

1 GINA L. DURHAM (Bar No. 295910)
gina.durham@dlapiper.com
2 DLA PIPER LLP (US)
555 Mission Street, Suite 2400
3 San Francisco, California 94105-2933
Tel: 415.836.2500
4 Fax: 415.836.2501

5 Tamar Y. Duvdevani (*pro hac vice* pending)
tamar.duvdevani@dlapiper.com
6 Marc E. Miller (*pro hac vice* pending)
marc.miller@dlapiper.com
7 DLA PIPER LLP (US)
1251 Avenue of the Americas
8 New York, New York 10020-1104
Tel: 212.335.4500
9 Fax: 212.335.4501

10 Ryan Compton (*pro hac vice* pending)
ryan.compton@dlapiper.com
11 James Stewart (*pro hac vice* pending)
james.stewart@dlapiper.com
12 DLA PIPER LLP (US)
500 Eight Street, NW
13 Washington, D.C. 20004
14 Tel: 202.799.4000
15 Fax: 202.799.5000

16 *Attorneys for Plaintiff*
Dr. Seuss Enterprises, L.P.

17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA
19

20 DR. SEUSS ENTERPRISES, L.P., a
California limited partnership,

21 Plaintiff,

22 v.

23 COMICMIX LLC, a Connecticut limited
24 liability company; MR. GLENN
25 HAUMAN, an individual; MR. DAVID
26 JERROLD FRIEDMAN A/K/A DAVID
GERROLD, an individual; and MR. TY
TEMPLETON, an individual,

27 Defendants.
28

CASE NO.:

COMPLAINT FOR:

- 1. **COPYRIGHT INFRINGEMENT;**
- 2. **TRADEMARK INFRINGEMENT;**
AND
- 3. **UNFAIR COMEPTITION**

DEMAND FOR JURY TRIAL

1 Plaintiff Dr. Seuss Enterprises, L.P. (“DSE”), by its attorneys, DLA Piper LLP (US),
2 brings this action for copyright infringement, trademark infringement, and unfair competition
3 against defendants ComicMix LLC (“ComicMix”), Mr. David Jerrold Friedman a/k/a David
4 Gerrold (“Gerrold”), Mr. Ty Templeton (“Templeton”), and Mr. Glenn Hauman (“Hauman”)
5 (collectively, “Defendants”), and by and for their Complaint (the “Complaint”) alleges as follows:

6 NATURE OF THE ACTION

7 1. This is an action for: (a) infringement of registered copyrights in violation of the
8 Copyright Act (17 U.S.C. § 101 *et seq.*); (b) unfair competition and passing off in violation of 15
9 U.S.C. § 1125(a); and (c) violation of California Business and Professions Code Section 17200,
10 arising out of Defendants’ unauthorized exploitation of the works of Theodor S. Geisel, better
11 known under his pseudonym, “Dr. Seuss,” one of the most successful children’s books authors
12 and illustrators of all time. Generations of children, and adults, around the world have been
13 entertained and instructed by Dr. Seuss’s whimsical stories, unique poetry and drawing style, and
14 beloved characters. Plaintiff DSE owns the intellectual property, including copyrights and
15 trademarks, in these treasured works—which includes nearly 60 books published over more than
16 a half-century—and it continues to produce new original content, including books, animated and
17 live-action television and film adaptations, theatrical and other works.

18 2. Defendants have created, without DSE’s authorization, a book entitled, “Oh, The
19 Places You’ll Boldly Go!” (the “Infringing Work”), and have solicited investors to finance their
20 mass production and distribution efforts for the Infringing Work. The Infringing Work infringes
21 DSE’s works by using innumerable copyrighted elements of several well-known Dr. Seuss works,
22 including the works’ settings, illustrations, characters, prose, and themes. The Infringing Work
23 unabashedly misappropriates DSE’s intellectual property to create the “look and feel” of an
24 authorized Dr. Seuss work. Upon information and belief, Defendants have raised nearly \$30,000
25 so far to produce the Infringing Work, and have agreed to a publishing deal, intending to print and
26 ship thousands of copies of the Infringing Work in time for the upcoming holiday season. Upon
27 information and belief, Defendants have already distributed portions of the Infringing Work
28 online in connection with their fundraising efforts. Defendants, via the Infringing Work, not only

1 appropriate without authorization and blatantly infringe DSE’s valuable copyrights in the Dr.
2 Seuss works, but also mislead and deceive or are likely to mislead or deceive the public as to the
3 Infringing Work’s source. Unless enjoined, Defendants will cause irreparable injury to DSE’s
4 goodwill, identity, and reputation, for which DSE has no adequate remedy at law.

5 **THE PARTIES**

6 3. Plaintiff DSE is a California limited partnership which owns the copyrights and
7 trademarks, and all related rights to the characters, illustrations and words of the works of
8 Theodor S. Geisel, the author and illustrator of the well-known children’s educational books
9 written under the pseudonym “Dr. Seuss.”

10 4. Upon information and belief, defendant ComicMix is a limited liability company
11 organized and existing under the laws of the State of Connecticut with its principal place of
12 business located at 304 Main Avenue, Suite 194, Norwalk, Connecticut 06851, and is doing
13 business in and with the State of California as a publisher and distributor of books, e-books, and
14 webcomics. Upon information and belief, defendant ComicMix markets, and intends to sell,
15 reproduce, and distribute, the Infringing Work throughout the United States, on the Internet, and
16 in the State of California.

17 5. Upon information and belief, defendant Hauman is an individual who resides in
18 the State of New Jersey and is the Co-founder, Vice President, Operations and Production
19 Manager of defendant ComicMix, and is doing business in and with the State of California. Upon
20 information and belief, defendant Hauman is the editor of the Infringing Work. Upon
21 information and belief, defendant Hauman intends to sell, reproduce, and distribute, the
22 Infringing Work throughout the United States, on the Internet, and in the State of California.

23 6. Upon information and belief, defendant Gerrold is an individual who resides in the
24 State of California. Upon information and belief, defendant Gerrold is a co-author of the
25 Infringing Work. Upon information and belief, defendant Gerrold intends to sell, reproduce, and
26 distribute, the Infringing Work throughout the United States, on the Internet, and in the State of
27 California.

28 7. Upon information and belief, defendant Templeton is an individual who resides in

1 Toronto, Ontario, and is doing business in and with the State of California. Upon information and
2 belief, defendant Templeton is the illustrator of the Infringing Work. Upon information and
3 belief, defendant Templeton intends to sell, reproduce, and distribute, the Infringing Work
4 throughout the United States, on the Internet, and in the State of California.

5 **JURISDICTION AND VENUE**

6 8. This action arises under the Copyright Act of 1976 (17 U.S.C. §§ 101, *et seq.*) and
7 the Federal Trademark Act of 1946, known as the Lanham Act (15 U.S.C. § 1125(a)).

8 9. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C.
9 § 1121, and 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court also has subject matter
10 jurisdiction over DSE’s related claims under state law pursuant to 28 U.S.C. § 1367(a).

11 10. This Court has personal jurisdiction over Defendants pursuant to Cal. Code Civ.
12 Proc § 410.10 because some or all of them reside in this state, because all Defendants conduct
13 continuous, systematic, and routine business within this state and this District, and because all
14 Defendants have personally and intentionally planned, authorized, and facilitated infringing acts
15 that have or will take place in California

16 11. Venue is proper in this District under 28 U.S.C. §§ 1391 (b) and 1400(a) because a
17 substantial part of the events giving rise to DSE’s claims arose in this District and because
18 Defendants reside or may be found in this District.

19 **FACTUAL ALLEGATIONS**

20 **A. The Dr. Seuss Intellectual Property**

21 12. Theodor S. Geisel, under the pseudonyms Dr. Seuss and Theo LeSeig, began
22 writing and illustrating children’s books at least as early as 1937. Between 1937 and 1990,
23 Theodor S. Geisel wrote, illustrated, and published almost 60 Dr. Seuss and LeSeig books. After
24 Theodor S. Geisel’s death in 1991, DSE published additional Dr. Seuss books written and
25 illustrated by Theodor S. Geisel. Most of the Dr. Seuss books were written to entertain children,
26 but more importantly, to promote and stimulate children’s love of reading and literary skills.

27 13. Theodor S. Geisel authored the Dr. Seuss books in simple, rhyming, repetitive
28 prose, accompanied by his descriptions and illustrations of characters that are distinctive,

1 recognizable, and appealing to children. The Dr. Seuss characters are often zany animals with
2 human-like characteristics. The Dr. Seuss books are set in distinctive, whimsical and fantastical
3 landscapes and created in a style unique to Dr. Seuss that makes them immediately recognizable
4 as Dr. Seuss works.

5 14. The Dr. Seuss books are iconic, and among the most popular children's books of
6 all time. The Dr. Seuss books have topped many bestseller lists, sold over 650 million copies
7 worldwide, and been translated into more than a dozen languages. Children around the world
8 read the Dr. Seuss books, and parents and educators worldwide use the Dr. Seuss books to
9 motivate children, teach community values, and enhance literacy.

10 15. The Dr. Seuss books and the Dr. Seuss characters are widely-known and
11 recognized throughout the world. Some of the most well-known Dr. Seuss books, for example,
12 are: *Oh, the Places You'll Go!*; *The Cat in the Hat*; *Horton Hears a Who*; *How the Grinch Stole*
13 *Christmas!*; *The Lorax*; *One Fish Two Fish Red Fish Blue Fish*; *Green Eggs and Ham*; *Yertle the*
14 *Turtle*; *Fox in Socks*; and *The Sneetches and Other Stories*.

15 16. The Dr. Seuss books and characters are original works of authorship and constitute
16 copyrightable subject matter under the Copyright Act, 17 U.S.C. §§ 101, *et seq.* The Dr. Seuss
17 books and characters are duly registered for copyright with the United States Copyright Office.
18 These copyright registrations are perfected and, where appropriate, have been renewed with the
19 United States Copyright Office and all registrations are in full force. The United States Copyright
20 Office has issued Certificates of Registration for these works that bear the numbers identified in
21 Appendix A (collectively, the "Dr. Seuss Copyrighted Works"). DSE is the owner of all of these
22 registrations and rights, by assignment.

23 17. In addition, DSE is the owner of trademark rights in multiple aspects of Dr. Seuss
24 goods that function, individually and collectively, as indicators of source, and make those goods
25 immediately recognizable as deriving from Dr. Seuss. With respect to this litigation, those
26 aspects include in relevant part: (1) the title OH, THE PLACES YOU'LL GO!; (2) the stylized
27 font used consistently throughout Dr. Seuss books, and (3) the unique illustration style of the
28 characters and backgrounds found throughout Dr. Seuss books (collectively, the "Dr. Seuss

1 Marks”) (the “Dr. Seuss Marks,” together with “The Dr. Seuss Copyrighted Works,” are referred
2 to collectively as the “Dr. Seuss Intellectual Property”). The Dr. Seuss Marks are well-known
3 and recognized worldwide. The Dr. Seuss Marks are distinctive and have acquired secondary
4 meaning in the minds of the public, and are readily associated with Theodor S. Geisel, Dr. Seuss,
5 and DSE. As the owner of the Dr. Seuss Marks, DSE enjoys extensive goodwill associated
6 therewith.

7 **B. Defendants’ Infringing Use Of The Dr. Seuss Intellectual Property**

8 18. Upon information and belief, Defendants’ Infringing Work is a book which
9 purports to be an amalgamation of the Dr. Seuss works and certain characters, imagery, and other
10 elements from *Star Trek*, the well-known science fiction entertainment franchise created by Gene
11 Roddenberry.

12 19. Upon information and belief, defendant Gerrold authored the text of the Infringing
13 Work and has a meaningful role in its promotion and sale.

14 20. Upon information and belief, defendant Templeton illustrated the Infringing Work
15 and has a meaningful role in its promotion and sale.

16 21. Upon information and belief, defendant Hauman edited the Infringing Work and
17 has a meaningful role in its promotion and sale.

18 22. Upon information and belief, defendant ComicMix is publishing, distributing,
19 promoting, and marketing the Infringing Work.

20 23. Upon information and belief, when Defendants wrote, illustrated, and edited the
21 Infringing Work, and at all times relevant to this action, Defendants had access to and copied the
22 Dr. Seuss Copyrighted Works.

23 24. At all times relevant to this action, Defendants have acted without authorization or
24 license from DSE.

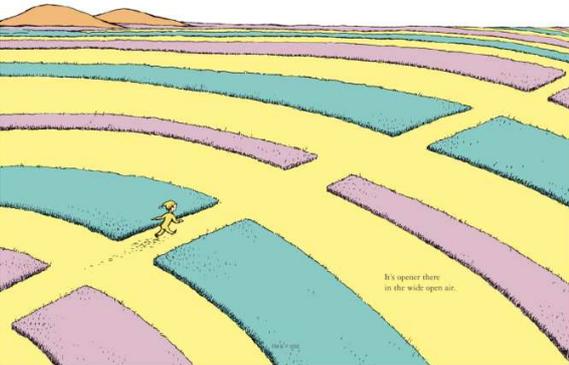
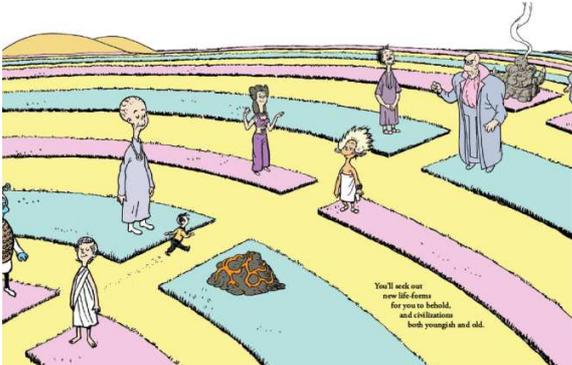
25 25. At all times relevant to this action, Defendants have acted without authorization or
26 license from the owner of the intellectual property in *Star Trek*.

27 26. Defendants have misappropriated many of the most recognizable protected
28 elements of the Dr. Seuss Copyrighted Works into the Infringing Work, including making

1 wholesale slavish copies of the Dr. Seuss Copyrighted Works’ distinctive illustrations and text.
 2 The Infringing Work misappropriates key protected elements of *Oh, The Places You’ll Go!*,
 3 including without limitation its title, story arc, characters, and illustrations. The Infringing Work
 4 also misappropriates key protected elements of *Horton Hears a Who*, *How the Grinch Stole*
 5 *Christmas!*, *The Lorax*, and *The Sneetches and Other Stories*, including without limitation
 6 characters and illustrations therefrom.

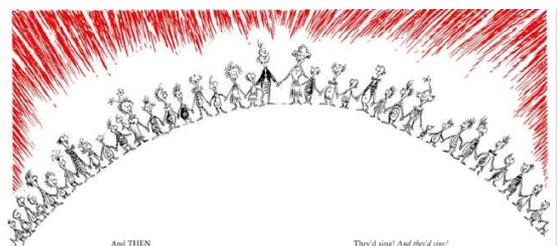
7 27. Defendants have also misappropriated and, without permission, used many of the
 8 Dr. Seuss Marks in the Infringing Work.

9 28. Set forth below are several examples, among many, of Defendant’s slavish
 10 copying of the Dr. Seuss Copyrighted Works, which attempt to recreate entire pages from the Dr.
 11 Seuss Books with meticulous precision, and thereby infringe both copyrights owned by DSE and
 12 the Dr. Seuss Marks:

<u>Dr. Seuss Work</u>	<u>Infringing Work</u>
	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dr. Seuss Work



And THEN
They'd do something
He think none of 'em!
Every Who down in Whoville, the tall and the small,
Would stand close together, with Christmas bells ringing.
They'd stand hand-in-hand. And the Who would start singing!

They'd sing! And they'd sing!
AND they'd SING! SING! SING! SING!
And the more the Grinch thought of this Who Christmas-Sing,
The more the Grinch thought, "I must stop this whole thing!
"Why, for fifty-three years I've put up with it now!
"I MUST stop this Christmas from coming!
... But HOW?"

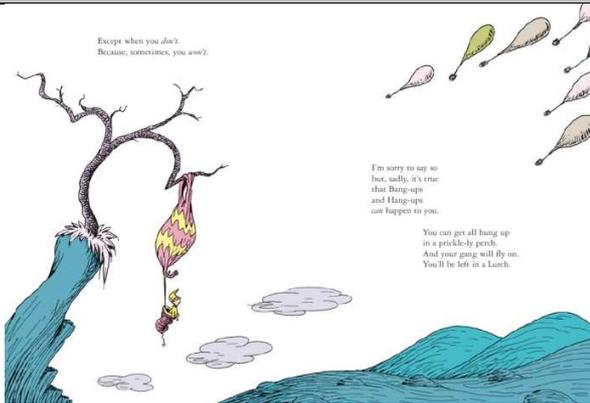
Infringing Work



You'll make lifelong friends. You'll love them like brothers.
(Even when they cannot stand one another.)
You'll encounter lovers of every hue
(though they'll never be back for an episode two).

Wind things will happen,
and usually do,
to scratchy explorers
and their marvellous crew.

Dr. Seuss Work

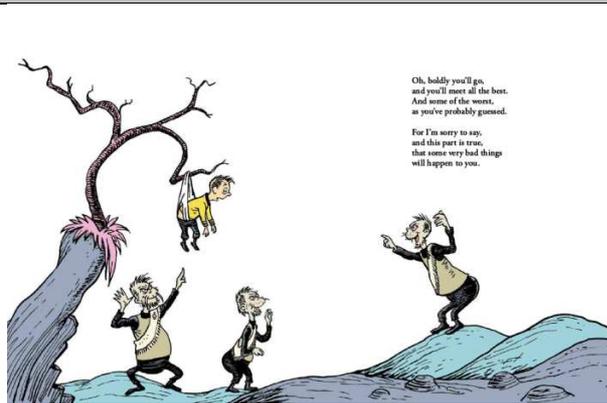


Except when you die?
Because, sometimes, you *are*?

I'm sorry to say so
but, sadly, it's true
that Hang-ups
and Hang-ups
can happen to you.

You can get all hung up
in a prickly-by perch.
And your gang will fly on.
You'll be left in a lurch.

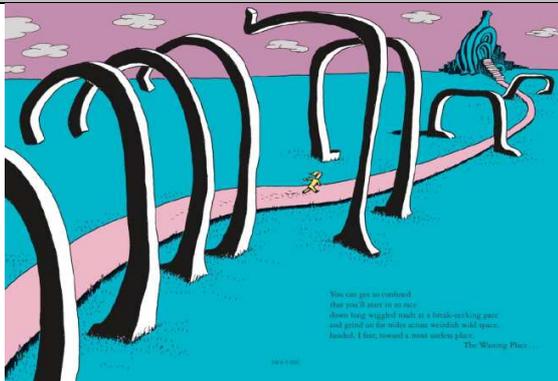
Infringing Work



Oh, holdly you'll go,
and you'll meet all the best,
And some of the worst,
as you've probably guessed.

For I'm sorry to say,
and this part is true,
that some very bad things
will happen to you.

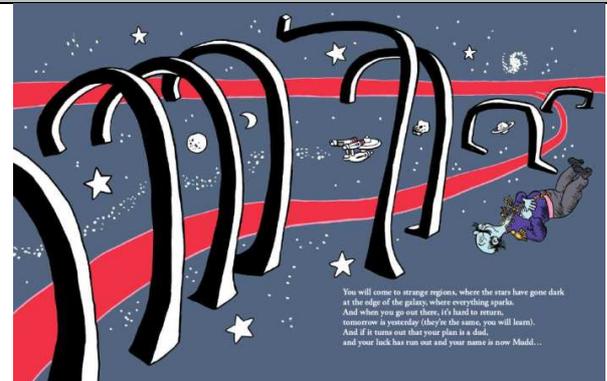
Dr. Seuss Work



You can get so confused
that you'll start to see stars.
When they suggest to you a think-out-thin game,
and you go on for miles across beautiful, wild, open
lands, I fear toward a new surface place.

The Writing Place

Infringing Work



You will come to strange regions, where the stars have gone dark
at the edge of the galaxy, where everything sparks.
And when you go out there, it's hard to return,
tomorrow is yesterday (they're the same, you will learn).
And if it turns out that your plans is a dud,
and your luck has run out and your name is now Mudd...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dr. Seuss Work

...for people just waiting.
Waiting for a train to go
or a bus to come, or a plane to go
or the mail to come, or the train to go
or the phone to ring, or the snow to stop
or waiting around for a 'No or No'
or waiting for their hair to grow.
Everyone is just waiting.

Waiting for the fish to bite
or waiting for wind to fly a kite
or waiting around for Friday night
or waiting, perhaps, for their Uncle Jake
or a pot to boil, or a Better Break,
or a string of pearls, or a pair of pants
or a wig with curls, or Another Chance.
Everyone is just waiting.

Infringing Work

...you may find yourself aging, deadly years fly,
with time moving past in the wink of an eye.
You might fall in love from a prince's tears,
or fight some fierce creatures who live off your fears.

But when things all get scary,
don't worry, don't flee.
For as you believe, so shall you do.
You are the bravest in all of the fleet.
Do you go forward or do you retreat?

Dr. Seuss Work

Then, quickly, Sylvester McMonkey McBean
Put together a very peculiar machine.
And he said, "You want stam like a Star-Belly Sneetch ... ?
My friends, you can have them for three dollars each!"

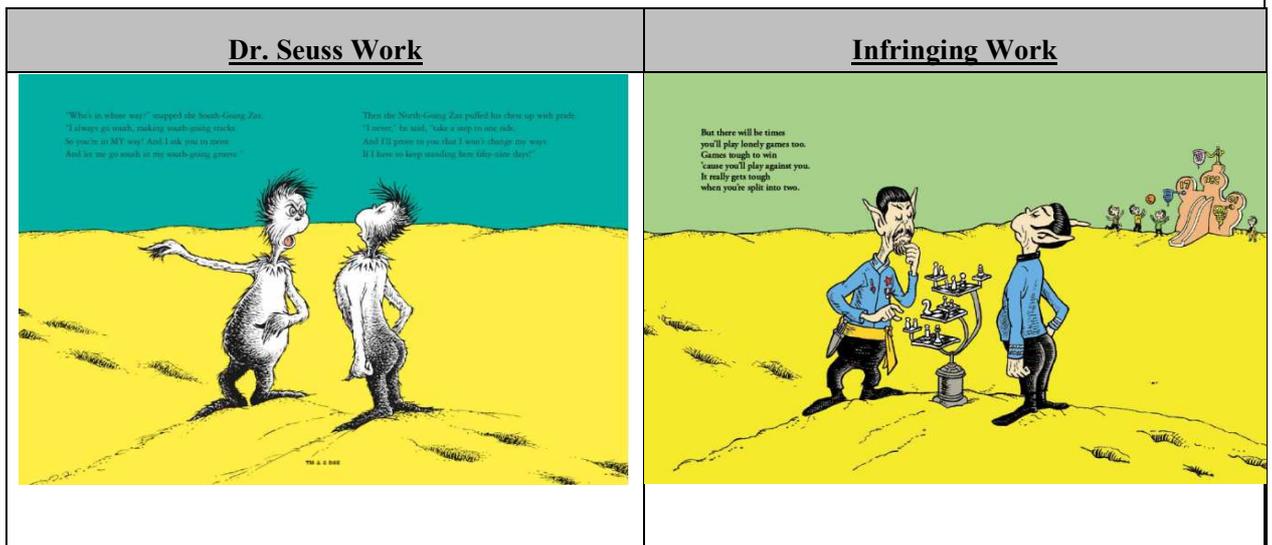
"Just pay me your money and hop right aboard!"
So they clambered inside. Then the big machine roared!
And it klunked. And it boinked. And it jerked. And it beeked.
And it bopped them about. But the thing really worked!
When the Plain-Belly Sneetches popped out, they had stars!
They actually did. They had stars upon their heads!

Infringing Work

You can get out of trouble, say that's knotty,
because in a pinch you'll be beamed out by Scooty.

(Assuming, of course, you're in transporter range.
These are the physics, they can't be changed.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



29. Defendants have willfully misappropriated and used the Dr. Seuss Marks in the Infringing Work with the intent to commercially benefit from the popularity and extensive goodwill associated with the Dr. Seuss Marks.

30. Defendants deliberately wrote and illustrated the Infringing Work with the intention of imitating the Dr. Seuss Marks, and creating confusion in the minds of the relevant public as to the origin of the Infringing Work and/or deceiving the public as to Dr. Seuss’s approval or licensing of the Infringing Work.

31. Defendants, without permission, have willfully copied many elements of the Dr. Seuss books that are protected by the copyrights owned by DSE, and intend to further infringe those copyrights by acts of reproduction, distribution, display, and unauthorized creation of derivative works.

32. It is not uncommon for DSE to license the Dr. Seuss Intellectual Property in connection with the creation of new works based upon, and incorporating, the Dr. Seuss Intellectual Property. Such licensing activities have included collaborations with other rights holders. Here, however, Defendants created the Infringing Work without license or authorization from DSE, and thereby usurped DSE’s licensing opportunities.

33. As a result of Defendants’ aforementioned use of the Dr. Seuss Marks in the Infringing Work, the relevant universe of consumers, including potential purchasers of books in

1 the State of California, are likely to be misled and confused as to the nature, origin, and
2 sponsorship of the Infringing Work, and are likely to form the false impression that the Infringing
3 Work has been authored, approved, licensed, sponsored, endorsed, guaranteed by, or is in some
4 way affiliated with Theodor S. Geisel, Dr. Seuss, DSE, and the Dr. Seuss Marks.

5 34. Upon information and belief, defendants have been running a campaign to fund
6 printing and distribution of the Infringing Work on Kickstarter, <www.kickstarter.com>, a
7 crowdfunding website where parties can raise money for various projects. The Kickstarter page
8 reproduced pages from the Infringing Work.

9 35. On its Kickstarter page, Defendants admit that their blatant and willful
10 infringement presents “Risks and challenges” to their project:

11 While we firmly believe that our parody, created with love and
12 affection, fully falls within the boundary of fair use, there may be
13 some people who believe that this might be in violation of their
14 intellectual property rights. And we may have to spend time and
money proving it to people in black robes. And we may even lose
that.

15 36. After learning of Defendants’ unauthorized use and planned uses of the Dr. Seuss
16 Intellectual Property in the Infringing Work, on or about September 28, 2016, the undersigned
17 counsel for DSE sent Defendants a letter asserting DSE’s exclusive rights in the Dr. Seuss
18 Intellectual Property, and stating that Defendants’ use thereof was an infringement of DSE’s
19 rights. The letter demanded that Defendants immediately cease all use of the Dr. Seuss
20 Intellectual Property.

21 37. Defendants did not respond to the September 28, 2016 letter.

22 38. On or about October 7, 2016, the undersigned counsel for DSE sent Defendants an
23 additional letter reiterating its previous demands, and requesting Defendants’ immediate
24 substantive response thereto.

25 39. Defendants did not substantively respond to the October 7, 2016 letter either.

26 40. On or about October 7, 2016, the undersigned counsel for DSE sent a notice,
27 pursuant to 17 U.S.C. § 512(c)(1)(C), to Kickstarter asserting DSE’s exclusive rights in the Dr.
28 Seuss Copyrighted Works, and stating that Defendants’ use thereof was an infringement of DSE’s

1 rights.

2 41. On or about October 7, 2016, Kickstarter disabled access to Defendants'
3 campaign, pursuant to 17 U.S.C. § 512(g).

4 42. On or about October 25, 2016, the undersigned counsel for DSE sent Defendants
5 an additional letter reiterating its previous demands, and requesting Defendants' immediate
6 substantive response thereto.

7 43. On or about October 28, 2016, counsel for Defendant ComicMix sent a letter to
8 the undersigned counsel for DSE responding to DSE's October 7 takedown notice to Kickstarter,
9 refusing DSE's demands to cease all use of the Dr. Seuss Intellectual Property, threatening to
10 pursue claims for tortious interference, unfair business practices, and violations of 17 U.S.C.
11 § 512(f), and advising that Defendants would be sending a counter-notice, pursuant to 17 U.S.C.
12 § 512(g)(3), to Kickstarter to reinstate its campaign.

13 44. On or about October 31, 2016, counsel for Defendant ComicMix sent a counter-
14 notice, pursuant to 17 U.S.C. § 512(g)(3), to Kickstarter.

15 **COUNT I**
16 **Copyright Infringement, 17 U.S.C. § 106**
(Against All Defendants)

17 45. DSE repeats and realleges every allegation in Paragraphs 1 through 44 of its
18 Complaint as if fully set forth herein.

19 46. The Dr. Seuss Copyrighted Works constitute copyrightable subject matter under
20 the Copyright Act, 17 U.S.C. §§ 101, *et seq.* DSE has recorded the copyrights in and to the Dr.
21 Seuss Copyrighted Works with the United States Copyright Office and have complied with all
22 applicable statutory registration and renewal requirements, and with the requirements of 17
23 U.S.C. §411 regarding registration of copyrights preceding an infringement action.

24 47. Upon information and belief, in direct violation of DSE's exclusive rights,
25 Defendants have directly infringed, and unless enjoined by this Court, will continue to infringe
26 the copyrights in the Dr. Seuss Copyrighted Works by, among other things:

- 27 a. Preparing unauthorized derivative works of the Dr. Seuss Copyrighted
28 Works in the form of the Infringing Work;

- 1 b. Reproducing copyrighted elements of the Dr. Seuss Copyrighted Works in
- 2 the Infringing Work;
- 3 c. Distributing copies of the Infringing Work, which contains copyrighted
- 4 elements of the Dr. Seuss Copyrighted Works;
- 5 d. Displaying or causing display of the Infringing Work, which contains
- 6 copyrighted elements of the Dr. Seuss Copyrighted Works.

7 48. As a direct and proximate result of the foregoing acts, DSE has been damaged and
8 has suffered, and will continue to suffer, significant damages, in an amount to be proved at trial.

9 49. Upon information and belief, Defendants have infringed the copyrights in the Dr.
10 Seuss Copyrighted Works with actual or constructive knowledge of DSE's rights such that said
11 acts of copyright infringement were, and continue to be, willful and intentional.

12 50. In addition, Defendants' violations of the Copyright Act have caused and, unless
13 enjoined by this Court, will continue to cause irreparable injury to DSE. DSE is therefore entitled
14 to a preliminary and permanent injunction enjoining and restraining Defendants from infringing
15 the copyrights in the Dr. Seuss Copyrighted Works, including but not limited to continuing to
16 reproduce, distribute, display, market, advertise, promote, produce, sell, or offer for sale the
17 Infringing Work or any works that are derivative of or copied from the Dr. Seuss Copyrighted
18 Works.

19 **COUNT II**
20 **Lanham Act Violation, 15 U.S.C. § 1125(a)**
21 **(Against All Defendants)**

22 51. DSE repeats and realleges every allegation in Paragraphs 1 through 50 of its
23 Complaint as if fully set forth herein.

24 52. The Dr. Seuss Marks are distinctive and have acquired secondary meaning in the
25 minds of the public, and are associated with Theodor S. Geisel, Dr. Seuss, and DSE.

26 53. Defendants' use of the Dr. Seuss Marks and any colorable imitation of DSE's Dr.
27 Seuss Marks in the Infringing Works, is a use in commerce of any word, term, name, symbol, or
28 device, or combination thereof, and a false designation of origin, which is likely to cause
confusion or mistake in the public mind or to deceive the public, as to the affiliation, connection

1 or association of Defendants with Theodor S. Geisel, Dr. Seuss, and DSE, or as to the origin,
2 sponsorship, or approval of Defendants' goods, services, or commercial activities by DSE.

3 54. Defendants' acts constitute false designation of origin, false endorsement, and
4 unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A).

5 55. As a direct and proximate result of the foregoing acts, DSE has been damaged and
6 has suffered, and will continue to suffer, significant damages, in an amount to be proved at trial.

7 56. Defendants' conduct has been intentional and willful and is calculated specifically
8 to trade off the goodwill that DSE has developed in its Dr. Seuss Marks. Pursuant to 15 U.S.C.
9 § 1117(a), DSE is entitled to recover its reasonable attorneys' fees incurred in this action.

10 57. In addition, Defendants' violations of 15 U.S.C. § 1125(a) have caused and, unless
11 enjoined by this Court, will continue to cause irreparable injury to DSE's goodwill, business
12 identity and reputation. DSE is therefore entitled to a preliminary and permanent injunction
13 enjoining and restraining Defendants from use of the Infringing Works or any other mark that is
14 confusingly similar to DSE's Dr. Seuss Marks.

15 **COUNT III**
16 **California Statutory Unfair Competition, Business and Professions Code § 17200**
(Against All Defendants)

17 58. DSE repeats and realleges every allegation in Paragraphs 1 through 57 of its
18 Complaint as if fully set forth herein.

19 59. DSE is the exclusive owner of the common law trademark rights in the Dr. Seuss
20 Marks. No license or authorization has been granted to Defendants to use any of these marks, or
21 variations thereon.

22 60. Defendants, with full knowledge of the public awareness and value of the Dr.
23 Seuss Marks, have traded on the goodwill associated with them and have misled and will
24 continue to mislead the public into assuming a connection between DSE and the Infringing Work
25 by Defendants' continued use of the Dr. Seuss Marks, even though such use is not authorized by
26 DSE.

27 61. By falsely suggesting a connection with or sponsorship by DSE, Defendants' use
28 of the Dr. Seuss Marks has caused and is likely to cause public confusion constituting unfair

1 competition within the meaning of California Business and Professions Code Section 17200 *et*
2 *seq.*

3 62. In addition, Defendants' violations of California Business and Professions Code
4 Section 17200 *et seq.* have caused and, unless enjoined by this Court, will continue to cause
5 irreparable injury to DSE's goodwill, business identity and reputation. DSE is therefore entitled
6 to a permanent injunction enjoining and restraining Defendants from use of the Infringing Works
7 or any other mark that is confusingly similar to DSE's Dr. Seuss Marks.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, DSE requests that the Court grant the following relief:

10 A. A judgment against Defendants, determining and adjudging:

- 11 1. that Defendants have willfully infringed and are infringing copyrights in
12 the federally registered Dr. Seuss Copyright Works under 17 U.S.C. § 106;
13 2. that Defendants have willfully committed and are committing acts of false
14 designation of origin, false or misleading description of fact, or false or
15 misleading representation in violation of DSE's rights under 15 U.S.C.
16 § 1125(a) and California state law;
17 3. that Defendants have willfully and deliberately competed unfairly with
18 DSE in violation of DSE's rights under 15 U.S.C. § 1125(a) and California
19 state law;

20 B. An Order preliminarily and permanently enjoining Defendants, their officers,
21 agents, representatives, servants, employees, attorneys, successors and assigns, and all others in
22 active concert or participation with Defendants from:

- 23 1. infringing the copyrights in the Dr. Seuss Copyrighted Works, including
24 but not limited to continuing to reproduce, distribute, display, market,
25 advertise, promote, produce, sell, or offer for sale the Infringing Work or
26 any works that are derivative of or copied from the Dr. Seuss Copyrighted
27 Works;

- 1 2. manufacturing, assembling, producing, distributing, offering for
2 distribution, circulating, selling, offering for sale, advertising, importing,
3 promoting, or displaying any simulation, reproduction, counterfeit, copy, or
4 colorable imitation of the Dr. Seuss Marks or any mark confusingly similar
5 thereto;
- 6 3. using any false designation of origin or false description or statement
7 which can or is likely to lead the public or individuals, erroneously to
8 believe that the Infringing Work has been provided, produced, distributed,
9 offered for distribution, circulation, sold, offered for sale, imported,
10 advertised, promoted, displayed, licensed, sponsored, approved, or
11 authorized by or for DSE, when such is not true in fact;
- 12 4. engaging in any other activity constituting an infringement of the Dr. Seuss
13 Intellectual Property, or of DSE's rights in, or right to use or to exploit the
14 Dr. Seuss Intellectual Property; and
- 15 5. assisting, aiding, or abetting any other person or business entity in
16 engaging in or performing any of the activities referred to in subparagraphs
17 (1) through (4) above.

18 C. An award to DSE, at its election prior to entry of final judgment, of statutory
19 damages of up to \$150,000 for each separate Dr. Seuss Copyrighted Work infringed, for willful
20 infringement pursuant to 17 U.S.C. § 504(c), or DSE's actual damages sustained as a result of
21 Defendants' acts of copyright infringement according to proof and Defendants' profits obtained
22 as a result of their acts of copyright infringement according to proof;

23 D. An Order requiring Defendants to account and pay over to DSE all gains, profits,
24 and advantages derived by them as a result of its infringement of the Dr. Seuss Marks to the full
25 extent provided for by Section 35 of the Lanham Act, 15 U.S.C. § 1117;

26 E. An award to DSE of such damages as it has sustained by reason of Defendants'
27 infringement of the Dr. Seuss Marks; and that, because of the willful nature of said infringement,

28

1 the Court enter judgment for DSE for three times of the amount of said damages, pursuant to
2 Section 35 of the Lanham Act, 15 U.S.C. § 1117;

3 F. An award to DSE of its costs and expenses incurred in the investigation and
4 prosecution of this action, including reasonable attorneys’ fees, pursuant to 17 U.S.C. § 505 and
5 Section 35 of the Lanham Act, 15 U.S.C. § 1117; and

6 G. Such other and further relief as the Court deems just and proper.

7

8 Dated: November 10, 2016

9

DLA PIPER LLP (US)

10 Of Counsel:

/s/ Gina Durham

11 Tamar Y. Duvdevani (*pro hac vice* pending)

GINA L. DURHAM (Bar No. 295910)

12 Marc E. Miller (*pro hac vice* pending)

555 Mission Street, Suite 2400

13 DLA PIPER LLP (US)

San Francisco, California 94105-2933

14 1251 Avenue of the Americas

Tel: 415.836.2500

15 New York, New York 10020-1104

Fax: 415.836.2501

16 Tel: 212.335.4500

17 Fax: 212.335.4501

Attorneys for Plaintiff

Dr. Seuss Enterprises, L.P.

18 Ryan Compton (*pro hac vice* pending)

19 James Stewart (*pro hac vice* pending)

20 DLA PIPER LLP (US)

21 500 Eight Street, NW

22 Washington, D.C. 20004

23 Tel: 202.799.4000

24 Fax: 202.799.5000

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

DSE hereby demands a trial by jury on all issues and claims so triable.

Dated: November 10, 2016

DLA PIPER LLP (US)

Of Counsel:

/s/ Gina Durham

Tamar Y. Duvdevani (*pro hac vice* pending)
Marc E. Miller (*pro hac vice* pending)
DLA PIPER LLP (US)
1251 Avenue of the Americas
New York, New York 10020-1104
Tel: 212.335.4500
Fax: 212.335.4501

GINA L. DURHAM (Bar No. 295910)
555 Mission Street, Suite 2400
San Francisco, California 94105-2933
Tel: 415.836.2500
Fax: 415.836.2501

*Attorneys for Plaintiff
Dr. Seuss Enterprises, L.P.*

Ryan Compton (*pro hac vice* pending)
James Stewart (*pro hac vice* pending)
DLA PIPER LLP (US)
500 Eight Street, NW
Washington, D.C. 20004
Tel: 202.799.4000
Fax: 202.799.5000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX A: COPYRIGHTED DR. SEUSS WORKS

1. *How the Grinch Stole Christmas!*, U.S. Copyright Registration No. A 312043, Renewal Registration No. RE 238319.
2. *The Lorax*, U.S. Copyright Registration No. A 301289, Renewal Registration No. RE 805038.
3. *Horton Hears a Who*, U.S. Copyright Registration No. A 152927, Renewal Registration No. RE 115184.
4. *The Sneetches and Other Stories*, U.S. Copyright Registration No. A 543386, Renewal Registration No. RE 425704.
5. *Oh, the Places You'll Go!*, U.S. Copyright Registration No. VA-430950.