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11 Attorneys for Plaintiff

12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 HUSH HUSH SOUND, INC., a California
 15 corporation; MICHAEL DAVID, an
 16 individual; and TYLER BLAKE, an
 17 individual,

18 Plaintiff,

19 v.

20 H&M HENNES & MAURITZ LP, a New
 21 York limited partnership; and DOES 1
 22 through 10,

23 Defendants.

Case No.:

COMPLAINT FOR:

- 1. Trademark Infringement I - Violation of 15 U.S.C. § 1114(1)(a) et seq.
- 2. Trademark Infringement II - Violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) et seq.;
- 3. Common Law Misappropriation of Name and Likeness; and
- 4. Violation of California Business and Professions Code § 17200, et seq.

JURY TRIAL DEMANDED

1 Plaintiffs, by and through their undersigned attorneys, hereby prays to this
2 honorable Court for relief based on the following:

3 **JURISDICTION AND VENUE**

4 1. This is an action for trademark infringement under the Trademark Laws of
5 the United States, under 15 U.S.C. §§ 1051, et seq., 15 U.S.C. §§ 1114, and 15
6 U.S.C. § 1121.

7 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
8 1338 (a) and (b).

9 3. This Court also has supplemental jurisdiction over the state law claims. This
10 Court has pendent jurisdiction over the claims arising under California law pursuant
11 to 28 U.S.C. § 1367(a) because the asserted state claims are substantially related to
12 the claims arising under the Trademark Laws of the United States. Furthermore, this
13 Court has pendent jurisdiction because both the state and federal claims are derived
14 from a common nucleus of operative facts and considerations of judicial economy
15 dictate the state and federal issues be consolidated for a single trial.

16 4. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
17 1400(a) in that this is the judicial district in which a substantial part of the acts and
18 omissions giving rise to the claims occurred.

19 **PARTIES**

20 5. Plaintiffs Michael David (“David”) and Tyler Blake (“Blake”) are
21 individuals residing in the state of California.

22 6. Plaintiff Hush Hush Sound, Inc. (“HHSI”) is a California corporation.

23 7. David, Blake, and HHSI do business as, and perform and sell merchandise
24 under the name, “Classixx”.

25 8. Plaintiff is informed and believes and thereon alleges that Defendant H&M
26 Hennes & Mauritz LP (“H&M”) is a New York limited partnership, with its
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1 principal place of business located at 110 Fifth Avenue, 11th Floor, New York, New
2 York 10003, and is doing business in and with the state of California.

3 9. Plaintiff is informed and believes and thereon alleges that Defendants
4 DOES 1 through 10, inclusive, are other parties not yet identified who have infringed
5 Plaintiff's copyrights and trademarks, have contributed to the infringement of
6 Plaintiff's copyrights and trademarks, or have engaged in one or more of the
7 wrongful practices alleged herein. The true names, whether corporate, individual or
8 otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff,
9 which therefore sues said Defendants by such fictitious names, and will seek leave to
10 amend this Complaint to show their true names and capacities when same have been
11 ascertained.

12 10. Plaintiff is informed and believes and thereon alleges that at all times
13 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
14 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
15 at all times acting within the scope of such agency, affiliation, alter-ego relationship
16 and/or employment; and actively participated in or subsequently ratified and/or
17 adopted each of the acts or conduct alleged, with full knowledge of all the facts and
18 circumstances, including, but not limited to, full knowledge of each violation of
19 Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

20 **TRADEMARK INFRINGEMENT OF U.S.**

21 **REGISTRATION NO. 4319801**

22 11. Since at least 2007, Plaintiffs have been producing a unique style of
23 electronic dance music and performing their music around the world. In 2013, they
24 released their first album, "Hanging Gardens," which was included in numerous
25 year-end, best-of lists, including those published by "Rolling Stone" and
26 "Billboard". They released their second album, "Faraway Places," in 2016, and have
27 released numerous singles and collaborations. Their material has been critically and
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1 commercially successful, landing in the top 15 of the “American Billboard
2 Independent Albums” and “Heatseekers Albums” charts.

3 12. Plaintiffs’ music was also recognized by “Chicagoist” as being “staples in
4 DJ sets all over the world.” “LA Weekly” named David and Blake, performing as
5 “Classixx” “L.A’s Best Dance Music Duo” in 2013 and similarly noted the duo has
6 “earned inclusion in DJ sets worldwide.”

7 13. In 2016, Plaintiffs began a headlining tour throughout the United States
8 and Canada reaching 18 major cities. They continue to tour around the country
9 performing at major performance venues and festivals. They also continue to market
10 and sell music and merchandise, including apparel, under the “Classixx” trademark.

11 **TRADEMARK INFRINGEMENT AND MISSAPPROPRIATION OF**
12 **LIKENESS AND RIGHT OF PUBLICITY**

13 14. Hush is the owner of United States Trademark Registration No. 4319801,
14 registered April 16, 2013, for the word mark “Classixx” (“Trademark”) for use in
15 association under International Class 009 for Musical sound recording and musical
16 video recordings in all media, and under International Class 041 for Entertainment
17 services in the nature of live musical performances by a performer or group. This
18 registration is now valid, subsisting, uncanceled, and unrevoked.

19 15. Plaintiffs, like most musical acts, markets and sells a wide range of t-shirts,
20 apparel, and other merchandise that bears the Trademark in commerce across the
21 United States and beyond.

22 16. Continuously since at least 2007, Plaintiffs have employed the Trademark
23 in connection with and to identify its brand, performances, music, merchandise,
24 clothing, and other services and products, and to distinguish said products from
25 similar products offered by other companies, by, and without limitation, prominently
26 displaying the Trademark on its products and advertising and promotional materials
27 distributed throughout the United States.

1 17. In addition, as of the date of the filing of this complaint, Plaintiffs actively
2 engaged in using and/or expanding its use of the Trademark in connection with its
3 products and services in interstate commerce throughout the United States.

4 18. Following this registration, Plaintiffs' investigation revealed that
5 Defendants, and each of them, which, like Plaintiffs, offer apparel to its customers,
6 had misappropriated the Trademark, and were trading on Plaintiffs' and the
7 Trademark's good will and reputation by marketing, advertising, and selling product
8 bearing unauthorized and confusion-causing identical copies of the Trademark.

9 19. Plaintiff is informed and believes and thereon alleges that, without
10 Plaintiffs' authorization, H&M and certain DOE Defendants created, sold,
11 manufactured, caused to be manufactured, marketed, advertised, published online,
12 distributed, and sold garments featuring as their primary mark, a mark that is
13 identical to the Trademark (hereinafter "Infringing Garments"). The Infringing
14 Garments include but are not limited to the garment depicted in the Infringing
15 Garment column of the design comparison set forth in paragraph 20, *infra*.

16 20. The Trademark was federally registered by Hush well before Defendants'
17 commenced their infringement and Defendants had constructive notice of Plaintiffs'
18 rights in Plaintiffs' federally registered Trademark under 15 U.S.C. § 1072. On
19 information and belief H&M was also aware of Plaintiffs and their Trademark due
20 to, *inter alia*, the performance of Plaintiffs' music in H&M's retail stores around the
21 world.

22 21. Plaintiffs served a cease and desist demand on H&M but no resolution
23 could be reached.

24 22. An exemplar of the Infringing Garments clearly indicates that the word
25 marks are identical, and likely to create consumer confusion as to the source of the
26 product. A picture of the Trademark and one non-inclusive exemplar of the
27 Infringing Garments are set forth below:

TRADEMARK:

Classixx

Word Mark

CLASSIXX

CLASSIXX



CLASSIXX LOGO T
(BLACK)
\$25.00

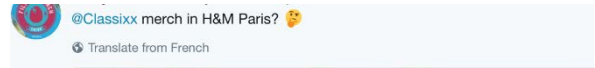
AA Poly-Cotton S/S Crew Neck - Black
Available in S, XXL

SMALL

Add to Cart



INFRINGING GARMENTS:



FIRST CLAIM FOR RELIEF

(Trademark Infringement I - Against All Defendants, and Each)

(For Trademark Infringement – Against All Defendants, and Each)

23. Plaintiff repeats, realleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

24. Hush owns a registration for the Trademark and Plaintiffs have used the Trademark in commerce in connection with recorded music, live music performances, and apparel and merchandise before Defendants’ used the Trademark in commerce.

25. Plaintiffs did not authorize Defendants’ use of the Trademark. Defendants’ use of the Trademark is likely to cause confusion, or to cause mistake, or to deceive.

1 Indeed, on information and belief it is alleged that Defendants' unlawful exploitation
2 of the Trademark has caused actual confusion in the marketplace.

3 26. Defendants, and each of them have imported, marketed, advertised,
4 published online, distributed, and sold product bearing the Trademark.

5 27. H&M has used in commerce a reproduction, counterfeit, copy, or colorable
6 imitation of the Trademark, which is federally registered, in connection with the sale,
7 offering in sale, distribution, or advertising of H&M product. The foregoing is likely
8 to cause confusion, or to cause mistake, or to deceive the public. On information and
9 belief it is alleged that actual confusion has resulted from H&M's unlawful use of th
10 Trademark.

11 28. Plaintiffs are informed and believes and thereon alleges that Defendants,
12 and each of them, infringed the Trademark by producing, marketing, importing,
13 publishing online, distributing and/or selling garments that infringe upon Hush's
14 rights in the Trademark.

15 29. Due to Defendants' acts of infringement, Plaintiffs have suffered
16 substantial damages to its business in an amount to be established at trial.

17 30. Due to Defendants' acts of infringement, Plaintiffs have suffered general
18 and special damages in an amount to be established at trial.

19 31. Due to Defendants' acts of trademark infringement as alleged herein,
20 Defendants, and each of them, have obtained direct and indirect profits they would
21 not otherwise have realized but for their infringement of the Trademark. As such,
22 Plaintiffs are entitled to disgorgement of Defendant's profits directly and indirectly
23 attributable to Defendant's infringement of the Trademark in an amount to be
24 established at trial.

25 32. Due to Defendants' actions, constituting unauthorized use of the Marks,
26 Plaintiffs have suffered and continues to suffer great and irreparable injury, for
27 which Plaintiffs have no adequate remedy at law.

1 33. On information and belief, H&M's misappropriation has been knowing,
2 intentional, wanton, and willful, entitling Plaintiffs' to treble damages, profits,
3 attorneys' fees, and costs.

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5 **SECOND CLAIM FOR RELIEF**

6 **(Trademark Infringement II - Against All Defendants, and Each)**

7 34. Plaintiffs repeat, reallege and incorporate herein by reference as though
8 fully set forth the allegations contained in the preceding paragraphs, inclusive, of this
9 Complaint.

10 35. Plaintiffs, as a musical group, and own an enforceable right in their own
11 identity, name, likeness, and trademarks.

12 36. H&M, in connection with its goods and services, has used and exploited
13 without permission the Trademark, which created a false or misleading
14 representation of fact that is likely to cause confusion, or to cause mistake, or
15 deceive as to the affiliation, connection or association of such person with another
16 person, or as to the origin, sponsorship, or approval of his or her goods, services, or
17 commercial activities by another person.

18 37. H&M' use of the trademark on its product has caused confusion as to the
19 origin of H&M's products, create a false affiliation, connection, association, and/or
20 sponsorship between Plaintiffs and H&M, and has led the public to believe that
21 Plaintiffs approved the Infringing Garments and resulted in actual confusion in the
22 marketplace.

23 38. Plaintiffs at no time authorized or approved of H&M's use of its
24 Trademark.

25 39. Defendants, and each of their, use of the Trademark has caused general and
26 special damage to Plaintiffs in an amount that will be established at trial. Plaintiffs
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1 will seek Defendants' profits, the damages sustained by the Plaintiffs, and the costs
2 of the action.

3 40. On information and belief, H&M's misappropriation has been knowing,
4 intentional, wanton, and willful, entitling Plaintiffs to treble damages, profits,
5 attorneys' fees, and costs.

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7 **THIRD CLAIM FOR RELIEF**

8 **(California Common Law Misappropriation of Name and Likeness and Right**
9 **of Publicity, - Against All Defendants, and Each)**

10 41. Plaintiffs repeat, reallege and incorporate herein by reference as though
11 fully set forth the allegations contained in the preceding paragraphs, inclusive, of this
12 Complaint.

13 42. David and Blake perform for the public under the name "Classixx" and
14 market and sell recorded music, apparel, and other merchandise under the name
15 "Classixx." Indeed, David and Blake are identified and known to their fans, the
16 industry, the media, and the general public by the name "Classixx."

17 43. H&M, without Plaintiffs' permission or consent, used and exploited the
18 name "Classixx" on product and in marketing, and the appropriation of the
19 "Classixx" name and identity resulted in a commercial and brand advantage to
20 H&M.

21 44. H&M, without permission, have used, and continue to use, the "Classixx"
22 name, identity, and persona for commercial and business purposes in such a way that
23 the "Classixx" name is prominent and clearly identifiable.

24 45. Specifically, H&M has and continues to use the "Classixx" name and
25 identity in association with its marketing and sales of the Infringing Garments. On
26 information and belief it is alleged that this appropriation was made to mislead and
27 deceive and consumers into believing that H&M's Infringing Garments are genuine

1 “Classixx” garments that originate from, or are sponsored by or associated or
2 connected with, David and Blake.

3 46. David and Blake did not consent to H&M’S appropriation and exploitation
4 of their (David and Blake’s) “Classixx” name and identity.

5 47. Such use by H&M is likely to cause, and has caused, David and Blake
6 commercial, reputational, and/or market damage and harm.

7 48. As a result of H&M’s misappropriation, David and Blake have been
8 injured in an amount not yet fully determined, but believed to be in excess of the
9 jurisdictional minimums of this court, exclusive of costs and interests. The damage
10 suffered by David and Blake includes without limitation damage to reputation,
11 emotional, marketing and loss of publicity value.

12 49. In addition, as a result of H&M’s misappropriation, David and Blake have
13 suffered and will continue to suffer irreparable harm through, without limitation, a
14 loss of goodwill, peace, happiness, and feelings, as well as though injury to their
15 goodwill, professional standing, and future publicity value. Unless H&M’s
16 misappropriation is enjoined by this Court, Plaintiff will continue to suffer a risk of
17 irreparable harm.

18 50. H&M has received a commercial advantage and value through its
19 exploitation of Plaintiffs’ name and identity by receiving revenues and profits in
20 connection with the sales of the Infringing Garments. Said revenues and profits must
21 be disgorged and tendered to Plaintiffs.

22 51. On information and belief, H&M’s misappropriation has been knowing,
23 intentional, wanton, and willful, entitling David and Blake to enhanced damages.

FOURTH CLAIM FOR RELIEF

**(Violation of California Unfair Competition and Trademark Law), -
Against All Defendants, and Each)**

52. Plaintiffs reallege and incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth here.

53. Plaintiffs are informed and believe that Defendants are in direct competition with Plaintiffs.

54. Defendants' willful, knowing and unauthorized promotion, advertisement, sale and offering for sale of infringing goods and services causing confusion as to the source of the goods and causing harm to Plaintiffs' goodwill is an unlawful appropriation of Plaintiffs' exclusive rights in the Trademark.

55. Such acts constitute unfair trade practices and unfair competition under California Business and Professions Code §§ 17200, et seq., and under the common law of the State of California.

56. Pursuant to California Business and Professions Code § 17203, Defendants are required to disgorge and restore to Plaintiffs all profits and property acquired by means of Defendants' unfair competition with Plaintiff.

57. Due to Defendants' conduct, Plaintiffs have suffered and will continue to suffer irreparable harm. It would be difficult to ascertain the amount of money damages that would afford Plaintiffs adequate relief at law for Defendants' acts and continuing acts.

58. Plaintiffs' remedy at law is not adequate to compensate them for the injuries already inflicted and further threatened by Defendants. Accordingly, Plaintiffs are entitled to preliminary and permanent injunctive relief pursuant to California Business and Professions Code § 17203.

1 59. Defendants' conduct has been intentional and willful and in conscious
2 disregard of Plaintiffs' rights and, therefore, Plaintiffs are entitled to exemplary or
3 punitive damages under the common law of the State of California in an amount
4 appropriate to punish Defendants and to make an example of them to the
5 community.

6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiff prays for judgment as follows:

- 8 a. Finding that Defendants have committed trademark infringement and
9 violated Sections 1114 and 1125(a) of Title 15;
- 10 b. Granting an injunction permanently restraining and enjoining
11 Defendants, their officers, agents, employees and attorneys, and all those
12 persons or entities in active concert or participation with them, or any of
13 them, from using on product, advertising, marketing, promoting,
14 performing under, or otherwise using the Trademark;
- 15 c. Directing that Defendants account to and pay over to Plaintiff all profits
16 realized by their wrongful acts and directing that such profits be trebled
17 in accordance with Section 35 of the Lanham Act, 15 U.S.C. § 1117;
- 18 d. Awarding Plaintiff statutory and trebled damages in accordance with
19 Section 35 of the Lanham Act, 15 U.S.C. § 1117;
- 20 e. Awarding Plaintiff actual damages in accordance with Section 35 of the
21 Lanham Act, 15 U.S.C. § 1117;
- 22 f. Awarding Plaintiff costs and attorney's fees and investigatory fees and
23 expenses to the full extent provided for by Section 35 of the Lanham
24 Act, 15 U.S.C. § 1117;
- 25 g. Awarding full damages as allowed under California common law for
26 Defendants' violation of Plaintiffs' common law right of publicity;
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- h. Awarding full damages, costs and attorneys’ fees under the California Business and Professions Code;
- i. Requiring Defendants to deliver to Plaintiff for destruction or other disposition all remaining inventory or materials bearing the Mark, including all advertising, promotional and marketing materials therefor, as well as all means of making the same;
- j. That Plaintiff be awarded pre-judgment interest as allowed by law;
- k. That Plaintiff be awarded the costs of this action; and
- l. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Dated: October 19, 2017

Respectfully submitted,

By: /s/ Scott Alan Burroughs
Scott Alan Burroughs, Esq.
Trevor W. Barrett, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiffs