

David L. Mortensen (#8242)
dlmortensen@stoel.com
Jose A. Abarca (#12762)
jaabarca@stoel.com
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111-4904
Telephone: (801) 328-3131
Facsimile: (801) 578-6999

Attorneys for The Color Run, LLC

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

THE COLOR RUN, LLC, a Utah limited liability company,

Plaintiff,

v.

MAXWELL W. JACKSON DBA MAX'S PHOTOGRAPHY, an individual,

Defendant.

COMPLAINT AND JURY DEMAND

Case No. 2:13-cv-00797-BCW

Judge Brooke C. Wells

Plaintiff The Color Run, LLC, by and through its counsel hereby complains against Maxwell W. Jackson dba Max's Photography and for its causes of action alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff The Color Run, LLC ("The Color Run") is a limited liability company organized and existing under the laws of the State of Utah, with its principal place of business at 12278 South Lone Peak Parkway, Suite 106, Draper, Utah, 84020.

2. On information and belief, defendant Maxwell W. Jackson dba Max's Photography ("Jackson") is an individual residing in Boca Raton, Florida.

3. The Court has subject-matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1331 as this action arises under the following federal statutes: 15 U.S.C. § 1125(a) (trademark infringement, copyright infringement, false designation of origin, false advertising). The Court also has subject-matter jurisdiction over this dispute pursuant to 28 U.S.C. § 2201(a) because this Complaint is an appropriate pleading, seeking a declaration of The Color Run's rights. The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a) in that they are substantially related to the claims that arise under the Lanham Act of the United States. Finally, the Court has subject-matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship and the amount in controversy exceeds the sum of \$75,000.00, exclusive of costs and interest.

4. This Court has personal jurisdiction over Jackson because Jackson has had specific contacts with Utah sufficiently related to this cause of action to warrant the exercise of personal jurisdiction by this Court.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

A. The Happiest 5k on the Planet.

6. The Color Run is the creator and leading provider of a new series of five kilometer foot races in which participants begin the race dressed in white and are doused in different colors of cornstarch paint as they reach each kilometer mark. By the time participants reach the finish line of the untimed events, they are covered in paint and are treated to a post-race party where they celebrate with music, festivities, and even more paint.

7. In 2012, The Color Run held more than 50 events worldwide with more than 600,000 participants. In 2013, The Color Run will hold more than 100 events worldwide with more than 1 million participants. As a result, The Color Run has become the largest and most well-recognized running event in the world.

8. In 2012, The Color Run raised more than \$600,000 for charitable organizations, and in 2013, The Color Run will raise more than \$1,000,000 for various charities.

9. On information and belief, Jackson is a freelance photographer employed by and/or working for Silverback Enterprises (“Silverback”) located in Lawrence, Kansas.

B. Jackson Attends The Color Run Miami and Photographs the Event.

10. On or about October 21, 2012, Jackson attended The Color Run event in Miami, Florida.

11. While at The Color Run event, Jackson took photographs of the paint race participants running, jogging, and/or walking the course and enjoying the post-race festivities (the “Photographs”). On information and belief, Jackson did not obtain permission from all of the participants in the Photographs.

C. Jackson Posts the Photographs of The Color Run Event on His Facebook Page.

12. On or about October 22, 2012, Jackson posted the Photographs on his Facebook page.

13. On information and belief, Jackson did not have permission from The Color Run event participants who appeared in the Photographs to use their likenesses or images.

D. The Color Run Approaches Jackson About Using the Photographs.

14. While, as set forth below, The Color Run had no legal obligation to do so, on or about October 22, 2012, Scott Winn (“Winn”), an independent contractor who assists with photography and videography for The Color Run, contacted Jackson via Facebook to determine whether Jackson would allow The Color Run to use the Photographs in advertising The Color Run’s future events.

15. Jackson agreed that The Color Run could use the Photographs to advertise The Color Run’s future events. Given Jackson’s agreement, The Color Run offered to link any of the Photographs used on The Color Run social media pages back to Jackson’s Facebook page. Jackson’s agreement to allow The Color Run to use the Photographs shall be referred to herein as the “Use Agreement.”

E. Jackson Provides The Color Run With the Photographs.

16. Pursuant to the Use Agreement, on or about, October 22, 2012, Jackson sent Winn an email that included the Photographs. Jackson also sent Winn a message via Facebook that included a link to the Photographs. Consistent with the Use Agreement and Jackson’s agreement that The Color Run had a license to and could use the Photographs, these high-resolution versions of the Photographs did not include Jackson’s watermark or other notice of Jackson’s alleged authorship of the Photographs.

17. The Color Run has relied on Jackson’s agreement that it could use the Photographs and has used the Photographs to advertise future events since Jackson sent the photographs to The Color Run. When The Color Run used the Photographs on social media websites, The Color Run typically included a link to Jackson’s Facebook page. At times, The

Color Run inadvertently used the Photographs in hard-copy and other advertisements without including a link to Jackson's Facebook page or otherwise attributing the Photographs to Jackson.

18. Since October 2012, Jackson has used the fact that The Color Run selected some of the Photographs to promote and market his photography services, and, on information and belief, has greatly benefited from such promotion and marketing.

F. Jackson Claims that The Color Run Breached the Use Agreement and Violated Copyright Laws.

19. For many months, Jackson has known that The Color Run was, at times, using the Photographs without giving him attribution.

20. On or about July 21, 2013, Jackson sent a demand letter, claiming that The Color Run used several of the Photographs on the internet and in print advertisements without attribution in violation of the Use Agreement. *See* Ltr. from M. Jackson to T. Snyder (07/21/2013), attached as Ex. A.

21. Jackson claimed that The Color Run's use of the Photographs was in breach of the Use Agreement and violated Federal Copyright laws. Based on that, Jackson demanded, among other things, that The Color Run (a) pay \$100,000 into his business bank account; and (b) name him as The Color Run's Official Photography Sponsor; and (c) include his logo on The Color Run's webpage. *See id.*

G. The Color Run's Intellectual Property.

22. The Color Run has successfully registered THE COLOR RUN as a trademark with the Utah Department of Commerce.

23. The Color Run has also applied for registration of its trademarks with the United States Patent and Trademark Office (the "USPTO"). Specifically, The Color Run has

sought to obtain federal trademark registrations for the following trademarks: THE COLOR RUN, COLOR 5K, COLOR DASH, COLOR RUNNER, COLOR VIBES, HAPPIEST 5K, IF LIFE HANDS YOU COLOR RUN WITH IT, WILL RUN FOR COLOR, WORRY LESS RUN MORE and COLOR MADNESS (the “Marks”).

24. The Color Run’s federal trademark applications have all passed the USPTO’s initial review and have either been published for opposition or have been approved to be published for opposition. And, The Color Run has obtained federal trademark registrations for COLOR MADNESS, COLOR RUNNER, HAPPIEST 5K, IF LIFE HANDS YOU COLOR RUN WITH IT, THE COLOR RUN, and WILL RUN FOR COLOR.

25. The Color Run promoted its paint races nationwide through posting photographs, videos, and social media campaigns on the Internet along with advertisements on Facebook and other Internet sites, spending hundreds of thousands of dollars on internet advertising. The Color Run also launched local campaigns where it plastered cities with flyers and posters of forthcoming events, and participated in run expos/tradeshows.

26. The Color Run has spent millions of dollars directly and indirectly building advertising and promoting its use of the Marks and its business as designated by the Marks.

27. As a result, the Marks have become famous and are recognized throughout the United States and world.

H. Jackson Claims to be an Employee of The Color Run and Uses The Color Run’s Marks Without Permission.

28. It has recently come to The Color Run’s attention that, Jackson has represented on his Facebook page that he is or has been employed by The Color Run. *See* Facebook Screen

Shot, attached as Ex. B. Jackson's representation is false. Jackson has never been employed by The Color Run.

29. Additionally, The Color Run has recently learned that Jackson has used and is continuing to use The Color Run's THE COLOR RUN trademark and logo on his Facebook page without The Color Run's permission. *See id.*

30. Jackson's use of the Marks in connection with his photography business has already caused, and is likely to cause continued confusion, mistake or deception as to the origin, sponsorship or approval of the products or services provided by Jackson's photography business.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

31. The Color Run hereby incorporates by reference the allegations set forth in paragraphs 1 through 30 above as though fully set forth herein.

32. An actual controversy has arisen and now exists between The Color Run and Jackson concerning The Color Run's use of the Photographs.

33. Jackson contends that The Color Run failed to give him attribution for the Photographs in breach of the Use Agreement and in violation of copyright laws.

34. The Color Run disputes these contentions and asserts that (1) The Color Run has an implied license to reproduce and display the Photographs; (2) attributing the Photographs to Jackson was not a condition of Jackson granting The Color Run a license to use the Photographs; (3) rather, any obligation to attribute the Photographs to Jackson was, at most, a covenant arising rather than a condition of the license and, accordingly, The Color Run's use of the Photographs cannot be a violation of copyright laws; (4) any failure to attribute the Photographs to Jackson was inadvertent and not a material breach of the Use Agreement; (5)

Jackson has not been harmed by any failure to attribute the Photographs to Jackson; (6) Jackson has violated the privacy and publicity rights of the persons in the Photographs and, accordingly, Jackson is barred from bringing claims against The Color Run relating to the Photographs; (7) The Color Run's use of the Photographs constitutes fair use under 15 U.S.C. § 107; and (8) the Photographs are derivative works created from The Color Run's copyrighted materials.

35. As a party to the Use Agreement and pursuant to 28 U.S.C. § 2201(a) and Utah Code Ann. § 78B-6-401 *et seq.*, The Color Run is entitled to a declaration determining the respective rights and obligations of the parties under the Use Agreement. A declaration of this Court is necessary and appropriate at this time so that the parties may determine their rights and obligations under the Use Agreement.

36. Specifically, The Color Run requests that the Court enter a declaration that (a) The Color Run did not violate copyright law as a result of any failure to attribute the Photographs to Jackson; (b) The Color Run did not materially breach the Use Agreement by inadvertently failing to attribute the Photographs to Jackson in certain advertisements; (c) Jackson has unclean hands as a result of failing to obtain the permission of race participants to use their likenesses and images; and (d) Jackson gave The Color Run an implied license to use the Photographs without giving Jackson attribution.

SECOND CAUSE OF ACTION
(Federal Trademark Infringement, 15 U.S.C. § 1125(a))

37. The Color Run hereby incorporates by reference the allegations set forth in paragraphs 1 through 36 above as though fully set forth herein.

38. The Color Run is the owner of the Marks, and the consuming public recognizes the Marks as being distinctive, and as identifiers of the high quality products associated with The Color Run.

39. Notwithstanding The Color Run's well-known prior rights in the Marks, Jackson has used and continues to use the Marks in connection with his photography business.

40. Jackson's use of the Marks in connection with his photography business has already caused, and is likely to cause continued confusion, mistake or deception as to the origin, sponsorship or approval of the products or services provided by Jackson's photography business.

41. Jackson's use of the Marks is also likely to cause at least initial interest and other confusion among users and potential users of The Color Run's goods and related services.

42. Jackson's actions constitute trademark infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a).

43. Jackson will continue, unless enjoined, to cause irreparable harm to, and injury to the goodwill and reputation of The Color Run.

44. As a direct and proximate result of Jackson's wrongful acts, The Color Run has also suffered pecuniary damages from Jackson's actions in an amount to be determined at trial.

45. In addition to the damages sustained, The Color Run is also entitled to recover Jackson's profits as provided under Section 35 of the Lanham Act, 15 U.S.C. § 1117(a).

46. The Color Run is also entitled to recover its costs and reasonable attorneys' fees associated with this action pursuant to 15 U.S.C. § 1117(a).

47. On information and belief, Jackson's activities were taken with knowledge of The Color Run's rights, and thus constitute deliberate, willful, and/or intentional infringement. The Color Run is further entitled, pursuant to 15 U.S.C. § 1117, to treble damages, together with interest thereon, in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(False Advertising, 15 U.S.C. §1125(a))

48. The Color Run hereby incorporates by reference the allegations set forth in paragraphs 1 through 47 above as though fully set forth herein.

49. Jackson's use in commerce of the Marks misrepresents the nature of The Color Run's goods, services, and commercial activities.

50. The information displayed currently and in the past on Jackson's Facebook page is false and misleading and misrepresents the nature, characteristics, or qualities of Jackson's goods, services, and commercial activities.

51. The above-described acts of Jackson constitute false advertising in violation of 15 U.S.C. § 1125(a).

52. Jackson will continue, unless enjoined, to cause irreparable harm and injury to the goodwill and reputation of The Color Run.

53. As a direct and proximate result of Jackson's wrongful acts, The Color Run has also suffered pecuniary damages from Jackson's actions in an amount to be determined at trial.

54. In addition to the damages sustained, The Color Run is also entitled to recover Jackson's profits as provided under Section 35 of the Lanham Act, 15 U.S.C. § 1117(a).

55. The Color Run is also entitled to recover its costs and reasonable attorneys' fees associated with this action pursuant to 15 U.S.C. § 1117(a).

56. On information and belief, Jackson's activities were taken with knowledge of The Color Run's rights, and thus constitute deliberate, willful, and/or intentional infringement. The Color Run is further entitled, pursuant to 15 U.S.C. § 1117, to treble damages, together with interest thereon, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(False Designation of Origin, 15 U.S.C. § 1125(a))

57. The Color Run hereby incorporates by reference the allegations set forth in paragraphs 1 through 56 above as though fully set forth herein.

58. Jackson's use in commerce of the Marks has caused and/or is likely to cause confusion, mistake, or to deceive the consuming public into believing that Jackson's use of the Marks is authorized, sponsored, or approved by The Color Run.

59. The above-described acts of Jackson constitute false designations of origin in violation of 15 U.S.C. § 1125(a).

60. Jackson will continue, unless enjoined, to cause irreparable harm and injury to the goodwill and reputation of The Color Run.

61. As a direct and proximate result of Jackson's wrongful acts, The Color Run has suffered pecuniary damages in an amount to be determined at trial.

62. In addition to the damages sustained, The Color Run is also entitled to recover Jackson's profits as provided under Section 35 of the Lanham Act, 15 U.S.C. § 1117(a).

63. The Color Run is also entitled to recover its costs and reasonable attorneys' fees associated with this action pursuant to 15 U.S.C. § 1117(a).

64. On information and belief, Jackson's activities were taken with knowledge of The Color Run's rights, and thus constitute deliberate, willful, and/or intentional infringement. The Color Run is further entitled, pursuant to 15 U.S.C. § 1117, to treble damages, together with interest thereon, in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(Trademark Infringement, Utah Code Ann. § 70-3a-402)

65. The Color Run hereby incorporates by reference the allegations set forth in paragraphs 1 through 64 above as though fully set forth herein.

66. The Color Run owns a Utah registration for THE COLOR RUN (the "Utah Mark").

67. Notwithstanding The Color Run's prior rights in the Utah Mark, Jackson uses a reproduction, counterfeit, copy, or colorable imitation of the Utah Mark without The Color Run's consent in connection with the sale, distribution, offering for sale, and advertising of similar goods and services.

68. Jackson used and continues to use the reproductions, counterfeits, copies, and colorable imitations of the Utah Mark with the intent to deceive or to cause confusion or mistake.

69. Jackson's actions constitute trademark infringement in violation of Utah Code Ann. § 70-3a-402.

70. Unless enjoined, Jackson will continue to cause irreparable harm to the goodwill and reputation of The Color Run.

71. As a direct and proximate result of Jackson's wrongful acts, The Color Run has suffered pecuniary damages from Jackson's actions in an amount to be determined at trial.

72. On information and belief, Jackson's activities were taken in bad faith or with knowledge of The Color Run's rights, and thus constitute deliberate, willful, and/or intentional infringement. The Color Run is therefore entitled to the remedies in Utah Code Ann. § 70-3a-404, including treble profits and/or damages, attorneys' fees and costs.

SIXTH CAUSE OF ACTION
(Unfair Competition, Utah Code Ann. § 13-11a-3 *et seq.*)

73. The Color Run hereby incorporates by reference the allegations set forth in paragraphs 1 through 72 above as though fully set forth herein.

74. Jackson has engaged in unfair methods of competition by intentionally using and continuing to use the Marks in connection with goods or services in commerce, in a manner that is likely to cause confusion, mistake, or deception as to the source, sponsorship, approval, or certification of such goods or services.

75. Jackson's actions constitute unfair competition under Utah Code § 13-11a-3.

76. Based on the foregoing, The Color Run is entitled to declaratory, injunctive, and monetary relief against Jackson, along with its attorneys' fees and costs, pursuant to Utah Code § 13-11a-4(2)(a), (b) and (c).

SEVENTH CAUSE OF ACTION
(Unfair Competition, Utah Code Ann. § 13-5a-101 *et seq.*)

77. The Color Run hereby incorporates by reference the allegations set forth in paragraphs 1 through 76 above as though fully set forth herein.

78. Jackson, by his actions set forth above, has engaged in intentional business acts or practices that are unlawful, unfair, and fraudulent, and which have caused a material diminution in the value of the trademarks held by The Color Run, including, but not limited to,

the Marks, and also constitute infringement of such trademarks, and has thereby engaged in unfair competition pursuant to Utah Code § 13-5a-102(4).

79. On information and belief, Jackson has engaged in unfair competition in willful and deliberate disregard of the rights of The Color Run and the consuming public.

80. Due to Jackson's unfair competition practices, The Color Run has suffered damages and irreparable harm.

81. Jackson's conduct, as set forth above, gives rise to a cause of action for unfair competition under Utah Code § 13-5a-101 *et seq.*

82. Based on the foregoing, The Color Run is entitled to declaratory, injunctive, and monetary relief against Jackson, along with its attorneys' fees and costs.

EIGHTH CAUSE OF ACTION
(Common Law Trademark Infringement)

83. The Color Run hereby incorporates by reference the allegations set forth in paragraphs 1 through 82 above as though fully set forth herein.

84. The Color Run is the owner of the Marks, and the consuming public recognizes the Marks as being distinctive, and as an identifier of the high quality-products and services associated with The Color Run.

85. Notwithstanding The Color Run's well-known prior rights in the Marks, Jackson uses and has used the Marks in connection with his photography business.

86. Jackson's use of the Marks in connection with goods or services in commerce that directly compete with The Color Run is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of such goods or services.

87. Jackson's use of the Marks is also likely to cause initial interest and other confusion among users and potential users of The Color Run goods and related services.

88. Jackson's actions constitute common law trademark infringement.

89. Jackson will continue, unless enjoined, to cause irreparable harm, and injury to the goodwill and reputation of The Color Run.

90. As a direct and proximate result of Jackson's wrongful acts, The Color Run has suffered pecuniary damages in an amount to be determined at trial.

NINTH CAUSE OF ACTION
(Common Law Unfair Competition)

91. The Color Run hereby incorporates by reference the allegations set forth in paragraphs 1 through 90 above as though fully set forth herein.

92. Jackson's actions as set forth above constitute unfair competition by misappropriation of The Color Run's labors and expenditures in violation of common law.

93. Jackson's actions constitute unfair competition by dilution and impairment of the ability of consumers to identify the commercial source of The Color Run's products and services.

94. As a direct and proximate result of Jackson's wrongful acts, The Color Run has suffered and continues to suffer damages, in an amount to be determined at trial.

95. Based on the foregoing, The Color Run is entitled to declaratory, injunctive, and monetary relief against Jackson, along with its attorneys' fees and costs.

96. Because Jackson's actions were and continue to be willful and/or reckless, with the intent to profit and/or cause confusion, mistake, and/or deception, The Color Run is entitled to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, The Color Run respectfully prays for this Court's judgment against Jackson as follows:

On the First Claim for Relief for Declaratory Judgment

1. For a declaration that (a) The Color Run did not violate copyright law as a result of any failure to attribute the Photographs to Jackson; (b) The Color Run did not materially breach the Use Agreement by inadvertently filing to attribute the Photographs to Jackson in certain advertisements; (c) Jackson has unclean hands as a result of failing to obtain the permission of race participants to use their likenesses and images; and (d) Jackson gave The Color Run an implied license to use the Photographs without giving Jackson attribution..

2. An award of damages in favor of The Color Run and against Jackson in an amount to be proven at trial, but not less than \$75,000;

3. An award of The Color Run's attorneys' fees and costs; and

4. A judgment granting The Color Run all such other and further relief available under applicable law and/or as the Court deems just and equitable under the circumstances.

On the Second Claim for Relief for Federal Trademark Infringement

1. For a declaration that Jackson's use of the Marks in conjunction with his photography business violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a);

2. For an order preliminarily and permanently enjoining and restraining Jackson and his officers, agents, representatives, employees, attorneys, successors, assigns, affiliates, and any persons in active concert or participation of any of them, from: (a) infringing the Marks; and

(b) using the Marks or confusingly similar marks in conjunction with Jackson's photography, or any other, business;

3. For an order requiring Jackson to remove the Marks from his Facebook page;

4. An award of damages in favor of The Color Run and against Jackson in an amount to be proven at trial, but not less than \$75,000;

5. For an amount to be determined at trial equal to Jackson's profits derived from, and The Color Run's damages as a result of, Jackson's wrongful acts;

6. For an amount equal to The Color Run's costs and reasonable attorneys' fees for this action; and

7. For an amount three times the greater of Jackson's profits derived from, or The Color Run's damages as a result of, Jackson's wrongful acts, and interest thereon.

On the Third Claim for Relief for False Advertisement

1. For a declaration that Jackson's use of the Marks constitutes false advertisement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125;

2. For an order preliminarily and permanently enjoining and restraining Jackson and his officers, agents, representatives, employees, attorneys, successors, assigns, affiliates and any persons in active concert or participation of any of them, from: (a) infringing the Marks; and (b) using the Marks in conjunction with Jackson photography, or any other, business;

3. For an order requiring Jackson to remove the Marks from his Facebook page;

4. An award of damages in favor of The Color Run and against Jackson in an amount to be proven at trial, but not less than \$75,000;

5. For an amount to be determined at trial equal to Jackson's profits derived from, and The Color Run's damages as a result of, Jackson's wrongful acts;

6. For an amount equal to The Color Run's costs and reasonable attorneys' fees for this action; and

7. For an amount three times the greater of Jackson's profits derived from, or The Color Run's damages as a result of, Jackson's wrongful acts, and interest thereon.

On the Fourth Claim for Relief for False Designation of Origin

1. For a declaration that Jackson's use of the Marks constitutes false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125;

2. For an order preliminarily and permanently enjoining and restraining Jackson and his officers, agents, representatives, employees, attorneys, successors, assigns, affiliates and any persons in active concert or participation of any of them, from: (a) infringing the Marks; and (b) using the Marks in conjunction with Jackson photography, or any other, business;

3. For an order requiring Jackson to remove the Marks from his Facebook page;

4. An award of damages in favor of The Color Run and against Jackson in an amount to be proven at trial, but not less than \$75,000;

5. For an amount to be determined at trial equal to Jackson's profits derived from, and The Color Run's damages as a result of, Jackson's wrongful acts;

6. For an amount equal to The Color Run's costs and reasonable attorneys' fees for this action; and

7. For an amount three times the greater of Jackson's profits derived from, or The Color Run's damages as a result of, Jackson's wrongful acts, and interest thereon.

On the Fifth Claim for Relief for Trademark Infringement under the Utah Code

1. A judgment finding that Jackson has infringed the Marks under Utah Code Ann. § 70-3a-402;
2. An order preliminarily and permanently enjoining and restraining Jackson and its officers, agents, representatives, employees, attorneys, successors, assigns, affiliates, and any persons in active concert or participation of any of them, from (a) infringing the Marks; (b) registering and using any trademark or service mark that is identical or confusingly similar to the Marks; and (c) using the Marks or trademarks that are confusingly similar to the Marks in conjunction with Jackson's photography, or any other, business;
3. An award of damages in an amount to be determined at trial, but not less than \$75,000, equal to Jackson's profits derived from Jackson's wrongful use, display, or sale of goods bearing the Marks, or all damages suffered by The Color Run as a result of Jackson's wrongful use, display, or sale of goods bearing the Marks;
4. An amount equal to three times Jackson's profits derived from, and The Color Run's damages as a result of, Jackson's wrongful acts, and interest thereon; and
5. An award of The Color Run's attorneys' fees and costs pursuant to Utah Code Ann. § 70-3a-404(3).

On the Sixth, Seventh, and Ninth Claims for Unfair Competition under Utah Code and the Common Law

1. For a declaration that Jackson's use of the Marks in conjunction with his photography business constitutes unfair competition in violation of the Utah Code and the common law;

2. An order preliminarily and permanently enjoining and restraining Jackson and its officers, agents, representatives, employees, attorneys, successors, assigns, affiliates, and any persons in active concert or participation of any of them, from (a) infringing the Marks; (b) registering and using any trademark or service mark that is identical or confusingly similar to the Marks; and (c) using the Marks or trademarks that are confusingly similar to the Marks in conjunction with Jackson's photography, or any other, business;
3. For an order requiring Jackson to remove the Marks from his Facebook page;
4. An award of damages in favor of The Color Run and against Jackson in an amount to be proven at trial, but not less than \$75,000;
5. For an amount to be determined at trial equal to Jackson's profits derived from, and The Color Run's damages as a result of, Jackson's wrongful acts; and
6. For punitive damages.

On the Eighth Claim for Common Law Trademark Infringement

1. A declaration that Jackson's use of the Marks infringes The Color Run's common law rights in the Marks;
2. An order preliminarily and permanently enjoining and restraining Jackson and its officers, agents, representatives, employees, attorneys, successors, assigns, affiliates, and any persons in active concert or participation of any of them, from (a) infringing the Marks; (b) registering and using any trademark or service mark that is identical or confusingly similar to the Marks; and (c) using the Marks or trademarks that are confusingly similar to the Marks in conjunction with Jackson's photography, or any other, business;
3. For an order requiring Jackson to remove the Marks from his Facebook page;

4. An award of damages in favor of The Color Run and against Jackson in an amount to be proven at trial, but not less than \$75,000; and

5. For an amount to be determined at trial equal to Jackson's profits derived from, and The Color Run's damages as a result of, Jackson's wrongful acts.

For All Claims for Relief

1. For an order requiring Jackson to file with the Court and serve on The Color Run within thirty (30) days after issuance of an injunction a report in writing and under oath setting forth in detail the manner and form in which Jackson has complied with the injunction, pursuant to 15 U.S.C. § 1116; and

2. For an order granting The Color Run such other and further relief as the equity of the case may require and this Court deems just and proper, together with the reasonable attorneys' fees, costs, and disbursements incurred by The Color Run in this action.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Seventh Amendment to the United States Constitution, The Color Run demands a trial by jury.

DATED: August 27, 2013.

STOEL RIVES LLP

/s/ David L. Mortensen

David L. Mortensen
Jose A. Abarca

Attorneys for Plaintiff
The Color Run

Plaintiff's Address:
The Color Run, LLC
12278 South Lone Peak Parkway
Draper, Utah, 84020