

1 BENJAMIN C. JOHNSON (SBN: 218518)
 benjamin.johnson@mgae.com
 2 JOSEPH A. LOPEZ (SBN: 268511)
 joseph.lopez@mgae.com
 3 MGA ENTERTAINMENT, INC.
 4 16380 Roscoe Blvd
 Van Nuys, CA 91406
 5 Telephone: (818) 894-2525 ext. 6788
 6 Fax: (818) 895-0771

7 Attorneys for Plaintiffs
 8 MGA Entertainment, Inc.

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 MGA ENTERTAINMENT, INC., a
 12 California corporation

13 Plaintiff,

14 vs.
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16 BRAT, INC., a New York corporation; and
 17 DOES 1 through 10, inclusive.

18 Defendants.
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Case No.

COMPLAINT FOR:

1. **TRADEMARK INFRINGEMENT;**
2. **FALSE DESIGNATION OF ORIGIN;**
3. **TRADEMARK DILUTION;**
4. **COMMON LAW TRADEMARK INFRINGEMENT;**
5. **STATE STATUTORY UNFAIR COMPETITION (CAL. BUS. & PROF. CODE § 17200, ET. SEQ.;**
6. **DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

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1 Plaintiff, MGA ENTERTAINMENT, INC. (hereinafter referred to as
2 “Plaintiff” or “MGA”) for its Complaint herein alleges as follows:

3 **INTRODUCTION**

4 1. This action involves claims for trademark infringement of MGA’s
5 federally registered trademarks in violation of § 32 of the Federal Trademark
6 (Lanham) Act, 15 U.S.C. §§ 1051 *et seq.*; false designation of origin, passing off, and
7 unfair competition in violation of Section 43(a) of the Trademark Act of 1946, as
8 amended (15 U.S.C. § 1125(a)); trademark infringement of Plaintiff’s trademark in
9 violation of 15 U.S.C. §1125; and related state and common law claims (the
10 “Action”), arising from the infringement of MGA’s BRATZ Marks (as defined *infra*)
11 by Defendants BRAT, INC. (“Brat”) and DOES 1 through 10, inclusive (hereinafter
12 Brat and Does 1 through 10 are collectively referred to as “Defendants”), including,
13 without limitation, by manufacturing, importing, exporting, advertising, marketing,
14 promoting, distributing, displaying, offering for sale or making available for
15 download and/or streaming products that are confusingly similar to the BRATZ
16 Marks.

17 **JURISDICTION AND VENUE**

18 2. This Court has federal subject matter jurisdiction over the claims
19 asserted in this Action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as well as pursuant
20 to 15 U.S.C. § 1121 as an action arising out of violations of the Lanham Act, 15
21 U.S.C. §§ 1051 *et seq.* and pursuant to 28 U.S.C. §1338(b) as an action arising out of
22 claims for false designation of origin and unfair competition.

23 3. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §§1367(a),
24 as the claims asserted thereunder are so closely related to the federal claims brought in
25 this Action as to form part of the same case or controversy.

26 4. Personal jurisdiction exists over Defendants in this judicial district
27 because Defendants regularly conduct, transact, and/or solicit business in California
28 and in this judicial district, and/or derives substantial revenue from business

1 transactions in California and in this judicial district, and/or otherwise avail
2 themselves of the privileges and protections of the laws of the State of California such
3 that this Court's assertion of jurisdiction over Defendants does not offend traditional
4 notions of fair play and due process, and/or Defendants' infringing actions caused
5 injury to Plaintiff in California and in this judicial district such that Defendants should
6 reasonably expect such actions to have consequences in California and in this judicial
7 district, for example:

- 8 a. Defendants were and/or are systematically directing and/or targeting
9 business activities at consumers in California through its online channel
10 on YouTube at [https://www.youtube.com/channel/UCdnJJrDU1-](https://www.youtube.com/channel/UCdnJJrDU1-y_ryelLMslxkQ)
11 [y_ryelLMslxkQ](https://www.youtube.com/channel/UCdnJJrDU1-y_ryelLMslxkQ), where consumers residing in California can view
12 Defendants' content, communicate with Defendants regarding its
13 content, and where Defendants can advertise content to consumers, all as
14 a means for establishing regular business with consumers in California,
15 including with YouTube.com, which has its headquarters in California.
- 16 b. Defendants were and/or are systematically directing and/or targeting
17 business activities at consumers in California through their website at
18 <https://www.brat.com/> where consumers residing in California can view
19 Defendants' content, and where consumers residing in California can
20 view Defendants' advertising of infringing apparel, can order
21 Defendants' infringing apparel, and can have Defendants' infringing
22 apparel shipped and delivered to California.
- 23 c. Defendants are a sophisticated media company operating a business
24 through the YouTube.com website by offering content to consumers,
25 including consumers residing in California, on a platform based in
26 California, that monetizes through views (50 million per month), and
27 licensing to brands and internet platforms residing in California, and
28 social media sites such as Facebook (<https://www.facebook.com/brat/>),

1 Instagram (<https://www.instagram.com/brat/>), and Twitter
2 (<https://twitter.com/brat/>), all of which are accessible to consumers
3 residing in California.

4 d. Defendants have transacted business with consumers located in
5 California, for the licensing of its content.

6 e. Defendants are aware of MGA, its Bratz Products, and Bratz Marks, and
7 are aware that their infringing actions, alleged herein, are likely to cause
8 injury to MGA in California, and in this judicial district specifically, as
9 MGA conducts substantial business in California and in this judicial
10 district.

11 5. Venue is proper, *inter alia*, pursuant to 28 U.S.C. § 1391(b)(2) because,
12 upon information and belief, Defendants conduct, transact, and/or solicit business in
13 this judicial district.

14 **PARTIES**

15 6. Plaintiff MGA ENTERTAINMENT, INC. (“MGA”) is a California
16 corporation and consumer toy company having an address and principal place of
17 business at 16380 Roscoe Blvd, Van Nuys, California, 91406.

18 7. Upon information and belief, Defendant BRAT, INC. is a Delaware
19 corporation and digital media and production company with a principle place of
20 business at 100 Crosby Street, Suite 308 New York, New York 10012.

21 8. Defendants DOES 1 through 10 are individuals and/or entities whose
22 true names and capacities are presently unknown to Plaintiff. At such time as said
23 Defendants’ true names and capacities become known to Plaintiff, Plaintiff will seek
24 leave to amend this Complaint to insert said true names and capacities of such
25 individuals and/or entities.

26 9. Upon information and belief, at all times relevant herein, Defendants,
27 including Does 1 through 10, inclusive, and each of them, were and still are the partners,
28 agents, employers, and/or employees of the other named Defendants, and each of them;

1 that in so doing the things alleged, said Defendants were acting within the course
2 and scope of said partnership, agency, or employment; and that in so doing the things
3 alleged, said Defendants were acting at all times with the knowledge, consent, and
4 authorization of each of the other Defendants.

5 10. Upon information and belief, at all times relevant herein, Defendants,
6 including Does 1 through 10, inclusive, and each of them, are the alter egos of each
7 other; are characterized by a unity of interest in ownership and control among
8 themselves such that any individuality and separateness between them have
9 ceased; are a mere shell instrumentality and conduit through which Defendants
10 carried on their business by use of each other's names; completely controlled,
11 dominated, managed, and operated each other's business to such an extent that any
12 individuality or separateness of the Defendants does not and did not exist;
13 completely failed to observe any corporate formalities; and intermingled the assets of
14 each other, and other entities affiliated with them, to suit the convenience of
15 themselves and in order to evade legal obligations and liability.

16 11. Plaintiff is informed and believes, and based thereon, alleges that
17 Defendants are in some manner responsible for the acts alleged herein and the harm,
18 losses and damages suffered by Plaintiff as alleged hereinafter.

19 **GENERAL ALLEGATIONS**

20 12. MGA is a leading designer, developer, marketer, and distributor of
21 innovative children's toys, and has adapted and produced multiple animated and live-
22 action features based on their toy brands. MGA promotes and/or sells its products
23 throughout the U.S. and the world through major retailers, quality toy stores,
24 department stores, and online marketplaces, including, but not limited to, channels on
25 YouTube.com. MGA is the company behind iconic brands such as Bratz, Little Tikes,
26 and L.O.L. Surprise!

27 13. One of MGA's most popular and successful toys is the BRATZ line of
28 toys and dolls ("BRATZ Products") targeted to young and teenage girls. More than 50

1 million BRATZ dolls have been sold to date on a worldwide basis, of which over 35
2 million have been sold in the United States. Over 25 million packages of accessories
3 for such BRATZ dolls have been sold worldwide, including over 15 million sold in
4 the United States. At the height of their popularity, BRATZ dolls outsold Mattel's
5 Barbie dolls. BRATZ dolls are sold worldwide, and in California, through retail stores
6 and online marketplaces.

7 14. Moreover, in an effort to further market the BRATZ line of dolls and
8 toys, MGA has adapted and produced multiple BRATZ animated and live-action
9 features airing as early as 2004. MGA has maintained a channel on YouTube under
10 the name "Bratz" since at least November 2005, located at
11 <https://www.youtube.com/user/Bratz>.

12 15. MGA maintains federal trademarks for BRATZ including but not
13 limited to: (1) Registration No. 2751890, in International Class 25 for "Girls' Apparel,
14 Namely, Shirts, Pants, Hosiery, Socks, Sleepwear, Skirts, Undergarments, Footwear,
15 Jackets, Gloves, Scarves, Earmuffs, Sweat Pants, Sweat Shirts, Shorts, Headbands,
16 All Relating To Applicant's Line Of Fashion Dolls And Accessories," with a date of
17 first use of February 20, 2002 and registered on August 19, 2003; (2) Registration No.
18 2789216, in International Class 28 for "Dolls," with a date of first use of May 21,
19 2001 and registered on December 2, 2003; (3) Serial No. 88079905, in International
20 Class 41 for "Entertainment Services Provided Via A Global Computer Network
21 Featuring Videos Highlighting Product Trivia, Product Information And Stories
22 Featuring Animated Fictional Characters," with a date of first use of November 12,
23 2005 (collectively, the "BRATZ Marks").

24 16. MGA spent substantial time, money, and effort in building up and
25 developing consumer recognition, awareness, and goodwill in the BRATZ Marks.

26 17. The success of the BRATZ Products is due in large part to MGA's
27 marketing and promotional efforts. These efforts include advertising and promotion
28 through television and the internet, including maintaining a channel on YouTube

1 under the name “Bratz” since at least November 2005. MGA’s BRATZ website
2 located at www.bratz.com redirects to its BRATZ YouTube channel. The YouTube
3 Channel is an important source of promotion for BRATZ Products and content. It has
4 over 60,000 subscribers, and over 27,000,000 views.

5 18. Additionally, MGA owes a substantial amount of success of the BRATZ
6 Products to its consumers and word-of-mouth buzz that its consumers have generated,
7 a target demographic focused on young and teenage girls.

8 19. As a result of MGA’s marketing, promotional, and distribution efforts,
9 extensive press and media coverage, and word of mouth-buzz, the BRATZ Marks
10 have become prominently placed in the minds of the public. Members of the public
11 have become familiar with BRATZ Products and have come to recognize the BRATZ
12 Products and BRATZ Marks and associate them exclusively with their source, MGA.
13 MGA acquired a valuable reputation and goodwill among the public as a result of
14 such associations.

15 20. MGA has gone to great lengths to protect its interests in and to the
16 BRATZ Marks. No one other than MGA is authorized to manufacture, import, export,
17 advertise, produce, adapt, offer for sale or make available for download and/or
18 streaming any goods or content utilizing BRATZ Marks without the express written
19 permission of MGA.

20 21. Defendant Brat is a digital media and production company with a
21 channel on YouTube called BRAT that was created in March 2017, and is located at
22 https://www.youtube.com/channel/UCdnJJrDUI-y_ryeILMslxkQ. The BRAT channel
23 advertises, distributes, and markets its digital content under the name BRAT.
24 Defendants BRAT, and its BRAT channel and content is targeted to the same
25 demographic of young and teenage girls as Plaintiff’s BRATZ channel, and BRATZ
26 Products. BRAT is a studio, network and channel that produces content for
27 distribution via its channel on YouTube directly to consumers worldwide, and
28 specifically to consumers residing in California, and also licenses its content to third

1 parties, including third parties in California, and through social media sites such as
2 Facebook (<https://www.facebook.com/brat/>), Instagram
3 (<https://www.instagram.com/brat/>), and Twitter (<https://twitter.com/brat/>), all of
4 which are accessible to consumers residing in California. Through its YouTube
5 channel, Defendant Brat advertises, distributes, and markets its content by using a
6 confusingly similar mark to the BRATZ Marks, and which is designed to look
7 confusingly similar to the BRATZ Marks.

8 22. Defendants has applied for and obtained two federal trademark
9 registrations: (1) Registration No. 5533951, in International Class 41, for “Education
10 and entertainment services in the nature of visual and audio performances, namely,
11 ongoing webisodes and web stream programs regarding variety, drama, comedy,
12 children's entertainment, and topics of general interest broadcast via an online
13 communications network; education and entertainment services in the nature of visual
14 and audio performances, namely, ongoing webisodes and web stream programs
15 regarding variety, drama, comedy, children's entertainment, and topics of general
16 interest broadcast via video media; entertainment services in the nature of recording,
17 production, and distribution of videos in the field of variety, drama, comedy,
18 children's entertainment, and topics of general interest,” with a date of first use of
19 March 28, 2017 and registered on August 7, 2018; and (2) Registration No. 5533952,
20 in International Class 41, for “Education and entertainment services in the nature of
21 visual and audio performances, namely, ongoing webisodes and web stream programs
22 regarding variety, drama, comedy, children's entertainment, and topics of general
23 interest broadcast via an online communications network; education and
24 entertainment services in the nature of visual and audio performances, namely,
25 ongoing webisodes and web stream programs regarding variety, drama, comedy,
26 children's entertainment, and topics of general interest broadcast via video media;
27 entertainment services in the nature of recording, production, and distribution of
28 videos in the field of variety, drama, comedy, children's entertainment, and topics of

1 general interest,” with a date of first use of March 28, 2017 and registered on August
2 7, 2018 (the “BRAT Marks”).

3 23. Furthermore, Defendant Brat advertise and offers clothing for sale using
4 its BRAT Marks, advertised through its website located at www.brat.com and online
5 store located at <https://brat.wun.io/store>, which also allows for this infringing apparel
6 to be purchased and shipped to California, including within this judicial district.

7 24. On or about May 17, 2018, MGA learned that Defendant Brat intended
8 to license their marks at the Las Vegas Licensing Expo 2018, including licensing their
9 marks on apparel. MGA was also planning on attending the Las Vegas Licensing
10 Show 2018 to license its “Bratz” marks and properties.

11 25. MGA a cease and desist letter to Brat on or about May 17, 2018.
12 Though Brat agreed that it would not display or license its BRAT Marks at the Las
13 Vegas Licensing Expo 2018, Brat continues to distribute content via its BRAT
14 YouTube channel, and upon information and belief, continues to license its content
15 that appears on its BRAT YouTube channel, continues to use its infringing BRAT
16 Marks to advertise its content via its website and on social media, and continues to
17 use its infringing BRAT Marks to advertise and sell clothing through its website. In
18 committing these acts, Defendants have, among other things, willfully and in bad
19 faith committed the following, all of which have and will continue to cause harm to
20 MGA: infringed BRATZ Marks; diluted the BRATZ Marks; committed unfair
21 competition; and unfairly and unjustly profited from such activities at MGA’s
22 expense.

23 26. Particularly in light of MGA’s success in marketing and selling its
24 BRATZ Products identified by its BRATZ Marks, as well as the reputation they have
25 gained, MGA and its BRATZ Products have become targets for unscrupulous
26 individuals and entities that wish to unlawfully exploit the goodwill, reputation, and
27 fame MGA amassed in its BRATZ Products, and the BRATZ Marks.

28

1 27. MGA investigates and enforces against such activity, and through such
2 efforts, learned of Defendants’ actions which vary and include, but are not limited to,
3 producing, advertising, marketing, promoting, distributing, displaying, and/or
4 licensing content that are confusingly similar to the BRATZ Marks, and/or are
5 identical or confusingly similar with the BRATZ Products and BRATZ content
6 appearing on its BRATZ YouTube channel, to consumers in the same demographic as
7 the BRATZ Products, including those located in California, through the use of its
8 infringing BRAT Marks.

9 28. Defendants are not, and have never been, authorized by MGA or any of
10 its authorized agents to copy, manufacture, produce, advertise, market, promote,
11 distribute, display, and/or license BRATZ Products or content, or to use BRATZ
12 Marks, or any marks or artwork that are confusingly similar to the BRATZ Marks
13 such as “BRAT.”

14 29. By its BRAT channel on YouTube, Defendants have violated MGA’s
15 exclusive rights in its BRATZ Marks, by adopting and using a mark that is
16 confusingly similar to the BRATZ Marks. Defendants’ conduct began long after
17 MGA’s adoption and use of its BRATZ Marks, as alleged above, and after MGA’s
18 BRATZ Products became well-known to the purchasing public, and specifically to the
19 target demographic of both Brat and MGA’s BRATZ Products—young and teenage
20 girls.

21 30. Based upon the trademark filings which have been submitted to the
22 United States Patent and Trademark Office, MGA’s use of BRATZ pre-dates
23 Defendants’ use of BRAT by at least sixteen (16) years, and MGA’s use of BRATZ
24 in class 41 pre-dates Defendants’ use of BRAT in class 41 by at least eleven (11)
25 years. Upon information and belief, MGA’s use of BRATZ for clothing and apparel
26 pre-dated Defendants’ use of BRAT for clothing and apparel by at least fifteen (15)
27 years.

28

1 31. Defendants’ dealings, as alleged herein, have caused, and will continue
2 to cause, confusion, mistake, economic loss and have, and will continue to deceive
3 consumers, the public, and the trade as to the source or origin of Defendants’ content
4 appearing on their YouTube channel, and any licensee authorized by Defendants,
5 thereby causing consumers to erroneously believe that such content and licensed
6 products originate from, or are licensed by, or otherwise associated with MGA,
7 thereby damaging MGA.

8 **FIRST CAUSE OF ACTION**

9 **Federal Trademark Infringement**

10 **(15 U.S.C. § 1114/Lanham Act § 32(a))**

11 32. Plaintiff repleads and incorporates by reference each and every
12 allegation set forth in the preceding paragraphs as if fully set forth herein.

13 33. MGA is the exclusive owner of all rights and title to the BRATZ Marks.

14 34. MGA has continuously used the BRATZ Marks in interstate commerce
15 since at least as early as 2001, including as early as 2002 in international class 25, and
16 as early as 2005 in international class 41.

17 35. Based upon the trademark filings which have been submitted to the
18 United States Patent and Trademark Office, MGA’s use of BRATZ pre-dates
19 Defendants’ use of BRAT by at least sixteen (16) years, and MGA’s use of BRATZ
20 in class 41 pre-dates Defendants’ use of BRAT in class 41 by at least eleven (11)
21 years. Upon information and belief, MGA’s use of BRATZ for clothing and apparel
22 pre-dated Defendants’ use of BRAT for clothing and apparel by at least fifteen (15)
23 years.

24 36. MGA, as owner of all right, title, and interest in its federally registered
25 BRATZ Marks, has standing to maintain an action for trademark infringement under
26 15 U.S.C. § 1114.

27 37. Defendants were, at the time they engaged in its actions as alleged
28 herein, actually aware that MGA is the owner of all rights in and to the BRATZ

1 Marks.

2 38. Defendants did not seek, and thus failed to obtain consent or
3 authorization from MGA, as the trademark owner of the BRATZ Marks, to deal in
4 and commercially manufacture, import, export, advertise, market, promote, distribute,
5 display, retail, produce, distribute, license, offer for sale or make available for
6 download and/or streaming any product or content bearing the BRATZ Marks, or any
7 marks that are confusingly similar with the BRATZ Marks such as “BRAT.”

8 39. Defendants knowingly and intentionally reproduced, copied, and
9 colorably imitated the BRATZ Marks and applied such reproductions, copies, or
10 colorable imitations, including but not limited to content appearing on the BRAT
11 YouTube channel, website, social media, other advertisements used in commerce, and
12 in connection with the sale of clothing and apparel.

13 40. Defendants’ egregious and intentional use of the confusingly similar
14 BRAT Marks in commerce on or in connection with Defendants’ goods and services
15 has caused, and is likely to continue to cause, actual confusion and mistake, and has
16 deceived, and is likely to continue to deceive, the general purchasing public,
17 including but not limited to as to the source or origin of Defendants’ content
18 appearing on the BRAT YouTube channel, and has deceived, or is likely to deceive,
19 the public into believing that Defendants’ content appearing on the BRAT YouTube
20 channel is related to MGA’s BRATZ Products or are otherwise associated with, or
21 authorized by, MGA.

22 41. Defendants’ actions have been deliberate and committed with
23 knowledge of MGA’s rights and goodwill in the BRATZ Marks, as well as with bad
24 faith and the intent to cause confusion, mistake, and deception.

25 42. Defendants’ continued, knowing, and intentional use of the BRATZ
26 Marks, or marks that are confusingly similar to the BRATZ Marks in the same
27 channels of commerce, without MGA’s consent or authorization constitutes
28 intentional infringement of MGA’s BRATZ Marks in violation of §32 of the Lanham

1 Act, 15 U.S.C. § 1114.

2 43. As a direct and proximate result of Defendants' infringing actions as
3 alleged herein, MGA has suffered substantial monetary loss, loss and damage to its
4 business and its valuable rights in and to the BRATZ Marks and the goodwill
5 associated therewith in an amount as yet unknown, but to be determined at trial.

6 44. Based on Defendants' actions as alleged herein, MGA is entitled to
7 injunctive relief, damages for the harm that MGA has sustained, and will sustain, as a
8 result of Defendants' unlawful and infringing actions as alleged herein, and all gains,
9 profits and advantages obtained by Defendants as a result thereof, enhanced
10 discretionary damages, as well as other remedies provided by 15 U.S.C. §§ 1116,
11 1117, and 1118, and reasonable attorneys' fees and costs.

12 45. MGA seeks an order from this Court directing the United States Patent
13 and Trademark Office to cancel Defendants' BRAT Marks registrations in
14 international class 41 bearing Registration Nos. 5533951 and 5533952 pursuant to
15 Section 37 of the Lanham Act, 15 U.S.C. § 1119.

16 **SECOND CAUSE OF ACTION**

17 **False Designation of Origin, Passing Off & Unfair Competition**

18 **(15 U.S.C. § 1125(a)/Lanham Act § 43(a))**

19 46. Plaintiff repleads and incorporates by reference each and every
20 allegation set forth in the preceding paragraphs as if fully set forth herein.

21 47. MGA is the exclusive owner of all rights and title to the BRATZ Marks.

22 48. MGA has continuously used the BRATZ Marks in interstate commerce
23 since at least as early as 2001, including as early as 2002 in international class 25, and
24 as early as 2005 in international class 41.

25 49. Based upon the trademark filings which have been submitted to the
26 United States Patent and Trademark Office, MGA's use of BRATZ pre-dates
27 Defendants' use of BRAT by at least sixteen (16) years, and MGA's use of BRATZ
28 in class 41 pre-dates Defendants' use of BRAT in class 41 by at least eleven (11)

1 years. Upon information and belief, MGA's use of BRATZ for clothing and apparel
2 pre-dated Defendants' use of BRAT for clothing and apparel by at least fifteen (15)
3 years.

4 50. The BRATZ Marks are inherently distinctive and/or have acquired
5 distinctiveness.

6 51. Defendants was, at the time they engaged in its actions as alleged herein,
7 actually aware that MGA is the owner of all rights in and to the BRATZ Marks.

8 52. Defendants did not seek, and thus failed to obtain consent or
9 authorization from MGA, as the trademark owner of the BRATZ Marks, to deal in
10 and commercially manufacture, import, export, advertise, market, promote, distribute,
11 display, retail, produce, distribute, license, offer for sale or make available for
12 download and/or streaming any product or content bearing the BRATZ Marks, or any
13 marks that are confusingly similar with or substantially similar to the BRATZ Marks
14 such as "BRAT."

15 53. Defendants knowingly and intentionally reproduced, copied, and
16 colorably imitated the BRATZ Marks and applied such reproductions, copies, or
17 colorable imitations, including but not limited to content appearing on the BRAT
18 YouTube channel, website, social media, other advertisements used in commerce, and
19 in connection with the sale of clothing and apparel.

20 54. Defendants' egregious and intentional use of the confusingly similar
21 BRAT Marks in commerce on or in connection with Defendants' content and goods
22 has caused, and is likely to continue to cause, actual confusion and mistake, and has
23 deceived, and is likely to continue to deceive, the general purchasing public,
24 including but not limited to as to the source or origin of Defendants' content
25 appearing on its BRAT YouTube channel, and has deceived, or is likely to deceive,
26 the public into believing that Defendants' content appearing on its BRAT YouTube
27 channel is related to MGA's BRATZ Products or are otherwise associated with, or
28 authorized by, MGA.

1 55. Defendants' egregious and intentional use of the confusingly similar
2 BRAT Marks is creating a likelihood of confusion by consumers as to the source and
3 origin of such its products, and allowing Defendants to capitalize on the goodwill
4 associated with, and the consumer recognition of, MGA's BRATZ Marks and
5 BRATZ Products, to Defendants' substantial profit in blatant disregard of MGA's
6 rights, thereby directly and unfairly competing with MGA. Such conduct has
7 permitted and will continue to permit Defendants to make substantial sales and profits
8 based on the goodwill and reputation of MGA and its BRATZ Marks, which Plaintiff
9 has amassed through its nationwide marketing, advertising, sales, and consumer
10 recognition.

11 56. Defendants knew, or by the exercise of reasonable care should have
12 known, that its adoption and commencement of and continuing use in commerce of
13 marks that are identical or confusingly similar to and constitute reproductions of
14 MGA's BRATZ Marks and BRATZ Products would cause confusion, mistake, or
15 deception among purchasers, users, and the public.

16 57. Upon information and belief, Defendants' aforementioned wrongful
17 actions have been knowing, deliberate, willful, intended to cause confusion, to cause
18 mistake, and to deceive the purchasing public and with the intent to trade on the
19 goodwill and reputation of MGA, its BRATZ Marks, and its BRATZ Products.

20 58. As a direct and proximate result of Defendants' infringing actions as
21 alleged herein, MGA has suffered substantial monetary loss, loss and damage to its
22 business and its valuable rights in and to the BRATZ Marks and the goodwill
23 associated therewith in an amount as yet unknown, but to be determined at trial.

24 59. Based on Defendants' actions as alleged herein, MGA is entitled to
25 injunctive relief, damages for the harm that MGA has sustained, and will sustain, as a
26 result of Defendants' unlawful and infringing actions as alleged herein, and all gains,
27 profits and advantages obtained by Defendants as a result thereof, enhanced
28 discretionary damages, as well as other remedies provided by 15 U.S.C. §§ 1116,

1 1117, and 1118, and reasonable attorneys' fees and costs.

2 60. MGA seeks an order from this Court directing the United States Patent
3 and Trademark Office to cancel Defendants' BRAT Marks registrations in
4 international class 41 bearing Registration Nos. 5533951 and 5533952 pursuant to
5 Section 37 of the Lanham Act, 15 U.S.C. § 1119.

6 **THIRD CAUSE OF ACTION**

7 **Trademark Dilution**

8 **(15 U.S.C. § 1125(c)/Lanham Act § 43(c))**

9 61. Plaintiff repleads and incorporates by reference each and every allegation
10 set forth in the preceding paragraphs as if fully set forth herein.

11 62. Plaintiff's BRATZ Marks are famous, as the term is used in 15 U.S.C. §
12 1125(c), and were famous before Defendants' first use of the BRAT Marks as a
13 trademark or service mark based on extensive nationwide use, advertising, and
14 promotion.

15 63. Defendants' actions, as complained of herein, have diluted, and are likely
16 to continue to dilute, the distinctive quality of Plaintiff's BRATZ Marks by blurring
17 in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

18 64. Based on Defendants' wrongful conduct, MGA is entitled to injunctive
19 relief as well as monetary damages and other remedies as provided by the Lanham
20 Act, including damages that MGA has sustained and will sustain as a result of
21 Defendants' illegal and infringing actions as alleged herein, and all gains, profits and
22 advantages obtained by Defendants as a result thereof, enhanced discretionary
23 damages and reasonable attorneys' fees and costs.

24 65. MGA seeks an order from this Court directing the United States Patent
25 and Trademark Office to cancel Defendants' BRAT Marks registrations in
26 international class 41 bearing Registration Nos. 5533951 and 5533952 pursuant to
27 Section 37 of the Lanham Act, 15 U.S.C. § 1119.

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1 **FOURTH CAUSE OF ACTION**

2 **Common Law Trademark Infringement**

3 66. Plaintiff repleads and incorporates by reference each and every allegation
4 set forth in the preceding paragraphs as if fully set forth herein.

5 67. MGA is the exclusive owner of all rights and title to the BRATZ Marks.

6 68. MGA has continuously used the BRATZ Marks in interstate commerce
7 since at least as early as 2001, including as early as 2002 in international class 25, and
8 as early as 2005 in international class 41.

9 69. Based upon the trademark filings which have been submitted to the
10 United States Patent and Trademark Office, MGA's use of BRATZ pre-dates
11 Defendants' use of BRAT by at least sixteen (16) years, and MGA's use of BRATZ
12 in class 41 pre-dates Defendants' use of BRAT in class 41 by at least eleven (11)
13 years. Upon information and belief, MGA's use of BRATZ for clothing and apparel
14 pre-dated Defendants' use of BRAT for clothing and apparel by at least fifteen (15)
15 years.

16 70. The BRATZ Marks are inherently distinctive and/or have acquired
17 distinctiveness.

18 71. Defendants were, at the time they engaged in the actions as alleged
19 herein, actually aware that MGA is the owner of all rights in and to the BRATZ
20 Marks.

21 72. Defendants did not seek, and thus failed to obtain consent or
22 authorization from MGA, as the trademark owner of the BRATZ Marks, to deal in
23 and commercially manufacture, import, export, advertise, market, promote, distribute,
24 display, retail, produce, distribute, license, offer for sale or make available for
25 download and/or streaming any product or content bearing the BRATZ Marks, or any
26 marks that are confusingly similar with or substantially similar to the BRATZ Marks
27 such as "BRAT."

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1 73. Defendants knowingly and intentionally reproduced, copied, and
2 colorably imitated the BRATZ Marks and applied such reproductions, copies, or
3 colorable imitations, including but not limited to content appearing on the BRAT
4 YouTube channel, website, social media, other advertisements used in commerce, and
5 in connection with the sale of clothing and apparel.

6 74. Defendants' egregious and intentional use of the confusingly similar
7 BRAT Marks in commerce on or in connection with Defendants' content and goods
8 has caused, and is likely to continue to cause, actual confusion and mistake, and has
9 deceived, and is likely to continue to deceive, the general purchasing public,
10 including but not limited to as to the source or origin of Defendants' content
11 appearing on its BRAT YouTube channel, and has deceived, or is likely to deceive,
12 the public into believing that Defendants' content appearing on its BRAT YouTube
13 channel is related to MGA's BRATZ Products or are otherwise associated with, or
14 authorized by, MGA.

15 75. Defendants' egregious and intentional use of the confusingly similar
16 BRAT Marks is creating a likelihood of confusion by consumers as to the source and
17 origin of such products, and allowing Defendants to capitalize on the goodwill
18 associated with, and the consumer recognition of, MGA's BRATZ Marks and
19 BRATZ Products, to Defendants' substantial profit in blatant disregard of MGA's
20 rights, thereby directly and unfairly competing with MGA. Such conduct has
21 permitted and will continue to permit Defendants to make substantial sales and profits
22 based on the goodwill and reputation of MGA and its BRATZ Marks, which Plaintiff
23 has amassed through its nationwide marketing, advertising, sales, and consumer
24 recognition.

25 76. Defendants knew, or by the exercise of reasonable care should have
26 known, that its adoption and commencement of and continuing use in commerce of
27 marks that are identical or confusingly similar to and constitute reproductions of
28

1 MGA's BRATZ Marks and BRATZ Products would cause confusion, mistake, or
2 deception among purchasers, users, and the public.

3 77. Upon information and belief, Defendants' aforementioned wrongful
4 actions have been knowing, deliberate, willful, intended to cause confusion, to cause
5 mistake, and to deceive the purchasing public and with the intent to trade on the
6 goodwill and reputation of MGA, its BRATZ Marks, and its BRATZ Products.

7 78. As a direct and proximate result of Defendants' infringing actions as
8 alleged herein, MGA has suffered substantial monetary loss, loss and damage to its
9 business and its valuable rights in and to the BRATZ Marks and the goodwill
10 associated therewith in an amount as yet unknown, but to be determined at trial.

11 79. Based on Defendants' actions as alleged herein, MGA is entitled to
12 injunctive relief, damages for the harm that MGA has sustained, and will sustain, as a
13 result of Defendants' unlawful and infringing actions as alleged herein, and all gains,
14 profits and advantages obtained by Defendants as a result thereof, enhanced
15 discretionary damages, as well as other remedies provided by 15 U.S.C. §§ 1116,
16 1117, and 1118, and reasonable attorneys' fees and costs.

17 80. MGA seeks an order from this Court directing the United States Patent
18 and Trademark Office to cancel Defendants' BRAT Marks registrations in
19 international class 41 bearing Registration Nos. 5533951 and 5533952 pursuant to
20 Section 37 of the Lanham Act, 15 U.S.C. § 1119.

21 **FIFTH CAUSE OF ACTION**

22 **State Statutory Unfair Competition**

23 **(Cal. Bus. & Prof. Code § 17200 *et seq.*)**

24 81. Plaintiff repleads and incorporates by reference each and every allegation
25 set forth in the preceding paragraphs as if fully set forth herein.

26 82. Plaintiff is the owner of all rights, title, and interest in the BRATZ
27 Marks, and associated BRATZ Products.

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1 83. Defendants have intentionally appropriated one or more of the BRATZ
2 Marks and/or associated BRATZ Products with the intent of causing confusion,
3 mistake, and deception as to the source of its goods with the intent to pass off its
4 goods as those of Plaintiffs and to place others in the position to pass off its goods as
5 those of Plaintiff.

6 84. Plaintiff states, upon information and belief and thereupon alleges, that
7 Defendants' actions, including those specifically complained of herein, with respect
8 to Defendants' misappropriation of Plaintiff's BRATZ Marks and BRATZ Products
9 have violated the unfair competition laws of the State of California, specifically
10 California Business and Professions Code §§ 17200 *et seq.*

11 85. Plaintiff has no adequate remedy at law. The conduct of Defendants has
12 caused, and if not enjoined, will continue to cause, Plaintiff irreparable harm and
13 damage to their BRATZ Marks and associated BRATZ Products and to Plaintiff's
14 businesses, reputations, and goodwill.

15 **SIXTH CAUSE OF ACTION**

16 **Declaratory Judgment**

17 **(28 U.S.C. § 2201)**

18 86. Plaintiff repleads and incorporates by reference each and every allegation
19 set forth in the preceding paragraphs as if fully set forth herein.

20 87. MGA has continuously used the BRATZ Marks in interstate commerce
21 since at least as early as 2001, including as early as 2002 in international class 25, and
22 as early as 2005 in international class 41.

23 88. MGA maintains federal trademarks for BRATZ including but not limited
24 to: (1) Registration No. 2751890, in International Class 25 for "Girls' Apparel,
25 Namely, Shirts, Pants, Hosiery, Socks, Sleepwear, Skirts, Undergarments, Footwear,
26 Jackets, Gloves, Scarves, Earmuffs, Sweat Pants, Sweat Shirts, Shorts, Headbands,
27 All Relating To Applicant's Line Of Fashion Dolls And Accessories," with a date of
28 first use of February 20, 2002 and registered on August 19, 2003; (2) Registration No.

1 2789216, in International Class 28 for “Dolls,” with a date of first use of May 21,
2 2001 and registered on December 2, 2003; (3) Serial No. 88079905, in International
3 Class 41 for “Entertainment Services Provided Via A Global Computer Network
4 Featuring Videos Highlighting Product Trivia, Product Information And Stories
5 Featuring Animated Fictional Characters,” with a date of first use of November 12,
6 2005.

7 89. Defendants has applied for and obtained two federal trademark
8 registrations: (1) Registration No. 5533951, in International Class 41, for “Education
9 and entertainment services in the nature of visual and audio performances, namely,
10 ongoing webisodes and web stream programs regarding variety, drama, comedy,
11 children's entertainment, and topics of general interest broadcast via an online
12 communications network; education and entertainment services in the nature of visual
13 and audio performances, namely, ongoing webisodes and web stream programs
14 regarding variety, drama, comedy, children's entertainment, and topics of general
15 interest broadcast via video media; entertainment services in the nature of recording,
16 production, and distribution of videos in the field of variety, drama, comedy,
17 children's entertainment, and topics of general interest,” with a date of first use of
18 March 28, 2017 and registered on August 7, 2018; (2) Registration No. 5533952, in
19 International Class 41, for “Education and entertainment services in the nature of
20 visual and audio performances, namely, ongoing webisodes and web stream programs
21 regarding variety, drama, comedy, children's entertainment, and topics of general
22 interest broadcast via an online communications network; education and
23 entertainment services in the nature of visual and audio performances, namely,
24 ongoing webisodes and web stream programs regarding variety, drama, comedy,
25 children's entertainment, and topics of general interest broadcast via video media;
26 entertainment services in the nature of recording, production, and distribution of
27 videos in the field of variety, drama, comedy, children's entertainment, and topics of
28

1 general interest,” with a date of first use of March 28, 2017 and registered on August
2 7, 2018.

3 90. Based upon the trademark filings which have been submitted to the
4 United States Patent and Trademark Office, MGA’s use of BRATZ pre-dates
5 Defendants’ use of BRAT by at least sixteen (16) years, and MGA’s use of BRATZ
6 in class 41 pre-dates Defendants’ use of BRAT in class 41 by at least eleven (11)
7 years. Upon information and belief, MGA’s use of BRATZ for clothing and apparel
8 pre-dated Defendants’ use of BRAT for clothing and apparel by at least fifteen (15)
9 years.

10 91. Based on the foregoing, MGA has prior use, and therefore superior
11 rights, in the use of BRATZ, or any substantially similar mark, in both classes 25 and
12 41.

13 92. On or about May 17, 2018, MGA learned that Defendant Brat intended
14 to license their marks at the Las Vegas Licensing Expo 2018, including licensing their
15 marks on apparel. MGA was also planning on attending the Las Vegas Licensing
16 Show 2018 to license its “Bratz” marks and properties.

17 93. MGA sent a cease and desist letter to Brat on or about May 17, 2018.
18 Thought Brat agreed that it would not display or license its BRAT Marks at the Las
19 Vegas Licensing Expo 2018, Brat continues to distribute content via its BRAT
20 YouTube channel, and upon information and belief, continues to license its content
21 that appears on its BRAT YouTube channel, continues to use its infringing BRAT
22 Marks to advertise its content via its website and on social media, and continues to
23 use its infringing BRAT Marks to advertise and sell clothing through its website. In
24 committing these acts, Defendants have, among other things, willfully and in bad
25 faith committed the following, all of which have and will continue to cause harm to
26 MGA: infringed BRATZ Marks; diluted the BRATZ Marks; committed unfair
27 competition; and unfairly and unjustly profited from such activities at MGA’s
28 expense.

1 94. An actual, present, and judiciable controversy has arisen between
2 Plaintiff and Defendants concerning the rights in their respective marks.

3 95. MGA seeks a declaratory judgment from this Court that its use of the
4 BRATZ Marks in classes 25 and 41 was prior to Defendants' use of the BRAT
5 Marks, and that MGA has superior rights in the BRATZ Marks in International
6 Classes 25 and 41 relative to the BRAT Marks.

7 96. MGA seeks an order from this Court directing the United States Patent
8 and Trademark Office to cancel Defendants' BRAT Marks registrations in
9 international class 41 bearing Registration Nos. 5533951 and 5533952 pursuant to
10 Section 37 of the Lanham Act, 15 U.S.C. § 1119.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, MGA prays for judgment against Defendants as follows:

13 A. For an award of Defendants' profits and MGA's damages pursuant to 15
14 U.S.C. § 1117(a), enhanced discretionary damages under 15 U.S.C. § 1117(a)(3), and
15 treble damages in the amount of a sum equal to three (3) times such profits or
16 damages, whichever is greater, for willfully and intentionally using a mark or
17 designation in violation of 15 U.S.C. § 1114(1)(a);

18 B. For an award of Defendants' profits and MGA's damages in an amount
19 to be proven at trial for willful trademark infringement of its BRATZ Marks, and such
20 other compensatory damages as the Court determines to be fair and appropriate
21 pursuant to 15 U.S.C. § 1117(a);

22 C. For an award of Defendants' profits and MGA's damages pursuant to 15
23 U.S.C. § 1117(a) in an amount to be proven at trial and such other compensatory
24 damages as the Court determines to be fair and appropriate pursuant to 15 U.S.C. §
25 1117(a) for false designation of origin and unfair competition under 15 U.S.C.
26 §1125(a);

27 D. For an award of damages in an amount to be proven at trial for state
28 statutory unfair competition, pursuant to Cal. Bus. & Prof. Code § 17200 *et seq.*

1 E. For a preliminary and permanent injunction by this Court enjoining and
2 prohibiting Defendants, or their agents, and any employees, agents, servants, officers,
3 representatives, directors, attorneys, successors, affiliates, assigns, and entities owned
4 or controlled by Defendants, and all those in active concert or participation with
5 Defendants who receives notice directly or otherwise of such injunction from:

- 6 a. manufacturing, importing, exporting, advertising, marketing, promoting,
7 distributing, displaying, offering for sale or making available for
8 download and/or streaming, through the use of the infringing BRAT
9 Marks or any other marks that are similarly confusing to Plaintiff's
10 BRATZ Marks;
- 11 b. directly or indirectly infringing in any manner any of MGA's
12 trademarks, copyrights, or other rights (whether now in existence or
13 hereafter created) including, without limitation its BRATZ Marks;
- 14 c. using any reproduction, counterfeit, copy or colorable imitation of
15 Plaintiffs' trademarks, copyrights, or other rights (whether now in
16 existence or hereafter created) including, without limitation, through its
17 use of the infringing BRAT Marks or any other marks that are similarly
18 confusing to Plaintiff's BRATZ Marks;
- 19 d. using any of MGA's trademarks, copyrights, or other rights (whether
20 now in existence or hereafter created) including, without limitation, the
21 BRATZ Marks, or any other marks or artwork that are confusingly or
22 substantially similar to the BRATZ Marks, on or in connection with
23 Defendants' manufacturing, importing, exporting, advertising,
24 marketing, promoting, distributing, displaying, offering for sale or
25 making available for download and/or streaming, through the use of the
26 infringing BRAT Marks or any other marks that are similarly confusing
27 to Plaintiff's BRATZ Marks;
- 28

- 1 e. using any false designation of origin or false description, or engaging in
2 any action which is likely to cause confusion, cause mistake, and/or to
3 deceive members of the trade and/or the public as to the affiliation,
4 connection or association with MGA of any product manufactured,
5 imported, exported, advertised, marketed, promoted, distributed,
6 displayed, offered for sale or made available for download and/or
7 streaming by Defendants, and/or deceive members of the trade and/or
8 public as to the origin, sponsorship, or approval of any product
9 manufactured, imported, exported, advertised, marketed, promoted,
10 distributed, displayed, offering for sale or making available for download
11 and/or streaming by Defendants and Defendants' commercial activities;
- 12 f. engaging in the unlawful, unfair, or fraudulent business acts or practices,
13 including, without limitation, the actions described herein, including
14 advertising and/or dealing in any infringing BRAT Marks or any other
15 marks that are similarly confusing to Plaintiff's BRATZ Marks;
- 16 g. engaging in any other actions that constitute unfair competition with
17 MGA;
- 18 h. engaging in any other act in derogation of MGA's rights;
- 19 i. secreting, destroying, altering, removing, or otherwise dealing with any
20 goods, services, or products bearing the BRAT Marks or any books or
21 records that contain any information relating to manufacturing,
22 importing, exporting, advertising, marketing, promoting, distributing,
23 displaying, offering for sale or download, selling or making available for
24 download and/or otherwise dealing in the infringing BRAT Marks or any
25 other marks that are similarly confusing to Plaintiff's BRATZ Marks;
- 26 j. from secreting, concealing, destroying, altering, selling off, transferring,
27 or otherwise disposing of and/or dealing with: (i) any goods, services, or
28 products bearing the BRAT Marks; (ii) any computer files, data, business

1 records, financial records, documents or any other records or evidence
2 relating to Defendants' business, or dealings with the infringing BRAT
3 Marks or any other marks that are similarly confusing to Plaintiff's
4 BRATZ Marks;

5 k. effecting assignments or transfers, forming new entities or associations,
6 or utilizing any other device for the purposes of circumventing or
7 otherwise avoiding the prohibitions set forth in any Final Judgment or
8 Order in this action; and

9 l. instructing, assisting, aiding or abetting any other person or entity in
10 engaging in or performing any of the activities referred to in
11 subparagraphs (a) through (k) above.

12 F. For an order from the Court requiring that Defendants provide complete
13 accountings for any and all monies, profits, gains and advantages derived by
14 Defendants from its manufacturing, importing, exporting, advertising, marketing,
15 promoting, distributing, displaying, offering for sale or making available for
16 download and/or streaming, or otherwise dealing in the infringing BRAT Marks or
17 any other marks that are similarly confusing to Plaintiff's BRATZ Marks as described
18 herein, including prejudgment interest;

19 G. For an order from the Court that an asset freeze or constructive trust be
20 imposed over any and all monies, profits, gains and advantages in Defendants'
21 possession which rightfully belong to MGA;

22 H. A declaratory judgment from this Court that MGA's use of the BRATZ
23 Marks in classes 25 and 41 was prior to Defendants' use of the BRAT Marks, and that
24 MGA has superior rights in the BRATZ Marks, relative to the BRAT Marks, in
25 classes 25 and 41;

26 I. For an order from this Court directing the United States Patent and
27 Trademark Office to cancel Defendants' BRAT Marks registrations in international
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1 class 41 bearing Registration Nos. 5533951 and 5533952 pursuant to Section 37 of
2 the Lanham Act, 15 U.S.C. § 1119;

3 J. For an award of exemplary or punitive damages in an amount to be
4 determined by the Court;

5 K. For MGA’s reasonable attorneys’ fees;

6 L. For all costs of suit; and

7 M. For such other and further relief as the Court may deem just and
8 equitable.

9

DEMAND FOR JURY TRIAL

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Plaintiff hereby demands a trial by jury.

11

12 DATED: October 8, 2018

MGA ENTERTAINMENT, INC.

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By: /s/ Benjamin C. Johnson
BENJAMIN C. JOHNSON
Attorney for Plaintiffs
MGA Entertainment, Inc.

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