



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**1STDIBS.COM, INC.**, a Delaware  
corporation,

Plaintiff,

v.

**FIRST DIBS, LLC d/b/a 1<sup>st</sup> DIBS DESIGN  
CENTER & HOME FURNISHINGS**, an  
Oklahoma limited liability company and  
**ANNE McCARTHY d/b/a 1<sup>st</sup> DIBS  
DESIGN CENTER & HOME  
FURNISHINGS**, an individual,

Defendants.

**CASE NO. 1:12-cv-02440-CM**

**STIPULATION OF DISMISSAL**

IT IS HEREBY STIPULATED between Plaintiff 1stDibs.com, Inc., and Defendants First Dibs, LLC d/b/a 1<sup>st</sup> Dibs Design Center & Home Furnishings and Anne McCarthy d/b/a 1<sup>st</sup> Dibs Design Center & Home Furnishings (collectively, the "Parties"), that the above-captioned action and all claims against Defendants are hereby dismissed with prejudice pursuant to Fed. R. Civ. Proc. 41(a)(1)(A)(ii), with all Parties bearing their own fees and costs.

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The Parties request that the Court maintain continuing jurisdiction of the matter, which has been settled.

**IT IS SO STIPULATED.**

Dated this 27<sup>th</sup> day of August, 2012.

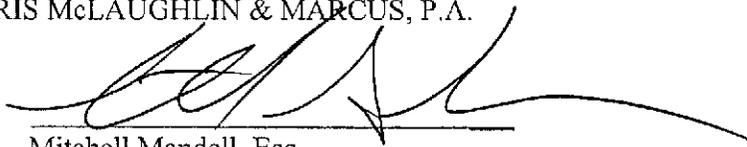
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Attorneys for Plaintiff

Dated this 27<sup>th</sup> day of August, 2012.

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Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2012, a true copy of the foregoing document was served on counsel of record by electronic mail.

/s/ Karl S. Kronenberger  
Karl S. Kronenberger

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**1STDIBS.COM, INC.**, a Delaware  
corporation,

**CASE NO.**

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**FIRST DIBS, LLC d/b/a 1<sup>st</sup> DIBS DESIGN  
CENTER & HOME FURNISHINGS**, an  
Oklahoma limited liability company and  
**ANNE McCARTHY d/b/a 1<sup>st</sup> DIBS  
DESIGN CENTER & HOME  
FURNISHINGS**, an individual,

**DEMAND FOR JURY DEMAND**

Defendants.

**COMPLAINT**

Plaintiff, 1stdibs.com, Inc. ("1stdibs"), by and through its undersigned counsel, states and alleges as follows:

**INTRODUCTION**

1. 1stdibs is a well-known and highly-regarded online marketplace for upscale home décor, furniture, fashion, and jewelry products. 1stdibs operates through its Internet website, located at <www.1stdibs.com>.

2. 1stdibs owns federal trademark registrations for the mark 1STDIBS (U.S. Patent and Trademark Office ("USPTO") Registration Nos. 3,849,749, 3,593,643, and 3,999,182). 1stdibs has been using the mark in commerce for over twelve years, during which time it has developed a reputation as being a source of unique and hard-to-find furniture and home décor items for discerning buyers.

3. Defendants First Dibs, LLC (“First Dibs”) and Anne McCarthy (“McCarthy”) (collectively, “Defendants”) compete with 1stdibs, selling home goods and furnishings from a brick-and-mortar store located in Edmond, Oklahoma.

4. On information and belief, McCarthy, an interior designer, is the heart, soul, and controlling force of First Dibs.

5. On information and belief, both First Dibs and McCarthy do business using the fictitious business name “1<sup>st</sup> Dibs Design Center & Home Furnishings.” Defendants also have a website located at <www.1stdibsedmond.com>, which they use to promote their furniture and home décor business.

6. Without permission or authorization from 1stdibs, Defendants use 1stdibs’ trademarks and confusingly similar marks in connection with their website, their business, and the promotional activities related to both.

7. On information and belief, Defendants’ unauthorized use of 1stdibs’ trademarks is not coincidental, but is instead an intentional effort to profit from the recognition and high esteem 1stdibs holds, particularly within the interior decorating community.

8. 1stdibs has been substantially harmed as a result of Defendants’ misconduct.

#### **PARTIES**

9. Plaintiff, 1stdibs.com, Inc., is a Delaware corporation with its principal place of business located in this judicial district in New York, New York.

10. On information and belief, Defendant First Dibs, LLC d/b/a 1<sup>st</sup> Dibs Design Center & Home Furnishings is an inactive Oklahoma limited liability company based in Edmond, Oklahoma.

11. On information and belief, Defendant Anne McCarthy d/b/a 1<sup>st</sup> Dibs Design Center & Home Furnishings (“McCarthy”) is an individual residing in Edmond, Oklahoma.

12. On information and belief, at all times all Defendants were the principals, agents, affiliates, partners, and/or co-conspirators of each other, and each acted within the course, scope, and authority of such relationships so that, as a result, all Defendants are jointly and severally liable for the acts alleged herein.

### **JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction over the federal trademark infringement claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1338. The Court has supplemental jurisdiction over the claim arising under state law pursuant to 28 U.S.C. § 1367(a), in that the state claim is so related to the claims over which the Court has original jurisdiction that it forms part of the same case or controversy under Article III of the United States Constitution.

14. The Court also has subject matter jurisdiction over the action on the basis of the diversity of citizenship of the parties, under 28 U.S.C. § 1332, and because the amount in controversy exceeds \$75,000.

15. On information and belief, this Court has personal jurisdiction over Defendants because Defendants advertise and/or market their services to clients and potential clients located throughout the entire United States, including New York, and because Defendants have committed wrongful acts, as alleged herein, causing injury to persons within New York and Defendants expected, or should have reasonably expected, the acts to have consequences within New York.

16. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391 because Defendants are subject to personal jurisdiction in this District and, on information and belief, a substantial part of the events giving rise to the claims in this Complaint occurred in this District.

### **FACTUAL ALLEGATIONS**

#### **Istdibs' Business and Mark**

17. Istdibs runs an online marketplace that provides consumers with access to a broad range of goods and services, including upscale and one-of-a-kind artwork, furniture, antiques, fashion, accessories, and real estate services.

18. Istdibs owns and operates the website <Istdibs.com> (the "Istdibs Website"). Istdibs first registered the domain name for the Istdibs Website in or about November 1998.

19. Istdibs owns several federally-registered trademarks for 1STDIBS (collectively, the "Mark"), including USPTO Registration Nos. 3,849,749, 3,593,643, and 3,999,182.

20. Istdibs began using the mark in commerce to identify the products and services offered on its Website at least as early as 2000. Istdibs has used the Mark substantially, exclusively, and continuously since that time, for approximately 12 years.

21. In addition to use of the Mark within its Internet domain name, Istdibs uses the Mark as a brand name to identify its products and services.

22. Istdibs heavily advertises the Mark in a variety of media, including substantial paid online advertisements.

23. Istdibs' advertising and promotion of the Mark and its brand have been highly successful, and the Istdibs.com website averages well over 100,000 unique visitors per month.

24. As a result of 1stdibs' advertising and promotional efforts, the Mark has become famous throughout the United States, as well as globally, and is widely associated with 1stdibs' website, products, and services.

25. Since 2000, numerous consumers located in the State of Oklahoma have registered with and purchased products from the 1stdibs Website.

**Defendants' Business and Misconduct**

26. On information and belief, McCarthy is an interior designer and the sole owner and operator of First Dibs.

27. According to the online records maintained by the Oklahoma Secretary of State, First Dibs was formed on September 22, 2006, but has since fallen inactive.

28. On information and belief, First Dibs, with McCarthy at the helm and in total control, did business under the fictitious business name "1st Dibs Design Center & Home Furnishings" (the "DBA") until it fell inactive. On information and belief, since First Dibs fell inactive, McCarthy has done business as a sole proprietor under the DBA.

29. On information and belief, McCarthy selected the name of First Dibs with the intent of capitalizing on the success of 1stdibs within the furniture and home décor business, which, at the time of First Dibs' formation, was already widely-recognized.

30. On information and belief, Defendants selected the DBA—which modified the name of First Dibs to include the numeric iteration "1<sup>st</sup>"—with the intent of further capitalizing on the success of 1stdibs within the furniture and home décor business.

31. On information and belief, Defendants own and operate a furniture and home décor store (the "Store") located at 15020 Bristol Park Place in Edmond, Oklahoma. In

conjunction with the Store, Defendants also offer interior design services, which are performed by McCarthy.

32. Defendants own and operate the website <1stdibsedmond.com> (“Defendants’ Website”). On information and belief, and according to the WHOIS record for Defendants’ Website, Defendants registered their domain name in or about May 2009—nearly a decade after the launch of the 1stdibs Website.

33. Defendants’ Website advertises Defendants’ interior design services and Store. Concerning the latter, Defendants’ Website states:

One of the greatest advantages is our 1st Dibs showroom. It gives you the opportunity to view in person our decorating approach and style and how it can be incorporated into your home! Whether your project is large or small, we have the furniture and accessories for your home. 1st Dibs gives you the opportunity [sic] to buy today off of the floor or we can custom order your choice from window treatments to upholstery to art and more.

34. Defendants compete directly with 1stdibs by offering furniture and other home décor items for sale.

35. Defendants compete directly with 1stdibs by marketing their furniture and other home décor goods and products online.

36. As a result of the similarities in the domain names for the 1stdibs Website and Defendants’ Website, Defendants’ Website appears as a result whenever consumers search for the 1stdibs Website. For example, a simple Google search for the Mark returns the following results, listing the 1stdibs Website and, immediately thereafter, Defendants’ Website:

The screenshot shows a Google search interface. At the top, there is a navigation bar with links for '+You', 'Search', 'Images', 'Maps', 'Play', 'YouTube', 'News', 'Gmail', 'Documents', 'Calendar', and 'More'. The Google logo is on the left, and the search input field contains '1stdibs'. Below the search bar, it says 'About 7,640,000 results (0.11 seconds)'. On the left side, there is a vertical menu with options: 'Everything', 'Images', 'Maps', 'Videos', 'News', 'Shopping', 'More', 'San Francisco, CA', 'Change location', 'Any time', 'Past hour', 'Past 24 hours', 'Past week', and 'Past month'. The search results are displayed in a grid. The top result is for '1STDIBS.COM - Antique, Mid-century Modern, Vintage Furniture ...' with the URL 'www.1stdibs.com/'. Below this, there are several sub-links: '1STDIBS.COM - Estate ...', 'New listings', 'Furniture & lighting', 'Dealer Login', and 'Fashion'. Each sub-link has a brief description. At the bottom of the results, there is a link for '1st Dibs • Design Center & Home Furnishings • First Dibs in Edmond ...' with the URL '1stdibsedmond.com/' and a description: 'At 1st Dibs, we offer a collaborative approach to design that encourages you to develop your own sense of style and taste. End results will ensure a beautiful, ...'.

37. As a result of the similarities in the domain names for the 1stdibs Website and Defendants' Website, Defendants have benefitted, and continue to benefit, from Istdibs' advertising and promotional efforts, in addition to the goodwill and recognition it has generated for its brand.

38. Defendants' use of the Mark and confusingly similar terms in the domain name for Defendants' Website, throughout the content of Defendants' Website, and as the name of Defendants' furniture business and Store, is likely to confuse and deceive consumers as to the source of the competing products Defendants sell.

39. Defendants' actions are willful and reflect intent to confuse consumers and profit from the goodwill associated with 1stdibs' Mark.

40. Prior to filing this Complaint, commencing in July 2008, 1stdibs sent at least two letters, and made several other informal demands, informing Defendants of 1stdibs' trademark rights and demanding that the infringing and deceptive conduct described above cease. Defendants, acting through counsel, expressly refused to honor 1stdibs' demands.

41. Defendants continue to use the Mark in the domain name for Defendants' Website, throughout the content of Defendants' Website, and as the name of Defendants' furniture business and Store in violation of 1stdibs' rights.

### **FIRST CLAIM FOR RELIEF**

**(Trademark Infringement Under the Lanham Act, 15 U.S.C. § 1125)**

#### **Against All Defendants**

42. 1stdibs repeats and realleges each of the preceding paragraphs as if fully set forth herein.

43. Defendants' actions alleged above constitute the knowing use of an infringing mark and false designation of origin, false and misleading description of fact, false and misleading representation of fact, false advertising, and unfair competition, all in violation of 15 U.S.C. § 1125(a).

44. 1stdibs owns the 1STDIBS trademarks.

45. Defendants' unauthorized and repeated uses of the Marks, as well as confusingly similar terms such as "1<sup>st</sup> Dibs," in commerce to falsely represent, describe, and/or designate the origin of Defendants' competing products is likely to cause confusion as to: (a) the source of the competing products, (b) an affiliation or connection between Defendants and 1stdibs, and/or (c) the origin, sponsorship, or approval of the competing products.

46. Defendants' conduct has damaged and continues to damage 1stdibs' business, reputation, and goodwill.

47. Defendants at all times were aware of 1stdibs' Mark, as well as the 1stdibs Website, and purposely copied those marks and registered a confusingly similar domain name. Defendants were put on notice of the allegations set forth herein, but the conduct has continued. Defendants' conduct has been willful and intentional, and Defendants engaged in the actions alleged herein with the purpose of confusing consumers and trading on the goodwill associated with 1stdibs' Mark. Accordingly, 1stdibs respectfully requests damages in an amount three times actual damages, and an award of attorney fees and costs pursuant to 15 U.S.C. § 1117.

48. Defendants' conduct will continue unless enjoined by this Court.

49. As a direct and proximate result of Defendants' willful and unlawful actions, 1stdibs has suffered and continues to suffer irreparable harm, including damage to and diminution in value of 1stdibs' Mark, for which there is no adequate remedy at law. Accordingly, 1stdibs is entitled to injunctive and equitable relief.

## **SECOND CLAIM FOR RELIEF**

**(Vicarious Liability Under the Lanham Act, 15 U.S.C. § 1125)**

### **Against Defendant McCarthy**

50. 1stdibs repeats and realleges each of the preceding paragraphs as if fully set forth herein.

51. McCarthy has knowledge of the infringement alleged herein, insofar as First Dibs directly perpetrated that infringement.

52. McCarthy profits from the infringement alleged herein, insofar as First Dibs directly perpetrated that infringement.

53. McCarthy has the ability, but chooses not to stop the infringement alleged herein, insofar as First Dibs directly perpetrated that infringement.

54. McCarthy's conduct has damaged and continues to damage 1stdibs' business, reputation, and goodwill.

55. On information and belief, McCarthy's conduct has been willful and intentional, and McCarthy engaged in the actions alleged herein with the purpose of confusing consumers and trading on the goodwill associated with 1stdibs' Mark. Accordingly, 1stdibs respectfully requests damages in an amount three times actual damages, and an award of attorney fees and costs pursuant to 15 U.S.C. § 1117.

56. McCarthy's conduct will continue unless enjoined by this Court.

57. As a direct and proximate result of McCarthy's willful and unlawful actions, 1stdibs has suffered and continues to suffer irreparable harm, including damage to and diminution in value of 1stdibs' Mark, for which there is no adequate remedy at law. Accordingly, 1stdibs is entitled to injunctive and equitable relief.

### **THIRD CLAIM FOR RELIEF**

**(Cybersquatting Under the Lanham Act, 15 U.S.C. § 1125)**

#### **Against All Defendants**

58. 1stdibs repeats and realleges each of the preceding paragraphs as if fully set forth herein.

59. Defendants, in bad faith, intended to profit from the Mark by registering, trafficking in, and/or using the domain name <1stdibsedmond.com>, which contains the Mark.

60. At the time Defendants registered the domain name <1stdibsedmond.com>, it was identical, or confusingly similar, to the Mark.

61. As a direct and proximate result of Defendants' actions, conduct, and practices alleged above, 1stdibs has been damaged and will continue to be damaged.

**FOURTH CLAIM FOR RELIEF**

**(False Advertising Under the Lanham Act, 15 U.S.C. § 1125)**

**Against All Defendants**

62. 1stdibs repeats and realleges each of the preceding paragraphs as if fully set forth herein.

63. Defendants' registration and use in commerce of the domain name <1stdibsedmond.com> constitutes commercial advertising or promotion within the meaning of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

64. Defendants' registration and use in commerce of the domain name <1stdibsedmond.com> misrepresents the nature, characteristics, and qualities of Defendants' and 1stdibs' goods.

65. As a direct and proximate result of Defendants' actions, conduct, and practices as alleged above, 1stdibs is likely to be and has been damaged and will continue to be damaged.

66. On information and belief, Defendants' conduct has been willful and intentional, and Defendants engaged in the actions alleged herein with the purpose of confusing consumers and trading on the goodwill associated with 1stdibs' Mark. Accordingly, 1stdibs respectfully requests damages in an amount three times actual damages, and an award of attorney fees and costs pursuant to 15 U.S.C. § 1117.

67. Defendants' conduct will continue unless enjoined by this Court.

68. As a direct and proximate result of Defendants' willful and unlawful actions, 1stdibs has suffered and continues to suffer irreparable harm, including damage to and

diminution in value of 1stdibs' Mark, for which there is no adequate remedy at law. Accordingly, 1stdibs is entitled to injunctive and equitable relief.

**FIFTH CLAIM FOR RELIEF**

**(Unfair Competition Under the Lanham Act, 15 U.S.C. § 1125)**

**Against All Defendants**

69. 1stdibs repeats and realleges each of the preceding paragraphs as if fully set forth herein.

70. Defendants' infringement and false advertising, as alleged above, constitutes unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a).

71. Defendants' conduct has damaged and continues to damage 1stdibs' business, reputation, and goodwill.

72. On information and belief, Defendants' conduct has been willful and intentional, and Defendants engaged in the actions alleged herein with the purpose of confusing consumers and trading on the goodwill associated with 1stdibs' Mark. Accordingly, 1stdibs respectfully requests damages in an amount three times actual damages, and an award of attorney fees and costs pursuant to 15 U.S.C. § 1117.

73. Defendants' conduct will continue unless enjoined by this Court.

74. As a direct and proximate result of Defendants' willful and unlawful actions, 1stdibs has suffered and continues to suffer irreparable harm, including damage to and diminution in value of 1stdibs' Mark, for which there is no adequate remedy at law. Accordingly, 1stdibs is entitled to injunctive and equitable relief.

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**SIXTH CLAIM FOR RELIEF**

**(Dilution Under the Lanham Act, 15 U.S.C. § 1125)**

**Against All Defendants**

75. 1stdibs repeats and realleges each of the preceding paragraphs as if fully set forth herein.

76. 1stdibs' Mark is famous, and widely recognized by the general consuming public of the United States as designations of the source of 1stdibs' products.

77. Defendants' actions alleged herein commenced after 1stdibs' Mark became famous.

78. Defendants' actions have lessened the capacity of 1stdibs' Mark to identify and distinguish 1stdibs' products.

79. Defendants' conduct has caused or is likely to cause dilution by blurring of the distinctive quality of 1stdibs' famous Mark, to 1stdibs' irreparable injury and damage.

80. Defendants' conduct has caused or is likely to cause dilution by tarnishing the reputation of 1stdibs' brand and the products sold under the Mark, to 1stdibs' irreparable injury and damage.

81. Defendants' conduct has damaged and continues to damage 1stdibs' business, reputation, and goodwill.

82. On information and belief, Defendants' conduct has been willful and intentional, and Defendants engaged in the actions alleged herein with the purpose of confusing consumers and trading on the goodwill associated with 1stdibs' Mark. Accordingly, 1stdibs respectfully requests damages in an amount three times actual damages, and an award of attorney fees and costs pursuant to 15 U.S.C. § 1117.

83. Defendants' conduct will continue unless enjoined by this Court. As a direct and proximate result of Defendants' willful and unlawful actions, Istids has suffered and continues to suffer irreparable harm, including damage to and diminution in value of Istids' Mark, for which there is no adequate remedy at law. Accordingly, Istids is entitled to injunctive and equitable relief.

**SEVENTH CLAIM FOR RELIEF**

**(Common Law Trademark Infringement)**

**Against All Defendants**

85. Istids repeats and realleges each of the preceding paragraphs as if fully set forth herein. 86. Defendants' unauthorized uses of the Mark, and confusingly similar terms, as alleged above, constitute trademark infringement under the common law of the State of New York.

87. Defendants' conduct has damaged and continues to damage Istids' business, reputation, and goodwill.

88. On information and belief, Defendants' conduct has been willful and intentional, and Defendants engaged in the actions alleged herein with the purpose of confusing consumers and trading on the goodwill associated with Istids' Mark. Accordingly, Istids respectfully requests damages in an amount three times actual damages, and an award of attorney fees and costs.

89. Defendants' conduct will continue unless enjoined by this Court. 90. As a direct and proximate result of Defendants' willful and unlawful actions, Istids has suffered and continues to suffer irreparable harm, including damage to and

diminution in value of 1stdibs' Mark, for which there is no adequate remedy at law. Accordingly, 1stdibs is entitled to injunctive and equitable relief.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment as follows:

1. That the Court issue a preliminary and permanent injunction restraining Defendants and any of their officers, directors, agents, employees, servants, attorneys, successors, assigns, and all others in privity or active concert with Defendants, from using any of 1stdibs' trademarks in any domain name, online content, advertising or promotional materials, or within the name of Defendants' business or Store;
2. That the Court enter a judgment finding that:
  - a. Defendants have infringed on 1stdibs' trademarks in violation of the Lanham Act and the common law of the State of New York,
  - b. McCarthy is vicariously liable for the infringing activities of First Dibs under the Lanham Act,
  - c. Defendants' infringement of 1stdibs' trademarks constitutes unlawful cybersquatting in violation of the Lanham Act,
  - d. Defendants' infringement of 1stdibs' trademarks constitutes false advertising under the Lanham Act,
  - e. Defendants' infringement of 1stdibs' trademarks constitutes unfair competition under the Lanham Act, and
  - f. Defendants' infringement of 1stdibs' trademarks constitutes unlawful dilution under the Lanham Act;

3. That the Court award damages and monetary relief as follows:
  - a. Statutory damages of \$100,000 against all Defendants pursuant to 15 U.S.C. § 1117(d),
  - b. Compensatory damages against all Defendants, together with appropriate interest thereon, in an amount to be determined at trial,
  - c. Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1117, and
  - d. Plaintiff's costs; and
4. Such other relief that the Court determines is just and proper.

Dated this 29 day of March, 2012.

KRONENBERGER ROSENFELD, LLP

By: 

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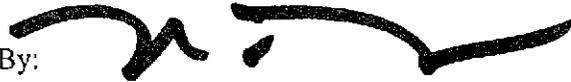
**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial of this action by jury.

Dated this 29 day of March, 2012.

KRONENBERGER ROSENFELD, LLP

By: \_\_\_\_\_



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