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9 YIGAL MESIKA

10 **THE UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 YIGAL MESIKA, an individual

14 Plaintiff,

15 vs.

16 PENGUIN MAGIC, INC., a Nevada
17 corporation, DOES 1-10, inclusive,

18 Defendants

) Case No.:

) **COMPLAINT FOR:**

-) **1) FEDERAL TRADEMARK INFRINGEMENT;**
-) **2) LANHAM ACT UNFAIR COMPETITION;**
-) **3) CALIFORNIA UNFAIR TRADE PRACTICES ACT;**
-) **4) FALSE OR MISLEADING STATEMENTS WHEN ADVERTISING ONE’S GOODS**

) **DEMAND FOR JURY TRIAL**

19 **COMPLAINT**

20 Plaintiff YIGAL MESIKA (“Mesika” or “Plaintiff”) alleges the following facts
21 upon actual knowledge with respect to himself and his own acts and upon information
22 and belief as to the actions of Defendant PENGUIN MAGIC, INC., a Nevada
23 corporation (“Penguin Magic” or “Defendant”) and DOES 1-10 (collectively,
24 “Defendants”), complains and alleges as follows:
25

1 **I. THE PARTIES**

2 1. Mesika is an individual, domiciled in, and a resident of, Los Angeles,
3 California.

4 2. On information and belief, Defendant Penguin Magic is a Nevada
5 corporation, having its principal place of business at 1585 Heather Oaks Way, North
6 Las Vegas, Nevada 89031. Upon further information and belief Penguin Magic
7 maintains an agent for service of process, Acar Altinsel, with the address for service of
8 process at 3299 Monier Circle, Unit A, Rancho Cordova, California 95742. Upon still
9 further information and belief Acar Altinsel is president and treasurer of the Defendant
10 corporation, with an address of record of P.O. Box 335460, North Las Vegas, Nevada
11 89033.

12 3. Plaintiff is informed and believes, and on that basis alleges, Penguin
13 Magic, and each of the DOE defendants (collectively “Defendants”) is responsible in
14 some manner for the events, occurrences and happenings herein referred to, either
15 contractually or tortiously, and each singly or together caused the damage to the
16 Plaintiff as herein alleged.

17 4. Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants, and each of them, at all relevant times were and are the agents, employees,
19 partners, joint venturers, owners, principals, employers or other representatives of each
20 and every other defendant, and in doing the things hereinafter alleged, were acting
21 within the course and scope of such agency, employment, partnership, joint venture,
22 representation, or ownership. Plaintiff is further informed and believes, and based
23 thereon allege, that the acts and conduct herein alleged of each such defendant were
24 known to, authorized by, consented to or ratified by the other remaining defendants
25 and each of them.

1 **II. JURISDICTION AND VENUE**

2 5. This Court has subject matter jurisdiction over this matter pursuant to: 28
3 U.S.C. §§ 1331 and 1338(a), (b) for claims arising under the trademark laws of the
4 United States, 15 U.S.C. §§ 1051, *et seq.* and 1125. This Court has jurisdiction under
5 28 U.S.C. § 1332 as the controversy exceeds the sum of \$75,000, exclusive of interest
6 and costs, and is between Plaintiff who resides in Los Angeles County, California and
7 Defendants, who reside in North Las Vegas, Nevada. Defendants are subject to
8 jurisdiction of this court as Defendants, do business within this judicial district, have
9 committed infringing acts within this district. Pursuant to 28 U.S.C. § 1367,
10 supplemental jurisdiction exists, because the other claims are substantial and are so
11 related to the federal question claims for relief that the claims form part of the same
12 case or controversy under Article III of the United States Constitution.

13 6. This Court has personal jurisdiction over Defendant in this action and
14 venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c) because, as
15 alleged further below: (a) Defendant has intentionally engaged in substantial business
16 within this forum amounting to sufficient minimum contacts, including, but not limited
17 to, the offer for sale and sale of their products and/or services into California and into
18 this district, including the use of the Internet; and (b) a substantial part of the acts or
19 omissions giving rise to the asserted claims occurred or had effects in this judicial
20 district. Venue is proper in this district under 28 U.S.C. § 1391 as Defendant is subject
21 to the personal jurisdiction of the Court situated herein. Defendant maintains
22 continuous and systematic commercial contacts with the State of California by, *inter*
23 *alia*, purposefully availing themselves of the opportunity to conduct commercial
24 activities, and regularly conducting business in the State of California; committing a
25 substantial part of the wrongful acts complained of herein in interstate commerce, in
the State of California, and in this judicial district; and conducting business activities in

1 the State of California by advertising, offering for sale, and selling competing products
2 as complained of herein while actively and continuously soliciting and consummating
3 commercial transactions with California residents.

4 5 **III. GENERAL ALLEGATIONS**

6 7. Mesika is the owner of intellectual property related to, including
7 inventions, patent applications, patents, trademarks, trade secrets, know how, and
8 confidential information relating to magic tricks, demonstrations, instructions, and
9 other means of entertainment.

10 8. Plaintiff markets, distributes, and sells products using such intellectual
11 property rights, including under the trademark LOOPS, which is registered in the U.S.
12 since April 27, 2010 with Registration No. 3,782,721. Plaintiff is the owner of all right,
13 title, and interest in and to United States Trademark Registration No. 3,782,721, for the
14 mark LOOPS as used for “magic tricks.” The LOOPS mark is valid, subsisting, and
15 incontestable. A copy of the registration of Mesika’s trademark LOOPS is attached
16 hereto as Exhibit 1.

17 9. Plaintiff markets, distributes, and sells products under the trademark
18 LOOPS, which is registered in the U.S. since June 14, 2011 with Registration No.
19 3,978,477. Plaintiff is the owner of all right, title, and interest in and to United States
20 Trademark Registration No. 3,978,477, for the mark LOOPS as used for “DVDs
21 featuring magic and levitations.” The LOOPS mark is valid and subsisting. A copy of
22 the registration of Mesika’s trademark LOOPS is attached hereto as Exhibit 2.

23 10. Plaintiff has developed a fine reputation and goodwill at substantial
24 expense associated with his LOOPS trademark and “LOOPS” products, through
25 advertising and marketing goods and services through his website
<http://www.yigalmesika.com/our-products>. Plaintiff also advertises and markets

1 LOOPS products via Amazon at <http://www.amazon.com/Yigal-Mesika-ms03430->
2 [Loops-by/dp/B008Z23Y7Q](http://www.amazon.com/Yigal-Mesika-ms03430-Loops-by/dp/B008Z23Y7Q). Plaintiff also attends trade shows, and participates in
3 various industry associations, including: the Academy of Magical Arts; FISM
4 (Federation Internationale des Societes Magiques); Magic Live; The Magic Café;
5 Genii, The Conjuror's Magazine; Magic Magazine; and EMC (Essential Magic
6 Conference). Plaintiff depends upon the Amazon website and Internet searches for
7 customers and potential customers to find Plaintiff and to promote Plaintiff's products
8 via searches for magic trick products.

9 11. Upon information and belief, Defendant advertises, markets, offers for
10 sale, and sells products that compete with Plaintiff in the United States and in the State
11 of California, and in this judicial district. Plaintiff's "LOOPS" products are competitive
12 with Defendant's "LOOPS" products, described as originating from Mesika but
13 actually an inferior product not authorized by Plaintiff.

14 12. Defendant has used the term or mark "LOOPS" as a key word or "meta
15 tag" in its website database. Such a meta tag is essentially a programming code
16 instruction to the Penguinmagic.com website search system. These keywords or meta
17 tags are usually not visible to an Internet user or searcher in the Penguin Magic
18 website. As a result, if someone types in "LOOPS" in a search at the Penguin Magic
19 website, the search will result in Defendant's counterfeit "LOOPS" name being
20 displayed along with the name of Defendant company Penguin Magic. Due to
21 Defendant's actions, a search at the Penguin Magic website for "LOOPS" does not
22 display any results listing genuine products by Plaintiff. Defendant has intentionally
23 misappropriated and unfairly used Plaintiff's registered trademark "LOOPS" as one of
24 its keywords, so that anyone searching for "LOOPS" on the Penguin Magic website is
25 misdirected to counterfeit products of Defendants, rather than being directed solely to
Plaintiff's products or authorized products licensed by Plaintiff to Defendant.

1 but not limited to, ordering Defendant not to use Plaintiff's trademarks in any industry
2 database or website as a keyword or meta tag, nor any other uses of Plaintiff's
3 trademarks;

4 B. Pursuant to 15 U.S.C. § 1117(a), it be declared an exceptional case and
5 Defendant be required to pay all of Plaintiff's costs and attorneys' fees;

6 C. Defendant's profits;

7 D. Plaintiff's damages;

8 E. Exemplary damages and treble damages;

9 F. Reasonable and necessary attorneys' fees as provided by California law
10 and other law;

11 G. Court costs;

12 H. Prejudgment and post-judgment interest; and

13 I. For such other and further relief that the Court deems just and proper.

14 December 2, 2015

Respectfully submitted,

15 _____/s/ Frederic M. Douglas_____

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PLAINTIFF'S DEMAND FOR JURY

Plaintiff hereby demands trial by jury.

December 2, 2015

/s/ Frederic M. Douglas
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