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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 MONSTER CABLE PRODUCTS,)
12 INC., a California corporation;)
13 MONSTER CABLE INTERNATIONAL,)
14 LTD., a Bermuda corporation,)
15 Plaintiffs,)
16 vs.)
17 THE WALT DISNEY COMPANY,)
18 and DOES 1 through 50, inclusive,)
19 Defendants.)

NO.

COMPLAINT FOR TRADEMARK
INFRINGEMENT AND DILUTION;
UNFAIR COMPETITION; and

JURY TRIAL DEMANDED

20 Plaintiffs, MONSTER CABLE PRODUCTS, INC. and MONSTER CABLE
21 INTERNATIONAL, LTD. (hereafter collectively "Plaintiffs"), allege as follows:

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JURISDICTION AND VENUE

1. This action arises under 28 U.S.C. §1125 et seq. Jurisdiction is therefore proper under
28 U.S.C. §§1331 and 1332.

2. Pendent or supplemental jurisdiction of this Court exists for the state law claims stated
herein, each of which arise out of a common nucleus of operative facts with those from which the
federal claims arise.

3. Venue in this judicial district is proper under 28 U.S.C. §1391 (b) and (c). Defendant

1 has on a continual basis committed infringing and diluting acts alleged below within the Northern
2 District of California, in business interactions purposefully elicited by Defendants with or directed
3 to residents of said district, including, inter alia, causing infringing sales within the district,
4 Internet website advertising and promotion and other promotion and media advertising within said
5 district, and other use of the infringing marks which harms Plaintiffs within said district.

6 THE PARTIES

7 4. Plaintiff Monster Cable Products, Inc. is a California corporation having its principal
8 place of business in Brisbane, California. Plaintiff Monster Cable International, Ltd. is a
9 corporation existing under the laws of the country of Bermuda, and is a wholly owned subsidiary
10 of Monster Cable Products, Inc.

11 5. Plaintiffs are informed and believe, and based thereon allege, that Defendant, The Walt
12 Disney Company is a Delaware corporation, having its principal place of business in Burbank,
13 California.

14 6. Plaintiffs are ignorant of the true names and capacities of the defendants sued herein
15 as DOES 1 through 25, inclusive and therefore sues said defendants by such fictitious names.
16 Plaintiffs will amend this complaint when the true names and capacities of said defendants have
17 been ascertained. Plaintiffs are informed and believe and thereon allege that DOES 1 through 25,
18 inclusive, and each of them, are legally responsible in some manner for the events and happenings
19 referred to herein, and proximately caused or contributed to the injuries and damages to Plaintiffs
20 as herein alleged.

21 7. Plaintiffs are informed and believe and thereon allege that each and every defendant
22 was the agent and employee of each of the remaining defendants, and in doing the things herein
23 alleged acted within the course and scope of said agency and employment.

24 FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

25 8. Beginning in or about August of 1978, and continuing to date, Plaintiffs have been
26 doing business in the United States and abroad, using in commerce the mark "MONSTER" and
27 related marks as a trademark in connection with audio, sound, video, musical and electrical items

1 and thereafter on related items, including products and services in connection with computer and
2 video games, computers, clothing, the Internet and electronic commerce.

3 9. Plaintiffs have acquired trademark and service mark rights to the mark “MONSTER,”
4 and related marks, both at common law from and after said date and further by virtue of
5 registrations with the United States Patent and Trademark Office, including, inter alia, federal
6 Trademark Registration No. 2,184,002, a true copy of which is attached hereto as Exhibit A, and
7 No. 2,197,793, a true copy of said registration is attached hereto as Exhibit B.

8 10. Plaintiffs additionally have an extensive “MONSTER” family of marks using the
9 “Monster” stem word, which has grown since 1978. Hereafter, all of the above marks are referred
10 to collectively as “Plaintiffs’ marks.”

11 11. Plaintiffs have extensively advertised and promoted said marks. Moreover, Plaintiffs
12 have invested substantial time, energy and resources to develop said marks. Each of their marks
13 are inherently arbitrary, fanciful, distinctive or suggestive, or have otherwise acquired secondary
14 meaning in the relevant channels of trade to refer to Plaintiffs.

15 12. Plaintiffs are informed and believe, and based thereon allege, that from and after
16 September 17, 2001, defendants and each of them have commenced use in commerce of a
17 confusingly similar “Monsters, Inc.” and “monstersinc” marks and domain name in connection
18 with the promotion, advertising, offering for sale, sale and licensing for goods and services or
19 other use in commerce as an indicator of origin of goods. Plaintiffs are further informed and
20 believe that defendants, and each of them, have a business practice of producing sequels or a series
21 of titles stemming from their original title, and intend or are likely to do so in connection with the
22 title “Monsters, Inc.,” which would likely to give rise to additional trademark usage by
23 defendants.

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1 trademarks and service marks.

2 20. As a proximate result of defendants' above-described conduct, Plaintiffs are informed
3 and believe and based thereon allege that they have been damaged in an unascertained amount.
4 Plaintiffs will seek leave to amend this Complaint when such damages have been ascertained.

5 21. At all material times, acted in bad faith, oppressively and maliciously toward
6 Plaintiffs, with intent to injure Plaintiffs, thereby entitling Plaintiffs to treble damages against
7 defendants, and each of them, in an unascertained amount. Plaintiffs will seek leave to amend this
8 Complaint when such damages have been ascertained.

9 22. The above described acts of Defendants have caused and are continuing to cause
10 irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law, and
11 Defendants will continue to do so unless enjoined by this Court.

12 WHEREFORE, Plaintiffs pray for judgment as hereafter set forth.

13 COUNT III

14 (Federal Unfair Competition)

15 23. As and for a cause of action against defendants, and each of them, Plaintiffs adopt,
16 reallege and incorporate by reference all of the allegations contained hereinabove in paragraphs
17 1 through the immediately preceding paragraph as though fully set forth.

18 24. The foregoing actions constitute unfair competition, in violation of 15 U.S.C.
19 §1125(a).

20 25. As a proximate result of defendants' above-described conduct, Plaintiffs are informed
21 and believe and based thereon allege that they have been damaged in an unascertained amount.
22 Plaintiffs will seek leave to amend this Complaint when such damages have been ascertained.

23 26. At all material times, acted in bad faith, oppressively and maliciously toward
24 Plaintiffs, with intent to injure Plaintiffs, thereby entitling Plaintiffs to treble damages against
25 defendants, and each of them, in an unascertained amount. Plaintiffs will seek leave to amend this
26 Complaint when such damages have been ascertained.

27 27. The above described acts of Defendants have caused and are continuing to cause

1 irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law, and
2 Defendants will continue to do so unless enjoined by this Court.

3 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

4 COUNT IV

5 (Contributory Trademark Infringement and Dilution)

6 28. As and for a cause of action against defendants, and each of them, Plaintiffs adopt,
7 reallege and incorporate by reference all of the allegations contained hereinabove in paragraphs
8 1 through the immediately preceding paragraph as though fully set forth.

9 29. Defendants, and each of them, have engaged in contributory trademark infringement
10 and dilution by inducing third party licensees and others to infringe and dilute Plaintiffs' marks.

11 30. As a proximate result of defendants' above-described conduct, Plaintiffs are informed
12 and believe and based thereon allege that they have been damaged in an unascertained amount.
13 Plaintiffs will seek leave to amend this Complaint when such damages have been ascertained.

14 31. At all material times, acted in bad faith, oppressively and maliciously toward
15 Plaintiffs, with intent to injure Plaintiffs, thereby entitling Plaintiffs to treble damages against
16 defendants, and each of them, in an unascertained amount. Plaintiffs will seek leave to amend this
17 Complaint when such damages have been ascertained.

18 32. The above described acts of Defendants have caused and are continuing to cause
19 irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law, and
20 Defendants will continue to do so unless enjoined by this Court.

21 COUNT V

22 (State Unfair Competition)

23 33. As and for a cause of action against defendants, and each of them, Plaintiffs adopt,
24 reallege and incorporate by reference all of the allegations contained hereinabove in paragraphs
25 1 through the immediately preceding paragraph as though fully set forth.

26 34. The actions of Defendants as described hereinabove constitute unfair competition
27 under California common law.

1 35. As a proximate result of defendants' above-described conduct, Plaintiffs are informed
2 and believe and based thereon allege that they have been damaged in an unascertained amount.
3 Plaintiffs will seek leave to amend this Complaint when such damages have been ascertained.

4 36. At all material times, acted in bad faith, oppressively and maliciously toward
5 Plaintiffs, with intent to injure Plaintiffs, thereby entitling Plaintiffs to treble damages against
6 defendants, and each of them, in an unascertained amount. Plaintiffs will seek leave to amend this
7 Complaint when such damages have been ascertained.

8 37. The above described acts of Defendants have caused and are continuing to cause
9 irreparable injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law, and
10 Defendants will continue to do so unless enjoined by this Court.

11 WHEREFORE, Plaintiffs pray for judgment in their favor and against as follows:

12 1. An award of monetary damages, including recovery of Defendant's profits and the
13 damages sustained by Plaintiffs, arising from the acts of Defendants complained of herein,
14 according to proof;

15 2. An award of trebled monetary damages, according to proof;

16 3. An award of prejudgment interest from the date of each wrongful act and recovery
17 of Plaintiffs' attorneys fees and costs;

18 4. Injunctive relief against defendants, and each of them, their officers, agents,
19 employees, servants, attorneys, representatives, successors and assigns, and each of them and all
20 others in privity and acting on behalf of or in concert therewith, from using as a trade name,
21 trademark, service mark or otherwise referring to itself or their goods or services, comprising or
22 containing the word "MONSTER," or any acronym of similar appearance, sound or import,
23 including, but not limited to, licensing, selling or otherwise using in commerce the term
24 "MONSTER" or "MONSTERS, INC." as an indicator of origin of goods in connection with any
25 licensing, merchandising or sale of goods or services (other than as a title in the first released
26 motion picture, except as stated immediately hereafter), or use in a series of titles for motion
27 pictures, video, audio, music, computer game or other products.

1 5. A judicial declaration that Plaintiffs shall have the exclusive right to use the marks and
2 domain names set forth herein and an order that defendants transfer of all right, title and interest
3 in and to all of such marks and domain names to Plaintiffs;

4 6. An award of Plaintiffs' attorneys' fees and costs; and

5 7. Any and all further relief as may be deemed fit and proper.

6 JURY TRIAL DEMAND

7 Pursuant to Fed R. Civ. P. 38(b), 5(d) and Local Rule 3-6, Plaintiffs demands a jury trial
8 of all issues triable by jury.

9 Dated: December 26, 2001.

Respectfully submitted,

10 LARIVIERE, GRUBMAN & PAYNE, LLP
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12 By: _____
13 Robert W. Payne
14 Attorneys for Plaintiffs
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