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| TO: Commissioner of Trademarks P.O. Box 1451 Alexandria, VA 22313-1451 | REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK |
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following **Trademarks**

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| DOCKET NO. 12-cv-00086 | DATE FILED 1/12/12 | U.S. DISTRICT COURT FOR THE DISTRICT OF COLORADO |
| PLAINTIFF Yay! Life! LLC | | DEFENDANT Tucker Gumber, et al. |
| PATENT OR | DATE OF PATENT | HOLDER OF PATENT OR TRADEMARK |
| 1 | <i>10 7^{ms} 11.5</i> | Please see copy of Complaint attached hereto |
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In the above—entitled case, the following patent(s) have been included:

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|---------------|---|-------------------------------|--|
| DATE INCLUDED | INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading | | |
| PATENT OR | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK | |
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In the above—entitled case, the following decision has been rendered or judgment issued:

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| DECISION/JUDGEMENT |
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| CLERK GREGORY C. LANGHAM | (BY) DEPUTY CLERK | DATE |
|------------------------------------|-------------------|------|

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

YAY! LIFE! LLC, a Colorado limited liability company,

Plaintiff,

v.

TUCKER GUMBER, individually, and in his official capacity as principal of Yay Life
Tribe LLC, and
YAY LIFE TRIBE LLC, a California limited liability company,

Defendants.

COMPLAINT

Plaintiff Yay! Life! LLC (“Yay! Life!”), by its undersigned attorneys, in support of its Complaint against Defendants Tucker Gumber (“Gumber”) and Yay Life Tribe LLC (“Yay Life Tribe”) (collectively “Defendants”), alleges and states as follows:

NATURE OF THE ACTION

1. This is an action for trademark infringement and unfair competition under federal, state, and common law.
2. Yay! Life! brings this action against Defendants seeking relief from

Defendants' use of the confusingly similar trademark YAY LIFE TRIBE (the "YAY LIFE TRIBE Mark") in connection with their goods.

THE PARTIES

3. Plaintiff Yay! Life! is a Colorado limited liability company with its principal place of business at 3215 Osage Street, Denver, CO 80211.

4. Upon information and belief, Defendant Gumber is a citizen of the state of California who presently resides at 6835 Peach Avenue, Van Nuys, CA 91406.

5. Upon information and belief, Defendant Gumber is the principal of Defendant Yay Life Tribe and organized Yay Life Tribe as a California limited liability company.

6. Upon information and belief, Defendant Gumber is personally responsible for all of the acts alleged herein of Defendant Yay Life Tribe in that he personally and intentionally infringed Yay! Life!'s trademarks with the intent to cause injuries and/or losses to Yay! Life!, a Colorado entity, in the state of Colorado.

7. Upon information and belief, Defendant Yay Life Tribe is a limited liability company organized and existing under the laws of the state of California with its principal place of business located at 6835 Peach Avenue, Van Nuys, CA 91406.

8. Upon information and belief, Defendants' YAY LFE TRIBE-branded products are sold throughout the United States, including in Colorado.

JURISDICTION AND VENUE

9. This action arises and is brought under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and the laws of the State of Colorado.

10. Subject matter jurisdiction exists under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, 1367(a).

11. Personal jurisdiction is proper because Defendants have infringed Yay! Life!'s trademark rights in this district, personally and jointly, and have caused harm to Yay! Life!, a Colorado entity, in this district. In addition, Defendants have continuous and systematic contacts with the district, because Defendants promote their YAY LIFE TRIBE products to residents of this district through their Internet website located at <http://www.yaylifetribe.com>.

12. Venue is proper in the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1391(b)(2) because the acts of trademark infringement occurred in this district, and Defendants' conduct have caused injuries and losses to Yay! Life! in this district, and if not enjoined, Defendants will continue to cause such injuries and losses.

GENERAL ALLEGATIONS

Yay! Life! and its Products

13. Headquartered in Denver, Colorado, Yay! Life! was founded on April 10, 2007 for the purpose of selling consumer products that display slogans reflecting a "Yay" thing, such as "Yay! Daughters!", "Yay! Solstice!" and "Yay! Cookies!". The name "Yay! Life!" was chosen for the company because "Yay! Life!" is about gratitude,

laughter, and celebrating life. While Yay! Life! was originally founded as a clothing and consumer products company, it also promotes a certain way of life, namely embracing your passion, giving gratitude and showing appreciation.

14. Yay! Life! has been continuously selling t-shirts, hats, and body suits under the trademarks YAY! LIFE!, LIVIN' THE YAY LIFE and YAY! (collectively the "YAY! LIFE! Marks") since at least as early as August 14, 2010.

15. In addition to t-shirts and other apparel, since at least as early as April 2010, Yay! Life! has sold magnets, mugs, greeting cards and key chains under the YAY! LIFE! Marks.

16. During this time, Yay! Life! has invested significant time and resources in promoting the YAY! LIFE! Mark and name in the United States.

17. As a result of Yay! Life!'s promotional efforts and the high quality nature of its goods, the YAY! LIFE! Mark has acquired, prior to the acts of Defendants addressed in this Complaint, a distinctiveness that signifies Yay! Life! and its high quality products throughout the United States.

18. The popularity and recognition of the YAY! LIFE! brand has grown significantly, and today, YAY! LIFE! - branded apparel and goods are sold on the Yay! Life! website located at <http://www.yaylife.com>, at trade shows, and throughout the United States.

19. Yay! Life! owns numerous U.S. trademark registrations for the YAY! LIFE! Marks, including the following:

| MARK | GOODS | REG. NO. | REG. DATE |
|--------------------------|---|-----------|------------|
| LIVIN' THE YAY! LIFE! | Decorative magnets; Decorative refrigerator magnets | 3,961,845 | 5/17/2011 |
| LIVIN' THE YAY! LIFE! | Mugs | 4,041,823 | 10/18/2011 |
| LIVIN' THE YAY! LIFE! | Plastic key chains | 4,041,820 | 10/18/2011 |
| LIVIN' THE YAY! LIFE! | Greeting cards | 4,049,394 | 11/1/2011 |
| LIVIN' THE YAY! LIFE! | Charms; Key chains as jewellery | 4,049,395 | 11/11/2011 |
| YAY! | Charms; Key chains as jewellery | 4,049,399 | 11/1/2011 |
| YAY! | Mugs | 4,049,396 | 11/1/2011 |
| YAY! | Greeting cards | 4,049,398 | 11/1/2011 |
| YAY! | Plastic key chains | 4,049,397 | 11/1/2011 |
| YAY! | Decorative magnets; Decorative refrigerator magnet | 4,049,400 | 11/1/2011 |

20. Copies of the Certificates of Registration for each of these marks are attached as *Exhibit A*.

21. Yay! Life! owns several pending U.S. trademark applications for the YAY! LIFE! Marks, including the following:

| MARK | GOODS | APP. NO. | APP. DATE |
|-----------------------|--|------------|------------|
| YAY! LIFE! | Body suits; Hats; T-shirts | 85/508,663 | 1/4/2012 |
| LIVIN' THE YAY! LIFE! | Body suits; Hats; T-shirts | 85/382,085 | 10/18/2011 |
| LIVIN' THE YAY! LIFE! | Coasters not of paper and not being table linen; Trivets | 85/382,094 | 7/27/2011 |
| YAY! | Coasters not of paper and not being table linen; Trivets | 85/382,105 | 7/27/2011 |

22. Copies of TARR printouts from the United States Patent and Trademark Office database evidencing the status of these applications are attached as *Exhibit B*.

23. The foregoing applications and registrations are valid and subsisting, and therefore constitute conclusive evidence of the validity of the marks and registrations, and of Yay! Life!'s ownership of and exclusive right to use the YAY! LIFE! Marks in connection with the goods set forth in the registrations and applications. The registrations and applications also provide constructive notice of Yay! Life!'s ownership of the YAY! LIFE! Marks.

Defendants' Wrongful Acts

24. Upon information and belief, Defendants began using the YAY LIFE TRIBE Mark sometime after April 20, 2011.

25. At the time Defendants started using the YAY LIFE TRIBE Mark, Yay! Life! had been organized as a Colorado limited liability company for four years and sold products under the YAY! LIFE! Marks for a year.

26. Upon information and belief, Defendants sell a type of headwear called "spirit

hoods”, t-shirts and business cards under the YAY LIFE TRIBE Mark on its website located at <http://yaylifetribe.com>.

27. Upon information and belief, Defendants have never registered the YAY LIFE TRIBE Mark, any mark similar to the YAY! LIFE! Marks, or any other mark containing the term “Yay Life.”

28. Upon information and belief, Defendant Gumber was aware of Yay! Life!’s use of its YAY! LIFE! Marks on its apparel and other goods before Defendants adopted an essentially identical mark, YAY LIFE TRIBE, in April 2011. A copy of an email from Gumber dated April 20, 2011 is attached as *Exhibit C*.

29. Subsequently, Yay! Life! advised Defendant Gumber of its senior trademark rights.

30. Upon information and belief, Defendant Gumber then organized Yay Life Tribe as a California limited liability company, notwithstanding his knowledge of Yay! Life!’s senior trademark rights.

31. Notwithstanding Defendants’ knowledge of Yay! Life!’s prior trademark rights in the YAY! LIFE! Mark, Defendants willfully started using the YAY LIFE TRIBE Mark in connection with their products and business.

Injury to Yay! Life!

32. Actual confusion among consumers who believe that Defendants are affiliated with Yay! Life! has occurred.

33. Defendants’ conduct has caused consumer confusion and continues to cause consumer confusion, in violation of Yay! Life!’s prior and valuable trademark rights.

34. Defendants' actions are likely to cause confusion, mistake, or deception as to the source or origin of the YAY LIFE TRIBE-branded hats, t-shirts and business cards they sell, and are likely to falsely suggest a sponsorship, connection, association, or license arrangement with Yay! Life!, thereby injuring Yay! Life! and the public.

35. Defendants' use of the YAY LIFE TRIBE Mark in connection with their clothing, headwear and business card products has irreparably injured and, if permitted to continue, will irreparably injure Yay! Life!, and its goodwill in its YAY! LIFE! Marks.

36. Defendants' use of the YAY LIFE TRIBE Mark has caused Yay! Life! to suffer monetary losses and will continue to do so unless Defendants' are enjoined.

37. Yay! Life! has no adequate remedy at law.

FIRST CLAIM FOR RELIEF
Infringement of a Registered Trademark Under
Section 32 of the Lanham Act
15 U.S.C. § 1114(1)(a)

38. Yay! Life! incorporates by reference the preceding allegations of this Complaint.

39. This is a claim for infringement of the federally registered YAY! LIFE! Marks. Defendants' use of the YAY LIFE TRIBE Mark constitutes a willful and knowing attempt to trade on the goodwill which Yay! Life! owns and has developed in the YAY! LIFE! Marks.

40. Defendants' use of the YAY LIFE TRIBE Mark is likely to cause confusion, or to deceive the purchasing public and others, leading them to mistakenly believe that Defendants' goods are authorized by Yay! Life! or that Yay! Life!'s goods are authorized by Defendants.

41. Defendants' use of the YAY LIFE TRIBE Mark is likely to cause confusion, or to cause mistake, or to deceive the purchasing public and others, leading them to mistakenly believe that Defendants' goods are those of Yay! Life!, or vice versa.

42. Defendants' use of the YAY LIFE TRIBE Mark therefore constitutes infringement of Yay! Life!'s federally registered marks referenced above in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

43. Upon information and belief, Defendants' acts of infringement have been willful and deliberate.

44. As a direct and proximate result of Defendants' unauthorized use of the YAY LIFE TRIBE Mark, Yay! Life!, a Colorado entity, has been damaged in Colorado and will continue to be damaged unless Defendants are restrained and enjoined by this Court from further violation of Yay! Life! rights.

45. As a direct and proximate result of Defendants' unauthorized use of the YAY LIFE TRIBE Mark, Yay! Life! has suffered monetary losses and will continue to do so unless Defendants' are enjoined.

46. Yay! Life! has no adequate remedy at law in that the goodwill and name of Yay! Life! have been damaged.

SECOND CLAIM FOR RELIEF
False Designation of Origin Under
Section 43 of the Lanham Act
15 U.S.C. § 1125(a)(1)(A)

47. Yay! Life! incorporates by reference the preceding allegations of this Complaint.

48. Upon information and belief, Defendants have publicly advertised and sold their

products to consumers in interstate commerce and in Colorado under the YAY LIFE TRIBE Mark.

49. Defendants' unauthorized use of the YAY LIFE TRIBE Mark in commerce for their products is likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of the products they sell. In particular, Defendants' use of the YAY LIFE TRIBE Mark suggests that Yay! Life! is associated with, has approved or has participated in the manufacture of Defendants' products.

50. As a result of the confusion, mistake or deception caused by Defendants' use of the YAY LIFE TRIBE Mark, Yay! Life!, a Colorado entity, has and will continue to suffer damage in Colorado and will continue to do so unless Defendants are restrained and enjoined by this Court from further violation of Yay! Life! rights.

51. As a direct and proximate result of Defendants' unauthorized use of the YAY LIFE TRIBE Mark, Yay! Life! has suffered monetary losses and will continue to do so unless Defendants' are enjoined.

52. Yay! Life! has no adequate remedy at law in that the goodwill and name of Yay! Life! have been damaged.

THIRD CLAIM FOR RELIEF
Unfair Competition
15 U.S.C. § 1125(a)

53. Yay! Life! incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

54. Defendants' use of the YAY LIFE TRIBE mark is likely to cause confusion, mistake, or deception as to origin, sponsorship, or approval of its goods sold and services provided under the infringing YAY LIFE TRIBE mark, and create consumer confusion as to the source of

such goods and services, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Defendants' conduct constitutes a willful and knowing attempt to trade on the goodwill which Yay! Life! has developed in its YAY! LIFE! Marks, and violates Yay! Life!'s trademark rights in the YAY! LIFE! Marks.

55. As a result of Defendants' actions described above, Defendants have caused Yay! Life!, a Colorado entity, irreparable harm and injury in Colorado and will continue to do so unless Defendants are restrained and enjoined by this Court from further violation of Yay! Life! rights.

56. As a direct and proximate result of Defendants' unauthorized use of the YAY LIFE TRIBE Mark, Yay! Life! has suffered monetary losses and will continue to do so unless Defendants' are enjoined.

57. Yay! Life! has no adequate remedy at law in that the goodwill and name of Yay! Life! have been damaged.

FOURTH CLAIM FOR RELIEF
Common Law Unfair Competition

58. Yay! Life! incorporates by reference the preceding allegations of this Complaint.

59. Defendants' use of the YAY LIFE TRIBE Mark constitutes misappropriation of valuable property rights of Yay! Life! and trading on the goodwill symbolized by the YAY! LIFE! Mark, and is thereby likely to confuse and deceive members of the purchasing public as to the source of the Yay! Life!-branded goods as a result of Defendants' use of the infringing YAY LIFE TRIBE Mark. By virtue of Defendants' conduct, Defendants have engaged in unfair competition in violation of the common law of the State of Colorado.

60. Defendants' use of the YAY LIFE TRIBE mark also constitutes intentional,

willful, and reckless disregard of Yay! Life!'s trademark rights by Defendants and an attempt to trade on the goodwill which Yay! Life! has developed, all to the damage of Yay! Life!.

61. As a result of Defendants' actions described above, Defendants have caused, and unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage, and injury to Yay! Life! in Colorado.

62. As a direct and proximate result of Defendants' unauthorized use of the YAY LIFE TRIBE Mark, Yay! Life! has suffered monetary losses and will continue to do so unless Defendants' are enjoined.

63. Yay! Life! has no adequate remedy at law in that the goodwill and name of Yay! Life! have been damaged.

FIFTH CLAIM FOR RELIEF
**Common Law Trademark
Infringement**

64. Yay! Life! incorporates by reference the preceding allegations of this Complaint.

65. Defendants' use of the YAY LIFE TRIBE Mark is likely to cause confusion, or to cause mistake, or to deceive the purchasing public and others, whereby they would be led to mistakenly believe that Defendants are affiliated with, related to, sponsored by, or connected with Yay! Life!, in violation of the common law of the state of Colorado.

66. Defendants' use of the YAY LIFE TRIBE Mark also constitutes intentional, willful, and reckless disregard of Yay! Life!'s rights by Defendants and an attempt to trade on the goodwill

which Yay! Life! has developed, all to the damage of Yay! Life! in Colorado.

67. As a direct and proximate result of Defendants' unauthorized use of the YAY LIFE TRIBE Mark, Yay! Life! has suffered monetary losses and will continue to do so unless Defendants' are enjoined.

68. Yay! Life! has no adequate remedy at law in that the goodwill and name of Yay! Life! have been damaged.

JURY DEMAND

Yay! Life! demands a trial by jury on all issues that the law allows a trial by jury.

PRAYER FOR RELIEF

FOR THESE REASONS, Yay! Life! prays that this Honorable Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

- A. A preliminary and permanent injunction enjoining Defendants, their principals, agents, servants, employees, privies, representatives, successors, assigns, attorneys, and all other persons in active concert or participation with it from:
- (i) imitating, copying, duplicating or otherwise marking any use of the YAY! LIFE! Mark or any mark confusingly similar to the YAY! LIFE! Mark, including, but not limited to, YAY LIFE TRIBE or YAY LIFE;
 - (ii) manufacturing, producing, distributing, circulating, selling, or

otherwise creating goods which bear any copy or colorable imitation of the YAY! LIFE! Mark, including, but not limited, to YAY LIFE TRIBE or YAY LIFE; and

(iii) performing any other acts that are likely to lead the public to believe that products sold or offered for sale by Defendants are in any manner licensed, sponsored, approved, or authorized by Yay! Life!

- B. An Order that Defendants deliver up for destruction or destroy all goods, advertising, accessories, labels, tags, signs, pamphlets, promotional materials, brochures, and other items in its possession or control, depicting the YAY LIFE TRIBE Mark or any other mark confusingly similar to the YAY! LIFE! Mark, including, but not limited to, the term YAY LIFE.
- C. An Order that the Defendants have infringed Yay! Life!'s YAY! LIFE! Marks in violation of federal law and the common law of the state of Colorado.
- D. An order that Defendants have unfairly competed with Yay! Life! by the acts complained of herein in violation of federal law and the common law of the state of Colorado.
- E. Award to Yay! Life! compensatory, punitive and enhanced damages for Defendants' willful infringement, false designation of origin, and unfair competition.
- F. An Order requiring Defendants to pay Yay! Life! Tribe's attorney's fees and costs in this action pursuant to 15 U.S.C. § 1117(a) due to the exceptional nature of this case.
- G. Award to Yay! Life! exemplary damages in view of the intentional and willful,

disregard of its rights by Defendants.

- H. Grant to Yay! Life! such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

Respectfully submitted this 12th day of January 2012.

s/ Carl F. Manthei

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