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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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THE COLOR RUN, LLC, a Utah limited liability company,
Plaintiff,
vs.
SPRINGBOK GROUP, LLC, a Utah limited liability company, RUN FOR COLOR, LLC, a Utah limited liability company, WAYNE GRANDALL ENTERPRISES, LLC, a Utah limited liability company, TAKBO EVENTS, LLC, a Utah limited liability company, MATTHEW WARD, an individual,
Defendants.

COMPLAINT
(Jury Trial Demanded)

Case No. 2:12-cv-00810 DN

Judge David Nuffer

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Plaintiff, The Color Run, LLC (“The Color Run” or “TCR”), by and through its counsel, hereby complains against the above-named defendants Springbok Group, LLC, Run for Color, LLC, Wayne Grandall Enterprises, L.L.C, Takbo Events, LLC and Matthew Ward and alleges

as follows:

DESCRIPTION OF PARTIES

1. Plaintiff The Color Run, LLC is a Utah limited liability company with its principal place of business in the State of Utah.
2. Upon information and belief, Defendant Springbok Group, LLC (“Springbok”), is a Utah limited liability company with its principal place of business in the State of Utah.
3. Upon information and belief, Defendant Run for Color, LLC (“Run for Color”), is a Utah limited liability company with its principal place of business in the State of Utah that operates under the name “Color Me Rad.” Upon information and belief, Defendant Run for Color is owned by Defendant Springbok.
4. Upon information and belief, Defendant Wayne Grandall Enterprises, L.L.C (“Wayne Grandall”) is a Utah limited liability company that operates under the name “Color Me Rad Races.”
5. Upon information and belief, Defendant Takbo Events, LLC, is a Utah limited liability company that operates under the name “Color Me Rad.”
6. Upon information and belief, Defendant Matthew Ward (“Ward”), either individually or through limited liability companies owned by him, is a member of Springbok and a resident of the State of Utah. Upon information and belief, Ward is the principal actor controlling Springbok, Run for Color, Wayne Grandall, and Takbo Events, LLC.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over TCR's claims for copyright and trademark infringement and related claims pursuant to 28 U.S.C. §§ 1331, 1338 *et seq.*, and 15 U.S.C. § 1125.

8. This Court has supplemental jurisdiction over TCR's claims arising under the laws of the State of Utah pursuant to 28 U.S.C. § 1367(a) because these claims are so related to TCR's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

9. Venue properly lies in this Court pursuant to 28 U.S.C. §§ 1391 because (a) the acts of infringement and other wrongful conduct alleged occurred in the District of Utah; (b) the Defendants may be found in the District of Utah; and/or (c) the Defendants have sufficient connection with the District of Utah to make venue proper in this district, all as alleged in this Complaint.

GENERAL ALLEGATIONS

Creation of The Color Run

10. TCR organizes and conducts 5 kilometer races in cities throughout the United States. Participants are instructed to wear white tee shirts, provided white head bands and/or wristbands, and, at each kilometer throughout the race course, are doused with colored cornstarch paint of various hues. By the end of the race, participants are covered in paint. The

races are non-competitive, designed instead to promote physical activity and provide an enjoyable, “fun” atmosphere for participants.

11. TCR was founded by Travis Snyder (“Snyder”). Snyder has owned and operated various running events for over eleven years including overnight running relays and triathlons.

12. In 2010, Snyder created a new racing event called “The Color Run.” The intent was to combine aerobic activity with the experience of being covered in paint.

13. Snyder designed The Color Run as a 5 kilometer race event because that distance could be run by, and would appeal to, both casual and serious runners.

14. Snyder further designed further progressed the event to become an entire experience. He made it 5k in length, decided the runners would be required to start in clean white clothing and to break up the painting experience over the 5k course by creating “Color Zones.” The Color Zones were dedicated to a single hue of paint area at each kilometer. At the finish the participants then celebrated their experience with a festival experience where there would be music and dancing, and all event attendees would synchronously throw paint in a finale.

15. Before The Color Run no other running races existed in the United States that combined the various elements of a 5 kilometer distance, with participants dressed in white tee shirts being doused in paint along the race course. Snyder was the first person to incorporate these unique elements into the design of The Color Run events, and branded his events as “THE COLOR RUN.”

16. In 2010, Snyder secured the Internet domain name for The Color Run (<http://www.thecolorrun.com>) and began executing on his business plan which constituted many hours of research on market launch strategies, paint properties, distribution and clean up for events, charity involvement, and a distinct choice not to time the races. With the plan in place, Snyder began reaching out to potential venues to host The Color Run events.

17. TCR also applied for registration of the following trademarks (collectively, the “Trademarks” or “Marks”) with the United States Patent and Trademark Office, among others:

Application Serial Number	Trademark	Filing Date	International Class	Goods and Services Description	Date of First Use in Commerce	Approved for Publication in Official Gazette
85554046	THE COLOR RUN	February 27, 2012	041	Athletic and sport event services, namely, organizing, arranging, and conducting running events and running competitions; providing a website featuring information on the sport of running and running events; providing online information in the fields of running and running events; providing online and electronic newsletters regarding running and running events	09/04/2011	Yes – August 7, 2012
85552443	THE COLOR RUN	February 24, 2012	025	Clothing for athletic use, namely, shirts, caps, hats, sweat shirts, sweat bands, head bands	09/01/2011	Yes – July 10, 2012
85556782	COLOR 5K	February 29, 2012	041	Athletic and sport event services, namely, organizing, arranging, and conducting running events and running competitions; providing a website featuring information on the sport of running and running events; providing online information in the fields	1(b) – intent to use filing	Yes – August 7, 2012

Application Serial Number	Trademark	Filing Date	International Class	Goods and Services Description	Date of First Use in Commerce	Approved for Publication in Official Gazette
				of running and running events; providing online and electronic newsletters regarding running and running events		
85556777	COLOR DASH	February 29, 2012	041	Athletic and sport event services, namely, organizing, arranging, and conducting running events and running competitions; providing a website featuring information on the sport of running and running events; providing online information in the fields of running and running events; providing online and electronic newsletters regarding running and running events	1(b) – intent to use filing	Yes – August 7, 2012
85551259	COLOR RUNNER	February 23, 2012	041	Athletic and sport event services, namely, organizing, arranging, and conducting running events and running competitions; providing a website featuring information on the sport of running and running events; providing online information in the fields of running and running events; providing online and electronic newsletters regarding running and running events	12/01/2011	Yes – September 11, 2012
85551252	COLOR MADNESS	February 23, 2012	041	Athletic and sport event services, namely, organizing, arranging, and conducting running events and running competitions; providing a website featuring information on the sport of running and running events; providing online information in the fields of running and running	09/04/2011	Yes – August 7, 2012

Application Serial Number	Trademark	Filing Date	International Class	Goods and Services Description	Date of First Use in Commerce	Approved for Publication in Official Gazette
				events; providing online and electronic newsletters regarding running and running events		

18. When Snyder first approached venues about the type of race he wanted to host, venues did not immediately understand the concept of “paint races” since no such walk/run events existed at the time.

19. Snyder was able to refer the venues to the well-known Dayglow Paint Party and similar paint party events that have been hosted in the United States since at least as early as 2006 where participants are covered in various hues of paints during the course of an event principally involving music and dancing.

20. Snyder engaged in extensive research in preparing to launch The Color Run including research regarding what type of liquid or powder paints could be thrown or projected at runners along the race route that would be safe and easy to clean.

21. Snyder spent considerable time researching how to properly clean up after the race and in preparing documentation regarding organization and clean up plans for various potential venues and cities in order to meet the requirements from potential venues and cities to issue permits for The Color Run events.

22. At the time that Snyder was developing and creating The Color Run, no other race event employed throwing liquid or powder paint at runners along the race route.

23. During 2010 and 2011 prior to Snyder's launch of The Color Run events, the term "The Color Run" meant nothing to people.

24. A search on "Google Insights for Search" shows that prior to the launch of TCR's events, the terms "The Color Run" or "Color Run" had virtually no search traffic throughout the world, because the term "THE COLOR RUN" had no meaning associated with it. A parallel search for the term "paint race" shows a similar increase in the number of searches for such term as TCR launched its events.

25. Since TCR's event was so original, TCR was required to spend significant time and money to inform consumers about paint races. To do so, TCR staged multiple mock/test events during which TCR took videos and pictures of the type of event it intended to host under the brand "THE COLOR RUN" with paid actors/models.

26. Once consumers saw the staged event they were then able to understand how the term "THE COLOR RUN" was suggestive of, but not descriptive of, TCR's events, much like MICROSOFT is suggestive of software for microcomputers, ROLLERBLADE is suggestive of roller skate with inline wheels that simulates the blade of an ice skate, or like Defendants' own marks DIRTY DASH (U.S. Reg. No. 3,965,475) or THE DIRTY DASH DD (U.S. Reg. No. 4,118,734) that are suggestive of a running event where participants get dirty.

27. Because consumers were not searching for the terms "Color Run", "The Color Run", or "Paint Race", TCR had the uphill battle of creating a market for its events from scratch.

28. TCR promoted its paint races nationwide through posting photographs, videos,

and social media campaigns on the Internet along with advertisements hosted on Facebook and other Internet sites, spending hundreds of thousands of dollars on internet advertising. TCR also launched local campaigns where it plastered cities with flyers and posters of forthcoming events, and participated in run expos/tradeshows.

29. Snyder created a Facebook page for The Color Run in August of 2011 in anticipation of TCR's first event in Arizona on January 28, 2012. By December of 2011, The Color Run Facebook page had 10,000 "likes." TCR has spent hundreds of thousands of dollars directly and indirectly building TCR's social media presence and as of the date of this filing, the TCR Facebook page has over 461,568 likes. Each "like" indicates an interested consumer investigating, following, and potentially subscribing to and registering for TCR events.

30. TCR's social media and video marketing campaigns have been very successful with TCR's YouTube channel having received over 3,000,000 views to date. This success has also result in TCR receiving media attention from CNN, National Geographic, Time Magazine, Spirit Magazine, MTV, the Daily Mail UK, among other media outlets.

31. As TCR began marketing its events branded under "THE COLOR RUN" name, consumers began searching for the term "THE COLOR RUN." When such searches began, it was clear that consumers were searching for TCR's events since there were no competitors in the market organizing and hosting paint races. TCR's events remain the premiere and original paint race events hosted in the United States.

32. By year's end TCR will have hosted over 50 events with an aggregate of more

than 500,000 participants running the races, making TCR, one of the largest overall running events domestically in the United States and in the world.

33. On July 8, 2012 TCR hosted an event in Philadelphia where over 23,000 runners participated in the event, making that race the 3rd largest single 5k race held in all of the United States. In the month of July alone, TCR had more than 157,000 runners participate in its events.

34. TCR's success is a result of extensive time, money, and original creativity invested in the creation of an event that draws tens of thousands of participants to each event location.

35. TCR's "THE COLOR RUN" mark is recognized throughout the United States and has become a famous trademark despite its relatively short existence.

36. As a result of this success, copycats races emerged as early as April 2012.

37. As copycats have emerged TCR has aggressively policed its trademarks, and has sent cease and desist letters to known competitors who attempted to use any of the TCR's Trademarks or any confusingly similar marks in connection with their competitive events. In each case to date, with the exception of Defendants, every party that has received a cease and desist letter from TCR has complied with its requests and have ceased using TCR's Trademarks.

38. TCR's Trademark applications for federal registration have all passed the United States Patent and Trademark Office's (the "USPTO") initial review and have either been published for opposition or have been approved to be published for opposition.

John Malfatto and Dirty Dash – a History of Copying

39. Defendants have a history of willfully copying market makers in the fun run industry.

40. John Malfatto (“Malfatto”) is an officer, manager, owner, and/or is otherwise affiliated with Defendant Springbok. Springbok and Malfatto are both associated with a run/walk event that does business as “The Dirty Dash.”

41. In 2009, Red Frog Events (an unrelated entity, not a party to this action) launched the Warrior Dash event which is a 5k running event with obstacles including crawling through mud. The Warrior Dash proved to be successful during 2009 and 2010.

42. In October 2010, the DBA designation “The Dirty Dash” was registered with the State of Utah with Malfatto appointed as the registered agent.

43. The Dirty Dash launched during 2010 in response to the popularity and success of the Warrior Dash. The Dirty Dash event incorporates similar obstacles to the Warrior Dash, including areas of the course that require crawling through mud, borrowed the “Dash” designation for “Warrior Dash,” and encourages the wearing of costumes that are part of the Warrior Dash event culture.

Relationship With Matthew Ward and Inquiries Regarding The Color Run

44. Prior to creating The Color Run, Snyder created a race event called the Red Rock Relay. The Red Rock Relay is a race covering over 180 miles in which runners form teams with each member of the team running a predetermined portion of the race.

45. Snyder conceived and developed the Red Rock Relay.

46. In 2008, Snyder invited Ward to join Red Rock Relay to help manage races.

Snyder and Ward have known each other since high school, and Snyder extended the invitation to join Red Rock Relay as a token of friendship after learning of Ward's personal financial distress.

47. Snyder also invited Tim Collins and Jim Evans to join Red Rock Relay.

Reflecting the fact that Snyder was the founder and creator of Red Rock Relay, Snyder held a 26% interest in Red Rock Relay, Evans held a 25% interest, Collins held a 24.5% interest and Ward held a 24.5% interest. The Red Rock Relay has organized races in Utah since 2008.

48. On January 9, 2012, Ward sent a cell phone text to Snyder asking Snyder if Snyder was involved in The Color Run.

49. That same day, Ward called Snyder and asked detailed questions about the logistics and potential operations of The Color Run. Snyder was hesitant to disclose information but Ward assured him his only interest was to the future benefit of Red Rock Relay. Ward asked how many runners had registered for The Color Run's first event on January 28, 2012 and inquired about: (i) the marketing approaches employed by The Color Run; (ii) the nature of the colored paints or powders that were thrown on the runners; (iii) the identity of the suppliers providing the colored paints or powders; and (iv) whether The Color Run was organizing an event in Utah. All of this constituted confidential information that was not available to or known by the public.

50. Ward sent multiple texts to Snyder asking additional questions about The Color Run. Ward repeatedly stated to Snyder, both orally and in writing via text, that Ward was not intending to “copy” The Color Run but that he was concerned about whether Snyder would be able to continue to take a lead role in managing the Red Rock Relay while also creating and managing The Color Run.

51. Ward’s subsequent actions demonstrate, however, that Ward used his position with the Red Rock Relay, as a pretext to collect information about Snyder’s development of The Color Run in order to launch an identical, competing venture. Ward intentionally misled Snyder in order to steal the fruits of Snyder’s research and development of The Color Run, and continues to do so by knowingly and willfully using TCR’s Trademarks and trade dress, amongst other things, to misdirect and confuse consumers to the benefit of Ward and Defendants and damaging TCR.

Color Me Rad and Infringement

52. In the spring of 2012, after TCR had staged multiple successful events and served tens of thousands of participants throughout the United States, Snyder became aware that Defendants had created a competing identical event called Color Me Rad.

53. The Color Me Rad website, located at the URL www.colormerad.com, looks substantially similar to The Color Run website and contains descriptions of a race nearly identical to The Color Run’s event in distance, requiring runners to wear white tee shirts, and in throwing a single different color of powder paint at runners at a particular stations on the race

course located roughly at each kilometer along the course, associating each event with a charity, and holding a paint party at the end of the race event where participants synchronously throw powder paints in a finale.

54. Additionally Color Me Rad has adopted a look and feel of their events that is nearly identical to that of a TCR event, including a white themed starting line, a color themed finish line, and similar placement and style of signage throughout the race which make photographs of the two events difficult to distinguish.

55. Prior to hosting Color Me Rad's first event, Defendants created a video promoting its competing identical event using footage taken directly from a video that had been created and posted by The Color Run on The Color Run's copyrighted website and on YouTube.com.

56. Color Me Rad also posted photographs taken at one or more of Plaintiff's events and the Color Me Rad website in a manner that implied that the photographs were of a Color Me Rad event. Videos and photographs belonging to The Color Run that were used by Color Me Rad are herein after referred to as the "Promotional Materials." These promotional materials containing TCR's proprietary photographs and photographs taken at TCR's event(s) were sent out to Defendants' Dirty Dash email database.

57. Prior to Color Me Rad holding a single event, Defendants contacted potential venues and purposely misrepresented that Color Me Rad had held prior events (which, in fact were The Color Run events), and referred these potential venues to cities where The Color Run events had actually taken place to falsely claim that Color Me Rad could properly handle

logistics of hosting an identical event.

58. Defendants purposely attempted to, and succeeded, in passing themselves off as The Color Run in order to secure licenses and permits from various municipalities and other venues, creating confusion in the marketplace at The Color Run's expense and depriving The Color Run of licenses and permits from various municipalities and other venues, and the profits associated with hosting events in those municipalities and venues.

59. TCR has been contacted by cities asking logistical questions regarding Color Me Rad events to be held in those cities.

60. Defendants have knowingly used "meta tag" descriptions for Color Me Rad's website that include TCR's Marks and other phrases trademarked by TCR, ensuring that website search engines misdirect consumers searching for TCR's website to Color Me Rad's website. Thus, when a user searches for TCR by its trademarked name, The Color Run, Color Me Rad's website is listed on the first page of the search results. *See* Internet search result, attached as Exhibit A. Google also suggests that "color me rad" is a search related to "the color run." This is the result of Defendants' manipulation of the search engine through improper use of TCR's trademarks.

61. Defendants have posted videos on the website YouTube.com located at the URLs, <http://www.youtube.com/watch?v=f7IHsi0pQys>, and <http://www.youtube.com/watch?v=niPnz3K4ZDQ> which attach the tag "Color Run" to the videos. The tag designates the terms under which the video will show up in the search results when the term "Color Run" is searched on YouTube and in some instances

Google.

62. On March 2, 2012, TCR posted a video to YouTube.com. The video included scenes from a TCR event. The video does not include any talking, but only the song “On Top of the World” by the band Imagine Dragons. The TCR video has at least 566,358 views and was shared virally online. Exactly two weeks later on March 19, 2012, Defendants posted the video located at <http://www.youtube.com/watch?v=f7IHsi0pQys> which includes pictures of a staged paint race accompanied by the exact same song “On Top of the World” by the band Imagine Dragons, and placed the tag “Color Run” in the meta data associated with the video.

63. Defendants’ conduct has created actual confusion among both consumers and venue cities regarding the relationship between The Color Run and Color Me Rad. Specifically, consumers have referred to their experience with The Color Run in encouraging others to participate in the Color Me Rad race and otherwise referred to Color Me Rad events as The Color Run events, thinking that the events were the same. Consumers have openly questioned whether The Color Run is the same race as Color Me Rad. Additionally poor experiences by consumers and venues with Color Me Rad have translated into certain consumers and venues being weary of TCR events as well. One of Defendants’ charity organizations that benefit from a share of the proceeds from a Defendant event was confused as between The Color Run and Defendant as evidenced by a post on the charity partner’s website that includes details about Defendants’ race that would benefit their charity, but then included one of The Color Run’s videos.

64. In March 2012, TCR put Defendants on notice of its infringing activities by sending a cease and desist letter to Defendants demanding that they cease using TCR's Trademarks. In spite of TCR's letter, Defendants' have adopted confusingly similar marks and pro-actively encouraged consumer confusion.

65. At the time TCR sent the cease and desist letter to Defendants, Defendants were operating as Springbok under the DBA "Color Me Rad." Since that time, and after having been put on notice of TCR's rights in the Marks, Defendants formed a new Utah limited liability company from which to operate its race under the name "Run for Color." Defendants have simply swapped the order of the words "Color" and "Run" and substituted an article for a conjunction – indicating that Defendants intend to proactively blur the line to cause consumer confusion.

66. Defendants initially adopted the mark Color Me Rad which has resulted in actual consumer confusion between The Color Run and Color Me Rad paint race events. Defendants then changed the way they refer to their paint race from "Color Me Rad" to "The Color Me Rad 5k Run" in an effort to manipulate search engines into thinking a search for the term "The Color Run" is relevant to Defendants events in an effort to piggyback off of the goodwill engendered in TCR's Trademarks. The adoption of this new term directly targets "**The Color Me Rad 5k Run**" and "The **Color Me Rad 5k Run**" which are both among TCR's Trademarks.

67. While no other copycat company that hosts paint race events is using TCR's Trademarks in its Promotional Materials, Defendants' attorney has solicited such companies and

encouraged them to oppose TCR's Trademark application to "THE COLOR RUN" mark before the USPTO.

FIRST CAUSE OF ACTION
(Common Law Trademark Infringement – Against All Defendants)

68. TCR incorporates by this reference the allegations set forth above in paragraphs 1 through 67 as if fully set forth herein.

69. The Marks are valid trademarks.

70. TCR is the owner of the Marks and began using the Marks in commerce prior to Defendants.

71. TCR's Marks have achieved secondary meaning in the State of Utah, and in each state in which TCR has conducted one of its events.

72. Defendants' conduct in using TCR's Marks in advertising and promotional materials has created confusion among consumers regarding which entity organizes and offers TCR events and Defendants' events.

73. Defendants' conduct has violated TCR's exclusive rights in the Marks.

74. TCR is entitled to damages arising from Defendants' conduct in an amount to be proven more fully at trial. In addition, TCR is entitled to injunctive relief prohibiting Defendants from engaging in continued infringing activities.

SECOND CAUSE OF ACTION
(Utah State Trademark Infringement -- § 70-3a-402 -- Against All Defendants)

75. TCR hereby incorporates by this reference the allegations set forth above in

paragraphs 1 through 74 as if fully set forth herein.

76. TCR has been doing business in the State of Utah and has been using in commerce the Marks and related marks as trade names, trademarks, and service marks in connection with its business.

77. TCR registered the Marks with the State of Utah.

78. Defendants have used a reproduction, counterfeit, copy, or colorable imitation of TCR's Marks without TCR's consent in connection with the sale, distribution, offering for sale, or advertising of services on or in connection with which that use is likely to cause confusion, mistake, or to deceive as to the source of origin, nature, or quality of those services, particularly in relation to the services offered by TCR, and have used that imitation in connection with advertising for Color Me Rad.

79. Defendants' conduct was done with the intent to cause confusion and mistake or to deceive.

80. TCR is entitled to damages in an amount to be proven more fully at trial, but in no event less than \$100,000.00 in statutory damages as provided for under Utah Code Ann. §70-3a-402. TCR is also entitled to its attorneys' fees and costs and to injunctive relief prohibiting Defendants from engaging in continued infringing activities.

THIRD CAUSE OF ACTION
(Trade Dress Infringement – Against All Defendants)

81. TCR hereby incorporates by this reference the allegations set forth above in

paragraphs 1 through 80 as if fully set forth herein.

82. The look and feel of The Color Run events requiring runners to run a 5 kilometer race with a white tee shirt upon which various colored powder paints are thrown at the runner at approximately each kilometer along the race route, along with the use of the Mark “The Color Run” constitute unique trade dress to TCR.

83. TCR’s trade dress is non-functional.

84. Defendants have copied TCR’s trade dress by creating a 5 kilometer race in which runners start the race wearing white tee shirts upon which various colored hues are thrown at the runners at approximately each kilometer along the race route.

85. Defendants have further copied TCR’s trade dress by using TCR’s trademarked name The Color Run in promotional and advertising materials as well as by using videos and photographs of The Color Run events in Defendants’ promotional materials.

86. Defendants’ conduct has created confusion or is likely to cause confusion among consumers regarding the source of origin of The Color Run events and Defendants’ events.

87. TCR is entitled to damages against Defendants in an amount to be proven more fully at trial. In addition, TCR is entitled to injunctive relief prohibiting Defendants from engaging in continued infringing activities.

FOURTH CAUSE OF ACTION
(Federal Unfair Competition and False Advertising--Against All Defendants)

88. TCR hereby incorporates by this reference the allegations set forth above in

paragraphs 1 through 87 as if set forth fully herein.

89. The actions by Defendants detailed herein constitute unfair competition in violation of the Federal Lanham Act, 15 U.S.C. § 1125(a).

90. Defendants have used in commerce words, terms, names and combinations of thereof, have used false designations of origin, and have used false and misleading descriptions and statements of fact, which are likely to cause confusion or mistake regarding the origin, sponsorship or approval of Defendants' services with the services offered by TCR.

91. In addition, Defendants have used in commerce words, terms, names and combinations of thereof, have used false designations of origin, and have used false and misleading descriptions and statements of fact which, in commercial advertising or promotion, misrepresent the nature, characteristics, qualities, or geographic origin of their and TCR's services and commercial activities.

92. As a proximate result of Defendants' above-described willful conduct, TCR has been damaged in an amount to be proven at trial, including, but not limited to, consequential damages and it is entitled to recover all of Defendants' profits from their actions detailed herein as well as all of TCR's costs and reasonable attorneys' fees associated with this action.

93. At all material times, Defendants have acted in bad faith, oppressively and maliciously toward TCR, with intent to injure TCR, thereby entitling TCR to treble damages against Defendants in an amount to be determined at trial.

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

irreparable injury to TCR, for which TCR has no adequate remedy at law, and Defendants will continue to do so unless enjoined by this Court.

FIFTH CAUSE OF ACTION
(Violation of the Utah Unfair Competition Act--Against All Defendants)

95. TCR hereby incorporates by this reference the allegations set forth above in paragraphs 1 through 94 as if fully set forth herein.

96. To the extent that the Court determines that federal law does not apply to TCR's claims for unfair competition, TCR asserts an alternative claim under Utah state law for unfair competition.

97. Defendants' actions, as described above, constitute methods of unfair competition proscribed by the Utah Unfair Competition Act.

98. Defendants' intentional actions, as described above, are unlawful, unfair, or fraudulent, have lead to a material diminution in value of TCR's intellectual property, and involve the infringement of TCR's Marks.

99. TCR is therefore entitled to injunctive relief barring Defendants from engaging in unfair methods of competition against TCR.

100. Further, TCR has been damaged by Defendants' unfair competition in an amount to be proven at trial. Pursuant to Utah Code Ann. § 13-5a-103, TCR is entitled to recover its actual damages, costs, attorneys' fees and punitive damages.

SIXTH CAUSE OF ACTION

(Violation of Utah Common Law Unfair Competition and Unfair Trade Practices--Against All Defendants)

101. TCR hereby incorporates by this reference the allegations set forth above in paragraphs 1 through 100 as if fully set forth herein.

102. To the extent that the Court determines that federal law and Utah statutory law does not apply to TCR's claims for unfair competition, TCR asserts an alternative claim under Utah state common law for unfair competition.

103. Defendants' actions constitute unfair competition and unfair trade practices proscribed by the common law of the State of Utah.

104. Defendants' acts of unfair competition and unfair trade practices, as described above, have caused damages to TCR, in an amount to be proven at trial.

105. TCR is being irreparably harmed by Defendants' actions, and TCR has no adequate remedy at law. TCR is therefore additionally entitled to injunctive relief barring Defendants from engaging in further acts of unfair competition and unfair trade practices.

SEVENTH CAUSE OF ACTION
(Accounting Against the Defendants)

106. TCR hereby incorporates by this reference the allegations set forth above in paragraphs 1 through 105 as if fully set forth herein.

107. TCR is entitled, pursuant to 15 U.S.C. § 1117, to recover any and all profits of the Defendants that are attributable to their acts of infringement.

108. TCR is entitled, pursuant to 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of the Defendants' acts of infringement.

109. The amount of money due from the Defendants to TCR is unknown to TCR and cannot be ascertained without a detailed accounting by the Defendants of the precise amount of profits of the Defendants attributable to their acts of infringement.

EIGHTH CAUSE OF ACTION
(Alternative Claim -- False Advertising — Utah Law—Against All Defendants)

110. TCR hereby incorporates by this reference the allegations set forth above in paragraphs 1 through 109 as if fully set forth herein.

111. To the extent that the Court determines that federal law does not apply to TCR's claims for false advertising, TCR hereby asserts this state law claim for false advertising.

112. By using TCR's trademarked name The Color Run in advertising and promotional materials, Defendants have caused confusion regarding the entity providing the service called The Color Run.

113. TCR has been damaged by Defendants' conduct in an amount to be proven more fully at trial.

114. TCR is being irreparably harmed by Defendants' actions, and TCR has no adequate remedy at law. TCR is therefore additionally entitled to injunctive relief barring Defendants from engaging in further acts of false advertising.

NINTH CAUSE OF ACTION
(Punitive Damages Claim Against the Defendants)

115. TCR hereby incorporates by this reference the allegations set forth above in paragraphs 1 through 114 as if fully set forth herein.

116. Defendants' conduct as described above constitutes bad faith and is willful and malicious, or otherwise manifests a knowing and reckless indifference toward, and disregard of, TCR's rights and, as a result, the Defendants should be required to pay punitive damages in an amount to be determined at the trial of this matter.

TENTH CAUSE OF ACTION
(Permanent Injunction)

117. TCR hereby incorporates by this reference the allegations set forth above in paragraphs 1 through 116 as if fully set forth herein.

118. TCR is entitled to injunctive relief prohibiting Defendants from infringing on the Trademarks and otherwise violating federal and state law by engaging in unfair competition with TCR.

119. Specifically, TCR is entitled to injunctive relief and an order enjoining the Defendants from: (i) using any of the Marks; (ii) using the words "the" "color" and "run" in any phrase or combination of words in any advertising or promotional material, on any website, or within any meta tags; (iii) using the words "color" and "5k" in any phrase or combination of words in any advertising or promotional material, on any website, or within any meta tags; (iv) using the words "color" and "dash" in any phrase or combination of words in any advertising or

promotional material, on any website, or within any meta tags; (v) using the words “color” and “runner” in any phrase or combination of words in any advertising or promotional material, on any website, or within any meta tags; (vi) using the words “color” and “madness” in any phrase or combination of words in any advertising or promotional material, on any website, or within any meta tags; (vii) using any of the Promotional Materials or other photographs or used by TCR to promote or advertise The Color Run; (viii) using the mark “Color Me Rad” or any marks similar to TCR’s Marks that are likely to cause consumer confusion; and (ix) adopting or copying TCR’s trade dress in marketing, promoting, organizing or running a paint race event.

PRAYER FOR RELIEF

WHEREFORE, TCR prays for judgment against the Defendants as follows:

1. On TCR’s First through Fourth Causes of Action, for damages in an amount to be proven more fully at trial, plus injunctive relief.
2. On TCR’s Fifth Cause Action, for damages in an amount to be proven more fully at trial, plus punitive damages, plus injunctive relief.
3. On TCR’s Sixth Cause of Action, for damages in an amount to be proven more fully at trial, plus injunctive relief.
4. On TCR’s Seventh Cause of Action, for damages in an amount to be proven more fully at trial.
5. On TCR’s Eighth Cause of Action, for damages in an amount to be proven more fully at trial, plus injunctive relief.

6. On TCR's Ninth Cause of Action, for punitive damages in an amount to be proved more fully at trial.

7. On TCR's Tenth Cause of Action, for permanent injunctive relief prohibiting Defendants from (i) using any of the Marks; (ii) using the words "the" "color" and "run" in any phrase or combination of words in any advertising or promotional material, on any website, or within any meta tags; (iii) using the words "color" and "5k" in any phrase or combination of words in any advertising or promotional material, on any website, or within any meta tags; (iv) using the words "color" and "dash" in any phrase or combination of words in any advertising or promotional material, on any website, or within any meta tags; (v) using the words "color" and "runner" in any phrase or combination of words in any advertising or promotional material, on any website, or within any meta tags; (vi) using the words "color" and "madness" in any phrase or combination of words in any advertising or promotional material, on any website, or within any meta tags; (vii) using any of the Promotional Materials or other photographs or used by TCR to promote or advertise The Color Run; (viii) using the mark "Color Me Rad" or any marks similar to TCR's Marks that are likely to cause consumer confusion; and (ix) adopting or copying TCR's trade dress in marketing, promoting, organizing or running a paint race event.

8. For TCR's attorneys' fees and costs in bringing this action.

DEMAND FOR JURY TRIAL

TCR demands a trial by jury of all issues triable by jury and submits the statutory fee herewith.

DATED this 17th day of August, 2012.

BENNETT TUELLER JOHNSON & DEERE



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EXHIBIT A

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8/17/12

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the color run



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THE COLOR RUN *5k of color running madness

thecolorrun.com/

The Color Run is a one of a kind running experience. Find a city and join us for 2012!

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Locations

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The annual Color Run is going down in Denver, May 26, 2012.

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THE COLOR RUN - Be a Color Runner - YouTube



www.youtube.com/watch?v=4EERSfHqT8

May 11, 2012 - 2 min - Uploaded by thecolorrun

Be Healthy, Be Happy, Be You. Be a Color Runner! We have kicked off our 2012 tour and now it's time to ...

More videos for the color run »

The Color Run | Facebook

www.facebook.com/thecolorrun

NEW VIDEO! Want to see 26000 Color Runners in the heart of Philadelphia with crazy HD helicopter shots? (Bonus points if you can spot Mr. Lego Man).

Color Me Rad 5K Run | Race dates for 2012

www.colormerad.com/

The Color Me Rad 5K Run is coming to a town near you with a tsunami of color that'll make colored tears of joy run down your cheeks and will renew your will to ...

The Color Run Turns You into a Human Canvas

www.visualnews.com/.../the-color-run-turns-you-into-a-human-canv...

Feb 6, 2012 - A regular long distance race is great for athletes who like to compete or community members who want to support a cause, but the Color Run ...

The Color Run . (thecolorrun) on Pinterest

pinterest.com/thecolorrun/

The Color Run is 5K of color madness. Start out as a clean, blank canvas and finish looking like a tie dyed Jackson Pollock painting. Join the Color Movement at ...

The Color Run coats Seattle runners | Picture This | The Seattle Times

seattletimes.nwsourc.com/.../201204072_thecolorruncoatsseattleru...

May 13, 2012 - ERIKA SCHULTZ / THE SEATTLE TIMES. At the finish of The Color Run, participants open packets of color dust in unison at The Seattle Center ...

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