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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 **CV 12 3112**

11 CHARLES CARREON

12 Plaintiff,

13 vs.

14 MATTHEW INMAN, INDIEGOGO, INC.,
15 NATIONAL WILDLIFE FEDERATION,
16 AND AMERICAN CANCER SOCIETY,
17 and Does 1 - 100,

18 Defendants.

19 Case No.:

20 COMPLAINT FOR INJUNCTIVE TO
21 IMPOSE CHARITABLE TRUST AND
22 REQUIRE ACCOUNTING. AND FOR
23 DAMAGES FOR TRADEMARK
24 INFRINGEMENT AND INCITEMENT TO
25 CYBERVANDALISM BY WEBSITE
26 HACKING AND FALSE PERSONATION

27 JURY DEMAND

28 For its complaint against defendants Matthew Inman ("Inman") and Indiegogo, Inc. ("Indiegogo"), jointly referred to sometimes herein as the "Fundraising Defendants," and the National Wildlife Federation ("NWF") and the American Cancer Society ("ACS"), jointly referred to sometimes herein as the "Charitable Organization Defendants"), and Does 1 - 100, plaintiff Charles Carreon ("Plaintiff"), alleges:

JURISDICTION

1. This is an action for infringement of a federally registered trademark pursuant to 15 USC §1114, unfair competition under California Business & Professions Code § 17200, *et seq.*, and violations of the Supervision of Trustees and Fundraisers for Charitable Purposes Act as amended by the Nonprofit Integrity Act California Government Code §§ 12580, *et seq.* and the Charitable Solicitation Disclosure Law, California Business & Professions Code §§ 17510, *et seq.*

FILED
E-filing
JUN 15 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED BY FAX

1 2. This Court has jurisdiction over this action pursuant to: 28 USC §§ 1331 and 1338(a) and
2 (b), and 15 USC §1121, as an action for violations of the Lanham Act, 15 USC §§ 1051, *et seq.*,
3 28 USC § 1332(a)(1), and has pendent, supplemental and ancillary jurisdiction pursuant to 28
4 U.S.C. § 1367 of state law claims arising from a common nucleus of operative fact joined with a
5 substantial and related claim under the trademark laws of the United States, 15 USC §§ 1051, *et*
6 *seq.* Further, this Court has diversity jurisdiction as the amount in controversy exceeds \$75,000
7 and the plaintiffs and defendants are diverse. Further, this Court has jurisdiction under the
8 United States Declaratory Judgment Act, 28 USC §§2201 and 2202.

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11 3. Venue is proper under 28 USC § 1391(b)(2) because a substantial part of the events or
12 omissions giving rise to the claim occurred at the premises of Indiegogo, and all of the property
13 that is the subject of the action is situated within the Northern District of California at 301 8th
14 Street, San Francisco, California 94117.

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16 **INTRADISTRICT ASSIGNMENT**

17 4. Pursuant to L.R. 3-2(c), intradistrict assignment of this Intellectual Property Action is made
18 on a District-wide basis.

19 **PARTIES**

20 5. Plaintiff is an individual residing in Tucson, Arizona, and a member of the California State
21 Bar Association with an Internet website at www.charlescarreon.com and a Twitter account at
22 @charlescarreon. Defendant Inman is an individual residing in the State of Washington who
23 runs a comic website at www.TheOatmeal.com and various related enterprises. Defendant
24 Indiegogo is a corporation incorporated in the State of Delaware, registered to do business in the
25 State of California pursuant to Cal. Corp. Code § 2105 as Entity No. C3054414 in the State of
26 California, doing business in the State of California.
27
28

1 6. This Court has general personal jurisdiction over Indiegogo, that markets itself as “the
2 world’s funding platform,” based on its corporate presence in California, its operation of the
3 transactional Internet website at www.indiegogo.com (the “Indiegogo Site”) in California, and its
4 pervasive business activity in California. This Court has general jurisdiction over Inman due to
5 his pervasive marketing of Internet digital products through various websites, including but not
6 limited to www.theoatmeal.com (“Inman’s Sites”) that are purposefully directed to California
7 consumers, and earn many thousands of dollars in transactions with California residents. The
8 Court has specific personal jurisdiction over Inman, because in order to accumulate the property
9 that is the subject of this action, Inman contracted with Indiegogo as further alleged *infra*, and
10 specifically directed an Internet fund-raising campaign linked to the California-based Indiegogo
11 Site at <http://www.indiegogo.com/bearlovegood> (the “Bear Love” campaign) toward California
12 consumers, and to Internet users nationwide, through the communicational instrumentalities of
13 interstate commerce within this judicial District. The Charitable Organization defendants are
14 Wherefore all of the named defendants, and each of them, have purposely availed themselves of
15 the laws of the State of California operative within this judicial District.

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19 7. The contract entered into between Inman and Indiegogo is a clickwrap online agreement,
20 the full text of which appears online at <http://www.indiegogo.com/about/terms> (the “Indiegogo
21 Contract”). Pursuant to the Indiegogo Contract, Inman agreed to indemnify Indiegogo for any
22 breaches of the Indiegogo Contract, agreed that Indiegogo’s services are solely based in
23 California, and agreed that any claim or dispute arising out of the Indiegogo Contract would be
24 decided under California law and in California.

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27 8. The full extent of the facts linking the fictitiously named defendants Does 1 through 5 with
28 the matters alleged herein, and/or the true names or capacities, whether individual, corporate,

1 partnership, associate, member or otherwise of said fictitiously named defendants, are unknown
2 to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed
3 and believes and thereon alleges that each of the defendants designated herein as Doe 1 through
4 5 negligently, wantonly, recklessly, tortiously and unlawfully committed the acts that
6 proximately caused injury and damages to Plaintiff as alleged herein. Plaintiff will hereafter
7 seek leave of court to amend this complaint to allege said defendants' true names and capacities
8 when the same have been ascertained.

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10 9. Plaintiff alleges, on information and belief, that each defendant named herein including
11 those named as Does, is and at all relevant times mentioned was, the agent, servant,
12 co-conspirator, advertiser, and/or employee of each of the other Defendants and, in doing the
13 things alleged herein, was acting in the course and scope and with the knowledge of each of the
14 other named Defendants. Plaintiff further alleges on information and belief that each Defendant
15 named herein aided and abetted the others by authorizing and/or ratifying the acts herein alleged.
16

17 **CALIFORNIA LAW GOVERNING CHARITABLE CONTRIBUTIONS**

18 10. In 1959, California enacted the "Supervision of Trustees and Fundraisers for
19 Charitable Purposes Act." Calif. Government Code Sections 12580 *et seq.*, (the "Act"), modified
20 by the Nonprofit Integrity Act of 2004 (the "NIA"). In 1972, the California legislature decided
21 the best protection against solicitation fraud was to require substantial, comprehensive
22 registration and disclosure procedures. To promote public education about charitable solicitation
23 costs through disclosure to the donor, California passed the "Charitable Solicitation Disclosure
24 Law." Calif. Business & Professions Code Sections 17510 *et seq.* (the "CSDL").
25

26
27 11. The Act requires all charitable organizations to "establish and exercise control" over their
28 own fundraising activities, and over all fundraising activities conducted by others for their

1 benefit. Charitable organizations operating in California must approve all written contracts for
2 fundraising on their behalf. Cal. Govt. Code § 12599.6(b).

3
4 12. Cal. Govt. Code § 12599(a) defines commercial fundraisers:

5 "Commercial fundraiser for charitable purposes" means any
6 individual, corporation, unincorporated association, or other legal
entity who for compensation does any of the following:

7 (1) Solicits funds, assets, or property in this state for charitable
8 purposes.

9 (2) As a result of a solicitation of funds, assets, or property in this
10 state for charitable purposes, receives or controls the funds, assets,
or property solicited for charitable purposes.

11 (3) Employs, procures, or engages any compensated person to
solicit, receive, or control funds, assets, or property for charitable
12 purposes."

13 13. Subsection (b) of Section 12599 provides in relevant part: "*A commercial fundraiser for*
14 *charitable purposes shall, prior to soliciting any funds, assets, or property ... in California for*
15 *charitable purposes, or prior to receiving and controlling any funds, assets, or property,*
16 *including salvageable personal property, as a result of a solicitation in this state for charitable*
17 *purposes, register with the Attorney General's Registry of Charitable Trusts on a registration*
18 *form provided by the Attorney General.*" Subsection (c) requires commercial fundraisers to file
19 yearly accountings pursuant to subsection (d) that disclose (1) total yearly revenue, (2) the fee or
20 commissions charged, (3) salaries paid to their officers and employees, (4) fundraising expenses,
21 (5) distributions to the identified charitable organization or purpose, and (6) the names and
22 addresses of any director, officer, or employee of the commercial fundraiser for charitable
23 purposes who is a director, officer, or employee of any charitable organization listed in the
24 annual financial report.
25

26
27 14. Section 12599(f) provides in relevant part:

28 "*Failure to comply with these registration or annual renewal and*
financial reporting requirements shall be grounds for injunction

1 against solicitation in this state for charitable purposes *and other*
2 *civil remedies provided by law.*" (Emphasis added.)

3 15. Section 12599(m) provides:

4 "A commercial fundraiser for charitable purposes shall not solicit
5 in the state on behalf of a charitable organization unless that
6 charitable organization is registered or is exempt from registration
7 with the Attorney General's Registry of Charitable Trusts."

8 16. Section 12599(f) specifically prohibits charitable fundraisers from conducting solicitation
9 campaigns in violation of the Act, committing unfair and deceptive acts, engaging in fraudulent
10 conduct, using any name that implies a contribution is for a particular charitable organization,
11 falsely telling donors that a contribution is for a charitable organization or will be used for a
12 charitable purpose, or misrepresenting a person as having has endorsements that they do not
13 have.

14 17. Pursuant to Section 12599(h), "*[n]ot less than ten (10) days prior to the initiation of a*
15 *solicitation campaign ... a commercial fundraiser for charitable purposes shall file with the*
16 *Attorney General's Registry of Charitable Trusts a notice*" on a prescribed form, setting forth
17 the following:

- 18
19 (1) The name, address, and telephone number of the commercial
20 fundraiser for charitable purposes.
21 (2) The name, address, and telephone number of the charitable
22 organization with whom the commercial fundraiser has contracted.
23 (3) The fundraising methods to be used.
24 (4) The projected dates when performance under the contract will
25 commence and terminate.
26 (5) The name, address, and telephone number of the person
27 responsible for directing and supervising the work of the
28 commercial fundraiser under the contract."

18. Section 12599(i) requires "a commercial fundraiser for charitable purposes and a charitable
organization" to enter into a written contract that shall be available for inspection by the
Attorney General "for each solicitation campaign, event, or service, that shall be signed by the

1 authorized contracting officer for the commercial fundraiser and by an official of the charitable
2 organization who is authorized to sign by the organization's governing body." The requirements
3 of such a written contract include provisions that give the charitable organization important
4 rights of control over any campaign, including, in subsection (i)(12)(c), the right to cancel
5 campaigns that "conduct fundraising activities in a manner that causes or *could cause public*
6 *disparagement of the charitable organization's good name or good will.*" (Emphasis added.)
7

8 **IT IS UNLAWFUL FOR DEFENDANTS TO SOLICIT**

9 **ON BEHALF OF CHARITABLE ORGANIZATIONS IN CALIFORNIA**

10
11 19. Inman and Indiegogo are commercial fundraisers for charitable purposes within the
12 meaning of Cal. Govt. Code § 12599(a).

13 20. Inman and Indiegogo are not registered with the Attorney General's Registry of Charitable
14 Trusts pursuant to § 12599(b).

15 21. Inman and Indiegogo have not filed the disclosures required by § 12599(c).

16 22. Inman and Indiegogo have not filed the annual reports required by § 12599(d).

17 23. Inman and Indiegogo are not exempt from registration, and therefore pursuant to subsection
18 § 12599(m), they are prohibited from soliciting "in the state on behalf of a charitable
19 organization."
20

21 **INMAN'S CONDUCT DISPARAGES THE IMAGE OF CHARITABLE FUNDRAISING,**

22 **AND HE IS NOT QUALIFIED TO BE A COMMERCIAL FUNDRAISER**

23
24 24. Inman described himself in an online interview¹ published January 6, 2011:
25

26
27 ¹ <http://mixergy.com/matthew-inman-oatmeal-interview/>
28

1 Inman: I work for myself and really no one can control what I say.
2 So usually I tell them that I slept with their mom or I say the most
3 vile, awful thing I can think of. *If you read my Twitter account, it*
4 *is like Hitler's port-a-potty. It's the worst thing that you've ever*
5 *seen, just this awful stuff that I say to my critics on there. Just to*
6 *troll them, mostly. So that's usually how I respond to it. Like a*
7 *drunk 15 year old, I think, is the best way to put it....*

8 Interviewer: What about in the beginning when you were going
9 into Digg and you knew that if you won this group of people over,
10 they'd send you massive traffic and if you turned them into haters,
11 they'd bury you and you wouldn't get anything from them. At that
12 point, weren't you nervous?

13 Inman: Yeah. At that point, I wouldn't have gotten on Digg and
14 been like, "Hey, your mom and I made love under the stars. Ha ha
15 ha. I liked it." That probably wouldn't go over so well. But now
16 I'm kind of at this comfortable level. And part of my writing style
17 and *the persona that I have online is sort of this crass, bloated,*
18 *obese, drunk monster.* (Emphasis added.)

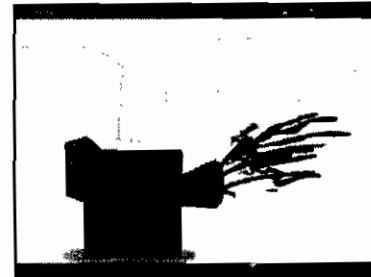
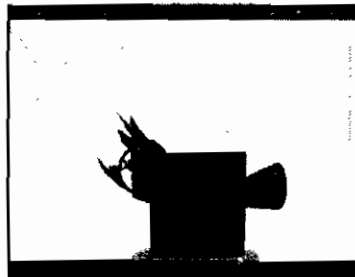
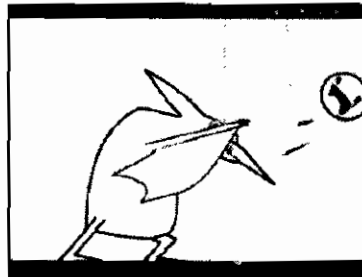
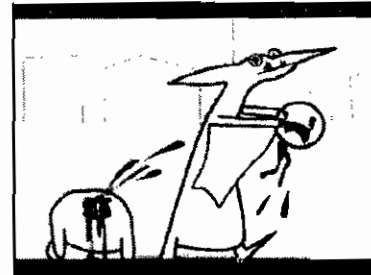
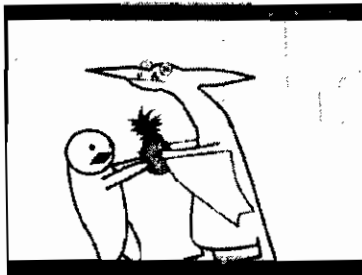
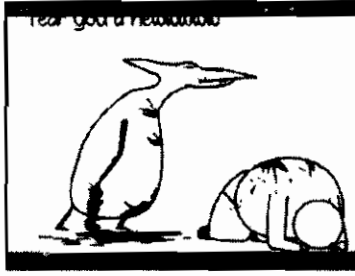
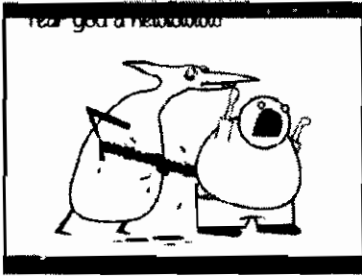
19 25. Inman has announced his vindictive response to his real and imagined enemies by posting,
20 within the source code of all of the webpages on his main website, www.theoatmeal.com, the
21 following image and text, depicting himself as a pterodactyl that will "ptero-you a new asshole."

22 A screencapture of the core of the source-code appears as follows:

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26 26. Following the link to <http://pterodactyl.me> leads the Internet user to a page on
27 TheOatmeal.com where a video created by Inman and Sarah Donner depicts Inman, in his
28 character as a carnivorous, prehistoric flying reptile that first rips the intestines out of a man's

1 anus, then flogs him with his entrails, then steals a pineapple from a boy, tears his head off,
2 flings it a girl and knocks here head off, then grinds up the girl's head up in a wood-chipper,
3 blends it with the pineapple, and drinks the grisly cocktail:
4



26
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28
Inman's followers are by and large with technologically savvy young people eager to follow the latest trend, who embrace Inman's brutal ideology of "tearing you a new asshole."

1 **THE DEFENDANTS' "BEAR LOVE" CAMPAIGN**

2 27. On June 11, 2012, Defendants published the webpage now appearing at
3 <http://www.indiegogo.com/bearlovegood>, as shown in Exhibit A attached hereto (the "Bear Love
4 campaign webpage").

5
6 28. The Bear Love campaign webpage states as follows:

7 "I run a comedy website called The Oatmeal.
8 Last year I wrote a blog post about another website called
9 FunnyJunk which stole a bunch of my comics and hosted them on
10 their website without giving me credit. They apparently didn't like
11 my blog post and recently FunnyJunk sent me a letter stating that
12 unless I pay them \$20,000 in damages they're going to file a
13 federal lawsuit against me. You can view the letter along with my
14 response here.
15 Instead of mailing the owner of FunnyJunk the money, I'm going
16 to send the above drawing of his mother. ***I'm going to try and
17 raise \$20,000 and instead send it to the National Wildlife
18 Federation and the American Cancer Society.
19 I'm hoping that philanthropy trumps douchebaggery and greed.***
20 More information here." (Emphasis added.)

21 29. The statement that "FunnyJunk ... stole a bunch of my comics and hosted them on their
22 website without giving me credit" was false and misleading. FunnyJunk, LLC ("FJ"), which was
23 and is Plaintiff's client, operates a website filled entirely with user-uploaded media content at
24 FunnyJunk.com. FJ operates FunnyJunk.com in compliance with the Digital Millennium
25 Copyright Act, 17 U.S.C. § 512(c) (the "DMCA"), and had never uploaded Inman's comics to
26 the FunnyJunk.com website. Nor had Inman ever sent DMCA takedown notices. Rather, Inman
27 had posted statements on TheOatmeal.com accusing FJ of copyright infringement for
28 commercial gain, which was false. Plaintiff's demand that Inman cease and desist from making
such statements was lawful, and the demand for payment of \$20,000 reasonably reflected FJ's
estimate of advertising losses sustained due to the taint of being accused of engaging in willful

1 copyright infringement for commercial gain, a federal felony under 17 U.S.C. § 506(a)(1)(A) and
2 18 U.S.C. § 2319(b).

3
4 30. In order to initiate an Internet jihad against Plaintiff and FJ, Inman unloaded the contents of
5 his "Hitler's porta-potty" on Plaintiff and FJ, drawing a misogynistic cartoon depicting an obese
6 female dressed in her underwear, with pendulous breasts popping out of her brassiere, an
7 enormous posterior distended by an overstretched thong, rouged cheeks, and a crudely-lipsticked
8 mouth, calling out to an apparently disinterested brown bear half her size, "COME HURR AND
9 LOVE MEEEE!" He described it as a "drawing of your mom seducing a Kodiak bear." A true
10 copy of the webpage is attached as Exhibit A.
11

12 31. Collecting funds to donate to the National Wildlife Foundation and the American Cancer
13 Society was not Inman's true purpose in launching the Bear Love campaign. Rather, the Bear
14 Love campaign was launched to revile Inman's legal adversaries, Plaintiff and his client, and
15 initiate a campaign of "trolling" and cybervandalism against them which has borne abundant
16 toxic results, including criminal misconduct by Inman's Internet followers against Plaintiff in the
17 form of repeated events of computer hacking and false personation in violation of Cal. Penal
18 Code § 529, as further alleged *infra*.
19

20 32. Inman made his intention to utilize the Charitable Organization defendants as a "human
21 shield" for his assault on Plaintiff and his client FJ clear when he summed up his attack with the
22 statement addressed to FJ:
23

24 Consider this my philanthropic, kind-spirited
25 way of saying:
26
27 Fuck off.
28

1 33. The Charitable Organization defendants are both registered charitable organizations with
2 the Office of the Attorney General who appear in the Charitable Registry. Neither NWF nor
3 ACS have entered in the written contracts statutorily mandated by Section 12599(i) with Inman
4 or Indiegogo, that would secure their rights to control the Bear Love campaign, receive a pre-
5 agreed amount of revenue from the campaign, and give them the right and duty to campaign is
6 being conducted in a manner that could cause public disparagement of the Charitable
7 Organization defendants's good name and good will. Although the Charitable Organization
8 defendants have notified by Plaintiff in writing about the fact that the "Bear Love" campaign
9 alleged *infra* is being conducted by Inman and Indiegogo in violation of the Act, and that the
10 campaign is being conducted in a manner that could cause public disparagement of the
11 Charitable Organization defendants's good name and good will, neither the ACS or the NWF
12 have acted to disavow their association with the Bear Love campaign, thus lending their tacit
13 approval to the use of their names to the Bear Love campaign.
14
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16

17 **FIRST CLAIM FOR RELIEF**
18 **FOR IMPOSITION OF A CHARITABLE TRUST UPON**
19 **THE PROCEEDS OF THE BEAR LOVE CAMPAIGN**
20 **SOLICITED BY VIOLATIONS OF THE ACT AND FALSE**
21 **ADVERTISING IN VIOLATION OF B. & P. Code § 17500**
22 **Against Defendants Inman and Indiegogo**

23 34. Plaintiff re-alleges and incorporates by reference each and every allegation set forth herein
24 as if set forth in full hereat.

25 35. Indiegogo, that receives contributions using credit card payments or PayPal, currently
26 reports the full amount of the funds collected by the Bear Love campaign as \$169,700, as
27 recorded in Exhibit A. The Bear Love campaign is scheduled to continue until 11:59 p.m. on
28 Monday, June 25, 2012, so the full amount of the funds that will be raised by the Bear Love

1 campaign is an unascertained number well in excess of this Court's jurisdictional requirement,
2 hereinafter referred to as the "Charitable Fund."

3 36. The Indiegogo contract provides that it will keep 9% of the Charitable Fund and pay the
4 remainder to Inman.

5
6 37. Inman's stated intention is to turn over only \$20,000 of the amount raised by the Bear Love
7 campaign to the NWF and the ACS, presumably splitting that amount between the two
8 Charitable Defendants.

9
10 38. Plaintiff is a contributor to the Bear Love campaign, and made his contribution with the
11 intent to benefit the purposes of the NWF and the ACS. Plaintiff is acting on his own behalf and
12 to protect the rights of all other contributors to the Bear Love campaign to have their reasonable
13 expectation that 100% of the money they contributed would go to a charitable purpose. Plaintiff
14 opposes the payment of any funds collected from the Bear Love campaign to Indiegogo, on the
15 grounds that the contract between Indiegogo and Inman is an illegal contract that violates the
16 Act, and its enforcement may be enjoined. Plaintiff opposes the payment of any funds to Inman
17 because he is not a registered commercial fundraiser, because he failed to enter into a written
18 contract with the Charitable Organization defendants, because the Bear Love campaign utilized
19 false and deceptive statements and insinuations of bestiality on the part of Plaintiff and his
20 client's "mother," all of which tends to bring the Charitable Defendants and the institution of
21 public giving into disrepute.

22
23
24 39. Indiegogo has not right to receive 9% of the Charitable Fund, and Inman is not entitled to
25 receive any portion of the Charitable Fund, because they were not registered as a commercial
26 fundraiser, had no written contract with the Charitable Defendants, failed to provide the statutory
27 notice to the Attorney General of prior to its initiation of the Bear Love campaign. Further,
28

1 Inman's use of vile, despicable insinuations of bestiality directed toward the mother of Plaintiff
2 and/or his client were unfair solicitations prohibited by Section 12599(f) of the Act, fighting
3 words, and incitements to commit cybervandalism, none of which are entitled to constitutional
4 protection, and perverted the socially-uplifting purpose of public giving for the malicious,
5 vindictive purpose of harassing and causing pecuniary damage to Plaintiff, as further alleged
6 *infra*.

8 40. The funds collected by Indiegogo under the Bear Love campaign are subject to a charitable
9 trust for the sole benefit of NFW and ACS pursuant to Section 12599(f) of the Act.

11 41. NFW and ACS have failed to perform their statutory duty to exercise authority over the
12 Bear Love campaign.

13 42. The Fundraising Defendants and the Charitable Organization defendants are all "persons"
14 within the meaning of California's Business and Professions Code § 17201.

15 43. The acts of the Fundraising Defendants as alleged hereinabove are acts of false advertising
16 made unlawful by California's Business and Professions Code § 17500, in that, through
17 publication on Inman's Site and the Indiegogo site, they lead donors to the Bear Love campaign
18 to believe that they were authorized to solicit funds under California law for the Charitable
19 Organization defendants, when in truth and in fact, in the exercise of reasonable care they should
20 have known that this was untrue and misleading and would tend to mislead a reasonable
21 consumer.

22 44. Plaintiff and the other contributors to the Bear Love campaign have no remedy at law;
23 wherefore, injunctive relief pursuant to § 12599(f) of the Act and Cal. Business & Professions
24 Code § 17535 is required to secure a lawful disposition of the proceeds of the Bear Love
25 campaign. If not enjoined, the unlawful conduct is likely to continue and recur.
26
27
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1 45. Plaintiff requests an award of attorneys fees pursuant to Cal. Code of Civil Procedure §
2 1021.5 as a public attorney general benefitting the public interest in enforcement of the Act.

3
4 **SECOND CLAIM FOR RELIEF**
5 **Use Of A False Designation In Violation Of Section 43(a)**
6 **of the Lanham Act, 15 U.S.C. § 1125(a)**
7 **Against Inman and Doe 1**

8 46. Plaintiff re-alleges and incorporates by reference each and every allegations set forth herein
9 as if set forth in full hereat.

10 47. Plaintiff holds a trademark on his name, Charles Carreon, USPTO Registration No.
11 3,749,709 for use in the provision of Legal Services, in Class 45.

12 48. Plaintiff has a Twitter account under the name “@charlescarreon.”

13 49. On June 14, 2012, Doe 1, incited by Inman, or in the alternative and on information and
14 belief, Inman himself, registered the Twitter name “@Charles_Carreon,” and began publishing
15 fake “tweets” on Twitter that were of immediately attributed to Plaintiff. This was not only an
16 act of trademark infringement, but also false personation in violation of California Penal Code §
17 529.

18 50. The fake tweets from @Charles_Carreon were abrasive and provoking to other Twitter
19 users, and engendered immediate negative responses, having the effect of intensifying public
20 hostility toward Plaintiff, and causing him irreparable harm in the marketplace for legal services.
21 Plaintiff makes it a practice to engage in tempered speech even on matters of heated debate, and
22 does not sling insults like “dumbass” and “idiot.” Nor was it Plaintiff’s attempt to use his
23 Twitter account @charlescarreon to engage in verbal combat with other Twitter users.

24 51. On June 14, 2012, Plaintiff learned of that he was being impersonated for malicious
25 purposes when he received an email from a friendly Twitter user. Attached as Exhibit B are
26 screencaptures of various Twitter exchanges in which Doe1 or Inman intentionally provoked
27
28

1 other Twitter users. After receiving an authentication of identity letter from Plaintiff, on June 15,
2 2012, Twitter deactivated the fake Twitter account.

3 52. The infringement of Plaintiff's trademark by Doe 1 or Inman have actually caused
4 confusion and mistake among consumers, have deceived consumers as to the affiliation,
5 connection, or association of Doe 1 with Plaintiff, or alternatively and conjunctively, have
6 confused, caused mistake among, and deceived consumers as to the affiliation, connection or
7 association between Plaintiff and Doe 1. Such false designations have also caused confusion as
8 to the origin, sponsorship, or approval of "tweets" attributed to "Charles_Carreon" on Twitter,
9 and are likely to cause such confusion, mistake and/or deception among consumers in the future.
10

11 Some of the tweets made by "@Charles_Carreon" were intended to, and did inflame other
12 Twitter users to deride Plaintiff, because they were provocatively phrased for that purpose,
13 including the following:
14

- 15 • @Charles_Carreon to @Samuaraikintter: "I have backtraced the attack to Matt
16 Inman's Internet Address. He needs to stop the attack or I will need to escalate
17 this."
18
- 19 • @ Charles_Carreon to @shellscape: "This comparison makes complete sense.
20 Idiot."
21
- 22 • @ Charles_Carreon [responding to] @johnandrews: "You sir, are a dumbass. I am
23 doing what any sane individual would do.

24 Another fake tweet disclosed Plaintiff's private email address, so cybervandals could sign him up
25 to random websites and send him hate-emails:
26
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- 1 • @Charles_Carreon to all: "The contact form has been disabled:
2 charlescarreon.com/temporarily-disabledun... Please contact me at
3 chas@charlescarreon.com instead.
4

5 53. On information and belief, Inman, either because he was tweeting as @Charles_Carreon or
6 had incited Doe 1 to post as @Charles_Carreon, tweeted:

- 7 • Matthew Inman @Oatmeal: "It's interesting to watch a man with his dick in a
8 hornet's nest try to solve the problem by tossing his balls in as well."
9

10 54. By reason of Doe 1's actions alleged herein, Plaintiff has suffered, and is likely to suffer
11 irreparable injury to his business, good will and property.

12 55. Inman has attempted to profit from the actions of trademark infringement by either himself
13 and/or Doe 1 by capitalizing on the confusion to whip up enmity against Plaintiff and thereby
14 fuel additional donations to the unfair and deceptive Bear Love campaign.
15

16 56. By reason of Inman and Doe 1's actions alleged herein, Plaintiff is likely to suffer
17 irreparable injury to its business, good will and property. Plaintiff is entitled, pursuant 15 U.S.C.
18 § 1117, to recover from them the damages sustained and will sustain as a result of Defendants'
19 wrongful conduct as alleged herein.
20

21 57. On information and belief, the above-alleged acts of infringement have been willful and
22 taken without regard to the established rights of the Plaintiff.

23 58. Plaintiff is entitled pursuant to 15 U.S.C. § 1116, to an injunction restraining Inman and
24 Doe 1, their officers, agents and employees, and all persons acting in concert with them, from
25 engaging in any further such acts of infringement in violation of the Lanham Act.
26

27 59. Plaintiff has no adequate remedy at law. Unless Defendants are enjoined from committing
28 these unlawful acts as set forth above, Plaintiff will continue to suffer irreparable harm.

1 60. This is an exceptional case; wherefore Plaintiff is entitled to an award of its reasonable
2 attorney's fees incurred in the prosecution of this action, pursuant to 15 U.S.C. § 1117.

3
4 **THIRD CLAIM FOR RELIEF**
5 **Inciting and Committing Cybervandalism In the Nature of**
6 **Trespass to Chattels, False Personation, and Identity Theft**
7 **Against Inman and Does 1 - 100**

8 61. Plaintiff realleges and incorporates herein by reference each and every allegation set forth
9 herein as if set forth fully hereat.

10 62. As noted above, Doe1 or Inman proliferated Plaintiff's email address via a fake tweet made
11 by "@Charles_Carreon.com." Plaintiff had not posted the chas@charlescarreon.com email
12 address anywhere on the Internet except where required by law and Internet regulations. (The
13 email address appears on legal papers in PACER filings in cases where required by the rules of
14 this and other U.S. District Courts; however, these filings are viewable only by PACER users.
15 The email address was also used in the Whois registration database for various websites Plaintiff
16 has registered for his benefit, and as by the authorized registrant/agent of various legal clients.)
17 Inman or persons incited by Inman also proliferated the email address and Plaintiff's home
18 address on social networking websites, again for the malicious purpose of enabling
19 cybervandalism.

20
21 63. Cybervandalism is the act of invading, trespassing upon, and damaging the personal digital
22 property of another. Inciting cybervandalism is the act of directing large numbers of Internet
23 users, through email, Internet postings, social media communications, and unfair devices like the
24 Bear Love campaign, to attack a target. Plaintiff was the target of cybervandalism in this case,
25 and Inman incited the campaign with the intention of causing injury to plaintiff.

26
27 64. On June 13, 2012, at 9:28 p.m., either Inman or one of the persons named as Does 1 - 100
28 engaged in the act of trespass to chattels, cracking the password on Plaintiff's website at

1 http://www.charlescarreon.com and requesting to reset the password. Fortunately, the intrusion
2 discovered instantly by Plaintiff who was sitting looking at his computer screen when he
3 received an email from the website software system, and was able to retain control of the website
4 by immediately changing the password using the hyperlink in the email.
5

6 65. As of the time of this filing, in part due to the Twitter posting, and in part due to other
7 postings of his email address on the Internet by Inman and or Does 1 – 100, Plaintiff has been
8 signed up to the following websites using the chas@charlescarreon.com email address by Does 1
9 – 10, or on information and belief by Inman himself. These signups are all without Plaintiff's
10 consent or knowledge, and count is presumably still rising. By creating these fake accounts,
11 Does 1 – 10 or Inman will have the ability to continue infringing Plaintiff's name and engaging
12 in identity theft by creating user profiles and ordering goods and services for which third parties
13 will hold Plaintiff responsible:
14

- 15 • Saboom.com (pornography website)
- 16 • Tube8.com (pornography site that spread malware including Trojan-
17 PSW.Win32launch, Hack Tool:Win32/Welevate.A, and Adware.Win32.Fraud)
- 18 • Dell.com (computer hardware website)
- 19 • IFWNewsletters.com (newsletter website)
- 20 • Baselinemag.com (newsletter website)
- 21
- 22

23 66. The full extent of Plaintiff's damage due to such conduct is unknown and will be subject to
24 calculation as this action proceeds, and the complaint shall be supplemented to allege an amount
25 susceptible of proof at trial.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests entry of judgment in its favor and against Defendants

as follows:

A. A permanent injunction:

1. Imposing a charitable trust upon all assets in the possession of Indiegogo collected from Plaintiff and other donors, allocating half to the National Wildlife Foundation, half to the American Cancer Society, and none to Defendants;

2. Barring Doe 1, or alternatively Inman, from falsely personating Charles Carreon or using the Charles Carreon registered mark alone or in combination with other words, symbols or designs including in any manner;

3. Requiring Indiegogo to register as a California fundraiser before proceeding with any future charitable fundraising;

4. Requiring the NWF and the ACS to affirmatively require written contracts with all commercial fundraisers in the State of California and to police the activities of fundraisers in order to prevent future abuses, false advertising, and unfair practices;

B. An award of actual damages suffered by Plaintiff in such amount as shall be established by proof;

C. An accounting and disgorgement of Inman's and Indiegogo's ill-gotten profits, if any, from the conduct alleged herein;

E. A finding that the infringements by Inman and Does 1 – 100 were willful, and/or that Plaintiff's recovery is inadequate based on Defendants' profits; wherefore treble damages are warranted pursuant to 15 U.S.C. § 1117(a);

1 F. A finding that this is an exceptional case, and that an award to Plaintiff of its full costs
2 and reasonable attorney's fees is therefore warranted pursuant to 15 U.S.C § 1117;


3 G. An order pursuant to 15 U.S.C. § 1116(a), requiring Inman, Indiegogo, the NWF, and the
4 ACS to file with the Court and serve on Plaintiff within thirty (30) days after service of an
5 injunction order as requested herein, a report in writing under oath setting forth in detail the
6 manner and form in which they have complied with the Court's Order;

7 H. Punitive damages against Inman and Does 1 – 100 pursuant to California Civil Code
8 § 3294;

9 I. Such other and further relief that this Court may deem just and proper.

10 Dated: June 15, 2012

11 CHARLES CARREON, ESQ.

12  Charles Carreon
2012.06.15
14 14:43:20 -07'00'


15 By: _____
16 CHARLES CARREON (127139)
17 Attorney Pro Se for Plaintiff

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a jury trial.

Dated: June 15, 2012

CHARLES CARREON, ESQ.


Charles
Carreon
2012.06.15
14:42:57 -07'00'

By: _____
CHARLES CARREON (127139)
Attorney for Pro Se for Plaintiff

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