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Thriller Energy Drinks

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

Thriller Energy Drinks,

Plaintiffs,

v.

Michael Haliechuk, Damian Abraham, Sandy
Miranda, Joshua Zucker, Benjamin Cook, Paul
Jonah Falco, David J. Eliade for and performing
with and under the name F****D UP,

Defendants.

Case No. _____

**COMPLAINT FOR DEFAMATION (C. C.
§§ 44); INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS (C. C. §§ 52)**

JURY DEMAND

Plaintiffs allege:

OVERVIEW

1. This complaint arises from the relationship between Nick Fenstle, Defendant, as representative of Thriller Energy Drinks, Trademark, and, Michael Haliechuk, Joshua Zucker, Damian Ford Abraham, Sandy De Neves Miranda, Paul Jonah Falco, Benjamin Cook and David J Eliade, here known collectively as "F****d Up"

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(whose name appears in orthographically altered form herein so as not to needlessly afford opportunities for distraction from the merits of this lawsuit) began in Austin, Texas in March of 2010 at the music, film and interactive conference South By South West (here known as "SXSW"). The plaintiff acting as Thriller Energy Drinks had funded and presented several showcases of a musical nature as part of the SXSW conference, as a series of publicity events for Thriller Energy Drinks. One such event was the co-sponsoring of an event curated by the Defendant, known as the "F****d Up and Friends" musical showcase, taking place March 20, 2010 at the Red 7 nightclub in Austin, Texas. The defendants received a sum of money (\$1000) from the Plaintiff in order to facilitate various actions necessary to present such an event, and was given approximately thirty (30) complimentary cases of Thriller Energy Drink to give away at the event.

2. On March 25th, 2010 on the defendants website a post was made disparaging the financial and promotional contributions made by Thriller Energy. By that action, the Defendant intentionally inflicted negative attention and libel on reputation of the Plaintiff and the company Thriller Energy.

THE PARTIES

3. Plaintiff Nick Fenstle ("Fenstle") is a natural person residing at 852 North Leavitt Chicago, USA during all relevant times of this action, and; is sole owner and proprietor of Thriller Energy Drinks incorporated. Thriller Energy Drinks has been producing a variety of energy drinks in the USA since 2008, including "Classic Thrill", "Thrill Wave", Thrill Caffeine", and "Low Carb Thrill". The company regularly promotes their products at extreme sporting events, extreme underground music festivals, and extreme nightlife events.

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4. Defendant "F****d Up" ("FU") made up of the natural persons Michael Haliechuk, Joshua Zucker, Damian Ford Abraham, Sandy De Neves Miranda, Paul Jonah Falco, Benjamin Cook and David Eliade and is incorporated under Hidden World Enterprises, residing at 17 Sparkhall Avenue, Toronto Canada. The band has been performing since early 2001. Its members performed for many years both individually and with different bands and ensembles. F****d Up's work is direct, sonically violent at times, and often characterized as hardcore punk, with the sometimes acknowledged influence of Spanish Civil War-variety anarchism, Viennese Actionism and the Situationist International.

FACTS

5. A physical copy of March 25th, 2010 "Looking for Gold" blog post is appended to this Complaint as Exhibit A. The "SXSW WHY?" post in question is sandwiched between -- bookended by -- articles by the names "PUNK WHY?" and "OX". At the time of 12:36 a.m. on March 25th, 2010 Michael Haliechuk did make public an article ("essay") of a personal yet polemical nature, describing events which took place during the week of March 14th, 2010 in Austin, Texas at the music, film and interactive festival "SXSW".

6. Therein he named the plaintiff Thriller Energy Drinks as "a bulls**t company", and owner and sole proprietor Nick Fenstle as a "sad looking guy handing these tiny cans to people out of a garbage can full of ice". The advertisements for Thriller Energy Drink appearing in and around Austin Texas during the week of March 14th, 2010 were summarily described as "gross"; the taste of energy drinks referred to as "vile"; the relationship between the Plaintiff and the Defendants as effectively terminated.

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FIRST CAUSE OF ACTION **(For Violation of California Civil § 44 - Defamation)**

7. Plaintiffs incorporate paragraphs 1-6 of this Complaint.

8. Defendants and each of them used the company and owner names of plaintiffs knowingly and deliberately for the purpose of increasing "blog hits" without the prior consent of the plaintiff.

9. The defamatory statements were, including, but not limited to, the following:

a. When we first started going to sxsw [sic] in 2007, this [sic] was just one sad looking guy handing these tiny cans to people out of a garbage can full of ice at the corner of Red River and 7th.

b. I guess he was at one of our shows that year and wrote some ridiculous shit about us on his website.

c. ...his mostly gross ads [sic] were spread all over sxsw [sic] this year.

d. We think energy drinks are some of the most vile stuff you can put in your body and didn't really want to have anything to do with him as a person or his company. He was persistent in bugging us for the first half of 2010 so we finally let him shell some of his gross drinks at our official showcase.

e. Really just a gross company, and even though we did help him promote our show [sic], we wouldn't do it again.

f. While all the companies we've mentioned in this article up to this point have been ones we've worked with on multiple occasions, [sic] and hope to do in the future, and admire, we can say with force that Thriller Energy Drinks is a bulls**t company and we won't be working with them ever again.

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10. The statements imputed by FU to Thriller Energy Drinks and Fenstle, the slurs on Fenstle's character by FU, including his honesty, integrity, virtue, or reputation, the written statements by FU that he looked sad or bum-like in the course of handing out a vile drink defamed Fenstle.

11. The defamatory statements resulted in liability to Fenstle.

SECOND CAUSE OF ACTION

(For Violation of California Civil § 52 -Intentional Infliction of Emotional Distress)

12. Plaintiffs incorporate paragraphs 1-6 and 8-11 of this Complaint.

13. Defendants and each of them used the company and owner names of plaintiffs knowingly and deliberately and inflicted emotional distress on Fenstle by defaming him to many people, including but not limited to the following: the readership of "Looking for Gold", the readership of the "Village Voice", the hardcore punk-wave community, attendees of the SXSW music, film, and interactive festival, Thriller Energy Drinks CFO Octavio St. Laurent.

14. As a result of FU's extreme and outrageous conduct, Fenstle was, is, and with a high degree of likelihood, will continue to be emotionally distressed due to their defamation of him.

15. As a result of FU's extreme and outrageous conduct, Fenstle has suffered and will continue to suffer mental pain and anguish, severe emotional trauma, embarrassment, and humiliation.

PRAYER

WHEREFORE, Plaintiffs pray as follows:

1. Plaintiff Thriller Energy Drinks demands judgment, including interest, against the defendant FU in an amount deemed by this Court to be use and fair and in any other way in which the Court deems appropriate.

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DATED: March 28, 2010.

FENNAL, BORTON, YOUNG & HERRERA
A Professional Corporation

By: **DRAFT**

Phillip R. Carmichael
Attorneys for Plaintiffs
Thriller Energy Drinks

JURY DEMAND

Plaintiffs hereby demand a trial jury of all issues so triable.

DATED: March 28, 2010.

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