

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE MUSEUM OF MODERN ART,

Plaintiff,

v.

MOMACHA IP LLC and MOMACHA OP LLC,

Defendants.

Case No. 18cv3364

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff The Museum of Modern Art (“Plaintiff” or “MoMA”) brings this action against Defendants MoMaCha IP LLC and MoMaCha OP LLC (“Defendants” or “MoMaCha”) and alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1338(a) (any Act of Congress relating to trademarks); and 28 U.S.C. § 1367 (supplemental jurisdiction).

2. Defendants are subject to personal jurisdiction in this District because they conduct business transactions within this District and such conduct has caused injury to MoMA in this District.

3. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (b)(2) in that a substantial part of the events giving rise to the claims occurred in District and Defendants are subject to personal jurisdiction in this District.

PARTIES

4. Plaintiff The Museum of Modern Art is a New York not-for-profit education corporation with its principal place of business at 11 West 53rd Street, New York, New York 10019.

5. On information and belief, Defendant MoMaCha IP LLC is a Delaware limited liability company with a principal place of business at 156 Fifth Avenue, Suite 500, New York, New York 10010.

6. On information and belief, Defendant MoMaCha OP LLC is a Delaware limited liability company with a principal place of business at 156 Fifth Avenue, Suite 500, New York, New York 10010.

STATEMENT OF FACTS

A. The Museum of Modern Art's History and Mission

7. MoMA is a not-for-profit, tax exempt New York education corporation founded in 1929. MoMA is one of the world's largest museums dedicated to modern and contemporary art and design and is considered a leading museum in its field, with a national and international reputation. MoMA's world class collection includes approximately 200,000 works of modern and contemporary paintings, sculptures, drawings, prints, photographs, media and performance art works, architectural models and drawings, design objects, and films.

8. MoMA is located at 11 West 53rd Street, between Fifth and Sixth Avenues, a location it has occupied since 1939. MoMA also owns a facility in Long Island City, Queens—MoMA QNS—where it operated an exhibition space between 2002 and 2004.

9. MoMA currently has over 120,000 members, and had nearly 12 million visitors during the four-year period between 2014 and 2017. From July 2017 to the present,

approximately 2.2 million people have visited MoMA. MoMA’s award-winning website, www.MoMA.org, had over 13 million unique visitors in the past year. MoMA currently has over 5.5 million followers on Twitter, 3.4 million followers on Instagram, and 1.96 million followers on Facebook.

10. Between 1967 and the mid-1980s, MoMA presented its name and logo as MOMA, in all capitalized letters. Starting in the mid-1980s, MoMA transitioned from MOMA to MoMA, with a lowercase o in between the two capitalized M’s. In its promotional and marketing materials, MoMA generally refers to itself as “MoMA” and uses the iconic logo shown below (the “MoMA Logo”):



11. The MoMA Logo itself has received significant press coverage, including in *The New York Times*. It also appears in a vertical format on a “blade” sign on the front of the Museum itself, as shown below:



12. MoMA has extensively used the trademark MOMA in communications with the public, press, artists, and sponsors continuously since 1967. The trademark MOMA and the

MoMA Logo are featured prominently on MoMA's website, www.MoMA.org, and in a variety of materials, including on signage, brochures, and websites, and in fliers, advertisements, and social media posts. It is also emblazoned on numerous objects that are sold through one or more of the MoMA Design Stores as well as through third-party retailers and online.

13. Amenities such as dining facilities are an important part of any museum, including MoMA. Accordingly, MoMA has offered a variety of dining services to its visitors over the years. It currently has two cafés within the Museum, Café 2 and Terrace 5, and two restaurants, The Bar Room and The Modern. Between 1993 and approximately 2002, visitors enjoyed their meals at the Sette MoMA restaurant, which was also operated within the Museum. From 2002 to 2004 when the Museum operated out of MoMA QNS, there was a café located inside the MoMA QNS facility.

14. MoMA also features The Modern restaurant. Founded by Danny Meyer's Union Square Hospitality Group and operated by Executive Chef Abram Bissell, The Modern offers a fine dining experience. The Modern has earned four James Beard Foundation Awards, three stars from *The New York Times*, and two Michelin stars. Although it is located within MoMA's museum building, The Modern restaurant is open to museum visitors and the general public alike.

15. MoMA also operates three retail stores in New York City under the name MoMA Design Store. One store is located across the street from MoMA's 53rd Street museum building, another is located within the museum itself, and the third is located downtown in the Soho neighborhood. These stores feature carefully selected products as well as products developed by MoMA that embody MoMA's vision of good design, ranging from reproductions of artwork in the MoMA collection, home items, kitchenware, coffee and tea articles, to jewelry, accessories,

books, and kids' items. In addition to the New York stores, there are two MoMA Design Stores in Japan. The MoMA Design Store also sells products online at <https://store.moma.org/>.

16. A MoMA affiliate operates a contemporary art institution called MoMA PS1, which was founded in 1971. It is one of the oldest and largest nonprofit contemporary art institutions in the United States and operates in its permanent space in Long Island City, Queens in New York. MoMA PS1 is used as a studio, performance, and exhibition space. It also has a restaurant open to museum visitors and the general public.

17. MoMA is an educational institution and in that capacity, offers a range of programs and activities aimed at educating both the general public and different segments of the community in approaching and understanding modern and contemporary art. In addition, MoMA has one of the most active publishing programs of any art museum in the United States and has published more than 2,500 titles.

B. MoMA's Trademark Rights

18. MoMA has taken all appropriate steps to protect its famous MOMA mark. MoMA owns the registrations and applications set forth below (together with the MoMA Logo, the "MOMA Marks").

19. MoMA owns U.S. Registration No. 2,768,707 for MOMA for "Multimedia software recorded on CD-ROM in the field of music and art" in International Class 9, based upon use in commerce since at least as early as October 1998; "Jewelry and clocks" in International Class 14, based upon use in commerce since at least as early as June 1989; "Blank books, phone books, address books, date books, journal notepads, books about art, architecture and design, posters and prints, note cards, stationery, drawing rules, pencils and pens" in International Class 16, based upon use in commerce since at least as early as December 1999;

“Umbrellas, book bags, backpacks, and tote bags” in International Class 18, based upon use in commerce since at least as early as December 1975; “Household and kitchen utensils, namely, plates, cups, vases, trays, bowls, barware, household and kitchen containers for food, beverage glassware and mugs” in International Class 21, based upon use in commerce since at least as early as July 2000; “Clothing, namely t-shirts, caps, and scarves” in International Class 25, based upon use in commerce since at least as early as August 1996; “Jigsaw puzzles, and board games” in International Class 28, based upon use in commerce since at least as early as 1996; “Retail and wholesale store services, mail order catalog services and online catalog services featuring artwork reproductions, stationery, books, publications, desk accessories, house wares, household goods, umbrellas, gifts, toys, CD’s, travel accessories, clothing and other general merchandise” in International Class 35, based upon use in commerce since at least as early as 1967; and “Museum services, educational services, namely conducting exhibitions, workshops, seminars, lectures, torus, film and video presentations, libraries and study centers in the field of art culture and design, providing information in the field of art, culture and design over the internet, and publication of educational material in the field of art, culture and design” in International Class 41, based upon use in commerce since at least as early as 1967. MoMA filed the application that resulted in U.S. trademark Registration No. 2,768,707 on August 20, 2001. The registration issued on September 30, 2003. This registration is incontestable.

20. MoMA owns U.S. Registration No. 1,623,051 for MOMA DESIGN STORE for “Retail store services in the field of artwork, stationery, books, housewares, gifts and toys and other general merchandise” in International Class 42. MoMA filed the application that resulted in Registration No. 1,623,051 on November 22, 1989, alleging use in interstate commerce since

at least as early as November 14, 1989. The registration issued on November 13, 1990. This registration is incontestable.

21. MoMA owns U.S. Registration No. 2,594,260 for MOMAQNS for “Museum services; libraries with study centers” in International Class 41. MoMA filed the application that resulted in Registration No. 2,594,260 on July 30, 2001, alleging use in interstate commerce since at least as early as January 2001. The registration issued on July 16, 2002. This registration is incontestable.

22. MoMA owns U.S. Registration No. 4,384,153 for MOMA MODERN KIDS for “Books related to art; sketch pads” in International Class 16 and “Dolls, jigsaw puzzles and art supply kits in the nature of hobby craft sets for building and designing miniature rooms and buildings” in International Class 28. MoMA filed the application that resulted in Registration No. 4,384,153 on May 29, 2009, and later filed a statement of use alleging use in interstate commerce since at least as early as April 30, 2010. The registration issued on August 13, 2013.

23. MoMA owns U.S. Registration No. 4,083,420 for MOMA PS1 for “Entertainment in the nature of art, music and architecture; entertainment in the nature of art exhibitions; entertainment in the nature of architectural exhibitions; entertainment in the nature of DJs and live music performances; entertainment in the nature of competitions for architects” in International Class 41. MoMA filed the application that resulted in Registration No. 4,083,420 on May 27, 2011, alleging use in interstate commerce since at least as early as May 20, 2010. The registration issued on January 10, 2012. This registration is incontestable.

24. MoMA has filed U.S. Application Serial No. 87/373,083 for the ART MAKING WITH MOMA mark for “Paints for arts and crafts” in International Class 2; “Arts and crafts paint kits; arts and craft clay kits; children's arts and crafts paper kits; journals, namely blank

journals and personalized writing journals; notebooks; calendars; paper; children's activity books; modeling clay; molds for modeling clays; paint brushes; canvas for painting; markers; pencils; crayons; writing instruments; impression stamps; stickers; stencils; modeling compounds; hobby craft kits, namely, arts and crafts kits composed primarily of canvas for painting, paintbrushes, paper, stickers, and stencils, canvas fabric, and paint” in International Class 16; “Hobby craft kits, namely, arts and crafts kits for making household decorations” in International Class 20; and “Puzzles; board games; construction toys” in International Class 28, which was filed on March 16, 2017. The opposition period for Application Serial No. 87/373,083 ended on April 5, 2018.

25. Each of the MOMA Marks is used for MoMA’s museum services, as well as with all goods and services incidental to operating a major art museum. These services include the exhibitions themselves, amenities like restaurants, bars, cafés, and shops, and educational programs, while the goods include publications and merchandise sold within MoMA’s shops and elsewhere. Each of the MOMA Marks is also used to promote these goods and services throughout the United States. As such, MoMA also owns common law rights in the MOMA Marks for museum services and all goods and services related to museums, including but not limited to restaurants, bars, cafés, publications, merchandise, and educational programs.

26. As a result of MoMA’s world-class reputation, and its expenditures and efforts to promote the MoMA brand and Museum, the MOMA Marks are famous and have come to signify the high quality of MoMA’s museum services, as well as all related goods and services, including but not limited to restaurants, bars, cafés, publications, merchandise, and educational programs. The MOMA Marks have incalculable reputation and goodwill, belonging exclusively to MoMA.

C. Defendants' Business and Willful and Wrongful Conduct

27. On information and belief, Defendant MoMaCha OP operates MoMaCha, an art gallery and café that opened to the public in early April 2018 in the Bowery in the Lower East Side of Manhattan. According to online sources, it also plans to present contemporary art installations at the MoMaCha art gallery and café. Defendant MoMaCha IP is the applicant for MOMA and MOMACHA trademark applications filed on January 18, 2018 and November 17, 2017, respectively, in the United States Patent and Trademark Office, and, on information and belief, owns any trademark rights that Defendants may claim in the MOMA and MOMACHA designations for use in connection with the MoMaCha art gallery and café.

28. On information and belief, Defendants intend to open two or three additional art-café in New York City this year, also to be called MoMaCha.

29. Defendants also operate a website at <https://momacha.com>, which features images of photography and artwork and promotes their goods and services at their art gallery and café, as well as through social media such as Facebook, Instagram, and Twitter. MoMaCha's Instagram handle is @momachanyc, and on both Instagram and Twitter, the hashtags #MoMaCha and #momacha are used to promote and identify MoMaCha.

30. On March 29, 2018, MoMA sent a demand letter to Defendants regarding their use of the MoMaCha name and mark and applications to register the marks MOMA and MOMACHA. MoMA demanded that Defendants cease use of the MOMA and MOMACHA marks and abandon the MOMA and MOMACHA trademark applications. Rather than comply with MoMA's demands, Defendants refused to cease use of the MOMA and MOMACHA marks and to abandon their pending trademark applications.

31. Defendants' willful intent here is clear as there is no possibility that they were not aware of MoMA or its famous MOMA mark prior to starting their business earlier this month. They are blatantly attempting to take advantage of the MOMA Marks, which are unquestionably famous within the modern and contemporary art space, to promote their newly launched art gallery and café business—perhaps even hoping for some free publicity when MoMA inevitably takes additional steps to stop this blatant infringement of its MOMA Marks, something that MoMA has not been required to do in the past.

32. There is no question that Defendants' conduct constitutes willful trademark infringement, and that they are willfully diluting the famous MOMA Marks. First, they are showing artwork—which is exactly what MoMA does through its MoMA museum services—and they are calling their art gallery “MoMaCha.” Second, Defendants are featuring displays of modern and contemporary art, which is exactly MoMA's market within the larger field of art. Third, they are offering café services, which MoMA has long offered under the MOMA Marks and which are an integral part of MoMA's museum services. There is no question that Defendants are targeting the very visitors that frequent MoMA's museum, stores, and restaurants, and hoping to confuse them into believing that Defendants' MoMaCha art gallery and café has some connection to MoMA, when there is none.

33. Defendants filed U. S. Application Serial No. 87/689,255 to register MOMACHA for “Beverages; namely, teas, tea blends and coffee; tea and coffee based beverages” in International Class 30 and “Restaurant, cafe, cafeteria, snack bar, tea and coffee bar and tea and coffee house services; carry out restaurant services” in International Class 43 on an intent-to-use basis (the “MOMACHA application”). The application was filed on November 17, 2017.

34. Two months later, on January 17, 2018, Defendants filed U. S. Application Serial No. 87/758,842 to register the identical mark, MOMA, for “Beverages; namely, teas, tea blends and coffee; tea and coffee based beverages” in International Class 30 and “Restaurant, cafe, cafeteria, snack bar, tea and coffee bar and tea and coffee house services; carry out restaurant services” in International Class 43 on an intent-to-use basis (the “MOMA application”).

35. The word MoMaCha in Defendants’ logo is black and white with each syllable in MoMaCha having initial capitalization and a separate line (the “MoMaCha Logo”) (together with the MOMA application and the MOMACHA application, the “MOMACHA Infringing Marks”):



36. Defendants also display the MoMaCha Logo vertically on a coffee cup in their promotional materials, similar to the MoMA blade that appears on the front of the Museum, as shown below:



37. The MOMA mark, for which Defendants have filed a trademark application, is identical to MoMA's MOMA mark, and the MOMACHA mark is extremely similar to the MOMA Marks because the MOMACHA mark and MOMA Marks share almost all of the same visual elements. The similarity between the marks is highlighted by the stunning similarity of the MoMaCha Logo to the MoMA Logo, sharing identical colors and similar capitalization and font.

MoMA Logo



Infringing MoMaCha Logo



38. Defendants' use of the MOMACHA Infringing Marks has already caused consumer confusion and is likely to continue to cause confusion among consumers who are likely to believe that Defendants' MoMaCha art gallery and café is affiliated with or sponsored by MoMA. In fact, MoMA is already aware of several instances of confusion. For example, MoMA's outside trademark counsel was contacted by an attorney for an artist who was concerned about unlicensed display of that artist's work at Defendants' MoMaCha café.

39. Undoubtedly, Defendants are aware of MoMA and the MOMA Marks and acted intentionally in their efforts to mirror the MOMA Marks and to confuse consumers. Press articles have explained that MOMACHA is a combination of the words "MOMA" and "matcha" and that the name is a play on MoMA's name. One of Defendants' founders concedes that MoMaCha "mashes art and matcha," implying that the MOMA portion of the name stands for art because it copies the MOMA trademark used by The Museum of Modern Art. Additional press

articles note Defendants' combination of matcha and modern art. For example, "MoMaCha Turns Green Tea Into a Modern Art Experience." published in *Beford + Bowery*, and "This Trippy Café Turns Your Matcha Experience into Modern Art," published in *Secret NYC*.

40. If Defendants continue their wrongful conduct, MoMA will be irreparably harmed, including through loss of goodwill, reputation, and revenue. Such irreparable harm will continue unless Defendants are restrained from their continuing violation of the Lanham Act. MoMA has no adequate remedy at law.

FIRST CLAIM FOR RELIEF

Trademark Infringement under 15 U.S.C. § 1114

41. MoMA repeats and realleges each allegation set forth in paragraphs 1 through 40 above as if fully set forth herein.

42. The acts of Defendants described above constitute trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

43. MoMA has valid and protectable registered rights in the MOMA Marks dating from the 1989 filing date for its first application to register MOMA. It has used the MOMA Marks in the United States since at least as early as 1967. These rights pre-date by 40 years Defendants' first of the MOMACHA Infringing Marks for art gallery and café services, which began no earlier than March 2018.

44. On information and belief, Defendants had actual knowledge of MoMA's ownership and use of the MOMA Marks prior to March 2018.

45. Defendants' unauthorized use of the MOMACHA Infringing Marks as alleged above is likely to cause confusion, mistake, or deception on the part of consumers, sponsors and advertisers as to the source, nature, and quality of the goods or services Defendants are offering

using the MOMACHA Infringing Marks, constituting trademark infringement in violation of 15 U.S.C. § 1114.

46. As a direct and proximate result of Defendants' wrongful conduct, MoMA has been, is now, and will be irreparably injured and damaged by Defendants' aforementioned acts, and unless Defendants are enjoined by the Court, MoMA will suffer further harm to its name, reputation, and goodwill. This harm constitutes an injury for which MoMA has no adequate remedy at law.

47. On information and belief, Defendants have acted willfully to usurp MoMa's rights, and should be held liable to MoMa for treble damages and attorneys' fees pursuant to 15 U.S.C. § 1117(a).

SECOND CLAIM FOR RELIEF

False Designation of Origin under 15 U.S.C. § 1125(a)(1)(A)

48. MoMA repeats and realleges each allegation set forth in paragraphs 1 through 47 above as if fully set forth herein.

49. The acts of Defendants described above constitute false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

50. MoMA has valid and protectable registered rights in the MOMA Marks dating from the 1989 filing date for its first application to register MOMA. It has used the MOMA Marks in the United States since at least as early as 1967. These rights pre-date Defendants' use of the MOMACHA Infringing Marks for art gallery and café services, which did not begin until March 2018.

51. On information and belief, Defendants had actual knowledge of MoMA's ownership and use of the MOMA Marks prior to March 2018.

52. Defendants' unauthorized use of the MOMACHA Infringing Marks as alleged above is likely to cause consumers to believe that there is a relationship between Defendants and MoMA and/or that Defendants' art gallery and café goods and services are provided by MoMA. Such association constitutes false designation of origin in violation of 15 U.S.C. § 1125(a).

53. As a direct and proximate result of Defendants' wrongful conduct, MoMA has been, is now, and will be irreparably injured and damaged by Defendants' aforementioned acts, and unless Defendants are enjoined by the Court, MoMA will suffer further harm to its name, reputation, and goodwill. This harm constitutes an injury for which MoMA has no adequate remedy at law.

54. On information and belief, Defendants have acted willfully to usurp MoMA's rights, with full knowledge of and intent to cause harm to MoMA, and Defendants should be held liable to MoMA for treble damages and attorneys' fees pursuant to 15 U.S.C. § 1117(a).

THIRD CLAIM FOR RELIEF

Trademark Dilution under 15 U.S.C. § 1125(c)

55. MoMA repeats and realleges each allegation set forth in paragraphs 1 through 54 above as if fully set forth herein.

56. The acts of Defendants described above constitute dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

57. MoMA has valid and protectable registered rights in the MOMA Marks dating from the 1989 filing date for its first application to register MOMA. It has used the MOMA Marks in the United States since at least as early as 1967. The MOMA marks are widely recognized by the general consuming public of the United States as a designation of source for

MoMA's goods and services. As such, they are famous. Moreover, they were famous prior to Defendants' first use of the MOMACHA Infringing Marks for art gallery and café services.

58. On information and belief, Defendants had actual knowledge of MoMA's ownership and use of the famous MOMA Marks prior to March 2018.

59. Defendants' unauthorized use of the MOMACHA Infringing Marks as alleged above is likely to impair the distinctiveness of the famous MOMA Marks and to harm the reputation of the MOMA Marks. Such impairment and harm constitutes dilution in violation of 15 U.S.C. § 1125(c).

60. As a direct and proximate result of Defendants' wrongful conduct, MoMA has been, is now, and will be irreparably injured and damaged by Defendants' aforementioned acts, and unless Defendants are enjoined by the Court, MoMA will suffer further harm to its name, reputation, and goodwill. This harm constitutes an injury for which MoMA has no adequate remedy at law.

61. On information and belief, Defendants have acted willfully to usurp MoMA's rights, with full knowledge of and intent to cause harm to MoMA, and Defendants should be held liable to MoMA for treble damages and attorneys' fees pursuant to 15 U.S.C. § 1117(a).

FOURTH CLAIM FOR RELIEF

Trademark Infringement under New York Common Law

62. MoMA repeats and realleges each allegation set forth in paragraphs 1 through 61 above as if fully set forth herein.

63. MoMA has valid and protectable registered rights in the MOMA Marks dating from the 1989 filing date for its first application to register MOMA. It has used the MOMA Marks in the United States since at least as early as 1967. These rights pre-date Defendants' use

of the MOMACHA Infringing Marks for art gallery and café services, which did not begin until March 2018.

64. On information and belief, Defendants had actual knowledge of MoMA's ownership and use of the MOMA Marks prior to March 2018.

65. Defendants' unauthorized use of the MOMACHA Infringing Marks as alleged above is likely to cause consumers to believe that there is a relationship between Defendants and MoMA and/or that Defendants' art gallery and café goods and services are provided by MoMA.

66. The acts of Defendants described above constitute willful trademark infringement under the common law of the State of New York.

67. As a direct and proximate result of Defendants' wrongful conduct, MoMA has been, is now, and will be irreparably injured and damaged by Defendants' aforementioned acts, and unless Defendants are enjoined by the Court, MoMA will suffer further harm to its name, reputation, and goodwill. This harm constitutes an injury for which MoMA has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF

Unfair Competition under New York Common Law

68. MoMA repeats and realleges each allegation set forth in paragraphs 1 through 67 above as if fully set forth herein.

69. The acts of Defendants described above constitute unfair competition under the common law of the State of New York.

70. As a direct and proximate result of Defendants' wrongful conduct, MoMA has been, is now, and will be irreparably injured and damaged by Defendants' aforementioned acts, and unless Defendants is enjoined by the Court, MoMA will suffer further harm to its name,

reputation, and goodwill. This harm constitutes an injury for which MoMA has no adequate remedy at law.

SIXTH CLAIM FOR RELIEF

Refusal of U.S. Trademark Application Serial Nos. 87/758,842 and 87/689,255 Pursuant to 15 U.S.C. § 1119

71. MoMA repeats and realleges each allegation set forth in paragraphs 1 through 70 above as if fully set forth herein.

72. MoMA has valid and protectable rights in the MOMA Marks since substantially prior to MoMaCha IP's priority date for Application Serial Nos. 87/758,842 and 87/689,255 for the MOMACHA Infringing Marks for use in connection with beverages and restaurant, cafe, cafeteria, snack bar, tea and coffee bar and tea and coffee house services, and carry out restaurant services.

73. MoMA has not authorized Defendants to use, apply to register, or register any mark substantially similar to MOMA for beverages and restaurant, cafe, cafeteria, snack bar, tea and coffee bar and tea and coffee house services, and carry out restaurant services.

74. Defendants' unauthorized use, application, and registration of the MOMACHA Infringing Marks for beverages and restaurant, cafe, cafeteria, snack bar, tea and coffee bar and tea and coffee house services, and carry out restaurant services is likely to cause consumers to believe that there is a relationship between Defendants and MoMA and/or that Defendants' MoMaCha art gallery and café goods and services are associated with or come from MoMA.

75. As a direct and proximate result of Defendants' unauthorized applications for the MOMACHA Infringing Marks, MoMA is now, and will be, irreparably injured and damaged by Defendants' aforementioned applications, and unless the applications are refused registration by

order of the Court, MoMA will suffer further harm to its name, reputation, and goodwill. This harm constitutes an injury for which MoMA has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, MoMA prays for judgment as follows:

- a) That judgment be entered in favor of MoMA and against Defendants on each and every claim of this Complaint;
- b) For entry of an order and judgment requiring that Defendants and their officers, agents, servants, employees, owners, and representatives, and all other persons, firms, or corporations in active concert or participation with them, be enjoined during the pendency of this action and permanently thereafter from (a) using the mark MOMA, the MoMA Logo, or any other designation confusingly similar to MOMA, or likely to dilute MoMA's famous MOMA Mark and MoMA Logo, including but not limited to MOMACHA, in connection with any goods or services; (b) doing any act or thing calculated or likely to cause confusion or mistake in the minds of the members of the public or prospective customers as to the source of the goods or services offered or distributed by Defendants, or likely to confuse members of the public, or prospective customers, into believing that there is some connection between MoMA and Defendants or any other entity owned by or associated with Defendants; (c) otherwise competing unfairly with MoMA in any manner; or (d) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in parts (a) through (c) of this paragraph;

- c) For entry of an order and judgment directing Defendants, pursuant to 15 U.S.C. § 1116(a), to file with this Court and serve upon MoMA within thirty (30) days after entry of the injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction and ceased providing or advertising goods and services under the name or logo MOMA or MOMACHA;
- d) For entry of an order and judgment refusing the MoMaCha IP's pending U.S. trademark applications related to art gallery and café goods and services, including the following: U.S. Serial No. 87/758,842 and U.S. Serial No. 87/689,255.
- e) For a judgment in the aggregate amount of (a) Defendants' profits, (b) MoMA's actual damages, (c) the costs of this action pursuant to 15 U.S.C. § 1117, and (d) restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of their unlawful, unfair, and/or fraudulent business acts or practices;
- f) That the Court award enhanced damages pursuant to 15 U.S.C. § 1117(a);
- g) That the Court award prejudgment interest on all amounts awarded;
- h) That the Court award MoMA reasonable attorneys' fees; and
- i) That the Court award such other relief as it deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, MoMA hereby demands trial by jury on all issues raised by the Complaint.

Dated: April 17, 2018

Respectfully submitted,

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