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BROOKS ENTERTAINMENT, INC.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

BROOKS ENTERTAINMENT, INC.,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC. AND
ROCKSTAR GAMES, INC.,

Defendants.

Case No. '21CV2003 TWR MDD

COMPLAINT FOR:

- (1) TRADEMARK
INFRINGEMENT 15 U.S.C.
§ 1114;**
- (2) COPYRIGHT
INFRINGEMENT; AND**
- (3) COMMERCIAL
APPROPRIATION OF
LIKENESS CCP § 3344**

(DEMAND FOR JURY TRIAL)

Plaintiff Brooks Entertainment, Inc. ("Brooks Entertainment" and/or
"Plaintiff") hereby alleges as follows:

JURISDICTION AND VENUE

1. This is a Complaint for (1) federal trademark infringement pursuant to 15 U.S.C. § 1114; (2) copyright infringement in violation of United States Copyright Act, 17 U.S.C. §§ 101 *et. seq.*; and (3) commercial appropriation of likeness CCP § 3344.

2. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121(a), 1114 (a), 17 U.S.C. §501 and 28 U.S.C. §§ 1331, 1332, 1338(a) and (b). This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

3. This Court has personal jurisdiction over Defendants because Defendants have purposely availed themselves of the opportunity to conduct commercial activities in this Judicial District by selling their products and services in this Judicial District and advertising to consumers in this Judicial District attempting to solicit the business of customers in this Judicial District.

4. Venue in this action properly lies in the Southern District of California under 28 U.S.C. §§ 1391 and 1400 as the Defendants provide goods and services to customers within California and this Judicial District, the Defendants have conducted business, published websites and have derived income from the sale of goods and services to the public within this Judicial District.

PARTIES

5. Plaintiff Brooks Entertainment, Inc. is a California corporation with its principal place of business at 1 Coronado Cays Blvd., Coronado, CA 92118.

6. Plaintiff is informed and believes, and based thereon alleges, that Defendants Activision Blizzard, Inc. (“Activision” and/or “Defendant”) is a Delaware Corporation with a principal place of business at 3100 Ocean Park Boulevard, Santa Monica, CA 90405.

7. Plaintiff is informed and believes, and based thereon alleges, that Defendant Rockstar Games, Inc. (“Rockstar” and/or “Defendant”) is a Delaware Corporation with a principal place of business at 622 Broadway, New York, New York 10012. (Defendants Activision and Rockstar are collectively referred to herein as “Defendants”)

8. Defendants are subject to the jurisdiction of this Court by virtue of its substantial contacts with California, including participation in the acts and events occurring within this District as described herein.

FACTS PERTAINING TO ALLEGATIONS FOR CLAIMS OF RELIEF

9. Brooks Entertainment was formed in 2002 by its founder Shon Brooks. It is a financial and entertainment consultant corporation which helps its customers build

1 their financial empire safely and hosts a TV Show aimed at encouraging and empowering
2 youth to take control of their destiny and become successful adults.

3 10. Shon Brooks has made it his goal to use his knowledge, intelligence and
4 broad connections to enrich the lives and financial souls of his clients and the
5 community. He is committed and dedicated to making a difference for people across
6 the globe. In an effort to meet his goals Mr. Brooks has engaged in many activities
7 which give back to the community and empower youth. Just a few of these include
8 being a mentor, providing motivational talks to kids, promoting literacy, hosting a talk
9 show on television called S.O.B TV Show.

10 11. Shon Brooks is well known and has deep ties with the NFL football
11 games and other sports channels. Brooks Entertainment has aired many commercials
12 and trailers for its services and its TV series, which highlights Shon Brooks, on ESPN
13 during major games for many years. Shon Brooks is a television host who has been
14 identified as a Game Changer by Invention Magazine and Financial Planning
15 Magazine. He has also appeared on “the Simpsons” at the Cox Media Showcase where
16 he was acquainted with the cast from the Discovery Channel, Fox, Disney and ESPN.

17 12. Brooks Entertainment has created content, a platform, concepts and
18 graphics for interactive video games which are aimed at empowering youth. Two of
19 these games are titled Stock Picker and Save One Bank. Concepts for these games
20 were also presented to San Diego Unified School District along with interviews with
21 Don King and Tommy Ford.

22 13. Brooks Entertainment is also the inventor of the Shon Brooks Star Cigar
23 which is distributed at the Cosmopolitan Las Vegas as well as Punta Cana, Dominican
24 Republic.

25 14. Brooks Entertainment is the owner of the following U.S. Registered
26 trademarks: U.S. Trademark 5653242 for SHON BROOKS. This mark was first used
27 in commerce in 1986 and was registered January 15, 2019, in class 41 for “television
28 show production of an entertainment variety, namely, producing a continuing variety

1 show that highlights different celebrity guests, and producing cinema films for television,
2 broadcasted over television, audio and digital video media” (“Brooks Trademark”). (A
3 copy of the Certificate of Registration is attached as Exhibit A.)

4 15. Brooks Entertainment also developed a number of copyrighted materials
5 (the “Brooks Copyrighted Materials”) in connection with its business including
6 designs, story lines, video game concepts, textual material, and graphics for which it
7 along with Fran S. Brooks has received multiple U.S. Registered Copyrights. All
8 rights to the copyrights obtained by Fran S. Brooks have been assigned to Brooks
9 Entertainment. Brooks Entertainment has copyrights for its games which include
10 STOCK PICKER and SAVE ONE BANK Registration Nos. Txu001684440
11 published 2010, PA0001397099 published 2011, PA0001788514 published 2003 and
12 PA000139794 published 2003 (the “Brooks Registered Copyrights”). (Copies of the
13 Certificates of Registrations attached as Exhibit B.)

14 16. Brooks Entertainment products which feature the SHON BROOKS
15 trademark and S.O.B copyrights and trademarks, owned by Brooks Entertainment, are
16 produced and distributed by the largest distributor in the world. Amazon and Amazon
17 Fashion distribute and manufactures Brooks Entertainment Inc.’s (Fran Shatone)
18 clothing merchandise and computer technology toys. These products include iPhone
19 cases, Samsung Galaxy cases, throw pillows, tote bags, smartphone and iPad
20 popsockets grips, T-shirts, tank tops, sweatshirts, pullover hoodies, and Raglan.

21 17. Brooks Entertainment has aired numerous trailers on First Look with
22 National CineMedia, these trailers feature Shon Brooks along with other actors and
23 advertise for S.O.B Television. These First Look airings have appeared before a
24 number of very well know and popular movies including James Bond Spectre, Marvel
25 Studios’ Dr. Strange, Walt Disney Company’s Rogue One: A Star Wars Story, Batman
26 v. Superman: Dawn of Justice, as well as on NBA and MLB on Cox Media.

27 18. In 2014 Cox Media also presented Brooks Financial & Entertainment
28 network which included the S.O.B Show series. This series has continuously aired

1 since that time and featured Shon Brooks as the host.

2 19. From 2010 and through 2015 Brooks Entertainment was talking to and
3 provided a pitch to Blizzard, Activision and Rockstar Games, Inc. to create a game. The
4 pitch was copyrighted. Many meetings and emails were exchanged between these
5 parties through the following individuals Sarah Shafer who worked for Rockstar and was
6 a partner with of Blizzard, Gordon Hall of Blizzard/Activision and Sam Houser of
7 Rockstar.

8 20. During these talks and meetings between 2010 and 2015 Brooks
9 presented SAVE ONE BANK and STOCK PICKER to Defendants. Brooks provided
10 Defendants with the content, script, proposal, images and details for these games.
11 These materials were copyrighted. The negotiations between the parties broke down
12 and no Agreement was ever reached.

13 21. In 2016 the “Call of Duty: Infinite Warfare” (“Call of Duty”) game was
14 released to the public by Defendants. Activision along with Rockstar used the main
15 character, content, scripts, images and details it was given in confidence by Brooks
16 Entertainment to develop this infringing game.

17 22. Also, in 2016 Call of Duty World League a series of Call of Duty esports
18 tournaments began. These tournaments occur on an annual basis and are attended by
19 participants from all over the world.

20 23. Defendants are using Sean Brooks as its main character in “Call of Duty”
21 this character uses the likeness, persona and name of Plaintiff’s owner Shon Brooks
22 and further infringes on Plaintiff’s trademark for SHON BROOKS.

23 24. Defendants have released a series of games which are based on the
24 original “Call of Duty” game. Very recently Defendant Activision released the game
25 “Call of Duty WARZONE” which is a first-person shooter video game and is the
26 thirteenth game in the Call of Duty series. The thirteen Call of Duty games will be
27 referred to herein as the “Call of Duty Games”.

28 25. Many of the scenes, the premise, the story lines and character types in the

1 Call of Duty Games were stolen from Brooks Entertainment's games Save One Bank
2 and Stock Picker. These games infringe upon the Brooks Registered Copyrights,
3 Brooks Registered Trademark as well as Mr. Shon Brooks rights in his name and
4 likeness. The character of Sean Brooks appeared in the Call of Duty Infinite
5 Warfare game and he is also the main character in Defendants' gambling platform
6 which contains all of Defendants games on e-subscription.

7 26. Defendants also conduct global esports playoffs and championships
8 utilizing the Call of Duty Games which infringe upon Brooks Entertainment
9 Copyrights and the mark and name SHON BROOKS.

10 27. Using the SHON BROOKS mark, name, likeness and persona confuses
11 the buying public as to the source of the products and services.

12 28. Many aspects of the copyrighted script were stolen, just a few of the items
13 which were copied include the following:

- 14 a) Sean (Shon) Brooks has missiles at disposal;
- 15
- 16 b) Save One Bank is uniquely played in First Person Shooter and Third Person
17 Shooter and Call of Duty copied the same format and is played in First Person
18 Shooter and Third Person Shooter;
- 19
- 20 c) Both games are played offshore;
- 21
- 22 d) The main characters of the games both bring thieves to justice;
- 23
- 24 e) Shon Brooks has unlimited resources being an undercover agent of the Crystal
25 Bank. Shon Brooks has access to not only financial means, but access to the
26 latest cars, planes, boats and upscale computer technologies and Sean Brooks
27 in the Call of Duty game copied this by having unlimited resources;
- 28
- 29 f) Shon Brooks navigates through both exotic and action-packed locations and
30 Sean Brooks navigates thru both exotic and action-packed locations;
- 31
- 32 g) Shon Brooks controls character during a single and multiplayer campaign and
33 experience and Sean Brooks controls character during a single and multiplayer
34 campaign and experience;

- 1
- 2 h) Save One Bank script has a day and a night mode for the game and Call of Duty
- 3 script has a day and night mode for the game;
- 4 i) Shon Brooks travelled to the Red Planet or Mars and Sean Brooks travelled to
- 5 the Red Planet or Mars;
- 6 j) Save One Bank script has red orbit sky and Call of Duty now has red orbit sky
- 7 which is identical;
- 8 k) Shon Brooks scripted game battle scenes take place in a high fashion couture
- 9 shopping center mall and Sean Brooks scripted game battle scenes take place in
- 10 a high fashion couture shopping center mall.

11 29. Beginning at least in 2016 and continuing until the present day,

12 Defendants have, without permission or authority, used the Brooks Copyrighted

13 Materials and Brooks Trademark and adopted marks and names that were confusingly

14 similar to the Brooks Trademark in their games without any authorization to do so.

15 **FIRST CLAIM FOR RELIEF**

16 **(Trademark Infringement: 15 U.S.C. § 1114, Against All Defendants)**

17 30. Plaintiff hereby repeats, realleges and incorporates by reference

18 Paragraphs 1 through 29 of this Complaint as if fully set forth herein.

19 31. Defendants are using the name and mark Sean Brooks as the main

20 character in its Call of Duty Games. This name and mark are virtually the same and

21 confusingly similar to the Brooks Trademark for SHON BROOKS.

22 32. The actions of Defendants described herein constitute infringement of the

23 Brooks Trademark in violation of section 32(b) of the Lanham Act, 15 U.S.C.

24 § 1114(1).

25 33. Defendants' willful, deliberate and unauthorized use of the Brooks

26 Trademark has caused confusion and is likely to continue to cause confusion, mistake

27 and deception in that consumers are likely to associate and believe Defendants' goods

28 and services are associated with, connected to, affiliated with, authorized by, endorsed

by, and/or sponsored by Brooks Entertainment, in violation of Section 32(b) of the

1 Lanham Act, 15 U.S.C. § 1114(1).

2 34. As a direct and proximate result of Defendants' unauthorized use of the
3 Brooks Trademark, Defendants have damaged and will continue to damage Brooks
4 Entertainment's goodwill and reputation, and has caused and is likely to continue to
5 cause a loss of sales and profits for Brooks Entertainment. Defendants' actions have
6 caused and will continue to cause irreparable harm to Plaintiff and to the public, who
7 is confused by Defendants' unauthorized use of the Brooks Trademark, unless
8 restrained and enjoined by this Court. Plaintiff has no adequate remedy at law to
9 prevent Defendants from continuing their infringing actions and from injuring Brooks
10 Entertainment.

11 35. As a further direct and proximate result of Defendants' actions, Plaintiff
12 has been damaged and will continue to sustain damage and is entitled to receive
13 compensation arising from its lost sales, lost profits, and efforts necessary to minimize
14 and/or prevent customer confusion, in an amount to be proven at the time of trial. In
15 addition, Plaintiff is entitled to disgorge Defendants' profits, and is entitled to interest
16 and to its attorney's fees and costs incurred bringing this action, all in an amount to be
17 proven at the time of trial. Plaintiff is further entitled to injunctive relief as set forth
18 above, and to all other and further forms of relief this Court deems appropriate.

19 36. The damages sustained by Plaintiff as a result of the conduct alleged
20 herein should be trebled in accordance with 15 U.S.C. § 1117(b).

21 **SECOND CLAIM FOR RELIEF**

22 **(Copyright Infringement: 17 U.S.C. § 501, Against All Defendants)**

23 37. Plaintiff hereby repeats, realleges and incorporates by reference
24 Paragraphs 1 through 36 of this Complaint as if fully set forth herein.

25 38. Brooks Entertainment is the rightsholder to the copyrights in the Brooks
26 Registered Copyrights, which substantially consist of wholly original material that
27 constitutes copyrightable subject matter under the laws of the United States. Brooks
28 Entertainment has complied in all respects with the Copyright Act and all laws of the

1 United States governing copyrights.

2 39. Brooks Entertainment authored and created designs, story lines, video
3 game concepts, textual material, and graphics for which it has received multiple U.S.
4 Registered Copyrights. Brooks has copyrights for its games which include STOCK
5 PICKER and SAVE ONE BANK among many others.

6 40. The Brooks Registered Copyrights are the exclusive and copyrighted
7 property of Brooks Entertainment. All copies, or derivations therefrom, are produced
8 either directly by Brooks Entertainment itself or, alternatively, under its authority or
9 license. The Brooks Registered Copyrights have been published in conformity with
10 the provisions of the Copyright Act, 17 U.S.C. § 101, *et seq.*

11 41. Defendants and each of them had access to the Brooks Registered
12 Copyrights and other Brooks Entertainment materials as these items were shared with
13 Defendants from 2010 to 2015 when the parties were negotiating an agreement to work
14 together for a licensing deal. The negotiations between the parties intended that
15 Brooks Entertainment was to be the sole creator of the games and that Defendants
16 would be the co-publisher. Defendants and each of them also had access to Brooks
17 Entertainment S.O.B television series which has aired for years on major networks and
18 featured Shon Brooks.

19 42. Brooks Entertainment is informed and believes, and based thereon
20 alleges, that Defendants knowingly and willfully copied and directly, vicariously
21 and/or contributorily infringed the Brooks Registered Copyrights. Brooks
22 Entertainment is further informed and believes, and based thereon alleges, that
23 Defendants copied the Brooks Registered Copyrights for the specific purpose of
24 infringing Brooks Entertainment's copyrights and selling illegal and unauthorized
25 copies of the Registered Works.

26 43. Brooks Entertainment has requested that the Defendants cease all use of
27 the Registered Works but the Defendants have refused.

28 44. Defendants' conduct infringes Brooks Entertainment's exclusive

1 copyrights in the Registered Works in direct violation of the Copyright Act of 1976,
2 17 U.S.C. § 501, *et seq.*

3 45. Defendants have willfully infringed, and unless enjoined, will continue
4 to infringe Brooks Entertainment's copyrights by knowingly reproducing, displaying,
5 distributing, and utilizing the Brooks Registered Copyrighted Works, or derivative
6 works thereof, for the purposes of trade.

7 46. Plaintiff is informed and believes that Defendants' acts of infringement
8 are willful because, *inter alia*, the Defendants are sophisticated businesses with full
9 knowledge of the strictures of federal copyright law and the basic requirements for
10 licensing the use of copyrighted content for commercial exploitation. Defendants' use
11 of Plaintiff's copyrighted material is nearly identical to what was presented to it during
12 the negotiations between the parties.

13 47. Plaintiff is informed and believes that Defendants, despite such
14 knowledge, willfully copied and distributed a series of games that utilized the Brooks
15 Entertainment Copyrighted materials without any right to do so.

16 48. Defendants have received substantial benefits in connection with the
17 unauthorized reproduction, distribution, and utilization of the Brooks Entertainment
18 Copyrights, or derivative works thereof, for purposes of trade, including sales of video
19 games, computer games, online gaming programs, toys and clothing.

20 49. Defendants' unauthorized actions were and continuing to be performed
21 without Brooks Entertainment's permission, license or consent.

22 50. As a proximate result of Defendants' wrongful acts alleged above,
23 Plaintiff seeks damages to compensate it for the loss of profits that Defendants have
24 caused. Damages cannot be accurately computed, and unless this Court restrains
25 Defendants from further commission of said acts, Brooks Entertainment will suffer
26 irreparable injury, for all of which it is without an adequate remedy at law.
27 Accordingly, Brooks Entertainment seeks a declaration that Defendants are infringing
28 Brooks Entertainment's copyrights and an order under 17 U.S.C. § 502 enjoining

Defendants from any further infringement of Brooks Entertainment's copyrights.

51. As a direct and proximate result of the acts alleged above, Brooks Entertainment has suffered and is suffering substantial damage to its business in the form of diversion of trade, loss of profits, injury to goodwill and reputation, and the dilution of the value of its rights, all of which are not fully ascertainable.

52. Because of the willful nature of Defendants' copyright infringement, Plaintiff is entitled to an award of the maximum available statutory damages.

53. Alternatively, at its discretion, Brooks Entertainment is entitled to actual damages in an amount to be proven at trial for the infringement.

54. Brooks Entertainment is also entitled to its attorneys' fees and costs in prosecuting this action.

THIRD CLAIM FOR RELIEF

(Commercial Appropriation of Likeness CCP § 3344, Against All Defendants)

55. Plaintiff hereby repeats, realleges and incorporates by reference Paragraphs 1 through 54 of this Complaint as if fully set forth herein.

56. Plaintiff has discovered that Defendants are using the name, likeness and persona of its CFO Shon Brooks in the Call of Duty Games as the main character. Plaintiff is the owner of the name, likeness and persona of Shon Brooks. Defendants did not obtain the consent of Plaintiff to use the name, likeness and persona of Shon Brooks.

57. Plaintiff is informed and believes and based thereon alleges that Defendants began using the name, likeness and persona of Shon Brooks in the Call of Duty Games beginning in 2016 and that said use has been continuing through the date of filing this Complaint. Based upon the extensive amount of Call of Duty product and advertising in the stream of commerce, the use of Shon Brooks' name, likeness and persona is likely to continue indefinitely.

58. Plaintiff as rights holder of Shon Brooks is entitled to compensation for the use of his name, likeness and persona both for the period of the use prior to the

1 filing of this Complaint and so long as Defendants continue to use them thereafter.
2 Plaintiff is uncertain as to the amount of compensation to which it is entitled, and it
3 will not be able to determine the same until it has learned the extent, manner of usage,
4 and distribution of Defendants' products as they relate to the Call of Duty series of
5 games and Call of Duty Esports League Championship.

6 59. The conduct and actions of Defendants have been willful, wrongful,
7 intentionally and without any right or entitlement whatsoever, and accordingly,
8 Plaintiff is entitled to punitive damages.

9 60. Plaintiff has needed to retain attorneys to prosecute this action and
10 accordingly has become obligated to pay attorney's fees and costs relative to this
11 proceeding, according to proof.

12 61. In addition to the above damages Plaintiff is entitled to recover from
13 Defendants profits derived from the unauthorized uses of Shon Brooks' name, likeness
14 and persona. The name, likeness and persona of Shon Brooks is an integral part of
15 The Call of Duty Games and the esport League Championships.

16 62. Plaintiff is uncertain as to the amount of sales of Defendants' products
17 from 2016 to the present time and continuing but believes that the sales derived from
18 the unauthorized use of Shon Brooks' name, likeness and persona to be well in excess
19 of \$1 Billion.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff prays for relief as follows:

22 **ON THE FIRST CAUSES OF ACTION:**

23 1. That Defendants be adjudged to have infringed Plaintiff's Trademark in
24 violation of federal law;

25 2. That Defendants be adjudged to have willfully infringed Plaintiff's
26 Trademark in violation of federal law;

27 3. For actual damages according to proof at trial;

1 4. For damages for lost profits and goodwill in a sum according to proof at
2 trial pursuant to 15 U.S.C. § 1125;

3 5. For treble damages for willful infringement pursuant to 15 U.S.C. §
4 1117(b);

5 6. For disgorgement of Defendants' profits;

6 7. For injunctive relief;

7 8. For attorney's fees for wrongful, willful and deliberate action under 17
8 U.S.C. § 1051, et seq.;

9 9. For costs of suit incurred herein; and

10 10. For such other and further relief as the Court deems just and proper.

11 **ON THE SECOND CAUSES OF ACTION:**

12 1. The Defendants, their officers, agents, servants, employees,
13 representatives, and all persons in active concert or participation with them, be
14 permanently enjoined from designing, copying, reproducing, displaying, promoting,
15 advertising, distributing, or selling games or other media which infringe upon Brooks
16 Entertainment's Copyrights;

17 2. Defendants be held liable to Brooks Entertainment for statutory damages
18 for copyright infringement, including willful infringement, in accordance with 17
19 U.S.C. §§ 504 (a)(2) and (c) and for costs, interest, and reasonable attorney's fees
20 pursuant to 17 U.S.C. § 505;

21 3. Requiring Defendants to account for and pay over to Brooks
22 Entertainment all profits derived by Defendants from their acts of copyright
23 infringement and to reimburse Brooks Entertainment for all damages suffered by
24 Brooks Entertainment by reasons of Defendants' acts, pursuant to 17 U.S.C. §§ 504
25 (a)(1) and (b); and

26 4. For such other and further relief as the Court deems just and proper.

27 **ON THE THIRD CAUSES OF ACTION:**

28 1. For damages for the unauthorized use of Shon Brooks' name, likeness and

1 persona according to proof;

2 2. For reasonable compensation for use of Shon Brooks' name, likeness and
3 persona according to proof;

4 3. For the profits derived from the use of Shon Brooks' name, likeness and
5 persona according to proof;

6 4. For punitive damages;

7 5. For attorney's fees and cost of suit incurred herein; and

8 6. For such other and further relief as the Court deems just and proper.

9 DATED: November 30, 2021

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