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CLERK U.S. DISTRICT COURT
CENTRAL DIST. CALIF.
LOS ANGELES

BY _____

6 Attorneys for Plaintiff
7 TOHO CO., LTD.

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 TOHO CO., LTD.

13 Plaintiff,

14 v.

15 DOCTOR'S ASSOCIATES INC. d/b/a
16 SUBWAY; SUBWAY FRANCHISEE
ADVERTISING FUND TRUST;
17 MCCARTHY MAMBRO BERTINO,
LLC d/b/a MMB and DOES 1 through
18 10, inclusive,

19 Defendants.

Case No. **CV08-02511GPS**

COMPLAINT FOR:

- (1) VIOLATION OF §43(a) OF THE LANHAM ACT;
- (2) FEDERAL TRADEMARK DILUTION;
- (3) STATE TRADEMARK DILUTION;
- (4) COMMON LAW UNFAIR COMPETITION;
- (5) UNJUST ENRICHMENT; AND
- (6) COPYRIGHT INFRINGEMENT

DEMAND FOR JURY TRIAL

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590

1 Plaintiff Toho Co., Ltd (“Toho”) alleges as follows:
2

3 NATURE OF THE ACTION

4 1. This action concerns defendants’ intentional and unauthorized use of
5 Toho’s world famous fictional character “Godzilla” in a recent high profile national
6 television commercial for “Subway Restaurants.”

7 2. Subway is one of the largest fast food franchises in the world, with
8 over 29,000 restaurants in over 85 countries, and generating over \$10 billion in
9 annual sales. Subway advertises aggressively to promote its restaurants, with a
10 yearly advertising budget exceeding \$500 million. The commercial at issue, which
11 was created for Subway by advertising agency McCarthy Mambro Bertino, LLC in
12 support of Subway’s “Five Dollar Footlong” sandwich promotion, features Godzilla
13 attacking a Japanese city and then endorsing the sandwich by spreading his hands a
14 foot apart. Viewers of the commercial have readily and consistently recognized the
15 featured character as Godzilla. Indeed, the Godzilla character is the centerpiece of
16 the commercial, which has aired repeatedly on national broadcast, cable, and
17 satellite television. The commercial has also been posted on numerous internet web
18 sites, where it (and, in particular, Godzilla’s role in the commercial) has been the
19 subject of extensive commentary by those who have seen it.

20 3. Defendants never sought or obtained Toho’s permission to use
21 Godzilla in the television commercial. Immediately after learning of the
22 commercial, Toho demanded that Doctor’s Associates (Subway’s parent company)
23 cease and desist from further broadcasting the commercial. It refused. Instead,
24 defendants caused the commercial to be broadcast constantly during the 2008
25 NCAA basketball tournament (the second most watched sporting event of the year)
26 and on programs such as American Idol (the most popular entertainment program
27 on television). The commercial has now been seen by tens, if not hundreds, of
28 millions of viewers, and defendants have unjustly benefited by willfully

1 misappropriating and exploiting valuable intellectual rights without paying for
2 them. In this action, Toho seeks injunctive relief, compensatory damages, and
3 disgorgement of all of the profits defendants have generated from their
4 infringement of Godzilla.

5
6 JURISDICTION AND VENUE

7 4. This action arises under the Lanham Act, 15 U.S.C. § 1125 and the
8 United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* This Court has original
9 jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121(a)
10 and 28 U.S.C. §§ 1331 and 1338. The Court has supplemental jurisdiction over
11 Toho's state law claims under 28 U.S.C. § 1367(a).

12 5. This Court has personal jurisdiction over each of the defendants named
13 in this Complaint, because each defendant does sufficient business in California and
14 this Judicial District, has sufficient minimum contacts with California and this
15 Judicial District, or otherwise intentionally avails itself of the California and Los
16 Angeles markets to render the exercise of jurisdiction over it by this Court
17 consistent with traditional notions of fair play and substantial justice.

18 6. Venue in this Judicial District is proper under 28 U.S.C. §§ 1391(b)
19 and (c) and 1400(a), in that a substantial part of the events giving rise to Toho's
20 claims occurred in this Judicial District, the infringing television commercial at
21 issue has been aired in this District, and one or more defendants resides and may be
22 found in this Judicial District within the meaning of 28 U.S.C. § 1391(c).

23
24 THE PARTIES

25 7. Toho is a Japanese corporation and motion picture studio that is in the
26 business of producing and distributing motion pictures throughout the world.
27 Toho's principal place of business is in Tokyo, Japan. Toho maintains an office in
28 Los Angeles, California to oversee the distribution of its films in the United States,

1 and to oversee the licensing, merchandising and enforcement of the intellectual
2 property that appears in its films.

3 8. Toho is informed and believes, and based thereon alleges, that
4 defendant Doctor's Associates Inc. d/b/a Subway ("Doctor's Associates"), is a
5 corporation organized and existing under the laws of the State of Florida, with its
6 principal place of business in Milford, Connecticut. Toho is further informed and
7 believes, and based thereon alleges, that Doctor's Associates conducts business
8 throughout the United States, including in this Judicial District.

9 9. Toho is informed and believes, and based thereon alleges, that
10 defendant Subway Franchisee Advertising Fund Trust ("SFAFT") is a business
11 entity affiliated with Doctor's Associates that conducts and/or participates in the
12 advertising for Subway Restaurants. Toho is further informed and believes, and
13 based thereon alleges, that SFAFT conducts business throughout the United States,
14 including in this Judicial District.

15 10. Toho is informed and believes, and based thereon alleges, that
16 defendant McCarthy Mambro Bertino, LLC d/b/a/ MMB ("MMB"), is a limited
17 liability corporation organized, existing, and having its principal place of business
18 in Boston, Massachusetts. Toho is further informed and believes, and based
19 thereon alleges, that MMB conducts business throughout the United States,
20 including in this Judicial District.

21 11. Toho is unaware of the true names and capacities of the defendants
22 sued herein as Does 1 through 10, inclusive, and therefore sues these defendants by
23 fictitious names. Toho will seek leave of the Court to amend this Complaint to
24 allege their true names and capacities when ascertained. Toho is informed and
25 believes, and based thereon alleges, that each fictitiously named defendant is
26 responsible in some way for the creation, production, distribution and/or exhibition
27 of the infringing commercial at issue in this Complaint, and is liable to Toho
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1 therefor. Doctor's Associates, SFAFT, MMB and Does 1 through 10 are
2 sometimes referred to collectively herein as "Defendants."

3 12. Toho is informed and believes, and based thereon alleges, that at all
4 times relevant herein, each of the Defendants was the agent, servant, or employee
5 of each other Defendant, and at all times relevant herein was acting in whole or at
6 least in part within the scope of such agency. As such, each and every Defendant
7 herein is equally responsible in whole or in part for each and every act alleged
8 herein.

9
10 ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

11 Toho and the Godzilla Character

12 13. In or about 1954, Toho created a fictional character called "Godzilla,"
13 a giant, prehistoric monster brought to life in the modern world. At the same time,
14 Toho produced and distributed a feature-length motion picture entitled *Gojira*
15 (Japanese for *Godzilla*), based upon the reawakening of Godzilla by the detonation
16 of an atomic bomb. The film was released in the United States in or about 1956
17 under the title *Godzilla, King of the Monsters*. Thereafter, Toho produced and
18 distributed throughout the world a series of motion pictures based upon the further
19 adventures of Godzilla. Toho has produced approximately twenty seven (27)
20 sequel films featuring its Godzilla character (the "Godzilla Character").

21 14. Beginning in or about 1981, Toho duly registered the name and
22 character image of "Godzilla" as service marks and trademarks under the Lanham
23 Act, 15 U.S.C. § 1051 et seq., and Toho remains to this date the owner of these
24 marks.

25 15. Toho's Godzilla films have been widely distributed in the United
26 States and throughout the world. In the course of the production and distribution of
27 these films, Toho and its licensees have expended significant effort advertising and
28

1 promoting the motion pictures under titles bearing the name of, and featuring, the
2 Godzilla Character.

3 16. As a result of the success and popularity of its Godzilla motion
4 pictures, Toho has, for a number of years, engaged in the business of merchandising
5 and promoting the Godzilla Character. Toho, by itself and through its authorized
6 licensing agents, has licensed others to use the name and likeness of Godzilla on
7 and in connection with toys, clothing, books, video games, records, posters and
8 various other types of merchandise. Substantial effort has been expended in
9 promoting Godzilla merchandise and the merchandise has been widely distributed
10 in the United States and elsewhere pursuant to these licenses.

11 17. Because of the widespread popularity and public recognition of
12 Godzilla, the Godzilla Character has often been used in national and/or regional
13 advertising and promotional campaigns. The companies that use the Godzilla
14 Character in their advertising and promotional campaigns pay substantial fees to
15 Toho for the right to utilize the character.

16 18. Toho has developed an excellent reputation and highly valuable
17 goodwill in its Godzilla Character and the products, goods and services featuring
18 that character. Through the consistent and extensive advertising and widespread
19 distribution and success of Toho's Godzilla motion pictures, the advertising and
20 distribution of merchandise featuring Godzilla, and the use of Godzilla in national
21 and/or regional advertising campaigns, a secondary meaning has been created in the
22 minds of the public throughout the United States, and throughout the world, by
23 which the likeness of Godzilla has become strongly identified and associated with
24 Toho, Toho's character and Toho's series of motion pictures. Toho therefore has
25 acquired common law trademark rights in the Godzilla Character in addition to its
26 federally-registered Godzilla trademarks.

27
28

1 19. Toho’s federally-registered trademarks and common law trademark
2 rights in the Godzilla Character are collectively referred to herein as the “Godzilla
3 Marks.”

4 20. As a result of the extensive advertising and widespread distribution
5 and success of Toho’s Godzilla motion pictures, the advertising and distribution of
6 merchandise featuring Godzilla, and the use of Godzilla in national and/or regional
7 advertising campaigns, the Godzilla Character and Godzilla Marks are famous
8 throughout the United States and are immediately recognizable to and known by the
9 public.

10 21. In addition to its ownership of the Godzilla Marks, Toho has complied
11 in all respects with the copyright laws of the United States, and all other laws
12 governing copyright, and is the owner of the exclusive rights and privileges in and
13 to the copyrights in *Gojira*, *Godzilla*, *King of the Monsters* and in the subsequent
14 Godzilla motion pictures. The copyrights cover all visual elements in the motion
15 pictures, including the appearance of the Godzilla Character itself. Toho has
16 registered the copyrights in its Godzilla films with the United States Copyright
17 Office, and these registrations are valid and subsisting.

18
19 Defendants’ Infringing Conduct

20 22. Toho is informed and believes, and based thereon alleges, that
21 defendant Doctor’s Associates is the franchisor of over 29,000 fast food restaurants
22 worldwide which operate under the “Subway” trade name. Toho is further
23 informed and believes, and based thereon alleges, that Subway is the largest fast
24 food restaurant in the United States, as measured by number of restaurants.

25 23. Toho is informed and believes, and based thereon alleges, that SFAFT
26 is involved in some way in the advertising for Subway restaurants and that Doctor’s
27 Associates and/or SFAFT spend in excess of \$500 million annually on advertising
28 for Subway.

1 24. Toho is informed and believes, and based thereon alleges, that
2 defendant MMB is Doctor's Associates' and SFAFT's principal advertising agency,
3 and that it was involved in the creation of the commercial at issue in this action.

4 25. Toho is informed and believes, and based thereon alleges, that in or
5 about early 2008, Defendants decided to promote Subway Restaurants by
6 developing and exploiting a high profile national television advertising campaign
7 with memorable visual elements to promote Subway's Spring 2008 "Five Dollar
8 Footlong" special.

9 26. Toho is informed and believes, and based thereon alleges, that
10 defendants created and, beginning in March 2008, caused to be broadcast, a
11 television commercial for Subway (the "Commercial"), approximately 30 seconds
12 in length, that features a giant green erect-standing anthropomorphic monster with
13 the distinctive appearance and many of the physical characteristics which make
14 Godzilla unique and recognizable, and which serve to call Godzilla to mind in the
15 eyes of the public. In the Commercial, Godzilla is shown stomping its way through
16 a Japanese city that is burning and under attack – an iconic and instantly
17 recognizable setting from Toho's Godzilla films. The viewer knows that it is a
18 Japanese city that is being attacked by the presence of Japanese lettering on the
19 sides of the buildings, and the presence of an Asian woman screaming at the sight
20 of Godzilla. Godzilla is shown moving its outstretched arms back and forth, and
21 then holding up both of its hands. A special effect shows the distance between its
22 hands – 1 foot – to represent the length of the Subway sandwich offered for sale.

23 27. Toho is informed and believes, and based thereon alleges, that
24 Defendants created the Commercial intending to use and copy Godzilla and
25 therefore misappropriate the Godzilla Character for Defendants' commercial
26 advantage. Defendants not only intentionally created a character that closely
27 resembles Godzilla in its physical appearance, but placed the character in a setting
28 (a Japanese city under attack) that is widely associated with Toho's Godzilla films.

1 28. Toho is informed and believes, and based thereon alleges, that the
2 Commercial has been a huge success in promoting Subway Restaurants, in large
3 part as a result of the presence of Godzilla. Indeed, Toho is informed and believes,
4 and based thereon alleges, that Defendants have also created and caused to be
5 broadcast a shorter, fifteen second version of the Commercial, which only features
6 the Godzilla character (as opposed to the 30 second version in which Godzilla is
7 featured along with three other characters).

8 29. On the popular YouTube video sharing site, the Commercial is
9 available for viewers to watch and discuss. In comments on YouTube and
10 numerous other internet sites, viewers of the Commercial consistently refer to the
11 creature in the Commercial as Godzilla. On the popular web site Wikipedia, the
12 entry on “Godzilla in Popular Culture” has been recently updated to reference the
13 Commercial, with the comment: “In a Subway commercial for \$5 1 foot long subs
14 it shows a man in a fake Godzilla suit attacking the city.

15 30. Listed below are only a few of the many comments mentioning
16 Godzilla that have been posted on the internet by those who have seen the
17 Commercial:

- 18 • “[D]oes anyone else want to jab out their eyeballs when the creepy
19 Subway commercial comes on? What does Godzilla have to do with
20 over-priced sandwiches?”
- 21 • “I find this Subway ad oddly awesome . . . I’m a big Godzilla fan.”
- 22 • “Man, how about that Japanise [sic] girl freaking out about Godzilla.
23 That is awesome! And then Godzilla does the \$5 holla . . . priceless!”
- 24 • “I love da Godzilla part.”
- 25 • “The best part is when the Godzilla is walking through the city and then
26 all you see is a woman, looking up and screaming, while making the foot
27 long gesture.”

- 1 • “Catchy ass jingle, and it’s only five words! Godzilla’s got the right
2 idea.”
- 3 • “By the way, I just saw that commercial and made an observation. They
4 show Godzilla doing the ‘foot long’ hand gesture. If Godzilla is as tall as
5 the buildings and he is holding his hands about shoulder-width apart,
6 wouldn’t that be more like 50 feet?”
- 7 • “Godzilla wants the 50 foot long.”
- 8 • “*go into subway* Um yes, i would like the godzilla footlong please . . .”

9 31. Comments made on the internet also indicate that many viewers of the
10 Commercial find that it contains sexual connotations. To the extent viewers see the
11 Commercial as having a sexual undertone, such associations tarnish the Godzilla
12 Character and the Godzilla Marks.

13 32. Toho is informed and believes, and based thereon alleges, that
14 beginning in or about mid March 2008, the Commercial was shown extensively on
15 broadcast, cable and satellite television nationwide (and perhaps internationally),
16 including repeated broadcasts during the NCAA Basketball Tournament, American
17 Idol and many other programs. Toho is further informed and believes, and based
18 thereon alleges, that the Commercial is available for viewing on various internet
19 web sites.

20 33. Toho is informed and believes, and based thereon alleges, that more
21 than \$20 million has been spent so far on advertising time to broadcast the
22 Commercial.

23 34. At no time did Defendants seek or obtain Toho’s permission or
24 consent to use or feature the Godzilla Character or any substantially or confusingly
25 similar character in the Commercial.

26 35. After learning of the Commercial, Toho demanded that Doctor’s
27 Associates cease airing the Commercial, but it refused to do so. Rather, defendants
28 have continued airing the Commercial on popular television programs, including

1 the NCAA Basketball Tournament semi-final and championship games. Toho is
2 informed and believes, and based thereon alleges, that the rate for broadcasting a
3 thirty second advertisement on the NCAA semi-final games was in excess of
4 \$600,000, and that the rate for broadcasting a thirty second advertisement on the
5 NCAA championship game was in excess of \$1.2 million.

6 36. By creating, distributing, and exhibiting the Commercial, Defendants
7 have obtained for themselves a benefit which is otherwise paid for by others, have
8 obtained valuable property rights belonging to Toho without having paid for them,
9 and have collectively made millions of dollars as a result of their unauthorized
10 commercial use of Godzilla.

11
12 FIRST CLAIM FOR RELIEF

13 Against All Defendants For Violation Of

14 Section 43(a) Of The Lanham Act

15 37. Toho realleges and incorporates by this reference the allegations
16 contained in paragraphs 1 through 36, inclusive, as though they were fully set forth
17 herein.

18 38. By, without limitation, creating, producing, distributing, exhibiting,
19 and otherwise exploiting the Commercial, and/or by authorizing or contributing to
20 the foregoing, Defendants have created, and will continue to create, confusion in
21 the marketplace and have falsely created the impression in the minds of the public
22 that Toho and its Godzilla character are somehow associated or affiliated with
23 Defendants, that Toho is somehow sponsoring or endorsing Subway restaurants
24 and/or that Toho approved or authorized Defendants' use of the Godzilla Character
25 or Godzilla Marks. Such conduct violates section 43(a) of the Lanham Act, 15
26 U.S.C. § 1125(a).

1 39. As a direct and proximate result of Defendants' wrongful conduct,
2 Toho has been damaged and is entitled to recover Defendants' wrongfully obtained
3 profits and three times Toho's actual damages, pursuant to 15 U.S.C. § 1117(a).

4 40. Defendants' violation of the Lanham Act has caused and will cause
5 irreparable harm to Toho which cannot be fully compensated by money. Toho has
6 no adequate remedy at law. Therefore, in addition to monetary relief, Toho is
7 entitled to preliminary and permanent injunctive relief preventing Defendants from
8 continuing to use Toho's Godzilla Character or Godzilla Marks, or any confusingly
9 similar variations, on or in connection with any products, goods or services, or the
10 advertising of any products, goods or services.

11 41. Toho is informed and believes, and based thereon alleges, that
12 Defendants engaged in the foregoing conduct knowingly, willfully and
13 oppressively, intending to appropriate Toho's intellectual property to the detriment
14 of Toho and to the confusion of the public. This constitutes an exceptional case
15 within the meaning of Section 35 of the Lanham Act, 15 U.S.C. § 1117, for which
16 Toho is entitled to its attorneys' fees.

17
18 SECOND CLAIM FOR RELIEF

19 Against All Defendants For Violation Of

20 Federal Anti-Dilution Law (15 U.S.C. § 1125(c))

21 42. Toho realleges and incorporates by this reference the allegations
22 contained in paragraphs 1 through 36 and 38, inclusive, as though they were fully
23 set forth herein.

24 43. By, without limitation, creating, producing, distributing, exhibiting,
25 and otherwise exploiting the Commercial, and/or by authorizing or contributing to
26 the foregoing, Defendants have created, and will continue to create, dilution of the
27 distinctive quality of Toho's famous Godzilla Character and Godzilla Marks.
28

1 44. Toho is informed and believes, and based thereon alleges, that
2 Defendants' use and exploitation of the Godzilla Character and the Godzilla Marks
3 was willful and intentional, that Defendants were aware of Toho's Godzilla
4 Character and Godzilla Marks, and that Defendants purposefully used Toho's
5 character and marks to trade on Toho's reputation, to cause confusion, mistake
6 and/or deception, and to take advantage of the goodwill and public recognition
7 associated with the Godzilla Character and the Godzilla Marks for their own
8 commercial advantage.

9 45. As a direct and proximate result of Defendants' wrongful conduct,
10 Toho has been damaged and is entitled to recover Defendants' wrongfully obtained
11 profits and three times Toho's actual damages, pursuant to 15 U.S.C. § 1117(a).

12 46. Defendants' violation of the federal Anti-Dilution Law has caused and
13 will cause irreparable harm to Toho which cannot be fully compensated by money.
14 Toho has no adequate remedy at law. Therefore, in addition to monetary relief,
15 Toho is entitled to preliminary and permanent injunctive relief preventing
16 Defendants from continuing to use Toho's Godzilla Character or Godzilla Marks,
17 or any confusingly similar variations, on or in connection with any products, goods
18 or services, or the advertising of any products, goods or services.

19 47. Toho is informed and believes, and based thereon alleges, that
20 Defendants engaged in the foregoing conduct knowingly, willfully and
21 oppressively, intending to appropriate Toho's intellectual property to the detriment
22 of Toho and to the confusion of the public. This constitutes an exceptional case
23 within the meaning of Section 35 of the Lanham Act, 15 U.S.C. § 1117, for which
24 Toho is entitled to its attorneys' fees.

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THIRD CLAIM FOR RELIEF
Against All Defendants For Violation Of
State Anti-Dilution Law
(California Business & Professions Code § 14330)

48. Toho realleges and incorporates by this reference the allegations contained in paragraphs 1 through 36, 38, and 43, inclusive, as though they were fully set forth herein.

49. Toho’s Godzilla Character and Godzilla Marks are strong and well recognized marks and thus entitled to protection as “distinctive marks” under the California Anti-Dilution statute, California Business and Professions Code § 14330.

50. By, without limitation, creating, producing, distributing, exhibiting, and otherwise exploiting the Commercial, and/or by authorizing or contributing to the foregoing, Defendants have created, and will continue to create, a likelihood of injury to Toho’s business reputation and/or of dilution of the distinctive quality of the Godzilla Character and Godzilla Marks in violation of California Business and Professions Code § 14330(a).

51. As a direct and proximate result of the foregoing conduct of Defendants, Toho has suffered and is entitled to monetary damages in an amount to be proven at trial.

52. Defendants’ violation of the California’s Anti-Dilution Law has caused and will cause irreparable harm to Toho which cannot be fully compensated by money. Toho has no adequate remedy at law. Therefore, in addition to monetary relief, Toho is entitled to preliminary and permanent injunctive relief preventing Defendants from continuing to use Toho’s Godzilla Character or Godzilla Marks, or any confusingly similar variations, on or in connection with any products, goods or services, or the advertising of any products, goods or services.

1 FOURTH CLAIM FOR RELIEF

2 Against All Defendants for Common Law Unfair Competition

3 53. Toho realleges and incorporates by this reference the allegations
4 contained in paragraphs 1 through 36, 38, 43, 49 and 50, inclusive, as though they
5 were fully set forth herein.

6 54. By their conduct as alleged above, Defendants have violated and
7 infringed Toho’s common law rights in its Godzilla Character or Godzilla Marks,
8 and have otherwise competed unfairly with Toho in violation of the common law of
9 the state of California.

10 55. As a direct and proximate result of Defendants’ conduct, Toho has
11 suffered and is entitled to monetary damages in an amount to be proven at trial.

12 56. By their conduct as described above, Defendants have engaged in
13 outrageous and despicable conduct and have acted with ill will, malice and
14 oppression toward Toho and in conscious disregard of Toho’s rights. Toho is
15 therefore entitled to recover, in addition to actual damages, exemplary and punitive
16 damages under California Civil Code § 3294 in an amount sufficient to punish and
17 make an example of Defendants.

18 57. Defendants’ unlawful conduct has caused and will cause irreparable
19 harm to Toho which cannot be fully compensated by money. Toho has no adequate
20 remedy at law. Therefore, in addition to monetary relief, Toho is entitled to
21 preliminary and permanent injunctive relief enjoining defendants from engaging in
22 further acts of unfair competition.

23 FIFTH CLAIM FOR RELIEF

24 Against All Defendants for Unjust Enrichment

25 58. Toho realleges and incorporates by this reference the allegations
26 contained in paragraphs Toho realleges and incorporates by this reference the
27

28

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& MACTINGER LLP
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Los Angeles, California 90067-4590

1 allegations contained in paragraphs 1 through 36, 38, 43, 49, 50, and 54, inclusive,
2 as though they were fully set forth herein.

3 59. By their conduct as alleged above, Defendants have unjustly retained a
4 benefit to the detriment of Toho, and such benefit violates fundamental principles
5 of justice, equity and good conscience.

6 60. Accordingly, Toho is entitled to an order requiring Defendants to
7 disgorge any and all such ill-gotten gains to Toho.

8
9 SIXTH CLAIM FOR RELIEF

10 Against All Defendants For Copyright Infringement

11 61. Toho realleges and incorporates by this reference the allegations
12 contained in paragraphs 1 through 36, inclusive, as though they were fully set forth
13 herein.

14 62. By, without limitation, creating, producing, distributing, exhibiting,
15 and otherwise exploiting the Commercial, and/or by authorizing or contributing to
16 the foregoing, Defendants have infringed Toho's copyright interests in Godzilla.

17 63. Toho is informed and believes, and based thereon alleges, that
18 Defendants' infringing acts were, and continue to be, committed willfully and
19 knowingly.

20 64. As a direct and proximate result of Defendants' copyright infringement
21 as alleged above, Toho has suffered and will continue to suffer injury and damage
22 in an amount to be determined at trial. Furthermore, Toho is informed and believes,
23 and based thereon alleges, that Defendants have received or will receive profits,
24 gains, or other benefits from their infringing activities, all of which should be
25 disgorged to Toho. In the alternative, Toho reserves the right to elect statutory
26 damages of up to \$150,000 for Defendants' willful infringement of its copyrighted
27 works.

1 65. Defendants' infringement of Toho's copyrighted works has caused and
2 will cause irreparable harm to Toho which cannot be fully compensated by money.
3 Toho has no adequate remedy at law. Therefore, in addition to monetary damages,
4 Toho is entitled to preliminary and permanent injunctive relief preventing
5 Defendants from continuing to infringe Toho's copyrighted works.

6 66. Toho has and will incur attorneys' fees in pursuing this action, which
7 Toho is entitled to recover from Defendants, pursuant to 17 U.S.C. § 505.

8
9 PRAYER FOR RELIEF

10 WHEREFORE, Toho prays judgment on its Complaint as follows:

11 1. For preliminary and permanent injunctive relief restraining and
12 enjoining Defendants and their officers, directors, agents, servants, employees,
13 representatives, partners, subsidiaries and attorneys, and all other persons or entities
14 acting in concert or participation with them or at their direction from:

15 (a) reproducing, distributing, displaying, exhibiting, and otherwise
16 exploiting the Commercial; and

17 (b) using the Godzilla Character, Godzilla Marks or any other
18 confusingly similar variation thereof, for advertising or promotional purposes;

19 2. For Toho's damages according to proof;

20 3. That Defendants be required to account for and pay over to Toho their
21 profits and other benefits which they received by reason of Defendants' unlawful
22 conduct alleged herein;

23 4. That the amount of all monetary recovery be increased as provided by
24 applicable law, up to three times.

25 5. At Toho's election, for statutory damages for willful copyright
26 infringement pursuant to 17 U.S.C. § 504(c).

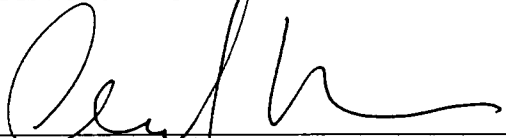
27 6. For an order requiring Defendants to disgorge any and all gains or
28 benefits conferred upon Defendants as a result of their violations of law.

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- 7. For punitive and exemplary damages.
- 8. For Toho's attorneys' fees and expenses.
- 9. For costs of suit incurred herein; and
- 10. For such other and further relief as the Court may deem just and proper.

DATED: April 16, 2008

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

By: 
AARON J. MOSS
Attorneys for Plaintiff TOHO CO., LTD.

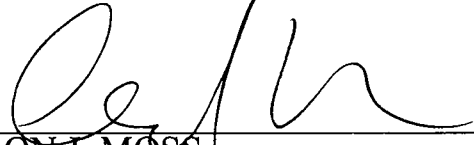
DEMAND FOR JURY TRIAL

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Plaintiff Toho Co., Ltd. hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: April 16, 2008

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

By: 
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