

### Multiple Documents

Part	Description
1	12 pages
2	Exhibit Exhibit 1
3	Civil Cover Sheet

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Attorneys for Plaintiff  
 Thelonious Sphere Monk, Jr., as Administrator of and on behalf of the  
 Estate of Thelonious Sphere Monk, deceased,

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

THELONIOUS SPHERE MONK, JR.,	)	<b>Case No.:</b>
as Administrator of and on behalf of the	)	
ESTATE OF THELONIOUS SPHERE MONK,	)	<b>COMPLAINT FOR</b>
Deceased,	)	
Plaintiff,	)	<b>(1) Trademark Infringement (15 U.S.C. §</b>
	)	<b>1125(a)</b>
vs.	)	
	)	<b>(2) California Civil Code § 3344.1</b>
NORTH COAST BREWING CO., INC., a	)	
California Corporation,	)	<b>(3) California Common Law Right of</b>
	)	<b>Publicity</b>
Defendant.	)	<b>(4) Unjust Enrichment</b>
	)	<b>DEMAND FOR JURY TRIAL</b>

**COMPLAINT FOR TRADEMARK INFRINGEMENT, VIOLATIONS OF RIGHTS OF**  
**PUBLICITY, AND UNJUST ENRICHMENT**  
**(INJUNCTIVE RELIEF DEMANDED)**

1 Plaintiff, THELONIOUS SPHERE MONK, JR., as Administrator of and on behalf of the  
2 ESTATE OF THELONIOUS SPHERE MONK (“Plaintiff”), by and through undersigned counsel,  
3 brings this Complaint against Defendant, NORTH COAST BREWING CO., INC. (“Defendant”),  
4 for damages and injunctive relief, and in support thereof states as follows:

5 **JURISDICTION AND VENUE**

6 1. This is an action arising under the Lanham Act, 15 U.S.C. § 1121, California Civil  
7 Code § 3344.1 and California common law.

8 2. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. §§  
9 1331 and 1338.

10 3. This Court has supplemental jurisdiction of the California Civil Code claims  
11 pursuant to 28 U.S.C. § 1367(a).

12 4. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the  
13 citizenship of the parties is completely diverse and the amount in controversy exceeds \$75,000.

14 5. Defendant is subject to personal jurisdiction in California.

15 6. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because the events  
16 giving rise to the claims occurred in this district, Defendant engaged in infringement in this district,  
17 and Defendant is subject to personal jurisdiction in this district.

18 **THE PLAINTIFF**

19 7. Plaintiff, THELONIOUS SPHERE (T.S.) MONK, JR. brings this action as  
20 Representative of and on behalf of the Estate of his deceased father THELONIOUS SPHERE  
21 MONK.

22 8. Thelonious Sphere Monk lived in New York County, New York at the time of his  
23 death on February 17, 1982.

24 9. THELONIOUS SPHERE (T.S.) MONK, JR. was duly appointed the Administrator  
25 of the ESTATE OF THELONIOUS SPHERE MONK on April 11, 1983 (the “Monk Estate” or  
26 “Estate of Thelonious Monk”) by the New York County Surrogate’s Court and currently possesses  
27 all rights and powers necessary to prosecute this action.  
28

## THELONIOUS MONK JAZZ LEGEND

10. Thelonious Monk (“Monk”) was born in Rocky Mount, North Carolina in 1917. Monk grew up in New York City where he became a world-renowned jazz pianist and composer. 2017 marks the 100<sup>th</sup> anniversary of Monk’s birth.

11. Monk learned to play piano at age six years old. He was largely self-taught. Monk’s early career as a jazz pianist coincides with jazz’s recognition as a major form of musical expression in the 1920s through the 1940s.

12. Monk was a pioneer of the Bebop style of jazz music. Bebop-style performers like Monk began to shift jazz from danceable popular music toward a more challenging “musician’s music.” By divorcing itself from dance music, bebop established itself more as an *avant-garde* art form, thus lessening its potential popular and commercial appeal. Monk led this *avant-garde* movement and, in the process, he became one of the most famous jazz musicians of all time.

13. Monk’s *avant-garde* approach extended beyond music to his personal style. Monk adopted a distinctive style in suits, hats, facial hair and sunglasses. Monk cultivated a unique look. The images of Monk shown below from different stages of his career demonstrate a consistent and iconic look and style. This “Monk look” became synonymous with Monk’s music.



THE COMPLETE 1961 **MONK** AMSTERDAM CONCERT  
QUARTET



3	15.	Monk is the second most recorded composer of jazz music, behind only Duke
4		Ellington.

16. The Smithsonian Institution maintains a permanent exhibit on Monk, and his piano will be housed at the African American Museum in Washington, DC.

7            17.     Monk is a member of the Downbeat Jazz Hall of Fame, the ASCAP Composer's Hall  
8 of Fame and his music is studied at major universities worldwide.

9           18.     “Live at Carnegie Hall” with Thelonious Monk and John Coltrane is the second best-  
10 selling album in Jazz history.

11                    19.        For his achievements throughout his illustrious career, Monk received the Grammy  
12 Lifetime Achievement Award, a special Pulitzer Prize, and his own star on the Hollywood Walk of  
13 Fame.

14      20.      The name THELONIOUS MONK is famous and valuable.

15      21.      The image of THELONIOUS MONK is famous and valuable.

16      22.      The likeness of THELONIOUS MONK is famous and valuable.

17           23.     THELONIOUS MONK is registered as a personality with the California Secretary of  
18     State.

19           24.     The THELONIOUS MONK name, image and likeness are the property of the Monk  
20     Estate.

21 THE DEFENDANT

22           25. Defendant NORTH COAST BREWING CO., INC. (“North Coast”) is a California  
23 corporation with its principal place of business in California and can be served with process through  
24 its registered agent Mark E. Ruedrich, 455 North Main Street, Fort Bragg, CA 95437.

25      26.      North Coast is a craft brewery.

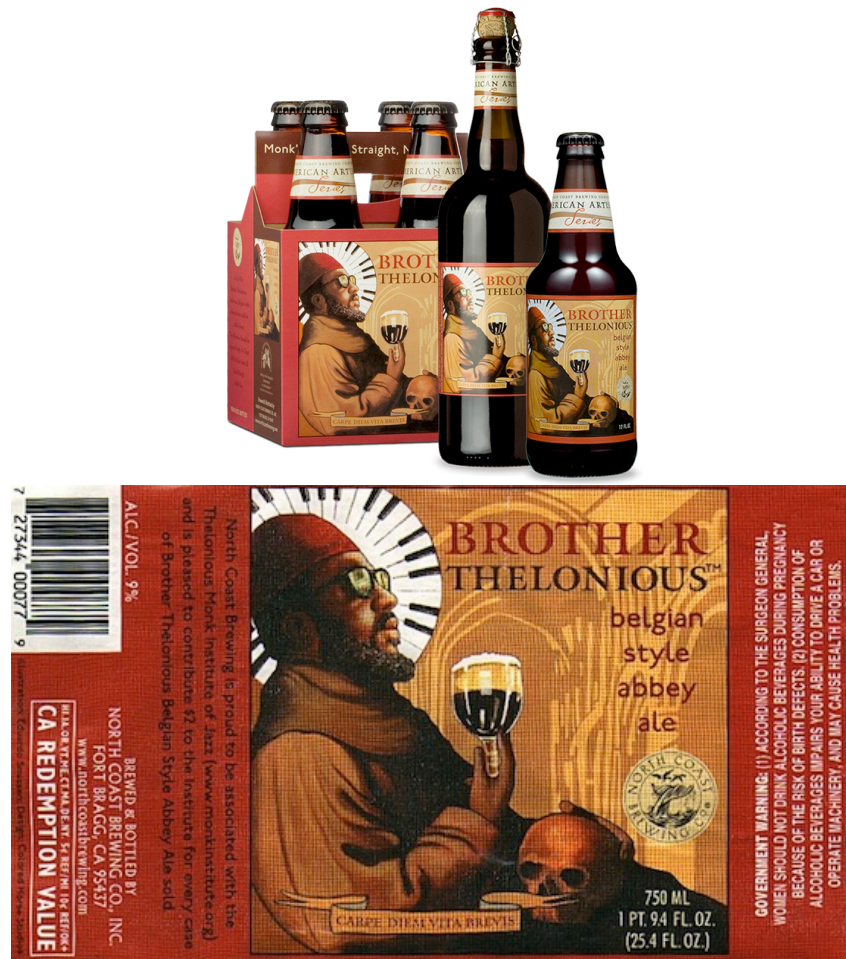
26      27.      North Coast makes and sells beer and ale.

27            28.     For many years, North Coast has brewed and sold a Trappist ale brewed in the style  
28 of those originally created by late 18<sup>th</sup> Belgian century monks fleeing the French Revolution. These

so called “Trappist” ales were originally brewed in Trappist monasteries exclusively by and for the monks who lived there. These ales are described as “dark and sweet” and are often bottled in the manner of sparkling wines using larger bottles and caged corks. Eventually, a Trappist certification system emerged. To qualify, the brewery must be in a monastery, the monks must play a role in its production and the policies and the profits from the sale must be used to support the monastery or social programs outside.

29. For many years, North Coast has produced, distributed and sold an ale brewed in the Trappist style called BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE.

30. North Coast has consistently distributed, marketed and sold BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE using a label that prominently features the name, image and likeness of Thelonious Monk, as shown below.



31. North Coast’s packaging for BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE features the name, images and likeness of Thelonious Monk, with Monk holding a



1 goblet of the product contained in the bottle. Monk is shown wearing his signature sunglasses, hat  
 2 and facial hair. In addition, a halo of piano keys surrounds Monk's head in a manner evocative of  
 3 saintly characters featured in medieval religious paintings.

4 32. "BROTHER THELONIOUS" is the principal feature in large print in all the product  
 5 packaging for BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE.

6 33. In addition to its use of the Monk name, image and likeness on the packaging for  
 7 North Coast BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE, North Coast features  
 8 the Monk name, image and likeness in all of its advertising, marketing and sales materials for  
 9 BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE.

10 34. North Coast operates a store on its website and in its physical premises where it  
 11 advertises, markets and sells products using the Monk name, image and likeness, including  
 12 BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE, as well as at least seventeen (17)  
 13 other items including cups, hats, hoodies, iron on patches, soap, t-shirts, tap handles, metal and neon  
 14 signs, pins, playing cards, mouse pads, posters, and food products, all of which feature the name,  
 15 image and likeness of THELONIOUS MONK.

16 35. North Coast also uses of the Monk name, image and likeness in connection with  
 17 promotional events at Jazz festivals and other locations as shown below.



27 36. North Coast's use of the THELONIOUS MONK name, image and likeness is  
 28 without the permission of the Monk Estate and unauthorized.





1 image and persona created by Thelonious Monk, recognized as associated with Thelonious Monk,  
2 and to distinguish the distinctive features of Thelonious Monk.

3 44. The name, image and likeness of THELONIOUS MONK is famous and valuable.

4 45. The name, image and likeness of THELONIOUS MONK is the sole property of the  
5 Estate of Thelonious Monk.

6 46. The name, image and likeness of THELONIOUS MONK cannot be used without the  
7 permission and authority of the Estate of Thelonious Monk.

8 47. North Coast used the name, image and likeness of THELONIOUS MONK in  
9 connection with the sale of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE and other  
10 products that feature the name, image and likeness of THELONIOUS MONK.

11 48. North Coast used the name, image and likeness of THELONIOUS MONK on and in  
12 connection with the container of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE that  
13 North Coast sold.

14 49. North Coast used the name, image and likeness of THELONIOUS MONK on and in  
15 connection with commercial advertising for BROTHER THELONIOUS BELGIAN STYLE  
16 ABBEY ALE and other products that feature the name, image and likeness of THELONIOUS  
17 MONK.

18 50. North Coast's use of the name, image and likeness of THELONIOUS MONK on and  
19 in connection with the container of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE  
20 and other products sold by North Coast is likely to cause confusion, mistake, or deceive as to  
21 whether THELONIOUS MONK or the Monk Estate is connected with, affiliated with, sponsors or  
22 approves North Coast's sale of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE and  
23 other products that feature the name, image and likeness of THELONIOUS MONK.

24 51. North Coast's use of the name, image and likeness of THELONIOUS MONK on and  
25 in connection with commercial advertising for BROTHER THELONIOUS BELGIAN STYLE  
26 ABBEY ALE and other products sold by North Coast is likely to cause confusion, mistake, or  
27 deceive as to whether THELONIOUS MONK or the Monk Estate is connected with, affiliated with,  
28 sponsors or approves North Coast's sale of BROTHER THELONIOUS BELGIAN STYLE

1 ABBEY ALE and other products that feature the name, image and likeness of THELONIOUS  
2 MONK.

3 52. North Coast's use of the name, image and likeness of THELONIOUS MONK on and  
4 in connection with commercial advertising for BROTHER THELONIOUS BELGIAN STYLE  
5 ABBEY ALE and other products sold by North Coast misrepresents the nature, characteristics, or  
6 qualities of North Coast's goods and services.

7 53. The Monk Estate has been damaged.

8 54. The harm caused to the Monk Estate has been irreparable.

9 **SECOND CLAIM FOR RELIEF**

10 **VIOLATION OF CALIFORNIA CIVIL CODE § 3344.1**

11 55. Plaintiff incorporates the allegations of paragraphs 1 through 41 of this Complaint as  
12 if fully set forth herein.

13 56. The name, image and likeness of THELONIOUS MONK is the sole property of the  
14 Estate of Thelonious Monk.

15 57. The name, image and likeness of THELONIOUS MONK is famous and valuable.

16 58. The name, image and likeness of THELONIOUS MONK cannot be used without the  
17 permission and authority of the Estate of Thelonious Monk.

18 59. North Coast knowingly used the name, image and likeness of THELONIOUS  
19 MONK for advertising, selling, or soliciting the sale of BROTHER THELONIOUS BELGIAN  
20 STYLE ABBEY ALE and other products without the consent of the Estate of Thelonious Monk in  
21 violation of California Civil Code § 3344.1.

22 60. North Coast has profited from its violations.

23 61. The Monk Estate has been damaged.

24 62. The harm caused to the Monk Estate has been irreparable.

25 **THIRD CLAIM FOR RELIEF**

26 **VIOLATION OF CALIFORNIA COMMON LAW RIGHT OF PUBLICITY**

27 63. Plaintiff incorporates the allegations of paragraphs 1 through 41 of this Complaint as  
28 if fully set forth herein.

64. The name, image and likeness of THELONIOUS MONK is the sole property of the Estate of Thelonious Monk.

65. The name, image and likeness of THELONIOUS MONK is famous and valuable.

66. The name, image and likeness of THELONIOUS MONK cannot be used without the permission and authority of the Estate of Thelonious Monk.

67. North Coast used the name, image and likeness of THELONIOUS MONK for advertising, selling, or soliciting the sale of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE and other products without the consent of the Estate of Thelonious Monk.

68. North Coast has profited from its violations.

69. The Monk Estate has been damaged.

70. The harm caused to the Monk Estate has been irreparable.

#### **FOURTH CLAIM FOR RELIEF**

##### **UNJUST ENRICHMENT**

71. Plaintiff incorporates the allegations of paragraphs 1 through 41 of this Complaint as if fully set forth herein.

72. The name, image and likeness of THELONIOUS MONK is the sole property of the Estate of Thelonious Monk.

73. The name, image and likeness of THELONIOUS MONK is famous and valuable.

74. The name, image and likeness of THELONIOUS MONK cannot be used without the permission and authority of the Estate of Thelonious Monk.

75. North Coast used the name, image and likeness of THELONIOUS MONK for advertising, selling, or soliciting the sale of BROTHER THELONIOUS BELGIAN STYLE ABBEY ALE and other products without the consent of the Estate of Thelonious Monk.

76. By reason of the foregoing, North Coast was and continues to be unjustly enriched through unlicensed and unauthorized exploitation of the name, image and likeness of THELONIOUS MONK.

77. The Monk Estate is entitled to just compensation under the common law of the State of California.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for judgment against the Defendant that:

- a. Defendant be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 15 U.S.C. § 1125, California Civil Code § 3344.1, and California common law;
- b. Defendant be ordered to pay Plaintiff's actual, consequential, incidental, and special damages, as well as the Defendant's profits attributable to the violations alleged;
- c. Defendant be ordered to pay Plaintiff's attorneys' fees and costs to the extent available under the statutes sued hereunder;
- d. Plaintiff be awarded punitive damages; and
- e. Plaintiff be awarded such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff respectfully requests a jury trial on all issues triable thereby.

Dated: August 29, 2017

Respectfully submitted,

By: /s/ Jonah A. Grossbardt

Jonah A. Grossbardt

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*Attorneys for Plaintiff  
Thelonious Sphere Monk, Jr.,  
as Administrator of and on behalf of the  
Estate of Thelonious  
Sphere Monk, deceased*

# **EXHIBIT 1**





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(212) 575-0671 Fax  
www.cll.com

Thomas Kjellberg  
(212) 790-9202  
tkk@ccl.com

January 11, 2016

**By Email - tnoah@dergnoah.com**

Todd A. Noah, Esq.  
Dergosits & Noah LLP  
Three Embarcadero Center  
Suite 410  
San Francisco, CA 94111

Re: North Coast Brewing Company, Inc.; BROTHER THELONIOUS

Dear Mr. Noah:

Further to our telephone conversation of December 15, 2015, I write on behalf of the Estate of Thelonious Monk and Thelonious Sphere Monk III ("T.S. Monk"), owner of 100% of the right of publicity of Thelonious Monk, regarding the commercial use by North Coast Brewing Company, Inc. ("NCB") of Thelonious Monk's name and likeness on "Brother Thelonious" ale and related merchandise, and for purposes of advertising and selling such product and merchandise.

Previously, royalties for NCB's commercial use of Thelonious Monk's name and likeness have been remitted, at the direction of T.S. Monk, to The Thelonious Monk Institute of Jazz. NCB is hereby advised that such direction is revoked; and NCB is hereby authorized and directed to make payment of any and all such royalties directly to T.S. Monk and the Estate.

NCB's ability to make continued commercial use of Thelonious Monk's name and likeness is, however, contingent on NCB's entering into a merchandising agreement with T.S. Monk and the Estate at standard industry rates, which shall be computed as a percentage of the retail sale price of all such merchandise sold by NCB.

We look forward to discussing the terms of that agreement as soon as possible.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas Kjellberg", written over a horizontal line.

Thomas Kjellberg

cc: Peter R. Porcino, Esq.  
Steven A. Reich, Esq.

**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

THELONIOUS SPIRER MONK, JR.,  
as Administrator of and on behalf of the  
ESTATE OF THELONIOUS SPIRER MONK, Deceased,

(b) County of Residence of First Listed Plaintiff New York County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Sever Threadgold LLP  
10250 Constitution Blvd. Ste. 100, Los Angeles, CA 90067  
Jonah Grossbardt (Cal. Bar No. 283584)  
Tel. (646) 475-2515

**DEFENDANTS**

NORTH COAST BREWING CO., INC., a California Corporation,

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff ☒ 3 Federal Question  
(U.S. Government Not a Party)
- 2 U.S. Government Defendant ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	423 Withdrawal 28 USC § 157	423 Patent	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	690 Other	835 Patent—Abbreviated New Drug Application	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	710 Fair Labor Standards Act	820 Copyrights	430 Banks and Banking
151 Medicare Act	340 Marine	720 Labor/Management Relations	830 Patent	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	740 Railway Labor Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	751 Family and Medical Leave Act	<b>SOCIAL SECURITY</b>	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	790 Other Labor Litigation	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	791 Employee Retirement Income Security Act	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury—Medical Malpractice	<b>IMMIGRATION</b>	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	<b>CIVIL RIGHTS</b>	462 Naturalization Application	864 SSID Title XVI	890 Other Statutory Actions
	440 Other Civil Rights	465 Other Immigration Actions	865 RSI (405(g))	891 Agricultural Acts
	441 Voting		<b>FEDERAL TAX SUITS</b>	893 Environmental Matters
	442 Employment		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
	443 Housing/Accommodations		871 IRS—Third Party 26 USC § 7609	896 Arbitration
	445 Amer. w/Disabilities—Employment			899 Administrative Procedure Act/Review or Appeal of Agency Decision
	446 Amer. w/Disabilities—Other			950 Constitutionality of State Statutes
	448 Education			
	<b>PRISONER PETITIONS</b>			
	463 Alien Detainee			
	510 Motions to Vacate Sentence			
	530 General			
	535 Death Penalty			
	<b>OTHER</b>			
	540 Mandamus & Other			
	550 Civil Rights			
	555 Prison Condition			
	560 Civil Detainee—Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation—Transfer ☐ 8 Multidistrict Litigation—Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Lanham Act, 15 U.S.C. § 1121

Brief description of cause:

Unauthorized use of Plaintiff's name and likeness on packaging and other items.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

Over \$75,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT** (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

DATE 08/29/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jonah A. Grossbardt



## General Information

<b>Court</b>	United States District Court for the Northern District of California; United States District Court for the Northern District of California
<b>Federal Nature of Suit</b>	Property Rights - Trademark[840]
<b>Docket Number</b>	5:17-cv-05015