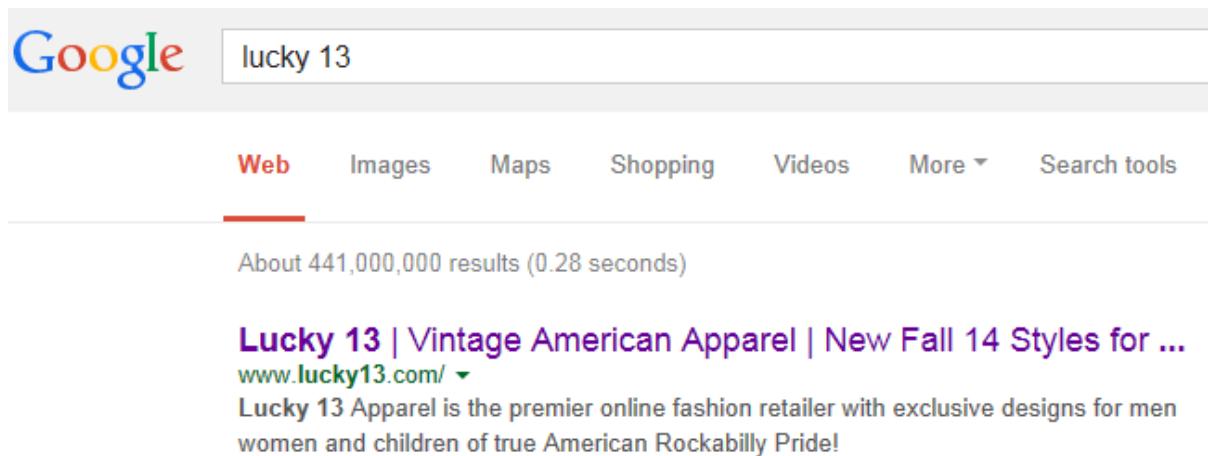
15 20. Since at least as early as May 7, 1992, Lucky 13 has invested and
 16 continues to invest substantial time, money, and effort in promoting and
 17 advertising its LUCKY 13® Goods in United States commerce, including through
 18 its commercial Internet website, www.Lucky13.com, which is depicted below.



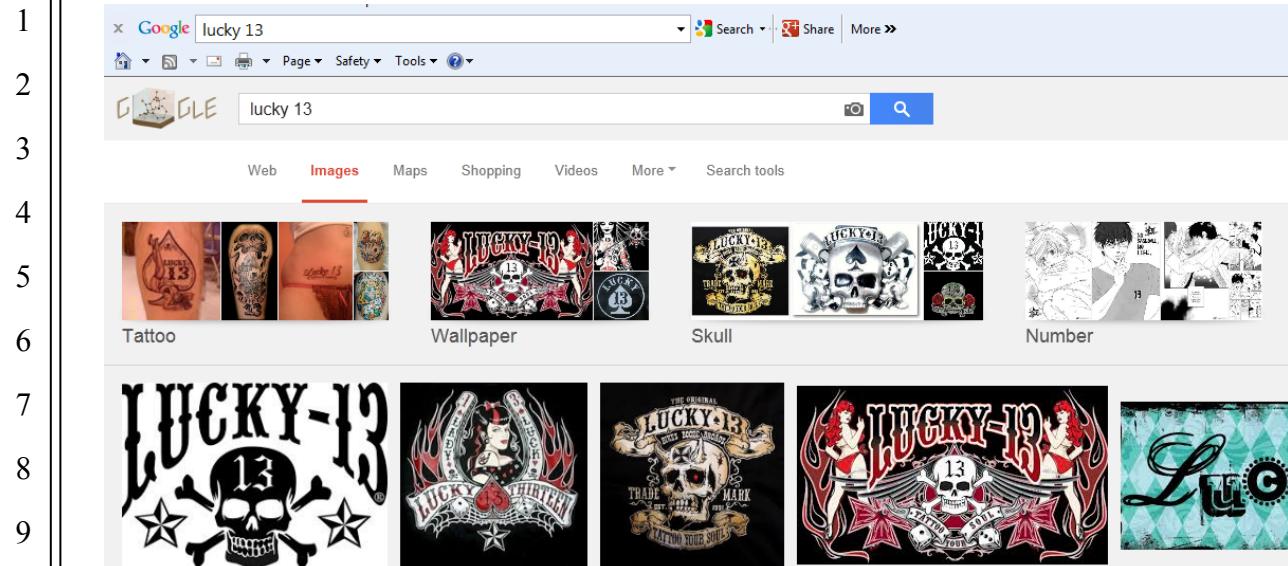
1 21. Lucky 13 also has marketed and sold the LUCKY 13® Goods in
 2 Argentina, Australia, Brazil, Canada, China, in the European Union, Hong Kong,
 3 Hungary, Japan, New Zealand, Panama, South Africa, Taiwan, Thailand, and
 4 Uruguay for several years.

5 22. Lucky 13, as a result of its extensive worldwide marketing,
 6 advertising and sale of LUCKY 13® Goods, has built and continues to enjoy
 7 significant consumer goodwill associated with its LUCKY 13® trademarks.

8 23. Lucky 13 and its licensing partners have sold a significant amount of
 9 LUCKY 13® branded goods in the United States and worldwide. In fact, for the
 10 past decade, Lucky 13 has earned several million dollars per year from its
 11 worldwide marketing and sale of the LUCKY 13® Goods through its own sales
 12 and the sales of its licensees. As such, Lucky 13's consumers have come to
 13 associate Lucky 13 as the source of LUCKY13® consumer goods. For instance,
 14 consumers can search for the term "Lucky 13" on the Google search engine for
 15 "Web" — the first search result is for LUCKY 13® consumer goods, as depicted
 16 below.



25 24. In addition, consumers can search for "Lucky 13" on the Google
 26 search engine for "Images" — the majority of the search results are for LUCKY
 27 13® consumer goods, as depicted on the following page.



11 **Lucky 13's Ownership of LUCKY 13® Trademarks in the United States**

12 25. Lucky 13 is the owner of several Federally registered and
 13 incontestable United States trademarks for LUCKY 13®, including,

14 a. United States Trademark Registration No. 2,970,316 for the
 15 mark LUCKY 13 in International Classification 18 for “Athletic bags,
 16 backpacks, beach bags, book bags, carry-on bags, duffel bags, gym bags,
 17 school bags, shoulder bags, sports bags, tote bags, travel bags, hand bags,
 18 billfold, day packs, pocketbooks, purses, wallets,” and International
 19 Classification 26 for “Belt Buckles not of precious metal”;

20 b. United States Trademark Registration No. 2,974,104 for the
 21 mark LUCKY 13 in International Classification 12 for “Hitch plugs, license
 22 plate holders, vehicle seat covers, automobile seat belt shoulder pads,
 23 steering wheel covers”;

24 c. United States Trademark Registration No. 3,022,964 for the
 25 mark LUCKY 13 in International Classification 06 for “Metal key chains,
 26 metal key holders, metal key rings, metal money clips, metal license plates”;
 27 International Classification 16 for “Bags for merchandise packaging namely
 28 plastic and paper, bumper stickers, calendars, organizers for stationary use,

1 decals, desk calendars, paper emblems, printed emblems, graphics for
 2 application to automobiles, litter bags, merchandising bags, plastic bags,
 3 stickers, temporary tattoos”; and, International Classification 21 for
 4 “Beverage glassware, bottle openers, candle holders not of precious metal,
 5 candlesticks not of precious metal, coffee cups, drinking glasses, shot
 6 glasses, flasks, hair combs, mugs, plastic cups, plastic coasters, rubber
 7 coasters, and travel tumblers”;

8 d. United States Trademark Registration No. 3,207,294 for the
 9 mark LUCKY 13 in International Classification 25 for “Clothing and
 10 footwear for men and women, namely, athletic shoes, athletic sports suits,
 11 belts, blouses, body suits, cardigans, coats, dresses, gowns, gloves, gym
 12 suits, hats, jackets, jeans, jogging suits, overalls; pants, namely, capri pants,
 13 chino pants, work pants; shirts namely, polo shirts, jersey shirts, diner shirts,
 14 bowling shirts, flannel shirts, sport shirts; shoes, shorts, namely, board
 15 shorts, chino shorts, walking shorts, hiking shorts; skirts, sleepwear,
 16 slippers, sneakers, suspenders, sweaters, sweatshirts, swimwear, tops,
 17 T-shirts, warm-up suits, beach clothes and surf wear, namely, board shorts,
 18 camisole tops, midriff tops, pants, skirts, sweatshirts, sweat pants, tank tops,
 19 tie tops; vests, sweaters, sandals, head wear, namely, caps, hats”; and,
 20 International Classification 35 for “Retail store services and on-line retail
 21 services available via the Internet in the field of electrical goods, lamps,
 22 optical goods and sunglasses, CDs, records and video tapes, jewelry,
 23 stationery, printed publications and printed matter, cards, gift wrap,
 24 furniture, furnishings and decorations, bed and table linen, comforters,
 25 towels, clothing, footwear, headgear, playthings sporting goods and
 26 accessories, namely, belt buckles, candles, clocks, coaster sets, gear bags,
 27 lighters, posters”; and,

1 e. United States Trademark Registration No. 3,250,642 for the
2 mark LUCKY 13 in International Classification 14 for “body-piercing rings,
3 body-piercing studs, bracelets, charms, chokers, costume jewelry, earrings,
4 ear studs, ear plug earrings, jewelry, navel rings, necklaces, pendants.”
5 Copies of the aforementioned Federally registered and incontestable
6 LUCKY 13 trademarks are attached hereto as **Exs. B** through **F**.

7 26. Lucky 13 is the owner of United States Trademark Registration
8 No. 3,623,660 for LUCKY 13 in International Classification 03 for “Body sprays;
9 Greases for cosmetic purposes; Hair care creams; Hair creams; Hair gels; Hair
10 pomades; Hair shampoo; Hair styling gel; Mustache wax; Perfumed creams;
11 Pomades; Sculpting gel; Styling gels; Gel for molding hair”.

12 27. Lucky 13 is the owner of United States Trademark Application
13 No. 85/814,077 for LUCKY 13 in International Classification 09 for “Motorcycle
14 helmets; Protective helmets; Riding helmets”.

15 28. Lucky 13 is the owner of additional trademark applications and
16 registrations throughout the world for LUCKY 13®, a Schedule of which is
17 attached hereto as **Ex. G.**

Lucky 13's Licensing Program for LUCKY 13® Goods

19 29. Lucky 13 has a sophisticated licensing program. It has entered into
20 numerous licensing agreements with parties in the United States and throughout
21 the world. Lucky 13 has numerous past and current licensing partners, each of
22 which market and sell LUCKY 13® Goods, including but not limited to apparel,
23 motorcycle helmets, and sunglasses. Each of these licensing partners pay a
24 negotiated royalty payment to Lucky 13, depending upon the licensed
25 LUCKY 13® product, relevant market, and other economic factors.

26 30. Because of Lucky 13's and its licensing partners' extensive use and
27 promotion of the LUCKY 13® trademarks, LUCKY 13® has become distinctive,

1 has acquired secondary meaning in the relevant consumer marketplace, and
2 identifies Lucky 13 as the single source of origin for LUCKY 13® Goods.

3 31. As such, Lucky 13 has developed and maintains a trademark
4 protection program, whereupon it seeks to stop the unauthorized and non-licensed
5 use of its LUCKY 13® trademarks. As part of this program, it sends “cease and
6 desist” letters and files litigation when its initial attempts to resolve matters are not
7 successful.

Lucky 13's Community Outreach

9 32. For several years, Lucky 13 has maintained a significant community
10 outreach program. As part of this program, it has donated numerous items to the
11 Orange County Rescue Mission, The Phoenix House, and the Delancey Street
12 Foundation, as discussed below.

13 a. The mission statement for the Orange County Rescue Mission
14 states “Our Mission is to minister the love of Jesus Christ to the Least, the
15 Last, and the Lost.” *See* www.rescuemission.org. For a copy of the relevant
16 portion of the Orange County Rescue Mission website, *see* **Ex. H.**

17 b. Phoenix House, from its website, www.phoenixhouse.org,
18 “embraces research-tested addiction treatment methods, tailored to meet
19 individual needs. Our more than 120 programs in California, Florida, Maine,
20 Maryland, Massachusetts, New Hampshire, New York, Rhode Island, Texas,
21 Vermont, and Virginia/Metro D.C. lead individuals and families from
22 disruptive to productive lives.” For a copy of the relevant portion of the
23 Phoenix House website, *see Ex. I.*

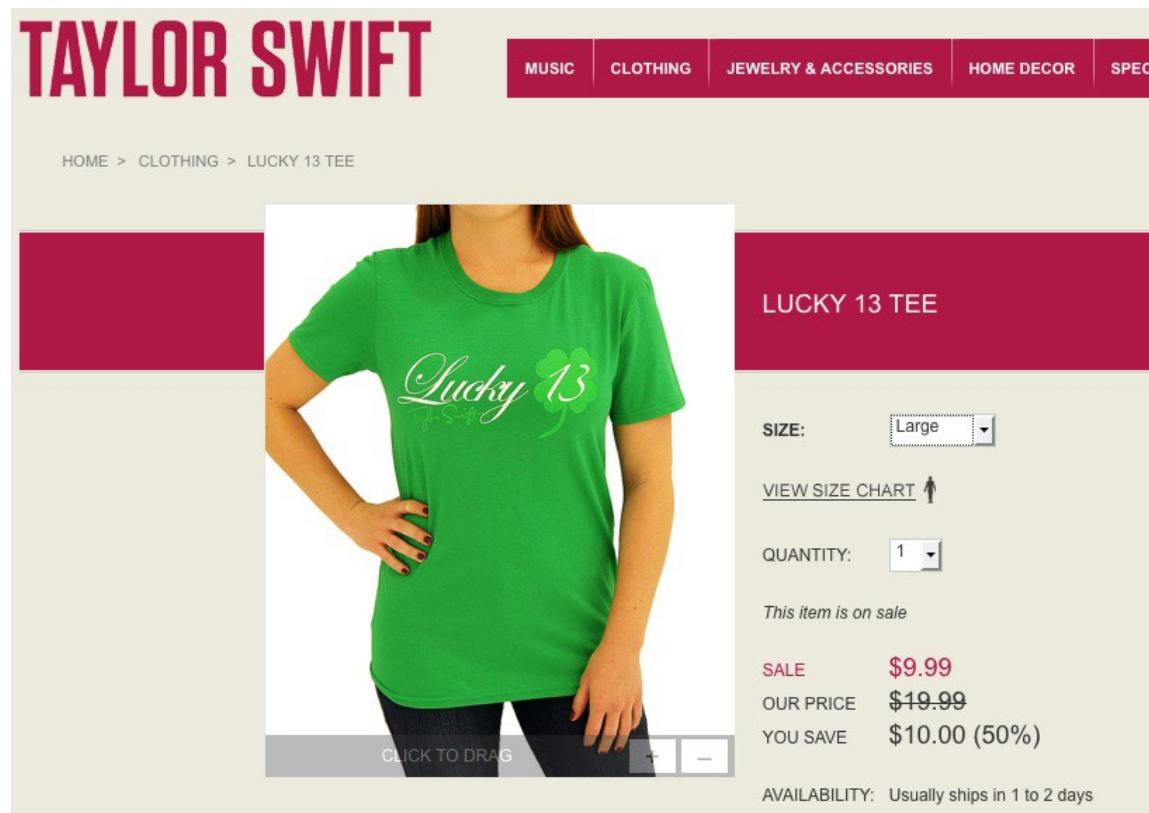
24 c. The Delancey Street Foundation “is the country's leading
25 residential self-help organization for former substance abusers, ex-convicts,
26 homeless and others who have hit bottom. . . . During their time at Delancey
27 Street, residents receive a high school equivalency degree (GED) and are
28 trained in 3 different marketable skills.” *See*

1 www.delanceystreetfoundation.org. For a copy of the relevant portion of the
 2 Delancey Street Foundation website, *see Ex. J.*

3 **Swift's Unauthorized Marketing and Sale of "Lucky 13" Goods**

4 33. Lucky 13 has not authorized Defendants to manufacture, distribute,
 5 advertise, or sell the "Lucky 13" apparel or related goods.

6 34. Upon information and belief, on or about March 1, 2012, which is
 7 about twenty (20) years after Lucky 13 first used its LUCKY 13® trademarks for
 8 the marketing and sale of its LUCKY 13® Goods, Swift began using the term
 9 "Lucky 13" to market and sell apparel in at least the United States, without
 10 requesting permission or otherwise securing a license from Lucky 13. *See* the
 11 usage depiction below.



26 35. Upon information and belief, Swift's "Lucky 13" apparel is further
 27 marketed and sold by additional vendors, including www.Polyvore.com, as
 28 depicted on the following page.



10 36. Swift also has used social media to market and promote its
 11 "Lucky 13" products, as depicted below.



25 37. Upon information and belief, Swift also has partnered with American
 26 Greetings Corp. to market "Lucky 13" greeting card contests without authorization
 27 or seeking a license from Lucky 13, in further infringement of Lucky 13's

1 Federally registered and incontestable LUCKY 13® trademarks, as depicted
2 below.

The image shows a page from the American Greetings and Taylor Swift's "LUCKY 13" Sweepstakes. At the top left, there are three red "RED" tickets. The main title "LUCKY 13" is in large, bold, red letters. Below the title, the text "AMERICAN GREETINGS AND TAYLOR SWIFT'S" is in a smaller, red, sans-serif font. The word "LUCKY" is in a larger, bold, red font. The word "SWEEPSTAKES" is in a bold, red, sans-serif font. Below "SWEEPSTAKES", the words "OFFICIAL RULES" are in a red, sans-serif font. In the center of the page, there is a red rectangular button with the words "GO BACK" in white, sans-serif font. At the bottom of the page, the text "ENTER FOR A CHANCE TO WIN 'RED' TICKETS" is in a red, sans-serif font. At the very bottom, a long, thin red banner contains the text "AMERICAN GREETINGS AND TAYLOR SWIFT'S 'LUCKY 13' SWEEPSTAKES OFFICIAL RULES NO PURCHASE OR PAYMENT NECESSARY TO ENTER OR WIN. A PURCHASE WILL NOT IMPROVE YOUR CHANCES OF WINNING. VOID WHERE PROHIBITED" in a white, sans-serif font.

15 38. Upon information and belief, Swift's conduct has been and will
16 continue to be malicious, fraudulent, deliberate, willful, intentional, and in
17 disregard of Plaintiffs' intellectual property rights.

Swift's Extensive Trademark Portfolio

19 39. Swift has filed about sixty United States Federal trademark
20 applications, including but not limited to the following marks:

21 a. United States Trademark Registration No. 3,439,210 for the
22 mark TAYLOR SWIFT in International Classification 25 for “Clothing,
23 namely, shirts, T-shirts, sweatshirts, jerseys, hats and caps”;

24 b. United States Trademark Registration No. 3,809,272 for the
25 mark TAYLOR SWIFT (and design) in International Classification 35 for
26 “On-line retail store services featuring audio recordings, video recordings,
27 printed publications, printed materials, clothing, collectibles, memorabilia,
28 and a wide variety of products related to a musical artist”;

11 f. United States Trademark Application No. 77/734,586 for the
12 mark FEARLESS in International Classification 25 for "Clothing, namely,
13 dresses, hooded pullovers, hooded sweat shirts, jackets, jerseys, sweat shirts,
14 pants and jeans, and hats, caps, bandanas, t-shirts and sweaters sold or
15 distributed in connection with Applicant's live musical performances and
16 musical sound recordings";

17 g. United States Trademark Application No. 85/121,390 for the
18 mark SWIFT (and design) in International Classification 25 for "Clothing,
19 namely, shirts, t-shirts, jerseys, sweatshirts, pants, sweatpants, shorts;
20 Headwear; Caps; Hats; Visors; Bandanas; Gloves; Scarves; Footwear;
21 Hosiery";

22 h. United States Trademark Application No. 85/121,393 for the
23 mark TS (and design) in International Classification 25 for “Clothing,
24 namely, shirts, t-shirts, jerseys, sweatshirts, pants, sweatpants, shorts;
25 headwear; caps; hats; visors; bandanas; gloves; scarves; footwear; hosiery”;
26 and,

4 40. Upon information and belief, while Swift filed the above applications,
5 it did not file a Federal trademark application for “Lucky 13” for apparel, the
6 online sale of apparel, or for use on any other goods or services. This is because,
7 upon Lucky 13’s belief, Swift likely knew that such an application would not
8 register — due to (a) Lucky 13’s earlier first use of the LUCKY 13® trademarks in
9 United States commerce, as well as (b) the existence of Lucky 13’s Federally
10 registered and incontestable LUCKY 13® trademarks.

Swift's Business Empire

12 41. Upon information and belief, Swift has numerous business and
13 licensing partners, each of whom is a licensee or sponsor of Swift, or whom Swift
14 endorses. These business partners include, but are not limited to, AirAsia Berhad,
15 the aforementioned American Greetings, Cover Girl, Elizabeth Arden, Papa John's
16 Pizza, and Keds.

17 42. Upon information and belief, in its annual Money Makers list,
18 *Billboard* magazine selected Swift as its highest earning musical act for 2013,
19 stating that Swift earned about \$40 million. *See, “Music’s Top 40 Money Makers*
20 *2014: The Rich List,”* *Billboard*, March 10, 2014, a copy of which is attached
21 hereto as **Ex. K.**

22 43. Upon information and belief, in total, Swift has sold at least 26
23 million albums and over 75 million digital downloads worldwide under the Taylor
24 Swift trademark. Swift's net worth is estimated to be at least \$200 million.

Swift's Intellectual Property Knowledge and Enforcement Activity

26 44. There can be no doubt that Swift — who has an extensive trademark
27 portfolio and numerous business and licensing partners, and whose record label is
28 even named the “Big Machine” — knows, understands and substantially profits

1 from her carefully cultivated and meticulously managed trademarks and brand,
 2 image, and other intellectual property.

3 45. As Swift has claimed in previous court filings seeking protect her
 4 trademarks, intellectual property protection is the backbone of her success,
 5 including for her copyright-protected musical compositions, trademark-protected
 6 brands and her overall image and likeness. Swift previously has filed Federal
 7 litigation seeking to protect her intellectual property rights. *See, e.g., Taylor Swift*
 8 *v. Malcolm Matthews, et al.*, Case No. 09-cv-00442 (M.D. Tenn. 2009) (the
 9 “First Swift Trademark Action”); *see, also, TAS Rights Management, LLC v.*
 10 *Various John Does et al.*, Case No. 11-cv-00477 (M.D. Tenn. 2011) (the “Second
 11 Swift Trademark Action”); and, *TAS Rights Management, LLC v. Various John*
 12 *Does, et al.*, Case No. 13-cv-00170 (M.D. Tenn. 2013) (the “Third Swift
 13 Trademark Action”). Each of these cases is discussed below.

14 a. In the First Swift Trademark Action, a copy of which is attached
 15 hereto as **Ex. L**, Taylor Swift claims,

16 [Merchandise bearing [Taylor Swift’s] trademarks and likeness has been
 17 made available for purchase to the public, by [Taylor Swift] and her
 18 authorized vendors. . . . [Taylor Swift] has advertised and sold such
 19 merchandise since as early as October 2000. . . . Merchandise being
 20 offered by [Taylor Swift] . . . includes hooded shirts, posters . . . and,
 21 most prominently, tee-shirts. . . . A variety of merchandise bearing
 22 [Taylor Swift’s] trademarks is also available in retail stores nationwide,
 23 pursuant to [Taylor Swift’s] licensing agreements. [Taylor Swift]
 24 carefully limits such agreements . . . and maintains complete control over
 25 the manner in which [Taylor Swift’s] Trademarks are used and [Taylor
 26 Swift’s] name and likeness are represented. (Emphasis added.) *See Ex.*
 27 *L* at Paragraph Nos. 17, 18, 21 and 22.

28 b. In the Second Swift Trademark Action, a copy of which is
 29 attached hereto as **Ex. M**, TAS Rights Management claims,

30 Ms. Swift is an internationally recognized singer-songwriter, musician
 31 and actress. . . . Ms. Swift provides and promotes products and services
 32 to the public in association with her name, Taylor Swift, which also
 33 functions as a trademark, used in an unstylized, literal form – “Taylor

1 Swift,” and in the stylized, “logo” form At all times relevant hereto,
 2 Ms. Swift and/or her licensees maintained exclusive rights in and control
 3 of the Taylor Swift Trademarks, which have and continue to be used
 4 extensively in the United States and throughout the world. (Emphasis
 5 added.) *See Ex. M* at Paragraph Nos. 7, 8 and 16.

6 c. In the Third Swift Trademark Action, Swift’s trademark legal
 7 team made the identical claims as in the Second Swift Trademark Action. *See*
 8 **Ex. N**, which is a copy of the Complaint in the Third Swift Trademark Action,
 9 also at Paragraph Nos. 7, 8 and 16.

10 46. While Swift’s merchandising and licensing team obsessively focuses
 11 on the Swift brand, it ignores the intellectual property rights of others. Upon
 12 information and belief, since at least as early as March 1, 2012, Swift has marketed
 13 and sold “Lucky 13” apparel, as well as offered “Lucky 13” greeting card-themed
 14 contests, all without seeking permission or otherwise securing a license from
 15 Lucky 13 — which itself has an extensive licensing program. There can be no
 16 doubt that Swift fully understands that marketing and selling another’s goods
 17 without securing a license or permission is not acceptable and cannot be allowed.

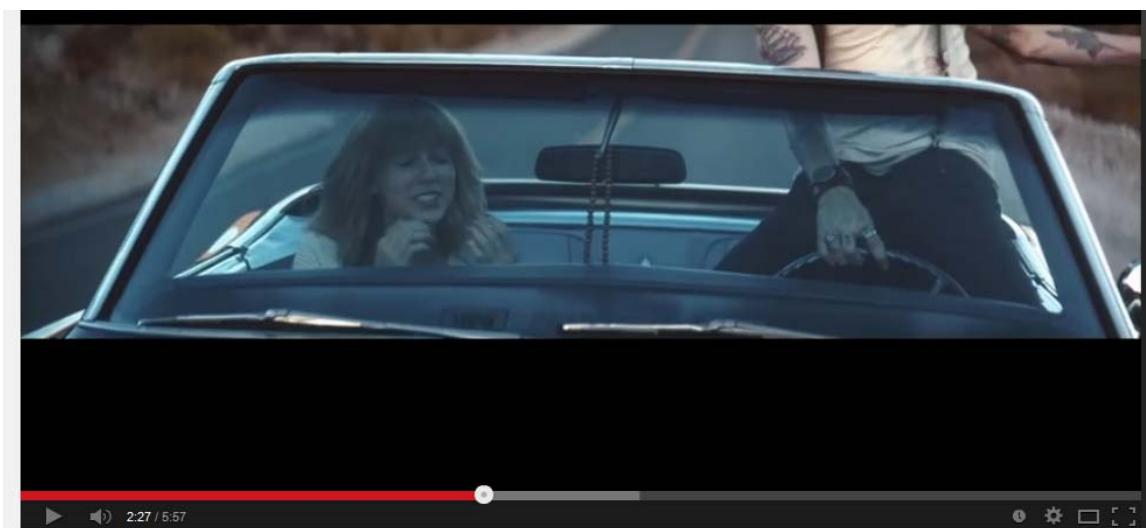
18 47. Upon information and belief, the “Lucky 13” apparel that has been
 19 marketed and sold by Swift is a “popular item” that is in high demand.

20 48. Swift’s infringement of Lucky 13’s Federally registered and
 21 incontestable LUCKY 13® trademarks is clear-cut. Lucky 13 is concerned that
 22 Swift’s past use and any future use of the term “Lucky 13” to market and sell
 23 apparel and related products is likely to cause and will continue to cause confusion
 24 with and dilute the significant value of Lucky 13’s Federally registered and
 25 incontestable LUCKY 13® trademarks.

26 49. Swift’s unauthorized use and continued use in interstate commerce of
 27 “Lucky 13” for apparel and other products is identical in nature to Lucky 13’s
 28 marketing and sale of the LUCKY 13® Goods. This is because Lucky 13’s

1 LUCKY 13® Goods and Swift's "Lucky 13" apparel and related products are
2 marketed and sold in the same distribution channels and for a similar price.

3 50. Taylor Swift — who has been photographed with permanent or
4 temporary tattoos and markets herself as liking fast cars and dangerous men who
5 drive them inappropriately, as demonstrated by her "I Knew You Were Trouble"
6 music video — undeniably and squarely fits within the exact consumer
7 demographic to whom Lucky 13 markets and sells its LUCKY 13® Goods.
8 Screen shots of this video are depicted immediately below.



51. A substantial majority of Swift's more mature, young adult followers are also within Lucky 13's target consumer demographic. In fact, the screen shot of the LUCKY 13® website at Paragraph No. 20, *supra*, and the screen shots of Taylor Swift's "I Knew You Were Trouble" music video that appear on the prior page at Paragraph No. 50 are similar and could be part of the same LUCKY 13® marketing campaign — the marketing imagery depicts stylish, attractive, tattooed individuals in provocative situations.

52. Swift has caused and is likely to cause confusion, mistake or deception (a) as to the characteristics, qualities or origin of Lucky 13's LUCKY 13® Goods, (b) as to an affiliation, connection or association between Lucky 13 and Swift, and (c) as to the sponsorship or approval of Swift's "Lucky 13" apparel by Lucky 13.

53. Lucky 13 is committed to protecting its LUCKY 13® trademarks against the use of identical or confusingly similar marks, for itself and its licensees in order to continue to administer its own highly successful licensing program.

FIRST CLAIM FOR RELIEF

(Infringement of Federally Registered Trademark (Lanham Act §32))

54. Lucky 13 hereby re-alleges and incorporates by reference each of the allegations from Paragraph Nos. 1 through 53 hereof as if fully stated herein.

55. By virtue of Defendants' conduct, Defendants have used and are using "Lucky 13" in connection with the advertising, marketing and offering of apparel and other products in interstate commerce, which imitates Lucky 13's LUCKY 13® United States Federally registered and incontestable trademarks.

56. Both Lucky 13 and Swift market and sell apparel and other products to the same or similar consumers.

57. As a result of Defendants' conduct, there is a strong likelihood of confusion, mistake, or deception. Many individuals familiar with Lucky 13's

1 LUCKY 13® Goods, reputation and favorable goodwill are likely to purchase
 2 Defendants' "Lucky 13" goods under the mistaken belief that such goods are
 3 offered or authorized by Lucky 13.

4 58. Defendants' actions have been and are willful, unfair, false and
 5 deceptive, in that they tend to mislead, deceive and confuse, and have had and will
 6 continue to have the result of misleading, deceiving and confusing the public to
 7 believe that Defendants and/or their goods are affiliated with, sponsored or
 8 controlled by Lucky 13.

9 59. The foregoing actions of Defendants constitute trademark
 10 infringement by inducing the erroneous belief that Defendants' and/or their goods
 11 are in some manner affiliated with, originate from, or are sponsored by Lucky 13
 12 in violation of Lanham Act § 32, 15 U.S.C. § 1114.

13 60. Lucky 13 is informed and believes, and on that ground alleges, that
 14 Defendants have made and/or will make unlawful gains and profits from their
 15 unlawful actions as alleged herein, and by reason thereof, Lucky 13 has been
 16 deprived of gains and profits which otherwise would have inured to Lucky 13 but
 17 for such unlawful actions.

18 61. Lucky 13 has no adequate remedy at law for the injuries alleged in
 19 this Count. The injuries are, in part, intangible in nature and not capable of being
 20 fully measured or valued in terms of monetary damages. Further, the injuries are
 21 of a continuing nature and will continue to be suffered so long as Defendants
 22 continue their wrongful conduct.

23 62. Notwithstanding the difficulty of fully ascertaining the value of the
 24 damage to Lucky 13 caused by Defendants' wrongful conduct, Defendants'
 25 conduct has resulted in irreparable, direct and proximate damages to Lucky 13.
 26 Thus, Lucky 13 is entitled to injunctive relief under 15 U.S.C. §1116(a).

27

28

SECOND CLAIM FOR RELIEF

(False Designation of Origin and Unfair Competition (Lanham Act §43(a))

63. Lucky 13 repeats and re-alleges each and every allegation contained in Paragraph Nos. 1 through 62 hereof as if fully stated herein.

5 64. This claim arises under Section 43(a) of the Lanham Act. Swift's
6 unauthorized use and continued use in interstate commerce of "Lucky 13" apparel
7 constitute use of a false designation of origin and a false description or
8 representation that has caused and is likely to cause confusion, mistake or
9 deception (a) as to the characteristics, qualities or origin of Lucky 13's
10 LUCKY 13® Goods, (b) as to an affiliation, connection or association between
11 Lucky 13 and Swift, and (c) as to the sponsorship or approval of Swift's
12 "Lucky 13" apparel by Lucky 13.

13 65. Such actions, as used in commercial advertising, have misrepresented
14 and continue to misrepresent the nature, characteristics or qualities of Swift's
15 "Lucky 13" apparel, services and/or commercial activities.

16 66. Upon information and belief, Swift has intentionally and falsely
17 designated the origin of its “Lucky 13” apparel by adopting and using a term that is
18 identical to Lucky 13’s Federally registered and incontestable LUCKY 13®
19 trademarks so as to profit from Lucky 13’s well-earned and carefully crafted
20 reputation by confusing the public as to the source, origin, sponsorship or approval
21 of its “Lucky 13” apparel, with the intention of deceiving and misleading the
22 public at large, and of wrongfully trading on the goodwill and reputation of
23 Lucky 13.

24 67. The activities of Swift complained of herein have caused and, unless
25 enjoined, will continue to cause substantial and irreparable harm to Lucky 13, its
26 well-earned and carefully crafted business reputation and its goodwill, for which
27 Lucky 13 is without adequate remedy at law.

68. The activities of Swift complained of herein also have caused Lucky 13 monetary loss and damage including, but not limited to, the loss of profits in an amount not yet determined.

69. Further, the injury is of a continuing nature and will continue to be suffered so long as Swift continues its wrongful conduct. Notwithstanding the inadequacy of, and the difficulty of, fully ascertaining the value of the damage to Lucky 13 caused by Swift's wrongful conduct, Lucky 13 is informed and believes, and on that ground alleges, that said conduct has resulted in irreparable, direct and proximate damages to Lucky 13.

THIRD CLAIM FOR RELIEF

(Federal Trademark Dilution (Lanham Act §43(c))

70. Lucky 13 repeats and re-alleges each and every allegation contained in Paragraph Nos. 1 through 69 hereof as if fully stated herein.

71. Lucky 13's Federally registered and incontestable LUCKY 13® trademarks are famous and distinctive and therefore are entitled to protection against dilution by blurring or tarnishment.

72. Defendants commenced use of Lucky 13's Federally registered and incontestable LUCKY 13® trademarks in commerce after the LUCKY 13® name and mark had become famous and distinctive.

73. Swift, by using the LUCKY 13® trademarks in connection with “Lucky 13” apparel and other goods in a manner in which consumers are deceived as to the nature and origin of the goods provided, has injured and will continue to injure Lucky 13’s business reputation, has tarnished the distinctive quality of Lucky 13’s famous name and marks, and has lessened the capacity of Lucky 13’s famous LUCKY 13® trademarks to identify and distinguish the LUCKY 13® Goods, in violation of 15 U.S.C. § 1125(c).

74. As a result of Defendants' tarnishment of Lucky 13's name and Federally registered and incontestable LUCKY 13® trademarks, Lucky 13 has

1 suffered substantial damages, as well as the continuing loss of the goodwill and
 2 reputation established by Lucky 13 in its marks. This continuing loss of goodwill
 3 cannot be properly calculated and thus constitutes irreparable harm and an injury
 4 for which Lucky 13 has no adequate remedy at law. Lucky 13 will continue to
 5 suffer irreparable harm unless this Court enjoins Defendants' conduct.

6 **FOURTH CLAIM FOR RELIEF**

7 *(Unfair Competition under Cal. Bus. & Prof. Code §§ 17200 et seq.)*

8 75. Lucky 13 hereby re-alleges and incorporates by reference each of the
 9 allegations from Paragraph Nos. 1 through 74 hereof as if fully stated herein.

10 76. Lucky 13 is informed and believes, and on that basis alleges, that
 11 Defendants have intentionally misappropriated Lucky 13's Federally registered
 12 and incontestable LUCKY 13® trademarks with the intent of causing confusion,
 13 mistake and deception as to the source of their goods with the intent to pass off
 14 their goods as those of Lucky 13, and as such, Defendants have committed unfair
 15 competition in violation of California Business and Professions Code §§ 17200
 16 *et seq.*

17 77. The foregoing acts of Defendants have caused and will continue to
 18 cause injury to Lucky 13 by depriving it of sales of its genuine LUCKY 13®
 19 Goods, injuring its business reputation and by passing off Defendants' goods as
 20 Lucky 13's goods, all in violation of California Business and Professions Code
 21 §§ 17200 *et seq.*

22 78. Defendants' acts have caused and will continue to cause irreparable
 23 harm and damage to Lucky 13, and have caused and will continue to cause
 24 Lucky 13 monetary damage in an amount not yet determined, for which Lucky 13
 25 is entitled to, including restitution and attorneys' fees and costs under California
 26 Business and Professions Code §§ 17200 *et seq.*

27 79. Defendants' infringement of Lucky 13's intellectual property
 28 described herein constitutes "unlawful, unfair or fraudulent business act[s] or

practice[s] and unfair, deceptive, untrue or misleading advertising" within the meaning of California Business and Professions Code §17200.

80. As a consequence of Defendants' actions, Lucky 13 is entitled to injunctive and monetary relief under California Business and Professions Code §§ 17200 *et seq.*

FIFTH CLAIM FOR RELIEF

(Common Law Misappropriation)

81. Lucky 13 hereby re-alleges and incorporates by reference each of the allegations from Paragraph Nos. 1 through 80 hereof as if fully stated herein.

82. Lucky 13 has invested substantial time, man-hours, resources and money in adopting, developing and using the LUCKY 13® trademarks (“Investment Capital”), and the Federally registered and incontestable LUCKY 13® trademarks are Lucky 13’s property.

83. In committing the acts of trademark infringement and unfair competition as alleged herein, Swift has misappropriated and taken without permission Lucky 13's property and converted it to its own use for its own benefit.

84. Lucky 13 is informed and believes, and on that ground alleges, that by misappropriating and converting Lucky 13's property, Swift has benefited greatly and illegitimately by using the LUCKY 13® trademarks to offer its "Lucky 13" apparel and related goods for sale without having to make a substantial investment of its own Investment Capital.

85. Swift's acts constitute common-law misappropriation under the common law of the State of California.

86. Swift has been and will continue to be unjustly enriched by its acts of misappropriation, unless enjoined.

87. The foregoing acts of Swift have injured and will continue to injure Lucky 13 by depriving it of sales of its genuine LUCKY 13® Goods and by

1 | injuring its business reputation and goodwill, all in violation of the common law of
2 | the State of California.

3 88. Swift's acts have caused and will continue to cause irreparable harm
4 and damage to Lucky 13, and have caused and will continue to cause Lucky 13
5 monetary damage to Lucky 13 in an amount thus far not determined, for which
6 Lucky 13 is entitled to its actual damages, Swift's profits, punitive damages,
7 attorney fees and costs.

89. Lucky 13 has no adequate remedy at law.

PRAYER FOR RELIEF

10 WHEREFORE, Plaintiffs pray for the following relief:

11 A. A determination that Swift's conduct infringes Lucky 13's Federally
12 registered and incontestable LUCKY 13® trademarks, falsely designates the origin
13 of Swift's "Lucky 13" apparel, falsely describes such apparel, and unfairly
14 competes with Lucky 13, all in violation of Lanham Act §§43(a) and 32, 15 U.S.C.
15 §1125, and 15 U.S.C. §1114 *et seq.*

16 B. A determination that Swift's conduct infringes Lucky 13's Federally
17 registered and incontestable LUCKY 13® trademarks and unfairly competes with
18 and misappropriates the property of Lucky 13 under California Business and
19 Professions Code §§ 17200 *et seq.* and the common law of the State of California.

20 C. That Swift and its agents, officers, directors, servants, employees,
21 attorneys, its successors and assignees, and all others in active concert or
22 participation with Swift be preliminarily and permanently enjoined from directly or
23 indirectly:

1 or words, trademark, service mark, trade name, trade dress or other business
2 or commercial designation or any logo, symbol or design;

3 ii. Committing any act which, in and of itself, or from the manner
4 or under the circumstances in which it is done amounts to false designation
5 of origin, false description or false representation of Swift's "Lucky 13"
6 apparel and other goods; and,

7 iii. Otherwise unfairly competing with Lucky 13 or
8 misappropriating Lucky 13's intellectual property, including, but not limited
9 to Lucky 13's Federally registered and incontestable LUCKY 13®
10 trademarks.

11 D. That the Court issue an Order directing Swift to file with the Court
12 and serve on Lucky 13, within thirty days after the service on Swift of such
13 injunctions, a report in writing and under oath, setting forth in detail the manner
14 and form in which Swift has complied with the injunction.

15 E. That the Court award judgment in favor of Lucky 13 for the amount
16 of either damages sustained by Lucky 13 or the profits made by Swift as a result of
17 Swift's wrongful conduct, whichever amount is greater, and damages in an amount
18 necessary for Lucky 13 to conduct corrective advertising to eliminate the confusion
19 caused by Swift's wrongful acts.

20 F. That the Court award judgment in favor of Lucky 13 in the amount
21 of treble damages under 15 U.S.C. §1117, plus prejudgment interest.

22 G. That the Court award judgment against Swift for the full costs of this
23 action, including reasonable attorneys' fees.

24 H. That the Court award to Lucky 13 punitive damages sufficient to deter
25 Swift from committing such willful acts of infringement in the future.

26 I. That the Court award interest on all amounts found to be due to Lucky
27 13 from Swift, at the prevailing rate, from the date said amounts or any part thereof
28 became or become due.

1 J. That the Court require Swift to notify its parent, subsidiaries, affiliated
2 companies, commercial associates, dealers, dealer advertising associations,
3 advertising agencies, suppliers and customers of said Order.

4 K. That the Court order such other, further and different relief as the
5 nature of this action may require and that the Court deems just and proper.

6 L. That the Court retain jurisdiction of this action for the purpose of
7 enabling Lucky 13 to apply to the Court, at any time, for such further orders as
8 may be necessary or appropriate for the interpretation or execution of any order
9 entered in this action, for the modification of any such order, for the enforcement
10 or compliance therewith, and for the punishment of any violations thereof.

11
12 DATED: May 20, 2014

STRADLING YOCCA CARLSON
& RAUTH, P.C.

13
14
15 By: s/ Justin E. Klaeb
16 Mark L. Skaist
17 Justin E. Klaeb
18 Attorneys for Plaintiffs,
19 BLUE SPHERE, INC. doing business
20 as LUCKY 13 and ROBERT A.
21 KLOETZLY

JURY DEMAND

Plaintiffs, Blue Sphere, Inc. doing business as Lucky 13 and Robert A. Kloetzly hereby demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on each cause of action asserted in its Complaint that is triable by jury.

DATED: May 20, 2014

STRADLING YOCOA CARLSON
& RAUTH, P.C.

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