

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**FC Online Marketing, Inc.
Plaintiff,**

Case No.: 2:14-cv-3685-SJF-W DW

v.

**Burke's Martial Arts, LLC,
John Jacob Burke,
Defendants.**

_____ /

ORIGINAL COMPLAINT

Comes now Plaintiff FC Online Marketing, Inc. ("FCOM") with its Complaint against Burke's Martial Arts, LLC, ("BMAL") and John Jacob Burke ("Burke") (collectively "Defendants") and states as follows:

INTRODUCTION

1. This is an action for Copyright Infringement under the United States Copyright Act of 1976, 17 U.S.C §§ 101 et seq. (the "Copyright Act"), for Trademark and Trade Dress Infringement under 15 U.S.C. §§ 1114, 1125 et seq. (the "Lanham Act"), for Cybersquatting under 15 U.S.C. § 1125(d), and for Unfair Competition under 15 U.S.C. § 1125 (a).

2. Additionally, as there is no adequate remedy in law, this is an action to preliminarily and permanently enjoin the reproduction, publication, advertisement, distribution or other dissemination of the domain name ILove2Kickbox.com ("Infringing Domain Name") and related trademark used on said Infringing Domain Name, created for or by the Defendants, and published on the Internet at said Infringing Domain Name, on the grounds that it is

confusingly similar to FCOM's trademark. It is also an action to preliminarily and permanently enjoin the further reproduction, distribution, and display of Defendants' website located on the Internet at said Infringing Domain Name, on the grounds that it violates FCOM's copyright, and to preliminarily and permanently enjoin the unfair competition that Defendants have engaged in.

PARTIES, JURISDICTION, AND VENUE

3. Plaintiff FCOM is a corporation that provides website design, search engine optimization, lead generation and other online marketing services and products to its weight loss through fitness licensees and franchisees, and who is domiciled in the State of New York, having its principal place of business in Nassau County, 3601 Hempstead Turnpike, Suite 503, Levittown, New York 11756.

4. Upon information and belief, Defendant BMAL is a State of Rhode Island Limited Liability Corporation that describes itself as providing "kickboxing classes for Rhode Island men and women who are falling in love with America's hottest new exercise that lets you lose weight and melt fat faster than they ever thought possible," with its principal place of business located in Providence County, 530 Wellington Avenue, Cranston, Rhode Island 02910.

5. Upon information and belief, Defendant John Jacob Burke is that Managing Member of BMAL and a resident of the state of Rhode Island having his principal place of residence at 512 Wellington Ave. Cranston, Rhode Island 02910.

6. Upon information and belief, at all times material hereto, Defendants operated through the acts of its employees, agents, representatives, servants, and the like, acting within their course of employment and scope of duties.

7. This court has jurisdiction over the subject matter of the Complaint for the Copyright Count pursuant to 28 U.S.C. 1331 (federal question) and pursuant to the Copyright

Act under 28 U.S.C. 1338(a) (copyrights) and 17 U.S.C. § 502 (copyright injunctive relief), and over the Unfair Competition Count under 28 U.S.C. § 1338(b) and 15 U.S.C. § 1116 (unfair competition injunctive relief), and over the Trademark and Trade Dress Infringement Counts under 28 U.S.C. § 1338(a) (trademarks) and 15 U.S.C. § 1116 (trademarks injunctive relief), and the Cybersquatting Count under 28 U.S.C. § 1338 (a) and 15 U.S.C. § 1116 (cybersquatting injunctive relief).

8. This Court has personal jurisdiction over Defendants because Defendants' tortious acts of Copyright Infringement, Trademark Infringement, Cybersquatting and Unfair Competition all occurred either directly or indirectly within this jurisdiction, and elsewhere in the State of New York as well as throughout the United States, and/or were specifically targeted at this jurisdiction where the intellectual property was created, is stored and the subject of the action. Defendants knew, or should have known, that their acts of Copyright Infringement, Trademark and Trade Dress Infringement, Cybersquatting and Unfair Competition targeted this jurisdiction and/or would have a direct impact on persons or entities located in this jurisdiction. Further, until recently, Defendants have transacted business within this jurisdiction.

9. Venue is proper in this judicial district pursuant to 28 U.S.C 1391 (a) and (b), because Defendants are subject to personal jurisdiction in this judicial district and a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

COPYRIGHT INFRINGEMENT

10. FCOM owns a website entitled I Love Kickboxing Carle Place, located on the internet at www.ilovekickboxingcarleplace.com (hereinafter referred to as "Website").

11. The Website is an original work which is copyrightable under Title 17 of the U.S.C to wit, the Copyright Act of 1976 as amended.

12. The Website contains “protectable elements” afforded copyright protection, said elements include, but are not limited to, the unique written content, images, graphics, and the unique expressions set forth in the Website.

13. FCOM, as the author of the Website, duly applied to the Library of Congress Copyright Office, and received a Certificate of Registration for the Website. *See Exhibit A*, Website U.S. Copyright registration, attached hereto and incorporated herein by reference.¹

14. FCOM is the sole owner of the Website’s copyright.

15. Subsequent to the issuance of the Website’s copyright certificate, Defendants infringed upon FCOM’s copyright by adapting FCOM’s Website content (“the Work”) and releasing said adaptation (“Infringing Content”) on its company website, located on the Internet at the Infringing Domain Name. *See Exhibit B*, Defendant’s Infringing Content, taken from ILovekickboxingcarleplace.com.

16. FCOM became aware of Defendants’ use of the Infringing Content on or about June 2, 2014.

17. On June 2, 2014 FCOM, via counsel, sent Defendants a first notification of copyright infringement. *See Exhibit C*, first copyright infringement notification. On this same day, FCOM sent Defendants’ Internet hosting provider (“GoDaddy”), a Digital Millennium Copyright Act (“DMCA”) “takedown notification” under 17 U.S.C. Section 512(c)(3) and 512(d)(3). *See Exhibit D*, DMCA takedown notification.

18. On June 3, 2014 GoDaddy responded that it had “suspended” Defendants’ website located on the Internet at ILove2Kickbox.com. *See Exhibit E*, GoDaddy’s response to

¹ All exhibits are attached hereto and incorporated herein by reference.

DMCA takedown.

TRADEMARK INFRINGEMENT

19. FCOM owns the trademark ILoveKickboxing.com (hereinafter referred to as “the Mark” or “Mark”). Michael Parrella (“Parrella”), CEO of FCOM, and the driving force behind the Mark, is a top gun fitness consultant and thought leader. Parrella has frequently been a featured speaker at the annual Martial Arts Industry Association (“MAIA”) convention, and has been voted either top MAIA speaker or, in the top group of MAIA speakers, every year attended. The MAIA is the industry’s leading martial arts business consulting organization. Parrella’s notoriety stems in part from running FCOM’s iLoveKickboxing.com fitness franchise (“ILKB”). ILKB has generated over 100,000 enrollments for schools around the world in its first two years of operation. Parrella has logged thousands of hours supporting the ILKB brand and promoting the Mark worldwide, including developing and implementing mastermind coaching programs that have helped school owners leverage the same Internet marketing techniques that propelled FCOM’s rise to prominence in the fitness industry.

20. The Mark is registered and protected under Title 15 of the U.S.C. §§ 1114, 1125 et seq. FCOM duly applied to the United States Patent and Trademark Office (“USPTO”) and received a trademark registration for “ILoveKickboxing.com.” See Exhibit F, FCOM’s USPTO trademark abstract. FCOM is the sole owner of the Mark.

21. FCOM has used the Mark in commerce on, and in connection with, the sale of its services on hundreds of websites (“the Works” or “Works”) that bear the Mark. See Exhibit G, Example of FCOM’s websites bearing the Mark. FCOM has spent hundreds of thousands of dollars advertising and promoting the Mark, as well as FCOM’s Works bearing the Mark. FCOM has built, and owns, valuable and substantial goodwill symbolized by the Mark.

22. FCOM's Mark is unique and distinctive and, as such, designates a single source of origin.

23. Subsequent to the Mark's registration, Defendants infringed upon FCOM's Mark by registering a domain name ("ILove2Kickbox.com") strikingly and confusingly similar to FCOM's ILoveKickboxing.com Mark and adopting a confusingly similar trademark, releasing said adaptation ("Infringing Mark") on its company website, located at ILove2Kickbox.com. *See Exhibit H*, Defendants' Infringing Mark taken from ILove2Kickbox.com.

24. FCOM became aware of Defendants' use of the Infringing Mark on or about June 2, 2014.

25. On or about June 3, 2014 FCOM, via counsel, notified Defendants that Defendants had infringed on its Mark. *See Exhibit I*, First notification of trademark infringement.

26. On or about June 3, 2014 Defendant Burke spoke with FCOM's counsel. Defendant Burke denied all allegations of copyright infringement and trademark infringement. The parties, through a phone conversation and email correspondence, have been unable to resolve the dispute amicably.

27. FCOM never entered into any agreement with Defendants that would permit Defendants to adapt or otherwise use the Work or the Mark; therefore, Defendants possess no rights whatsoever in the Work or the Mark, including any of the exclusive rights owned by FCOM under the Copyright Act and Lanham Act.

CYBERSQUATTING

28. FCOM's Mark is widely known and recognized among consumers and members of the fitness industry.

29. Defendants knew of FCOM's Mark prior to registering the Infringing Mark on

GoDaddy because Defendants were former FCOM licensees. *See* Exhibit K, Defendants' business relationship with FCOM; *see also* Exhibit L, Defendants' GoDaddy registration information.

30. Defendants registered the Infringing Mark ("ILove2Kickbox.com") and used it as Defendants' trademark and domain name, a trademark and domain name ("Infringing Domain Name") which is confusingly similar to the domain name that bears FCOM's distinctive Mark ("ILoveKickboxing.com").

31. FCOM, upon information and belief, alleges that Defendants used the Infringing Mark to divert Internet traffic, and therefore revenue, from users searching for FCOM's well-known fitness Mark, to the Infringing Domain Name.

32. FCOM, upon information and belief, alleges that Defendants' Infringing Domain Name features goods or services that are directly competitive with those sold or provided in connection with FCOM's distinctive Mark.

33. FCOM, upon information and belief, alleges that Defendants' unauthorized registration of the Infringing Domain Name creates a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Infringing Domain Name, and is likely to falsely suggest a sponsorship, connection, license, or association of Defendants, and the Infringing Domain Name, with FCOM.

34. FCOM, upon information and belief, alleges that Defendants' conduct has irreparably harmed, and if not enjoined, will continue to irreparably harm the general public who has an inherent interest in being free from confusion, mistake, and deception.

UNFAIR COMPETITION

35. Defendants' conduct, as described herein, constitutes unfair competition under the Lanham Act by, *inter alia*, directing search engine results toward an unauthorized and Infringing Domain Name and away from FCOM's website and Works, which bear FCOM's distinctive Mark.

TRADE DRESS INFRINGEMENT WEBSITES

36. FCOM has invested substantial time and financial resources in the creation of its extensive ILKB web presence ("Web Presence"). See Exhibit G. FCOM currently has active hundreds of ILKB websites including one of their flagship websites located on the Internet at www.ilovekickboxingcarleplace.com. See Exhibit M, look and feel of FCOM's ILKB websites with distinctive elements enumerated. FCOM's ILKB Web Presence was designed and refined after expending thousands of man hours, and significant amounts of money, focused on a particular "look and file" (ILKB "Trade Dress") that would convert leads into sales.

37. BMAL, in its www.atomickickboxing.com website, copied the "look and feel" of FCOM's distinctive elements (24) as well as their corresponding arrangement. See Exhibit N, BMAL's literal copying of FCOM's distinctive elements. For example:

- a. The blue radiant background on the atomickickboxing.com ("AKBC") above the main content is similar to ILKB's use of a radiant element in the same location—**element #1**.
- b. The placement of the AKBC logo and action figure elements are the same as ILKB's—**element #2**.
- c. AKBC's use of the solid blue border is the same as ILKB's—**element #3**.
- d. "Celebrity Cranston Kickboxing Instructor Will Show" is the equivalent of

“Famous Carle Place Kickboxing Instructor Shows” —**element #4.**

e. AKBC’s placement of the first “contact box element” is the same as ILKB’s—**element #5.**

f. The first line in the contact box, “Enter your Name and Primary Email to get” copies text from the ILKB first contact box—**element #6.**

g. The AKBC contact box also contains a “Get Instant Access” button and the same text and call to action as ILKB contact box—**element #7.**

h. AKBC’s repetitive use of a “3 dimensional banner element” exceeding the content borders is the same element that ILKB uses—**element #8.**

i. AKBC’s repetitive use of a “red arrow element” to denote before and after pictures is the same element that ILKB uses—**element #9.**

j. AKBC’s content “There’s no other form of aerobic activity that burns more calories” paraphrases ILKB’s “The Ilovekickboxing.com workout burns more calories than any other form of aerobic activity” —**element #10.**

k. AKBC’s “Aerobic Calorie Burning Per Hour element” arrangement of exercises and the related calories burned per hour is identical to ILKB’s Cardio Comparison: Fitness Facts—**element #11.**

l. AKBC’s “Fitness and Benefits element” not only paraphrases ILKB’s “Fitness Benefits element” but also matches each bullet point in order—**element #12.**

m. AKBC’s second “contact box element” contains the following “*Your privacy is important to us and we hate spammers! We will NEVER share your information with anyone!” Paraphrasing ILKB’s contact box element including the asterisk “*We hate spammers and hope they get roundhouse kicked in the face! We value your privacy and

will never share your information with anyone, ever!”—**element #13.**

n. The contact link goes to ilove2kickbox@gmail.com—**element #14.**

o. The blue radiant background on AKBC above the main content is similar ILKB’s use of a radiant element in the same location—**element #15.**

p. The placement of the AKBC logo and action figure elements are the same as ILKB’s—**element #16.**

q. AKBC’s use of the solid blue border is the same as ILKB’s—**element #17.**

r. AKBC’s “Step 1, 2 and 3” element is essentially identical to ILKB’s “3 Step” element in terms of organization of the message: “Step 1 Video, Step 2 Class Schedule and Step 3 Special Web Offer.” Additionally, AKBC’s background color used in the “3 Steps” element is similar to ILKB’s “3 Step” background colors—**element #18.**

s. As of yet AKBC’s video is not available to review for content however the previous video mimicked the ILKB video—**element #19.**

t. AKBC’s “Step 3” element starts with “Take advantage of our limited-time, web special offer” similar to ILKB’s text from the ILKB’s “Take advantage of our ridiculous web offer”—**element #20.**

u. AKBC’s “Here’s exactly what you will get:” element is broader in explanation of the items received but follows in order the ILKB offering. Additionally it includes the pricing of the FREE boxing gloves at \$45—**element #21.**

v. AKBC’s Special Offer Pricing of \$19.99 is identical to ILKB’s pricing—**element #22.**

w. AKBC uses a “Satisfaction Guaranteed” element is similar in placement and style to ILKB’s “Satisfaction Guaranteed” element—**element #23.**

x. AKBC's "Call to Action" buy now element is in the same typeface (non-italic) and emphasized with a freehand red circled emulating ILKB's "Call to Action" buy now element—**element #24**.

38. FCOM's ILKB Trade Dress is comprised of distinctive protectable elements comprising a definitive "look and feel" of its ILKB Web Presence. *See Exhibit M*, enumerated distinctive elements. FCOM's ILKB Trade Dress serves to identify FCOM as the source of its services. FCOM has invested substantial time, effort, and financial resources in creating and promoting said Trade Dress in connection with the sale of its products and services in interstate commerce. FCOM's Trade Dress is widely recognized and has become an asset of substantial value as a symbol of FCOM, its quality products and services, and its good will.

39. FCOM's ILKB Trade Dress is inherently distinctive as applied to its products and services and/or has acquired secondary meaning through FCOM's long-term, widespread and continuous use of said Trade Dress in commerce. FCOM's websites and web strategies, including its Mark and Trade Dress, are well known throughout the martial arts industry and recognized by many as the "gold" standard for converting leads into sales. Defendants were well aware of FCOM's Trade Dress and were desirous to copy it, something Defendants proceeded to do repeatedly.

40. FCOM's Trade Dress is unique, recognizable, and not merely functional. The distinct and non-functional elements of the Trade Dress include, but are not limited to, the elements enumerated above. Defendants, as former FCOM licensees, knew full well the value of FCOM's Trade Dress and that is why Defendants went to great lengths to intentionally copy it. *See Exhibit K*, business relationship between FCOM and Defendants.

TRADE DRESS INFRINGEMENT BRICK & MORTAR STORES

41. FCOM has likewise invested substantial time and financial resources in the creation of its trade dress for its “brick and mortar” ILKB stores (“Store Trade Dress”). *See Exhibit O* p.1, FCOM’s Store Trade Dress. The following elements are part and parcel of FCOM’s distinctive Store Trade Dress:

- a. reception area: desk framed sheetrock painted Benjamin Moore #1061 tan;
- b. desk is topped with absolute black granite with affront apron;
- c. flooring is either tan ceramic tile or black rolled rubber flooring with brown & tan chips;
- d. red pendant lighting over reception desk is Home Depot fixture “Watermelon;”
- e. walls are painted flat black, BM #1061 tan, or Faux Brick paneling is used;
- f. pro shop (merchandise area) is black slat wall with tan framing;
- g. previously the pro shop was brick slat wall for hanging merchandise;
- h. black track lighting over pro shop areas;
- i. red benches are specified for lobby area;
- j. training floor mats are Red and Black (usually red with black border);
- k. ceiling if open is painted black, or drop ceiling if existing;
- l. training floor lights are high bay acrylic hung to the 10” height on chain or similar product;
- m. locker rooms, bathrooms, store rooms are BM/ Linen White;
- n. corridors have a simple chair rail at approximately 41” ;
- o. lower half of walls get similar tan wall covering;

- p. bathroom vanities are absolute black granite with mirror finish Kohler sinks and single lever faucets (chrome Moen);
- q. specific tile is used in bathrooms and shower areas; a light glazed tile with 12” dark grey accents up the middle of showers and behind sinks;
- r. vanity lights over 18x30” commercial mirrors 3 square lights with green glass covers by Jasco; and
- s. green tall bamboo style plants are specified for lobby area.

42. Compare Exhibit O, p.1 (FCOM’s Store Trade Dress) with Exhibit O, p.2 (BMAL’s Store Trade Dress). Even to a lay observer will notices that the appearance of the two are remarkably similar, if not identical. In particular the brick wall, the red bench, the front desk, the placement of merchandise, the workout area flooring, the use of the respective logos on the wall (and the logos themselves) are all either identical or substantially similar. Discovery is likely to uncover additional similarities.

43. Upon information and belief, it was Defendant Burke that posted BMAL’s “build out” photos on a Facebook group that he participates in.

44. Upon information and belief, as Defendants have done on previous occasions, Defendants intentionally copied FCOM’s Store Trade Dress and thereby repeatedly infringed on FCOM’s intellectual property rights under the Lanham Act.

TEMPORARY AND PERMANENT INJUNCTION

45. FCOM is likely to succeed on the merits on its copyright and trademark infringement counts (i.e. included its Trade Dress Count) based on the evidence before the Court in FCOM’s complaint.

46. If this Court fails to provide injunctive relief then FCOM will suffer irreparable harm in that Defendants' intentional violation of FCOM's copyright, trademark and trade dress will continue unabated, thereby damaging FCOM's goodwill, which no amount of compensatory damages can replace.

47. The balance of the hardships favors FCOM in the instant case. Defendants are free to conduct business without infringing on FCOM's intellectual property. FCOM seeks only to protect its intellectual property and has no interest in preventing Defendants from otherwise doing business.

48. The public interest is best served by preventing the kind of confusion in the marketplace that Defendants' intentional misconduct has engendered.

Count I – Copyright Infringement
[Copyright Infringement 17 U.S.C. § 501(a)]

49. FCOM incorporates by reference all the allegations set forth in ¶¶ 1-48 as if fully set forth herein.

50. FCOM is the rightful owner of all rights related to the Work and, pursuant to 17 U.S.C. § 102(a), owns a copyright in same, for which an application for registration has been made and a certification issued.

51. Defendants, by using FCOM's Work for their own economic gain without a contractual agreement with FCOM— unlawfully reproduced the Work, unlawfully distributed the Work, unlawfully displayed the Work, and unlawfully created a derivative version of the Work, in violation of FCOM's enumerated rights contained in the Copyright Act. *See generally* 17 U.S.C. §§ 106 and 501.

52. Upon information and belief, Defendants' acts of copyright infringement were willful and deliberate, in reckless disregard of FCOM's copyright, and intended for its own economic gain, without consideration for processes and safeguards that would have protected the rights of copyright holders. *See* 17 U.S.C. § 504(c)(2).

53. As a direct and proximate result thereof, FCOM has been injured, in an amount presently unknown and to be determined at time of trial, by reason of Defendants' intentional acts.

54. The injury that FCOM has suffered, and will continue to suffer, unless Defendants' acts of infringement are enjoined, is irreparable.

55. FCOM has no adequate remedy at law for said copyright infringement, accordingly, FCOM is entitled to preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502.

Count II – Trademark Infringement
[15 U.S.C. §1114 and §1125]

56. FCOM incorporates by reference all the allegations set forth in ¶¶ 1-48 as if fully set forth herein.

57. FCOM is the rightful owner of all rights related to the Mark and, pursuant to 15 U.S.C. §1114 and §1125, owns a registered trademark in same, for which an application for registration has been made and a certification issued.

58. Defendants, by using FCOM's Mark for its own economic gain without a contractual agreement with FCOM— unlawfully substantially reproduced the Mark, unlawfully distributed the Mark, unlawfully displayed the Mark, unlawfully created a derivative version of

the Mark, and unlawfully used the Infringing Mark in commerce, thereby causing confusion in the marketplace, in violation of FCOM's rights contained in the Lanham Act.

59. Upon information and belief, Defendants' acts of trademark infringement were willful and deliberate in reckless disregard of FCOM's Mark, and intended for its own economic gain, without consideration for processes and safeguards that would have protected the rights of trademark holders. *See generally* 15 U.S.C. §1114 and §1125; *see also* Exhibit J, Defendant Burke providing guidance designating the Mark as a reference.

60. FCOM has no adequate remedy at law for said trademark infringement, accordingly, FCOM is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

Count III - Cybersquatting
[Cybersquatting Under 15 U.S.C. § 1125(d)]

61. FCOM incorporates by reference all the allegations set forth in ¶¶ 1-48 as if fully set forth herein.

62. FCOM, upon information and belief, alleges that Defendants registered, trafficked in or used the Infringing Domain Name.

63. FCOM's Mark is distinctive and federally registered at the USPTO at the time Defendants registered and used the Infringing Domain Name.

64. The Infringing Domain Name is confusingly similar to FCOM's Mark.

65. FCOM, upon information and belief, alleges that Defendants registered, trafficked in, or used the Infringing Domain Name in bad faith and with bad faith intent to profit from FCOM's Mark.

66. FCOM, upon information and belief, alleges that the Infringing Domain Name

does not consist of the legal name of any Defendant, nor is it a name that is otherwise commonly used to identify any Defendant.

67. FCOM, upon information and belief, alleges that Defendants have not made any prior use of any of the Infringing Domain Name in connection with the bona fide offering of any goods or services.

68. FCOM, upon information and belief, alleges that Defendants registered and used the Infringing Domain Name to divert consumers from FCOM's website and Works to the Infringing Domain Name for Defendants' commercial gain by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Infringing Domain Name.

69. Defendants' registration, use, or trafficking in the Infringing Domain Name constitutes cybersquatting in violation of 15 U.S.C. § 1125(d), entitling FCOM to relief.

70. Defendants engaged in the above activities complained of above with bad faith intent to profit from the registration or maintenance of the Infringing Domain Name.

71. By reason of Defendants' acts alleged herein, FCOM's remedy at law is not adequate to compensate FCOM for the injuries inflicted by Defendants. Accordingly, FCOM is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

Count IV - Unfair Competition
[15 U.S.C. § 1125]

72. FCOM incorporates by reference all the allegations set forth in ¶¶ 1-48 as if fully set forth herein.

73. FCOM created an original Work that has been published and used by hundreds of FCOM's licensees and franchisees on the Internet. Further, the Work has contributed significantly to FCOM's annual revenue stream since its inception.

74. Defendants' unauthorized use of FCOM's Work, which Defendants made available on the Internet, has caused irreparable harm to FCOM. This harm was caused by, *inter alia*, directing traffic and revenue away from FCOM's Works. Any continued use or display of a derivative of said Work by Defendants will add to the irreparable harm already caused.

75. As a direct and proximate result thereof, FCOM has been injured, in an amount presently unknown and to be determined at time of trial, by reason of Defendants' intentional acts.

76. The injury that FCOM has suffered, and will continue to suffer, unless Defendants' acts of infringement are enjoined, is irreparable.

77. FCOM has no adequate remedy at law, accordingly, FCOM is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

Count V – Trade Dress Infringement
[15 U.S.C. § 1125]

78. FCOM incorporates by reference all the allegations set forth in ¶¶ 1-48 as if fully set forth herein.

79. FCOM's Trade Dress is used throughout the United States in connection with both its websites and its brick and mortar stores. FCOM's Trade Dress is distinctive and distinguishes FCOM and its services from those of its competitors. FCOM's Trade Dress is widely recognized given FCOM's significant marketing and the acclaim and widespread public recognition of its products and services, both nationally and internationally.

80. Defendants have, without authorization, duplicated FCOM's Trade Dress on its website and in its brick and mortar store. FCOM's Trade Dress is strongly associated with its quality, reputation, and good will in the marketplace. Duplication on the part of Defendants is

likely to cause consumer confusion, or to cause mistake, or to deceive as to Defendants' affiliation, connection, or association with and/or endorsement or approval of by FCOM, and constitutes infringement of FCOM's rights under 15 U.S.C. § 1125(a) and/or vicarious or contributory infringement of FCOM's rights under same.

81. Upon information and belief, actual and potential consumers of FCOM have relied upon the likely confusion, mistake and/or deception, of said duplication of FCOM's Trade Dress, and such reliance has caused economic loss to FCOM's business.

82. Upon information and belief, Defendants exercised ownership or control over the duplicated trade dress and/or intentionally induced or encouraged the infringement of FCOM's rights under 15 U.S.C. § 1125(a). At all times relevant to this action, Defendants knew of FCOM's prior adoption and widespread use of its Trade Dress, and the acts of Defendants as described herein have been, and continue to be, willful and deliberate and in conscious disregard of FCOM's rights.

83. Due to the acts of Defendants as described herein, FCOM has been damaged and will continue to be damaged, and Defendants have been unjustly enriched, in an amount to be proven at trial.

84. FCOM has no control over the quality of Defendants' duplicated trade dress, and therefore said duplication puts FCOM's goodwill at risk. FCOM's goodwill is of enormous value, and FCOM will suffer irreparable harm if the infringement is allowed to continue to the detriment of FCOM's goodwill. FCOM is further entitled to an order enjoining Defendants from any further infringement of its Trade Dress.

PRAYER FOR RELIEF

WHEREFORE, FCOM respectfully requests that this Court:

Count I – Copyright Infringement

- (A) Permanently enjoin Defendants, and all other persons who are in active concert or participation with Defendants, from continuing to infringe FCOM’s copyrighted Work;
- (B) Order Defendants to delete and permanently remove copies of FCOM’s Work from each of the computers under Defendants’ possession, custody or control;
- (C) Award FCOM, at its election, damages in an amount to be determined at time of trial and/or Defendants’ infringing profits, or statutory damages;
- (D) Award FCOM reasonable attorneys’ fees and costs pursuant to 17 U.S.C. §505; and
- (E) Grant FCOM any other and further relief this Court deems just and proper.

Count II – Trademark Infringement

- (A) Permanently enjoin Defendants, and all other persons who are in active concert or participation with Defendant, from continuing to infringe on FCOM’s Mark;
- (B) Award FCOM damages in an amount to be determined at time of trial based Defendants’ infringing profits pursuant to 15 U.S. Code § 1117(a) and trebled damages pursuant to 15 U.S. Code § 1114;
- (C) Award FCOM reasonable attorneys’ fees and costs pursuant to 15 U.S. Code § 1117(a); and
- (D) Grant FCOM any other and further relief this Court deems just and proper.

Count III - Cybersquatting

- (A) Find that Defendants violated FCOM's rights in the Mark under 15 U.S.C. §1125(d);
- (B) Order Defendants to transfer the Infringing Domain Name ("ILove2Kickbox.com") to FCOM;
- (C) Permanently enjoin Defendants, and all other persons who are in active concert or participation with Defendant, from the following: (i) registering, trafficking in, or using, in any manner, any Internet domain name that incorporates, in whole or in part, FCOM's Mark, or any name, mark or designation confusingly similar thereto; (ii) using any of FCOM's Mark, or any other name, mark, designation or depiction in a manner that is likely to cause confusion regarding whether Defendants are affiliated or associated with or sponsored by FCOM; (iii) registering any Internet domain name that incorporates, in whole or in part, FCOM's Mark, or any name, mark or designation confusingly similar thereto; (iv) assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs C(i) through C(iv) above;
- (D) Order Defendants to account to FCOM for, and disgorge, all profits they have derived by reason of the unlawful acts complained of above;
- (E) Award FCOM damages in an amount to be determined at time of trial based Defendants' infringing profits pursuant to 15 U.S. Code § 1117(a) and/or statutory damages pursuant to 15 U.S. Code § 1125(d), in the amount of in an amount of one hundred thousand dollars (\$100,000), and that those damages be trebled, under 15 U.S.C. § 1117;
- (F) Award FCOM reasonable attorneys' fees and costs pursuant to 15 U.S. Code §

1117(a); and

(G) Grant FCOM any other and further relief this Court deems just and proper.

Count IV - Unfair Competition

(A) Permanently enjoin Defendants, and all other persons who are in active concert or participation with Defendants, from continuing to engage in conduct giving rise to unfair competition;

(B) Award FCOM reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1117; and

(C) Grant FCOM any other and further relief this Court deems just and proper.

Count V – Trade Dress Infringement

(A) Permanently enjoin Defendants, and all other persons who are in active concert or participation with Defendants, from continuing to engage in conduct giving rise to trade dress infringement;

(B) Award trebled damages for Defendants' acts of trade dress infringement;

(C) Award FCOM reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1117; and

(D) Grant FCOM any other and further relief this Court deems just and proper.

Respectfully submitted,

By: /s/ Carlos A. Leyva
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**ATTORNEY FOR PLAINTIFF
FC ONLINE MARKETING, INC.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 13, 2014, I electronically filed the foregoing using the CM/ECF system, which will send notification of such filing.

By: /s/ Carlos A. Leyva
Carlos A. Leyva