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6 PORT BREWING, LLC

7
8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 PORT BREWING, LLC, a California limited
11 liability company,

12 Plaintiff,

13 v.

14 MOYLAN’S BREWING COMPANY, a
15 California limited partnership; and DOES 1
through 10, inclusive.

16 Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF:**

- 17 **1. FEDERAL TRADEMARK
INFRINGEMENT;**
18 **2. FALSE DESIGNATION OF ORIGIN;**
3. TRADEMARK DILUTION;
**4. VIOLATION OF CAL. BUS. & PROF.
CODE § 14330;**
**5. VIOLATION OF CAL. BUS. & PROF.
CODE § 17200;**
6. UNJUST ENRICHMENT.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff PORT BREWING, LLC (hereinafter referred to as “Port Brewing” or “Plaintiff”)
21 for the causes of action against Defendant MOYLAN’S BREWING COMPANY (hereinafter
22 referred to as “Moylan’s” or “Defendant”) and DOES 1 through 10, inclusive, and each of them,
23 alleges as follows:

24 **JURISDICTION AND VENUE**

25 1. This is an action for trademark infringement, trademark dilution, unlawful business
26 practices, and related causes of action arising from Defendant’s improper use of Plaintiff’s
27 protected and trademarked beer tap design.

28 2. This Court has subject matter jurisdiction over the claims in this action pursuant to

1 28 U.S.C. §§ 1331, 1338(a), 1338(b), and 1367(a); and 15 U.S.C. § 1121, because the claims stated
2 herein arise under the laws of the United States or are related to such claims and are part of the
3 same case or controversy.

4 3. Venue in this Court is proper under 28 U.S.C. § 1391(b) because a substantial part of
5 the events or omissions giving rise to the claims occurred in this District, and/or a substantial part
6 of property that is the subject of the action is situated in this District.

7 4. The Court has personal jurisdiction over Defendant by virtue of Defendant
8 transacting and doing business in this District and also by virtue of Defendant committing a tort in
9 or directed at this District.

10 THE PARTIES

11 5. At all times material hereto, Port Brewing is and has been a limited liability
12 company existing under and by virtue of the laws of the State of California with its principal place
13 of business located at 155 Mata Way, Suite 104, San Marcos, California 92069.

14 6. Plaintiff is informed and believes, and on that basis alleges, that at all times material
15 hereto, Defendant Moylan's is and has been a limited partnership existing under and by virtue of
16 the laws of the State of California with its principal place of business at 306 Olive Avenue, Novato,
17 California 94945.

18 7. The true names, identities and capacities, whether individual, associate, corporate or
19 otherwise, of Defendants DOES 1 through 10, inclusive, and each of them (the "DOE
20 Defendants"), are unknown to Plaintiff at this time, who therefore sues the DOE Defendants by
21 such fictitious names. When the true names and capacities or participation of the DOE Defendants
22 are ascertained, Plaintiff will amend this complaint to assert the true names, identities and
23 capacities. Plaintiff is informed and believes and thereon alleges that each of the DOE Defendants
24 sued herein is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff in
25 some manner for the events and happenings alleged in this complaint. Plaintiff is informed and
26 believes and thereon alleges that at all times herein mentioned, the DOE Defendants were and are
27 doing business and/or residing in this District.
28

1 **FACTS COMMON TO ALL CAUSES OF ACTION**

2 ***Port Brewing and its Famous Trademarks***

3 8. Port Brewing is a well-known creator, supplier and seller of beers and related
4 merchandise, as well as the operator of its brewery. Port Brewing produces two lines of beers: 1)
5 Port Brewing branded beers, and 2) Lost Abbey branded beers. Among Plaintiff’s successful
6 brands is its stylized Celtic cross beer tap handle bearing its protected trademarks. The Celtic cross
7 beer tap handle and accessories have become popular and famous in the United States and
8 internationally.

9 9. Plaintiff has engaged in extensive marketing and promotion of their Celtic cross
10 trademark and has enjoyed significant sales of their beer and merchandise, including sales of the
11 Celtic cross beer tap handles.

12 10. Due to Plaintiff’s extensive use of its stylized Celtic cross image marks (collectively
13 referred to herein as the “Port Brewing Marks”), Plaintiff has built up significant goodwill therein
14 and its branded merchandise has been praised and recognized in the brewing industry and through
15 various media.

16 11. As a result of such longstanding, substantial and continuous use, the Celtic cross-
17 branded products have long been immediately recognized by consumers and the trade.

18 12. Since March 2006, Plaintiff has utilized and offered products bearing the Port
19 Brewing Marks.

20 13. Plaintiff has been using its stylized Celtic cross beer tap since 2008, and has
21 acquired broad common-law rights in these trademarks. In addition, Plaintiff has filed for U.S.
22 federal trademark registrations for its Celtic cross beer tap trademarks. The registration filings are
23 identified below:

Serial No.	Classification Type of Goods and Services
85/038380	IC 032. US 045 046 048
85/038385	IC 007. US 013 019 021 023 031 034 035

24
25
26
27
28 14. True and correct copies of the filings for registration listed above are attached hereto

1 collectively as **Exhibit 1**.

2 15. The various stylized Port Brewing Marks have acquired a strong secondary meaning
3 and are strong trademarks. Plaintiff's stylized Port Brewing Marks and associated products have
4 become famous and are known and recognized across the United States and the world.

5 *Defendant's Unlawful Activities*

6 16. Upon information and belief, Defendant Moylan's was created as a limited
7 partnership company in the State of California on March 2, 1994.

8 17. Upon information and belief, Defendant operates, supervises, manages and owns the
9 restaurant brewery, "Moylan's Brewery and Restaurant" at 15 Rowland Way, Novato, California
10 94945.

11 18. Upon information and belief, Defendant recently began using a stylized cross beer
12 tap handle within its course of business that is strikingly similar to the Port Brewing Marks.

13 19. Upon information and belief, Defendant is currently using a stylized cross beer tap
14 handle, at its brewery and at other participating restaurants, bars, taverns and breweries across the
15 nation, including within this District, featuring marks confusingly similar to Plaintiff's stylized Port
16 Brewing Marks. Defendant is providing this infringing beer tap to distributors and such taps are
17 being particularly confused with Port Brewing's protected beer taps where both companies' beers
18 are being served.

19 20. Upon information and belief, Plaintiff is aware that as recently as on or about August
20 6, 2010, a CBS-affiliate news story was filmed at Moylan's Brewery and Restaurant with multiple
21 confusingly similar stylized cross beer taps visibly featured in the background. This news story
22 aired in Northern California, as well as in and around San Diego—within this District.

23 21. Defendant is not authorized to use any of the Port Brewing Marks, any colorable
24 imitations thereof, any marks substantially indistinguishable from those marks, or any marks
25 confusingly or substantially similar thereto, to identify Defendant's beer products or any other
26 goods or services.

27 22. Upon information and belief, Plaintiff alleges that at all relevant times, Defendant
28 was aware of Plaintiff's proprietary interest in the distinctive and unique trademarks associated with

1 Plaintiff's various stylized Port Brewing Marks and willfully and intentionally copied Plaintiff's
2 trademarks.

3 **FIRST CAUSE OF ACTION**
4 **Trademark Infringement Under the Lanham Act and Common Law**
5 **(Alleged Against All Defendants)**

6 23. Plaintiff hereby incorporates by reference each and every allegation contained in the
7 paragraphs above as if fully stated herein.

8 24. Defendant has used in commerce, without Plaintiff's consent, marks that so resemble
9 Plaintiff's marks that it is likely to cause confusion with respect to the source and origin of
10 Defendant's products and business and is likely to cause confusion or mistake and to deceive
11 consumers as to the affiliation, connection, or association of Plaintiff with Defendant and/or the
12 marketing or sale of its products.

13 25. Defendant's acts constitute an infringement of Plaintiff's various stylized Port
14 Brewing Marks, in violation of the Lanham Act, 15 U.S.C. § 1114, and the common law.

15 26. As a direct and proximate result of Defendant's wrongful acts, Plaintiff has suffered
16 and continues to suffer and/or is likely to suffer damage to its business reputation and goodwill.
17 Defendant will continue, unless restrained, to use marks confusingly similar to Plaintiff's stylized
18 Port Brewing Marks and will cause irreparable damage to Plaintiff. Plaintiff has no adequate
19 remedy at law. Plaintiff is entitled to an injunction restraining Defendant, its officers, agents, and
20 employees, and all persons acting in concert with Defendant, from engaging in further acts of
21 trademark infringement. Such harm will continue and increase until Defendant is preliminarily and
22 permanently enjoined from its unlawful conduct.

23 27. Plaintiff is further entitled to recover from Defendant the actual damages that it
24 sustained and/or is likely to sustain as a result of Defendant's wrongful acts. Plaintiff is presently
25 unable to ascertain the full extent of the monetary damages that it has suffered and/or is likely to
26 suffer by reason of Defendant's acts of trademark infringement.

27 28. Plaintiff is further entitled to recover from Defendant the gains, profits, and
28 advantages that Defendant has obtained as a result of its wrongful acts. Plaintiff is presently unable
to ascertain the full extent of the gains, profits, and advantages that Defendant has realized by

1 reason of its acts of trademark infringement.

2 29. Because of the willful nature of Defendant's wrongful acts, Plaintiff is entitled to an
3 award of damages under 15 U.S.C. § 1117.

4 **SECOND CAUSE OF ACTION**
5 **False Designation of Origin Under the Lanham Act**
6 **(Alleged Against All Defendants)**

7 30. Plaintiff hereby incorporates by reference each and every allegation contained in the
8 paragraphs above as if fully stated herein.

9 31. Defendant's actions as alleged herein constitute a false designation of origin in
10 violation of 15 U.S.C. § 1125 (a).

11 32. As a direct and proximate result of Defendant's wrongful acts, Plaintiff has suffered
12 and continues to suffer and/or is likely to suffer damage to its business reputation and goodwill.
13 Defendant will continue, unless restrained, to use marks confusingly similar to Plaintiff's stylized
14 Port Brewing Marks and will cause irreparable damage to Plaintiff. Plaintiff has no adequate
15 remedy at law. Plaintiff is entitled to an injunction restraining Defendant, its officers, agents, and
16 employees, and all persons acting in concert with Defendant, from engaging in further acts of false
17 designation of origin. Such harm will continue and increase until Defendant is preliminarily and
18 permanently enjoined from its unlawful conduct.

19 33. Plaintiff is further entitled to recover from Defendant the actual damages that it
20 sustained and/or is likely to sustain as a result of Defendant's wrongful acts. Plaintiff is presently
21 unable to ascertain the full extent of the monetary damages that it has suffered and/or is likely to
22 suffer by reason of Defendant's acts of false designation of origin.

23 34. Plaintiff is further entitled to recover from Defendant the gains, profits, and
24 advantages that Defendant has obtained as a result of its wrongful acts. Plaintiff is presently unable
25 to ascertain the full extent of the gains, profits, and advantages that Defendant has realized by
26 reason of its acts of false designation of origin.

27 35. Because of the willful nature of Defendant's wrongful acts, Plaintiff is entitled to an
28 award of damages and increased profits under 15 U.S.C. § 1117.

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THIRD CAUSE OF ACTION
Trademark Dilution Under the Lanham Act
(Alleged Against All Defendants)

36. Plaintiff hereby incorporates by reference each and every allegation contained in the paragraphs above as if fully stated herein.

37. Plaintiff's various stylized Port Brewing Marks are inherently distinctive and have acquired distinction from other marks through long, continuous, and exclusive use by Plaintiff.

38. Plaintiff's various stylized Port Brewing Marks are famous and distinctive within the meaning of 15 U.S.C. §§ 1125 (c)(1) and 1127.

39. Defendant's unlawful activities described in this complaint constitute unauthorized use in interstate commerce of Plaintiff's various stylized Port Brewing Marks. Defendant's unlawful activities were conducted with full recognition of Plaintiff's use of its various stylized Port Brewing Marks and commenced after such trademarks had become famous. On information and belief, such activities are likely to dilute, have diluted, and will continue to dilute or be likely to dilute, the distinctive quality of Plaintiff's various stylized Port Brewing Marks by lessening their capacity to identify and distinguish Plaintiff's goods and by blurring and tarnishing such marks to the damage and harm of Plaintiff, its customers, and the public, in violation of 15 U.S.C. § 1125 (c)(1).

40. As a direct and proximate result of Defendant's wrongful acts, Plaintiff is likely to suffer, has suffered, and continues to suffer or be likely to suffer dilution of the distinctive quality and the blurring and tarnishing of its various stylized Port Brewing Marks. Defendant will continue, unless restrained, to use marks confusingly similar to Plaintiff's stylized Port Brewing Marks and will cause irreparable damage to Plaintiff. Plaintiff has no adequate remedy at law. Plaintiff is entitled to an injunction restraining Defendant, its officers, agents, and employees, and all persons acting in concert with Defendant, from engaging in further acts of dilution. Such harm will continue and increase until Defendant is preliminarily and permanently enjoined from its unlawful conduct.

41. Plaintiff is further entitled to recover from Defendant the actual damages that it sustained and/or is likely to sustain as a result of Defendant's wrongful acts. Plaintiff is presently

1 unable to ascertain the full extent of the monetary damages that it has suffered and/or is likely to
2 suffer by reason of Defendant's acts of dilution.

3 42. Plaintiff is further entitled to recover from Defendant the gains, profits, and
4 advantages that Defendant has obtained as a result of its wrongful acts. Plaintiff is presently unable
5 to ascertain the full extent of the gains, profits, and advantages that Defendant has realized by
6 reason of its acts of dilution.

7 43. Plaintiff is informed and believes, and on that basis alleges, that Defendant
8 committed the acts alleged above: (a) with previous knowledge of Plaintiff's prior use of its various
9 stylized Port Brewing Marks; (b) with the willful intent to trade on Plaintiff's goodwill and
10 reputation; and/or (c) with the willful intent to cause dilution of Plaintiff's various stylized Port
11 Brewing Marks. As a result, Plaintiff has been damaged in an as yet unascertained amount.
12 Because of the willful nature of Defendant's wrongful acts, Plaintiff is entitled to an award of
13 damages pursuant to 15 U.S.C. § 1117.

14 **FOURTH CAUSE OF ACTION**
15 **Injury to Business Reputation and Dilution under Cal. Bus. & Prof. Code § 14330**
16 **(Alleged Against All Defendants)**

17 44. Plaintiff hereby incorporates by reference each and every allegation contained in the
18 paragraphs above as if fully stated herein.

19 45. The use by Defendant of the marks in California: (a) dilutes or is likely to dilute the
20 distinctive quality of Plaintiff's various stylized Port Brewing Marks; (b) reduces or is likely to
21 reduce the value of Plaintiff's goodwill and business reputation; and (c) destroys or is likely to
22 destroy the exclusive association by the public of Plaintiff's various stylized Port Brewing Marks.
23 Defendant's wrongful acts constitute injury to business reputation and dilution of the distinctive
24 quality of Plaintiff's marks within the meaning of Cal. Bus. & Prof. Code § 14330.

25 46. As a direct and proximate result of Defendant's wrongful act, Plaintiff is likely to
26 suffer, and/or has suffered, and is likely to continue to suffer, dilution of Plaintiff's various stylized
27 Port Brewing Marks and damage to its business reputation and goodwill in an amount subject to
28 proof. Defendant will continue, unless restrained, to use the marks, and will cause irreparable
29 damage to Plaintiff. Plaintiff has no adequate remedy at law. Plaintiff is entitled to an injunction

1 restraining Defendant, its officers, agents, and employees, and all persons acting in concert with
2 Defendant, from engaging in further acts of injury to Plaintiff's business reputation and dilution of
3 Plaintiff's marks. Such harm will continue and increase until Defendant is preliminarily and
4 permanently enjoined from its unlawful conduct.

5 **FIFTH CAUSE OF ACTION**
6 **Unfair Competition Under Cal. Bus. & Prof. Code § 17200 and the Common Law**
7 **(Alleged Against All Defendants)**

8 47. Plaintiff hereby incorporates by reference each and every allegation contained in the
9 paragraphs above as if fully stated herein.

10 48. Cal. Bus. & Prof. Code § 17200, et seq., states that unfair competition shall mean
11 and include any "unlawful, unfair or fraudulent business act or practice."

12 49. Defendant's actions as alleged herein constitute unlawful business acts and/or
13 practices under Cal. Bus. & Prof. Code § 17200, et seq. and the common law.

14 50. Defendant's conduct constitutes unfair business acts and/or practices because
15 Defendant has unfairly used and infringed Plaintiff's various stylized Port Brewing Marks pursuant
16 to the Lanham Act while engaging in a business practice.

17 51. Defendant's conduct constitutes fraudulent business acts and practices because
18 Defendant has deceptively and unfairly marketed, advertised, sold, and/or distributed products
19 under trademarks that are confusingly similar to Plaintiff's various stylized Port Brewing Marks.

20 52. As a direct and proximate result of Defendant's wrongful act, Plaintiff is likely to
21 suffer, and/or has suffered, and is likely to continue to suffer damage to its business reputation and
22 goodwill. Defendant will continue, unless restrained, to use the marks, and to deceptively and
23 unfairly market, advertise, and promote its business. This will cause irreparable damage to
24 Plaintiff. Plaintiff has no adequate remedy at law. Plaintiff is entitled to an injunction restraining
25 Defendant, its officers, agents, and employees, and all persons acting in concert with Defendant,
26 from engaging in further acts of unfair competition. Such harm will continue and increase until
27 Defendant is preliminarily and permanently enjoined from its unlawful conduct.

28 53. Plaintiff is further entitled to recover from Defendant the actual damages that it
sustained and/or is likely to sustain as a result of Defendant's wrongful acts. Plaintiff is presently

1 unable to ascertain the full extent of the monetary damages that it has suffered and/or is likely to
2 suffer by reason of Defendant's acts of unfair competition.

3 54. Plaintiff is further entitled to recover from Defendant the gains, profits, and
4 advantages that Defendant has obtained as a result of its wrongful acts. Plaintiff is presently unable
5 to ascertain the full extent of the gains, profits, and advantages that Defendant has realized by
6 reason of its acts of unfair competition.

7 55. Because of the willful nature of Defendant's wrongful acts, Plaintiff is entitled to an
8 award of punitive damages.

9 **SIXTH CAUSE OF ACTION**
10 **Unjust Enrichment Under Common Law**
(Alleged Against All Defendants)

11 56. Plaintiff hereby incorporates by reference each and every allegation contained in the
12 paragraphs above as if fully stated herein.

13 57. By virtue of the egregious and illegal acts of Defendants as described above,
14 Defendants have been unjustly enriched in an amount to proven at trial.

15 58. Defendant's retention of monies gained through its deceptive business practices,
16 infringements, and otherwise would serve to unjustly enrich Defendants and would be contrary to
17 the interests of justice.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment against the Defendant, and each of them, as
20 follows:

21 1. For damages in an amount to be proven at trial for trademark infringement under 15
22 U.S.C. § 1114/Lanham Act § 43(a);

23 2. For damages in an amount to be proven at trial for false designation of origin under
24 15 U.S.C. § 1125(a);

25 3. For damages in an amount to be proven at trial for trademark dilution under 15
26 U.S.C. § 1125(c);

27 4. For damages to be proven at trial for common law unfair competition;

28 5. For damages in an amount to be proven at trial for unfair, fraudulent and illegal

1 business practices under Cal. Bus. & Prof. Code § 17200;

2 6. For disgorgement of Defendant's profits under 15 U.S.C. § 1117(a);

3 7. For injunctive relief barring Defendant and its agents, employees, subsidiaries,
4 licensees, successors, and assigns, and all other persons in active concert, privity or participation
5 with it, from doing, abiding, causing or abetting any direct or indirect use of Plaintiff's Port
6 Brewing Marks, or any confusingly similar trademarks in any way, including in advertising,
7 promoting, or selling Defendant's products and services, which infringe upon Plaintiff's rights or
8 compete unfairly with Plaintiff;

9 8. For an order from the Court requiring that Defendants provide complete accountings
10 and for equitable relief, including that Defendants disgorge and return or pay their ill-gotten gains
11 obtained from the illegal transactions entered into and or pay restitution, including the amount of
12 monies that should have been paid if Defendant's complied with their legal obligations, or as equity
13 requires;

14 9. For an order from the Court that an asset freeze or constructive trust be imposed over
15 all monies and profits in Defendant's possession which rightfully belong to Plaintiff;

16 10. For destruction of the infringing articles in Defendant's possession under 15 U.S.C.
17 § 1118;

18 11. For damages in an amount to be proven at trial for unjust enrichment;

19 12. For all costs of suit; and

20 13. For such other and further relief as the Court may deem just and equitable.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff respectfully demands a trial by jury in this action.

23
24 Dated: September ____, 2010

GRISWOLD LAW

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26 By: _____

Richardson C. Griswold, Esq.
Attorney for Plaintiff
PORT BREWING, LLC

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